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5.	Grant of Easements to Santa Clara Valley Water District, Pacific Gas and Electric Company, City of East Palo Alto and East Palo Alto Sanitary District for the San Francisquito Creek Joint Powers Authority's (JPA) Initial Flood Protection Project (Highway 101 to San Francisco Bay)
6.	Approval of Amendment One to Contract with Tandem Creative, Inc. to Extend the Contract Term Through December 31, 2016 and to Increase the Total Compensation by \$220,000 from \$198,000 for a Total Not to Exceed Amount of \$418,000 to Provide Marketing Design Services for the Utilities Department
7.	Approval of a Final Subdivision Map for the Previously Approved Mayfield Agreement Housing Project at 1451-1601 California Avenue, Including 68 Detached Single Family Residences and 112 Multi-family Condo Units. Environmental Assessment: City of Palo Alto/Stanford Development Agreement and Lease Project Environmental Impact Report (State Clearinghouse No. 2003082103)
8.	Approve a Blanket Purchase Order with Oldcastle Precast, Inc., as the City's New Standardized Supplier of Certain Equipment for the Utility's Electric Underground System, in an Annual Amount of \$350,000 for a Total Purchase Amount of \$1,750,000 Over the Next 4.5 Years241
9.	Approval of a Contract Amendment to CompuCom Systems, Inc., in the Amounts of \$194,470 for Annual Microsoft Licensing True-Up, \$70,147 for Office365, and \$27,000 for a contract contingency - Contract C12144913; and Adoption of a Budget Amendment Ordinance 5293 entitled "Budget Amendment Ordinance of the Council of the City of Palo Alto in the Information Technology Fund in the Amount of \$291,617."
10.	2755 El Camino Real Prescreening Request: Request by Hayes Group Architects for Council Authorization to Schedule a City Council Preliminary Review ("Pre-Screening") of a proposed Rezoning from PF (Public Facility) to CC2 (Community Commercial) and amendment to the Comprehensive Plan land use designation for a vacant site at the corner of El Camino Real and Page Mill Road (the vacated VTA parking lot)
11.	Ordinance 5294 entitled "Ordinance of the Council of the City of Palo Alto Establishing a Citywide Framework for Establishment of Neighborhood-Specific Residential Preferential Parking (RPP) Districts (First Reading: December 2, 2014 PASSED: 9-0)."

12.	Recommendation from Policy and Services Committee: (a) Review and Accept Inventory of Donated City Owned Properties; (b) Review and Make No Changes to Policy and Procedure 1-11 (Leased Use of City Land/Facilities)242
13.	Review of a Proposed Conditional Use Permit (CUP) for a Verizon Wireless Telecommunication Facility at the Palo Alto Little League Ball Field, Zoned R-1 (8000), and an Appeal of the Director's Architectural Review Approval of the Facility, an 18-inch Diameter, 65-foot tall Monopole/Light Pole Replacing a 12-inch Diameter, 60-foot Tall Light Pole, and Associated At-Grade Equipment Enclosure at 3672 Middlefield Road and Approval of CEQA Exemption242
14.	Park Improvement Ordinance 5295 entitled "Park Improvement Ordinance of the Council of the City of Palo Alto Approving and Adopting a Plan for Improvements to Bowden Park."242
15.	Proposed Changes in Development Impact Fees: Adoption of Ordinance Amending Chapter 16.58 Implementing New Public Safety Facility and General Government Facility Impact Fees And Direction to Draft Resolution Setting Initial Impact Fee Rates at 75 Percent of Levels Identified in Nexus Study
16.	Resolution 9481 entitled "Resolution of the Council of the City of Palo Alto Amending Resolution No. 9296, Adopted November 13, 2012, to Extend Statutory Exception for Soil Transfers by Truck on Oregon Expressway until September 30, 2015."242
17.	Request for Authorization to Increase Existing Legal Services Agreements with the Law Firms of: (1) Ginn & Crosby, LLP, by an Additional \$50,000 for Legal Services Relating to Construction of the Mitchell Park Library and Community Center for a Total Not to Exceed Amount of \$250,000; and (2) Musick Peeler & Garrett, LLP, by an Additional \$20,000 for Palo Alto Baylands Golf Course Reconfiguration Project and the San Francisquito Creek Flood Control Project for a total Not to Exceed Amount of \$85,000
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21.	Approval of the Proposed Grocery Store Tenant (College Terrace Market) Within PC 5069 (College Terrace Centre) Based on the Finding that the Proposed Grocery Tenant Would Likely be Comparable in Quality of Products and Services as JJ&F as It Existed and Operated on December 7, 2009 at 2180 El Camino Real
22.	Policy and Services Committee Recommendation to Council for Adoption of an Ordinance Amending Chapter 9.14 (Smoking And Tobacco Regulations) of the Palo Alto Municipal Code to Establish New Smoking Restrictions for Outdoor Commercial Areas, Outdoor Eating Areas, Public Events, Work Sites and Service Locations; Include Penalty Escalation for Repeat Offenders; Require Cigarette Butt Receptacles and Signage Immediately Adjacent and Within Areas Covered by the Ban; and Include E-cigarettes
23.	Colleague's Memo From Council Members Berman, Burt, and Klein Regarding Climate Action Plan Implementation Strategy to Reduce Use of Natural Gas and Gasoline Through "Fuel Switching" to Carbon-Free Electricity
24.	Colleagues Memo from Vice Mayor Kniss and Council Members Holman, Klein and Price Regarding Regulation of Short-Term Rentals in Residential Neighborhoods (e.g., Airbnb and Related Businesses)278
Adjou	urnment: The meeting was adjourned at 1:11 A.M280

The City Council of the City of Palo Alto met on this date in the Council Chambers at 5:37 P.M.

Present: Berman, Burt, Holman, Klein arrived at 5:41 P.M., Kniss, Price,

Scharff, Schmid, Shepherd

Absent:

#### Special Orders Of The Day

1. Proclamation for Waverley Writers.

Council Member Price read the Proclamation into the record.

Mary Marsha thanked the Council for recognizing and honoring Waverly Writers and poetry. Waverly Writers had been a haven for many poets. She read a poem from the most recent edition of *Fresh Hot Bread*.

2. Adoption of Three Resolutions of the Council Expressing Appreciation. Resolution 9477 entitled "Resolution of the Council of the City of Palo Alto to Arthur Keller for His Service on the Planning and Transportation Commission," Resolution 9478 entitled "Resolution of the Council of the City of Palo Alto to Lee Lippert for His Service on the Architectural Review Board," and Resolution 9479 entitled "Resolution of the Council of the City of Palo Alto to Clare Malone-Prichard for Her Service on the Architectural Review Board."

Council Member Burt read the Resolution in recognition of Arthur Keller into the record.

**MOTION:** Council Member Burt moved, seconded by Council Member Holman to adopt the Resolution expressing appreciation to Arthur Keller for his service on the Planning and Transportation Commission.

#### **MOTION PASSED**: 9-0

Arthur Keller expressed that he had learned a great deal about land use and transportation issues while serving as a Planning and Transportation Commissioner. He noted the loss of ground-floor retail businesses in the Downtown area and suggested the Council reconsider the meaning of commercial use. Palo Alto needed more housing for senior citizens and younger adults.

Council Member Holman felt the Resolution spoke well to Mr. Keller's service. She appreciated serving with Mr. Keller on the Planning and Transportation Commission (P&TC).

Council Member Schmid thanked Mr. Keller for his thoughtful comments while serving on the P&TC. He hoped Mr. Keller would continue to share his analyses of issues.

Council Member Price read the Resolution in recognition of Lee Lippert into the record.

**MOTION:** Council Member Price moved, seconded by Mayor Shepherd to adopt the Resolution expressing appreciation to Lee Lippert for his service on the Architectural Review Board.

#### **MOTION PASSED**: 9-0

Lee Lippert thanked the Council for the honor and pleasure of serving the community for the past 17 years. He recalled Frank Alfonso's influence on his decisions while serving on the Architectural Review Board (ARB).

Mayor Shepherd believed Mr. Lippert helped crystallize design debates. She thanked Mr. Lippert for his contributions to the City.

Council Member Price indicated Mr. Lippert's service demonstrated his commitment to the City.

Council Member Klein read the Resolution in recognition of Clare Malone-Prichard into the record.

**MOTION:** Council Member Klein moved, seconded by Mayor Shepherd to adopt the Resolution expressing appreciation to Clare Malone-Prichard for her service on the Architectural Review Board.

#### **MOTION PASSED**: 9-0

Clare Malone-Prichard noted how she enjoyed working with Staff and colleagues in an effort to make Palo Alto a better place to live and do business. Navigating between development rights and the desire to maintain Palo Alto's character was a delicate balance.

Mayor Shepherd expressed appreciation for the Architectural Review Board's work and Ms. Malone-Prichard's service.

#### Council Member Questions, Comments And Announcements

Council Member Berman recorded a yes vote for the Resolution in recognition of Lee Lippert.

Council Member Price inquired about the status of body cameras for the Police Department.

James Keene, City Manager, reported the City had video cameras in police cars. Staff began to utilize COPS funding to purchase body cameras initially for all patrol officers not in vehicles. Currently eight or nine body cameras were in operation. More cameras would be purchased.

Council Member Price encouraged the public to read the informational report regarding Project Safety Net and Health and Safety Funds from the Stanford University Medical Center Development Agreement contained in the Council's packet.

Mayor Shepherd advised that she and the City Manager had reorganized the process for developing Agendas. The City Manager met with the Agenda-setting team prior to the pre-Council meeting and eliminated a meeting later in the day. This reorganization allowed Staff to accomplish more work during the day.

#### City Manager Comments

James Keene, City Manager, announced Palo Alto children who wrote to Santa received a stuffed Palo Alto Fire Dalmatian dog. Beginning January 2015, Agenda packets for the Council and Council Committees would be released on Thursdays, 11 days prior to meetings. The new Palo Alto Green Gas Program, a voluntary program, would launch during the week. The City hosted a free community water use forum the prior week to discuss drought-proof water supply resources. He thanked Staff and the community for their response to the prior week's storm warnings. Flintco executed the settlement agreement with the City, and the surety needed to execute it as well.

Mayor Shepherd recalled the Council spent many hours in Closed Session regarding the contract with Flintco. She asked if no further Closed Sessions would be needed.

Mr. Keene answered yes.

#### Agenda Changes, Additions And Deletions

Council Member Holman reported California Avenue businesses did not feel they had been consulted regarding Agenda Item Number 22: Policy and Services Committee Recommendation to Council for Adoption of an Ordinance Amending Chapter 9.14 (Smoking And Tobacco Regulations) of the Palo Alto Municipal Code to Establish New Smoking Restrictions for Outdoor Commercial Areas, Outdoor Eating Areas, Public Events, Work Sites and Service Locations; Include Penalty Escalation for Repeat Offenders; Require Cigarette Butt Receptacles and Signage Immediately Adjacent and Within Areas Covered by the Ban; and Include E-cigarettes, or extended parking hours for the holidays.

