

CITY OF PALO ALTO CITY COUNCIL MINUTES

Regular Meeting August 11, 2014

The City Council of the City of Palo Alto met on this date in the Council Chambers at 6:00 P.M.

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

Shepherd

Absent: None

CLOSED SESSION

1. CONFERENCE WITH CITY ATTORNEY - EXISTING LITIGATION

Subject: Markman v. City of Palo Alto, Santa Clara County Superior

Court, Case No. 111-CV-210779

Subject Authority: Government Code Section 54956.9(a)

The Council returned from the Closed Session at 6:35 P.M.

Mayor Shepherd advised that the Council voted unanimously to authorize a settlement in the matter of *Markman v. City of Palo Alto*, Case No. 111CV210779, pending in Santa Clara Superior Court. The suit involved a resident who was seriously injured when he fell on a utilities box cover, which had since been replaced. The matter settled for \$150,000 in exchange for a dismissal of the lawsuit and a full release of all claims.

AGENDA CHANGES, ADDITIONS AND DELETIONS

Mayor Shepherd reported that Staff requested Agenda Item Number 9 be continued to an undetermined date.

MOTION: Vice Mayor Kniss moved, seconded by Council Member Holman to pull Agenda Item Number 9 to be heard at a later undetermined date.

Mayor Shepherd reviewed the at-places memorandum regarding the Architectural Review Board's (ARB) concerns about the design competition.

James Keene, City Manager, indicated Staff would attend the ARB's next meeting.

MOTION PASSED: 6-0 Berman, Burt, Klein absent

CITY MANAGER COMMENTS

James Keene, City Manager, encouraged parents to review the City's website regarding Safe Routes to School as the school year would begin the following week. The City turned on the first bicycle traffic signals at Alma Street and Lytton Avenue. New green bicycle boxes at intersections were waiting areas for cyclists. The County of Santa Clara was working to complete the Oregon Expressway Project prior to the start of the school year. He requested Staff work with the County of Santa Clara regarding the staging of projects. The Library Department subscribed to IndieFlix as an additional service for its cardholders. Furniture was moved into the new Mitchell Park Library, and books would be delivered the following week for shelving. The City's solar rebate program, PV Partners, was slated to expire as funding was dwindling rapidly.

ORAL COMMUNICATIONS

Ken Horowitz thanked the Council for allowing members of the Page Mill YMCA to speak the previous week. Members were not requesting Council intervention in Silicon Valley YMCA's decision to close the Page Mill YMCA. Members continued efforts to keep the Page Mill YMCA open.

Peter Holland felt the Architectural Review Board's (ARB) review of the 385 Sherman Avenue Project lacked transparency. The community was not given sufficient time to review and comment on voluminous documents. He requested the Council direct Staff to delay the next ARB hearing.

Elizabeth Greenfield created a program for third graders to learn about local government and community engagement as a Girl Scout project. Students received classroom instruction and tours of City Hall.

Mark Weiss felt the Ventura neighborhood could benefit from a new park. The Council and Staff seemed to think the Fry's site was near California Avenue when it was closer to the Ventura neighborhood. He found community support for having a park in Ventura.

MINUTES APPROVAL

MOTION: Council Member Price moved, seconded by Council Member Berman to approve the minutes of June 16 and 23, 2014.

MOTION PASSED: 9-0

CONSENT CALENDAR

Mayor Shepherd indicated Page 8 of an at-places memorandum concerning Agenda Item Number 6 contained an error. The appropriate language should be "provides Google with written notice that it does wish to renew the agreement."

Herb Borock spoke regarding Agenda Item Number 6. The Staff report on page 1 indicated Google's proposal complemented the open market approach when it did not. He questioned Google's need to locate fiber huts on City property.

Council Member Klein recused himself from participating in Agenda Item Number 6 as he owned shares of Google.

Mayor Shepherd recused herself from participating in Agenda Item Number 6 as she owned shares of Google.

Council Member Berman recused himself from participating in Agenda Item Number 6 as he owned shares of Google.

MOTION: Vice Mayor Kniss moved, seconded by Council Member Scharff to approve Agenda Item Numbers 2-6.

- 2. Approval of a Contract with KEMA Services Inc. in the Amount of \$233,030 for Development of Sustainability and Climate Action Plan (S/CAP).
- 3. Approval and Authorization for the City Manager to Execute a Contract with PAR Electrical Contractors, Inc. For a Total Not to Exceed Amount of \$504,020 for the Pole Replacement Project 2, Which Involves Construction Maintenance Work on the City's Electric Distribution System at Various Locations Throughout the City of Palo Alto.
- 4. Approval of a Contract with Moore Iacofano Goltsman (MIG) in the Amount of \$499,880 for the Development of a Transportation Management Association Study for Downtown Palo Alto and Adoption of a <u>Budget Amendment Ordinance 5265</u> entitled "Budget Amendment Ordinance of the Council of the City of Palo Alto in the Amount of \$180,000 Amending the Fiscal Year 2015 Planning and Community Environment Adopted Operating Budget.

- 5. Approval of Contract Amendment No. One to Contract No. C13147733 in the Amount of \$216,532 with CH2M HILL Engineers, Inc. for Predesign for the Thermal Hydrolysis Process Anaerobic Digestion Facility, Capital Improvement Program Project WQ-14001.
- 6. Approval of a Master Network Hut License Agreement with Google Fiber.

MOTION PASSED for Agenda I tems Numbers 2-5: 9-0

MOTION PASSED for Agenda Item Number 6: 6-0 Berman, Klein, Shepherd not participating

ACTION ITEMS

7. Adoption of Two Resolutions Related to Hourly Employees: (1) Resolution 9450 entitled "Resolution of the Council of the City of Palo Alto Approving a New Memorandum of Agreement with Service Employees' International Union Local 521 for Represented Hourly Employees and Amending Section 1901 of the Merit System Rules and Regulations;" and (2) Resolution 9451 entitled "Resolution of the Council of the City of Palo Alto Approving a New Compensation Plan for Limited Hourly Employees."

Council Member Burt recused himself from the item, because his child worked for the City as a part-time employee during the summer months.

Kathy Shen, Chief People Officer, reported the City had two groups of hourly employees. One was represented by the Service Employees' International Union (SEIU) Hourly Unit; and one was unrepresented. Generally compensation plans for the two groups were similar, because job classifications overlapped the two groups. A three-year contract for employees represented by the SEIU Hourly Unit contained a 2 percent increase in base salary for each of the three years and a 9 percent increase of the medical stipend. SEIU members had ratified the proposed contract. The medical stipend did not apply to the unrepresented hourly group. Otherwise, the contract contained identical terms for the two groups.

MOTION: Vice Mayor Kniss moved, seconded by Council Member Klein to adopt two Resolutions related to hourly employees: 1) approving a new Memorandum of Agreement with Service Employees' International Union Local 521 for represented hourly employees and amending section 1901 of

the Merit System Rules and Regulations; and 2) approving a new compensation plan for limited hourly employees.

MOTION PASSED: 8-0 Burt not participating

8. Approval of Design Contract No. C14153579 with BKF Engineers in the Amount of \$180,000 for the Embarcadero Road Satellite Parking Project (Continued from Consent Calendar on June 16, 2014).

Mayor Shepherd read an at-places memorandum clarifying the Staff Report.

