



# CITY COUNCIL SUMMARY MINUTES

Special Meeting  
August 8, 2022

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, Cormack, Dubois, Filseth, Kou, Stone, Tanaka

Present Virtually: None

Absent: None

## Special Orders of the Day

1. Appreciation for State Senator Josh Becker for Securing \$2 million for Newell Bridge Replacement Project

Mayor Burt introduced Senator Josh Becker.

Senator Becker commented on the Newell Bridge Replacement Project. In the next 3 weeks there are going to be hundreds of bills regarding climate action.

Council Member Dubois thanked Senator Becker for money for the bridge, for raising \$12 million for peninsula projects, for all he is doing in the senate, the clean energy committees, authoring several bills in clean energy and other areas, and taking up the issue of encryption of police communications. Thanks to our own police force, we have a local workaround but the legislation remains important.

Council Member Stone thanked Senator Becker for the funding Palo Alto is receiving, work he is doing with climate change, and his support of SB1000.

Council Member Cormack thanked Senator Becker and addressed why the Newell Bridge is important.

Vice Mayor Kou thanked Senator Becker for all the work he is doing. She appreciates his sensible views, including many legislations put forward in terms of housing and the funding he was able to procure for the bridge.

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Council Member Filseth thanked Senator Becker for the Newell Bridge project and for SB1000.

Mayor Burt echoed his collective thanks and for this coming year's legislative action. Senator Becker is leading the charge on a series of climate initiatives. He asked him to let the Council know how they can support him.

Senator Becker stated he has a committee hearing tomorrow on clean reliability.

## 2. Select Applicants to Interview for the Human Relations Commission

**MOTION:** Council Member Cormack moved, seconded by Vice Mayor Kou to interview all applicants for the HRC position.

Council Member Cormack stated she has reviewed them and thinks everyone is deserving of having us to meet with them and consistent with prior practice.

Vice Mayor Kou agreed.

### Public Comment

Aram James wanted to know who are the candidates. There is very little public attendance at the HRC meetings. It seems the committee meets by itself and wants to get out of the meeting as quickly as possible. He gives credit for all the civil rights issues they have reached out on. He questioned what we can do in regard to public attendance. He wanted to speak to Senator Becker tonight, and the public was not given that opportunity.

Mayor Burt stated the names and applications in the Council packet are available online to anyone.

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

Mayor Burt stated the City Clerk will notify the applicants and the Council and post the date and time of the interviews on the City website in the coming days.

## AA1. Sibling City Update from Mayor John Hamilton, Bloomington, Indiana

Mayor Burt stated we have joining us in person Mayor John Hamilton from Bloomington, Indiana. Mayor Hamilton and a delegation of his public and private representatives from Bloomington have been here for a couple days and will be with us through tomorrow for the purposes of sharing information and innovation initiatives in our climate efforts and a variety of other issues.

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Mayor Hamilton stated there is a lot in common between Bloomington and Palo Alto and listed some commonalities. There are also differences in political, geographical, and civic surroundings. Delegations have been exchanged. The Rotarians have visited. There is a plan to come back in November. Culture and commerce interactions are beginning. He welcomes them anytime to Bloomington, Indiana, and stated to check with him on optimal times if they desired.

Mayor Burt stated he is looking forward to reciprocating visits as well as meetings tomorrow.

Mayor Hamilton stated his next meeting will be in front of his council for their budget, and there will be question given back and forth.

Council Member Dubois stated the two cities have been working together on various projects. There is another delegation coming out for the Art and Wine Festival the end of this month.

## Agenda Changes, Additions and Deletions

Mayor Burt stated there were several noted in the revised agenda that is posted online but no further ones tonight.

## Public Comment

Andie Reed stated she acts as the coordinator for Palo Alto's first domestic sibling city, Bloomington, Indiana, in her work for Neighbors Abroad, Palo Alto's nonprofit that facilitates our eight international sister cities. She thanked Mayor Hamilton for visiting and providing opportunity for some of our high-tech businesses to meet and potentially crosspollinate. Partnerships have been established between the two cities' Rotary and Kiwanis clubs. She noted that during the Festival for the Arts on Saturday, August 27, Neighbors Abroad will be hosting an event showcasing a few of our international sisters. And at 4:00, the new Sister Sibling Cities sign in front of City Hall will be unveiled.

Leland Francois disclosed facts regarding his pursuit of Ravenswood GardenKits products. He had delivered folders of products he developed to the Council. Everything is being fabricated in East Palo Alto and being distributed from the old Ravenswood High School. He has been working with the Center for Human Settlement for years and dedicated a product specifically to address residential transition problems

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Aram James spoke to the appointment of the new Police Chief, and referenced recruiting a male and a female African-American into command positions, and requested vetting and ensuring no white nationalists are hired; encouraged an intervention standard and policy allowing community members to intervene if the police fail to do so when someone is likely to die, eliminating any military equipment unless absolutely necessary.

Matt Schlegel stated a family member in Palo Alto had a catastrophic water heater failure. There is an urgent need to stop burning fossil fuels. He described his inspection and findings of this family's home and came up with a solution to ridding the home of a fossil fuel water heater. As part of the heat pump water heater program, he suggests keeping an inventory of used but still functional gas water heaters of residents who have replaced them with electric water heaters. Having these assessable will eliminate the need of residents buying a new fossil fuel appliance if needed.

Saksiri Tanphaichitr stated he is here in response to the wee abatement assessment notice sent recently.

Mayor Burt stated that item has been re-agendized to a future date.

City Manager Ed Shikada stated the date is rescheduled for September 12 and notices will be sent to all applicable parties.

Mayor Burt stated within a week and half of that meeting an agenda should be up so the public will know when during the meeting that will occur.

## Consent Calendar

**MOTION:** Council Member Cormack moved, seconded by Mayor Burt to approve Agenda Item Numbers 3-4.

3. Adoption Of **Resolution 10061** Establishing FY 2023 Property Tax Levy for General Obligation Bonds (Measure N Libraries)
4. Approval of the Rail Committee Charter and Workplan for 2022-23

**MOTION PASSED:** 7-0

## City Manager Comments

City Manager Ed Shikada provided slides. He gave a weekly update related to the pandemic. The Novavax vaccine for COVID is available through Santa Clara County, and sccfreevax.org can be accessed for information and

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appointments. Regarding the beginning of the schoolyear, the California Safe Schools for All hub site ([schools.covid.19.ca.gov](https://schools.covid.19.ca.gov)) is available and provides resources for community awareness. At the Palo Alto Arts Center, resources are provided locally for COVID as well as Monkeypox. He addressed preparing for a healthy return to school and stated resources are available on the City website under the News heading. The Police Department will be maintaining increased visibility around schools. He spoke about the ArtLift Microgrant Program and upcoming events and referenced [cityofpaloalto.org/artlift2022](http://cityofpaloalto.org/artlift2022). The Community Health Fair that will occur the afternoon of Sunday, August 21 at Mitchell Park Community Center. In reference to sustainability and climate action, he referenced a recent article on our Medium blog site. There were a number of shifts for tonight's agenda. Regarding upcoming agenda items, next week we have two pre-screenings, which the City Council will not take action but will hear about applications for initial review of potential development related to 800-814 San Antonio Road, 66 Ramona, and the City's partnership with LifeMoves on the Project Homekey site on San Antonio Road. Two weeks from today, the City Council will hear an update and potentially take action on the Housing Element goals, policies, and programs. The September 5<sup>th</sup> meeting is cancelled in observance of Labor Day. On September 12<sup>th</sup>, there are a few study sessions, which he outlined, and there will be re-agendized items with the Police Department and the Weed Abatement. Further out is a study session with the Utilities Advisory Commission regarding fiber optic and broadband service as well as an update on the Sustainability and Climate Action Plan.

Vice Mayor Kou asked City Manager Shikada if it is 66 Ramona or 616 Ramona.

City Manager Shikada stated it is 616 and apologized for the typo.

## Action Items

5. Approval of Appointment and Employment Agreement with Andrew Binder as Chief of Police

City Manager Ed Shikada stated it is his role as City Manager to bring forward for confirmation selections of department heads. Filling the position for the Chief of Police has been very high priority. They completed an extensive process and conducted a competitive open recruitment that generated nationwide interest. He provided a brief overview of that process. They had a very competitive, impressive, and diverse pool of candidates interviewed that resulted in agreeing Acting Police Chief Andrew Binder brought the best combination of qualifications as well as demonstrated dedication and caring for the community.

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Acting Police Chief Binder stated he looks forward to the opportunity to lead the group within the Police Department is a dream come true. He deeply cares about the people in the Police Department and the community of Palo Alto. He looks forward to the work he has been doing and the work ahead. Recruiting, hiring and retention, and community engagement are big priorities. He will continue to connect the Police Department with the community.

