



CITY COUNCIL SUMMARY MINUTES

Regular Meeting
October 23, 2023

The City Council of the City of Palo Alto met on this date in the Council Chambers and by virtual teleconference at 5:30 P.M.

Present In Person: Burt, Kou, Lauing, Lythcott-Haims, Stone, Tanaka, Veenker

Present Remotely:

Absent:

Mayor Kou convened the meeting.

City Clerk Mahealani Ah Yun called roll and declared six were present.

Mayor Kou announced that the meeting was being called to order in honor of International Artists Day. She noted there would be a closed session on two items – the Public Employee Performance Evaluation of the City Manager and the Conference with Labor Negotiators.

City Manager Ed Shikada voiced that Item 2 would be deferred to a future date, so there would be only one closed session item.

Public Comment

City Clerk Mahealani Ah Yun commented no hands were raised, and there were no requests to speak.

Closed Session

1. PUBLIC EMPLOYEE PERFORMANCE EVALUATION Authority: Cal. Gov. Code section 54957(b); Title: City Manager
2. CONFERENCE WITH LABOR NEGOTIATORS Authority: Cal. Gov. Code section 54957.6; Agency representative: Jeremy Dennis, MRG; Unrepresented Employees: City Manager and City Attorney

Item 2 deferred to a future meeting date to be determined.

MOTION: Council Member Lauing moved, seconded by Mayor Kou to go into Closed Session.

MOTION PASSED: 7-0

Council went into Closed Session at 5:32 P.M.

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Council returned from Closed Session at 7:39 P.M.

Mayor Kou reconvened the meeting and announced there was nothing to report from the closed session.

Agenda Changes, Additions and Deletions

City Manager Ed Shikada expressed there were no changes from what was posted online, but he remarked that Item A1 was continued from last week, which was related to the proposed Joint Powers Authority Agreement, and a Supplemental Memo related to that had been added.

Public Comment

Mark S. displayed slides and opined there had been neglect and deterioration of the California Avenue shopping district with businesses closing and struggling. He requested there be funding to maintain California Avenue. He stated if California Avenue is to remain closed there should be a clear plan as to why and what was being created and that there should be efficient and safe routes in and out for vehicles and bicycles.

Tim P. provided information related to what he considered to be corruption with regard to the Police Department and the District Attorney's Office concerning a personal matter and videotapes. He had provided documentation to the Interim City Clerk, and he stated more would be coming and would be released to the public. He would also attend next week's meeting.

Fred B. thanked Mayor Kou for her appeal to unite in common grief and to move forward with common humanity. He discussed protecting the community in open processes. He recommended speakers straying from agenda items be immediately cut off and that any follow-up statements be held until completely offline. He indicated there was no First Amendment rights related to remote public comments, and he requested speakers be required to be present in the chambers for open mic public comments and that there be a uniformed Public Safety Officer present during that time.

Aram J. (Zoom) spoke of his comments regarding Israel being cut off last week with 20 seconds of speaking time remaining and speakers being allowed only 1 minute to comment on another study session topic. He congratulated Council Member Lythcott-Haims for her article titled Israel Palestine and Me.

Council Member Questions, Comments and Announcements

There were no Council member questions, comments, or announcements.

Public Comment

City Clerk Mahealani Ah Yun announced no hands were raised, and there were no requests to speak.

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Consent Calendar

3. Approval of FY 2023 Reappropriations Requests and Amendments to the FY 2024 Budget Appropriation. CEQA Status: Not a Project
4. Approval of Contract Amendment No. 3 with Carollo Engineers, Inc., adding \$388,538 to the Total Contract Amount for Construction Management Services through June 30, 2024 for the Regional Water Quality Control Plant Primary Sedimentation Tank Rehabilitation Project. CEQA status – Exempt under CEQA Guidelines Section 15301 (repairs to existing facilities).

Council Member Tanaka registered a no vote on Agenda Item Number 4.

MOTION: Mayor Kou moved, seconded by Council Member Lythcott-Haims to approve Agenda Item Numbers 3-4.

MOTION SPLIT FOR THE PURPOSE OF VOTING

MOTION PASSED ITEM 3: 7-0

MOTION PASSED ITEM 4: 6-1, Tanaka no

Council Member Tanaka spoke to Item 4, and he questioned why there had not been an open bid and why it was awarded to the second instead of the first person. In the report, he could not find a comparison of prior rates to current rates, which he thought would have been helpful. His biggest issue was capital projects being allocated based on historical usage instead of current usage.

City Manager Comments

City Manager Ed Shikada furnished slides and noted that storm preparations, which he detailed, were ongoing by the Public Works Department. Additional information would be available at a community meeting on October 26, and members needed to be in person to ask questions. On November 15, there would be a workshop. He noted that the Bicycle and Pedestrian Transportation Plan and the Safe Streets for All Safety Action Plan were underway, and community members could provide input through an online survey and interactive map, which would be open through November 30. He discussed upcoming Halloween activities from October 26 to 28. There would not be a City Council meeting on October 30. Upcoming Council meetings would include action items related to Car-Free Streets and the Ellsworth Place Development Proposal on November 6. Consideration of the Housing Element Implementation Ordinance and the proposed development at 575 Los Trancos would be on November 13. There would be no meeting on November 20. The November 27th meeting would include a study session on the FTTP Program, State and Federal Legislation, and the Rental Registry Program recommendations from the Housing Ad Hoc Committee. He noted that December included a number of items to take Council through the end of the calendar year.