**MOTION:** Council Member Holman moved, seconded by Council Member Burt to continue Agenda Item Number 22: Policy and Services Committee Recommendation to Council for Adoption of an Ordinance Amending Chapter 9.14 (Smoking And Tobacco Regulations) of the Palo Alto Municipal Code to Establish New Smoking Restrictions for Outdoor Commercial Areas, Outdoor Eating Areas, Public Events, Work Sites and Service Locations; Include Penalty Escalation for Repeat Offenders; Require Cigarette Butt Receptacles and Signage Immediately Adjacent and Within Areas Covered by the Ban; and Include E-cigarettes, to a date uncertain.

Mayor Shepherd requested clarification as she had spoken with a representative who did not indicate any issues to her.

Council Member Berman requested Staff provide information regarding outreach to California Avenue businesses.

Council Member Klein reported Agenda Item Number 22 had to be moved forward for the Council to consider any aspect of it.

Mayor Shepherd asked if the item could be continued once it reached the Agenda.

Molly Stump, City Attorney, advised that the Council could consider the Motion to continue under Agenda Changes, Additions and Deletions or address the request for continuation when the item was called in the Agenda.

Mayor Shepherd noted the Motion was to continue the item. The Council could take the item up again when the item was reached in the normal order of the Agenda.

Ms. Stump clarified that if the Council voted to continue Agenda Item Number 22 at the current time, it would be continued to a later date.

Mayor Shepherd preferred to discuss continuation within the order of the Agenda.

Council Member Holman noted the Council received an email from the President of the California Avenue Business Association.

Mayor Shepherd stated discussion was not allowed at the current time, but could be held when Agenda Item 22 was reached on the Agenda.

Council Member Holman noted neither she nor Council Member Burt, maker and seconder of the Motion, were allowed to address the Motion.

Mayor Shepherd wanted to postpone the vote on the Motion until Agenda Item 22 was reached in the order of the Agenda in order to hold a discussion.

James Keene, City Manager, concurred with awaiting the item in the Agenda so that Staff could clarify what had happened prior to the Council rescheduling the item.

Mayor Shepherd tabled the item until its natural order on the Agenda.

#### **Oral Communications**

Jim Wang reported the Planning Department spent a great deal of time meeting with him; however, the Planning Department took no action to proactively address the issues of privacy, noise and odor.

Robert Moss thanked Mayor Shepherd and Council Members Klein and Price for their service on the Council. They worked to improve the City and the community.

Lisa Henderickson introduced Amy Andonian as the next President and Chief Executive Officer of Avenidas.

Amy Andonian looked forward to working with the community and continuing Avenidas' work in the community.

Ronna DiVincenzi appreciated the improvements being made to California Avenue. The crosswalks were much safer. However, pedestrians along the sidewalk were suffering lacerations from the glass in the exposed aggregate. The new sidewalks were slippery when wet and collected dirt.

#### Consent Calendar

Mayor Shepherd noted an at-places memo that indicated Agenda Item Number 18 should state \$87,356.00 rather than \$79,000.00.

Herb Borock spoke regarding Agenda Item Number 10. He did not believe a prescreening for a development proposal was appropriate when another application was pending for the same property. Also, it was inappropriate to place the item on the Consent Calendar as the item should first be presented to the Planning and Transportation Commission.

Council Member Schmid requested comment from the City Attorney regarding Agenda Item Number 10.

Molly Stump, City Attorney, advised that the item was presented on the Consent Calendar to allow it to be scheduled for prescreening. Staff reviewed all relevant Code sections and believed the Council could act on Agenda Item Number 10.

**MOTION:** Council Member Schmid moved, seconded by Council Member Holman, third by Council Member XXX to pull Agenda Item Number 13: Review of a Proposed Conditional Use Permit (CUP) for a Verizon Wireless Telecommunication Facility at the Palo Alto Little League Ball Field, Zoned R-1 (8000), and an Appeal of the Director's Architectural Review Approval of the Facility, an 18-inch Diameter, 65-foot tall Monopole/Light Pole Replacing a 12-inch Diameter, 60-foot Tall Light Pole, and Associated At-Grade Equipment Enclosure at 3672 Middlefield Road and Approval of CEQA Exemption, to be heard at a later date.

Mayor Shepherd noted that absent support from a third Council Member the item would remain on the Consent Calendar.

#### MOTION FAILED DUE TO THE LACK OF A THIRD

Richard Brand spoke regarding Agenda Item Number 11. He saluted the Council for its support of the Residential Parking Permit (RPP) Ordinance. He had not heard any negative comments regarding the RPP Program.

James McLaughlin spoke regarding Agenda Item Number 13. He supported Item Number 13 and urged the Council to approve it. The item would improve cellular communications and support the baseball program.

Paul Albritton, counsel for Verizon Wireless, spoke regarding Agenda Item Number 13. He encouraged the Council to retain the item on the Consent Calendar. It would improve service coverage in southern Palo Alto. The

Planning and Transportation Commission (P&TC), Architectural Review Board (ARB), and the Planning Director and Staff approved the project. Verizon addressed many of the issues raised by opponents to the project.

Ken Allen, President of the Adobe Meadow Neighborhood Association, spoke regarding Agenda Item Number 13. A vast majority of the residents supported the cell tower. The Council would have opportunities to review any changes to the project. He urged the Council to support the item.

Gerald V. Lucha spoke regarding Agenda Item Number 13. After attending many presentations from both AT&T and Verizon, he urged the Council to support the item.

Joe Caporaletti spoke regarding Agenda Item Number 13. Opposition to the project raised many imaginative fears, which were baseless. Improved cellular coverage was needed.

Rod Creason spoke regarding Agenda Item Number 13. Verizon was attempting to finalize the project prior to implementation of the City's comprehensive wireless plan. He urged the Council to remove Agenda Item Number 13 from the Consent Calendar and consider the illegality of the previous Conditional Use Permit (CUP).

Gen Isayama spoke regarding Agenda Item Number 13. Residents hired a planning and wireless expert and an attorney to evaluate the Verizon application. Their reports were included in the briefing packet. City Staff had not replied to residents' concerns. The item should not be on the Consent Calendar.

Grace Zhao spoke regarding Agenda Item Number 13. Parents of young children were concerned about radiation from the cell tower. She related information that had been provided to her regarding the City's ability to deny the application.

Charlene Liao spoke regarding Agenda Item Number 13. She requested the Council remove Agenda Item Number 13 from the Consent Calendar and hold a public hearing. The tower would be taller than trees in the location and more visible than other cell towers in Palo Alto. The Council should consider new information.

Jason Yotopallos spoke regarding Agenda Item Number 13. Moving the tower a quarter mile away to an industrial location should not be an inconvenience for Verizon. Verizon had technology other than DAS it could utilize. The Council should remove the item from the Consent Calendar.

Ann Xu spoke regarding Agenda Item Number 13. She favored a public hearing for further discussion of the cell tower. The proposed cell tower posed serious health and safety issues.

Willy Lai spoke regarding Agenda Item Number 13. He opposed locating the cell tower in a location close to schools, child care and youth athletic fields. He urged the Council to remove the item from the Consent Calendar.

Barbara Cooley spoke regarding Agenda Item Number 13. She did not support the location of the cell tower. In her own survey of residents, 90 percent of respondents preferred an industrial or commercial location; 75 percent preferred another location.

Kim Amsbaugh, Palo Alto Little League Board Member, spoke regarding Agenda Item Number 13. She encouraged the Council to approve the CUP. The ARB, P&TC and the Planning Director and Staff showed that opponents' arguments were misguided, misinformed and misleading.

John Markevitch spoke regarding Agenda Item Number 13. He supported approval of Agenda Item Number 13. Verizon attempted to accommodate residents' concerns.

Don Amsbaugh, Palo Alto Little League Board Member, spoke regarding Agenda Item Number 13. He urged the Council to retain the item on the Consent Calendar. Palo Alto Little League worked with Verizon, City Staff and Boards, and the community to present the proposal to the Council. There were no grounds to deny the proposal.

Daryn Reicherter, Palo Alto Little League Board Member, spoke regarding Agenda Item Number 13. The tower would not change the ball park. The item should remain on the Consent Calendar.

Mark Priestley spoke regarding Agenda Item Number 13. Issues raised by opponents to the cell tower were addressed and resolved. Postponing the discussion would not benefit anyone.

Kristin Foss, Palo Alto Little League President, spoke regarding Agenda Item Number 13. The focus of the ball park would not be the cell tower, as claimed by opponents, but the games being played on the field. She requested the item remain on the Consent Calendar, so that Palo Alto Little League Board Members could return to providing baseball to kids.

Helen Li spoke regarding Agenda Item Number 13. She opposed the location of the cell tower. She believed Verizon would add more equipment at a later time. The item deserved a public hearing with the Council.

Fred Balin spoke regarding Agenda Item Number 7. He recalled the history of his appeal of the project and the Council's action. Residents were amassing baseline data of traffic and would have a valid determination of traffic impacts from the project.

Christopher Woothman, Stanford University Project Manager, spoke regarding Agenda Item Number 7. Stanford University staff remained sensitive to residents' concerns; however, the project was in compliance with mitigation measures.

Council Member Burt understood that the cell tower in Agenda Item Number 13 would become a co-location facility after approval of the project and that the Council would have CUP discretionary approval of subsequent co-located functions. He inquired about the Council's discretionary authority.

Cara Silver, Senior Assistant City Attorney, reported a new Federal regulation would govern co-locations, but it was currently not in effect. The regulation would allow the City to regulate the aesthetic impact of a co-location. Because the application was filed prior to the regulation taking effect, the City required the condition that the applicant would go through a full CUP process in order to co-locate functions at that particular site.

Council Member Burt inquired whether the full CUP would apply even with the new regulation.

Ms. Silver replied yes.

Council Member Burt asked if the Council had full discretion regarding the type of rezoning and if the Council could make that known at the prescreening concerning Agenda Item Number 10.

Ms. Silver advised that the Council had full authority to weigh in at the prescreening.

Hillary Gitelman, Director of Planning and Community Environment, added that the prescreening section of the Code indicated nothing that transpired at that hearing would be binding. The Council would be free to offer opinions, ideas, insights, and questions at that time; however, those comments would not be binding on any final decision on the proposal.

Council Member Holman remarked that the City Attorney's responses regarding Agenda Item Number 13 made her feel more comfortable with approving the CUP. Agenda Item Number 10 was listed as a prescreening for proposed rezoning, but the recommendation indicated a preliminary review of the proposed project. She asked if the item would be on Consent.

Ms. Gitelman indicated Staff was requesting the Council concur with Staff placing the item on the Agenda for Council consideration.

Council Member Holman inquired whether the rezoning and Comprehensive Plan amendment or the preliminary review of the project would be placed on the Agenda.

Ms. Gitelman reported in the context of the rezoning and Comprehensive Plan amendment, the Council could discuss the project proposed under both of those amendments. The prescreening request was related to rezoning and the Comprehensive Plan amendment.

Council Member Holman asked if the project would be presented as conceptual at the time of the prescreening.

Ms. Gitelman believed the section of the Zoning Ordinance related to prescreening provided for conceptual review if an application had not been filed, and a more detailed review if an application had been filed. She would need to review that if the Council approved Staff placing it on a future Agenda.