## Public Comment

Winter Dellenbach stated she was on the June 23<sup>rd</sup> committee that interviewed the candidates and they took the process seriously. This is a major hire of consequence. She recommended approval of Acting Chief Binder as the Chief because of the well-designed hiring process in which gender, ethnicity, and race diversity were well represented and critical to the public trust. Acting Police Chief Binder wants the PAPD to reflect Palo Alto community values to protect and serve all equitably. He is a principal leader and committed to supporting our police policy and accountability reforms. He is willing to consider more as needed to increase equity and willing to listen to informed, reasonable concerns and act on them. Acting Police Chief Binder will do his best to be the Chief Palo Alto needs post 2020.

Annette Glanckopf supported the appointment of Assistant Police Chief Andrew Bender as Police Chief. She was a member of the Selection Committee. She stated Winter Dellenbach stated it perfectly. There were critics of the process, candidates, etc., but the City did an exceptional job with the selection process as well as selecting a diverse Selection Committee. Assistant Police Chief Binder is the ideal candidate. She was impressed with his passion for public service and policing. He is committed to Palo Alto and the job with energy, knowledge, leadership and integrity. He is very responsive to the community and willing to listen and talk through issues. In the past, Acting Police Chief Binder was the designated the face of the City for the City's Race and Equity Initiatives and Efforts and he sat very carefully through the Human Relations Commission and was grilled, listening and answering questions during the Department's controversy, and he did it admirably. He is committed to the seven pillars of 21<sup>st</sup> century policing. He is off to a fabulous start by ending the encryption of radios. City Manager Shikada made the best decision.

Aram James stated he congratulated and had a conversation Acting Police Chief Binder when he found out he was possibly going to be our next Police Chief. He has discussed with him many times police practices issues and has a high level of respect for him. City Manager Shikada indicated we were going to have a transparent process. Transparency would have been in open

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session the three finalists being questioned by members of the press, the community, and people under prior chiefs that were subject to discriminatory policing. The Chief's selection has been tainted by this not being a transparent process. Acting Police Chief Binder is a man of integrity but the same does not apply to City Manager Shikada because of the lack of transparency. He looks forward to working with Acting Police Chief Binder. He is asking not to approve his hiring tonight but to bring the three finalists before the citizens to ask questions.

Hamilton Hitchings (final speaker) stated in the last four years a number of police chief positions have become available in Santa Clara and San Mateo County, and all Santa Clara and most San Mateo positions were filled with internal promotions because it is hard to hire highly qualified candidates that can do a better job than the best internal candidate. He was one of the interviewers of the candidates. The reason this process is confidential is some are employed at other police departments and have not told their superiors and do not want this to be public information. It is not realistic the three candidates speak publicly. He commented on the process of the selection of the candidates. Acting Police Chief Binder was the top candidate by a wide majority and brings many attributes. He has been the primary driver of extensive lasting reforms and improvements to the Department over the last few years and many officers who did not embody these values have left the Department. We are fortunate to have such an outstanding professional heading our Police Department, and this promotion is well deserved.

Council Member Stone stated the process was appropriate and transparent. HR specialists did provide good advice at the beginning of the process to explain the chilling effect that might happen if we brought finalists in a public setting. He asked City Manager Shikada to describe the applicant pool and the demographics of our finalist candidates.

Town Manger Shikada stated it is inappropriate to be specific but there was gender, ethnic, and experience diversity as well as a diversity of backgrounds in terms of the types of agencies they have been employed.

Council Member Stone addressed ending police encryption and spoke to his leadership. SB1000 is facing some opposition with regard to the issue of cost. He asked Acting Police Chief Binder to talk about costs anticipated with ending encryption.

Acting Police Chief Binder stated he wanted this community to have real-time access. The cost was not significant and was mostly personnel power to

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come up with a plan and make sure it could be done. He described what that included.

Council Member Stone asked regarding the transparency issue what are Acting Police Chief Binder's thoughts on the current practice of having supervisors answer questions by members of the press rather than the officer involved in the case.

Acting Police Chief Binder stated when there were budget cuts in 2020 we had to let go Janine De la Vega, an important component of communication with the community and the Department, but communication was still important. A plan was created with personnel in the building. It is important the information is accurate and timely. Responses to media are kept track of. He meets with the media. He is open to opportunities to do better. The Police Department is still growing and rebuilding, and it is a balance between having supervisors in the field and getting the media accurate and timely information. It is a balance that will continue to be done as capacity allows.

Council Member Stone asked if a member of the press questions a particular officer if that officer may speak with the press.

Acting Police Chief Binder stated in the past they had a Press Information Officer (PIO) team that we do not have now. Members of the media know they can submit a form online that goes to the watch commanders who are very responsive. They want accountability when the media needs questions answered. At this point, this is the best way to be done.

Council Member Stone asked if an officer could respond directly to the press.

Acting Police Chief Binder stated it depends on the context and gave some scenarios. The a single point of contact is the watch commander because the information needs to be accurate and involves research and getting all the details. The officers on the street do not always have the totality of the circumstances.

Town Manger Shikada stated it is not unique to the Police Department and is a City-wide practice because they want to ensure the information is what the requestor is looking for and has the context of whatever a frontline staff person might not be aware of. It is our responsibility to provide timely and accurate information.

Council Member Stone wanted to ensure this is a communications policy that is working for the Department. Over the past several years, there have been several high-profile incidents within the Police Department that have brought negative attention with regard to civil rights lawsuits and employment

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issues. He asked how he will address some of those cultural issues with the Department that may have caused some of these incidents and how he envisions the Department under his leadership and how it might be different.

Acting Police Chief Binder stated he is proud of the people in the Police Department. They do a hard job but do not always get it right. They have a track record of bettering themselves to serve the community. It is making sure the mission statement and their core values are known. His personal values are synonymous with the values of the Department. He recognizes accountability starts with him.

Council Member Stone stated he supports the nomination.

Vice Mayor Kou stated she supports the appointment. She is comfortable knowing the vetting process has gone forward with the community and long-time community members have been involved in the interview process. She follows Chris Hsiung, Police Chief of Mountain View, and he has community engagement that Acting Police Chief Binder seems to have. She stated Acting Police Chief Binder has been very proactive in terms of equity and race matters, and she gave some examples. She asked that he continue the community engagement and emphasize it throughout the Department. His employees respect him and support him for Chief.

Council Member Cormack stated regarding City Manager Shikada that this process is untainted. We have come to the right conclusion. She stated Acting Police Chief Binder has demonstrated his dedication to making this place and the department better. There is work to be done, and he is the right person to do it. On a personal note, he thoughtfully handled a neighbor's concern. She has confidence when something terrible happens in the community, he and his department will be there and help people and if something goes wrong that he will take responsibility and accountability. She stated another member of the public talked about professionalism, work ethic, honesty, caring, etc., and that describes City Manager Shikada and Acting Police Chief Binder. She looks forward to confirming this appointment.

Council Member Dubois stated he appreciates Acting Police Chief Binder's approach to the police force, the Council, and the community. This is a huge responsibility and critical role for the community. He has demonstrated aptitude of working with the community. He hopes he will build relationships with the local press and take their phone calls occasionally and be accessible to them and the community. He asked Acting Police Chief Binder to reach out if there is anything he can do to help.

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Council Member Tanaka stated when our police officers or firefighters interview at other cities they notify us. He wanted to know how people apply to this role and if they have to notify their organization.

City Manager Shikada stated our employees need to notify us when they start a background check. That is compulsory and normal part of a process for hiring a sworn officer. In the case of a Chief of Police, it would not occur until the last steps of a hiring process.

Council Member Tanaka stated other cities use a variety of methods for election of chiefs. He wanted to know what our community members thought, so he ran a poll on Nextdoor, which was not huge but did get some input. Of the residents, 41 percent of the public wanted the process to be public, 26 percent wanted it to be a direct resident election, and 32 percent wanted to do it the way we did it. He presented a chart showing the property crime rate per 100,000 people of the United States, California, and Palo Alto. He provided some statistics. He stated some neighboring cities had lower rates than Palo Alto. He does not know if it is a regional issue. He provided some examples of property crimes in Palo Alto. He asked Acting Police Chief Binder if he was appointed Chief what we should do about this and how do we solve this problem.

Town Manger Shikada stated the graph does not look correct. He cannot confirm the accuracy of the statistics because trends are different in the graphic than our experience. He notes the data ends pre-pandemic, and it is expected there would have been some variations in what is happening. Regarding the level of aggregation, in one case, it is Palo Alto specific versus statewide or nationwide. He stated Acting Police Chief Binder may be at a disadvantage in being able to see the graphic.

Council Member Tanaka clarified he went to other cities' websites to compare. He stated the graph does is not shown, but he had 2022 data as well, the latest data. He stated they could do the same. He listed nearby cities that had better property crime rates.