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Action Items

- AA1. Discussion and Direction on Feedback Regarding the Proposed Joint Powers Agency (JPA) Agreement for Cities Association of Santa Clara County or Authority to Approve the JPA Agreement As Drafted or With Revisions; CEQA: Not a Project (Continued from October 16, 2023)

Assistant to the City Manager Melissa McDonough presented slides and asked Council to give potential direction to provide feedback to CASCC on the proposed JPA agreement. If Council proposed changes to the draft agreement, staff and Mayor Kou would bring the recommendations back to the Cities Association, which they may incorporate, and then the final agreement could be brought back to Council for consideration. Alternately, Council could choose to grant authority to approve the agreement as drafted or with revisions. She defined CASCC and provided some history. The draft agreement had been circulated to City and Town Attorneys and Managers within Santa Clara County for feedback. The agreement incorporated some of that feedback, but there were still issues remaining for Council's consideration. Besides becoming a JPA, CASCC had the opportunity to avoid liability through other means, which she provided examples of. She indicated there was an alternative to a JPA, which she outlined. Council could consider recommending tighter definitions of the JPA's purpose and powers and could choose to add to the list of JPA prohibited activities. Related to the scope and purpose, the draft agreement did not describe the level of consensus required for action, for example simple or supermajority, and Council could recommend adding this language. Regarding Fiscal Management, the draft agreement did not specify how member agencies would review and provide input to the budget, and Council could recommend establishing a Working Committee consisting of member agency staff responsible for distributing and preparing budget information and deadlines to member agencies. Concerning programs, Council could suggest language establishing a Working Committee for a variety of reasons, which she outlined. In terms of contract and contractor oversight, the draft agreement did not discuss the responsibilities for selecting contractors, ensuring adequate performance, and handling potential terminations, and Council could recommend the agreement specify it be the board and Executive Committee or create a member agency staff structure. Regarding Executive Committee authority, the draft indicated that decisions other than approving the annual budget could be delegated to the Executive Committee, and they would have the ability to exercise all powers related to agreements and leases within the approved budget, and those decisions may not align with the Board overall. Staff recommended that Council discuss the proposed agreement and provide direction and feedback to CASCC regarding the terms or grant authority to the Mayor to approve the agreement as drafted or with revisions.

Mayor Kou requested commentary related to the At-Places Memo.

City Manager Ed Shikada voiced that two issues were addressed in response to questions from Council Member Veenker. One was related to the Executive Committee's authority. The draft agreement specified elements could be delegated from the full board to the Executive Committee, and staff suggested changing the wording of one of the statements in the Staff

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Report to read “decisions other than the annual budget may be delegated to the Executive Committee.” The second issue related to the timing of establishment of the Working Committee and whether that needed to be done as a part of the agreement or if it could be done later as a part of the bylaws. The draft agreement provided a variety of options, so the question of whether and when to establish a Working Committee was something Council had full discretion in determining whether it would be raised as an issue or if it could be an issue addressed later.

Council Member Veenker addressed her question in the At-Places Memo. She noted that the issue was new to three of seven Council members, but she explained that those Council members were not starting from a blank slate. She appreciated staff’s effort and intent to watch out for the City, but the report recited several negatives that were outdated and was why she had raised questions. She thought the update sent out earlier that afternoon still contained items that were not quite accurate, which included the authority given to the Executive Committee was only within an already approved budget by the board or expressly delegated the vote to the Executive Committee. She commented that the language “decisions other than the annual budget may be delegated” entirely omitted the main premiss, which was the Executive Committee had no powers if not expressly given by the board. She did not consider the sentence “it should be noted that the draft agreement does not specify which body directs the actives and priorities of the executive director, which could be a source of misalignment between the board and Executive Committee” to be correct because JPA Paragraph 14.1.1 expressly addressed the executive director, which she quoted, so she thought it was clear that it was either the board directed the executive director or it would expressly delegate that to the Executive Committee. She asked if that was correct because it was not how she interpreted the response that came to their places. She asked if there was agreement that elsewhere in the document it said the Executive Committee did not have powers expressly delegated to it by the board and that could and likely would refer to the instance when the board would delegate that specific power.

City Manager Shikada responded that he related to the potential for any confusion. He noted that the phrasing “direction of the board and the Executive Committee” opened some question as to which it was. He pointed out that in the following paragraph it was clear that the General Council shall take direction from the majority of the Board of Directors, which posed a very clear contrast to the way the executive director’s activities were described.

