



# CITY OF PALO ALTO CITY COUNCIL FINAL MINUTES

Regular Meeting  
December 14, 2020

The City Council of the City of Palo Alto met on this date in Virtual Teleconference at 6:01 P.M.

Participating Remotely: Cormack; DuBois arrived at 6:08 P.M., Filseth, Fine, Kniss, Kou, Tanaka

Absent:

## Closed Session

1. CONFERENCE WITH CITY ATTORNEY- EXISTING LITIGATION  
Santa Clara County Superior Court, Case No. 16CV300760  
(One Case, as Defendant) Miriam Green v. City of Palo Alto  
Authority: Government Code Section 54956.9(d)(1).

Rebecca Eisenberg suggested the Council consider alternate means for producing revenue, such as a business tax, rather than appealing the judgment.

**MOTION:** Council Member Kniss moved, seconded by Council Member Cormack to go into Closed Session.

**MOTION PASSED:** 6-0 DuBois absent

Council went into Closed Session at 6:06 P.M.

Council returned from Closed Session at 7:37 P.M.

Mayor Fine announced no reportable action.

## Special Orders of the Day

2. Appointment of Candidates for the Architectural Review Board, Historic Resources Board, Parks and Recreation Commission, and the Planning and Transportation Commission

Beth Minor, City Clerk, referred to the Staff Report and requested Council direction.

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Mayor Fine noted a memorandum provided options for the Council.

Keith Bennett believed the Council was rushing the appointments in order to influence the composition of Boards and Commissions.

Hamilton Hitchings noted the Council previously agreed that members needed to be appointed in the spring. Without meaningful residential representation on the Planning and Transportation Commission (PTC), residents' concerns were not going to be addressed. To maintain the credibility of the PTC, he recommended the Council reappoint Ed Lauing and Doria Summa to the PTC.

Fred Balin stated the incoming Council needed to fill the Board and Commission positions as specified in the Council Handbook. This was an opportunity for the Council to decide the best action for the public good.

Winter Dellenbach understood the number of applicants for the Historic Resources Board (HRB) was insufficient. The Council previously decided an outgoing Council appointing Board and Commission members was bad practice. The Council had not interviewed PTC applicants.

Elaine Andersen concurred with prior comments. Appointing members to the Boards and Commission in the current meeting was a disservice to the community.

Chris Robell expressed outrage that the Council intended to appoint members to the Boards and Commissions. Appointments without interviews were disrespectful to the applicants. Acting contrary to the Council Handbook was ridiculous.

Carol Scott supported prior comments and urged the Council not to make the appointments in the current meeting.

1 650\*\*\*469 felt appointing members during the current meeting was hypocritical.

Mayor Fine suggested Council Members select members for the Architectural Review Board (ARB) and Parks and Recreation Commission (PARC) only. Interviewing applicants with only four Council Members present was embarrassing. The hypocrisy and bad faith involved in the process was astounding.

**MOTION:** Mayor Fine moved, seconded by Council Member Cormack to:

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- A. Appoint candidates to the ARB and PARC tonight; and
- B. Defer the HRB and PTC interviews and appointments to January 2021.

Council Member Cormack indicated Council Members not attending interviews was both embarrassing and disrespectful.

Council Member Filseth proposed amending the Motion to direct Staff to agendize a procedure change to prevent lame duck appointments.

Mayor Fine requested confirmation that the Council recently moved appointment of some Board, Commission, and Committee members to the spring.

Ms. Minor clarified that the Council revised the Board and Commission Handbook to hold recruitments in the spring; however, the Council did not adopt an Ordinance changing the appointment of members to the spring only.

Council Member Cormack advised that the Council directed Staff to draft the Ordinance.

Ms. Minor indicated Staff intended to present a draft Ordinance for Council review.

Council Member Kniss related that in August 2020 the City Clerk provided a memo regarding appointment of PTC members at the same time as other Board and Commission members. Between August and December 7, 2020, the City Clerk provided more than 20 notices advising that several Board and Commission members' terms were scheduled to end on December 15, 2020. Nine positions on Boards, Commissions, and Committees were not going to be filled if the Council did not vote in the current meeting. The Ordinance did not require Council Members to interview applicants before appointing them.

Vice Mayor DuBois noted the Council recently approved moving recruitments and interviews to the spring, which did not occur. He indicated he immediately notified the City Clerk of his inability to attend interviews on December 9, 2020. Other Council Members were not available on various proposed dates. Recruitment for the ARB needed to continue.

**AMENDMENT:** Vice Mayor DuBois moved, seconded by Council Member Kou to extend the recruitment for the ARB.

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Vice Mayor DuBois commented that the number of applicants was typically greater than the number of vacant positions. He preferred to select from a larger applicant pool.

Council Member Kou wanted to obtain additional applications as was done for the PTC. Due to her employment and participation in civic groups, she was not available for interviews on short notice.

Council Member Kniss did not support the Amendment. Four months was a sufficient timeframe to plan interviews. ARB applicants were required to meet specific qualifications.

Council Member Filseth did not support the Amendment as the Council had interviewed the applicants.

**AMENDMENT FAILED:** 2-5 DuBois, Kou yes

Council Member Kniss supported the Motion in order to fill the positions and despite the many opportunities to schedule interviews. The current members of the ARB, HRB, PARC, and PTC continued to serve until the Council appointed their replacements.

**MOTION PASSED:** 7-0

First Round of voting for two positions on the Architectural Review Board with terms ending December 15, 2023.

Voting For: Grace Lee                      Cormack, DuBois, Filseth, Fine, Kniss, Tanaka

Voting For: Osma Thompson      Cormack, DuBois, Filseth, Fine, Kniss, Tanaka

Council Member Kou abstained from casting a vote for appointments to the Architectural Review Board.

Mayor Fine announced Grace Lee with six votes and Osma Thompson with six votes were appointed to the Architectural Review Board.