Acting Police Chief Binder stated when it was reported in April our property crimes were the lowest in three years and trending downward, not to say it is not important. Crime is cyclical and being a victim of any crime is very intrusive and hard for residents who are victims. It is the number one issue in Palo Alto, and they are aware of it. It goes back to the support this Council had given them last fall with rebuilding the Police Department, the Detective Bureau, and having specialized teams, extra officers in the marked police car being a highly visible presence, and officers being able to use the data we have and target the areas of the property crimes. Our officers do a

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good job through various techniques to be force multipliers to address these crimes. Our Detective Bureau networks with our regional partners because the property crimes we have in Palo Alto are a regional issue. We are going to continue working with other agencies and taskforces. As we continue to hire officers, we are going to continue to address this in multiple ways.

Council Member Tanaka stated there are a lot of laws on the book but not all are enforced. There are manpower limits but sometimes we chose not to because it is politically difficult to enforce those laws. He asked Acting Police Chief Binder how he feels enforcing laws that are not politically popular.

Acting Police Chief Binder stated laws are important and provide officers a framework and direction to take enforcement action. This community is very unique. He feels strongly an arrest or writing a citation is not always the answer. We have had these discussions with our unhoused and others. He is proud of the service-led approach officers take. We are not going to arrest our way out of a lot of these social issues that need a bigger, broader helping hand and partnership and is where the PERT team comes in. We could write someone who is unhoused a citation but we want to be long-term problem solvers, so get the PERT to connect them with services to get the help they need. The citation is not going to solve the problem. He encourages his officers to be critical thinkers and problem solvers for long term because we do not want to keep going back to the same problem. There are times when an arrest is appropriate. Our officers are given the latitude to use that discretion make that arrest and why they go through a police academy and training. He does not believe just because a law is on the books it means in every situation we need to enforce it.

Council Member Tanaka asked Acting Police Chief Binder to talk about the recent incident of a suspected trespasser at the 1100 block of Ramona Street.

Mayor Burt stated this level of detail is not appropriate.

Council Member Tanaka disagreed. He asked Acting Police Chief Binder if he was familiar with it.

Acting Police Chief Binder stated he is not.

Council Member Tanaka asked how much was the salary of the last Chief.

City Manager Shikada stated he did not have that information handy but is available online.

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Council Member Tanaka stated it is a pertinent question to try to approve the contract. The contract has 200 hours of vacation. He asked how much the last Chief got.

City Manager Shikada stated he did not have the document, but it is available.

Council Member Tanaka stated when he is approving contracts he wants to know comparisons. He stated being told to look it up is not appropriate.

Council Member Filseth stated everybody that serves the public has responsibilities of one kind or another. The people in this department have a responsibility that is in some ways different from everybody in the City and most others in society. The person that leads that department bears an even greater responsibility because they are responsible for everything. He thanked Acting Police Chief Binder for accepting that responsibility and thanked the City Manager's team and the stakeholder group that also carries some responsibility in the process, a very important choice to the community.

Mayor Burt pointed out that over the last two years Acting Police Chief Binder has been at the forefront of a series of very difficult transformations and reforms in the Police Department. We have not done a good enough job presenting them comprehensively. He spoke of some topics his colleagues have talked about that have been done in the Police Department. He noted we have had a significant turnover in officers and new officers have been brought onboard with the values, programs, and policies adopted over the last two years. Accomplishing these reforms in a police department is not an easy task and not typically done successfully by autocratic mandates. Acting Police Chief Binder has led these reforms and the Department personnel to accept changes many police departments have struggled to implement. In 2020, there were very severe cuts to our staffing in the Police Department. These positions have been restored and we are in the process of bringing new cadets through the Academy and onto the force to complete restaffing of our force. He has been able to identify the funds to do that for only the next two years. It is critical we have our Police Department return to full staffing. We will have an opportunity on our next item to look at our business license tax, the primary mechanism for which we will be able to continue the staffing ongoing.

Acting Police Chief Binder stated part of the conversations in 2020 was how we lessen the footprint of law enforcement in society and serving their community through public safety service. It was recognized sometimes there are better tools than sending just a police officer to solve a problem. It goes

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to the arrest question and how we comprehensively address the issues within this community. Mental health co-response is the future. A behavioral health clinician rides with officers four days a week and handles acute mental health issues and is the primary contact for our unhoused. It is a success. It is a new approach to how we better serve those than just locking them up and throwing away the key. He wants our public safety to go to our residents when needed for serious crimes.

**MOTION:** Mayor Burt moved, seconded by Council Member Dubois to approve appointment of Andrew Binder as Chief of Police and his employment agreement as presented.

City Manager Shikada addressed Council Member Tanaka's former questions and stated the former Chief's salary was \$298,355, and the vacation hours were also 200-hour accrual rate.

**MOTION PASSED** 6-1, Tanaka no

[The Council took a 15-minute break]

6. Adoption of an Ordinance Approving the Police Department's Military Equipment Use Police Under AB 481 – Continued to a future meeting.
- AA2. Adoption of Resolutions: (1) Placing a Business Tax on the November 2022 Ballot; (2) Placing a Measure Affirming the Natural Gas Utility Transfer on the November 2022 Ballot; and (3) Establishing Advisory Spending Guidelines for Business Tax Proceeds (6:45 PM – 8:15 PM)

Assistant Director of Administrative Services Department Christine Paras had a presentation. They are returning to Council now with the Business Tax Measure and the Measure to Affirm the Natural Gas Transfer. Last Monday, City Council directed staff to return tonight with final documents to place these measures on the November 2022 ballot and included in the Staff Report. The Ad Hoc Committee met on August 3 and 4 and recommend a \$1 million cap per business and documents for this alternative structure are in Attachment B. The City received proposals from the business representatives on August 3 and 4. Attachment B includes the administrative adjustments requested by the business representatives that staff agrees are reasonable and appropriate. They received a proposal measure from the business representatives with the details on Slide 5. She noted a correction to the Staff Report packet, Page 188. It was noted the proposal from the business representatives would generate an estimated \$5 million in revenue. The correct amount is \$7.1 million in net business tax revenue. In Attachment B are documents to place the measure to affirm the Natural Gas Transfer on the ballot. Slide 3 is a recap of Council's direction from last Monday. She

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summarized what it included. Attachment B outlines the Ad Hoc's alternative. The adjustment included is an annual tax cap adjusted by CPI of \$1 million and includes the recommended administrative changes suggested by the business representatives. This tax structure will generate an estimated \$16.5 million in net business tax revenue. Should Council wish to place this alternative proposal on the ballot for further consideration, the Council needs to adopt the documents found in Attachment B. After many discussions with the business representatives, they remain unchanged and a final proposal was received last Thursday. Council direction last week adjusted the square footage exemption from 5,000 to 10,000 square feet, which is in alignment with the business representative proposal; however, the proposal received last Thursday reflects a 6-cent rate change, which was previously 5 cents from what staff received in June. The Ad Hoc Committee's alternative recommends a \$1 million annual cap adjusted by CPI, while the proposal received by the business representatives assumes a half-million dollar cap that is fixed annually. The Ad Hoc Committee will provide more context as to the negotiations as part of Council's discussion. The Resolution of Intent Spending Priorities – Business Tax slide was a repeat of last week's slide. She reminded everyone the resolution establishing the advisory spending guidelines and decisions on allocation of funds is made annually through the budget process and will fund general government services and programs. She presented a chart giving everyone a visual reminder why we are here and how this is a component of the continued progress of long-term fiscal sustainability. The City has historically modeled good financial stewardship by ensuring a balanced budget. A priority is to ensure resources are aligned, and staffing has been reduced over the past decade while demands for services have increased. She explained what the chart illustrated. The next slide was a recap of the Affirmation of the Natural Gas Transfer found in Attachment D. This affirms decade's old practice by the City for the provision of General Fund Services. They are seeking voter affirmation of what established and the City chartered decades ago. On the next slide, some services funded by the Natural Gas Transfer were outlined. The services are funded with reserves for two years; therefore, proceeds of the Natural Gas Transfer would ensure the City is able to maintain these service levels beyond 2024. Should the Gas Transfer not be affirmed, these services will likely be cut in 2025. The next slide – Remaining Milestones indicated the critical register of voter due date is on the 12<sup>th</sup> and documents must be submitted by then. Once Council has adopted the documents, no further changes can be made and once Council authorizes placement of these ballot measures on the November 2022 ballot, staff will transition to a fact-based, informational-only position. The next slide recapped staff's recommendation to counsel regarding the business tax, either adopting Attachment A or B and the Business Tax Advisory Spending guidelines can

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be found on Attachment C and Attachment D of Adopting the Natural Gas Utility Transfer.