Los Altos Council Member Neysa Fligor appearing on behalf of the Cities Association as the first Vice President mentioned that with her was Former Vice Mayor of San Jose and former President of the Cities Association Chappie Jones. She thanked Council for this being placed back on the agenda after last week’s incident. She spoke of the group wanting to move to a JPA and that over the years it had become more apparent and urgent why they needed to. They had a lot of input from three attorneys who represented the Cities Association and input from the City Manager’s group, including Palo Alto’s City Manager, and several sections in the draft had been improved. Mayor Kou had also made suggestions, which were reflected in the JPA. She admitted that this was not a perfect document, but based on the input to date, they

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thought it was a good JPA and that it was ready to move forward. Four cities had approved the current JPA draft. They asked Council to approve the JPA in its current form. Regarding revisions, if there were large changes proposed, then it would have to go back to all the Councils, which they wanted to avoid. If there were small changes, and if authority was delegated to Mayor Kou to make the changes, those were things that had been built into the process, and it would not have to go back to the different Councils. If the JPA was approved by eight or more City Councils in Santa Clara County, they would move forward with it. Once there was a JPA, they would still work on personnel policies and bylaws, and they would work over the next year to put together the full packet needed to fully represent and protect the cities as part of the JPA. Concerning Council Member Veenker's question about the Executive Committee, Council Member Veenker was correct. She declared that Attorney Andrew Shen with the Renne Public Law Group was online. She voiced that the JPA clearly stated that the Executive Committee only had authority that was delegated to it by the board, which was something they intentionally clarified because they received feedback about the concern of the authority of the Executive Committee. Article 14 also said that the board and (not or) the Executive Committee would direct the executive director. She believed that when thinking of large changes, because the intent was clear, that the Executive Committee could not act without direction and delegation from the board, that that clarified that the Executive Committee would not be in charge of managing the executive director without delegation from the board, which was an easy clarification to make.

Former Vice Mayor of San Jose Chappie Jones reiterated that the process had been going on for quite a while and had gone through many iterations. They received much feedback from the City Managers' Association and legal staff. There would be an ability to make changes going forward, but it needed to be in place, so the business of the Cities Association could be conducted.

Council Member Veenker requested Council Member Fligor address Working committees and who could be on those.

Council Member Fligor noted that the JPA made it clear that the board would have the authority to establish a Working Committee if the board believed a particular special program or initiative warranted a committee. She spoke of this being different than SVRIA, which had a Working Committee established in its JPA. She expressed that the specifics could be housed in the bylaws, and the next step was to update the bylaws. If the board should direct to the group to do this, more of the composition of a Working Committee, for example, could be described in the bylaws, so there were other documents to help govern and manage the organization.

Vice Mayor Stone queried if the Executive Committee would have to come back to the board for final approval of intended actions, if the members of the Executive Committee were selected by the board annually, who would serve on the board, if it was typical that most directors would serve only one year, and if board members who served multiple years were likely to serve in the Executive Committee. He asked City Attorney Molly Stump if the JPA offered better protection for the City than what currently existed and if an agreed party could

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sue the JPA if they wanted to sue a City. He noted that cities were assessed annual dues, and he questioned if there was insurance that the JPA would not take action and then come back to the cities with an additional bill during that year. He inquired if each City would be approached for additional funding if the JPA wanted to take on a project that would extend them beyond the budget.

Council Member Fligor replied that the board could give full discretion to the Executive Committee or they could ask the Executive Committee to bring it back for final approval. She added that all member agencies would have a seat on the board. Members of the Executive Committee were selected by the board annually. It was up to each City who would serve on the board. There was no term limit for directors to serve if Councils approved such. It was fair to assume that board members who served multiple years were likely to serve in the Executive Committee. She could not guarantee there would be insurance that the JPA would not take action and then come back to the cities with an additional bill during that year. In the current plan, there was no intent to increase the dues. The plan, as done every year, was for the executive director to bring a proposed budget to the Board of Directors and then take direction from that board. The board had agreed not to increase dues from the prior year. As for the JPA taking on a project that would extend them beyond the budget, each City would decide if they wanted to participate in the program. She added that a JPA could apply for grants, which could be explored for anything outside the limited budget. She noted that the goal of the Board members on the Cities Association was to work within their means. The dues covered staffing and two yearly events, and it could be decided that one of the events would not be done. She invited Council to attend the holiday party on December 14.

City Attorney Molly Stump responded that a JPA was an improvement in terms of clarifying legal relationships. She would stop short of saying the JPA would guarantee to insulate the member cities from liability in all circumstances. The organization was thinly capitalized and relied exclusively on the annual dues from cities, so it could insure itself as it had in the past, and she was sure they would take various actions to make sure they were appropriately insured in light of what they were doing. Ultimately, the member cities were the backstop for the agency and dues from member cities had funded prospective plans of the agency and worked out issues when problems had arisen. The annual dues would create the budget for the JPA.

Mayor Kou mentioned that her experience with JPAs had been very targeted in terms of scope, such as roads, etc. This JPA seemed broad. She inquired if other JPAs had such a broad scope.

City Manager Shikada responded there was an article in the proposed agreement that identified specific areas the JPA would be based upon. He was not aware of other JPAs having the potential to take on broad issues like this.

Council Member Tanaka inquired what liabilities the City would assume if the JPA was sued or incurred debt, etc. He asked if the City would have to pay for such or if the City would vote on it. He thought he understood the upside, but the downside was not clear. He questioned what could be a worst-case scenario, if it could be \$1B, and if there were cities that had not accepted

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it. He asked if City Attorney Stump agreed that a JPA would protect the City from liability more than not having one.

City Manager Shikada answered that if the liability associated with an activity exceeded the resources of the JPA, he thought the JPA would need to go to the member agencies to cover those costs. He did not think it was helpful to speculate on potential risks that could be involved in the activities of the agency.

