



CITY COUNCIL SUMMARY MINUTES

Special Meeting
May 9, 2022

The City Council of the City of Palo Alto met on this date in the Council Chambers and by virtual teleconference at 5:00 P.M.

Present: Burt, Cormack, DuBois, Filseth, Kou, Stone, Tanaka

Absent: None

Closed Session

1. CONFERENCE WITH CITY ATTORNEY- EXISTING LITIGATION
Subject: Julio Arevalo v. City of Palo Alto U.S. District Court, Northern District, Case # 3:20-cv-04157-CRB Authority: Government Code Section 54956.9(d)(1)

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

MOTION PASSED: 7-0

PUBLIC COMMENT

Aram James stated the case should settle for the asking price of \$10 million due to the evidence provided in the video of the incident.

Council went into Closed Session at 5:05 P.M.

Council returned from Closed Session at 5:45 P.M.

There were no announcements for the Public.

Special Orders of the Day

2. Affordable Housing Month Proclamation 2022

Mayor Burt proclaimed that the month of May is affordable housing month in the City of Palo Alto.

City Clerk Lesley Milton introduced a representative from Eden Housing who received the proclamation.

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Kate Blessing-Kawakawa, Eden Housing, explained Eden Housing is a non-profit housing developer who began building affordable housing in 1968. She thanked the Council and the City for its dedication to build more affordable housing in the City of Palo Alto.

PUBLIC COMMENT

Linda Jolley remarked the City's efforts to build more affordable housing was not working. There were many un-housed individuals living on the streets or in their vehicles. She recommended the City reexamine its philosophy and approach to affordable housing.

Aram James encouraged the City to explore low income housing reparations and to work with the folks living in their vehicles.

Mayor Burt shared that the City has moved aggressively towards creating a transitional housing project and recently received confirmation the City will receive grant funding for the project. The City Council recently increased commercial Impact Fees to fund more affordable housing in the City. The City also proposed to use a significant portion of the Business Tax revenue to fund more affordable housing projects in the City.

NO ACTION TAKEN

Agenda Changes, Additions and Deletions

None

Public Comment

Linda Jolley (In Person) emphasized the City's approach to build more affordable housing in the City was not working. She encouraged the City to build RV parks for folks living in their RVs or vehicles. She stated the Palo Alto Police Department was leaving Notices of Violations in inconspicuous places on folks' cars and issuing them multiple times a day.

Aram James mentioned he filed a Public Records Request in April 2022 asking for what the application process will be for the next Chief of Police. The request was returned due to him asking a question instead of asking for specific documents. He requested City Attorney Molly Stump provide the documentation.

Matt Schlegel acknowledged the City's work against climate change and its focus on developing policies to help residents to stop burning fossil fuels. He shared that the three listed installation companies on the City's website would

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not install a new heat pump water heater at his home. He recommended the City make it easier for folks to convert their appliances.

Shani Kleinhaus, speaking for the Santa Clara County Audubon Society, shared a video and presentation about night time bird migration across the United States of America. The primarily death of migrating birds was the loss of habitat, outdoor/feral cats and collisions with man made structures. She encouraged the Council to consider birds when approving projects and nature preserve construction.

Kerry Yarkin inquired which City body is responsible for granting the 48,000-square foot Variance for the Castilleja School expansion project. Through the project review process, it was discovered the school had been over building their maximum allowable space for years.

Rebecca Eisenberg expressed confusion as to why the City was focusing on heat pump water heaters when studies showed that cars were the top polluters. The City must reinstate the electric shuttles to reduce cars on the roads. Also, it was unreasonable to request renters to ask their landlords to upgrade the appliances in their rentals. Lastly, she requested how much funding the City was playing for the Palo Alto Museum.

Consent Calendar

Council Member Tanaka registered a no vote on Agenda Item Number 8.

Council Member Kou registered a no vote on Agenda Item Number 9.

MOTION: Council Member DuBois moved, seconded by Council Member Cormack to approve Agenda Item Numbers 3-10.

PUBLIC COMMENT

Jeff Levinsky appreciated Staff making adjustments to the Height Transition Ordinance that he suggested. He noted the new law did not protect all residential neighbors within 50-feet. He requested the language be fixed in the City's Municipal Code. The change would bring the law into compliance with the Council's direction made on January 24, 2022.

Rebecca Eisenberg commented with respect to Item Four, the tree at 1872 Edgewood Drive was removed because it was damaged by new construction. She strongly urged the Council to pass the new Tree Ordinance before the summer. With respect to Item Eight, the City made a \$900,000 budgeting error and was seeking an adjustment without discussion.

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Aram James noted that many of the items on the Consent Calendar were high priced items, but the City continued to cut vital services to residents. He agreed discussion about the items should be held so the public can understand what the Council is approving.

3. Approve Minutes from the April 18, 2022 and City Council Meeting, April 25, 2022 City Council Meeting
4. Adoption of a Resolution Designating Redwood Tree at 1019 Forest Court as a New Heritage Tree #5 and Removing Previously Designated Silver Maple at 1872 Edgewood Drive From the List of Heritage Trees
5. Resolution of the Council of the City of Palo Alto Approving the Execution of Two Assignment Agreements to Assign Palo Alto's Base Resource Percentage Received Under the 2025-2054 Contract With the Western Area Power Administration to the Northern California Power Agency
6. Approval of Construction Contract Number C22182558 with Enterprise Roofing Service, Inc. in an Amount Not-to-Exceed \$497,233 to Replace the Existing H Wing Roof at Cubberley Community Center, Capital Improvement Program Project CB-16002; and Authorization of Contract Contingency in an Amount Not-to-Exceed \$49,723 for Related, Additional but Unforeseen Work Which May Develop During the Project.
7. Approval of Contract Amendment No. 1 to Contract Number C21179340 with Baker Tilly US, LLP. to Increase the Not-to-Exceed Compensation by \$2,126,250 and Extend the Term for Three Additional Years for Continued Audit Services
8. Approval of \$900,000 Budget Amendment in the Refuse Fund for Fiscal Year 2022 for Collection, Hauling, and Disposal of Refuse for an Administrative Correction
9. Second Reading of an Ordinance Clarifying Ambiguities in Height Transitions, Adding RMD to the list of Residential Districts and Amending the Setback for the RM-40 Zone District

MOTION SPLIT FOR THE PURPOSE OF VOTING:

MOTION PASSED FOR ITEMS 1-7: 7-0

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MOTION PASSED FOR ITEM 8 PASSED: 7-1 Tanaka no

MOTION PASSED FOR ITEM 9 PASSED: 7-1 Kou no

Council Member Tanaka agreed with the public comment that \$900,000 is a large error. The report did not indicate how it happened, or how this type of error can be prevented in the future.

