



POLICY AND SERVICES COMMITTEE TRANSCRIPT

Special Meeting
Tuesday, June 13, 2017

Chairperson Wolbach called the meeting to order at 6:06 P.M. in the Community Meeting Room, 250 Hamilton Avenue, Palo Alto, California.

Present: Kniss, Kou, Wolbach (Chair)

Absent: DuBois

Agenda Items

1. Consideration of a City Ordinance Protecting Personal Privacy in the Acquisition and use of Surveillance Technologies by the City.

Chair Wolbach: Thank you, everybody, for being here this evening. We'll start off this Policy and Services Committee meeting with Oral Communications. This is an opportunity for members of the public to speak on any item which is not on the tonight's agenda. It looks like we no public speakers for Oral Communications, is that correct? Ok, so we will move onto our first action item. Item one tonight is consideration of a City Ordinance protecting personal privacy in the acquisition and use of surveillance technologies by the City. What we will do here is we will have a Staff report first, then we will go to oral communications and then bring it back to the Committee for discussion and motions. Would Staff like to kick this one off?

Ed Shikada, Assistant City Manager: Thank you, Chair and Members of the Committee; Ed Shikada, Assistant City Manager. I'd just like to introduce Amber Cameron who is by day with the Fire Department and took this on as a special project for us from a City-wide perspective to help manage our inter-departmental work to follow up on this Colleague's Memo. With that, I'll ask Amber to do a quick overview.

Amber Cameron, Senior Management Analyst: Great, thank you and it's a pleasure to be here with you tonight. Let's see, we'll be talking about what the considerations of an Ordinance regarding surveillance technologies. Some background on this is originally this idea was brought forward in April 2016 by a Colleague's Memo and in December 2016, Staff came to Policy and Services with another report with a lot of information about what technologies and policies the City currently has. As well as some examples of what other Cities have done around this issue. Then, at the – the result of

TRANSCRIPT

that was the Committee requested Staff to come back with a potential Ordinance for adoption. What we are bringing forward today are the tenants and recommendations of what we would request that should be covered in that Ordinance. In – this is really just a proposal to get us started with some basic components of the Ordinance to get the conversation going and to get your feedback. With that in mind, the goals of what this Ordinance would cover would be to reaffirm a commitment to privacy rights for the residents in the community, increasing oversight and transparency in the purchase and use of surveillance technology, require explicit City Council for approval for purchase and rules governing the use of these surveillance technologies. As well as make publicly available these policies outlining measure taken to protect privacy. One of the main things to consider with what would include in the Ordinance is how we define surveillance technology and what we are recommending is a – is that we focus on the primary technologies of concern today, as a starting point. The City's Attorney's Office has drafted this definition of surveillance technology that does focus on those primary technologies but also allows for the inclusion of other technologies that are developed in the future or that you might want to see included in the – down the line. We would also recommend that Council authorization be required when purchasing any of these technologies, regardless of how much the cost. So, right now you have seen a few of these items come forward to you because of the price point but this would require any item, even something like a drone that might be a \$500 price, will still come forward to you for approval. We would also suggest that we outline what should be required in these Staff reports, which would include a description of the technology and the rules that govern it's use already. So, if there are any current laws or regulations around these items, going back to the drone example, it would include things like the FAA regulations that are already related. Also, including measures to protect private information that will be included. Data management and retention policies, so ensuring that we're not keeping any data erroneously or that kind of thing. Also, any current policies in place or policies that need to be development administratively for internal regulation within the City. In addition, we would recommend an annual report to City Council, which would be a City-wide report. That would include identifying the technology, as well as the date that it was authorized by Council for purchase and use, which departments are utilizing it, how often they are utilizing it, as well as the purpose and outcomes of the times that they have deployed that technology. We will also ensure that reports will be made easily assessable to the public as well. Those are the basics of what the Ordinance should cover and with that information, we'd like you to discuss your thoughts and confirm what you would like to see in the Ordinance. Then instruct us to come back with a draft Ordinance for adoption.

TRANSCRIPT

Chair Wolbach: Very good. If – is there anything else from Staff before we go to the public? I just wanted to open the opportunity for any of the other Staff members. If not – City Manager?

James Keene, City Manager: I just might amplify a couple of thoughts. I think in the – I think in our sense of responding to the – certainly, the Committee's interest at our last meeting, that getting an Ordinance in place to the Council is important. Therefore, the process we're proposing would recommend again, just going straight to Council from here. Rather than having to come back to the Committee and that sort of thing, thanks.

Chair Wolbach: I appreciate that point. So...

Vice Mayor Kniss: Can I ask you one thing before the public?

Chair Wolbach: Yeah, I am ok if you have a couple real just quick questions.

Vice Mayor Kniss: No, it's not a question. I want – you brought it to us and I am interested in what motivated you. You wrote this with a couple of other Colleagues.

Chair Wolbach: That is correct. I am happy to talk about that. I think maybe we should go to the public first and then I'd be happy to talk about it unless you really want...

Vice Mayor Kniss: They might want to respond to why you wanted it.

Chair Wolbach: Well, I think everybody is aware that technology is out there today, which can collect personally identifiable information. New technologies will be developed in the future. There is legislation at the State level addressing a couple of pieces of technology but not everything that is out there and nothing covering future technologies, which might be very useful to the City. It's essentially an unregulated area of technological use by local government. The question is how do we ensure that there's transparency for the public and that the City utilizes best practices in considering adopting and utilizing technology, in order to ensure that personally identifiable information is acquired, disseminated, and retained in the most responsible manner. The intent here is not to limit any technology from use by the City but to again, push for transparency in the kinds of things used by the City and also, to nudge the City towards best practices, which I think – I'll say that I think we've done a pretty good job of. This is really more future focused, rather than looking backward with any criticism.

TRANSCRIPT

I think our City has been very progressive on a number of things related to law enforcement, public safety and I think that we are well positioned to be leaders on this. This has been implemented in a sense on something every similar at the County level. They have seen some benefits and also some challenges and I think that we can learn from what's happened at the County level. So, when we come back after speaking with – after hearing from the public, I will share my thoughts about that as well.

Vice Mayor Kniss: Thank you.

Chair Wolbach: So, let's go to the public. We have, let's see, just three – we haven't received any more speaker cards, have we? Ok, so we have three speakers. Each of you will have three minutes and feel free to use the microphone right up here. The first speaker is Adam Schwartz from the Electronic Frontier Foundation or EFF; to be followed by Paul George and Jerry Swartz.

Adam Schwartz, Electronic Frontier Foundation: Thank you very much for allowing me to speak here tonight. Paul and Jerry have agreed to lend me some of their time and I'll try to stay under the three minutes but if I don't...

Chair Wolbach: Actually, we generally just the speaker use the three minutes.

Mr. Schwartz: Ok, great. I'll stay at three minutes, so first, thank you to all the Council Members who have supported this and to all the Staff members who have generously given their time to speak to the privacy advocates about this. We really appreciate it. We are strongly supportive of the idea of this Ordinance and we urge the Council to vote as Staff has suggested to ask them to prepare the Ordinance for the Council's approval. There is a lot to like in this Ordinance. We did circulate a letter earlier this afternoon to many of you and we do hope that is in the record. Just to summarize three concerns that we do have – of course, there is not even an Ordinance yet but as we understand the sketch, number one is we think it's important that surveillance technology be defined to include a technology that is used to gather information about the public. Whether or not it was intended to be so use but for example, with a body worn camera or a smart City camera that is intended to be looking at cars. It might not be intended to watch what any individual is doing but after the fact, the information can be taken from that device and actually used for surveillance of a particular individual. So, we think the definition in the Staff sketch of surveillance technology is too narrow. Number two in the Staff sketch of what issues come before the City Council it is purchasing and contracting, which is good but that leaves out

TRANSCRIPT

the solicitation of money from other sources. We think before they are soliciting money, they ought to come before the City Council as opposed to showing with the money, which we think puts a thumb on the scale for the City Council's deliberation. Number three, a critical feature of what we consider the model bill coming out of Santa Clara County and – which is have been approved by the Oakland City Council Committee of Public Safety and the Commission of Privacy in which is heading for their full City Council we hope soon. That it's not just Council approval of the technology but also of use policies. When the Council is deciding how we going to buy a drone, the Council should be having in front of them a specific policy from the Police Department or the Fire Department or whoever about how they are going to use that drone. Then the Council should decide whether that policy meets all of the Council's expectation. As opposed to just signing off on a technology without the use policy. As the bill is written, we may have other concerns but those where the three concerns we had – that we saw on the face of the Staff report. Again, we are grateful to Staff for communicating with us and for seeking this Ordinance and we're very appreciative of all of the Council Members who have been involved in the Council Colleague's letter. So, thank you.

Chair Wolbach: Thank you. Alright, Paul George, to be followed by (inaudible) speaker Jerry Schwarz.

Paul George: Paul George with Peninsula Peace and Justice Center. First of all, here's the letter that just got emailed this afternoon. I have given the City Attorney and the City Manager copies. I hope you can review these and include this as part of your conversation tonight as you give Council instruct. I'll let the letter and what Adam just said mostly speak for what I want to say. All I will add is that from my position as an (inaudible) organizer, there's tremendous amount of support in the City for this. Everyone is concerned about their privacy and their electronic data. So far, Palo Alto will be the first City in this area to do such an Ordinance and so I would encourage you to make it the best you possibly can and take into consideration some of these additional tweaks to Staff's excellent first report. I will let it go at that, thank you.