City Attorney Stump, concerning JPA liability, thought there was an opportunity to approve the budget assessment each year, but there was no guarantee there would not be direct claims made to member cities for activities of the JPA, which would depend on particular circumstances, such as the JPA activities, contractual relationships, etc. Whether the City would have to pay without a vote would depend. She noted the City would have more protections with a formal arrangement like this. She remarked there were other ways to limit liability, which she thought the Staff Report listed. The amount of the liability would depend on the activities the Cities Association involved itself in. It was known what the Cities Association was doing now and what it had done in the past. There was an open-ended list of potential future actives, so it was a question of Council understanding the governance structure, Council's ability to have input as decisions were made, and being comfortable joining given the future general and broad set of areas the JPA could pursue. She agreed that a JPA would protect the City from liability compared to an unincorporated association.

Council Member Fligor clarified that the JPA structure would protect Palo Alto from liability better than an unincorporated structure. She noted that claims would most likely be against the JPA as an entity. They had no idea what type of claim may be filed against a City. They did not have insurance for the Cities Association. They lost the insurance because of a claim that had occurred over the last couple years, and one of the reasons was because they were an unincorporated association, so by becoming a JPA, it put them in a better position to obtain insurance, which would help defund any potential claims. She spoke of San Mateo County and Orange County having similar structures in the form of a JPA. Although there were 15 items listed as a purpose, it came down to working together and collaborating on common issues of interest. Of five cities who considered joining the JPA, Milpitas was the only City that had not joined. They had questions, and she thought it was a matter of clarifying what the JPA agreement said, and she hoped they would approve the JPA once misunderstandings were clarified.

Council Member Lauing asked what problem was being addressed. He agreed with the stated mission, but it was very general. He was confused how this would address governmental immunities and liability. He indicated that it would be easier to sue 1 JPA than 16 cities. He requested a definition of government immunities. He asked for clarity related to tax status. He was not sure why "growing with respect to responsibilities," as referenced on Packet Page 197, argued in favor of any particular format of government. He noted that the Staff Report was helpful in pointing out concerns, which had been addressed, but there were other concerns that were not being considered, and he thought there should be another draft of the

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agreement addressing fiscal management, dues, and some of the items raised by the City Manager. He appreciated the value of the organization and the work that had gone into it.

City Attorney Stump, concerning governmental immunities, stated that a JPA was an official entity of government, and essentially the JPA law allowed two or more public agencies to create a new entity of government by giving some of its powers to the new entity, and that entity would qualify for governmental immunities. They would apply in various situations, and some were contingent immunities and some stronger than that. It was a defense to liability in some cases. Palo Alto's tax status would not be affected by the JPA.

Counselor Cities Association Andrew Shen agreed that there would be an improvement if the Cities Association were to form as a JPA instead of its current form as an unincorporated association. In terms of immunities, it would be a full-fledged government entity and would have additional immunity with tort claims and tort liability that it otherwise would not have. By becoming a JPA, they hoped to gain access to other insurance risk pools that were currently not available to them, so not only would there be additional immunities but hopefully there would also be a layer of insurance on top of that. As for tax status, a full-fledged JPA model would not be subject to a lot of the tax requirements of a private entity, which he explained was advantageous.

Mayor Kou queried who would be associate members as addressed in Article 32.

Council Member Fligor replied that the definition of associate member was under Article 1.1, which was a non-city local agency. An example was Santa Clara County.

Former Vice Mayor Jones addressed expanded responsibilities. He noted that the Cities Association had taken on more responsibilities in a collaborative fashion, which he provided an example of.

Public Comment

City Clerk Mahealani Ah Yun declared there were no request to speak and no hands raised.

Council Member Burt noted there were a number of things he wanted to see refined. It was clarified that the bylaws would address such, and it was clear that Council should provide input as to what should be clarified. He thought the JPA would better protect cities with respect to technical and legal values. He noted that it seemed to be the opinion of the legal advisors that there would be greater legal liability insulation with a JPA versus there being a legal suit brought to several individual cities. He commented that the tax filing and the insurance aspects were strong technical reasons to do a JPA. Regarding the importance of a strengthened body and if a JPA was the right form, he discussed that within a JPA each City and County would have an equal vote, which meant this organization would not necessarily be dominated by San Jose like the County Board of Supervisors, which was an important value to the smaller cities of the County. He supported approving what was before Council. He addressed there being value in

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obtaining grants. From an advocacy standpoint, he stated it would give Santa Clara County cities a stronger voice on regional, state, and federal matters. He regarded the dues as modest.

Vice Mayor Stone moved to approve the JPA agreement as drafted.

Council Member Veenker seconded the motion.

Vice Mayor Stone stated that he had come in with several concerns, and after the discussion, he felt comfortable that this would be an improvement. He mostly aligned with Council Member Burt regarding the benefits of the JPA. He was open to amendments but nothing too large.

Council Member Veenker had attended a meeting of the Cities Association in February, and she saw its important purpose as far as sharing concerns, trading best practices, etc. She wanted Palo Alto to be part of it. It comforted her that three years ago the mayors were concerned about issues with the unincorporated Cities Association, who had reviewed this and voted unanimously after a presentation of a JPA and a 501(c)(4). She was very comfortable with the JPA, which did not mean there should not be additional feedback related to the bylaws, etc.

Council Member Lythcott-Haims associated herself with Council Members Burt and Veenker and the Vice Mayor. She noted that a challenge had been faced recently that warranted an exploration of a better structure, and she valued the expertise of Council Member Fligor and Former Vice Mayor Jones.

