



# CITY OF PALO ALTO CITY COUNCIL TRANSCRIPT

Regular Meeting  
November 7, 2016

The City Council of the City of Palo Alto met on this date in the Council Chambers at 6:08 P.M.

Present: Berman, Burt arrived at 6:18 P.M., DuBois arrived at 6:29 P.M., Filseth, Holman arrived at 6:32 P.M., Kniss, Scharff, Schmid, Wolbach

Absent:

## Agenda Changes, Additions and Deletions

Vice Mayor Scharff: Agenda Changes, Deletions, Additions, I don't think we have any.

## City Manager Comments

Vice Mayor Scharff: Move to City Manager comments.

James Keene, City Manager: Thank you, Mr. Vice Mayor. Just three things to report. First of all, if you look up there on your screen, you will see that rain brings new plantings. We had more than 2 1/2 inches of rain in October at our newly rejuvenated 130-acre Byxbee Park. Perfect timing as we had just planted 2,000 native plants in 16 pilot vegetated islands. The plantings are a big part of our Byxbee Park interim plan and will inform decisions about the ultimate landscaping plan, etc., for the broader area. The rains also sprouted growth from our hydroseeding, but even natives will have a tough time surviving their first few summers, so we're experimenting with some small irrigation systems using recycled water. Here's one of our four small compressed-air operated pumps we use to get water from tanks to the new plans. I hope you'll join me in jogging or walking out there and watch the progress that is unfolding with this joint Public Works and Community Services Department project. The next item, I would say, is the artist Patrick Dougherty has returned to the Palo Alto Art Center October 30th through November 18<sup>th</sup> to create another captivating willow sculpture. The Council will recall that Dougherty's previous temporary sculpture, *Double Take*, was created as an installation in 2011. While temporary, it was there for five years over time, but it had lost its structural integrity and was

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removed in June. Wood chips from the piece were integrated naturally into the City's park landscaping. Following the destruction of *Double Take*, a crowdfunding effort was launched by the Palo Alto Art Center Foundation to raise funds to bring Dougherty back to construct another sculpture. The crowdfunding raised \$15,000, met within a two week period, and he has come back to create and construct another environmentally friendly sculpture. Of course, that's not Mr. Dougherty there in the bottom right-hand corner but our own Rob de Geus. Finally, just again, the Rinconada Library wins another design award. Last week, the Rinconada Library was recognized for its design and received the Honor Award for Public Architecture at the San Mateo County American Institute of Architecture. The design jury awards one Honor Award to the project that best demonstrates a confident sense of place, ecology, history and purpose. It is further confirmation in the case of this award of this very successful renovation that upgraded our library structure while maintaining the integrity of its architecture. That's all I have to report.

Vice Mayor Scharff: Thank you very much.

## Oral Communications

Vice Mayor Scharff: Now, we'll move to Oral Communications. You'll each have three minutes. The first speaker is—I think it's Tesfamichael Zeru Ugbe. Is that correct? Am I mispronouncing it? After that, we'll have Iris Korol.

Tesfamichael Zeru Ugbe: My name, that's not my (inaudible). My name is Tesfamichael Zeru Ugbe. I already told him to be called on (inaudible). I don't know who (inaudible) very name of me. If I said your name is Michael, would you accept that name? Would you accept it?

Vice Mayor Scharff: I apologize for mispronouncing your name. Would you like to speak?

Mr. Ugbe: (inaudible) I got to know this. This is a serious matter. (inaudible). I've said this (inaudible). I'm going to talk about the education system of the City of Palo Alto, that's number one, the City of San Pablo, that's number two, the City of (inaudible), better named as (inaudible), that's number three, and the City of Richmond, that's number four, to be upgraded and elevated. This has to include the safety of all children under the age of 25. Twenty-five is the landmark for adulthood. At the (inaudible) time, when the age 25 ends, then the person becomes an adult. Serious. I've said this. I've told several times in my lifetime about the age of adulthood. This has to be less than 25 complete years. The safety of all those children has to be kept by me first and if subordination and help by

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those who are compatriots of me basically of the four cities that I mentioned. The other thing, this is my final time. I'm president (inaudible) working as president (inaudible) and working as president—I'm also President Donna J. (inaudible). Whenever people you're going to call me. Whoever says Tesfamichael as a name be said for the name Tesfamichael Zeru Ugbe, if anybody says Tesfamichael I have taken a (inaudible).

Vice Mayor Scharff: Thank you. Iris Korol to be followed by Ken Cunningham.

Iris Korol: Hi. I'm Iris Korol, and I'm representing 2016 Citizens Police Academy of Palo Alto. Some of my fellow classmates are here with me and Zach Perron, who led our charge. We'd like to read a letter to you that was signed by all 21 of us. Dear Palo Alto City Council Members, we the 2016 Class of the Palo Alto Citizens Police Academy would like to acknowledge the hard work and caring of Lieutenant Zach Perron in planning and leading the Citizens Academy. He and his colleagues—each week he brought in presenters from various areas of the Police Department—were outstanding. Each and every presenter was well prepared, providing interesting information and offering interactive experiences for our group to participate in. The sessions were varied, including three hours of class time as well as offsite activities. We each spent time in the dispatch center and also on a patrol ride-along. The Academy gave us the opportunity to interact with PAPD officers and to see how they do their job as well as to see them as real people. It also provided the officers the opportunity to see and know members of their Palo Alto community. We applaud and appreciate the professionalism of the Palo Alto Police Department (PAPD) and its officers and thank Chief Burns and the leadership of the Department for making this program available to the Palo Alto community. It was a fabulous experience. Zach, we would like to give this to you.

Lt. Zach Perron, Palo Alto Police Department: We'll be recruiting for the next class starting in the next few weeks, if anyone's interested, starting in January of 2017. Thank you.

Mayor Burt: Thank you very much. The next speaker is Ken Cunningham, to be followed by Lynn Krug.

Ken Cunningham: Good evening. My name is Ken Cunningham. I'm an AC Officer with the City of Palo Alto. I've worked for two large animal shelters and been in public service for over 20 years. Approximately four years ago when the City took the first shot at Animal Services, the agency survived the attack but came away gravely wounded. After losing the City of Mountain View through no fault of their own, the City descended on the little shelter

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by the Bay and gutted the agency to the bone. It's been made clear over the years there's never been any intention of resurrecting an agency the City could be proud of. No capital improvements of any type of the outdated left to crumble. During this process, it's been difficult and rather unfortunate to hear the misinformation and flat out lies leveled against the people I consider my family. On a number of occasions, they've questioned the integrity of the agency and people working here. We have been warned by the City that we cannot defend our position and, in fact, warned against talking to anyone about these allegations. For years, we were told we couldn't directly fundraise, so we left it to our so-called Friends of the Palo Alto Shelter. Many of the Friends groups within the City have raised tens of millions of dollars for various projects I'm sure you're familiar with. Instead, our Friends group decided to solicit and actively participate in the interest of Pets in Need, again leaving us with no vehicle for fundraising. Back to checking the boxes. I'm a little confused. The City is going to refurbish and upgrade the shelter for Pets in Need but let it rot away from its own people. Pets in Need are going to build 80 kennels so they can kennel animals longer. We have 22 kennels and have never euthanized for space or time. I think the money used for 80 kennels could be better used for outreach and education. In closing, I'd like to personally thank the incredible Staff members who successful run an antiquated, falling down shelter with integrity and compassion. Acting Superintendent Cody McCartney at any given time can be seen at the City Hall attending meetings or in the office helping the public, working as an Animal Control Officer in the field or helping the animals in the shelter. By the way, he's saved Animal Services and the Police Department hundreds of thousands of dollars by negating the necessity to go out and find a professional and help with this transition. He's been up there doing it himself along with everyone else. Jeannette Washington and (inaudible) Joe Dixon have been doing the work of many others. Thank you.

Mayor Burt: Thank you. Our next speaker is Lynn Krug, to be followed by Jeannette Washington.

Lynn Krug: Good evening, City Council Members. We are here tonight, volunteers, employees and community members all, asking the City to retain the City of Palo Alto Animal Shelter as a community animal shelter. As employees, we are members of this community. We work hard and wish to sustain the shelter. We are willing to seek sponsorship and find sponsorship to raise the funds for our shelter. It seems contraindicative to be funding an outside source when we could bring these monies to our own employees, to our community shelter and raise the funds that we need. Why would we outsource this to someone else and pay them to run the shelter when we

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have this service now in-house and the dedicated employees to perform this service. Thank you, and I hope you will reconsider.

Mayor Burt: Thank you. Our next speaker is Jeannette Washington, to be followed by Bunny Bornstein. Welcome.

Jeannette Washington: Hi. For several years now, the animal shelter has been left in limbo while City officials put off much needed renovations. The outdated state of the shelter and lack of financial stability lays solely on the fault of City management. They have repeatedly placed unrealistic burdens on employees to raise revenues with less Staff and less resources. This situation that we're currently in presents an opportunity for real change. With a new, open-minded superintendent and appropriate staffing, programs can be placed in place that will allow the shelter to expand services in a cost-effective manner. Has the City truly tried every measure to obtain funds and donations on behalf of a new shelter? For example, a Measure N bond was placed on the ballot for voters to approve the new Mitchell Park Library. \$29 million was raised for Palo Alto's new performing arts center. \$4 million was raised by a community group for a total renovation of \$7.9 million for the Art Center. The Junior Museum Friends group has a \$30 million goal to remodel the Junior Museum. The remodel of City Hall at a cost of \$4.5 million. Our community has proven time and time again that where there's a will, there's a way. Funding is possible. The support of the community is there. We have a new opportunity to move the shelter forward, but let's keep it within the City of Palo Alto. We're proud of the work the shelter does. Pets in Need rescues dogs from other shelters, and that's great, but Palo Alto does as well. That's what shelters do; we help one another. What happens in five years if Pets in Need decides the shelter is not working for them, their mission statement is not being met, and their relationship is (inaudible)? What's the City's backup plan? Will they then outsource the shelter outside of Palo Alto? Palo Alto has been a leader in putting community services first. This is an opportunity to continue that tradition and show our neighbors what an innovative and groundbreaking shelter can be. Thank you.

Mayor Burt: Thank you. Our next speaker is Bunny Bornstein, to be followed by Teddy Daliggo.

Bunny Bornstein: Good evening, Council Members. I was here a few weeks ago when a lot of us from our community group spoke to you. At that time, I was able to provide from all of us a green packet that we distributed through Beth to you. I don't know if you've had the opportunity or the time, but we would really appreciate it if you would look through the green packet that we developed for you. Inside of it on the right-hand side are all

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the community petitions. Hard copies are on the right; the online copies are on the left. When we presented it to you two or three weeks ago, at that time we had about 1,685 signatures of people who are supporting our vision to keep the shelter with the City. As of today, I have more hard copy petitions, and most of these signature are residents or business owners or both in the City of Palo Alto as well as Los Altos and Los Altos Hills, also neighboring communities that use services at the City as well as cities in other states, this state and across the country. A majority of the ones you're going to get today as well as the ones you've already received are Palo Alto residents. The community is basically telling you we don't want you to do this. We are here trying to be the voice for all in the community. I'd like to pass out—it's only four pages. If you would please add it to your packet, then you can actually visibly see all the signatures that volunteers and staff and dedicated people have spent time to provide for you. In the time that I have left, I want to make note to all of you that also in the packet is a two-page fact sheet. These are facts that basically give you documentation and validate many of the points that speakers brought up to you 3 weeks ago as well as this evening. Also in the packet is statistical information that was compiled by Animal Shelter Staff. Please we are asking you to review it and please work with us to help keep the shelter with the City. We have donor ideas, funding ideas. We're willing as a community to work with you all. Please let us know that you will. Thank you very much.

Mayor Burt: Thank you. Teddy Daliggo to be followed by John Karl Fredrich.

Teddy Daliggo, Santa Clara County Health Department: Good evening, Honorable Mayor and Council Members. My name is Teddy Daliggo, and I'm from the Santa Clara County Public Health Department. I'm here to invite each of you to join us at our Healthy Cities conference that's occurring next week, Friday, November 18th, at the Tech Museum in downtown San Jose. The purpose of this conference is to share policy and strategy ideas that cities can adopt to promote and support the health of their employees, residents and visitors. At the conference, a Healthy Cities campaign dashboard for your specific city, the City of Palo Alto, will be shared. I want to thank Ed Shikada, Kristen O'Kane, Rob de Geus, Chris Corrao and the rest of the City Manager's team for their assistance in vetting the dashboard. Based on the dashboard findings, awards will be presented at the conference to acknowledge the amazing work of cities including Palo Alto. In closing, I will leave conference agenda and the registration information. Thank you for your time, and I hope we'll see you there. Thanks.

Mayor Burt: Thank you. John Karl Fredrich to be followed by Kip Husty. Welcome.

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John Karl Fredrich: Good evening. I'm John Fredrich, candidate for City Council, and I certainly support the animal services. I'm here tonight to correct the record from the October 24th meeting. I'm probably one of the 1,000-plus signatures on their petition. In that meeting, there was a dispute as to what the language of Proposition 64 said. I read from the record, contrary to the opinion of the City Attorney, that growing in an area that is unlocked or visible from a public place is illegal under this measure. That means you cannot grow it in front of your house or at the side of your house unless there was a seven foot fence, something that protected it from eye level. Also, it was claimed that it could be grown in community gardens, which does not fit the language of the measure that it has to be not visible by normal, unaided vision from a public place. Since community gardens are of themselves a public place, it could not be hidden under those circumstances. Those are items of fact that the City Attorney was in error of in her presentation. When challenged, they made that statement twice, and the Mayor even asked at the end, "Do you stand by your opinion?" I want to thank Mayor Burt and Councilman Schmid for declining to recognize the urgency of this measure as my contention that night was that the measure should be voted on by the public before any action needs to be taken. Ordinance 4422 that was passed under the medical marijuana thing should be explained to have been necessary. Is this a problem in the first place? The idea that the California Cities League says here, the disclaimer, this is not intended for legal advice but should be referred to an attorney—it should have also been referred to the District Attorney, State Attorney General and the Attorney General of the United States before action is taken. The fact is that marijuana is still a Schedule 1 prohibited drug. At any time, the Federal government can shut down any operation, even those that are allowed by Proposition 64. I think you need to do a little more homework on this. I also would disagree with the conclusion here that the resource impact is negative, that there's no resource impact. If you make this like the leaf blower act and choose not to enforce it, then yes, it would be no impact. If you're going to take the services to do something, then you're going to have costs attending to this measure. I'd like the record to show those changes.

Mayor Burt: Thank you. Our next speaker is Kip Husty, to be followed by our final speaker, Keith Bennett.

Kip Husty: There was no emergency. This was ridiculous. Cory, the last time I was here I pointed out—you were electing Council Member Holman as Mayor. I pointed out that she had supported no camping, and you kind of bent over backwards to say it was okay. You got my vote because you came out against the measure. Are we doing the same thing? Medical marijuana is an important, life-saving part of the California law. What does Proposition 64 do to it? We don't know. What do you guys do? If you don't

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make it clear that growing marijuana for medical purpose is okay in the backyard, you are condemning some people to misery. I don't want to see this once again go down to court cases. Now, you can get people in deep trouble while it gets played out. It's ridiculous. It's ridiculous. We're supposed to be getting better, not worse. This is Palo Alto, not California cities which who knows which ones dreamed this one up. Let's back off on that. Growing outdoors first of all is the only way to do it that's safe. The only way to do it that's safe, no fire hazard. You're making something out of nothing, out of nothing. If you're worried about the children, come on, come on. You can go into any high school in Palo Alto, probably any junior high in Palo Alto, middle school in Palo Alto, and you can get yourself marijuana. To take somebody's plants, to take it home, dry it and things like that is ridiculous. It's not going to happen. Don't make something that doesn't have to be. Right now, it's working. I won't tell you exactly how I know it's working, but let me just tell you it's working fine, and it's helping people with serious illnesses. You're treading on that by this Ordinance unless you make it real clear, the exceptions. Don't worry about Palo Alto actually becoming a—I don't know why it would be so bad. It's not going to become a cash crop city. Heaven forbid Palo Alto actually produces something agricultural again. That'd be a real shame, wouldn't it? Come on, you guys.

Mayor Burt: Thank you. Our final speaker is Keith Bennett.

Keith Bennett, Save Palo Alto's Groundwater: My name is Keith Bennett. I'm here with Save Palo Alto's Groundwater. We've made some measurements of the pull down of the water table due to dewatering. About a year or a little bit over a year ago, I was asked by a Council Member whether or not the effect on neighboring properties was on the order of inches or on the order of feet. I will show you tonight that it is on the order of feet. We measured near the locations of two dewatering sites of the eight residential sites that were dewatered this last summer. Zero on the graph is roughly the start of the dewatering on that site. You can see we have two lines here. The blue line was measured about 45 feet away from the property line; that's a next door house. The other line is 115 feet; that's two doors away. You can see that the water table is pulled down approximately four to six feet quite promptly. After the pumping stopped, the water table rose back up over a period of about a week but did not rise to the starting location. The pumping was then restarted. The water table dropped down. It dropped down lower than before over about a week. When the pumping stopped, it went back up and etc. Finally it ended about one foot below the starting point. This is another property. The first property I mentioned pumped about 30 million gallons. This property pumped something over 20 million gallons. This measurement is 220 feet from the property line; that's about three or four houses. They started later



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in the summer. The first red arrow there shows the start of a distant—I think it's about 2,000 feet away, maybe 1,000 feet away. This is the start of dewatering. The water started to go down. When the closer site started pumping, the water dropped quite rapidly, about two feet, and then more slowly down to about three feet below the starting point. When it rained, the water table came up. Finally the pumping stopped, and then the water table recovered after about a week; however, the water table recovery was incomplete. The summary is that dewatering has significant extended impacts several properties from the boundary of the applicants' properties, and the water table recovery even after significant rains—we had about one-fifth of our normal rainfall—is incomplete. Thank you.

Mayor Burt: Thank you.

## Minutes Approval

1. Approval of Action Minutes for the October 17 and 24, 2016 Council Meetings.

Mayor Burt: We will now move to approval of Minutes. We have Minutes from October 17th and October 24th of this year. Do we have a Motion to approve?

Vice Mayor Scharff: So moved.

Council Member Berman: Second.

**MOTION:** Vice Mayor Scharff moved, seconded by Council Member Berman to approve the Action Minutes for the October 17 and 24, 2016 Council Meetings.

Mayor Burt: Motion by Vice Mayor Scharff, seconded by Council Member Berman. Please vote on the board. That passes unanimously.

**MOTION PASSED:** 9-0

## Consent Calendar

Mayor Burt: We now move on to our Consent Calendar. We have no speaker cards. Do we have a Motion to approve?

Vice Mayor Scharff: So moved.

Council Member Berman: Second.

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**MOTION:** Vice Mayor Scharff moved, seconded by Council Member Berman to approve Agenda Item Numbers 2-4.

2. Utilities Advisory Commission Recommendation That the Council Adopt the Net Energy Metering (NEM) Transition Policy and Resolution 9638 Entitled, "Resolution of the Council of the City of Palo Alto Revising the NEM Cap Calculation Methodology."
3. Approval of Amendment Number 3 to Contract Number C15157271 With McGuire Pacific Construction to Extend the Term of the Contract for Downtown Residential Preferential Parking Sign Installation to September 1, 2018 With no Additional Costs.
4. Ordinance 5398 Entitled, "Ordinance of the Council of the City of Palo Alto to add Chapter 10.51 to the Palo Alto Municipal Code to Permanently Implement the Crescent Park No Overnight Parking Program and Expand the Boundaries of the Program (FIRST READING: December 7, 2015 PASSED: 7-0 Scharff Not Participating, Burt Absent)."

Mayor Burt: Motion by Vice Mayor Scharff, seconded by Council Member Berman. Please vote on the board. That passes unanimously.

**MOTION PASSED:** 9-0

## Action Items

5. Resolution 9639 Entitled, "Resolution of the Council of the City of Palo Alto Amending and Restating the Administrative Penalty Schedule and Civil Penalty Schedules for Certain Violations of the Palo Alto Municipal Code and the California Vehicle Code Established by Resolution Number 9554 (Continued From October 4, 2016)."

Mayor Burt: We now move on to our first Action Item, which is Item Number 5, adoption of a Resolution amending and restating the Administrative Penalty Schedule and Civil Penalty Schedules for certain violations of the Palo Alto Municipal Code and the California Vehicle Code established by Resolution Number 9554. Director Gitelman, do you—who launches ...

Albert Yang, Senior Deputy City Attorney: Albert Yang, Senior Deputy City Attorney.

Mayor Burt: Welcome, Mr. Yang.

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Mr. Yang: Good evening, Council Members, Mayor Burt. Before you is our annual update to the Administrative Penalty Schedule. We brought this item before you a few weeks ago and took it back to respond to a number of Council comments. Those are addressed in the Staff Report. I do just want to make one clarifying note. The amounts in the draft Penalty Schedule all reflect the initial penalties that are available through a citation. For the subsequent violations of the same section, penalties will increase. For the second violation, the penalty is 1 1/2 times the amount stated. For the third and subsequent violations, the penalty is twice the amount that's stated in the Penalty Schedule. I am available and Director Gitelman available for any questions you may have.

Mayor Burt: Thank you. Any questions from Council of Staff? If not, we'll move on to members of the public who—we have ten speaker cards and more. If anyone else wishes to speak, please bring forward a card at this time. Council Member Holman.

Council Member Holman: Just a couple of questions. The language having to do with—I have the same question around some things. The language around—I'm trying to find it here. It's Packet Page 63. It's 16.49.050. This is one of three, where I have the same question. It says exterior alteration of Downtown structures or significant structure outside the Downtown without or in violation of a permit. What's the definition of a significant structure?