Mayor Burt reminded everyone the funds are committed toward three basic purposes. He recapped the work of the Ad Hoc Committee over the last week. After the meeting Tuesday, we reached out to the coalition who has been opposing the tax and offered to negotiate and indicated we are open to modifying the proposal if an agreement could be reached. They were met with first on Wednesday morning, and one element to the discussion was a number of administrative issues how to make the implementation of the tax as streamlined as possible and eliminate barriers that would produce inconveniences or otherwise to the businesses affected. Our staff came back with a number of those incorporated. There were discussions on the perspective amount and caps on the tax. The Ad Hoc believes caps are regressive, meaning the very largest businesses would pay a lower rate than medium-large businesses, not lower than the smaller business that are exempt to largely exempt. If that was necessary to come to an agreement on a compromise, the Ad Hoc was open to doing it. Even though an agreement has not been reached, in the Staff Report, incorporation of a cap has been recommended. It is not at the level two businesses were seeking. The Ad Hoc indicated it was open to additional negotiation if a comprehensive agreement on the terms of the tax measure could be reached. The second issue was the rate, and the Ad Hoc indicated willingness to recommend some modification, not at the level in their proposal but to reduce the revenue below what is the real need if it could result in a compromise and an agreement. They met and returned to the Ad Hoc Thursday. The Ad Hoc requested another discussion and negotiation, and they tentatively concurred but they said no and gave the terms of their proposal. They did not want to negotiate any further, and if these terms are accepted, they will not oppose the measure and if not accepted, they will oppose it. They stated they would spend whatever it takes to defeat this measure and attempt to defeat the Gas Transfer fee, which is independent of this issue. We made it clear we were willing to negotiate. We spoke with a number of the entities being represented there to encourage them to come back to the table and negotiate in good faith. They have declined to do so. We have before us a set of possibilities. The Ad Hoc Committee met again hopeful we would come to some agreement. We all recognize the community supports both measures, but in this economic time, support is not as strong as in normal times. If there was a strong opposition, it is a coin toss what would prevail. Given the statements the business community would spend whatever it takes, we as a council need to look at risking whether we get a measure passed this election closer to the terms that meet our budgetary needs or do we offer something less or do we accept the proposal of the opposition coalition. A majority of the Ad Hoc want to present to the Council

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we propose to the business community we are willing to reduce the rate to 8 cents a square foot with the same exemptions we already have and would be open to some further reduction in the cap below the level we have before us. If the coalition wants to negotiate, we are open to doing so. Placing an edict of accept or reject, that the opposition has done without good faith negotiation, and a threat to spend unlimited funds is not what we hope for as the good faith negotiation we have attempted, but it is in the best interest of all parties because the uses of these funds are beneficial and important to residents and the business community. He addressed the needs for the uses of these funds. The business community has not been thinking about the broader ramifications of not coming to an agreement. They stated they would use unlimited resources to defeat the measures if we do not abide by their mandates, they would be able to stipulate what this City puts before the voters. That would be a serious harm to the stature of the business community in our region. Our community does not want local government subordinate to the dictates of very affluent and powerful business influences. Instead, we can come out of this with a collaboration and showing we can come together and benefit the residents and the business community.

Council Member Dubois commented on a sincere interest in negotiating. There has not been a commitment to an effort designed to achieve success. Since June, we have had a few discussions but not a firm desire to negotiate or establish a framework to get to an agreement. His impression is the group is not closely aligned internally and likely some members do not support any level of tax. There has not been a point of contact with negotiating authority. Any item raised had to go back to the group, and individuals in that group are concerned about different issues, and there was not an ability to compromise on an issue that may impact one company more than another. Regarding implementation issues, staff reached out and had conversations with the business community and got more of these at the last hour and staff came in on the day packets were due. The Ad Hoc is split on their recommendation to Council. He does not support further discussion. He stated we should vote tonight what we want on the ballot and will explain why in Council discussion.

Mayor Burt clarified that tonight both or just one of the actions could take place. We could proceed with what we intend to put on the ballot absent any further negotiated agreement or proceed with what we want on the ballot and not anticipate any additional negotiations. Supporting the Ad Hoc Committee's continued negotiations would be in parallel in proceeding with the ballot measure or measures. One of the issues is whether we put both measures on the ballot if we have a negotiated agreement or not.

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## Public Comment

Julia Zeitlin stated she is a rising junior in high school and a leader of the Palo Alto Student Climate Coalition. She is here to ensure the Council considers the climate impacts of not putting the Natural Gas Utility Transfer on the November 8, 2022 ballot. If not placed on the ballot, gas rates will become significantly lower than electric rates and poses a threat to Palo Alto's climate goals and electrifying the City. She urges the Council to place this item on the ballot. This historic practice by the City Utility funds important programs to continue. Recent polls show many residents support the transfer practice. The climate ramifications could be immense.

Aram James believes in the City of Palo Alto v. Green there has been a court decision the practice is unconstitutional. The public has not gotten their refunds. With a transfer tax, the money goes maybe to the services you say they do and oftentimes goes to higher staff salaries, etc. He opposes putting on the ballot the Natural Gas Transfer tax. Let the citizens first get a refund on the \$12 million. As for the business tax, big businesses should be taxed at least at the equivalent rate in adjoining cities. Putting the Gas Transfer tax on the ballot will discourage people from voting yes on the business tax, monies needed for public services.

Winter Dellenbach (In Person) stated stop negotiating. These are businesses making as much money as they can and not doing their fair share. She wants no more concessions made. If the business tax becomes almost nothing, the people will not support it. It is giving us almost nothing per year. Let us have a business tax that makes sense.

Bob Moss (In Person) stated the business tax the Council is talking about is a small fraction of what businesses in Palo Alto pay in rent. The proposal is too low. It should be a charge of 5 cents a square foot for 5,000 to 10,000 square foot businesses and 10 to 15 cents a square foot for larger businesses. The millions of dollars businesses are going to spend objecting to this is more than they will pay in taxes. He asked if we were going to let businesses buy the City and our use of funds to preserve the community or are we going to win for the community by passing this necessary tax. Palo Alto is nearly the only city in California that does not have a business tax. It should be put on the ballot. The transfer of excess revenue from utilities should be on the ballot. We should work hard to get this passed so we can use the money from businesses to support the City.

Julie Lythcott-Haims (In Person) stated we are all incensed by the business community's failure to negotiate and by their threat of using their massive resources at the effort to defeat it. The business community profits from

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having a Palo Alto address and is part of their brand. She is a former trademark lawyer in Palo Alto. She urges the Council to stand up to the threat of the wealthy to have their way with our City. She would like to see a \$1 million tax on the top businesses based on market capitalization or gross revenue. We need a proper business tax to raise the funds our City needs.

Hamilton Hitchings stated there should be no cap and to not lower the square foot rate or raise the limit beyond 10,000. It is going to take money and effort to pass the tax, and we should get rewarded for doing it. Big businesses need to pay their fair share for City services. This tax represents 1 percent of their rent and 1/18<sup>th</sup> what large tech companies spend on food for their employees each month. He addressed some large companies wanting to maintain their corporate welfare with subsidies. This tax helps landlords because it is easier to retain the high rents businesses pay for Palo Alto. He encouraged the Council to not lower it to 8 cents. Let us take an accurate assessment where we stand and move forward.

Nadia Naik supported Hamilton Hitchings statements. She has talked to residents about their interest in this tax, and it is felt this should have been on the ballot long ago. It does not raise enough money for the problems identified but is better than nothing. There is a lot of anger in the community that businesses are not paying their fair share. She hopes the Silicon Valley Leadership Group (SVLG) will reconsider. She worked successfully with them on Measure RR and Measure B, and in 2016 Palo Alto was going to put a business tax on and did not because of the discussions of not wanting to undermine Measure B that was being championed by SVLG. If they spend millions of dollars trying go against a very modest and reasonable tax that impacts only the largest employers in the City. She hopes they think about how it is going to play out in the community the next time they want support. The City Council has done everything it can to not impact small businesses and make sure this is asking our largest companies to pay their fair share of the needs of the City.

Vice President for Tax Policy at the SVLG Dan Kostenbauder stated the leadership group is part of the Palo Alto Community and Business Alliance, which is composed of concerned citizens and local businesses. The coalition has recently outlined for the Council key elements of an alternative business tax measure that would raise revenue commensurate with most nearby cities. If the Council places such an alternative business tax measure on the November ballot, the Alliance would not oppose it or the Gas Utility Transfer affirmation. If both pass, the City would increase tax revenue by almost \$15 million per year. The third round of polling conducted by the City in late May considered the impact of having both measures on the same ballot. The business tax measure garnered 48 percent yes and the Gas Utility Tax

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Transfer 50 percent. The results were before any opposition campaign. As standalone measures, both poll much better, although with soft support. Instead of placing a business tax measure on the November ballot the Alliance would oppose, he recommended placing only the Gas Utility Tax Transfer affirmation on the ballot. The Alliance would not oppose the Gas Tax Transfer measure alone, but if both are on the ballot, the Alliance would oppose both. If the Council places only the business tax measure on the ballot, it would lose about \$7 million per year in revenue from the Gas Transfer affirmation, which would not be on the ballot, and the business tax might still lose, which means the City would get no additional revenue. The Council engaged in serious conversations with representatives of the business community only after the last round of polling showed decreasing support for the level of businesses tax the Council had been considering. He thanked the Council, ad hoc group, and the staff for its inclusion of a number of administrative aspects of the tax that will make it fairer for all taxpayers.