Chair Wolbach: Thank you. Final speaker Jerry Schwarz.

Jerry Schwarz: Good evening. Thank you for your time. I have been a strong supporter of the ideas of this Ordinance but it seems to me that it's not strong enough in the direction I think is most important, which is making sure that the public understands what's happening and can make its voice heard before any action with regard to surveillance equipment occurs. I have

TRANSCRIPT

a few nits which I understand is going to go back to Staff and these nits are our nits. For example, in specifying that certain things should appear on the Council agenda, it doesn't say on the regular agenda which is very important. It – there have been instances not in Palo Alto but in other locations where something was snuck into the consent calendar without being properly reviewed. In terms of the definition of what is surveillance equipment, it is wrong that you only want to look at things that are out there right now. We live in Silicon Valley and there was probably a new product announced today that none of us know about yet. That the definition of surveillance equipment has to be broad enough to take into account new technologies that will be coming down the pipe. The phrase – the wording for the definition here confused me because it says that it has to be something about specific individuals. Which to me sounded like this equipment would be only used when you had identified – it would only be equipped used when somebody has been identified in advance but most of the – not all of the examples are surveilling activities, not particular people. For example, license plate readers are surveilling cars, not people. Of course, people and cars go together a bit but they are not – that primarily designed to see where cars are, not where people are. Thank you.

Chair Wolbach: Thank you. Alright, so I'll bring it back to Council unless Staff wants to take a first stab at responding to anything mentioned by the public.

Mr. Keene: Well, yes, Mr. Chairman, I guess two points. One is sort of interested in your desires to how you want to process both Council's comments and the comments from the public this evening. We have some very (inaudible) people here. Some of these things I would say – well, let's just say in the spirit of transparency and democracy, we could have commentary here where we're not even in agreement on the Staff if some people get up and speak. So, I just would say let's sort of temper the discussion in one sense, so there may be things right off the bat that we could say that we don't think this is an issue, say in the comments that we've heard but we haven't heard what the Council would say. There are little things to me like is it clear whether this is – what City departments or all City departments? I can understand the confusion since people have been paying attention to strong Mayor form of government or Counties that are very fragmented and compartmentalized. We have the good fortune of having adopted a progresses reform movement called the Council-Manager Form of Government, that it's unified and in that sense, it says that we clearly—so, I am just putting a plug in for our form of government...

Mr. Schwartz: Subtle plug.

TRANSCRIPT

Mr. Keene: ...this would automatically really apply to all departments. I think that the City attorney—we may have some of our Public Safety folks who would put some perspective this but I want to restate that one, we're interested in getting an Ordinance in place. Clearly, it's easier for us to define things that we know about as opposed to things that we don't know about. Additionally, an Ordinance in and of itself isn't the only vehicle we use for regulating ourselves, our behavior, erecting our behavior, and reporting. So, we actually have administrative policies that would supplement this. My own sense on the comments related to policy in the Ordinance would be more to leave this in a policy realm for now. That's the fastest way for us to be able to adapt to things. Particularly if it's an administrative policy and some of these things are things that I can sign off on just like that, rather than a – often what's a month – a multi-month process in having to come back to the Council. That being said, we certainly anticipated that in our thinking about this drafting, that we would in the future probably be coming back to Council. One as technology shifted or as we kind of got our sea legs about what's working and what isn't working. We'd rather sort of let things unfold then be in a situation where we're clawing back language that was problematic; so, thanks.

Chair Wolbach: Ok, I appreciate that. I could tell you more about my thoughts but first I want to give Liz and Lydia, each of you a chance to – if you have any questions or comments, maybe that you would like to ask.

Council Member Kou: Actually, I – I'm actually surprised too – while I agree with this Ordinance and I support it for the privacy matter. I am actually surprised that it was brought forward, especially with the climate that we're in and concerns with tracking of – you know ICE tracking and that sort of thing. I know that we have a policy in place to ensure that our police and that organization and our departments do not give out the information of – undocumented workers. However, with this kind of technology in place, there is always the opportunity too, so I do have great concerns about being – that it is – if it should get incorporated, that is it very carefully thought out and to retain the privacy of everybody involved. Even with the license surveyors, those scanners, I am not – there seems to be a violation of the driver's privacy. When I see these surveillances, I would really like it to be left to the Police Department and it's a – for me, these surveillances – these devices are more better for our employees and our Staff to protect ourselves, to protect the City versus going out and doing – having it everywhere. I do agree with the privacy matter. I mean I agree with what the gentlemen came in from ACLU, their letter completely and I would agree with the City Manager to actually draft it up and take it to Council for them to look at. I was surprised to read this – that it was brought as a Colleague's

TRANSCRIPT

Memo over. I think it's more for privacy and to describe the privacy, is that what the intent was?

Chair Wolbach: The intent was to – well, so we actually started working on this about a year and a half ago and we're working with Staff and various members of the community and it finally got on the Council's Agenda about a year ago. So, it's been kind of a long deliberative process so far and again, the original intention was to say that there's this whole realm of technological use currently and potentially in the future. A lot of people in the community have concerns about it. There's a lot of concerns about how current and future technology used by local Cities, including Palo Alto, may or may not impact the privacy of residents. One of the best things that we can do to reassure our residents in Palo Alto that their privacy is protected, is to have better transparency about what kinds of technologies we use. That's basically the primary impetus for this, is to ensure that the privacy of residents isn't violated in – especially in some unknown way. There's – there have been cases in other communities where – this part of the motivation for our colleague's memo, where we saw in some other communities, maybe something that I wouldn't expect to happen here but I – we want to play it safe but we've seen other communities sometimes some piece of surveillance technology might be adopted and the public didn't know about it. Then the public finds out about it later and everybody is upset, the City looks bad, the public feels their trust has been betrayed, and the role of law enforcement is undermined because it's diminished. (Inaudible) the City's hurt because of the diminished trust of the public and so rather than waiting for something like that to happen in Palo Alto, even if it's unlikely, we wanted to get ahead of it and just ensure that we have best practices to avoid something like that ever happening here.

Council Member Kou: So, can you describe to me how would transparency look like in terms of when a new technology is adopted? What is the community outreach and I get it that you would bring something to Council but how would the community be involved in the input of that device and what – how they feel about it?

Mr. Keene: Well, yeah, I think the direction that we got from the Council and the general intent is that decisions that result in the deployment and use of such technologies would be essentially approved in public by the City Council at a City Council meeting. Your question is a larger one about how do we engage the public just in everything that we do so we have our means but we certainly weren't thinking about any particular distinctive approach in this separate from our existing approaches.

TRANSCRIPT

Council Member Kou: I just worry that it's going to run away from us in terms of really providing the privacy for people and the protection, as well as the cost and Staff time. I think that's one of my bigger concerns but yeah, I agree the Ordinance is something that is necessary.

Mr. Keene: I actually would say that I actually think that we're not going to be a problem. I'd be much (inaudible) – we should be much more frightened about the deployment of all these devices through the private sector and through individuals in our society. We haven't even started talking about artificial intelligent stuff.

Chair Wolbach: I'll get there. I know Liz has a couple question unless Ed, you wanted too...

Mr. Shikada: I was perhaps just going to add an example of kind of looking backward. I think the most recent example we have was when the Planning Department put out traffic counters or actually pedestrian and bicycle counters and in that context, once the technology came forward and it was – as we described it, it's a very fuzzy camera that doesn't identify facial features. It's blobs (inaudible) by the camera and so we scrubbed and looked closely at the both the technology, as well as the record keeping and how that all works. There where notifications provided to residents because these would be fixed on street light poles, I believe it was and so there were notifications provided to surrounding area. Then there were signs put up with the cameras so that folks would know that this was what the device is that has been installed. Again, all of that was done in the absences of an Ordinance. It was really based upon an initial assessment both of what it is that we were trying to achieve, which was counting pedestrians and cyclists around schools and wanting to ensure that privacy was protected. Again, I think we have some examples of how this has played out and this would build upon that.

Mr. Keene: Let me just jump in real quickly too. I might say that just – I'm trying to pick off things that were said. I think the City departments would be the whole City. I think clearly the expansion of the language to be beyond purchases and contracts. I mean it makes sense for grants and those sorts of thing so we would take a look at those. Probably, if we get a chance with some of our Staff who deal with this, the relationship of use policies that we have and their relationship to the technologies.

Chair Wolbach: Thanks, ok I want to give Liz a chance to weigh in. If you have any questions or thoughts.

TRANSCRIPT

Vice Mayor Kniss: Yeah, I have some comments though because I watched whoever the officer is back there, nodding his head and having had my credit card cloned last week, I am really feeling pretty strongly about this. It's so easy in so many ways to track you, to know what you are doing, and I want to tell you how irritating it is to have your credit card cloned because the real credit card was in my purse. You know all know this very well and you probably had it happen within the last year; very frustrating. I said what do I do about this? They said oh, you got to go to the police. I said oh, come on. How many times does somebody get their credit card cloned? You are not going to constantly file a police report. So, could I ask if – are you our representative tonight? Great. Yeah, so I just wanted to hear what you would have to say about the conversation we've been having and I also have a feeling that we're probably under surveillance far more than we ever think we are.

