

CITY OF PALO ALTO CITY COUNCIL WORKING MINUTES

Regular Meeting March 11, 2013

The City Council of the City of Palo Alto met on this date in the Council Chambers at 7:10 P.M.

Present: Berman, Burt, Holman, Price, Scharff, Schmid

Absent: Klein, Kniss, Shepherd

AGENDA CHANGES, ADDITIONS, DELETIONS

None

SPECIAL ORDERS OF THE DAY

 Presentation Acknowledging Palo Alto Art Center Foundation Final Payment of \$418,743 for the Palo Alto Art Center Facility Renovation Expenses, as well as a Gift of \$508,057.10 in Fixtures, Furnishings and Equipment.

Karen Kinzel, Director of the Palo Alto Arts Center introduced current and former Board Members. The Palo Alto Arts Center presented their final payment for the completion of the renovation for the Palo Alto Arts Center. There were donations of almost \$2.2 million contributed to the Palo Alto Arts Center.

Council Member Price noted that the Palo Alto Arts Center put forth a tremendous effort, including the work the employees put forth in creating the Arts Center.

Mayor Scharff accepted the final payment for the Palo Alto Arts Center and gave commendation for the work done.

2. Proclamation for Tsuchiura and Introduction of Marathon Representative of the City of Tsuchiura.

Kyoko Nakajima, Vice President of the Sister City relationship for Neighbor's Abroad Program introduced Jason Golbus, the person designated to represent Palo Alto in running the marathon in Tsuchiura in April, 2013. She also introduced the exchange students, the hosts, & the guests involved in the exchange program. A background of the Tsuchiura program was given. Gratitude was expressed to Palo Alto for the support given to Japan during the Tsunami disaster.

Mayor Scharff presented the Proclamation for Tsuchiura, Japan and mentioned all students involved in the program. A letter of appreciation was presented and read from the Mayor of Tsuchiura, Japan.

CITY MANAGER COMMENTS

James Keene, City Manager, encouraged residents of and commuters into Palo Alto to complete the City-Wide Transportation Survey online to determine travel modes and commute patterns. The City was in the process of approving a trial run for the Edgewood Eats special events application to hold the event at the First Congregational Church on March 18, 2013. The Cubberley Community Advisory Committee report would be presented formally to the Council and the Palo Alto Unified School District (PAUSD) on March 14, 2013, at 7:00 P.M. at the Cubberley Community Theatre.

ORAL COMMUNICATIONS

Neilson Buchanan spoke regarding quality standards for Downtown North. The most obvious concern was parking. Of 1,600 available parking spaces, 1,200 were filled during the week. He hoped the Council would provide a definitive solution promptly.

Wynn Grcich reported water from the Crystal Springs reservoir was used to flush a chloramine spill from a nearby creek. She preferred drinking the toxin-free water. Water quality reports were misleading regarding the level of lead in water.

Ken Alsman believed the March 18, 2013 Council Agenda could include a Developer request to use City-owned land to build parking for his private use. He requested the Council not consider the request.

CONSENT CALENDAR

None

ACTION ITEMS

3. Certification of the Final Environmental Impact Report and Adoption of an Ordinance Amending Palo Alto Municipal Code Section 5.35 to Expand Plastic Bag Ban to Retail and Food Establishments, Require Retailers to Charge Fee for Paper Bag Use and Provision of Phased Implementation.

Council Member Berman recused himself as having a conflict, because he invested in a company that made reusable plastic bags.

