



CITY OF PALO ALTO CITY COUNCIL TRANSCRIPT

Special Meeting
August 22, 2016

The City Council of the City of Palo Alto met on this date in the Council Chambers at 5:36 P.M.

Present: Berman, Burt arrived at 5:45 P.M., DuBois, Holman, Kniss, Scharff, Schmid, Wolbach

Absent: Filseth

Closed Session

1. CONFERENCE WITH CITY ATTORNEY

Subject: Written Liability Claim Against the City of Palo Alto by Gilles Boccon-Gibod (Claim No. C16-0026)

Authority: Government Code Section 54956.9.

Vice Mayor Scharff: Now we'll go into Closed Session on a conference with the City Attorney regarding a written liability claim against the City of Palo Alto by Gilles Boccon-Gibod, Claim Number C160026. Before we do that, can we have a vote whether or not to go into Closed Session?

Council Member Wolbach: I'll move that.

Council Member Berman: Second.

MOTION: Council Member Wolbach moved, seconded by Council Member Berman to go into Closed Session.

Vice Mayor Scharff: If you could all vote on the board to go into Closed Session. I think we're good. Five votes, we're good. Now we'll retire into Closed Session.

MOTION PASSED: 5-0 Berman, DuBois, Scharff, Schmid, Wolbach yes, Holman, Kniss not participating, Burt, Filseth absent

Council went into Closed Session at 5:38 P.M.

Council returned from Closed Session at 5:59 P.M.

TRANSCRIPT

Mayor Burt: We had a Closed Session item, and we have a reportable action in the case of potential litigation against the City of Palo Alto by Gilles Boccon-Gibod, Claim Number C16-0026. The Action is a settlement of this claim in the amount of \$59,434.42. (7-0 Burt, Filseth absent)

Special Orders of the Day

2. Proclamation of the City Council Honoring Robert Kelley.

Mayor Burt: At this time, we'll move on to our second item, which is a Special Order of the Day, a Proclamation of the City Council honoring Robert Kelley. We have a second Proclamation, I believe, that Senator Simitian will be providing. Thank you. First, maybe I'll read the City's Proclamation and then ask Supervisor Simitian to come forward and speak to his. [Mayor Burt read the Proclamation into the record.] Mr. Kelley, before we invite you up, we'd like to ask Supervisor Simitian to come forward.

Joe Simitian, County Supervisor: Thank you, Mr. Mayor. Thank you, members of the Council. I would be here under any set of circumstances to express my appreciation and the appreciation of 1,918,044 Santa Clara County residents for the extraordinary benefit that TheatreWorks and Kelley himself have shared with us over these 46 years. It really is an extraordinary thing. To have the vision is one thing. To engage scores, hundreds of thousands of folks to work with you in realizing that vision is another. To then fully realize the vision is still a step beyond. To be able to carry that forward for 46 years with never so much as a hint or a suggestion that it has become old or tired or routine is really just extraordinary. As I say, I have a real sense of appreciation that I want to convey by my presence here tonight and, of course, the obligatory Proclamation that goes with it. I also want to express my admiration for the individual work that has been multiplied, as I said, through the good works of so many others that Kelley has been able to enlist over the course of the 46 years. As I say, I would be here under any set of circumstances, but as I listen to you describe the early days of TheatreWorks, I should perhaps note one of the reasons I'm here is because in the summer of 1970 I was the stage manager for TheatreWorks' first production called *Popcorn*. Yet, they prospered. I want to tell you that if you're privileged with somebody like Kelley, you will learn a great deal. One of the things I learned—it has stood me in good stead—is that it is possible to be both rigorous and mellow at the same time. That knowing laugh you hear is from all of the people who have worked with Kelley over these 46 years. Being a stage manager, which I had never done before and have never done since, is a little bit like being an air traffic controller. Largely because he didn't have any choice, Kelley trusted some 17-year-old kid off the street to be the stage manager for his first show in

TRANSCRIPT

what was to become TheatreWorks. Of course, I was sure that it would just come crashing down on me at any moment. I got anxious, perhaps a little bossy. He kept telling me, "Mellow out. Mellow out." I kept saying, "But Kelley, you want it to be perfect." He kept telling me, "It can be perfect. We can have high standards and still be mellow and respectful with one another." All these years later, if you ask what did I learn from that summer in 1970, not knowing at the time what Kelley's work would amount to over the course of the next five decades, I learned that you can be rigorous and mellow at the same time. It has stood me in good stead. If I could ask my staff to hand me the Proclamation, I will not read the "whereas and therefore be it resolved." One of the things I also learned is when to get off the stage. If I could ask Kelley to come forward so we could do a quick photo opportunity, so I can in the digital age post it on Facebook and bask a little bit in the reflected glory. Kelley, thanks so much.

Robert Kelley: I have to get a bigger house now, I can see. Thank you so much. This is a surprise. Thank you all so much. Supervisor Simitian, Joe, Mr. Mayor, Pat, and members of the Council, all the great members of the City Staff who are here, thank you for this. It's just incredible. As I said to Joe on the closing night of our first show, *Popcorn*, "I'll see you in 46 years, okay?" Here we are. I have to specially thank Pat Briggs who has been a great part of Theatreworks' journey and who I still regard as one of the greatest treasures that we have in Palo Alto. Thank you, Pat, for all you've done at the Children's Theatre and all. I very much want to thank all the friends and members of TheatreWorks' Board who have come tonight. I don't think they'll be staying for the whole meeting, but thank you for being here for this. TheatreWorks started in 1970. One of our very first shows was here at City Hall; I think it was in 1971. It wasn't actually in the Council Chambers; it was down in the basement on the third floor down underground with the audience sitting on one of the down ramps and the performers performing right out in front of the elevator. It was a version of *Alice in Wonderland*, an original musical of it. We have deep roots in Palo Alto. We really do feel part of the community. The actual founder of TheatreWorks is the City of Palo Alto. The chance to start a theatre here and develop it came directly through the City. In 1976 the City came up with a new plan for how to create theatre in Palo Alto instead of having City employees do it or, in my case, a contractor to the City. They proposed to the groups that were making theatre at the time or helping to make it that the City become a partner with those groups and came up with what I think is a unique method of making theatre happen. It involves the City providing the space and the equipment, and these groups on their own would need to take care of the employees, the people who made the art and all the expenses that went along with that. To say it was a successful idea, if unique, is a tremendous understatement. It's led to TheatreWorks being

TRANSCRIPT

one of the major regional theatres in the country. It has led us to continue our work—we began as an education program—in education in Palo Alto with, as you mentioned, 25,000 kids a year. We are also in partnership with Palo Alto Unified School District (PAUSD) on school tours that go out every single year on subjects that they think children need to address in their lives but done in a theatrical way that they will never forget. It also has led to us developing a national reputation for the creation of new works. We just finished our 15th New Works Festival, but we've done 66 world premiers at TheatreWorks since we began. Our shows are now seen all over the country and, of course, in New York as well. The most successful one being *Memphis*, which we premiered, and it went on to win the Tony Award for Best Musical in 2010. To say that this has been a successful partnership with the City of Palo Alto is what I really want to say. I say it all the time. I can't thank you tonight but also the City as a whole for letting us grow and supporting us every step of the way. Thank you so much for this. Thanks. Appreciate it.

Mayor Burt: Now, on to our second act.

Agenda Changes, Additions and Deletions

Mayor Burt: Our next item is Agenda Changes, Additions or Deletions.

James Keene, City Manager: Mr. Mayor?

Mayor Burt: Yes.

Mr. Keene: I had a couple of items to report on at the right point.

Mayor Burt: On the Agenda you say?

Mr. Keene: Yes.

Mayor Burt: Go right ahead.

Mr. Keene: Thank you, Mr. Mayor. If I might, rather than under City Manager Comments, would point out that under Item Number 8 on the Consent Calendar, approval of a contract amendment with Van Scoyoc and Associates for federal legislative representation, extending their contract for two years at a cost of \$202,000, there is an At-places Memo that we submitted to the Council, a request that you actually adopt this particular item as part of the Consent Calendar under Number 8. We have changed the contract amendment from two years to one year at half the cost for \$101,000. I'd gotten some questions from Council related to the federal legislative program and integration with some of our other areas of concern.

TRANSCRIPT

It seemed that reducing this to one year would allow us to be able to engage sometime in the course of this year's contract with the Council in a discussion about where we go. We've talked to our lobbyists, and they're in support of the change. That would be recommended as the change to the Consent Calendar when you adopt it. As is typical, you have a couple of potentially meaty items on your Action Agenda. We also have a report on Number 14, intergovernmental legislative affairs status update and potential City responses to the Governor's by-right housing bill and pending bills addressing housing issues. I did want to just let you know that it doesn't look like there will be much to discuss on this item. You'll still take it up when it comes up. Folks who might be interested in it, the Governor's by-right housing bill is dead for this year, so there wouldn't be much to discuss there. The other housing bills, which are included in the Staff Report, are already on the floor of the Legislature, eligible to be taken up at any point in time. In talking with our Sacramento lobbyist, he expects them to be acted upon before August 31st, which is really next week. I just do point that out. We're not pulling it off the Agenda, but anticipating the fact that you would have a short, if any, discussion. That's all I have to report.

Mayor Burt: Item Number 13 is being rescheduled.

Mr. Keene: Yes.

Mayor Burt: That is for next week, August 29th. We can move on to City Manager Comments.

City Manager Comments

James Keene, City Manager: Thank you, Mr. Mayor, members of the Council. If you happen to look behind you, I think the backdrop for the Council Chambers looks much improved and certainly for TV. I was thinking that maybe we should put an extra edition there, maybe a slogan underneath that says rigorous but mellow. I don't know what you think, but I thought that might be transferrable. A little update on Southgate and Evergreen Park Residential Preferential Parking Permits (RPPs). Our Staff is hard working toward the Evergreen Park and Southgate Residential Permit Parking efforts as directed by the Council. Community workshops were held in July and focus group meetings have been scheduled in Evergreen Park and will soon follow in Southgate. As discussed at the May 9th Council meeting, we have been exploring opportunities with Palo Alto High School about their permit process and engineering solutions such as signing and striping in the Southgate neighborhood that don't exist in Evergreen Park. At the Southgate community workshop in late July, several interim parking options were presented for resident feedback; one of which involved a one

TRANSCRIPT

hour parking restriction similar to the existing one hour restriction near Gunn High School. Based on positive input at that meeting, Staff sent an online survey to the full neighborhood last week, but the majority of respondents thus far are not supportive of the idea. The Council received at least one email over the weekend in this regard. Based on this input—I did not have those results until late today—I did want to inform Council that we will not be proceeding with any one hour parking restriction. We will go ahead with development of the RPP program design concurrent with a number of other activities. We'll continue to meet and talk with Palo Alto High School. We have been working on adding parking along El Camino Real between Embarcadero Road and Churchill Avenue, increasing the amount of parking available for Palo Alto High School. Staff will host a focus group for residents related to the Evergreen Park RPP later this week to receive input on its program design. Staff expects to bring a resolution on the Evergreen Park RPP to Council in November. In addition, Staff will be responding to any Southgate residents who wrote to raise a concern about the 1-hour parking restriction concept and saying that that is off the table. Tonight's Council packet includes an informational progress report on our new zero waste collection and management program for organic materials, which means yard trimmings, food scraps and soiled paper. Since its beginning in July 2015, participation in this single-family, residential, food-scrap collection program has soared to over 60 percent, and more than 1,500 tons of food scraps and soiled paper have been diverted from garbage cans and landfills towards composting and soil augmentation. This level of participation, you will be happy to know, is among the highest in the entire state of California and is unusually high for the first year of a program. The Council also adopted a new composting ordinance this year that requires all commercial customers to subscribe to compost service. It's being implemented in three phases. I'm happy to report that 100 percent of the 664 Phase 1 customers have now added compost service and have their green carts. Phase 1 includes our biggest customers including restaurants and multifamily complexes. Full compliance was achieved by the last customer earlier this month, a bit after the April 1, 2016 deadline but without the use of any formal enforcement or fine. A lot of great uptake by our community in this important matter on our path towards zero waste. Both our residential and commercial organics are going to a dry, anaerobic digester in north San Jose, which moves us ever closer to the energy and compost production goals of Measure E adopted by Palo Alto voters. These early results are very encouraging and continue to make us a leader in the state and the nation. Lastly, the Stanford-Palo Alto community fields turf replacement project was completed on August 12th. The park is back open to the public. The parking lot is scheduled to be slurry sealed on September 1st. The 45-day improvement project was completed on time and on budget. The fields, originally constructed a decade ago, have never

TRANSCRIPT

looked better. That's all I have to report other than to announce that next week I hope to have a brief set of pictures identifying the range of various Bike and Pedestrian Plan improvements that have been taking place around the City this summer as part of our Bike Plan. Thank you.

Mayor Burt: Thank you. Council Member Kniss.

Council Member Kniss: Because I think our food scrap program is so interesting and you've given some pretty substantial data, how are they actually measuring that? What was the amount you said? Some huge amount.

Mr. Keene: It was our sense 60 percent of the residential food scraps are being diverted. That question I don't know the answer to. I'll be happy to get it to the Council. I mean, exactly the methodology.

Council Member Kniss: We pretty much know 60 percent are being diverted.

Mr. Keene: That's correct.

Mayor Burt: Thank you.

Council Member Kniss: Love more information when you have it.

Oral Communications

Mayor Burt: Our next item is Oral Communications. We have four speakers. If anyone else would like to speak, please bring a card forward at this time. Our first speaker is Stan Shore, to be followed by Hank Sousa. Welcome.

Stan Shore: Thank you, Council. My name is Stan Shore. I live at 242 Kellogg Avenue, directly across the street from the Castilleja—one of the entrances. Castilleja has recently submitted plans to increase student enrollment from 415 to a huge 540 students, the largest increase ever. I'm 100 percent opposed to the 125-student increase. I'm also 100 percent opposed to the mass and scale of this project, which is not compatible with this residential neighborhood. This huge project is totally out of character for this neighborhood of single-family homes. The project, when finished, will result in more students, more faculty, more staff and more visitors than all of the combined residents living in the households surrounding Castilleja. This project will overwhelm the neighborhood, will increase traffic and congestion and negatively impact Professorville and Old Palo Alto. Most neighbors are strongly opposed to the 540 students; however, some neighbors are okay with 450 students providing Castilleja constructs an on-premise, underground garage that holds 125 or more vehicles. Should City

TRANSCRIPT

Council allow Castilleja to proceed with this huge project, then the below suggestions should be part of the new Conditional Use Permit (CUP). One, enrollment is not to exceed 450 students. Two, all new constructed buildings are to be set back 75 feet from the curb. This will reduce the visual mass and scale of the project. Three, new constructed buildings should not exceed the average height of all the residential homes surrounding Castilleja. This will further reduce the mass and scale of the project which will help to retain the residential character of the neighborhood. Thank you very much for listening. Sure appreciate it.

Mayor Burt: Thank you. Our next speaker is Hank Sousa, to be followed by Ken Horowitz. Welcome.

Hank Sousa: Hello, Mayor Burt and City Council Members. I also am wanting to talk a little bit about Castilleja. I have a slightly different take on it than Stan. I live on Melville, in the 100 block of Melville Avenue. It's about 185 feet from the school. Over the last 20 years, the flavor and enjoyability of the neighborhood has definitely declined. In my opinion, it's due to too much traffic, too many school events. They last into the evening. At one point during the past school year in a 14-day period, there were school events every day. They weren't all after school. Some were in the mornings; some were in the afternoon; some were in the evening. They all brought more traffic into the neighborhood. As the school readies the additional information to provide to you to process their CUP, many of us concerned neighbors would like the enrollment to be capped at 415. Stan says 450, but somewhere in that neighborhood would certainly be acceptable. Part of putting some teeth into the new CUP might be to say roll back the enrollment over the next few years, so it gets to that low-400 level. The density of the school is certainly greater than some of its—not competitors but other private schools in the area. The second concern that our group has is the idea to build the underground garage. If the school has fewer events, if they can acquire an offsite parking area, either purchase or lease, and then shuttle kids to the school, that would eliminate the need to build the garage. With high speed rail coming, planes are flying lower and directly over us, it would be nice to have a modest win in our little neighborhood. With your assistance, we can restore some peace and order to the neighborhood and have quiet restored. Thanks for listening to our concerns. Appreciate it.

Mayor Burt: Thank you. Our next speaker is Ken Horowitz, to be followed by Rita Vrhel.

Ken Horowitz: Good evening. My name is Ken Horowitz; I live on Homer Avenue. I want to talk about a topic that I spoke about, about two years

TRANSCRIPT

ago, that's currently in the news again. That's about bicycle safety. As you know, last week we had the death of a bicyclist on Greenwood Drive. It was actually the most viewed story on *Palo Alto Online*, and also Dave Price talked about it today in the Palo Alto news. We just need to do something about this. I think the foremost role of the City government is to protect the safety of its citizens. Yet, we see and I'm sure all of you that drive in the City or even ride your bicycles in the City see what's going on with all the bicyclists. Now that we have school back in session and also that darkness is going to be coming earlier and earlier, we need to enforce some of these bicycle rules. My hope is that the City Manager in conjunction with Chief Burns and also Superintendent McGee at PAUSD can work together to work out some kind of plan to make these streets safe for not only the bicyclists but also for the drivers. You can read tons of stories online about how close bicyclists have come to getting hit by a car and vice versa. I know one of the biggest problems today is staffing. We have an undermanned police force and, as a result, some things have had to be cut back. Our traffic team, which we used to have at the schools, is no longer functioning. We're also having a shortage of police officers. I know I've talked to Chief Burns about this. This is not a problem just unique to Palo Alto. I don't know if you saw today's news. The City of San Jose may declare a state of emergency because they have a shortage of police officers as well. I don't know what you need to do, but I think you need to look at safety, the bicycle safety. I was thinking maybe you should have some checkpoints just like we have automobile checkpoints, maybe on Bryant. We could have some officers every once in a while check pointing to see if the bicyclists are having their lights and have all their safety equipment. Also I would think that maybe you can take some of that Track Watch monies that you allocated, almost \$1 million, for those security guards. I think you need to do something before there's another tragedy in Palo Alto. Thank you for your time.

Mayor Burt: Thank you. Our next speaker is Rita Vrhel, to be followed by our final speaker, Mark Mollineaux.

Rita Vrhel: Thank you. There was lots of news in the paper this week about the mega mansion over on Newell and Embarcadero with 11 bedrooms and 13 bathrooms and a single-car garage. There was also this really excellent article in the paper regarding the housing shortage and the prices of single-family homes increasing and the candidates for the City Council race. I think this brings us back to again housing and traffic and how is this all going to be solved. I think there's a couple of things that concerned citizens might agree on. One is that the practice of putting in mega basements, like at 736 Garland, have in my opinion contributed to the phenomenal increase in the house costs for single-family residents. If you put in a 3,500-square-

TRANSCRIPT

foot basement and you have a one-story house, I think I'm correct in that you do not have to go through any City Council review, which you would have to go through if you had a two-story house of the same size. I would recommend that all two-level houses—if you look at real estate ads now, basements are no longer being called basements. They're actually being called lower level, which I think makes them into a house. If the City Council could review all two-level buildings in residential areas, that might help stop the huge expansion in basements and these houses becoming unaffordable for all except a small number of people. I think the other thing that could be done would be to put basements—now we call them lower levels—into the floor area ratio. Again, this would help limit the size of mega mansions and keep them more in the range of affordability for more citizens. I think also the Individual Review process can be stiffened and strengthened so that neighbors who have these concerns will actually have a voice that counts, rather than simply being heard and left by the wayside. I think the mega mansion and the 736 Garland mega basement offer the City Council and the citizens a chance to revisit current zoning laws and decide if this is the way they want the City to grow or whether they would like to see some changes. Thank you.

Mayor Burt: Thank you. Our final speaker is Mark Mollineaux. Welcome.

Mark Mollineaux: Hello, good evening. My name is Mark Mollineaux; I live in Redwood City, but I have been a fan of the City Council here in Palo Alto for quite some time. I'd just like to comment on the approval process last week for the Lytton Avenue development and just how it went. A good deal of time was spent on local issues that were caused by this possible development and effect on local traffic, the effect that temporary construction would have on local traffic, roof patterns, oddly shaped lots, uneven massing of buildings. Relatively little time, however, was spent on the issue of housing. This would have added the modest amount of housing units to the City. Much less time was spent to this issue that affects the community at large rather than just the local issues. Some time was spent—I commend the time that was spent. This is reasonable. The people that are of Palo Alto have every reason to prefer the local responses this creates. It's important to remember that the powers of zoning, approval process and so on are not just a local, natural right of cities but, in fact, are a state right. The state of California entrusts this to local communities with the idea that it will serve the larger community as a whole. It's awfully hard to justify extremely restrictive zoning laws and approval processes as serving the greater community and not just the people who are lucky enough to be able to live in Palo Alto. I would just like to remind the responsibility to its own citizens, also to neighboring communities and to the state at large. I think it would be very well for Palo Alto as well as for other

TRANSCRIPT

communities to reconsider restrictiveness of zoning laws and the approval process to justify the fact that the zoning power is entrusted to the cities. It's a responsibility they should take in hand. This also goes with communication and cooperation with local cities. I think the issue with the water rights to East Palo Alto—I'd like to certainly urge Palo Alto to work with them to have all the cities work together to have these needs. These needs aren't going away of more housing. It's every city's obligation to work together to make this happen. Thank you for your time.

Mayor Burt: Thank you. That concludes our Oral Communications. Mr. City Manager, did you have a comment?

James Keene, City Manager: Mr. Mayor, we had a couple of speakers this evening. I think we had five or six last week speaking about the Castilleja School Conditional Use Permit. I just did want to share again with the public that, before any decision that the Council would ultimately make, there will actually be an Environmental Impact Report, an EIR, required as part of the Castilleja process. My understanding is that's not yet really underway. Thank you.

Mayor Burt: Thank you.

Consent Calendar

Mayor Burt: Our next item is the Consent Calendar. We have one speaker, who wishes to speak on Item Number 7. Doria Summa, welcome.

Doria Summa, speaking regarding Agenda Item Number 7: Good evening, Mayor and City Council. Doria Summa. I'm here tonight as President of the College Terrace Residents Association. The Board met last week, and we wanted to thank you for Item 7, your continued support of neighborhoods and working with neighborhoods and especially making meeting rooms more available to us. It really, really helps. Thank you.

Mayor Burt: Thank you. We will now move on to the Consent Calendar with an understanding that Item Number 8 is being modified with the changes at place to reduce the contract term to one year with a corresponding 50 percent reduction in the amount.

Vice Mayor Scharff: I'll move approval.

Council Member Kniss: Move approval.

MOTION: Vice Mayor Scharff moved, seconded by Council Member Kniss to approve Agenda Item Numbers 3-10, including changes outlined in the At-

TRANSCRIPT

Place Memorandum for Agenda Item Number 8 - Approval of Contract Amendment Number 4 With Van Scoyoc Associates Inc. ...

3. Approval and Authorization of the City Manager to Execute a Contract With Builders Protection, LLC in a Total Not-to-Exceed Amount of \$4,620,000 for Three Years for Water, Gas, Wastewater, Electric, Storm Drain, and Street Resurfacing Construction Inspection Services; and Finding That the Contract's Approval is not a Project Requiring California Environmental Quality Act Review.
4. Resolution 9618 Entitled, "Resolution of the Council of the City of Palo Alto Correcting Clerical Errors in two Items Previously Approved as Part of the Palo Alto Clean Local Energy Accessible Now (CLEAN) Program."
5. Approval of Contract Number C16163335 With Sierra Traffic Markings, Inc. in the Amount of \$850,000 to Provide On-call Traffic Safety Services, Allowing Them to Implement Minor Roadway Improvements in Response to Community Service Requests.
6. Approval of a Revenue Agreement With the County of Santa Clara in the Amount of \$250,000 Over two Years for Support of Intensive Case Management in Connection With Housing Subsidies to be Provided by the County of Santa Clara for Palo Alto's Homeless.
7. Policy and Services Committee Recommendation to City Council for Next Steps in the City's Neighborhood Engagement Initiative Including: Establishing a Yearly Goal of Three Town Hall Meetings; Updating the Co-Sponsorship Agreement; Adopting a List of Neighborhood Associations; and Amending the Annual Budget to Reduce the General Fund and Increase the General Liabilities Insurance Program Fund by \$5,000.
8. Approval of Contract Amendment Number 4 (Contract Number C12146667) With Van Scoyoc Associates Inc. for Federal Legislative Representation to Extend the Contract for two Years Through July 31, 2018 and add \$202,000 for a Total Not-to-Exceed Amount of \$606,000.
9. Approval of an Amendment to the Existing Joint Powers Authority Agreement With the Silicon Valley Regional Interoperability Authority to Include Participation by the Santa Clara Valley Transit Authority.

TRANSCRIPT

10. Approval for the Consolidation of the Unscheduled Vacancy on the Planning and Transportation Commission With the Fall 2016 Board and Commission Recruitment.

Mayor Burt: Motion to approve by Vice Mayor Scharff, seconded by Council Member Kniss. Please vote on the board. That passes 8-0 with Council Member Filseth absent.

MOTION PASSED: 8-0 Filseth absent

Action Items

11. Resolution 9691 Entitled, "Resolution of the Council of the City of Palo Alto Adopting a Net Energy Metering Successor Rate E-EEC-1 (Export Electricity Compensation); Establishing the Net Energy Metering Transition Policy; and Amending Rule and Regulation 2 (Definitions and Abbreviations) and 29 (Net Energy Metering and Interconnection) (Continued From June 27, 2016)."

Mayor Burt: We will now move on to Item Number 11, which is a recommendation from the City Council Finance Committee that the Council adopt a Resolution adopting a Net Energy Metering successor rate, EE-EEC-1, which is Export Electricity Compensation, which establishes the net metering transition policy and amends the rule and regulation of two different ones, the definitions and abbreviations, and Section 29, the Net Energy Metering Interconnection. This was continued to us from June 27th of this year. Welcome, Mr. Shikada and colleagues.