First Round of voting for one position on the Parks and Recreation Commission with a partial term ending December 15, 2022.

Voting For: Amanda Brown                      Cormack, Fine, Kniss, Tanaka

Voting For: Geoffrey Nicholls

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Voting For: Angie Reed

Voting For: Curtis Smolar

Voting For: Brent Yamashita                      DuBois, Filseth, Kou

Mayor Fine announced Amanda Brown with four votes was appointed to the Parks and Recreation Commission. In addition, he encouraged the applicants to reapply and other community members to apply in the future.

Vice Mayor DuBois inquired about HRB recruitment.

Ms. Minor reported she had not set a deadline for the submission of applications for the HRB but was considering the end of January 2021.

## Agenda Changes, Additions and Deletions

None.

## Oral Communications

Bill Ross indicated Council Member Cormack's comments before the San Francisco Public Utilities Commission (SFPUC) on November 30, 2020 were beyond the scope of any authority delegated to her and contrary to the Council's direction regarding the Bay-Delta Plan. Her statement that she represented the Palo Alto City Council was contrary to AB 1234.

Michelle Fox Wiles reported she participated in the investigation of the Downtown Streets Team and provided an account of witnessing a sexual assault to the investigator. Additionally, three women who did not participate in the investigation told her of their experiences with sexual harassment while employed by Downtown Streets Team. She related the history of allegations against Downtown Streets Team.

Keith Bennett, Save Palo Alto's Groundwater, expressed disappointment with the Council approving the San Antonio Road project after Save Palo Alto's Groundwater provided comments regarding the Environmental Impact Report (EIR). He hoped the Council adopted stronger dewatering regulations that applied to the project.

Chris Robell proposed revising the City Charter to eliminate the requirement for a voter to witness the signature of another voter on a petition for a referendum as the requirement for social distancing made this difficult.

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Rebecca Eisenberg appreciated the appointment of women to Boards and Commission as they increased the diversity of Boards and Commissions. Unfortunately, the incoming City Council was less diverse than the current Council. Based on Ms. Wiles' comments, further investigation of allegations against Downtown Streets Team was worthwhile. The City may enact an emergency tax on large, profitable corporations to contribute to the City's economic recovery.

Aram James remarked that a local Ordinance suggesting the public may not criticize public officials violated a decision of the United States Supreme Court. This issue needed sorting out. Palo Alto was segregationist and racist with respect to housing and the Police Department.

Hamilton Hitchings thanked the Council and Staff for providing COVID-19 testing at the Palo Alto Art Center.

Chuck Jagoda suggested the Council explore a requirement for Police Officers to obtain insurance that provided coverage for allegations and judgments of police brutality.

Council Member Kniss advised that Palo Alto Medical Foundation (PAMF) was fined each time it denied COVID-19 testing to individuals.

Vice Mayor DuBois requested Staff follow up with Mr. Hitchings.

## Minutes Approval

3. Approval of Action Minutes for the November 30 and December 7, 2020 City Council Meetings.

Council Member Cormack identified three errors in the November 30, 2020 draft Action Minutes. The Motion to pull Agenda Item Number 4 was supported by Council Members Kou, Kniss, and Cormack. The language incorporated into the Motion for Agenda Item Number 10 needed to state the Parks and Recreation Commission rather than the Human Relations Commission. Part F of the Motion as amended was vague.

Council Member Kou advised that she found two of the three errors.

Council Member Cormack suggested the City Clerk review and revise the draft Action Minutes for November 30, 2020.

Beth Minor, City Clerk, agreed to do so.

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Rebecca Eisenberg appreciated Council Member Cormack's careful review of the draft Action Minutes and suggested the Council delay approving the November 30, 2020 draft Action Minutes.

Michelle Fox Wiles related inaccuracies in Mr. Byrd's comments in the December 7, 2020 draft Action Minutes.

Council Member Kou requested Staff speak with Ms. Wiles regarding her evidence of Mr. Byrd's inaccurate statements.

Molly Stump, City Attorney, shared an email address through which information could be provided to her.

Council Member Kniss inquired regarding inclusion of a reference to potentially inaccurate comments contained in the draft Action Minutes.

Ms. Stump explained that the public comments did not refer to the draft Action Minutes. Staff was investigating the issue and planned to return to the Council with information.

**MOTION:** Council Member Kniss moved, seconded by Council Member Filseth to

- A. Approve the Action Minutes for the December 7, 2020 City Council Meeting; and
- B. Direct the City Clerk to return to Council with updated November 30, 2020 Action Minutes, which will include corrections provided by Council Member Cormack.

## **MOTION SPLIT FOR THE PURPOSE OF VOTING**

**MOTION PART A PASSED:** 6-0 Cormack abstain

**MOTION PART B PASSED:** 7-0

### Consent Calendar

Mayor Fine asked if Council Members needed to disclose ex parte communications for Agenda Item Number 4.

Molly Stump, City Attorney, replied yes.

Council Member Cormack disclosed no ex parte communications.

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Vice Mayor DuBois disclosed no ex parte communications.

Council Member Filseth disclosed no ex parte communications.

Mayor Fine disclosed no ex parte communications.

Council Member Kniss disclosed no ex parte communications.

Council Member Kou disclosed no ex parte communications.

Council Member Tanaka disclosed no ex parte communications.

Rebecca Eisenberg, addressing Agenda Item Numbers 4, 5, and 10, believed quasi-judicial matters were not to be placed on the Consent Calendar. The City needed to utilize the Roth Building rather than lease a building. Commercial developers needed to pay for costs associated with permitting.

Mary Jane Marcus, addressing Agenda Item Number 5, noted the cost per square foot varied from \$2.00 to \$5.00.

Vice Mayor DuBois registered a no vote on Agenda Item Number 11.