Julie Weiss, Environmental Specialist reported changes to the plastic bag Ordinance would assist with reducing plastic litter in creeks and the Bay. In the 1980s, the City required retail businesses to offer only paper bags or a choice between paper and plastic bags. Approximately five years ago, Staff implemented a Reusable Bag Task Force that recommended an Ordinance apply to all retail businesses, be implemented all at once, and require a charge for paper bags. Because of economic concerns, the Council prohibited the distribution of plastic bags at grocery stores and committed to extensive outreach to encourage use of reusable bags. Approximately 56 percent of people continued to use paper bags. Plastic litter remained a problem despite efforts to prevent litter and plastic pollution. Changes to the current Ordinance could address these problems. Staff proposed a prohibition of single-use plastic bags in all retail and food establishments and a charge of \$0.10 to \$0.25 for paper and reusable bags at retail businesses. The charge would drive behavior changes. Other jurisdictions saw reductions in bag usage when a fee was implemented. Staff proposed businesses show the bag charge on the receipt as another driver for behavior change. Stores should report bag sales in order to measure the impact of the Ordinance. Staff proposed updating the durability standards for reusable bags using the best standard available. By making these changes, approximately 26 million fewer single-use bags would be used by the end of the first year. In addition, these changes would assist the City with meeting storm water goals and Zero Waste goals. Staff proposed prohibiting plastic bags but not requiring a paper bag charge at restaurants, because the California Restaurant Association preferred not to utilize reusable bags at restaurants. In addition, restaurants could use product bags for items that could spill. An Environmental Impact Report (EIR) evaluated the proposed project and six alternatives. Utilizing conservative studies and assumptions, all alternatives were beneficial or had less than significant impacts for all evaluation categories. By the end of the second year, Staff anticipated a reduction of 26 million paper and plastic bags, and an 89 percent conversion from usage of paper bags to reusable bags. Staff recommended the Ordinance become effective for retail businesses on July

1, 2013, and for food service establishments on November 1, 2013. In making these changes, there would be a reduction of plastic litter and a reduction of environmental impacts from paper bags.

Council Member Burt believed the Council's discussion after hearing public comments was better informed and resulted in an effective outcome. He inquired whether Council discussion was restricted.

Mayor Scharff answered no. Council discussion would occur prior to and after public comment.

Council Member Schmid inquired about Staff's recommendation not to use biodegradable bags.

Ms. Weiss explained that compostable plastics did not breakdown in creek conditions. They were compostable only in hot, controlled municipal compost facilities. Use of compostable bags would not affect the problem.

Council Member Schmid recalled a letter regarding use of paper bags. In response to the \$0.25 charge for paper bags, households would purchase plastic bags to contain food and pet wastes, which would result in an increased number of plastic bags in landfills. That was not a green solution.

Ms. Weiss explained the idea that bags would decompose in a landfill was not accurate; essentially nothing biodegraded in a landfill due to the sealed environment. Alternatives to trash can liners and pet waste were produce and bread bags. If residents needed to purchase plastic bags, then the Ordinance would prevent the bags from being released into the environment.

Council Member Schmid asked where biodegradable bags went after they were collected curbside in San Francisco.

Ms. Weiss stated the bags were taken to the composting facility.

Council Member Schmid reported San Francisco was working on a system of Solano County farmers using biodegradable bags as part of soil. The City's proposed program would lead to plastic bags in landfill.

Ms. Weiss was unsure whether San Francisco residents disposed of biodegradable bags as garbage, and would follow-up regarding San Francisco's process.

Council Member Schmid believed the bags were placed in food waste carts.

Ms. Weiss wanted to confirm San Francisco's process for compostable bags.

Council Member Schmid asked if the City's trial garbage pickup of food waste included paper, but not plastic.

Phil Bobel, Assistant Director of Environmental Services, replied yes. If the trial program expanded to the entire City, then residents would place compostable material in the green cart along with green yard trimmings. Staff would encourage the use of a compostable bag. For the trial area, waste would go to composting and would be separated from the green material.

Council Member Schmid asked what a compostable bag was.

Mr. Bobel explained it was similar to a biodegradable bag, but met a slightly different standard. Compostable meant ideally the bag would breakdown in the timeframe of normal compost.

Council Member Schmid inquired whether the goal of garbage collection within a few years would be to use compostable bags.

Mr. Bobel responded yes. Staff did not encourage residents to use compostable bags, because food scraps were not being composted. When food scraps were composted in the future, then the Council could reconsider this Ordinance to determine if compostable bags could play a larger role in composting. Residents in the pilot area could reuse compostable produce bags that some grocers were offering. Eventually he hoped residents would get a compostable produce bag at the grocer, fill it with food scraps, and place it in the green cart for composting. The City was not quite ready to link the two programs.

Council Member Schmid noted the Staff Report did not contain any of that information. He believed tonight's discussion would be an opportunity to prepare for the expiration of contracts with GreenWaste and Smart Station.

Council Member Price requested the City Attorney comment on the Retail Food Code and its relationship to the proposed Ordinance.