James Reifschneider, Police Lieutenant: So, I guess just for the record I am James Reifschneider and I am a Lieutenant with the Police Department. Presently assigned to the patrol division and I am here on behalf of the Chief just to represent any questions you might have from the police perspective. To answer your question, I think my thoughts generically, be that the one quibble I would have with the premises is that I think this is largely a very regulated area of police procedure, I would say at least. From a police perspective, all of this really falls under the umbrella of four amendment, search, and seizure, in which there are voluminous case law. I can tell you having spent a lot of time in our investigations bureau, that any time that we want to utilize this type of technology or any other kind of surveillance, even if it's just manual surveillance, there's an ample body of supreme court case law, state case lot etc. that dictates what we can and can't do and the procedures that we go through. Most of which require court orders etc., so there's actually quite a bit of regulation and oversight, at least from a police perspective. I would say though that to kind of piggyback on what's been said. I think we've probably, historically from a police perspective, done a pretty good job of disclosing on the front end of any time that we acquiring this kind of technology. We've done a pretty good job of mirroring or in fact, developing our own best practices in terms of using those technologies and using them responsibly and probably most importantly, to make sure that we are complying with the implacable law etc. So, I think that – the point I think is well taken in that we've probably, up to date, done a pretty good job and to the extent that the Ordinance would ensure that we would continue doing that. I – we certainly don't have any objection. Our only concern would be that clearly when we get into very specific details as to how particular technologies can be used, our position would be that there's clearly some need for exemption and confidentiality when it comes to very specific law enforcement methods and tactics as they apply to investigations

TRANSCRIPT

etc. There's a reason that some of these things are – require court orders and that is because they infringe on folk's privacy rights and there's a need for judicial review of those things. So, there's already that sort of built-in safeguard. To the extent that this Ordinance would capture technologies that fall below that purchasing threshold that would not previously have been disclosed, it really doesn't make any difference to the way we've been doing business historically so we don't have any objections on that point.

Vice Mayor Kniss: Good, I—that's a terrific—you know the framing of this, especially talking about case law and so forth, so I appreciate that. I always think these things are going to make other people nervous, am I being watched or not watched or am I being recorded and so forth. So, I appreciate your mentioning what you did.

Mr. Reifschneider: If I may, as someone who spent four years as a fraud detective, I very much care about your cloned credit card and I've caught many folks for credit card fraud so we can talk offline if you'd like.

Vice Mayor Kniss: I think it was a gas station.

Mr. Reifschneider: I think gas stations skimmers, unfortunately, are common.

Vice Mayor Kniss: Yeah, and I think I can name the gas station but I won't hear in public because we are under surveillance but thank you. I appreciate your – as I said, framing this and it's good to know, from the police perspective, what value this has for you. It makes me feel a little more comfortable going forward with it.

Chair Wolbach: Well, I'll jump in with a couple more thoughts. Having heard from Staff and also from members to the public, there is one thing that I really do want to address right away that I think has been a source of concern for Staff. Based on the experiences that we've seen in Santa Clara County and what's the question of what's the problem that we are trying to solve? The problem we are trying to solve is that members of the public have concerns about their privacy in the modern era from many sources. The City's Managers point about what the private sector does to collect information about us is well taken. Maybe we will get there but the point of this Ordinance is to address what we do ourselves and maybe if nothing else, to set a good example. What this is not primarily about is HR issues. It's not primarily about what we do within City Hall where enacting with our employees. My understanding is that there have been some challenges around implementation of a similar model Ordinance in Santa Clara County

TRANSCRIPT

because rather than just focusing on the public, there's been a lot of focus on things used internally in the County. It's become a kind of HR nightmare and I just want to emphasize that as this moves forward, I hope we do focus on the privacy of the public as the primary problem we are trying to solve. We don't want HR issues to get in the way of that. People at the County and others may have different views about that but that's where I am coming from. I think that's the goal and we should focus there and those other issues may be important...

Vice Mayor Kniss: Cory, what clarification – didn't I hear in the (inaudible) that one of you said that this would go directly to Council and not come back to this room, correct?

Mr. Keene: That's our proposal.

Vice Mayor Kniss: So, it will get published up by Staff and looked at and then will go to the full Council?

Mr. Keene: Right.

Chair Wolbach: We don't even have really draft Ordinance language in front of us so what we are essentially going to be doing is offering guidance for – further guidance beyond what's in the Staff report to guide Staff as they take the next step in drafting an Ordinance when it – before it comes back to the Council. So, I do think that...

Vice Mayor Kniss: I have one more and I don't remember who spoke – thanks. You talked about soliciting money, what was that in reference to? It was one of you who spoke.

Chair Wolbach: The grants, seeking federal grants or State grants; things like that.

Mr. Keene: That was what I heard. That there are products in funds that the City can receive without falling under the definition of a purchase or a contract.

Chair Wolbach: The point is, is that it's about what we acquire...

Mr. Keene: Right.

TRANSCRIPT

Chair Wolbach: ...whether we buy it, a contractor uses it or somebody just gives it to us.

Mr. Keene: I mean, I would say that the Council approves a lot of grants that we get but Ed and I were talking about it and we certainly have some that we get. I mean they are usually pretty de-minimus but that we don't – we're not required under our current regulations – not – this has nothing to do with surveillance technology per say – have to bring to council. I think the intention here is for the technology or the tool to be – the deployment of the tool to be made known publicly and therefore, we would have to have an expansive view of how that comes – how we acquire that.

Chair Wolbach: I think that is important. One of the other – that was actually the next thing on my list so thanks for pointing that one out. I think that the point is well taken that Mr. Schwartz points out about – I guess I'll just ask this has a question but this question of whether our definition is a little too narrow? There's another –actually, there are two Mr. Schwartz speaking tonight, both Adam Schwartz and Jerry Schwartz, and they both raised questions about the definition and whether the definition is broad enough or too narrow. One was – one question was about whether the technology is intended to be used to collect information? I do think that it will be our intention, regardless of what it was designed to, it's the use of it to do that, it the use of the technology to conduct any kind of surveillance or collect personally identifiable information and that would be the concern. So, the repurposing of something that was intended to be a non-surveillance technology, then to use it as a surveillance technology, I think would be of interest to the public and interest to the Council. If the City Attorney wants to weigh in on that one.

Molly Stump, City Attorney: Just a clarification on that. So, the definition that we drafted as a starting point for your thinking includes technologies that are either used or intended to be used for that purpose. It does capture what you said but what it doesn't include—and I think the advocates are interested in this area but we would propose to leave it aside in this initial effort. That would be that technologies like the traffic counters that were used to assess the effectiveness of our Bicycle Boulevards, where we were not intending to use them and they were not actually being used to collect any personally identifiable information. In theory, at some point the technology could be used for that, so that would be an area where we would ask for the Committee's clarification.

Chair Wolbach: That's an interesting point and actually one question, I guess is in the first line of your definition where it says design and actually used.

TRANSCRIPT

Perhaps it could say 'and/or actually used' or 'designed or actually used'. It could be an 'or' instead of an 'and'. I think that might broaden it a little bit. I am sure the City's attorney's Staff has spent a lot of time on this so I don't want to throw a monkey wrench into it.

Ms. Stump: No, no, it's only a starting point for the discussion.

Mr. Shikada: You do add 'or intended to'

Ms. Stump: Right, so the system is primarily designed and it's either actually used or intended to be used. Again, things like the traffic counters that we use to assess the speed of vehicles or the presence of pedestrians or vehicles or bicycles, these things are becoming increasingly common and we are frequently asked – Staff is frequently asked by Council to gather data in these areas. So, do you want to be doing a surveillance assessment on a lot of that work? Are you are asking for a lot of data to be generated and for Staff to be very knowledgeable about movement and mobility. Do we need to do this process if our intention – if it's not, in fact, going to be used or it is not our intention to use it; to take it to the individually identifiable level?

Chair Wolbach: I think the concern here is that it could be and to indicate that it will not be used for that purpose. To have it clear in the policy for those technologies that that's not the intention and it's possible that the wording of this general Ordinance may indicate that any – for any technology used by the City, which has not gone through a more robust process such as this, would not be used for those purposes. So, we could – we would default to saying that the City is not going to use technology 'X' for surveillance and – or the City is not going to use any technology for surveillance unless they go through this process. Then if the City does adopt a piece of technology which has the potential, we will be safe in assuming that it's not being used for those purposes because you haven't brought it to us in this form. On the other hand, if some piece of technology has the potential to be used for surveillance and the public is aware and the Council is aware that the City owns it, the City contracts for it or the City uses it and we haven't heard a reassurance that might be of concern. So, perhaps a simple line in a Staff report saying this technology is not going to be used for surveillance and thus we don't need to produce surveillance use policy or report for this technology, might be sufficient. Does that make sense?

