



Policy and Services Committee Transcript

Special Meeting
Tuesday, May 12, 2015

Chairperson Burt called the meeting to order at 7:02 P.M. in the Community Meeting Room at 250 Hamilton Avenue, Palo Alto, California.

Present: Berman, Burt (Chair) DuBois, Wolbach

Absent:

Oral Communications

None.

Agenda Items

1. Legislative Update and Review and Approval of the Draft Fall 2015 Semi-Annual Legislative Strategic Initiatives.

Chair Burt: Richard Hackmann will be joining us to lead that.

Richard Hackmann, Management Analyst: Thank you, Chair Burt and Council Members. I'm Richard Hackmann, Management Analyst with the City of Palo Alto. Before you tonight we have a draft edition of the Fall Semi-Annual Legislative Strategic Initiatives. Just to do a quick refresher since this process is now entering its second year. Council, back in February, approved the Legislative Guiding Principles document. That document is intended to serve as an ongoing, more static document that generally guides our Legislative Program. Our Legislative Program is encompassed by the policy that Council makes with the direction and input of the Policy and Services Committee. It is carried out by Staff and our State and Federal legislative advocates, who you will hear from shortly. The concept behind doing the Semi-Annual Legislative Strategic Initiatives is this. Every spring we will be looking forward to the fall. Right now we're in May, and that's why we're working on the fall initiatives. The hope is that following this Committee's review, Council can adopt a final version of the Fall 2015 Legislative Strategic Initiatives, which will allow our legislative advocates to then begin working on the conversations they need to have with policymakers ahead of the upcoming legislative year. We're trying to make that more of a proactive document. Right now as we move into fall, the thought should be what do we want Legislators to carry for us and how can we be proactive in legislation. That should be reflected in the document

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that is recommended tonight. After that, we'll come back around, as you did in February, and approve the spring document. That document is intended to be more reactive and is intended to anticipate what's upcoming in that legislative year based on the information we've received from our legislative advocates so we can respond to it. Right now, they're operating under the Spring 2015 Legislative Strategic Initiatives. There's a lot of different things going which we'll update you about. We'll make recommendations for what we'd like to see happen next year. That's why they'll start working on it in the fall. To get these things done in a proactive manner, we need a couple months of lead time. Then the cycle will continue. If that's clear, what I would like to do, with the Chair's permission, is first hand it over to our Federal legislative advocates, Van Scoyoc Associates, for their update; and then we'll have our State legislative advocate give his update. After that, we can take input from you on what direction you'd like to see this document go.

Chair Burt: That sounds good. Welcome.

Steve Palmer, Van Scoyoc: Thank you. Chair and Council Members, thank you very much. My name is Steve Palmer. Thane Young and I are with the firm of Van Scoyoc Associates. We're very pleased to be able to be here tonight. As Richard said, what I'd like to do is give you a quick overview of what's happening in Washington, and then move into the particulars of the Federal priorities that we advocate for on behalf of the City. I'll do a very quick overview. I won't get into a lot of detail, but please ask questions. Essentially, 2015 was a new Congress. The Republicans took control of the Senate. The way I would describe the Congress so far after four-plus months is it's functional but not exceptional. They are passing legislation that they've been trying to deal with for years. They fixed what has been called the doc fix, the Medicare reimbursement rate for doctors. That had been a 15-year battle, where they've been trying to fix that on an annual basis. They confirmed an Attorney General. They had the first budget since 2009. When I say budget, it's a budget framework. I'll come back to that, because I want to make it clear. That just sets the targets for revenue and spending for the coming year and ten years. The reason I say it's not exceptional is there are still 30 or 40 "no" votes. I typically will say there are 30 or 40 "no" votes in the House. If you said the sun's going to rise in the east and set in the west, those 30 still vote against that, saying it's not really going to happen that way. That's pretty much the way things have been working in Washington. Extensions have been the by-word, essentially the way everything's been functioning. If you can get a big bill of any sort passed in this environment, it seems to be a very large accomplishment. Going back to the budget. The battles this year are going to be over funding levels, because sequestration returns again this year, where there are

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across-the-board cuts. There are policy riders that are going to be attached to every bill, which means that now the Senate is Republican, they'll pass the Congress, but President Obama will likely veto these bills. These policy riders range from trying to block the President's EPA rulemaking on carbon emissions to Waters of the US to banning flights to Cuba. They range all over the map, because it's the one place where many in Congress feel they can actually legislate on policy issues. The Congress has taken care of defense spending; they've added enough money back so they can avoid sequestration there. The fight's going to be now trying to add money back for domestic spending. That will probably happen this fall, even though they're going to go through this process of trying to approve individual bills. There are 12 different appropriations bills, not each affect the City. They're going to move through that process and have to deal with it in the fall when they face another debt limit extension. Thane will talk to you about some of the projects he's been working on. The way we divide things up is I tend to handle a number of the transportation and housing issues. Just on those in particular and some of the priorities of the City, we can answer questions. The Transportation Bill has to be extended. The current program ends on May 31st. We've been advocating for increased spending for non-motorized transportation projects and programs. In years past, the pedestrian bridge over the 101 has been a priority. Because the Highway Trust Fund is short on cash, they need to put an infusion of money in. There's a real push by many in the majority in the Republican Party to be able to say, "Let's cut out all funding for anything other than highway spending." We'll be playing a defensive battle. We're trying to make sure that at least the 3 percent of all funding now that goes for transportation alternatives is kept in the bill going forward. There's a real desire to knock that out and put that money, as I said, all into highway spending. On housing programs, we've been working hard to try to preserve funding for the Community Development Block Grant Program, which is another priority for the City as well as the Home Partnership Program. Both of those, I'm happy to say, in the House Appropriations Bill that will be in front of the full committee tomorrow. The existing funding levels of \$3 billion for the CDBG and \$900 million for the Home Partnership Program are preserved into the coming year. Now this is the House Republicans, so we feel that's a pretty good start for the appropriations process this year. We're hopeful that will continue on, but those are two of the priorities that we've been working on. With that, I'll let Thane talk about some of the other issues.

Thane Young, Van Scoyoc: Thank you very much for letting us be here this evening. I want to talk about one project in particular we've been working on with the City, and then also talk about two regulatory initiatives that have been important to the City and that we've been engaged on. The San Francisquito Creek Project has finally, over the course of the last 18-24

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months, really seen some progress with the advancement of the feasibility study. After languishing for a number of years, with the appropriation that will be provided this year of \$331,000, the Corps has deemed it funded to completion for the feasibility study. That's important. I met earlier today with Len Materman at the Joint Powers Administration (JPA). We want to try and accelerate as much as we can to be able to take advantage of the next Water Resources Development Act, which we anticipate could come up in 2016. You have to have a completed Chief's Report in order to be authorized in that bill. Those bills come up supposedly every two years, but we've been getting them in about seven-year cycles. We certainly don't want our project to be delayed again, because we missed the authorization window. We're working diligently to try and make as much progress as we can with the project. Len was telling me earlier today that things are looking pretty good, as good as things can look when dealing with the Corps of Engineers. Two regulatory initiatives that I wanted to talk about that have been important to the City. The City wrote a very strong letter last November, a comment letter to EPA and the Corps of Engineers on some proposed rules defining Waters of the US. I can get into more detail if you have questions about it. Our concern with that rule is it could significantly increase the regulatory burden cost and the exposure to litigation for the City on things like your storm water discharges. On a larger scale, things like water delivery systems throughout all of California could face some additional regulatory challenges as well. The other initiative is a relatively recent one. Comments were due by May 6th. The City submitted comments on a new Executive Order and a new floodplain definition that empowers each Federal agency to determine where a floodplain is, rather than relying on the floodplain that FEMA defines. The concern with that is not so much with the flood control project itself; although, we did ask that they put a provision in making it clear that existing studies would be grandfathered. We certainly don't want to have to start over again, having to take this new initiative into consideration with that study, since we're so close to the completion on that. Where the concern comes in is how other Federal agencies, any Federally approved grant, loan, loan guaranty, permit, license, any Federal action in a floodplain could be conditioned or possibly prohibited. Each agency would be able to determine on its own, using certain methodologies, where the floodplain is. What we now understand is the floodplain could be significantly greater and impact some City programs and services.

Mr. Palmer: We're happy to answer any questions. We can talk about any other priorities that we've been working on. Just want to let you ask questions so we can better address those.

Chair Burt: Colleagues, anybody have questions? Tom.

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Council Member DuBois: Is there anything at the Federal level about sea level rise? Does that tie into the flood waters or is that considered separate?

Mr. Young: It does. In fact, with this initiative, the last one I mentioned dealing with identifying the floodplain, the intention is to make sure that climate change and sea level rise is taken into consideration. We certainly feel that it has been using the best available technology with the existing San Francisquito Creek study. There is pretty good data available for coastal areas. For some of the inland river basin areas, that data is not as readily available. There are other methodologies that can be used. That is the intention, to make sure that gets factored in.

Council Member DuBois: They're not talking about Federal grants for planning to address sea level rise or anything like that?

Mr. Young: No.

Mr. Palmer: If I can just add. Part of the reason is we still have a lot of naysayers in the Congress. The Chairman of the Senate Environment and Public Works Committee, Jim Inhofe from Oklahoma, has unabashedly said climate change doesn't exist.

Council Member DuBois: A question about municipal-owned fiber and the Telecommunications Act, are you guys monitoring that? Do you see anything coming down the pike that would adversely affect the City trying to build out a fiber service?

Mr. Palmer: We have been monitoring it. On previous Federal advocacy trips, the Mayor and the Council Members have come back. We've taken them into the Department of Commerce, to the National Telegraphic and Information Agency as well as the Federal Communications Commission to talk specifically about grants. It's been more technical assistance and trying to highlight the fact that some of the cities are trying to do this, but they really haven't gotten to the point of actual making grant money. They've just talked about trying to be there as a resource.

Council Member DuBois: You don't see legislation that would make it hard?

Mr. Palmer: No, I don't. I'm sorry I didn't answer your question. You're right. I have not seen anything of late. The whole issue of net neutrality and the Congressional opposition to what the FCC has done could spark a push for a telecommunications reform act as there was in 1996. That typically takes several years though for those ideas to germinate. I don't think it's going to happen in the near term. That would probably be the

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legislatively vehicle or something like that would happen. We'll be happy to continue to monitor and keep you apprised.

Council Member DuBois: Thanks.

Chair Burt: Others? I can wade in on a couple. First on this issue of the floodplain management Executive Order, maybe you spoke with Len Materman about this question of mine. One of the anticipated directions that we have as the Flood Control District is once we have achieved 100-year protection with sea level rise for properties in those floodplains, we would hope that those property owners would be able to apply for exemption from the Federal flood insurance requirements. My understanding from brief readings is that we now have a more incremental approach to increasing those premiums, but it's back going forward. I think it's an annual or so determination?

Mr. Young: Right.

Chair Burt: They're piecemealing it basically, right?

Mr. Young: Correct. When the National Flood Insurance Program was reauthorized in 2012, there were quite dramatic jumps in the rates. Congress has since repealed some of those. It's now much more incremental. You are correct about that.

Chair Burt: Would this change allowing different agencies to determine floodplains affect the flood insurance issue?

Mr. Young: The way the Executive Order is written, and there's a new document called the Federal Flood Risk Management Standard, it's not intended to affect it; although, it's not real explicit about that. That's one of the things we asked for greater clarification on as they revised the implementing guidelines for the FFR, the Federal Flood Risk Management Standard. It's not their intention to have it affect the National Flood Insurance Program.

Chair Burt: Do you see any indication that there may be an unintended consequence?

Mr. Young: I think that there are unfortunately a number of unintended consequences that could arise, which is why the City wanted to submit a letter on this issue. I think, though, as far as the flood insurance rates themselves are concerned, I don't see that as a near-term concern.

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Chair Burt: Thanks. Next under transportation, I am aware that we continue to have the State dispute with the FTA, I think it is, on whether our pension reform caused a violation of labor practices. We had a court ruling that overturned the Federal executive position. My latest reading on this is that it has resulted in those funds being released by the Administration, that the court ruling has not. Are you involved in that?

Mr. Palmer: We are. You're absolutely right. The Department of Labor has indicated that it plans to appeal. They haven't actually appealed yet. The concern is that since they filed the intent to appeal, they are now starting to withhold funds. The Monterey-Salinas Transit District is the first one that's going to be the test case. They're going to start to run into some of these issues. As you know from having dealt with this issue in the past, before the State passed its legislation which everyone thought and hoped would solve the problem, what the withholding of these transit funds ultimately means is that transit agencies will either have to reduce service or start to lay off employees. I don't think Santa Clara VTA has reached that point yet. They've indicated that they will have to do that. Their big issue is funding for the BART extension. That's going to be the big issue for them. Their formula funds, they seem to have enough of a cushion to be able to operate for several months. I think locally the hope is that some of these other agencies like Sacramento RTD and there's another one in San Diego are out in front that to deal with these issues before anyone else. Hopefully the State and the Department of Labor will be able to resolve this problem relatively quickly. To answer your question directly, yes, we've been very engaged.

Chair Burt: Do you have any update on the Federal Solar Investment Tax Credit? It's an ITC that's being reduced significantly in 2017, I think. Is that right?

Mr. Young: I think that's right; although, I'm not as familiar with that.

Mr. Palmer: I'm not either. That's something we can go back and ...

Chair Burt: That'd be great. That is of significant interest, certainly in California, where we're having strong solar adoption. It affects the economics for projects even within Palo Alto. In fact, Palo Alto in some ways is more dependent on that than others, because we have such low electric rates, more than 20 percent below PG&E, the return on investment for solar is lower than adjacent cities ironically. We're even more sensitive to that capital cost than elsewhere. I saw your list of grant areas that you're pursuing. One of the things that we may not have added to that list is wanting to begin to pursue opportunities for any funding. I'd qualify this because I appreciate it may not be able to be attained. We're looking more

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seriously at grade separations for our rail system. Whether it's this year or in the future, we want to make sure that we're really pursuing any opportunities we can for that. The final thing was that your comment on Senator Inhofe and climate change is spot on. I'm even more pessimistic because I know from reading that he derives his determination of climate change from a Biblical interpretation, and we're not likely to be changing that any time soon. We're stuck with his interpretation as long as he's in that position, barring some other significant climactic event.

Mr. Palmer: If I may, Council Member. The good news for all of us who disagree with his opinion is that he's only chairman until the end of next year. He terms out as the chairman of that committee, so there'll be another member.

Chair Burt: Thank you.

Mr. Palmer: May I also respond to a couple of other things real quick?

Chair Burt: Sure.

Mr. Palmer: We will get you information on the Solar Investment Tax Credit. That's something unfortunately neither of us is prepared to talk about today. To put it in context of tax reform, we all hear about tax reform. It's probably not going to happen this year. It may happen in 2017. Investment Tax Credits are exactly the kind of thing that would probably be done away, if there is corporate tax reform or personal tax reform. To get the revenue to be able to lower the overall rates, they have to eliminate a lot of those tax credits. Just so you're aware of that.

Chair Burt: I know that there are a number of trade groups and entities and government advocacy groups that are very involved with this. The hope is that it would be a graduated reduction, rather than a cliff. The cost of solar has been going down so much that the need for the full tax credit has really been diminished. A lot of the industry is receptive to something graduated. Frankly if I was arguing this, I'd be arguing that this is a real success story, and we just need to wean the solar industry away. This is a great success. The investments that were made through tax credits and otherwise have helped drive down the cost of the solar. What we need to do is have that more of a stepped-transition, rather than just eliminating it. What happens in 2017 is a fragment of it would remain, but a minority.

Council Member DuBois: I have one other quick one. We had a bunch of concerned citizens come speak to us about the FAA's next gen system. The City's looking at doing a data analysis on like ten years of history, because it appears that they're actually concentrating flights over Palo Alto and then

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turning on their entry paths. Even though we're fairly far from the airport, people have noticed a big change in the noise level. I didn't know if you guys were aware of that.

Mr. Palmer: We are very aware of it. The City Manager and Staff, Richard, made sure we were engaged on that quite a while ago. When the Mayor and Council Members came to Washington in March, Mayor Holman met with the FAA about that. You probably got the report from her on that. Unfortunately, my read of that is that the FAA is near the end of their process of what they call the optimization flight plan. It's very difficult to find anything other than probably a legal challenge that could change the way they are approaching this. I did just see on Thursday of last week the FAA release a statement not directly going to affect Palo Alto in the near term, but they are looking at surveying individuals in communities to make sure that they have acceptable noise levels at airports. It's 65 decibels right now. They are trying to determine if that is the right amount and should they try to lower that even more. That's a long-term approach for Palo Alto, but we are ...

Council Member DuBois: A few cities, like Phoenix ...

Mr. Palmer: Yeah, Phoenix is going through it right now. They're a little bit further behind. Editorial comment on my part: the FAA has not done a very good job at all of doing outreach. That's the one thing that we're trying to see if there's some possibility legislatively or guidance to Congress that would direct the FAA to reopen that and talk to people and engage stakeholders a little bit more.

Chair Burt: Thanks, Tom. That was important to bring up. It triggers a recollection that I thought in the Mayor's report she had said the FAA disputed that we had had these changes in flight patterns resulting in this increase in noise and overflies. First, is that your recollection as well? If it is, are we doing anything to go back with the data that we think we have available that could refute their claim?

Mr. Palmer: On the first part of your question, I do not recall that being explicitly stated. I'm not saying the Mayor was wrong.

Chair Burt: My recollection may be wrong.

Mr. Palmer: I don't have a recollection of exactly how that was phrased. I do know that in terms of their outreach, they did say they probably did not get into Santa Clara County. They probably stopped at San Mateo County. That's as far as their outreach or involvement of some of the stakeholders had gotten. In terms of trying to move forward, if there's anything on the

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data, I believe that the data was sent directly to the FAA. We haven't been engaged on that as a follow-on, but we're happy to help in any way that we can.

Chair Burt: You may have heard this. When you look at the data and the flight patterns, what appears to have shifted is that historically it was San Mateo County that was a concentration of the focus. We now have the greatest concentration of overflies of anywhere. It is like three different flight patterns intersecting above our City.

Mr. Palmer: One of the things I do recall is they were not—we were talking to the right people—entirely clear that that was traffic into San Francisco or San Jose or any of the other airports. We didn't get a lot of clear direction about it.

Council Member DuBois: It might be a combination of Oakland and SFO.

Mr. Palmer: Yeah, it could be.