Molly Stump, City Attorney reported the State had the authority to determine that it would exclusively regulate an industry. The question was whether the State Legislature had done that by passing the Retail Food Code. The City received correspondence from an industry coalition asserting that the proposed Ordinance was preempted by the Retail Food Code. That

issue was litigated at the trial court level in San Francisco. The Superior Court Judge determined that the State Code did not preempt the local regulation. The Court said the State Code focused on health and sanitation; the San Francisco plastic bag ban was an environmental regulation. The two could coexist harmoniously. The issue was appealed and would be addressed by the Court of Appeal.

Council Member Price asked if there were different legal interpretations regarding this issue.

Ms. Stump answered yes. The industry coalition maintained that State law prevented local regulation of restaurant use of plastic bags. The City's and other jurisdictions' position was that this type of regulation was lawful and not preempted by State law.

Council Member Holman recalled a reference to bag usage decreasing from three to 0.3, and asked Staff to restate it.

Ms. Weiss reported San Jose analyzed the impact of its Ordinance during the first year. The average number of bags used were three prior to the Ordinance. After implementation of the Ordinance with the \$0.10 charge for paper bags in place, bag usage decreased to 0.3.

Council Member Holman inquired whether bag usage decreased from three to 0.3 bags per week per person or per month per person.

Ms. Weiss indicated per trip to the store.

Council Member Holman referenced 5 percent or 1.3 million plastic bags came from food service establishments, and inquired whether that figure pertained solely to Palo Alto.

Ms. Weiss responded yes. Numbers were extrapolated from a study performed by the County of San Mateo.

Council Member Holman asked if Staff could measure the impact of the bag charge on heightened awareness.

Ms. Weiss inquired whether Council Member Holman meant the level of change created by a \$0.10 charge versus a \$0.25 charge.

Council Member Holman stated that was one impact. A number of grocery stores not covered by the current Ordinance changed their practices with

regard to bags. She inquired whether there was a means to gauge the impact on usage.

Ms. Weiss noted Staff surveyed restaurants to determine that one-third of restaurants were using only paper products. Staff could perform the survey again with the same sample size at the end of one year with the \$0.10 charge in place to determine if there had been any behavioral changes at restaurants. However, that would provide information about store behavior rather than individual behavior.

Council Member Holman inquired whether requiring food service establishments to charge for plastic bags rather than prohibiting plastic bag usage was an option.

Ms. Stump responded no. State law did not allow local jurisdictions to impose a fee on the use of plastic.

Council Member Burt asked if State law allowed a charge for paper bags but not plastic bags.

Ms. Stump answered yes.

Council Member Burt believed the two goals for the Ordinance were preventing release of plastic litter into the environment and reducing landfill. Paper bags currently being used would go into paper recycling. He inquired about the net gain for the Zero Waste program by eliminating paper bags.

Mr. Bobel agreed with his comments regarding the two goals. Although the City had recycling programs for paper and plastic bags, residents did not recycle all paper and plastic bags. A reusable bag was a good option to paper and plastic bags; therefore, it was logical to have an Ordinance to prohibit or restrict paper and plastic bag usage.

Council Member Burt stated the practical reality was residents would purchase plastic bags to replace paper bags as trash can liners. He asked what residents would use as trash can liners if they used only reusable bags when shopping.

Mr. Bobel indicated Council Member Burt seized on the one legitimate complaint or criticism of Staff's proposal. An extremely small percentage of paper bags were used for trash can liners.

Council Member Burt asked why Staff believed only an extremely small percentage of paper bags were reused.

Mr. Bobel reported that was his personal experience.

Council Member Burt felt there was a penalty amount between \$0.10 and \$0.25 that would encourage residents to obtain only the number of paper bags needed.

Ms. Weiss noted the chief complaint was loss of free bags for use as trash can liners; however, bags were not really free. The Ordinance would require merchants to show the price of a bag on the receipt, and provide the option of not paying a charge or purchasing plastic trash can liners.

Council Member Burt asked why consumers should pay \$0.25 rather than \$0.10.

Mr. Bobel reported Staff attempted to strike a balance between having Palo Alto be a leader and being consistent with other cities. Most other cities charged \$0.25. Retail businesses indicated inconsistent bag charges among cities were a problem.