Hillary Gitelman, Planning and Community Environment Director: Thank you, Council Member Holman. Hillary Gitelman, the Planning Director. I think we note in our Staff Report that several of these items we've added with regard to historic structures are going to need supporting amendments in the section of the Zoning Ordinance about historic preservation. We could address that, if it's not already addressed, in Section 16 of the Municipal Code when we go back to add the definition of demolition as we've discussed and substantial alteration.

Council Member Holman: I understand coming back with a definition of demolition. In the meantime—I'd like to know if there's a timeline on coming back with a definition of demolition—why could this not just be identified as exterior alteration of Downtown historic structures or identified historic structure? That language is used quite a bit; identified historic structure is used a fair amount, I think, in our Code. Then it has a meaning.

Mr. Yang: A significant building is the term that's used in those sections of the Municipal Code. It's also defined in Chapter 16.49. A significant building means any building, group of buildings or site categorized on the Historic

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Inventory as Number 1 or Number 2, and all structures within Historic Districts.

Council Member Holman: Is that within the context of that language or is that standalone?

Mr. Yang: This is all within the same Chapter, so it is meant to define that term "significant building" as used throughout the chapter.

Council Member Holman: That's helpful. Thank you. Just a couple of other quick questions. On the next page, 22.04.250, it's park regulations. What does that mean? Violation of park regulations? The language is different in some places. 22.040.320 is parks closed. On the next page, 22.040.390 just says duck pond. I don't know how to interpret those.

Mr. Yang: The convention in this Penalty Schedule is in terms of naming is kind of a holdover from years past. In general, these are meant just as shorthand for the sections of the Municipal Code that are cited. Park regulations, for example, I believe that section of the Municipal Code authorizes Staff to adopt regulations for the use and conduct in parks. A violation of that section would be a violation of any regulations adopted thereunder.

Council Member Holman: Would it not be clearer for somebody at a quick glance to then just look at this and say violation of park regulations?

Mr. Yang: It certainly would. As we update specific parts of this Penalty Schedule, we have tried to have clearer language. I agree it would be helpful to revamp the Schedule as a whole.

Council Member Holman: We have this in front of us tonight, and those seem to be minor language cleanups that wouldn't affect the Code. Couldn't we just do that tonight if we chose to?

Mr. Yang: I guess.

Council Member Holman: For clarity.

Molly Stump, City Attorney: Thank you. City Attorney, Molly Stump. This is one of those things where do we take more time to perfect the project or do we do the items that are immediately before us that have a substantive effect and then take our limited energies and focus on the many other things we're doing finishing out the year here. If there are minor specific items to be changed, I think we could do that tonight. If what you're seeking is a

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restructuring of the whole Administrative Penalty Schedule, I would suggest maybe next year we could take that up when we do the annual cleanup.

Council Member Holman: Certainly not a restructuring, just a clarification. If there was one that we chose to add this evening, could we do that? The one I'm thinking about and I realized wasn't in here when I was reading this again last night or whenever is something I hear a lot of complaints about. That is noncompliance to construction truck traffic routes. Construction trucks are driving through neighborhoods, and they're not supposed to be there. Not complying with construction traffic plans, I hear that quite a bit. If we wanted to add something, could we do that this evening?

Ms. Stump: I'm going to let them look at the details. In general, if there was something that's not currently prohibited by City law or regulation, we can't add that substantive item tonight, because it's not noticed for that. If there's a desire to provide a particular penalty that's customized for a section that already exists, we could probably do that. The way that the schedule is setup, there's also a default penalty. Even if particular items are not listed, we do have an ability to use the basic through the Schedule as it is.

Council Member Holman: It would be conformance with project permits. Does that require some kind of other change?

Ms. Stump: Is there a particular type of permit? There are various permits listed in our Code.

Council Member Holman: There are conditions of approval that are given. Ms. Gitelman or Jonathan Lait can probably clarify the language better. There are conditions of approval, and oftentimes those conditions of approval have traffic routes for construction trucks. We do have in our City Code also a weight limit for trucks on residential streets. Those both get violated quite a lot during construction, larger projects especially.

Ms. Stump: Why don't we look at the detail on that while the rest of the hearing is going on?

Council Member Holman: Thank you, appreciate it.

Mayor Burt: Council Member DuBois.

Council Member DuBois: A couple of questions. Some of these fees are—most of them are per incident, but some of them are per day. Is that correct?

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Ms. Gitelman: Albert can correct me if I'm wrong. I believe they're all per violation. The City has a great deal of discretion about how frequently to charge these. The changes we're talking about adding this evening for the PC zoning and the Transportation Demand Management (TDM) plans—we've identified what the maximum could be per violation, and we could do that up to every day. Every day could be a new violation. We don't have to charge it on every day, but we can.

Council Member DuBois: I wasn't clear about that. Some of the Ordinance said it was a per day fee, like the PC zoning, or it's really per incident. You're saying they're all really per incident.

Ms. Gitelman: There's a great deal of discretion with all these.

Council Member DuBois: The understanding is the PC Zoning and the Transportation Management Association (TMA) would be per day.

Ms. Gitelman: That's right.

Council Member DuBois: Obviously a TDM charge of \$500, if that was the sum total ...

Ms. Gitelman: Again, we have discretion because the magnitude of violations can vary and the severity of them could vary. I could imagine there'd be a violation of a TDM plan or a Planned Community (PC) that might be really minor, where you wouldn't want to charge that kind of fee on a daily basis. Charging it once is sufficient to get compliance, and that's all we need to do. We certainly with this change have the ability to charge these fines every day.

Council Member DuBois: Are there any others that you would consider more like a daily fee?

Ms. Gitelman: I think all of these can be charged on a daily basis. Am I right, Albert?

Mr. Yang: Yes, to the extent that they're ongoing violations. The general provisions of our Code state that each day is considered a separate violation. A citation could be issued each day, but it does not have to be issued each day.

Council Member DuBois: Thank you. I'm curious if Staff considered having any escalating penalties built into the Code so we don't have to revisit Council as often. I'm just wondering if you guys discussed that. Like the PC

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zoning one, if the penalty doubled every three months, it would just naturally escalate the longer it went. Did you guys think about that at all?

Ms. Gitelman: We didn't think about that. We thought about getting it to a point where it's a substantial penalty. Again, there are going to be some violations and some situations where, I think, it will be difficult to charge this kind of fine on an ongoing basis. Where the PC calls for something that's of significant value and the PC itself is the significant value, I think we can charge it on an ongoing basis even if it were to double, as Albert said, where it wasn't just \$2,000 a day, but it went up to \$4,000 a day. That's not always going to be the case.

Council Member DuBois: Again, I don't think I'm going to suggest it tonight. If we revisit these, some of the fees look fairly dated. Again, if there's something big where we really want to motivate somebody, if we told them there was a timeline—in 90 days it's going to double again—it may give some incentive. A quick question about the taxi permit. Does that apply to Uber or are they excluded somehow?

Ms. Stump: Uber is a—I forget the special term that the State created to describe the new ridesharing company—has been regulated by the California Public Utilities Commission (CPUC); although, wasn't that slated to be moved to the Department of Motor Vehicles? I'm not sure what happened when the Governor—we'd have to look at that. There was a proposal to restructure a lot of the way this work was done on a regulatory basis. Some of it was vetoed at least on the Governor's desk. We can get back to you on that.

James Keene, City Manager: Just separate from that, I think in one of the upcoming—before the end of the year, I think, actually we're going to come on the Taxi Cab Ordinance discussion to Policy and Services. We'll have some opportunity to talk through some of the ramifications.

Council Member DuBois: Make it a fair playing field.

Mr. Keene: There are a number of issues associated with the regulation of taxi cabs, the freedom of cabs to move and that sort of thing.

Council Member DuBois: My last question. We struck out a bunch of discharge fees, like on Packet Page 61. I'm just curious why we struck out all those.

Mr. Yang: Those were all listing out very specific sections of our Sewer Use Ordinance. We just replaced those with one generally applicable penalty for violation of that chapter. All the penalties were the same, so there's no substantive change.

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Council Member DuBois: Do you know which fee that is? Is it basically they were all \$1,000, so it's basically \$1,000?

Mr. Yang: If you look at the line after the last strikeout, there is a new general penalty.

Council Member DuBois: Thank you.

Mayor Burt: Council Member Kniss.

Council Member Kniss: Just to follow up on Council Member DuBois' comments regarding PCs. Just to go back to that for a minute. The last PC that we voted on and the only PC that five of us have ever voted on was Maybell. I don't recall dealing with fines at that point. I was interested in Tom's point, I think, being should we weave into PCs—is that what you were asking, Tom? Fines that are higher or more predictable, that continue to ...

Council Member DuBois: Not into the PC. I think the penalty is here, but we could have a mechanism to increase it over time.

Council Member Kniss: I don't see it included in here. It's been a long time since we've done a PC. We could talk about it, but I don't recall us discussing it for quite some time. Is that the case?

Ms. Gitelman: Council Member Kniss, you raise a really good point. We're talking about this Administrative Penalty Schedule, but this is really only one tool we have in our toolbox to achieve compliance. There are a number of other options that are available if we have an incredibly difficult Code enforcement matter. There are situations, as you've said, where you might in an Ordinance institute a separate or different arrangement. We did for the College Terrace Centre, if you remember. It was actually in the PC Ordinance, some kind of agreement with a penalty or a remedy specified. This is just one quiver to give us the ability to charge these. There are other things we can do.

Council Member Kniss: Thanks for that reminder. I do remember that we wove that into the next grocery store that will come along. Thanks.

Mayor Burt: Vice Mayor Scharff.

Vice Mayor Scharff: Just briefly. On the new one that says "exterior alteration of downtown structure or significant structure outside the downtown," is that any structure in the Downtown or is that just a significant structure in the Downtown?

Ms. Gitelman: It's intended to be historical buildings, significant structures.



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Vice Mayor Scharff: Shouldn't that be clarified or does that no matter? Right now it looks like any structure in the Downtown as opposed to—we call significant to be outside the Downtown.

Ms. Gitelman: I think that would be an acceptable clarification. I'll turn to my colleague.

Mr. Yang: I'm sorry. Could you repeat what ...

Vice Mayor Scharff: I'm at 16.49.050.

Ms. Gitelman: The question is should it say exterior alteration of a significant Downtown structure, just to qualify Downtown structures.

Mr. Yang: I believe it was any historic structure Downtown. It didn't need to be significant.

Vice Mayor Scharff: Maybe we should just say historic then. That's all. I'm just trying to clarify.

Mr. Yang: I think that's a good clarification.

Vice Mayor Scharff: Just out of curiosity. What is the failure to pay the fee for Charleston/Arastradero? Is there a particular fee for that? That just struck me as confusing.

Ms. Gitelman: I think there is an impact fee specific to that.

Vice Mayor Scharff: If you're on that corridor, you pay a specific impact fee. That was really all I had. Thanks.

Mayor Burt: We will now move on to the public. Our first speaker is Kirk Fry. We have 12 speakers.

Kirk Fry: Hello. My name's Kirk Fry. I'm a resident of Midtown. I've lived there for 40 years. When I first moved in, I could walk to six grocery stores. Today, I can walk to three. One of the ones that went away was the one at Edgewood. What I'm speaking to is the fact that we don't have a grocery store at Edgewood, because of the failed PC process and the inadequacy of the penalties to the developer to get a grocery store there. It's pretty simple. If you make it painful enough for them to not have a grocery store there, he'll have a grocery store there. The second point I'd like to make is the PC process is broken in Palo Alto. I have a way to fix it. Every PC project that comes up, put it to a vote to the people and have the person who wants to do the PC project pay for the election. Thank you.

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Mayor Burt: Thank you. Each speaker will have up to two minutes to speak. Our next speaker is Efi Luzon.

Male: I think Efi wants to speak after I.

Mayor Burt: Sorry.

Male: You want Efi? I'm Number 5. It might make more sense if I spoke first.

Mayor Burt: I think we need to follow the sequence that the cards are submitted. Efi Luzon.

Efi Luzon: I don't believe having a penalty is going to get a nice grocery store there. I know the effort that Sand Hill Property is taking under ... We have at least 60 different grocer there that been selected by the original. It say there 30. None of them can make it there at all. To impose fees, that's not going to get you a grocer there any sooner. A trustee can take the property, and you can deal with somebody on the East Coast after that. That's going to be really not productive. I'm not in support of imposing any fees that's more than you already imposing on it. That's not going to get you a grocery. As Kirk suggested, that's not a solution here. I know that they worked very, very hard, continuously working very hard. They in negotiation right now with a mom and pop operation, which they never thought even to consider to do something like this, but they're willing to do it. It doesn't behoove them, Sand Hill Property, to have that empty. The rest of the tenant that they have is being affected by that as well. It's not self-afflicting thing because they are crazy or something. It doesn't make any sense here. I think you have to reconsider and think about it. Just working with a developer, it's a hell of a lot better than just try to impose fees and go to some kind of war. This is not the spirit of Palo Alto.

Mayor Burt: Thank you. Our next speaker is John Yu, to be followed by Cheryl Tsui.

John Yu: Good evening. My name is John. I tend to agree with Efi on imposing a fine on something that is asking is impossible to do. I'm encouraging the Council and the residents to have patience. I understand that I myself is also living very close by, and I would like a grocery store there that I can shop very conveniently. I'm an architectural consultant myself. In studying the supermarket situation, nowadays that very, very different from the previous centuries. This 20,000-square-foot is too big for a mom and pop store and too small for the chain stores. It's kind of something like doing something that is impossible. Your raising the fine doesn't help. It will just for the purpose of doing it. I think they are trying

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their best to find, and they go through 60 stores. None of them—either too small or too big. They might land on one that's willing to come. I hope that you will find you have one very soon. I urge that everybody support them, have patience, and not to raise the fine. That's doing nothing for them. Thank you.

Mayor Burt: Thank you. Our next speaker is Cheryl Tsui, to be followed by John Tze.

Cheryl Tsui: Hi, good evening, Mr. Mayor and all the Honorable Council Members. My name is Cheryl Tsui. I'm here to tell you how much I will appreciate a grocery store in my neighborhood and also how much I appreciate the convenience we have after the opening of Edgewood Plaza. I live at 569 Patricia Lane, which is about 2,100 steps from the Plaza. I walk there every day. Right now, I walk to the Plaza to get my coffee, my bagel. I can do my little banking there. We even have a quality Chinese restaurant. We didn't have that 15 years ago, 10 years or even five years ago. We started to have this about two years ago. I really enjoy it. Of course, I miss Fresh Market and, of course, I know how wonderful it is to have a grocery store in my neighborhood. I tried to look at the other side of the story. I understand it might be a little bit challenging to run a grocery store in the neighborhood. I remember there was a Miki Farm, a little grocery store, on Alma. It closed down about a little while after. Like the people who speak just said, the space at the Plaza for grocery is comparatively small. Maybe the big guy would not be interested in coming in. I think personally it would be perfect size for something like Trader Joe's or Molly Stone, but I'm not sure they want to have another store in the City. It is very challenging. In conclusion, as a resident I think we should be a little patient. I rather wait for a good one. I think we all deserve a good quality little market in the area. I think maybe we should give a little time to the Plaza to find a good one. Thanks a lot for your attention.

Mayor Burt: Thank you. Our next speaker is John Tze, to be followed by Carla Carvalho.

John Tze: Good evening, Honorable Mayor and members of the Council. My name is John Tze, Sand Hill Property Company, Menlo Park. I'm truly disappointed it's taking so long to fill the Fresh Market space, but I'm not entirely surprised. Nobody here was involved, but the first time around it took years before we found the Fresh Market and brought them to Edgewood with the help of our neighbors. Some of that was community involvement with Edgewood Eats. There were a lot of things when that blighted center was there that we could do. The Fresh Market has hundreds of stores. Last year, (inaudible) closed all their California locations. They had seven at one

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time, Palo Alto being one of the last to close. They're subleasing their Edgewood space, and we're doing everything we can to help them. Between us, they've hired a broker, Cushman Wakefield, as you may be aware. We're doing our own search of the local stores. Cushman generally works with national and regional type tenants. We don't feel that what we've learned is that they're the most appropriate. Between us, we've contacted over 65 grocers, and dozens have toured the site. Most of the chain grocers pass because they won't fit into our space, which was sized for an earlier era. We find the family-owned grocers—most of the families aren't interested in expanding. That's not to say we can't find a grocer. We've had two serious prospects and a lot of close misses. We introduced Andronico's to the Fresh Market, and the negotiations were long and tedious. Whenever they couldn't resolve an issue, we made concessions to keep the deal alive. Rent was never an issue with any prospect. In fact, Andronico's initial rent offer was at market rate, which actually gave the Fresh Market a sublease profit. None of that profit came to us as landlord. After all the agreements were finalized, Andronico's literally pulled out at the last minute, saying they were pursuing other opportunities. We were devastated. At the time, word on the street was that they were selling themselves, which proved to be right. Do I have a few more seconds?

Mayor Burt: Just one last statement, wrap-up.

Mr. Tze: A few months ago, we identified a local family-owned grocer who likes the space and wants to expand. They've begun negotiating with the Fresh Market and now are working on a sublease. We will do everything we can to make this deal work. Nobody wants a grocer at Edgewood more than Sand Hill, and we're determined to fill it as fast as we can. Thank you.

Mayor Burt: Thank you. Carla Carvalho to be followed by Lenore Cymes.

Carla Carvalho: Good evening, Council. Mr. Fry, I'm glad to hear that you have three grocers you can walk to from any of our neighborhoods. We currently have zero in the Duveneck neighborhood. I'm glad to hear that we're talking about a prospective mom and pop or small owned grocer as coming in. If that's the case and something is in the works, then we shouldn't have to worry about these fines. We should go ahead and proceed. Sand Hill would have nothing to worry about in that case. In the meantime, for 18 months our neighborhood has been lacking a grocer at Edgewood Plaza. For more than 12 of these months, we've asked for your help in encouraging the developer to seek out a tenant for this empty space. During this time, we the neighborhood have endured the emotional ups and downs, oohs and ahs of a rollercoaster as we were repeatedly told by Sand Hill Properties that such-and-such a grocer was interested, not interested,

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not coming. Each time we held our breath, crossed our fingers and hoped that we would soon be able to take out our walking shoes, bicycles, canes and even walkers and head on over to Edgewood Plaza to pick up some lunch, some dinner, some groceries. It was not meant to be. The deal crafted by Sand Hill Properties to protect itself in the case of prolonged vacancy was clearly well thought out, so well thought out actually that it has fooled me and perhaps many others. Through their corporate manipulation, exploitation and deceit of our neighborhood, Sand Hill continues to collect rent from Fresh Market while the space remains empty. As if this weren't enough, Sand Hill Properties has been able to reap the benefits that we, the neighbors, afforded by allowing ten expensive homes to be built and sold. Please help us. The incremental fine of \$2,000 that you are proposing is inadequate to encourage Sand Hill Properties to incentivize a new tenant. Please make Sand Hill think about a shiny, new deli counter, the smell of fresh-cut roses and the essentials of a healthy Palo Alto diet every time they write a check for 5,000 a day. Thank you.

Mayor Burt: Thank you. Our next speaker is Lenore Cymes, to be followed by Bob Smith.

Lenore Cymes: I'd love a few more seconds, if I could, to just ask all the neighbors that showed up to stand up for a minute. That takes care of the audience. In the packet, there are 76 letters written from people. Some are here, and some are not here. I'm not going to review all the other things that everybody else has reviewed. I want to deal with the frustration of \$1,000 a day. Now, there's a possibility of going to \$2,000. Given the fact that they're still getting rent from Fresh Market, why are they going to get more creative and more positive than they did at \$1,000? I can't believe that's going to make a difference to them. I think \$5,000 would really make a big difference in this neighborhood. If that's the case to some degree, they've got parking that we don't have any more. They've got ten expensive houses that have been sold. The houses are not going to go away. Why don't they give us some of the profits back so that we could look for somebody? They can look for somebody and make them a good offer to move in and a big incentive. The developer at College Terrace wanted a grocery store so badly because of the neighborhood that they were willing to go out and get somebody to run that grocery store. Why don't they do that at Edgewood? Sand Hill has made it abundantly clear to us that Fresh Market and the dealings with Fresh Market are private. We really don't know anything about them. I don't believe that, given the size of Sand Hill, anything less than \$5,000 will cause more than a hiccup to their existence as a company. I also feel that they should get a lot more creative about finding somebody to run a grocery store, even if they have to foot the bill for it. I can't believe that somewhere in this country there's not some senior

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person who's dealt in grocery stores, who wouldn't love the opportunity to run their own grocery store, come in and Sand Hill build it up and figure out how to do it beyond that. Thank you. I think they're just not nearly as creative as they could be. If I could just take one second. If they could tell us they're not in the grocery store business, there's a huge project they're working on in Cupertino, which is putting in the nursery and the tree business by wanting to do a living roof, which is the same kind of thing as running a grocery store. Thank you very much.

Mayor Burt: Our next speaker is Bob Smith, to be followed by Steve Eittreim.