Jaime Rodriguez, Chief Transportation Officer, reported the item concerned awarding a design contract to study the feasibility of a satellite parking lot on Embarcadero Road. In February 2014, the Council authorized Staff to proceed with five initiatives to improve parking supply. Staff expanded permit parking supplies to employees working in the South of Forest Avenue (SOFA) District. In September, Staff would present responses to a Request for Information to increase parking supply in Downtown and information regarding potential locations for parking garages in Downtown. Later in August 2014, Staff would present parking technology solutions to increase The study would consider construction of an on-street satellite parking lot on Embarcadero Road. Preliminary design work indicated approximately 132 parking spaces could be created through restriping the north side of the street for parking. The study would include potential modifications to the existing shuttle route to support satellite An early draft of the proposal also considered satellite parking activities at the Baylands Athletic Center; however, Staff was not recommending that option at the current time. Eliminating satellite parking at the Baylands Athletic Center did not alter the scope of the study. Staff recommended the Council award a design contract to BKF Engineers. Alternatively, the Council could remove the task regarding satellite parking at the Baylands Athletic Center.

Robert Moss did not believe an \$180,000 contract was necessary to restripe a street. Public funds would be spent for parking that private Developers were excused from providing. The Council should refuse to approve any Downtown development projects that did not provide all required onsite parking. Shuttles would increase traffic congestion along Embarcadero Road.

Alice Mansel reported the schedules for public transit along Embarcadero Road were a farce. She preferred existing shuttles be improved before spending funds for the proposed study.

Annette Ross concurred with Ms. Mansel's comments regarding existing public transit. Outreach to that community could provide the City with insight into transit problems.

Malcolm Beasley advised that the Council should clearly articulate concepts for residential neighborhoods adjacent to commercial corridors and establish standards and norms for parking and traffic to determine the impact of development plans on neighborhoods.

Neilsen Buchanan noted the Council had been provided the July 24, 2014 survey of parking in neighborhoods. The Council needed to increase parking supply and mitigate parking demand. He was sensitive to transferring parking problems from neighborhood to neighborhood. He suggested a quality standard of no more than 25 percent of all residential parking spaces be allocated to worker permits.

Simon Cintz, speaking as an individual, urged the Council to approve the contract for the study. The contract allowed the contractor to obtain input from stakeholders. The Council could utilize that input to reach a thoughtful and reasoned decision. The study would be an important step in increasing parking supply.

Mary Carlstead did not support satellite parking along Embarcadero Road, because that area was a scenic corridor. Downtown parking garages were underutilized.

Jeff Levinsky felt commuters would continue to park in neighborhoods to save time and money. He questioned whether the study would review the total roundtrip time for commuters using satellite parking and the cost per car removed from Downtown. More cost-effective solutions were available.

Michael Griffin indicated advocates of Residential Parking Permit (RPP) Programs did not want to shift parking problems from neighborhood to neighborhood. The goal of an RPP Program was to restore a reasonable quality of life for neighborhoods. Moving cars from Downtown to parks and open spaces was not a solution. Parking lots located at the east end of the Dumbarton Bridge should be investigated.

Vice Mayor Kniss requested Staff comment regarding cost of the study, underutilization of parking garages, parking technologies, and parking in the Baylands. She asked how parking could reach 112 percent of capacity.

Mr. Buchanan explained the lack of striping allowed cars to park close together and to overlap driveways, resulting in greater than 100 percent capacity.

Vice Mayor Kniss inquired whether the actual number of parked cars were counted and compared to the number of parking spaces allowed by striping streets.

Mr. Buchanan noted most people followed striped markings.

Mr. Rodriguez wanted to conduct a comprehensive analysis of the area. A lane reduction would have specific environmental impacts, and Staff wanted to disclose those impacts. Staff requested authority to begin a design study for the area. Staff was not recommending a satellite parking lot be located in the area. Staff did not wish to destroy the look and feel of the Baylands. The project most likely would be implemented in two phases. The first phase would be near-term improvements limited to resurfacing and striping The second phase would be long term improvements to the roadway. ensure the project integrated well with the environment. The cost of the study was higher because of the need to accommodate different design scenarios. Design work also would accommodate completion of the Bay Trail link from Faber Place to the East Palo Alto border. Parking garages were highly utilized and often fully occupied. Staff received complaints that permit holders could not find parking spaces. Staff wished to preserve hourly parking for retail locations, but was considering conversion of some hourly spaces to permit spaces. Satellite parking should be studied as a potential parking supply option. Staff would return to the Council in a week with additional strategies to provide supply in Downtown, specifically technology solutions. Parking guidance solutions could be implemented immediately or over the next several months. Technology solutions could be implemented in combination with access and revenue controls at garages to allow transferable parking permits among employees. The data Mr. Buchanan referenced was provided by Staff. Commuters did park more closely than would be permitted by striping; however, striping residential streets diminished the quality of the neighborhood.

Vice Mayor Kniss asked if Staff changed something about parking permits such that parking garages were filled.

Mr. Rodriguez advised that Staff released a large number of permits recently. Staff had not reached the thresholds instituted for release of parking permits because of complaints regarding lack of parking spaces in garages. Having a parking permit did not guarantee a parking space for a permit holder.

Page 7 of 36 City Council Meeting Minutes: 08/11/14

Vice Mayor Kniss suggested technology solutions that broadcast information regarding open parking spaces could resolve complaints.

Mr. Rodriguez remarked that parking guidance systems could be utilized in Downtown as well as along Embarcadero Road.

Vice Mayor Kniss inquired whether parking apps were available as well.

Mr. Rodriguez stated they were in the works.

James Keene, City Manager, felt a key change would occur when RPP Programs were instituted and parking supply immediately shifted. Drivers would be forced to park outside neighborhoods, and technology would increase the ability to locate available parking spaces. All parking initiatives were predicated on the lack of sufficient parking capacity in garages.

Council Member Price requested Staff provide additional details regarding multiple uses of transit stops.

Mr. Rodriguez reported a long-term design would be sensitive to the surrounding Baylands and support multiple uses such as bicycle activity and shelters.

Council Member Price noted the project would be funded through the Capital Improvement Program (CIP). She inquired whether Staff reviewed the operations of the existing Embarcadero Road shuttle and the Marguerite shuttle.

Mr. Rodriguez responded yes.

Council Member Price asked if responses to the Request for Proposal (RFP) regarding expanded shuttle service would be available when the design project was complete.

Mr. Rodriguez reported Staff hired a consultant to analyze the existing shuttle program and proposed shuttle routes. The consultant's report would be presented to the Planning and Transportation Commission (PTC) in early September 2014 and the Council in late September.

Council Member Price was looking forward to having additional information prior to taking further action.

Council Member Klein recalled Council discussion regarding use of the Golf Course parking lot and requested Staff comment on that possibility.

Mr. Rodriguez had not explored the use of Golf Course parking as a temporary parking facility. Use of Golf Course parking spaces influenced the long-term operations of the Golf Course itself. Therefore, alternative uses of existing Golf Course parking could impact any environmental studies performed to determine ways parking could support Golf Course activities.

Council Member Klein understood environmental studies of the Golf Course were complete.

Mr. Rodriguez explained that changing the proposed use of Golf Course parking would result in the need for additional environmental study.

Council Member Klein was not persuaded, because the report was complete and the parking lot could easily be divided for Golf Course uses and other uses.

Mr. Keene agreed the Environmental Impact Report (EIR) for the Golf Course was complete. Determining the number of spaces that could be used for shuttle parking was more complicated. Most of the parking lot could be available for shuttle parking, at least for the 16 months the Golf Course was closed. The Golf Course parking lot could be a short-term option until other parking supplies were operational.