Council Member Burt did not understand the difficulty of different charges among cities for retail establishments.

Mr. Bobel stated the public process indicated a consistent charge was important.

Council Member Burt inquired whether pricing uniformity was as important as policy uniformity.

Mr. Bobel responded yes.

Council Member Burt noted the Council had heard the rationale of incentivizing retail in Palo Alto in other issues. It was a question of striking a balance between that rationale, and causing behavior change.

Ms. Weiss reported a San Jose study estimated a \$0.10 charge would cause about 65 percent of consumers to convert to reusable bags, and a \$0.25 charge would cause approximately 89 percent to convert. Recent analysis confirmed those estimates.

Council Member Burt believed an important second question was attitudinal change. At some point, the community could resent the imposition of a fee and, consequently, not support other issues. He requested Staff's rationale for delaying implementation of the fee for restaurants.

Ms. Weiss explained the significant amount of Staff time devoted to education and compliance following adoption of the Ordinance was the reason for phasing implementation.

Mayor Scharff agreed with Council Member Burt's comments. He inquired whether a \$0.10 fee could be imposed first, Staff could determine behavior changes, and then the Council could consider implementing an increase to \$0.25. He did not believe there was consistency among cities.

Ms. Weiss reported largely Ordinances were consistent, but there were slight variations within Ordinances.

Mr. Bobel indicated changing implementation was within the Council's prerogative. Staff could return at a later date with a second tier.

Mayor Scharff noted Staff's analysis lacked the grocery stores' incentive of keeping funds from the bag charge.

Mr. Bobel reiterated that grocers stated they wanted consistency among cities.

Mayor Scharff inquired whether a compostable bag was prohibited under the proposed Ordinance.

Ms. Weiss responded yes. No plastic bags would be allowed for distribution. The proposed Ordinance would allow purchase of plastic reusable bags, and would change the durability standard for reusable bags.

Mayor Scharff assumed using compostable bags was environmentally friendly, and asked if that was true.

Ms. Weiss answered no. Any bag that was used to line a trash can would go to the landfill. Neither bag provided a benefit once it was in the landfill.

Mayor Scharff stated if the trial garbage program was successful, then compostable bags would go to the composting facility.

Ms. Weiss noted plastic bags currently distributed were not compostable.

Mr. Bobel reported only produce bags were compostable.

Mayor Scharff inquired whether bags were compostable, biodegradable, or neither.

Ms. Weiss replied neither.

Mr. Bobel stated bags currently being used were plastic. Eventually food scraps would be placed in compostable plastic bags; however, Staff was struggling with the type of container to be used for other kinds of garbage.

Mayor Scharff inquired about the meaning of dynamic tests as part of durability standards.

Ms. Weiss explained a dynamic test measured durability using simulation of actual usage.

Mr. Bobel stated the bag was tested through stress.

Mayor Scharff asked if durability standards would prevent usage of lowquality bags.

Ms. Weiss indicated durability standards would allow consumers to move away from low-quality bags.

Mayor Scharff inquired whether the low-quality bag Ms. Weiss demonstrated met EcoLogo standards.

Ms. Weiss did not believe it would.

Mayor Scharff inquired whether the Ordinance would require that bags indicate they met EcoLogo standards.

Ms. Weiss reported the proposed Ordinance required quite a bit of information to be placed on the bottom of bags.

Mayor Scharff referenced the information required to be printed on bags, but did not find a requirement for the EcoLogo standard.

Ms. Weiss noted that was not required but could be included as a requirement.

Mayor Scharff expressed concerns about the amount of information required to be printed on bags, stating that would not benefit anyone and could cause less reusing of bags.

Ms. Weiss reported that requirement was based on recommendations from a reusable bag manufacturer. Other bags could be sold in a store, but not at point of sale because behavior change was less likely to occur.

Mayor Scharff inquired whether Staff had a reason not to delete the requirement for information on the bottom of the bag.

Mr. Bobel indicated Staff again was attempting to be consistent with other communities' requirements. The Council could remove that requirement. This requirement fell under Staff's authorization to change an Ordinance where the change was not critical to the function of the provision. Staff would work with stores to meet substantive requirements but not labeling requirements for bags.

Mayor Scharff inquired whether retail stores could distribute paper bags smaller than 15 liters in capacity.