Chair Burt: If I recall correctly, the flights are predominantly SFO, but that flight pattern change has also caused the San Jose flights to fly lower over Palo Alto. The change was not principally in number of flights from San Jose, but the noise impact was differentially from San Jose being driven by the flight numbers from San Francisco. It was very complicated, but we have some very engaged residents who have done great data mining. In our hearing that we had on it, one of the local residents who testified is actually a consultant to the FAA, a Stanford avionics professor. We do have some good citizen resources that are very much providing the foundation for our understanding of this. Cory.

Council Member Wolbach: Just a quick follow-up. Chair Burt mentioned the question of looking for grants for potentially grade separating individual crossings or the length of the Caltrain tracks in Palo Alto. This is obviously an ongoing discussion we're having in the City. Is that something that we might look at the Department of Transportation's TIGER Grants for?

Mr. Palmer: You could, certainly. For the TIGER Grant program, there are many criteria that they are looking at in terms of investment of regional and national significance. Obviously those kinds of projects are very regionally significant. There are some other criteria that are imposed in terms of the kinds of grants. If I can step away from the TIGER Grant Program for a second. I was going to volunteer this, but we moved on. There is a Federal Highway Administration program for grade separations. It's not a lot of money; nationally it's like \$150 million or something like that. That money is given to the State. It's not done on a project-by-project basis. There is

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Federal funding that comes for grade separation, but the TIGER Grant program could be an ideal program for something like this.

Council Member Wolbach: Also Innovative Public Transportation Workforce Development Grants, I haven't looked into that a lot. We're just starting to get rolling in an exploration of doing different things with transportation in Palo Alto. We've provided some seed funding for a Transportation Management Agency that brings together local businesses, school district, Stanford, etc. I'm wondering if there might be an intersection with this one.

Mr. Palmer: There could be. This is a very small grant program. I believe nationally it was like \$20 million. I don't have the exact amount, but it was a relatively small range of money. This Administration has been trying to be very creative with the Federal funds that they get, that are not formula funds. They have a very limited discretionary pot of money right now. They're trying to target in ways that can be constructive to urban areas. This is one of the ways they were channeling the funds, trying to issue grants this way. If I could, Council Member, can I get some additional information? We'll provide it to Staff for you on that.

Council Member Wolbach: Sure. I just wanted to throw it out there, so you'll keep your ears and eyes open for the future.

Mr. Palmer: Absolutely, we'll be happy to. For myself if nothing else and I'm happy to share it with you, I'd like to make sure we've got the right bead on that program for you.

Council Member Wolbach: That'd be wonderful.

Chair Burt: Thank you. Anything, Marc?

Council Member Berman: No.

Chair Burt: Thank you very much for the update, and thank you in particular for the ongoing work you've been doing on the creek flood control. That's been really appreciated.

Mr. Young: Len wanted me to also pass along that he said he was speaking with the Corps of Engineers today and the regulatory folks. They said that they intend to put out by Friday the public notice on the 404 permit for the golf course. That would be a significant step forward. I know that's been the source of some frustration.

Chair Burt: Great, thanks.

Mr. Palmer: Thank you very much.

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Mr. Young: Thank you.

Chair Burt: Hi.

Niccolo De Luca, Townsend Public Affairs: Hello, Chairperson and Members of the Committee. My name is Niccolo De Luca. I'm a Senior Director at Townsend Public Affairs. We've been doing the State advocacy work for Palo Alto for almost two years now. What I was going to do is something similar, an overview on where things stand in the State. I want to first thank City Administration Staff for working closely. I feel we've got a great flow of communication. We do weekly check-in calls to discuss issues that are on the City's radar. We do weekly updates to the City on bills and things that we're tracking. It's been a great flow of communication with the City. It's been very enjoyable representing Palo Alto in Sacramento. I will first start with the budget, and then I was going to talk about legislation, and then I was going to talk about probably the biggest issue facing the State right now which is the drought. With regards to the budget, we're in a good spot compared to the past few years. Revenues are up. On Thursday, Governor Brown will release what's called the May revise. As you know, he submits his budget in January. The Assembly and the Senate do subcommittee hearings on many of the different topics. They make suggestions to the Governor. He does his May revise which will come out on Thursday. That's when the budget negotiations really kick off. One thing that we've heard clearly is since revenues are up, there's a lot of entities that have been cut in years past, so lay off them. First and foremost schools, public education, K-12, they've had a lot of cuts. In the past couple of years, the Governor has tried to increase their funding. There's been a dispute with the UC System/UC Regents over tuition. That was really heating up and then the drought came, so that's been put on the back burner. The Governor shows a lot of concern to the UC Regents on the salaries for some of the high-ranking folks there, how they propose to balance their budgets, and charging students more. Another issue that the Governor has quickly jumped on with regards to the budget and the drought is funds from the water bond. He was able to put that forward to do a drought relief package. Thursday the May revise comes out. Both the Senate and Assembly have made overtures on wanting to see more funding for transportation. Senator Bell has proposed an increase to the Gas Tax and an increase to a road user fee. The Speaker, Toni Atkins, has also mentioned a user fee primarily to get local roads and streets more funding. That's definitely going to be on the negotiation table. We'll see where that goes. Once the revise comes out on Thursday, we'll provide the City with an update in bullet-point format of some of the more important things to local government. Following up with regards to legislation, the hearings really start in February. Some of the main topics this year that are being discussed are affordable housing, body

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cameras for law enforcement—that's a really, really big issue—the dissolution of redevelopment agencies but that doesn't really impact Palo Alto too much, medicinal cannabis, and again the drought. On legislation, we're tracking a few main bills for the City as in we go to Committee and testify on the City's behalf. We provide ongoing updates for many, many bills. As I mentioned, Senator Bell's got his transportation bill, SB 16. We've been watching that closely. Assembly Bill 48 on the disposable cigarette butts, that's from Assemblymember Stone. That bill's in print, and it has not yet been scheduled for a hearing. I don't see it getting scheduled any time soon, so it's going to be what we call a two-year bill which means it needs more time to be addressed. Microbeads, that's another bill that's out, AB 888, on how do you address disposable microbeads and the recycling of that. Another bill that the City has taken a position on is Assembly Bill 708 with regards to consumer products and labeling. This is all in the report in a lot more detail. There's a big deadline in two weeks about bills that need to get out of their fiscal committee, and then we'll really see what's out there. Moving next to the drought. Last week the Water Board did their hearing. As you know, on April 1st the Governor issued an Executive Order. It's the first time in California history a Governor has signed an Executive Order. He said, "You've got to cut water 25 percent." Not that big of an issue for a lot of the cities in the Bay Area, due to water shortage providers and overall water recycling that's been done in cities such as Palo Alto. However, it is a really big issue in the Central Valley, a really big issue for a lot of our ag producers. At the hearing last week, the Water Board adopted a resolution saying 25 percent reduction. There was discussion of fines. There will be \$10,000 fines after you receive a cease and desist order and do not acknowledge that. The Water Board Chair was very clear. She said, "The press has gotten a hold of these fines, but that's not what we're about. We're in the fourth year of a drought; we need to focus on conservation up and down the state." There's many different climates, as you know, in the state, so the 25 percent standard is going to be treated a little bit differently in desert communities in Imperial County versus coastal communities. I felt bad for a presenter from the City of Lincoln; she was at the hearing last week. She said, "We want to do our part, but we really like watering our lawns three times a week." She politely was dressed down by the Board Chair, saying lawns are window dressing, they don't do anything for us. There's a lot of education that has to go on about you don't need to water your lawn, make sure you address leaks in your house, low-flow shower heads, low-flow toilets. What we expect to see in the budget is programs for local government, encouraging residents to take out lawns. There could be a 50 percent match for what they're calling turf reduction, to take out lawns and put in drought-tolerant landscaping. Something we're looking into is legislation for the PACE Program. You can put up solar panels on your house through your property tax. What about long-term water efficiency for

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landscaping? That's actually something as a friend we're looking into right now. We've been talking to Natural Resources about the probability of that. That's where things are overall, minus the drought. The State is in a lot better place financially. The Democrats control both the Senate and the Assembly, but there's a lot more cohesion between both parties, a lot more working together. For a lot of legislation, it could be a Democratic author but Republican coauthors. It's not the venomous feeling of years past, which we appreciate greatly because it makes working a lot more fun in the capital and getting things done a lot easier. With that, I will happily address all of your questions.

Chair Burt: Colleagues? Marc?

Council Member Berman: Thank you very much for the report. Just a quick question to Richard. Did we get these via email before? I might have overlooked them in my inbox.

Mr. Hackmann: You did.

Council Member Berman: Next time, is it possible for these to come with the packet?

Mr. Hackmann: Sure.

Council Member Berman: That'd be awesome. Thank you. Senator Bell's transportation bill was something I was interested in. This is helpful in providing some more data there. It seems like, if it's passed, the money is meant to go towards local transportation projects. It looks like the California League of Cities is supporting the bill. I haven't read it and done my own personal analysis. Is there any reason why we should be opposed to it or not?

Mr. De Luca: No, but I would strategically wait to weigh in on the bill. We feel it's going to be addressed in the budget. It would almost be more of addressing a budget proposal. On behalf of the City of Palo Alto, we support any funding for local streets and roads. The Senator is Chair of Transportation. He had this bill and another bill, SB 9. SB 9 said take some of the cap and trade funding and earmark 90 percent of it for major transit projects. He's made it clear that for, say, a BART extension or a freeway overpass or a muni getting new rail cars, you've got to be smart when it comes to transportation and fund the big stuff first. That strategy with SB 16 was keeping in mind locals exactly.

Council Member Berman: They deteriorate more and more.

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Mr. De Luca: With regards to discussions previously about the transit corridor and grade separation, there is a proposal that Assemblymember Alejo is considering a budget play to have some funding for train corridor improvement grade separation. We've heard of it from a couple of people, but we haven't seen anything in writing. That's something we'll mark for the City and flag once we see something that's cohesive and real.

Council Member Berman: Along those lines, I thought I saw something about a bill to lower—it might be ACA 4—to lower the voter threshold requirements for special taxes by local governments for the purpose of providing funding for transportation projects from two-thirds to 55 percent. I wonder if that might be something that a city like Palo Alto could use to try to get funding for grade separations.

Mr. De Luca: You definitely could. Two years ago, when there was a major Democratic takeover in both Houses, one of the first things they wanted to do was lower the voter threshold for ...

Council Member Berman: They got the supermajorities.

Mr. De Luca: Exactly. Then Senators Yee, Wright and Calderon ...

Council Member Berman: Had issues.

Mr. De Luca: Yeah. That got pulled. It makes a lot of sense, and the locals love it. It just sometimes comes down to a party-line vote. You've got to have the majorities in both Houses ...

Council Member Wolbach: It was like one vote short.

Mr. De Luca: Yeah, exactly. It wouldn't go to the Governor, because it would go straight to the voters. The Governor said, "I said I won't increase taxes." The debate is whether this is an increase in taxes by decreasing the threshold. I don't know. It would be something that would make sense to support in theory. I don't see the traction for it this year.

Council Member Berman: Unless there are majorities.

Mr. De Luca: Unless something happens. Yeah.

Council Member Berman: Thank you.

Mr. De Luca: One more thing interesting about voter threshold was some museums and others were against it, because they felt that cities might be able to lower what they would charge at the gate. When we first heard about supermajority, we figured a lot of cultural institutions would be

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excited, because they could do a bond or what have you. There's actually a good amount of resistance from organized cultural institutions.

Council Member Berman: I'm not sure if I see the connection.

Mr. De Luca: I didn't totally see it either when it was explained to me. I thought this would be a no brainer. My point is some groups don't want thresholds to be relaxed. It's not just your average taxpayer groups.

Council Member Berman: Those were the main questions I had for now.

Council Member Wolbach: If I could ask a quick follow-up just to make sure I'm clear. Your recommendation with SB 16, Bell's transportation bill, was support the idea because if it finds success in the budget, then he's got an open legislative vehicle he could use for something else. We're already on record liking it. If it turns into something quite different, then we're in a tricky spot. Right?

Mr. De Luca: Exactly. Spoken like a veteran. Absolutely, yes.

Council Member Wolbach: Yes, I definitely like the idea of emphasizing that we're supportive of that concept, that movement. I can't speak for the whole Committee or whole Council. We definitely want to be supportive of the concept wherever it comes from. That's just speaking as one Member.

Mr. De Luca: What we can do is, once the Governor releases his May revise, see what's there, and then do a letter on behalf of the City of Palo Alto indicating these are the policy topics we'd strongly encourage get passed in the budget and outline them, streets and roads, etc. And then obviously share it with our Senator and Assemblymember and leadership in both Houses.

Council Member Wolbach: Great. Then we've got a month?

Mr. De Luca: Yeah, just to find it out.

Chair Burt: I had a few follow-ups and some other fresh questions. Under the transportation funding bills, I wasn't sure if I followed which bill you were referring to as being under the premise that doing the big stuff first is smart.

Mr. De Luca: Senate Bill 9 from Senator Bell. Part of the cap and trade funding—I think there was \$200 million a year—was designated for a competitive process of transit inner-city rail. It's for your munis, your Caltrains, etc. That's an annual application process. Senator Bell has his bill to say, "Let's not make it a competitive program. Let's take 90 percent of

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that \$200 million and designate off the top to statewide large projects." The basis was these are so big, it's going to take forever to piecemeal them to get funding, so let's give them some big funding right now.

Chair Burt: The statement that jarred me was this premise that the big projects are necessarily the smart projects. I wouldn't abide by that. They could be or very often are the least smart. I don't know whether there's any opportunity for us to drive a cost-benefit approach to this decision making. Trip avoidance or vehicle miles traveled avoidance per dollar invested seems like a better metric than assuming that big projects are smart projects.

Mr. De Luca: Certainly. From speaking to Senate transportation staff, I feel that there's going to be a lot more to it. The bill is only a couple of pages for a vast policy topic. I know that a lot of the transit agencies have pushed back saying, "We still have needs." A lot of the cities have pushed back saying, "We still have needs." I feel that if it is to move forward successfully, the percentage drops. Also there needs to be more meat on the bone as to how you define an important project.

Chair Burt: On the voter threshold for local transportation initiatives, I appreciate the reality of the party line breakdown. I've always been a bit mystified on why there wasn't a stronger push by some of the local jurisdictions that may be Republican dominated for this being a local control issue and greater resonance there. Has that been just a futile, political argument?

Mr. De Luca: Local control stuck; it made sense. Local control was an argument. Getting people back to work was an argument. Taking advantage of better bond ratings was an argument. A lot of it came down to timing. An older political consultant said that getting the two-thirds in both Houses was like Hayley's Comet; no one really expected it. Once it happened, it was like, "Uh-oh, this happened. Now what are we going to do with it?" Leadership quickly got together and laid out what their top priorities were. Unfortunately, like Hayley's Comet, three Senators got in trouble out of the blue and derailed it.

Chair Burt: I hadn't known that there was State legislation prospectively in the works for turf reductions and maybe other drought initiatives. You may or may not know that the Santa Clara Valley Water District has an incentive for turf reduction. We as a City match that dollar-for-dollar. We already have strong ones. If there was an additional State one, this would be an extremely strong incentive. What do you know about the status of that?

Mr. De Luca: They want to include that in the budget. It's coming out of Natural Resources. The dollar amounts, they weren't comfortable talking

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about quite yet. Cities or counties that have a match would go to the front of the line. It would almost be whoever is ready would go after it right away.

Chair Burt: Those with a match would go to the front of the line. That's great. That incentivizes the local match and would put us in a good position. Good. Has there been any discussion about other credits for things like appliance replacement?

Mr. De Luca: Yes. There's actually a bill out right now. I think it's AB 88, Assemblymember Gomez. It's to waive sales tax to buy appliances that use less energy and conserve energy.

Chair Burt: What about water reduction?

Mr. De Luca: I need to check for water. With regards to the drought, the Governor was proposing some loan forgiveness on farm equipment. Let me check more specifically on water.

Chair Burt: We definitely have appliances today that use far less water. It's not just toilets.

Mr. De Luca: The Gomez bill was waiving the sales tax on all home appliances. Let me also look into that to see if there's more specifics on that.

Chair Burt: We had County Assessor Larry Stone approach us with concerns on SB 661, Senator Hill's legislation that would shift the property tax assessment from County Assessors to the State Board of Equalization on airplanes. Apparently the County Assessors are adamantly opposed. Their claim is that it is being driven by the airline industry and would reduce the assessment rates considerably. The State Board of Equalization has their own letter advocating for this change. I didn't know if you were ...

Mr. De Luca: I am not up to speed on that, but I happily will. We do a lot of work with the BOE. The concerns specifically were altering how the tax assessment is?

Chair Burt: The legislation would move it from being the jurisdiction of County Assessors to being the BOE. The concerns of the County Assessors were that this would reduce the tax revenue. I don't yet follow the specifics of this, but it would impact basic aid school districts even more so.

Mr. De Luca: I will definitely look into that and get more.

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Chair Burt: Richard, I know that we had received a letter from Assessor Stone. Is this something that our Staff has looked at? I didn't see anything in the report about this legislation.

Mr. Hackmann: At least from the Staff perspective, we haven't done anything beyond what has been mentioned.

Chair Burt: Do you recall this letter from Assessor Stone? About three weeks ago.

Mr. Hackmann: I don't recall any specifics about it beyond what has been said already.

Chair Burt: Is that something that Staff can look into in greater depth?

Mr. Hackmann: Just to be clear, specifically what would you like us to look into on that?

Chair Burt: To look at the position that our County Assessor has taken on this and what we can determine about the merits of the legislation and whether this is something we want to support or oppose in the legislation. It sounds like it potentially could affect us locally. I know that Assessor Stone had contacted me and was interested in coming this evening, but he's speaking on this subject to the Los Altos City Council. He's making the rounds throughout the county.

Council Member Wolbach: Could I weigh in on that one briefly?

Chair Burt: Sure.

Council Member Wolbach: In full disclosure, until recently I did work in the Office of Senator Hill. I would recommend that you reach out to Senator Hill's staff. I'm sure they'd be very happy to share Senator Hill's perspective on why he's supporting the legislation. I have heard him say that he disagrees with the Assessors' assessment of the impact for local governments. If it was going to have that impact, he wouldn't support it. We should definitely have that conversation and hear both sides for SB 661.