Mr. Keene: Yes, so – well, let me give you my take on this too. Again, I mean I really appreciate the desire to craft an Ordinance in advance. At the same time, we live in the real world of implementation also and for the most part, we understand the intention of this Ordinance. There is nothing that

TRANSCRIPT

really kind of gives us a pass to avoid something that is a technology that is not explicitly called out in the Ordinance but it comes onto the scene. We are going to bring that to the Council in the same way and that it's the – one of the main reason, as I would understand it, for the public awareness and the Council oversight, is that active bringing it to the Council gives us the opportunity to do expressly what you just said. Which is in public to state how this will be used and how it will not be used. That is much better to handle in many cases every time we do that than trying to anticipate what those might be in an Ordinance. I would imagine what will happen is that there will be a body of experience that starts to build up as well. There is a whole pattern of this and now let's just go ahead and kick this into an Ordinance because we know what that is so let's do that. I just think – I think we are on the baby step land of this technology. I think it's going to rapidly excel.

Chair Wolbach: Agreed, agreed. For everybody, I think the original intent and still the intent for the Ordinance is not to try and craft in advance specific use policies for different pieces of technology. The point is that new things will be invented today, tomorrow, five years from now and they might be very useful for the City and we should have an opportunity to have a conversation about whether to adopt it in the City and do that in a way that still respects personal privacy. My next question is – yeah, I actually – I do agree with the concern that we should approve use not just the technology that was raised by Adam Schwartz and whether it should be allowed on the consent calendar or not. I actually could go either way on this. I don't agree with the common description of a consent calendar item as somehow snuck in. I do think that the consent calendar is a legitimate part of our calendar. It's noticed in advance, it's published in advance, it's published for the public to see, any three members of the City Council can pull anything from the consent calendar and can issue questions in advance in writing to the Staff which are then returned and made available to all Council Members and public to review those questions. So, I am open to persuasion that we do not need to have – that if and when individual uses and proposals come forward on pieces of technology, I am open to saying they can stay on the consent – they can initially be on the consent calendar. I mean, for instance, anything passed unanimously by this Committee, will tend to go on the Consent Calendar. Doesn't mean that it's not important, doesn't mean that the rest of the Council won't pay attention to it. If the rest of the Council or even any three Members of Council want to ask more questions about it, they can pull it off the consent calendar. I guess I am open to my colleague's and Staff's thoughts about that. I know that's an area of concern but I just want to say that's why I am...

TRANSCRIPT

Mr. Keene: Yeah, I think we should use our current process which is we make decisions every week on whether something should be on Consent or should be on the Action portion of the – so I wouldn't want to say that to make that decision in a blanket way because there could be some, again, new emerging technology or something that seems freaky, especially. That I think clearly, we would say well, we better put that on the action calendar and there will be other things that will be, in a sense, we feel are adequately—easily enough described in the item itself with this – all of the conditions that you said. In our City, as you well know, I mean the Council Member's ask questions, people pull –you guys pull stuff off the consent calendar all the time or the public comes in and makes comments and then very often the Council pulls the item off.

Chair Wolbach: I would also emphasize that approval of an item on the consent calendar is an approval that happens in an open and public meeting. On the question of whether the current definition is too limiting in that it only targets individual people rather than the public at large; we heard that raised by the last public speaker. Does the City Attorney or other City Staff want to weigh in on that definitional question?

Ms. Stump: Maybe I can. Again, I think we were – where we are using technologies to count things, blobs moving in space, we didn't think that was a high priority for the Council, at least in this first pass. Where we are gathering information about actual individual people, yes, it's not meant to say only where the identity of that person is already known in advance but rather identifiable individuals or a collection of identifiable individuals. Not a group as in there were fourteen pedestrians and thirty-six bicyclists per hour at this intersection.

Chair Wolbach: Right, so I think that's important and as the Ordinance is drafted, I'm sure Staff will continue to try and tighten that up so that it's very clear. So, the language in an Ordinance is very clear so we will have that (inaudible) because as anyone who has worked and studied these technological questions knows that something might seem innocuous but it actually be identifiable. Sometimes something might seem like unanimous data but could be – could actually be personally identifiable in the future and through the mixing of different streams of data, you can re – especially in the future with artificial intelligence tools, it would be more possible to re-personalize de-personalized information. That's part again, is what we are trying to get ahead of here. With that, if it's alright with my colleague's if you will indulge me in making a motion unless – alright. I'll move that Staff – that the Policy and Services Committee recommends to the City Council – recommends Staff draft and the City Council to adopt an Ordinance

TRANSCRIPT

establishing criteria procedures for protecting personal privacy when considering the acquisition and use of surveillance technologies by the City. I did want to add a couple of small amendments with an emphasis on public privacy, personally identifiable information, including acquisition from any source, data retention or is it data acquisition, data retention, and data dissemination.

Vice Mayor Kniss: Do you want to me to second or are you not done?

Chair Wolbach: That's it.

MOTION: Chair Wolbach moved, seconded by Vice Mayor Kniss to recommend the City Council adopt an Ordinance establishing criteria and procedures for protecting personal privacy when considering the acquisition and use of surveillance technologies by the City with an emphasis on public privacy, personally identifiable information, including acquisition from any source, data acquisition, data retention and data dissemination.

Vice Mayor Kniss: On seconding it, I would like to add one thing though unless it's redundant in some way, which is to consider the proposed Ordinance tenants which are on the next page; in the middle of the page.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND THE SECONDER to add to the Motion "and to consider the Staff proposed Ordinance tenets as a basis for the Ordinance."

Chair Wolbach: Is that redundant? My understanding is that was intended but...

Mr. Keene: (Inaudible)

Chair Wolbach: Data acquisition, data retention, and data dissemination. Then Liz suggested adding to include – to use as a basis for the Ordinance the tenants identified on Pages 2 and 3 of the Staff report.

Ms. Stump: (Inaudible) the elements that the Staff called out is being (inaudible).

Vice Mayor Kniss: Yes, so however you want to word it meaning don't – do a look at these when you're writing it.

TRANSCRIPT

Chair Wolbach: To speak to it, I look forward to Staff drafting an actual Ordinance. I look forward to it coming to the City Council. My guess is it will probably be an action item but we can have that conversation about this one. I do think that the City Manager's point is well taken that we are taking our first steps in this which is baby steps and even if we don't think that the Ordinance is perfect, we can pass something. We can always amend it later as we learn from the experience but I do think that moving forward is important and I look forward to Palo Alto setting a good example in the region. Given our role in the region and our – the image – (inaudible) our image as a technically leading City, I think it sets a positive example that we're looking for a way to do this in a way that does not result in tremendous administrative burden but still respects the privacy of our public.

Mr. Keene: Right. I would just say that I think we would – in this case, we certainly would bring this Ordinance back on the Action portion of the Council's Agenda. I mean, number one, we may not get it quite right. Two, Policy and Services had a little bit deeper dive than the rest of the Council and course the public really hasn't been part of the discussion in any larger sense so we'd put this on action.

Chair Wolbach: Liz, do you want to speak to your second?

Vice Mayor Kniss: No, I think we've handled this one.

Chair Wolbach: Lydia?

Council Member Kou: Thank you, Jim, for what you just said because I was just going to mention that since it's the first time it's surfacing, it would be good to be on the Action calendar. Then also, when you are looking at drafting this Ordinance, you are going to be working with the Police Department and the First Departments so that we don't tie their hands in their investigative – yeah.

Mr. Keene: People have to be able to give some examples to sort of say, in this sort of situation and then this. You know, we get Amber Alerts for example and I mean there are all sorts of data sharing that takes place already right now so we need to kind of give examples of this.

Chair Wolbach: If I might, my thoughts on that and not to include as amendments in the Motion but just so Staff is aware of my thoughts on this. Certainly, things which have been – have received a court order and which is working with those courts must be kept confidential. We don't want to bring

TRANSCRIPT

that out into the public meeting because that would obviously, raise all kinds of legal concerns. Not to mention undermining public safety and so as far as the question of disseminating with other law enforcement partners. I do think that is a major concern and we've talked about it in regards to ICE for instance, into the degree that can be addressed in this Ordinance; that would be excellent. I think that is going to be an ongoing conversation about how we – that's a tricky question but I do think it's an important one.

Council Member Kou: One more question? So how does that affect police protecting themselves with their body cams and their car cameras and so forth? Does this Ordinance have anything – I mean obviously it's a privacy Ordinance so it's going to – whoever it is that you are approaching, how does that affect their privacy and how does that impede your investigation if need be?

Mr. Reifschneider: It shouldn't. I mean operationally from the Police Department perspective, the general – well, I mean we've obviously been using dash cams for years and in fact decades in some areas of the Country. Body cameras have been on the market for quite some time. There is the sort of policy I'll call it, not operational but policy question about what you do with body cameras when you are in – when you are on private property or in somebody home doing an investigation? That's something that there are best practices for in terms of other departments that have been using body cams for some time. I don't think this would – as it's been said, I don't think this would hamstring us on using those technologies. At least as I understand the conversation, the Council seems to be open to us using these technologies so long as the public is aware that they are being used and that we're employing best practices in the way we use them.