Charlie Weidanz asked that the Ad Hoc proposal not be approved for a business tax for the ballot as it could have dire consequences on the economic vitality of Palo Alto in the near future. He asked for consideration that the pandemic continues. Palo Alto commercial real estate is facing the highest vacancies in the past 25 years, which he listed some challenges. The business community proposed a tax that is fair and reasonable and still impactful for the City. The components proposed ensure equity and do not overburden any particular portion of the business environment. The proposed rate by the Ad Hoc Committee far exceeds the rate of any business taxes in all neighboring municipalities. Several neighboring cities have opted to not to have business taxes on the ballot. The current proposed rate by the Ad Hoc Committee far exceeds the rate of any business taxes in all neighboring municipalities. Keep in mind Palo Alto businesses already pay significant tax through property and sales taxes and the Utility Transfer fees.

Keith Reckdahl stated he strongly supports the tax. It is fair businesses to help pay for the services they use. Landlords in Palo Alto charge the highest rents in the bay area, and the tax is small in comparison. If businesses are driven from the City, it will be due to rent increases, not this small tax. Without this tax, we will be forced to further cut public safety in two years. This reasonable tax is crucial. We must pass this tax.

Mayor Burt directed questions to speakers representing the Business Coalition, Representative of the Business Community Dan Kostenbauder and Chamber of Commerce President Charlie Weidanz. He does not know if NAIOB is still part of that coalition and taking the same position, but when we offered to sit down and negotiate in good faith, one set of proposals was received that was below our needs and an unwillingness to attempt to

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negotiate. He asked if their coalition is willing to engage in good faith negotiations in the next day or two and will inform the actions of our Council tonight whether to authorize the Ad Hoc Committee to do that under the approximate terms laid out earlier.

Representative Kostenbauder stated they have been negotiating in good faith. The fact they have a position for the business community spanning many large and small companies and three different business associations makes it difficult to come to an agreement and enable them to speak with a common voice. The proposals from City Council from the beginning have been much higher than most neighboring communities. Taxing by neighboring communities...

Mayor Burt interrupted stating the majority of the Ad Hoc Committee is willing to negotiate and reluctantly willing to consider flexibility on the cap and the rate. He questioned if the coalition is willing to meet over the next one to two days and continue to negotiate in good faith as opposed to a set of terms they laid out that would have to be accepted as stipulated by their coalition.

Representative Kostenbauder stated the guidance he has gotten from members of the coalition is we have agreed upon a set of terms that are fair to the City, raise a lot of revenue, and commensurate with other cities. We do not agree with the City Council proceeding with an approach of having a business tax in Palo Alto higher than neighboring cities and has been the position of the coalition. If the offer is 8 cents, the group has taken the position we want to do this but...

Mayor Burt stated the record shows we have adjusted and compromised on a set of issues, which he listed. If there is no willingness to have any further flexibility by one side, there cannot be a negotiation. By definition, good faith negotiation is recognizing each party believes in their positions and yet there is a mutual benefit to attempting a mutually acceptable compromise without an exact predetermination what precise parameters would be in that compromise when the negotiation is answered. He questioned if he was willing to enter into negotiations without a predetermined outcome with each side having stated going in their tentative positions.

Representative Kostenbauder stated he has been an advocate to talk, especially with government and elected officials, when there is any possibility of closing a gap. He cannot assure they will be able to reach that agreement. He will encourage members of his association to continue having conversations with the ad hoc if it seems likely to produce forward progress. He could do a poll of their members in the morning and see if there is an

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opportunity. He hesitates to foreclose conversations and does not want to set expectations trying to have a united voice in the major parts of the Palo Alto business community, such as the Leadership Group and the Chamber. They will be willing to try to have those conversations without setting any expectations. There should be further talks if there is any possibility of closing the ground.

Mayor Burt asked Chamber of Commerce President Weidanz the same question.

Chamber of Commerce President Weidanz stated they came with a proposal they felt was fair to all their business components. As of about 1:00 today, the proposal in front of the Council did not change. He stated he cannot answer tonight and has to go back to the group.

Mayor Burt stated the question is whether they are willing over the next one to two days negotiate in good faith and attempt to come to a resolution.

Chamber of Commerce President Weidanz stated that earlier today the response of leaders in that group was, "No. We are where we are." This is new information, which he cannot answer until he goes back to them.

Council Member Cormack stated she would like \$17 million for our City to be spent in a responsible manner. It is not about the Council but the voter and how that person will be influenced by an extremely well-funded opposition campaign. We have to be focused on what that person will vote for, what they will hear, and what will be our collective experience over the next 12 weeks. We must move forward on our long list of priorities. There is a possibility for a comprehensive agreement because six and eight are not far apart. This is a pragmatic alternative based on the data and we are close. The latest recommendation from the Ad Hoc lowers the risk of failure. It will provide enough money for the firefighters, a down payment on the train crossings, and refilling the Affordable Housing Fund and aligns with our climate goals. There is room in the middle, and she trusts the Ad Hoc in whatever composition it is going to be, and if it needs to change, fine. The opportunity we have is to get a business tax on the books, steady our budget, and accept the business community's acknowledgement of the many ways they support us. We need to think about these measures living or dying based on whatever economic conditions we have in November when people vote. We should not be gambling with the City's financial future. She asked Mayor Burt if we would repurpose the Wednesday meeting if they make progress.

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Mayor Burt stated yes. There is a Special Council meeting Wednesday and this could be added to the agenda. It requires 24-hour noticing on a special meeting, so we would have to agendize it tomorrow afternoon. If we are going into negotiations, that would be adequate to place it on the agenda without a determination at that time whether those negotiations are successful.

Council Member Cormack stated she is supportive of the Ad Hoc's recommendation of continuing to work with the members of the business community and reconsidering this Wednesday night. She stated we should put both measures on at this time.

Council Member Dubois stated he is supporting the new recommendation in the packet, Attachment B, which was discussed last week with the addition of a \$1 million cap, which will be the maximum tax per business. He summarized the journey we have been on. Looking at the polling data, he supports putting one measure on the ballot, the business tax. He is not supportive of delaying until Wednesday. He stated we have been accommodating with little receptivity. There was a suggestion we do not put any business tax on the ballot and we put on just the Gas Transfer. After Mayor Burt repeatedly asked if they would talk, they stated they would but to not expect any change. The response speaks for itself. He listed many changes made since the Ad Hoc started. Tonight we are talking about adding a cap. All these things addressed many requests of the business community. What remains are the City's needs, which he listed. Many of those areas have been impacted by large businesses, and many of the proposed uses benefit the entire community, businesses, and residents. He has seen very few objections coming in from businesses and a lot of email strongly in favor of the tax. We have a strong history of abiding by our Advisory guidelines in terms of spending funds. The hiring data came out very strong that we are in a recession. Recessions have been about 18 months long, and this is going to be phased in over 3 years without full implementation until 2025. We should pass B tonight. He explained why he supports the addition of a cap at \$1 million dollars a year. He cannot support further delay. Unilateral compromises were made with no indication it will create support. If we are going to have a campaign, we should do it for 11 cents, not 8 cents. SVLG will consider no business tax and the Gas Transfer, and polling did show strong support for one measure and weaker support for two. The Gas Transfer would be \$4 million new revenue, not \$7 million according to math. He stated it was characterized if we pass the tax like some of the very old taxes around us plus the Gas Transfer, we would be at a total of \$15 million, but that is not correct. That also assumes Gas Transfer would pass, and he is hearing opposition to that independent of the business transfer. He spoke of other cities' taxes. The real issue is SVLG does not want a city to

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modernize their business tax. Many of the taxes passed were 20 to 40 years ago, and we are getting pressured to adopt a sleepy tax. Palo Alto voters need to help pass a practical tax that will pay for these needs and benefit the entire peninsula because other cities will follow.