**MOTION:** Vice Mayor Kniss moved, seconded by Council Member Berman to approve Agenda Item Numbers 3-18 with the at-place memorandum change to Agenda Item Number 18 to change the dollar amount from \$79,655 to \$87,356.

Council Member Schmid registered a no vote on Agenda Item Number 13.

- 3. Resolution 9480 entitled "Resolution of the Council of the City of Palo Alto Approving and Authorizing the City Manager to Execute a Meter Maintenance Program Agreement with the Northern California Power Agency for a Five Year Term with an Anticipated Total Cost of \$45,000."
- 4. Approve a Contract with Goodland Landscape Construction, Inc. in the Amount of \$4,441,520.11; Authorize the City Manager or his Designee to Negotiate and Execute One or More Change Orders to the Contract with Goodland Landscape Construction, Inc., Not to Exceed \$444,151; Approve a Contract with NOVA Partners, Inc. in the Amount of \$319,880 for Construction Management Services; and Adopt a <u>Budget Amendment Ordinance 5292</u> entitled "Budget Amendment Ordinance of the Council of the City of Palo Alto in the Total Amount of \$1,343,047 to increase the El Camino Park Restoration Project by \$1,343,047, offset by a \$246,000 transfer from the Park Development Impact Fee Fund, a \$45,000 reduction to the Bicycle and Pedestrian

- Transportation Projects capital project, and a reduction to the Infrastructure Reserve (IR) by \$1,052,047."
- 5. Grant of Easements to Santa Clara Valley Water District, Pacific Gas and Electric Company, City of East Palo Alto and East Palo Alto Sanitary District for the San Francisquito Creek Joint Powers Authority's (JPA) Initial Flood Protection Project (Highway 101 to San Francisco Bay).
- 6. Approval of Amendment One to Contract with Tandem Creative, Inc. to Extend the Contract Term Through December 31, 2016 and to Increase the Total Compensation by \$220,000 from \$198,000 for a Total Not to Exceed Amount of \$418,000 to Provide Marketing Design Services for the Utilities Department.
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- 10. 2755 El Camino Real Prescreening Request: Request by Hayes Group Architects for Council Authorization to Schedule a City Council Preliminary Review ("Pre-Screening") of a proposed Rezoning from PF (Public Facility) to CC2 (Community Commercial) and amendment to the Comprehensive Plan land use designation for a vacant site at the corner of El Camino Real and Page Mill Road (the vacated VTA parking lot).
- 11. <u>Ordinance 5294</u> entitled "Ordinance of the Council of the City of Palo Alto Establishing a Citywide Framework for Establishment of

- Neighborhood-Specific Residential Preferential Parking (RPP) Districts (First Reading: December 2, 2014 PASSED: 9-0)."
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- 14. <u>Park Improvement Ordinance 5295</u> entitled "Park Improvement Ordinance of the Council of the City of Palo Alto Approving and Adopting a Plan for Improvements to Bowden Park."
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- 16. Resolution 9481 entitled "Resolution of the Council of the City of Palo Alto Amending Resolution No. 9296, Adopted November 13, 2012, to Extend Statutory Exception for Soil Transfers by Truck on Oregon Expressway until September 30, 2015."
- 17. Request for Authorization to Increase Existing Legal Services Agreements with the Law Firms of: (1) Ginn & Crosby, LLP, by an Additional \$50,000 for Legal Services Relating to Construction of the Mitchell Park Library and Community Center for a Total Not to Exceed Amount of \$250,000; and (2) Musick Peeler & Garrett, LLP, by an Additional \$20,000 for Palo Alto Baylands Golf Course Reconfiguration Project and the San Francisquito Creek Flood Control Project for a total Not to Exceed Amount of \$85,000.
- 18. Adoption of First Amendment to the Lease with ADA's Café and to Modify the Term and Add \$79,655 to Reimburse Tenant for Expenses Related to Completion of Mitchell Park Library and Community Center.

MOTION PASSED for Agenda Item Numbers 3-12, 14-18: 9-0

#### MOTION PASSED for Agenda Item Number 13: 8-1 Schmid no

Council Member Schmid felt it was important for the community to reach closure regarding Agenda Item Number 13. The Council's approval of the item on Consent did not heal or resolve problems.

#### **Action Items**

19. PUBLIC HEARING: Approval of a New Fifty (50) Year Lease to Avenidas for City-Owned Property at 450 Bryant Street to Allow the Continued Use of the Building to Provide Senior Services.

Lalo Perez, Chief Financial Officer, reported Staff requested the Council approve a 50-year lease with Avenidas. Staff issued notice on July 18 and 25, 2014 and November 7 and 14, 2014 in the *Palo Alto Weekly*. As required, Staff notified owners of property located within 300 feet of the site.

Public Hearing opened at 7:49 P.M.

Bill Blodgett, La Comida Board President, supported and urged the Council to approve the new long-term lease with Avenidas. He was confident La Comida could work with Avenidas through the planning process to arrive at a plan that met the needs of both organizations.

Herb Borock felt the expansion and proposed lease were one project and should have been presented to the Council simultaneously.

Public Hearing closed at 7:53 P.M.

**MOTION:** Mayor Shepherd moved, seconded by Vice Mayor Kniss to authorize the City Manager to approve a new, fifty (50) year lease agreement between the City of Palo Alto and Avenidas and cancel the existing lease for the City-owned property at 450 Bryant Street, Palo Alto.

Mayor Shepherd was pleased Avenidas would continue its service to the community with a modern facility.

Vice Mayor Kniss congratulated Avenidas for its plans and wished it luck in the future.

**MOTION PASSED:** 9-0

20. Palo Alto History Museum's Request for Funding and Approval of Transfer of Development Rights for the Roth Building.

Mayor Shepherd noted the Palo Alto History Museum Board (Board) had worked with Staff to begin fundraising efforts in order to renovate the Roth Building and operate a history museum. She reviewed strategies presented to the Council.

Lalo Perez, Chief Financial Officer, advised that the Council last received an update on March 24, 2014, when the Board requested a one-year extension of the option to lease. The Council extended the option to June 30, 2014. As planning approvals were set to expire at the end of December 2014, the Board requested time in December for the Council to consider a funding request.

James Keene, City Manager, had heard that a potential respondent to the Transfer of Development Rights (TDR) sale had a project that was just beyond the 500-foot boundary from his residence. While the project was outside the radius from his residence, he felt it best to recuse himself from the item.

Mayor Shepherd was unclear whether she could ethically participate in some aspects of the discussion as the California Fair Political Practices Commission (FPPC) had not responded to her question. She requested clarification from the City Attorney.

Molly Stump, City Attorney, reported Council Members having questions about conflicts of interest would need to make a judgment. Perhaps Council Members would want to make a conservative judgment if they felt there could be an issue.

Mayor Shepherd inquired whether Council Members felt they had a conflict of interest.

Council Member Burt understood the item concerned a potential receiver for the TDRs. He did not understand why the City or the Board would not utilize an open bidding process. In that sense, he did not believe the Council was determining that a given project within a geographic vicinity would be the recipient of the TDRs. In all likelihood, the recipient would be located in Downtown.

Ms. Stump indicated the City had a published policy and procedure on the sale of City-owned TDRs. The policy and procedure called for a competitive process; however, it allowed the City to set aside the results of that process to select any bidder in the public interest.

A second provision allowed for an oral up-bidding process after closed bids were initially opened. The City always could cancel all bids and rebid. If the Council wished to obtain the best price, it could instruct Staff to issue a Request for Proposal (RFP) that disavowed those options and accepted the highest bidder. Council Members' assessment of the situation should be considered in their conflict situations. Steps could be taken to insulate anyone in terms of the selection of a particular responder. Timing of the issuance of TDRs could have an impact on financial interests.

Council Member Burt understood from the City Attorney's clarification why conflicts of interest could exist.

Council Member Berman recused himself from Agenda Item 20 due to ownership of real property located just outside the 500-foot boundary from property that could be a receiver of the TDRs.

Mayor Shepherd recused herself from Agenda Item Number 20 due to her husband leasing offices within the 500-foot boundary.

Mr. Perez clarified that the extension expired on June 30, 2015 rather than June 30, 2014.

Rich Green, Palo Alto History Museum President, provided updated financial information to the Council.

Myron Freedman, Palo Alto History Museum Executive Director, had reviewed renovation plans and costs for the Roth Building with the architect and the contractor, and looked forward to meeting with potential donors. The goal of the History Museum was to serve the community by making history relevant, accessible, and useful. A history museum was the community resource for engaging the past, and a place to encounter and discuss common heritage. Utilizing the latest exhibit-design and technology, the Museum would tell the City's story to inspire, to provoke questions, and to invite participation. The Museum would have special galleries with an array of changing exhibits, would be a destination for tours and talks, would serve as the home of City archives, and would be an innovative resource for teachers and students. A café and book store would enhance visits to the Museum.

Mr. Green indicated the Board hosted a website and received significant donations. The Board had raised more than \$200,000; \$168,000 from 57 new donors. In total the Museum had more than 500 donors who had given more than \$3.5 million. The Board had a fully engaged donor pool capable of strong, ongoing funding for the Museum. The Board developed a proforma operating cost budget through to the year 2020.

Comparing revenue and donations against expenses, the Museum would be cash positive year over year. Phase 1 of renovations would rehabilitate the Roth Building so that it could be occupied. The Board estimated receiving \$1 million from the sale of TDRs, if the Council approved a sale. The Library Impact Fee would generate \$300,000. Pledges in-hand totaled \$2.5 million, and gifts in-hand totaled \$400,000. Total available funding was \$4.2 million, leaving a gap of \$4.3 million. Phase 2 of renovations would build exhibits and programs and finish archives, with a budget of \$9 million. Because the Board was reviewing methods to phase in the opening, the actual amount to open the Museum would be less than \$9 million. Operating costs were estimated at \$1.9 million through 2017. The total campaign goal was \$20 million. The Board requested the Council initiate a TDR sale at market value, consider funding repairs to the back wall in the amount of \$1 million, and consider funding 50 percent of the gap as a challenge grant.

Vice Mayor Kniss remarked that the Council would discuss designating the Roth Building as a "Sender Site", a one-time contribution of \$1 million, and a funding challenge.

Council Member Klein asked if the City had previously agreed that funding from the Library Impact Fee would be designated for the History Museum.

Mr. Perez advised that Staff reviewed the request. Funding from the Library Impact Fee would support the City's archives materials; therefore, funds could be used for that purpose.

Council Member Klein asked if the Council or Staff approved that.

Mr. Perez believed it was before the Council for approval.

Council Member Klein inquired whether the amount was correct.

Mr. Perez needed to double check the amount.

Council Member Klein asked if that amount of funds was available.

Mr. Perez answered yes.

Council Member Klein recalled that the Council had several requests for funding of repairs to the Roth Building just after he joined the Council in 2006. Mr. Borock estimated a total amount of \$1.3 million was approved for repairs. After three or four requests for funding, he seemed to recall that Staff indicated to the Council that no additional funds would be needed to repair the building.

Mr. Perez recalled the Council placed a cap on the amount of funds, in the range of \$150,000.