Council Member Klein believed the Golf Course parking lot was a short-term solution once the RPP Program was implemented and prior to constructing a new parking garage Downtown. He requested the status of an RFP to determine if owners of private parking garages were interested in leasing parking spaces to the public.

Mr. Rodriguez advised that approximately 12 private garages were located Downtown. Those garages typically were gate controlled to ensure privacy for authorized users. In conversations with Staff, owners of private garages were not interested in leasing spaces to the public.

Molly Stump, City Attorney, stated the topic of the Agenda Item was satellite parking. A certain amount of discussion of related items was permissible. If the Council wished to hold an extended discussion of parking solutions, it should be agendized for a future meeting.

Council Member Klein asked why Staff did not include the current topic with other parking issues agendized for the following week.

Mr. Rodriguez advised that it could be included with the following week's presentation.

MOTION: Council Member Klein moved, seconded by Council Member Schmid to continue this item to a meeting in September.

Hillary Gitelman, Director of Planning and Community Environment, planned to provide a status report of parking initiatives the following week as well as to focus on garage technologies. Staff received nine recommendations related to technologies and to increased utilization of existing structures. Staff understood the Council direction in February 2014 was for Staff to return with initiatives as they were ready. Staff planned to return in September for a discussion of parking supply enhancements including public-private partnerships and recommendations for garage locations.

Mayor Shepherd recalled the item was removed from the Consent Calendar a few weeks previously. She inquired whether the item could be continued to the following week.

Mr. Keene expected the September 18, 2014 meeting to end at 11:30 P.M. or later without this item. He requested the Council provide questions and concerns in the current meeting in order to save time at the next meeting, should the item be continued.

Council Member Klein felt a discussion of shuttle parking should be held with or after a discussion of garage technologies. Discussing the two together was logical.

Council Member Schmid agreed it was more logical to discuss shuttle parking within an overall view of parking. The Development CAP Study indicated 3.2 million square feet of nonresidential space was located in Downtown. Consequently, 12,600 parking spaces should be available in Downtown. Existing parking spaces totaled 4,800. An additional 132 parking spaces did not solve the parking problem. Locating 132 parking spaces in the Baylands would save someone approximately \$8 million.

Mayor Shepherd inquired whether Council Members wished to provide comments at the current time rather than at the continued discussion.

Council Member Schmid understood the City Manager requested Council Members' comments.

Mayor Shepherd noted comments should be restricted to the Motion. She inquired whether the City Manager wanted Council Members to provide their comments.

Mr. Keene suggested the Council could comment at the end of the discussion or continue discussion to the following week. Mr. Buchanan proposed 25 percent of neighborhood parking spaces be filled by commuters. Once an RPP Program was implemented, approximately 1,200 commuters would need parking spaces. Existing parking garages did not have the capacity to park 1,200 commuters. A series of decisions would be made in order to tackle the issues of parking supply.

Mayor Shepherd inquired whether Council Members wished to continue the item or ask questions.

Council Member Scharff called Point of Order. Procedures directed a debate of the Motion as to the appropriateness of postponement and the time set. The Council should follow procedures and debate the Motion.

Ms. Gitelman planned to provide an assessment of parking garage technologies at the August 18, 2014 meeting. In September 2014, she planned a holistic discussion of parking supply.

Council Member Schmid referred to the City Manager's suggestion of a tiered approach. The Council should consider a tiered approach and determine the major elements.

Mayor Shepherd requested Council Members limit their comments to the Motion.

Council Member Holman would not support the Motion. Shuttle parking along Embarcadero Road was a high cost per space project in an environmentally sensitive area. People would continue to park at the Baylands Athletic Center even if the Council removed it from the study. The transfer of parking from neighborhood to neighborhood was a valid concern. The Staff Report did not address protections for the Baylands. She offered a Substitute Motion.

Council Member Klein called Point of Order. A Substitute Motion could not be offered for a Motion to continue.

Ms. Stump reported the Motion to continue should be resolved prior to accepting another Motion.

Council Member Scharff would not support the Motion. The Agenda for the August 18, 2014 meeting was full. Satellite parking was an independent issue. The public was present for the discussion.

Council Member Berman concurred with Council Member Scharff's comments.

Council Member Price also concurred with Council Member Scharff's comments.

Vice Mayor Kniss felt the Council should discuss individual issues and would not support the Motion.

Council Member Burt inquired whether the intention of the Motion was to preclude further Council Member questions and comments or to preclude Council action.

Council Member Klein indicated the intention was to preclude Council action.

Council Member Burt asked if Council Member Klein would continue the item to the September meeting given Ms. Gitelman's description of the topic for discussion.

Council Member Klein indicated the Motion would not be approved; therefore, the Council should vote on the Motion and begin discussion of the item.

Council Member Burt asked if Council Member Klein would continue the item to the following week or September.

Council Member Klein preferred one meeting devoted to a variety of solutions.

Council Member Burt reiterated his question.

Council Member Klein answered September.

Council Member Burt believed action on the item was contingent upon other considerations. The item was more contentious than other actions. The Council should discuss it at the current time and then defer it to the September meeting for action.

MOTION FAILED: 3-6 Burt, Klein, Schmid yes

MOTION: Council Member Holman moved, seconded by Council Member Schmid to eliminate the Embarcadero Road Satellite Project from consideration to solve parking problems. Provide an opportunity to discuss the list of potential parking solutions from February 2014 at the August 18, 2014 meeting.

Council Member Holman explained that the Comprehensive Plan and Baylands Master Plan were not considered in this item. She had never supported the location on Embarcadero Road. The cost per space was high. The project provided very few additional parking spaces. Public comment indicated the existing shuttle service was not reliable. She inquired whether Staff obtained public input regarding use of the Embarcadero Road location.

Ms. Gitelman reported one objective of the project was to determine whether satellite parking was a low-cost, short-term solution that could attract commuters to park there. Compared to constructing parking structures in Downtown, satellite parking required less time to implement and cost considerably less. The analysis would include possible transfer of impacts to other neighborhoods as well as Baylands policies.

Council Member Holman remarked that the cost of satellite parking was not only monetary but also environmental and aesthetic. Once an area was degraded, it would most likely remain degraded. She wanted to discuss the list of potential parking solutions at the August 18, 2014 meeting.

Mayor Shepherd inquired whether the item would include a discussion of the list of items discussed in February 2014.

Council Member Holman replied yes.

Mr. Keene requested clarification regarding a holistic discussion of parking items the following week.

Council Member Holman felt the Council should discuss and question all parking solutions.

Mr. Keene advised that the Staff Report for the August 18 meeting was complete and could not be modified.

Council Member Holman was requesting the ability for the Council to discuss, question, or consider all parking options.

Mayor Shepherd asked if the discussion Council Member Holman requested could be part of Staff's presentation of a work plan for the Comprehensive Plan Update.

Mr. Keene recalled the prior week the Council directed Staff to provide an update of all initiatives currently pending. The Agenda for the August 18 meeting would need to be revised to include the discussion requested by Council Member Holman. It was also similar to the holistic parking discussion scheduled for September 2014. Staff's workload would not permit them to discuss the same issues week after week.

Council Member Holman did not understand the difference between continuing the item to August 18 and the discussion she requested. Both would require revision of the Agenda and additional noticing.

Mayor Shepherd suggested the Council discuss the Motion and determine support for it prior to resolving Agenda and noticing issues.