Vice Mayor Kou agreed with Council Member Dubois. A couple members of the public stated the SVLG as well as the Chamber of Commerce have declared they are overseers of Palo Alto residents' quality of life. The coalition said they will consider and not oppose, but they have not said anything about support. We have one of our largest infrastructure projects coming forward, which it will hardly provide funds for, which is grade separations. If we are going to consider and sometime later we are going to do a bond to provide monies – today on the Consent Callender, we approved the General Obligation bonds the library. She stated \$9.26 per \$100,000 in assessed value, if we are using a \$3 million figure means one is paying \$278 per year. A person who owns a condo is paying the same amount as a large business that has more than 1 acre in a parcel. During the pandemic with the smash and grabs, it was not to the tech companies but to the retailers. We have to make sure that is in place for businesses to run effectively. Mayor Burt and the Ad Hoc Committee have extended time and time again. Now we are going to extend to last minute putting this on the ballot, and we are still not going to get there. Enough is enough, and now is the time to decide. The public wants to be assured the funds are going toward what we say, and Council will do the right thing. Since we will be reducing the tax so much based on the proposals, perhaps a specific tax is the way to go to give assurances to the public and the voters this is where the money is going. We should not let these people say what the quality of life is of the residents of Palo Alto. We were elected to make the decision to safeguard our community and not put further burdens on them.

Council Member Stone stated he came in to the discussion open to the idea of continuing the conversation if the business community and representatives would negotiate in good faith. He was shocked there was not an easy answer to Mayor Burt's question of, "Yes, we would be happy to continue negotiations." He does not share the optimism of Council Member Cormack. There were no signs of serious intention to continue to negotiate. He has not talked to anyone who is oppositional to the business tax beyond the business community. He has had several conversations with the business community over the years, and they have always made strong arguments for the need for affordable housing, etc. The residents of Palo Alto have been doing most of the lifting over the last several decades in funding these services. It is time we ask businesses to pay their fair share. We need money for the needs of the community. We do not have many revenue options to go after, and this business tax will allow that. He is hesitant to go

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below 11 cents, even down to 8 cents. If the business community was willing to say they will not only not oppose the business tax but actively support it, he may be willing to go down a cent or two to ensure we are going to get it, but he has not heard any type of willingness. We have been willing to give in. We are at the point we have a very fair tax and one the community seems to support. Community members have talked about the need for this to be even stronger, but he is cognizant of the polling data and concerned about going further.

Council Member Filseth stated the notion of sales tax was brought up. Adjusted for inflation in 2008 dollars, sales tax revenues in the City have not grown as fast as commercial employment. If we take out one very large taxpayer of sales tax in the City, over the last 15 years, sales taxes have not grown in 2008 dollars. We have heard times are tough and businesses have no money and heard a threat to spend unlimited amounts of money to oppose this tax measure. We have two major businesses, restaurants and retail, which have been dramatically affected by the pandemic, which are starting to come back but will never come back fully because of COVID. Those groups have no money, but they have not added large numbers of employees over the last 15-20 years. The overwhelming majority are under 10,000 square feet and are exempt. Many larger than 10,000 square feet did very well in the pandemic. It is not known how many strong opponents there are to this measure because we received only a couple letters. The net earnings of these folks are measured in billions. The Ad Hoc and Mayor Burt have bent over backwards for months trying to reach an agreement with all concerned parties. Not much progress has been made in certain areas. If Mayor Burt wants to negotiate, he supports it. He suspects we will not get there and that we will go with option B.

Mayor Burt stated he is not counting on coming to an agreement, but the advantages of an agreement are important for both parties, and he is willing to attempt it. If we go to the ballot and are not successful, we get nothing, and with a massive opposition, we are facing a jump ball. The business community has become less united in their opposition. He listed a number of exemptions that were made and stated a lot of the business community said they were important needs and a modest tax and are not in opposition. NAIOP is not opposing or supporting the tax. Noteworthy is there was no reference tonight to NAIOP as part of the coalition. There are members of the business community who would be modestly affected by the tax and say it is reasonable. He rehashed what had been stated by others regarding surrounding communities having lower rates than we are alluding to. He pointed out some surrounding communities with higher rates in some areas having new projects come forward. The amount proposed is not a major amount in an economic consideration of doing development or locating in a

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city. He had located a factory in three cities on the peninsula, and each city moved to have a higher business tax than the city they left. It was a cost of doing business and not a major factor in the location. The concern is whether the communities in Silicon Valley will have local business taxes more aligned with other areas. Silicon Valley is an exceptionally low business tax region. San Francisco's business tax is about 15 to 20 times the rate we are proposing, yet they had a tech company boom over the past decade with that tax structure. The business community has stipulated terms as opposed to negotiating. As parties get close to a deadline, either an agreement is reached or there is an outcome unfavorable to both parties. He wants to keep the door open and encouraged colleagues to go forward with our proposal and what we will put on the ballot and authorize the Ad Hoc to continue to negotiate with an understanding of the framework laid out earlier. If there is no negotiation, no harm no foul. If there is, the Council can decide if they find it acceptable and go forward. He hopes his colleagues will support the two-track system and keeping the door ajar. The question is is it in the interest of our community and our residents to continue the next two days and see if there is a possibility of a successful compromise. He asked if we opt to put on the ballot only the business tax but we come to a resolution in the next two days and the alternative would be to then put the Utility Gas Transfer fee and a form of the business tax on the ballot what would be the action tonight enabling us to do that.

City Attorney Stump stated the resolutions at Attachment B and C need to be adopted. If progress is made in the next few days, they would come back on Wednesday and withdraw, revoke Attachment B, and then there will be a different form of that item. At that time, consideration can be given to the Attachment D, which would not be adopted tonight but could be adopted Wednesday if the Council wants to support two measures.

Council Member Cormack asked if Attachment B is as written, the one Council Member Dubois is supporting, or if it is revised per the comments of Mayor Burt and Council Member Filseth.

Mayor Burt stated it is as written. These items should be separated so those not supporting Attachment B can vote one way and those supporting allowing additional negotiations can vote separately on that.

Council Member Cormack asked if we will be voting on the Gas Transfer tax.

Mayor Burt stated in his motion he will propose we do not at this time place that on the ballot and reconsider it if we have successful negotiations over the next two days. If council members want to support placing it on the ballot or some other variation, we can take those votes as well.

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City Attorney Stump advised authorizing the Ad Hoc to advise by tomorrow at 5:00 whether there should be a meeting on August 10 because the meeting has to have an agenda informing the public what might be discussed. A broad agenda could be written allowing an alternative Business Tax measure to be brought back should an agreement be reached and the Natural Gas Utility item as well.

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

1. Adopt **Resolutions 10062 and 10063**, to submit a measure to the voters at the general municipal election on November 8, 2022 (Attachment B) and adopt resolution establishing advisory spending guidelines regarding use of business tax proceeds if passed by voters (Attachment C).

Council Member Tanaka asked if voted on today can the 11-cent rate change.

City Attorney Stump stated if the Council approves Item Number 1, it will be voted to put something on the ballot. That item could be repealed on Wednesday and replace it with another one.

Council Member Tanaka stated he liked the idea of a specific tax. He asked in terms of dedicating funds if it is going to affect how budgeting is done.

City Attorney Stump stated every year decisions are made as a Council how to budget the City's funds. These are Advisory guidelines.

Council Member Tanaka stated on the most recently approved budget, we have some of the highest spending per capita compared to any surrounding city. It is important we make do with what we have. To Mayor Burt's comment, we should compare against cities around us. A lot of companies in San Francisco are shutting down offices because of work from home, so we are on a dangerous course. He cannot support this motion. We have had two quarters of declining GDP. Usually taxes are not raised but lowered during recessions.

Council Member Cormack stated she wants to vote for a business tax but she cannot vote for this.

**MOTION PASSED:** 5-2, Cormack, Tanaka no

Mayor Burt stated we can go to Item 2 unless there is further discussion.

Council Member Stone stated we have given several concessions and going below 11 cents is not going to raise enough revenue to cover costs to come.

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If we are able to get the business community to agree to a compromise, there is not a mechanism to hold them accountable. He is supportive of the business tax we are at and concerned about further concessions.

Council Member Cormack asked if we are putting the Gas Transfer tax on if Number 2 fails.

City Manager Ed Shikada stated that is the understanding.

Council Member Cormack asked if it will die of inaction if not adopted tonight and not brought back Wednesday. The most important work we are doing has to do with climate and antithetical to climate needs to not put the Gas Utility Transfer on. A means we are going to make progress, and if 2 fails, we are going to make gas less expensive than electricity and is not what we want. As for B, it is not too late to talk. Let us keep the door open and give it one last chance.

Mayor Burt reiterated supporting this is leaving open the potential of last-minute negotiation, which is often when agreements are arrived at. The choice we have is not what we want but what we can achieve. He is willing to consider a compromise because we are in jeopardy of having nothing and not being able to go back to the voters for years if we fail. We need to know if there is an alternative we would consider on Wednesday. He is not asking for a final decision.