Ed Shikada, Interim Utilities Director/Assistant City Manager: Thank you, Mr. Mayor and members of the Council. Ed Shikada wearing my hat as Interim Utilities Director. This evening, we've got a presentation which, perhaps in reference to the City Manager's earlier comment, is in typical Palo Alto rigorous style. I'm not sure it's too mellow, but it is nonetheless rigorous. We would like to spend a few minutes walking through the particulars of this Net Energy Metering issue as it is a fairly complex technical one and also obviously drawing quite a bit of attention from solar industry advocates. The Council may have noticed that you received quite a few emails this afternoon with the title "Protect Rooftop Solar in Roseville." If nothing else and a little bit tongue in cheek, the emails you received do reflect some industry concern about how cities are dealing with the Net Energy Metering regulations and moving into successor programs as the regulations are moving into a new phase. I would say that as Staff has met with industry reps, we recognize the concern that they have about Palo Alto's trendsetting ability. I would, as we get into the particulars, use it as an opportunity to push the perspective that, rather than being concerned

TRANSCRIPT

about where Palo Alto is and where Palo Alto is headed, this is an opportunity to perhaps identify the uniqueness and unique circumstances that exist in Palo Alto. The fact of the matter is that it's a combination of factors unrelated to Net Energy Metering that do make it a bit perhaps more difficult to push rooftop solar in our market. It's the combination of our low electric rates in comparison to Pacific Gas & Electric (PG&E) surrounding areas, 30-50 percent below comparable rates, as well as the high level of conservation that our residents have undertaken. Using some benchmarks that California Solar Energy Industries Association (CALSEIA), the industry association, put forward reflects average usage, average loads on the order of 25 percent below what perhaps other reference points might suggest. Both of which contribute to a very difficult market for rooftop solar. The last point there would be simply to note that the Council's leadership, City's leadership in the area of local solar plan and other methods to advance solar through our Palo Alto CLEAN program, group buys, to improve and maximize cost effectiveness of purchases, community solar program also being undertaken, and other elements of Palo Alto's long history of supporting solar development locally. With that, let me ask Jon Abendschein to report for Staff on the particulars of our Net Energy Metering successor policy recommendations.

Jon Abendschein, Utilities Senior Resource Planner: Good evening, Council Members. Thank you, Ed. I'm Jonathan Abendschein; I'm a Senior Resource Planner with the Utilities Department. I'm here to talk to you tonight about the Net Energy Metering successor rate proposal. It is a complex proposal, and I'm going to try and move quickly through it. If at any point on one of these slides you'd like me to talk in more detail or have some questions, please feel free to interrupt. I'd also note that I am substituting here for a Staff member, Amy Bailey, who developed this proposal after extensive research over the course of a year. She unfortunately left us in the last month for a job at PG&E. I worked with her quite a bit on this proposal. I'm hoping I can do full justice to the extensive work that she did. In brief, I think Ed has done an excellent job of giving us the background and context that we're working in as far as Palo Alto's historical leadership in supporting solar. I'll just briefly run through that. I'll continue on. I'll give you a summary of Net Energy Metering as it stands now, the successor rate we are proposing, and how we plan to transition from one to the other. I'll also give you a rundown of the alternatives that we looked at. Again, we really, I believe, exhaustively considered the field of possible successor programs. Again, just reiterating some of what Ed mentioned to you. Palo Alto does have a long history of supporting solar. We have been in advance of other publicly owned utilities in providing PV rebates. There are some specific things that are unique to Palo Alto: the low electric rates, which is a wonderful thing, as well as the fact that we

TRANSCRIPT

have a carbon-neutral electric portfolio, which reduces some of the non-quantifiable benefits to local generation. Of course, the constraints of Proposition (Prop) 26 we face. At the bottom of this slide, you can see the list of programs that Ed reiterated that were adopted as part of the local solar plan and that are under that umbrella. Net Energy Metering is a current program, is one more program on top of the several others that were shown on the previous slide. It's a longstanding program. It's mandated by State law. Essentially what it does is it allows customers to roll their meters backwards. If they're generating more than they use in one more part of the day, they're essentially able to use that energy later in the evening when they're consuming. State law requires that Palo Alto offer this incentive up to the point when solar penetration reaches five percent of Palo Alto's peak load. It doesn't provide a lot of strong definitions on what peak load is. Based on our current definition, that penetration level is 9.5 megawatts. We are expecting to reach that this year. The State law requires that we offer this incentive up to that point but makes no statement about what we need to do after that. That's led to a really wide variety of different programs at other publicly owned utilities around the state and, I think, has contributed to some of the concern and discussion among the publicly owned utilities and the solar industry. We are proposing to bring a successor program to you that we believe is cost-based but also does not provide any additional, unnecessary, undue burdens on solar. Because we're getting close to reaching the cap this year, we began working on the successor program over a year ago. We did extensive research, sought feedback from stakeholders including members of the solar industry and, in fact, incorporated some of that feedback that we received early on into our proposals. We also coordinated with the electric utility's cost of service study to make sure it was cost-based. Before we even started on this program, we actually had a number of policy discussions with the Utilities Advisory Commission and the Finance Committee and Council. In January 2016, the Council adopted successor program design guidelines. The two really key policy points that we received were that rates must be based on the cost of service and also that the successor program should minimize negative impacts on solar and essentially ensure that, while this was cost-based and did not impose any costs on non-solar customers, it also didn't provide any undue burdens on solar. We took that into account and made an effort to scrupulously search for every quantifiable benefit that could be assigned to solar. We believe we've come to you with a proposal that does that. Again, I alluded to the wide variety of publicly owned utility programs out there. I don't believe that necessarily—I think this proposal stands head and shoulders—I think actually provides some leadership in how to actually approach this issue in contrast, I think, to some of the other proposals that have come out in the last year or so. I'm going to move quickly through this slide. If anyone would like me to address a little more carefully, but this

TRANSCRIPT

essentially illustrates how Net Energy Metering works. You have a typical customer load, a lot more consumption in the morning and the evening. You have solar generation represented by the yellow line, which typically comes in the afternoon. You essentially end up with, from the utility's point of view, something that looks like this, where the customer is a consumer in the morning and a consumer in the evening and a producer at night. In the morning under Net Energy Metering as it is now, the meter moves forward. The meter moves backward during the day and at night will typically move forward. If you have a large enough solar system, what this can mean is that a customer can eliminate their entire bill. This means that certain services that the utility provides, such as maintaining the connection to the utility, providing billing services and providing a variety of other maintenance and operational services, don't get paid for. These have to be paid for by the customer's neighbors. Essentially that's why it's an incentive program subject to eventual sunset. Net Energy Metering has been going for a while. I think there's an open question out there about why don't we just continue it. We've had Net Energy Metering up until now as required by State law. Our most recent cost of service study demonstrated that solar net metering customers in Palo Alto only pay for about 90 percent of the cost to actually serve them. As I mentioned earlier, we're subject to very strict requirements that essentially say that our rates must be set up so that each customer is charged exactly what it costs to serve them. That presents a real difficulty in trying to continue Net Energy Metering beyond the State-mandated cap. What we're proposing to transition to instead is a two-part rate with an hourly netting period. This is sort of a confusing statement, but let me try and break it down into something a little simpler. Essentially any energy that the customer consumes—that's that section in the morning and the evening that we were looking at—they pay for that energy at the retail rate that every other customer pays for energy at. When a customer generates solar energy and they use it onsite, they're not paying for anything. They're paying just for the cost of their solar system. They have no relationship with the utility for that energy. To the extent that they're generating more energy than they use onsite and sending some back to the utility, we pay for that at a rate that is equal to the value solar provides to the utility and all the customers. That's roughly 7 1/2 cents. I'll talk a little more about that in a moment. This illustration shows those three different areas, those three different types of compensation. I can go into this a little bit more if you'd like me to. For now, I think the key thing to look at here is these evening areas and morning areas. This is where the customer is consuming, and they're paying at the retail rate. This section here is energy that's being generated and used onsite. This section here is surplus energy that's being generated, and then we will compensate the customer at 7 1/2 cents per kilowatt hour. This is how that 7 1/2 cents per kilowatt hour was calculated. This is a methodology that we've developed over time. It

TRANSCRIPT

includes all of the values that solar provides. It's the energy savings. It's the value of the green energy. It includes things like capacity and ancillary services which are fairly esoteric products, values that they could provide to the electric system—I can go into those in a little more depth if anyone wants me to—savings and transmission costs as well as transmission and distribution losses of energy because the energy is generated locally instead of being transported. This is a higher rate than I think has been proposed in any other publicly owned utility around the state. I think it really goes to the fact that we've exhausted the search for value that solar provides. This just summarizes the way the charges and the credits work. I think the key thing to take from this slide is this is a summary of the customer example that was included in the Finance Committee report. Essentially what it says is that a customer who has no solar—the example customer that we've included, that has no solar, might pay \$1,800 a year. If they were on our current net metering rate, they might pay \$820 a year after putting in a solar system that meets 50 percent of their annual use. Under the successor rate, their annual bill might be a little bit higher, about \$1,000. They're losing a little bit of value at that size. This shows how the payback period increases. This takes into account the actual cost of the solar system and how long it takes to pay off. I think one of the key points to see here is that the payback period is very similar for smaller-sized solar systems. For the largest solar systems, this is where you start to see a divergence in payback periods. What this program will likely end up doing is you'll have more people installing solar, but they'll be smaller solar systems. Again, talking about how the successor program compares to Net Energy Metering, I think we've struck a balance here, trying to minimize the impact on solar customers while still adhering to cost of service. Customers are still able to use what they produce onsite. This is one of the pieces of feedback we actually received from the solar industry earlier that we incorporated into our proposal. They're still compensated for surplus energy. I think the really important part here is that solar is still receiving compensation for every bit of support that they're providing to other utility users. The main difference is that an hourly netting period is used rather than a monthly netting period. I can go into that in a little more detail, but that's sort of the key point. That's that illustration that we saw earlier showing how in the mornings and the evenings you end up consuming energy, and in the middle of the day you end up generating it at a different rate under this proposal. The alternatives we considered. We examined and rejected a number of alternative designs. These designs either didn't meet the cost of service requirement or they were much less favorable to solar. The first was continuing Net Energy Metering, which we couldn't make feasible from a legal standpoint. Another proposal was using a monthly carryover period instead of an annual or hourly period. This unfortunately also doesn't meet the cost of service requirements. It reintroduces a lot of the incentives. We

TRANSCRIPT

looked at having a separate Net Energy Metering program with fixed charges that would eliminate the subsidy. This is no better for solar than our current proposal, and it also introduces some of the inequities that you could get from fixed charges. Different-sized customers have different impacts on the system, so having one uniform fixed charge for all those customers can introduce some inequities. The last one is actually a buy all sell all. It's called a value of solar tariff. This is something that we heard some pretty negative feedback about early on from the solar industry. This requires some separate metering, and it compensates all energy generated at that 7 1/2 cent rate. It doesn't allow you to use any of the energy onsite, which definitely decreases the value quite a bit. It also introduces some additional metering costs to the customer, so we chose not to go down that road. That's our proposal. As far as the transition goes, we're proposing to grandfather the customers that are already within the Net Energy Metering cap. Customers that have already installed solar systems already have Net Energy Metering. Those customers would get a full 20-year period to recover the value of the solar systems they installed. Those customers can modestly expand their systems and still remain eligible. Implementation of this program is actually pretty urgent. We're expecting that the Net Energy Metering capacity could be fully reserved in the next 3-6 months. We do need some time to actually get this program implemented. This is partially why we started over a year ago and tried to seek as much feedback as we possibly could. We'll be doing a lot of outreach to existing customers as well as to customers that we know are looking to actively consider solar and outreach to the installer community. For those customers, we plan to set up a program to make sure that there's an equitable reservation system for the remaining capacity in the Net Energy Metering program and also provide calculators and guidance to installers who are looking at the new successor program as well. That's it. This is the Motion that we're requesting, the proposal we're requesting that you adopt. I really believe we've put a lot of thought into this program, and I really believe it's going to maintain—it's achieved the goals that we set for this program. I think it's one more way—eventually Net Energy Metering is something that's going to end throughout California. I think this is one way that Palo Alto can show leadership in showing what the future can look like.

Mayor Burt: Thank you. If that concludes the Staff Report, we can go to the Council for any technical questions before hearing from members of the public. So far I have four speaker cards. If anybody else would like to speak, please bring a card forward. Council Member Schmid.

Council Member Schmid: Thanks very much. I'm an enthusiastic supporter of the program until I got to the next-to-last page on your document. On Packet Page 275, it has the Utilities Advisory Commission (UAC) Minutes.

TRANSCRIPT

The Chair in the last paragraph there, Chair Foster asked for Staff's comment on the disparity between the proposed credit rate of 7.5-cent and the Palo Alto CLEAN price of 16.5-cent. Staff mentioned that the Palo Alto CLEAN rate is available to all customers including residential customers, so customers are free to participate in the Palo Alto CLEAN program and get the 16.5-cent rate for all the energy generated by their PV systems. I don't recall that connection made anywhere else.

Mr. Abendschein: I'll just reiterate that answer. The Palo Alto CLEAN program is open to residential customers, but it does require separate metering and essentially providing all of the power from the solar system to the City at the 16.5-cent rate.

Council Member Schmid: Anyone participating in the Net Energy Metering (NEM) program can shift ...

Mr. Abendschein: This would not be available to ...

Council Member Schmid: ... to the CLEAN?

Mr. Abendschein: Could they shift to the CLEAN program? I think that's a good question. We haven't had any inquiries on that front. I would have to get back to you and look at the program rules on that.

Council Member Schmid: I thought the CLEAN program was very clearly identified for a specific number of commercial projects. It was ...

Mr. Abendschein: It's a program that is mainly oriented at commercial programs. It's mostly going to make sense for commercial customers. It is technically available to residential customers; although, we don't really expect many residential customers to take us up on that.

Council Member Schmid: Why shouldn't every one of them say, "I want the 16.5-cent return"?

Mr. Abendschein: I think one thing to remember is that customers—our current top tier rate is more than 16 1/2 cents. Some of these customers are able to—because you're able to use some of the energy onsite, some of these customers are actually able to offset an even higher retail rate even than the 16 1/2 cents. That's part of the reason. Also it's a bit of a complex program for a smaller system. It really makes more sense for a larger commercial system.

Council Member Schmid: That wasn't my understanding.

Mr. Abendschein: I think we actually have something ...

TRANSCRIPT

Jane Ratchye, Utilities Assistant Director: Jane Ratchye, Assistant Director. The other difference is this is—the CLEAN program is a fixed price for 20-25 years. That doesn't change as rates may go up over 20 years. Presumably the electric rates will increase over 25 years. In the CLEAN program, that's a fixed rate for 25 years.

Mr. Abendschein: Twenty years from now, retail rates would be expected to be even higher than they are now. Whereas, a customer in the CLEAN program would still only be paying 16 1/2 cents.

Council Member Schmid: I guess I don't recall when we voted on the CLEAN program that it was open to individual households. I thought it was clearly identified as a major commercial program.

Mr. Abendschein: I may need to check on the history and get back to you on that one.

Mayor Burt: Council Member Kniss.

Council Member Kniss: Both of Council Member Schmid's questions are interesting as well. How many are involved in the CLEAN program, which is the one Greg just spoke about, versus how many will be involved in the NEM program, roughly?

Mr. Abendschein: The CLEAN program, we don't have a completed project yet. We're looking at a relatively small number of large projects. Two.

Council Member Kniss: How many?

Council Member Berman: Two.

Council Member Kniss: Two?

Mr. Abendschein: Four. Are we looking at (crosstalk).

Mr. Shikada: Four, if we count the (inaudible) garages.

Mr. Abendschein: Two to four customers. Whereas, we're looking at hundreds in the Net Energy Metering program, and we would expect hundreds more in the successor program.

Council Member Kniss: There's quite a difference.

Mr. Abendschein: Yeah. They're different programs focused on different markets.

TRANSCRIPT

Council Member Kniss: In the Net Energy, are we talking about 500, 1,000, 1,500? What number are we really dealing with that are actually in what is a rather dramatic program actually?

Mr. Abendschein: I believe we're up to about—it's between 800 and 900 right now.

Council Member Kniss: It's how many?

Mr. Abendschein: Between 800 and 900 right now.

Council Member Kniss: It's getting close to 1,000. How are you divvying that up as far as apartment houses? Are they counted as one user?

Mr. Abendschein: The limitation is really more on solar capacity. You may have someone who counts as one customer. If they are a large commercial customer, they may have a megawatt of solar on. A small customer may only have 0.3 percent of that. You could have hundreds of small users and then one large user equivalent to hundreds of small users. Does that help?

Council Member Kniss: Yes. If you were to make a prediction about this, I think what you would say is this encourages the use of more solar in our community. Agree?

Mr. Abendschein: Yes in that it continues. Yes.

Council Member Kniss: In the end, this is a very good deal for the customer and really a pretty good deal for us as well.

Mr. Abendschein: Yes.

Council Member Kniss: Good. Thanks.

Mayor Burt: Council Member DuBois.

Council Member DuBois: I had a question about the grandfathering clause. We got a letter about the 10 percent cutoff, and they were suggesting a sliding scale if any customers want to add additional capacity. Was there any discussion or consideration of a sliding scale that would allow people to maintain their current rate?

Mr. Abendschein: We did have some Staff turnover, so we haven't had a chance to extensively examine that particular proposal. I wouldn't say.

Council Member DuBois: As far as you recall, there wasn't a discussion at UAC or has it been considered and rejected for any reason?

TRANSCRIPT

Mr. Abendschein: I think it was heard but maybe not extensively discussed, and then the proposal was adopted. That was my understanding.

Council Member DuBois: Do you guys have an opinion?

Mr. Abendschein: I'm sorry?

Council Member DuBois: Do you have an opinion about the idea?

Mr. Abendschein: I'd have to spend some more time looking at it. I'm sorry.

Mr. Shikada: If I could add. From a Staff perspective, the issue is one of administrative complexity. Part of the path going forward would be to look at how difficult it would be to implement something like that over the course of time based upon the kinds of applications we would anticipate. Certainly if the Council were to want to proceed with the recommendation or some variation on the theme, it would give us the basis for which to do that additional analysis.

Mayor Burt: Council Member Berman.

Council Member Berman: Sorry, Ed, I actually just missed your last answer. I was going to ask similar questions that Council Member DuBois asked. It sounds like Staff hasn't had a chance to analyze the proposal we got for expanding existing systems and grandfathering them in. Were you saying that there would be a possibility of doing that and possibly updating the successor plan once you've done that analysis?

Mr. Shikada: In terms of the grandfathering policy, I think we have talked some about whether—again as an example, if the Council were to direct us to proceed with the successor program as described, then we'd use that as the base to do the additional analysis of the transition and how we could maximize the ability to provide some flexibility under the transition policy. It would take additional analysis.

Council Member Berman: Would you guys be looking at both the, I guess, the equation that was proposed by the residents of our community and also the idea of it applying to expansions of up to 25 percent, not just expansions of up to 10 percent, which is what's in the current proposal? Apparently 10 percent is quite small and not likely to actually be useful to residents. At least that was the assertion that was made. I guess I'll ask you guys what your thought was on that.

TRANSCRIPT

Mr. Abendschein: We could look at both those aspects. I think the way we'd want to do it is return and amend the successor program so that we could get started on implementation but then clean up.

Council Member Berman: In your presentation—thank you for your presentation. It's always difficult giving a presentation that somebody else made. You talked about how Palo Alto got to its NEM cap. I guess the State legislation was kind of vague in how different municipally owned utilities derive that cap. What analysis did we use to get to that cap? Are there options? I had a meeting with—I won't hog the ball too much, but I had a meeting with Staff last week where it's my understanding that there might be a different equation that we would use, that gives us a little more, that would increase the cap a little bit and maybe give us a little more time as we make the transition and maybe analyze other improvements that could be made.

Mr. Abendschein: The cap that we have now, we brought it to you for adoption—I think it was last year. It was based on a formula we'd been using internally that was based on what's called coincident peak load, which is the actual measureable load where we take energy off the California (Cal.) ISO grid. That's a clear measureable standard. We used the peak from 2006, which was when Senate Bill (SB) 1 was adopted, and it represented the highest level of the peak in the last ten years or so. There are two other ways that you could look at defining peak. One is the way the investor-owned utilities do, that they're mandated to do by the California Public Utilities Commission. That is to take the peak load of every individual customer throughout their service area and add it up. That generates a much higher cap, but it also requires analytical capabilities that we don't have.

Council Member Berman: Smart meters.

Mr. Abendschein: Smart metering, yeah. A middle ground is the peak load of every customer class, so residents, commercial customers. It's not as clear cut, but it is something we're able to estimate. We chose a very clearly measureable standard. Customer class, non-coincident peak load is something that we can estimate.

Council Member Berman: You think that if we were to use that analysis that would increase the cap a minimal amount?

Mr. Abendschein: Yeah, maybe by around five percent or so.

Council Member Berman: The last question I have for now is there's been a lot of debate—this is more a legal question than a technical question.

TRANSCRIPT

There's been a lot of debate about the applicability of Prop 26 to the NEM successor plan and folks from the solar industry asserting that it doesn't apply to NEM successor plans. I don't know if the City Attorney can give some high-level thoughts on whether or not it does.

Molly Stump, City Attorney: Sure. Thank you, Council Member Berman. City Attorney Molly Stump. Proposition 26 was adopted by the voters in 2010 and went into effect in 2011. It grandfathered existing rate structures, but when new rates were imposed or rates were increased, then its requirements would come to bear. That happened for the Palo Alto electric utility just this summer, I think. That's when we were really looking very closely then at complying with those requirements, which boiled down essentially say that the rates charged to customers need to be supported by the cost of providing services to those customers. That's a paraphrase, and the law is more complicated than that. To comply with that, we—the electric utility and the gas and the water utility as well under a parallel law—work really closely with cost of service consultants to carefully document all of the components of cost of serving groups of customers and try to very closely align the rate structure to those costs of service. That's what we're looking at here. These issues become very present for a utility at the point when the State mandate concludes. When we reach that five percent threshold, then we no longer have a State mandate for the incentive program. We're able to continue with the program, but we need to do that in compliance with all of the relevant rules and laws. Chief among those for us is Prop 26. We're looking very closely at that, and we're able to get the cost of service consultant support around the proposal that's before the Council tonight. That's the one that we do feel comfortable with.

Mayor Burt: Council Member Schmid, you have a follow-up question? Briefly.

Council Member Schmid: Yes, for the City Attorney. Actually on the next page of that UAC meeting, Deputy Senior Assistant City Attorney Jessica Mullen said that rates are cost-justified such as the NEM. When someone asked about the CLEAN price, they said any rate that was changed would need to comply with the cost-based requirement of Prop 26. My understanding from the presentation is this is the analysis of the real cost that is justified under Prop 26. The CLEAN price of 16.5 is not. If anyone requests to get into the CLEAN, they would have to have an economic assessment like this, wouldn't they?

Ms. Stump: You may recall that the subject of the rates that are paid under the CLEAN program has been before the Council quite a number of times and before Council Committees as well. We have worked very carefully to

TRANSCRIPT

assess the particular characteristics of that program including the local benefits that are somewhat unique to the CLEAN program in order to support that rate. This is more of an art than a science. That rate is not before us tonight. I haven't completely studied up and reviewed all the various cost and benefit components that went into that rate. As a general rule, Ms. Mullen who works in my office, her statement is correct. That's the standard that we are always looking at when we're looking at proposals from the Utilities Department, the UAC and the Council.

Mr. Abendschein: I think one of the key differences here is that the CLEAN program is available not just to customers but to anybody who can develop a solar system in Palo Alto. In that sense, it's a wholesale energy purchase. You can, for example—this is actually the way a lot of these projects are developing—have a billing owner in Palo Alto who rents a roof out to a solar developer. The solar developer essentially treats it as land. Essentially we are buying at a certain contract rate from that developer. It's different in that it's not a rate that's imposed on a specific customer activity.

Council Member Schmid: I guess I could read what you say as though that 800 solar power customers can request to get the CLEAN rate than the NEM rate. Is that what you have said? Is that we're voting tonight?

Mr. Abendschein: They would have to sign a 20-year contract, reconfigure their metering. It would be an expensive conversion. We think that's a very unlikely outcome of this.

Ms. Stump: Council Member Schmid, this is an important point. Power purchase agreements, which our CLEAN program involves a power purchase agreement, is a different category. There is an element of buying power in the NEM program, of course, but it's really at a consumer level, and it involves this give and take of someone who's primarily a power customer. The power purchase agreements are somewhat different. The utility is not required to always purchase only the least expensive power. Prop 26 and Prop 218 on the water side don't require that. They do allow reasonable decisions about entering into contracts for perhaps a slightly more expensive power source for appropriate reasons. Our utility has pursued that, pursued some green goals on purchasing, and perhaps in some cases has paid more for power, paid more for longer-term contracts, more secure contracts, contracts with companies that have a more sound financial footing, etc. All of those are business negotiations that are appropriate, and they're somewhat different than the consumer level.

Mayor Burt: We don't want to have tonight's discussion be principally around the CLEAN program. It's around the net metering. Just to help on

TRANSCRIPT

that clarification and this issue about resident participation eligibility in the CLEAN program, frankly I do remember we've had a series of discussions and Staff had always explained that the CLEAN program really wasn't available to individual residents. It may technically be so, but that's not the way, I believe, Staff had framed it. However, I do recall that one of the participation methods is through solar co-ops. We had had some interest, and that's how residents would potentially collectively participate in a CLEAN program. Is that correct?

Mr. Abendschein: I would say yes.

Mr. Shikada: The simple answer is yes.

Mr. Abendschein: If we want to talk a little more about community solar, I would defer to Assistant Director Ratchye.

Mayor Burt: That's all right. One of the questions was about how the resident benefits from the Net Metering program. We're staring at the 7 1/2 cents or whatever it is. That's when you are producing beyond your need as a resident. Slide 12, I want to make sure I follow why the first two sets of bars show no change between the two programs, the current and the future one, and a higher, faster payback if we are putting solar on our homes that only produce 30 or 50 percent than if we go up toward 100 percent. As you mentioned, when we have the—with Net Metering when we're getting credit against our retail bills, it can be at a higher tier. I'm not sure whether everybody's understanding that. Our higher tiers go up to how much a kilowatt hour?

Mr. Abendschein: It's roughly 16 1/2 to 17 cents.

Mayor Burt: If I have this and I'm offsetting a high tier, the first chunk that I sell back to the City, I'm selling at 16 1/2 or 17 cents.

Mr. Abendschein: Yes, that's it.