Council Member Kou believed there were mistakes in the Height Transition Ordinance and agreed simple corrections in the ordinance will provide more protections for residents. Adopting the ordinance placed a financial hardship on residents if they wished to file an appeal. She requested the item be brought back to Council with the Objective Standards.

City Manager Comments

Ed Shikada, City Manager explained Staff's annual practice after each fiscal year was to calculate an estimate of what funds will be needed in the current year versus the upcoming year. In the case of Item Eight, Staff believed the funds would be next year and not the current year. With respect to the COVID-19 Pandemic, the City was tracking an increase in COVID-19 cases as well as hospitalizations. The month of May was Asian American and Native Hawaiian/Pacific Island Heritage Month and upcoming events could be found on the City's website. On May 10, 2022 the annual safety update event was to be held by the Fire Chief, the Police Chief and the Office of Emergency Services. On May 14, 2022 was the Party in the Park event for the Junior Museum and Zoo. On the City's website was a survey for the public to provide their comments and recommendations about the temporary street closure extension for California Avenue and Ramona Street. The community was invited to the Municipal Center Open House on June 18, 2022. Upcoming items for the May 16, 2022 City Council meeting were the Objective Standards and interim closures for Ramona Street and California Avenue.

Action Items

10. Review and provide feedback on the proposed permanent parklet standards and program policies; and Adopt an interim ordinance and resolution to continue the pilot parklet program until December 31, 2022

City Manager Ed Shikada shared that Staff debated whether the item should have been a study session or an action item due to the range of issues the topic covered. He encouraged the Council to provide direction with the understanding that the item would come back to the Council at a later time.

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Assistant Planning and Transportation Director Rachael Tanner confirmed Staff was seeking input on the proposed permanent parklet standards and program policies. Also, that Council considered adopting an ordinance and resolution to continue the pilot parklet program until December 31, 2022. Parklets and outdoor dining began during the height of the COVID-19 Pandemic in June of 2020. The City allowed parklets to help local businesses remain in business and provide a safe place for residents. Since its inception, residents have continued to support the use of parklets. The pilot parklet guidelines focused on reducing the overall risk and immediate safety for parklet patrons, motorists and pedestrians. Aesthetics, design consistency, and fees were not included in the pilot parklet guidelines. A parklet is an extension of the pedestrian right of way which utilizes one to three parking spaces. Only legally permitted existing restaurants could have a parklet and they could only be on streets with a speed limit of 25 miles per hour or lower. The components of a parklet included, but were not limited to, the platform, the enclosure and traffic safety features. Staff recommended the Council focus their discussion on retrofitting, edge treatments, sidewalls, heaters, neighboring businesses and building owner support, limited sidewalk dining in conjunction with parklets, restricting fabric tents and alcoholic beverage services. With respect to retrofitting, Staff recommended a transition period for businesses to change their existing condition to the guidelines. With respect to edge treatments, Staff recommended a periodic barrier such as planters or filled containers. The Architecture Review Board (ARB) recommended that edge treatments have a maximum height of 36-inches. Staff suggested that sidewalls be no taller than 42-inches from the ground to maintain line of sight. The ARB indicated that some level of transparent siding should be used and requested additional time to discuss the concept further. Staff recommended that the use of heaters be prohibited for all parklets due to them being the number one cause of compliance issues. ARB believed heaters were a crucial component of the parklets and requested that a subcommittee explore electric heaters versus propane. If a parklet extended beyond an applicant's storefront. Staff proposed the applicant obtain letters of support from the neighboring tenants and building owner. Staff believed that parklets paired with sidewalk dining decreased the area for pedestrians to cross safely. Staff recommended 8-feet of clear, unobstructed path of travel be made available in order to obtain a sidewalk dining permit in conjunction with a parklet permit. Staff also recommended that no fabric tents or canopies be used but the ARB recommended allowing fabric covers if it could be used safely. ARB also recommended prohibiting the use of vinyl, soft plastics, and tarps. Lastly, Staff proposed a Conditional Use Permit (CUP) process to amend a CUP for alcohol service outdoors. The Public Works Department continued to work with other agencies to review the permits and inspect the parklets during construction. Parklets would be subject to annual inspection and Staff

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recommended an annual time period be set during which parklet applications could be submitted.

Consultant Sophie Gabel-Scheinbaum reported that after comparing other jurisdictions, Staff prepared two methods for a Parklet Fee Structure. The first was the cost of on-street parking spaces in Palo alto for a full calendar year. The second option was to use the average ground-floor retail rents and apply the rate to the average square footage of the parking space. The current daily fee for use of a parking space in the City was \$25 and over a year that equated to \$9,125 per space. The commercial rent valuation fee provided several fee amounts based on rates for ground floor retail. The City of Burlingame and the City of Mountain View both used a 9 percent proportion of the market rate rental value. In general, many cities opted to do a flat rate fee instead of a per space fee.

Ms. Tanner shared the feedback from the focus group was that landscaping and planters may be hard to maintain. They supported having enclosures and sidewalls to protect diners from the sun and wind. Also, to allow propane heaters because they are more cost effective. Some folks felt there should be no fee while others expected there to be a fee. Staff conducted a survey and there were 24 respondents. Many of the existing parklets utilized two parking spaces. Many of the survey respondents supported a fee of \$100 to \$250.