Council Member Klein inquired about the need for repairs to the back wall of the Roth Building. He had not heard of repairs being needed until Council Member Holman or Burt mentioned it. He questioned whether Staff knew if additional repairs were needed and, if so, why they did not inform the Council.

Mr. Perez could not answer Council Member Klein's questions as he was not a part of the discussions at that time. He became aware that additional repairs were needed when Staff prepared for the March 2014 Study Session.

Council Member Klein inquired whether Staff believed the City was obligated to repair the wall and, if so, whether the amount was correct.

Mr. Perez believed the prior Council made a decision not to fund repairs further and to place responsibility for repairs on the Palo Alto History Museum.

Council Member Klein asked if Staff believed the \$1 million repair estimate was reasonably accurate.

Mr. Perez did not know, and had not initiated an estimate of needed repairs without Council guidance.

Stephanie Munoz believed the Palo Alto Historical Museum was worthy of support. The proposal to sell TDRs seemed to be outrageous, because the City had already given away those development rights to Palo Alto Medical Foundation.

Herb Borock believed the regulations of the FPPC required Council Members to state with specificity the nature of their conflicts of interest, *i.e.*, name the party that created the conflict of interest. The \$1 million item in his memo to the Council was part of the development agreement with the developer. The City was responsible for buying the parcel and then demolishing the wings. The City budgeted \$415,000 to address drainage and leaks into the basement, after which the History Museum would be responsible for repairs. Another request of \$300,000 for repairs was presented to the Council in 2007; however, Staff did not recommend the Council approve it. The Council chose to fund \$150,000 with the intention not to expend further funds. He suggested the Council direct Staff to present a Park Dedication Ordinance for the parcel in order to be eligible for grants from the County of Santa Clara (County).

John Shenk, Thoits Brothers, supported the Museum and hoped the Council would support it. The TDRs represented a good portion of funds needed for the Museum.

Council Member Scharff inquired whether the History Museum would be required to utilize prevailing wage if the City agreed to fund repairs of \$1 million.

Ms. Stump reported additional research was needed as the law had changed. A few weeks previous, the Council suspended its policy that prevailing wage not be required for locally funded projects in response to State requirements. Staff needed to better understand the extent to which the Council chose to fund a construction project and the structure of that funding in order to determine requirements. Staff would review the issue once the Council structured the project.

Council Member Scharff found it difficult to make a decision regarding the \$1 million without that information. He inquired whether the bid would be with or without prevailing wage.

Mr. Green did not know. The cost estimate increased because of various contingencies.

Council Member Scharff remarked that selling the TDRs would commit the City to renovating the building according to the Secretary of Interior's Standards. He inquired whether it was the City's practice not to do that until it was ready to sign a construction contract.

Ms. Stump indicated there was not a lot of actual history to report. Various people had pointed out that the City made statements of its intention to restore the historic resource in a way that was consistent with requirements. It was another matter to create a TDR that was constructed in another project and created a binding commitment for historic renovation and seismic work. A statement of intent could have more flexibility in terms of interpretation, application, and timing.

Council Member Scharff asked if the City could refuse to sell the TDRs so as not to lock the community into retaining the Roth Building as a historic structure and not have to renovate it to the Secretary's standards.

Ms. Stump did not have an example where the City had made this type of commitment this early in a project. One other City-owned project was renovated using a private entity; the Sea Scout Building. That question was not raised until late in the project. She did not believe those TDRs had ever been transferred.

Council Member Scharff asked if proceeds from the sale of TDRs would be placed into a fund and not used for maintenance or operating expenses.

Ms. Stump reported the Code provided proceeds would be placed in a fund and the funds would be directed to the site that generated them in the first instance. Leftover funds could go elsewhere.

Council Member Scharff felt something had to be done with the building. The disadvantage of selling TDRs would be a commitment to renovate the building.

Gail Woolley commented that the building was listed on the National Register and had to be renovated.

Council Member Scharff reiterated that the commitment would be to renovate the building to the Secretary's standards.

Ms. Stump explained that Staff described a series of issues and factors for the Council to consider. Those were policy questions. Staff did not make a recommendation or provide a set of options. The History Museum requested the item be presented to the Council. Perhaps questions were best directed to them.

Council Member Scharff wanted to understand the City's options.

Mr. Green advised that the requirement to renovate the Roth Building was established in the SOFA 1 (South of Forest Avenue) agreement.

Council Member Scharff remarked that if the Board raised sufficient funds through the challenge grant, it would have a shell of a building and would need to raise an additional \$9 million to develop exhibits and programs. The Board did not have a record of being able to raise \$9 million, let alone another \$9 million.

Mr. Green had strong support from the donor community, some of whom were eager to see the outcome of the Roth Building. Calculations based on resources of the donor pool indicated the Board could raise more than \$10 million. The Board felt comfortable that they could raise the money.

Council Member Scharff inquired about a projected opening date for the Museum.

Mr. Green responded September 2016.

Vice Mayor Kniss understood the building was listed as a historic building and would have to be renovated to the Secretary's Standards.

Council Member Price asked if there had been an update of the structural engineering and architectural estimates.

Mr. Green reported the estimates were refreshed that day. Estimates were realistic and based on escalation of fees and costs as estimates were first prepared two years previously.

Council Member Price requested a description of the formula and assumptions used in projecting increases in operating costs.

Mr. Freedman advised that the Board established its fundraising capability in the early going while working with consultants to develop historical resources and connections to the educational community. As the project proceeded, the Board would be more specific about taking care of collections and obtaining resources for storage and registration of collections. The Board structured it to identify support, develop resources of history and education, and then identify people and resources to execute exhibits.

Council Member Price inquired about options for funding in addition to the request to the City.

Bob Woods, Development Counsel for the Palo Alto History Museum, explained that donors were interested in the building and in the Museum. Of the approximately 500 donors, 115 made multiple gifts over multiple years. These people were good prospects for planned giving. Several planned gifts were needed to help an organization build its operating costs, and then build planned gifts into an endowment. If philanthropists made a gift to the campaign, they would protect that gift by assuring ongoing support for several years.

Council Member Price commented that the value of TDRs were a function of market value, which changed over time. She inquired whether the City could set a threshold amount for a TDR square footage fee.

Mr. Perez replied yes. The City set \$90 as the minimum the last time it attempted to sell TDRs.

Council Member Price asked if Staff could provide a range for a square footage TDR fee at the current time.

Hamid Ghaemmaghami, Real Estate Manager, reported the Municipal Code required the City to perform an appraisal and set a price before marketing TDRs.

Council Member Price asked if it would be a while before tangible numbers were known.

Mr. Ghaemmaghami could conduct some research into the market to identify a preliminary number. An appraisal could take some time.

Council Member Holman inquired whether the demolition of the wings at the back of the building was part of the SOFA 1 plan, before a potential tenant was identified.

Mr. Ghaemmaghami answered yes.

Council Member Holman was not aware of the City allowing any TDRs for the site or the block. She asked if her knowledge was correct.

Mr. Ghaemmaghami replied yes. The City last sold TDRs in 2006. Those TDRs belonged to the Children's Library and sold for about \$95 per square foot.

Council Member Holman did not believe County grants were available for the History Museum.

Gail Woolley indicated County grants were available. The problem was the requirement that a project be completed within the following year. The amount of grants was not large, perhaps \$50,000-\$100,000. The Museum was not in a position to apply for County grants at the current time.

Council Member Holman noted the City did not have an estimate for repairs and Staff did not have restoration plans that met the Secretary's Standards. She inquired whether the Museum's cost estimates and plans would suffice to answer Staff's concerns and questions.

Ms. Stump reported the plans that were approved through City processes would satisfy the legal requirements. Whether they formed a basis to proceed was a policy discussion for the Council.

Council Member Holman asked if the Museum's plans had been approved by the Historic Resources Board.

Mr. Ghaemmaghami concurred the plans had been approved. However, the Conditional Use Permit (CUP) expired at the end of the year. The Museum would need to go through the process again to regain the CUP.

Council Member Holman inquired about the effect of restoring the building on Phase 2 fundraising.

Mr. Freedman stated restoration would provide momentum for fundraising. Restoration plans were drawn in a way that would allow the Museum to occupy and utilize the building fairly quickly. Once the Board began building programs, it would be able to demonstrate to the donor community the use of the building and its future as a museum.

Mr. Witts reported prospective donors indicated that if the Board could complete the building, then they would fund the Museum. Because the Board had always planned in phases, the idea of phased fundraising would work.

Council Member Holman asked about the source of the \$1 million estimate for repairs at the back of the building.

Mr. Freedman advised that the contractor provided the estimate for that work. The actual estimate was in the range of \$700,000 prior to contingencies.

Council Member Burt inquired whether at least one project, the Thoits project, was already approved but could not proceed without obtaining TDRs.

Mr. Perez did not know.

Ms. Stump understood a project on University Avenue was approved contingent upon obtaining TDRs.

Council Member Burt reiterated that the 500 University project had been approved, but it did not have the TDRs that would allow it to build the square footage as approved.

Hillary Gitelman, Director of Planning and Community Environment, noted the project was approved conditioned upon obtaining 10,000 square feet of TDRs.

Council Member Burt asked if the non-historic wings of the Roth Building were razed to complete the space for Heritage Park.

Mr. Perez concurred.

Council Member Burt asked if the same repairs would be needed if the building was returned to the City.

Mr. Ghaemmaghami responded yes.

Council Member Burt inquired whether the Council should consider the recommendations individually or as a group.

Vice Mayor Kniss preferred to consider them individually.

**MOTION:** Council Member Burt moved, seconded by Vice Mayor Kniss to direct Staff to initiate designating 300 Homer Street, known as the Roth Building, to be eligible as a "Sender Site" in the Transfer of Development Rights (TDR) program.

Council Member Burt recalled Mr. Green's statement that in May 2012 the City designated the Roth Building as a "Sender Site."

Ms. Stump noted according to Mr. Green the document being referred was a draft and had not been executed. Designating the property as a "Sender Site" was before the Council. If the Council adopted the recommendation, the next step would be to perform an appraisal and place an authorization to initiate the sale on the Council's Consent Calendar.

Mr. Ghaemmaghami clarified that Staff would return to the Council for approval of a Resolution designating the location as a "Sender Site" prior to performing an appraisal.

Council Member Burt inquired whether that could occur expeditiously.

Mr. Ghaemmaghami would need to place the Resolution on the Council's Agenda.

Vice Mayor Kniss believed the location was clearly a "Sender Site" in terms of the Ordinance. She asked if the City could negotiate a minimum amount for the TDRs.

Mr. Ghaemmaghami reported Staff would need to perform some market research to set a minimum in the process of the RFP.

Vice Mayor Kniss asked if the TDRs would go out to bid.

Mr. Ghaemmaghami advised that the RFP would set the minimum price that Staff believed was appropriate.

Vice Mayor Kniss inquired whether the bid process would be open to many people.

Mr. Ghaemmaghami indicated the TDR sale had to be open bidding.

Vice Mayor Kniss asked if the City preferred the location be designated as a "Sender Site" rather than the History Museum utilize the building.