Council Member Kou registered no votes on Agenda Item Numbers 5 and 11.

Council Member Tanaka registered no votes on Agenda Item Numbers 5 and 10.

**MOTION:** Vice Mayor DuBois moved, seconded by Council Member Kniss to approve Agenda Item Numbers 4-11

4. QUASI-JUDICIAL. 4115 El Camino Real: Request for Final Map to Divide an Existing 15,453 Square Foot Parcel Into Condominiums for a Mixed-use Project, Including Seven Residential Units, Four Commercial Condominiums, and a Public Access Easement. Environmental Assessment: Exempt. Zoning District: CN (Commercial Neighborhood).
5. Approval of a Lease Agreement Between KG-Bryant, LLC and the City of Palo Alto for the Premises Located at 526 Bryant Street for a 24-month Term, at a Starting Base Rent of \$5,293 per Month and Increasing 3 Percent in Year Two.
6. Resolution 9931 Entitled, "Resolution of the Council of the City of Palo Alto Declaring Weeds to be a Public Nuisance and Setting January 11,



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2021 for a Public Hearing for Objections to the Proposed Weed Abatement."

7. Approval of Amendment Number 4 to Contract Number S16161922 With Advanced Control Systems, Inc. for: 1) Maintenance and Support of the City's Supervisory Control and Data Acquisition (SCADA) System; 2) to Extend the Contract for Five Additional Years (for a Ten-year Term); and 3) to Increase Compensation by \$372,064, Which Includes a 10 Percent Contingency for Additional Services, for a new Total Not-to-Exceed Amount of \$672,794.
8. Approval of a Cooperative Agreement With Stakeholder Cities (including Palo Alto) and AC Transit and a Memorandum of Understanding With AC Transit, MTC and Other Partnering Agencies for the Dumbarton Express Corridor Transit Signal Priority Project.
9. Resolution 9932 Entitled, "Resolution of the Council of the City of Palo Alto Declaring the Results of the Consolidated Municipal Election Held on November 3, 2020."
10. Approval of Contract Number C21179976 With TruePoint Solutions, LLC in the Amount of \$901,683 for Scripting, Reporting, and Other Technical Support of Services Related to the Construction Permitting System (Accela) Through December 31, 2024.
11. Resolution 9933 Entitled, "Resolution of the Council of the City of Palo Alto Amending and Restating Resolution Number 9911 to Extend the Temporary Street Closures of California Avenue, University Avenue, and Adjacent Downtown Blocks to May 31, 2021."

**MOTION PASSED FOR AGENDA ITEM NUMBERS 4, 6-9:** 7-0

**MOTION PASSED FOR AGENDA ITEM NUMBER 5:** 5-2 Kou, Tanaka no

**MOTION PASSED FOR AGENDA ITEM NUMBER 10:** 6-1 Tanaka no

**MOTION PASSED FOR AGENDA ITEM NUMBERS 11:** 5-2 DuBois, Kou no

Vice Mayor DuBois believed street closures through May 31, 2021 were too long given the status of the COVID-19 vaccine.

Council Member Kou preferred a month-to-month lease of additional space until the Council discussed a lease during its Budget hearings for Fiscal Year

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2021-2022. She did not understand closing the streets after they had just reopened and recommended Staff treat retailers and restaurants fairly when closing streets.

Council Member Tanaka questioned whether the City needed additional space with Staff working from home. The permitting process needed revising before the Council approved software support.

## City Manager Comments

Ed Shikada, City Manager, summarized restrictions under the most recent Public Health Order. The surge in the number of cases and deaths from COVID-19 was unprecedented. The County of Santa Clara (County) was implementing an administrative process to enforce violations of the Public Health Order. Free COVID-19 testing was scheduled for December 18, 2020, January 8 and 22, 2021, and February 5 and 26, 2021. He encouraged the community to support local restaurants and retail businesses and to visit [upliftlocal.org](http://upliftlocal.org). The Ordinance to open Foothills Park to the general public was effective December 17, 2020, but Foothills Park was going to remain closed to the public if a referendum was submitted timely. Mr. Shikada highlighted informational reports provided in the Council packet. Tips for coping with public health restrictions were available at [cityofpaloalto.org/bewell](http://cityofpaloalto.org/bewell). A contactless Toy Drive, Home Decoration Contest, and Letters to Santa Program were under way.

Mayor Fine noted the many ways the City supported residents, businesses, and nonprofits.

Council Member Kniss asked if San Mateo County was open.

Mr. Shikada did not know.

Mayor Fine indicated San Mateo County and another county were considering joining the lockdown.

Council Member Kniss related that residents were patronizing Menlo Park businesses. She inquired about the number of COVID-19 deaths in Santa Clara County.

Mr. Shikada replied 526 deaths occurred since March 2020.

Vice Mayor DuBois requested the rationale for closing Foothills Park to the public during the referendum process.

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Mr. Shikada explained that if the referendum was certified, the Council would discuss adopting the petition or placing it on a ballot.

Vice Mayor DuBois asked if it was a Council decision to open or close the park during the referendum process.

Molly Stump, City Attorney, clarified that once the referendum qualified, the Ordinance opening Foothills Park to the general public did not become effective. If the Council wished, the City did not have to enforce the residents-only policy. Foothills Park was not going to be closed to residents but to nonresidents during the pendency of the referendum. If the petition signatures were not verified, the Ordinance was going to take effect.

Council Member Kou inquired about a second reading of the Ordinance for a pilot program in Foothills Park if the referendum qualified.

Ms. Stump reported the Council directed Staff to prepare an Ordinance. A first reading of an Ordinance had not occurred. If the referendum qualified, the Council discussion may include other types of regulation for Foothills Park.

City Council took a break at 9:09 P.M. and returned at 9:22 P.M.