Ms. Stump: Yeah, thank you. If I could just add that what is proposed here, by the privacy advocates is not to, by this Ordinance, bar or restrict any technology. Rather what's proposed is that Staff bring it forward to Council, explain that it has some implications for privacy, explain how the Staff – why it's important anyway in the Staff's view to use it for Smart City purposes or as an effective investigative tool and to put all that on the table, along with the methods and the policies that Staff would use to gather, share, retain and destroy any information gathered. Then allow Council to make that decision of yes, we do endorse and want to support the acquisition and use of this technology because we think it's important and on balance that serves the community or to say no, we'll take a pass at this point. It's really to bring forward all the information so that you make a decision and it's not to say through this Ordinance, that we're going to not do these things. Does that make sense?

TRANSCRIPT

MOTION AS AMENDED RESTATED: Chair Wolbach moved, seconded by Vice Mayor Kniss to recommend the City Council adopt an Ordinance establishing criteria and procedures for protecting personal privacy when considering the acquisition and use of surveillance technologies by the City with an emphasis on public privacy, personally identifiable information, including acquisition from any source, data acquisition, data retention and data dissemination, and to consider the Staff proposed Ordinance tenets as a basis for the Ordinance.

Chair Wolbach: Alright, let's take a vote. All in favor of the Motion? All opposed? Nope, it looks like it's unanimous in favor. Thank you very much and thank you very body from the public and the City Staff for this conversation.

MOTION AS AMENDED PASSED: 3-0 DuBois absent

Mr. Keene: I did just – may say one thing. I do want to make it clear that our Staff is very supportive of this direction and we're open to not only the ensuing discussion when this Ordinance is adopted but how we review it and make adaptations as time goes by.

Chair Wolbach: I think Council feels the same in that we're very open to learning as we go.

2. Recreational and Medical Marijuana: Review and Discussion of State Law Developments and Input to Staff on Next Steps, Including Possible Ordinance Adopting Local Regulations Regarding Commercial Marijuana Activity, Outdoor Cultivation, and Marijuana Dispensaries. This Action is Exempt Under Section 15061(b)(3) of the California Environmental Quality Act.

Chair Wolbach: Alright, well let's move onto our second item. That one, as I expected took longer than our average of half an hour peridium tonight but it's been a big one and a long time coming. So, let's move on to item number two, recreational and medical marijuana. Review and discussion of State law developments and input to Staff on next steps. Including possible Ordinance adopting local regulations regarding commercial marijuana activity, outdoor cultivation, and marijuana dispensaries. Do we have any public speakers on this? So, this would be a good time for any members of the public to give a speaker card or let the City's Clerk Staff know and – but – so while City Staff is giving their presentation, any members of the public are welcome to submit any cards. We will go to City Staff for your presentation, thank you.

TRANSCRIPT

Molly Stump, City Attorney: Thank you. City Attorney Molly Stump and I do want to introduce Deputy City Attorney, Tim Shimizu who's done the laboring work on the legal work on this issue. He is going to run through a couple of slides to frame and introduce the issues that the Committee needs to address this evening.

Tim Shimizu, Deputy City Attorney: Thank you, City Attorney. Good evening Mr. Chairperson and Members of the Policy and Services Committee. My name is Tim Shimizu, Deputy City Attorney and this presentation today will provide some background and present to you some of the policy issues that have arisen because of Proposition 64, which was passed last year in November, regarding the recreational use of Marijuana. First just as some background, the legalization of marijuana use, as you know, has been commenced with two phases. One in 1996 with the passage of Proposition 215, which allow or at least decriminalized the use of medical marijuana and last year's passage of Proposition 64, which is also known as the Adult Use of Marijuana Act, which legalized the recreational use of marijuana and regulated associated businesses; among other things. Just as a side note, of course as you know marijuana continues to be a scheduled one substance under federal law and associated criminal liability.

Vice Mayor Kniss: Could you just stop there for a second because that's the one area I have struggled with for ages. As a County person, our Sheriff frequently did raids and at the same time, there was a very different take from many of the others in the County. So, because this is now a law in California, what happens to federal law? I am sorry to stop you right in the middle but I – it's the one thing that just – where do we come out here? The police have left so I guess we can discuss it fairly forthrightly, right?

Mr. Shimizu: The very basic answer is that Federal Laws are unchanged by the action that the voters have taken under Proposition 215 and Proposition 64. An active Congress obviously would have to change federal law to remove marijuana from the schedule one list and the associated criminal liability that comes with that.

Ms. Stump: And maybe I can add, at sort of my pay grade, a little bit more editorializing about this. As a practical matter—so what Tim has said is technically true as a practical matter. It's been the history and the practice of our federal law enforcement agencies to focus on larger quantities of drugs and drug activity that is associated with guns and violence and certainly other types of drugs. Now that is up to the prosecutorial discretion of the federal law enforcement authorities. There is no – certainly no guarantee that those practices will continue. We would note that the federal

TRANSCRIPT

law enforcement system is relatively small in comparison with the scope of practices in local communities around the use of marijuana. There certainly couldn't feasibly be a large-scale criminal effort on the federal but whether there could be a targeted one, it certainly is something that's – it's within federal law and it's a matter of the federal discretion where they are going to spend their resources.

Vice Mayor Kniss: I am sorry to interrupt you.

Mr. Shimizu: No problem.

Vice Mayor Kniss: I knew that was one of my big concerns.

Ms. Shimizu: In moving on to legislation of marijuana-related businesses. This has also happened in phases so in 2003, some immunity was provided by the State legislature for cooperative to grow medical marijuana. So, cooperatives generally being groups of patients that could be members of a cooperative to grow marijuana for their needs. In 2015, the Medical Cannabis Regulation and Safety Act or sometimes called Medical Marijuana Regulation Safety Act, started regulating commercial medical marijuana activities and created a new State Bureau to permit and regulate these types of activities; including cultivation, dispensaries and cooperative businesses for medical marijuana. Then again, last year with Proposition 64, Proposition 64 did this same kind of creation of a State regime to regulate commercial recreational marijuana activities akin to the Medical Cannabis Safety Act. So, those are things like creating a licensure system for commercial recreational businesses, such as retail, commercial growing etc. and I'll go into that a little bit later. In overview of the current City situation and current City laws, currently the City has on the books two Ordinances, the first from 1997 prohibits medical marijuana dispensaries. From 2016, Ordinance 5399 prohibits outdoor marijuana cultivation for one year and so that Ordinance automatically sunsets, I think in November of this year. In general, the City has what's called a permissive zoning system so in theory, only things that are explicitly allowed by the zoning code are allowed uses under the zoning code. So, if it's not there, you can't do it so because the permissive zoning code does not allow for a marijuana cultivation or commercial uses, it's not allowed under permissive zoning. Now some overview of local authority under Proposition 64, which was again passes last year. Local approve is not required, it is not required under Proposition 64. If the City does nothing for commercial marijuana businesses – recreational businesses to open and get a State issue permit, in general, starting on January 1st of 2018, if a commercial recreational marijuana business such as a retailer, cultivation, etc. wants to open a business, they first look to the City's laws. Does the

TRANSCRIPT

City regulate this in anyway and if the answer is no, all they have to do is go to the State and get a license from the State and the State – if they fall under the guidelines of the State, the State will issue a license and they are ready to move in. Now, Cities can choose what types of commercial activities for recreational marijuana are allowed; if any. Proposition 64 and the Medical Marijuana Act of 2015 give Cities that choice and we will go over a list later of what those kinds of choices are. Cities can also create regulations for types of businesses that are allow. For example, if a City like San Jose, which has medical marijuana dispensaries, obviously the City can create regulations about time place manner restrictions. For example, you can only be open this many hours of the day. You have to have a certain kind of security. A certain kind of audit record and so on and so on. Also, City issued permits, of course, to operate if the City wants to do that. Lastly, there is again, the January 1, 2018 deadline and that is when the State will begin issuing its permits for commercial marijuana businesses. If the City doesn't have a prohibition in place by that point, the State is free to issue these licenses. Of course, the City can always choose to prohibit after that but will deal with grandfathered in businesses with State issued license. Those licenses generally will be issued for a year at a time by the State. Here's a list of the major policy questions for the City in terms of Proposition 64 and Medical Marijuana and I'll just run down this list very quickly just to emphasize that here are the policy questions that obviously the City will have to address eventually. Number one, will the City continue to vent outdoor marijuana cultivation? Again, the ban currently exists but will expire this November. Will the City allow any commercial activities for either or both marijuana or recreational? Such as commercial cultivation indoor and/or outdoor and if so, the size of those operations because the State differentiates currently by the size of your operation in terms of square footage. Whether a dispensary in retail sale will be allowed in the City? Delivery services; for example, whether deliveries will be available to residents within Palo Alto. The distribution in transport businesses of marijuana and just as a side note, distribution and transport is a category because the State is sometimes, especially in the medical marijuana side, trying to prevent too much vertical integration of the medical marijuana industry. So, some very large medical marijuana growers are not allowed to (inaudible) distribute their goods and they can't do it all themselves. That's a little bit different under Prop. 64 where they are allowed to do more that steps in the – say grow into retail process. They can be more vertically integrated so these categories are not mine, they are kind of how the State licensing is working. The next category is the manufacture of products containing marijuana so for example, edibles and things like that. This category depends on – there are two categories of manufacturing depending on how the process of whether they use solvents or not to extract the essential ingredients into your products. Then testing businesses which are

