



CITY OF PALO ALTO CITY COUNCIL FINAL MINUTES

Regular Meeting
November 2, 2020

The City Council of the City of Palo Alto met on this date in Virtual Teleconference at 6:02 P.M.

Participating Remotely: Cormack, DuBois, Filseth, Fine, Kniss, Kou, Tanaka

Absent:

Agenda Changes, Additions and Deletions

None.

Oral Communications

Mary Sylvester believed the public did not have sufficient time to review documents for the Castilleja School expansion project. She requested the Council investigate the intention of Castilleja School's attorney in making comments during Staff's presentation to the Planning and Transportation Commission (PTC) the prior week.

Tyler Hoffman expressed disappointment with the proposal to rescind or reduce ground-floor retail protections in Palo Alto. During economic downturns in 2000 and 2008, landlords were allowed to convert ground-floor retail and services to non-retail. Landlords needed to accept lower rents for ground-floor spaces in exchange for owning prime commercial spaces.

Rob Levitsky remarked that Mr. Lait's interpretation of the tree Ordinance was a stark reversal of the intention of the Ordinance. If the Council allowed the interpretation to stand, the only protected trees in a single-family neighborhood were street trees. Trees in the way of Castilleja School's expansion were going to be removed because the parcel was zoned R-1.

Rebecca Eisenberg commented regarding the Council's time limit for public comments as a violation of the Brown Act.

Reginald Williams summarized the inaccuracies contained in Vice Mayor DuBois' email about Council candidates.

Aram James concurred with an October 28, 2020 article in *The Daily Post* regarding the Independent Police Auditor (IPA) and urged the Council to direct the IPA to review all misconduct allegations against Police Officers.

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Carlin Otto asked the Council to allocate resources to count and enforce the daily maximum number of visitors to Foothills Park and to set the daily maximum at a sustainable number.

Kelsey Banes supported Mr. Williams' comments. In response to the complaint she filed against Vice Mayor DuBois for not filing Form 460, the Fair Political Practices Commission (FPPC) was investigating Vice Mayor DuBois.

Minutes Approval

1. Approval of Action Minutes for the October 19, 2020 City Council Meeting.

MOTION: Council Member Cormack moved, seconded by Vice Mayor DuBois to approve the Action Minutes for the October 19, 2020 City Council Meeting.

Rebecca Eisenberg urged the Council not to approve the Minutes because the Agenda was created by individuals who were systematically violating the Brown Act.

MOTION PASSED: 7-0

Consent Calendar

Council Member Cormack moved, seconded by Council Member Kniss, third by Mayor Fine to pull Agenda Item Number 5 to be heard later in the meeting.

MOTION: Vice Mayor DuBois moved, seconded by Council Member Kou to continue Agenda Item Number 5 to a future meeting.

Vice Mayor DuBois recalled that the prior week a majority of Council Members supported holding recruitments in the spring.

Council Member Kou concurred with Vice Mayor DuBois' comment.

Council Member Cormack advised that at least two of the Boards and Commissions had enough applications for a vote.

Council Member Kou requested the names of the two Boards and Commissions.

Council Member Cormack replied the Architectural Review Board (ARB) and the Parks and Recreation Commission (PRC).

MOTION FAILED: 3-4 DuBois, Filseth, Kou yes

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Mayor Fine indicated Agenda Item 5 was moved to the end of the Agenda.

Rebecca Eisenberg, addressing Agenda Item Numbers 2, 3, and 5, opposed the purchase of asphalt concrete as it was a major producer of carbon emissions. The Police Department review process was fatally flawed. She supported the proposal to allow the new Council to appoint Board and Commission members.

MOTION: Mayor Fine moved, seconded by Council Member Kniss to approve Agenda Item Numbers 2-4.

2. Approval of a Blanket Purchase Order With Graniterock in the Amount of \$400,000 Annually for a Three-year Term for a Total Not-to-Exceed Amount of \$1,200,000 for Asphalt Concrete Materials for Public Works and Utilities Departments.
3. Accept the Staff Report on the Palo Alto Police Department (PAPD) Revised Policy 300 on Use of Force.
4. Refer the Development of Permanent Public Art on King Plaza at City Hall to the Public Art Commission.
5. ~~Approve and Authorize the Extension of the Fall 2020 Board and Commission Recruitment for Positions on the Architectural Review Board, Planning Transportation Commission, Historic Resources Board, and Parks and Recreation Commission for an Additional six Weeks, With an Application Deadline of December 16, 2020.~~