Ms. Stump remarked that determining the location to be a "Sender Site" was a policy question for the Council. The Council did not have to designate it as a "Sender Site."

Vice Mayor Kniss commented that the historical building would need to be brought up to the Secretary's Standards in order to use it.

Ms. Stump advised that was a separate issue from the sale of TDRs.

Council Member Schmid understood that the TDR market had been very active. He inquired whether the City kept records of TDR sales and their values.

Mr. Stump reported Staff had made some efforts to compile a complete record. The Code contained requirements to document both sending and receiving sites for TDRs. Staff was being careful about recording those now.

Council Member Schmid noted TDR sales were registered with the Planning Department, and asked about the time period Staff had been documenting sales.

Ms. Stump did not know historically. Current Staff was very careful about documenting and recording TDRs.

Mr. Ghaemmaghami added that the value of TDRs exchanged in the marketplace probably had not been reported to the City. People did not disclose the sale price of TDRs.

Council Member Schmid commented that Staff might have the number of square feet transferred but not the value. He inquired whether there was a list of qualified sites even if they had not been approved.

Mr. Perez could not answer that.

Council Member Schmid asked if Staff could estimate the market for TDRs with no information.

Mr. Perez indicated Staff had received a few calls over the past few years inquiring about the City going to market with TDRs. Therefore, Staff knew there was some demand for TDRS.

Mr. Ghaemmaghami had heard from private developers that they were having a hard time locating TDRs. People who had TDRs were not selling them. He believed there was an active market for TDRs.

Council Member Schmid inquired whether the City controlled; in any way, the private eligibility for TDRs.

Mr. Ghaemmaghami was not aware of any City controls.

Council Member Schmid asked if it was a private decision to provide a TDR.

Mr. Ghaemmaghami replied yes, to provide or to sell them.

Council Member Schmid inquired whether the City had a list of sites eligible to provide TDRs.

Mr. Ghaemmaghami was not aware of such a list. The Planning Department did research the issue, and he could provide an answer at a later time.

Council Member Schmid found it difficult to estimate a value without knowing the market. He asked if there was currently a hold on TDRs.

Mr. Ghaemmaghami clarified that the City was holding its TDRs. There had been a few transactions involving privately owned TDRs. People were looking for TDRs and having a hard time finding them.

Council Member Schmid recalled the Council changed TDRs to exclude parking exemptions. He inquired about the impact of that change on the value of TDRs.

Mr. Ghaemmaghami reported TDRs that applied to parking had a much higher value. TDRs currently in the marketplace would be used for additional square footage, not parking. The market had driven the price for those high as well.

Council Member Schmid requested Staff provide some background information as to TDR value.

Mr. Ghaemmaghami would do so.

Council Member Klein asked why Ms. Gitelman was in the audience rather than at the table answering questions.

Hillary Gitelman, Director of the Planning and Community Environment, did not have a lot of experience or information about the current project or with the TDR program.

The City permitted the creation of development rights from certain categories of historic resources. She could not provide any additional information regarding TDRs.

Council Member Klein asked if anyone in the Planning Department had additional information.

Ms. Gitelman stated additional Staff was not present.

Council Member Klein suggested Ms. Gitelman call or text the appropriate Staff.

Ms. Gitelman could not reach Staff at 9:20 in the evening.

Council Member Klein viewed the History Museum's requests as a comprehensive list of demands and preferred to respond to those requests comprehensively rather than individually. The requests were contrary to the previous agreement negotiated with the History Museum. The History Museum was requesting a considerable amount of financing which was neither appropriate nor in line with the previous agreement. Funding for the History Museum ranked very low in polling conducted for the Infrastructure Plan. He was not impressed with the amount of funds raised by the Board in 2014. He was concerned that this would not be the Board's last request to the City for funds and could not support any of the three requests. Perhaps the Museum of American Heritage should be involved, as they had a record of success. The Council should not designate the property as a "Sender Selling development rights meant an increase in density at a particular site. The Council and public had indicated there should be less building. An appropriate Motion would be to deny the requests and instead grant the History Museum Board an additional 12 or 18 months to develop a program.

Council Member Holman stated the Ordinance was passed to support the retention, restoration, and rehabilitation of historic buildings. The Ordinance was conceived because it was a way to take advantage of private money to promote a public good. Comprehensive Plan Policies L-51, L-52, L-53, and L-57 encouraged preservation and rehabilitation of historic resources. Selling TDRs did not increase already allowed density. A prior Council set a minimum sale price for City-owned TDRs of \$90 per square foot when the Ordinance came forward. With respect to lack of public support for the History Museum in polling, it was often difficult to obtain funding for the arts.

Council Member Scharff expressed concern that the City would not receive fair value for the TDRs because the market was not transparent.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to set a minimum of not less than \$200 per square foot for the TDRs.

Council Member Burt asked if Council Member Scharff was confident the City could obtain \$200 per square foot.

Council Member Scharff replied yes.

Council Member Schmid calculated the current market value per square foot as approximately \$8 million for 10,000 square feet; therefore, \$200 per square foot seemed reasonable.

Council Member Klein felt the Council was doing exactly what it criticized developers for doing: attempting to maximize its real estate interests. The Council did not have to sell TDRs to fund repairs to the Roth Building. The Motion set a dangerous precedent and was inconsistent with the Council's ideas of limiting development.

Council Member Price would support the Amended Motion even though there was a great deal of uncertainty.

Council Member Holman reiterated that the TDRs would return to the City if the sale price did not meet the minimum of \$200 per square foot.

**MOTION AS AMENDED PASSED:** 6-1-2 Klein no, Berman, Shepherd not participating

Vice Mayor Kniss indicated the next item for consideration was a one-time contribution of \$1 million toward the cost of rehabilitation and seismic retrofitting of the building. She inquired whether rehabilitation and seismic retrofitting was needed whether or not the History Museum project came to pass.

Mr. Ghaemmaghami responded yes.

Vice Mayor Kniss recalled Mr. Green's statement that the cost estimate for repairs was closer to \$700,000 and contingencies increased the estimate to \$1 million.

Mr. Green clarified that the \$1 million estimate applied to repairs for the back wall of the building. It did not apply to rehabilitation and seismic upgrades of the entire building.

Vice Mayor Kniss assumed the back wall would have to be repaired.

Mr. Green explained that the back wall supported the entire building.

**MOTION:** Council Member Burt moved, seconded by Vice Mayor Kniss to make a one-time contribution of up to \$1,000,000 toward the cost of rehabilitation of the back wall including the seismic rehabilitation of the City owned Roth Building located at 300 Homer Avenue, in conformance with historic standards.

Ms. Stump inquired whether the Council wished to state in the Motion that if rehabilitation work was completed for less than \$1 million, then the balance of funds would be returned to the City or expended on the remainder of needs for the facility.

Vice Mayor Kniss indicated the amount would be up to \$1 million.

Council Member Schmid inquired about the source of funds should the Council choose to supply them to the History Museum.

Mr. Perez suggested the Council could reprioritize the Capital Improvement Program (CIP) to accommodate funding for the History Museum or withdraw approximately \$661,000 from the Budget Stabilization Reserve (BSR) Fund.

Council Member Schmid asked if either of those alternatives would affect the Council's recent pledge to expend a certain amount for infrastructure projects.

Mr. Perez advised that the Council would have to reprioritize the projects not contained on the list of infrastructure projects.

Council Member Schmid requested examples of projects not on the list.

Mr. Perez needed to review that information and get back to Council.

Council Member Klein believed the Motion would withdraw funds from projects carefully considered for funding or from the Budget Reserve. The Council did not have to fund repairs at the current time. The previous arrangement was for the History Museum to pay for any repairs after 2007-2008.

Council Member Price would support the Motion. She questioned whether the Motion should include the source of funding.

Vice Mayor Kniss understood Staff addressed funding sources.

Mr. Perez provided options for Council consideration.

Vice Mayor Kniss asked if Council Member Price wished to include a specific funding source.

Council Member Price answered yes. She requested Staff repeat the options.

Mr. Perez indicated funds could be taken from the BSR Fund if the Council changed the goal from 18.5 percent. If the goal remained at 18.5 percent, approximately \$661,000 would be available. A second source could be infrastructure funds; however, Staff would have to reprioritize projects included in the Infrastructure Plan for Council approval.

Council Member Price preferred not to withdraw funds from the Infrastructure Reserve Fund. She inquired whether \$500,000 could be withdrawn from the Operating Reserve and \$500,000 from another source.

Mr. Perez replied yes, a combination of sources was possible.

Council Member Burt advised that the City owned the building and would realize appreciation of the asset resulting from improvements. Mr. Perez had clarified that funds would not be taken from the Infrastructure Funding Plan. Council Member Klein's arguments were inconsistent with his previous support of City Hall renovations.

MOTION PASSED: 6-1-2 Klein no, Berman, Shepherd not participating

Vice Mayor Kniss advised that the next topic for discussion was a funding challenge including City funds of \$1.65 million. She inquired about the source of City funds for the \$1.65 million.

Mr. Perez explained that the Infrastructure Funding Plan did not address all infrastructure projects. In addition, there were concerns about the accuracy of cost estimates for infrastructure projects. The Council would have to reprioritize infrastructure projects in order to fund the \$1.65 million. He was concerned about lowering reserve thresholds as the City prepared to issue significant debt.

Mr. Green noted the \$1.65 million amount would be reduced by a high valuation of the TDR sale. The Museum requested the City fund 50 percent of the gap, not a specific amount of \$1.65 million.

Council Member Scharff understood Mr. Perez to indicate the City did not have sufficient funds to expend \$1.65 million. He asked when the History Museum expected to receive funds from the City.

Mr. Green planned to raise funds prior to expiration of the lease option on June 30, 2015, unless the option was extended.

Council Member Scharff inquired whether the Board would prefer \$1 million for repairs to the back wall or \$1.65 million for a challenge grant.

Mr. Green would prefer funding for the challenge grant. Perhaps funds for repair of the wall could be bound into a challenge grant.

Council Member Scharff questioned whether the Council or the Museum needed to incorporate funds for wall repairs into a challenge grant.

Vice Mayor Kniss asked if Council Member Scharff meant the challenge grant was not due until the History Museum had raised necessary funds.

Council Member Scharff understood under the previous Motion that City funds would have to be utilized for repair to the back wall.

Mr. Green explained that the challenge grant was intended to close the remaining funding gap. The gap would be determined by the value of the TDR's.

Council Member Burt advised that the History Museum Board could determine the best method to frame marketing of funds received from the City.

**MOTION**: Council Member Burt moved, seconded by Vice Mayor Kniss to direct Staff to defer consideration of Staff Recommendation Number 3: Issue a funding challenge where Palo Alto Historical Museum (PAHM) would solicit private matching donations if the City offered an additional \$1.65 million toward the project cost.

Council Member Burt looked forward to Staff's determining whether additional funding for the History Museum could be included in the Fiscal Year 2016 CIP.

Council Member Holman believed the Staff Report lacked clear information regarding potential funding sources.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to direct Staff to return with potential funding sources that would be within FY 2016 Capital Improvement Program (CIP), and to add that Staff is to also provide an update on the TDR sale, and update on the status of History Museum fundraising.