TRANSCRIPT

designed to ensure the integrity of marijuana, just like other drugs are tested for their integrity in potency. The next major category for any businesses that are permitted by the City, if the City wants to develop regulations, time place and manner and do you need a permit or not; things like that. Lastly, if the City would like to attempt to pass a voter-approved excise tax on marijuana-related businesses that operate within the City. Just as a side note, the City is generally not allowed to pass a sales tax only on a particular thing, say like marijuana. So, there can't be like a special sales tax on marijuana but what it can do is pass – have the voters pass an excise tax on companies – on businesses and their revenues generated from marijuana-related enterprise. Lastly some high-level notes about the status of the State level legislation. The Governor – so Proposition 64 was passed last year obviously but the Governor and the State Legislature are working on a clean-up bill in part to harmonize the standards between the medical side which was passed by the legislature in 2015 and Proposition 64, which was passed last year. There are some slight differences in terms of how their regulated and these kinds of differences in the business. Like I said, one example earlier is vertical integration requirements and things like that. Again, or further there are State draft regulations currently for the medical marijuana regulation that have been issued and I think public comment is open currently and similar regulations for recreational marijuana will be issues shortly thereafter. Though it's my understanding that the comment period for the medical marijuana regulations will essentially be the one that the State is really going to pay attention to and the recreational will be quickly followed up after that. As a note to the City, anything – work the City does, we have to be very (inaudible) and these kinds of facets may change that legislature the State is taking. In terms of the next steps for this, we are currently at the Planning and Services Committee having this discussion. Thank you very much for taking us today. The Planning Commission will also foreseeably have to hear any proposals, as this would generally affect the zoning code and ultimately an Ordinance of course, would go before the City Council.

Ms. Stump: (Inaudible) Thank you, Tim. Just up to a higher level for a moment. So, what we did for you today is based on the direction that we received from the Council in the past, on issues around a medical marijuana and recreational marijuana. We went ahead and drafted an Ordinance and it's a starting place for your thinking. These are policy decisions and you can make them different in the areas that Tim listed and maybe actually, Tim, you could go back to the slide that has the areas where the City has to make some decisions. What we prepared for you would do the following, it would make permit or ongoing the outdoor cultivation ban and it would prohibit commercial marijuana businesses in any zone in Palo Alto, with the exception of deliveries. I think that's – those are basically the key elements

TRANSCRIPT

of what we put before you today as a starting place for your thinking. Again, policy decisions, there can be differences of views on this and you may want to take a different approach on any one of these issues. We'll take notes on this today and draft up whatever direction we get from the Committee and go to the Planning Commission because this is – will be a zoning Ordinance and it will need to be reviewed by Planning and then come back to Council in the fall.

James Keene, City Manager: Molly, isn't this pretty much an extension of our existing practice and policies as they are today?

Ms. Stump: Yes, what we've put before you is status quo with the direction that Palo Alto has provided in the past; including the voters. We didn't discuss it in our presentation but in 2013 there was an initial Ordinance that was placed onto the ballot by a group of advocates and that would have provided for three medical marijuana dispensaries in Palo Alto and the voters said no thank you to that quite resoundingly.

Mr. Keene: Mr. Chair, with your indulgence, I have to leave to catch a plane but I just had one quick question. At least a lot of our thinking is being just sort of driven by this January 1st deadline. Where we sort of lose some of our authority but if the Council were to adopt the Ordinance as recommended, that doesn't necessarily preclude them from changing that in the future, right? In some way, if they somehow wanted to allow commercial activities or change their position on outdoor cultivation.

Ms. Stump: Yes, thank you for raising that, so the approach that we are recommending would be sort of to protect the statues pro and then it would allow the Council at any point to say now that we know more or we've learned more or we've heard more from the community. We have seen how this working in other communities, we wish to be more liberal or have some types of businesses or some types of activities in some areas. You could do that at any time.

Vice Mayor Kniss: We can change anything up until January 1st, right? I mean we – it's all—January 1st is our deadline.

Ms. Stump: It's a deadline in the sense that at that point – well so, Tim explained to you have we have a permissive zoning scheme but the Prop. 64 actually says unless you actually make it explicit, it's not clear that can be enforced. So, if we were to do nothing and January 1st rolls around and a business goes and qualifies for a State license and wishes to open up a dispensary here. So, we very well may have a dispensary. Now, we can take

TRANSCRIPT

action after that to say no, they are not permitted in any zone but we'll have a pre-existing lawful activity there most likely.

Vice Mayor Kniss: So, this is our opportunity to craft what we would actually like in the City?

Ms. Stump: Yes, and it is to the extent that you wish to either prohibit or regulate certain activities. If you want whatever the State is going to license, then you don't need to do anything.

Vice Mayor Kniss: Just to remind me, why did we ban outdoor growing? Was there a reason that we had at the time?

Ms. Stump: We had a very short window to consider that question because of that ability for personal cultivation outdoors, the Prop. 64 said that was effective immediately on the vote of the people. So, as Cities looked at that in weeks approaching the election, some Cities and I think including this one, said that we are not prepared to see that yet. We want to consider that more carefully and it may be that you wish to allow some outdoor cultivation. I think issues there might involve questions about how much plant material and where that might be in visa via front yards, walkways that are accessible to folks, community gardens, those kinds of things. I think Prop. 64 does allow and we cannot prohibit up to six plants indoors and plants outside in a covered greenhouse that can't be seen from the street.

Vice Mayor Kniss: Thanks for that reminder. I don't know if we'd really like them in community gardens. What do you think?

Chair Wolbach: I just wanted to thank Staff for the presentation and before we can finish up our – continue our conversation, I just wanted to double check that we did not receive any speaker cards, which actually surprised me. I thought there would be more controversy on this topic. Perhaps when it comes to Council. So, yeah, we can keep going with questions. Any more Liz, for now?

Vice Mayor Kniss: I am almost – this is pretty much where we are right now. I don't have any great need to make any big changes. The outdoor one was the only one that I looked at but as we – as it so often happens, we start discussing it and I think, front yards, hum? Community gardens, hum? I'm just not sure that we, as a community, really want to support that far more liberal way of growing marijuana. We can, as you said, outside covered can

TRANSCRIPT

be grown, inside can be grown but it seems as though – I know it sounds like a judgment but it just seems as though that would be sufficient for most people use. Again, I don't know what you may wish to – what the amount is that is correct.

Chair Wolbach: I've got a couple questions and thoughts but Lydia, I want to differ to you first if you wanted to jump in.

Council Member Kou: Thank you for the work and the presentation on this. So, in the delivery, is there any – is there an amount of how many grams they are allowed to be transporting at the time or I mean, I was just wondering.

Mr. Shimizu: In terms of a delivery under Prop. 64, I am not aware that a delivery vehicle has—anyone delivery vehicle has a limit on how much marijuana can be contained say in the vehicle at any one time. Of course, maybe you are inferring does that raise some kind of securing issue, I don't know. I would...

Chair Wolbach: Also, just to jump in if I could, how much could be delivered to a customer or a patient if it's medical in nature? If the delivery truck, which may have a lot in it, pulls up in front of somebody's house. The delivery truck driver walks up to the house and makes the delivery, is there any maximum size of delivery that could be made?

Mr. Shimizu: Under one reading of Prop. 64, a person for their personal use can only have 28. – about 28 grams of marijuana at one time. Which is a lot for one person to use; let's say more than one days' worth, let's say that. Under that understanding, it would be hard to foresee how you could be allowed to buy say more than that because then you would have more on your person than that even at home. It's definitely, I think, within the City's powers to say regulate the amount of – for delivery vehicles, how much they could contain at any given time. That is something that I can research further as we go forward.

Council Member Kou: And would you recommend to do that?

Chair Wolbach: That's a good question.

Ms. Stump: I think that's a policy question. Has there been a debate at the State level about Cities are doing on that issue?

TRANSCRIPT

Mr. Shimizu: I am not aware of a state level that's come down about the amount that a delivery can hold at any given time. I am aware that certain jurisdictions, such as San Jose, do have very extensive delivery regulations but I don't know if the amount at any given time is one of them but I can check.

Council Member Kou: Please. I think my concern on – for that question is that next thing you know, we have all these delivery trucks going throughout our City with any amount that they want. Another question is, how do other Cities keep the delivery away from schools? I mean, I know that the Act – the a – whatever Act they put forth that was passed, it says that it has to be 21 and above; it's adult, right? We also see children smoking and everything so how does that stay away from the children and that it's not delivered over there? Is there some way?

Mr. Shimizu: Under Proposition 64 there are some proximity limits about where marijuana use can occur. In terms of can a delivery occurs near a school but not at a school, I don't think there's any prohibition currently about that. It would be a little unusual, to me at least, for there to be a prohibition like that; for a delivery service making a delivery to somewhere in proximity of a school but I understand your concern.

Council Member Kou: I am done.