MOTION PASSED FOR AGENDA ITEM NUMBERS 2-4: 7-0

City Manager Comments

Ed Shikada, City Manager, reported the Police Department was not aware of any credible threat or protest scheduled to occur in Palo Alto during the General Election. Registered voters could return their ballots by mail or drop box or vote in person. Revisions to Police Policy Manual Section 300, which the Council approved on the Consent Calendar, incorporated a significant body of work from the Human Relations Commission (HRC), Council Ad Hoc Committee, Palo Alto Police Department, Palo Alto Police Officers Association (PAPOA), and the Police Managers Association (PMA). Free COVID-19 testing and flu shots were available on November 6 and 7, 2020 respectively. Family Movie Night in the Park was scheduled for November 13, 2020. A virtual Tree Lighting Ceremony was planned for November 20, 2020 with details of a Holiday Home Decorating Contest to follow.

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Vice Mayor DuBois believed Agenda Item Number 3 needed to be an Action Item because of the extensive revisions.

Council Member Kou agreed with Vice Mayor DuBois' comment and remarked that the Council responded to community concerns with substantial changes to the Use of Force Policy. The City missed an opportunity to acknowledge the vast amount of work required to revise the policy.

Council Member Kniss noted that COVID-19 testing was the only thing preventing Santa Clara County from returning to the red tier. She encouraged the public to get tested.

Council Member Filseth appreciated Staff revising the Police policy exactly as the Council and HRC requested.

Mayor Fine appreciated the HRC's and community's work on the Police policy.

Action Items

6. Adoption of an Ordinance Amending the Municipal Code to Rename Foothills Park to Foothills Nature Preserve and Open it to the General Public by Removing Limits on Non-Residents, While Maintaining the Maximum Capacity of 1,000 Persons and Providing Residents First Access to Reservations for Towle Campground and Oak Grove Group Picnic Area.

Ed Shikada, City Manager, reported Staff was confident they were capable of managing Foothills Park in line with the community's interest in conserving natural resources. The Parks and Recreation Commission (PRC) began the discussion in 2018 and in 2019 recommended the Council adopt a pilot program for Foothills Park. In August 2020, the Council directed Staff to implement the pilot program in the fall of 2020 or the winter of 2021. In September 2020, litigation was instigated to open Foothills Park to nonresidents. The City Attorney's Office worked with the plaintiffs to develop the Staff recommendation as a way to avoid protracted litigation.

Kristen O'Kane, Community Services Director, advised that the entrance gate to Foothills Park was staffed on weekends only; an entrance fee was not charged; and the number of visitors was limited to 1,000 at one time. The number of visitors was not limited to 1,000 people per day, but to 1,000 people at one time. Some amenities were available for reservations. The General Fund provided funding for the management and maintenance of Foothills Park. Limitations and closures were in place due to COVID-19 and the risk of fire. Dogs were allowed in Foothills Park on weekdays only and were required to be leashed. The benefits of opening Foothills Park to

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nonresidents included increased access to nature-rich experiences, increased well-being of youth and adults, opportunities for additional partnerships in environmental projects, and reduced impacts on neighboring open space preserves.

Daren Anderson, Community Services Assistant Director, related that Staff needed to install a real-time vehicle counter, increase waste collection service, and improve parking delineation prior to opening Foothills Park. On opening day and the following few weekends, the number of Staff needed to be increased. Staff planned to assess the visitor experience and the park over several months to determine if additional resources were needed. The Monitoring Plan called for Staff to monitor the number of park visitors, litter, trash and recycling containers, and parking in non-designated areas. Grassroots Ecology offered to monitor trails for invasive plant species and sensitive habitat species and provide anecdotal observations of impacts to animals or plants. Options for the Council's consideration were continuing the 1,000 visitor limit, reducing the limit to 750 visitors, directing Staff to return in the spring with an evaluation and recommendation for the number of visitors, charging no entrance fee, charging a fee on weekends only with Staff collecting the fee at the entrance gate, and charging a fee every day with visitors depositing fees in a collection box on weekdays.

Alex Von Feldt, Grassroots Ecology, supported eliminating the residency requirement and the capacity limit because ecologically sensitive areas were not located in the high-use areas of the park. Many of the volunteers who worked in Foothills Parks were not Palo Alto residents.

Anne Cribbs, Parks and Recreation Commission Vice Chair, noted access to nature provided developmental and mental health benefits and increased environmental stewardship. Working together, the City and the community would protect this special resource.

Ms. O'Kane indicated if the Council approved the Staff recommendation, next steps included a second reading of the Ordinance on November 16, 2020, an effective date of December 17, 2020 for the Ordinance, preparation of an opening plan, and follow-up with the Council in the spring. If the Council did not approve the Staff recommendation, Staff needed to present options for a pilot program.