Bob Smith: Hi. Good evening, Mayor and Council. My name is Bob Smith. I live in Greer Road in Palo Alto. I'm going to try to take my time and rebut some of the things I've heard tonight rather than saying what I had prepared. Several of the speakers, pro-development people I think, asked for patience. That's always a virtue and a good thing. A year ago I was here. If you look back at the tape, which may or may not exist, I was very reasonable and patient and tried to be understanding, but frankly I don't know what's going on. I'm not seeing any activity. We always hear stories and there are blogs, and they're inconsistent about what's happening. We haven't really seen the kind of action. The first six months between March and October of 2015, there was no penalty at all. We came in here; you went to the \$500 penalty. Thank you very much. Then, the \$1,000 a day penalty, but nothing has happened since. A couple of blips that maybe Andronico's or maybe Lucky's were coming in. My daughter, who just moved into the neighborhood, was very hopeful. She'd moved there with that in mind actually. We're not seeing the kind of action here. I'm very pleased that Mr. Tze, who I by the way, like as a developer—I've always thought he was a nice guy—is here tonight. I feel sorry for him. There's a very different story he tells us now. I want to say that, from what we had a few years ago when we had the hearings for the PC, he was all confidence at that time that he could find grocery stores and fill them and this was not a problem. He was as confident then as he is more careful now. One gets the feeling that the developer comes in and promises anything to get the PC, the zoning override, the ten houses, and then it's hard. We shouldn't increase the rates, and we shouldn't maybe even have any rates at all in the fines, one speaker said. I disagree. There's got to be a price point at which somebody is willing to come in. The only way I can see—somebody said you have other things in your quiver, other arrows in your quiver, that you can use of the developer. Let's get them out and use them. I don't know where the price is. \$2,000 strikes me as too little. \$1,000 hasn't made any difference. Of course, we don't know all the economics. We don't know what these offers. We hear things; we don't know what's true. It would be

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nice to know. The position you're in—I please beg of you to give us our grocery store, to make that the priority here, and to make this PC Ordinance really work for once for the City. You've got three grocery stores out there. If this one fails and you let him get away with it, the other two will be here sooner or later asking for the same privilege of being able to get out of the grocery store business. Please find a way to do this. Let's make it happen. Let's put the penalties out there big time now. I was patient a year ago; I've lost my patience. Thank you.

Mayor Burt: Thank you. Our next speaker is Steve Eittreim.

Steve Eittreim: My name is Steve Eittreim. I live a couple of blocks from Edgewood Plaza. I want to urge you strongly to take the strongest action you can to incentivize Sand Hill Properties to do the right thing and get a grocer in this very nice space, very nicely remodeled. I appreciate John Tze's reaching out to the community years ago as the developer was planning the whole property, but I have lost patience as all my neighbors have. It's been 18 months. We need a grocer there. I don't see why it can't happen. We don't understand the finances of it, but there's something stuck. I wanted to make two main points. One is that as I eat my breakfast at home, I'm looking out the window onto Ivy Lane. When Fresh Market was open, we saw lots of foot traffic and bike traffic in front of us back and forth. When Fresh Market closed, that kind of stopped. When I think of all the extra miles that are being driven for people to go to their grocery store, the extra carbon in the air for our grandchildren, it pains me. We need to fix it. Another point I want to make is that I have heard the comment that this is not a good place for a grocer, it's not the right space, not the right place. If you just look at a Google map and ask for the grocery stores to be put on there, you'll see this is a space in Palo Alto that is uniquely missing a grocer. Grocers all around, about a mile, mile and a half, but nothing at that corner of Channing and Embarcadero. We need a grocer there. Thank you very much.

Mayor Burt: Thank you. Our next speaker is Hamilton Hitchings.

Hamilton Hitchings: Hello. I'm a member of the Citizen Advisory Committee (CAC), but these are my own comments. I'm also a neighbor, and I live in the Duveneck neighborhood. I love going to Fresh Market. I can walk there; I don't have to get in my car unlike going to Whole Foods or Safeway. We really enjoyed having it there. It hasn't been there for 18 months. When John Tze got up and told you this was a great place for a grocer before he sold \$30 million worth of townhouses, and now after he sold the \$30 million worth of townhouses, he's telling you it's difficult to find a grocer there, I think you have to reflect on that. He was fundamentally negligent,

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because John didn't pass on the commitments he made to the City to his lessee within the contract. Therefore, the lessee has no incentive to meet his obligations to the City, which is why they've been trying to lease it for even more than they're renting it for, which is why some of these deals have fallen through. I strongly encourage you to raise the penalty to \$5,000 a day. I think it's really important that if you make a commitment to the City, you put it in your lessee's contract. Otherwise, we have these situations. One last point. On 181 Heather Lane, they are beyond their pumping permit for groundwater. I'd like to make sure that you enforce the \$500 a day penalty for them as well. Thank you very much.

Mayor Burt: Thank you. Our next speaker is Jeff Levinsky.

Jeff Levinsky: Good evening, Mayor Burt, Council Members and City Staff. The big question tonight is for Edgewood Plaza and the \$5,000 a day penalty. Ironically, we already have a \$5,000 a day penalty, and that's about what we neighbors are paying in extra time, gasoline, wear and tear on our cars because we can't shop locally. Others in Palo Alto are also paying a penalty for the extra traffic, delays and pollution caused by our having to go further to shop. Not two years ago, the City weighed what should happen at College Terrace Centre if it didn't provide an operating grocery. The Council wanted a penalty high enough so that the owner would subsidize a new grocer if necessary. Based on that, the Council agreed there to a penalty of \$2,000 a day with an inflation adjustment and 6 months of no penalty every 5 years for tenant changeover. The grocery space at Edgewood Plaza is 2 1/2 times larger, so the comparable penalty to what you already set is \$5,000 a day. Sand Hill, of course, hasn't been paying \$5,000 a day, just \$1,000 for the last 13 months. That alone has saved it over \$1 1/2 million. By not subjecting Sand Hill to the very same policy that you already set for College Terrace Centre, you've given them effectively \$1 1/2 million, but I don't think we've gotten a thank you note from them for that. Even after such generosity, we have no grocery store still. It's likely potential grocery tenants realize that if you're going to raise the penalty gradually, they'll get the best deal on the rent if they wait until the penalties go up further. Announcing that you'll step up penalties doesn't help. It actually delays the day we get a grocer back. Please no more delay, no more million dollar gifts to Sand Hill in reduced penalties. Please set the penalties tonight to \$5,000 a day for Edgewood Plaza and all other PCs where there's no prior agreement and they fail to provide their public benefits. I want to thank you and all the neighbors who came tonight.

Mayor Burt: Thank you. Our next speaker is Robert Moss, to be followed by our final speaker, Jim Holsworth.



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Robert Moss: Thank you, Mayor Burt and Council Members. This is another example of why PC zoning is a scam. The developer gets a huge profit, and the community gets stiffed. Here we are getting stiffed again. How do we overcome that? The fine is one way of doing it. I suggested in the letter I sent you that we increase it from \$1,000 to \$2,000, but then double it periodically. I suggested \$2,000 instead of \$5,000, which most of the community wants, for two reasons. The first one is that's an initial doubling of the penalty, and the second is that's what the Staff is recommending. If you double the fee periodically—I suggested every 60 days, but you could make it every 30 days or every seven days if you wish—after a few months, you'll start to get Sand Hill's attention. If you did it every two months, after 10 months the penalty would be \$64,000 a day. That just might get their attention. One of the arguments they have is the building is too small for a viable grocer. That's a lot of garbage. Let me give you an example. For over 35 years, All American Market was extremely successful at 3990 El Camino on a site which was much more than 20,000 square feet. They didn't leave because they had a financial problem; they left because the Jissers refused to extend their lease and forced them out so that they could subdivide the building and put in, as they did later, four different tenants and raise the rent. The grocery store was viable and made money. A grocery store at Edgewood Plaza in a 20,000-square-foot site is viable and can make money and serve the community. Let's stop playing games with the PC zone. When the developer doesn't do what they were going to do, penalize them stiffly and keep the penalties going up and up and up and up until they finally get right and do what they said they were going to do.

Mayor Burt: Our final speaker is Jim Holsworth. Welcome.

Jim Holsworth: Hello. Thank you for listening to me tonight. I think I found out who the Sand Hill people are. It reminds me of the old statement, by and by there will be pie in the sky. I guess by and by we'll have a grocery in the sky. We're supposed to be patient. We're supposed to be nice. We've waited 18 months from the time Fresh Market closed. My understanding was Fresh Market was actually making a profit. It seems like a really good space, 20,000 square feet at a freeway exit. I always shopped at Lucky's when I came home from work, back when it was around. What I'm thinking as I hear about this \$5,000 or \$2,000 fine, I'm wondering Sand Hill won't even tell us how much is the rent. What are they getting from Fresh Market? I don't know why Fresh Market is allowed to hang onto a space they don't use. It seems like when this requirement was made Palo Alto never had any kind of rules in place with regard to the lease, with regard to confidential terms. We don't know anything. We don't know why the stores refused to come. What I would say is it should be at least 5,000. If Sand Hill thinks that's too much, they should present the Council with information

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as to what the lease is bringing and some of the other terms that are currently confidential. If they think it should be lowered, they should have some reason for that. Otherwise, why not do \$5,000? We don't know what they're getting. That's all I can say. Thank you.

Mayor Burt: We'll now return to the Council. I realized I should have asked a technical question earlier. How many square feet is the grocery store space? Do we know.

Male: 20,000.

Female: 20,000 and Whole Foods is 13,000.

Mayor Burt: I'm sorry, folks. We have to respect the order of the meeting, so we don't shout out.

Ms. Gitelman: We'll look it up. We think it's 18,000 to 20,000.

Mayor Burt: Thank you. Council Member Kniss.

Council Member Kniss: I imagine you're looking for comments at this point and not a Motion yet. I think it's really abundantly clear that when you create a PC—as I said earlier, this group hasn't done a PC since Maybell. We pretty much have put PCs on hold. In fact, I think we may not see PCs again except in some very different type of form. To look at this from the standpoint of how do we have the end product of what was a PC that was done—could you remind me, Hillary, when the PC was actually done? Done before at least three or four of us were involved.

Ms. Gitelman: There were actually two Ordinances. 5150 interestingly enough was adopted in April of 2012. There was an Ordinance, 5224, approved in November of 2013.

Council Member Kniss: Essentially this has been in place for four years. Fresh Market did operate for some period of time. I've heard why they went out of business, which apparently wasn't that they weren't successful there. It had a great deal to do with what their operating style was. They primarily operate in the Southeast. It wasn't a market I was familiar with at all. I don't frankly see a way that we can have something happen without a sufficient penalty. One of the ones that we've looked at before and I've talked to Staff about is going to the \$5,000 level. I want to check with our City Attorney as to how we can get to that point tonight using what we have in front of us, the Administrative Penalty Schedule and the Civil Penalty Schedules. How can we go to that amount, which is not woven into the Schedule?

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Ms. Stump: Thank you, Council Member Kniss. There is a proposed PC zoning violation penalty in the material that's before you. It's on Packet Page 63. If you follow down on the left, it's 18.38.020, Planned Community zoning unless otherwise specified in PC Ordinance. It provides for \$2,000 beginning on the 181st day following notice of violation. We would note that under the general structure of the administrative scale—my colleague, Albert, will correct me if I'm wrong—that \$2,000 beginning on the 181st day doubles again then subsequently. It does provide for—what's proposed is up to \$4,000. If the Council wanted to amend that to some other number—many members of the public have talked about \$5,000—you could do that by changing that \$2,000 to \$2,500.

Mr. Keene: For City Attorney, the Council could do that this evening. Is that correct? As opposed to directing the Staff to come back with that, they could do it this evening.

Ms. Stump: Yes.

Council Member Kniss: That was my question. When the time comes, Mr. Mayor, I would be glad to move in that direction. Some of you are looking expectant, like why don't I do it right this minute. I will look for help with the language from Molly Stump. I would move that looking at 18.38.020, we look at amending that from the \$2,000, which is allowed at this point, to \$2,500.

Mayor Burt: Council Member Kniss, unless we want a separate Motion for this, what we'd want to do is ...

Vice Mayor Scharff: Adopt the whole thing.

Mayor Burt: ... a Motion to adopt the entire ...

Council Member Berman: Schedule.

Mayor Burt: ... schedule with whatever amendment you would recommend.

Council Member Kniss: Then let me do it in reverse. I will then suggest that we adopt the entire Resolution in front of us this evening and additionally add that we change the \$2,000 to \$2,500 under the PC. Thank you for getting us to that point where we can go to the \$5,000.

Vice Mayor Scharff: Second.

**MOTION:** Council Member Kniss moved, seconded by Vice Mayor Scharff to adopt a Resolution amending the Administrative Penalty Schedule to update

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the penalty amounts for certain violations of the Palo Alto Municipal Code with the following change:

- A. Increase the penalty for violations of Municipal Code Section 18.38.020 to \$2,500.

Council Member Kniss: Can I continue?

Mayor Burt: You want to speak to your Motion?

Council Member Kniss: Just briefly.

Mayor Burt: Yes.

Council Member Kniss: For all of you who are here tonight, I know this has been painful especially because you've gone without a market primarily. I think the second pain has been that there was a deal struck, and you were involved in that. I think most of you were. The deal was struck, and included in that was a grocery store. Included in that was housing and a lack of parking. You've all been very articulate. Believe me, we've heard from many of you about your frustration with this. I think, while this may not resolve it, you may not have a grocery store right away. I think this may provide an incentive or, as somebody had said less elegantly, light a fire under the feet of those who are involved, so that you actually do get a grocery store. I simply want to say we don't have a great deal of information about the business arrangement that has been made. That's not something that the Council has been privy to whatsoever. We share your frustration, and I think we will do the best we can in order to motivate the developer in this particular situation to provide a grocery store.

Mayor Burt: Vice Mayor Scharff.

Vice Mayor Scharff: Thank you for coming out tonight and speaking on this issue. I also have gotten lots and lots of emails over this. I actually appreciate all those emails. I share the frustration on this. I don't really understand why it's taken 18 months. I appreciate Mr. Tze's coming and speaking a little bit. Some of the questions I actually would have liked answered is why was the rent higher if we were talking with Andronico's? Shouldn't we have tried to lock that in earlier? I guess more information about why it's taken that long in terms of deal structure and lots of things about how we would have gotten there and what role the lender plays in this and all sorts of things. I think if we had more information as opposed to "we're trying, we're trying," we'd be more sympathetic. At this point, it just sort of feels like we're being shined on a little bit frankly. That's my impression of it. I think this is the right way to go. I would encourage you

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to get a grocery store in there as soon as you possibly can. I think the community has really had it frankly with this whole thing. I also just wanted to briefly ask—on the 16.49.050, which was the exterior alteration of the Downtown structures, I wanted to add the word "historic" because we'd talked about that earlier. That was the right word you wanted in there. Is that correct?

Mr. Yang: Yes.

Vice Mayor Scharff: Liz, would that be all right to add the word "historic" like he suggested?

Council Member Kniss: Yes, please.

Vice Mayor Scharff: I'd like to just add that in, in 16.49.050. It would say "exterior alteration of historic downtown structures."

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to add to the Motion, "add to Municipal Code Section 16.49.050; 'historic' after 'exterior alteration of downtown.'" (New Part B)

Mayor Burt: Are you done speaking?

Vice Mayor Scharff: I'm done. Thanks.

Mayor Burt: Thank you. Council Member Wolbach.

Council Member Wolbach: I just want to be very clear. This is a question for Staff. If we make the change proposed in "A" here, when would it go to \$5,000 for Edgewood Plaza, immediately or would there be a wait?

Ms. Gitelman: I think our reading of this is the 181st day has well passed. We would be able to begin assessing these increased penalties immediately. The first day we would charge a fee of \$2,500; it would go up by 50 percent. It would double to \$5,000 on the third day.

Council Member Wolbach: On the third day?

Ms. Gitelman: That's right. Now in all likelihood, after the Council's action this evening, it'll take us a few days to finalize the Resolution. We'll transmit a copy of that to the property owner with a notice that this is going to commence. It's not going to be tomorrow, but it's going to be some day really soon.

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Council Member Wolbach: That's reassuring. Thank you for clarifying that process. I think we heard important comments from the community tonight, that we didn't want to wait a long period of time before a substantial increase, because that might encourage people to wait until they can get a better deal. I'll just say that I think I'll be supporting the Motion. While I'm generally not in favor of government in general and this City Council in particular micromanaging what business goes in what place, in this case there was a commitment. There was a commitment broken. The community and this Council have run out of patience.

Mayor Burt: Council Member Holman.

Council Member Holman: A little clarity on that. Just point us to, if you would, Planning Community zone unless specified in the PC Ordinance \$2,000 beginning the 181st day following notice of violation. Will you point us to where the escalating language is?

Ms. Gitelman: It's in the very beginning of this Penalty Schedule, in Section 1. It says a second violation is 150 percent of the listed penalty, and the third and subsequent violations are 200 percent of the listed penalty.

Council Member Holman: According to that, there would not be a maximum then.

Ms. Gitelman: The maximum is 200 percent of the listed penalty ...

Council Member Holman: I guess there would be. Yes, there would be, yes.

Ms. Gitelman: ... so it would be \$5,000 a day.

Council Member Holman: That's good. Going to 16.49.050. I did look up the Code and, I think, the language actually should be "exterior alteration of downtown historic structures," that language. That's consistent with what's in the Code. It would be "exterior alteration of downtown historic structures." The "historic" would be after "downtown." If that's agreeable to the maker and seconder.

Council Member Holman: Downtown historic structures.

Vice Mayor Scharff: That's absolutely fine.

Council Member Holman: The next one. I'm a little bit struggling how 16.49.060 and 16.49.080 are different. The language is different, but I don't know if intention is any different. 080 is—I'm sorry, I misread. It's 090—apologies for that—demolition of Downtown historic structure, but 060

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is demolition of Downtown, you could say, historic structure with or without permit or violation. Aren't they the same thing?

Mr. Yang: We have separate sections in the Municipal Code dealing with—060 deals with significant buildings in the Downtown as opposed to 090, which is more general and also, I believe, speaks to alternative enforcement mechanisms.

Council Member Holman: What I'm suggesting is that we use the language "historic structure" because "significant building" is less inclusive. If we look at the language that's in the Comprehensive Plan, it's very supportive of preservation efforts. I would suggest deleting 090 and making 060 demolition of a Downtown historic structure.

Mr. Yang: These penalties all track to specific provisions of the Municipal Code. They use the language of that Municipal Code section.

Council Member Holman: Yeah. I'm looking at it. If you look at "E," it says "historic structures or sites." It means any structure or site within the City that has an identified blah, blah, blah, blah. It includes Categories 1, 2, 3 and structures within a Historic District. That's more inclusive. It's language in the Code, so could we not just use it? To be clear here again. 060 would change to demolition of a historic structure Downtown without or in violation of a permit.

Mayor Burt: Including or excluding the word "significant"?

Council Member Holman: Don't need the word "significant." "Significant" is a different definition.

Ms. Gitelman: Council Member Holman, we're looking at the Code sections. There are two different sections that are cited here, 060 and 080. One refers to significant buildings, and the other refers to historic buildings. The Penalty Schedule is structured so that a violation of those particular sections would convey this fee, which is identical, of \$2,000. I know it's a little repetitive, but it's just because of the way the Code is structured.

Council Member Holman: Right. The Code says—"E" is historic structures and sites. "F" is significant building. What I'm saying is "E" is more inclusive and clearer, I would say.

Mr. Keene: Isn't the way this is proposed providing for the application of the same fee in two different circumstances or potentially circumstances?

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Council Member Holman: What it seems to me is that 060 is the same thing as 0—I'm sorry, I keep saying that. 060 is the same thing as 090 except that it goes on and says "without or in violation of a permit." I think they intend the same thing. Otherwise, they seem to be a little bit in conflict with each other.

Mayor Burt: Can I ask a clarifying question on this language?

Council Member Holman: Sure.

Mayor Burt: Is there a distinction to be made in what's intended by this language and what's existing in the draft we have? A difference between historic Downtown building and historic structure? Significant Downtown building, maybe I didn't say that right.

Council Member Kniss: Is it location?

Mayor Burt: I'm asking.

Council Member Holman: The language in the Code is different.

Mayor Burt: Pardon me?

Council Member Holman: The language in the Code is different.

Mayor Burt: I don't understand in terms of the types of buildings what's a building that is a significant Downtown building that is not a historic structure and vice versa.

Council Member Holman: I have my opinion. We'll let Staff respond.

Mayor Burt: Pardon me?

Council Member Holman: I said I have my opinion. We'll let Staff respond.

Mr. Keene: Cut to the chase you guys.

Ms. Gitelman: Council Member Holman, we're looking at it. I think we could live with the change that you've suggested. Removing 090 and leaving 060 with a wording change.

Council Member Holman: The wording change would be "demolition of a downtown historic structure or site with or without or in violation of a permit."



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Mayor Burt: Council Member Holman, can you offer me your understanding of that difference that I was asking?

Council Member Holman: A significant building means any building, groups of buildings or a site categorized on the Historic Inventory as Number 1 or 2 and all structures within Historic Districts. Historic structure or site is the same thing basically, except it includes Categories 1, 2, 3 and 4. Our inventory is so very, very old we have structures and historic resources in Categories 3 and 4 that actually some of them are eligible for National Register even. We haven't updated our inventory. It's more inclusive.

Ms. Gitelman: Council Member Holman, we've been talking amongst ourselves. I think you're correct about the deletion of 090. I'm concerned that the change between "significant downtown" and "downtown historic" is not consistent with the way this section 060 reads. We'd be using terminology that wouldn't allow us to enforce against that section. I think we would recommend leaving the significance wording intact. It's broad as you read it in the Code.

Council Member Holman: But it only covers Categories 1 and 2. It doesn't cover 1, 2, 3, and 4 as historic structure does.

Mr. Keene: Doesn't 090 on demolition of a Downtown historic structure include those other categories?

Council Member Holman: It's a little frustrating because the language seems contradictory in 090 and—they're still struggling with that, so I'm going to go on to something else just quickly. I note also in ...