Chair Wolbach: Ok, I've got a couple question too and going back to this question of not just why we banned outdoor cultivation but the timeline. I think I was actually the person who made the suggestion that we have a sunset. There was debate on Council about whether to ban or not to ban. There was at least one Council Member who said why do we want to ban it? It's going to be legal, what's the big deal? Others said well, we think it's a big deal and so we ended up going with this of let's ban it for now but with a sunset, which will force us to revisit the issue; where now we are revisiting the issue. Part of the idea was that by the time we revisited the issue, the matters of – the uncertainties around State law would be cleared up. My sense is that the uncertainties around State law have not been cleared up because while we know the outcome now of the ballot measure. As we've heard from Staff and well know that the State is still considering further regulations, clean up bills etc. so my – I'll just tell you right now, even before we get to motions is that my inclination is to say that we shouldn't change the sun setting ban to an indefinite ban on outdoor growing but that we ought to extend the sunset and maintain a sunset. So that again, we can – once the State law has been cleared up, then we can have a real discussion based on understanding the context of State law. That's going to

TRANSCRIPT

be—when it comes to motions, that’s what I am going to suggest and that is basically to do what we did last year. Have another 6 or 12-months of kind of forced review through a sunset.

Vice Mayor Kniss: Such as December? Are you trying to (inaudible)?

Chair Wolbach: I would basically say that it would basically either sunset mid-way through or the end of 2018.

Ms. Stump: Yeah, I think that makes sense because the State licensing program is going to come into being in January of 2018 and as we’ve seen in this area, it’s fairly complex and the State needs to revisit and adjust. Think we would expect to see some continuing changes through 2018.

Chair Wolbach: Yeah, then on the question of – a couple question I had about delivery services and distribution transport, remind me what the difference is between delivery services and distribution transport? What would a – help me understand item number four here on your list. What would a distribution transport commercial activity look like?

Mr. Shimizu: It’s my understanding that a delivery service is a retail – like delivery pizza to a customer say, right? Where are number four distribution/transport is more of a wholesale function where marijuana is being grown say in the mountains on a farm. Somehow it needs to get to the City’s to be sold and there are some categories of big growers that aren’t allowed, at least under the Medical Marijuana Act, to do their own distribution. You have to hire another category – a business that is licensed to transport and say distribute medical marijuana.

Chair Wolbach: So, it would be somewhere between the grower and the retailer like an intermediate (inaudible).

Mr. Shimizu: Yes, it’s not like a retail delivery.

Chair Wolbach: Right and so if we were to prohibit that kind of distribution transport activity within the City, would that mean that a truck going from say Menlo Park to Mountain View would be prohibited from driving through Palo Alto?

Vice Mayor Kniss: No, you can’t do that.

TRANSCRIPT

Chair Wolbach: I didn't think we could but I just wanted to check. Just wanted to be very clear, ok. Great.

Ms. Stump: So, the State regulates the road, believe it or not. They don't help us much with the congestion problems that we have on those roads but they do preamp regulations. We're not permitted to say that those – even retail delivery services could not travel say from their headquarters business let's say in Mountain View to a customer in Menlo Park travel through Palo Alto without stopping that. We do not have an ability to (inaudible).

Chair Wolbach: When it comes to an Excise Tax or a Sales Tax, would that include – I guess based on how the Ordinance is drafted right now, what – this would allow deliveries, correct? When the delivery is made, would – assuming it's made for cost. That it's a sale and not just a co-op or free delivery for a patient. Would we collect sales tax on that kind of a delivery if the delivery is made to an address in Palo Alto?

Mr. Shimizu: Sale tax is something that we didn't necessarily discuss today but I can address it a little bit if you want.

Chair Wolbach: Please.

Mr. Shimizu: We actually have a slide about that. Under Proposition 64, whether marijuana is eating, made, or actually sold for medical or non-medical purposes, is where this how – where the sales tax applies. So, non-medical marijuana has regular sales tax on it, it's a retail product, right? Whereas medical marijuana, because it's now a medical product, does not have sales tax but marijuana – all marijuana in general now, whether it's medical or non-medical or whatever you want to call it, the State is going to impose a fifteen percent excise tax on marijuana and its related products. That's on the (inaudible) receipts of retail sale on the businesses that are operating this.

Chair Wolbach: That would include say a business based in San Jose but delivering to Palo Alto?

Mr. Shimizu: Just any business in California.

Chair Wolbach: Would Palo Alto get that?

Mr. Shimizu: That's a State collected tax.

TRANSCRIPT

Chair Wolbach: Oh, sorry, I'll let you go on.

Mr. Shimizu: Yeah, sorry.

Vice Mayor Kniss: (Inedible).

Mr. Shimizu: Yeah, whether the City would receive...

Chair Wolbach: (Inaudible)

Mr. Shimizu: Yeah, so whether the City would receive a part of that excise tax, I am not sure. There are grants that are going to be available for say law enforcement and other protective things related to marijuana distribution or the use of marijuana but those depend on how much your jurisdiction allows commercial activities. There are going to be taxes on State cultivation so flowers and leaves. Then the bottom category, City marijuana Excise Tax, again, if your jurisdiction approves an excise Tax passed by the voters, you can impose your own City Excise tax in addition to all the other ones that are being put forward. One of the concerns, of course, is too much tax means you have black markets. The City can also impose a regulatory fee, say like a permit fee or business license fees, to pay for the cost of regulation but that is limited to a cost recovery basis.

Chair Wolbach: Could you say that one more time.

Mr. Shimizu: Cities can impose a business regulatory fee. Those are things like fees to get a permit to have a marijuana-related business or a license to operate – business license fee for a marijuana business; those kinds of things.

Chair Wolbach: So, on your – I just want to make sure that I am clear. When you – your slide on – it might just be – there are different words but they're slightly different things. On the left it says – it doesn't say excise tax but on the right bubble, it says excise tax. I just want to be clear, would – if we allow delivery and do not pass any additional ballot measures in Palo Alto to have an excise tax. If a delivery is made in Palo Alto from a business based outside of Palo Alto, it sounds like the sale tax will be collected by the State. Will that one percent – where it says the trans and use percent varies (inaudible) (crosstalk).

TRANSCRIPT

Ms. Stump: That's the standard sales and use tax formula there that applies to all sales. So, the [SPOE] makes a determination of where to allocate that sale.

Chair Wolbach: But we would get the one percent? It looks like... that thing on the left looks like we would...

Ms. Stump: The City gets a cut of sale tax. I think – I am not an expert on what the current slice is that comes to the City.

Chair Wolbach: Just looking at the slide, it says one percent (inaudible) (crosstalk)...

Ms. Stump: It does say that. This is the – California Legal City has prepared this chart for Cities, in general, looking at these issues.

Mr. Shimizu: I think what you are asking is say the dispensary in San Jose is the one who is selling and delivering to an address in Palo Alto. Does Palo Alto get the Sale Tax?

Chair Wolbach: Do we get that one percent of Sales Tax?

Mr. Shimizu: That's a question that I'm not – I don't know the answer yet. That is something again, that the State makes a determination and...

Vice Mayor Kniss: I'm sure we keep track. If they deliver it somewhere and...

Chair Wolbach: Well, the State would send us back out cut, right?

Vice Mayor Kniss: ... a sales bill or...

Ms. Stump: This is the same as any other phone order or internet order sale problem and the State Board of Equalization looks at those issues and make a determination of which local jurisdiction to allocate the local portion of the sales tax too. As you know, we retain a consultant who works with us to understand how those decisions are being made and to advocate on our behalf.

Chair Wolbach: Could we find out about that?

Ms. Stump: About how...

TRANSCRIPT

Vice Mayor Kniss: I wonder if it's not pretty early to figure out – it sounds like this is so much still in the informing stage.

Ms. Stump: With respect to the particular product but this type of thing – for example, the pizza example. Maybe not because that's food but any other type of delivery where you are ordering something from in a neighboring jurisdiction and it's being delivered here. We can certainly get some more information about what types of decisions SPOE is making on those.

Chair Wolbach: I think that would be...

Council Member Kou: Do you know...

Chair Wolbach: ... I think that would be important and just on this point, I think I would be open to allowing, as the proposed Ordinance does, allowing deliveries but for delivery businesses to be based here, right? Certainly not for the retail stores to be based here but I would want to make sure that the City of Palo Alto can collect some sales tax and I would be open to us doing an excise tax on those deliveries, if possible. Lydia, you had –you wanted to weigh in as well?

Council Member Kou: On the deliveries, the pizza example, naturally the drivers, they don't have a permit. We don't issue them a permit to come in but would it be possible to have a permit on the drivers that do come in with – sell it – with marijuana delivery? I don't know if it's a good way to just to kind of – one to have control and two, finance budget is always – I mean funding is good.

Mr. Shimizu: Yeah, so San Jose current imposes a very strict regulation on – regulations on delivery services for medical marijuana, which range as strict as each vehicle needs to be registered and things like that and need to even have GPS trackers on vehicles and so on and so on. Yeah, whether we can do – those kinds of regulations are currently possible but will be subject again to – we'll have to see if the State puts out any contradictory regulations as it comes out this summer.

Vice Mayor Kniss: Can you tell me why your delivery truck guidance – you don't want the trucks to be here but its ok if the trucks come in and deliver and leave?