Chair Burt: One final thing. I don't anticipate that there'll be any change in this. As we were talking about funds for local transportation and other greenhouse gas reduction initiatives, I just need to remind us that the Governor basically a year ago pushed the Legislature into giving a high proportion of the cap and trade dollars to High Speed Rail, despite the lack of objective data showing that that project would compete well for greenhouse gas reductions compared to other transportation measures and

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other climate change efforts that could have been funded by the cap and trade measure and were the intention of the cap and trade law. I don't think you're going to be able to change that with this Governor and his influence over the Legislature.

Mr. De Luca: He's got a lot of influence.

Chair Burt: Any other—Tom.

Council Member Berman: Sorry. Just one quick follow-up on that. When you were talking about SB 9 earlier and giving the greater clarification, the whole bigger projects are better, I can't help but wonder if that might be intended for High Speed Rail.

Mr. De Luca: No.

Council Member Berman: Is that specifically carved out?

Mr. De Luca: It's a great question, because right away folks thought that. The Senator made it clear it's not for High Speed Rail. It was more for the San Jose BART extension and specifically—I'm blanking right now. Muni's got a big project, where they want to get a tremendous amount of cars.

Council Member Berman: Specifically no HSR, at least for that?

Mr. De Luca: Correct. The thought process was due to cap and trade guidelines, they already have their ongoing carve outs.

Council Member Berman: 25 percent.

Mr. De Luca: Yeah. Let's not give them more. Two other things briefly. You mentioned solar credits. Senator Leno last year in the waning hours of the budget extended the State solar credit. Also in the update was the plastic bag ban. Statewide it's on hold based on the signatures to stop it. However, any city that has it, their ban stands. If other cities want to get a ban, they certainly can.

Chair Burt: Tom.

Council Member DuBois: Has there been any movement on Prop 13 reform for commercial properties?

Mr. De Luca: There was a lot of movement last year. There was a legitimate bill moving through the Assembly that got stopped. I read just the other day there is a coalition of labor and others to do a signature-gathering to try to change Prop 13 for the commercial property side, not the

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residential houses. They would be looking for the 2016 general election, so they've got time to gather signatures. From reading who the labor groups were, it's a legitimate effort. They're funded. It's not just some ...

Council Member Berman: Random folks.

Council Member DuBois: Good. What about the ABAG housing formula reform, is anything happening there?

Mr. De Luca: Not that I'm aware, but I can keep looking into that.

Council Member DuBois: One thing, I don't know if it goes to the State level, but San Mateo County handles their ABAG allocations differently than Santa Clara.

Chair Burt: As a county, we could choose to do that in our county.

Council Member DuBois: That's County Supervisor issue. You mentioned medical marijuana. Is there anything coming that would impact Palo Alto?

Mr. De Luca: To impact Palo Alto, no. There's pretty much two main bills, and they all seek to have statewide regulations. The two bills are very clear about local control. If a city wants to ban it, ban it. If a city wants to embrace it, embrace it. It's the same policy that's been worked on the last three or four years. It comes down to two main proposals. One is industry-backed. The other is law enforcement-backed. Neither of them have enough traction to move through both Houses successfully. It gets into everything from dispensaries to transportation to cultivation to baked goods to how to tax it and what have you. I somehow fell into this policy topic and know more about it than I care to share. My high school teachers always told us, "If you smoke pot, you'll be worthless and no good." You hear all these stories about these zillionaires. The main issue is where is the Governor. Besides some joke he made about stoners, he's not showing his hand on this whatsoever, because he doesn't need to at this time. There's a lot of different propositions for 2016 on recreational use. There's about three or four different groups trying to get signatures. There's one backed by the Drug Policy Alliance, which has a good chance of getting enough signatures. I've talked to one of the authors. They've made it clear that whatever they put to the voters, they want to make sure the cities are covered. The League is good at stoking this fire of 1970 liquor stores ended up everywhere; we want to keep that from happening. The good authors of any ballot measure want to make sure that there's a lot of checks and balances. The State is now realizing some of the tax benefits such as what's happening in Colorado and Washington. Long story short, there's two main

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medicinal cannabis bills. Will they get through both Houses successfully? I'm not seeing it this year.

Council Member Wolbach: Just to follow up on the transportation bills. We were talking about specifically a couple of proposals from Senator Bell, a potential proposal from Assemblymember Alejo. Obviously Palo Alto is not in either of their districts. On the strategy question, this will be important for us on Council talking to our Colleagues, our counterparts in other cities in Santa Clara County as well as Staff and yourself, just to make sure that we've got a good working relationship and good connections from multiple angles, so that as those measures are being crafted, as the details are being worked out, if we have ideas that they'd be amenable to, that we're in a position to share that in an effective way.

Mr. De Luca: Absolutely.

Council Member Wolbach: Not to mention of course working with Jerry and Rich's offices.

Mr. De Luca: The City's in a good spot with a great Senator and a great Assemblymember. A lot of what we do is primarily represent cities. When we come into Legislators' offices, they know that we've got legitimate ideas. We're not saying, "I'm here on behalf of Chevron or Philip Morris." What we like to do is work it three-fold; through the Legislature, through the Governor's Administration and then through Caltrans. I will keep a keen eye for what proposals are coming and work with Richard and the City Manager and you all on the best ways to take a swipe at this.

Chair Burt: That leads me to a final political question, but it's not party-line political. My understanding is that in the battles over the redevelopment agency funds and some other battles, the California League of Cities lost some of its influence in the Legislature and with the Governor. Are you seeing that that's still the case? Are you seeing as a result our cities needing to go through their own vehicles to try and have their voices heard more? What's the climate of that?

Mr. De Luca: That's a very fair question. Going back to the redevelopment dissolution, there was an agreement in place where the leadership was going to sign off on it, the Governor was going to sign off on it. It did not completely wipe out redevelopment. Out of respect to the League, their legal advice was to sue. They did; they lost completely. From staff that we work with, there was a bit of "you had something good, you fought it, now you've got what you've got." The League does a very good job of some of the more broad policy topics. When you want to get into something specific to Palo Alto, that's when we go out on our own. When we do legislation and

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we work with the City on strategy, sometimes we bring in the League; other times we don't. The League can be effective with some of the smaller, more rural city members, because they have a big influence there. I do think based on the redevelopment, they put a dent in their armor.

Chair Burt: We weren't fighting that redevelopment battle. When I heard that this was the reality of what was going on in the Legislature, my thought was sometimes we have disagreements. Whether the League took a position that either didn't work or was a wrong strategy for other reasons, I was pretty shocked that our Legislators throughout the Legislature were bearing this grudge. My attitude was "get over it, they represent their local constituencies." I was pretty offended by it.

Mr. De Luca: By the feelings of the Legislature?

Chair Burt: Yeah. I don't have a good answer and I haven't been engaged specifically on how to convey that message to the Legislature that we expect them to move beyond those things and look out for the interests of their local constituencies.

Mr. De Luca: From that redevelopment process, a greater light in a positive way was shined upon local government. Now there's hindsight on the dissolution, and there's been such headaches on winding it down. The budget's still working on it now. Legislators have been more sensitive to city-specific needs. Also, we've got 37 new Legislators this class. Two classes before, I think we had 51, and a lot of them came from local government. The issue is move past just local control to more specifics. The benefits of Palo Alto is your neighboring cities are very similar. It's great to work four cities together, five cities together. What we like to do, if we're pushing something really hard, is get support in the Bay area, LA, and then see what we can do up north, to really show it's a statewide issue. I think the wounds are slowly healing on redevelopment, and hopefully they can heal a little bit faster.

Chair Burt: Thank you for your report.

Mr. De Luca: Thank you very much.

Chair Burt: We appreciate it.

Mr. De Luca: You have our follow-up. Thank you.

Chair Burt: Richard, is there additional Staff follow-up to it or does this end that item?

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Mr. Hackmann: There is additional action for ...

Council Member Berman: We need to approve the ...

Mr. Hackmann: Correct. You have the draft Fall 2015 Semi-Annual Legislative Strategic Initiatives. To whatever extent you want, I can go into those or not. You can call out any that you like. The document is similar to the spring document. No items were removed, but some were added. To the extent that you wish, I'm happy to answer any questions you have.

Chair Burt: Let's go into whether we have any modifications or not that we'd like to make to this set of initiatives.

Council Member Berman: Go for it.

Council Member Wolbach: Okay. I actually had a few questions and possible places for clarification or amendment that I'd like to put out there for discussion with Staff and also with Colleagues. The first one is just a clean-up thing. If you'll look at Page 1 of the document or Page 5 of the packet, under our Top Seven Priorities, Number 5, we added a second clause to that. It says "and reforms to elements of the State Density Bonus Law," etc. This tracks to an item, on Page 3 of the item or Page 7 of the packet, under Housing "A." When we added it on Page 1, we didn't add it under Housing "A" on Page 3. That's a clean-up thing.

Mr. Hackmann: Thank you. That's great.

Council Member Wolbach: This might be a larger policy question. Item 6 under our top priorities and paralleling with "L" under Environmental, when we talk about advocating for green technology, green fuel, do we want to articulate that that's specifically non-carbon or carbon-free fuel? I would suggest that we add language to that effect under "6" under our Top Priorities and Item L under Environmental. I would not be in favor of it, because it's advocating for biodiesel, hydrogen and natural gas. Again, this is a larger policy question. Palo Alto should continue to advocate for non-carbon-based fuels. We can take them one at a time.

Chair Burt: The first one that you raised is a clean-up in consistency. This is a policy discussion. Let's pick that up after we hear from people. I'll put down some areas that we may actually want to have a little more discussion on.

Council Member Wolbach: Right. That's probably a bigger discussion than we want to get into today. Also on Page 1 of the document, Employee Relations and Risk Management, Item C. Here's a new item, I believe. I

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don't know if we want to add some clarifying language where it says, "oppose legislation or regulations that would increase employer medical costs for workers' compensation." I don't know if we want to articulate that our interest here is as it applies to government or municipal government or to the City rather than broadly weighing in on ...

Chair Burt: First, the question is can you clarify the intent.

Mr. Hackmann: Yes. This is a classic local control issue. The intent here is the City should be able to set what they want their ...

Chair Burt: Richard, I think Cory's point is that as worded, this would apply to private sector as well.

Mr. Hackmann: Right. The Employee Relations and Risk Management items are driven by our People Strategy and Operations Department. They're coming through the lens of the City of Palo Alto and our Budget and interests, not the City as a whole.

Council Member Wolbach: Right. For instance Item B right above it says "for public employees." I'm just articulating that we're not trying to weigh in on the economy as a whole or weigh in on our own interests. Just a couple of words to clean it up and clarify that as it applies to the City or something like that.

Mr. Hackmann: Absolutely.

Council Member Wolbach: Just might provide that clarity, so the language reflects the intent. On the following page in that same section, Item H, I'm concerned about this one. It says, "oppose legislation imposing State-mandated training programs when there is no guarantee of local reimbursement or offsetting benefits." That sounds great, because we don't want unfunded mandates coming down to us. Former Palo Alto Mayor Vic Ojakian had a piece of legislation that he was supporting and that was unsuccessful. I think it was in the end vetoed by the Governor. It was calling for additional training for certain professionals for suicide prevention. I'm not sure if it had the guaranty of local reimbursement or offsetting benefits. I would hate to think that the City of Palo Alto would oppose that kind of legislation if it came back. I don't know if we want to be very careful about something like that or dig a little more closely into that. That's my concern about that one. I don't know if any of my colleagues have thoughts on that?

Council Member Berman: This is a new one, right?

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Mr. Hackmann: Correct.

Council Member Berman: What caused its insertion into the strategies?

Mr. Hackmann: It's us trying to get clear. This is a new category, Employee Relations and Risk Management. It's an area that the State can do things that can result in significant financial impacts.

Council Member Berman: Unfunded mandates essentially.

Mr. Hackmann: Unfunded mandates to the City. The goal of adding these was not to necessarily oppose a policy issue that is raised in one of these items., but to allow the City flexibility to dictate on our own what we do. Your point is well taken that a lot of these should be taken with a grain of salt or come with a caveat. We can clean up the language as such. A simple thing like "when appropriate oppose legislation."

Council Member Berman: Even have that be in ...

Council Member Wolbach: As an overall statement.

Council Member Berman: Exactly.

Council Member Wolbach: Having that kind of qualification or flexibility.

Mr. Hackmann: It's always the fine line that we want to be clear. If the issue is when we say "when appropriate" we've all of a sudden opened the door.

Chair Burt: I might suggest in this example that was legislation that we specifically supported. The appropriateness would lie in "unless it was specifically supported by the City." The title for that section, you may want to look at something different. I don't see how "H" would fit under Employee Relations or Risk Management. I get there's a grouping that you're trying to get there, but maybe come up with a slightly different title.

Council Member Wolbach: Maybe it would go under Financial. I see the ...

Mr. Hackmann: The training element of it was ...

Council Member Wolbach: Employee issues.

Mr. Hackmann: Yeah. This was really more about possibly Police, Fire, those sorts of things.

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Council Member Wolbach: The last one on my list right now is under Transportation. This is again a question about whether this language articulates City policy and is up-to-date with City Policy. I believe it is. This might again be a larger conversation. It says under Transportation "A" "oppose the California High Speed Rail Project." There's no qualification there, no "unless it's a blended system" or "unless it goes around Palo Alto." It's a blanket statement about this issue under all circumstances. I was hoping you could maybe remind me if that reflects the status quo of the City's policy.

Mr. Hackmann: It's an interesting and complicated and good question that you raise. The City of Palo Alto for a number of years had a Rail Committee. The Rail Committee had a set of Guiding Principles. One of their key Guiding Principles was oppose the California High Speed Rail Project, and there was a number of reasons for that. One of which was they didn't have a business plan that met the criteria of Prop 13, for example.

Chair Burt: Prop what?

Mr. Hackmann: Excuse me, Prop 1A. In that document which speaks specifically to rail, this is the overarching statement. As we sit here today, there's a number of different directions we could go. We could obviously choose not to oppose it. We could choose to keep the language as is, or we could either directly or indirectly refer to that other document which puts this statement into context.

Chair Burt: In a lot of ways it's a moot point, because there is no legislation impacting High Speed Rail going forward, since we had the Governor's cap and trade funding for it. There's nothing going on in the Legislature that I'm aware of. I wouldn't be surprised if some Legislator would attempt to renew opposition. I suppose in that case we would have a question of whether we would support that legislation, however futile that legislation may be. I did want to clarify those Guiding Principles are Rail Guiding Principles, but they were adopted by the full Council rather than the Committee.

Mr. Hackmann: That is correct.

Chair Burt: I put that as a placeholder for our additional discussion.

Council Member Wolbach: Sounds fine to me. Thank you.

Chair Burt: Marc.

Council Member Berman: A couple of quick things. The first is under Employee Relations and Risk Management, bullet point A, there's some

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wording issues. Depending on what it's actually trying to say will determine...

Ed Shikada, Assistant City Manager: It's missing a word or two after "eliminate corruption."

Council Member Berman: Is it "in order to focus on reasonable claims"?

Mr. Hackmann: There should be "corruption and the associated costs."

Council Member Berman: Earlier in this, "reform the state's workers' compensation laws in order to focus on reasonable claims"?

Mr. Hackmann: Yes, "in order to focus."

Council Member Berman: Okay. "In order to focus on reasonable claims and eliminate corruption and the associated costs." Perfect.

Mr. Hackmann: Thank you.

Chair Burt: Marc, as long as you're on that. Corruption is a pretty harsh term. I would recommend that be changed to abuse. That's how it's historically been described and what's trying to be addressed here.

Council Member Berman: Something that we might want to put in the parking lot is under Environment, "reduce the approval requirement from two-thirds to 50 percent plus one." We don't necessarily have it for other items like we talked about with Transportation earlier. I don't know if we want to add that component to the Transportation section just as supporting that as a general policy.

Council Member Wolbach: Can I piggyback on that?

Chair Burt: I'm sorry. Could you restate that, Marc?

Council Member Berman: Yes. Under the Environmental section, we say "reduce the approval requirement from two-thirds to fifty percent plus one of voting property owners to pay for improvements necessary for cities to come into compliance with new state and federal storm drain requirements." Do we want to add something like "support reducing the approval requirement from two-thirds to 55 percent for local transportation projects or ...

Council Member Wolbach: Maybe "all local funding projects in general".

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Council Member Berman: Or maybe "all local funding projects," yeah. There's also things for local community projects and libraries and that kind of stuff. Yeah, school bonds. School bonds, it's been reduced.

Chair Burt: I would support that. As I read our wording, we say that we're supporting reducing from two-thirds to 50 plus one. Under this guideline, if it was legislation that reduced it from two-thirds to 60 or 55 percent, we wouldn't have authorized that. We should simply have whether it's applying to this one or the transportation, reduce the approval requirement below two-thirds.

Council Member Berman: Sure. Fifty-five is what I've seen a lot of.

Chair Burt: Right. The fifty plus one, maybe there's some legislation that proposed that. It was probably dead on arrival if it did. Tom, did you have something? We're still on this, because Marc still had other questions.

Council Member DuBois: I thought I heard Marc say not just transportation, but something more broad.

Council Member Berman: Yeah. I think that can be something we can discuss. It would be easier if we just had it be an overarching principle that we support lowering the threshold necessary for local projects. There were six different bills last year for different projects, whether it's schools or libraries or transportation. I don't recall exactly.

Chair Burt: Are we in agreement?

Mr. De Luca: Libraries, transportation, schools.

Mr. Shikada: The broad category of infrastructure would apply.

Council Member Wolbach: The easiest thing might be to pull that out of the Environmental category and just say "for local funding measures."

Council Member Berman: That could even fall under Local Control.

Council Member Wolbach: I would agree. That would be a good place to move it.

Chair Burt: We're in consensus that.

Mr. Hackmann: With that, just drop "storm drain." Have it read as "reduce the approval requirement below two-thirds of voting property owners to pay for any local improvements"?

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Council Member Berman: It's not even the property owners necessarily. That was specific to that item. It's just reduce the voter threshold to below two-thirds.

Mr. Hackmann: I will clean it up before Council review.

Council Member Wolbach: I'd suggest "for local revenue measures."

Chair Burt: These are all about capital projects, correct?

Council Member Berman: Yes.

Council Member Wolbach: Not necessarily. If we also want to loop in and show solidarity with the school district for things like bonds, which already are at 55 percent, or for parcel taxes.

Chair Burt: Okay. The bonds are also construction, so that's capital as well. Then it would only be a parcel tax that would be outside of that. I do think that we'd need a broader discussion if we're advocating that it would be for any revenue.

Council Member Berman: To keep it for capital projects is sufficient.

Chair Burt: That's the overwhelming majority of this legislation and what we've waded in on. That's consistent with what has to date been the Council direction. We could reconsider it. It is much broader.