Council Member Lauing wanted to clarify the voting process. He presumed the process was that a Palo Alto representative would go to the Cities Association of Santa Clara County body and vote on an issue and that Council may not vote the same way as the League of Cities on the issue. He asked if Council should direct the representative as to how to vote on an issue, so they represented the Council and the citizens rather than their own view. He asked if, in the case of a published agenda, the item could come back to Council to sign off on it.

Mayor Kou replied that when she was at the Cities Association and there was a matter that came to vote that was about process and whether something should be explored, she would vote based on what she felt was needed to move forward. However, if it concerned the City, she would oftentimes abstain as she had not received direction from Council.

Council Member Burt answered that the guideline was if the legislation being considered fell within Palo Alto's established legislative guidelines, that representative had the discretion to support it through that body. If it was outside the guidelines Council had established, the obligation was to return to Council and seek authority, which meant Council members may have to abstain if the body was going forward.

Mayor Kou commented that she served on the Legislative Committee at the Cities Association and was on the board. She expressed that the Planning Collaborative benefitted many cities. Palo Alto's dues for the Cities Association this year were \$18,314. There were ABAG dues of

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\$16,674 as of June 2022 and dues to Cal Cities of \$21,485 for 2022 to 2023. She noted that these organizations were representing Palo Alto in some way. She mentioned that the Cities Association Legislative Committee voted to have the Committee Chair reach out to State Legislators in the past, which negotiated on proposed legislation, which was not agreed to by the Councils of each city, and they were negotiating based on what the Cities Association Legislative Committee instructed, which she stated was an overstep of their powers. There were no legislative analysts to review proposed legislation, but Council members acted as the analyst, and some would have their own City's lobbyists provide analysis. She had asked multiple times if the Cities Association letterhead included all cities from Santa Clara County, so even if a city had a descending vote, a letter would be sent as a whole to the state and could appear as if there were unanimous votes from all Santa Clara County, which she thought was misleading. As for representatives appointed by Cities Association Select Committee to all organizations [inaudible], in her experience, she had seen ABAG representatives who had sat at ABAG from Cities Association that had not received direction how to vote at ABAG, but when they voted, they were representing all 15 cities, which she had an issue with. She mentioned that the state had hijacked much of the City's local governance over land use and zoning, and mandates were mostly unfunded and required matching funds or were conditioned by local jurisdiction funding, and she questioned why Palo Alto was continuing to allow another regional group to continue to perhaps take away more local governance. She thought a JPA was a good way to go, but the way it was now, she did not think was the right way to do it. She thought more levers and limitations should be in it, so it could be assured they would not exceed their power. She had researched JPAs, and there was a Grand Jury report out of Nevada, which indicated JPA served a legitimate purpose but that they were subject to little, if any, oversight or accountability. Until there was more assurance that there would not be misuses, she cautioned approving what was proposed as drafted. She voiced that Council was obligated to Palo Alto voters, and the JPA was allowed to legally bypass voting rights of taxpayers and obfuscate financial transactions' real costs, which would not be acceptable to citizens.

Council Member Burt responded there was a tradeoff in having a stronger collective voice versus having less voice but being narrow and limited to a City's perspective. The question was how to balance those tradeoffs. Of the concerns Mayor Kou raised, he did not hear anything specific to the creation of the JPA. What had not been addressed at this meeting was the process of giving feedback on Council's concerns and what Council wanted to see addressed in the bylaws. He advocated for and proposed an amendment that the Cities Association address voting for taking a position on legislative matters and whether it should be a simple or a supermajority and that the composition of the Executive Committee and whether it should be expanded beyond three members be addressed in the upcoming bylaws.

Vice Mayor Stone supported the amendment but he was curious of the process. He asked representatives to speak to the timeline of the bylaws and if it needed to be decided at this meeting.

Council Member Burt added that this was the opportunity to provide feedback unless this would be agendized for another Council meeting.

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Council Member Fligor noted it was Council's prerogative to do it now. She thought the better approach may be to have each Council with their representative look at the bylaws once the JPA was approved. They currently had bylaws for the unincorporated association, and they hoped they could be improved by working with the representatives. The super versus simple majority would reside in the bylaws. She specified if the JPA had between 8 and 11 members, the Executive Committee would consist of 3 members. If there were more than 11 members on the Cities Association Board, there would be 5 Executive Committee members.

Council Member Burt remarked that based on that clarification, he did not feel a need to address the Executive Committee on the amendment. In the process described, the representative would look at the bylaws, but he questioned if there should be guidance on the supermajority, which would not prohibit a follow-up meeting, but if there was consensus, now was a good opportunity to address it.

Vice Mayor Stone accepted the amendment. He was concerned that this was now turning out to be long and drawn out.

Council Member Veenker commented that taking a position on legislative matters had been discussed by Council with respect to the City's letters to Sacramento, and it was decided that a majority was enough. She was not eager to support asking the Cities Association to do something inconsistent with what Palo Alto did.

Council Member Burt replied that the amendment looked at whether it should be a simple or a supermajority. It did not take a position.

Discussion ensued related to language of the motion and the amendment.

Mayor Kou asked if the Working Group was proposed in the current agreement or it had been incorporated after.

City Manager Shikada believed the agreement provided the option to the board to establish a Working Committee.

Mayor Kou wanted to include that it would be at the discretion. She asked Council if a position should be taken on whether it should be done now or as each event arose.