Mayor Fine chastised Council Member Kou for communicating purported confidential information, votes, and attendance from Council Closed Sessions. Code Section 2.04.040 prohibited the disclosure of any matter discussed during a Closed Session, and Council Procedures and Protocols prohibited the disclosure of confidential information without proper legal authorization.

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Council Member Kou objected to Mayor Fine's accusation as she did not divulge any confidential information. She conducted a survey of her own.

James Hindery urged the Council to support opening Foothills Park to all neighbors.

Jeff Greenfield, speaking for Keith Reckdahl, Fred Balin, Marilyn Keller, and Gerry Mastellar, supported opening Foothills Park if it was balanced with environmental stewardship, staffing, and infrastructure. The lawsuit eliminated community involvement. If the Council approved the Staff recommendation, it needed to support infrastructure updates, increased staffing, and enhanced environmental monitoring; set the daily visitor limit at 500 to 750 people; require an entrance fee on weekends; prioritize residents' reservations for all amenities; and direct Staff to return with a comprehensive policy recommendation in the spring.

Rohin Ghosh recommended the Council approve the Staff recommendation with no changes. Environmental groups supported opening the park. The idea of limiting visitors in order to preserve the park was absurd.

Bill Ross felt more transparency and certainty was needed regarding the proposed settlement. The proposed settlement was significant regardless of the Council's opinions of opening. The Council needed an independent legal opinion regarding the settlement.

Aram James supported opening the park and hoped the Council adopted the proposed Ordinance.

Jennifer Michel shared her affinity with Foothills Park and asked the Council to open it to nonresidents so that she could visit it again.

Ryan Globus supported allowing nonresidents into Foothills Park and a limit of 1,000 visitors and opposed prioritizing residents' reservations and charging an entrance fee.

Neva Yarkin opposed opening Foothills Park to the general public because more visitors meant more noise and trash.

Salim Damerджи asked the Council to approve the Staff recommendation as written.

Raven Malone stated the General Fund supported Foothills Park, and the primary source of the General Fund was the Transient Occupancy Tax (TOT). Tourists paid for the park; yet, tourists were not allowed to use it. She supported opening Foothills Park to everyone and charging an entrance fee.

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Reginald Williams supported opening the park.

Scott O'Neil remarked that litigation was costly, and winning the lawsuit was not a message the Council wanted to send.

Kelsey Baner did not support a pilot program and urged the Council to open the park.

Rebecca Eisenberg shared a resident's story of being asked to prove her residency when visiting Foothills Park.

Sonya Bradski favored charging an entrance fee for nonresidents because residents paid taxes to support the park, and many other cities charged entrance fees to nonresidents.

Elliott Wright felt a protracted lawsuit would cost the City more than allowing nonresidents into the park.

Madhumita Gupta concurred with comments in support of the Staff recommendation. The limit on visitors to the park was a conservation measure. The park and its inhabitants did not care if the 1,000 visitors were residents or nonresidents.

Leland Levy trusted the Community Services Department to protect the integrity of the park. Closing the park to nonresidents did not violate any laws, but the Council needed to do what was right.

Joe Hirsch concurred with Ms. Yarkins' comments. Council Member Kou's survey found a significant number of residents supported the residency requirement. The requirement had a de minimis effect on nonresidents' Constitutional freedoms. The public deserved to know if the lawsuit was the driving force to remove the requirement and to see the proposed settlement agreement.

Council took a break at 8:00 P.M. and returned at 8:19 P.M.

Council Member Kniss asked if alcohol was allowed in parks.

Ms. O'Kane advised that alcohol was allowed in some City parks with a permit. Generally, alcohol consumption in parks was not allowed.

Mr. Anderson clarified that visitors to Foothills Park were allowed to consume alcohol in the park. Alcohol was prohibited in Johnson, Boulware, Scott, Greer skate park facility, Robles, Hopkins, El Palo Alto Park, Cogswell Plaza, and Lytton Plaza. Without a permit, alcohol was prohibited in Rinconada, Mitchell, Heritage, and Eleanor Pardee parks.

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Council Member Kniss suggested the Council consider not allowing alcohol without a permit at Foothills Park. She requested the policy for fires in Foothills Park.

Mr. Anderson indicated fires were allowed at Towle Camp with a permit but not on red flag days and other fire danger days. With guidance from the Fire Department, Staff closed barbecues when fire danger was high.

Council Member Kniss asked if fires had been a problem in Foothills Park.