Council Member Scharff inquired whether Staff was directed to return with potential funding sources.

Council Member Burt wanted Staff to provide alternatives including not funding the History Museum's request.

Vice Mayor Kniss reiterated that the Council could choose not to fund the request.

Council Member Schmid requested Staff be directed to provide an assessment of the value of TDRs along with potential funding sources. As discussed earlier, the value of TDRs could be greater than \$1 million.

Mr. Perez inquired whether the Council would also like an update on History Museum fundraising when Staff returned with information regarding TDRs and funding sources.

Council Member Burt answered yes.

Council Member Price would support the Amended Motion. She expressed concerns regarding the History Museum's assumptions for long-term funding strategies. With the additional information provided by Staff, the Council could better assess the situation.

**MOTION RESTATED:** Council Member Burt moved, seconded by Vice Mayor Kniss to direct Staff to:

Defer consideration of number 3: Issue a funding challenge where Palo Alto Historic Museum (PAHM) would solicit private matching donations if the City offered an additional \$1.65 million toward the project cost; and to direct Staff to return with potential funding sources for FY 2016 CIP for consideration, an update on the TDR sale, and an update on the status of the History Museum fundraising.

MOTION AS AMENDED PASSED: 7-0 Berman, Shepherd not participating

Council Member Holman explained that preparation of the FY 2016 Budget would begin in early 2015. The Roth Building was designed by Birge Clark, whose sons had been present at the meeting.

The Council took a break at 10:05 P.M.

James Keene, City Manager, inquired whether he could release Staff present to provide information for Agenda Item Number 22 as he could provide information for Council discussion.

If the Council felt discussion of Agenda Item Number 21 would require only 15-20 minutes, then Staff for Agenda Item Number 22 could remain.

Mayor Shepherd asked if the City Manager was recommending the Council postpone Agenda Item Number 22.

Mr. Keene answered no. He was requesting permission for Staff to leave the meeting.

Council Member Burt suggested postponing Agenda Item Number 22 to January 2015. In that time, Staff could perform outreach to California Avenue businesses.

Council Member Scharff wanted to discuss Item Number 22.

**MOTION:** Council Member Burt moved, seconded by Council Member Schmid to move Agenda Item Number 22: Approval of the Proposed Grocery Store Tenant (College Terrace Market) Within PC 5069 (College Terrace Centre) Based on the Finding that the Proposed Grocery Tenant Would Likely be Comparable in Quality of Products and Services as JJ&F as it Existed and Operated on December 7, 2009 at 2180 El Camino Real, to January 2015.

Council Member Holman felt outreach to California Avenue businesses was appropriate.

Council Member Berman requested Staff comment on outreach to the California Avenue Business District.

Mr. Keene believed Staff did perform outreach; however, few if any businesses responded to that outreach. The Council wanted to feel satisfied that it had heard from California Avenue businesses. Changes to parking were not relevant to the item.

Council Member Berman clarified that Staff did attempt outreach to the California Avenue Business District.

Council Member Scharff reported the owner of the Cuban restaurant wished to provide a smoking area for his employees and requested a provision be included in the Ordinance. He believed California Avenue businesses were provided with outreach.

Mr. Keene advised that an at-places memo corrected the Ordinance to extend beyond shopping centers to include shopping districts. Outreach to business owners located on El Camino Real or other areas that could be affected by the Ordinance had not been performed.

Council Member Price believed the Council had sufficient information to make a decision.

Council Member Klein concurred with comments made by Council Members Scharff and Price. In addition, continuing an item because someone indicated he had not received notice was a bad precedent.

MOTION FAILED: 4-5 Holman, Burt, Berman, Schmid yes

Mayor Shepherd reported Agenda Item Number 22 would remain on the Agenda. The question was whether Staff could be released.

Mr. Keene requested Mr. Bobel remain and determine any other Staff that should remain.

21. Approval of the Proposed Grocery Store Tenant (College Terrace Market) Within PC 5069 (College Terrace Centre) Based on the Finding that the Proposed Grocery Tenant Would Likely be Comparable in Quality of Products and Services as JJ&F as It Existed and Operated on December 7, 2009 at 2180 El Camino Real.

Mayor Shepherd indicated the item would complete the Planned Community (PC) Ordinance granted in January 2010. On December 1, 2014, the Council determined the proposed tenant would not be comparable in quality of products and services to the former JJ&F Market. Also the Council requested modifications so that the owner and applicant could contract with an experienced grocer, and the Council imposed daily penalties should the grocer/operator cease operations.

Hillary Gitelman, Director of Planning and Community Environment, reported the College Terrace Centre Project (Project) was approved in January 2010 as a PC Zoning project. The outstanding issue was whether the City would approve the grocery store tenant as being comparable in quality of products and services to JJ&F. On December 1, 2014, the Council explicitly stated its requirements to make the findings that the proposed tenant was comparable. Staff recommended the Council adopt the current tenant proposal and authorize the City Manager to execute the Covenant regarding penalties. The at-places memo did not make any substantive changes.

Brian Spiers, Applicant, advised that funds were available to complete the Project. Brian Spiers Development was the managing member of College Terrace Centre LLC. The Applicant clearly understood that the grocery tenant must be operating prior to any other allowed commercial uses. A letter from the City Attorney's Office dated December 13, 2013 indicated the grocery store lease was approved for purposes of obtaining building permits.

On December 1, 2014, the Council rejected the proposed operator for the grocery space. The Applicant assigned the lease to Miki Werness and his investor team. Mr. Werness was an experienced grocery store operator who could provide a grocery store comparable to or better than JJ&F Market. The Applicant reviewed Mr. Werness' personal financial statements as well as pro forma information for the store and determined that he was a great choice. Mr. Werness' business plan focused on products and services to be provided to the community. Ultimately College Terrace Centre LLC's responsibility was to maintain a grocery tenant on the property in accordance with the PC Ordinance. The Applicant believed it was presenting a grocery tenant that exceeded the requirements of the PC Ordinance. Further delays could result in significant financial burdens for the Applicant.

Miki Werness remarked that the landlord supported the tenant with reasonable rent. Other advantages included a smaller store footprint, frontage on El Camino Real, and outdoor space for seating. The grocery store would provide conventional products, organic products, a deli, meats, fish, a bakery, and a variety of produce. Management staff had experience in independent markets.

Nancy Peters wished to ensure a public gathering space continued should the grocery store fail. She questioned whether the Covenant could include language that the lease would revert to the City at no cost if the space remained vacant after a specified period of time.

William Ross suggested Staff perform due diligence with respect to the current proposed tenant. The provision that the filing of a lawsuit rendered the Covenant unenforceable defeated the purpose of the Covenant. The appropriate measure of security for the deal was a performance bond or a letter of credit in the amount of rent realized on an annual basis without discount.

Robert Smith expressed concern regarding changes taking place in the business. He understood the PC would exist in perpetuity, but that should be clarified.

Robert Moss urged the Council not to approve the proposed tenant because of the lack of information. Approving a large office structure in exchange for a business was a lousy idea. A \$2,000 per month penalty was trivial.

Stephanie Munoz agreed it was a poor idea to have a grocery store as a public benefit. She recommended the Council scrutinize the language of the Covenant.

Margaret Heath wished to ensure that the public received a fair return on the PC; that return was a solid replacement for JJ&F. She questioned Mr. Werness' grocery experience.

Fred Balin stated more information was needed from Mr. Werness and questioned whether the Restrictive Covenant was enforceable. The Council should consider a letter of credit. The Council should not approve the proposed tenant until the Covenant was corrected.

Annette Portello Ross suggested the Council ask thoughtful, communitysensitive questions about College Terrace Centre. The Council needed updated financial information.

Doria Summa questioned the relationship among Mr. Werness, his partners, and the Applicant; whether the Applicant could provide and maintain a grocery store equivalent to the community benefit; and the amount of time that penalties would be accepted in lieu of a public benefit. The Council should provide a plan for expending penalty fees if such were collected and should link penalties to the Consumer Price Index.

Diane Finkelstein was concerned about the City enforcing the comparability provision of the Ordinance and the lack of financial information. The language of the Covenant was unrealistic and unenforceable.

Jeff Lewinsky suggested the Council better define "fully ceases to operate." The penalty clause did not define grocery operations required to avoid the penalty. The Covenant should contain language that the grocery store would not convert to a private workspace for employees of the office complex. The proposed penalty should increase with inflation and should be due whether or not the City collected it. The City should inspect more than once a year. The agreement was invalid if a court entered an order against the grocery store.

Lydia Kou noted Staff recommended approval of the proposed tenant; yet, residents hesitated to embrace Mr. Werness. The Applicant did not search for or propose a lease with successful Chinese, Korean, Persian, or Indian grocers.

Ms. Gitelman explained that the PC Project had been approved with a public benefit of a grocery store and some BMR units. The City could only change the public benefit by changing the PC Ordinance. The Covenant memorialized a voluntary condition of approval. The penalty was intended to be a significant disincentive for leaving the tenant space vacant if the market went out of business. Collecting a penalty of \$2,000 per day did not seem fair if a court enjoined the market from operating.

The PC Ordinance stated the market had to serve the neighborhood and could not degenerate into a convenience mart.

Cara Silver, Senior Assistant City Attorney, clarified that the provision regarding a court enjoining the grocery store from operating did not invalidate the entire agreement. It only set aside the penalty if the grocery store went out of business due to a court injunction. This type of provision applied at the beginning of implementation of a Covenant. The provision could be modified. The question of a substitute public benefit should a grocery store fail was not before the Council.

Mayor Shepherd recalled that the first public speaker wanted guarantees of a public benefit if the grocery store ceased operations. She asked if the Covenant would remain in effect in perpetuity or until the Council changed zoning.

Ms. Silver clarified that the Covenant remained in effect for the useful life of the improvements, not in perpetuity.

Mayor Shepherd inquired whether the Applicant could request another use for the site if improvements failed.

Ms. Silver explained that the Covenant would go away at the end of the lifespan for improvements to the buildings.

Council Member Scharff believed the Applicant followed the Council's instructions set forth on December 1, 2014.

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

- 1. Approve the grocery store tenant of the development at 2180 El Camino Real, finding that the proposed tenant is likely to be comparable in quality of products and service to the former JJ&F Market as it existed and operated on December 7, 2009; and
- 2. Authorize the City Manager or his designee to execute the Restrictive Covenant (Attachment C) to ensure the continued viability of the grocery store community benefit.

Council Member Scharff felt Mr. Werness could provide the type of grocery store the community sought. Penalties were severe at \$2,000 per day. The Applicant met its obligation, and the Council should approve the proposed tenant.

Vice Mayor Kniss noted the PC Ordinance was valid, even though the current Council probably would not have approved it. She hoped that the determination of both the neighborhood and Mr. Werness would result in success.

Council Member Klein remarked that the proposal met the requirements of the PC Ordinance. He proposed the penalty be indexed for inflation.

Council Member Scharff asked if the Applicant would accept the change.

Mr. Spiers accepted the change.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** that the penalty described in Paragraph Number 2 of the Covenant be appropriately indexed for inflation on an annual basis, the precise language to be determined by the City Attorney.