Mayor Burt: I think that helps people understand why this isn't principally a 7 1/2-cent benefit to the resident. It's stepping down. It starts at 16 1/2-17, and then goes down depending on how much solar you put on your roof.

Mr. Abendschein: Yes. I would just add to that that when we have a smaller system, more of it ends up getting used onsite and at the higher tiers that you're talking about.

Mayor Burt: The other thing, you noted that the pricing structure for when we do buy the surplus in a Net Metering program is based on all quantifiable

TRANSCRIPT

costs. That's always a challenging context. I'd put it more accurately, and what we've captured here is all readily quantifiable. What we can ultimately quantify as we dig deeper, we find some other things that there may be ability to quantify. One, for instance—this goes kind of two steps removed. Solar on rooftops reduces for buildings that have air conditioning—this would be more on the commercial side than on the residential—they help keep the buildings cooler. We subsidize energy efficiency programs. I'm sorry? We don't in any way subsidize our local energy efficiency?

Ms. Ratchye: All of our efficiency programs are cost-effective. It's cheaper for us to do efficiency than not. There is no explicit subsidy on pretty much, I think, any of our efficiency programs.

Mayor Burt: When you say they're cheaper, we have a cash outlay. You're saying that we have cost avoidance as a result of that?

Ms. Ratchye: Yep.

Mayor Burt: Is that cost avoidance the same as what's captured here?

Ms. Ratchye: Right. We calculate the avoided cost for efficiency based on the shape of the saved energy. The avoided cost for this program is based on the shape of the generated energy. There's more value in solar.

Mayor Burt: They're captured in both programs. I'll just say that there is a value that we don't quantify in that solar on rooftops that to some degree helps us achieve our energy efficiency goals even if that economic cost savings is already captured here. This is an area that I recognize is even harder to quantify, the present and more importantly future value of local generation toward resiliency. We have two levels. One is if I put in a storage system at my home, then I have my own independent resiliency. A tougher question is whether the community benefits from that. There are probably some ways that they actually do in the event of an outage. Whether we in the future will have a broader local generation and a micro-grid system in that this is creating the building blocks for that. The more local generation we have, the more of a foundation we have for a potential future micro-grid that provides some resiliency. We're seeing Long Island has gone in this direction, and other places. Those are a couple of areas that, I think, we have less tangible benefits, but they're ones that are out there. I just had one clarifying question. Mr. Shikada, you mentioned our comparative rates versus PG&E. I've been using recently a 30 or 35 percent lower—I think you said 30-50. Is that based on different tiers? Actually there are tiers where we are not 30 percent cheaper than PG&E; we're actually 50 percent cheaper?

TRANSCRIPT

Mr. Abendschein: We don't have the graph in front of us. Yeah, 30-50, it's on that scale.

Mayor Burt: In our community, that is a grossly underappreciated fact. I think it's something that we really need to get out there to the community, how much cheaper our electricity is than PG&E. In one sense, it goes into our broad discussions. We've been able to achieve—I'm sorry. I'm going to cut myself off, because that goes more into the comment period. I'll bring that up later. Final question. We've talked briefly about how this program fits within our various local solar initiatives. Can you just briefly update us on what is the present and, from a utility Staff perspective, future role of PACE programs in our local generation initiatives and efficiency for that matter?

Mr. Shikada: I'll opine on it to start with. We have had a number of conversations with Property Assessed Clean Energy (PACE) program providers. There have been some mixed feedback with respect to success on issues of the contractor used, some of the customer service issues, and particularly some issues as residential properties turnover and are up for sale and how it can complicate the sale transaction. That said, we understand that Association of Bay Area Governments (ABAG) recently adopted something of an umbrella program that would make it easier for Palo Alto as with other cities to adopt more of a general authorization for PACE programs to come to town. Staff is looking at how we could best bring that forward. I think one of the policy discussions that the Council will have is the extent to which the City would want to be in the middle on the issues of customer service and somewhat customer protection as those are issues that have come up of late.

Mayor Burt: Thank you. Now we'll turn to members of the public. We have four speaker cards. If anyone else would like to put in a card, please come forward at this time. Our first speaker is Gina Goodhill, to be followed by, I believe, Carter Lavin. Excuse me if I didn't read it right. Welcome.

Gina Goodhill: Hi there. My name is Gina Goodhill Rosen with SolarCity. Thank you for taking public comments tonight. I've spoken before this Council a couple of times in the past on this issue. We once again urge the Council to vote against this proposal and to direct Staff to work directly with the solar industry on something that works for all parties. I'm trying not to be duplicative and say things that I've said in the past. On June 27th, as you know, Staff came to Council with this same proposal. Once again, the solar industry opposed it because it doesn't fairly compensate customers for the benefit that they provide to the grid. We've submitted a letter in the past with more details on what we think all those benefits are. Additionally,

TRANSCRIPT

as several Council Members brought up, we are confused by the rate, that it compensates solar customers when there is another program, as mentioned the CLEAN program, that compensates solar customers at more than double the rate. To us this is something that really sets a double standard. It's confusing and sends mixed messages about the value of solar. It implicitly recognizes that there is value to solar greater than the 7 cents suggested here, that's not being recognized for customers who are not commercial customers, who want to put rooftop solar on their house. To answer Council Member Schmid's question before, another big difference with the CLEAN program is that while it is technically open to residential customers, there's a \$34 per month charge that most residential customers just wouldn't be able to handle. On June 27th, as you know, City Council chose not to vote on this issue because they thought more discussion was needed. Since that time, very little discussion has been had. The solar industry had one meeting with many of the Staff that was here. I think it was a good meeting, but the Staff made it clear that they had no intent to change the program. This is the exact same proposal that you saw on June 27th. We would love to work with your Staff on coming up with a new proposal that meets their needs and doesn't kill the solar industry in this area. This is the same proposal that the utilities in Modesto and Alameda both proposed. Both of their Councils or their Boards ended up rejecting the proposal, because they knew it would get rid of the solar industry. I know that you said you're going to be hitting the cap in the next 3-4 months. We can work quickly with the Staff in the next two months to come up with something new. We're not asking for a continuation of NEM. We're asking for a proposal that is fair to all parties. Finally very briefly on Prop 26. I am not a lawyer; I definitely am not qualified to speak to it, but I can tell you that our legal counsel has a different take on how this applies, not just for Palo Alto but for other municipal utilities. We'd love to have the opportunity once again to work with Staff, to work with your legal counsel and make sure that we're coming up with a solution that works for all parties. Thanks so much.

Mayor Burt: Thank you. Our next speaker—I'll let you get it right.

Carter Lavin: Sure, it's Carter Lavin. You got it right.

Mayor Burt: I did.

Mr. Lavin: Hello. Thank you all very much for talking about this and opening up the floor to public comment. My name is Carter Lavin; I'm with the California Solar Energy Industries Association, CALSEIA. We're the voice of the solar industry. We have over 400 members, companies throughout California, large and small from companies like SolarCity to four people in a truck doing solar projects in the area. Our stance is that of SolarCity, that

TRANSCRIPT

this program as it is currently proposed will decimate solar development in Palo Alto. We hope that the Council votes to pull the issue, direct Staff to work with the industry and the public to discuss a proposal that works for all parties and allows us to meet the goals that we all want to do together. One thing I think, while this slide is up here, that's very important to recognize is a 16-year payback for a solar project is something that no one would sign up for. Currently, if you're a nonprofit who can't take advantage of federal programs, your payback period is about 12-13 or 14 years. Five percent of solar customers or thereabout are nonprofits. Moving ahead, if we are pushing these types of project development timelines to this period, that would have a significantly detrimental impact to solar jobs and also hamstringing Palo Alto residents' and business owners' ability to go solar. Regarding the value of solar, this is obviously a hot topic and has been researched very thoroughly. The investor-owned utilities throughout California have done their own research. That number that they are proposing is somewhere around 15 cents, which is very similar to the CLEAN program. I think if we are to all get together, sharpen our pencils and work our way to something more comprehensive, we'd recognize that this frankly wholesale rate of around 7 cents is the tip of the iceberg. Solar provides a great deal more value. I think in terms of what's happening for this issue about saying our hands are tied and the time is running out, we do have the ability to move very quickly at CALSEIA, and we'd love to work with Staff and the Council and the public on this in terms of making this work out for everybody. There's numerous examples like Alameda and Modesto and also Los Angeles Department of Water and Power (LADWP) that are working together to create a future where people in Palo Alto and people throughout the state of California can take control of their electric bill and have some more certainty going forward. Once again, Carter Lavin with CALSEIA asking for you to table this for further discussion. Thank you very much.

Mayor Burt: Thank you. Our next speaker is Gary Gerber, to be followed by David Coale. Welcome.

Gary Gerber: Good evening. Mr. Mayor and Council, my name's Gary Gerber. I'm president and founder of Sun Light and Power Company. We're out of Berkeley, but we're very familiar with Palo Alto. I've been in business for 40 years. A lot of my points have actually already been made, so I don't want to belabor them. I will speak, though, as a solar contractor with approximately a megawatt or so of commercial projects underway in Palo Alto right now. I will say I'm very afraid of what's going to happen here if you go ahead and adopt this plan. My customers will probably—if they don't back out of these projects, they certainly won't do anymore projects in this City. I can pretty much tell you that. This example here, any project that has a 11-year or greater payback, if it's residential, you can forget it.

TRANSCRIPT

There's no point in trying to sell those projects anywhere. No one will buy in any quantity at all. This is just going to make it worse. That's the best it gets here, and it just goes worse than that. We're in a City where you have very low rates. That works against solar admittedly. Making solar even less attractive is just going to drive solar out of the City. Making it more difficult, it doesn't seem like that goes with what I saw as a clean initiative that was adopted, I saw, in 2014 here. Killing solar in the City shouldn't be part of your CLEAN program, I wouldn't think. I would ask—also the other thing is that the NEM cap is available for the Council to set however you want to set it, if you want to raise the NEM cap, if you want to ignore the NEM cap. The urgency is artificial. You do not have to act on the cap. If you want to give yourselves some more time, very easily go to the non-coincident peak load. That's what most of the rest of the state's already done. You can do the same. That'll raise the cap and give you time to consider this thoroughly. Thank you very much.

Mayor Burt: Thank you. Our final speaker is David Coale. Welcome.

David Coale: My name is David Coale. I'm with Carbon Free Palo Alto, and I'm also a solar installer here in Palo Alto. In our view, the Net Metering successor plan largely does a good job of navigating a compromise and the constraints of Prop 26 and delivers many benefits that the old system did. We support the plan. This will have virtually no effect on large commercial installations in that they use all their power during the day and never net out positive even during the day. That's 85 percent of Palo Alto's electricity usage, so there's virtually no effect there. The economics of solar has improved radically in the last several years and will continue to improve. This program will not kill solar in Palo Alto. It will change the payback and, for some, that will be a deal breaker. This new rate will in fact incentivize storage in Palo Alto. This will be precedent setting, and perhaps this will be one of the benefits as including solar. If we look at the larger view of the context of this, I would much rather have the citizens of Palo Alto invest their discretionary funds in fuel switching rather than in solar. In Palo Alto we have carbon-free electricity. When we take the greater, larger view, with all due respect to the solar industry, of climate change, the discretionary funds that could be spent on an electric vehicle (EV) or heat pump water heater are going to reduce our emissions far more than adding more solar where we already have carbon-free electricity. In that sense, in that larger picture, I support this plan as well. What does need to change and what has been before some of you but Staff has not reviewed adequately is the grandfathering clause. It is great that they're grandfathering this in. With the 10 percent addition, that means nothing. No one's going to pull a permit for a 10 percent addition on any residential system, just not worth it. That's a non-starter. Staff kind of pulled that out of other proposals wanting to

TRANSCRIPT

look at the industry. What would be fair is to change the grandfathering time such that if you were to double your system in size, that would cut your grandfathering time in half. This way your initial investment is still realized with the same investment. You're not changing the investments of your earlier system in the middle of the game. That would be very unfair. I think the grandfathering could change. This would be precedent setting because other utilities are looking at this all over the place. They still have this similar grandfathering. This part, I think, needs to change. Thank you.

Mayor Burt: Thank you. We'll now return—I'm sorry. We have Mike Danaher from our UAC. Welcome.

Mike Danaher, Utilities Advisory Commission: Good evening. I was asked by others on the UAC to represent our discussion. I'll be very brief. The last speaker made some of the points. We've been guided in our discussions to look for the maximum carbon reduction at the lowest price. Since we're carbon neutral with our large utility-scale projects, we didn't feel the need to pay a premium for local rooftop solar. We worked very hard to find reasons why there's an extra benefit from that. Mr. Mayor, nobody quantified that part of reducing the temperature for the air conditioning. We looked for otherwise. It doesn't help resiliency at the grid, given the type of inverters we have now. Unless Council advises us otherwise, that's been our guiding philosophy on the UAC. Thanks.

Mayor Burt: Thank you. We'll now return to the Council for discussion. Vice Mayor Scharff.

Vice Mayor Scharff: Thank you. First of all, I'd like to say that I really appreciate the effort that Staff's put into this. I know that they've really thought long and hard about this. I know that Staff has really focused on how do we get more solar in Palo Alto. I think, given the state of the law and Prop 26 and the requirements we have, Staff's really done a good job in balancing that and coming up with a proposal that's legal and helps the solar industry. I thought it was really interesting. When we have these kind of proposals that come before us, if there is a problem with it, there are a number of citizens who live in Palo Alto and who come out and speak and say you have a particular problem on this. I haven't seen these people who usually come out complain about this. I haven't gotten emails from them. In fact, I've had David Coale, who just came up and spoke, and I thought did so very articulately and eloquently about why we should support this. On the other hand, the people that have spoken against this don't live in Palo Alto and have a vested financial interest in trying to do something differently. I think that really plays in the way I think about this. I think Staff has done a really good job on this. I think we are protecting the

TRANSCRIPT

investment back to expectations, is the way I'd put it, of the people who have installed the solar. I do agree and would like to see Staff come back and look at the grandfathering provision, but I think we should pass this tonight, and then Staff should come back and reevaluate the grandfathering provision of how that works. What else do I want to say about this? I think it is really important. I do think it doesn't do any good to say Prop 26 doesn't apply and we don't have to adhere to the cost of service principles. I think we clearly do. I think this does a really good job in doing that. With that, actually I'd like to actually move the Staff recommendation, which is adopt a Net Energy Metering, NEM, successor rate EEC-1, Export Electricity Compensation; establish the NEM transition policy; and amend utilities Rule and Regulation 2, definitions and abbreviations, and 29, Net Energy Metering and interconnection. I'd also like to direct Staff to come back with some options on a grandfathering policy and a recommendation.

Council Member Holman: Second.

MOTION: Vice Mayor Scharff moved, seconded by Council Member Holman to adopt a Resolution adopting a Net Energy Metering (NEM) Successor Rate, E-EEC-1 ("Export Electricity Compensation") and amending Utilities Rule and Regulation 2 ("Definitions and Abbreviations") and 29 ("Net Energy Metering and Interconnection"); and direct Staff to return with options and a recommendation for the NEM Transition Policy.

Mayor Burt: Would you like to speak further to your Motion?

Vice Mayor Scharff: Just briefly. I think I've said everything other than to say that I really do appreciate the hard work of the UAC that really looked at this, Staff's contributions. I know that the Finance Committee also spent quite a bit of time on this.

Mayor Burt: Council Member Holman.

Council Member Holman: I don't have much to say other than concur with the comments the Vice Mayor just made. I do have one question for Staff. The grandfathering matter, is there going to be any issue with going ahead and passing this Ordinance and wanting you to come back with a grandfathering? In other words, in the interim is there going to be an issue that people are going to get caught in?

Mr. Abendschein: It's not impossible that in the few months it might take us to get back that there might be somebody who ends up getting a little delayed on an expansion they were trying to do. I wouldn't expect that to last for that long. I think it's unlikely there's going to be that much impact, if any.

TRANSCRIPT

Council Member Holman: You think you can be back to Council within four months maybe?

Ms. Ratchye: If we can come straight to Council with the proposal, we can do it relatively quickly.

Council Member Holman: Looking at the maker of the Motion, do you see any reason for this to go back to Finance or just come back straight to Council?

Vice Mayor Scharff: I'm actually fine with it going straight to the UAC and then coming to Council. If that would delay it excessively, then I think it should come directly to Council. I don't think we need to go to Finance Committee, with all due respect. I'm really looking to Staff to sort of get a sense of what they think about that. I want to honor the UAC a little bit in the process.

Council Member Holman: I should have said UAC in addition to Finance. Is Staff okay with that just coming straight back to Council, it sounds like? With that as a stipulation, do you think you could be back within four months so any impact on folks would be pretty minimal, if any? You're confident in that regard? I see lots of nodding of heads but nothing on the record.

Mr. Shikada: Yes, that would be fine. Can do.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to add to the Motion, "to Council within four months" after "direct Staff to return."

Council Member Holman: With that, I'm happy to support the Motion.

Mayor Burt: Council Member Kniss.

Council Member Kniss: Equally happy to support the Motion with one other question or request. How are you going to publicize this? Not everybody is watching tonight who lives in Palo Alto. This is a change, and this should motivate people with using solar energy.

Mr. Abendschein: I can talk about a few ways that the word will get out. First off, we have a Staff member who's devoted to solar. She actively looks through building permits and keeps in touch with customers who are considering solar, to keep a status on have they signed a contract yet, how far are they in the permit process. She's in contact with all of those customers. Those folks will receive information. We'll also be doing the sort

TRANSCRIPT

of publication that we always do with new programs, whether that's online or working through installers or working through the building division.

Council Member Kniss: Included in the utility bill and so forth.

Mr. Abendschein: Yep. We have all of our regular channels available to us.

Mr. Shikada: We definitely would want to be active in pursuing this last piece. I would make note of this, recognizing CALSEIA has obviously a pretty high level of mobilization in communicating with their stakeholders, that they work with us in getting the word out, that this is simply the next step in Palo Alto's continued commitment to the development and expansion of solar and hope that they will also be a partner in getting the word out throughout the state really in a positive manner.

Council Member Kniss: I'm not going to prolong it. I wanted to make sure that we had brought it up tonight, so that we don't forget that what we've done is something that, I think, is advantageous to the community. I want them to know and be able to participate.

Mr. Shikada: In fact, I think we've got a couple at least of related programs that are getting close to being able to launch along the lines of group buy as well as continued progress on our community solar program. We'll factor this in with other marketing communication efforts that we have coming up.

Council Member Kniss: Thanks. Appreciate it. I will be supporting the Motion.

Mayor Burt: I guess I'll first say that I want to make sure that we are not stifling an important program for local solar. It's really hard for us up here to know whether we will continue to have adoption of residential solar through Net Metering with this new program or we won't. One question would be, if we wanted to include a report back on the impact of the program, what would be a reasonable timeframe to get that.

Mr. Abendschein: I think one year is likely too short, because we're going to be going through the transitional period. I would defer to ...

Mayor Burt: When you say that, if you can ...

Ms. Ratchye: Clearly we can report on this on a quarterly basis in the quarterly report too. We can see trends, and we can see if the line is bending down or whatever. We will be tracking it on an ongoing basis. I think we can easily report it on a quarterly basis.

Mr. Shikada: Do we have an existing report?

TRANSCRIPT

Ms. Ratchye: Yeah, the quarterly report.

Mr. Shikada: I should know this. That said, I would be cautious about drawing too close a connection between NEM and the rate at which solar systems are being installed, given that there are a variety of factors; the cost of the systems as well as the extent to which perhaps the early adopters are already there. We'll certainly report on that and draw any conclusions we can.

Mayor Burt: Does the quarterly report distinguish which program is being utilized, whether it's NEM or ...

Ms. Ratchye: We can put whatever we want in the quarterly report. We can put that. We can identify when we've met the cap, how many people are over the cap, where we are with respect to the cap and things like that.

Mayor Burt: Really what I'm looking for is once we've gone past the cap and we go into the new program what then happens on Net Metering. I think it was the CALSEIA representative who referenced that investor-owned utilities are looking in the range of 15 cents a kilowatt hour under new NEMs. Are we familiar with that at all?

Mr. Abendschein: My guess would be that that's looking—I'd have to get more information, but my guess would be that's looking at their retail rate, which is a lot higher than ours. Fifteen cents is on the low end of their average rate, so anybody would receive that in compensation under Net Energy Metering. One thing that wasn't discussed is that there are non-bypassable charges that are being added into Net Energy Metering for the investor-owned utilities. That's also affecting the compensation rate.

Mayor Burt: In comparison, if we're comparing to an investor-owned utility that charges 30-50 percent more, then their cost recovery is different. It's higher.

Mr. Abendschein: I don't think it's the same model. It's not representative of an avoided cost rate.

Mayor Burt: I think that David Coale's point that this won't affect commercial accounts was informative, and it makes perfect sense, since they're typically not nearly approaching full generation onsite and they're operating at some high tiers. That makes good sense there, and that's a little reassuring on that side. I think a lot of the discussion that we've had, where some of the colleagues have pitted this against a CLEAN program, it makes me recall when we had the discussion around our school funding and basic aid districts and Palo Alto benefits from being a basic aid district.

TRANSCRIPT

Ultimately, the argument was we want to lift everybody up; we don't want to bring down beneficial programs. The same thing here. I don't think we want to pit one good program against another, because the Net Metering program is now being forced to reduce its rates basically against some Prop 26 requirements that's really the primary trigger along with the fact that we've ended our old program. I have searched for a way to make this a stronger incentive, because I am concerned that we're going to see a drop off, but I don't know it. I guess I'd like to hear one final thing from a CALSEIA representative. I think there were basically two. What we heard was kind of a generalized "give us time, work with us." We didn't hear enough about any specific changes that could be done outside of really disagreeing with the applicability of Prop 26. If Prop 26 was interpreted differently, then that opens the door to different things. If you would take a moment and if you have any specific recommendations for us to consider, I'd value that.

Mr. Lavin: Sure. Our Director of Policy would have a little bit more of a detailed answer. I do think the Prop 26 question is a very critical one, particularly as this is something that will be happening consistently throughout the state. Having a very firm answer on this is going to be great for not only the solar industry but for every municipal utility throughout California. Regarding the 15 cents/7 cents question, the 15 cents was regarding the value of solar, not necessarily the rates but saying the transmission, distribution. Sharpening our pencils and going through those numbers a little bit more openly, those two places are great places to start. From there, I'm sure there's a lot of other things that we can talk about as well.

Mayor Burt: Thank you. The other CALSEIA representative.

Council Member Berman: She's SolarCity.

Mayor Burt: I'm sorry. SolarCity.

Ms. Goodhill: I'm sorry. I think that's a great question. The Staff sent us some of their data about a week and a half ago which we've been analyzing, which was a really important part of this to make sure that you're not just giving a blanket proposal, that it's actually modeled specifically for Palo Alto. I can tell you that in other cities some things that the industry has suggested have included a very high minimum bill to ensure that solar customers are always paying a significant part of their bill each month even if they are, let's say, zeroing out their electricity. Other things that have been suggested is you're no longer getting compensated at the retail rate. It's maybe a cent or two haircut, but it's not as low as what's being

TRANSCRIPT

suggested here. It really depends on what the specific rates look like in each city and what the modeling looks like. I think that's going to be a key part of it, really having some more time to go through the information that was sent to us, so we can craft a proposal that actually makes sense for this community. Those are two examples of what happened in other places.

Mayor Burt: Thank you. It does occur to me that another part of the difference in equating the value of solar through Net Metering that is being done by investor-owned utilities compared to the City of Palo Alto is the comparative cost of renewables. Palo Alto has drastically lower cost of renewables than the investor-owned utilities. I won't even say "most," than all. We did very opportunistic buying. When they compare the value of their Net Metering purchase or cost avoidance, it's a higher cost avoidance. It's not just the base electricity rate, I assume. What you were starting to say, it sounds like it's against their solar or other renewables which, I think, are even comparatively higher than Palo Alto. It's kind of making sense there. What I think would be important for me—I'll see whether the maker and seconder are open to it—is to be able to have this come back to the Council within a year from when it triggers, meaning when we run out of the old program and start the new, to have a report out on what is occurring in other agencies and whether what we've anticipated or interpreted as the requirements are bearing out. I would offer an amendment that these Staff return within 1 year of what I'll call the implementation date of the new ...

Vice Mayor Scharff: Why don't you say reaching the cap, because (crosstalk).

Mayor Burt: Okay. One year of reaching the cap from the old NEM program or the expiring NEM program. The report would provide an update on NEM programs elsewhere in the state and a comparison to the Palo Alto program as well as the effectiveness of the new Palo Alto program in incentivizing local residential solar adoption. Instead of incentivizing, I'd say spurring.

Vice Mayor Scharff: Right now it says including. I think it needs to say spurring.

Mayor Burt: Yes.

Vice Mayor Scharff: Is that (inaudible)?

Mayor Burt: Wait a minute.

Vice Mayor Scharff: I think you're right.

Mayor Burt: I think we've got it. Is that ...

TRANSCRIPT

Vice Mayor Scharff: It's acceptable.

Council Member Holman: It's okay.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to add at the end of the Motion, "return to Council within 1 year of reaching the cap from the expiring NEM program with a report describing other NEM programs in California with a comparison to the Palo Alto program including the effectiveness of our program in spurring local residential solar options."

Mayor Burt: I have spoken enough to that. Council Member Berman.

Council Member Berman: Thank you. I think that's a good addition. One of the things that we talked about the other day on a different issue was the responsibility the City has of not locking ourselves into a lawsuit. Our City Attorney's Office, who I have 100 percent faith in, has clearly stated to Council and to the public that Prop 26 applies to our NEM successor rate. I know that CALSEIA and the industry have a different opinion. I would encourage the CALSEIA rep to go back to your attorneys to let them know they need to do a better job of explaining why they think Prop 26 doesn't apply. Without getting into too much detail, the recent effort didn't achieve their objectives. Whether it's a better understanding of municipally owned utilities and how Prop 26 applies. We can't pass policy that would likely open ourselves up to a lawsuit. We shouldn't pass policy that would likely open ourselves up to a lawsuit and kind of be the guinea pig. If other communities want to do that, if other municipalities want to do that, that's great. We can find out about it in a year. We have a responsibility not to do that. One thing I did want to suggest—since I see that some colleagues on my left have already indicated their vote, I'm going to offer an amendment since I know they're going to vote in support of it. Offering an amendment to change the way that we currently calculate the NEM cap to something that I talked about earlier, the customer class no-coincident peak demands, and using that as the equation, which would increase the cap, I think, maybe half a megawatt and extend this current program a little bit longer. I'll offer that up as an amendment. What this would essentially do is increase the cap from 9 1/2 megawatts to maybe 10 megawatts or something like that and allow more customers, more residents to take advantage of the current NEM program before we switch to the successor program that isn't quite as advantageous for customers. The amendment would be that Palo Alto change the method for determining the NEM cap to the five percent of the sum of the customer class non-coincident peak demands.