Council Member Wolbach: Let's do what we can tonight and, if it is a broader discussion we need to have, I would recommend that we have that. I do like the idea of having it be broader. If we can't do that much tonight, I understand.

Chair Burt: From a political standpoint, getting there on capital projects is in itself a tough row to hoe. Going beyond that to other general revenue would be really politically tough. We haven't been able to make much progress on some incremental changes in the Legislature on this.

Council Member Wolbach: The point is we're trying to say here's our position as a city, so it provides political cover for people in the Legislature. Municipalities have expressed a position of support. We're not pushing the bill. We're saying here's our position.

Chair Burt: Yes. Whether I would support that in an ideal world or not, there's a question of whether it undermines our political voice if we reach too far.

Transcript

Council Member Berman: This is a larger conversation.

Chair Burt: That's why I'm not readily willing to go along with it even if I might support it in an ideal world.

Council Member Wolbach: Let's pick it up at a later time then.

Chair Burt: Marc?

Council Member Berman: That's great. Thanks.

Chair Burt: Tom.

Council Member DuBois: Perhaps we should add something under Environmental about advocating for higher standards for airplane noise.

Chair Burt: Is that anything under State legislative authority?

Council Member DuBois: Is this just a State list or is this Federal?

Mr. Hackmann: This is State and Federal.

Chair Burt: Oh, State and Federal. I'm sorry. It's appropriate for us to try to capture what we'd like to have addressed on airplane noise.

Council Member DuBois: There's some efforts to change the decibel level.

Chair Burt: There may be other efforts that are outside of just decibel level. I'd support language that would give broader support for addressing local noise impacts from planes. I can envision that it might somewhat include decibel level, but we might want to be able to support things that are different from that as well.

Council Member DuBois: I said advocate for higher standards for airplane noise. That's fairly general I think. The other thing we talked about ...

Chair Burt: Higher standards, okay.

Council Member DuBois: What's that?

Mr. Hackmann: May I ask a question? Would you be willing to have that under Transportation instead of Environmental just to make sure it doesn't get lost in the mix?

Council Member DuBois: Sure. It's kind of both, but sure.

Transcript

Chair Burt: The impact for us as a City is environmental. I think it belongs under Environmental more than ...

Mr. Hackmann: Have it as Environmental.

Council Member DuBois: I'm wondering if ...

Council Member Wolbach: Can I ask just a quick question about that?

Council Member DuBois: Yeah.

Council Member Wolbach: As far as the process and the work flow for Staff and for our lobbyists and how work gets assigned among various people and coordinated, does having it under Transportation or Environmental make any difference?

Mr. Hackmann: It really makes no difference. It's just that there's a number of items under Environmental, and less under Transportation. The transportation folks are thinking transportation, and they tend to deal more with planes, trains and automobiles. That was more where I'm coming from. The impact is clearly environmental. The cause is clearly transportation. Where we put it is semantics.

Council Member Wolbach: Okay.

Mr. Hackmann: We'll make it.

Mr. Shikada: That said, I do agree that placing it under Environmental would be more direct in terms of the issue we're trying to address. If I might suggest a little broader language. Rather than the standard itself, to focus on addressing the impacts of aircraft noise.

Council Member Wolbach: I'd agree.

Mr. Shikada: We can craft some language along those lines.

Council Member DuBois: I'd potentially have one for Transportation, if you want to bulk it up. We all talked about grade separations. I wonder if we need to call anything out about looking at the Caltrain Corridor and the intersection with roads.

Mr. Hackmann: A bullet point possibly along the lines of "advocate for grade separation funding."

Council Member Berman: Mm-hmm.

Transcript

Chair Burt: Mm-hmm.

Mr. Hackmann: "Pursue and advocate for grade separation funding."

Council Member Wolbach: Sounds good to me.

Council Member DuBois: Maybe a regional approach to grade separation.

Chair Burt: I'm trying to make sure that when we vote on this—Richard are you capturing these changes enough that we can recite them for the record?

Mr. Hackmann: I can run through, and you can tell me what I missed.

Chair Burt: Thank you. That it?

Council Member DuBois: That was it. I would support—I guess we're going to come back to it—the non-carbon-based vehicles.

Chair Burt: We're going to loop quickly. Let's go back to that one.

Council Member Wolbach: Two parts there.

Mr. Hackmann: Environmental, Letter L.

Council Member Wolbach: It's under Top Seven Priority 6 and Environmental L, both. They're kind of separate, but it's the same theme.

Mr. Hackmann: Yes.

Chair Burt: The issue is in "L." This is the one that Cory raised. We historically have viewed fuel such as biodiesel and compressed natural gas as progressive alternative fuels. As we're making progress to cleaner alternative fuels, the question is whether those are still areas that we would support. It's interesting that within this "L," the language almost looks like it's a holdover from the last decade. There's nothing about EVs.

Council Member Wolbach: Exactly.

Mr. Hackmann: Just to clarify, Number 6 which you have mentioned is Letter A under Environmental.

Council Member Wolbach: Thank you for pointing that out.

Mr. Hackmann: "L" is an add-on. One's a very broad statement; one's a more focused statement. Obviously "L" is repetitive of "A," but "A" is not necessarily repetitive of "L." We could consider just dropping it and adding language to "A."

Transcript

Council Member DuBois: Where did all the add-ons come from?

Mr. Hackmann: The add-ons are from a variety of comments received from Council at the last meeting; conversations with Staff members; conversations with our legislative advocates; our sense of what legislation might be proposed in the future. A number of different sources.

Chair Burt: I would make a distinction that "A" appears to be talking about energy generation, and "L" is about energy use.

Mr. Hackmann: Specifically the vehicle.

Council Member Wolbach: I would suggest both of those. I would suggest adding carbon-free to the alternative energy in "A," and I would advocate for dropping "L." Rather not adding it, because we're talking about which ones we want to add here.

Chair Burt: My support would be to emphasize our preference for carbon-free. I'll give you the example of compressed natural gas. At present we have a compressed natural gas facility in Palo Alto. We have an opportunity that I haven't seen any progress on, to purchase renewable compressed natural gas. Fleet vehicles are far lower cost to transition from conventional gasoline-powered to compressed natural gas. It's economically attractive to do so, especially if you have an existing CNG facility like we do. Switching those vehicles at this point in time to EVs is probably not ripe. Although, within a few years, it probably will be. I don't know whether we would yet be ready to abandon support for cleaner vehicles. I see Phil Bobel. Give us some insight on this. I forgot Phil was behind this, and here's somebody who can shed some light on it.

Phil Bobel, Public Works Assistant Director: Phil Bobel, Public Works. Because our electric supply is now carbon neutral, we have adopted a Staff-level policy of favoring EVs. It's about to go into the Policy and Procedures Manual at the Staff level. We did that knowing that there is a price issue, but these price things are really hard to evaluate because of the total cost and the life cycle analysis. Nobody has done a great job of doing a life cycle analysis comparing a CNG vehicle and an electric vehicle. Absent enough data to make a purely scientific call on this and knowing that we have achieved carbon neutrality, it seemed to make sense to favor, all other things being equal, electric vehicles going forward. We've ordered our first few electric vehicles, and we're headed in this direction. We don't see ourselves buying more CNG vehicles.

Chair Burt: That would apply to trucks as well?

Transcript

Mr. Bobel: It would apply to trucks when they're available. Apparently there is a small, light pickup which is available, maybe several brands, EVs and we're looking into that. It was a policy shift we made, so we'll explore it at every level of vehicle and see if there is an EV. We know they're going to be added in the future. There's even an experimental small garbage truck. I'm not suggesting that we buy that just now. I just wanted to let you know that at the Staff level we have made that shift.

Council Member Wolbach: If this is in our legislative guidance, I worry about telling our legislative advocates to go tell our Legislators and their counterparts that we want them to invest in biodiesel and natural gas potentially at the expense of electric vehicles or diluting the effort to invest in electric vehicles. It's the question of whether we want to go all in with EVs or advocate for something broader. If we drop "L," it doesn't say we're opposed to all things. I don't think we should use our legislative resources to advocate for biodiesel, etc.

Mr. Bobel: This language is a little dated.

Council Member DuBois: I was more comfortable with the carbon-free language. Right now most hydrogen is generated with greenhouse gases. If it ever came about that it wasn't, then maybe hydrogen would come back. The focus on carbon-free was good.

Chair Burt: An alternative would be to drop these references specific to biodiesel, hydrogen and CNG. Simply that we're promoting advanced low emission vehicle technology and encourage or promote alternative fuels.

Council Member Wolbach: With an emphasis on EVs maybe.

Chair Burt: If we added "with a priority toward non-GHG emitting vehicles," is that sufficient.

Council Member Wolbach: I would be fine with that.

Council Member DuBois: That doesn't quite get there, I don't think.

Chair Burt: As somebody who's a strong advocate of greenhouse gas reductions, I'm differentiating between where we are today and our long-term goals. I'm not convinced that at this point in time there isn't an appropriate role for clean vehicles other than completely greenhouse gas free.

Transcript

Council Member DuBois: I kind of see that. We don't know where this technology is going to go. You're thinking about higher power uses, where you may need the energy.

Chair Burt: At this point in time, it's still a complex subject with a range of solutions. We certainly want to favor the most environmentally progressive solutions that are anywhere near economical.

Council Member Wolbach: Can I suggest an alternative that leaves in something about the vehicles? Rather than dropping "L," advocate for programs and policies that promote electric vehicles. That doesn't say we're advocating against other alternatives, but it says we're going to focus our legislative resources, our lobbyists, etc., on EVs. Colleagues?

Council Member Berman: I don't feel strongly one way or the other.

Chair Burt: My preference would be an "L" that would delete "such as" and add "with a priority toward non-greenhouse gas emitting vehicles."

Council Member Wolbach: Would that include ones that operate on natural gas? They don't emit ...

Chair Burt: No, they do.

Council Member DuBois: It's a good compromise for now, to evolve our way there.

Council Member Wolbach: We've got to move on. Back to "A." Do we want to add something about prioritizing carbon-free alternative energy sources? We've dealt with the use in vehicles, now back to the sources. I'm okay with not requiring it be only carbon-free.

Chair Burt: Yeah, we should add "with a priority toward non-GHG emitting energy sources." I think we covered the others down to local project issues. Did we get that language on the voter threshold?

Mr. Hackmann: Yes. Once we're done with our process, I'll go through and you can tell me everything on this.

Chair Burt: I think we are done unless anybody else has any others.

Council Member Wolbach: I can't remember, I'm sorry. Did we want to talk anymore about High Speed Rail and adding some kind of qualification, as Staff suggested, referencing the larger document to put our opposition to High Speed Rail in the context of the extensive work the City's done on that issue? Just to contextualize it.

Transcript

Chair Burt: I suppose we could say "support or oppose legislation consistent with our Rail Guiding Principles." That would go beyond just High Speed Rail in some ways.

Council Member Wolbach: I like that.

Mr. Hackmann: For "A" "support ...

Chair Burt: "Support or oppose legislation based upon its consistency with our Rail Guiding Principles." "This City's Rail Guiding Principles."

Mr. Hackmann: Let's see what we've got. Going back to Page 1, packet Page 3. Am I correct?

Chair Burt: Okay.

Council Member Berman: Five.

Mr. Hackmann: Packet Page 5?

Chair Burt: Yeah.

Mr. Hackmann: We have under the Top Seven, Number 6, the same as Environmental Letter A. "Advocate for environmental initiatives that promote the use of alternative energy sources with a priority on non-greenhouse gas emitting energy sources." Is that correct?

Chair Burt: Sounds good.

Mr. Hackmann: Going down to Employee Relations and Risk Management, clarify the title so that it reflects that this is for public employees.

Chair Burt: That it's public employees, but not limited to employee relations. We have the example of "H" that isn't exactly an employee relation. Just clarify the title to capture the intent of what is put in the ...

Council Member Wolbach: Were we talking about changing the title of the section or specifically adding just a couple of words to Item C to clarify that one?

Chair Burt: It's actually better in the section. If you look ...

Council Member Wolbach: The others generally do ...

Chair Burt: "D" doesn't. It's better to have it overriding, and then you don't have to worry about every single one.

Transcript

Council Member Wolbach: What kind of language do we want to do then?

Chair Burt: We'll leave it open to Staff to come up with that. They can do that.

Council Member Berman: This is coming back to full Council.

Chair Burt: Same thing on "E." There are apparently a number of these that the implication is that it's referring to municipal employees, but it's not stated.

Council Member Wolbach: In direction to Staff when it comes back to Council, I'd be willing to defer to Staff about whether they think it's easier to add it in the title or to add it to the individual items, as they feel is appropriate.

Chair Burt: Good enough.

Mr. Hackmann: Under Environmental, we already covered Letter A. For Letter H under Environmental, we are going to remove that from Environmental and put it under Local Control. It will read "reduce the approval requirement below two-thirds of voting"—should I say of voters instead of voting property owners?

Chair Burt: Mm-hmm.

Mr. Hackmann: "Of voters for capital projects."

Chair Burt: Great.

Mr. Hackmann: Moving on down to Letter L, "advocate for programs and policies that promote advanced low-emission vehicle technology and encourage or promote alternative fuels." Dropping "such as biodiesel, hydrogen and compressed natural gas." Adding "with a priority on non-GHG vehicles."

Chair Burt: Great.

Mr. Hackmann: At the recommendation of a Council Member, we have added Letter M, Reduction of Airplane Noise and the Impact of It. "Promote the reduction of airplane noise and its impacts."

Chair Burt: Yes.

Council Member Berman: You'll have to re-letter everything since you removed "H," as you know.

Transcript

Mr. Hackmann: Correct, yes. Then moving on to Housing, Letter A. I have made the edit to reflect what was under the Top Seven ...

Council Member Wolbach: Five?

Mr. Hackmann: Yeah. Number five under the Top Seven. Add "and reforms to elements of the State Density Bonus Law." Under Transportation, Letter A, we have removed the language "oppose the California High Speed Rail Project" and replaced it with "support or oppose legislation consistent with our City's Rail Guiding Principles." Added in Letter C "pursue and advocate for grade separation funding."

Council Member Wolbach: Can I also check on one? Did we get the edits to Employee Relations and Risk Management "A," just the typos and changing corruption to abuse?

Mr. Hackmann: That's a good point. Instead of "focusing," it is "focus." Instead of "corruption," it is—this is Employee Relations and Risk Management Letter A. "Focusing" has been changed to "focus." "Corruption" has been changed to "abuse." "And" has been added after "abuse."

Chair Burt: I just caught myself on something. On the "pursuing grade separation funding," I'm trying to recall whether last year, when we went through our grade separation study, the Council took an action supporting future grade separation. Have we done that? Is that in either our Guiding Principles or action we took last year? I want to make sure that I'm not pushing something the Council as a whole didn't support yet.

Mr. Hackmann: You raise a great point. When the grade separation issue came to Council last fall, it was in the form of a Study Session. There was clear consensus amongst the Council that they were intrigued, for lack of a better word, by the possibility of a 2 percent grade separation trench.

Chair Burt: That's even more specific than grade separations. The other thing that may already give guidance on this is that we adopted certain aspects of the Rail Task Force, but we didn't incorporate every recommendation of the Task Force.

Mr. Hackmann: The Rail Corridor Task Force, I did not work directly on that project, but I was familiar with it. They recommended trenching throughout the entire City. There are funding and engineering constraints and complications with that recommendation, but that was their recommendation. I don't know to what degree, but it was incorporated in the Comp Plan.

Transcript

Chair Burt: Of the broad set of recommendations of the Task Force, there was one aspect that was essentially—if I recall correctly—adopted, but not the entirety of the recommendations of the Task Force. On this Transportation "C," as much as I would support pursuing those funds, I don't want us to take an action as a Committee that is a policy direction that hasn't yet been endorsed by the full Council.

Council Member Wolbach: Can I ask a procedural question?

Chair Burt: Yeah.

Council Member Wolbach: The changes we're proposing tonight, will these come to full Council?

Mr. Hackmann: Yes. Very important, none of this is City policy until it goes before a full Council. All this will be coming back before Council.

Chair Burt: Everything else that we have been discussing, my understanding is it is consistent with other policy direction that we have had. Are there things that we haven't yet? That's a good question.

Council Member DuBois: It is.

Mr. Hackmann: Nothing has arisen tonight that is outside of policy discussions that we've generally had. The only one that stands out a little bit would be possibly the one of reducing the approval requirement for all capital projects. That's a pretty significant change. We've discussed it for specifically infrastructure projects, but ...

Chair Burt: Some of these changes go beyond clear prior policy direction of the Council. We think they're aligned in values, but I don't think it's appropriate for us as a Committee to go beyond that, unless we call them out and make clear to the Council that those are actions that they're actually taking. I don't want to backdoor them on policy changes as a Committee.

Council Member Wolbach: I hate to suggest it, but even if we have a unanimous vote, perhaps we should recommend that this not go on Consent and that these items be highlighted. I hate to make that recommendation.

Council Member Berman: It doesn't go on Consent, but I could be wrong.

Mr. Hackmann: One request that Staff received following this process last time we went through it for the Spring Legislative Strategic Initiatives was that our lobbyists come back and present to the full Council. I was never under the impression that this would be going on Consent, based on its nature.

Transcript

Council Member DuBois: You can just highlight those two items then.

Chair Burt: We would request Staff not only highlight those items, but call out any others that we may have taken action on but do not represent clear prior policy guidance from the Council.

Council Member Berman: Do we want to ask Staff specifically to provide an update on what the status is in regards to Council policy towards grade seps?

Chair Burt: This general statement will give them that guidance, but not limited to that. We've framed the issue. We want to make sure that we're not creating policy tonight, that we're trying to reflect existing Council intent. To the extent that we might be in an ambiguous area, we want to give the full Council the opportunity to make a deliberate action.