Ms. Weiss reported the EcoLogo standard required the 15-liter bag size. Under the proposed Ordinance, retailers could distribute any size of paper bag for the indicated fee.

Mr. Bobel believed it was best to use standard definitions whenever possible, and the 15-liter capacity was part of the EcoLogo standard definition.

Council Member Burt inquired about the benefit of a plastic bag being recycled as opposed to a cloth bag being placed in the trash.

Ms. Weiss explained most plastics could only be recycled once, and then placed in the landfill. It was beneficial to recycle once; however, recycling was not a long-term solution.

Mr. Bobel noted cloth could be donated to non-profit organizations.

William Rosenberg spoke to the Council in September 2012 regarding an extension of the plastic bag ban, and supported the proposed Ordinance. Single-use bags were not currently available that did not contribute to environmental pollution. The only remedy was to change the culture to reuse of bags through external motivation.

Richard Gertman, Board Member of Californians Against Waste, reported the organization committed itself to reducing the amount of disposable single-use items in the environment. He supported programs to recover and promote reusable bags. Banning single-use bags would provide a significant environmental benefit.

Javier Gonzalez, California Restaurant Association, opposed the ban because reusable bags lent themselves to cross-contamination and food-borne illnesses. Other jurisdictions in the area exempted the restaurant industry for those reasons. Plastic bags were better for holding multiple sizes of containers and for containing spills. He asked the Council to exempt the restaurant industry.

Bruce Wolfe, Executive Officer of the San Francisco Bay Regional Water Board, reported the Water Board's 2009 Region-Wide Storm Water Permit required agencies to reduce trash in storm water by 40 percent by 2014, 70 percent by 2017, and 100 percent by 2022. The proposed Ordinance was a phased approach which would assist the City in reaching trash reduction requirements. Phasing out products regularly found in runoff was an effective method to engage the public.

Robert Berman, Chairman of Roplast Industries and Member of the Reusable Bag Task Force, applauded Staff's efforts to promote the use of reusable grocery bags. The proposed Ordinance would encourage the use of reusable bags; however, expanding the ban to all retail could increase paper bag usage with the same negative environmental impact. For most non-food retailers, it would be logical to provide small paper bags rather than large reusable bags, which would undermine the City's goal of promoting reusable bags. He recommended retailers be allowed to sell reusable bags smaller than 30 inches in combined width and length without requiring the EcoLogo certification as long as bags met all other requirements.

Peter Drekmeier felt the problems caused by plastic bags outweighed their convenience. The City made a great deal of progress since 2009, but the next step was needed. Palo Alto would be a part of changing the cultural norm.

Trish Mulvey supported the proposed Ordinance. Allowing restaurants to use plastic bags for liquid items addressed concerns of the California Restaurant Association. Currently, very little household trash needed to be placed in trash cans with liners. She preferred different sizes of reusable bags.

Samantha Meyer, Zero Waste Program Coordinator at Clean Water Action, encouraged the Council to support the Ordinance, because it considered source reduction. Currently in Palo Alto, 24 percent of customers used reusable bags; whereas, in cities with bag fees, 62-94 percent of customers used reusable bags.

Cedric de La Beaujardiere supported the Ordinance. As a user of reusable bags, he subsidized other shoppers' use of plastic and paper bags. Palo Alto's Ordinance should be consistent with other cities' Ordinances. He had used his own containers at restaurants for many years, had not been ill as a result, and often received a discount from the restaurant.

Robert Moss stated many people used store bags as trash can liners, and the Council should consider some means of allowing this usage. He suggested no bag fee be implemented for a year or two in order to determine usage of reusable bags and to allow the City to remain competitive with other cities. The Council should be very careful about its message to the public regarding implementation of an Ordinance.

Jason Lundgaard, Manager of State and Local Government Affairs for Apple, encouraged the Council to remove the requirement to label bags. The labeling requirement was unnecessary and counterproductive.

Mike Francois suggested implementing incentives for returning plastic bags. Plastic bags were unsightly litter. He appreciated the Council's and public's comments.

Council Member Holman asked why delicatessen was included as both retail service establishment and food service establishment.

Ms. Weiss explained delicatessen included food bars in grocery stores and stand-alone businesses.