TRANSCRIPT

Vice Mayor Scharff: I heard Staff being fairly negative on that as not being clearly calculable. It'd be more of an estimate. I'm going to not accept it.

Council Member Berman: I'll offer that as an amendment.

Mayor Burt: I maybe be open to seconding it, but can you explain that calculation before I do so?

Council Member Berman: I would happily ask Staff to.

Mr. Abendschein: There were two ways of calculating non-coincident peak. The first was the investor-owned utility method, which was the sum of all the individual customers' peaks. That was something we couldn't do without smart meters. The other was the customer class, which is what I heard you speak to. Customer class non-coincident peak is something that we can estimate using cost of service methodologies. It's not a directly measureable number, but it is something that we can estimate using routinely used cost of service methodologies.

Mayor Burt: Can I ask a follow-up?

Council Member Berman: Please.

Mayor Burt: What I think I just heard is that because you can estimate it, it's not a big—it's imprecise but not a big Staff chore to do so. Is that correct?

Mr. Abendschein: Correct.

Vice Mayor Scharff: Can I ask a follow-up question?

Mayor Burt: Sure.

Vice Mayor Scharff: Are there any legal or other reason why we wouldn't do this? You just indicated now that it's not a hard chore to do, that it seems okay. I'm sympathetic to the idea of raising it. If there aren't legal impediments to doing it, it just seemed to me funny that we're changing it at the last minute. If this is not a problem, I'm on board.

Mr. Shikada: We believe that it's effectively a refining or a variation on the method that does not in and of itself create a new concern. In fact, I believe the recent bill that was working its way through the Legislature proposed that this would apply to public power as well. Given that, we believe that this is in the range of doable.

Vice Mayor Scharff: Then I would accept it, if Karen would.

TRANSCRIPT

Council Member Berman: Thank you.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to add to the Motion, "change the method for calculating the NEM cap to 5 percent of the customer class non-coincident peak."

MOTION RESTATED: Vice Mayor Scharff moved, seconded by Council Member Holman to adopt a Resolution adopting a Net Energy Metering (NEM) Successor Rate, E-EEC-1 ("Export Electricity Compensation") amending Utilities Rule and Regulation 2 ("Definitions and Abbreviations") and 29 ("Net Energy Metering and Interconnection"); direct Staff to return to Council within four months with options and a recommendation for the NEM Transition Policy; return to Council within 1 year of reaching the cap from the expiring NEM program with a report describing other NEM programs in California with a comparison to the Palo Alto program including the effectiveness of our program in spurring local residential solar options; and change the method for calculating the NEM cap to 5 percent of the customer class non-coincident peak.

Mayor Burt: I see no more lights, so please vote on the board. That passes unanimously on an 8-0 vote with Council Member Filseth absent. Thank you all very much. Why don't we take a brief break. We'll try and be back in close to five minutes.

MOTION AS AMENDED PASSED: 8-0 Filseth absent

Council took a break from 8:08 P.M. to 8:17 P.M.

12. Interim Retail Preservation Ordinance: Request for a Waiver at 100 Addison, Discussion Regarding Applicability to Retail and "Retail-Like" Uses Which do not Have Required Entitlements, and Discussion Regarding Potential Ordinance Improvements and Next Steps.

Mayor Burt: Our next item ... Our next Agenda Item is Item Number 12, reviewing the Interim Retail Preservation Ordinance. We have before us both a request for a waiver on the property at 100 Addison as well as a broader discussion about how the Council would like to proceed with the Interim Retail Preservation Ordinance and the new non-interim Ordinance on the horizon. There's a real question from a process standpoint tonight, what would be the best way to go about this. I'm open to input from colleagues. We could first look at the more global issues, and they perhaps would inform a subsequent discussion about this specific request for a waiver, or we could dive into the request for a waiver and allow that and other examples of

TRANSCRIPT

requests for waivers that have gone to Staff to inform our thinking about what we might want to do on a more broad level. Council Member Holman.

Council Member Holman: I agree with your approach of looking at the broader issues. I think that will help inform the individual and specific issues.

Mayor Burt: Hearing Council Member Kniss have a similar perspective. Council Member Wolbach.

Council Member Wolbach: I would just recommend that even if we break up the questions like that, when it comes time for motions and for some discussion maybe allow across all the topics. Completely segregating one topic from another might actually limit the range of conversation.

Mayor Burt: I think the review of a specific waiver is going to need to be separated. We can have a variety of topics that are discussed in the same broad discussion about any ways we implement or contend with requests for waivers on the Interim Ordinance, and then the discussion about direction to Staff on the permanent Ordinance. I think then we have to deal discretely with a specific waiver request. Unless others feel differently, then I think we can begin with the discussion about—the Staff Report first—where we stand on the broader issues of both where we're going on the long-term ordinance and kind of the set of problems that Staff is being presented with on properties that are seeking waivers to the Interim Ordinance. I don't know if I've just muddled the Staff presentation or helped you divide it. Why don't you go ahead and proceed within that context as best you can.

Hillary Gitelman, Planning and Community Environment Director: Thank you, Mayor Burt and Council Members. Hillary Gitelman, the Planning Director. I'm joined by Jonathan Lait and Cara Silver of the City Attorney's Office who is also going to chip in this evening. We do have, as the Mayor indicated, kind of a complicated set of issues associated with the City's Interim Retail Preservation Ordinance. This presentation was put together before the discussion you just had, so it deals with these things in the order that they were presented in the Staff Report. I hope you'll let me present them in that order, and then we can (crosstalk).

Mayor Burt: How about if you skip over the specific waiver things, and we'll then come back to that with a focus after we've done the broad discussion?

Ms. Gitelman: I really wanted to start with kind of a review of the Ordinance. It sort of all blends together.

Mayor Burt: Okay.

TRANSCRIPT

Ms. Gitelman: Just in terms of our objectives this evenings, we want to review the overall Ordinance with you. It was adopted in May of 2015 and extended one month later. You really have to look at the original Ordinance and the extension together to get the full scope of the program. Those were provided in your Staff Report. The Ordinance expires April 30, 2017, so that's our deadline for developing and adopting any permanent restrictions. This evening in addition to reviewing the Ordinance, we wanted to consider this request that's specific to 100 Addison. It's a request for a waiver using the provisions of the Ordinance. It was originally on your Consent Calendar and pulled for discussion by the Council and scheduled for this evening. In addition, there are three other properties discussed in the Staff Report. In each of these three cases, we don't have a fully fleshed out request for waiver with supporting documentation, but each one has raised different questions about the applicability of the Ordinance and how they should be treated under the Ordinance. We wanted to discuss kind of that issue of interpreting the current Interim Ordinance with the Council. Finally, as the Mayor mentioned we wanted to receive direction and have some discussion with you about the prioritization of permanent retail protections. As I mentioned, the whole purpose of an Interim Ordinance is to give the City time to develop those permanent restrictions. Just in general, the ordinance prohibits the conversion of ground-floor retail and what we defined in the Ordinance as retail-like uses from converting to other uses. Where that Ordinance was "permitted or operating on March 2nd, 2015," that's the operable date at which these controls or these restrictions start to apply. It specifically applies under the ordinance to legal and nonconforming uses, which is an unusual provision that creates some complexities. It also applies in some instances to basements that are being used as retail or retail support functions. Again, that's an unusual provision that brings with it some complexities; although, that's not really the subject of any of the specific interpretations that we're bringing to you this evening for your conversation. This is the list of retail and retail-like uses from the ordinance. This was discussed at length when the interim Ordinance was adopted. The Ordinance contained a minor edit to the definition of retail service, and then it identifies by section of the Code all of these other uses as being protected. Essentially, if you have one of these uses on the ground floor of a building in Palo Alto that was permitted or operating as of that March 2nd date, it cannot convert to a use that's not on this list under the terms of the ordinance. If you had a retail use, it could convert to eating and drinking and, likewise, other uses could convert to other uses on this list. It just can't convert to office, for example. That was really the motivation of the ordinance, to prevent conversions to office and non-retail-like uses. Since adoption, the Ordinance has effectively prevented the conversion of ground-floor retail space to office space. Obviously, we don't know how many spaces would have converted in this time if the Ordinance hadn't been in

TRANSCRIPT

effect. We know that we've been able to control that conversion from happening. We've also found some provisions in the ordinance difficult to administer. We've gotten a lot of questions particularly from property owners like those that are listed in the Agenda report this evening, where the properties are located not in the retail core but kind of in the outer areas of the commercial districts. The interpretations that have been difficult have related to this issue of nonconforming uses and to that term "permitted or operating." Since adoption, we've also taken a number of steps to put permanent retail protections in place. Council adopted an ordinance protecting retail uses in the California Avenue area. The Council adopted an Ordinance as part of the big cleanup ordinance that closed a loophole that was allowing conversions of ground-floor retail spaces in the CS, the CN and the CC zoning districts. Those are two things that have already been accomplished. In addition, we've begun the analysis that will lead to preparation of a Downtown Ordinance. We've outlined a number of things in the Staff Report that we think will be worth looking at in the context of that review. Just getting to the administration of Interim Ordinance and the four properties before you this evening for discussion, 100 Addison is the one that's ripe for a decision on their request for waiver. There was a bunch of correspondence including some that came in over the weekend on that property. I'd be happy to answer questions about any of those issues. There are three other properties. In the case of 3241 Park Boulevard, there's an auto service use that the property owner is arguing was not legally established; although, I think there's some question about that. 425 Portage Avenue, again there's a retail use at that location, which the property owner is arguing was not legally established. In both of those cases, retail and auto service are permitted uses, either permitted by by-right or permitted with a use permit in the zoning district. The issue is that the business owners didn't obtain the appropriate permits. In the case of the auto service use, there was no use permit. In the case of the pet warehouse, there was no variance for parking requirements. Finally, there's the request from the property at 999 Alma Street, which was phrased as a request for waiver, but it came in without supporting analysis or documentation, which is what is required in the Interim Ordinance. It was simply a statement of the property owner's objectives. We've provided that to the Council for their consideration this evening. I have two...

Mayor Burt: I'm sorry. Could you explain?

Ms. Gitelman: There was correspondence; it's in your Packet. It's a request for waiver from the property owner—it's actually the long-term leaseholder—at 999 Alma Street. The Interim Ordinance calls for the Council to make decisions on waivers after they're received by the Planning Director and requires them to be supported by evidence including economic analysis. I'm

TRANSCRIPT

paraphrasing, but we can look at the terms of the ordinance. What we got was a simple letter saying, "I wish we could do something different on this property." We didn't get the kind of economic analysis and backup information that we requested and then received on the 100 Addison property. This slide shows a map of the two properties, 100 Addison and 999 Alma Street. As you see, they're right across the street from each other. One was the location of the Addison Antiques until that business left. The other was the location of Anthropologie until that business left. I'm sorry. Just going back, both of these properties are zoned RT-35. They're in the South of Forest Area. If the Interim Ordinance didn't exist, they would be allowed to convert to office uses and other uses. The RT-35 district, as I understand it, does not require ground-floor retail. It allows retail, but it also allows these other uses. It's really the interim Ordinance that is preventing conversion of these buildings. 425 Portage and 3241 Park are also proximate to each other. One is zoned GM; that's the one on Park Boulevard. The other one on Portage is zoned CS. Both of those districts allow the uses, as I've mentioned. On 3241 Park, auto service uses are permitted with a use permit; although, in this case no use permit was ever obtained. It sounds like the use has been there since 1969, potentially predating the requirement for the use permit. The pet warehouse at 425 Portage was established as a warehouse use. It was a warehouse for pet supply distribution, and then they started doing retail activity. The retail activity really should have not commenced unless there had been a discussion and a granting of a variance for parking, which was never applied for or obtained. Again, it's a permitted use in the sense that the district allows retail uses, but it was not properly permitted. Getting to the larger question that the Mayor indicated we'll be taking up first. We have, as I mentioned, until April 30th of 2017 to identify and adopt any permanent restrictions to protect ground-floor retail in the City. We have underway our analysis of Downtown. We are, I think, at the Council's direction in prior forums looking at adjustments to the GF boundary. That's the combination zone that protects ground-floor retail in Downtown. At one point in the recession, the boundary was shrunk. We're looking at increasing the size of that boundary again. We're considering to what extent protections should apply outside of that boundary, if at all; the extent to which protections should apply for retail uses and support uses in basements and how that would be couched so that it's easy to administer; updating definitions as needed in the Downtown zone; and then something to address legal and nonconforming uses and just the appearance and the presentation they make to the street. We have a number of cases where office uses are permitted because they're legal and nonconforming, but then the store windows or the frontage is completely boarded up. It seems like a small thing to ask those businesses to open those windows or put some kind of display window in place. We're hoping to get some discussion from the

TRANSCRIPT

Council on these ideas for Downtown, but more broadly the priorities for other retail protections that we should look at in the time remaining while the Interim Ordinance is still in place. Again, there are really three things to discuss this evening: the specific request for waiver affecting 100 Addison; the properties where we've been forced to interpret this ordinance and any suggestions or input the Council has on those interpretations; and then prioritization of permanent retail protections affecting Downtown and other districts. Thank you.

Mayor Burt: Thank you. There was one, I think, from the applicant, a claim that Staff had granted a waiver without going to Council. Is there any clarification that you have on that?

Ms. Gitelman: Yeah. I'd be happy to speak to that. We haven't actually granted what we would consider a waiver. We have, as the Staff Report indicates, found some sections of this ordinance challenging to administer over time. One of them was the provision that the controls or protections apply to legal and nonconforming uses. We had an instance in the south part of town where there was a retail use in an industrial district where retail is not permitted. In that case, we found that use to be—it had been established without permits. It was both nonconforming in the sense that that use was not allowed and it was not permitted properly. In that case, we decided it was an illegal use and this Ordinance would not apply. We have not been able to make that same chain of logic work for the uses that we're discussing this evening. As I mentioned, both the pet store and the auto service use, we believe, are permitted in the districts in which they occur. They just didn't obtain all of the permits that they should have.

Mayor Burt: Thank you. We'll now go to colleagues for technical questions. Council Member Holman.

Council Member Holman: I have just a few questions of clarification, if I could. Mayor will stop me if these aren't technical questions. Both in the Staff Report and also on Page 5 of the presentation, the second bullet here talks about some provisions that have proven difficult to administer. Can you tell me what the difference is between the first and the third bullet? Interpretation of permitted or operating. Why is retail uses that were not permitted properly not the same as operating?

Male: (inaudible)

Council Member Holman: Slide Number 5. The first and third bullets.

Ms. Gitelman: Thank you for that question. We could have phrased those bullets a little more artfully. I think those are related subjects, but there is

TRANSCRIPT

this nuance about uses that are operating but not—they're the two cases that I talked about. The uses that we have are permitted in the districts where they occur, but they were not permitted properly. They didn't get the appropriate permits. There's this other case that I just mentioned in response to the Mayor, which is a use that's just not permitted in the district in which it occurs and it wasn't permitted properly. It's an illegal use.

Mayor Burt: Maybe we can use the term allowed under zoning, and then permitting meaning a permit granted.

Council Member Holman: Thank you for that clarification. Is B2B, business to business, covered here anywhere? Is that considered retail in any of our aspects of this ordinance? I don't remember reading about it anywhere. How is that treated and handled?

Ms. Gitelman: We are guided by the definition of retail service in the Code. I think retail service is sale of goods to customers. A business to business, if it's like a wholesale, that wouldn't necessarily fall under the retail use.

Council Member Holman: Even though it's sales, it's more wholesale or big scale?

Ms. Gitelman: I'm distinguishing between retail and wholesale. I'd have to look at the exact definitions in the Code to respond with more precision than that.

Council Member Holman: I did have one other question, and I'm not finding it here. About basements. By the way, before I go any further, I so super support what Staff's doing here. When you brought this forward, we had asked you to, but you've done a really great job in this. Appreciate how you're administering it and all the effort that you've put forward in this. On Slide 3, the third bullet, basement retail and retail support. How is Staff informed about what spaces are actually in retail use and retail support? I know this is a concern of the Mayor's as well.

Ms. Gitelman: Thank you for the question. This hasn't come up as much as I thought it would. We haven't really been asked for interpretations or seen conversions of basement in the time that this ordinance has been in effect, that I'm aware of. I think we anticipate it will be difficult to administer because we don't have a good baseline, other than in Downtown we have the engineer's report for the Parking Assessment District, which we've referred to on occasion when we get questions like this. That's one of the issues, I think, we want to address in an ordinance about Downtown specifically, which is can we create a bright line test for when is a basement considered supportive of retail versus the building owner storing a bunch of

TRANSCRIPT

stuff. We're going to have to give that some thought. If you had any ideas, we'd be open to them.

Council Member Holman: When you were seeing the conversions previous to this Ordinance, applicants were coming forward with permits to convert to other uses or tenant improvements. Not that this would happen, but do you have any reason to think that conversions are happening but without permits?

Ms. Gitelman: We're really not aware of any that have happened during the life of this Ordinance.

Council Member Holman: That's great. I think my last question—I have a good number of comments—at this point is—lost it. Updating the definitions as needed. Does Staff have some thought about what definition updates are needed?

Ms. Gitelman: I know that when the Council adopted the Interim Ordinance, they made a change to the wording of the definition of retail services. At a minimum, we would want to carry that change forward into the permanent Ordinance. There may be other updates. As the Council's aware, the nature of retail has changed to the point where you don't see a lot of travel agencies anymore. There are a bunch of uses that we call out in specific that maybe it doesn't make sense to call them out anymore. That might not be a good example, but I think we just want to take a look at the definition of retail services and any of the other definitions that are in force and make sure that they make sense in light of 2016.

Council Member Holman: Actually, I did err. There's one other question. You don't have to answer this now. When we get into the heart of this and start making comments and our lower-level questions, if you will, I think we're going to be interested in what level of change we can make in an Ordinance going forward that's either not going to affect Staff's work priorities as the Council has set or what it would affect depending on how wide we go with updates to this Ordinance. You can think about that and answer that later, if you would. Is that question clear enough?

Ms. Gitelman: I guess I'm just wondering whether you're talking about making changes to the Interim Ordinance or whether you're talking about this subject we're focusing on, which is the permanent Ordinance that we would (crosstalk).

Council Member Holman: The permanent Ordinance. If we make many changes and what level of changes to the Interim Ordinance in the form of a

TRANSCRIPT

permanent Ordinance, is it going to affect Comp Plan Update schedule? What's it going to affect? You can answer that later if you wish.

Ms. Gitelman: Thank you.

Council Member Holman: Thank you.

Mayor Burt: Council Member DuBois.

Council Member DuBois: I think Council Member Holman covered a couple of my questions. Could you just remind me what's the definition of personal service?

Jonathan Lait, Planning and Community Environment Assistant Director: Personal service means a use providing services of a personal convenience nature and cleaning, repair or sales incidental thereto including beauty shops, nail salons, day spas, barber shops, self-service laundry, repair and fitting of clothes, quick printing and copying services, internet and other consumer electronic services, film, art, dance and music studios, things of that nature.

Council Member DuBois: Thank you. The other question I had was kind of what are our legal options. In terms of the priorities you have, if we say stay on your current priorities, can we extend the Interim Ordinance and maybe only have it apply to areas like the community commercial districts or El Camino that you may not get to for a while or would we have to pass a new Interim Ordinance for those areas or would we have to make this one permanent and change it later?

Cara Silver, Senior Assistant City Attorney: Thank you. Cara Silver, Senior Assistant City Attorney. You have adopted this Interim Ordinance under the safe harbor provision of State law regarding moratorium ordinances. Under that statutory scheme, there is a two year limit to these types of ordinances that essentially freeze development rights on particular pieces of property. After the two years expire, you would have to adopt a permanent ordinance that would get at some of the issues that you want to regulate. That's one option; you can adopt a permanent Ordinance. You might be able to extend the Ordinance if you can make a different set of health and safety-type findings, but that would be rather difficult in this case.

Council Member DuBois: Even though we've created some permanent ordinances, say, for Cal. Ave. and University, if we created an Interim Ordinance for the Midtown commercial district, as an example, it's already been under the two years that the current Ordinance has. We would have to

TRANSCRIPT

create a new, somewhat different Interim Ordinance. Would that be possible?

Ms. Silver: That's a slightly different question. There are different concepts that we're talking about. One concept is the Urgency Ordinance that you created, setting a moratorium on retail conversions. That's considered a moratorium Ordinance. It's a ban on converting retail ordinances. Properties have to retain the retail use on the property. There are limitations. You can only adopt that as a ban for a period of two years. On the other hand, you're always free to adopt interim Ordinances. You can adopt a new Zoning Code or a new zoning provision on California Avenue (Cal. Ave.) that you want to apply for only three years or three months. That's called an Interim Ordinance. You're always free to do that under your police power.

Council Member DuBois: Just so I'm absolutely clear, we've had this two year clock that's almost over. There's not a problem with then adding an interim Ordinance onto the end of that clock as a different ordinance?

Ms. Silver: Right. As long as it's a different Ordinance and it does then allow some kind of development. As long as it's a new regulation, you can—that new regulation can still get at some of the underlying problems that you were trying to address with this Ordinance. We can help you with that in the permanent drafting stage.

Ms. Gitelman: I guess I had an observation. We've talked about this quite a bit today, just trying to figure out what would be some logical next steps. I think we were hoping, first of all to Council Member Holman's point, that we didn't spend time amending the Interim Ordinance, just because we only have so much time left. It'd be better to focus on the future of permanent protections. We thought that in addition to focusing on Downtown permanent protections there might be a way to draft a permanent Ordinance that was more far-reaching for either most of the City or a portion of the City, as you point out, that had a similar provision about not allowing retail conversions but had a lower bar for people who wished to seek those conversions. It wouldn't, for example, require a Constitutional taking argument to be made if you wanted to convert. We could set in place, with your help, a set of findings that if the site is located really far away from everything else and it's been vacant for a year, we could come up with some conditions that the ordinance could put in place, that could apply. That might be one way we proceed with a permanent Ordinance.

Council Member DuBois: Thank you.

Mayor Burt: Council Member Kniss.

TRANSCRIPT

Council Member Kniss: Pat, I'm trying to get a sense of where we're going on this. You want us to still stay within this so-called technical range as much as possible?

Mayor Burt: This is technical questions, then we'll hear from members of the public, and then we'll come back for discussion that we'll probably break up into two parts.

Council Member Kniss: Let me keep it technical then, as technical as I can. If not, just say off the range. Looking at the South of Forest Area (SOFA) map that you included on this, I know that both Pat and Karen know a lot about this one. This indicates on here, I presume, what was devised at that time. Was there any indication then of where retail would be or not be? Was that stipulated or is what I'm seeing here something different than that? It's the attachment that's on Page 303.

Ms. Gitelman: As I understand the SOFA controls—I'm not an expert in this by any means—there are some areas of SOFA where an existing retail use cannot be converted to another use. That is not true of these sites that we're talking about this evening.

Council Member Kniss: The two sites in question tonight, Anthropologie and 100 Addison, are not subject to a long-term retail use under the SOFA plan. Did I misunderstand?

Ms. Gitelman: No, I think that's correct. The retail protections that are preventing them from converting at this point are in the Interim Ordinance, not in the underlying zoning.

Council Member Kniss: If the Ordinance were to be renewed, would that continue to affect those properties?

Ms. Gitelman: Again, this gets to the question that Council Member DuBois just asked.

Council Member Kniss: Pat answered it. That's a big help. Currently of our openings, I'm counting three on Alma. Is that correct? Right now, North Face has shut down and the other two.

Ms. Gitelman: That's correct.

Council Member Kniss: I don't see North Face on your list tonight, and I don't know what their address is.

TRANSCRIPT

Ms. Gitelman: We haven't had a request from the property owner of the North Face property. We're only bringing to you this evening the properties where we've heard from the owner or the lessee and they want to convert.

Council Member Kniss: In my technical questions, I'm trying to figure out where these other areas are going to be that are somewhat difficult, hard to get to off Alma and so forth. That hasn't come to us yet, but we do know that it's empty and has been for a while. Right. I'm not going to go into a soliloquy on retail and so forth. I might just observe technically that Stanford Shopping Center is successful because they have a great deal of control over who goes in and who goes out. It's one of the things we don't have in the Downtown. That's the end of my technical questions for the moment.

Mayor Burt: That's technical questions we're trying to do as opposed to rhetorical questions which are comments. Vice Mayor Scharff.

Vice Mayor Scharff: Thank you. Just briefly, what does the GF stand for again, when you say the GF boundary?

Ms. Gitelman: That's the combining district or the overlay zone in Downtown.

Vice Mayor Scharff: What does GF stand for?

Ms. Gitelman: Ground floor.

Vice Mayor Scharff: It's the ground floor combining district. Is that what we call it?

Ms. Gitelman: Yeah.

Vice Mayor Scharff: When you talk about prioritizing Downtown, you're not including SOFA in that. If we wanted you to prioritize Downtown and SOFA and look at it together, that would be a separate request. Is that correct?

Ms. Gitelman: If you'd like us to look at the SOFA area as part of that, it'd be nice to hear that (crosstalk).

Vice Mayor Scharff: I just wanted to make sure that's—when you say Downtown, you don't mean SOFA.

Ms. Gitelman: That's correct.

Vice Mayor Scharff: I think there's some confusion, and I just want to clarify it. We talk about the current Ordinance expiring, the temporary Ordinance,

TRANSCRIPT

and putting in a new Ordinance. Isn't the reality actually it's several ordinances, that you'd have a different Ordinance for Downtown and you'd have a different Ordinance for Midtown commercial, you'd have a different ordinance for El Camino? It would be actually more than one Ordinance, what we're thinking about.

Ms. Gitelman: I guess the idea that I was just articulating was that we would do Downtown as a separate Ordinance just like we did Cal. Ave. Because we don't have time to do Midtown and Charleston and all the others, we could lump them all into a ...