MOTION: Council Member Berman moved, seconded by Chair Burt to recommend the City Council approve the Fall 2015 Semi-Annual Legislative Strategic Initiatives document with the following changes:

- A. Under the Top Seven Fall 2015 Semi-Annual Legislative Strategic Initiatives add "with a priority on non-Green House Gas (GHG) emitting energy sources;" and
- B. Change the title of the Employee Relations and Risk Management Section to make it more clear and change it so that it's clear it's referring to public employees only; and
 - i. Under Employee Relations and Risk Management replace in Item A, "focusing" with "focus", "corruption" with "abuse", and add "and" after "abuse;" and
- C. Under the Environmental Section:
 - i. Replace Item A with, "with a priority on non-Green House Gas (GHG) emitting energy sources;" and
 - ii. Replace Item H with, "reduce the approval requirement to below two-thirds of voters for capital projects;" and
 - iii. Item H should be removed from the Environment Section and placed in Local Control Section; and
 - iv. Replace Item L with, "advocate for programs and policies that promote advanced low emission vehicle technology and

Transcript

encourage or promote alternative fuels with a priority on non-Green House Gas (GHG) emitting energy sources;" and

- v. Add Item M, "reduce airplane noise and its impact on the City;" and
- D. Replace Housing Section Item A with, "advocate for Association of Bay Area Governments (ABAG) housing mandate reform via a revised formula for housing allocations and reforms to elements of the State Density Bonus law that are counterproductive to the jobs/housing imbalance;" and
- E. Replace Transportation Section Item A with, "support or oppose legislation that is consistent with the Palo Alto City Council Rail Committee Guiding Principles;" and
- F. Add Item C, "pursue and advocate for grade separation funding."

Chair Burt: That Motion is incorporating the list of changes that Richard just stated along with a direction to identify any ...

Council Member Berman: Any areas of ambiguity.

Chair Burt: That's right.

Mr. Hackmann: Any new policy items and any major policy changes.

Chair Burt: Any other discussion?

MOTION PASSED: 4-0

Chair Burt: That passes unanimously but directed to go to an Action Item.

Mr. Hackmann: Our legislative advocates will be back for that. The full Council will get it.

Chair Burt: As we're getting ready to start this, I had a request from the City Auditor to move Item 3, which should be a brief item, ahead of Item 2. We can get rid of Item 3 in ten minutes, if that's all right.

Council Member Berman: I have no problem with it.

Chair Burt: Tom, are you okay with it?

Council Member DuBois: Yeah. We've got a lot of people here for it.

Transcript

Chair Burt: I know. That's why I'm trying to move fast. We'll try and go right through it. It's pretty perfunctory.

3. City Auditor's Office Fiscal Year 2016 Proposed Work Plan.

Harriet Richardson, City Auditor: Good evening, Mr. Chair and Members of the Committee. Harriet Richardson, City Auditor. I'm here tonight to present our Fiscal Year 2016 Audit Work Plan. Our Audit Work Plan considers several risks that we identify before we put topics on here. We want to make sure that we're focusing on ways to improve how the City manages its finances, operations, regulatory risks, health and safety, and information and security. We also consider other factors such as relevance; whether best practices can be used; return on investment; meaningful improvements in how the City can do its business; the potential for actionable recommendations; and whether the audit scope is narrow enough that it can be completed in a timely manner. Our Audit Plan also considers risks related to major functions in the Utilities Department that were identified in a 2011 Risk Assessment conducted by a consultant. We have some routine, non-audit work that we'll continue to do. That includes the Annual Performance Report, National Citizens Survey, the Citizen Centric Report, as well as ongoing monitoring and recovery of misallocated sales tax; administering the Fraud, Waste and Abuse Hotline; monitoring and reviewing the status of prior audit recommendations; and preparing our quarterly reports. As part of our responsibility to administer the contract with the external financial audit firm, we will be issuing a new RFP this year and awarding a new contract as the current contract will be expiring. We will conduct performance management training as part of our effort to continue improving and streamlining the Annual Performance Report. We will also conduct some internal control training in an effort to increase awareness of management's responsibilities regarding internal controls. Our Audit Plan includes broad topic scopes. We refine these as we conduct the audit. We start our audit with a broad scope and then we do a project-based risk assessment and refine our audit objectives to get more focus. We continue to finish our Parking Funds Audit which is in progress right now. Then we have eight audits on here that I anticipate completing this year, and three that I anticipate we will start but not complete. This is an aggressive Audit Plan, but it reflects my vision. Council has expressed a desire for my office to do more focused audits that can be completed in less time; trying to narrow the scope and reduce the number of hours that we spend on each audit as well as the amount of time lapse. We have three audits on here for Utilities. As you know, we have one Auditor who is dedicated to Utilities. The first audit, Rate and Billing Accuracy, we expected to start it in March, but the Utilities Auditor had an unexpected two-month medical leave and just came back to work. We'll get going on that one

Transcript

pretty quickly. We'll also do a Meter Routes Audit and a Utilities Asset Management Audit. We will be doing an audit in People Strategies and Operations of disability rates and workers' compensation. We have two audits scheduled for Citywide. Those include looking at fee schedules and the process used to set fees; and developing some analytics for continuous monitoring which would allow us to do things on a routine basis, such as making sure we're not making duplicate payments or things like that. We have two audits scheduled for the Administrative Services Department. One is procurement processes, and one is contract oversight. On the Contract Oversight Audit, that is one that we expect to do more Citywide. It's focused on processes in Administrative Services, but we'll look at contracts on a Citywide basis. We have two audits planned for Planning and Community Environment. One of them will evaluate if expected public benefits for projects were achieved. The other is looking at the process for calculating, assessing and collecting Impact Fees. That audit will also cover Development Services. We also have six projects on the horizon. These are audits that would be substituted for others if, for some reason, we can't do one or if someone asks us to rearrange and put things in a different order. Those are payroll processes, whether the City uses purchasing practices to maximize environmental sustainability; application controls for critical City applications; how the City allocates charges to departments; then Utilities staffing; and data reliability. The data reliability one would feed into how City departments collect the data that they use and that they report in the Annual Performance Report, so we can ensure that the data represents what we think it does and that it's collected in a consistent and reliable manner. Those are the audits that I have planned for this next year. I'm open to questions on any of these.

Chair Burt: Colleagues, any questions?

Council Member DuBois: I have two.

Chair Burt: Tom.

Council Member DuBois: Looking at the list for 2016, most of these make a lot of sense to me. The one that seems to jump out at me is the disability rates and workers' comp. Why is that a priority and why is that on the list?

Ms. Richardson: That is one that has been on the list for two years. It was on the list prior to me coming here. I have talked to Kathy Shen, the Director of People Strategies and Operations. She is interested in us doing that. One of the things we will look at is making sure that the claims are legitimate, that people are not getting paid for something that they shouldn't be, and looking at if the City is maximizing ways to get people back to work when they've been injured.

Transcript

Council Member DuBois: Do we have a lot of claims?

Ms. Richardson: Most of the claims are in Public Safety.

Chair Burt: Millions of dollars.

Council Member DuBois: For some reason I thought there was a TDR Audit on the horizon. Has that ever been discussed, looking at sender and receiver sites and what our TDR inventory is?

Ms. Richardson: No.

Council Member DuBois: I'd be interested in adding that, if my colleagues support it. Either on the horizon ...

Chair Burt: Can you repeat that again? I'm sorry.

Council Member DuBois: An audit of TDRs (Transfer Development Rights), sender sites, receiver sites, what's the outstanding inventory. Are we accounting for them properly? When people show up and say they have this many TDRs, can we track them back and see where they came from? Maybe it's in the parking lot, but I'd like to see it get on the list.

Chair Burt: Colleagues? I had said that the disability and workers' comp is millions. Let me correct myself and say it's a very high number.

Ms. Richardson: It's a high number, and I don't have the exact number.

Chair Burt: That leaves Tom's question, whether transfer should be the subject of a future audit.

Council Member Berman: A question I'd have is—it might not be possible to answer—but how many hours would something like that take.

Council Member DuBois: I'm just suggesting we look at it, and it'd be on the future work list. Looks like 2017 at this point.

Council Member Berman: This is something they're going to analyze the possibility of.

Council Member Wolbach: I want to make sure that we assign that task to the right department to perform. I'm sure others have thoughts on it.

Chair Burt: Is your question whether that is something that would be more appropriate to be performed by the Planning Department or by the Auditor's Office? Is that your question?

Transcript

Council Member Wolbach: Or some third ...

Chair Burt: I don't think there is a third.

Council Member Wolbach: You're probably right.

Ms. Richardson: It seems like an auditable topic. What I'm trying to do is scope most of them in the 600-800 hour range, so that we're not going into the 1,500-hour range like the audits typically have been doing.

Council Member Berman: Again, I'm not opposed to it. Is there a real concern that there's gaming of the system? How big of a problem is this?

Council Member DuBois: I don't know. At some point, I'm suggesting we put it on the work list. It seems like it's not tracked very precisely. It feels like something that could be auditable.

Chair Burt: Everything's auditable. That doesn't mean there's a high value to it. We have seen some recent examples where we've had that concern raised. The question would be do we have enough information to put that request in or do we have some means to get additional information that ...

Council Member DuBois: I'm asking Harriet to evaluate the scope.

Mr. Richardson: We can do that. Usually during the first month of starting an audit, we can tell if we have something that ...

Chair Burt: Scope is different ...

Council Member DuBois: I'm saying scope out the work.

Ms. Richardson: Right.

Chair Burt: That's different from whether there is a need for it.

Council Member DuBois: We are seeing pretty high rates. The value of these things is there, so there's potential for abuse.

Chair Burt: What I'm asking is, is there a way for us to have any additional input on establishing the need separate from how big of a project it would be to do it.

Ms. Richardson: I can look at that and get back to you.

Chair Burt: I'm not opposed to it. I think that's proper procedure.

Transcript

Council Member Berman: The threshold question would be how many are outstanding.

Council Member DuBois: I don't know if we know.

Chair Burt: Our Planning and Urban Environment Staff should have some parameters on that readily available.

Council Member DuBois: They should. The list they had didn't have some of the ones that came up recently.

Chair Burt: I'm not saying that they have a list that is all inclusive. Part of the question was how many do we have. They have a good sense of it, maybe not a perfect sense.

Council Member Wolbach: My question is do we want the Planning Department to take a stab at improving their own records before assigning it to the City Auditor. I'm open.

Chair Burt: That's why we're not making that determination. I would recommend that we don't make that determination to add it to the list tonight. We ask the City Auditor to return with a preliminary evaluation of whether it appears to be an item ...

Council Member Wolbach: That is worthy of further work.

Chair Burt: May be worthy of an audit and the approximate scope of work that would be involved in such an audit.

Council Member Berman: That makes sense.

Council Member Wolbach: I'm comfortable with that.

Chair Burt: We can add that to our Motion. Are we otherwise ready to have a Motion?

MOTION: Council Member Berman moved, seconded by Council Member DuBois to recommend the City Council approve the Fiscal Year (FY) 2016 Proposed Audit Work Plan and direct the Auditor to return to the Policy and Services Committee after conducting a preliminary review to determine whether an audit of the Transferable Development Rights (TDR) sites would be warranted and if so, the preliminary scope and time required to conduct the audit.

Chair Burt: Any other discussion? No.

Transcript

MOTION PASSED: 4-0

2. Discussion and Direction on Expansion of City Smoking Ordinance to Multi-Family Housing, Adding Electronic Cigarettes, and Restricting Sales of Tobacco Products and E-Cigarettes.

Chair Burt: Council Member Berman is going to want to recuse himself from the first item dealing with multi-family tenants, because ...

Council Member Berman: I thought of this at the last minute. I live in multi-family housing and checked with the City Attorney's Office. There are some concerns that it might warrant conflicting myself out of this item. Out of an abundance of caution, I'm going to go ahead and do that tonight and get further feedback from the City Attorney's Office before anything comes back to full Council. I'm going to recuse myself from Number 1 of the three items that we're going to discuss tonight. I'll come back for "2" and "3."

Chair Burt: In doing so, we'd have to break up the Staff Report. I'm just trying to figure out the best way to ...

Phil Bobel, Public Works Assistant Director: We can do that.

Chair Burt: We'll have the Staff Report on Number 1 first.

Council Member Wolbach: That means we also have Motions.

Chair Burt: But then we would have ... yeah or actions. I'm just trying to think this through.

Felicia Gross, Assistant City Attorney: And the public comment.

Council Member Berman: I can stay for public comment.

Chair Burt: Do you have any guidance on that?

Ms. Gross: I think you can.

Council Member Berman: Stay for public comment?

Ms. Gross: Right.

Council Member Berman: I'd ask that Number 1 be broken out.

Chair Burt: We can have the full Staff Report and the public comments, and then he recuses himself from discussion and action?

Ms. Gross: Exactly.

Transcript

Chair Burt: Welcome. Phil, are you taking the lead?

Phil Bobel, Public Works Assistant Director: I'll kick it off quickly, just to introduce the people that are here. Myself, Phil Bobel, Public Works. Kirsten Struve, Public Works. Karen North is here from Public Works as well. Felicia Gross is here from our Attorney's Office. That's your team.

Nicole Coxe, Santa Clara County Health Department: One more. Nicole Coxe from County Public Health Department.

Mr. Bobel: I'm going to ask Kirsten to go through these eight short slides we have. Then it'll come back to you. I'm glad you didn't ask us to break it up, Felicia, because I just noticed in different slides we have them in different orders. It would be tough on us. Kirsten, do you want to run through this?

Kirsten Struve, Environmental Control Program Manager: Sure. Again, my name is Kirsten Struve. I work for Environmental Services in Public Works. Turning to the background slide. The full Council adopted an extension of the Outdoor Smoking Ordinance for commercial areas on December 15, 2014 and, at that time, referred to the Policy and Services Committee including e-cigarettes. On December 15 the draft Ordinance did include e-cigarettes, but the Council asked that that be deferred, also outreach to multi-family properties, which had been a previous discussion item for Policy and Services, and restricting sales of tobacco products particularly for pharmacies. We'll talk about multi-family first. We sent out a postcard. The picture on the postcard is on the slide. In fact, we sent out 8,549 postcards to the list provided by Planning on multi-family properties. We received 505 responses, which was quite a lot more than we expected. That's a six percent response rate. Looking at other surveys, that's a good response rate for this type of survey. 96 percent of the respondents were residents, two percent were landlords or property owners, and two percent were other. Our survey was structured in a way so that the people that were neither residents of multi-family nor landlords or property owners could only answer the written comments that were attached and are not part of the data that's presented. We thought a survey was the best option for our outreach to multi-family, because we got a lot more responses than we would have in a public meeting. We also received phone calls in support from additional residents; two additional residents representing at least ten families each and two more multi-family that were not able to complete the survey in time. We also received the written comments that you have at places. The survey results for property owners. There were only nine who responded. Twenty percent of them indicated that their properties do not allow smoking now. Fifty-six percent have had to deal with complaints

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regarding smoking in the properties they manage. All of them supported partial or complete bans of smoking in multi-family housing. The support for a designated smoking area was split, four in favor and five against. This is a typical result. Multi-family property owners and landlords often like for a city to be the one banning it rather than doing it themselves. Survey results for residents and tenants of multi-family ...

Mr. Bobel: We're at the top of Page 30 now.

Ms. Struve: It's five.

Council Member Berman: Slide 5.

Ms. Struve: Sorry, Slide 5, Page 30. Eighty-two percent of them indicated that they feel bothered by smoke on the complex grounds. Eighty percent also feel bothered by smoke inside their unit. Ninety percent favor smoking restrictions in multi-unit housing. Especially high support for banning it in all units and in all common areas. The comments that were attached to the Staff Report indicate that the primary concerns are exposure for children and adults that might have health problems. The home is where these people spend the most time, so that's the highest risk of exposure. The US Surgeon General has found there's no risk-free level of exposure to secondhand smoke. The American Lung Association finds that smoke migrates from other units and common areas through various systems; ventilation systems, doorways, cracks in the walls, electrical outlets and plumbing. Eliminating smoking can contribute to higher property values and decreased fire risk. We could bring back an Ordinance in the fall based on what other cities have done. Some of the other cities that have included multi-family in their smoking bans are San Rafael, Richmond, Walnut Creek, and Santa Clara and San Mateo Counties. That's it for multi-family. Our second issue that we're presenting tonight is electronic cigarettes. The use of electronic devices by youth has increased. That changes the social norm, so they're seeing people vaping where there was no smoking-type of activity before, including in restaurants. It's pretty much allowed anywhere; someone could be doing it right here. That actually provides an entry into tobacco smoke for youth. It's also very easy to purchase even though in California it's not allowed to be bought by minors. That then increases cigarette use in the future. There are harmful chemicals apart from nicotine in e-cigarettes, including heavy metal and other chemicals. They may be a hazard for bystanders. There are no restrictions currently. This fits in with the Healthy City Health Community Council Priority. Sunnyvale, Santa Clara, Foster City, Fremont, Dublin and Mountain View and the County has also included e-cigarettes in bans. We can discuss whether there might be a way to phase it in and do indoor first. Restricting sales, moving onto the

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next topic. One of the discussions at a prior Policy and Services meeting was restricting sale in pharmacies. We only have four pharmacies left in Palo Alto that sell tobacco products because CVS stopped. It's the three Walgreens and the Safeway. Tobacco retailer licensing would be one tool. We could just have an Ordinance banning it in pharmacies, but tobacco retailer licensing is another tool that has multiple benefits. It can address the sale of tobacco products in pharmacies. It can restrict locations of any new tobacco retailers to be further away from schools and parks. Right now half of the tobacco retailers are located within 1,000 feet of schools in Palo Alto. We have a 15-percent illegal sale rate to minors. The program, the way it would work is that licensing could happen through like the business registry, but we would need to work out exactly how this works. Tobacco retailers would have to obtain a local license and pay an annual fee. It would be a self-funding program once set up correctly. It would then allow more teeth in enforcement. Right now when there's a sale to minors, nothing really happens. If we had tobacco retailer licensing, we could suspend their license for a period of time. San Jose, Campbell, Gilroy and Morgan Hill and Santa Clara County currently have tobacco retailer licenses.

Mr. Bobel: I thought you were done with that slide. Are you done with that slide?

Ms. Struve: I think I am.