Council Member Holman wanted to focus on whether the proposed tenant was valid. There was a lack of information regarding Mr. Werness and his ability to attract vendors because of his prior bankruptcy case. Nothing in the documents committed the developer to providing 40 parking spaces dedicated to the grocery store. The Covenant should include a description of JJ&F Market rather than merely describing it as a full-service grocery store. The Council needed to review a business plan. She questioned whether the provision regarding fully ceasing operations would ensure that the public benefit remained in place. She inquired about the reason for not including the language for a full service grocery comparable to JJ&F in the penalty provision. She inquired about the purpose of the language regarding a lawsuit. She would not support the Motion.

Harry Fox, Applicant's Counsel, reported Paragraph 2 of the Covenant specifically stated that the penalty applied each day after each six-month period that the grocery store was not in operation in accordance with the terms of the PC Ordinance. The Covenant specifically referred to the terms of the PC Ordinance. The intent was to capture the language of the PC Ordinance regarding comparability to JJ&F.

Council Member Holman felt the Covenant should require the ongoing operation consistent with JJ&F as the PC Ordinance did not have that language.

Mr. Fox believed the PC Ordinance did require that. The PC Ordinance specifically stated the limitations on land use were a grocery store within the development for the useful life of the improvements; a neighborhood grocery store rather than a convenience market, and the tenant was subject to prior approval of the City.

Council Member Holman remarked that there was a big gap between a grocery store and a convenience market. The other language concerned approval for the building permit, not for the ongoing operations being consistent with JJ&F.

Mr. Fox indicated the language of consistent with JJ&F did not reference the building permit. It was not a condition of the building permit. It was a reference to any grocery tenant that was a party other than JJ&F.

Ms. Silver interpreted the continuing obligation to have a grocery store as the tenant would function as a grocery store and not revert to a convenience mart. Mr. Werness wanted to provide a market that would respond to changing community needs. Including language in the Covenant to require the grocery store to be modeled on JJ&F might not serve the Project well over time. However, that was a policy decision for the Council.

Mr. Spiers had dedicated 40 parking spaces to the market space, and that information was contained in documents with the grocery store. The viability of the grocery store was important to the Applicant for many reasons. The grocery store would pay approximately \$250,000 a year in rent once it was open and successful. If it is closed, the Applicant would be fined \$2,000 a day or \$720,000 a year in addition to the loss of \$250,000 in rent. The Applicant had tremendous incentives to keep the grocery store open and to vet the proposed tenant. The only permitted use for the space was a grocery store; therefore, the Applicant had no other options.

Mr. Werness accepted full responsibility for the failure of his previous grocery store. He had done business with the same vendors for over 30 years. After he filed bankruptcy, those vendors told him they would continue to do business with him. He received a letter from one of the largest wholesalers in California, stating it would be happy to do business with him again.

Council Member Schmid could not approve the proposed tenant. The Applicant accepted responsibility for the public benefit and had the same incentive as the City to provide a successful grocery store. The City Attorney indicated the Covenant was acceptable with respect to enforcement. He supported a cost of living increase for the penalty.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to add to the terms of the PC Ordinance that there will only be six months of non-penalty every five years.

Mayor Shepherd inquired whether the Applicant would accept the additional provision.

Mr. Spiers requested clarification of the provision. He asked if a subsequent tenant would need to sign a minimum five-year lease.

Council Member Schmid explained that if one grocery tenant went out of business, the Applicant would have six months to replace the tenant. A penalty would not be imposed during that six-month period. The City would provide only one-six-month period every five years free of penalty. He wanted to ensure the Applicant was confident a subsequent tenant would be successful.

Mr. Spiers inquired whether Council Member Schmid was suggesting the Applicant utilize the full six months to select another tenant.

Council Member Schmid indicated the Applicant could utilize two, three, or six months.

Mr. Spiers reiterated that the store could be vacant without a penalty only six months in one five-year period. That sounded reasonable; however, he hesitated to add more safeguards to the ones already in place.

Mr. Fox inquired whether the Applicant could utilize three months to find a second tenant and, should the second tenant fail, another three months to find a third tenant.

Council Member Schmid replied yes.

Mr. Spiers accepted the provision.

Council Member Berman found no provision for the use of penalty funds, should any be collected. He asked if Staff considered whether penalty funds could benefit the College Terrace area.

Ms. Gitelman assumed penalty funds would be used for Code enforcement efforts. The Council could make that decision.

Council Member Berman asked how funds would be utilized for Code enforcement.

Ms. Gitelman advised that penalty funds could subsidize the time and energy spent inspecting and enforcing Zoning Ordinances.

Council Member Berman did not agree with utilizing funds for Code Enforcement. The grocery store was intended to be a benefit for the neighborhood, and penalty funds should be utilized for the neighborhood. He did not wish to prescribe expenditures for a future Council.

Molly Stump, City Attorney, advised that Council Member Berman's concerns should not be addressed in a contractual commitment with the Applicant. Council Member Berman could provide a separate Motion directing Staff to segregate penalty funds and return to the Council for direction on expending those funds. Staff would most likely follow that process without a specific Motion; however, a Motion could clarify the Council's intent.

Vice Mayor Kniss suggested the Council provide directions to Staff after it voted on the pending Motion.

Ms. Stump indicated that method would also record directions to Staff in the meeting minutes.

Council Member Berman commented that many businesses in Silicon Valley failed and to hold a business failure against an individual was not appropriate. He would support the Motion.

Council Member Burt inquired whether the Applicant was receptive to the parking agreement being part of the Covenant.

Mayor Shepherd clarified that 40 parking spaces would be dedicated to the market.

Mr. Spiers accepted the provision.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to add 40 dedicated grocery parking spaces to the Covenant.

Mayor Shepherd felt the Applicant had listened carefully to the Council and the community. Parking for the market was accessible. She would support the Motion.

Council Member Holman was encouraged by the new information but needed even more information to support the Motion.

MOTION AS AMENDED PASSED: 8-1 Holman no

**MOTION**: Council Member Berman moved, seconded by Council Member Scharff that any funds collected due to future violations of the grocery store be brought to Council for guidance on expenditure of funds.

Council Member Berman preferred penalty funds be utilized for the benefit of the College Terrace neighborhood.

Council Member Scharff felt expenditure of the funds should be more visible than Code Enforcement.

#### **MOTION PASSED:** 9:0

22. Policy and Services Committee Recommendation to Council for Adoption of an Ordinance Amending Chapter 9.14 (Smoking And Tobacco Regulations) of the Palo Alto Municipal Code to Establish New Smoking Restrictions for Outdoor Commercial Areas, Outdoor Eating Areas, Public Events, Work Sites and Service Locations; Include Penalty Escalation for Repeat Offenders; Require Cigarette Butt Receptacles and Signage Immediately Adjacent and Within Areas Covered by the Ban; and Include E-cigarettes.

Council Member Price noted Staff proposed a modification to the Smoking Restriction Ordinance after distribution of the Staff Report.

Kirsten Struve, Manager of Environmental Control Programs, reported in 2013 there was an effort to expand the No Smoking Ordinance to include parks and to expand the buffer zone around buildings to 25 feet. The Council approved a ban on smoking in all parks effective October 9, 2013. In November 2013, a Colleague's Memo proposed including University Avenue and California Avenue. Staff discussed benchmarking with the Policy and Services Committee (Committee) in June 2014. The Committee recommended expanding the proposal to commercial areas rather than specific streets and to include e-cigarettes. Staff conducted outreach to businesses. Staff recommended the Ordinance include outdoor commercial areas and allow designated smoking areas.

Phil Bobel, Public Works Assistant Director, indicated the proposed Ordinance included streets, sidewalks, businesses and parking lots behind businesses. A member of the California Avenue community expressed concern about a designated smoking area within the commercial area for employees. The change noted in the at-places memo would allow Staff to work with California Avenue businesses to identify a designated smoking area within the no-smoking zone.

Ms. Struve advised that unenclosed areas were part of the existing Ordinance; however, those provisions needed some clean-up language because smoking was allowed in 50 percent of unenclosed dining areas. The Committee directed all outdoor dining areas, public events, work sites, ecigarettes, and a penalty escalation be included in the Ordinance.

Jan Parcel stated studies were providing evidence in favor of the safety of ecigarettes and indicating young people were quitting smoking in unprecedented numbers. E-cigarettes should not be included in the proposed Ordinance.

Omar Chatty noted the number of deaths on Caltrain tracks. He hoped the Council would support replacing Caltrain with Bay Area Rapid Transit (BART) in order to save lives.

Council Member Price reported that the Committee's discussion included the importance of expanding the smoking ban and modifying boundaries. The discussions focused on the issue of public health risks associates with smoking. Other communities commonly included e-cigarettes in the definition of cigarettes. She proposed modifying Item 2 in the Committee's recommendation to include examination of potential banning of smoking in multifamily residential units that had a shared ventilation system.

Mr. Bobel did not have any concerns about including the proposed language.

Council Member Price felt the proposed language clarified the Committee's intent.

**MOTION:** Council Member Price moved, seconded by Vice Mayor Kniss to Adopt an Ordinance Amending Chapter 9.14 (Smoking and Tobacco Regulations) of the Palo Alto Municipal Code to:

- Establish New Smoking Restrictions for Outdoor Commercial Areas, Outdoor Eating Areas, Public Events, Work Sites and Service Locations; and
- 2. Include Penalty Escalation for Repeat Offenders; refer further investigation to the Policy & Services Committee on tobacco retailers licensing and indoor smoking, including examination of potential banning of smoking in multifamily residential units that have a shared ventilation system; and
- 3. Require Cigarette Butt Receptacles and Signage Immediately Adjacent to and Within Areas Covered by the Ban.

Council Member Klein supported the Motion. A Cable News Network (CNN) article indicated kids who used e-cigarettes migrated to use of cigarettes.

Council Member Burt inquired whether cigar rooms were prohibited under the proposed Ordinance.

Mr. Bobel answered no.

Council Member Burt inquired whether smoking on the patio at The Nut House was prohibited.

Mr. Bobel answered yes.

Ms. Struve added that smoking on the patio was prohibited under the existing Ordinance as it was located within 25 feet of the building.

Council Member Burt did not believe the Council had sufficient information to include e-cigarettes in the proposed Ordinance. If the Council's objective was to discourage smoking by teens, then e-cigarettes should be included in the proposed Ordinance. If the Council was concerned about the impact of secondhand smoke on others, then evidence was not clear whether e-cigarettes should or should not be included in the proposed Ordinance. He inquired whether the objective was to discourage smoking among teens or to protect non-smokers or both.

Council Member Price indicated the objective was both.

Ms. Struve also understood the objective was both. Staff reviewed studies that indicated e-cigarette use led to the increased use of cigarettes by teens. There was not sufficient information to determine whether secondhand smoke from e-cigarettes impacted health.

Council Member Burt remarked that the proposed Ordinance would prohibit adults from using e-cigarettes.

Mr. Bobel advised that the Council would need to make a policy decision whether to prohibit adult e-cigarette use.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to refer the issue of e-cigarettes to the Policy and Services Committee for additional consideration.