Council Member Veenker believed the At-Places Memo clarified that it need not be the Executive Committee, but it was a discretionary decision, so she assumed that could be done in the bylaws.

Mayor Kou wanted an amendment stating, "to determine to establish a Standing Committee called the Working Group that would consist of two persons of City staff." She asked if it should be City staff or managers.

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City Manager Shikada suggested it read that a Working Committee comprised of staff from member agencies be established as advisory to the board.

Vice Mayor Stone asked if this would be a request that the Cities Association would consider this in their bylaws.

Mayor Kou confirmed that was correct.

Vice Mayor Stone accepted the amendment.

Mayor Kou asked City Attorney Stump if the amendment would be unfriendly if the maker of the motion accepted it and the seconder did not.

City Attorney Stump confirmed that was correct.

Council Member Veenker did not accept because she was not prepared to ask the Committee to consider this particular configuration because she believed it would tie their hands. She felt they were providing flexibility in that this was an option Council asked them to include, and they included it. She Called the Question.

Council Member Lythcott-Haims seconded Calling the Question.

City Attorney Stump declared that Calling the Question required a supermajority.

Council Member Veenker thought it was fine to discuss at the next stage and that discussing it with 1 of the 15 cities was the way to do it. She did not think this one was as necessary because it was amongst the options.

Mayor Kou added that they would be taking it back to their Committee for discussion, which she thought would be a worthwhile discussion.

Council Member Burt declared there should not be debate if a Question was Called.

City Attorney Stump listed the attributes of Calling the Question.

MOTION: Council Member Veenker moved, seconded by Council Member Lythcott-Haims to Call the Question.

MOTION PASSED: 5-2, Stone, Kou no

AMENDMENT: Mayor Kou moved, seconded by Vice Mayor Stone to determine a working committee comprised of staff members from member agencies be established as advisory to the board.

MOTION PASSED: 4-3, Lythcott-Haims, Veenker, Tanaka no

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AMENDMENT INCORPORATED INTO THE MAIN MOTION

Mayor Kou asked if there were budget concerns or if it was just a concern of not coming to the Council for review.

Council Member Burt clarified that the amendment would fall under requests, and he asked what should be the format of the motion.

City Attorney Stump understood that the Question was Called pertaining to the motion on the floor, which was the amendment, and now the amendment was incorporated into the main motion, which had not been voted on.

Council Member Veenker was trying to call the main question, and she did not realize the amendment had been seconded and voted on.

City Attorney Stump noted it was pending, so it would require another Call to Question.

Council Member Veenker Called the Question.

Council Member Lythcott-Haims seconded Calling the Question.

Mayor Kou asked what the question was being called on.

Council Member Veenker answered that she was Calling the Question on the main motion.

Mayor Kou questioned Council Member Veenker if she wanted to stop all comments and vote.

Council Member Veenker, out of respect for the Mayor, withdrew the Calling the Question. She hoped it could be moved forward without a lot of instructions, which could become burdensome if every city were to do such.

Mayor Kou remarked this was giving some power to a regional committee, and she would hate to see it given without looking at it carefully.

MAIN MOTION: Vice Mayor Stone moved, seconded by Council Member Veenker to approve the JPA Agreement as drafted and request the CASCC in the upcoming bylaws to consider:

- a. Whether it should be a simple majority or super majority when voting on taking a position on legislative matters, and;
- b. Whether a working committee comprised of staff members from member agencies should be established as advisory to the board.

MOTION PASSED: 7-0

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5. PUBLIC HEARING: Adoption of an Ordinance Amending the Stanford University Medical Center (SUMC) Development Agreement Adjusting the Timeline for Achieving the SUMC Alternative Mode Share Targets and Adoption of a Resolution Updating the Mitigation Monitoring and Reporting Program Accordingly. Zoning District: HD (Hospital District). Environmental Review: Project is Consistent with the 2011 Certified Environmental Impact Report (EIR) for the SUMC Facilities Renewal and Replacement Project.

Council Member Veenker recused herself from this item as she did life science patent work for Stanford, which was deemed a conflict of interest. She noted that she would not need to recuse for Berkeley, Davis, or many other California college towns. She was in conversation with State policymakers to put Palo Alto on the same footing as other college towns and to change this inequitable situation.

Planner Rebecca Atkinson provided a presentation. The proposed Amendment text was outlined in Attachment A and discussed in detail in the Staff Report. Approving the Amendment would adjust the timeline for which SUMC would be allowed to achieve their alternative transportation mode share targets, which were outlined in the original 2011 agreement and were included in the Project Mitigation Monitoring and Reporting Program. The application represented the first amendment to the development agreement. She provided details of the SUMC Development Agreement. She supplied slides showing the alternative transportation mode share targets under consideration; the pattern of how employees commuted since 2011; payments of alternative transportation funding if targets were missed; the rationale for the amendment; and details of the amendment, which was limited to two sections in the Development Agreement related to achieving targets, cost, and spending flexibility, which she outlined. She displayed a slide listing staff's recommendations, including finding that the proposed amendment be consistent with Project EIR, adopting the ordinance (Attachment A), and adopting a resolution (Attachment B) that would update the MMRP to be consistent with the amendment.