Mr. Bobel: Let me do the last slide for you. Your last slide is recommendations. As we go through these recommendations, I'm just going to point out some areas where you could, if you wanted to, do something slightly different. Just point that out. Although, you guys are perfectly good at coming up with alternatives to Staff recommendations. I'm going to take a shot at this anyway. Overall, we're recommending that we be directed to go back and do an Ordinance and that we bring that Ordinance back to you. That's the big picture. There's a decision right there. You could direct us, you're so sure we'll do a great job on this Ordinance, to go directly to Council with it. We're recommending and what was in the Staff Report was to bring that Ordinance back to you, the Policy and Services Committee, in the fall. That's the big picture of our recommendation. Back to Policy and Services in the fall. That was in our Staff Report. There's three parts to the Ordinance, and I'll go one-by-one. First, we're recommending expanding the Ordinance to multi-family and all units, all common areas in the multi-family unit. That's the most expansive and the most typical that other cities have done; although, there's a wide range of what they've done. Here's your first choice. If you're not comfortable with all units, all common areas, then you can imagine how you could scale that back. Probably the least controversial thing is going to be

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the common areas. Actually, there's some controversy about that, because people want to be able to step outside if you're going to ban it inside. Now, are they in a common area? How far do they have to walk to get somewhere? All common areas is not as non-controversial as you might think. Then there's a possibility of backing it off to only so many units. If it's an apartment building, then you can imagine how that could be scaled back to some percentage of the apartments. What about condos? That can be addressed separately. Condominiums could be excluded from this thing at first. Again, this is your third phase of this Smoking Ordinance. I don't think you have to see yourselves as done when you're done with tonight. It's just your next phase. We've been taking this like layers of the onion, and you can view this as your next step. That's "A." "B" is e-cigarettes. That's a little hard to see how you'd scale that; although, you could say, "We want e-cigarettes to apply to certain cases, but not all." That's making it a little complicated for us enforcement folks. It'd be much cleaner if, whatever you're going to do, e-cigarettes was just part of that something; if the definition of smoking was expanded to include e-cigarettes. If e-cigarettes apply here but not there and tobacco is somehow different, that would be tough for us.

Council Member DuBois: Could I ask a quick question on that?

Mr. Bobel: Yes.

Council Member DuBois: The Staff Report says that the County doesn't ban it in multi-unit housing, and they were suggesting the same thing. That's slightly different than what you're saying.

Mr. Bobel: I'm sorry, you're right. Sorry about that.

Ms. Struve: Yes, it's except in multi-family units.

Mr. Bobel: Sorry about that. We are making it tough on ourselves, and we're trying to follow the model on that one. Thirdly, the restriction of sale of tobacco products in pharmacies and establishing a tobacco retail licensing program. Again we've seen what other people have done, not universally, but they've used the licensing program as a vehicle for banning the sale in certain situations but not others. You wouldn't have to use that as your tool. You could just ban it in all pharmacies. You could just ban it X feet from schools without establishing a retail licensing program. Nonetheless, to be consistent with as many locations as we could, we're making the recommendation of having a licensing program. We understand that's going to be one of the more controversial parts of this. A step forward would be to ban it in all pharmacies. It'd be a more complicated step to ban it within X feet of schools because, as Kirsten pointed out in the Staff Report, if you use

Transcript

1,000 feet, that'd be about half of the locations that sell tobacco currently. Then you'd start debating the number of feet from the schools. The easiest baby step is pharmacies. Other people have done that. We know how to do that. We had our bag ban that applied just to pharmacies and grocery stores at first. There's a precedent for dealing with pharmacies. I wanted to point out those. Our recommendations are here. There's ways to scale that back, if you choose to do it. I'm done.

Chair Burt: Thank you. Given Council Member Berman's need to recuse himself from the first item, rather than go into questions we can take comments from members of the public.

Council Member Wolbach: That's fine.

Chair Burt: We have two speakers, Michael M. Moore to be followed by Jim Neal. Is Mr. Moore here? Hi. Can we pull up a chair?

Council Member Wolbach: Use the microphone right here.

Chair Burt: I'm sorry. There we are. You'll have three minutes to speak. Welcome.

Michael M. Moore: Chairman Burt and Councilmen, thank you for the opportunity to address you on this issue. I was glad to get the survey. Filled it out, mailed it in. Then I noticed that of the 32 other members in my complex, I asked each one of them, I was the only one. The lady here presented the numbers. They mailed out 8,500 surveys. They got 505 back. That says that 94 percent of the people didn't think it was important enough to fill it out and return it. If you look at 40 percent of the City's residents live in multi-family housing, that's about 25,000 people. That's less than a two percent sampling of that group, and less than 1 percent sampling of the entire population of Palo Alto. That's not a survey. I don't know what it is, but it's not a survey. It's certainly very selective. The written comments are very anecdotal and should be questioned about the truthfulness. I have some questions about this. If you pass this Ordinance, how do you enforce it? Are people going to be cited, because someone else said they were smoking? Are they going to take pictures of their neighbors? Are the police or whoever enforces this going to have to witness somebody smoking? Or what? The reason I ask that question is because you have other types of smoking. You have incense smoke, cooking smoke, medical marijuana smoke. A lot of people don't know this but PAHs, which is a chemical formed by frying meat, are probably much more dangerous for you than secondhand cigarette smoke, according to the National Cancer Institute. You guys can have all this. My email address is on there. I'll be happy to supply you with all this. I'm a research librarian. The other thing

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is the exemption for medical marijuana use. Some of the anecdotal reports said that heavy smoke wafted up through walls, out their windows. They were concerned about their children. Wouldn't they be concerned about marijuana smoke? If smoke can waft up, so can marijuana smoke. Now you could have three and six year olds exposed to marijuana smoke, not cigarette smoke. I think that's rather odd. Of course in 2016, there's a likely chance that marijuana will be made legal as a recreational drug. In Colorado, as you guys may know, the only place you're allowed to smoke it is in your home, your domicile. That's going to present some unique problems. Just to review quickly. I think you're going to have problems with evictions. This is going to be extremely harsh on elderly residents who may find it difficult to quit smoking. They may lose their domicile and have difficulty finding another one. I think it's a poor survey. You're going to have a lot of problems with this. I'm telling you the day it passes I'll start lawyer shopping, because I intend to sue the City and everybody connected with this Ordinance.

Chair Burt: Thank you. Our other speaker is Jim Neal. Welcome.

Jim Neal: Hi, I'm Jim Neal. I live in Mountain View, so why am I here? As we explained, once something like this passes in one city, it generally flows over to other cities. As far as an e-cigarette ban, why? They produce water vapor. Why ban those? We've heard some things about children and things like that, but that's an enforcement issue. If it's not being enforced now, passing this isn't going to help with that. There was also secondhand smoke research performed by Stanford University. She conducted the study of 76,000 women over ten years and found that there was no measurable difference in lung cancer rates for those exposed to secondhand smoke as opposed to those who actually smoked. Stanford University is right here, and I verified that she's still at Stanford. You can talk to her and find out what the basis was and if there was any bias in that study. They talk about money spent treating lung cancer, smoking illnesses and things like that and how smokers will pay for it. That's absolutely not true. Smokers do pay for that. They pay for that in the medical premiums they pay and all the extra taxes. There's a 12 cent tax for the General Fund per pack, and that's been in effect for 30 years. A 50 cent per pack tax from Prop 10, that goes to First 5. Prop 99 implemented a 25 cent tax. Federal taxes are \$1.01 a pack. That's \$1.88 on every pack of cigarettes that smokers pay. Yet, because smokers aren't a protected class like minorities and things like that, we have the least representation for all the taxes we pay. I think that's completely unfair. A lot of the taxes don't go into prevention or things like that. They go into the General Fund, and they're used for other things. Prop 10 had no accountability for the spending. The results that they got for the spending, there was no measurable impact from \$1 billion in spending.

Transcript

The tobacco retail license, that's a really bad idea. It says it restricts youth access. How does it do that? There's no way that adding a tax reduces youth access. All it does is put another burden on people who smoke. There are other diseases that are caused by things like obesity and diet and lack of physical exercise. Does the City or State have the right to tell them what to eat or what to do inside their own homes? Are you going to go in and remind them how many hamburgers they eat or what they weigh on the scale? I don't think so. What is the result going to be of this new Ordinance? You're going to have people informing on their neighbors. You're going to create something where you're going to have neighbor versus neighbor. People are going to go outside to smoke, most likely in a public space, and that's going to increase confrontations. If you have any questions for me, I'd be happy to answer them.

Chair Burt: Thank you. Council Member Berman is now going to bow out for our discussion of Item Number 1. He'll return for the other two items on the agenda.

Council Member Berman recused himself at 9:43 P.M.

Chair Burt: Item 1 is to discuss multi-family building tenants and how we would recommend to proceed on that subject. Either questions or comments are welcome from colleagues. Who would like to proceed?

Council Member DuBois: You want to go ahead?

Council Member Wolbach: If you have comments, go for it. No questions.

Chair Burt: Go ahead, Tom.

Council Member DuBois: I'm really curious about other cities' Ordinances. You guys have looked at some of those?

Ms. Struve: Yes, we have.

Council Member DuBois: One thing I'm interested in is, you mentioned condos, so owners versus renters. When you said two percent of the respondents were owners, were those owners of the entire apartment building or those condo owners?

Ms. Struve: No. We distinguished between property managers, landlords and then residents of multi-family. We wouldn't know how many of the residents were condo owners. The support for condo upon resale only was low, but I don't know whether that's because there weren't very many condo owners that responded.

Transcript

Council Member DuBois: You don't know who was a condo owner and who wasn't?

Ms. Struve: No.

Council Member DuBois: Do other cities differentiate between own and rented?

Ms. Struve: As Phil said, there is a whole table of what other cities have done. The majority don't distinguish between condo and apartment, but some do. Some allow condo associations to vote on it and say, "We want 20 percent of our units to be for smokers." There are a variety of things you can include in an Ordinance. There could be phasing or grandfathering in existing smokers. Based on the responses we received, people are upset about them now. There are ways to say all new ones have to implement it right now, all new multi-family. The ones that are already in place have a few more months or upon lease renewal or whatever. There are lots of different ways of implementing it for multi-family. We could bring options back, if you wish.

Council Member DuBois: On the survey itself, 8,500 mailed out. Was that 8,500 different units or was there multiple mailings to single units to try to get responses?

Ms. Struve: I don't believe it was to a single unit. It was to whatever our Planning Department gave us as a list of the addresses for multi-family in Palo Alto. Anything higher than a duplex.

Council Member DuBois: Was it balanced at all for low income versus the buyer?

Ms. Struve: We wouldn't know. The phone calls I got were for low income.

Council Member DuBois: I'm curious for examples. How do other cities specify a designated smoking area outside of a common area? Rather than saying all common areas, do they specify ...

Ms. Struve: Yes. There's ways to specify. They have to be clearly designated, 25-30 feet away from any openings. Some even include buffers around them. Some of our residents that called requested that the public right-of-way have a buffer, so that people who go out to the sidewalk don't affect those living in the front buildings. Currently a lot of multi-family already don't allow smoking inside the units, so then the people who are closest to the street get affected and can't open their windows. There are different buffer requirements.

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Mr. Bobel: I'll just remind you what you did on Phase 2 of the smoking requirements, akin to this. You banned smoking in a district, a larger area than we had banned previously. In response to comments, we added that a smoking area could be designated, could be proposed and then approved by the City.

Council Member DuBois: Proposed by a private landowner?

Mr. Bobel: Anybody actually. In this case it could be proposed by the complex.

Council Member DuBois: Has that happened at all?

Ms. Struve: Not yet.

Mr. Bobel: Not yet. We've reminded the folks. There is interest; we know there's interest. They just haven't gotten it together. The business district would propose mostly likely.

Council Member DuBois: A six percent survey response, I'm not really sure what to make of the numbers, at that kind of response rate.

Mr. Bobel: Could Kirsten address that?

Council Member DuBois: Sure.

Mr. Bobel: We did look into that.

Ms. Struve: We looked at articles that talk about statistics with respect to these types of surveys. Our population is who we sent it out to. Our sample is what came back. I found two articles that when your sample size is around 8,000, you need about 350 for a 95 percent confidence level in the results. We got 505. As I said in my presentation, if we had used a different outreach method such as public meetings, we would probably never have gotten 505 people to come. It's much more difficult to attend a public meeting than fill out an online survey or call. We feel like our sample is less biased than it would have been from a public meeting.

Chair Burt: Are you going to go on the survey more?

Council Member DuBois: A little bit. You need 350 if there is no bias. I'm not sure if there is bias or not. I generally support the idea, but I'm a little bit uncomfortable particularly when people own their home but don't have any option. An outright ban with no smoking area, nothing. I'd like to hear what my colleagues have to say.

Transcript

Chair Burt: Cory, do you want to wade in?

Council Member Wolbach: I guess there are a few questions. I am a little ambivalent about each of them. To follow up on the question of designated smoking areas, Council Member DuBois asked but I didn't hear, have other cities implemented designated smoking areas as a requirement? If you're the owner of an apartment complex, you have to have a designated smoking area. If you're the owner of an apartment complex, you have the option of providing one for your residents if you would like. What have you seen at least in some neighboring cities on this one?

Ms. Struve: Nicole, do you know?

Nicole Coxe, Santa Clara County Health Department: The typical way of doing it is that landlords have the option to negotiate that. We haven't seen any, at least I haven't, in the jurisdictions that implemented where it's an outright requirement that there be a smoking section.

Council Member Wolbach: There are some where they do allow the property owner to provide that, if they would like to provide that, as an amenity for their smoking tenants?

Ms. Coxe: Correct.

Council Member Wolbach: There are a few questions I want to throw out there or highlight that we should discuss before we provide direction. There's the question of e-cigarettes inside multi-family housing. A couple of issues there. One of the motivations for—we're going to talk about this once Marc comes back—arguments in favor of restricting e-cigarette use is because it sets an example. If it's within somebody's home, you don't have that issue. There is of course the open question of what are the health impacts of vapor and does that circulate within a building in the same way or remain in the building providing a health risk? I'm not an expert on that, so I'm going to defer to others on that one.

Ms. Struve: We're not experts on that either. The County did not ban it inside the units for their Ordinance, because there is no evidence that it travels. I do believe it's banned in the common areas.

Council Member Wolbach: I am curious about how we would handle medicinal marijuana smoke.

Ms. Struve: That too. The California medical marijuana law currently includes language that says someone with an identification card cannot smoke their marijuana in a place where smoking is prohibited by law, which

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includes any local Ordinances. There is that concern about people in their homes. We could come up with some ideas during Ordinance development. I haven't seen any other city addressing that concern. There might be some way we could ask people to submit an exemption if their neighbors are not bothered by it. Right now only medical uses are allowed.

Council Member Wolbach: 2016 hasn't happened yet.

Ms. Struve: It's already included in State law that it cannot be smoked in areas where it's prohibited.

Council Member Wolbach: That might tie our hands a little bit. If we did want to carve out an exemption for medical marijuana hypothetically, that might put us out of compliance with State law. That's interesting. There's the option of petitioning your neighbors or petitioning the City for an exemption for a particular area, which might be one domicile where a medicinal marijuana user might put in for that application. I'm just brainstorming and putting out the questions I think we need to discuss. I don't have a firm opinion.

Mr. Bobel: Could I add a thought to that? Felicia, as an attorney, would know best. To avoid an apparent conflict with State law, you may need to exempt smoking from that particular unit. Smoking of all types, since the State has said that medical marijuana constitutes smoking.

Council Member Wolbach: That's what I intended. Thank you for clarifying. How we handle designated areas, if we do e-cigarettes indoors or not, how they line up, medical marijuana, and enforcement questions. I don't think that's terribly complex. I have confidence that, if Staff does come back with a draft Ordinance, then that would be addressed.

Mr. Bobel: If directed to come back with a draft Ordinance, we would come back with a companion enforcement plan. Just to give you a broad outline of what we're thinking, and Felicia has had discussions with our Police Department and we have to have a lot more. There would certainly be a front-end public education, awareness. Any citations would at first be educational citations. There wouldn't be penalty-oriented citations at first. We'd have a long period most likely of that. Ed can address what they did in San Jose, which I wasn't aware of, where rather than using the Police Department—Ed, do you want to expand on that?

Ed Shikada, Assistant City Manager: Sure. This follows some Staff discussion on that question of enforcement and how best to approach it. To a certain extent, it relates back to the question of what's being regulated. Is it the activity? Is it the land use? That might be the source of the

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regulation. In San Jose, it was focused not in the units, but in the common areas of multi-family. The approach was not to be a regulatory approach, instead be more public education. There was a partnership put together with Breathe California to respond to complaints with education and lobbying, and not setting the expectation that there would be any regulatory enforcement.

Council Member Wolbach: One of the questions that was raised by a member of the public was the issue of whether people might be forced out of their homes either by the City or by the property owner.

Mr. Bobel: We wouldn't have an enforcement provision like that.

Council Member Wolbach: That would allow the property owner to evict somebody for violation?

Mr. Bobel: I wouldn't see putting anything like that in it. You'd have to put it in.

Ms. Struve: Other jurisdictions' experiences are that once a ban passes and notice is put out and everyone is informed, there are actually very few complaints. Outside enforcement could happen a number of ways, complaint-based as well as policeman seeing someone smoking or doing a sweep or whatever. Inside a unit, it would have to be complaint-based, and it would be very difficult to see it happen. Education would be the first response and perhaps worked in other jurisdictions. Landlords would be asked to include in their leases that no smoking is allowed. They would be breaking the lease. We wouldn't then have to require anything in particular. It's however they want to handle that.

Council Member DuBois: Can I ask one quick question?

Chair Burt: Yes.

Council Member DuBois: Today a landlord's free to ban smoking on their own property?

Ms. Struve: Yeah.

Council Member DuBois: It's market driven, if they want to do it or not do it.

Ms. Struve: I'm not sure.

Chair Burt: First I'm glad this conversation seems to be focusing most of all on addressing risks to third parties, and not attempting to regulate conduct

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if it does not harm others. My Colleagues weren't on the Council when we had some of these discussions over the last year or so. I was concerned that there was a tenor that was driving into including wanting to regulate private conduct. That conduct may be harmful to the health of that individual. but that's a different issue. I'm glad that we've been focusing on how it affects third parties. I am a bit concerned on the survey as to whether it would be self-selecting and include biases. On the other hand I would think that if someone was a smoker, they might be inclined to respond to the survey and attempt to protect their interests. How do the results of our survey compare with any others, if we know that?

Ms. Struve: The County did a survey a few years back, and our results are consistent with theirs. Generally there's always high support from tenants and landlords.

Chair Burt: Are we aware of anywhere where they went from a mail-in survey to a focused survey going door-to-door and trying to get a high response rate? Any place that did that?

Ms. Struve: No. I don't even think that everyone who took to ban smoking or their family did any survey attended public meetings instead.

Chair Burt: Yeah, I can see that. I'm interested in what response we would get if we did a sampling that was much more targeted.

Mr. Bobel: Do we know of anybody that did phone survey?

Ms. Struve: No, I don't think so.

Mr. Bobel: I'm sure nobody did a door-to-door survey. They're real unpopular these days.

Ms. Struve: Phone surveys don't work out very well. People don't answer their phones.

Chair Burt: When we were referring to common areas, I didn't hear any distinction between indoor and outdoor common areas. Were we referring to both or one?