Council Member Schmid explained that satellite parking provided very small gains in parking spaces. It impacted new neighborhoods and residents who utilized the Baylands. It would affect parking in neighborhoods and overflow parking throughout the Baylands. The intersection of Embarcadero Road and Highway 101 was already one of the worst in the City. Downtown businesses would reap the benefits while residents would pay the costs of satellite parking.

Council Member Berman was surprised by the lack of community support for satellite parking. He referenced an email from Mr. Buchanan and Mr. Filseth requesting satellite parking be placed on a fast track. He inquired whether shuttle stops would be added to the existing route.

Mr. Rodriguez proposed a minimum of two new shuttle stops to support shuttle activities for the parking lot.

Council Member Berman asked if the proposed stops would be located east of Highway 101 or within neighborhoods west of Highway 101.

Mr. Rodriguez indicated they would be located east of Highway 101.

Council Member Berman inquired whether additional shuttle stops would be proposed for residential neighborhoods west of Highway 101.

Mr. Rodriguez advised that a separate study analyzing existing shuttle operations would be presented to the Council in September. As a result of that study, Staff could recommend expansion of stops.

Council Member Berman inquired about hours of operation for shuttles to and from the Embarcadero Road satellite parking lot.

Mr. Rodriguez reported that would be part of the September Council discussion.

Council Member Berman requested an update of the Golf Course closure.

Mr. Keene could provide that information in the next few weeks.

Council Member Berman viewed satellite parking as a short-term parking solution. Several initiatives were underway to increase parking supply. A long-term solution would manage traffic and the demand for parking. Implementation of the RPP Program and the resulting decrease in parking supply would impact both technology and service workers. The concept of satellite parking was worthy of study. He would not support the Motion.

Council Member Klein shared the views of Council Member Berman. However, he did not support Staff's recommendation because of the high cost of satellite parking. The area east of Bayshore Road was a possible location for satellite parking. The proposal need further work.

Mayor Shepherd originally did not support satellite parking along Embarcadero Road. After meeting with concerned residents, she realized satellite parking was needed. She was impressed with the incorporation of bike paths into the study.

Council Member Scharff remarked that 132 parking spaces comprised 6-9 percent of the parking deficit. The parking deficit was 1,500 to 2,000 parking spaces. Mr. Buchanan proposed allowing commuters to occupy 25 percent of neighborhood parking. A TDM Program and increased parking efficiency were additional solutions to the parking deficit. The item would authorize a study only.

SUBSTITUTE MOTION: Council Member Scharff moved, seconded by Council Member Price to approve a consultant agreement with BKF Engineers in the amount of \$180,000 for the design and environmental review of the Embarcadero Road-Satellite Parking Lot Project, subject to removal of Task 4.7 and other references to the Baylands Athletic Center from the scope of

work. Additionally, direct Staff to return at the appropriate meeting to analyze the feasibility of using the golf course parking lot while it is closed.

Council Member Scharff felt it was important to implement the RPP Program. The City needed to move forward with parking solutions. If the community had additional solutions, they should offer them.

Council Member Price agreed it was important for the City to proceed. The Council wanted data to make informed decisions; this study would provide data. The Substitute Motion allowed the City to move forward. She expressed concern regarding use of the Golf Course parking lot because of the completed EIR. Satellite parking was worthy of examination.

Council Member Burt opposed the Substitute Motion. Satellite parking should be considered in the context of other parking solutions. Measures to decrease parking demand and increase parking supply would determine whether satellite parking was needed. Expending \$180,000 for a design and environmental analysis made it more difficult not to implement satellite parking. The Council's decision regarding satellite parking should be contingent on additional information. Ms. Gitelman stated the study would review the potential uptake by Downtown businesses. The RFP and Staff Report did not indicate whether Downtown businesses would be surveyed to determine the number of workers who would choose to utilize satellite parking.

Ms. Gitelman clarified that satellite parking was identified as a short-term parking solution for Downtown workers once an RPP Program was implemented. She was unsure whether surveying employees prior to implementing satellite parking would be effective.

Council Member Burt was not convinced that a survey would provide definitive information regarding participation once an RPP Program was implemented. The total cost could be \$500,000 for a short-term solution when Staff had not determined whether there was any demand. He did not understand how additional shuttles would not be needed.

Mr. Rodriguez reported Staff needed to review the number of shuttles needed to serve the area. That topic was a part of the study that would be presented to the Council in September.

Council Member Burt asked if additional shuttles would stop at shuttle stops on the way to Downtown.

Mr. Rodriguez explained that Caltrain operated and maintained the existing Embarcadero Road route. At least two shuttle stops would need to be added to the proposed parking lot, because there were no existing stops there.

Council Member Burt clarified his question to be whether additional shuttles would mean additional stops west of Highway 101.

Mr. Rodriguez was not proposing any new shuttle stops. The frequency of buses could increase.

Council Member Burt stated the Embarcadero Road shuttle currently had a series of stops. He inquired whether additional shuttles would stop at existing stops along the route.

Mr. Rodriguez advised that enhancing service would provide the option to stop at existing stops.

Council Member Burt focused on a specific question for a certain reason.

Mr. Keene did not have an answer for Council Member Burt, because the Council was finalizing work on the shuttle RFP. The design study would be sensitive to the potential impact of pop-up satellite parking lots.

Council Member Burt commented that increased shuttle headway would result in existing stops becoming de facto satellite parking lots. He hoped the scenario would be reviewed in the study. Spending \$180,000 now and committing to more expenditures in the future for two years of shuttle service along with many unanswered questions was a problem. He asked if the intersection at East Bayshore Road and Embarcadero Road carried a Level of Service (LOS) rating of F.

Mr. Rodriguez did not have the LOS number for existing conditions.

Council Member Burt advised that the Council would need that information to make a responsible decision.

Mayor Shepherd inquired whether that would be analyzed in the study.

Mr. Rodriguez answered yes. Analysis would confirm existing levels of service and any changes in levels of service as a result of the potential increase of traffic. There were no proposed lane or capacity reductions at East Bayshore Road. Proposed roadway changes would occur east of Faber Place. The capacity of existing intersections would not change.

Council Member Burt clarified that the demand for the intersection would change. The baseline LOS should be part of the report. He understood the Baylands Athletic Center was removed from consideration because it was dedicated parkland. He asked if the Golf Course parking lot was also dedicated parkland.

Ms. Stump reported the Baylands Athletic Center was removed because Staff did not propose it. There was no reason to proceed with a full analysis of the procedures required to use it. The Golf Course was dedicated parkland. The Council requested an analysis of the feasibility of using that on a temporary basis. Staff would provide that information.

Council Member Burt believed satellite parking was not ripe for a decision. The Council would know more after the September meeting and could make an informed decision then.

Vice Mayor Kniss did not know how to reach a solution without some study. She favored moving forward. Commuters would park in the satellite lot and car pool into Downtown.

Mayor Shepherd supported the Substitute Motion. The study included bike lanes along Embarcadero Road. An analysis would provide more information. She asked if the analysis would determine changes to the area, how the area would look, and whether the area could accommodate a satellite parking lot.

Mr. Rodriguez responded yes.

SUBSTITUTE MOTION PASSED: 5-4 Burt, Holman, Klein, Schmid no

- 9. Approval of Contract No. C15155728 in the not to Exceed Amount of \$146,440 with American Institute of Architects California Council to Manage the Design Competition for the Pedestrian & Bicycle Overpass at Highway 101 CIP Project PE-11011.
- 10. Approval of the Proposed Grocery Store Tenant (J&A Family 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 requested Council Members disclose outside contacts that provided information not in the public record.