Mr. Keene: Can I just clarify just to be sure that the Council understands as I think I do now what the Staff's point is? The titles, as we look at these, are essentially that, a simple title. Subsequently—we're not looking at this language—there's a whole section with terminology and language that applies to that. Just changing the title creates some incongruity in the whole section itself that may have to be completely reworked. The idea of simply making a change here generates a problem for us. I don't think it's so much contradictory as it may be overlapping and redundant. I'm hearing the Staff say the ability to apply the enforcement on Category 1, 2, 3 or 4 is still enabled by both of these existing.

Council Member Holman: No, because significant building only includes 1 and 2.

Mr. Keene: Wouldn't a 3 or 4 be a historic structure?

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Council Member Holman: 090 only deals with Downtown historic structures. Only Downtown.

Mr. Keene: That's a good point.

Ms. Gitelman: I'm sorry, Council Member Holman. We're going to have to look into this more if we want to go deeper into this. We were really just trying to arrange the Penalty Schedule to follow the titles in the Ordinance, so the titles of each section. This Section 060 refers to significant Downtown buildings. If that's not broad enough for the Council, we'll have to look into that and bring back an alternate proposal.

Mr. Yang: Again, the language in this Schedule doesn't—this is only meant to help us find and help the public find the section in the Municipal Code that's being referenced. Changing the wording here doesn't affect our actual substantive ability to enforce. It doesn't narrow or broaden our enforcement ability.

Council Member Holman: If the definitions are different, though, it seems like it would. The other thing I would suggest is—just to be clear here. It's like ...

Mayor Burt: I'm sorry. We've got this amendment up here. Is this still standing based on what Staff said or are you going to retract that or do what? I would offer that, based on what we just heard from Staff, it seemed like it initially made sense to try and fold those two sections together, but maybe it doesn't now. If you want to just strengthen 090, maybe that's another alternative as opposed to folding 090 into 060 and modifying 060. We need to try and see if we can move on, on this.

Council Member Holman: Why don't we do this then? In 090, maybe we just eliminate the word "downtown," and I think we've got it. That's another approach.

**AMENDMENT:** Council Member Holman moved, seconded by Council Member XX to add to the Motion, "remove Municipal Code Section 16.49.090 and replace in Municipal Code Section 16.49.060, 'significant downtown' with 'downtown historic.'"

**AMENDMENT RESTATED:** Council Member Holman moved, seconded by Council Member XX to add to the Motion, "remove 'downtown' from Municipal Code Section 16.49.090."

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Ms. Stump: Council Member Holman, the language of that Code section only pertains to Downtown. If you change this Penalty Schedule—this is a list of numbers. This just is a ...

Council Member Holman: Got it. There's not a way to do that.

Mr. Keene: There is a way to do it. The Council could go ahead and adopt this as it is proposed right now. It allows an enhanced fine to be levied in the conditions as expressed right now that are limited to Downtown. You can ask us to come back subsequently to changes that could expand it beyond Downtown. That would be the most—that's the only effective way to probably make those changes. We still protect ourselves even in this interim period for being able to apply this enhanced amount as it relates to these Downtown structures. We can come back faster on a subsequent thing with some direction than we can get to it tonight.

Council Member Holman: Maybe just pull this one out, and that would come back by itself. The other thing is I'm ...

Mayor Burt: I'm sorry. Not ...

Mr. Keene: I was suggesting not pull it out.

Mayor Burt: You don't mean pull it out.

Mr. Keene: I would say approve it ...

Council Member Holman: I'm sorry. You'll come back with just that one. That's what I mean to say.

Mr. Keene: Yes.

## **AMENDMENT WITHDRAWN BY THE MAKER**

Council Member Holman: The other thing is having to do with language that's on—which is in the Municipal Code. Page 54 talks about Code states that "a person who demolishes a historic building in the downtown would be subject to a civil penalty after court adjustment in a sum equal to the replacement value of the building or an amount in the court's discretion not to exceed \$10,000." Clearly this language is very old. Once a building is significantly altered or demolished, there's no replacement for it. Trees are probably the next thing. Why are we not going to \$10,000 at least, which is what's here. Why \$2,000? That's nothing. It's just nothing. You can ponder that. Where is the pumping violation? Exceeding the number of days that pumping is allowed. While you're looking for that, let me also point out that the \$2,000 schedules that are on historic buildings and, I

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think, the same thing on trees, it's a minimum penalty of \$3,000 not complying with the C&D diversion Ordinance. It seems really out of scale to me.

Mr. Keene: Council Member Holman, you're asking about a dewatering fee as it relates to groundwater pumping?

Council Member Holman: No, not a dewatering fee, no. There's a calendar in which you're not supposed to allow beyond the calendar date. Then, there's a penalty supposed to be imposed. I did not find that in here.

Male: Dewatering.

Council Member Holman: For dewatering, yeah.

Ms. Stump: It'll take a minute to look for the calendar. I'm not immediately recalling where that is. Again, this is just a list of penalty amounts that corresponds to substantive provisions elsewhere in our Code. I'll answer your question in part, which also answers your earlier question about truck routes as a condition. There are two sections here on Page 61, 16.04.050, violations of the California Building Code, \$500 unless otherwise specified. On the next page ...

Council Member Holman: I'm sorry. What number was that please? I'm sorry.

Ms. Stump: 16.04.050. On the next page, which is Page 63, 18.01.080, violation of zoning laws. Conditions of approval could be attached to either one of those, either a building permit or a zoning action. These general sections would then be used to cite for those violations. The groundwater permits that are issued, I believe, are street encroachment or sidewalk encroachment permits. They would be under 16.12. There's a specific one. We can take a look at it. The permits that are issued are associated with the building permit process and would be handled in the same way. As you know, we have a to-do item to come back to the Council for direction on a more specific set of fees associated with groundwater pumping. That's a very substantive item. It's not in this Schedule now; it doesn't exist yet in our Code. That's something that we'll be talking to Council about.

Council Member Holman: One last thing. I missed the number again, the permits that would have to do with trucks, construction trucks.

Ms. Stump: We'll have to confirm this with Staff, but we think they are probably mostly issued associated with building permits.

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Mr. Keene: 16.04.05 now.

Council Member Holman: I read that as violations of California Building Code 16.04.05?

Ms. Stump: Which is adopted by Palo Alto with enhancements. It's our version of the California Building Code.

Council Member Holman: How is that linked to permits?

Ms. Stump: One of the requirements of the Code is that you have a permit and that you comply with the conditions. Again, you can't read this item here and understand the substantive provisions. This corresponds to other sections of our Code. When you go to those sections listed on the left, you see a whole series of substantive provisions. That's what you can be cited for in the amounts listed here in this list.

Council Member Holman: I guess those are my questions for now. Council Member Filseth has pointed out there is a truck route violation, which there is. 10.48.030 is truck route violation, which has a funny number beside it, 211. Will Staff come back ...

Ms. Stump: We read that section as a standing truck route. We thought your question was associated with specific construction (crosstalk).

Council Member Holman: It is about construction. Staff will come back then—just to clarify. Staff will come back with clarifications. We'll approve this tonight, and Staff will come back with clarifications and what kind of timeframe about 16.49.050 through 16.49.090. Do you have any kind of timeframe?

Ms. Stump: That's a different topic. It's to address the substantive Ordinance around historic structures. I think that's a discussion for the Council to have with the City Manager about how that fits into the priority work and the schedules. That really is not about the Administrative Penalty Schedule. That's adjusting the substantive requirements of local law.

Council Member Holman: Last thing then is I would offer an amendment to raise those penalties from \$2,000 to \$10,000.

Vice Mayor Scharff: Which penalties?

Council Member Holman: 050, 060, 070, 080, 090 on Page 63.

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Ms. Stump: Council Member Holman, just to point out that the civil penalties referred to are one-time penalties that can be assessed by a court. These are ongoing penalties that are assessed administratively.

Council Member Holman: I understand. It just seems like \$2,000 is nothing. If we can change the amounts, why not make it something that amounts to something? \$2,000 for destroying a historic building is really nothing. The friendly amendment is to raise those \$2,000 fees to \$10,000 fees.

Ms. Stump: Council Member ...

Vice Mayor Scharff: I need to understand—maybe you ...

Ms. Gitelman: I just had a clarification. This is actually in the Staff Report, but I think it's buried a little here. There are other sections of the Code that allow us to impose or seek some kind of judgment against someone who demolishes a historic building. We would likely make use of these other provisions of the Code to seek another kind of settlement. The Code actually says, "in a sum equal to the replacement value of the building or an amount of the court's discretion, not to exceed \$10,000." That provision is already in the Code.

Council Member Holman: I understand. I never see it implemented, though. I didn't see any harm in having the \$10,000 also in the table.

Vice Mayor Scharff: Let me just ask my clarifying question, if that's all right. This is the question. Most of these are ongoing, daily penalties, and they add up. If someone like Sand Hill Properties destroyed the historic structure at Edgewood, do we fine them \$2,000? How did that work? Is this a one-time fee for destruction, and then you're done with the \$2,000 or do we know? If we raise it to \$10,000, is it one-time \$10,000 or is this on a daily basis? How does that work?

Ms. Gitelman: I think we would potentially get into a dispute with someone who had demolished a building about what exactly the appropriate penalty would be. They would look at that other section of the Code and say potentially replacement of the historic building. For the Edgewood Plaza situation, we did deal with that in the second of the two PC Ordinances. I can quickly look up and see what we got in that instance.

Mayor Burt: If I might wade in. Wasn't that because we had the discretion of this second PC Ordinance that we could impose these things if it was just a violation? What I just heard you say is it's replacement cost of the historic structure or not to exceed \$10,000. If somebody's got a big historic building

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that they want to take down, the maximum they could be fined is \$10,000 even elsewhere in the Code. Is that what was said?

Ms. Gitelman: I'll defer to my colleagues on that question. The PC Ordinance itself set a penalty of \$94,200 with respect to that demolition that occurred at Edgewood Plaza. Within a PC ...

Mayor Burt: That was because we had a PC Ordinance where we could set a specific amount. I'm talking what you just previously talked about.

Mr. Yang: That language refers to the amount of a penalty that a court could impose after a court judgment against an individual.

Mayor Burt: Right. My question is why are we limiting what a court could penalize? If they take down a building that is a historic building, and it's replacement cost is \$5 million, why are we saying the maximum we could ever fine them is \$10,000 if we went to court?

Mr. Yang: That section, as noted earlier, is very outdated. That's something that obviously needs to be revisited. To answer Vice Mayor Scharff's question, I think the penalties in the Penalty Schedule could be interpreted to apply on a daily basis. If we felt that the appropriate remedy was reconstruction or restoration if it's not a total demolition, those could be cited on multiple occasions. The \$2,000 level could rise to \$4,000 per citation.

Vice Mayor Scharff: Is there any reason not to go with the \$10,000? Doesn't that give Staff more flexibility? What's the reason not to? Clearly, \$2,000 to take down a building is too small a penalty. I think everyone agrees on that. Staff seems hesitant, so I'm just trying to understand what would be the argument why we shouldn't just do \$10,000? I could see some arguments I could make up. I was curious as to why.

Ms. Gitelman: I don't think we see an immediate problem. I think we have to use good judgment in applying all of these penalties. We have the flexibility to apply them at different frequencies. If it was a garage that was historic garage and the whole structure was worth \$8,000 or could be replaced for \$8,000, I don't think we could apply a \$10,000 penalty over and over and over again. We might be able to apply it once. The flexibility is not with the amount. If the Council sets the amount at \$5,000, raising it to \$10,000, that's fine. The flexibility for the City is on the frequency with which we apply the penalty.

Ms. Stump: I would just add there is a constitutional limitation potentially if the circumstances surrounding the penalty amounts to a forfeiture. The

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illustration that the Planning Director gave could be such a situation, a smaller structure where the amount of the fine far exceeds the value. Since this applies to a variety of structures from very small to quite substantial, that is an issue.

Mayor Burt: Under the other section that Director Gitelman had cited, it said that it could be up to the replacement costs of the structure, not to exceed \$10,000. That was my concern. We have another issue that has evolved. If we could exercise these as daily penalties, then it could exceed the value of the structure. In that case, it seems like we should cap it at the replacement costs of the structure. I'd have another question. Mr. Yang had said that these could be daily on the demolition until it's replaced. That's interesting, but I've never heard that interpretation on a penalty for a demolition. If that is the case and what we want, then it seems like we would want to clarify our language that that's permissible unless it's unambiguous. I'm intrigued by that, but I'm concerned that there might be some ambiguity that could put us in legal jeopardy unless it's crystal clear in a way I didn't understand. We're now re-examining a bunch of things. What was suggested to us is that we could break this up into two parts: the changes that we're clear on tonight and the things that we'd like to have returned to the Council so that we can discuss them in greater depth subsequently and identify those. I would suggest that unless we're clear on what we want to do, we put them in a second bucket as areas that we request to be returned to the Council for additional consideration. Does that sound right?

Vice Mayor Scharff: I might have some concerns about that.

Ms. Stump: Perhaps another way to approach it, given how crowded the Council's calendars are in the nearer term, unless you are specifically uncomfortable with an item that's before you, you could adopt the whole group and then ask to come back to re-look at and supplement.

Mayor Burt: That's what I was meaning.

Ms. Stump: I see. Not to take them out, but to ...

Mayor Burt: That's not what I said.

Ms. Stump: I see. It seems like the Council is particularly interested maybe in an item around historic structures and how we treat historic structures.

Mr. Keene: Mr. Mayor, if I just might say. I think your Motion is saying this. I think it would be good to act on the adoption of this first, and then have this subsequent discussion about what some of these items are. I'm



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guessing most of the public who is here isn't necessarily interested in having to stay for that discussion about what we do subsequently. We would clear the decks on this and then have that.

Mayor Burt: We could do that. Vice Mayor Scharff.

Vice Mayor Scharff: I agree. Let's take this issue out and maybe come back to it. My concern is that every time we have a Council meeting—this is not my highest priority, I've got to say. We have a ton of things on our calendar. I don't want to make this the highest priority. I'm always concerned that every time we talk about stuff, the easy thing to say is what the Mayor just said, let's set this aside and come back. Then, we have all these things that Staff can't get to. I'm happy to have this come back, but I don't think it's the highest priority. I want to make sure we ...

Mayor Burt: I don't think anybody said it was.

Vice Mayor Scharff: I know. The problem is we just add one more thing that then becomes an issue.

Mayor Burt: Having it come back is different from characterizing it as the highest priority. I want to be clear that no one had said it would be coming back as the highest priority, which was what you were concerned with.

Vice Mayor Scharff: I think my concern is that it doesn't bump anything. I think I'll just clarify. I don't want it to bump anything that's already in the queue.

Council Member Kniss: Could I say something as the maker of the Motion?

Mayor Burt: Okay.

Council Member Kniss: I think we have dealt with probably what was the measure of most concern to the public tonight. As you have just said, we're now getting into areas where they may need attention, but they probably don't need attention tonight. I think we should move on.

Mayor Burt: I'm good with that. When we're looking at urgency—I don't want to characterize this as highest priority. It's not a high priority until after something goes wrong. Then, suddenly it was "why didn't we fix it beforehand?" I just want to make sure that we're not assuming that because we haven't had an important historic structure pulled down recently or imminently, it won't be a big deal if it happens. Let's go ahead and proceed as we were discussing where we will take on the items that we're

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clear on tonight. Do that as a Motion, and then have a separate Motion for any items that we'd like Staff to put into a bucket list to return.

Council Member Holman: Could I ask for one ...

Mayor Burt: Just let me get this ....

Mr. Keene: I just want to be clear. The Staff is okay with the Motion as it's stated up there, even including this increasing under "C." We're okay with that, understanding that there's a larger conversation as it relates to penalties on historic structures.

Mayor Burt: Council Member Holman, you had something?

Council Member Holman: Thank you for that, City Manager. I don't mean to—I know people are here mostly for Edgewood Plaza. I apologize for dragging this out. This has been an ongoing and really, in my opinion, an urgent concern because we do see historic buildings torn down currently. That's why I press on this so much. Thank you.

Mayor Burt: Council Member Schmid.

Council Member Schmid: I think what we're trying to do tonight is to say on the Edgewood Plaza this is something that is important to the Council, the community, and we want to deal with it imminently. I guess I would see Item 18.52.05, the last item on Page 63, Transportation Demand Management conditions. I would just note that the fines stated there of \$500 a day. On the next page, after half a year they are quintripled [sic], go up to \$2,000 per day. That amount of money over 1 year is less than one-third the amount that Stanford University Medical Center (SUMC) is spending each year on achieving their target. TDMs are something which are essential to a number of our strategic goals. I think this penalty is too low. I would suggest doubling the amounts of penalties on there.

Mayor Burt: Let me just jump in there. I'm interested in increasing those penalties, but I think the comparison is not valid. The Stanford Medical Center project is an enormous project, the largest development project in the City's history.

Council Member Schmid: 2,400 people and workers, and that's similar to many other districts that would have a TDM.

Mayor Burt: Many other districts?

Council Member Schmid: Yes. Like the Stanford Research Park, the Downtown.

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Mayor Burt: These don't apply to districts. They apply to individual projects.

Council Member Schmid: Mm hmm, TDMs.

Mayor Burt: The proper comparison is, for instance, an individual project in the Stanford Research Park that might be a large building.

Council Member Schmid: The Downtown TDM is an association, a group. That's how we've been talking about it.

Mayor Burt: It is, but that's not what this Schedule applies to. There's no way in which this Schedule applies to the Downtown TMA.

Council Member Schmid: I guess that's—is that correct? What is the Schedule for, if it's not for the Downtown TMA?

Ms. Gitelman: The idea here is to be able to assess a penalty to an applicant who pledges as part of a project approval to prepare and comply with a TDM plan and then fails to do so. We would be able to charge a fine of up to \$500 a day, increasing to \$1,000 a day, for the first six months we notice that kind of violation, and then increase it significantly after the first six months. In reality, again, we're not in this to make money. We're in this to get compliance. We would issue a notice. We would work with the applicant in trying to bring them into compliance. It would be nice to have this recommended penalty of \$2,000 a day after six months rising to \$4,000 a day if necessary as a significant incentive if we're not reaching compliance in another way.

**AMENDMENT:** Council Member Schmid moved, seconded by Council Member XX to add to the Motion, "increase the penalty for violations of Municipal Code Section 18.52.050 to \$1,000."

Mayor Burt: They apply to individual projects. Let me try and move the ball forward. I would offer an amendment that 18.52.050 amount be doubled to an initial maximum amount of \$1,000 a day and an ultimate one of \$4,000 a day. If I have a second.

Council Member Schmid: Second.

Mayor Burt: I'm sorry. We should have ...

Council Member Kniss: Why don't you incorporate (crosstalk).

Mayor Burt: I should have asked the maker and the seconder. I apologize. Are you good with it?

# TRANSCRIPT

Vice Mayor Scharff: Yes.

Mayor Burt: You're good with it. Good.

**AMENDMENT RESTATED AND INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to add to the Motion, "increase the penalty for violations of Municipal Code Section 18.52.050 to \$1,000 and \$4,000 beginning the 181st day following notice of violation." (New Part D)

Council Member Wolbach: What about "C"? Did that get approval?

Mayor Burt: What about what?

Council Member Wolbach: Did "C" get approval of the maker and seconder?

Council Member Kniss: Yes.

Mayor Burt: Yes, it did. The maker and the seconder, did you?

Vice Mayor Scharff: We didn't give approval, but I'm fine to give approval.

Council Member Kniss: We both nodded.

Vice Mayor Scharff: You did; I didn't.

Mayor Burt: Noddings don't count. Maker and seconder have also approved "C." Thank you. Council Member Filseth.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to add to the Motion, "increase the penalty for violations of Municipal Code Sections 16.49.050, 16.49.060, 16.49.070, 16.49.080, and 16.49.090 to \$10,000." (New Part C)

Council Member Filseth: Thanks. I just want to make sure I understand on the Edgewood thing. If we pass this, then the penalty basically immediately goes to \$5,000 as opposed to it goes to \$2,500 now and then \$ 5,000 after 181 days. Is that right?

Ms. Gitelman: If you pass this, then day one we could charge \$1,000, increasing to \$2,000 after three days. After six months, we could charge \$4,000 a day, increasing to \$8,000 a day after three days.

Council Member Filseth: For Amendment A?

Unknown: That's this one.

# TRANSCRIPT

Ms. Gitelman: "D."

Council Member Filseth: I'm sorry. I want to ask about "A."

Ms. Gitelman: I'm sorry. Edgewood.

Mr. Keene: Basically within three days, we're going to be charging \$5,000 a day.

Council Member Filseth: \$5,000 in three days. At what point does this come back to Council? Suppose a year goes by, and there's no grocery store, and we're still charging \$5,000 a day. Should it come back and we review it again, and maybe it goes to \$10,000 or something like that?

Mayor Burt: Let me just try to bring that up there. We had a letter from Arthur Keller and Lydia Kou, who raised the question of outside of this Penalty Schedule a mechanism by which this kind of violation of a PC would necessarily return to the Council after a review of three years after the project. It's kind of a question of why hasn't this already come back outside of the Fee Schedule for an individual PC action. That's the other mechanism.

Ms. Gitelman: Council Member Filseth, the Mayor is correct. There's a provision in this PC Ordinance that says three years after occupancy the applicant is to request a review for compliance. That can result in hearings at the Planning Commission and at the Council. That's a provision we'll be bringing to the applicant's attention. Presumably in the new year, we can schedule hearings at both the Commission and the Council. Again, it's just a question of prioritization and work load at this point about how soon we can make that happen.