Vice Mayor Scharff: It depends on your priorities. If we said drop everything else, you could do it. I assume you could.

Ms. Gitelman: We could certainly evaluate our ability to do more than one or two ordinances, but it's ...

Vice Mayor Scharff: Let's assume what you're saying is correct. What I'm really hearing is you could prioritize Downtown and maybe add SOFA into it, and then there's a couple of other little things that you've added in here. I forgot exactly what they were. They were things like—anyway, there's a couple of other things you've added. That's sort of the scope of what you thought we could do. That gets us to the other ordinance that how do we maintain the status quo, which I think is where Tom was getting to. What I heard you say as a possibility—I wanted to make sure I understood this—is that we could pass another Ordinance, which we could either make interim or not interim until we have time to look at the other areas. That Ordinance would, for instance, just have a different standard for an appeal. Basically we could say we don't want no conversion Ordinance without a CUP, for instance. You could do that, and that has to come to Council or it has to go to the Director or whatever you want to do. Is that within your scope of what you believe we could get done before the 17th? Obviously that would be a really important part, to maintain the status quo on areas we haven't had a chance to look at.

Ms. Gitelman: What we discussed today is that if we proceed expeditiously, we understand the Council's direction and we have a clear set of priorities, we could potentially undertake a Downtown Ordinance and then some other ordinance that addressed those areas of the City that had not been yet addressed. We'd have to talk about what exactly that would look like.

Vice Mayor Scharff: There's a fourth Ordinance we sort of talked about, which I would call core retail and retail-like, which would be the notion that we'd go back and look in our definitions and say on University Avenue, on California Avenue we want real retail. We don't want nail salons, for

TRANSCRIPT

instance. We don't want personal services. Whereas, on the side streets, maybe we want a broader definition of retail and maybe even in the outlying areas, which are further out, say the 100 Addison, the 99 Alma type things. It's much more of a different definition. That would be another Ordinance you could do. Is that the kind of Ordinance that would take a lot of time to do different definitions? I understand the implementation may take a lot of different times. Would actually setting up the Ordinance and drafting that kind of an Ordinance take a lot of time?

Ms. Gitelman: Again, when we worked on the Cal. Ave. Ordinance that the Council adopted, we had this discussion about what type of retail uses should be permitted. In that case, the combining zone is the R zone, I think. We had this conversation. We ended up looking at the definitions closely and adding some provisions related to formula retail, if you recall. We've kind of had that conversation on Cal. Ave. I think it would be a redo to go back and have it again about Cal. Ave. and the surrounding streets. We could have that conversation in the context of the Downtown Ordinance we're working on, if that's something that's really of concern or interest to the Council. To do that more broadly in other areas of the City, I think that wholesale redo of how we think about our retail districts Citywide would be a little more complicated.

Vice Mayor Scharff: Some of the things that—I don't know what kind of Ordinances these would fit into. I'm a little unclear on it. For instance, the CineArts Theatre, right now that's a retail use. Under our interim Ordinance, you couldn't change it to a non-retail use, because it's a theatre and the theatre is clearly there. There's the Summer Winds Nursery, for instance, which could be developed, which is clearly a nursery use, which would therefore be a retail use. There's a lot of those sort of last-type things in Palo Alto. When they go away, there's not going to be any more of them. What our current interim ordinance is doing is keeping those in place. My question really is how do we buy time. What would that ordinance look like? To buy time to have those discussions about how we protect certain uses like that, that may not be as obvious. They're not El Camino; they're not Downtown; they're not California Avenue. They're really spread sporadically around the City frankly. It's that discussion too as an ordinance I'm interested in. I don't know how we get there.

Ms. Gitelman: Just two responses to that. One is the CineArts Theatre is not just protected from converting by this Interim Ordinance. It's really by the PC Ordinance that contains the development plan for that site. A legislative change would be required if the theatre were to be converted to another use regardless of what we're doing here. Your question about other kind of far-flung retail uses like the nursery, I think that would be addressed

TRANSCRIPT

by the idea that we were discussing with Council Member DuBois, which is a Citywide look at the areas that have not been covered by these individual ordinances with some standards or findings that need to be made when a property owner seeks conversion of one use to another.

Vice Mayor Scharff: Thanks.

Mayor Burt: You touched on one of my questions in your answers to Vice Mayor Scharff. I want to follow up on the question whether Staff has been evaluating different zoning definitions. One of the questions was around real retail in the core downtown areas, along Cal. Ave. and along University, and maybe certain key perpendiculars. You spoke that we had really addressed it through formula retail. My recollection at the time is that we looked at formula retail, and we also had discussions that restricted even within, say, restaurants not having too many formula, but that doesn't address whether we get Cal. Ave. turning into a bunch of nail salons and fitness centers. We just lost our stationery store that's turning into a fitness center on a vital corner in Cal. Ave. Has Staff not been looking at that issue of distinguishing between true retail, selling goods and food, versus other retail services that are in a much broader definition?

Ms. Gitelman: We already distinguish between retail services and personal services, which is the nail salons and typical uses. I'll have to look back at the record. I thought when we talked about the Cal. Ave. ordinance and we did the outreach to the business community there and others, we asked people if they wanted to further limit the uses that were allowed in the R combining district. I'll just have to go back and look if we had that conversation. Certainly when we talk about Downtown, we will be able to consider whether we want to adjust the uses that are permitted in the GF combining district and potentially eliminate personal services from the list if we think we want to focus on retail services instead of personal services.

Mayor Burt: You're right. I misspoke in terms of mixing up personal services from retail services. The other flip side of this—Vice Mayor Schmid alluded to it—is outside of that area we have a broad definition of uses that are permitted. They include all the way from things like medical offices that we have traditionally seen as being a community value and ones that have existed in the buffer areas to our downtowns versus the sorts of office uses that we've been seeing proliferating and really that we have a question whether they're actually a properly permitted use even in the Downtown areas; although, they've been proliferating there for the last couple of decades. Has there been any consideration of distinguishing amongst what types of uses we might permit in an area like—what's the SOFA zoning that we have for this?

TRANSCRIPT

Ms. Gitelman: RT-35.

Mayor Burt: RT-35. We might allow medical offices and schools and some of those things that are not pure office but are in a more expansive definition than our current retail.

Ms. Gitelman: We haven't looked specifically at how we might address the RT-35. The SOFA controls, as you know, are complex; there was a lot of site-specific planning done there. I think schools would be permitted on these sites and a range of office type uses. I'd have to go back and research those. I don't know that we're going to really want to look at changing the SOFA controls.

Mayor Burt: That's right. I think in this area, if we didn't have the moratorium, yes, those things would be permitted. My question is when we created the SOFA plan, we weren't envisioning Palantir and Amazon as the tenants in those kinds of uses. We have a different circumstance today. Our zoning hasn't adapted to that. I'm interested in something that is capturing uses that don't permit high-density office but do capture things beyond our retail definition, like medical office and schools. If we did an adjustment and relieved some of these properties from the retail moratorium, might we go to something that gives them a broader range in potential tenants, ones that probably would be viewed as having some community value to them, but doesn't mean we've given Palantir another location for expansion?

Ms. Gitelman: Again, I think one of the approaches we've been throwing around here is the idea of an Ordinance to replace the interim Ordinance that restricted conversions of ground-floor retail space but allowed applicants to apply for a conversions if certain findings can be met. One of those findings could be that the underlying zoning allows a school and the school would be a good thing and we could come up with some other findings. That's one direction we could go in.

Mayor Burt: Finally, some of our problems around retail go back for a long while. For instance in Midtown, we had prior Staff interpretations of permissible uses that really seemed to stretch the intended boundaries. You now have some—I'm not refreshed on what they were, but I think last year we adopted that you create administrative definitions that give applicants greater clarity on how Code is being interpreted. I haven't reviewed those. Do you happen to know whether they shed light on some of the issues that would give the Council greater confidence that if we gave some relief for the retail moratorium, we weren't going to see some of the changes that had

TRANSCRIPT

been happening, that we were concerned about and the community was concerned about?

Ms. Gitelman: I think what you're referring to is in the Code cleanup ordinance. We created a process for affirmative and formal Code interpretations. Staff could initiate an interpretation. If we had a number of situations calling into question one section of the Code, we could make a formal interpretation and publish that for review. Similarly if we made an interpretation that an applicant or someone interested in a property didn't agree with, we could make that available in writing. We included an appeal provision in the Code. We haven't had occasion to use that provision, but it's available. In fact, we could have used it for a couple of the cases this evening. It seems unnecessary in the case of an interim Ordinance where we could just bring it and have the kind of conversation we're having this evening. That provision does exist in Code, and we could use it in the future.

Mayor Burt: Thank you. Let's proceed to the public. We have 12, 13—I have 12 already. We have a lot of speakers. Each speaker will have up to three minutes to speak. Given the number of speakers, if somebody else has represented your thoughts and you want to attribute yours to say, "I agree with the last speaker" or whatever, feel free to do that. It'll speed up the process. Our first speaker is Michael Morris, to be followed by Soroush Kaboli. Welcome.

Michael Morris: Mr. Mayor, Honorable Council, thank you for listening to us this evening in regards to our waiver request for 100 Addison. The Morrisses are not developers. We are a small family with close to 100 years of Palo Alto residency. This building is part of the future for us and generations to come. The lack of any income has caused a financial strain on the family. We have had no income from this property since July 2015 but have had to bear the carrying costs all the same. We've offered the property at a major discount, below what is considered market rate for the area. We've also cooperated with the City every step of the way in applying for this waiver, offering anything requested by the Planning Department. We wish to remain in harmony with the residential homes directly on the other side of the alley from our building. We have sent you letters, emails and a petition about our request for a waiver from the Ordinance. As my Cubberley High School forensics teacher once told me, "Tell them. Tell them you told them. Tell them again." We have, and thank you for that. In our request for the waiver, in our opinion, there has been a few inconsistencies in implementing the ordinances. Section 18.85.104(a) talks about economic hardship. We've presented documentation requested by Planning. The result of no income and continuing expenses, according to Planning, does not constitute

TRANSCRIPT

a hardship. We disagree. The definition of hardship, according to dictionary.com, is a condition that is difficult to endure, suffering and deprivation. No income and expenses, I think that fits. Section 18.85.104(c) of the Ordinance talks about documentation. We have supplied all the documentation that the Planning Department has asked for, and they say we have not offered enough to justify a waiver. We disagree with that also. We've had to fight for over a year to get before the Council. We first met and communicated with the Planning Department in June of 2015. We do not believe the Staff did what the Ordinance said and brought our waiver request to you in a timely manner. Staff says we still don't have hardship when there's been zero income. We've marketed the property without a square-foot cost with no takers. The City says that we want retail in the building, but when a prospective tenant presented a plan to the City about splitting the building, Staff said no. This is not a retail area. I think we all know it. I know I have to sum it up, so I'm just going to end real quick. Please bear with me. This location which is proximal to single-family residences would not be conducive for a lot of the retail categories that are listed in the ordinance. We are the perfect building for the RT-35 SOFA description. We're a single-story building owner. If we can't lease it and it's a single-story, we're out of luck. Thank you for your time and your consideration for our waiver.

Mayor Burt: Thank you. Next speaker is Soroush Kaboli, to be followed by Jeff Levinsky. Welcome.

Soroush Kaboli: Mayor Burt, Council Members, good evening. My name is Soroush Kaboli. I am a resident of Palo Alto, and I've worked as a commercial real estate broker for over 30 years in the area. I'd like to thank you for allowing me to continue my comments from our last meeting of June 20th. Since our marketing efforts have been the subject of the Staff Report, I would like to offer a quick update since our June 20th meeting. CBRE commercial and myself and our efforts for 100 Addison have not produced any results. To the best of my knowledge, the marketing of Newmark Cornish and Carey for the Anthropologie building at 999 Alma and Premier Properties for the North Face building at 217 Alma has not produced any results either, while other properties such as 441 University have joined the ranks of available properties in the core area of the Downtown. Additionally I would like to bring to your attention that the marketing effort for each of the mentioned properties is not limited just to the listing agents of said properties. It is a common practice for brokerage firms and the agents to cooperate fully with each other and each others' efforts. Lastly, I would like to express my opinion that for a variety of the reasons that have been discussed in the past with the Staff and also in my last conversation with you, 100 Addison and a number of other properties on the fringe areas

TRANSCRIPT

of the subject discussion are among a handful of properties that deserve your consideration for the waiver as it was intended. Thank you.

Mayor Burt: Thank you. Our next speaker is Jeff Levinsky, to be followed by Winter Dellenbach. Welcome.

Jeff Levinsky: Good evening, Mayor Burt, Council Members and Staff. You have before you tonight—where did my slides go? Technical problems. We have before you tonight three cases where the owners of buildings are trying to claim that they're not covered by the Retail Preservation Ordinance or to get out of it. The first one is, I think, perhaps the funniest to ever show up in a Council Packet. The owner of 425 Portage is trying to claim that the tenant, Pet Food Depot, is not a store. Rather, he says they were a warehouse for other locations and sold things only from financial desperation and then only wholesale. Incredibly, the City wrote back and acknowledged that last November, saying it's not a store. It is a store. This is their website for the location in Palo Alto. It says store location and store hours. It's also listed on Yelp as a store. It's listed on Groupon as a store, and it's listed on the Shop Palo Alto site as a store. That site is, by the way, produced by the City. Just to double check, I went there yesterday and I bought this. It's a little squeaky toy for a dog. They didn't ask me if I was a wholesaler and going to be reselling this at all. It's a store. The second case is 3241 Park, where the owner claims incredibly that the shop is illegal. I've never heard someone try harder to claim that their use is illegal. That's because they hope that frees them of having to continue some retail-like use. They even submitted this page; this is from an old, old Code. They highlighted for your benefit that it wasn't a body and fender and repair shop or an auto painting shop, so it's not legal. If you look up above, it says that repairing products is one of the legal uses of the property. Unfortunately for them, I think it was legal. Case 3 is 100 Addison. The owner claims that it's not viable for retail, that Addison Antiques was uninterested given Anthropologie's departure. The tenant said otherwise. Here's *The Mercury News* interviewing the tenants. They say, "We had to renegotiate our new lease, and the price was just going to be too high to continue operating," and that they were unable to secure another affordable location in Palo Alto. In other words, they were willing to be a tenant there without Anthropologie, but the rent went up. They couldn't afford to stay. There are three cases here, but all one verdict. The owners are fighting hard to avoid the ordinance, but the ordinance knew that would happen. It knew that retail would not produce as much rent. I ask that you not grant these exemptions, which would only trigger a whole flood more. Thank you.

Mayor Burt: Thank you. Our next speaker is Winter Dellenbach, to be followed by Herb Borock. Welcome.

TRANSCRIPT

Winter Dellenbach: I would like to identify with what Jeff just said. Thank you, Staff. I fully support your recommendations on 100 Addison. I enjoyed your quote in the paper, Jim. It was a very lawyerly quote regarding the operation and the permit quote. I shop at Pet Food Depot all the time; it's where everybody in my neck of the woods gets their pet food. It certainly is a store. I really plead with you to keep a very, very strong retail Ordinance over, at this point, the whole City. I don't hear a lot about El Camino, south Palo Alto and El Camino. There are a number of individuals that have been actively involved for the past year, literally fighting to keep retail there. There are many building owners that are trying legal and illegal work-arounds to get rid of retail and convert it to all kinds of other uses, warehouse use, office use, wholesale distribution uses, some of which is known by Staff and Code Enforcement, some of which they don't know about yet at this point. Certainly if south El Camino is not protected, the residents in Ventura and Barron Park won't have a lot of services that they have. They have already lost some of what is there. It's very important that we have strong retail protection. I have some suggestions for some things to do. If you're going to have strong retail protection, you have to have strong and effective Code enforcement. I suspect that Code enforcement needs more staffing. There has to be more funding for that staffing. One of the things that is happening in more and more ground-floor retail is the windows are covered up. You can't see in, and you don't know what's going on there. There should be some way to uncover those windows, so that there isn't the opportunity for the kinds of work-arounds that are going on so people can't see them. It bothers me that there's a loophole that you can take a retail space, convert most of it to office, and have some window dressing of a little bit of retail in a little section of it. I know that that's legal now, but we have examples of that in El Camino and south Palo Alto where there's a tiny little bit of a retail olive oil sales going up front and the rest of it is just a real estate office. It's just really too bad. Please keep a strong retail protection in this market. A huge amount will be lost without you staying the course.

Mayor Burt: Thank you. Our next speaker is Herb Borock, to be followed by Boyd Smith. You're going off of what's posted. I was looking at the cards in front of me. We'll try and reconcile those. Sorry.

Herb Borock: Thank you, Mayor Burt and Council Members. The first speaker said that he wanted to have something that would be compatible with the residential properties behind him. You have in the Staff Report a copy of the zoning district map for the area, but you don't have something that shows the uses. In those blocks, it's essentially residential uses. The ordinance allows a project that has at least one-third of the total square footage in multiple family uses to see if it's possible to make the finding of hardship. I believe the best way to have something compatible with those

TRANSCRIPT

surrounding residential uses is to have a project that's entirely residential. I would suggest, in addition to the Code, that a project that's 100 percent residential at 999 Alma or 100 Addison, which also has the address 1015 Alma, that a 100 percent residential project that complies with the existing zone district should be exempt from the retail requirement. The suggestions that the Mayor made for certain kinds of office uses, I disagree with. They're going to be impacting the neighborhood and the transportation and the parking just as other office uses. I wouldn't make a distinction of one office use versus another. In regard to the property that complains it should be exempt because there was a former illegal use, I'm disappointed that Mr. Levinsky showed us that it was a legal use, because a new property owner gets all the rights and also the obligations that go with the land. It seems if a property had been violating the Zoning Code for a period of time, that owner is obligated to pay fines on a daily basis for that continued violation. I think it would be worthwhile and would set a good example to go back and count up all those days and fine the existing property owner for the use that he says had been illegal. Thank you.

Mayor Burt: Thank you. Our next speaker is Boyd Smith, to be followed by Heather Young. Welcome.

Boyd Smith: I handed out some material. Do you have these pictures in front of you? These photographs show the inside of this building. That's it. Thanks. I'm at 301 Coleridge Avenue in Palo Alto, and I'm the owner of this building at 425 Portage. The building was constructed in 1951 as a warehouse building, and it's been that since that time. There are only nine parking spaces associated with this, because it was warehouse. A retail building of that size would require 34, so we're not even one-third there. Prior to moving into the building in 2011, Pet Food Depot closed their retail operations on El Camino and opened a store in Redwood City. They were given permission by the landowner at that time—not me, someone else—to open an existing warehouse at 425 Portage, the property we're talking about. It was clearly understood in a meeting with Amy French and Russ Reich at the time that Pet Food Depot would expand the warehouse component of their business at 425 Portage and no change in use from warehouse would occur; therefore, an application was not filed by the City. In other words, they were permitted to move in there because it was a warehouse. Our leases, which are attached to there, indicate that it's to be used only for a warehouse. There's no retail component listed in the lease. It was never built as retail. There's no central HVAC. There's no insulation. It's rough concrete floors. There's no customer restrooms. It was never intended to be leased as retail. If the City had intended that the space be converted from warehouse to retail in 2011, they would have required restrooms, Americans with Disabilities Act (ADA) improvement, and none

TRANSCRIPT

was requested. The tenant still uses that primarily as wholesale. They have done some minor retail sales out of there. We were not totally aware of that. I still don't know exactly what the percentage is, but it's been primarily warehouse. If you see the photographs, you can see that it's warehouse. I do not see how a tenant improvement application would be allowed to be submitted to the City when the parking requirement cannot be met. If this was designated as retail, again it would have 34 parking spaces. Because of the current interpretation of the Staff that we are a retail-like use, we have been actively marketing the property as retail since Pet Food Depot is moving out. We've been unable to lease it. We request that the property—is this red light on?

Mayor Burt: You're all done, yeah.

Mr. Smith: We request that the property not be clouded by the Retail Ordinance, that the practical use of this property be maintained and it stay as warehouse. That's what we want. Incidentally, there's a shortage of warehouse in Palo Alto.

Mayor Burt: Thank you. Our next speaker is Heather Young, to be followed by Jonathan Satz. If any other speakers wish to speak on this topic, they need to bring cards forward at this time. Welcome.

Heather Young: Good evening. My name is Heather Young. I'm an architect and a small business owner in Palo Alto. Mayor Burt, Vice Mayor Scharff and members of the City Council, thank you for giving me the opportunity to speak with you this evening. A primary goal of the retail Ordinance is to retain existing ground-floor uses that bring people, liveliness and diversity of uses to our commercial neighborhoods. This is implied throughout but stated in the Ordinance when it quotes the Comprehensive Plan. It envisions inviting, pedestrian-scale centers with a mix of uses as focal points for the neighborhoods. It is a means of retaining local services and diversifying the City's economic base. The Ordinance in place has begun to address these goals. It's clearly written to prevent office uses from moving into ground-floor locations while encouraging and fostering a broad diversity of retail and retail-like uses that vitalize our streets and storefronts. As you discuss the Interim Retail Preservation Ordinance, please consider strengthening the ordinance by expanding the definition of retail use to include educational uses such as private educational facilities and business and trade schools to the list of permitted retail uses. Ask yourself if yoga and dance classes are allowed, why exclude tutoring and SAT prep. If the retail Ordinance already allows daycare, shouldn't small-scale private education like the AltSchool be allowed? The people you envision supporting retail uses are the same people who will be supported by and enrolled in

TRANSCRIPT

educational classes. These uses include private K-8 schools, tutoring businesses, SAT prep classes, business classes, language schools, computer training and graphics classes, video camp and art classes. These uses attract students of all ages and all stages of life. Private education is a retail endeavor in which students are the customers who support retail-like educational uses. Moreover, regular attendance at these classes will bring these customers back week after week, month after month to the larger retail districts that traditional retail, like travel bureaus, may not. Like other retail uses, educational uses activate the street frontage by creating pedestrian activity and visual interest on the ground floor. The services provided in these uses are similar to the intensity of use provided by the daycare center and personal service uses already permitted. Allowing educational facilities and schools to be included is a good thing, and it's already allowed, as you can see, in the CC, CC(2) and CS districts and CN. Please consider adding this as you examine the retail Ordinance. Thank you.

Mayor Burt: Thank you. Our next speaker is Jonathan Satz, to be followed by Robert Moss.

Jonathan Satz: Thank you for the opportunity to speak at this meeting. My name is Jonathan Satz, and I work at AltSchool. AltSchool operates a small kindergarten through eighth grade school in Downtown Palo Alto that opened in the fall of 2015. We currently serve an enrollment of around 80 families and are a proud member of the community. As we are all aware, finding and securing real estate in Palo Alto can be incredibly difficult. It took us two years to find our first location as we competed with office users on most properties that we identified. In the years to come, we would like to add an additional school in Palo Alto. However, identifying properties since the adoption of the retail Ordinance has been incredibly different. Even if we can identify properties that are not protected by the Ordinance, most property owners are unwilling to lease to us out of fear that they may not be able to convert back to office once they convert to educational use. For these reasons, we would like retail-like services to include educational uses in the definition of retail-like services. Thank you.

Mayor Burt: Thank you. Bob Moss to be followed by Robert Wheatley.

Robert Moss: Thank you, Mayor Burt and Council Members. Offices are in great demand both nationally and especially in Palo Alto. Palo Alto office rents are back over \$7 a square foot. They're some of the highest in the country. During the dot com boom, we had the highest office rates in the entire world. There's a real incentive to convert retail to offices. We do have a 50,000-square-foot limit on office conversions, but this is for specific areas. That should be made generic for the entire City, not just Downtown

TRANSCRIPT

and California Avenue but everywhere. It'd also make it a lot easier for Staff to manage and oversee it. We also should include the basements when we're talking about areas that are being converted. Basements are being used as office space in many cases, so that should be part of the conversion limits. One of the problems that we have is retail in general is in trouble nationwide. A number of businesses, chains have said they're going to close their stores. There have been a number of articles in the press about malls closing up or being endangered nationwide. Some malls can survive quite nicely, and Stanford is an excellent example. If you have the right management and the right combination of stores, they work fine. Also, you don't have to have retail clusters. You can have very successful stores all by themselves. If you had an Apple store or an Amazon store—Amazon is starting to open stores. If Amazon moved into 100 Addison, they'd be a tremendous success. It's not a question of where am I located. It's a question of who do I actually get and who are they and how successful are they. It's not easy, but it can be done. One other thing, you have to have a cluster of stores. Let me give an example of a store that's surrounded by offices and does very well, one that some of you may have heard of. It's called Fry's. I think what you should do is have Staff revise the Retail Preservation Ordinance, make it apply Citywide, put a strict limit on how you can convert retail to offices, and bear in mind that when you convert retail to office, you increase jobs, you increase traffic, you increase parking, and you lose retail vitality, you lose neighborhood vitality and neighbors being able to shop locally, and you lose the sales tax revenues. We should not allow conversion of retail to offices if we can avoid it.

Mayor Burt: Thank you. Our next speaker is Robert Wheatley, to be followed by Richard Brand. Welcome.

Robert Wheatley: Thank you, Council. I'm the owner of the long-term ground lease at 999 Alma. I was interested in the discussion that mentioned fringe area and maybe having it vacant for a year. We definitely check the boxes as a fringe area for retail. We're five blocks off the core. We are surrounded by other non-retail uses completely. We've had it marketed for a year with no interest for a full user. All of 2016, we've been marketing; no full building user. Anthropologie is a very difficult thing to replace as far as a destination for a standalone building of a small nature. It's not big enough to be a standalone like Fry's. The difference between an owner and a non-owner is that we're not interested in having it sit vacant for a year to see and test if it's okay. We market ahead of time for a year, well in advance. That's what we're going to do. 100 percent or 50 percent? We can't find a 100 percent user; perhaps we could find a 50 percent user. We had one expression of interest in a 50 percent use. What would that do with the rest of it? It leaves a vacant 5,000 feet on the back alley without any frontage,

TRANSCRIPT

which isn't going to be any more successful as a retail use. Under the underlying zoning, we could have leased the front part. We could have leased that to an Alma frontage, retail user, and then done something else with the back. It allowed for some flexibility when you don't find an Anthropologie. The current moratorium prevents that and just takes away useful flexibility that the foresight of the previous ordinance left in place. We do support the idea that Heather Young and Jonathan Satz put forward, that an education use is retail-like and should be included in that retail-like use. I would just encourage you not to do a blanket, to draw the widest net. Our property is the victim of kind of a straight-line approach. We're just going to straighten that line out and move it all along. Even though the property may not belong there, it's going to be included in an area. Don't expand that and do it Citywide. A better approach is to look at the individual areas, the individual properties and see what fits best. I encourage you to do that and to also allow the education use and flexibility. Thank you.