Mayor Burt inquired if folks understood it was a monthly fee per parking space.

Ms. Tanner believed they understood it applied to the whole parklet. She noted respondents from the survey supported the use of propane heaters. Respondents also recommended that the guidelines be clear, streamlined, that parklets have a uniformed look, and other similar guidelines. In conclusion Staff requested a 6-month extension of the pilot program to allow for more refinement of the standards.

Council Member DuBois asked what Staff's recommendation is for the barrier height.

Ms. Tanner concurred Staff was comfortable with ARB's recommendation of 36-inches.

Council Member DuBois understood that a third of the parklets take up 4 or more parking spaces. He asked what the biggest parklet was in the city.

Senior Engineer Mike Nafziger predicted the largest parklet was between four and five spaces.

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Council Member DuBois mentioned that many cities allowed parklets at the street level. He inquired how those cities complied with American Disability Act requirements.

Ms. Tanner explained that some cities allowed it under the temporary program but not in the permanent program.

Ms. Gabel-Scheinbaum confirmed that none of the permanent programs allowed at grade parklets.

Council Member DuBois asked if Council could suggest changes to the temporary ordinance.

Ms. Tanner answered yes.

Council Member DuBois inquired if the City required insurance for parklets.

Mr. Nafziger confirmed any Encroachment Permit required insurance.

Council Member Filseth remarked there were two issues. One was how to allow the use of public space for private use and the other was design standards. He wanted to know if there are any electric heaters being used in any of the parklets.

Mr. Nafziger answered yes.

Council Member Filseth inquired about the lease lengths for parklets.

Ms. Gabel-Scheinbaum stated that the permits included language that gave the jurisdiction authority to discontinue the use of the parklet for emergencies or maintenance.

Council Member Stone wanted to know how much greenhouse gas propane outdoor heaters omitted.

Public Works Director Brad Eggleston believed it would be a small amount but could provide the information at a later time.

Council Member Stone encouraged Staff to explore it further. He inquired if the proposal was to phase out the heaters or an immediate change.

Ms. Tanner remarked it would be part of the transition period. The Palo Alto Fire Department was very concerned about the existing propane heaters that were out of compliance.

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Council Member Stone inquired why two inspections were needed during construction.

Ms. Tanner explained the platform construction would be inspected to address compliance and then the remaining components would be inspected.

Council Member Stone supported having a designated time when parklet applications could be submitted but believed once a year may be too restrictive.

Ms. Tanner suggested there be an annual set date for the transitional period so that the City can keep inventory. After the transitional period Staff was comfortable having multiple application submittal times.

Mr. Nafziger noted that typical insurance policies are renewed annually.

Council Member Stone wanted to understand how the City of San Diego built in an equity component in their parklet program.

Ms. Tanner explained that areas in the City of San Diego that suffer from climate change have a lower cost.

Ms. Gabel-Scheinbaum confirmed they linked climate impacts with environmental justice.

Council Member Stone wanted to know how Palo Alto could do that.

Ms. Tanner provided the City could give a discount to locally-owned restaurants instead of country-wide restaurants.

Council Member Cormack asked if the special street sweeper was sufficient to keep the area between the parklets and the street clean of debris.

Mr. Eggleston disclosed there are areas around the parklets where the sweeper cannot reach and Staff was cleaning them by hand.

Mayor Burt asked if Staff had explored whether the electric heaters are radiant or resistant heaters.

Mr. Nafziger did not know what type of heaters they were.

Mayor Burt articulated it was important to make the distinction. He understood the power requirements for radiant heaters was less than resistant heaters. He wanted to understand what capacity did the restaurants have to provide electricity to outdoor heaters.

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Ms. Tanner noted Staff had not done that research.

Mayor Burt inquired if there had been evaluations on the health risks of folks breathing in the combustible materials from propane heaters.

Ms. Tanner disclosed Staff had not explored it.

Mayor Burt mentioned there are areas where the sidewalk encroachment has decreased to 4-feet. He wanted to understand the impacts of having an 8-foot requirement for sidewalks.

Ms. Tanner explained that Staff could evaluate the businesses that had parklets on the sidewalk and in the road and what impacts they may encounter.

Mayor Burt articulated that one concern from businesses was that the City collected additional Sale Tax revenue from the increased dining and that the City should not charge a fee. He asked what percent of Sales Tax was the City receiving and had that been considered in the proposed fee amounts.

Ms. Tanner answered Staff had not done that analysis.

Mayor Burt believed that piece of information was an important consideration for fee rates. He wanted to know if any additional bike parking had been installed in the downtown areas.

City Transportation Director Philip Kamhi noted that any additional bike parking was from recent development requests.

Mayor Burt wanted to see more bicycle parking for the downtown areas. Recently a bike corral was removed from Ramona Street and now there was a shortage of bicycle parking.

Council Member Tanaka wanted to understand why businesses could not share a parklet.

Ms. Tanner explained there was no prohibition on businesses sharing a parklet.

Council Member Tanaka wanted to hear the proposal for shared parklets.

Mr. Eggleston concurred during the pandemic the City allowed businesses to place their parklets in front of neighboring businesses. The temporary ordinance was later amended to not allow parklets in front of neighboring businesses.

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Council Member Tanaka remarked several parklets had been placed in front of neighboring businesses' signs and asked how that situation was mitigated.

Ms. Tanner believed the letter of support will mitigate those impacts and facilitate a compromise between neighboring businesses.

Mr. Shikada agreed there must be a balance between interests of different businesses and the interest of the City for activation of the street.

Council Member Tanaka wanted a program that maximized the economic activity in the area and a phased in approach for fees. He appreciated the comparisons regarding fee structure of neighboring jurisdictions but noted that the proposed fee for Palo Alto was significantly higher. Also, the program should ensure activation of the sidewalks instead of folks walking down the center of the street.