## Action Items

12. Adoption of a Temporary Ordinance Amending Title 18 (Zoning) of the Palo Alto Municipal Code to Broaden Permissible Uses and Raise Thresholds for Conditional Use Permits for Some Land Uses Throughout the City. Environmental Review: California Environmental Quality Act (CEQA) Exemption 15061(b)(3).

Jonathan Lait, Planning and Development Services Director, reviewed the Council's November 9, 2020 direction to Staff to refine the definition of retail use and adjust the thresholds for retail conditional use permits (CUP) and to the Planning and Transportation Commission (PTC) to evaluate and propose changes that enabled diverse retail uses in more retail sites. The proposed temporary Ordinance removed sandwich and coffee shops and ice cream parlors from eating and drinking service, raised the CUP threshold for personal service to distinguish it from commercial recreation, added learning centers, cooking classes, and afterschool programs to personal service, and increased CUP thresholds for medical, commercial recreation, personal service, and neighborhood business service uses in specific zones. In addition, the proposed Ordinance removed the CUP requirement for beauty

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shops, nail salons, barbershops, and laundry and cleaning services located on California Avenue only. Formula retail and retail preservation requirements remained the same. Medical uses were not allowed to replace retail or retail-like uses. Staff proposed the temporary Ordinance end June 30, 2022 so that the PTC had time to evaluate any changes the Council approved.

Benjamin Cintz remarked that there was a lack of medical offices and clinics in many areas of Palo Alto. The proposed Ordinance did not address the needs of residents and needed to allow medical offices and clinics in ground-floor retail spaces in underserved areas.

Winter Dellenbach recalled projections of a bright future for brick-and-mortar retail uses in Palo Alto from a previous Council Study Session. She supported a continuation of ground-floor retail preservations. The Council needed to add protections for gas stations and car repair shops.

Rebecca Eisenberg urged the Council to obtain information from small businesses and other stakeholders that were suffering from the economic downturn.

Bill Wu supported the temporary Ordinance and suggested the Council consider extending the Ordinance past 2022.

Mary Jane Marcus commented that storefronts were vacant, but rents were not decreasing. The Council needed to consider zoning for creative and public benefit spaces.

Vice Mayor DuBois requested the uses allowed in shopping centers under the proposed Ordinance. He preferred not to allow commercial recreation or medical uses in shopping districts or centers, specifically Midtown, Edgewood, Alma Village, and Charleston Plaza.

Mr. Lait reiterated that the temporary Ordinance did not include any changes for medical uses. Staff planned to review changes at a district level with the PTC, and district-level changes were not reflected in the proposed Ordinance. He interpreted the Council's direction as seeking analyses of Citywide changes and neighborhood or district changes.

Vice Mayor DuBois appreciated the narrow scope of the proposed changes. His concern was allowing medical and commercial recreation uses in a shopping center without a CUP. The Council needed to consider a mix of uses that were not dependent on commuters.

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Council Member Filseth requested a differentiation of ice cream parlors and sandwich and coffee shops from restaurants.

Mr. Lait explained that the distinguishing factor was an onsite full kitchen.

Council Member Filseth asked if the purpose of differentiating the two was to predict parking requirements.

Mr. Lait advised that while coffee and sandwich shops and ice cream parlors were included in the definition of retail, the original intent was not to define them as retail. The proposed Ordinance aligned with the original intent.

Council Member Filseth asked for examples of commercial recreation uses if they did not include gyms or fitness studios.

Mr. Lait referred to the definition which included recreation, amusement, exercise, or entertainment services, including theaters, bowling lanes, billiard parlors, skating arenas, gymnasiums, exercise studios and facilities, and martial arts studios. Under the proposed Ordinance, commercial recreation uses were likely going to be more modest in nature and not disruptive to established neighborhood commercial services.

Council Member Filseth asked if it was a question of size or function.

Mr. Lait noted the larger the space, the more intensive the use and the greater the parking demand. The question for the Council was the CUP threshold. Currently, all commercial recreation uses required a CUP. The proposed Ordinance required a CUP for uses of 5,000 square feet or larger.

Council Member Filseth asked if a private education facility was a school rather than a test preparation site.

Mr. Lait answered yes.

Council Member Kou asked if applications that were less than the proposed thresholds were going to be approved by the Director instead of the PTC or Council.

Mr. Lait clarified that the Municipal Code required either Director or Council approval of a CUP. The Director of Planning and Development Services approved or denied every CUP regardless of the size of the use. The Council approved or denied appeals of the Director's decisions.

Council Member Kou asked if there was a fee for an appeal.

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Mr. Lait responded yes.

Council Member Kou requested the method for measuring the impact of the proposed increased square footage of commercial recreation on parking resources and intrusion into neighborhoods.

Mr. Lait indicated there was not a mechanism for measuring the impact. The Staff Report stated Staff did not anticipate impacts based on the proposed sizes of uses.

Council Member Kou requested the rationale for removing CUP requirements for beauty salons, barbershops, and laundromats in 2015.

Mr. Lait clarified that the 2015 change required a CUP for those uses.

Council Member Kou asked if Staff proposed removing the CUP requirements in the proposed Ordinance.

Mr. Lait reported Staff proposed the change for Council consideration. The Council directed Staff to propose changes that helped minimize storefront vacancies. A CUP requirement for nail and beauty salons and barbershops discouraged those uses.

Council Member Kou asked how Staff proposed to balance an excess of those uses with minimizing storefront vacancies.

Mr. Lait explained that Staff proposed to monitor the number of uses approved during the term of the proposed Ordinance and obtain the public's perspective during PTC hearings. Staff may propose regulations that limited the number of uses as needed.

Council Member Tanaka requested Staff's rationale for not changing formula retail requirements.

Mr. Lait believed the Council's direction was specific to proposing minor changes to retail. The Council's concern about formula retail and discussion of requirements were significant; therefore, Staff did not propose any changes.