Council Member Holman would support the Motion. She clarified her earlier comments that Staff performed outreach but did not engage the business community. She did not intend to contradict Staff's statement that they performed outreach.

Mr. Bobel reported the Development Manager attended a meeting with the California Avenue Business Association in June 2014. Several members also emailed Staff.

Council Member Schmid noted the Ordinance stated smoking was prohibited in commercial areas. Commercial areas as defined in the Ordinance were large areas. He asked if employees in commercial areas would have to leave the area in order to smoke.

Ms. Struve advised that business owners could propose smoking areas that were at least 25 feet away from an opening.

Council Member Schmid asked if any business owner could propose a smoking area.

Ms. Struve indicated business owners in the commercial area would need to make one proposal as the smoking area would likely be on City property.

Mr. Bobel would work with business associations in Downtown and California Avenue and Stanford Shopping Center to determine designated smoking areas.

Council Member Schmid noted the Ordinance stated a shopping center could establish a designated smoking area, and asked if that included smaller commercial sites.

Mr. Bobel referred to the change in the at-places memo which would include any commercial area covered by the smoking ban. It would include neighborhood commercial centers.

Council Member Schmid asked if Staff would work individually with those groups.

Mr. Bobel would contact the small shopping centers.

Council Member Schmid was thinking of Charleston Center, where the only neighboring site was Cubberley Community Center. The City did not want to establish a smoking area at Cubberley.

Ms. Struve believed smoking was banned at Cubberley as it was a park. It would be difficult to establish a designated smoking area at Charleston Center because of the 25-foot buffer zone.

Council Member Schmid asked if Staff would work individually with each area.

Mr. Bobel stated he would work with them individually.

Council Member Scharff was pleased to support the Motion as it would have a positive impact on public health. He inquired whether someone would have to complain about someone smoking or whether officers could cite smokers on sight.

Mr. Bobel reported the Police Department was not in the habit of ignoring Code violations.

Council Member Scharff felt an advantage to the proposed Ordinance would be the clear delineation of designated smoking areas. Police Officers would no longer have to determine if smokers were inside the 25-foot buffer zone. Smoking at bingo games was not prohibited.

Ms. Struve clarified that smoking would be allowed only in a bingo game area with less than five employees or run by volunteers.

Council Member Berman concurred with referring the e-cigarette issue to the Committee for additional review. He related information from studies he found online regarding teen use of e-cigarettes.

Mayor Shepherd suggested the Committee consider a sunset provision for ecigarettes. She would support the Motion.

Molly Stump, City Attorney, clarified that the Council wished to delete ecigarettes from the proposed Ordinance.

Mayor Shepherd was not amending the Motion.

**AMENDMENT:** Council Member Klein moved, seconded by Council Member XXX to include e-cigarettes in the Ordinance.

#### AMENDMENT FAILED DUE TO LACK OF A SECOND

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

23. Colleague's Memo From Council Members Berman, Burt, and Klein Regarding Climate Action Plan Implementation Strategy to Reduce Use of Natural Gas and Gasoline Through "Fuel Switching" to Carbon-Free Electricity.

Council Member Burt advised that the Colleague's Memo did not determine any action by the Council, but it did move the Council toward evaluation of future initiatives. Future initiatives would be essential for the City to fulfill the objectives of the Climate Action Plan.

The City's carbon-free electricity portfolio was a foundation for moving toward an energy form that would gradually reduce and eventually eliminate carbon emissions. Zero carbon emissions was an ambitious goal.

Bruce Hodge stated the City's move to a carbon-free electricity portfolio reduced the carbon footprint of the entire City by approximately 20 percent. Next steps were to determine methods to drastically reduce consumption of natural gas and gasoline. The Colleague's Memo along with the Climate Action Plan were the beginning of a crucial next phase in the decarbonization of energy use in Palo Alto.

Walt Hays believed this was the Council's first opportunity to take concrete action. The Council was asking Staff to investigate the opportunities and constraints of fuel switching and return with a reasonable recommendation. He urged the Council to support the Colleague's Memo.

Craig Lewis remarked that fuel switching was difficult but important in reducing carbon emissions. He encouraged the Council to support the Colleague's Memo.

Council Member Berman recalled that the Council discussed the Climate Action Plan and the importance of moving aggressively to reduce carbon emissions the prior week. This was an amazing opportunity to implement fuel-switching measures.

**MOTION:** Council Member Berman moved, seconded by Council Member Klein to direct the City Manager to prepare a report for the City Council outlining:

- 1. Prospective programs and incentives that would result in the use of electrical devices to replace those using natural gas; and
- 2. Possible building code changes to require, where feasible, the use of electrical appliances rather than natural gas appliances in the construction and renovation of residential and commercial buildings; and
- 3. Possible changes to utility rate structures that would not penalize fuel switching; and

4. Evaluation of additional strategies to support adoption of electric vehicles. The report should consider and take into account applicable legal requirements, and identify potential legal, code or regulatory barriers that would need to be changed to facilitate fuel-switching. The City Manager will return to the Council by the first meeting in February with an initial report to Council on the timeframe required to research and develop this report, and the staff and related resources that will be necessary, as this initiative would be an important component in the 2015 Work Plan.

Council Member Klein agreed this was an important first step. Cities around the world were pioneering efforts to reduce carbon emissions.

Council Member Scharff inquired about the meaning of Item 3 in relation to Proposition 218.

Council Member Klein believed a rate structure was a means to incentivize or disincentivize behavior. He did not want people who switched fuels to be penalized through rate structures.

Council Member Scharff understood it was illegal to incentivize fuel switching under Proposition 218. He hoped the Council would carefully consider such issues and not waste time on efforts that were not allowed.

Molly Stump, City Attorney, reported the Colleague's Memo included a reference to review of the regulatory system. That would be incorporated in the report to the Council.

Council Member Scharff asked if Staff would be able to return with a report in 30 days.

James Keene, City Manager, indicated Staff's report in February 2015 would advise the Council of actions needed to report on those four points.

Ms. Stump added that the initial report would have to be generated in the next few weeks to meet the deadline for inclusion in the Council packet.

Mayor Shepherd inquired whether Staff would provide an information or action item.

Mr. Keene believed it would be an action item.

Council Member Burt clarified that the City Manager would report on the timeframe required to research and develop the full report.

Council Member Scharff indicated it was illegal to incentivize fuel switching; the Colleague's Memo indicated the City would review rate structures that did not penalize fuel switching.

Ms. Stump reported structuring rates consistent with Propositions 26 and 218 was very complicated. Staff would perform quite a bit of work in this area in order to meet policy goals.

Mayor Shepherd inquired about integration of the Colleague's Memo with work performed by the Chief Sustainability Officer, Gil Friend.

Mr. Keene felt the Colleague's Memo aligned with the general direction of the Climate Action Plan. When Staff returned in February 2015, the Council could hold a focused discussion regarding integration of fuel-switching measures with the Climate Action Plan.

#### **MOTION PASSED: 9-0**

24. Colleagues Memo from Vice Mayor Kniss and Council Members Holman, Klein and Price Regarding Regulation of Short-Term Rentals in Residential Neighborhoods (e.g., Airbnb and Related Businesses).

Council Member Klein attended the National League of Cities meeting in November 2014 where a panel discussed the "shared economy." The discussion indicated short-term rentals were a problem for communities. The City was losing Transient Occupancy Tax (TOT) revenue through these businesses. The Cities of San Jose and San Francisco had negotiated agreements with Airbnb regarding zoning rules and collection of TOT. The Council should direct Staff to schedule a Study Session no later than March 31, 2015 to inform the Council of issues and potential actions.

**MOTION:** Council Member Klein moved, seconded by Vice Mayor Kniss to direct Staff to conduct a Study Session with City Council no later than March 31, 2015, on the various questions posed by businesses that facilitate short-term rentals of rooms, apartments or houses in residential neighborhoods (e.g., Airbnb, VRBO, etc.), what actions the City has taken, and what actions, if any, the City should take.

Vice Mayor Kniss advised that such businesses were economically successful; however, they did not provide any revenues to the cities in which they operated. The Council should learn of actions taken by other cities as well as review the new business model that did not benefit the City.

Council Member Scharff noted the issue was included in the Policy and Services Committee work plan. The Planning Director stated to the Policy and Services Committee that Staff did not have sufficient resources to take on the issue as well as other pressing matters until mid-2015. This issue was not a priority in relation to traffic, parking, and other planning initiatives.

**AMENDMENT**: Council Member Scharff moved, seconded by Council Member Schmid to remove the verbiage of returning no later than March 31, 2015.

Council Member Scharff did not oppose the Council reviewing the issue, but was concerned about Staff resources.

Council Member Schmid wanted to provide Staff with the flexibility to determine when they could return with a Study Session.

Council Member Burt suggested Staff review actions taken by other cities and present that information to the Council. An important first step would be adopting an Ordinance. The Council could then consider methods to enforce the Ordinance.

Molly Stump, City Attorney, reported the larger issue was a community discussion regarding what should be allowed in R-1 neighborhoods. Staff could quickly provide information on actions taken by other cities.

Council Member Burt believed there were two aspects to the issue. One was that regulations for these businesses aligned with regulations for traditional short-term rentals. The second aspect was what the Council and community wanted to allow. Adoption of an Ordinance could be done quickly, followed by a prolonged discussion of what to allow.

Ms. Stump advised that the TOT Ordinance presented to voters in November 2014 clarified the language. Council Member Burt's first aspect was accomplished.

Council Member Klein was disappointed by the Planning Director's comments to the Policy and Services Committee and felt the problem was larger than Council Member Scharff believed. Without clear policies for collection of tax revenues, the problem would grow. These businesses were negatively affecting Palo Alto's hotel industry. It would be a mistake not to include a date for Staff to return to the Council.

Council Member Price would support the Amendment. She too was concerned about Staff's workload.

Vice Mayor Kniss would not support the Amendment. The City was losing money every day it did not collect tax revenues.

Mayor Shepherd understood the topic was included in the Policy and Services Committee's work plan. She would support the Amendment. The topic should remain on the Policy and Services Committee's work plan and discussed within the Comprehensive Plan Update.

AMENDMENT PASSED: 5-4 Burt, Holman, Klein, Kniss no

Council Member Holman indicated short-term rentals impacted the availability of housing as well as safety. The Council should address the issue.

Council Member Burt viewed short-term rentals as a large part of the broader issue of commercialization of residential neighborhoods. The other dimension of commercialization was homes being utilized for full-scale office businesses. This dimension should be included in the work plan as well.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to refer to Policy and Services Committee the review of how to contend with the increased commercialization of residences.

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

<u>Adjournment</u> :	The meeting was adjourned at 1:11 A.M.
ATTEST:	APPROVED:
City Clerk	

NOTE: Sense minutes (synopsis) are prepared in accordance with Palo Alto Municipal Code Sections 2.04.180(a) and (b). The City Council and Standing Committee meeting tapes are made solely for the purpose of facilitating the preparation of the minutes of the meetings. City Council and Standing Committee meeting tapes are recycled 90 days from the date of the meeting. The tapes are available for members of the public to listen to during regular office hours.