City Attorney Stump clarified what will appear on Wednesday's agenda. If there is discussion but no final recommendation by the Ad Hoc, an agenda title will need to be drafted saying adopt or not a resolution with the Gas Transfer. It will also say allowing repeal of tonight's resolution and adopt an alternate resolution. If there is good work done tomorrow morning, we might have documents to provide at that time. There may not be a full Staff Report, and it may be seen at some point Wednesday. That leaves Council's options open and does not predict those things will occur.

Council Member Filseth asked if Wednesday is the City Manager's review.

City Attorney Stump stated it is the clerk and attorney's review.

Council Member Filseth stated that is a closed session and asked if we may still do an open session.

City Attorney Stump stated that is correct and assumed the open session would be first.

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Council Member Filseth asked if any decision made tonight we can make the same decision on Wednesday.

City Attorney Stump stated if there is no development on an alternative business tax procedure, action will have already been taken tonight and there will still be opportunity to reconsider the Gas Transfer.

Vice Mayor Kou asked if repeal resolution refers to Resolution B.

City Attorney Stump stated yes, that it will be on the agenda to allow it to be done if there is an agreement.

Vice Mayor Kou asked if there is a new proposal.

City Attorney Stump stated that is correct.

Vice Mayor Kou asked if otherwise Resolution B as written tonight as 11 cents moves forward.

City Attorney Stump stated that is correct. It will be sent to the Registrar on Thursday and placed on the ballot this fall.

Council Member Dubois stated climate action is critical. Polling has shown the two measures is a stretch and doing one is the best chance of success. If we delay the Gas Transfer, we are going to need to come back in two years with a climate funding plan, and it may look a lot different than the transfer today. If we have a business tax in place, the uses could be very different as well. There are options, and we could have a very attractive measure in two years if we end up there.

Council Member Stone asked if we are able to separate Motions A and B in case some want to support the Utility Transfer but not the Ad Hoc.

Mayor Burt stated to separate those.

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

2. Continue this discussion to August 10 with the following direction:
  - A. Bring final documents for the measure to affirm the Natural Gas Utility transfer.

**MOTION PASSED:** 6-1, Dubois no

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

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2. Continue this discussion to August 10 with the following direction:
- B. Authorize the Ad Hoc to continue discussions with the business coalition to reach agreement on alternative tax structure.

**MOTION** Passes: 4-3, Stone, Vice Mayor Kou, Dubois no

AA3. PUBLIC HEARING / QUASI-JUDICIAL. 1033 Amarillo Ave [22PLN-00016]: Request for a Preliminary Parcel Map With Exceptions to Subdivide a 20,787 Square Foot R-1 Property Into Two (2) Lots, Where Lot 1 Will be 10,668.50 Square Feet and Lot 2 Will be 10,118.77 Square Feet. Exception is for Minimum lot Width and Maximum lot Size. Zoning District R-1 Single Family Residential.

Mayor Burt stated this is a continuation of last week's meeting but because of additional information, comments will be reopened to the public.

Planning and Transportation Director Jon Lait stated he has no presentation but there is an At-Places Memo.

Mayor Burt asked Planning and Transportation Director Lait to recap the substantive elements.

Planning and Transportation Director Lait stated that during deliberation there were some questions staff was not able to answer, so after the meeting they researched the comprehensive plan further and reported on some of the policies of housing affordability, not affordable housing from a regulatory standpoint but housing that is affordable by age or size and the unique housing typology of cottage housing. They identified in the At-Places Memo some additional policies. They found the project remains in conformance from a staff perspective. He recommended support of the subdivision map with exceptions.

Consultant Project Executive Ted O'Hanlin stated he is representing the property owners who requested the preliminary parcel map with exceptions. They are in agreement with the Planning staff's updated Supplemental Review of the application. The project remains in compliance with the Comp Plan. It is not uncommon for a project to comply with some policies and not others in a Comp Plan. He explained the Memo recognizes L2.7, which is focused on retention and discouraged housing losses. There is a housing opportunity. The State will not allow a net loss of housing. They are proposing the addition of two housing units on the property. He discussed what is contained in L2.3 of the Supplemental Review and Housing Element H3. In the last session, it was discussed the cottages are rented at approximately \$4,000 a month, which categorizes them as above moderate

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income. Considering H3, this is not a low or moderate income housing type. He asked for consideration of the draft housing element. In the next cycle, the City is considering 512 ADUs making up the over 6,000 housing units. The 512 units are classified as above moderate income. That 8 percent of the RHNA Allocation is assumed to be rented. A unit is a unit in the RHNA Allocation whether the owner chooses to rent it or otherwise. The project as proposed would replace the above moderate income housing units that exist on the property with two ADUs and two JADUs. The Supplemental Report states there are no zoning regulations or incentives implemented for this type of property. Last October they suggested subdividing the property into a more modernized cottage cluster and found lack of support from the City Council and lack of tools in the municipal code allowing it. They pursued the subdivision in an attempt to redevelop the property. Similar properties were recently granted approval of a preliminary parcel map because they would allow for future development of additional units. They are proposing to defer future development of additional units. What the Council, etc., have been considering in this most recent cycle with new housing laws is the objective versus subjective interpretation and how decisions are made. He focuses on the objectivity they are presenting, a housing opportunity to create a marginal amount of more housing units but two more housing units that would count for the City of Palo Alto.

Council Member Filseth asked if when they saw the project before it was going to be split using SB9.

Planning and Transportation Director Lait stated when the prescreening came forward one of the concepts was to divide the lot into four, and SB9 was a conversation but not reported as the applicant's interest but does not mean it could not happen.

Council Member Dubois stated this is a flood zone. Ideally we would wait for the application before doing the split, but it was previously stated the applicant did not want to incur those costs. He looked at the Planning and Transportation's (PTC) arguments and the subdivision section finding 2 and 4, and there is potential for displacement because the lot is occupied. He asked if they would accept conditioning the final map on approval of a replacement project that matches the description they have had. The Council would give preliminary approval with the final approval conditioned on presenting those plans.

Consultant Project Executive O'Hanlin stated he is authorized to accept that on behalf of the owners but was not expecting that dialogue. He stated they have been consistent with the preliminary application. They were clear the four unit subdivision would have been a single-family home and an ADU.

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Contemplated now is a two lot subdivision with a single-family home, an ADU, and a JADU on each to create housing. These additional housing units is the best outcome.

Council Member Dubois asked if he was able to reach the decisionmaker at this point.

Consultant Project Executive O'Hanlin stated he can do that.

Council Member Dubois stated he was considering denying the preliminary, but if it could be conditioned, he would consider approval.

Vice Mayor Kou stated she appreciated Council Member Stone's questions with regard to some of the Comp Plan programs and missing elements. In particular to Policy L2.7, we have our Council priorities of continuing with the housing for social and economic balance, including the State's 3 P's. It seems staff misses bringing these topics up when it comes to producing housing. PTC is correct in terms of not being able to find the findings to approve this. We have to follow municipal codes. We want to look at our Comp Plan not in the way it is on Page 239 as trying to comply with most policies but not others. We want to adhere to the priorities of the City. Cottage clusters is more than an historical factor. There is a value to the community in terms of it is pleasant and has character. In subdividing the lot, we do not know the impacts to the neighborhood, the type of housing, etc. In addition to not being able to make the findings, the absence of a development application, and not knowing what is going be on the parcels does not meet the goals, policies, or the law of the City.

Council Member Stone stated he cannot make the necessary findings, especially for the preliminary parcel map and the exception. He is compelled to Policy L2.7 and 2.3 component of a diverse and inclusive community regarding house types, etc. Our Comp Plan is critical. Denying this project is more consistent with the Comp Plan and our policies and priorities than staff's interpretation. The PTC made strong arguments for denying this and is consistent with our own land use planning. The original Staff Report stated it will facilitate rebuilding of existing units, and the applicant stated last week the new project will not have another cottage cluster and will be two single-family homes with the potential for rentals. There are many unknowns. We know the existing cottage cluster will be no more, and older, smaller housing units tend to be cheaper than newer homes. He will not support this. He agrees with the PTC's finding Number 2.

Consultant Project Executive O'Hanlin stated they would support the Council's efforts to write a motion that might condition an ADU and a JADU

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on each of the two lots. It depends ultimately how the motion looks, but he has indication from the owners they would accept.

**MOTION:** Council Member Dubois moved, seconded by Mayor Burt to approve the Record of Land Use Action based on findings and subject to conditions of approval. Prior to approval of a parcel map, the applicant shall receive approval for any planning entitlement as required by the municipal code that includes a new single-family home, ADU and JADU on each subdivided lot.

City Attorney Molly Stump stated if the property changes hands and a future owner wants to exercise other rights under State law, we will likely not be able to enforce this condition.

Council Member Dubois stated that is understood. The intent is to establish a relationship of trust and that Consultant Project Executive O'Hanlin proceed under these conditions. He asked if under the law that is the most we could expect.