Council Member Tanaka inquired whether the Council discussion occurred during a pandemic and considered projections for the closure at 60 percent to 70 percent of businesses.

Mr. Lait advised that the Council discussion occurred several years ago.

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Council Member Tanaka requested Council Members consider changing formula retail requirements in an effort to reduce vacancies. He requested clarification of medical uses not being allowed to replace retail or retail-like uses.

Mr. Lait recalled Council direction for Staff to work with the PTC regarding a variety of uses, specifically medical uses. Consequently, he did not believe the Council directed Staff to incorporate medical uses into retail-like uses.

Council Member Tanaka inquired whether Staff had any data or forecasts regarding vacant retail square footage.

Ed Shikada, City Manager, reported Staff provided that information to the Council a few weeks ago.

Council Member Tanaka asked if that data was specific to Palo Alto and whether it included projections.

Mr. Shikada responded that the data was specific to Palo Alto but did not include projections.

Council Member Tanaka suggested the Council needed a Plan B to prevent retail vacancies.

Mayor Fine asked if the proposed Ordinance increased the CUP threshold for allowed medical and dental uses from 2,500 square feet to 5,000 square feet.

Mr. Lait answered yes.

Mayor Fine inquired whether the Retail Preservation Ordinance stated specific dates.

Mr. Lait replied yes. If a retail or retail-like use was located in a space as of a specific date, the space was required to remain a retail or retail-like use. If a use other than retail or retail-like was located in a space before that date, the use was allowed to change.

Mayor Fine requested the advantages and disadvantages of including medical and dental uses in retail or retail-like uses.

Mr. Lait reiterated Staff's wish to obtain PTC and public input on the issue. Public comment was needed regarding medical uses that were more similar

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to personal service uses or incorporated a retail component or for which these was a need.

Mayor Fine supported the proposed Ordinance as presented and expressed interest in Council Members' comments regarding treating medical and dental uses as retail and retail-like uses.

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

- A. Find the proposed Ordinance exempt from the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15061(b)(3); and
- B. Adopt on first reading the Ordinance amending various land use definitions to broaden permissible uses and adjust conditional use permit thresholds for some land uses throughout the City.

Council Member Filseth noted the proposed Ordinance contained minor adjustments. Allowing medical and dental uses in retail areas required a longer discussion than time permitted in the current meeting.

Vice Mayor DuBois concurred with Staff's desire to obtain public comment regarding more consequential changes. When life returned to normal, consideration of parking was needed.

Council Member Kniss remarked that the purpose of the Retail Preservation Ordinance was to maintain activity and vibrancy in retail areas. The Motion seemed to direct Staff to look at medical and dental uses in retail areas.

Mayor Fine clarified that the Motion did not expand the sites at which medical and dental uses were allowed.

Council Member Kniss believed a future Council discussion of medical and dental uses was needed.

Council Member Cormack reported Edgewood was zoned Planned Community (PC) while Charleston was zoned Service Commercial (CS) and Neighborhood Commercial (CN). Midtown was zoned for a number of uses. She inquired whether the Council directed the PTC to consider medical uses.

Mr. Lait replied yes.



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Council Member Cormack supported distributing medical uses throughout the community. Some medical uses contained a retail component.

Mayor Fine expressed concern that some of the proposed changes were too narrow for the current crisis. Changes needed to be more aggressive.

Council Member Kou inquired about the method for making changes in the future.

Mr. Lait advised that the proposed Ordinance, if adopted, remained in effect until June 2022 or until superseded by another Ordinance.

Council Member Kou asked which portions of the Ordinance were being considered for the first reading and the second reading of the Ordinance.

Mr. Lait indicated the Motion included approval of a first reading of the draft Ordinance contained in the Council packet. A second reading of the Ordinance was scheduled for January 11, 2021.

## **MOTION PASSED: 7-0**

13. Finance Committee Recommends the City Council Direct Staff to Complete the Following in Regards to the ROTH Building, 300 Homer Avenue: 1) Identify Funding for a "Cold Shell"; 2) Return to Council With Additional Funding and a Lease or Lease Option; and 3) Work With the Palo Alto Museum Regarding Lease Terms.

David Ramberg, Administrative Services Assistant Director, reviewed the history of the City's ownership of the Roth Building and work with Palo Alto History Museum (PAHM). PAHM proposed a two-phase project consisting of rehabilitating the building in Phase 1 and constructing a museum in Phase 2. Funding identified for rehabilitation totaled \$6 million. PAHM proposed the City fund the remaining Phase 1 construction cost of \$3.71 million with Library, Community Center or Parks Impact Fees; issue a 40-year lease between the City and PAHM; and commit to a partnership for the rehabilitation of the Roth Building and success of the project. Readily available funds totaled approximately \$6 million derived from the sale of Transfer of Development Rights (TDR), grant funding, Library Impact Fees, and cash. The total cost of Phase 1 was \$10.5 million. PAHM's pledges totaled approximately \$200,000 to \$500,000 based on the audit. The Finance Committee reviewed PAHM's request on November 17, 2020 and recommended the Council identify options to fund the cold shell option and to develop lease options.

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Council Member Tanaka advised that the Finance Committee's discussion centered around competing needs for City funding.

Rebecca Eisenberg questioned whether a museum was the best use of the Roth Building at the current time.

Council Member Cormack indicated she recently toured the Roth Building and discovered it was in appalling condition. She inquired whether the Fiscal Year (FY) 2020-21 Budget contained an allocation of \$1 million for the project.

Kiely Nose, Administrative Services Director, replied yes.

Council Member Cormack asked if the Finance Committee recommended additional funding of \$0.5 million to \$1 million from the General Fund.

Ms. Nose responded yes.

Council Member Cormack requested the current location of the City Archives.

Ms. Nose answered Cubberley Community Center.

Council Member Cormack requested the reason for the Archives being located at Cubberley rather than a Library.