Mr. Anderson related that fire was a concern at the hillside barbecues. Staff was considering a recommendation to remove the hillside barbecues.

Vice Mayor DuBois requested the number of parking spaces in Foothills Park.

Mr. Anderson replied approximately 370.

Vice Mayor DuBois suggested the Council consider a limit on vehicles rather than people. He inquired regarding the consequences of the Council adopting the Staff recommendation without the injunction.

Molly Stump, City Attorney, suggested the litigation may not settle if the Council did not support the injunction. She preferred to advise the Council on the legal risks and defenses for the City in a confidential forum.

Vice Mayor DuBois noted Los Altos Hills installed no-parking signs along the road to Arastradero Preserve, which restricted public access to the park. He inquired regarding the methodology of studying the impact of dogs with increased usage of the park.

Mr. Anderson reported Rangers typically tracked their contacts with off-leash dogs. The Rangers could formally track those contacts in more detail.

Vice Mayor DuBois asked if the City Attorney clarified the name of the lawsuit prior to the Council adjourning to Closed Session.

Ms. Stump recalled clarifying that the lawsuit was filed because the Agenda identified prospective litigation. She needed to check on whether she indicated the suit was removed to federal court.

Vice Mayor DuBois noted the October 19, 2020 Minutes, which the Council approved earlier in the meeting, did not reflect oral changes to the Agenda Item.

Ms. Stump agreed to review the Minutes to ensure their accuracy.

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Council Member Cormack asked if visitation to Foothills Park was high during winter months.

Mr. Anderson responded no.

Council Member Cormack asked if nearby or mid-peninsula parks limited occupancy.

Mr. Anderson was not familiar with any parks having occupancy limits.

Mayor Fine inquired regarding the City's ability to charge an entrance fee, the easiest fee structure or type to administer, and a reasonable amount to charge.

Ms. O'Kane reported the Municipal Code did not set a fee for use of Foothills Park. If the Council wished to impose a fee, Staff needed to return with an amendment to the Code and a recommendation for a fee amount. Staff believed charging a minimal amount per car, perhaps \$5.00, and providing an annual membership with a reduced rate for residents was appropriate.

Mayor Fine requested the Foothills Park amenities for which Staff accepted reservations and which of the reservations could include a preference for residents.

Ms. O'Kane related that Staff accepted reservations for Towle campground, the Oak Grove picnic area, and a classroom in the Interpretive Center.

Mayor Fine asked if the proposal included the classroom.

Ms. O'Kane replied no.

Mayor Fine requested usage of the three amenities.

Ms. O'Kane stated the campground and picnic area were quite popular and were often booked up.

Council Member Tanaka asked if it was possible to charge a parking fee rather than an entrance fee.

Mr. Anderson supported charging a fee for vehicles only and recommended staffing the entry gate in order to welcome visitors, explain the rules, and accept credit card payments.

Council Member Tanaka requested the cost of infrastructure projects planned for Foothills Park and the increased costs associated with increased usage of Foothills Park.

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Mr. Anderson reported the costs of replacing restrooms, the Sunfish Island bridge, and the canoe dock were \$1.5 million, \$200,000, and \$125,000 respectively. The cost of Buckeye Creek improvements was \$3.9 million.

Council Member Tanaka expressed interest in determining a fee amount to fund those projects and increased maintenance costs if usage increased.

Mr. Shikada advised that deferred maintenance costs were greater than a vehicle fee could fund.

Council Member Tanaka requested the total cost of deferred and routine maintenance and possible funding sources.

Council Member Kou requested an explanation of using a vehicle counter to count visitors.

Mr. Anderson explained that Staff utilized a multiplier to estimate the number of visitors. Staff multiplied the number of cars by 2.7 to estimate the number of weekend visitors.

Council Member Kou inquired about the consequences of the number of visitors exceeding the limit.

Mr. Anderson indicated Rangers stopped visitors from entering the park until a sufficient number of visitors left the park.

Council Member Kou asked if concerts were allowed in Foothills Park.

Mr. Anderson replied yes with a special permit. A permit application for a concert was subject to several levels of review.

Council Member Kou believed the concern about concerts was increased noise levels in a nature preserve. She inquired about the City's liability for nonresident rental of canoes.

Mr. Anderson advised that all visitors signed a waiver.

Council Member Kou inquired regarding the funding source for maintaining and replacing canoes.

Mr. Anderson answered the Community Services Department's operating budget.

Council Member Kou asked if Staff had considered increased traffic on Page Mill Road from more visitors traveling to the park.

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Mr. Anderson reported Staff planned to install permanent no-parking signs in a few areas along Page Mill Road.