Mayor Burt: Thank you. Our next speaker is Richard Brand, to be followed by Loren Brown. Welcome.

Richard Brand: Good evening, Council Members and Staff. Richard Brand, 281 Addison. I'm here to speak in support of the Staff's well-written Report. I'd encourage you to stand by your Ordinance, which was done just for the reasons that we're here. The previous speaker spoke about fringe retail area on the Addison two properties. Ace Hardware, when they first opened, people said that would never work because it's too far from Downtown. We know how that's happened. The same thing about the properties on Addison. Mr. Levinsky has made a good commentary about the other stores. I'm going to focus on Addison, because that's where I live. I drive by that corner of Addison and Alma probably twice a day if not eight or ten times. It's my entryway to going north and south. I can tell you that many times I have to stop for people going across the street and not using the crosswalk, because it's vibrant. The issue of finding somebody to take that retail space—that's retail and very vibrant retail space. As we know, our retail area has expanded with the growth of the City. Anthropologie became a destination store, and a lot of people drive to that store that don't even live in Palo Alto. I think with the right kind of marketing, the owners of that property and both properties for that matter can find retail stores that would like to come. If nothing else, they're going to get people returning to find out where Anthropologie went. I want to speak about 100 Addison, which is three blocks from my house. I know the story of that. It was my good friend and neighbor, Ken Allsman, who was one of the owners. We were working on our RPP at the time, and I said, "Ken, why are you closing your store?" In fact, he said, "Because they won't"—Jeff Levinsky mentioned

TRANSCRIPT

this—"give us a good deal in negotiating the lease. They were charging way too much money, and we can't afford to stay here, so we have to go." While the owners of the property are saying that they are in a bad situation, they've created the situation for themselves. I think they have to find a way to make this work. This Ordinance is put in place just for these kind of situations. Property owners want to increase the lease—I'm a landlord. I know how that goes. You really adjust your lease price based on the market. In fact, they went too high on the lease price. Now, they're paying the piper for that. Once again, I encourage you to deny these applications and keep the backbone in this ordinance. Thank you.

Mayor Burt: Thank you. Our next speaker is Loren Brown, to be followed by Kristina Lawson.

Loren Brown: Hi. Good evening, Council. I'm Loren Brown, 334 Kingsley Avenue, Palo Alto. I'm speaking tonight in regards to the 3241 Park Boulevard building. My company is Vance Brown. We're commercial general contractors. We've been located in Palo Alto since 1932. We've constructed many, many, many projects in Palo Alto, Stanford, Menlo Park, Mountain View over the years. We're a business with local customers and a genuine need to be located near where we build our projects. We're currently located at 3197 Park Boulevard, which is immediately next door to 3241 Park. We've been in the Park Boulevard area since 1950. We were approached to buy the building at 3241 Park after Park Avenue Motors gave notice that they were closing their business. Park Avenue Motors is owned by a parent company, Auto Nation, which is associated with the Mercedes dealership that is planning to go in at Ming's. We didn't evict anybody from that building. They were leaving on their own to go off to Ming's and change that use from restaurant to automotive. The location at 3241 is perfect for us to expand. We don't expand very often. We had 2,500 feet in 1960. We grew to 5,000 feet by 1995. Between '95 and now, we've had 10,000 feet. We are a growing business. At some point we need to have a little bit more space. It's so hard to find real estate around. It's a perfect location for us. There's a power station at one side, railroad tracks on the other side, the creek and our building on the third side, and Park Boulevard on the fourth side. We're competing with national law firms and national tech firms for space in Palo Alto, and it's very tough for us to find space that we can afford. One way to do it is to own our own destiny by buying the property. I've drafted a letter and issued it to the clerk. It addresses the reasons that we believe that the automotive services use at 3241 was never approved. I hope you'll read that letter. One last thing is that the Zoning Ordinance should not unfairly discriminate against a particular parcel of land. For the past 65 years, the M2 zoning and the GM zoning that applied at 3241 have effectively purged all retail uses out of that area. As a result, there's no

TRANSCRIPT

other properties in the GM zone that's local to 3241, that either have a retail or automotive services use. Under the City Staff's current interpretation, the property at 3241 is required to have a retail or automotive services use, a requirement that is not imposed on any other property in the local GM zone, which is an unfair discrimination. For these reasons, we ask you to direct Staff to make a decision to exclude the 3241 property from the provisions of the urgency ordinance. Thank you.

Mayor Burt: Thank you. Kristina Lawson to be followed by Benjamin Cintz. Welcome.

Kristina Lawson: Good evening, Mayor Burt and members of the City Council. My name is Kristina Lawson. I'm a land use attorney with Manatt, Phelps and Phillips here in Palo Alto. For over a year now, I've been working with the Morris family in regard to their 100 Addison property here in Palo Alto. I first wrote to the Planning Director over a year ago on August 19th, 2015, laying out the reasons why we thought a waiver was necessary and why that would help the Morris family to mitigate the economic hardship it was facing knowing that it could not lease the building. Just for some context, there's been a lot of talk about what the building had been leased for and what the proposal was, whether there was renegotiation perhaps attempted by Addison Antiques. The Morris family had increased the rent only 56 cents in the 10 years prior to Addison Antiques vacating that location. At the time it vacated, it was being leased for \$1.56 per square foot. They were heavily subsidizing that use at that location in Palo Alto. They left the building. They did not decide to renegotiate. There was not negotiation over price. Addison Antiques simply vacated the building. Now, I know you've received our extensive correspondence. I think we've written to the City four, maybe five times. You've heard directly from the owners of 100 Addison; you've also heard from their broker about this particular location. Presumably when the Council enacted both the original moratorium and then the extension to two years, it provided a mechanism to grant a waiver or an adjustment from the retail conversion prohibition because it recognized that there were situations that would result in such economic hardship that the Ordinance should not apply. This is one of them. I think it's a little bit unfortunate that tonight we're talking about 100 Addison in the context of the entirety of the ordinance and also these other properties, because there are some very, very unique features to this particular property. If you just take a look, it really has no windows. It's not attractive to a retail end user and, in fact, upwards of 35 have inquired to the brokers and have declined to even come see the space once they realize what it's really all about. We do know that there have been some retail uses that have spoken with City Staff. Again, they haven't pursued it because it's just not the type of location. When they hear that

TRANSCRIPT

Anthropologie is exiting the site across the street, they have no further interest in this property. I want to run through just a couple of the points we make in our letters. Staff's recommendation for denial of the waiver is based on the erroneous assumption that our client must have suffered a total economic loss of this property. This is not a claim for a complete regulatory taking where the property has been rendered valueless. Our client's request is that a waiver due to economic hardship be granted, because the continued imposition of this moratorium on the property results in severe economic loss and a diminution in the property's value, which thereby effectuates a partial taking. This isn't about profit. This isn't about how much profit the tenant can make. Right now, there's absolutely no value that's being derived from this property with an extensive amount of carrying costs that continue to mount. Again, I would request that you decline to adopt Staff's recommendation and instead grant this waiver this evening for a property that's located on the fringe of the Downtown core with some really, really unique circumstances. Thank you.

Mayor Burt: Thank you. Our next speaker is Benjamin Cintz, to be followed by Leonard Ely. Welcome.

Benjamin Cintz: Good evening, Mayor Burt, Council Members and Staff. I grew up and live in Palo Alto. I have seen many changes in retail, both retail going up and retail going down, in the years I've lived in Palo Alto. I'd like to address the interim Ordinance, my thoughts on that and also on the waiver requests at least as to 100 Addison and as to 3241 Park. I think what the City did by enacting the interim ordinance is give itself some flexibility in trying to figure out what needs to be done. I think that was a very good move. When looking at Alma Street, there is very little foot traffic outside of the core area. I think you see that in terms of what's happened with North Face, what's happened with Anthropologie and, of course, there's 100 Addison as well. I think if the City wants real retail or quality retail, it needs to realistically look at where that retail is going to be. It needs to be in the Downtown core where it's always been. The SOFA area was either the Palo Alto Medical Clinic or automotive use. The automotive use has gone away. The Clinic has gone away. On Alma Street where there isn't much foot traffic outside of the core, it's not realistic to expect retail. It's not realistic to expect retail at 100 Addison to be able to be viable. You're not going to get quality retail if you get anything. As to the Park, it's a compelling argument. Here's a local business; they've acquired a property. This seems like a perfect use for that property. I ride my bicycle by that property—I won't say daily but often. There's no retail around it. It just really seems like it would be a perfect use. I request that the Council seriously consider granting the waivers based upon the circumstances, which

TRANSCRIPT

I think is what the City had in mind when they enacted the ordinance. Thank you very much.

Mayor Burt: Thank you. Our next speaker is Leonard Ely, to be followed by our final speaker, Rita Vrhel.

Leonard Ely: I'm Leonard Ely. I live at 651 Seale. This is a good example of things where you made a mistake, and it needs to be rectified. I would imagine that when the lines were drawn for retail for this Interim Ordinance, they were drawn to where retail was at the time. That has changed. Mayor Burt summed it pretty well. Zoning has not adapted to this area. A retail core in Palo Alto is a great idea. I don't think this is part of the core. If you look at the map, it looks more like an amoeba. One of the tests that either the Council or the Planning Department should use in granting or considering waivers would be what the contiguous properties are and what their uses are. If you look in that area, there is one retail automotive use about a half block away, and then the nearest thing is Ace Hardware. I go to Ace Hardware quite often. As Mr. Moss stated, it's been done very well, but I always drive. It's not some place where I walk to. When Anthropologie first went in years ago, I couldn't believe that it would be there as long as it was. As far as Apple and Amazon being located there, the properties are way too small. Those kind of tenants have to have 20,000, 30,000-square-foot buildings. I think that's about it. As I say, I think the real test here should be what it butts up to. It was originally an auto repair shop years ago at 100 Addison. Again, as Mayor Burt said, the zoning has not adapted to this space. Thank you.

Mayor Burt: Thank you. Our final speaker is Rita Vrhel. Welcome.

Rita Vrhel: Thank you. I think you've heard a lot of arguments today about why this Ordinance should stay in place. If you do away with the Ordinance, you will have every business owner of a retail space coming before you and requesting an exemption. As far as the property on Addison is concerned, they can put some windows in. They can make it more attractive. I don't know what the price is that they're trying to rent it at. If it was \$1.56, I'm sure that it will rent again per square foot. There's probably a lot of room where that can be improved. If you're talking about having it be what it butts up against, then maybe this is an ideal location to consider some below market housing, not a huge project but maybe three or four units. Perhaps that would work. The place where North Face used to be is in an area, if I remember correctly, where there are a number of multiple-unit four plexes. Perhaps that's the place to put a limited amount of below market or affordable housing. That could render you eight units. It probably would be profitable for the landowner. It's near Downtown; it's near transportation.

TRANSCRIPT

That would fit the definition of housing in the transit corridor. Portage Avenue, I would encourage you to go shop there. I've shopped there before, and if Mr. Levinsky can buy something from this warehouse and I have, then you can probably too. The fact that they don't have enough parking spaces hasn't prevented them from running a business. I don't think that should even be considered at all. The Park Avenue, the owners when they brought this property, they knew what the property used to be. Things should be considered, but you should hold this ordinance and strengthen it so that everybody doesn't come before you with a sad story. Thank you.

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

Council Member Holman: Thank you. Thank you to all the members of the public who have come this evening to speak to us. Where to start? I guess for lack of any specific place to start, it's better than another. I want to address the suggestion about schools. I never remember the name of the school, but the school that's on El Camino where Los Robles runs right into it. My concern is schools, especially on primary streets, just create dead spaces. Winter's still here and lives in Barron Park; maybe she can remember the name of the school. It really is kind of the death knell to creating active spaces. Private schools want to have private space. That's a concern about that. The other concern I have about that is that in several locations, especially in the SOFA area and other industrial areas—Mayor Burt and I have talked about this—there are toxics that are likely present onsite. Without the minimum of a Conditional Use Permit, we have no way to protect sensitive receptors who might be on that site from the toxics from automotive use, for instance, on those sites. Schools on primary streets like El Camino, Middlefield, for instance, Alma, I can't support. They wouldn't be able to support University Avenue. Except there's another example of this. We get many complaints about this. Institute for the Future is a great entity, but people are not happy that Institute for the Future is not retail and it's in the location that it is. It was an interpretation that Staff made to allow them to be there. It's not retail. As much as I really like it and appreciate the people there, it's not a good consideration as retail. I don't remember who this was. Maybe it was Council Member Scharff who talked about hair and nail salons. I would put in that gyms as well ...

Mayor Burt: Council Member Holman, I want to let you continue, but we had discussed earlier how we might structure the discussion, whether we would want to go into looking at the broad direction to Staff on both the permanent ordinance and guidelines on how to proceed on the interim and then specific action on the waiver before us tonight. I just want to look back

TRANSCRIPT

to the Council on whether we want to try to break up the discussion that way or we want to throw everything together.

Council Member Holman: Where I was sort of headed was setting some parameters for the Ordinance and then address the 100 Addison situation.

Mayor Burt: Parameters for the interim Ordinance or parameters for the permanent Ordinance?

Council Member Holman: It depends on how we—there's different ways of looking at this. The permanent Ordinance, I guess, could be an extension of the Interim Ordinance with some changes. That goes to the question I asked earlier, which is how much change can we make and not totally disrupt the Staff's priority workload.

Mayor Burt: Let's hold off on the specific waiver before us for the time being and discussion of that. Let's talk about broader guidelines to Staff, and then we'll loop back after that and address the waiver request.

Council Member Kniss: (inaudible)

Mayor Burt: That's a good question. I think it can be either. We've heard from Staff that the Interim Ordinance—they have real hesitancy about going into major modifications and making the Interim Ordinance refined when we have basically six months left on it. For the most part, we should be trying to begin to give guidance on our direction for the permanent Ordinance. If there are specific ways in which we might want to tweak the Interim Ordinance that would not be big burdens to Staff, then we could consider that.

Council Member Holman: My thinking and the points that I'm making is to look at the Interim Ordinance and changes to it that would then become a permanent Ordinance.

Mayor Burt: If you're really trying to get into a deep discussion tonight around that, you may have one idea and we may have eight others on where that would head. That would be probably a really involved conversation. I wouldn't assume that you can begin to craft too much about the permanent Ordinance tonight and fold that into the interim. I wouldn't make that assumption.

Council Member Holman: It gets a little tricky then on how to give guidance to Staff.

TRANSCRIPT

Mayor Burt: The guidance on the permanent Ordinance, I don't think we'd be attempting to give explicit guidance but greater direction to Staff on where we want to head. We haven't visited this in over a year on where we're thinking we want to head on the permanent Ordinance. If there is certain guidance on the direction of the permanent Ordinance without trying to specify what it would be, I think that would be useful to Staff. That's a more broad stroke direction. Then, perhaps we could consider tonight something a little more explicit if there are readily doable changes to the Interim Ordinance that aren't going to involve a bunch of Staff work. We could consider that tonight, and then ultimately we have a waiver before us.

Council Member Holman: I think Hillary may have a question about that.

Ms. Gitelman: I guess I was just going to second what the Mayor was suggesting. I guess we're hoping that we don't have to amend the interim Ordinance. Because it has so little time left, that time would be best spent focusing on the permanent Ordinance. We would be happy if the Council would indicate their support for prioritizing Downtown, and then permanent protections for ground-floor retail in other areas of the City with some lesser standard than economic hardship for consideration of a conversion approval. That's kind of where we thought the Council was interested in going. If you are, that's the kind of direction that would be helpful for us to prioritize our resources over the next six months.

Council Member Holman: I don't know that we're heading different places. I think we just may be having some verbiage issues here. I'm not sure that we're heading different places, I don't think.

Mayor Burt: Why don't you go ahead and proceed, attempting to frame it within that context.

Council Member Holman: Speaking of framing, let me go to Packet Page 283. This is the Ordinance 5325. It's "G" I want to refer to, just so we don't forget how we ended up where we are. It talks about the loss—this is "G" at the bottom of Page 283. It talks about the Santa Clara Valley Transportation Association's (VTA's) congestion management plan indicated that approximately 70,000 square feet of retail-type uses were lost in Palo Alto from the period 2008 to May 2015. There may have been more than that, because not everything requires discretionary approval. I actually am looking for, yes, I would support Staff going ahead and working on a Downtown Ordinance. For me, I would like to see the interim Ordinance continued in a permanent Ordinance. I'm actually in a different place than Staff. I still think the hardship should be the threshold. We have seen in this community many times how property owners hold out for a year for the

TRANSCRIPT

ability to be able to convert to office. Especially for long-term property owners, that's not that hard to do. If you can go from—I'll just make up numbers--\$2 to \$6 a square foot, why wouldn't you hold out for a year? The hardship threshold is a good threshold. I have notes here. Hang on a second. I would absolutely support in the permanent—you want me to just make a Motion? Council Member Burt, do you want me to just make a motion?

Mayor Burt: You can give it a shot.

Council Member Holman: Rather than say all this and come back and have to do it again. I would move—I'm just talking about the Ordinance now, going forward. I would move that the Staff make permanent the Interim Ordinance with the following clarifications: on Slide 10, I support Staff requiring display windows for nonconforming uses, all the four bullets on that page. It really is four bullets, not three, because updating definitions as needed is also a bullet actually.

Mayor Burt: Council Member Holman, you're free to go ahead and make this. I think there would be a usefulness to hearing from the Council Members first on what their higher level thinking is on where they want to head in a future Retail Ordinance before diving into a specific proposal. How about this? If we hold on this, I'll return to you. If colleagues are fine, before we go forward with Motions I'll return to you and give you first crack at it.

Council Member Holman: Then I'll make general comments and not make the Motion. What I support is basically the Staff continuing the Interim Ordinance as a permanent Ordinance and returning also with a Downtown-focused Ordinance. I don't support reducing the threshold, because of what I just mentioned about gaming the system. I do support the bullets that Staff has proposed to come back with. That's on Slide 10 and also in the Staff Report. I think other Council Members have also mentioned some additional qualifications for hair and nail salons. I might add personal gyms to that. I've made comments too about schools, private schools. A question for Staff. What level of effort is going to interrupt your priority workload? The question is if we were to ask Staff to look at the viability of readdressing or reevaluating the streets that were taken out in the 2009 ground-floor retail reduction, if you will, would that be a major undertaking or would that be we could pick our priority streets and it wouldn't be a major undertaking that would disrupt your work flow. Help me out with that.

Ms. Gitelman: Thank you for that question. We do have Staff assigned and resourced to do the Downtown permanent Retail Protection Ordinance.

TRANSCRIPT

We're prepared to work on that issue and others that we've identified for Downtown, if the Council prioritizes that effort. It's the other Ordinance for continuing these protections in other areas of the City that we haven't resourced or assigned Staff to yet. We're talking about how to do that. As long as that effort doesn't get complicated with 14 different subparts, I think we're going to be able to accommodate some amount of that work in the time we have.

Council Member Holman: I think we continue it kind of as a lump and not breaking it off into sections. I can't imagine that Staff has the time to do a variety of different Retail Ordinances. I think just a couple of other things here. I think we can quickly and easily clarify for Staff the questions that are on Slide 5, that were asked about earlier. As a general comment, I would just ask that Council Members think of retail not just what goes on University Avenue, not just what goes on California Avenue, not even necessarily just what goes on some of the side streets in the core areas. Start thinking creatively. Palo Alto has been the incubator for tech businesses for years and years and years. It's time we start thinking more diversely. Think about Palo Alto and locations that might be appropriate for incubator retail uses. I'll just use it as an example. I look at 100 Addison, and that's an industrial building. I think of all kinds of uses that would be wonderful at that site. I don't know what kind of marketing. I did go online, and it just seems like it's kind of posted as retail space available, blah, blah, blah, blah. It doesn't try to promote any kind of active uses there that could be creative and wonderful. We lost Turner and Martin. There are other kinds of antique uses like Big Daddy in San Francisco that are ...

Mayor Burt: I think we're now getting a lot of specifics that we're going to not have ...

Council Member Holman: I'm just trying to get us—when Council Members are starting to think about what's retail and what should be in retail, what shouldn't be in retail, to think about these other kinds of uses and more creative uses, and not just think about University Avenue and California Avenue and what kinds of uses we typically see there.

Mayor Burt: I want to be mindful of the clock. We had budgeted a certain amount of time. We're clearly well beyond that and going to go beyond it. I want to have us be able to get everybody a chance to wade in. Vice Mayor Scharff.

Vice Mayor Scharff: Thank you. I guess I see it different than Council Member Holman, but not that differently. I think we want to prioritize Downtown. When we prioritize Downtown, I want us to also include SOFA

TRANSCRIPT

into that. I really think that they're one area in terms of retail. I think we want to look at how Emerson Street goes down there, how that connects to Whole Foods, and how we build that whole retail corridor and do that. I want Staff to look at those two in conjunction. I definitely want to focus a little on the Downtown area. As part of that, I want us to actually look at how do we change the uses. I clearly think, as Council Member Holman mentioned, Institute for the Future is not a retail use. I also think the Wells Fargo building is clearly an office building on the ground floor. I realize it's been there forever. I think we need to amortize it out if it takes 15 years or 20 years. We need to get that in Motion, so eventually that is no longer on a prime corner a non-retail use. What else did I want to say about the Downtown? I think we should also on the Downtown obviously look at adjusting those boundaries. I agree with Council Member Holman that we want to consider the definition of basements, those four items you have on Slide 10. I would be very supportive of including those. At the same time, I think we want a second Ordinance, which you've talked about, which would continue the retail protections. Unlike Council Member Holman, I am not going to support a Motion that doesn't have more flexibility. The standard of a Constitutional taking is extreme. I don't think I can support something that extreme in the long term. I also would like to see, at least for the outlying areas, if we can come up with a definition of where you have what I would call the Downtown core and then the outside areas, which would be like 100 Addison frankly, and other places where you have a broader definition of retail. That broader definition should definitely include educational uses and may include other things. I might even be open to medical office in a permanent Ordinance or something like that, something that activates the area, that serves the public. I think we could have a broader definition there. On the interim Ordinance, the only change I probably would make—I think it might give immediate relief to some people—is the notion of an educational use. That actually would be really helpful for those broader uses outside of the Downtown core. I would like to obviously see a Motion that goes forward on those issues. The only other thing, I think, we might consider is making a distinction on retail uses. As I said, on the outside of the core, I think they're different. I think depending on how much Staff time Staff has, I don't think we need for instance—I don't know if we allow nail salons on University Avenue. I think they could be on the side streets as opposed to that. I think that's sort of where I am on this.

Mayor Burt: Council Member Wolbach.

Council Member Wolbach: I kind of want to frame this by going back to the question of what our overarching goal is. I think our goal was to prevent losing retail and having it converted into office. If my memory serves me, that was our original intent. We also have an interest in preserving local

TRANSCRIPT

retail, for instance, on Cal. Ave. and not wanting to see a monoculture of one particular thing just taking over an entire street, whether that's just restaurants or just gyms or just nail salons. Within that broader definition of retail, as long as it's not a complete monoculture, I'm not comfortable with saying, at least at this point—I don't really understand this move towards core retail in our Downtown core versus a slightly broader definition in the periphery. It sounds like the core retail definition that I'm hearing some allusions to would be really restrictive. I'm wondering are we going to say that the President Hotel barbershop, because it's on University, shouldn't be there. Are we going to say is the Stanford Theatre not strictly retail, so it shouldn't be on University? A yoga studio or a gym, as long as they're not taking over the whole street but one or two, on a main Downtown street adds a lot of vibrancy, adds a destination that people go to. They leave a yoga studio or gym hungry, and they go spend money whether it's at Molly Stone's or at a restaurant. I just don't see the need to be that micromanaging. I'm not going to be looking for a long-term ordinance that really micromanages in that way. I think the goals are—at least what I see people are demanding in the community when it comes to retail is we don't lose a vibrant street and we don't lose our local businesses and we don't lose our retail in the broad sense and just see it all converted to office. If we keep that in mind, I don't think that micromanaging is really the way to go. There was an interesting proposal to exempt for 100 percent residential. This might surprise people, but I'm not even sure that I'm on board with that. There might be places where that would be okay. Maybe that's the question of core versus periphery. Maybe that's where on the periphery we allow an exemption if you do go full residential or (inaudible) kinds of residential. I kind of wanted to ask the question, because maybe I misheard. I thought I heard Council Member Holman say that schools create dead zones. I'd wonder if the businesses at Town and Country that enjoy so much patronage from Paly students at lunch time, after school would agree with that. Maybe I misunderstood. I don't want to misrepresent your comments. The idea that schools aren't good for local business—I know we're going to go back to her. I just want to say that I don't see schools as inherently negative. Again, what I do see as negative is monoculture. If everything in Midtown got turned into an SAT prep site, that's not what we want. It's really, for me, having the diversity. I'll leave my comments at that for now.

Mayor Burt: Council Member DuBois.