Monique Le Conge Ziesenhenné, Assistant City Manager, reported the Archives were relocated from Rinconada Library prior to its renovation.

Council Member Cormack inquired whether the original intention was to improve and operate the Roth Building at no cost to the City.

Ms. Nose responded yes, based on Staff's research.

Council Member Cormack asked if a 10-percent contingency amount for construction was sufficient.

Brad Eggleston, Director of Public Works, believed a larger contingency was appropriate given the historic nature of the building and the potential for additional problems.

Council Member Filseth inquired whether the Finance Committee considered options other than a cold shell.

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Council Member Tanaka explained that the Finance Committee was concerned about funding and stabilizing the building.

Council Member Filseth interpreted Council Member Tanaka's response as the cold shell option was the least expensive method to stem deterioration of the building. He requested the Finance Committee's opinion of the warm shell option.

Council Member Tanaka indicated it was not an option because Staff would need to reallocate funding from another valuable project to the Roth Building. Identifying funding for the cold shell option was questionable.

Council Member Filseth understood constructing the cold shell option at the current time and waiting a year or two to construct the warm shell option increased the total cost by about \$500,000.

Mr. Ramberg reported the total construction cost under the delay scenario was \$11 million.

Council Member Filseth inquired whether funding for the cold shell option included \$0.5 million from PAHM.

Ms. Nose replied yes. The grant funding was in the City's name, but the applications were joint.

Mr. Ramberg clarified that use of TDR revenues was restricted to implementing rehabilitation and historic goals for the Roth Building, whether PAHM or the City proposed a project that accomplished the goals.

Vice Mayor DuBois requested a presentation from PAHM as there were significant updates.

Mayor Fine requested a brief summary of PAHM's presentation.

Rich Green, Palo Alto History Museum, reported PAHM spent \$1.8 million in donors' funds for architectural plans that complied with Secretary of Interior Standards and permits. The TDR revenue and grants were awarded based on PAHM's plans for the building. If PAHM was excluded from rehabilitation of the Roth Building, costs for rehabilitating the building increased by \$1.8 million. Impact Fees were available for the project and did not impact the General Fund. PAHM's proposal was the most expedient path forward. PAHM had \$2.1 million in cash and pledges to fund the opening of the museum within a year of rehabilitating the building.

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Vice Mayor DuBois supported the proposal to fund the cold shell option in order to hold the asset. Council Members needed to consider the history of projects and fundraising for other City-owned buildings. Vance Brown, the construction contractor, was committed to the project and had a good record building community projects.

Council Member Kou inquired regarding PAHM's success in meeting the Council's challenge of raising \$1.75 million in 2018 in exchange for the City renewing PAHM's lease option.

Mr. Green related that PAHM raised \$1.82 million in 2018, but the City did not renew the lease option. The lack of a lease on the Roth Building halted PAHM's fundraising efforts.

Council Member Kou asked if PAHM had sufficient funding for the cold shell option.

Mr. Green indicated \$3.7 million was needed to completely rehabilitate the building. PAHM contributed \$6.71 million toward the goal. PAHM and City Staff needed additional discussion to work out the details of funding and construction.

Council Member Kou inquired whether grant funding was restricted to the museum.

Mr. Green explained that TDR revenue and grant funding were restricted to a finished public-use building, which did not include the cold shell option.

Ms. Nose clarified that grant funding was restricted to the Roth Building, specifically the roof or the frescoes.

Council Member Kou remarked that fundraising was essentially stalled by the City not renewing PAHM's lease option. The building needed to be rehabilitated.

Council Member Kniss recalled that tracking the \$1.82 million was difficult. She requested the length of time PAHM had been fundraising.

Mr. Green advised that fundraising began 13 years ago, but fundraising did not occur in the last two years because PAHM had no lease on the building.

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Council Member Kniss believed if donors were enthusiastic about the project, the lack of a lease would not have impacted donations significantly. She asked about possible reasons for donors not fulfilling their pledges.

Mr. Green stated donations were significant as PAHM raised more than \$13 million and spent less than \$4 million over 15 years. When a true partnership was established, PAHM anticipated receiving significant donations to build the museum.

Council Member Kniss inquired about the state of the building once \$10.5 million was invested in it.

Mr. Green indicated the building could be occupied.

Council Member Kniss requested the amount of funds needed to upgrade an occupiable building to a museum.

Mr. Green reported the cost for a dream museum was \$8.8, which required about six years to complete.

Council Member Kniss requested the total cost of rehabilitating the building and establishing a museum.

Mr. Green replied approximately \$20 million.

Council Member Tanaka related his respect for the people working on the project. Unfortunately, the City's current economic situation was dire. A viable museum required funding of \$18 million to \$20 million. Committing City funding to the Roth Building was not prudent at the present time.

Mayor Fine concurred with Council Member Tanaka's comments. He inquired whether PAHM had \$2.1 million in the bank.

Mr. Green answered approximately \$2 million in the bank, a pledge of \$2 million, and about \$100,000 in other funding for the museum.

Mayor Fine requested an explanation of the gap between the \$0.7 million mentioned in the presentation and the more than \$4 million stated by Mr. Green.

Mr. Green advised that PAHM had allocated all funding that was not restricted to other uses to the rehabilitation project.

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Mayor Fine supported the concept of a history museum. The City should have rehabilitated and leased the building or sold it to PAHM at the outset. He inquired regarding other uses for the TDR revenue.

Mr. Ramberg related that TDR revenue was required to be used for a qualifying rehabilitation project, but he was not aware of any other projects.

Mayor Fine requested an explanation of the use of \$0.6 million in Impact Fees.

Mr. Ramberg referred to Page 11 of Staff Report Number 11611, which showed a breakdown of Impact Fees. A large share of Impact Fees was committed to City projects. The \$0.6 million represented Staff's estimate of uncommitted Impact Fees.