Council Member Kou asked if Staff planned to fill the vacant Ranger Manager position.

Mr. Anderson explained that the competition for limited funding may not allow Staff to fill the position.

Council Member Kou inquired about mountain bikers using the back entrance to bike on the trails.

Mr. Anderson explained that bicyclists were allowed to travel on the road through the park. Which entrance mountain bikers were using to access the trails was unknown.

Council Member Kniss asked if more people hiked or used the campground and picnic area.

Mr. Anderson indicated the picnic area received the most use.

Council Member Kniss asked if a picnic table was usually available at lunch time for visitors without a reservation.

Mr. Anderson stated a picnic area was usually available without a reservation on weekdays. The availability of a picnic area without a reservation on weekends depended on the time of year. Staff reviewed 2020 visitor information and found the number of park visitors reached 750 at one time on about six occasions, most of which were holidays.

Vice Mayo DuBois agreed with opening the park to all. The Council needed to consider starting with a lower vehicle count and raising the count after a few weeks. He supported charging a fee on weekends and different fees for residents and nonresidents. He requested discussion of the permanent injunction.

Mayor Fine requested an explanation of the injunction.

Ms. Stump advised that the injunction was important to the plaintiffs. She suggested the plaintiffs viewed the injunction as providing a solid and final resolution of the legal issues. If the City did not agree to the injunction, the plaintiffs' decision to settle or litigate the issues was unknown.

Mayor Fine interpreted the comments as litigation was likely to proceed if the Council did not approve the injunction. He questioned the rationale for opposing the injunction.

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Council Member Kou requested the remedies for residents if the City settled the lawsuit and residents disagreed with the Council's actions.

Ms. Stump reported not adopting the proposed Ordinance was within the Council's discretion. If the Council did not adopt the Ordinance, Staff planned to return to the Council later in November with details of various models for a pilot program. When a settlement was complete, the Council and the plaintiffs were required to approve it. The framework for settlement included recognition of voters' ability to referend a Council Ordinance. If a referendum was qualified for the ballot prior to the end of the 30-day period following a second reading of the Ordinance, the settlement would be void, and litigation would proceed.

Council Member Kou inquired about an initiative.

Ms. Stump explained that the right of initiative was very broad, and an initiative would be handled separately from the litigation. Ultimately, an initiative may be decided by a judge.

Council Member Kou inquired about outside counsel not disclosing the fact that the National Association for the Advancement of Colored People (NAACP) was or had been their client.

Ms. Stump did not believe there was a problem with the work conducted on behalf of the City. If the Council wished to pursue the topic, Staff needed to schedule a discussion.

Council Member Kou expressed reservations regarding outside counsel having a potential conflict of interest.

Council Member Tanaka requested the annualized cost of infrastructure and staffing.

Mr. Anderson indicated he needed additional time to provide the cost.

Council Member Tanaka asked if there was a draft settlement agreement.

Ms. Stump answered no. When a settlement agreement was final, Staff planned to make it available to the public. Hopefully, the settlement agreement was complete prior to a second reading of the Ordinance.

Council Member Tanaka asked if the Council needed to obtain a second opinion regarding the litigation.

Ms. Stump explained that the Council's timeframe for resolving the litigation was limited. The settlement offer included the plaintiffs' agreement not to

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seek reimbursement of legal fees if the situation was resolved by the end of the year. She believed there was not a conflict of interest, and outside counsel's advice was thorough and solid.

Council Member Tanaka clarified that he did not thoroughly read the memorandum regarding the potential conflict of interest. Members of the public may not have seen it.

Ms. Stump stated the memorandum was not provided to the public.

Council Member Tanaka requested the difference between a referendum and an initiative.

Ms. Stump explained that the State Constitution provided citizens with the right to impact government through an initiative, recall, and referendum. A referendum reversed an Ordinance adopted by a local government. Citizens had 30 days to gather a sufficient number of signatures to initiate a referendum. The time and topic of an initiative was not limited. A recall pertained to removing an elected official from office.

Council Member Tanaka understood that a referendum overturned an Ordinance and placed it on the ballot.

Ms. Stump clarified that the Ordinance was suspended rather than overturned.

Council Member Tanaka asked if an Ordinance remained in effect pending the outcome of the vote on an initiative.

Ms. Stump replied yes.

Council Member Tanaka requested the number of signatures needed for an initiative.

Ms. Stump needed to review the City Charter to provide that information.

Council Member Kniss noted the Council received information about the lawsuit.

Ms. Stump advised that the Council did not vote to disclose information provided in Closed Session.