Council Member Klein met with the Applicant and his attorney; however, he did not receive any information not in the public record.

Hillary Gitelman, Director of Planning and Community Environment, reported the Planned Community (PC) Zoning Ordinance approved the project contingent on a public benefit of a grocery tenant. The grocery tenant, other than John Garcia, was subject to approval by the City of Palo Alto.

Kristina Lawson, Attorney for the Applicant, advised that at the time the project was originally approved, it was understood the existing JJ&F Market would continue operations. Approximately a year later, John Garcia formally indicated he would not operate a grocery store as part of the project. The Council adopted a special limitation that required the City to determine that any proposed tenant other than Mr. Garcia was comparable to JJ&F Market. The City's evaluation had to be reasonable, and approval could not be withheld without a finding that the proposed tenant was not comparable to JJ&F Market. Evidence in the public record supported a finding of comparability between J&A Family Market and JJ&F Market. Staff and an independent grocery consultant concluded that J&A Family Market would likely be comparable in quality of products and services to JJ&F Market. Sutti Associates, the third-party consultant, concluded that the management team and advisors for J&A Family Market had necessary credentials to participate in managing and advising the owners of J&A Family Market. Sutti Associates also concluded that J&A Family Market would benefit the community and would be comparable, if not superior, to JJ&F Market. Development of the property was intended to enhance and revitalize the project. City approval was a prerequisite to issuance of a building permit. She respectfully requested the City allow the project to proceed by approving the grocery tenant.

Robert Moss suggested the Council modify the PC Ordinance such that the property owner would have 60 days to open a grocery store should J&A Family Market close. On the 61st day, a \$500 per day fine would be assessed for each day the grocery store remained closed. The fine would double on the 121st day and double again on the 181st day should the grocery store remained closed. In addition, the Council should state that the space could not be used for any other purpose. Without penalties, the grocery store would close and not be replaced.

William Ross recommended the Council continue the item or deny it. Critical documents were not provided to the Council. The Council was being asked to find a public benefit based on a confidential document. Traffic and circulation conditions had changed since the Council approved the Mitigated Negative Declaration.

Page 19 of 36 City Council Meeting Minutes: 08/11/14

Robert Smith believed the tenant's lack of grocery experience was not conducive to a successful grocery store. The Council should question the Applicant regarding efforts to obtain a tenant with grocery experience. He did not believe that a grocery store would be sustainable in that location for any amount of time.

Fred Balin stated the Council should not approve J&A Family Market as the grocery tenant. The lack of an independent and experienced proprietor was cause for concern. The Council could not make a proper judgment as to comparability without the full background of key managers.

Robert Phillips advised that the public benefit had declined to a market specializing in "grab and go" products and would be managed by the Applicant's son with no previous grocery experience. The Council should insist on a real grocer, a transparent process, and adherence to the letter and spirit of the Zoning Ordinance.

Lydia Kou indicated the community deserved a market comparable to JJ&F Market. The Council should include remedies in the Zoning Ordinance to close loopholes. The item should be continued.

Herb Borock believed the Applicant was given the benefits of a Public Hearing while the community was not. The Council was not given complete documents.

Margaret Heath recalled the Applicant's statements that space for a grocery store would be a financial loss for his business plan. If the Developer wanted to change the Condition of Approval, then that action should invalidate the PC designation.

Mark Weiss preferred a motivated and talented entrepreneur become the tenant.

Seelam Reddy indicated other grocery store operators were better suited to occupy the space.

Doria Summa reiterated that the tenant was the son and business partner of the Applicant and the son had no grocery experience. The Council had no assurances that the tenant was a legitimate grocery store with a good chance of success. The Council should insist the Applicant find a proven and known grocer for the location.

Ms. Lawson reported the Council did have information about the business plan in Attachment C. Attachment B was a copy of the lease between the owner of the property, College Terrace Centre LLC, and J&A Family Market. Neither party was related. The item for consideration was a replacement tenant for JJ&F Market. The third-party consultant did review the trade secret list of employees. The consultant and Staff determined the Applicant satisfied terms of the Condition of Approval. She read the Mission Statement of J&A Family Market.

Vice Mayor Kniss asked if the Applicant's proposal met the letter of the law for findings adopted in 2010.

Cara Silver, Senior Assistant City Attorney, advised that three other projects contained a grocery store as a community benefit. For the project under discussion, the Council adopted a comprehensive set of conditions in an attempt to prevent problems that occurred with the other projects. The burden was on the Developer to provide the same level of services as of 2009. The Council could determine whether operative findings were met based on the evidence. The Condition of Approval was well crafted and contained a number of safeguards.

Vice Mayor Kniss inquired whether the Council could require the tenant to report to the City on the success of its operations every six months or so.

Ms. Silver felt the Council could direct Staff to require the Applicant to prepare a report or to monitor existing community benefits.

Vice Mayor Kniss recalled the Council's concerns regarding monitoring of PCs. If she supported approval of the tenant, then she would want to require monitoring of the tenant.

Ms. Silver indicated such a requirement was within the Council's purview.

Council Member Scharff asked if Ms. Lawson stated this was a lease between College Terrace Centre LLC, the property owner for 80 years, and another business entity.

Ms. Lawson replied yes.

Council Member Scharff explained that LLC entities had not been in existence for 80 years. Her statement clearly was not true. He requested clarification of the ownership structure.

Michael Polentz, Attorney for the Applicant, reported the LLC was a single-member, single-manager LLC. The sole member and manager of the LLC was Chilcote Family Trust. The Chilcote family had owned the property for 80 years. The LLC entity was created in response to a mandatory condition for financing debt on the property.

Council Member Scharff requested clarification of the relationship between the Developer and the grocery store manager.

Mr. Polentz advised that the Developer was not the property owner. The Chilcote family hired a fee Developer to develop the project. The lease was between the LLC and an entity formed by Jim Smailey. Mr. Smailey was the son of Patrick Smailey, both of whom were principals of the Fee Developer. None of the Smaileys owned any interest in College Terrace Centre LLC.

Council Member Scharff referenced the requirement to provide a signed lease for the grocery store enforceable against the tenant. The Applicant provided a redacted copy of the lease. He could not support approval of the tenant without information redacted from the lease. He asked if the Applicant would provide that information.

Mr. Polentz reported the same discussion occurred when entitlements were issued in 2010. The prior City Attorney advised the City Council at that time as to how and why the redactions occurred. Ms. Silver approved the form of the lease provided in 2010. Sutti Associates received an unredacted copy of the lease along with other requested information.

Council Member Scharff stated the City Council had to make the decision, not Sutti Associates. The ownership received a larger building in exchange for a public benefit. He asked if the Applicant would supply a copy of the lease.

Mr. Polentz responded no, the Applicant would not provide a copy of the lease in a public forum.

Council Member Scharff understood the tenant would provide a comparable quality of products and services. The consultant reported it had no basis to compare services because the Applicant did not provide information. He could not determine whether services were comparable without having all the information.

Ms. Lawson indicated the Applicant did not provide the specific names of people providing services. The consultant had that information for review.

The Applicant wished to protect the confidentiality of those people who were currently employed elsewhere and to protect the operations of the business.

Council Member Klein recalled that the Council in 2009 was persuaded to grant the benefits requested by the Applicant in exchange for the grocery store because there was community support for the grocery store. He referenced Paragraph 7 regarding continuous operation as a grocery store. The PC Ordinance contained penalties for the Applicant not complying with requirements. The Applicant had a continuing obligation to provide a grocery store of comparable services and products. If the Applicant proposed an existing grocery store as the tenant, then the Council could easily judge the quality of goods and services. The Council did not have the necessary information to judge the quality of goods and services offered by a start-up grocery store. Providing that information to a consultant was not approved by the Council.