Council Member DuBois: I'd like to thank Staff for working through this and toeing the line. I think the question we're faced with is how do we distinguish between greed and hardship. How do we tell the difference? Retail protection of ground-floor space isn't going to have any effect if we

TRANSCRIPT

just grant exceptions when somebody complains. We know the economics for office space is much greater than retail. That was kind of the purpose of the ordinance in the first place. Generally, I think Staff has rightly seen through maybe some weak arguments. I am interested in correcting a loophole or a clarifying restriction for illegal uses and legal, nonconforming uses. It's kind of the definition of chutzpah to say, "I have retail there, but it was illegal so I don't have to follow the ordinance." Most of us have probably shopped at a lot of these places. I do have to say I found these pictures particularly a blatant misrepresentation. I've shopped at Pet Food Depot for years. Yeah, it looks like this in the back. The front's a pretty nice retail area with cash registers. Everything is priced for retail. To imply that it's not is just hard to—it's just a misrepresentation. Even though there's not a lot of parking here, it's very easy to pull in, grab your bag of dog food and pull out. It's not a place that you need to spend a lot of time. If we started to grant exemptions for claimed illegal use or legal, nonconforming, it's going to weaken the force of law. It really incents people to have an illegal use, because then you get extra rights. I do agree we need to consider the SOFA boundaries. It's certainly becoming a much more vibrant area. It'd be a shame not to have any retail in that area. Again, this isn't just about the retail core. Part of this ordinance is really thinking beyond just the retail cores. I am also interested in figuring out how to extend protection to the community shopping areas on El Camino, whatever the best means to do that is, even if it's another interim ordinance until we have time to get to it. As Mayor Burt mentioned, part of this discussion is about the types of office uses permitted. It's a question of scale of office, hardware/software development, product development, large-scale services which have traditionally been in our office park and on Bayshore. Do we want to continue to allow those Downtown or do we want to revisit those definitions and get back more to administrative office, locally serving office spaces? If we were to grant exceptions, I'd like to clarify those permitted uses, update the definitions. Perhaps we should consider an exclusion if there's a lone, former retail use that is now completely surrounded by non-retail, like nothing on the entire block in any direction. Maybe we consider that. I think we'd have to have it very well defined. Perhaps the Mercedes repair shop would fall into that category. On the question of schools again, I don't think we're talking about large schools. I think we're talking about SAT prep mostly. I'm not convinced that adding a lot of SAT prep is necessarily in the best interest of our community. Those are my high-level thoughts.

Mayor Burt: Council Member Schmid.

Council Member Schmid: In a way, we're talking about the future of the City. It's important to recognize that the essence of the City is where people

TRANSCRIPT

gather and mix, interact with each other. Retail plays a critical role in that. I think we also have to recognize that commerce is changing. Every day there are articles in the *Wall Street Journal* about traditional retailers having trouble, losing market, changing, adapting. The next 10 years is going to see quite a change in what we shop for, where we shop for it, how we do it. How do we keep alive that essence of the City, of the mixing and gathering with the commercial retail sector that's dramatically changing? I think it is good that we focus on our Downtown. It's the most dynamic and maybe rapidly changing area of town and a place where we can get characteristics that might work elsewhere. A good starting point is a definition. What is retail? I note that the definition we used in the ordinance is retail is primarily engaged in selling, and then turns into a 15-line sentence that lists all kinds of things. If you go down those lists, those are the things that are changing. What's on the list today might not be there tomorrow. I think it'd be nice to have a definition of what we mean by retail. As an economist, I think you go to any basic textbook, and retail is the sale of goods and services to the public in relatively small quantities for final use or consumption. It'd be nice to have a definition like that, and then you can ask the question for each of those items in the next 15 lines does it fit closely or is this moving further away from the essence of final use, small quantities, people, public, moving in and out. I think that would be helpful. One thing we're running into in our work is transitional areas. The other night we had a discussion about Lytton. What is it? East of Waverley, where offices are moving in, in denser and denser format, but we haven't really worked out is this part of the core or not, should it be made part of the retail core as well. Where does a retail core end and stop? We talked about major changes east of Hamilton that could bring big changes. Tonight we're looking at Addison. We've looked at Waverley with the transitional areas. What's the role of retail in transitional areas? How do you keep that dynamic of the core and the transitional area? I think the point was made a couple of times that the most obvious place for retail is probably in mixed use. Retail and housing fit together very nicely. We can't recreate Paris, but they have done a very good job of mixing housing and retail. I think it is important to step back a little bit, to recognize the goals we want to achieve, that retail is part of keeping the essence of a city where people gather, mix, exchange ideas, work together, live together. We need to be sensitive to where retail goes. While we're looking at these bigger issues maybe in the Downtown and SOFA, we shouldn't give up what currently is retail just because office today happens to have higher returns. Keep options alive as we move down the road of deciding where it is best mapped in our Downtown and other areas of town.

Mayor Burt: Council Member Kniss.

TRANSCRIPT

Council Member Kniss: Greg and I don't always concur, but I think those comments were particularly good. We are in an incredibly dynamic situation as far as retail goes, as far as office goes, whatever we may be discussing. I've forgotten how many stores Macy's closed within the last two weeks. I think it was 160. I don't know about the rest of you, but my kids think Amazon is just part of their everyday life. That's just been 10 years in the making. So much is now just delivered to your doorstep. It may be coming by truck now; it'll probably come by drone at some time in the future. What we're looking at tonight is a very long-term issue. While we may be giving you some guidance, to Hillary and Jonathan, I think at the same time we're very early on with this. I think this needs to be so fine-tuned. What has just been described by you, Greg, as the definition of retail is just that. It's a vital area of your community. I do see that there are some options for 100 Addison, also for 999. At the same time, I don't think they're the same kinds of options you're going to find in that Downtown corridor. When I stood there on Sunday at noon, it was absolutely jammed with people coming and going, wherever they might be going. When I went by, with all due respect to Richard Brand who's probably left by now, when I turned onto Addison tonight, primarily 100 Addison was being used as a parking lot for people who are going into Anthropologie, which is by the way having a 40-percent off sale, if any of you are interested. They're going to be empty as well. There may be some good retail uses for both those areas. I don't know, but I think they're going to have to be altered from what we currently think of as retail. Maybe a type of school. I actually think schools, especially a school that might be a tutoring or might be teaching martial arts which has become very popular lately, something like that is the kind of thing that we should be looking at for those outlying areas. In the core, you have certain things that are expected. Also I'd reflect on what Cory said. Is Stanford Theatre kind of a dead zone in the middle? Can you imagine us getting rid of Stanford Theatre? That just wouldn't happen. It's retail. It is retail. If you had a street full of theatres, it would be a pretty quiet street. I think tonight—what I'd really like to do is hold a lot of my thoughts in abeyance. This is going to evaporate essentially on April 30th. Between now and then, probably sometime in the next few months depending on who's sitting here, there will be a long discussion of what the ordinance is going to be and what it protects. Those are my comments for now. I think it's been a very thoughtful kind of evening. If there was one thing I would leave with this is your core is going to be quite different from your outskirts. We very carefully need to look at the SOFA area and what the anticipation was back then, when two of you in particular were very involved with it. It still doesn't look to me as though areas along El Camino should be held to the same standard as the Downtown area. Thanks. Alma. Did I say El Camino? No, I meant Alma. It's now 10:35 P.M. ; that's probably why.

TRANSCRIPT

Mayor Burt: That's okay. Council Member Berman.

Council Member Berman: Some of the comments made by Council Members Kniss and Schmid underlie the importance of flexibility, which ties a bit to the comments of Council Members Scharff and Wolbach, even though they claim to disagree or Wolbach claimed to disagree with Scharff.

Male: (inaudible).

Council Member Berman: Or that. It's true. Our economy is changing. The way we buy things is changing. The way we look at things is changing. Because of that, it's important to have flexibility. Because of that, as Council Member Scharff mentioned, I wouldn't support a permanent ordinance that only had economic hardship and unconstitutional taking of property as the threshold that had to be met for Council to provide an exception to the rule. Clearly different parts of Palo Alto and even clearly different parts of a larger Downtown area might be able to facilitate different uses. I think we should create—if it's going to be a permanent Ordinance, I think it's one that should have that flexibility in there to allow for different situations. I like the idea of having certain rules for a Downtown core versus an outside of the core. I disagree with Council Member Scharff that we should get so specific as to say certain uses for University and this for Lytton and this for Hamilton and that kind of thing.

Male: (inaudible).

Council Member Berman: I like the idea of different standards for the Downtown core versus the areas outside. I also think we need different standards for different parts of town, and we don't have that in the temporary Ordinance. We should have different standards in the permanent Ordinance. Obviously different parts of town should be treated differently. I'm intrigued by the idea of schools. Maybe it's partially because I've become so much more acutely aware of the shortage of childcare facilities and preschools that we have in the region. That's not to say that any of these sites would be perfect for that use specifically, but there could be sites that would be good for those uses. That's something we should consider if there's a way that we can add it into the Ordinance in a way that wouldn't create dead zones that some of my colleagues are worried about. We have a desperate need for those types of facilities and services in Silicon Valley as a whole. I think if we can encourage that, that would be a huge benefit to our community. That's the high-level thoughts I have. I'm glad that we're not going to totally rewrite the temporary Ordinance six months before it sunsets. I think it's helpful to get some direction for what the permanent Ordinance should look like.

TRANSCRIPT

Mayor Burt: Let me try and take a crack at a few elements of this. First, Council Member Wolbach had offered up a revisiting of the problem. I think that's useful; although, I have a broader definition of the problem. My recollection is that we really were concerned about two major things. Maybe others would add in other elements. It was loss of local-serving retail. We weren't saying that we're really acutely concerned about loss of revenue from retail regardless of whether it was local-serving. We really cared about losing retail that people in the community used and valued, which is interesting. In some of the discussion around this property tonight, people talked about it being a destination retail. It's not solely; I mean, Palo Altans go there as well. It's not the same thing as losing a hardware store. Second, it's a concern of retail being converted to basically Research and Development (R&D)/office space, software firms and the like. We put an interim ordinance in, but one of the things that we had misgivings about at the time—certainly I did—was that it was a pretty rigid ordinance without a lot of flexibility to it. We tried to put in this waiver process. This applicant has certainly made a case that they've been waiting a long time for that process to work, to get a hearing on it. I'll talk briefly, kind of broadly about my thoughts on where I think we ought to be going on the permanent Ordinance. I don't think we're going to have really time tonight to try to craft any clear guidance to Staff on that. I think we have input, and then we may need to re-agendize this topic again so that the Staff gets an opportunity to have stronger and more considered guidance on the permanent Ordinance before they come back to the Council with a proposal to reflect that input. My personal thoughts are that, first, we want to have zoning that looks at strengthening the retail in our core areas of our downtowns, University and Cal. Ave. We've had a degree of a problem on those real core retail areas where we have an overly broad definition of retail there, one that might be overly restrictive in some other areas where it's applied. One definition of retail doesn't suit us where we really have areas that are strong retail areas and they shouldn't have a bunch of gyms, they shouldn't have a bunch of nail salons in those core areas. This is where people are having all the foot traffic. The notion that a gym is really a good thing in a retail zone I just disagree with. The same thing with a bunch of nail salons or other salons or who knows what. That doesn't mean we don't grandfather in some existing, but I certainly don't want to see that go long term and expanding that kind of use and really undermining what's retail. I also think that El Camino is a different sort of retail. It's a drive-to retail. It's really important that we not lose that second tier, more economical retail for a lot of different services that are valued in the community. It's much more affordable retail, and we need to retain that. That's the other thing that I really want to see. This notion of really two retail definitions. Where that goes, I think that'll be part of the next discussion. I think we've got a core retail definition, and then we've got one that has greater latitude in

TRANSCRIPT

uses in some of these other retail areas, but we allow more things. I also think that, whether in the interim ordinance or the permanent one, the intent of economic hardship shouldn't be that it requires total economic loss. I don't think that was the intent. It's hardship, not elimination of revenue. I think we need to give some better sense of what that intent was. Frankly, the wording in the interim ordinance does capture it. Somehow maybe it's being interpreted pretty strictly or overly strictly. On the Interim Ordinance, first I'll say there's a couple of properties that are part of the SOFA II plan. In SOFA II, it was a very deliberate process over a couple of years. It did a good job, probably an imperfect job at the time. Now we've had some morphing that's occurred, and it's probably even less perfect today than it was when we adopted it. I have regrets over having allowed some of the old retail on Homer between Emerson and Ramona to have been lost. One of the problems with that retail is there's no off-street parking. That's one of the real problems in SOFA for retail. That'll be one of the struggles as we envision that SOFA has some intrinsic demand. It's a walkable neighborhood and an extension to Downtown, but it doesn't have parking. We'll have to struggle with that. On the interim Ordinance, we went through a very deliberate process, and we did not say that all those buildings, if they went to and from retail, would then have to be locked into retail. We actually had that discussion in the SOFA conversation, of whether some of these properties might move in and out of auto dealership or some other thing. We thought that over time we'd see some evolution there. I don't think it was the intent of SOFA II that these properties would be locked into retail permanently. On the other hand, I don't want to see them be office/R&D, which almost 20 years ago when we did the SOFA that wasn't really happening. Now, that's the threat. It's a big part of why we've lost a great deal of medical office. They've been squeezed out from us allowing big office/R&D firms to be in the Downtown area in a way that, I think, an objective reading of the current zoning does not allow it. I encourage everyone to read carefully the zoning and the permissible uses for Stanford Research Park where it specifically says that hardware and software R&D are not only permitted uses, they're essentially key designated uses, for biotech and all those different things. The Downtown deliberately does not include that. It has general office, and it has definitions of that. I think we've had, for whatever reason, a complete slide from what the verbiage says in our Zoning Code versus how we're implementing it. That's got to be part of this whole discussion about what goes where. That's not specifically retail, but if we're talking about allowing properties to be exempt from a retail Ordinance, I don't want them to go into that bucket. I think those hit my main points on each of the areas. We're at a quarter to 11:00 P.M. I'm going to return to Council Member Holman, but I think it would be much better for us to attempt to agendize a meeting where we pick up on the discussions that we've had here and then attempt to give real guidance to Staff on the

TRANSCRIPT

permanent Ordinance direction that we'd like. Once we wrap this up, we need to go back to the waiver application before us tonight. Council Member Holman.

Council Member Holman: I guess I have a very small number of additional comments about ...

Mayor Burt: I'm returning—if we go back to a whole other go-around of comments, then everybody's got to get a turn.

Council Member Holman: I'm not sure what you're returning to me for. You don't want to ...

Mayor Burt: Because I had committed to you—just a second.

Council Member Holman: You don't want a Motion on this.

Mayor Burt: That's right.

Council Member Holman: You said we want to do separately the 100 Addison appeal. You're returning to me, which I appreciate, but it's not clear to me what you're returning to me to do.

Mayor Burt: I can offer up my recommendation that we don't go into trying to prescribe the permanent Ordinance, but you're still free to do what you want. I'm offering my recommendation, and I committed to you that I'd return to you, so that's what I'm doing. A bunch more comments, everybody else needs a crack at that if we do it.

Council Member Holman: Can I just respond to a couple of things that have been said then? About SOFA II, I agree about Homer Avenue between Ramona and Emerson. Actually it's a strong retail area, and we have now two clothing stores on that block. I wish they were all retail. Parking or not, I think it's a strong parking area. Just a reminder. We do have retail required because—Vice Mayor Scharff was helpful in this too. We do have retail extended from Downtown down Emerson to Homer. I do wonder, when we're including this in the retail Ordinance going forward, we look at south of Homer as well.

Male: (inaudible)

Council Member Holman: Maybe that's right. Maybe it is to Forest because the block between Forest and Homer were already protected as retail in the SOFA II plan I think. I think we were just connecting those. At any rate, that's my memory. Just a response to another couple of questions. I look at this as it's both the loss of retail sales tax dollars and the loss of local

TRANSCRIPT

businesses that we were trying to address in this ordinance. Just in response to Council Member Wolbach, what I was saying about dead spaces and schools, it's because of how the schools are built and designed. They're private schools, and they aren't street facing. That's what I meant by dead space. Just to clarify that. Just one quick addition to the bullets on Slide 10. This is an issue that we have in a variety of locations around town. Retail should be generally open to the public and have a minimum number of hours that they are open and not by appointment. Council Member Scharff referenced the bank. I don't disagree with you. There's also a bank on University Avenue that you have to buzz to be let in. It's hardly a retail use the way it's established now. Those are my responses to questions. Is that where we end up on this discussion? When would this come back, if Staff can give us a date on that?

Mayor Burt: Council Member DuBois. I'm sorry.

Ms. Gitelman: I was just going to make a suggestion. If you're not going to get into further detail this evening on this, we could arrange to come back sometime—it'll probably be October at this point given your agendas—with just a really brief work plan of what we would include in the permanent ordinances for you to take a look at. We'd invite input from those who spoke this evening. If they could get it to us in the next four weeks or so, we could try and incorporate that into—it'll be really brief given the time we have and the amount of work we have to do. It would be something for you to react to on this issue.

Mayor Burt: Good. I think at that time we'd probably want to schedule a really thorough discussion around that. Council Member DuBois.

Council Member DuBois: I was going to try a Motion. I was actually going to go a little further which would be to have Staff come back at that time with a draft Motion for us to react to, based on our input tonight.

Mayor Burt: I think I'd prefer that the Council attempt to do that. That's a bunch of open policy debates that we will have. To ask Staff to come forward with a Motion, I wouldn't support it. You're welcome to do so.

Council Member DuBois: Here's my Motion: Direct Staff to come back with a framework for an Ordinance for Downtown including the SOFA area and a more flexible framework for an Ordinance for the rest of the City.

Vice Mayor Scharff: I will second that.

MOTION: Council Member DuBois moved, seconded by Vice Mayor Scharff to direct Staff to return to Council with a framework for an Ordinance for the

TRANSCRIPT

Downtown Area, including South of Forest Area Coordinated Area Plan Phase 2 (SOFA II) and a more flexible framework for the City as a whole.

Council Member DuBois: I think you've heard maybe slightly different views, but not all that different. The one area for me that I'd like to comment on is I think weakening the bar is a slippery slope. Introducing flexibility sounds good, but if we really intend for retail, retail-like uses, personal services, on the ground floor to be required, I think they have to be required in nearly all cases. I'm open to some flexibility, but I think it needs to be a reasonably high bar. I think requiring documentation, as you've asked for, is a good thing. If somebody asks for an exemption without documentation, it's a good thing to hold that requirement. You've heard ideas for understanding the different kinds of retail on perhaps El Camino. Again, I'm concerned about our neighborhood centers. I think they are at risk as well. Based on what you've heard, you could come back with a framework, maybe give us some options. It may not be the final Ordinance, and we'd have to come back again with that.

Vice Mayor Scharff: I agree that it would be helpful to have you come back. People have talked in general about these two things: let's focus on the Downtown, let's focus on SOFA, and let's have a more flexible ordinance that's legally supportable frankly for the rest of the City, that protects some of the areas that Tom's talked about outside of that and that I've mentioned. I also would like, when we talk about the analysis of Downtown as part of that ordinance, to look at those four things they have on Page 10 and include that in the Motion, if that's all right with you.

Council Member DuBois: (inaudible) four things.

Vice Mayor Scharff: They're consider adjustments to the existing boundary of retail. I obviously think we want to do that. Consider protections outside the GF and for basements, update the definition of basements. We talked about that. Require display windows for nonconforming uses. I would add a fifth one which is look at how we would amortize out nonconforming uses so we start the process on those.

Mayor Burt: Would you say "and which"? Not that all of them (crosstalk).

Vice Mayor Scharff: No, no. Certain nonconforming uses on University Avenue. Really I'm just thinking about University Avenue. I'm thinking about the Wells Fargo Bank. People have mentioned there may be other ones on that.

Council Member DuBois: This is really just to consider it or evaluate it.

TRANSCRIPT

Vice Mayor Scharff: Right, just to evaluate it.

Council Member DuBois: Okay.

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

- A. Requiring display windows on properties with nonconforming uses; and
- B. Considering adjustments to the Ground Floor (GF) boundary; and
- C. Considering protections outside the GF and for basements; updating definitions as needed; and
- D. Options to amortize out certain nonconforming uses along University Avenue."

Mayor Burt: Council Member Holman.

Council Member Holman: I'm wondering if—one, just a little clarification. I think this is clear, but just to be sure. Including South of Forest, it's really SOFA II.

Vice Mayor Scharff: Okay, let's go with that.

Council Member Holman: That's SOFA II. To address actually what Council Member DuBois was saying, a more flexible framework for the City as a whole, did you mean—maybe to clarify or maybe support what you're saying—a somewhat more flexible framework?

Council Member DuBois: Yeah.

Council Member Holman: You'll accept that as a friendly amendment?

Vice Mayor Scharff: I think I'd just rather say "more flexible." Let Staff come back, and we can—this is going to come back to us, and then we can argue about how flexible we want it to be. I don't want to really give direction to Staff to say some or not. I want them to come back, and we can fight about it then.

Council Member Holman: I just heard Staff mention earlier a one year vacancy. That's not going to cut it.

Vice Mayor Scharff: Not with me either, but let's ...

Council Member Holman: As long as Staff's hearing that.

TRANSCRIPT

AMENDMENT: Council Member Holman moved, seconded by Council Member XX to add to the Motion, "somewhat" after "(SOFA II) and a."

AMENDMENT FAILED DUE TO THE LACK OF A SECOND

Council Member Berman: (inaudible)

Male: That doesn't mean we (inaudible).

Council Member Holman: It's not like the one year we have had in the past. That's where we end up in trouble. One other addition to what you have on Page 10 that you've added here as "A, B, C, D" is retail would be generally open to the public and with a minimum number of operating hours. If that's acceptable to the maker and seconder.

Council Member DuBois: Could we extend that to be a more general definition of retail? Along what Council Member Schmid suggested.

Vice Mayor Scharff: What did he suggest?

Council Member DuBois: He had an economic definition for retail rather than listing music stores.

Council Member Holman: That's okay if it gets added into the definition of retail. Right now we don't have that, and that's how we have the bank situation on University Avenue that you have to be buzz to even be let in.

Vice Mayor Scharff: I'm good with it

Council Member DuBois: I'm okay with it too.

Council Member Holman: You want to add this to the definition of retail?

Mayor Burt: I don't know if I'd call it a definition, but it's maybe a requirement. Whereas, Council Member Schmid was really talking about a definition that would precede our laundry list of examples.

Vice Mayor Scharff: Why don't we just say a requirement then? Does that work for you?

Council Member Holman: Requirement works for me, absolutely.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to add to the Motion, "add to the requirement of Retail; 'generally open to the public with a minimum number of hours.'" (New Part E)

TRANSCRIPT

Council Member Holman: Also to address the Staff question that the items on Slide 5 that are also in the Staff Report, the three bullets at the bottom, for Staff to come back with clarifications on those three bullets. Probably don't need that in the Motion. I think you're going to do that anyway. The interpretation of permitted and operating, and then the last bullet was retail uses that are not permitted. You're going to come back with that cleanup anyway, right? You don't need that in the Motion, do you?

Ms. Gitelman: I think you'll see in the framework that we're going to try and dispense with the regulation of legal and nonconforming uses and clarify those provisions.

Council Member Holman: Say that again about legal and nonconforming.

Ms. Gitelman: Currently the interim use protects legal and nonconforming retail uses from converting, which is highly unusual. You want your Zoning Ordinance to start transitioning things to a more conforming environment. Now that we're transitioning to a permanent Ordinance, we'll have to clean that up and also address this language that's been so difficult to work with about permitted or operating. We'll be doing that for sure.

Council Member Holman: I'm not so sure I would want to eliminate legal and nonconforming uses.

Ms. Gitelman: Let us put it in the work plan and try and explain what I didn't so good a job of explaining right now. If you don't want to proceed with that, we can come up with an alternative.

Council Member Holman: I think I'm okay here.

MOTION RESTATED: Council Member DuBois moved, seconded by Vice Mayor Scharff to direct Staff to return to Council with a framework for an Ordinance for the Downtown Area, including South of Forest Area Coordinated Area Plan Phase 2 (SOFA II) and a more flexible framework for the City as a whole, including:

- A. Requiring display windows on properties nonconforming uses; and
- B. Considering adjustments to the Ground Floor (GF) boundary; and
- C. Considering protections outside the GF and for basements; updating definitions as needed; and
- D. Options to amortize out certain nonconforming uses along University Avenue; and

TRANSCRIPT

- E. Add to the requirement of Retail; "generally open to the public with a minimum number of hours."

Mayor Burt: I see no more lights. We can go ahead and vote on this and then return to the waiver issue. That passes 8-0 with Council Member Filseth absent. That was good work.

MOTION AS AMENDED PASSED: 8-0 Filseth absent

Mayor Burt: Let's go on to the issue of the waiver request for 100 Addison. Just to frame it—maybe people disagree with the three choices. Keep things as they are; completely waive them; or do something in between. Council Member Holman.

Council Member Holman: On this one, I'm going to move that we deny the request for a waiver at the property at 100 Addison and support the Director's decision. If I can get a second, I'll certainly explain why.

Council Member DuBois: I'll second that.

MOTION: Council Member Holman moved, seconded by Council Member DuBois to deny the request for a waiver at 100 Addison Avenue from the Retail Protection Ordinance and uphold the Director's decision.

Council Member Holman: Thank you for that. There are a number of reasons why I don't support the conversion of this. I think there are numerous opportunities here. Because it's not in the core, it's not going to rent for the same amount of money that it would if it was in, let's say, the 500 block of Bryant or something. It's not, and that's a given. I think the property owner understands that. What's troubling me is a few things. One is—somebody else mentioned this. The owner has created their own hardship by trying to raise the rent on Addison Antiques, which left because of the raised rent. I know ...

Male: That's not true.

Council Member Holman: Sir. I know that from two owners, that I know personally, who own Addison Antiques and two other dealers that were at the property. No mention was ever made of Anthropologie leaving. It was always about raised rents. What's troubling me and sort of supports that is the rent was \$1.35, I think, or whatever it was that the owner indicated. Addison Antiques closed on June 15. On June 22, there was a letter of intention that was signed where the rent was indicated as \$5—I forgot to look it up. It was over \$5. That's a very large hike. That's June 22nd. In August, August, the first request for an exemption was filed. There was

TRANSCRIPT

hardly any attempt in that short period of time to—there's not time for that big of an outreach to try to re-rent the space as retail. I said earlier that I think there are all kinds of purposes that this space could accommodate. Industrial space, I look at this building as being industrial space with the roll-up doors and the concrete block construction. It's highly sought out in other communities. We haven't done that. We haven't been creative enough to try to use that kind of space for really creative uses. I started mentioning earlier Big Daddy, Architectural Salvage, Turner and Martin, those kinds of design firms that could be design and gift sales. Turner and Martin was priced out of Downtown. It could be a plant nursery and a garden store combined. It could be an art gallery. There are all kinds of things that those spaces could be used for. If I were owning that property, I'd be working closely with the owners of the Anthropologie building to create an environment there, to absolutely create an environment there that would be a destination place and something that the community could support and embrace. I'm not persuaded that a real attempt has been made to reach out, to try to get the kinds of uses there that would actually be attracted to that kind of space. Again, I went online and all I saw was just it's posted. There's no creative attempt to attract a maker kind of retail space or anything else like I've tried to mention. That's why I'm supporting the Director's determination.