City Attorney Stump stated that is correct. The property owner has the ability to exercise various rights State law provides, and approval of the final map is ministerial. It is possible Council say a project has gone through the approval process, but if the project exercises other rights under State law, it is not a basis to not approve the final map.

Planning and Transportation Director Lait agreed.

Council Member Dubois stated he understands the concern in the community and is supportive of the PTC. This is a good compromise to move the project forward. Hopefully the intentions stated will happen.

Mayor Burt stated this is a reasonable compromise. He would like to see all our quadplexes remain but there are limits to what we can do unless we come up with an incentive program, whether a future TDR, etc. With this motion, we would have six units where four are today, yet retain character of a single-family neighborhood. He hopes we can come up with clearer policies in the future that reflect the aspiration of the Comp Plan to protect quadplexes more.

[The Council took a 15-minute break]

Vice Mayor Kou asked at what point will the public get to comment or have a public meeting.

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Planning and Transportation Director Lait stated this meeting and the meeting that was Monday and with the Planning Commission. The public hearing is with the exception that is before the Council. The parcel map is an administrative process and making sure what is approved by the Council is prepared correctly and reviewed by civil engineers for conformity at the staff level. The project that ultimately comes forward will be an individual review application for a two-story home. If it is a one-story home, it is not subject to individual review and is processed administratively as a building permit.

Vice Mayor Kou stated she cannot make the findings for the lot split. She asked if it is the same PTC was deliberating or per the title here now.

Planning and Transportation Director Lait stated this motion is for project approval of the lot split, not the project. No project has been filed.

Vice Mayor Kou asked if there is a guarantee families are going to move into these units.

Planning and Transportation Director Lait stated the action before the Council is to subdivide the property. The forthcoming project is the intent of the applicant to build single single-family homes.

Mayor Burt stated there are no guarantees those will be rented.

Vice Mayor Kou stated there is no guarantee they are going to be as affordable as they are now.

Council Member Stone asked if we could add a condition requiring the ADU and JADU to actually be rented and that there be some level of affordability attached.

City Attorney Stone stated the At-Places Memo refers to the legal test, which is nexus and rough proportionality. To impose an affordability condition, the City needs to show through a study the development itself, not in general or an otherwise existing development, is a nexus to the need for affordability and that the City's regulatory requirement is roughly proportional to the need created. Our current study shows 15-20 percent, well below the proportion the Council is suggesting. She is not aware of any city that has done a study of this type that justifies affordability requirements on ADUs or JADUs for this reason.

Planning and Transportation Director Lait stated he is not aware of any municipal regulations in this city or other cities that have an inclusionary requirement for a single-family ADU or JADU composition.

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Council Member Dubois asked if there is an ability to condition these be rented.

Planning and Transportation Director Lait stated there is no ability to condition these be rented.

Council Member Dubois stated this motion is better than the preliminary ask, but we are not meeting our Comp Plan and some of our own policies and priorities on affordable housing. There is no guarantee the ADU or JADU be used for housing and could be used for another purpose. It seems different than what the PTC discussed and vetted. He is still not able to define the requisite findings.

Council Member Filseth stated he supports this because it is consistent with the direction Council gave the applicant when they were here previously. If we turn it back on some of these issues, then was the time to do it, not now. The issue of destruction of cottage clusters and the replacement of more affordable or older units with more expensive ones is likely to happen, but there is no ordinance regulating the destruction of cottage clusters. Maybe we need one, but we would need to consider there are dynamics involved with maintenance, etc. It is counterintuitive to reverse the guidance we gave last time and simultaneously try to create cottage cluster policy on this project at this time. He is probably in support of this.

**MOTION PASSED:** 5-2, Kou, Stone no

7. Discuss and Provide Comments on the City's Draft Comment letter to the California High Speed Rail Authority (CHSRA) and Authorize the Mayor to Send a Comment Letter to the CHSRA on the Final Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the California High Speed Rail segment between San Francisco and San Jose, Which Traverses Palo Alto.

Town Manager Ed Shikada stated there was no Staff Report.

Office of Transportation Manager Ripon Batia gave a brief introduction of the Staff Report. The item brought forward is to provide review and comment on the City's Draft letter prepared for CHSRA on the final EIR for the segment between San Jose and San Francisco. On June 10, CHSRA released the final EIR in compliance with the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA). PTC staff prepared the Draft Comment letter and major concerns EIR lacks analyzing, such as commuter traffic impacts, etc. EIR safety improvements, such as quad gates, etc. The CHSRA is considering the adoption and certifying the final EIR at their August 17 and 18 Board meeting and will consider only in-person comments

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on August 17. Any revisions recommended by the Council tonight will be incorporated in the letter before sending it. The recommendations also state we seek authorization from the Council for Office of Transportation Manager Batia himself to sign the letter and the consideration to designate a representative if needed to advocate support and City's position.

Council Member Dubois stated Page 101, Item 2 addresses safety at the grade crossings. He asked if it would help or hurt us to expand how dangerous these rail crossings are.

Mayor Burt stated he did not see it hurting.

Office of Transportation Manager Batia stated they could add the comment on the ranking.

Council Member Dubois asked if on the impact to Palo Alto the only request is we have somebody monitor the tree trimming and if there are other concerns of impacts to the tree if there is construction equipment, etc.

Office of Transportation Manager Batia stated it is duly noted.

Mayor Burt stated regarding the risk level of the grade crossings we have data on the number of fatalities in the last 12 years. Fatalities resulting from accident or lack of security are addressed by grade separations that allow that security. That gives additional substance and credibility to our concerns.

Council Member Stone referenced a statement on Page 97 regarding if the evaluation shows an alternative would reduce impacts to less than significant level for grade separation would need to be constructed and funded as part of the HSR project. He asked if the Authority found that grade separations would reduce impacts if the Authority would be required to construct and pay for the separations first without financial support from the City.

Office of Transportation Manager Batia stated yes and it would be at the highest level of the mitigation impact if the whole mitigation is triggered by this event.

Council Member Stone asked if there is a legal remedy we can pursue if the Authority does not find our argument persuasive and continues to approve the project.

City Attorney Stump stated this is a comment letter on a final EIR. She asked Office of Transportation Manager Batia if they are obligated to respond to significant comments.

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Office of Transportation Manager Batia stated he is not sure they are obligated to respond, but they may consider in the public hearing.

Mayor Burt ask if by virtue of these comments we have a basis in the future to legally challenge the EIR.

City Attorney Stone stated that is correct.

Mayor Burt stated you have to comment to have legal standing.

Vice Mayor Kou stated it needs to be emphasized there is no station in Palo Alto, so trains are increasing speed through the City. The four-quadrant gates are insufficient. There needs to be more funding toward ensuring we do not have any more fatalities. She wants to make sure we document as much comment as possible in the letter so we have backup. The tree was referenced, but lessening the divide of this community east and west is important.

Council Member Cormack stated she is surprised fencing or soundwalls will be required along the entire corridor within the City. She does not know if we should address aesthetics in this letter, but the community would have a lot to say about what the fencing and sound walls look like. With respect to Item 2 and the fatalities, the best way to approach that is any increase in trains and higher speeds would exacerbate the situation. With respect to Item 5, it is important the times assumed in the analysis are not indicative of actual field conditions. She asked if we need more detail. If the data is not right, we should make a bigger deal.

Office of Transportation Manager Batia stated they modeled it as they have done some fieldwork but it may not have been to the satisfaction to the detail level, so there could be additional work done calculating the delays and emergency response impacts.

Council Member Cormack asked if we could provide data of the work we have done.

Office of Transportation Manager Batia stated they have the ability to get all recently available data from the VTA but other than that, the project has collected the data.

Council Member Cormack stated that should be emphasized more.

**MOTION:** Council Member Cormack moved, seconded by Council Member Dubois to:

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1. Authorize the Mayor to sign the City's comment letter, incorporating Council's requested revisions (if any), and to submit the letter to the CHSRA prior to its consideration for approval of the proposed project and certification of the Final EIR/EIS.

**MOTION PASSED:** 7-0

8. ~~Designation of Voting Delegate and Alternate for the League of California Cities Annual 2022 Conference, to be held September 7-9 in Long Beach, CA~~

**ACTION: Continued to August 15, 2022**

Council Member Questions, Comments and Announcements

Mayor Burt stated we do not use the lightboard and it may be more expeditious. It would allow council members to vote simultaneously, which is a fairer voting process.

City Clerk Lesley Milton stated in the hybrid meeting a verbal announcement needs to be made. In the September 12 meeting, we are going to introduce a new option of digital voting, so it can be shown to the public in the virtual room and the Council chamber simultaneously.

Vice Mayor Kou stated she forgot to thank the Ad Hoc Committed for the business tax.

Adjournment: The meeting was adjourned at 10:32 P.M.