Mayor Fine asked if the museum needed to pay Impact Fees.

Mr. Ramberg did not believe so.

Mayor Fine felt the use of Impact Fees was entirely inappropriate. He inquired whether allocating Impact Fees to the museum project resulted in the defunding of other projects.

Mr. Ramberg answered yes.

Council Member Kou asked if the City had leases with the Junior Museum and Zoo (JMZ), Avenidas, and the Palo Alto Art Center while the entities conducted fundraising and planning.

Ms. Nose explained that the City operated the JMZ and turned the facility over to the Friends of the JMZ for rehabilitation. Once construction was complete, the Friends of the JMZ intended to return the facility to the City. Not every partnership involved a landlord/tenant relationship.

Council Member Kou commented that the community probably did not use some of the projects to which Impact Fees had been allocated. She inquired regarding the Rinconada Park improvements.

Mr. Eggleston advised that the improvements included deferred maintenance, replacement of play equipment, and the City's contribution to the new JMZ.

Council Member Kou requested information about the projects funded with Stanford University Medical Center (SUMC) funds.

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Ms. Nose reported the funds had been used historically for Project Safety Net.

Council Member Kou felt the museum project had been sabotaged, especially in the past few years. The Council had a Fundraising Ad Hoc Committee for the museum project, but she did not recall a report from the Ad Hoc Committee. The museum project deserved the same support the City gave similar projects. The project was designed to house the City Archives in the correct environment and to provide a bathroom for park users.

Council Member Filseth concurred with many comments from Council Member Tanaka and Mayor Fine. If the City retained ownership of the Roth Building, the warm shell option was needed. Constructing a cold shell and later a warm shell was going to waste money. The City needed a plan to construct either a warm shell or a cold shell and subsequently a warm shell. The problem was funding. It appeared PAHM's actual amount of funding was unknown. The City needed to utilize or lease the Roth Building if funding for the museum was delayed. He inquired regarding the cost and timeline for refurbishing the current Police Department for Development Services' use.

Mr. Eggleston seemed to recall an estimate of \$10 million to \$20 million and a timeframe of a year.

Council Member Filseth asked about the funding source for that project.

Mr. Eggleston reported funding had not been allocated for the project. Some funding had been set aside for planning the project.

Council Member Filseth encouraged the Council to develop a plan to construct the warm shell option and consider options if PAHM did not reach its fundraising goals.

Council Member Cormack asked if selling the Roth Building was an option.

Ms. Nose replied yes. Use of TDR revenue was restricted to historic or seismic upgrades for the Roth Building or another City-owned building. Staff needed to analyze that further.

Council Member Cormack believed a Plan B was needed for the project. Reallocating Impact Fees from facilities currently in use was inappropriate. She suggested the Council direct Staff to explore selling the Roth Building.

Council Member Filseth preferred not to sell the Roth Building.

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Council Member Cormack agreed, but not considering a sale was irresponsible.

Council Member Tanaka did not want to abandon PAHM, but continuing to do nothing was irresponsible. He proposed the Council direct Staff to solicit proposals to purchase or lease the building, consider City use of the building, and return to the Council in six months with a range of options for the Roth Building.

Mr. Shikada reported the Council previously directed Staff to issue a Request for Proposals (RFP) for use of the Roth Building. Before Staff completed their work, the Council provided different direction to Staff. He was unsure whether the market would view the sale as serious and submit serious offers.

Council Member Tanaka inquired regarding terms that resulted in serious offers to purchase the Roth Building.

Mr. Shikada noted much of the debate concerned who was responsible for the building. Mr. Green's description delineated rehabilitation of the building from establishment of a museum, and PAHM viewed rehabilitation as the City's responsibility and establishment of a museum as PAHM's responsibility. Staff did not view the need for rehabilitation as extensive or as expensive as PAHM. If the Council determined a specific level of rehabilitation was the City's responsibility, then Staff needed to find funding.

Council Member Tanaka expressed concern about the City repairing the building for habitation and a renter needing a different configuration such that the City's repairs were unnecessary. Perhaps the Council needed to set one course of action so that potential purchases viewed a listing seriously.

Mr. Shikada wanted to confer with Staff prior to advising the Council.

Mayor Fine suggested the Council sell the Roth Building and offer PAHM the first right to purchase or partner with PAHM to construct a warm shell with no City funding.

Council Member Tanaka noted selling a commercial property was different from selling a residential property. Some tenants redeveloped a building under a lease agreement. Perhaps an additional option was to direct Staff to consider a revenue-generating lease of the building.



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Mr. Shikada indicated Staff needed to provide the Council with details for those options. The Council previously considered rezoning the property.

**MOTION:** Council Member Tanaka moved, seconded by Council Member Kniss to:

- A. Pursue selling the building with a first right of purchase to the Palo Alto History Museum;
- B. Partner with the Museum to achieve a “warm shell” project with no additional City money;
- C. Research a revenue generating lease;
- D. Explore re-zoning for this to be economically viable; and
- E. Return to the City Council in six months.

Council Member Kniss believed the Council needed to move forward, and the Motion provided four reasonable options.

Vice Mayor DuBois reiterated that the Finance Committee recommended a cold shell option at a cost of \$6.5 million. The cold shell option preserved the historic building, utilized the TDRs as required, and stopped the building's deterioration. The Council needed to consider the cold shell option and save the historic asset. The Roth Building had little parking and was located in a park. Parks Impact Fees were proposed as a source of funding for the public bathroom for park users, Community Center Impact Fees for the community center room, and Library Impact Fees for the City Archives. He did not favor selling City real property. He questioned whether Part B meant no TDR revenue, grant funding and/or additional City funding.

Mayor Fine clarified that Part B meant no additional City funding but may not mean additional TDR revenue.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to add to the Motion “Find our best option to achieve a warm shell project with City funding: a. Assume the City keeps half of the space for City purposes initially, and b. Funding options could include a revenue-generating lease, non-profits, or direct City use” (New Part D.)