Council Member Filseth: I understand. Maybe that's the process. I'm just wondering if there needs to be a provision in here that it comes back to Council to be reviewed in a year or something like that.

Ms. Stump: Council Members, if I may. The purpose of an Administrative Fee Schedule is to authorize the Staff to deal with this on a ticket basis. These are typically Code Enforcement Officers, who then have the authority of Council when there is a violation of substantive law to address it through the preapproved penalty amount. In the PC situation or in other situations where there are specific laws that apply, there may be additional processes. That's what Mr. Keller and Ms. Kou pointed out and Ms. Gitelman just spoke about. In the PC situation at Edgewood, there is that other process that can also be accessed.

# TRANSCRIPT

Council Member Filseth: Invoking that is going to be at the discretion of Staff, the Planning Department?

Ms. Stump: It's at the discretion of your City officials applying the Ordinance that you adopted in the Edgewood PC case. In a general matter, this Code section sets out the amount. It's designed specifically to be self-executing to allow the Staff to execute it on a Staff-level.

Council Member Filseth: Basically I'm going to support this. Again as has been said, this exposes some of the weaknesses of the PC process and these kinds of applications. Other than that, I concur completely with the maker of the Motion. Thanks.

Mayor Burt: I'll just add I've been trying to think through the impacts of these fees. On the one hand, even the \$2,000 a day may be a fee that would exceed the lease income that Sand Hill is receiving. I don't know what the rate is. Nineteen thousand square feet, I'm guessing in the \$3 or \$4 a square foot range, but that's just my best guess. If you have a fee of \$5,000 a day, that's \$150,000 per month in fees versus what might be \$60,000 or \$70,000 a month in lease they're getting. In the short term, it looks like an overwhelming incentive for them to figure out how to let the current leaseholder out of the deal or subsidize a new deal or whatever it takes. I realize that the property owner only has to pay that fee as long as the vacancy is there. They have a 10-year lease, seven years remaining or whatever. They're weighing the short-term penalty against the locked-in long-term income they have from the current leaseholder. That's what's persuaded me to really need the ability to have a pretty onerous fee. This is not a small amount. Even the \$2,000 would probably be in the neighborhood of the total amount of the lease income they're receiving, but it needs to be greater than that to actually get them to weigh the short-term penalty versus the long-term income that they're getting from a locked-in lease on an empty space. That's what finally persuaded. I just want to put that on the table, because we're all kind of struggling with why haven't our current fees caused the outcome that we hoped they would and what fees would it take to do it. That's my best speculation. Since we all want a grocery store there, one of the things that—this is not on the Fee Schedule, but I'll just briefly state it. One of the speakers spoke about this is a freeway exit. A number of years ago I identified this as one of the few stores immediately off the freeway of a grocery store between San Francisco and San Jose. We don't have any signage that tells drivers that you can get off and shop and get back on and go home. If we really want a store to be successful, and if we're willing to accept some traffic that is shoppers getting off the freeway to help support a store so that it'll be vital, we as a community may want to look at whether we will facilitate better signage

# TRANSCRIPT

visibility at that location. Part of it is tree blockage and all those things. There are tradeoffs like we have any time. It's a discussion that, I think, we should have. Finally, when we talk about PCs and the failure of PCs, it's important to remember that—if we look at the PCs in our community, they're not just the failures. Certainly, our affordable housing projects are overwhelmingly PCs. We would have almost no affordable housing in this community without PCs. Neighborhood shopping centers are generally PCs, and we're very limited on ability to create this. Without a PC, I don't know how we would have retained a neighborhood shopping center there albeit this one is vacant. Without the PC, I don't know that we'd have one. We need to think about when we see a failure PC and say, "Throw the whole thing out. They're a total failure," we're only focusing on the places they've failed and not where they have had significant community benefit for decades. We clearly need to fix them, but I'm not sure abolishing them is the right fix. Having said that, I think we're ready to vote.

**MOTION AS AMENDED RESTATED:** Council Member Kniss moved, seconded by Vice Mayor Scharff to adopt a Resolution amending the Administrative Penalty Schedule to update the penalty amounts for certain violations of the Palo Alto Municipal Code with the following changes:

- A. Increase the penalty for violations of Municipal Code Section 18.38.020 to \$2,500; and
- B. Add to Municipal Code Section 16.49.050; "historic" after "exterior alteration of downtown;" and
- C. Increase the penalty for violations of Municipal Code Sections 16.49.050, 16.49.060, 16.49.070, 16.49.080, and 16.49.090 to \$10,000; and
- D. Increase the penalty for violations of Municipal Code Section 18.52.050 to \$1,000 and \$4,000 beginning the 181st day following notice of violation.

**MOTION AS AMENDED PASSED:** 9-0

Mayor Burt: That passes 9-0. Thank you to everyone for coming and participating and listening to the mundane discussions. That concludes Item Number 5. We will now break for five.

Council took a break from 8:24 P.M. to 8:31 P.M.

- 6. Review and Potential Direction to add Optional Enhancements and Associated Costs for the Adobe Creek/Highway 101 Pedestrian

# TRANSCRIPT

Overcrossing Project, Capital Improvements Program Project PE-11011.

Mayor Burt: ... and associated costs for the Adobe Creek/Highway 101 pedestrian overcrossing project. Who kicks this off? Brad?

James Keene, City Manager: May I say one thing, Mr. Mayor? Just hearing the title, walking in from the side there, I think that's part of the discussion. The other piece is you could say, "There's going to be no enhancements or additions and let's stay on course and proceed with the bridge as scoped right now." I didn't mean for this to be saying we're begging for enhancements. Thank you.

Mayor Burt: It says potential for optional. That didn't sound like you were driving too hard for it.

Brad Eggleston, Public Works Assistant Director: Good evening, Mayor Burt and City Council Members. I'm Brad Eggleston, Assistant Director of Public Works. We're here tonight to review the design work that's been done since you approved the contract with Biggs Cardosa Associates in May of this year. With me tonight in the audience are Elizabeth Ames and Maka Bonsal [phonetic] from our Staff team, and also sitting next to me is Roy Schnabel, our principal in charge from Biggs Cardosa Associates. We've been working closely with Roy over the summer. I just wanted to let you know, as we get into this, he has extensive experience with Biggs Cardosa managing successful pedestrian and bicycle pathways and bridge structure projects essentially throughout the Bay Area and California. Just a few examples for your information: Central Marin ferry bridge, two different bridges in Emeryville, the current Facebook bridge project over Highway 84 in Menlo Park, the Fremont Bay Area Rapid Transit (BART) station, the East Palo Alto bicycle/pedestrian bridge that's being planned as well as experience with the Mary Avenue bridge in Sunnyvale. He brings a lot of experience to the project. A quick overview of what we'll be talking about, a little background. We want to talk about the funding situation. We want to review the 15-percent design development work that's been done. We want to talk about these potential optional enhancements that would have a greater cost and touch briefly on the schedule. A little background. Before getting into the design work, I wanted to review where we are in the process. As you recall, last December the Council directed Staff to end the negotiations with Moffatt and Nichol following the design competition and essentially to reset the design process with a new Request for Proposal (RFP) and an updated project budget. Following that, we conducted an RFP process, and we brought the contract with Biggs Cardosa Associates for your approval in May. At that time, we explained that the first step would be to develop a baseline



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design to a 15 percent level with the baseline design being one that could meet the project's \$13 million new budget that you had approved. We said that following that work we would bring that 15 percent design to Council along with some other optional enhancements that had been talked about during the design process over the last couple of years, but with those things being things that weren't initially prioritized in the \$13 million, meaning that they would have added costs beyond the \$13 million. That's where we are now. I'll say we're very pleased with the design work that Biggs Cardosa has done, and we hope you will be too. As Staff, we're quite excited to have this project moving forward and trying to keep it on budget and on schedule. At this point, we need the guidance from Council about whether to include any of the optional enhancements so we can move forward with the design work and also with completing our updated environmental documents and reports that are critical to the schedule on this project. In terms of funding, this slide reviews the current funding plan for the project. The \$13 million budget includes \$4.65 million from the General Fund, \$4 million from the Santa Clara County Recreation Trails Fund, and \$4.3 million from One Bay Area Grant (OBAG) Cycle 2 funds. Just a reminder that the OBAG Cycle 2 funding is funding that's replacing the State Transportation Improvement Program (STIP) funding that was deleted earlier this year because of the shortfalls at the State level. We talked about this in May. We've gotten assurances from VTA that we'll get this funding sort of skimmed off the top of the OBAG Phase 2, but the formal decisions and determinations and notifications on that haven't yet been made. In addition to that funding, the \$13 million, Google has committed to provide \$1 million for the project. That hasn't yet been incorporated into our budget, but there's a few things we could do with that. It could be used to add some of these optional enhancements to the project. It could be used to reduce the City's \$4.65 million contribution or partially in that way. It could be held as a contingency essentially against potential cost increases that could develop. Kind of to that point, I just wanted to point out that while we've defined this baseline project that meets the \$13-million budget, to achieve that we actually have some pretty slim contingencies within that \$13 million. That makes us a little bit nervous at this point, working near the Baylands and with the environmentally sensitive areas close to us. The last category is the additional \$4.5 million in Santa Clara County Recreation funds. That's not allocated for projects at this time, because Stanford University didn't use the funding for the Perimeter Trail construction that they did. That's funding that's potentially available, but we've asked several times and we're still being told that there's not a process yet defined for how those funds will be eventually allocated. Kind of no answer on that yet. In terms of project elements, I'm going to turn it over to Roy in a moment to review our design information and the optional enhancements. I won't walk through the details on this slide. The purpose of it is to orient you to what is

# TRANSCRIPT

included in the \$13 million project budget that we've been talking about and which things would require more funding. When you look and see the baseline and core additional elements, things like the main span spanning Highway 101, this 12-foot clear walkway on the bridge, enhanced lighting, and those other types of enhancements, those are the things that are included in the \$13 million. The optional enhancements item at the bottom are what we've been working with Biggs Cardosa on, that Roy will talk about. Those are the things that would require additional funding. With that, I'm going to turn this over to Roy.

Roy Schnabel, Biggs Cardosa Associates: Thank you, Brad. We have a little video that will hopefully do a better job than I can to give you the look and feel and overview of the bridge. I'd like to give at least a little brief overview of how we got to this point. First of all, we built upon a lot of the existing information and information that was done previously by your Staff and some of the previous consultants that were on board. There was not a lot of wasted work including the alignment. This is the alignment that we thought would be the best alignment given the number of constraints that we had. Those include environmental constraints with the Baylands and the Adobe Creek riparian areas; with Caltrans and the freeway and their right-of-way; with the property owner who is Google and their parking lot; and the impacts to the Santa Clara Valley Water District and their right-of-way and their maintenance and operations. We've generally divided the bridge into three segments or three areas: the eastern approach which basically starts at the Bay Trail and works its way northeast and sweeps up across to the edge of Bayshore; the principal span structure which basically crosses Bayshore Road and Highway 101; and then the western approach structure, which generally goes from West Bayshore down to the trailhead at the Adobe Creek Trail. Within that West Bayshore, it's divided into several different elements. One is the approach ramp. The other is another steel bridge that crosses over Barron and Adobe Creek channel confluence similar to what's on the other side, albeit a little bit longer. A pathway which basically is on retain fill within the Santa Clara Valley Water District right-of-way that basically provides access to the ramp structures for the bridge. When we looked at structure type, it was basically optimized to look at what was most cost effective. We knew that there was some priority with some additional enhancements or core enhancements to improve the user functionality and the user experience and to improve safety. We've incorporated a number of those. The structure type for the ramps are generally a concrete, short-span structure. This is one of the cheaper forms. We're going to upgrade them and enhance them with textures and colors and things like that. The principal span structure is a steel truss structure. We chose steel for several reasons. One was to optimize the profile, which allowed us to shorten the structure. It also allowed us to eliminate a column

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in the middle of the freeway, which will help us with regards to construction impacts to the freeway. The other is it allows us some flexibility with regards to enhancing, and it allows us to enhance the portion of the structure that probably has the most impact visually to the surrounding area. The baseline is basically a prefabricated bowstring truss, similar to that picture on the left. It is straddled by two pony or H trusses. Basically this is a common prefabricated steel form, so it's very cost effective. With that, we'll show the video. [Video shown] Hopefully that gave you a better overview than my rambling. We also reviewed several optional enhancements, and those optional enhancements included an enhanced eastern approach ramp plaza, some enhanced railings and fencing, enhanced amenities. We also looked at some alternative principal span structures, some different looks that we could use to upgrade the structure to give it a little bit more of a unique flavor. We are currently contracted for the baseline alternative. If you select one of these alternatives, that would have to be included in the additional cost. We also looked at increasing the width, currently at 12 feet, to 16 feet to give two bicycle lanes and an independent pedestrian walkway. These are the alternative enhancements. The baseline is at the top. Basically it's a limited amount of landscaping, some very basic hardscaping with some basic amenities. The enhanced version would increase that area, utilize more decorative paving, and improve the amenities to include such things as bicycle racks and seat walls within that enhancement. The enhanced railings, the baseline is in the center. It's basically a galvanized, modified chain link railing. It's not your basic chain link railing, but it's fairly cost effective. The enhancements would probably be dependent on whatever the principal structure would look like. That would be the design narrative that we would take all our design cues from. Here are some alternatives that we developed as potential enhancements. Basically they include a cable railing, welded wire mesh. They include upgrades into stainless steel, which could be quite costly. One of the things that we also did was move all of those railings to be supported on the outside of the bridge instead of on the curve, which allows an even more open feel to the bridge by adding some width internally. The reviews with the enhanced amenities include upgraded drinking fountains, which could have potentially pet drinking stations and water bottle stations, bicycle racks and then more upgraded feel for the standard amenities including trash receptacles, interpretive signage. Not included here, but the benches as well. We reviewed a number of alternatives that we delivered to Staff. We've whittled it down to looking at five and advancing five through this 15 percent. Here are some of those alternatives. I'll go through them fairly quickly. The first is a prefabricated bowstring truss. Instead of the three span alternative which is in the baseline, this would be a single span structure, a very, very long structure, 240 feet long, basically eliminating any columns within any of the roadways. They would be in the landscaped

# TRANSCRIPT

areas and outside of the roadway areas. Alternative 2 is a closed truss, three-span similar to the baseline but with an articulated look. It would have a visual changing in degree of the top cords and would have an interesting view from both inside and from the freeway area. The third is a basic, steel closed truss, also a single span similar to Option 1. Alternative 4, which is the least cost increase, is basically an open truss similar to the bowstring but instead of a bowstring, it's a sloped Warren truss. It slopes in opposing directions to give some visual differences. The last is a steel space frame. Basically it's inclined. The inclined nature of it actually also gives the added perception of increased width. It's also very open, so it does not close off the vistas. The railings would be connected to the space frame, so there wouldn't be a need for a separate structure to support the fencing and railing. In general, we looked at those options, and then we also looked at the possibility of increasing the width of the structure from 12 to 16 feet. In some cases, it was not practical. The manufacturers wouldn't be able to manufacture those in the larger widths, partly because of the shipping, the prefabrication, the methods of construction out in the field and then the erection. It's also impractical in certain parts of the structure, specifically along the Water District, Barron Creek, and Adobe Creek areas. There would be some difficulty in constructing the 16-foot-wide walkway because of impacts to the utility and to the maintenance and operations of the Water District. Even if we were able to do the 16-foot width, a portion of it would probably have to remain at 12 feet through that area. These are basically the summary. I'll give that back to Brad.

Mr. Eggleston: Thank you, Roy. We've provided it just as a summary. We won't go through it now, but you can see all the optional enhancements and their potential costs in one place there. Lastly, just touching on the schedule here. This project schedule is the same as what we showed you in May when we came with the design contract. Just to summarize it, we anticipate completing environmental reviews late next year and/or early 2018 with our Caltrans approvals for the project in the fall of 2018. We would begin construction in early 2019 and be completed with the bridge in the spring of 2020. That concludes our presentation. We'll be happy to take your questions and comments.

Mayor Burt: Thank you. Council Member Holman.

Council Member Holman: Just a couple of questions please. Our presentation that we have in our packet and at places—just in our packets, is somewhat different than yours. The steel, closed-truss, three-span, what was the cost on that? I don't have a—it's Packet Page 101. I guess there are different versions of it.

# TRANSCRIPT

Mr. Eggleston: The cost for the ...

Council Member Holman: That one. \$2.9 million ...

Mr. Eggleston: ... three-span closed should be \$2.9 million. That's the additional cost beyond the baseline.

Council Member Holman: Can you help us understand? There are different examples here. The example that's second down from the top on the left ...

Mr. Schnabel: This one here?

Council Member Holman: Yes. Yes, sir, that one. What would that look like? There are just different designs here. The one at the top on the left is obviously very different than the one to the right of that. The one below that you just pointed to, what would that look like on the—looking at it from a distance as opposed to inside? The lower right-hand corner, what would that look like from the outside of the bridge? Looking at it, what would that look like? In other words, let's just say interested in the Alternative 2, steel closed-truss, what are we saying that we want? These are very, very different visuals as I read it.

Mr. Schnabel: They are. This is a little bit of a unique structure. That was the goal, to create something that was a little bit unique. Those ones that you're looking at, at the top, are in Amsterdam. They're a little bit different because the space frame, the frame of the structure goes completely around the deck that's internal. It's designed to give you a feel for it; albeit it's not the exact look of what that structure would look like. I don't think this structure has been done before.

Council Member Holman: If we wanted to give you direction, how would we do that, given that these are all so very different?

Mr. Eggleston: I think the yellow example is the primary example of what we would be pursuing in this instance. Correct me if I'm wrong, Roy. I think all three of those are based on the same structure type. Correct?

Mr. Schnabel: Yes.

Mr. Eggleston: As seen from different perspectives.

Council Member Holman: I get the same structure type, but the visual, the design of it, is very different. You can think about that. Going back again, we don't have this; I didn't find it anyway in ours. If you back up, you had the overlook, I think, on the Bay side. You were talking about the different planting scenarios.

# TRANSCRIPT

Mr. Schnabel: The overlook or the plaza?

Council Member Holman: I guess it would be the plaza. There was one you were talking about the different landscape scenarios.

Mr. Schnabel: You passed it. This one?

Council Member Holman: That one, yes. Thank you. There's the baseline and then there's the one at the bottom. You were talking about pavings and plantings and stuff. That's actually literally the Baylands, isn't it? I'm not quite sure what the intention is there. They have to be consistent ...

Mr. Eggleston: That is on the Baylands side, Council Member Holman.

Council Member Holman: I guess I'm a little concerned about how that eastern plaza enhanced—I'll call it enhanced; alternative is a better term—how that would be consistent with protection of the Baylands and Baylands Master Plan.

Mr. Eggleston: This particular area, when we met with the regulatory agencies, it didn't have wetlands value, and it was generally considered to be kind of a low-value area there, right along that trail. The reason we had included it as an optional enhancement is it was one of the things that had been included in some of the design competition submissions that people seem to be interested in. I would note, as I mentioned before, the things that we as Staff thought were the highest priority pieces to include in the project are the things that are already there in those core additional enhancements. This was just meant to give an opportunity for a little development of some of the other ideas.

Council Member Holman: The three-span, which is the basic, it spans the total freeway. There's the pillars or supports, and then there's another support on either side that spans the East Bayshore and West Bayshore Roads. Correct?

Mr. Schnabel: Yes, that's correct.

Council Member Holman: There was one place too where the video showed that pedestrians and bicycles were separated. I think that's one of the things that people liked a lot on some of the other iterations we saw of a bridge design in the past. It isn't always separated. Correct?

Mr. Schnabel: Yeah, that's correct. The separation was—I'm sorry. I'm guessing that you're talking about the access ramp, the secondary access ramp. The secondary access ramp, there were a couple of core additional

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items that we were tasked to look at. One was providing additional ingress/egress for pedestrians that were traveling northbound so they wouldn't have to take such a long detour to get to the entrance of the pedestrian bridge, and then have to travel all the way back. It was originally envisioned as a staircase. The second item that we were tasked to look at was improvements to West Bayshore to eliminate or to improve the bike lane, so that the bike lane could be continuous. Currently, it's shared with a very small sidewalk at the channel crossing. What we envision and what we came up with was an access ramp that was also Americans with Disabilities Act (ADA) accessible for the pedestrians and became a pedestrian bypass, where we moved the pedestrians off the street onto this and demolished the existing sidewalk that would be at the channel and utilize that as a continuous bicycle lane. The additional benefit is that this provides a secondary ingress/egress access when Santa Clara Valley Water District will be doing the regular maintenance every 3-5 years. They'll need to close the trail and the trailhead for that maintenance. This allowed us to keep the bicycle and pedestrian path open throughout that as a secondary emergency access.

Council Member Holman: This is on the west side. On the east side, they run concurrent, pedestrians and bicycles mostly.

Mr. Schnabel: We didn't look at improvement on that area.

Council Member Holman: Thank you.

Mayor Burt: Council Member DuBois.

Council Member DuBois: You started to answer one of my questions. I'm still trying to picture the west side with the pedestrian sidewalk. In the video, it's basically a raised sidewalk.

Mr. Schnabel: That's correct.

Council Member DuBois: Why did you do that again, if somebody just wants to walk along Bayshore?

Mr. Schnabel: Currently the access for pedestrians basically goes into the street and shares the bicycle lane at the channel crossing, because the bicycle lane and pedestrian are together.

Council Member DuBois: There's no sidewalk there currently?