Council Member Holman noted the consultant's report raised issues regarding a deli consultant and a produce buyer and manager. There was no mention of the proposed grocer committing to engaging consultants. The produce department would be smaller; however, the outdoor market would enhance the produce department. The outdoor market was not shown on the floor plan, and there was no commitment to the floor plan.

Larry Brucia, President of Sutti Associates, knew the individuals who had expressed high interest in being part of the J&A Family Market. They were currently employed by other companies. The individuals were highly qualified and involved in high-profile stores. The tenant did not provide him with employment contracts for those individuals. The floor plan was preliminary and not a working drawing. The J&A Family Market would provide all departments found in other grocery stores. "Grab and go" products were a part of the store, but not the entire store.

Council Member Holman asked if J&A Family Market had engaged a produce consultant.

Mr. Brucia stated J&A Family Market had talked to a produce consultant and expressed an interest in hiring him, and the person expressed a desire to work for J&A Family Market.

Council Member Berman asked if the Chilcote Family Trust was the owner of the property.

Mr. Polentz answered yes. Fee title was held in the LLC, but the LLC was owned by the Chilcote Family Trust.

Council Member Berman asked if the Developer was hired to build the property.

Mr. Polentz replied yes.

Council Member Berman asked if the Developer's son was proposing to own and manage the grocery store.

Mr. Polentz explained that the Developer's son through the J&A Family Market entity entered into a lease with College Terrace Centre LLC, the property owner. The lease was the same business transaction to which JJ&F Market agreed.

Council Member Berman asked if the Developer's relationship with the property owner would continue once construction was complete.

Mr. Polentz advised that a Fee Developer could play different roles. The Fee Developer was hired to develop the project. Once development was complete, the Fee Developer's role was complete. There were other roles for ongoing management such as property manager and leasing broker.

Council Member Berman asked if a property manager and leasing broker were different from a Fee Developer.

Mr. Polentz answered yes. The name of the Fee Developer was 2100 Ventures, effectively the Smaileys.

Council Member Berman inquired about the career experience of Jim Smailey.

Mr. Polentz reported the ownership continued to search for an established grocer who was willing to enter into a lease with the same terms as JJ&F Market's lease. Mr. Smailey had not previously operated a grocery store. He had operated a construction company and was part of a property management firm and part of a Fee Developer. In order to establish the viability of a grocery store, Mr. Smailey found potential employees with grocery store experience.

Council Member Berman asked if Mr. Smailey was willing to operate the grocery store because someone was needed to own and manage a grocery store.

Mr. Polentz did not wish to speak for Mr. Smailey. Mr. Smailey believed a grocery store was a required component of the project. Given the location and the orientation of the store, the likelihood of a successful grocery store was high. Mr. Smailey was convinced a grocery store would succeed.

Council Member Berman inquired about Mr. Smailey's reasons for wanting to operate a grocery store.

Mr. James Smailey explained that he contacted people he knew in the grocery industry to take over the store from JJ&F Market. However, no one was willing to operate a grocery store at the site, even after the building was rebuilt. He did not want to open a grocery store and watch it fail. He did not know the grocery business, but he knew customer service.

Council Member Berman inquired whether periodic monitoring of goods and services was required under the PC Ordinance.

Ms. Gitelman advised that Staff would consider monitoring the quality of goods and services. Provisions of the PC Ordinance would help Staff monitor and enforce a better outcome.

Ms. Silver indicated the PC Ordinance required the Council to make an initial finding of comparable quality of goods and services. The Condition of Approval did not require goods and services remain static. The Condition of Approval did require continuous operation of a neighborhood-serving grocery store.

Council Member Berman was concerned that goods and services would diminish as time passed.

Council Member Burt inquired about consequences for J&A Family Market allowing the quality of goods and services to deteriorate.

Ms. Gitelman reported Staff would not monitor the quality of goods and services but the continuous operation of the store.

Council Member Burt stated monitoring would have no value under the existing PC Ordinance.

Mr. Keene did not believe the Council had begun a discussion of consequences for failing to meet standards.

Council Member Burt believed the current PC Ordinance did not provide explicit ramifications for deterioration of goods and services or lack of

continuous operation. He inquired whether Council action to strengthen consequences for noncompliance with PC Ordinances would apply to PC Ordinances currently in place.

Ms. Stump advised that the Council could review remedies and consequences and attempt to refine provisions for PCs that had been approved in Palo Alto. Changes to the type of remedies that applied to a PC violation could and would apply to already approved PCs. The Council could enact an Ordinance that would apply prospectively to violations that developed in the future. Conditions had to be read together in a harmonious way. Monitoring was not precise. The requirement for a high customer service market with high quality products was part of the PC Ordinance and would be a continuing obligation. The City would look to enforce that.

Council Member Burt understood that was an interpretation of the existing PC Ordinance. He asked if the Council could modify the PC Ordinance.

Ms. Stump indicated modification of PC Ordinances was not on the Agenda for the meeting. As a general matter, PC Ordinances were zoning matters and the Council retained discretion over zoning. Rights did not vest until a building permit was issued and there were substantial expenditures in reliance thereon. It was the City's position that had not occurred. Staff would want to review any modification carefully and would need time to analyze that procedure.

Council Member Burt referred to a statement in Attachment E that the lease and rent structure were identical to that provided and accepted by John Garcia, which the City Attorney reviewed and approved. He asked if the City Attorney had reviewed and approved the current or prior lease according to the statement.

Ms. Stump reported Staff reviewed the form of the lease and determined that the lease was a commercially customary lease. Staff did not review substantive terms of the lease, which had been redacted. Some of those terms were relevant to the discretion the Council would exercise.

Council Member Burt reiterated that Staff did not review the rent structure under the current lease. He assumed the Applicant was saying that the redacted lease was the same as the prior lease with Mr. Garcia. He asked if Staff reviewed the rent structure and the balance of the unredacted lease with the prior Garcia lease.

Ms. Silver answered no. She understood both leases contained a redaction of the rent amount.

Mr. Polentz clarified that all of those business terms were redacted at Mr. Garcia's express request.

Council Member Burt asked who wrote the responses in Attachment E.

Mr. Smailey wrote the responses.

Council Member Burt could not determine whether the lease and rent structure were identical to those provided to and accepted by Mr. Garcia, as stated in Attachment E. The City Attorney reported she did not review and approve the rent structure, as stated in Attachment E.

Mr. Polentz had written documentation from Ms. Silver confirming her review and approval of the form of lease.

Council Member Burt clarified that Mr. Polentz stated form of lease while Attachment E stated rent structure. Ms. Silver indicated the lease contained redactions. Among those redactions was the rent structure. The form of the lease was different from the specifics of the lease.

Mr. Polentz explained that the Condition of Approval was the City Attorney's approval of the form of lease.

Council Member Burt reiterated that form of lease was not stated in Attachment E and not what Ms. Silver stated earlier. He inquired about the basis for a claim of confidentiality regarding market research.

Ms. Gitelman advised that Staff's charge was to evaluate the proposed tenant and how it compared in quality and service to JJ&F Market.

Council Member Burt asked if the business plan was part of Staff's evaluation.

Ms. Gitelman replied yes.

Council Member Burt noted the consultant was not part of the review of the business plan for market research. He asked if that review was separate from the business plan.