Council Member Holman noted supermarket was included as a food service establishment.

Ms. Weiss indicated that language could be streamlined, because supermarket was included under retail establishment.

Council Member Holman requested definitions of sales outlet and shop under food service establishment.

Mr. Bobel reported Staff used existing definitions for this portion of the Ordinance, and attempted to include any type of business that might sell food.

Council Member Holman noted the definition of Superintendent was the Assistant Director for Environmental Services, and inquired why Staff utilized different names for the same position.

Mr. Bobel indicated Staff utilized Superintendent to link the proposed Ordinance with an existing Ordinance and existing structure. The Council could direct Staff to clarify that language within the Ordinance.

Council Member Holman asked if Staff had a suggestion for that change.

Mr. Bobel agreed one word would be better. Staff would need to review and revise the entire proposed Ordinance.

Council Member Price noted a one-year exemption for participants in State or Federal supplemental food programs, and inquired whether Staff would monitor the exemption.

Ms. Weiss indicated Staff had a reporting requirement for the number of people using bags under the exemption.

MOTION: Council Member Price moved to certify the Final Environmental Impact Report and adopt the proposed Retail and Food Service Establishment Checkout Bag Requirements Ordinance as proposed by Staff.

MOTION FAILED DUE TO LACK OF SECOND

MOTION: Council Member Burt moved, seconded by Mayor Scharff to approve Staff recommendations to certify the Final Environmental Impact Report and adopt the proposed Retail and Food Service Ordinance, establish the Checkout Bag Requirements Ordinance as proposed by Staff, with the following amendments to the proposed Ordinance: 1) Chapter 5.35, Section 5.35.010 Definitions, subsection (f)i Pre-Approved Materials to allow smaller reusable bags; 2) not require EcoLogo label indicated in Subsection (d)i Pre-Approved Standard, Numbers 3 and 4; and 3) Section 5.35.030, Section (b) to make the fee for paper bags 10 cents. Staff will return to Council in 18-24 months for review of pricing policy, and this item will return as a first reading of the amended Ordinance on the Consent Agenda.

Council Member Burt believed these were minor modifications in an attempt to strike a balance between a progressive program and a practical program.

Mayor Scharff felt flexibility for smaller bags was important. He inquired whether Staff was directed to review the proposed Ordinance for consistency regarding the use of Superintendent.

Council Member Burt answered that term and any other inconsistency.

Ms. Stump reported the Agenda Item would return with a first reading of the Ordinance on the Consent Agenda, followed by a second reading on the Consent Agenda.

Council Member Schmid agreed with banning plastic bags and placing a \$0.10 charge on paper bags. A \$0.25 charge would create an incentive for residents to purchase plastic bags for household use, which was counterproductive. Palo Alto residents would be more likely to convert with smaller incentives.

AMENDMENT: Council Member Holman moved to eliminate food service establishments from the Ordinance.

AMENDMENT FAILED DUE TO LACK OF SECOND

Council Member Holman suggested supermarkets be included under retail service establishment.

Mr. Bobel indicated Staff would carefully review the Ordinance for Council Member Holman's prior suggestions.

Council Member Holman suggested Farmers Market should be added in the appropriate location.

Ms. Weiss indicated Farmers Market was included at the bottom of page 6.

Council Member Holman inquired whether Farmers Market should be included in the definitions of retail service or food service establishments.

Mr. Bobel did not want to include Farmers Market, unless the Council directed otherwise.

Council Member Price felt the Ordinance was consistent with the community's values and beliefs. She preferred the discussion of a fee increase return to the Council in less than 18-24 months. Because of the community's disposable income, she did not believe there would be resistance to a \$0.25 fee.

MOTION PASSED: 5-0 Berman not participating, Klein, Kniss, Shepherd absent

COUNCIL MEMBER QUESTIONS, COMMENTS AND ANNOUNCEMENTS

Council Member Holman announced that comments regarding the Caltrain Environmental Impact Report (EIR) were due in a few of weeks.

Council Member Price reported that she attended the opening of the Youth Speak Out art show. Youth Speak Out also had an exhibit in the City Hall lobby. She also attended the Neighbors Abroad picnic the previous weekend celebrating the Tsuchiura exchange program.

ADJOURNMENT: The meeting was adjourned at 9:30 P.M.