Council Member Kou wanted to know if high rents are the cause of landlords not being able to rent their space.

Ms. Tanner concurred that could be a factor and recommended those be taken on a case by case basis.

Vice Mayor Kou encouraged Staff to explore all factors as to why a storefront is vacant. She wanted to understand the process for deep cleaning California Avenue.

Ms. Tanner confirmed additional cleaning was happening on a weekly and monthly basis.

Mr. Eggleston added traditionally before the street closures, the streets were swept and received blower work three times a week for California Avenue and downtown. He noted Staff has not been able to maintain the cleanliness standards in some areas due to street furniture. A permanent program would consider an acceptable fee that covered the additional Staffing needs for cleaning.

Vice Mayor Kou added that additional fire and police Staff will need to be considered for a permanent program as well. She asked how other cities do their cleaning.

Ms. Tanner commented that other cities do not require parklets to be removed for street cleaning and many cities have a similar street sweeping schedule as Palo Alto. She suggested that a parklet permit holder maintain the cleanliness of the hard to reach areas themselves.

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Ms. Gabel-Scheinbaum articulated she would reach out to other jurisdictions to understand their cleaning operations.

PUBLIC COMMENT

John Shenk, Thoits Brothers, remarked the downtown is at its best when it is full of diverse shops and food establishments. All business establishments should be allowed to use the parklet program while the rest of the downtown needs visibility and parking. The City should continue to enforce the existing rules while evaluating the streets for an expanded program. He requested that the City not micromanage the use of heaters and to work with owners on the happenings in front of their storefronts.

Nancy Coupal agreed that the COVID-19 Pandemic was not over and the City faced an endemic situation. The City should follow public wishes for public property and facilitate more parklets and walkable streets. Any fees should be used for the purpose of the business to remain in business. She encouraged a process that allowed the City to decide on a parklet permit approval that had not received a letter of support from adjacent building owners.

Rebecca Eisenberg expressed concern that there were no business owners speaking during public comment, only landlords. She echoed the comment that a vibrant downtown includes a diverse set of businesses. The parklets are a great idea if they are implemented appropriately and the closure of the streets was the best solution.

Council Member DuBois suggested the Council consider whether the goal was to provide parklets that are all-weather indoor space or outdoor dining. He found it interesting that many of the parklets take up four or more parking spaces. Staff should explore parklet programs that were implemented before the COVID-19 Pandemic. The City of San Diego's parklet program had many useful components that were established pre-pandemic that the City should consider. With respect to aesthetics, there should be different rules for open streets versus closed streets. He supported Staff's recommendation there be no tents or canopies and to phase out the use of propane gas. He recommended the use of astroturf be not allowed, that planters be used as barriers, there be a neutral color palette and a 36-inch barrier height limit. He expressed concern about parklets in other parts of the city causing impacts with respect to lighting and that parklets should not have a lot of signage. Also, he did not support allowing a business to have both a Sidewalk Encroachment Permit as well as a Parklet Permit. With respect to street use, it should be clear that parklets should not be allowed in handicap spaces, bus zones, loading spaces, curb ramps, etc. The Staff Report was silent on

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parking demand and how much available parking there was in the downtown areas. The City should act as a property manager and lease the space with the understanding of how much inventory there is. He noted some cities implemented a restriction of how many parking spaces could be used per street. With respect to zoning, parklets located within a historic district should be subject to a historic review. There was confusion on who determined where a parklet should be located. Two options were to limit the determination to the applicant or that the City lease the spaces completely separate from the storefronts. If the City pursued a management role, then lease terms, enforcement and remedies should be considered.

Council Member Filseth acknowledged that outdoor dining was strongly supported in the City and should be extended. He supported allowing businesses to serve alcohol outside if they are permitted to serve it inside and that more bicycle parking be installed. With respect to sidewalls, the City should determine whether the parklet is an extension of the indoor space or whether the parklets are an experience for diners. He inquired if it is best practice to not allow parklets to encroach in front of neighboring businesses.

Ms. Gabel-Scheinbaum restated that cities that allow extension of the parklet beyond the storefront required a letter of support or acknowledgment from neighboring businesses. The majority of cities with a permanent program had those provisions.

Council Member Filseth predicted the process would be complicated because there may be an agreement but then tenants may change. To make it more fair the City may have to become the landlord. He echoed the comment that there is a difference between open and closed streets, that folks should be walking on the sidewalks and the need to understand the impact of lost parking spaces.

Council Member Stone appreciated Staff's acknowledgement of having a fee that offsets the management costs while keeping it reasonable for applicants. He asked if Staff knew what the management costs would be for a permanent program.

Ms. Tanner remarked there was discussion of having a half of a full time equivalent (FTE) Staffing position to manage the program.

Council Member Stone wanted to understand what fee amount was needed to cover the half FTE.

Ms. Tanner answered Staff did not have the answer but would continue to discuss and evaluate it.

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Council Member Stone noted moving forward it would be helpful to have a better understanding of that. He acknowledged and agreed that the City will be receiving additional Sale Tax revenue as well as many other community benefits. He asked if retailers could apply for a Parklet Permit.

Ms. Tanner commented the proposal was for restaurant use but the Council could recommend that other uses be allowed to use parklets.

Council Member Stone pressed if other cities allowed that.

Ms. Tanner noted some cities allowed other uses to have parklets. Some businesses choose to use them as a public amenity with a swing or a bench instead of for their business.

Ms. Gabel-Scheinbaum added gyms used their parklets for fitness classes during the pandemic. For the majority of cities in the State of California the use of a parklet was limited to restaurant use.

Council Member Stone encouraged Staff to explore allowing other uses to use parklets to promote equity. He wanted to understand why Staff proposed that a business seek approval from the adjacent business owner as well as the building owner for extended parklets.

Ms. Tanner restated that a property owner may have difficulty finding a tenant due to an extended parklet in front of the vacant space.

Mr. Eggleston clarified the temporary ordinance did not allow anyone to object to an extension of a parklet but Staff was proposing that the permanent ordinance include that language.