Ms. Silver indicted the consultant would need to answer that.

Council Member Burt wanted to understand the relationship between the tenant and the guarantor. The lease terms placed significant weight on the

guarantor of the lease. He requested an explanation of the relationship of the guarantor to the lease. Mr. Polentz stated that no other grocer was interested in the site under the terms to which Mr. Garcia agreed. He asked how Mr. Smailey would be successful at the site when other proven grocers would not. He asked why other grocers were offered only the terms of the Garcia lease.

Mr. Polentz indicated J&A Family Market was a corporation and the guarantor of the lease was Mr. Smailey. As part of the entitlement process, virtually all of the business terms of an agreement to lease had already been negotiated. Mr. Smailey agreed to accept all of those terms in the hope that that would be the appropriate response for a replacement tenant, because the Council had already assessed it under the terms of the agreement to lease. Discussions with other grocers were not limited to terms included in the agreement to lease with Mr. Garcia and JJ&F Market. Grocers could propose any terms; however, no grocer had proposed any business terms to lease the site.

Council Member Burt asked why Mr. Smailey would be successful and other grocers would not.

Mr. Polentz could not speculate on why an established grocer was not interested in the site.

Council Member Burt could not discern who initiated the agreement with Mr. Smailey. He asked why the Developer's son would enter into an agreement with the owners.

Mr. Polentz attempted to answer that question previously.

Mayor Shepherd requested Council Member Burt conclude his questions in the interest of time.

Council Member Burt understood the consultant reviewed the business plan subject to a confidentiality agreement. He asked if Staff could agree to terms of confidentiality and still divulge information to the Council.

Ms. Gitelman reported Staff believed receipt of confidential information would place that information in the public record, and Staff would have to release that information to anyone who requested it.

Council Member Burt inquired whether Staff could agree to a confidentiality agreement.

Ms. Stump believed there was a mechanism for Staff to receive confidential information. It had been done in the past. Staff's lack of expertise in the grocery business was part of the rationale for hiring an expert consultant.

Council Member Burt was not asserting that Staff's possession of information would substitute for hiring a consultant.

Mr. Keene felt the City Attorney added a narrow opening related to confidentiality. The City's culture of transparency placed Staff in the position of not engaging in a confidentiality agreement.

Council Member Burt commented that the qualifications of J&A Family Market were based upon J&A Family Market hiring key employees with expertise in the field. While J&A Family Market was interested in hiring key employees and key employees desired to be employed by J&A Family Market, there were no employment contracts. He did not understand how the consultant or the Council could determine that those individuals would be hired.

Council Member Price expressed concern that other grocers were not interested in the site. Baseline conditions and performance measures were needed to monitor quality of services. The Council needed to take some action to resolve the issue.

MOTION: Council Member Klein moved, seconded by Council Member Scharff that Council finds that the Applicant has not submitted sufficient information for the City to reasonably find that the proposed grocery tenant is likely to be comparable in quality of products and services as the former JJ&F Market as it existed and operated on December 7, 2009.

Council Member Klein felt the burden was on the Applicant to demonstrate that the tenant would offer the same quality of products and services as JJ&F Market. The lack of information from the Applicant made such a finding impossible.

Council Member Scharff was disappointed by the Applicant's unwillingness to share lease terms and other information. He encouraged the Applicant to return and provide information so that the Council could make a decision based on evidence.

Council Member Holman concurred that the Council did not have sufficient information to approve the proposed tenant. She was not comfortable with the lack of information regarding attempts to lease the site to other grocers.

Council Member Schmid proposed language for the Motion of "ask Staff to expedite a Council discussion of fines on existing PCs."

Ms. Gitelman reported a Study Session regarding PC reform was scheduled for the Planning and Transportation Commission (PTC) that week. Staff would present information on PC reform to the Council on October 6, 2014.

Council Member Schmid wanted an expedited discussion of existing PCs rather than all PCs.

Mayor Shepherd noted the Agenda item was not PC reform.

Ms. Stump understood Council Member Schmid's request was concern regarding scheduling of an item. With the number of complex issues before the Council, discussion of PC reform twice was not the best use of time.

Mayor Shepherd felt duplicating the services and products of JJ&F Market would be very difficult. The Applicant should reach out to the neighborhood to generate community support.

MOTION PASSED: 9-0

11. Transfer of the Operation of Palo Alto Airport to the City Requiring Adoption of: 1) Resolution 9452 entitled "Resolution of the Council of the City of Palo Alto Approving Four Contracts - the Termination Assignment and Assumption Agreement, the Federal Obligations Assignment and Assumption Agreement, the Federal Aviation Administration Supplemental Lease Agreement, and the State Lands Commission Lease No. PRC ____; " 2) Resolution 9453 entitled "Resolution of the Council of the City of Palo Alto Approving FY 2015 Palo Alto Airport Fees and Charges; " 3) Resolution 9454 entitled "Resolution of the Council of the City of Palo Alto Approving Application of the County Airport Rules and Regulations and General Aviation Aircraft License Agreement to the Palo Alto Airport During FY 2015;" and 4) Ordinance Amending Palo Alto Municipal Code Sections 12.04.020, 12.04.030, 12.04.040 and 12.20.010, to add "General Aviation Airport" to Existing Definitions and Permit the Adoption of Airport Fees and Charges by Resolution.

Mike Sartor, Public Works Director, reported the Santa Clara County Board of Supervisors approved the Transfer Agreement the prior week.

Andy Swanson, Airport Manager, advised that the Airport was very busy and played an important role as a reliever airport. The loan amount from the

General Fund to the Airport Fund totaled \$1.6 million. In 2017, Staff would renegotiate two major land leases. Staff projected the Airport would be operating at a profit in 2018 and could begin repaying the General Fund loan at that time. Replacement of the terminal building was a capital project. The County of Santa Clara (County) would provide matching funds for a grant for runway rehabilitation and taxiway repairs. The State Lands Commission (SLC) was scheduled to review the 25-year lease agreement on August 15, 2014. Federal Aviation Administration (FAA) approval of the lease agreement hopefully would occur in the next two weeks.

Alberto Rossi, Rossi Aircraft, reviewed services offered by Rossi Aircraft.

Ralph Britton, Palo Alto Airport Association President, was pleased the City was taking control of the Airport. The transfer process proved to be considerably more complex than originally thought. The Palo Alto Airport Association was committed to making the Airport the best possible.

Bob Lenox was looking forward to making the Airport a signature gateway to the community.

Council Member Schmid noted in 1978 the County assumed the principle duty for maintaining the levee, which duty would be transferred to the City along with the Airport. He inquired whether the City was assuming responsibility for the levee.

Mr. Sartor answered yes. The City would maintain the levee parallel to the runway.

Council Member Schmid noted money could not be transferred from the Airport Enterprise Fund to the General Fund. He asked if the City's responsibility was through the General Fund.

Mr. Sartor explained that Airport Enterprise Funds would be utilized to maintain the levee.

Council Member Schmid inquired whether maintenance of the levee would be a permanent City responsibility.

Mr. Sartor indicated the levee was a permanent part of the Airport and Airport operation. It protected the runway from tidal action.

Council Member Schmid inquired whether Staff anticipated maintenance to be a large cost.

Mr. Sartor replied no. Major reconstruction of the levee occurred approximately five years ago. Recent repairs were routine maintenance.

Council Member Klein recalled a reference in the documents to resolving the ownership of the land with the SLC. He asked if litigation would be initiated in the next 12-18 months to resolve ownership.