Vice Mayor DuBois opposed the injunction because it may be perceived as forcing the City to open Foothills Park to nonresidents rather than the City choosing to open Foothills Park. The City did not need an injunction to manage its assets.

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Council Member Kou inquired about details of the permanent injunction.

Ms. Stump reiterated that it was a component of settlement, which was not complete.

Council Member Kou expressed concern that the time for Council review of the settlement would be limited.

Ms. Stump remarked that a permanent injunction was intended to create finality around the decision to open the park, if the Council wished to do so.

Mr. Shikada read the Staff Report language pertaining to the permanent injunction. He expected future documents to conform to that description.

Council Member Kou commented that the permanent injunction prevented current and future residents and Councils from repairing environmental damage caused by increased usage of the park.

Mr. Shikada clarified that the injunction pertained to resident versus nonresident access only. The City retained the ability to manage and address costs under the injunction.

Council Member Kou stated the City was giving up rights with respect to residents bearing a large portion of repair costs. The Council previously approved opening the park in a measured way so that the issue was not social justice versus the environment. She wanted to try the case in federal court because federal judges were appointed and a federal court was the appropriate court to determine whether the City violated the Constitution.

Mayor Fine commented that the Council had an option to open the park in June 2020 but continued the item to August. In August, the Council declined to eliminate the residency requirement. Concerns about increased usage impacting the park pertained to the number of visitors, not the visitors themselves. Under the settlement, the City retained the ability to manage the park and implement sustainability measures, including capacity limits, fees, and reservations. The City was not allowed to discriminate based on residency.

MOTION: Mayor Fine moved, seconded by Vice Mayor DuBois to adopt an Ordinance to:

- A. Open Foothills Park to the general public by removing limits on nonresidents, while maintaining the maximum capacity of 1,000 persons and providing residents first access to reservations for all facilities;
- B. Amend or delete outdated and duplicative code language;

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- C. For the first 90 days, temporarily limit the capacity to 750 people at any one time; and
- D. Return to City Council and the Parks and Recreation Commission with proposals for fee, capacity, and park management/environmental integrity studies.

Mayor Fine believed concerns about the number of people visiting in the first months after opening were legitimate. Part C provided Staff with time to study the impacts of increased usage. Part D ensured the park remained an awesome resource for visitors. He did not support changing the name to Foothills Nature Preserve. The lawsuit addressed foundational civil issues of the residency requirement.

Vice Mayor DuBois suggested Council Members supported a pilot program in August 2020 because they thought there was time for it with the public health orders in place at that time.

AMENDMENT: Vice Mayor DuBois moved, seconded by Council Member Kou to direct Staff to use the renaming process to consider renaming Foothills Park to Foothills Nature Preserve.

Council Member Kou felt changing the name was appropriate because Foothills Park was a preserve.

Council Member Kniss supported changing the name because nature preserve was more precise than park.

Council Member Cormack suggested the Council refer a name change to the PRC to allow public input and to follow the City's naming process.

Vice Mayor DuBois preferred to direct Staff to follow the naming process.

Mr. Shikada reported the naming policy included a referral to the Board, Commission, or Committee of jurisdiction. In this case, the Commission of jurisdiction was the PRC.

AMENDMENT PASSED: 7-0

AMENDMENT: Vice Mayor DuBois moved, seconded by Council Member Kou to direct Staff to not agree to a permanent injunction.

Council Member Kou noted in August 2020 the Council approved opening the park to nonresidents through the pilot program. A permanent injunction was unnecessary.

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Council Member Cormack believed a permanent injunction was a part of democracy and the check-and-balance system. She did not support the Amendment.

Mayor Fine concurred with Council Member Cormack. If the Council approved the Motion as the right thing to do, then the injunction did not matter. Leaving the possibility of rescinding the Ordinance open was not steadfast. He inquired about the effect of not agreeing to the injunction on the process.

Ms. Stump expressed a high degree of confidence that Council approval of all the terms listed in the Staff recommendation would resolve the litigation at little cost to the City. The Amendment created substantial uncertainty as to whether resolution of the litigation occurred.

Mayor Fine commented that the settlement was the only option that avoided attorney fees. The Amendment introduced substantial risk to the settlement, finances, and a good outcome.

AMENDMENT FAILED: 3-4 DuBois, Kou, Tanaka yes

Council Member Cormack advised that since the topic was first raised two years ago, many people had changed their minds about opening Foothills Park. The summary of the PRC's panel discussion indicated Foothills Park could be shared responsibly.

Council Member Tanaka requested the information he sought earlier in the discussion.