Council Member Stone saw the logic of allowing an adjacent business owner to object to an extended parklet but he could not support allowing a property owner the same right.

Council Member Cormack stated the proposal was not only an economic decision. The parklets added visual interest to the streets and provided a more community experience instead of an individual experience. She found it appropriate to apply high standards to the parklets because they provided a lot of visual aesthetics to the community. A semi-permanent change to the landscape will be expensive but the City should require electric heaters instead of propane. The City must continue to enforce the 8-foot sidewalk requirement as well as disable parking, loading zones and bicycle parking. She supported real vegetation in the barriers, no artificial turf and colorful accents. She wanted to better understand the differences in the guidelines for closed and open streets. A one year lease term may be too short if the

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businesses are making investments and the City is managing the leases. With respect to extended parklets, one option was to allow adjacent businesses the right of first refusal. If the store decided not to use the space then the space should be made available to whoever wants to use it. With respect to fees, Staff provided a wide range of figures without any explanation of them.

Ms. Tanner explained that Council could consider using a fraction of the parking space value for the fee instead of the full \$25 per day.

Mr. Kamhi mentioned the \$25 per day amount was the City's current parking price for the City-owned parking garages and lots.

Ms. Tanner noted the Council could also recommend a fraction amount for the rental rate average instead of the full amount.

Mayor Burt reminded the Council that one of the 2022 Council Priorities was economic recovery and transition. The Stanford Shopping Center businesses have been very busy and their parking spaces were hundreds of yards away from the shops. This showed what a well designed pedestrian environment could do to attract more folks to the shopping center. He answered Council Member Filseth's question that the spaces should be considered as an additional experience for diners. He did not support a rental rate that was collaborated to indoor lease rates but rather a fee that used annual parking rates. The rates should also consider the additional revenue the City will be receiving as a result of the increased retail sales. The City should explore how to help retailers more with marketing and additional wayfinding signs. He encouraged allowing retailers to have a parklet but cautioned about having pop up businesses that competed with existing retailers. For rental fees he supported a 2-year implementation process. He suggested the ARB reconsider a number of aspects they recommended including a neutral color palette. He encouraged the Council to provide direction quickly so that businesses could move forward with their designs but understood that many of the concepts would have to be taken up at a later time. Enforcement on California Avenue should be strengthened. He believed Staff misinterpreted the Council's motion and expanded the motion to property owners instead of keeping it only to business owners.

Council Member Tanaka acknowledged that handling the transition period will be challenging. Many businesses had already invested large sums of dollars for their parklets and now they were being asked to change them.

Ms. Tanner agreed that businesses have already made significant investments and the proposals intended to be low-cost changes.

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Mr. Shikada recommended the Council provide clarity about the future state of the parklets. That direction would facilitate discussions with businesses on how to move forward.

Council Member Tanaka believed the right step was to allow propane heaters during the transition phase. He agreed there was a lack of bicycle parking in the area and that design standards needed to be implemented. If retailers were allowed to use parklets they could attract customers to their shop. He encouraged the City to explore how to manage parking demand and to include the property owners in curating the space to create a more vibrant street.

Vice Mayor Kou aligned her comments with Council Member Filseth and Council Member DuBois. She believed it was true and necessary to have a diverse set of shops downtown as well as ensure compliance and enforcement of the rules. She supported ARB's recommendations and emphasized that deliveries and loading must be taken into consideration. Any fee that is set should cover Staff time as well as maintenance and repairs of the street. She encouraged planters as barriers with more greenery and flowers. The parklet permit holder should be responsible for any trash, debris and cleaning near their space. She strongly opposed the use of the sidewalks for signage and seating. Pedestrians must have a safe and clear pathway. Also, businesses and the City should discourage the use of trees as bike storage. In conclusion she supported the requested extension to allow ARB to further explore the design guidelines.

Council Member DuBois believed if the City does not charge market rent but allows a store front to have a parklet. Eventually the property owner will capture the value in incremental rent. The City should manage the leases and capture the value for the taxpayers. He found the construction rate and daily rate not useful. The Parking In Lieu Fee was more reasonable in that the fee structure required an owner to pay a nominal amount annually. The Council should consider what the cost is to privatize the public land. He imagined a vendor renting a parklet without having a store front and that type of use should be allowed. The temporary ordinance should be updated to include items that will be required in the future such as the removal of the temporary tents.

Mayor Burt cautioned on requiring temporary tents to be removed while the City discussed whether to extend the parklets to the future or not.

Council Member DuBois emphasized that restaurants could continue outdoor dining but without an enclosed tent.

ORIGINAL MOTION: Council Member DuBois moved, seconded by Vice Mayor Kou to direct staff to update the temporary ordinance to notify of the

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intention to disallow upon the effective date of a permanent ordinance the use of vinyl, tents or canopies; prohibit parklets from blocking handicapped or curb ramps, state a strong preference for plants as barriers; shift to 36" in height; prohibit new parklets from having these characteristics; and ask staff to prepare pre-approved designs as part of the permanent ordinance;

Council Member DuBois stated it is important to start to move towards requirements that will be included in a permanent ordinance.

Council Member Stone stated now was not the time to discontinue the use of tents or canopies.

Ms. Tanner explained the tents along California Avenue were not included in the existing Parklet Program. Staff could begin providing notices to businesses that tents and canopies will not be allowed in the future.

Mr. Shikada requested clarification on how long the transition phase will be in place. He predicted that businesses would not remove their tents until final parklet guidelines are adopted.

Council Member DuBois wanted to provide a notice of intent to allow time for folks to transition to the new guidelines.

Mayor Burt suggested to provide clarity on what will not be allowed in the permanent ordinance.

Council Member DuBois agreed and updated the motion. He asked if there had been any recent parklet applications.

Mr. Nafziger answered that Staff received two applications recently and one or two others in the past month.

Council Member DuBois inquired what requirements would new applications follow.