Mr. Schnabel: There is a sidewalk, but it's shared with the bicycle lane. Basically the bicyclists have to ramp up into the sidewalk. It's a very narrow

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sidewalk, so it's not the most beneficial or functional sidewalk/bicycle condition. One of the things that we were tasked with was to separate those or to look at a way to separate those. We came up with a pedestrian-bypass ramp. The ramp goes up about five feet, and it needs to rise to meet the downgrade from the ramp coming in the other direction.

Council Member DuBois: That was in place of a stairway for ADA compliance?

Mr. Schnabel: We were also tasked with looking at a stairway to improve the ingress from anybody walking from northbound to southbound. We thought that the ramp actually was a better solution than a staircase, because it provides equal access to the disabled as well.

Council Member DuBois: Thank you for clarifying that. It was talking about painting versus weathering. Can you tell us what the lifetime cost would be for those span options?

Mr. Schnabel: Typically, when you're looking at prefabricated structures, the manufacturers order one type of steel. He orders self-weathering steel regardless of whether you're painting it or not painting it. He's going to use that because it's cheaper for him to do that. It typically costs him about 20-30 percent extra to add the paint depending on the type of paint system you want. There are two-coat and three-coat paint systems, which are much more expensive. The two to three-coat paint systems last a lot longer. Typically the life of the steel is anywhere from 75 to 100 years, and they typically last that long. Regardless of the paint system, it also needs to be maintained. When there are issues of areas where the paint has flaked off or is exposed, rusting will occur. The benefit of a self-weathering steel undercoating is that it has a sacrificial section that will allow it to develop. The only problem is a visual thing. If you see rusting through paint, it tends to create bigger impacts to people seeing that than it is to the actual. Self-weathering steel typically lasts anywhere between 50-75 years depending on where they're located. We've done a lot of bridges near bayland areas, and this has sufficient circulation to allow for the weathering steel to last longer.

Council Member DuBois: It sounds like it's not a really significant cost difference in terms of maintenance.

Mr. Schnabel: The maintenance is different. Maintenance for self-weathering steel is typically to deal with discoloration or any discoloration that is occurring. It's fairly limited. The maintenance with paint, if you want to maintain the paint, can be quite extensive because you have to grind off the areas and repaint it.



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Council Member DuBois: Again, if you look at the total cost, is the self-weathering cost more initially?

Mr. Schnabel: It probably washes out in the end. It probably washes out in the end except for the initial cost of the painting system. The painting system is pretty extensive. Again, it's 20-30 percent of the cost of the overall bridge.

Council Member DuBois: Brad, you mentioned the contingency is small. What is the contingency?

Mr. Eggleston: We have a 20 percent total contingency in terms of the construction cost. What that means is that there's essentially 10 percent design contingency that's there to account for things that we come across as we go through the design process that have extra cost, and 10 percent construction contingency, which is the actual contingency on the construction contract. More typically for a project like this at this point of design we'd want to have 20 percent design contingency with the 10 percent construction.

Council Member DuBois: Are there any conditions attached to the Google money?

Mr. Eggleston: No, there are not. The initial letter that Google had submitted to us last December had some language that could be read as conditions, but the updated letter that they gave us in May removed all that.

Council Member DuBois: The last question was if we did look at additional money from one of these grants, could that money be used to accelerate the schedule or is this schedule pretty much the fastest that Caltrans is going to go?

Mr. Eggleston: This schedule is primarily driven by the Caltrans review process. Extra money would not help us with that.

Council Member DuBois: Thanks.

Mayor Burt: Vice Mayor Scharff.

Vice Mayor Scharff: Thanks. I just wanted to follow up on the self-weathering steel versus the painting of galvanized steel. I'm not sure I was following exactly. When we build the bridge, what I heard you say—I just want to make sure I'm right—is that it's—was it 15-20 percent more expensive if we paint it?

Mr. Schnabel: Yes.

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Vice Mayor Scharff: It's cheaper to go with the self-weathering?

Mr. Schnabel: It is cheaper to go with the self-weathering. It's a little bit cheaper to maintain, the self-weathering, but the bridge tends to not last as long.

Vice Mayor Scharff: The difference would be it lasts 50-75 versus, if we maintain it, 75-100. If we don't maintain it, it lasts 50 years. That's what it says in the Staff Report. Is that not ...

Mr. Schnabel: Yeah, generally. It depends on the type of painting system. Again, if you use the more expensive painting systems, you tend to reduce the amount of maintenance required.

Vice Mayor Scharff: That's that 15-20 percent more.

Mr. Schnabel: Yes. That's a standard painting system that most of the prefabricators like to use.

Vice Mayor Scharff: In the base number, the \$13 million, what do we have? Do we have the self-weathering steel or do we have the painting?

Mr. Eggleston: We have paint.

Vice Mayor Scharff: We have paint.

Mr. Eggleston: That's right.

Vice Mayor Scharff: Do we have the better paint or the not ...

Mr. Schnabel: We have the standard paint.

Vice Mayor Scharff: We have the standard paint. Would you recommend the better paint? If you were looking at this from a cost-effective—I guess that's really the question. Lower maintenance ...

Mr. Eggleston: (crosstalk) life span (crosstalk) life cycle kind of approach.

Mr. Schnabel: I think, though, self-weathering steel will tend to be the more economical if you look at ...

Vice Mayor Scharff: Is the self-weathering as attractive or is the paint better looking? What's the ...

Mr. Schnabel: It's not paint. Basically it's rust. The whole bridge just rusts through, and it's a rust color. You see it on a lot of the creek bridges.

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Vice Mayor Scharff: The self-weathering steel will have that rusty look to it as opposed to a painted bridge, which has a color and doesn't look rusted. Is that it?

Mr. Schnabel: Yeah. In fact, there's a picture of one that's actually self-weathering in here.

Mr. Eggleston: I believe those are like the bridges you see along the Bay Trail on the east side of there now.

Mr. Schnabel: That's a self-weathered—that would be the color.

Vice Mayor Scharff: It's got that old railroad trestle bridge look.

Mr. Schnabel: It's just a uniform rust color all the way through.

Vice Mayor Scharff: I'm glad I understand that. The next thing is—what is it? How much extra would be the contingency in a normal project? I was trying to get—you said you'd rather have 10 percent more in the design contingency. What is that in terms of a dollar amount?

Mr. Eggleston: On this project, it'd be around \$900,000.

Vice Mayor Scharff: It'd be like the entire Google money.

Mr. Eggleston: \$800,000 to \$900,000.

Vice Mayor Scharff: I wanted to ask briefly about the extra money from the County, the \$4.35 million. No, that's what we currently have.

Council Member Kniss: \$4.5 million

Vice Mayor Scharff: \$4.5 million additional money. The question is something like this. You have a schedule of how we're moving forward on this. Is there any sense at all of when we hear from the County if we have this additional money, and if we do hear from the County that, for instance, we were to get it, where in the cycle could we break in? You could come back to us and say, "We have this extra money. We now could do these enhancements for that." How does that money play into this or is it even relevant, I guess?

Mr. Eggleston: It's a difficult thing, I'd say, because we're at a point now where to stay on the schedule that we've laid out here, we essentially really need the decisions about the primary structure type and the width now to move forward with our studies. We've checked with the County several times, and we've been told, "Wait. We don't have a process yet for you to

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ask for the money." They're supposed to be having discussions. The last we had heard was maybe the first quarter of next year they would start talking about what the process could look like. This would be a competitive process, we're quite certain.

Vice Mayor Scharff: That's what I have. Thanks.

Mayor Burt: Council Member Filseth.

Council Member Filseth: Thanks. Just briefly. Actually I think a member of the public sent this in, sort of a comparison of bridge widths. I wanted to ask about the 16 feet versus 12. There are comparisons of bridge widths for other bike bridges around the Bay Area. The sense, from what this gentleman sent in, is they're mostly 8-10 feet with a couple of 12-foot ones. Are there any 16-foot bridges around here?

Mr. Schnabel: We're doing one for a BART station, but that's a really high-traffic BART station. They basically have the parking structure on the other side of the railroad tracks. It's really designed for a larger flow. Most bridges that we do, especially over highway facilities, are typically 10 feet.

Council Member Filseth: Ten feet.

Mr. Schnabel: Yeah, 10 feet. Belmont's 8, which is kind of rare. That's the absolute minimum in the guidelines. Typically, the standard requires at least 10. Twelve is pretty ...

Council Member Filseth: Twelve was ample.

Mr. Schnabel: Yeah, it's pretty comfortable.

Council Member Filseth: Thanks.

Mayor Burt: Council Member Kniss.

Council Member Kniss: Could we go back to the funding sources? The funding from the City is pretty certain, I guess, at this point?

Mr. Eggleston: Yes, the funding from the City has already been budgeted into the project.

Council Member Kniss: Let's talk about the funds from the County, because I remember this pretty clearly. The funds from the County are the result of Stanford not doing a trail. They came, as a result, of San Mateo County turning it down. The amount of money that came back from Stanford was roughly \$8 million or \$9 million. The money has to be spent within a certain

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distance from the center of Stanford. That's how it's stipulated. It must be used for recreation. At the time the money was voted, because I was there, the money was voted to be used by Palo Alto. Help me with what happened between 2011 and 2016 that you're now saying it's somewhat dicey. Is that what you're telling me?

Mr. Eggleston: Council Member Kniss, are you referring to the—there's two different numbers here for the ...

Council Member Kniss: I'm referring to the \$4.5 million that you have there, the recreation fund you're calling it.

Mr. Eggleston: That was the amount that had been allocated to Stanford. There was a joint application by the City and Stanford. At the end of that application process, the bike bridge was allocated \$4 million from those funds, and the Stanford Perimeter Trail was allocated \$4 1/2 million. In the end, a year or two ago, Stanford decided to forego that funding and to build the Perimeter Trail on their own. Now, this \$4 1/2 million is kind of left there in this fund without a plan yet for how it would be allocated to other potential projects.

Council Member Kniss: Perhaps you could call them or I would call them, because my recollection is that that money very clearly had to be used for recreation, as I said, within a certain perimeter from the center of Stanford. This was an interesting happening, which maybe we'll go into it at another time. I think that it would be good to have another conversation regarding the money and exactly where it is at this point. I think what you're saying is a certain amount came to Palo Alto, and then the rest went to the Perimeter Trail, and that's true. That Perimeter Trail money was given back; there was no question. Somehow now there's probably \$8 million or \$9 million or \$10 million sitting in that fund. There has to be. Sitting in what you're calling the Santa Clara County Recreation Fund. I would appreciate it if you would have another conversation with Joe Simitian—the money can't be used in other districts, just District 5—and get more clarity on that. Thanks.

Mr. Eggleston: We can do that.

Mayor Burt: Council Member Schmid.

Council Member Schmid: Just a couple of quick questions. The five alternatives, as I understand it, do not provide any difference in safety. Is that right?

Mr. Schnabel: That is correct.

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Council Member Schmid: Either from down below cars hitting the struts or people on the top climbing over.

Mr. Schnabel: No difference in terms of the functionality and safety of the bridge.

Council Member Schmid: What about the five alternatives in terms of the view of crossers, do any of them give more enhanced visual fields?

Mr. Schnabel: Yes. The ones that are—the closed truss will tend to be a little bit more closed from the user, because you're going into a box instead of something that's open. The member sizes tend to be a little bit smaller, so the view outside of the truss will be a little less impeded. Option 5, Alternative 5 is probably the most open. It's a very open space frame. It also has the benefit of being inclined, and that incline not only gives the feeling that you're walking into something that's bigger but it allows a little bit more visibility outside with the vistas. That probably is the one that creates the most open look and feel for the user.

Council Member Schmid: Thank you.

Mr. Eggleston: I'd also add even some of those five—for instance the single-span bolstering truss, we said that was Alternative 1. Our baseline is the three-span. The three-span or baseline is open above the user as you're on the bridge. When you look at the rendering of the one-span that clears everything with the single-bolstering truss, it's actually closed along the top with members there that are needed for structural stability. In some instances, there's changes. We didn't call that one a closed-truss, but it essentially is.

Council Member Schmid: Thank you.

Mayor Burt: I had a few questions. I'm trying to think of this. On the eastbound ramp, I guess, if we look at Slide 6—the east side ramp I should say. It has a really big radius and a big loop there. Why is that so big there rather than something more truncated?

Mr. Schnabel: There are design guidelines within Caltrans that require certain design speeds to be adhered to with regards to bicycle trails.

Mayor Burt: It's a lot bigger than the other side. Why wouldn't they apply to the other side?

Mr. Schnabel: They allow exceptions in locations where it's not either feasible or practical to do it. Unfortunately with regards to the room on that

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side, that's about as large a radius that we could get to fit and still make the column locations (crosstalk).

Mayor Burt: This is their standard radius?

Mr. Schnabel: That would be the standard. This would be what we had to live with on that side, because of a lot of the constraints that we had on that side.

Mayor Burt: On the west side, I wasn't quite clear. If you're going—I'll call it southbound on West Bayshore and you want to turn and get on the ramp, what I thought I saw in the video seemed like a very sharp turn.

Mr. Schnabel: It is a very sharp turn. It's basically a 180-degree turn.

Mayor Burt: Is that an issue?

Mr. Schnabel: It is what it is. It is with regards to access, but people will have to stop there and look both ways before they get on the ramp.

Mayor Burt: It seems like the fix is if you have earlier than that juncture a small, moderately sharp radius that would ...

Mr. Schnabel: We looked at trying to fit that in there. Unfortunately there's a very large utility box that's located right at that location where we're doing the transition. We'll have to do some utility modifications at that location. There's also not a lot of space to do that with regards to the grades. One of the challenges is that we have high voltage lines that are basically located here in this area, that we have to maintain vertical clearance underneath. The secondary challenge is to get above the Google parking lot to give them sufficient headroom, vertical clearance, to get their cars and trucks underneath. There was a challenge with the slopes to get from here to there.

Mayor Burt: On the Google parking lot, you said cars and trucks. I don't know that parking lot well. Is it possible that they don't need to get trucks there and that can be worked in, that we can have a ...

Mr. Schnabel: We're discussing those issues with them and what works functionally with regards to the parking lot. We've modified it quite a bit, and we're looking to try to make sure that they either don't get a loss in their number of parking spaces and that the parking spaces are still functional for the use.

Mayor Burt: On Page 20 or Slide 20, you've got a timeline that I'm not sure if there's a typo or I'm misunderstanding something. It says that Phase 1,

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the second bullet, is 35 percent design review in the Fall of 2017. The third bullet says in the winter of 2017, which precedes the Fall by nine months.

Mr. Eggleston: That's just kind of a confusing use. Not the best use of the seasons.

Mayor Burt: I'd agree. What's unconfusing this?

Mr. Eggleston: That needs to refer to winter that begins on December 21st, 2017. Probably inartfully described there.

Mayor Burt: I'd change that. I get it. Under Phase 2, it says the OBAG funding access becomes available in October 2018. I was going to be asking whether—the approval would occur before then. Is that correct?

Mr. Eggleston: We're expecting the approval to occur sometime in the next several months.

Mayor Burt: Approval submittal of early next year, but the access is later. You said you think that the California Environmental Quality Act (CEQA)/National Environmental Policy Act (NEPA) is what will be the driver on being able to spend those dollars?

Mr. Eggleston: That's right. It's getting through the CEQA process, NEPA and then getting the final Caltrans approval.

Mayor Burt: Is it NEPA because this is a U.S. highway? Is that what makes it NEPA?

Mr. Eggleston: It's because of the Federal funding that is part of this OBAG funding.

Mr. Schnabel: If you get Federal funding, you have to get Federal environmental clearance.

Mayor Burt: Amongst the amenities, I was really focusing just on the lower cost ones. I was surprised that the—we had a combination of enhanced railings and fence mesh adding \$1/2 million. When I was looking at those, that was kind of a head-scratcher at least on the mesh. What are the advantages to some of those alternatives? I'm looking at Page 19. Trying to understand what drives \$1/2 million cost increase from those differences in mesh. I'm seeing it's railings as well.

Mr. Schnabel: That's basically this enhanced railing up here on the screen, Section 11. You go from a standard chain link railing to a different kind, welded-wire mesh or cable railing type. Because of the specialty



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construction of those, it's quite expensive. Depending on the type of material and the type of railings, railings tend to be one of the more expensive items on a bridge.

Mayor Burt: The other enhanced amenities are all those other little things of drinking fountains and all that on that one page. Is that right?

Mr. Schnabel: That's correct.

Mayor Burt: All those together add \$130,000?

Mr. Schnabel: That's right.

Mayor Burt: If we allocated the Google \$1 million and brought our contingency up, we'd still roughly have enough for that set of amenities?

Mr. Schnabel: That's right.

Mayor Burt: If we don't end up needing the full contingencies, which hopefully would be the case, we'd have left over dollars. Maybe those would be the Google dollars or whatever. Has there been consideration on whether we could reallocate those dollars to something like the Loma Verde grade-separated bike crossing that we have in the plans?

Mr. Eggleston: There hasn't been that discussion to this point, but I'd say definitely the City's General Fund capital contribution to this project should be fungible between the project and other priorities.

Mayor Burt: Google doesn't have a problem if we spend their \$1 million and we only spent 3 1/2 of ours?

Mr. Eggleston: They don't. I've discussed with them that one of the alternatives we put forward is the City's contribution could be reduced.

Mayor Burt: Finally, one of the earlier alternatives that we had had Motion sensor lighting that tracked pedestrians crossing. It just moved and lit them as they moved, whether on bike or walking. Is that any part of this project?

Mr. Schnabel: It's included in the enhanced lighting design. Those are the controls.

Mayor Burt: Where's the enhanced lighting? I'm looking at Page 19.

Mr. Eggleston: The enhanced lighting is one of the core additional things that we prioritized and included in the project in May.

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Mayor Burt: It's in there.

Mr. Eggleston: It's already funded.

Mayor Burt: This bridge would have that kind of lighting tracking?

Mr. Schnabel: Yeah. One of the enhancements was to include the controls necessary to do that. It would sense somebody crossing the bridge, and then it would improve the lighting as a means to save on energy. All the fixtures are going to be high-efficiency LED lighting.

Mayor Burt: Are you saying that when someone's crossing, the whole bridge lights up more or is it that the lighting tracks the person's movement?

Mr. Schnabel: We can do that. We can change the colors. We can change the locations. We currently have an allowance for doing some of that. Some of that will be restricted because of the blow back onto the channel, blow back onto the glare and blow back onto the freeway and the blow back into the ...

Mayor Burt: I thought these were low-wattage LED that are directional.

Mr. Schnabel: It is, but if you start changing height—typically we try to keep those as low as possible to limit the amount of spillage onto the channel.

Mayor Burt: Thank you. Council Member Wolbach.

Council Member Wolbach: (inaudible)

Mayor Burt: We will now hear from members of the public. We have eight speaker cards. You can have up to three minutes to speak. It's getting late; if you can do it any quicker, all the better. The first speaker is Matthew Lefkowitz, to be followed by Herb Borock.

Matthew Lefkowitz: Good evening. Thank you, Council. My name is Matthew Lefkowitz. I'm the son of Benjamin Lefkowitz. The existing structure on the Adobe Creek side is named for my father. It was named for my father by Motion of this Council in December of 1989 and dedicated by the Mayor. I'm having mind blank. I looked at the proposal. It's beautiful. It's in keeping with my dad's idea of increased bicycle and pedestrian access to the Baylands. I'd hate to see the work that the Council did reversed and his name erased from the site. I don't see his name anywhere on the new proposals. The site's very special to my family. My father was sick when the site was dedicated, and about a year later he died. The site's become kind of a memorial or a monument to my father's memory more so than his

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gravesite in Colma. Under optional enhancements or something, can something be done to transfer his name in some appropriate way to the new project? That's why I'm here, to implore the Council to not forget the work it did in 1989 and in some way remember my father in the new project. Thank you for hearing my petition.

Mayor Burt: Thank you. Our next speaker is Herb Borock, to be followed by David Moss.

Herb Borock: Good evening, Mayor Burt and Council Members. My first comment has to do with the Google contribution that was raised by Council Member DuBois and Mayor Burt. I recall the first letter from Google which set conditions. That was made available to the public. I don't recall seeing the second letter that changed that to an unrestricted contribution. I think that will be helpful for the public and the Council if that was included in the next packet. Of course, I don't know how soon we're going to be seeing this item on your agenda again. It'll be clear to everybody that there are no conditions to the contribution. If there's anything in writing that it's okay with Google, but it doesn't have to be okay with Google if it's an unrestricted contribution, then I would support what Mayor Burt suggested as an option, which is that it be applied to the base project funding so that it goes against and is part of the \$4.65 million from the City's contribution. Google is the main beneficiary of this bridge. It connects Google's campus, properties on East Meadow to its properties in Mountain View. The City's already done a substantial amount of investment to make the area on East Meadow attractive for Google to then purchase the properties, the East Meadow area plan, an extension of the fiber network and installation of dark fiber access point at East Meadow. For Google, it'll be a bargain of \$1 million out of the \$13 million. I would think their share of the \$13 million should be much more. In regard to the issue Council Member Kniss raised about the County funds, at the bottom of Packet Page 74, it refers to the \$8.5 million and that Stanford was awarded \$4.5 million, which means we were awarded \$4 million as part of our joint application. Then, we see \$4 million at the bottom of Page 75 as the Santa Clara County Recreation Fund. My question is, is that our \$4 million share of the \$8.5 million or is that \$4 million from the Stanford share. In other words, we spent our \$4 million on other projects. I think it would perhaps answer the question that Council Member Kniss raised as that money to sort of describe which pieces of that \$8.5 million are shown at the bottom of Page 75, showing a source of \$4 million from the County. Thank you.

Mayor Burt: Thank you. Our next speaker is David Moss, to be followed by Jeff Saunders.