Vice President of Planning, Design, & Construction SUMC Rachel de Guzman provided a history of entitlements Palo Alto issued for Stanford Medicine Facilities Renewal and Replacement Project. The key elements of the enhanced TDM program as well as alternative mode share targets were formalized in the Development Agreement with the City. The hospitals had implemented the enhanced TDM Program measures three years before the City required such, and the employee commute mode share increased in response and continued to climb in subsequent years. The hospitals had met and exceeded mode share targets for seven years. Unfortunately, the COVID pandemic reversed the progress made toward increasing the use of alternative transportation modes. In the past year, they had begun to regain ground. She provided a chart showing alternative mode share results to date. She spoke of the work done by the hospitals and transportation modes during the pandemic. They continued to enhance TDM programs throughout the pandemic. They provided funding for bus service to the East Bay and expanded bicycle and pedestrian networks. In 2023, they received gold status as a bike-friendly business. She discussed having piloted two new park-and-ride programs. She outlined how they had continued to promote alternative forms of transit in many ways. With the

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lingering effects of the pandemic, the hospitals were not able to achieve the alternative mode share targets in the Development Agreement on schedule. They provided the City a Notice of Permitted Delay in June 2022 and had worked with the City to prepare the proposed amendment. They needed additional time to meet targets. They proposed the 2021 interim date be shifted 2024. Should the date not be met for two consecutive years, the hospitals would make annual penalty payments to the City of \$175K plus inflation adjustments. They were proposing 2028 for the final alternative mode share target date, and if not met, the hospitals would make a \$4M payment plus inflation adjustments to the City. They continued to prioritize drive-alone rates for employees, and they were actively exploring and piloting new programs. They remained committed to offering sustainable commute options and to reducing their organization's carbon footprint. They signed the U.S. Department of Health and Human Service Climate Pledge last year. She stated their goals were aligned with the City's climate goals. They strove to regain the previously successful alternative mode share, but they needed additional time.

Council Member Burt appreciated that the COVID impact had been significant and that the effect lingered, but he questioned what caused the decline before COVID. He mentioned a five-minute training video for new employees and asked how effective that had been in changing mode share. He asked to what extent a retail selling of the TDM Program was done. He was interested in later discussing a more systematic outreach to employees. He inquired if there was data on EV adoption rate by employees and the types of vehicles their employees used.

Director, Land Use & Licensing SUMC Molly Swenson explained that there was not specific data focused on the effectiveness of the new employee orientation programs. She provided examples of retail selling of the TDM Program, which included focus groups and pop-up table events. They were beginning to collect data related to EV adoption rate and the type of vehicles employees used, and the data was being used to inform their GHG reporting.

Council Member Burt wanted to later discuss GHG reductions and compliance, which was a way, in part, to meet objectives.

Council Member Lythcott-Haims was concerned with the decrease in use of incentivized transportation before the pandemic. She asked if there was information as to the number of people coming to campus today or last year versus 2018 or 2019.

Director Swenson responded that they had data of employees working on the main campus. There was greater flexibility to work one day a week remotely, for example, whereas pre-pandemic they did not, but that nuance was not captured in the data. She explained that the percentage of employees commuting by alternative modes may be slightly lower than what was reported to the City. She did not have a sense of how many vehicles were coming onto campus today versus 2019. That would require trip monitoring, which had not been done.

Vice Mayor Stone requested an explanation of the 9% drop from 2021 to 2022, which concerned him. He questioned if the need for extending the timeline to meet the alternative

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mode share targets from 2025 to 2028 was because the construction timeline had been extended. He asked what percentage of staff was telecommuting or telecommuting more than 50% of the time.

Director Swenson replied that the 9% drop from 2021 to 2022 coincided with the emergence of new COVID-19 variants, and the use of alternative modes was not resumed. Extending the timeline to meet the alternative mode share targets was pushed out due to the second interim target date being push out. It took time to build changes and transition habits, and they intended to follow the structure that was part of the original Development Agreement. Those telecommuting more than 50% of the time with the main campus assigned as their work location were considered part of the alternative mode share, and they made up a small fraction of alternative commuters.

Vice President Guzman added that due to the pandemic some construction had been paused, so they had seen a little extension in schedule from the construction standpoint.

Council Member Lauing questioned how many current hospital employees there were and how many there were in 2020.

Director Swenson answered that on the main campus within the Development Agreement area there were approximately 13,000 employees. She believed the number of employees in 2020 was slightly lower.

Council Member Lauing inquired what percentage of the 13,000 were new since 2018. He indicated that was the only component that made sense as to why there was not compliance. He voiced that the new employees may not be signing on to the plan and that they should be educated that it needed to be done for the Agreement, the climate, etc.

Director Swenson did not have that data. They had identified new employees as a potential source of a drop in alternative mode share pre-pandemic, but the pandemic had exacerbated the drop.

Vice President Guzman added that after the public health emergency they had gone to alternative workforce attendance, which was hybrid and remote, which played into the number of employees on campus. The formal program of hybrid, remote, and onsite rolled out in the new year.

Council Member Lauing pointed out that Director Swenson stated a tiny percentage was truly remote.

Mayor Kou questioned how long the construction phase had been stopped during the pandemic. She was trying to correlate the amount of time this was being pushed out. She queried why a second year target year and final year target year was used instead of using a year.

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Vice President Guzman responded that the construction phase had stopped for a few months.

Director Swenson explained that the language second year target year and final year target year was used due to not knowing when the public health emergency would end.