Grant Kolling, Senior Assistant City Attorney, reported the City and the SLC would hire a land surveyor to survey the Airport property. The results of the survey would determine who owned the Airport. The City and the SLC would decide whether a lease from the SLC was necessary. Staff expected that to be done in less than 18 months.

Council Member Klein inquired about the cost.

Mr. Kolling did not have a cost estimate for the survey.

Mr. Swanson advised that the City had performed a survey for the Airport Layout Plan. Staff was sharing survey records with the SLC.

Council Member Klein inquired about reasons for taking these actions.

Mr. Kolling reported a grant assurance required the City to hold fee title to the Airport. Fee title was in doubt because of the SLC's claim to certain parts of the Airport that historically belonged to the State.

Council Member Klein offered a hypothetical scenario of a portion of the Airport being owned by the State rather than the City. He asked if the City would have to pay the SLC for that portion of land owned by the State.

Mr. Kolling reported the City was unaware of the ownership issue until negotiations commenced. The SLC recognized that the County and the State were not aware of the legal issues underlying the SLC claim to title to any portion of the property. In other transactions, the State and City agreed to disagree as to who owned the property. The FAA wanted the issue resolved prior to issuing funds.

Council Member Klein remarked that the same issued applied to the Baylands.

Peter Kirsch, Kaplan, Kirsch and Rockwell, LLP, explained that the dispute was actually an ambiguity having to do with title extending back to when California became a state. The City and the SLC had recognized the ambiguity for over 40 years. The City believed it had title, and the SLC was

not sure the City held title. The SLC gave a lease to the County for the duration of the County's lease from the City. The SLC offered to continue that process with the City. In order to operate the Airport and to receive federal grants, the City was required by federal law to have good title to the property through title or a lease. If the City held a lease, the lease was required to extend at least 20 years from the date of the last federal grant. Because three years remained on the lease with the SLC, the current lease would not be satisfactory to the Federal government unless the City could prove it held title. The City believed it held title, but could not prove that to the satisfaction of the Federal government. The SLC was willing to enter into a new lease for a period of 25 years, which provided the City with time to resolve the issue. If the survey determined the City held fee title, the SLC lease would terminate and the issue would be resolved. If the City did not hold title, the SLC proposed to enter into a new lease that would give the City satisfactory title for purposes of federal grant assurances.

Council Member Klein asked if the City would have control of the Airport property for the foreseeable future either through lease or fee ownership.

Mr. Kirsch responded yes.

Council Member Klein asked if this issue would affect the City's claim to other property in the Baylands.

Mr. Kirsch indicated the SLC believed it owned more property than just that in dispute at the Airport. If the survey provided additional information, it would be useful for the City's claim to other property. The focus was on the boundaries of the Airport.

MOTION: Council Member Price moved, seconded by Vice Mayor Kniss to adopt:

1. Resolution, incorporating the Council's explicit approval of: (A) the Termination Assignment and Assumption Agreement between the City and the County, regarding the transfer of sponsorship, management and control of the Palo Alto Airport to the City; (B) the Federal Obligations Assignment and Assumption Agreement among the City, County and the Federal Aviation Administration, regarding the City's assumption of the County's outstanding federal grant agreement assurances and obligations pertaining to the Palo Alto Airport; (C) the Supplemental Lease Agreement between the City and the FAA, regarding the Palo Alto Airport Air Traffic Control Tower lease and Operating Agreement; and (D) a new lease (State Lands Commission)

Lease No. PRC ____) between the State Lands Commission and the City for the lease of the real property underlying Palo Alto Airport.

- 2. Ordinance, amending Palo Alto Municipal Code sections 12.20.020, 12.04.030, and 12.040, to include "general aviation airport" in the definition of "public works" and "public utilities," and section 12.20.010, to permit the adoption of Palo Alto Airport fees and charges by resolution.
- 3. Resolution, approving the FY 2015 Palo Alto Airport fees and charges that will apply to tenants, licensees, permit holders and other users of premises at the Palo Alto Airport after August 11, 2014.
- 4. Resolution, regarding the City's adoption of both the County's Airport Rules and Regulations and the General Aviation Aircraft License Agreement that will be applicable to tenants, licensees, permit holders and other users of the Palo Alto Airport after August 11, 2014 during FY 2015 until the City develops its own Palo Alto Airport Rules and Regulations and Master License Agreement.

Council Member Price commended Staff for their negotiations with local, State, and Federal agencies.

Vice Mayor Kniss had previously shared her concerns regarding the Airport. Operating an airport was difficult.

Council Member Burt inquired about the source of funds for tower replacement and runway repaying projects and a method to repay those funds.

Mr. Sartor advised that runway repairs would be paid through a combination of funds from an FAA grant and County matching funds. Trailer replacement was included in the Capital Budget and pro forma projections.

Council Member Scharff asked if a survey would resolve the title issue, if the City had chosen a surveyor, and if the issue would negatively impact the City's other property interests.

Molly Stump, City Attorney, was sure the SLC did not want to operate a local airport.

Mr. Kirsch remarked that the title issue was not simple. The survey was the first piece to resolving the issue. When California became a state, the State had trust properties consisting of tidal lands. Tidal land when California

became a state was different from current tidal land. The purpose of the survey was to determine the boundary of State claims. The City and the SLC proposed to hire jointly a surveyor. Once the current boundary was determined, then historical research was needed to determine the boundary when California became a state. At that point, the City would know the State's historical claims to property, whether there had been changes in the State's claims because of property sales, whether the State sold property it acquired as part of statehood, and whether the State continued to own any of that property. The SLC was extraordinarily helpful in finding creative solutions. The SLC was eager to resolve the issue or to continue the current arrangement.

Council Member Holman recalled a great deal of the Baylands was created through landfill possibly after California became a state.

Mr. Kirsch advised that two federal statutes covered that issue. Boundaries of the State at statehood, subsequent changes, applicable statutes affecting states' rights, and property transfers were all issues to be considered.

Council Member Holman inquired about discrimination against commercial operators. Restrictions on activities in the vicinity of commercial operations could impact the Baylands. She asked if that was a concern for the City.

Ms. Stump reported the nondiscrimination provision was a standard part of grant assurances required by the FAA from all airport sponsors. Many airports had wildlife and bird management issues.

Mr. Kirsch indicated the operator of an airport that received federal grants could not unjustly discriminate among commercial operators. Commercial operators did not include passenger carriers. The Airport was not licensed to receive passenger carriers. Unjust discrimination meant the City could not allow one entity to operate at the Airport and not another entity. The geographic limits of the Airport were defined by the City. If someone proposed an operation consistent with City rules, regulations, and standards and if space was available, then the City was required to accommodate the operation. All airport operators were required to have a Wildlife Hazard Assessment Plan. Wildlife was less of a problem along San Francisco Bay. The City would need to make a wildlife assessment to determine whether there were any wildlife hazards on or near the Airport and how to handle those hazards in a humane and responsible manner.

Mayor Shepherd felt it would be difficult for the Airport to operate at a profit.

MOTION PASSED: 9-0

COUNCIL MEMBER QUESTIONS, COMMENTS AND ANNOUNCEMENTS

Council Member Price requested an update regarding the status of discussions between the Santa Clara Valley Transportation Authority (VTA) and Stanford University regarding the Palo Alto Transit Center.

Council Member Holman asked Staff to provide information to Council regarding the 385 Sherman Avenue project mentioned during public comment.

ADJOURNMENT: The meeting was adjourned at 11:46 P.M.