Mayor Burt understood Staff would apply the new rules to the new application. He asked if the motion should include language about adjacent property owners prohibiting parklets.

Council Member DuBois declined to include that language in the motion. He believed it should be up to the City to decide where a parklet should be located.

PROPOSED AMENDMENT: Motion by Mayor Burt, Seconded by Council Member Stone to incorporate: Until adoption of a permanent ordinance, property

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owners do not have the right to determine the use of the public space in front of their properties

Mayor Burt recommended the requirement be in place until Council could discuss the permanent ordinance.

Council Member Cormack wanted to understand how the amendment would affect Ramona Street.

Mr. Eggleston remarked the ordinance would remove the language about a property owner objecting to a parklet but continue to allow adjacent business owners to voice objection.

Council Member Cormack supported the amendment.

Council Member DuBois understood that store owners could object to having a parklet in front of their space.

Mayor Burt confirmed that is correct.

Council Member DuBois wanted to understand why a store owner should have the continued right to determine the use of public space.

Mayor Burt emphasized the amendment was in alignment with Council's motion made in September of 2021. The amendment would give Staff discretion on whether a parklet application should be approved or not.

Council Member Filseth supported the amendment for the interim period but recommended Council revisit the topic during the permanent ordinance discussion. If there was a dispute between the property owner and the tenant. The property owner will win and he could not see how the amendment provided any protection to the tenant in that scenario.

Council Member Stone agreed the amendment was especially important for the interim ordinance because it provided consistency for business owners.

Council Member Tanaka echoed Council Member Filseth's comment. He inquired if the amendment would create any legal issues for the City.

City Attorney Molly Stump did not foresee any legal concerns arising with the amendment. Property owners could provide input to the City if they have any concerns.

Council Member Tanaka wanted the ordinance to be fair for both parties and agreed that the amendment would not be sufficient for the permanent ordinance.

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Mayor Burt understood from the September 2021 motion that if a neighboring business opposed. Staff has the prerogative to determine whether there was interference. If there was no interference then the neighboring business did not have the right to object.

MOTION PASSED: 6-1, Tanaka No

Council Member Cormack provided clean up remarks to the main motion.

Mayor Burt inquired if the motion should include items for new parklets as well as items that should not be allowed under the permanent ordinance.

Council Member DuBois stated if there is agreement among the full Council then the items should be included in the motion.

Council Member Cormack stated the motion was updating the guidelines, it was prohibiting items for new parklets and was placing items in the permanent ordinance.

Council Member DuBois remarked the permanent ordinance will be discussed at a future time.

Council Member Cormack requested that Item D state that electric heaters be required for new parklets.

Mayor Burt agreed but was not comfortable providing that direction at this time.

Council Member Cormack rephrased her request for Item D. She inquired if Council needed to provide more direction to the ARB.

Ms. Tanner clarified that Staff will continue working with the ARB on refining the standards.

MOTION: Council Member DuBois moved, seconded by Vice Mayor Kou to direct staff to:

- A. Adopt the interim ordinance and resolution;
- B. Update the guidelines for new temporary parklets and incorporate into the permanent ordinance the following:
 - I. Prohibit use of vinyl, tents or canopies;
 - II. Prohibit parklets from blocking handicapped or curb ramps

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- III. State a preference for plants as barriers;
- IV. Shift to a maximum of 36" in enclosure height;
- C. Consider pre-approved designs as part of the permanent ordinance;
- D. Until adoption of a permanent ordinance, property owners do not have the right to determine the use of the public space in front of their properties; and
- E. Research and return with more information on electric heating options for the permanent ordinance

Council Member Tanaka noted that the motion did not specify that the item will be extended through the summer.

Mayor Burt clarified the temporary ordinance would be extended through December but the City intended to adopt a permanent ordinance before the expiration.

Ms. Tanner confirmed that is correct.

Council Member Tanaka asked if existing parklets are allowed to block handicapped ramps.

Ms. Tanner answered no.

Mayor Burt clarified it has happened.

Ms. Tanner restated that handicap rules, regulations and access should be enforced.

Council Member Tanaka asked if there were platforms that allowed handicap access.

Mr. Shikada answered that it was not a typical design.

Council Member Tanaka commented that on some streets the spaces are not symmetrical in size. He asked if the City should explore centering the street.

Mayor Burt interjected that centering the street would not be part of the interim ordinance and suggested it be brought up during the permanent ordinance discussion.

Mayor Burt mentioned there are superior barrier designs that do not include planters. He recommended the ARB explore barrier designs further.

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[Council took a short break]

MOTION PASSED: 7-0

11. Approve and Authorize City Manager to Execute Non-Binding Letter of Intent with First Tee Silicon Valley Towards Establishing a Public Private Partnership for Practice Facility Infrastructure Improvements at the Baylands Golf Links and Long-Term Facility Use Access for the First Tee Silicon Valley's Youth Development Teaching Program

City Manager Ed Shikada shared that Council adopted a policy that allowed the City to pursue unsolicited proposals for use of City facilities in June of 2021.

Superintendent of Public Facilities Lam Do reported from 2009 to present, the City worked collaboratively with First Tee Silicon Valley (FTSV) to promote youth development, life skills and core values. Between 250 to 300 youth from Palo Alto and surrounding jurisdictions participated annually at the Baylands Golf Links. FTSV proposed to expand the program's enrollment to 1,000 youth per year at the Baylands Golf Link and begin a new outreach program with an enrollment of 5,000 youth.