Mayor Kou suggested a year now be used since the public health emergency had ended. She asked if \$175K would come into play for the second interim year and the final interim year.

Counselor SUMC Alan Murphy did not object to using a year in the language, but it would require revisions to the Draft Amendment in front of Council this evening. The second interim target year was 2024, and the final target year was 2028.

Director Swenson explained if in the reporting year a target was missed and there was no previous miss in the target, it would be considered a first year, and the monitoring and coordination would continue. If a target was missed in the second consecutive year, that would be when the first \$175K with a cost escalator would be in effect, and if it happened a third year, a second payment would be applicable. The amount was not included in the budget.

Public Comment

City Clerk Mahealani Ah Yun announced that no hands were raised, and there were no requests to speak.

Vice Mayor Stone stated that not meeting the 2021 target was justifiable, but he struggled to understand the need to extend the timeline from 2025 to 2028. He did not think it was necessary and that it was inconsistent with the Agreement. He made a motion to extend the second interim target year to 2024 and the final target year to 2026.

Council Member Lauing seconded the motion.

Vice Mayor Stone thought Stanford would have a good chance of winning the force majeure clause related to 2021 events, but he did not understand the 3-year extension of the final target year, but extending it an additional year made sense.

Council Member Lauing basically concurred with Vice Mayor Stone's comments. This delay seemed reasonable. He thought Council, especially Council Member Burt, could help them with retail selling of the program.

Council Member Burt stated that most of the reduction was in Caltrain ridership. He spoke of the happenings within Caltrain, which included the electrified train system, the new service model, and the expectation of ridership increasing. He addressed the recently adopted Stanford Community Plan, and he wanted Council to consider focusing the funds from penalties on the same geographic area as a first priority and using the TMA as the vehicle to do that. He asked staff if it should be in the motion as a guidance to using those funds should they occur.

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Transportation Planning Manager Sylvia Star-Lack declared that the request fell within the uses described in the Development Agreement, and she agreed with the request.

Vice Mayor Stone accepted that as long as staff understood it was priority, but if it did not work out, then those fees could be spent elsewhere.

Council Member Lythcott-Haims reiterated that the presentation indicating the downturn was due to the pandemic was misleading, as there was a decline in 2018 and 2019. She discussed the percentages of alternative mode share in 2024 needing to increase by over 7% by 2024 and by 2% by 2026, and she questioned if SUMC could be successful.

Council Member Tanaka had the same concerns. He asked staff if it was achievable. He asked how the City was progressing with TDM. He asked Manager Star-Lack if, in her experience, the target was achievable.

Planning & Development Services Director Jonathan Lait believed 2024 would be the first missed year target, so there would not be a financial penalty. There would be a penalty if was missed in 2025.

Manager Star-Lack could not answer for Stanford whether the timeline was achievable, and she would rely on the dat that had been provided. They had done it in the past. Stanford Healthcare was well qualified and resourced to do the work. She thought they could do it. She was not prepared to address the City's TDM efforts at this meeting.

Vice President Guzman commented that they had been successful in the past. They could do it, but they needed a little more time. She requested the final interim be increased to 2028.

Council Member Burt did not think the targets were overly aggressive.

Council Member Tanaka asked what recourse Stanford would have if they disagreed with this. He asked the representatives if they would accept this.

City Attorney Molly Stump answered that there was an agreement, and an amendment of it required mutual agreement. The staff recommendation had been agreed to. Stanford would have an opportunity to agree with this or to stand on their original position that they would be entitled to an exception from the penalty provisions due to force majeure.

Mayor Kou thought it was better for staff to discuss this with the representatives rather than the representatives telling Council if they could accept it.

City Manager Ed Shikada did not think staff would have anything further to discuss or negotiate beyond what was proposed in the motion. It may be appropriate to get an initial response from Stanford representatives.

Vice President Guzman wanted to explore their possibilities if it should not be approved per their request.

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Mayor Kou asked if she was referring to what was on the motion.

Vice President Guzman confirmed that was correct.

MOTION: Vice Mayor Stone moved, seconded by Council Member Lauing to:

1. Find the proposed amendment to the SUMC Development Agreement consistent with the Certified EIR for the SUMC Facilities Renewal and Replacement Project; and,
2. Adopt an Ordinance (Attachment A) approving Amendment No. 1 to the SUMC Development Agreement; and modify language as follows: to extend the second interim target year to 2024 and the final target year to 2026; and,
3. Adopt a Resolution (Attachment B) updating Mitigation Measure TR-2.3 to be Consistent with the Development Agreement Amendment Number 1; and,
4. Prioritize use of any payments to the City for trip reduction to have a prioritized use in the Northwest commercial areas of the City, meaning the hospital area and the shopping center areas.

MOTION PASSED: 4-2-1, Lythcott-Haims, Tanaka no, Veenker recused

CLOSED SESSION

~~6. CONFERENCE WITH REAL PROPERTY NEGOTIATORS Authority: Government Code Section 54956.8 Property: 1175 North San Antonio Road, Palo Alto (Informally known as the former Los Altos Treatment Plant site) Negotiating Party: Santa Clara Valley Water District City Negotiators: (Ed Shikada, Brad Eggleston, Karin North, Sunny Tong) Subject of Negotiations: Lease Price and Terms of Payment~~

Adjournment: The meeting was adjourned at 10:44 P.M.