Mayor Burt: Council Member DuBois. I do want to caution us against asserting privileged claims of fact that we as a body don't have and that we're not giving the applicant an opportunity to respond to in that regard. We should be cautious about something like that.

Council Member Holman: Actually I'm responding to the applicant.

Council Member DuBois: For 100 Addison and for retail in general, part of the key question is what's a taking versus diminution in value based on retail rents instead of office rents. If we allow office rents to be considered as the basis for a taking, then the Ordinance is entirely meaningless. We know office rents are higher than retail rents. Anyone can make this argument for an exemption. The economic hardship analysis that was provided showed a lost opportunity cost based on office rent. Again, while I think it was a creative approach, it kind of flies in the face of the ordinance. I don't think there should be an expectation of the same rents as an office or even the same rents as Downtown. I think the reason we put the temporary ordinance in place is still there. It's a detriment to the neighborhood. The ordinance itself says it impacts the public welfare, and I think that's still true. This is an Interim Ordinance, and it expires in six months. Based on the Staff Report, it looks like more of a desire not to comply. I didn't see a lot of evidence in the report of marketing for retail. Saying its unsuitable for

TRANSCRIPT

retail when it has been retail was hard to understand. You argued about a lack of windows. I would believe windows would be nice for an office as well, so it's kind of the same. I do think we need equal treatment. Like I said earlier, that means a high bar for an exemption. I think we already committed to promptly review this temporary Ordinance and come back with a permanent ordinance. At that time, we can potentially consider a more flexible definition of exemptions. For now, Staff has followed the intent of the emergency Ordinance. I support upholding their decision.

Mayor Burt: I want to pause for a moment and allow the City Attorney to wade in on the issue of whether we—even though this is not a quasi-judicial matter—need to address any disclosure of any ex parte communications. Why don't we go ahead and—Molly, you want to give some guidance?

Molly Stump, City Attorney: On closer review, it's not a typical item that we have. We didn't mark it as a quasi-judicial item, but it really is in the nature of a quasi-judicial item. We should take a little break and do our disclosures. What you're wanting to do here under your rules, which make sure that there's a fair process for everyone, is identify any conversations or information that you've gathered about the item outside of the material that's been presented by Staff. If you do have those items, you want to be specific, especially if they've influenced your thinking in any way. We need to provide an opportunity for effected parties to respond to that. The Chair will do that tonight. Thanks.

Mayor Burt: Let me just clear the board. Council Member Holman.

Council Member Holman: Way back before the antique store was closing but when they were about to close—I'm going back a ways—I went into Addison Antiques fairly regularly. In conversation with two of the owners, Deborah Kohler and Ken Allsman, both indicated to me that the reason for their departure was a rent increase. There was no reference of anything other than a rent increase. More recently but it's still been—there was no discussion then about any kind of waiver or anything. It was just like they were going to be leaving. Fairly more recently—I do not recall when; it's in an email somewhere. There was a communication from—I believe it was from Ken Allsman indicating that the rent that they were paying was in line with what the owner has said.

Mayor Burt: Anyone else? I'll say that a few months ago I was contacted by Mr. Kaboli, who essentially presented the issues and the concerns of the applicant and provided no additional information. Council Member Kniss.

Council Member Kniss: I know Julie Keaty [phonetic] and have known her for 20 or 30 years. Most of you probably know she worked in Palo Alto

TRANSCRIPT

during that length of time. I don't know Mr. Morris in the same way, but I certainly have known her for a long period of time.

Mayor Burt: We just talk about communications specifically related to this item and in particular any information that we ...

Council Member Kniss: There's nothing in here you're not reading about.

Mayor Burt: ... in particular any information that we receive that is not in the public record.

Council Member Kniss: I don't have anything to share that's not in the public ...

Mayor Burt: Then you don't have to speak on it. Council Member Berman.

Council Member Berman: I've received communications from the applicant. Nothing that's not in the public record. I don't think I even had a chance to reply to the communication that I received. Sorry about that. I didn't learn anything that others don't know.

Mayor Burt: Council Member Wolbach.

Council Member Wolbach: I received a voice mail and also an email from Judy Ellis, sharing the concerns that we've heard tonight from the applicant.

Mayor Burt: I see no more lights. I think we're back to Vice Mayor Scharff.

Ms. Stump: Excuse me, Mr. Mayor.

Mayor Burt: I'm sorry.

Ms. Stump: It would be important to invite the effected parties to respond if they wish to do so.

Mayor Burt: I want to give the applicant for the waiver an opportunity to respond to any additional—yes, you're welcome to come forward—information that was put forward by Council Members.

Mr. Morris: Thank you. It's late. In response to the comments that Council Member Holman made, I had many conversations with Ken and Debbie and everyone there. I remember the phone call I got at home. Did you know that Anthropologie is going to be moving to Stanford? I said, "No." It was in today's paper. What are we going to do? The majority of our business is from Anthropologie. As time went on, we extended leases every two years. When it came to the end of this lease, yes, I did tell them there would be an

TRANSCRIPT

increase in rent because they only wanted one year and not two years to try and stay in business before Anthropologie left. Yes, but it wasn't \$5 a foot. It wasn't \$4 a foot. It wasn't even \$3 a foot. Knowing what the retail rate was in that part of town at that time, it was either \$2.50 or \$2 a foot. I'd have to go back and check my notes to be honest with you. One of the four members of Addison Antiques LLC had already left. Debbie Kohler had already told me that some of the people that were renting space from the antique collective had already left, that their business was slow. With Anthropologie leaving, they didn't see where they could sign a two year lease. They only wanted one year. I said, "It's been a great relationship. This is what I want." They said, "Mike, with Anthropologie leaving, with business slow, we're not going to renew or opt." That's the facts as I remember it. (crosstalk)

Mayor Burt: Thank you. Now, Vice Mayor Scharff.

Vice Mayor Scharff: Thank you. Thank you to the applicant for that. To be honest, I'm going to completely accept your version of the events as the way I think about it up here. I'm very hesitant frankly on an Ordinance that's expiring in March to have Staff make many changes to it. I'm really curious if we could allow, as part of this waiver as the Mayor said, something in between. What I'd like to see us allow in between is some sort of educational use there. I think that would open up possibilities for them. I think it would be interesting to see how that goes. I guess I will just move, as long as no one from the City Attorney's Office or anyone, that we deny the waiver but we allow them to put in an educational use at the same time.

Council Member DuBois: Is that an amendment?

Vice Mayor Scharff: That would be an amendment.

Council Member Kniss: Is that a Motion?

Vice Mayor Scharff: First, I'm offering it as an amendment.

Mayor Burt: The maker and the seconder would have to accept it first. If not, he can propose it as a ...

Council Member DuBois: I'd accept it.

Vice Mayor Scharff: You would?

Council Member Holman: I won't accept it, and here's why.

Mayor Burt: All you have to do is just say yes or no.

TRANSCRIPT

Council Member Holman: I won't accept it. I made comments earlier about there's toxics probably onsite.

Mayor Burt: We got it.

Vice Mayor Scharff: I need a second.

Council Member DuBois: I'll second it.

AMENDMENT: Vice Mayor Scharff moved, seconded by Council Member DuBois to add to the Motion, "and allow education uses in the interim ordinance."

Mayor Burt: Now, you can speak to your amendment.

Vice Mayor Scharff: We heard from some of the educational institutions earlier, talking about how difficult it is to find that kind of space and how they're being squeezed out both from the retail side because the interim retail Ordinance doesn't allow it and other spaces don't allow office. There seems to be a clear market for something like this. I think that would help the person requesting the waiver while at the same time providing a useful service in Palo Alto of which we have a shortage of space. I think this is a good compromise on the interim Ordinance that would allow the person who is seeking the waiver to take advantage of that.

Council Member DuBois: (inaudible)

Vice Mayor Scharff: Yes. That's correct.

Mayor Burt: Council Member DuBois, you want to speak to your ...

Ms. Silver: Excuse me. By clarification, I'm assuming that what you're proposing is essentially a granting of the waiver, but then also a direction that Staff comes back with an amendment to the interim Ordinance. This is essentially a zone change, so we have to reach out to the neighbors of the existing property.

Vice Mayor Scharff: My preference would be, if I can't do it that way, simply to change it for them tonight on that, not grant the waiver, but just expand the definition for just them tonight. You're saying I can't do that?

Ms. Silver: Yes. That's problematic.

Vice Mayor Scharff: If I can't do that—that's why I asked when I started this, if Staff jumps in, what would be the way to achieve that given the shortage of—how would I achieve that in a quick period of time?

TRANSCRIPT

Ms. Silver: We could do an amendment ...

Vice Mayor Scharff: To the Interim Ordinance.

Ms. Silver: ... to the Interim Ordinance.

Vice Mayor Scharff: Which I would be fine with.

Council Member DuBois: I don't want to do that (inaudible) had six months left. (inaudible)

Mayor Burt: You're withdrawing your second? Is that what you're saying?

Council Member DuBois: Yeah. I really didn't want to update the interim Ordinance with only six months left.

AMENDMENT WITHDRAWN BY THE SECONDER

Mayor Burt: Does anyone else want to ...

Council Member Kniss: I'll second it.

AMENDMENT: Vice Mayor Scharff moved, seconded by Council Member Kniss to add to the Motion, "and allow education uses in the Interim Ordinance."

Mayor Burt: Council Member Kniss, you want to speak to your second?

Council Member Kniss: I would. I also need a quick definition of what education is. Looking down at legal or at Staff.

Ms. Gitelman: Council Member Kniss (crosstalk) ...

Council Member Kniss: Is it a tutoring service? Could it be a ...

Ms. Gitelman: We could look at the fine points of the definition when we come back with the Ordinance. I should mention it's going to take time away from the work we just agreed to do on the permanent ordinances. If you're directing us to come back with changes to the interim Ordinance, we would come back with a definition the Council could react to. I'll have to consult with City Attorney about whether it has to go to the Planning and Transportation Commission (PTC) or ...

Council Member Kniss: The Motion says education uses. If we were to add that in and vote for it tonight, who makes the decision about what an education use is?

TRANSCRIPT

Ms. Gitelman: You would make that decision when the Interim Ordinance comes back.

Mayor Burt: Don't we have existing definitions that we use in our zoning?

Ms. Gitelman: We do. Would you like us to look in the Zoning Ordinance now?

Vice Mayor Scharff: Yes.

Mayor Burt: First, that would be helpful. Second, I don't see why it's going to be much of a workload to just take that and plug it in. I don't get it.

Council Member Kniss: If I can continue?

Mayor Burt: Sure.

Council Member Kniss: It would seem as though education uses is one of the most desirable in the community. Marc and I happened to be at a film yesterday, hearing about the dearth of any kind of childcare, education use, whatever in this community. Somebody else spoke about that tonight. I can't imagine it would be extremely complicated, but I imagine what the applicant may decide to do is just not pursue this either, but at least the option is there. As a governing body, putting forth something that involves education in our community is a good goal.

Mayor Burt: If it's okay, while Director Gitelman is looking that up, I'll go ahead and offer a couple of comments. Once again this site was part of a careful SOFA II consideration. It was not intended to be limited to retail nor even retail and educational. It was a variety of uses that the RT-35 has there. I said earlier what I don't want to see is it become another software coding center. That's where I'd be coming from, to assure it would be limited to the uses that were envisioned in the SOFA II. It was pretty well thought through that this outside—the real debates we had in SOFA II were around some of those Homer traditionally retail spaces. This wasn't part of the debate. I would actually be open to expanding this to medical office as well. I think that's a modest increase. It doesn't allow everything that it's permitted currently, absent the interim ordinance. It would give two choices beyond retail. I frankly think that we have been seeing medical offices get squeezed out of the community. I don't know whether there's support for that. I will ...

Council Member Holman: Can I ask a question of Staff?

Mayor Burt: Yep.

TRANSCRIPT

Council Member Holman: I don't have my computer with me. I don't remember all the uses that are allowed in RT-35.

Ms. Gitelman: We can look that up after we respond to your question about educational uses. At a minimum, if we wanted to capture a range of educational uses, we'd have to look at 18.104.030(23), business or trade school, meaning a use except a college or university providing education or training on business, commerce, language or similar activity, etc. Also, there's a definition of colleges and universities. There's a daycare center definition that includes facilities licensed by the State for non-medical, daytime care included but not limited to nursery schools, preschools and similar facilities. There may be one or two more definitions in here that we'd have to capture and consider as part of the interim ordinance changes.

Mayor Burt: That's why you'll need to come back when we actually have the Ordinance with ...

Ms. Gitelman: That's correct.

Mayor Burt: ... a more clear recommendation on how to capture the intent of educational uses. That's not a complete answer to your question, but is that good enough for now?

Council Member Kniss: It's a good direction.

Mayor Burt: Council Member Berman. I'm sorry.

Council Member Kniss: Are you adding your medical at this point?

Mayor Burt: I'll go ahead and offer that as an amendment to the amendment.

Vice Mayor Scharff: No.

Mayor Burt: The maker of the Motion did not accept it. I will offer it as a separate amendment to the amendment if I have a seconder.

Council Member Berman: I'll second it, but I have some questions.

AMENDMENT: Mayor Burt moved, seconded by Council Member Berman to add to the Motion, "and allow education and medical office uses in the interim ordinance."

Mayor Burt: I've already spoken to it. Council Member Berman.

Vice Mayor Scharff: I'm going to withdraw my original Motion.

TRANSCRIPT

AMENDMENT WITHDRAWN BY THE MAKER

Council Member Berman: Your original amendment?

Vice Mayor Scharff: Yep.

Mayor Burt: Instead it just becomes—I don't know what the point is. We can vote on it separately or together. It doesn't really change. The next action is we'd see whether the medical office passes. If it doesn't, then it falls back to your amendment. Fine, whatever you want. I will offer the amendment. Please keep it up there. I'm going to go ahead and just—if you replace Vice Mayor Scharff and put my name in there, we'll just retain it. Council Member Berman.

Council Member Berman: Did you mean to just add medical office or did you want to restrict uses? I think there's a broader set of uses that could be under RT-35. (crosstalk)

Mayor Burt: I was intending to just expand it to medical office rather than all uses under RT-35.

Council Member Berman: I'd be okay with that. Part of it is we are going to be revisiting the permanent Ordinance. That will be a longer conversation, and I think you'll see more change. I hope I won't be on the Council at that point, but I hope you'll see more change to some of the really outlying regions of the Downtown area that the ground-floor retail ordinance falls under. My concern was just having education. I'd be the biggest proponent of encouraging as much preschool and childcare as possible in town, but there are a lot of complications with that. I don't know enough about the site to know whether or not it's even viable under existing health and safety laws for that type of use. I don't think that just restricting it to that type of addition—I just don't know whether or not that even helps. Adding a secondary use like medical office provides some flexibility to the owners. If they want to wait six months or seven months until more changes are made at the time that we pass a permanent Ordinance, that's definitely an option. Here what we're trying to do is create some flexibility. Without knowing more about the site, I don't even know if it's a huge help, but at least it's something before the permanent Ordinance in half a year.

Mayor Burt: Council Member Schmid.

Council Member Schmid: Just a clarification. The sentence as it reads says in the interim Ordinance. Does that mean that we are allowing education, medical offices throughout the City in retail sectors? Why just these two

TRANSCRIPT

then? Do we want an overwhelming number of these things appearing all over the City?

Mayor Burt: Let me ask is there any way to accomplish this in a more narrow way? That was the whole ...

Ms. Silver: I think you can add an exception. There are two ways to do it. One is to add it to the definition of retail-like uses and just make them permitted. The other way is to add another exception that says something like "if the site has no surrounding retail uses, then it can convert to ...

Mayor Burt: Could we do it simply in the SOFA II area or RT-35?

Ms. Silver: Yes.

Mayor Burt: I would like to then narrow the impact of this to properties in RT-35 zoning. It's in the SOFA area. I'll say that it's one of the few areas of the City that had gone through and had a very deliberate consideration of the zoning when the SOFA II plan went through. If you want to chat, I'll go to a next Council Member, and then you can return with clarifications for us. Council Member Wolbach.

INCORPORATED INTO THE AMENDMENT WITH THE CONSENT OF THE MAKER AND SECONDER to add to the Amendment, "for properties in SOFA II, Residential Transition-35 Zone (RT-35)."

Council Member Wolbach: I just wanted to ask a quick question about medical offices. Just want to check. Does that include mental health services, psychologists, psychiatrists, therapists, things like that as well? We've heard some concern about possible displacement of businesses like that, small practitioners like that, in the community. Of course, we know how important they are for the community right now.

Ms. Gitelman: Yes, those type of uses are considered medical offices. I should just remind the Council that medical office uses greater than 5,000 square feet are subject to the annual office limit.

Mayor Burt: This is smaller, right?

Ms. Gitelman: It doesn't say small. If ...

Council Member Berman: (inaudible) smaller than that.

Ms. Gitelman: If someone had proposed a large medical office use in one of these buildings, it would be subject to that other set of controls.

TRANSCRIPT

Mayor Burt: Got you. Cara, did you have any follow-up yet or did you ...

Ms. Silver: I think the language that you've proposed now is fine.

Mayor Burt: Council Member Holman.

Council Member Holman: Two things. As I understood the amendment, it was SOFA II RT-35 zone, not just SOFA.

Mayor Burt: I think that's better clarification.

Council Member Holman: SOFA II RT-35 zone. My original question was to Staff. Is medical office an allowed use in RT-35? It is an allowed use? That's helpful to understand. The other thing is—never mind. I'm done.

Mayor Burt: Council Member DuBois.

Council Member DuBois: I think we're definitely not doing our best work after 11:00 P.M.. I just want to point out again daycare centers are already allowed under our retail definitions. We don't need to worry about those. We're tasking Staff to change an interim Ordinance. It's likely by the time we have a second reading, it'll probably be in effect for 30 or 60 days. I'd much rather have Staff working on the permanent Ordinance at this point. We have two other properties requesting exemptions, so we're creating this exemption for SOFA II. It just seems like a very uneven playing field. I'm not going to be supporting this amendment.

Mayor Burt: Vice Mayor Scharff.

Vice Mayor Scharff: Now we've gotten back to what I originally asked for. We're just adding the medical office. We're only applying this to this property. That's really where we end up on this.

Council Member DuBois: (inaudible) across the street.

Vice Mayor Scharff: The Anthropologie site, is that also RT-35? We're doing the Anthropologie site and we're doing this. The Anthropologie site is bigger than 4,000 square feet. How does that affect it if that suddenly becomes medical office, which is a likely outcome if we pass this?

Ms. Silver: My understanding is that medical office could go up to 5,000 square feet in RT-35. 5,000 square feet of Anthropologie could take advantage of this.

TRANSCRIPT

Vice Mayor Scharff: They'd be limited to the 5,000. To Council Member DuBois' point, what is the timing of this? If this passes, it doesn't go into effect until we have a second reading, right?

Ms. Gitelman: We need to draft an Ordinance and bring it to you for a first reading.

Vice Mayor Scharff: Why don't you lay out the timeline for me in days, in months. What is it going to be?

Ms. Gitelman: We're going to have to consult with the City Attorney about whether it needs to go to the PTC. The original Ordinance was an Urgency Ordinance that didn't go to the Planning Commission. We're just going to have to consult and get back to you on that.

Vice Mayor Scharff: It doesn't work for me.

Mayor Burt: Let's see whether—let's take a pause. Does the City Attorney's Office have an input on what the process route would be?

Ms. Silver: We don't know. My sense is that this amendment is very discrete. The drafting of the amendment will not take time. There's an upcoming Planning Commission meeting.

Mayor Burt: Would it even need to go to the Planning Commission?

Ms. Silver: It's an amendment to a Zoning Ordinance, so it typically does.

Vice Mayor Scharff: How long does that typically take? Are we going to be able to schedule it on the next meeting? The question is if this comes back to us in January, I'm voting no.

Mayor Burt: Let's just hear what the ...

Vice Mayor Scharff: If it's coming before, I'd probably vote yes.

Ms. Gitelman: If we could get this on the PTC agenda in early September, then it takes 4-5 weeks for an Agenda Packet to get to Council. You're three or four weeks to a Planning Commission meeting, then add four or five weeks to get to a Council hearing. That's your first reading. You need a second reading after two weeks. It's not going to happen instantaneously. I also wanted to point out the way this is written, it would apply to any existing retail use in the SOFA II RT-35 district. I don't know how many of those there are, because we haven't done that analysis yet. There may be others, other than the two we've been discussing this evening.

TRANSCRIPT

Vice Mayor Scharff: Thank you.

Mayor Burt: Council Member Holman.

Council Member Holman: I apologize for this. I just pulled up the map that's in our Packet on Page 303 of the RT-35 zone. Understand that this change would mean that Watercourse Way could be converted to medical office. It means that Reach could be converted to medical office. It means the City of Paris and the building next to that could be converted to medical office. It means the Creamery store could be converted to medical office. That one's not very likely to.

Mayor Burt: I get the list.

Council Member Holman: I just want Council Members to understand the breadth and potential impact.

Mayor Burt: Let me ask a question of the City Attorney's Office. In the discussion that we've had, we've really been thinking that properties on Alma, on the real outskirts is what we are more open to changes on. Could we further restrict this and say that this would apply to RT-35 properties on Alma? It's not spot zoning. It would be four or five properties total.

Ms. Silver: Yes, that would be fine.

Mayor Burt: I agree with the point. I'd be concerned if it could apply throughout SOFA. Our intent really was to look at outlier properties that have gotten pulled into this. Now, that's the narrower impact of the amendment. Last one, Council Member Wolbach.

INCORPORATED INTO THE AMENDMENT WITH THE CONSENT OF THE MAKER AND SECONDER to add to the Amendment, "on Alma Street."

Council Member Wolbach: Just so we can make sure to capture this site. Where it says "on Alma," could we maybe change that to "on or abutting Alma"? Just to make sure (crosstalk).

Mayor Burt: (crosstalk) addresses.

INCORPORATED INTO THE AMENDMENT WITH THE CONSENT OF THE MAKER AND SECONDER to add to the Amendment, "or abutting" after "(RT-35), on."

AMENDMENT RESTATED: Mayor Burt moved, seconded by Council Member Berman to add to the Motion, "and allow education and medical

TRANSCRIPT

office uses in the interim ordinance for properties in SOFA II, Residential Transition-35 Zone (RT-35), on or abutting Alma Street."

Mayor Burt: Let's go ahead and vote on the amendment. That amendment fails on a 4-4 vote. Vice Mayor Scharff.

AMENDMENT FAILED: 4-4 DuBois, Holman, Scharff, Schmid no, Filseth absent

Vice Mayor Scharff: I'd like to make another amendment that is the same without medical office use.

Mayor Burt: Is anybody seconding that?

Council Member Kniss: (inaudible)

Council Member Berman: It's your original ...

Vice Mayor Scharff: It's the exact same amendment.

Mayor Burt: Basically it's taking the amendment before us and deleting medical office uses.

Council Member Kniss: Let's try it.

Mayor Burt: Does that mean you're seconding?

Council Member Kniss: I'll second.

AMENDMENT: Vice Mayor Scharff moved, seconded by Council Member Kniss to add to the Motion, "and allow education uses in the Interim Ordinance for properties in SOFA II, Residential Transition-35 Zone (RT-35), on or abutting Alma Street."

Mayor Burt: Do you want to speak further to that?

Vice Mayor Scharff: No.

Mayor Burt: Council Member Kniss, did you want to speak to it?

Council Member Kniss: No.

Mayor Burt: Please vote on the board. That passes on a 5-3 vote. That ends this item. Thank you all for hanging in there with us. Pardon me? Sorry. We have a clarification.

AMENDMENT PASSED: 5-3 DuBois, Holman, Schmid no, Filseth absent

TRANSCRIPT

MOTION AS AMENDED RESTATED: Council Member Holman moved, seconded by Council Member DuBois to deny the request for a waiver at 100 Addison Avenue from the Retail Protection Ordinance and uphold the Director's decision and allow education uses in the interim ordinance for properties in SOFA II, Residential Transition-35 Zone (RT-35), on or abutting Alma Street.

Vice Mayor Scharff: I think we need to vote on the Motion.

Mayor Burt: Now we have to vote on the primary Motion. Let's see. What are we—that was the amendment.

Ms. Silver: The primary Motion was to deny the waiver.

Mayor Burt: To deny the—the primary Motion is to deny the waiver. The amendment was to allow this within the existing interim Ordinance. We still have to vote on the primary Motion, which is to deny the waiver. That passes on a 6-2 vote with Council Members Berman and Kniss ...

Council Member Berman: Wait a second.

Council Member Kniss: Isn't that the other way around?

Mayor Burt: We're voting to deny the waiver. Isn't that what we're doing?

Vice Mayor Scharff: Yeah.

Mayor Burt: Yes means you're voting to deny the waiver. Did you want to change your vote? Let's clear the board and revote. Try it one more time. That passes 8-0 with Council Member Filseth absent. Now we're done.

MOTION AS AMENDED PASSED: 8-0 Filseth absent

13. Policy Discussion on Comprehensive Plan Update Environmental Impact Report Scenarios 5 & 6 (Staff requests this item be continued to August 29, 2016).

This Item was continued to August 29, 2016.

Inter-Governmental Legislative Affairs

14. Status Update and Potential City Responses to the Governor's "By Right" Housing Bill and Pending Bills Addressing Housing Issues.

Mayor Burt: We really don't have a need to ...

TRANSCRIPT

James Keene, City Manager: Item Number 14 was only put on there if you wanted to take action. We're not requesting any specific action. As I indicated earlier, we've run out of time here and there.

Mayor Burt: Any Council Member questions or comments or announcements?

Council Member DuBois: On 14, (inaudible) bill that's going next week?

Council Member Berman: You just want an update?

Mayor Burt: Council Member DuBois is asking about a density bonus bill that is going next week. Is that more timely?

Council Member DuBois: There were several bills in this item. I thought several were still alive.

Council Member Berman: AB 2501 is the one you were wondering about. (inaudible) update on what happened.

Hillary Gitelman, Planning and Community Environment Director: It's scheduled to be heard tomorrow.

Mayor Burt: Is there any action that we would be potentially taking? I would think it's—we don't matter.

Mr. Keene: (inaudible)

NO ACTION TAKEN

Council Member Questions, Comments and Announcements

Mayor Burt: Council Member comments or announcements.

Adjournment: The meeting was adjourned at 11:40 P.M.

Mayor Burt: Seeing none, meeting's adjourned.