President and CEO of Baylands Golf Links George Moxy reported FTSV was celebrating 25-years of serving youth across 148 chapters nationwide. FTSV was established in Silicon Valley in 1999 in the City of San Jose and then expanded to other cities within the Valley. All kids were welcome to attend the programs regardless of their ability to pay. The classes were the heart of the program and were held once a week for 8-weeks, four seasons of the year. FTSV had 35 paid employees with over 100 volunteers. The outreach program to schools and youth organizations helped introduce golf to kids who may not have access to the game. The Baylands Golf Link was the only course that could be sectioned off to allow for FTSV's programming. FTSV proposed to invest \$500,000 annually for classes and \$100,000 for outreach. FTSV would not use the youth area at the Baylands Golf Link more than 30 percent of the time and proposed that the operator offer the space to other youth organizations and schools. FTSV requested that the Council define community benefits for residential rates for Palo Alto and East Palo Alto residents as well as provide discounted rates for seniors, juniors, FTSV participants and families. The proposal was

SUMMARY MINUTES

for FTSV to raise funding to raise the existing driving range netting, add protective netting along Embarcadero Road and complete the youth area. FTSV received approval from the Federal Aviation Administration (FAA) to install higher nets. FTSV would leverage funding from its trustee program as well as seek donations for the program. If the proposal is successful, FTSV will pursue a facility with a training structure and offices in the future.

Mr. Do restated FTSV was seeking a Letter of Intent toward establishing a public/private partnership. The Letter of Intent will facilitate discussions on developing the partnership and Staff will return to Council within 18-months to discuss facility use, construction plans and partnership terms. The partnership would provide benefits to the community through infrastructure improvements, open up underutilized areas at the golf course, establish Baylands Golf Link as FTSV's home in the Mid-Peninsula and further establish youth participation in golf. The Parks and Recreation Commission recommended Staff seek a Letter of Intent from the City Council.

PUBLIC COMMENT

Rebecca Eisenberg spoke in favor of the item. FTSV had a proven track record of providing a large range of benefits to diverse communities.

Shani Kleinhaus spoke on behalf of the Sierra Club and the Santa Clara County Audubon Society. She requested that the City ensure that all parties be informed of existing mitigations for the wetlands and trees at the golf course. Before any infrastructure projects could take place, the City must work with the regulatory agencies and review the Conditions of Approval set forth by the Army Corps of Engineers. Any infrastructure changes should be done in compliance with the Baylands Master Plan and the Palo Alto Baylands Nature Preserve Design Guidelines.

Aram James wanted to understand if there was enough space at the Baylands Golf Link to build a miniature golf course.

Council Member Cormack inquired if the City was responsible for the fencing in the youth area.

Mr. Do confirmed that is correct. The improvements would increase the maintenance budget. FTSV's proposal was to provide resources for the initial construction and then renew the partnership later to include a cost share component.

Council Member Cormack asked if FTSV had done a feasibility study that would give Council reassurance that the funds could be raised.

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Mr. Moxy answered no but there had been discussions with donors as well as the precedent set by the City of San Francisco and the City of Monterey and their facilities.

Council Member Cormack wanted to know if changes would have to be made to the City's Naming Policy.

Mr. Do noted the present proposal did not include any name changes.

Council Member DuBois asked if there were any planned impacts to trees.

Mr. Do answered no because the new fencing would be contained within the existing turfed areas.

Council Member DuBois shared he did not know the City was considering a two-level driving range.

Mr. Do explained in the Fiscal Year 2023 Budget Staff requested funding to hire a consultant to do a feasibility study for a second level at the driving range.

Council Member DuBois understood that FTSV would do the initial fundraising for construction. Then FTSV and the City would enter into an agreement regarding a cost sharing for operations.

Mr. Do clarified the City would continue to provide the monthly maintenance of the facility. When repairs were needed to the infrastructure then the City and FTSV would negotiate a cost share plan.

Council Member DuBois wanted to know if FTSV paid rent in other cities.

Mr. Moxy answered FTSV paid an access fee per participant per 8-week class per season. He emphasized that a long-term agreement was crucial for fundraising.

Council Member DuBois announced his support for the proposal and appreciated that the public use would not be impacted. He encouraged the City to complete the Roth Building lease before working on the FTSV agreement.

Council Member Stone inquired what outreach did FTSV provide to Palo Alto students.

Mr. Moxy remarked it was minimal because of the long wait lists and FTSV did not want to increase demand when there was no place for the kids to play.

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Council Member Stone wanted to know if the proposal would allow for significant expansion.

Mr. Moxy explained that over half the kids were 2nd through 4th graders and they would be placed in the youth area rather than spread around the golf course. This would also allow FTSV to hold Saturday classes which were currently not in the existing program.

Council Member Stone encouraged a greater focus to reach more Palo Alto students. He understood the practice areas would be available to the public when FTSV was not using it.

Mr. Do answered yes and the new youth area would be constructed in an underutilized area of the course.

MOTION: Council Member Stone moved, seconded by Mayor Burt to approve the letter of intent for establishing a partnership with First Tee Silicon Valley Youth Development Teaching Program.

Council Member Stone agreed FTSV is an incredible program, well recognized and the proposal was consistent with Council's priority of public health and safety.

Mayor Burt agreed the proposal fitted into several Council priorities that were held over the years. He found the proposal an exciting opportunity to partner with community partners and leverage resources. He noted adding an additional level to the driving range was included in the long-term master plan for the golf course.

Council Member Filseth agreed the proposal was an excellent use of the facility. He wanted to know in the near future how much of an increase for maintenance would the City be responsible for.

Council Member Tanaka asked what the \$4 million would be used for.

Mr. Moxy explained it would be used for the netting and building out the youth area.

Council Member Tanaka inquired how much folks paid to use the driving range.

Mr. Do disclosed that participants bought different bucket sizes full of golf balls and they ranged from \$6 to \$15.

Council Member Tanaka understood FTSV would have discounted fees to use the driving range.

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Mr. Do clarified that fees would be negotiated over the next 18-months.

Council Member Tanaka wanted to understand FTSV's wholesale rate versus the retail rate.

Mr. Do answered it was hard to provide a range.

Council Member Tanaka inquired if Palo Alto students had any special access to the program.

Mr. Do mentioned the golf course supported the girls and boys high school golf teams for both Palo Alto High School and Gunn High School. The proposal did not prioritize Palo Alto youth over youth from other cities.

Council Member Tanaka expressed interest in understanding more about how to include more Palo Alto youth into the program.