Ms. Struve: We asked about both in the survey. It was pretty much support for banning it in both. If there is a smoking area, it would obviously be outside, but probably not next to the playground or the pool where a lot of children would hang out.

Chair Burt: There was this reference to occasions where it drives it out to the sidewalk, and the units close to the sidewalk get even more. When we

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banned smoking from our parks, we didn't make any exceptions. I know of neighbors who have said, "When I walk the sidewalks and walk the dog, I'm encountering a lot more cigarette smoke." We've driven the people out of the parks rather than giving them a designated area. I'm not sure that was the wisest decision. I want to bear that in mind as we think about what to do here. I'd be inclined to allow designated outside common areas, whether we would have to have some parameters on the distance or whatever. It begs the question of whether that designation would be up to the complex owner or we'd set some ...

Mr. Bobel: I like what you ended up doing on our commercial district area. It wasn't my idea; I think it was one of you. You put it back on the district, in this case the complex, to propose something. The City would approve it just so we would know that it was consistent with our own Ordinance. That way they're proposing it, and we're double checking it to make sure it's not just forcing it on some other neighbor or the pool area or something.

Chair Burt: On this vaping, apparently there's no evidence that it travels from one unit to another.

Mr. Bobel: If I could offer something there.

Chair Burt: Sure.

Mr. Bobel: Probably the County is technically right; there's no evidence because it's a new thing and nobody has checked into it. However, it is nicotine. It has to be some related compound to nicotine. We know there's heavy metals in it. I don't know why it would be stopped.

Chair Burt: This goes to the issue of what's harmful from cigarette smoke. My understanding is it's not principally nicotine. The studies on secondhand smoke were about the carcinogens and other health impacts of smoke, not nicotine. Nicotine gum or patches are not thought to be harmful. They're FDA approved; whereas, cigarettes are not.

Mr. Bobel: You're raising the temperature of nicotine. I have to think there have to be nicotine-related compounds that are produced by the combination of heat and oxygen. We know to some extent that's true. Your Staff Report mentioned a derivative of nicotine. I'm not advocating that. One of our commenters tonight indicated that it was water vapor. It's more than water vapor. Just make sure everybody's clear on that.

Chair Burt: We conceivably could have nicotine exposure that would be the drug exposure. Other than exposing someone to a drug to whatever exposure level they'd get in secondhand, I don't know whether we know that

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there are any negative health impacts, unless our experts have anything to shed light on that.

Ms. Coxe: The health impacts.

Chair Burt: Sorry. Because this is recorded, can you join one of the mikes and introduce yourself? You can use Council Member Berman's right there.

Ms. Coxe: The health impacts

Council Member Wolbach: If you could introduce yourself.

Ms. Coxe: Sure. My name's Nicole Coxe, and I'm with the Santa Clara County Public Health Department. In terms of the health impacts, that's still being studied in terms of secondhand vapor exposure. Many of the studies that have come out do show that in addition to the nicotine there are other carcinogens that bystanders are being exposed to. The biomarker for nicotine is cotinine. There's no study showing that secondhand exposure is showing up in bystanders. There's been formaldehyde and other harmful toxins being ...

Chair Burt: Do we know at what levels and whether those are at thresholds that are significant?

Ms. Coxe: We don't know. This is a very new area that's being studied. I'm cautious about saying for certain what level of exposure is risky.

Council Member Wolbach: Can I just interject on this?

Chair Burt: Okay.

Council Member Wolbach: For the sake of Council Member Berman who's coming back for the larger discussion about adding e-cigarettes to our Smoking Ordinance, I'd like to make sure that our discussion at this time focuses on the question of whether e-cigarette vapor and those potentially harmful things included in it travel through and around a multi-family housing facility in the same way that the regular smoke does.

Chair Burt: I appreciate that we have a bit of a dilemma. There are some aspects to this discussion that will be repeated when we look at e-cigarettes. For me, these issues will bear on my recommendations on multi-family dwellings. Let me just continue, Cory.

Council Member Wolbach: If I could suggest one other thing.

Chair Burt: What?

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Council Member Wolbach: If the vapor does not travel in the same way that smoke does, it might make it a moot point. We might all agree not to worry about it for multi-family units following the County's example.

Council Member DuBois: And Staff's recommendation.

Chair Burt: Let's go to that one and dwell on that. What do we understand about how e-cigarette vapor may migrate to other units in multi-family dwelling units?

Ms. Coxe: There are no studies currently that have looked at that. That's part of why the County has been cautious about going that far. Other jurisdictions have included it in blanket tobacco smoking restrictions. We do know that there is some exposure in outdoor settings and other places and indoor, but the issue of the vapor traveling through ventilation systems has not been looked at. There's probably some level that is being transmitted through those areas. They're starting to also look at the issue of third-hand vapor, similar to secondhand smoke where it can stick to walls and curtains and things like that. They're finding that some of the harmful chemicals are...

Chair Burt: When we're referring to vapor, is this on water vapor or is it chemical vapors that are not on water droplets?

Ms. Coxe: I don't understand your question.

Chair Burt: It's the difference between a fume and a water vapor. Water vapor can carry other materials. A fume is that particular material that's been put into a gaseous phase.

Ms. Coxe: You guys might know more.

Mr. Bobel: If it's in the water or if it's separate from the water.

Chair Burt: A water droplet will move in a more restricted manner and be more controllable than a fume.

Ms. Coxe: I'm certainly not an expert on that question. The more common term that the scientists are using is aerosol. They're finding it does contain high concentrations of ultrafine particles.

Chair Burt: Do you happen to know, Phil?

Mr. Bobel: I don't.

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Chair Burt: Phil knows these sorts of issues from other air quality standards. These are distinctions that are made in air quality regulations for industrial environments and things like that. There's a difference in the ability to control them. If it goes through a ventilation filter, it would potentially make a difference between whether it moves from one place to another or not. It's not an incidental consideration.

Mr. Bobel: The bottom line is, Council Member Burt, we don't know. As she was saying, there just aren't any studies on this. It's an unknown.

Chair Burt: Cory framed this. We've got this issue on medical marijuana. We have a State regulation that would prohibit it from anywhere that smoking is prohibited, if I understood that correctly. I'm surprised there hasn't been a court case yet. If somebody has a medical marijuana prescription and they can't smoke it outdoors and they can't smoke it indoors, where do they smoke it?

Mr. Bobel: That's what I was saying. We'd have to have an exemption process. We'd have to exempt them from all smoking in that unit. If somebody has a prescription for medical marijuana and they live at Unit 302, you'd exempt Unit 302 from the smoking prohibition. Then it wouldn't be odds with the State law, because you've exempted any kind of smoking in Unit 302. It's not in conflict.

Council Member DuBois: Clarify that. A landlord can say, "I have nonsmoking apartments." Does that today ban medical marijuana smoking in those units?

Ms. Struve: It's not a law when a landlord has a policy. I don't think that would necessarily be covered by the State law.

Council Member DuBois: They'd be allowed to ...

Ms. Struve: That's a legal question.

Council Member Wolbach: Are landlords able to ban medical marijuana smoke in and/or around the entire property currently?

Ms. Gross: I don't think there's anything that prohibits them from doing that as a condition of your lease. Medical marijuana could be ingested in various places. At the person's healthcare provider for example. It can be ingested in alternate forms other than smoking. I don't believe there's anything in the law currently or could possibly be that would prohibit landlords from including that as a provision of the lease.

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Chair Burt: That would be important to have clarification when we get to Council on that. It just seems like we've got some legal contradictions that are implied here. We've all had a bunch of questions asked and answered and some comments. I don't know whether we're ...

Council Member DuBois: Could we hear a little bit more about the San Jose Ordinance? There's only a ban on common areas.

Mr. Shikada: That's correct. Maybe just to come back to that last point in terms of the contradiction in some regulatory structures. One, on the medical marijuana is whether the activity, which is at least a medical treatment, can be overruled by a landlord. I'm not sure that the answer is that clear, especially as it may relate to ADA requirements and whether there is an obligation by the landlord to provide some reasonable accommodation for that medical condition. That's one question. As it relates to the common area, I mentioned a question of land-use regulation versus the activity of smoking. If it's the smoking that's prohibited, then it's an individual's action that is prohibited or in some way subject to enforcement action. On the other hand, if it's put in more of land-use category, which was the case for San Jose. The regulation was one of a requirement to put up signs, which was a landlord's obligation. The prohibition of smoking within a certain physical area, which again was the responsibility of the landlord. That puts it within certain boundaries of our ability to effectively enforce it.

Council Member DuBois: There was no attempt by San Jose to impact secondhand smoke between neighbors in adjacent units.

Mr. Shikada: Within units. That was considered to be too hard to figure out. We're wrestling with some of the same issues here. Whether the City was in a position to be able to effectively regulate activity within a dwelling unit.

Council Member DuBois: I have one idea; it may be impractical. There's a big difference between public space, which we've done so far, and private spaces. We seem to be crossing a line that I don't necessarily want to cross. The difficulty here is people are sharing walls. Even though you're doing it in the privacy of your own home, you may be impacting another person. I was starting to go down the line thinking about what if we had an Ordinance where it was up to the landowner. They could create a smoking wing and a nonsmoking wing, and we could specify no smoking in common areas and a certain distance between smoking units and nonsmoking units. How do you do that practically? You'd probably have to grandfather it in. As leases expired, start to move the smokers together into one area. I did like the idea of focusing on education and posting signs in common areas. At this

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point, we should allow e-cigarettes within apartment units just like the County. It seems a little early to get ahead on that. That's one idea. It might be a little complicated.

Chair Burt: I was thinking about the smoking wings or smoking units, if we were to eventually go down that path. I'm not sure we're ready to do that tonight. The issue would be are there reasonable ways in which you can have exhausting outside the unit so that it doesn't go into a common ventilation system. People have fans that exhaust through a roof with filters. Tobacco smoke can presumably be filtered with carbon filters. Do you know, Phil?

Mr. Bobel: I think you can get rid of many of the carcinogens with a carbon filter.

Chair Burt: Maybe we'd even want to say if you're going to have it in a unit, you'd have to have separate exhausts, but you'd have to have a carbon filter into the common unit as well. I'm not prepared to get into the engineering of this. It may be a future where we and apartment owners would have an obligation to assure that, if smoking is still allowed in units, it doesn't get into other people's units and lungs. There are engineering solutions, but we're not ready to launch into that. We haven't seen anybody else do it to our knowledge. Have you heard of anybody who's done it through engineering requirements?

Ms. Struve: No. Since it would be a complaint-based enforcement process, if someone managed not to have smoke travel, no one would ever complain. Certainly it's something that either apartments or smokers could consider, but it's not necessarily something that we need to put in the Ordinance.

Mr. Bobel: Thinking of our ideal building ordinance for new buildings, you start to think about shouldn't that be a requirement. We've upgraded apartment complexes to deal with noise over the years. Why not smoke?

Chair Burt: If we were going to continue to allow it.

Council Member Wolbach: I definitely think this should come back. I'm tempted to say it should come back to Policy and Services. I could go either way on that one. There are a few things that's going to need to come back...

Chair Burt: I'm sorry. Where else would it come back to?

Council Member Wolbach: The Council.

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Chair Burt: That's not coming back.

Mr. Bobel: Our recommendation was ...

Council Member Wolbach: Their recommendation was to ...

Mr. Bobel: To come back to Policy and Services. I was just pointing out that that is a ...

Council Member Wolbach: He mentioned it earlier. We have that choice. I would prefer that it come back to Policy and Services, because we've asked a lot of questions. I was actually walking into tonight's meeting thinking this would be easy. It turns out I had more questions than I expected, as we got into it. When we're ready to make a Motion—which is very shortly—I'm tempted to say that we should direct Staff to draft an Ordinance prohibiting indoor smoking with allowances for designated smoking areas with guidelines about what those would look like. Those designated smoking areas could be outdoor or indoor. The guidelines would provide a distance from openings and things like that. If you live in an apartment complex and you want to have a smoking den, that's fine. Having it as a wing gets back to the question of airplanes and restaurants and hotels where we've seen that trying to have separate wings within the same building doesn't seem to preclude smoke traveling. One of the other big things about cigarette smoke—this is one of the other things when we draft a Motion, I'd be happy to take a stab at it—we're going to want to ask Staff to come back with whatever information you can find out about whether it's aerosol, vapor, fume, smoke associated with e-cigarettes. At least with cigarette smoke, it's not just your neighbors, it's also the next tenant in your unit. The carcinogens that attach to the walls and ceiling and the carpet provide a health risk to the next tenant. If that is also true as you suggested for e-cigarettes, even if it doesn't travel, if it remains and provides a carcinogenic risk to the next tenant in the same unit, I'd be very concerned about that. I want to have a little bit more information about that before I recommend that in an Ordinance to the full Council. That's where I'm at. If you guys think we're ready, I'm happy to take a stab at a Motion to direct Staff to come back with stuff.

Council Member DuBois: I'm still not at the point of banning somebody from smoking in their own home if we can make it work for their neighbors. There is a difference between smoking and nonsmoking sections in a restaurant. We'd leave it up to the landlord or owner whether to allow smoking or not in their building generally. We could require them to have designated smoking units so that people moving in would know where they are and they could decide to rent or not next to it. We could encourage through education those smoking units to eventually become grouped

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together. If you're moving into an apartment, you'd know it was a smoking unit before.

Council Member Wolbach: Thinking about the residents who are their neighbors and the residents who are the future tenants and knowing how much. I want to say that the free market will decide.

Council Member DuBois: Partially what's behind that idea is that the market will decide how many units there are.

Council Member Wolbach: Partly, not exclusively, recognizing how restricted housing options are in Palo Alto, sometimes people don't have a lot of free market options.

Council Member DuBois: If a landlord hears, "I really want a nonsmoking unit," they're not going to have very many smoking units in their inventory.

Council Member Wolbach: The way you establish the benefits of a nonsmoking unit is that it has never been a smoking unit because of the retention of dangerous chemicals in a smoking unit from somebody having smoked there for a long time. The ability to restrict the movement of smoke from one unit to another within a multi-family complex is really difficult, from my understanding. We can get more evidence or studies, have Staff pull something up and include it in our packet when it comes back to us. My understanding is that it is really, really tough to segregate and isolate smoke in that way. Both spatially and temporally. That's why I'm generally supportive of the ban, but still very concerned that we do provide a way for a landowner or apartment manager to provide a designated area so that people don't have to ...

Chair Burt: I'm not usually in favor of this action, but on this item out of the three I'm still struggling with it. I haven't heard a solution that seems adequate at this point in time. I would favor continuing this, rather than directing the elements of an Ordinance. Not continue it indefinitely. When we hopefully have Items 2 and 3, we will actually direct an Ordinance and have additional discussion of this at that meeting.

Council Member Wolbach: Can I ask a question?

Council Member DuBois: Is anything going to change? Do you have any questions?

Chair Burt: We've asked some questions. For me, sometimes I need to think about things after I've had more information.

Transcript

Council Member DuBois: I would really like to see some Ordinances from other cities that allow people to smoke in their home, but protect neighbors. I'd like to see if anybody's figured out how to do that.

Council Member Wolbach: My procedural question for Staff is if we're continuing this and it's coming back to us in its present form, can we also expect to have additional information brought by Staff?

Chair Burt: Certainly. We can ask Staff for additional information. Tom had one request. I would be interested in seeing what we can find out about engineered protections to address smoke from migrating to neighbors in multi-family units.

Council Member Wolbach: I would add to that the ability to truly, effectively cleanse an apartment that had been occupied by a smoker with indoor smoking.

Chair Burt: Let me finish before you jump in there. I would also like to have additional information on the issues around apparent legal contradictions with medical marijuana. We've raised a couple different things.

Mr. Bobel: Could you say your first again, Council Member?

Chair Burt: What we know about ...

Council Member DuBois: Air filtration systems.

Mr. Bobel: Air filtration.

Chair Burt: It's basically ventilation and filtration systems. Those are the two areas that I had been interested in. Can we look at smoking units requiring exhaust to the roof with some filtration so that those odors don't just go out unimpeded? Within a common ventilation system, are there reasonable ways to restrict the smoke being able to pass from one unit to another?

Mr. Bobel: Existing units, not new construction?

Chair Burt: Correct. Cory.

Council Member Wolbach: Following on those last couple of points, are there ways to truly, effectively cleanse an apartment that has been a smoking unit to transition it into a safe nonsmoking unit? Also further information about how chemicals that are produced by e-cigarettes travel or are retained in the environment.

Transcript

Chair Burt: Let me ask, are you referring to toxic chemicals?

Council Member Wolbach: Potentially harmful chemicals.

Chair Burt: Same thing. I would like to add to Cory's last one. It's not just how they transfer but any information about the amounts. Do we have reporting of any amount of any toxic material? That becomes a recognition that that wasn't a meaningful report. We encounter toxins throughout our days all over the place. Suddenly we pick a category and say, "This particular one should have zero risk." Zero risk becomes defined by the latest instrumentation that no longer is just parts per million that we can measure, but parts per billion. Then we start getting instrumentation that literally can go into parts per trillion. We start defining public health risks according to how advanced our test equipment is as opposed to the public health risk. I just want to make sure we focus on public health risks.

Council Member DuBois: Did you move to continue this?

MOTION: Chair Burt moved, seconded by Council Member DuBois to continue recommendation Number One to a date uncertain and direct Staff to return to the Policy & Services Committee with further information regarding:

- A. Engineered protections to prevent migration of carcinogens such as exhaust systems for venting through the roof lines; and
- B. Cleaning processes to convert a smoking unit (both tobacco and e-cigarette) to a non-smoking unit; and
- C. How potentially harmful materials are transferred and in what amounts they become dangerous; and
- D. Benchmarking with other cities' multi-family Ordinances and how they allow smoking (partial units, smoking areas designated, condo exemption process, disclosure process, etc.); and
- E. Possible legal contradiction with medical marijuana law.

MOTION PASSED: 3-0 Berman not participating

Chair Burt: When Marc comes back, it would be helpful to briefly repeat what we were informed about the e-cigarette issues, so that we don't have to do the whole question/answer. I'm sorry. You were the one who gave us most of the information that we asked for on the e-cigarettes. You can use that mike. I just want to repeat for Council Member Berman what he was

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out of the room for. We got into a partial discussion on e-cigarettes around multi-family. Now it pertains to e-cigarettes in particular.

Council Member Berman returned to the meeting.

Council Member Wolbach: For the record, if you could re-introduce yourself please.