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David Moss: Thank you very much, Biggs and Cardosa, for doing such a fantastic job on that baseline design. I would encourage the Council to accept that, because we've been waiting a long time for this bridge. I would like it to go as fast possible. If the baseline is really beautiful, we should just stick with that and not have to hash through the options and alternatives that you proposed. I would encourage you to do the baseline as quickly as possible. Thank you.

Mayor Burt: Thank you. Our next speaker is Jeff Saunders, to be followed by Rich Ellson.

Jeff Saunders: Hello. West Bayshore north of this location is a very treacherous path for bicycles. It's zoned at 35 miles an hour, but the typical vehicle speed is closer to 50. You've got the standard bike lanes on either side of that traffic. The Girls' Middle School has further exacerbated traffic on that stretch. The sidewalk is actually not Americans with Disabilities Act (ADA) compliant. There's fire hydrants and other things in the midst of the sidewalk along that entire stretch. Just on the other side of those businesses is a City easement called Sterling Canal, which used to be an open lateral between Adobe Creek and Matadero Creek. Part of that has already been improved as a walking trail north of Loma Verde, dead-ending at Matadero Creek. You could very easily enhance this whole project and take all the bicycle and pedestrian traffic off of West Bayshore onto Sterling Canal by putting bridge connections on the western approach. That would address Mayor Burt's concern about that radius turn by taking northbound traffic back around beside the Google building to Sterling Canal, and then Sterling Canal all the way up to Matadero Creek. Put a bridge at Matadero over to the Pacific Gas and Electric (PG&E) substation, and that takes you all the way to Greer Park off of West Bayshore. It would allow all pedestrian and bicycle traffic to use Sterling Canal rather than West Bayshore. Then, you could restripe West Bayshore to improve the Girls' Middle School location and reduce traffic concerns there. Thank you.

Mayor Burt: Thank you. Next speaker is Rich Ellson, to be followed by Penny Ellson.

Rich Ellson: Hello, Council Members. I'm delighted to be here again to speak to you about this issue. I've been working to acquire funding. I spoke to Liz Kniss when she was at the County about acquiring some funds for this bridge a long time ago. A fundraising proposal I wish I had thought of was for every day that I had to ride over the San Antonio bridge because the tunnel was closed, I should have had a \$10,000 fee per day. If I had done that about the time that we went in 2011 to speak to you about getting money from the County and you had given the money to me, I could fund

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the bridge. I gladly would have done so. I think, from the perspective of most cyclists, speed and having a bridge is much better than anything. The tunnel works, and we ride through it when we can. When it's closed, there aren't really safe alternatives. We have to go on the street or on San Antonio, which is not a safe place to be. From my perspective, build anything. They're all wonderful compared to what we have, which is unsafe during the times of year when we have to use it. One recommendation—I've ridden the Borregas Bridge many times. It's one of the routes that I take to get into work sometimes—is actually to go with the incline rather than spend money on width and vertical posts. If you're a cyclist, you're actually a little bit wider up top, because of your handlebars. Actually canting things out on an incline does give you a little more room to move over to get around pedestrians, people with jogging strollers, etc. That's been very useful on the Borregas bridges. I think that may be a better tradeoff from a visual impact, just narrow width and give us more incline. That's an option you might want to consider. Also there have been considerable upgrades in the path heading south, so the functionality of a bridge has increased tremendously in the last few years. With the addition of a paved path from the opening of Moffett Park, which was about five years ago, the Moffett Park Bay Trail section is open, which opens great connections to a lot of the new Google facilities that are being built. Most of Moffett Park is becoming Google. Big eight-story buildings going up if you haven't noticed them from the 101. That's a great cycle connection for them to head south, and they spent a few million dollars to basically upgrade that trail to be DG, like we have in a lot of our parks. It's a great path for cycles and improved my speed to get to Moffett Park, which is the route that I cycle. I think making this improvement will reduce traffic on our streets and get a lot more cyclists out. I've already noticed the improvements just from that 2 1/2-mile upgrade. We need to do our part and do it quickly. Thank you.

Mayor Burt: Thank you. Our next speaker is Penny Ellson, to be followed by Robert Neff.

Penny Ellson: Good evening, and thank you for hearing us this evening. I want to thank City Manager Keene for your reassuring opening comments. My husband covered a lot of the stuff that matter to our family. What he didn't mention is that we use this future bridge—we'll use it not just as bicyclists but as pedestrians quite a lot. My daughter is a birder, and I have two dogs that I walk a lot. I spend a fair amount of time on the Bay trails. One thing I want to point out when you talk about lighting and doing fancy lighting, at night when you get on the other side of that bridge, you're walking on trails in the dark. If you're going over that bridge without a light on your bike or a flashlight in your hand at night, it's not going to make a difference if there's lighting on that bridge. It's dark in the Baylands at

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night. I just want to encourage you to keep this simple. Every day, every week, every year we don't have this bridge, bicyclists are at risk because they are forced onto surface streets like Middlefield and San Antonio. In the winter, in the rain, these are not where you want these bicyclists to be. It's not where I want them to be. I just want to really encourage us to move this thing forward as quickly as possible with as few changes as possible. Keep stuff in here that makes it functional, but let's not delay it any further. Let's stick with our budget. That's all I would ask. Thank you.

Mayor Burt: Thank you. Robert Neff to be followed by our final speaker, Rob Robinson.

Robert Neff: Thank you and good evening. I think the proposed design for this bridge at Adobe Creek is an excellent design that you should expedite as quickly as possible. In particular, the features originally requested, the 12-foot width, a connection to East Meadow via the Santa Clara Water District path, and also the viewing area on the Baylands side, are valuable additions and well done. The sidewalk access from West Bayshore incorporating the sidewalk into the bridge and letting the space on the existing roadway bridge be used as a bike lane is inspired. We had a lot of different proposals for this, and none of them solved that problem until this one came to us tonight. I'm just thrilled by that. I can see that there's a menu of options for enhancing the design. For any expensive option, I'd suggest the City bank the money and use it on other bicycle and pedestrian projects. I do not favor spending several million dollars to cosmetically enhance this design. Spending more money to widen the bridge is really not justified in my view. The 12-foot width is the same as some of the nicest mixed-use bridges built in the area. The Mary Avenue bridge in Cupertino and the Stevens Creek Trail bridge over Highway 85 are both 12 feet. When I use those bridges as a bicyclist, it is easy to safely share that bridge between me and the occasional ambling family groups that might be heading across the bridge at the same time. The Baylands viewing platform incorporated in the design will offer a good space for viewing and also let people hang out on the bridge without being in conflict with other bridge users. Please move forward as quickly as possible on this design. Thank you.

Mayor Burt: Thank you. Our final speaker, Rob Robinson.

Rob Robinson: Hi there. I was the one who compared the bridges nearby us. The Permanente Bridge is 12 feet wide, which is generous, so 12 is no problem. I would like to see the overview slide again. I can't emphasize more than Robert did about the ingenious fix on the West Bayshore. Building another bridge, if you will, and tearing out that dysfunctional bit of bridge and make the sidewalk useful is just the breakthrough. Imagine how

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it's going to be used. People will actually congregate on the Adobe Creek Trail extension, which has got to be a part of this. Maybe not the funding part, but it's got to happen. People will gather, talk, visit and then they'll start up the ramp. Those cyclists who come from the north and have to stop to make their really sharp turn, again an opportunity for a visit before they go across the bridge. When they cross the bridge, it's boring. It's just cars. The fun is getting over to the east side and enjoying looking at the Baylands and the nice gentle fall-down to the trails on the east side. Keep it simple. Thanks.

Mayor Burt: Thank you. We'll now return to the Council for discussion and motions. Council Member Wolbach.

Council Member Wolbach: I think we've seen a lot of great work here, trying to pivot after the previous attempt at a bridge here didn't pan out. I think the work that's been done is great. I like the way we're going here. I'd be happy to move the Staff recommendation and move forward with the baseline option. I'd be open to consideration of some of the more affordable enhancements. For the most part, I think we should stick to a slim budget and efficiency.

Vice Mayor Scharff: Second.

Council Member Schmid: Second.

**MOTION:** Council Member Wolbach moved, seconded by Vice Mayor Scharff to:

- A. Direct Staff to amend the contract with Biggs Cardosa Associates, Inc.; and
- B. Increase the budget for the Adobe Creek/Highway 101 Pedestrian Overcrossing Project, Capital Improvements Program (CIP) Project PE-11011.

Mayor Burt: Do you want to speak to your Motion?

Council Member Wolbach: Just a couple of things. First, I did hear a number of members of the public and also during the presentation—the video by the way was very useful. It really highlighted one of the key areas of concern for me. This fix on West Bayshore is really important. That's a very frequent jogging route that I take. I know that area well. Having to look over my shoulder, if I'm heading southeast on Bayshore, to make sure that I'm not going to get run over by a car and how unappealing that would be if I were any less athletic. I can imagine other people just having a very,

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very difficult time there. It even scares me sometimes. The fix there is really critical, even for people who aren't using the bridge. I think that's really worth pointing out and appreciating. I think that the baseline design is simple. It's elegant. It gets the job done. I think that the 12-foot width is perfectly sufficient. I do appreciate that Staff has brought us a number of options. We've talked about on a lot of things how it would be nice to more often get Staff recommendation, but then here are a couple of other options we could pursue. I appreciate having those options. In this case, I agree with the Staff recommendation. I think the design is fine, and the budget is right. I don't want to see us, as I mentioned before, slow this down or add to ballooning costs. A couple of things that I will also mention. I don't know if we need to include it in this Motion. I would like to see it called something like the Lefkowitz Memorial Bridge. I'm open to discussion either way on whether we go with the self-weathering steel or with a paint. Actually a quick question. On some of these smaller amenities like drinking fountains, bike racks, interpretive signage, are those things we need to decide tonight or can those be decided at a later point in this project?

Mr. Eggleston: Those are much less important to decide tonight. I'm almost certain that whatever you decide, we'll probably be able to incorporate some of those types of things.

Council Member Wolbach: Just in the interest of time, I'd actually recommend to my colleagues that we hold off on those enhanced amenities that aren't necessary to decide right now, so we can move forward a little bit more in the planning before we add all those, whatever they may be. We did hear a question during public comment about Sterling Canal for bike and pedestrian use. Did Staff want to weigh in and respond to that at all or indicate whether that's feasible and whether that's something we, again, would have to discuss tonight or we could come back to that at a future time?

Mr. Eggleston: It's not an issue that I'm familiar with. I jotted down some notes. We'll definitely reconvene and talk about it.

Council Member Wolbach: It would be great to get some follow-up. I appreciate the member of the public who brought that up. Also on the point of lighting that was raised, I would actually also point out that this doesn't just connect to the Baylands. It also connects to a lot of jobs and businesses in North Bayshore. I think we do have pretty good lighting there. Actually one other question. Just looking for an example of the weathered steel look, as we were discussing this I was pulling up Google Earth and looking at the street view down there. I'd forgotten that there is a bike bridge right now across Adobe bridge on the East Bayshore side, which is



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that weathered steel look currently. If we did go with weathered steel, it would match what's there now. Of course, on the West Bayshore side, it would be less of an aesthetic match. As I said, I'm open to that. Maybe that's something we don't have to decide fully tonight either.

Mayor Burt: Vice Mayor Scharff.

Vice Mayor Scharff: I agree with virtually everything that Cory said. I actually do, though however, think we should have the enhanced amenities, and that we should then use the rest of the Google as the 10 percent contingency obviously, if we don't use it. My question is on the contingency. We have the Google money; should we put that in the Motion for clarity?

Mr. Eggleston: Is the question whether we should move forward with accepting the Google funding and then allocate a portion to enhance amenities and a portion to increase contingencies?

Vice Mayor Scharff: Yes, that's what I'd like to do. I don't know. Are you good with that?

Council Member Wolbach: If we don't need it for contingency, do we still get to keep it is my only concern there or do we have to give it back to Google?

Vice Mayor Scharff: We do, right?

Mr. Eggleston: No, we would not have to give it back to Google.

Council Member Wolbach: Just wanted to be really ...

Mayor Burt: ... already answered that.

Council Member Wolbach: I just wanted to be very clear about that. Thank you.

Vice Mayor Scharff: Are you fine with those too?

Council Member Wolbach: Yeah, I think I'm fine with that. Actually the one about amenities, there are a number of amenities and ...

Vice Mayor Scharff: No. There's the enhanced amenities for \$0.13 million. That's it. That covers ...

Council Member Wolbach: That ....

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Vice Mayor Scharff: That's the benches. That makes it pretty clear to Staff that what I want to do is to limit it to a small set. It spends all the money, and we don't go above that.

Council Member Wolbach: Which small set are you looking at? In a couple of different places in our presentations and attachments, it lists them a little bit differently. Which one are you looking at (crosstalk)?

Vice Mayor Scharff: I'm looking at where it says enhanced amenities for \$0.13 million which is \$130,000. Staff had a bunch of stuff—I'm not going to repeat it. Cory wants to hear it, so ....

Council Member Wolbach: No, just point—it's different in different places ....

Mayor Burt: Let me just try and speed this along. If you look at Page 12, I think those are images of the enhanced amenities. When you look at the table on Slide 19, it lists it just like in the Staff Report, \$0.13 million for enhanced amenities. That's what it's referring to.

Council Member Wolbach: I'm sorry. Which page did you say in the Staff Report?

Mayor Burt: I didn't. It's the same thing as Slide 19. We talked about it earlier.

Council Member Wolbach: Right. I'm comfortable with that \$0.13 amenities.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to add to the Motion, "

- C. Accept the \$1 million contribution from Google to use towards contingency funds; and
- D. Incorporate "Enhanced Amenities" for an additional cost of \$0.13 million."

Mayor Burt: Council Member DuBois.

Council Member DuBois: I actually really want it to be clear in those enhanced amenities. Slide 10 basically shows a water fountain, trash receptacles in the baseline. Are we just paying for fancier trash receptacles?

Mayor Burt: Slide 10?

Mr. Schnabel: Yeah.

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Council Member DuBois: We're paying for a fancier water fountain and ...

Mr. Schnabel: A fancier water fountain. If you want to incorporate bicycle racks, those weren't included. The drinking fountain was a standard drinking fountain. There are upgrades to the standard drinking fountain to include dog watering and water bottle refilling. They call those hydration stations, not drinking fountains. Those are probably twice as expensive as a standard drinking fountain.

Council Member DuBois: If I would have made the Motion, I would have left that out. I'm not going to argue it at this time of night. I do have some other comments though. First of all, I appreciate that you incorporated a lot of the options from the design competition in the base and in the options. That was really nice to see, at least some of the influence. There was mention of an art project, and one of the pictures was a pretty dramatic, I guess, example. That would probably not fly in the Baylands. I just wanted to—as we get into the art that would be appropriate on the east side there. We have a lot of capital improvement projects on our list, and I really am glad to see this Motion. I think we should stick with the base project. It'd be great if that Google money just reduced the General Fund contribution. I think it's a great bridge the way it is. Thank you for the design.

Mayor Burt: Just reminding everybody of the hour. Council Member Holman.

Council Member Holman: Just a couple of comments here, I think. On the baseline, the center portion of the bridge is at 16 feet, and it has a very different look than on the bowstring one-truss. It's only two feet taller but has a very different look. The reason I bring it up is because it's a much more graceful design. I'm just wondering are these accurate or are these sketches? You know what I'm saying.

Mr. Schnabel: No, I'm not ...

Council Member Holman: The top of the arch on the baseline versus the top of the arch on the prefab bowstring one-span, which is Option 1—the apex of the arch, the top of the arch, is higher.

Mr. Schnabel: Yes.

Council Member Holman: Is that not possible to do on the baseline or why is it different?

Mr. Schnabel: We can. It just adds more steel. Basically what we defined for the span length is a depth to span ratio. The typical depth to span ratios

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are applied to both sections the same way. One has a much longer span, so it's much taller and needs to be taller to reduce the impacts from the loading and the deflection. We can artificially increase that span for architectural reasons. What we've done here is basically a structural baseline. What's minimal for the structural necessity of the design.

Council Member Holman: Do you have any notion of what a cost might be to enhance that height?

Mr. Schnabel: I'm not sure. There's some offset. The more you increase the height, the less member size that you'll need. There's an offsetting cost impact, but I'm not clear what the overall cost implication would be.

Mr. Eggleston: Can I just add that as we went into this with the results of the design competition in mind, we have been specifically trying to look at having lower profile designs. In fact, from our standpoint, not been so interested in arch designs that were higher, and thought it was a positive that the three-span had the lower elevation.

Council Member Holman: This isn't high like the other design was, that was put to the side. The reason I bring it up is because the—I do come from the graphics world. From my perspective, it isn't a very graceful transition from the arch section to the—I'll call it for lack of a better term the square section. The square section also tends to end rather abruptly as opposed to more gracefully.

Mr. Schnabel: I could provide you with some examples of where that actually occurs in that form. You could have a real-life example of what that would look like.

Council Member Holman: That would be helpful. My interest is—I don't think there is enough support—Option 2, but I don't know where would we get the money if there was—where would that money come from, the 2.2? Excuse me, 2.9.

Mr. Eggleston: Alternative 2, the \$2.9?

Council Member Holman: \$2.9, where would the money come from?

Mr. Eggleston: We don't have an identified place where the funding would come from at this time.

Council Member Holman: We have options in front of us that we have no funding mechanism for?

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Mr. Eggleston: It would have to be something where, if you directed us, we would be going after that Santa Clara County trails funding potentially or weighing other projects that are being considered or already funded.

Mr. Keene: I don't think we can identify with any certainty being effective in closing the gap. I would just say as we get together with Finance Committee here soon and we start looking at '18, I think we're probably going to have some capital budget challenges overall. If we could put all that together with this, I think it would sort of steer us back towards the baseline. I don't mean to be cutting things off, but I think there's more likely other demands on us than there's additional supply out there.

Council Member Holman: That's a little—I appreciate the perspective. It's a little frustrating because they're put in front of us like here's the candy bowl and then don't put your hands in it. I really do think ...

Mayor Burt: I didn't think of it as a candy bowl. It was pretty clear from the presentation that those other funds are not presently available and consideration of any of the more expensive alternatives would mean we would not be going forward at this time. That was clear to me.

Council Member Holman: That's then kind of like why are we looking at the options. I'm intrigued by Design Number 2. There was one other thing. The clarification on Council Member Kniss' question about the funding, you just said that we'd be going after the County funds. Why wouldn't we be going after the County funds anyway, if I understood the comment correctly?

Mr. Eggleston: I think we will be. As I mentioned, we've contacted the County several times, and we can continue to do that. It's just that at this point, we don't have any level of certainty that we'd be successful. We don't even know yet what that process will be.

Council Member Holman: Last question. The \$1 million contribution from Google, does it have strings attached to it or not? Last time it did.

Mr. Eggleston: Two times ago it did. That was last December. In response to the member of the public's comment about seeing the updated letter, that letter was attached to the May Council packet where the design contract was approved. There were no conditions in the letter.

Council Member Holman: To be clear, there's no contingency, no conditions, no strings on "C."

Mayor Burt: That's correct. Council Member Schmid.

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Council Member Schmid: I think Staff did well with the consultant on the enhancements that are now included in the baseline. I think it's clear that we have been a long time in this process. There are lots of people who are looking forward to it being brought to fruition. I would certainly support the current Motion and focus on getting it done. I would also support the notion of having somewhere an identification of the Lefkowitz origins.

Mayor Burt: Just at a high level in the funding, I'll add that if we had additional funds available that were significant, I'd put a higher priority in beginning to fund the Loma Verde grade separation, which I think has extremely high value to the community, to Stanford Research Park, students, all those things. If we have Measure B pass, we may be able to tap into some of those funds for that purpose as well. I'd recommend that we—it's a good design. It may not be an earth-shattering design, but we need to move forward. Thank you all very much for the presentation. We have the Motion before us. I think we're ready to vote on the board. That passes 9-0. We are moving forward. Thank you to everyone from the public for the participation and staying up late with us.

**MOTION AS AMENDED RESTATED:** Council Member Wolbach moved, seconded by Vice Mayor Scharff to:

- A. Direct Staff to amend the contract with Biggs Cardosa Associates, Inc.; and
- B. Increase the budget for the Adobe Creek/Highway 101 Pedestrian Overcrossing Project, Capital Improvements Program (CIP) Project PE-11011; and
- C. Accept the \$1 million contribution from Google to use towards contingency funds; and
- D. Incorporate "Enhanced Amenities" for an additional cost of \$0.13 million.

**MOTION AS AMENDED PASSED:** 9-0

Mayor Burt: We only have one more item. You can stick around.

- 7. PUBLIC HEARING: Finance Committee Recommendation That the Council Adopt an Ordinance Updating the Procedure for Collection of Impact Fees by Amending Palo Alto Municipal Code (PAMC) Title 16 (Building Regulations), Chapters 16.45 (Transportation Impact Fee for new Nonresidential Development in the Stanford Research Park/El Camino CS Zone), 16.46 (Approval of Projects With Impacts on Traffic

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in the San Antonio/West Bayshore Area), 16.47 (Approval of Projects With Impacts on Housing), 16.57 (In-Lieu Parking Fee for new Nonresidential Development in the Commercial Downtown (CD) Zoning District), 16.58 (Development Impact Fees), 16.59 (Citywide Transportation Impact Fee), 16.60 (Charleston Arastradero Corridor Pedestrian and Bicyclist Safety Impact Fee), 16.61 (Public Art for Private Developments), 16.64 (Development Fee and In-Lieu Payment Administration); and Title 21 (Subdivisions and Other Divisions of Land), Chapter 21.50 (Parkland Dedication or Fee In-Lieu Thereof), and Finding the Action Exempt From Review Under the California Environmental Quality Act (CEQA).