Vice Mayor Kou wanted to understand the shared partnership percentages for each entity.

Mr. Do explained that 30 percent of the youth practice area would be used by FTSV during the 8-week sessions.

Vice Mayor Kou understood the modifications to the site were away from the sensitive nature areas.

Mr. Do confirmed that is correct.

Vice Mayor Kou asked if the mitigations placed during the golf course rebuild were completed.

Mr. Do concurred that the mitigation were completed but the monitoring portions of the mitigation were not completed.

Vice Mayor Kou was very supportive of the program and agreed it fell within many of the Council's priorities.

MOTION PASSED: 7-0

12. Report on Palo Alto's Response to Hate Crimes and Hate Incidents, and Discussion of the Policy and Services Committee Recommendation that the City Council Consider the Idea of Developing a Misdemeanor Ordinance to Deter Hateful Speech and Support the Human Relations Commission (HRC) to Bring the FBI and Community Resources to Palo Alto to do Community Education on Hate Crimes

SUMMARY MINUTES

Deputy City Manager Chantal Cotton-Gaines reported at the September 14, 2021 Policy and Service Committee (P&S) meeting, the Committee directed Staff to explore a Hate Crime Ordinance. The Human Relations Commission (HRC) voted on March 10, 2022 to support a recommendation to bring the FBI and community resources to Palo Alto to do community education on hate crimes.

City Attorney Molly Stump summarized that California State Law criminalized acts motivated by hate or hate speech that constituted a criminal threat. Beyond that, speech was protected by the First Amendment. Local and state governments could not punish First Amendment protected speech but could take actions to encourage tolerance and civility as well as provide education around rights, available resources and support for folks harmed by hateful speech.

Ms. Cotton-Gaines mentioned that the City had employed several strategies to address hate crimes and hate incidents. Staff recommended the Council support the HRC bringing in the FBI and community resources to further community education on hate crimes. Also, to consider supporting hate crime legislation such as Assembly Bill (AB) 1947.

PUBLIC COMMENT

Aram James mentioned the FBI had a long history of hate crimes against persons of color and opposed having them come to the community. Also, there was no legal basis to have a stand alone hate ordinance in Palo Alto.

Rebecca Eisenberg echoed Mr. James' comment about not bringing the FBI in to speak to community members about hate crimes.

Kat Snyder agreed with the Staff Report that a City ordinance against hate speech would be unconstitutional and ineffective. She encouraged the HRC and the Palo Alto Libraries to work together to educate the community by using prior HRC work about hate crimes.

Bob Moss (in person) acknowledged that many hate crimes were under-reported and the first step was to encourage folks to file a report when there was an incident. Also, to educate the community about the resources available if they are a victim of a hate crime.

MOTION: Vice Mayor Kou moved, seconded by Council Member Stone to receive the report, support the Human Relations Commission to bring the FBI and/or other community resources to Palo Alto to further community education on hate crimes and support hate crimes legislation (Assembly Bill 1947).

SUMMARY MINUTES

Vice Mayor Kou inquired if the motion should include language that Council was not directing Staff to develop a hate crime ordinance.

Ms. Stump answered no.

Vice Mayor Kou remarked that the Constitution is clear that people have the right to freedom of speech. She supported having more community awareness and using past programs as resources.

Council Member Stone believed that pure hate speech and the First Amendment was a gray area. There have been many Supreme Court rulings identifying speech that rises to the level of pure hate speech. He supported AB 1947 and believed California Law should provide more protection. He mentioned he completed the FBI Citizens Academy that focused on building community relationships with the FBI. Also, the FBI recently launched a new strategic initiative to combat hate crimes which included community education on how to report hate crimes. He noted the FBI had vocally acknowledged their troubled history in the past and he encouraged the community to move forward.

Council Member Cormack was surprised to see that P&S recommended the City adopt a Hate Crime Ordinance but appreciated Staff's suggestion not to implement the ordinance. She believed there was already a fair amount of structure in place to prosecute hate crimes but the problem was that folks were not reporting them. She inquired what community outreach would the FBI do.

Human Services Manager Minka van der Zwaag explained Staff was setting up a meeting with the FBI and HRC to hear more about their community education program. This was the first step in a potential multi-step outreach initiative.

Council Member Cormack would have rather seen training that educated folks on what to do if they witnessed a hate crime rather than education that focused on reporting and data. She asked if AB 1947 would result in a huge change in the way the City defined or responded to hate crimes.

Assistant Police Chief Andrew Binder believed there would not be a big change.

Council Member Cormack requested the motion remove the words FBI and noted she was not prepared to identify who the City should partner with.

Vice Mayor Kou agreed.

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Council Member Stone recommended the motion to say FBI and/or other community resources.

Council Member Cormack agreed.

Council Member Tanaka appreciated Staff's work and given the discussion he supported the motion. He agreed with Council Member Stone's comment about freedom of speech.

Council Member DuBois asked if Staff had explored easier methods of reporting hate crimes.

Mr. Binder explained the Palo Alto Police Department offered a variety of ways to report a hate crime.

Council Member DuBois suggested the HRC explore and provide recommendations on how to increase hate crime incident reporting.

Mr. Binder supported the recommendation to work with the HRC to remove any barriers there might be to reporting.

MOTION PASSED: 7-0

Council Member Questions, Comments and Announcements

Council Member DuBois commented that the May Fete Parade was excellent and acknowledged that this was his first time seeing the Council designate a new heritage tree.

Mayor Burt reported that at the last Silicon Valley Transit Authority (VTA) meeting the group voted on the first phase of a construction contract for the tunneling of the Bay Area Regional Transit (BART) system to the City of San Jose. VTA estimated the cost would be \$6.9 billion but the federal government estimated it to be closer to \$9.1 billion. Several San Jose representatives recommended an independent review of the alternatives and the risk of the project. He countered the proposal by recommending an independent peer review committee and that recommendation was accepted.

Adjournment: The meeting was adjourned at 11:14 P.M.