Ms. Coxe: Sure. My name is Nicole Coxe. I'm with the Santa Clara County Public Health Department. Essentially what I shared with the committee was that there's some limited research in terms of the public health effects of long-term exposure to e-cigarette vapor to bystanders. There's starting to be some evidence that there's toxins being emitted through the secondhand aerosol. The biomarker for nicotine, cotinine, is being found in bystanders. I've got to think of the other elements.

Mr. Bobel: On the other side of the ledger, we should point out that there are no real studies that we're aware of on the migration of the vapor from e-cigarettes through buildings. There's also no health effect studies on the vapor itself.

Ms. Struve: There are.

Mr. Bobel: There are, okay. It's just on the movement through buildings, there weren't studies.

Ms. Coxe: There aren't very many studies, but there's evidence that it can affect bystanders. Caution is recommended. Just like exacerbating respiratory issues like asthma and things like that, they're getting exposure to ultrafine particles.

Chair Burt: I'm sorry. You're saying that are particulates?

Ms. Coxe: Correct.

Chair Burt: Of what sort?

Ms. Struve: Heavy metals.

Ms. Coxe: Heavy metals is the main study that's been cited.

Chair Burt: Do they cite concentrations? We have OSHA standards on exposure to heavy metals, for instance.

Ms. Coxe: I don't know, but I can definitely look at that. One of the findings in the public health advisory issued in January of this year said that

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both the mainstream, the aerosol being absorbed by the user, and secondhand aerosol has been found to contain at least ten chemicals on the California Prop 65 list of chemicals known to cause cancer. I know the threshold limit is an issue. I think that was ...

Chair Burt: Nothing about concentrations in any of this?

Ms. Coxe: It's very new. While there's been more and more studies ongoing, this is a new area of research.

Chair Burt: Presumably when they did a study, there was a concentration determined in that study. It sounds like the reporting is just that they found some ...

Ms. Coxe: Level.

Chair Burt: I'm guessing the study has that information.

Ms. Coxe: It would, yeah. I don't want to quote which chemical it was, but in some of the studies it's at the same level as secondhand smoke. I can certainly pull the details when we come back.

Chair Burt: That's interesting.

Ms. Coxe: I know that all of our County's factual findings that we used for our Ordinance are cited in your report. There's more evidence for you there.

Chair Burt: Thank you. Let's focus on this question of regulation of e-cigarettes. Who would like to proceed? Tom, do you have anything?

Council Member DuBois: Again, I see a big difference between private and public use.

MOTION: Council Member DuBois moved, seconded by Council Member Berman to direct Staff to draft an Ordinance making e-cigarettes subject to the same regulations as the current Smoking Ordinance and return to the City Council for review and adoption.

Council Member Wolbach: Can I have a friendly Amendment?

Chair Burt: Did you want to speak to your Motion?

Council Member DuBois: No. The CDC has found that 10 percent of high school students are starting to vape. The Staff Report summed it up pretty well on this issue. I don't have much to add.

Transcript

Chair Burt: Marc, do you have ...

Council Member Berman: I missed the conversation that you guys already had earlier. The statistic that Tom just cited was the most alarming and striking one. That was a 100 percent increase in one year. That 10 percent is a 2012 number. Who knows what it is now. We talked about it; I can't remember if it was last year or earlier this year. The likely harm that's occurring to youth probably outweighs for me the potential benefits that it might be providing for others. It makes sense to add it to our ban.

Chair Burt: Cory.

Council Member Wolbach: Do we want to jump to Part 3 at the same time or keep them separate?

Chair Burt: No, separate.

Council Member Wolbach: I'll be supporting the Motion.

Chair Burt: I think I will be supporting it as well. I have not seen the data that demonstrates that as a health risk to others vaping vapors are anywhere near equivalent to the significant health risks that we have from cigarette smoke. There are some indications that there is health risks. I just haven't seen that it is equivalent health risks. Marc, this was one of the things you were outside of the room on. Just a reminder that it is not nicotine in cigarette smoke that is the primary toxin. It's all of the many other harmful ingredients in cigarette smoke. That's why nicotine gum and nicotine patches are all FDA approved with no harmful effects. I don't use them. This is what health studies have demonstrated for some time. I want to make sure that we don't leap into equating nicotine with the harmful effects of cigarette smoke. There are studies that are indicating that vaping is not harmless. By restricting it in these public areas in the ways that we do cigarette smoke, I don't think we're risking something too onerous. That includes all areas of parks, right?

Mr. Bobel: Yes.

Chair Burt: Maybe we could do it at the end. Look at whether we want to have a revisit on designated areas in parks, so that we don't have another thing that we just invade our sidewalks with by restricting that. That can be a separate direction to Staff on this return perhaps, when this comes back to us. I will support this Motion. I guess no other comments.

MOTION PASSED: 4-0

Transcript

Chair Burt: The final item is the restriction of sales of tobacco products. Who would like to kick it off? Tom?

Council Member DuBois: Yes. I've been kicking it off. I wasn't here for the previous two phases. Why the focus on pharmacies? That wasn't clear to me.

Ms. Struve: It was because pharmacies are supposed to be places where people go to get things to be healthy. Tobacco is not something ...

Chair Burt: We don't call them drug stores.

Ms. Struve: It was something that San Francisco had done. When we initially did benchmarking with other cities on their Smoking Ordinances, it was an idea that was brought forward. Policy and Services discussed it.

Council Member DuBois: The proposal from Staff is that we would license other retailers, but ban pharmacies. Under our current regulation, have we banned pharmacies from cigarettes?

Ms. Struve: No, not yet. We didn't restrict any sales.

Mr. Bobel: This is a new area.

Ms. Struve: The options are ...

Council Member DuBois: I read here the Committee moved to ban pharmacies; however, they haven't been pursued. In the Staff Report, it says Policy and Services moved to ban the sale of tobacco products from pharmacies; however, due to staffing resources, such restrictions were not pursued. Does that mean it was approved by Council or just Policy and Services?

Mr. Struve: Just Policy and Services.

Council Member DuBois: It didn't go anywhere?

Ms. Struve: Yeah. The options, like Phil said before, is either we come back with an Ordinance banning it in pharmacies or we use the tool of tobacco retailer licensing. You could adapt it.

Council Member DuBois: Let's talk about licensing. The recommendation here said ban pharmacies and license. How do we measure the illegal sales to minors at 15 percent?

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Ms. Struve: It's basically minor decoys and then some businesses sell to them and others don't.

Council Member Berman: Sorry to interrupt. I hate to do that. What does that mean? There's a 15 percent illegal sale rate to minors. Does that mean that 15 percent of minors that try to buy ...

Ms. Struve: Fifteen percent of businesses that sell tobacco have sold to minors.

Chair Burt: That's different from 15 percent of the time.

Ms. Struve: Sorry, that wasn't clear.

Mr. Bobel: We have 33 businesses ...

Ms. Struve: We now have 32 but 33 at the time.

Council Member Berman: So five of them.

Mr. Bobel: Fifteen percent of those according to the County Clerk have sold to minors.

Council Member DuBois: The idea behind retail licensing is an enforcement mechanism? You said it will be self-funded. How much Staff would be needed to enforce it?

Ms. Struve: We can design it anyway we want. We have already applied for a grant from the County to help us with tobacco control. There will be more grant money available in the fall. This grant money can be used for hiring Staff to set up a program like that or a consultant. I don't know that there would be ongoing implementation money available. Once we have it set up with a fee that is collected annually, it should be self-funding if designed correctly.

Council Member DuBois: Are we talking about one FTE or do we know?

Ms. Struve: I'm not sure. That's something we would have to bring back.

Council Member DuBois: Do we know what a typical license fee is in other cities?

Ms. Struve: Yes. It's around \$300 or more or less depending on what their cost recovery rates are and whether they have other fees they already collect. Some cities that have health departments might have other funds

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already invested in tobacco control. Their fees are lower. It depends. From what I've seen, around \$300, \$350.

Council Member DuBois: The option you threw out was banning it within so many feet from a school. That doesn't provide the funds to do enforcement.

Ms. Struve: The problem is that half of our current tobacco retailers are located within 1,000 feet of our schools. The licensing program would permit us to say no new ones could locate in such areas. The already existing businesses could be grandfathered.

Council Member DuBois: Are you proposing that we would have a licensing program and additional restrictions?

Mr. Bobel: The only additional restriction we received was banning it in pharmacies.

Ms. Struve: At this time, but you could choose whatever you want.

Mr. Bobel: The dilemma we ran into was the 1,000 feet didn't seem right. We could cut that in half or you could cut it in a quarter.

Council Member DuBois: I'm still not sure why we'd single out pharmacies. I think I like the idea of the licensing and having that be self-funded. I would apply it to everybody including pharmacies. I'd like to hear what everybody has to say.

Council Member Berman: I apologize. I was in my own head, and all of a sudden I heard one FTE. Was that ...

Council Member DuBois: The idea is we would have this licensing fee and it would fund the program. I didn't know how fleshed out it was. How many people that would be ...

Council Member Berman: To run the program?

Chair Burt: The answer was what?

Council Member DuBois: They don't know yet.

Mr. Bobel: We don't know.

Council Member Berman: I just heard that and it was like ...

Mr. Shikada: Just to be clear, there was no estimate or expectation that an FTE would be involved.

Transcript

Council Member Berman: Perfect. It doesn't sound like the fee would cover that either.

Mr. Bobel: If it was \$300 and we had all 33 of those facilities, that's on the order of \$100,000. It's not

Council Member Berman: I got \$9,000.

Mr. Bobel: I'm sorry, I was thinking on the wrong order of magnitude. We might have to charge more.

Council Member Berman: We're going to have to revisit this Minimum Wage Ordinance that we talked about earlier.

Mr. Bobel: Sorry about that.

Council Member Berman: I don't have any other questions.

Chair Burt: Cory.

Council Member Wolbach: Questions or comments at this time?

Chair Burt: Either.

Council Member Wolbach: My thinking is in line with Tom's. We should have a tobacco retailer licensing program. It should apply the same to drug stores, liquor stores, pharmacies, gas stations. We should have a clear set of standards. If you meet the standards, you should be able to sell cigarettes. As far as distance from a school, it's an arbitrary number but 1,000 feet sounds okay to me. If that means that half of the current tobacco sellers in Palo Alto would no longer be able to, there are a couple of options there. One is half of them aren't able to anymore. That raises the question about whether that opens up us to risk. Is that a taking? Would we have to amortize it? Or we grandfather in those that are within distance. That's a question for the City Attorney, could we tell those 15 or 16 they can't sell tobacco anymore?

Ms. Gross: Without a license?

Council Member Wolbach: Could we tell them you're not getting qualified for the license; therefore ...

Chair Burt: Because of their adjacency?

Council Member Wolbach: Because of their adjacency to schools. If we chose not to allow grandfathering.

Transcript

Ms. Gross: I have to do some legal research. Certainly I think there'd be some legal risks. Grandfathering would meet constitutional standards, so that's certainly an option.

Council Member Wolbach: Once we make a Motion and it comes back, my recommendation would be that we have those options with that information to help make a more informed decision about proximity to schools. If there's not a legal risk or a cost to the City, I'd be fine with saying they can't sell tobacco that close to a school. If we have to grandfather them in. Those are my thoughts.

Chair Burt: Let me ask about the enforcement. I favor the licensing. Right now, for instance, we have alcohol sales. Sellers of alcohol are very diligent on checking IDs because it jeopardizes their license. This would be a similar circumstance. What happens if they encounter false licenses? Right now on the County cigarette surveys, if a kid goes in and isn't ID'd, that's one thing. If they're ID'd and they give a false license, is that same ding on the seller? How is that viewed?

Ms. Coxe: The survey that was done was actually conducted by the police department. The enforcement agency abides by a set of standards when they go into a store. The minor that goes in has to have an issued ID and can't lie about their age. There's no entrapment issues going on with the minor lying about it or presenting a false identification. What we do at the County with our Sheriff's Office is they have set standard procedures that their enforcement officials are trained on, the minor is trained on and so is complying with State standards.

Chair Burt: I get it now. You're not entrapping. That doesn't get to the dilemma of how would we address an issue if we found out that sales went to a minor who used a false ID. I don't know how it operates in liquor now. What happens if somebody's got a false ID? Does somebody risk losing their liquor license if they sold to someone with a false ID?

Mr. Shikada: They do. It's the ABC permit or license that's at risk. In this case, in principle it would be the tobacco license that would be at risk. We'd need to look into what enforcement mechanism, what appropriate level of resourcing would be necessary.

Chair Burt: I want to see something where sellers are going to exercise proper diligence and tighter controls than we presently have. I think we'll get that out of a license. I want to be fair at the same time. If they're doing that diligence, they don't get their license yanked because somebody deceived them in a way that was not readily apparent. That's my one concern there. If we do have that strong enforcement and they would

Transcript

jeopardize their license if they allowed it to be violated, then I'm less concerned about this distance issue. What is the point of the distance? My understanding is that you don't want to have these places selling to minors. They get out of school and they go over to buy cigarettes at the local store. I tend to think that the most important thing is having the sellers enforce rigidly. They'll be checking for IDs if they're going to lose their license. These that do sell them make money off their cigarettes. It's a high margin and high dollar amount these days. The other thing about this distance issue is we say schools, but do we mean public schools or public and private schools? Are we including educational uses like we were talking about last night? We have them galore in every one of our shopping centers now, certainly places like Midtown where you have all kinds of classes. I would think that those would be similar. We'd want to treat them in a similar nature, but that would prohibit sales from anywhere near Midtown for instance. It depends on where we draw the line on those uses. Have we had any thought on what we'd put in this school category?

Mr. Bobel: We weren't recommending that, so we didn't do a lot of thinking about it.

Ms. Struve: What the survey from the County shows and the number of half of our retailers within 1,000 feet of schools includes both public and private.

Chair Burt: I'm not presently inclined to do this distance restriction provided that we have the license and strong enforcement. I am interested in capping the number of licensed sellers in the City, so that we don't have a proliferation in the future. That would be an element that I haven't heard colleagues talk about. That's something I'd be interested in doing.

Council Member DuBois: It seems like a pretty stable market. Are we expecting an explosion of cigarette sellers?

Chair Burt: No.

Council Member DuBois: I just wondered if it would have unintended effects, limiting the number of sellers. Somebody ends up with a cigarette monopoly in Palo Alto. I don't feel very strongly about it either way. That would just be the concern.

Council Member Berman: It's a fine idea. I agree that you don't want a monopoly. I'd be fine with setting it at 33. If you want to set it at 40, you'd have a little leeway. That's high enough that we're not being draconian.

Chair Burt: I'm not interested in expanding the number of sellers in the City.

Transcript

Council Member Berman: I'm fine with that.

Chair Burt: I'm not saying we'd shut anybody down, but maybe we cap it at our current number.

Council Member Berman: I don't have a problem with it.

Council Member Wolbach: In response to your questions about the school proximity, you make a good point. I could push strongly on the school proximity restriction. Conversely I'm not sold on the idea of capping the number. I don't think it's necessary. As Tom said, it seems like a pretty stable market. If the market wants it and people aren't giving them to kids and people aren't smoking them in public places, I'm fine with more places providing it. My concern is how they end up getting used and by whom.

Mr. Bobel: Could I just say something in defense of our recommendation to restrict them at pharmacies? CVS did it themselves because they didn't want to have a mixed message at their facility. They didn't want to be saying, "Come to our facility and stay healthy and get well. This is what you do when you come to our facility, you stay health and you get well. This is the kind of facility we are." To also sell cigarettes, especially to young people that might be legal but just barely legal, they decided that's not the image they wanted of their store. There isn't super great logic to it. Other communities have done it. That's the reason, so that the messaging to the community is very clear. Cigarettes don't go along with getting healthy or staying healthy. That's not what cigarettes are about. It's a messaging reason. I'll leave it at that. It's totally up to you, but I did want to defend it a little bit since we made that recommendation.

Council Member DuBois: How many of the 33 are pharmacies?

Ms. Struve: Four.

Council Member Berman: Four.

Ms. Struve: And three are from the same chain, Walgreens.

Mr. Bobel: One does worry me a little bit, that Safeway on Middlefield.

Council Member DuBois: You're counting Safeway?

Mr. Bobel: Yeah, we're counting Safeway. They have a pharmacy. They're a magnet for kids after school. I don't know if you can make the same argument about the Walgreens.

Chair Burt: Cory.

Transcript

Council Member Wolbach: It's interesting intersections here. The messaging argument about prohibiting cigarette sales in pharmacies to send a message.

Chair Burt: Geez, we're late.

Council Member Berman: Yeah.

Council Member Wolbach: The messaging thing also applies to the distance from schools thing. I don't think we need to ban it in pharmacies. They have a whole aisle full of things that cause diabetes, and they sell them to kids every day.

Council Member Berman: I was ...

Chair Burt: Let's move toward action. Without a clock in this room, I did not realize we were at 11:00. Let's have someone put a Motion out.

MOTION: Council Member DuBois moved, seconded by Council Member Berman to direct Staff to enact a tobacco retail license program and return to the City Council for review and approval.

Chair Burt: Any further discussion on your Motion, comments?

Council Member Berman: No.

Chair Burt: Tom? Cory.

Council Member Wolbach: So we're clear, are we directing Staff to bring it back to Policy and Services or to Council?

Council Member Berman: I'd be fine with Council. I don't know if there's follow-up items on this. We're not doing the 1,000 feet, so the grandfathering shouldn't be an issue.

Council Member DuBois: We continued the first item. I'd be fine sending the other two to Council. Does it make sense to split them up?

Chair Burt: It does. It would allow us to move them all forward. Number 2, did we say to bring the Ordinance to Council, not back here?

Mr. Bobel: You didn't say.

Chair: Then we need to add that direction.

Council Member Berman: Let's wrap this and then go back and do that.

Transcript

Chair Burt: Sure. This would be an Ordinance to Council. Any other discussion?

MOTION PASSED: 4-0

Chair Burt: We need to entertain a direction on whether Number 2 would return to Policy and Services or go on to Council.

Future Meetings and Agendas

Chair Burt: Our next meeting is the 21st. Refresh on the agenda items.

Tabatha Boatwright, Administrative Associate III: With Khash being out on vacation, we did not receive an update. I did verify again the current tentative. There are no others on the current agenda.

Chair Burt: We could have a quick meeting.

Council Member DuBois: The protocol discussion.

Chair Burt: I think that's right. I think we were rolling over the protocol discussion.

Adjournment: Meeting was adjourned at 11:07 P.M.