Mayor Burt: Our final item is a public hearing, a Finance Committee recommendation that the Council adopt an Ordinance updating the procedure for collection of impact fees and various amendments to the Municipal Code in Title 16. I will not read off the entire title, but it's there in the report. Is the City Attorney's Office taking the lead on this? Is that right, Cara?

Cara Silver, Senior Assistant City Attorney: Actually, Sherry's going to give the Staff Report.

Mayor Burt: Thank you.

Sherry Nikzat, Senior Management Analyst: Hi. My name's Sherry Nikzat. I'm the Senior Management Analyst with the Planning and Community Environment Department. Honorable Members of the Council, tonight we're coming to you with the Finance Committee recommendation for amendments to the Municipal Code, which will update and standardize the collection of impact fees. This could be construed as sort of a procedural Code cleanup. Generally speaking, impact fees have been adopted by Council as the need has been identified. The new Municipal Code has been introduced at that time. An unintended consequence has been an overly complicated process to administer these funds. The purpose of the recommended changes tonight are to provide uniformity amongst rate calculations; to provide uniformity among the fees for inflationary adjustments; to improve the administration of these funds. In other words, to make the program fee computations so we can put them in our permitting system and retain the information properly. To create uniform payment timing; and to clarify ambiguous Code language, things like Quimby versus Park Impacts and things to clarify the Code language. Lastly, to implement uniform protest procedures per the Mitigation Fee Act. As I mentioned earlier, impact fees were often established with their own Code, which may have made sense at the time, but they sometimes included requirements for

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certain City positions to update fees, to report on funds or to have the ability to issue citations. There are also out-of-date payment locations in the Code and language that needs clarification. Staff is recommending changes to the Code. Excuse me, the Finance Committee is recommending changes to the Code to standardize the annual adjustment process and the indices used, standardize the due dates of payments, update or remove old position titles that no longer exist, and implement recommendations from the Parking Fund audit, correct unintended errors and add protest information. We've provided the Minutes from the Finance Committee at places this evening and wanted to respond to written questions that we received from Council Member Schmid earlier today. Council Member Schmid was questioning the section of the Ordinance where we have recommended deleting a provision requiring the Chief Transportation Official to report on an annual basis on the cost of providing parking, the need for parking and the pending development within the Assessment District. The parking audit from last year indicated that this annual report has not been happening. In the City Manager's response to that audit, we said that the departments would work together to review the Municipal Code and recommend additional changes to update the Code, clarifying reporting requirements and removing areas of contradiction and confusion. Our recommendation for eliminating the reporting provision is consistent with our response to the audit and with the objective of this Ordinance, which is to simplify procedures related to impact and in-lieu fees. Staff already provides an annual report on impact fees annually as well as the annual report on development in the Downtown including use of parking in-lieu fees and the status of the long-term parking deficiency originally quantified back in 1986. The latest such report on Downtown was provided to Council on April 11th, 2016, and another will be forthcoming in the spring of 2017. Based on these existing reporting procedures and our overall desire to streamline operations where feasible, we're comfortable with our recommendation to modify Municipal Code Section 16.57.070 as shown on Packet Page 122. Before turning this over to Council for questions, we have two minor edits to the Ordinance, which is Attachment A. The first is on packet page 129, Section 16-64-070(d), the Director may elect to appoint a designee to hear and decide a protest under this section. The second change, minor edit, would be on Packet Page 131. There is a typographical error on the sixth line of the text. That line should read "the existing rate for a fee shall remain in effect until the recalculated rate is adopted and effective pursuant to Section 16-64-050."

James Keene, City Manager: We just delete "made," the word "made."

Ms. Nikzat: Yes, delete the word "made." Yes, thank you. We recommend your Motion contain these two corrections. Senior Assistant City Attorney, Cara Silver and I are happy to address questions you may have.



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Mayor Burt: Thank you. Any questions from the Council? I'll just note that this was passed unanimously by the Finance Committee, but it is an action item because it requires a Public Hearing, not because we would normally agendize it for discussion and debate purposes. Council Member Schmid.

Council Member Schmid: I guess I have just a simple question. It's about the clarification that has taken place. I can understand virtually everything you've done except on 16-57-07, Packet Page 122. What you're crossing out—let me just read it. On an annual basis, the estimated cost of the described parking, the continued need for that parking, and the reasonable relationship between such need and the impacts of pending or anticipated nonresidential development shall be reported to the Council and recommend any adjustments needed. This is not for an impact fee; this is for in-lieu payment. We have been using for decades now the 1:250 ratio, one new job for every 250 square feet. That has become a very important number in our calculations of jobs, the relationship between commercial building and jobs. My understanding in looking at the City Manager's report on Plan Bay Area that was given to us October 4th that in the development of the new scenarios, five and six, it became clear that the parking ratios used there were quite different from the 1:250. They were implying a jobs to square feet ratio that's some 30-50 percent higher. This seems to me to call for that Code part that I just read, 16-57-07, that if there is a change, a major change, in how we calculate parking and its impact, its relationship to development in the area, that that should be reported to the Council. Now, instead what's taking place here is you're eliminating the paragraph that says let's report to the Council and discuss the need for shifts. My question is why. That's not just an impact fee like the others. This is the in-lieu payment, which is dependent upon the 1:250.

Ms. Silver: I'll take a crack at that. Cara Silver, Senior Assistant City Attorney. As Sherry mentioned in her presentation, the reason why Staff is recommending that that be eliminated is in response to the Auditor's report originally, which found that the annual report required by that section was not being made. We recognized that it was not being made, and we thought it would be most appropriate instead of having a standalone report on in-lieu fees, that it would be more appropriately grouped together with the annual report that we do on all of the other City impact fees. We have one other category of fee that is similar to the in-lieu fee, and that is the public art fee, which we have been reporting now in this annual report. The public art fee is not technically a development impact fee, but it is included in this annual report. We thought we should treat this transportation in-lieu fee similarly and group them together. The other point, I think, that Sherry mentioned is that there are other parking reports that do come out on an annual basis.

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The Council certainly can talk to the policy issue underlying those parking reports in connection with those information items that are reported on.

Council Member Schmid: I guess you mentioned the audit report. On Page 11 of the audit report, they do spend the entire page talking about administering parking in-lieu fees. The Audit Report mentions the noticed public hearing regarding the reasonable relationship between continued need for parking, the impact of pending or anticipated commercial development. They end that paragraph by saying the annual noticed public hearing to satisfy this Code requirement has not been held. That doesn't sound like a recommendation to drop it, let's treat it like all the other impact fees. It seems to be saying, "Let's take a serious look at that." I do note that in the Assistant City Manager's letter responding to the audit report, he said, "residential parking programs are established to address a pressing need in the community and by necessity to manage these programs and respect the urgency with which the City Council would like to address these community needs." That seems to be saying we will respond to the Auditor's Report with the fact the City Council has identified the in-lieu parking fee as a critical element in its planning.

Mr. Keene: I'm listening very carefully. I don't see how that's not accommodated by the annual report that will still go to the Council just in conjunction with some of these other fees as opposed to doing it separately than this.

Council Member Schmid: As I said, I pointed out the City Manager's report on the Plan Bay Area seems to indicate that Staff is using a ratio quite different than our 1:250, some 30-50 percent higher ratio. That's a major step.

Mr. Keene: (crosstalk) adopted that particular ....

Mayor Burt: I think the City Auditor—I'm giving a lot of latitude because this is really not a question. This is a debate with Staff, and we're in a question period. We have protocols.

Council Member Schmid: They are asking us to drop ...

Mayor Burt: Council Member Schmid, I'm going to let the City Auditor respond here.

Harriet Richardson, City Auditor: Thank you. Harriet Richardson, City Auditor. The section of the Audit Report that Council Member Schmid is referring to—we were pointing that there was a reporting requirement that wasn't being met. We didn't tie it specifically to what should be reported,

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what we thought should be reported. Our recommendation was when they updated the Code to address all the issues in the audit report to clarify the reporting requirements. I think that's what they're trying to accomplish with this Staff Report. We generally tell them what we want them to do, but not how we want them to do it. We leave the how up to them, and that's what's being addressed in the Staff Report.

Mayor Burt: Thank you. Council Member DuBois.

Council Member DuBois: Could you repeat the first change you said was on Page 129?

Ms. Nikzat: Certainly.

Council Member DuBois: Is that an addition of "D"?

Ms. Nikzat: On Packet 129 add Section 16.64.070(d), which will read "the Director may elect to appoint a designee to hear and decide a protest under this section."

Council Member DuBois: That's a new letter "D" as in dog. Thanks. I just didn't catch that. I know this is mostly Code cleanup. I'm curious. There was a housing impact fee that went to Finance. When is that going to come to Council?

Ms. Nikzat: I don't know when that's coming to Council.

Mr. Keene: It's a separate issue. We're thinking it's in December, but we don't ... I may be able to tell you more specifically.

Ms. Silver: It has one more meeting before the Planning Commission and then it goes to ...

Mr. Keene: December 12th.

Ms. Silver: ... the Council.

Council Member DuBois: That already went to the Finance Committee, right? A question for the Chair of the Finance Committee. I'm just curious. I just saw the Minutes. Was deletion of this report discussed at the Finance Committee?

Council Member Filseth: I'm sorry. What page are you on?

Council Member DuBois: 122, 16.57.070. Council Member Schmid's question about reporting about the in-lieu fee.

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Council Member Filseth: You mean Council Member Schmid's question earlier this evening?

Council Member DuBois: Yeah. I don't know if this was a change you guys voted on or approved.

Council Member Filseth: That particular issue didn't get discussed in Finance. I've been sitting here wondering about the answer to Council Member Schmid's question too.

Council Member DuBois: All right. Thanks.

Mayor Burt: We're now going to go to the public and now open the public hearing. We have one speaker, Stephanie Munoz. You have up to three minutes to speak.

Public Hearing opened at 10:24 P.M.

Stephanie Munoz: Thank you, Mayor Burt and Council, for letting me speak. I don't think that this is a welcome comment. It seems to me you're placing altogether too much faith in money. Whenever you give privileges and helps, little helpful things to the legitimate businesses that we all look for to make Palo Alto rich and interesting, you raise the value of the property. That's generally assumed to be a good thing, but it is not entirely a good thing from the point of view of the society that has to support itself. When you raise the value of the property, you raise the salaries that you have to give all of your workers, the teachers, the firemen, the administrators, the policemen, all of them. It's not working that well. The thought underlying a lot of it is that there will be more funding for the schools. The price of having a school system in which you can have a \$4 million wrestling room but not use an old gymnasium to house the homeless, the price of that is unspeakable because the best and the brightest, many of them—just one would be too of a high price. I'm not buying into it. They're opting out. You can't have that. You just can't have that. We've got to do better with the homeless. You've got to not have homeless. It's going to cost money, more money because of the way that you're allowing the businesses to impact with putting the workers off, off, off in the nether regions of Palo Alto, Mountain View, Sunnyvale, farther and farther away, Stanislaus County. It's very costly. The money that you're getting from the impact fees are not going to catch up. God bless you. I know it's a difficult choice. I couldn't do it, but you have to. God bless you. I wish you luck.

Public Hearing closed at 10:27 P.M.

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Mayor Burt: Thank you. We'll now close the public hearing and return to the Council for discussion and Motion. Vice Mayor Scharff.

Vice Mayor Scharff: I just actually briefly read the Minutes of the Finance Committee. I thought you guys did a good job and went through most of the issues I could think of. This strikes me as basically a cleanup of what we're doing. It doesn't seem like there are any huge policy issues embedded in this, frankly. I'll just move the Staff recommendation with the changes that they suggested.

Mayor Burt: Second. Would you like to speak to your Motion?

**MOTION:** Vice Mayor Scharff moved, seconded by Mayor Burt to:

- A. Adopt an Ordinance which implements 2015 Parking Funds Audit recommendations, and updates and standardizes collection of impact fees by amending Palo Alto Municipal Code (PAMC) Titles 16, 18 and 21 including the following changes:
  - i. Add, "Section 16.64.070(d): the director may elect to appoint a designee to hear and decide a protest under this section;" and
  - ii. Replace the last paragraph of Section 16.64.110 with, "The existing rate for a fee shall remain in effect until the recalculated rate is adopted and effective pursuant to Section 16.64.050;" and
- B. Make a finding that the Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) under Section 15061(b)(3) of the CEQA Guidelines.

Vice Mayor Scharff: No.

Mayor Burt: I don't have anything to add either. Vice Mayor Schmid. I mean Council Member Schmid.

Council Member Schmid: I would like to suggest an amendment that the strikeout on Section 16.57.07 be dropped and the text—let me read the text, " On an annual basis the Chief Transportation Official shall review the estimated cost of the described in-lieu parking, the continued need for that parking and the reasonable relationship between such need and the impacts of pending or anticipated nonresidential development." That is such a key strategic issue that we are looking at across the board in terms of parking, traffic, growth, the impact of future growth on us that I can't believe that we

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would take that out of the Code, that we would have—any major adjustments would come to Council.

Vice Mayor Scharff: No. I heard Staff's response, and I thought it was appropriate.

Council Member DuBois: I'll second that.

**AMENDMENT:** Council Member Schmid moved, seconded by Council Member DuBois to add to the Motion, "retain at the end of Municipal Code Section 16.57.070, 'on an annual basis following the enactment of this chapter, the chief transportation official shall review the estimated cost of the described parking, the continued need for that parking and the reasonable relationship between such need and the impacts of pending or anticipated nonresidential development within the assessment district. The chief transportation official shall report his or her findings to the city council at a noticed public hearing and recommend any adjustment to these requirements as may be needed.'"

Council Member Schmid: I would just make the case that these in-lieu payments which rely on and are based upon the assumption of one new job, one new parking place for each 250 square feet is the number we have been using in approving projects in town for the last 2-3 decades. That is such a critical element in our assumptions. Staff has indications that they are actually looking at a different fee. They're creating more jobs per square feet. That has tremendous repercussions. This clause says you must come to Council and talk about those adjustments with Council. I think it is important that this clause remain in the Code.

Mayor Burt: Council Member DuBois.

Council Member DuBois: I'll just make two points. Kind of the importance of the parking report is not the same as the public art in terms of impacts. I think it does deserve discussion. Two, when you read this, it's eliminated. It doesn't say that the report will be combined with other reports. It just eliminates it. I don't think the Ordinance matches what Staff was describing or doesn't really describe how and when it's delivered. If you want to deliver it with other information, I think that's fine. I do think the language about recommending adjustments if needed is pretty important as well.

Mayor Burt: I don't see other lights. I'd like to then just go back to Staff and hear again whether retention of the former, what ramifications that would have.

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Hillary Gitelman, Planning and Community Environment Director: Thank you, Mayor Burt and Council Members. Hillary Gitelman, the Planning Director. Maybe I can just weigh in on this a little. What we were really trying to do with this Ordinance, which is mostly procedural, is try and clean up some of the inconsistencies but also address some of the chores like this one that are in there, which we haven't been doing and which take away from the critical work and the priorities of the Council. The Chief Transportation Official has a tremendous amount on his plate. We didn't think it was necessary for he, himself to prepare a separate report annually and come to a noticed public hearing to deliver information that you're getting in two other reports, that come to Council on a routine basis. One is the Downtown cap report, where annually we calculate the number of spaces provided within the Assessment District, we talk about pending development projects and how that's going to affect the parking deficit as it's been calculated for over 30 years. The other report is the annual report about impact fees that, I think, Cara Silver mentioned. We're talking about including the in-lieu fee in the annual report on impact fees. You'd be getting all the information that would otherwise be provided to you by the Chief Transportation Official. It just wouldn't be from him in a separate public hearing. Of course, you would retain the ability to, at the time you receive those other two reports and any other time, request a hearing on parking requirements or the need for parking or anything else.

Mayor Burt: Council Member Schmid's concern that elimination of this paragraph and instead going to these other two reporting mechanisms—this paragraph, you're saying this report we haven't been getting that somehow that would change the City formula for baseline parking expectations. I should clarify they're not jobs; they're parking. Unless we assume that every employee drives a single occupancy vehicle, that's not one and the same. Nevertheless, does it have the impact that Council Member Schmid is concerned about, that it would change our parking formula?

Ms. Gitelman: No, it would not. I should say also that I believe there's a misunderstanding about the recent report we sent on Plan Bay Area. It didn't talk at all about parking ratios. It talks about employment, and it talks about households that are projected by the regional agencies. Nothing in there was about parking or would change anything that has to do with our parking standards.

Mayor Burt: I think that goes to the point I was just making, that the one parking spot per 250 square feet of office, I think, is being construed as necessarily one job. The implication actually is that if we require one parking spot for 250 square feet, then we would have more jobs per that space than that, not fewer. Nevertheless, I guess that's my real concern. If

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you're saying that there's no policy change to our assumptions as a result and we'll have that data through the other reports, then I won't be supporting the amendment. I see no other lights. Let's vote on the amendment. That fails on a 6-3 Motion with Council Members Schmid, DuBois and Holman voting yes.

**AMENDMENT FAILED:** 3-6 DuBois, Holman, Schmid yes

Mayor Burt: We now return to the Main Motion. We have no more lights there, so please vote. That passes 8-1 with Council Member Schmid voting no. That concludes our action items.

**MOTION PASSED:** 8-1 Schmid no

## Inter-Governmental Legislative Affairs

Mayor Burt: We're just wrapping up on Intergovernmental Affairs, which I'm not aware of any things until after tomorrow.

## Council Member Questions, Comments and Announcements

Mayor Burt: Council Member Questions, Comments and Announcements. Council Member Wolbach.

Council Member Wolbach: On the eve of, I think, what we could say is a remarkable election and at the tail end of a remarkable election season, I just wanted to mention that I'm actually working on drafting a Colleagues Memo regarding local campaign finance reforms that would study establishing local donation limits by individuals or organizations, total expenditure limits by campaigns, and disclosure requirements for campaign advertising. I've begun to and will continue to reach out to colleagues for potential coauthors.

Mayor Burt: Council Member Holman.

Council Member Holman: In light of the election being tomorrow and the predominant political party that's in Palo Alto, just a quick announcement that Perry, the Bol Park donkey, will be coming home within about a week or so. Two candidates are being interviewed to be his new companion. We'll have two donkeys back in the community before long.

Mayor Burt: I get the donkey joke. Council Member Schmid.

Council Member Schmid: I guess I would just like to ask the City Manager that the report on Plan Bay Area implied shift in jobs to square footage, which was quite dramatically different than the ratio we have been using of



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the last couple of decades. We have been using a ratio of four jobs to 1,000 square feet. That Plan Bay Area ratio was using something close to 5.8, 5.9. Now, maybe there are reasons for that, but I think it's very important as we focus on Scenarios 5 and 6 that the Council understand the assumptions being made in Scenario 5 and 6. Before the consulting contract is done, before it goes out for public comments, it would be important that Staff share with Council what their assumptions are about Scenarios 5 and 6 and the relationship between parking and square footage.

Mayor Burt: Vice Mayor Scharff.

Vice Mayor Scharff: Just briefly, we have at our places the Santa Clara County Healthy Cities conference. I would encourage everyone to go. It is one of our Priorities that we have as a healthy city. I will also be on one of the panels on tobacco.

Mayor Burt: Council Member DuBois.

Council Member DuBois: I'd just like to maybe clarify my feelings about what Council Member Schmid said. I think on Scenario 5, which was the lower office space, my intent was that meant lower jobs. I think that was the intent of the Council. I think there's concern that it's going to the consultants with the same number of jobs but less office square footage. It would be a shame to do all that work, that Environmental Impact Report (EIR) work, and have that come back. If we need to clarify that intention, we should do that. I thought Council was fairly clear that we were exploring the bounds of the different scenarios. That was a scenario with less office space and, therefore, less jobs.

Council Member Holman: Can I just chime in there? Since I was the maker of that Motion, I absolutely concur with what Council Member DuBois just said.

James Keene, City Manager: Just real quickly. We're going to be within the month to the Council on the Land Use Element of the Comp Plan. I would be hoping that some of that conversation sort of (crosstalk).

Council Member DuBois: The concern is if you have a consultant working on it and to finish the work and come back and be out of sync.

Mayor Burt: Just want to mention a couple of things. This evening, Council Members Holman, DuBois and I were at our second annual veterans event. I won't ...

Council Member Berman: Schmid and I were there too.

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Mayor Burt: I saw Council Member Berman, and I guess Council Member Schmid was there as well. It was really a great event. It built and expanded on last year's. We had an honored guest of the Marine Corps lieutenant colonel—a three-star general who has the largest troop command in the Marine Corps as our featured speaker and a whole bunch of great vets. We were a few minutes late because we decided that if a Pearl Harbor vet or a World War II POW vet or a Marine Corps general wanted a few more minutes to speak, then they were going to have it. It was really a great event. The amount that the vets from World War II, Korea, Vietnam and more recent service—all of them were represented. They were just so grateful for the appreciation of them that was expressed. It was really great. This is an event that Council Member Holman and Janice Svendsen from City Manager's Office had launched last year. I think it's really important that we continue it. I also wanted to add that we mentioned at last Council meeting that just over a week ago was the conclusion of the U.N. film festival, which continues to be a really incredible event that happens to happen predominantly in our community. After 19 years, most of our community doesn't know it exists. I'm looking forward to ways in the future that the City can really be a more full partner in this. It's an internationally recognized festival. It's really taken for granted here. Those are my comments. On that note, meeting's adjourned.

Adjournment: The meeting was adjourned at 10:44 P.M.