Ms. Stump advised that the number of signatures needed for an initiative and a referendum was the same.

Mr. Anderson reported the identified capital costs spread over the next five years was approximately \$2,120,000 or \$424,000 annually. He agreed to provide staff costs at a later time.

Council Member Tanaka asked if the injunction prohibited future Council actions.

Ms. Stump answered yes, if the court entered the injunction.

AMENDMENT: Council Member Tanaka moved, seconded by Council Member Kou to defer parts A, B and C to give the City Attorney time to get a second opinion.

Council Member Tanaka remarked that various members of the public wanted a second opinion. The national election deflected interest from this topic.

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There were questions about prioritizing residents for some things. The community needed time to consider the settlement.

Council Member Kou felt there continued to be questions about a conflict of interest for outside counsel. She wanted to understand the risk of proceeding in federal court.

Vice Mayor DuBois felt the injunction was negotiable, assuming the Council agreed to all the other conditions. The timing was not negotiable.

AMENDMENT FAILED: 2-5 Kou, Tanaka yes

Council Member Kniss recalled efforts to open Foothills Park in 1990. While the heart wanted to share Foothills Park, the head listened to the community's desires. The time was right to share Foothills Park.

Council Member Filseth did not believe the community supported the contentions of racist, segregationist, or human rights issues. The community needed to read Palo Alto's history of racism contained in the lawsuit. The Council had to consider the totality of community desires, legal risks, and costs.

Council Member Kou reported her survey found 66 percent of residents wanted to retain the residency requirement and wanted the City to defend the lawsuit. The lawsuit was an attempt to bully the City and frivolous.

Council Member Tanaka requested the Mayor split the Motion into Parts A, B and C and Parts D and E.

MOTION AS AMENDED RESTATED: Mayor Fine moved, seconded by Vice Mayor DuBois to adopt an Ordinance to:

- A. Open Foothills Park to the general public by removing limits on nonresidents, while maintaining the maximum capacity of 1,000 persons and providing residents first access to reservations for all facilities;
- B. Amend or delete outdated and duplicative code language;
- C. For the first 90 days, temporarily limit the capacity to 750 people at any one time;
- D. Return to City Council and the Parks and Recreation Commission with proposals for fee, capacity, and park management/environmental integrity studies; and

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- E. Direct Staff to use the renaming process to consider renaming Foothills Park to Foothills Nature Preserve.

MOTION SPLIT FOR THE PURPOSE OF VOTING

MOTION AS AMENDED PARTS A, B, and C PASSED: 5-2 Kou, Tanaka no

MOTION AS AMENDED PARTS D and E PASSED: 7-0

Council Member Kou asked the Mayor to publish his accusation and proof against her.

Mayor Fine agreed to do so.

Council took at break at 10:11 P.M. and returned at 10:21 P.M.

7. Approval of a Surveillance Policy for the use of Construction Cameras at the California Avenue Parking Garage and Highway 101 Pedestrian/Bicycle Overpass Construction Projects, and of a Surveillance Policy for the use of a Parking Guidance System, in Accordance With the Surveillance and Privacy Protection Ordinance (Continued From September 21, 2020).

Brad Eggleston, Public Works Director, reported the Council adopted a Surveillance and Privacy Protection Ordinance in September 2018. The policies in this item were the first ones presented to the Council since then. Staff strengthened the policies after the Council continued the item on September 21, 2020.

Holly Boyd, Public Works Assistant Director, advised that detailed information regarding surveillance and technology evaluations and policies was contained in the Staff Report. The Surveillance Use Policy for Construction Cameras applied to cameras used to monitor construction progress and to share progress with Staff and residents. Protections included capturing still images only once every 15 minutes, providing only a current view and a time-lapse video to the public, and managing and retaining data on webpages and City servers. The Surveillance Use Policy for Parking Guidance System was intended to improve parking management strategies and operational efficiencies. Protections included tracking parking availability only, requiring the vendor to complete a Vendor Information Security Assessment (VISA) process, and limiting staff and contractor access to data via a login/password protected system. Staff planned to discuss future capabilities, including license plate recognition, with the Council in the future.

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Rebecca Eisenberg expressed concern about the Police Department having access to images and questioned the purpose of the cameras.

Council Member Cormack asked if the public had access to the information.

Mr. Eggleston answered no, because the Council had not approved the policies.

Council Member Cormack asked if Staff intended to post still photos or time-lapse video of construction progress for public consumption.

Mr. Eggleston responded both.