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Council Member Filseth remarked that the difference between Part B and the Amendment was the Amendment separated City and PAHM funding.

Council Member Tanaka wished to ensure the Motion provided Staff with specific direction.

Mr. Shikada interpreted the Motion as general direction to Staff but not a direction for Staff to identify \$4 million in funding. A lease with a nonprofit agency was not going to provide revenue.

Council Member Filseth viewed the Motion as a soft request for potential funding sources. He hoped Staff did not interpret the Motion as direction to list the Roth Building for sale.

Council Member Cormack reviewed Council direction to Staff in March 2020, which was remarkably similar to the direction in the Motion. The City needed a new option.

Ms. Nose indicated tonight's direction to Staff was the same as that provided in March 2020.

Council Member Cormack stated the City had no funding to rehabilitate the building at the current time.

**MOTION AS AMENDED:** Council Member Tanaka moved, seconded by Council Member Kniss to direct Staff to:

- A. Pursue selling the building with a first right of purchase to the Palo Alto Museum;
- B. Partner with the Museum to achieve a “warm shell” with no additional City money;
- C. Research a revenue-generating lease;
- D. Find our best option to achieve a warm shell project with City funding:
  - i. Assume the City keeps half of the space for City purposes initially;
  - ii. Funding options could include revenue generating lease, non-profits, or direct City use;
- E. Explore re-zoning for this to be economically viable; and

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F. Return to the City Council in six months.

**MOTION AS AMENDED PASSED:** 5-2 DuBois, Kou no

14. Colleagues' Memo on Safe Firearms Storage.

Council Member Cormack reported Council Members had spoken with groups advocating gun safety and the League of Women Voters and learned that deaths by firearms were preventable. An Ordinance was a public health necessity, not a Second Amendment debate. She suggested the City/School Liaison Committee discuss the education suggestions provided in public comment.

Mayor Fine noted news articles frequently referred to the increasing number of gun sales, and an Ordinance requiring the safe storage of firearms in residences was needed. Compliance was easy and low cost.

Stacey Ashlund read a letter from the League of Women Voters in support of a requirement for storage of firearms in areas or devices that locked.

Rebecca Eisenberg appreciated the Colleagues' Memorandum. Secure storage of firearms prevented tragedies.

Kelly Traver supported an Ordinance requiring safe storage of firearms. Since the pandemic began in March 2020, unintentional deaths of small children had increased 45 percent, and teen suicides using a firearm had increased 7 percent because of the dramatic increase in gun sales. Moms Demand Action supported a fine or community service penalty for violation of the Ordinance.

Council Member Filseth asked if the proposed Ordinance was unconstitutional.

Molly Stump, City Attorney, answered no.

Vice Mayor DuBois expressed concerns about government overreach and enforcement of the proposed Ordinance and suggested referring the proposed Ordinance to the Policy and Services Committee (P&S) to review and obtain public comment.

Mayor Fine advised that gun locks were sold with all firearms in California unless the buyer provided proof of ownership of a firearm safe. Firearms were required to be placed in a locked container if located in a vehicle. He

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inquired whether the San Mateo County Ordinance was more restrictive than the Santa Clara County Ordinance.

Ms. Stump explained that both Ordinances provided an exception for carrying a firearm on the authorized user's person. The Santa Clara County Ordinance provided an additional exception for a firearm located in close proximity to and within the control of the person authorized to carry it.

Mayor Fine commented that this type of Ordinance was rarely enforced. A violation was sometimes added to other Code violations found in a residence.

**MOTION:** Mayor Fine moved, seconded by Council Member Cormack to direct the City Attorney to return to Council with an Ordinance to require the safe storage of firearms in residences.

Council Member Cormack noted many nearby jurisdictions had adopted the same or a similar Ordinance.

**MOTION PASSED:** 7-0

## Council Member Questions, Comments and Announcements

Ed Shikada, City Manager, reported the City Charter stated a petition for a referendum was presumed to contain the requisite number of qualified voters until proven otherwise. Therefore, if a petition was presented, Foothills Park was going to be closed to nonresidents during the pendency of a referendum.

Council Member Cormack advised that contrary to public comment two weeks ago, she did not oppose the Bay-Delta Plan before the San Francisco Public Utilities Commission (SFPUC), and her remarks did not conflict with Council policy. She provided her remarks during public comment on the water supply agreement and attended the entire workshop. A Bay Area Water Supply and Conservation Agency (BAWSCA) director was a steward of the 26 member agencies and the 2 million people served by BAWSCA.

Vice Mayor DuBois thanked those who volunteered for the COVID-19 Ambassador Program and believed Palo Alto Medical Foundation (PAMF) was suppressing COVID-19 testing. Stanford University was providing virtual holiday concerts.

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Council Member Tanaka noted public requests for additional time to submit a referendum regarding Foothills Park.

Molly Stump, City Attorney, indicated the rules for submission of a referendum were contained in the City Charter, and neither the Council nor Staff had the discretion to vary from those rules.

Council Member Tanaka thanked Mayor Fine and Council Member Kniss for their service on the Council.

Mayor Fine related that the Santa Clara Valley Transportation Authority (VTA) responded to the City's comment letter regarding the Measure B funding plan, and the response indicated VTA was following its process. He formally disbanded the Diversity and Inclusion, Policy/Data/Hiring, Transparency and Accountability, and Boards and Commissions Ad Hoc Committees and thanked Council Members for serving on the Ad Hoc Committees. He recognized Council Member Kniss' decades of service to the community; thanked Staff, Council Members, and the community for their support during his term on the Council; and wished the incoming Council all the best.

Council Member Kniss offered her thanks to each Council Member and Staff.

Adjournment: The meeting was adjourned at 12:35 A.M.