Vice Mayor DuBois believed the risks from not having good surveillance policies were large. He wanted to see additional information regarding the data captured, the format of data, encryption of data, capturing personally identifiable information, and the ability to delete data. The City needed a policy for retention of surveillance data. Access to data needed to be limited to specific positions within the City. He inquired about federal or state laws.

Mr. Eggleston advised that Staff did not find any laws that applied to these types of technologies.

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

- A. Approve the surveillance policy and use of the construction video cameras for the California Avenue Parking Garage and Highway 101 Pedestrian/Bicycle Overpass construction projects, which will be used to share progress on the construction with staff and residents and create a time-lapse video at the end of each project; and
- B. Approve the surveillance policy and use of a Parking Guidance System (PGS) for the California Avenue Parking Garage and future installations at other City-owned parking garages and lots.

Vice Mayor DuBois noted surveillance data for the construction projects was to be deleted at the completion of projects. He inquired whether personally identifiable information was to be collected with the parking guidance system.

Philip Kamhi, Chief Transportation Official, responded no.

Monique LeConge Ziesenhenné, Assistant City Manager, advised that Staff continued to review and refine policies for surveillance and data capture.

Council Member Kniss remarked that it was time to do this.

FINAL MINUTES

Council Member Tanaka inquired regarding the rationale for installing cameras at the almost-complete California Avenue parking garage.

Mr. Eggleston related that the camera was installed at the beginning of the project. Over time, Staff learned of the potential for the camera to capture sensitive information and began developing the first policies for surveillance. If the Council approved the policy, Staff planned to publish real-time images and time-lapse video.

Council Member Tanaka asked if the Council was approving funding for the camera.

Mr. Eggleston answered no. Council approved funding for the parking garage camera with approval of the construction contract, and the Bike Bridge camera was approved through a change order.

Council Member Tanaka noted construction cameras were typically used to promote projects or to monitor projects in outlying areas. He felt the cameras were frivolous.

MOTION PASSED: 7-0

8. (Former Agenda Item Number 5) Approve and Authorize the Extension of the Fall 2020 Board and Commission Recruitment for Positions on the Architectural Review Board, Planning Transportation Commission, Historic Resources Board, and Parks and Recreation Commission for an Additional six Weeks, With an Application Deadline of December 16, 2020.

Beth Minor, City Clerk, reported the item was presented because of a lack of applications.

MOTION: Council Member Kniss moved, seconded by Council Member Cormack to:

- A. Extend the Fall 2020 recruitment for positions on the Planning and Transportation Commission and Historic Resources Board; and
- B. Accept the Architectural Review Board and Parks and Recreation Commission applications; and
- C. Proceed with interviews for positions on all four Boards/Commissions with the intent of completing all interviews by December 7, 2020 and voting on the appointments on December 14, 2020.

FINAL MINUTES

Council Member Cormack suggested including a date to end recruitments for the Planning and Transportation Commission (PTC) and the Historic Resources Board (HRB).

Ms. Minor proposed extending the recruitments to November 12, 2020.

Council Member Kniss noted the number of appointments facing the new Mayor in January. If the Council did not address this item before the end of the year, some Boards, Commissions, and Committees (BCCs) may be short of members in early 2021.

Jeff Greenfield supported the new Council appointing members to BCCs given the Council discussion the prior week of moving recruitments to the spring. Extending the recruitments was logical in order to increase the number of applications.

Rebecca Eisenberg concurred with Mr. Greenfield's comments. Extending the recruitments for all four BCCs was in the public's interest.

James Hindery preferred the incoming Council appoint members to these BCCs.

Curtis Smolar agreed with prior public comments.

Council Member Cormack believed the Council needed to accomplish the tasks before it. Allowing new Council Members to become familiar with Council processes before having to appoint members to BCCs was a good idea.

Vice Mayor DuBois remarked that the prior week a majority of Council Members agreed that avoiding lame duck appointments was logical. The Council did not make its 2020 spring appointments until September 14, 2020. Setting a deadline was bad governance. He wanted to extend the recruitment for the ARB.

Council Member Filseth concurred with Vice Mayor DuBois. Currently, there were not sufficient applications for the number of open positions.

Mayor Fine advised that until the Council changed the rules, he intended to follow them.

MOTION PASSED: 4-3 DuBois, Filseth, Kou no

FINAL MINUTES

Council Member Questions, Comments and Announcements

Council Member Kou reported she was receiving public comment regarding vehicles speeding and not stopping at stop signs. She requested the City Manager explore Police patrols of neighborhood streets.

Council Member Filseth hoped to review documentation of Mayor Fine's accusation against Council Member Kou in order to resolve the issue soon.

Adjournment: The meeting was adjourned at 11:03 P.M.