Ms. Stump: Maybe I could just offer one comment. So, the general approach that we took because we understood it to be consistent with where we have

TRANSCRIPT

been in the past, is to say that we're not going to allow commercial activity in Palo Alto. We did draft the Ordinance to allow deliveries because of comments we did hear from Council Members last fall when we did the outdoor cultivation ban. Where a couple Council Members just reflected on this upcoming issue and said gee, we might feel differently about delivery. I think that what was articulated at that time was that there may be in fact patients or people who are using marijuana product, who may find it difficult to travel personally and would really value this service. So that is why we drafted that but you can decide that you are not prepared to have that and you can say deliveries won't be allowed.

Vice Mayor Kniss: I don't have any problem with deliveries; I really don't. I think if somebody really – especially if its medical marijuana, that would make a great deal of sense. We sort of make light of it but this is a very important pain reliever with someone who is ill and whether you put it into food or whether – however, you ingest it, I think there is almost no question that for many people, this makes a huge difference. I wouldn't want to prohibit that ability for us to have deliveries.

Chair Wolbach: Lydia?

Council Member Kou: In that case, I don't have anything to say because I thought that Liz was concerned about delivery.

Chair Wolbach: Does anyone want to make a motion?

Vice Chair Kniss: Well, the suggestion here and that's – let me ask Molly because the suggestion here is that we review and discuss State law and so forth and as a starting point. So, I am going to presume that for us to move forward on this, we would move Attachment A as it says consistent with current City policies.

Ms. Stump: Yes, so what I am hearing from the Committee so far, is that we sort of accurately forecasted were you were going to be, at least for now for Palo Alto. Which is no to any commercial dispensaries or commercial retail outfits. No to manufacturing businesses or testing or delivery businesses being based here. Do allow deliveries to residences in Palo Alto. Then the one question would be that outdoor cultivation ban

Council Member Kou: It's already in here.

TRANSCRIPT

Ms. Stump: We just made it open ended that yes, we would not allow it and Chair Wolbach suggested maybe putting in a new sunset date of the end of 2018 on that one.

Council Member Kou: In addition of – after you research this, how much – how many grams each delivery truck can have in there, if we can kind of have control over that and also limit...

Ms. Stump: Yes, let us do some research on that one. If we discover that there are no regulations limiting the amount, we'll anticipate that you will want to have some reasonable amount, right? That's the concern here is that there not be a very large amount that would be in some sense creating some kind of special security problem. We could draft potentially something on that for the PTC to consider.

Vice Mayor Kniss: (Inaudible) Molly, I am going to look to you on this because I think it's – just for real clarity here. If we are looking to send zoning code amendments to the Planning and Transportation Commission and to return to us for Ordinance adoption in the fall, is that sufficient or do we need to add to that?

Ms. Stump: I think it's sufficient to the extent that we're all clear. That what you're thinking is to keep the outdoor cultivation ban for now with the sunset at the end of 2018, no commercial activities located based in Palo Alto, personal deliveries to residents are allowed. We'll research the question of whether there is any State regulations or proposed regulations that would make limitation on the amount. So that there's a reasonable amount and if not, then we would bring forward a suggestion that planning looked at and maybe putting that in at a local level. Does that sound, about right?

Vice Mayor Kniss: Yeah, I think that sounds right so I would say that is – that we – I know propose that we send zoning code amendments to the Planning and Transportation Commission for review during the summer and return to Council for Ordinance adoption in the fall. That's the message – I mean that's the motion.

MOTION: Vice Mayor Kniss moved, seconded by Chair Wolbach to recommend the City Council:

- A. Send a proposed Ordinance and zoning code amendments to the Planning and Transportation Commission for review during the summer; and

TRANSCRIPT

- B. Change the outdoor cultivation sunset provision in the Ordinance from indefinite to 2018; and
- C. Direct Staff to research maximum delivery size, regulations around delivery vehicle safety and business regulations, and information about sales and/or excise taxes.

Chair Wolbach: I'll second that and I'll just to have in the Motion to make a couple of Amendments if that's alright?

Vice Mayor Kniss: You can just expand on the Motion, I don't think you have to amend it.

Chair Wolbach: Right, to expand on the Motion, if you will accept them. That we change the sunset from indefinite to end of 2018. That we ask Staff to research a couple of items. Delivery – maximum delivery size to match what personally allowable amounts of approximately 28 grams and also to research regulations in other Cities around delivery vehicle safety and business regulations, including what San Jose and other Cities do again. Also, the last thing is to research and bring back to Council information about the sale and/or excise taxes. Once we have more information about that.

Vice Mayor Kniss: I support all that. I don't know if you need it in the Motion or (inaudible).

Ms. Stump: We understood it. We're –yeah. So, this Committee process doesn't need to be quite that formal and we definitely are listening and I got all this down. On the SPOE allocation, the existing sales and use tax, we'll research that and we'll report back what kinds of decisions SPOE is making. We don't have an ability as a City, other than to – as an advocate on our behalf to actually change that. In terms of an excise tax, that's an item to go before the voters.

Chair Wolbach: So, my thinking here is that it's hard for me to make a policy recommendation to the Council about whether to put something to the voters until I know more about what we're going to get anyway from – based on the BOE rules.

Vice Mayor Kniss: I don't think we need to get that far ahead at this point.

TRANSCRIPT

Chair Wolbach: Right, so having – so basically, once we get more information and little more time passes and we get more information about what the BOE plans to do with this, that will inform a future discussion about whether we want a local excise tax.

Vice Mayor Kniss: I mean we don't know if we are discussing a lot of money or...

Ms. Stump: Exactly.

Chair Wolbach: Right.

Vice Mayor Kniss: ...this little bit that is hardly worth it.

Ms. Stump: Right.

Chair Wolbach: I think that this would still allow us – we've got enough time if we did decide early next year to start putting something towards a ballot measure in 2018, we would still have that option.

Ms. Stump: Alright Tim, could you clarify, in terms of putting an Excise Tax in place, if it was to become the case that this was a really large volume of activity and the Council wanted the voters to consider an Excise Tax in 2018 or 2020, we would still have the ability to do that then.

Mr. Shimizu: Yes, it's – with the caveat, of course, an Excise Tax can't be retroactive.

Vice Mayor Kniss: It can be retroactive.

Mr. Shimizu: Cannot.

Vice Mayor Kniss: Oh, cannot. I would think not (inaudible)(crosstalk)

Chair Wolbach: So, before we head to a vote, Lydia anymore...

Council Member Kou: Can I just ask you to clarify on the amount of the delivery that you put a number.

Chair Wolbach: I was just asking Staff to research it.

TRANSCRIPT

Mr. Shimizu: Just as a note, City of Campbell recently passed an excise tax related to marijuana and that was passed by the voters; their voters. Although it's interesting because yet at the same time, they also prohibited commercial activity until 2019. So, they kind of did it – say well if we ever do allow it, we already have this tax. That's another approach that some – Campbell has taken.

Chair Wolbach: Do they prohibit deliveries as well?

Mr. Shimizu: I am not sure.

Chair Wolbach: I think that's the only place where we'd be looking at it.

Ms. Stump: I would, just with respect, quote Council Member Kniss that we have to think about how much it's worth getting the voters' attention on an issue where we're not expecting any activity anyway.

Chair Wolbach: Right, yeah, the cost of having the ballot measure might be more than the revenue we would gain so it might not be worth it. That's why again, let's research it and we can talk about next year. Alright, all in favor of the motion? That passes unanimously. Again, with Council...

MOTION PASSED: 3-0 DuBois absent

Vice Mayor Kniss: I have one additional question, which doesn't need to go with this but my understanding is that there is a City in California, who has (inaudible) 1,000 people and they've recently zoned for marijuana growing. I don't recall the name of the City, maybe you do but they said it absolutely was going to save their City from ruin because they literally don't have any other type of regular income. I thought that was not only interesting but it's hard to believe that one City starts this as their main crop. That it won't start across the State becoming – especially in towns and Cities that are anxious about their budget. That it's – as it turns out, it's a rather lucrative crop.

Chair Wolbach: I understand that it's been California's number one cash crop for main years predating its legalization.

Mr. Shimizu: Just as some feedback to that comment. It's my understanding that marijuana is an export crop from California and California, I am to understand, produces more marijuana than it consumes. So, there is some

TRANSCRIPT

municipal risk about allowing your City's economy to over dependent say on marijuana growing because of the volatile nature of the industry.

Vice Mayor Kniss: I (inaudible) suggesting moving in that direction but I found it interesting that with that sufficient, that they felt as a City they needed to do (inaudible).

Ms. Stump: Doesn't it make you feel fortunate that we live in a City with a very diverse tax base and an active set of citizens and we have lots of options.

Vice Mayor Kniss: And we don't have to rezone for marijuana use, right?

Chair Wolbach: Alright, let's wrap up this item. Thank you very much to Staff for the presentation.

Vice Mayor Kniss: And welcome.

Ms. Shimizu: Thank you.

Chair Wolbach: Just a – I just wanted to suggest that we take just a 5-minute break because it's been a couple hours and people need to stretch their legs or anything. Just a quick 5-minute break and then we'll reconvene and move onto item three about Cubberley.

The Committee took a break from 7:49 P.M. until 7:56 P.M.

3. Request for Proposals for a Consulting Firm to Assist the City of Palo Alto and Palo Alto Unified School District With Master Planning of the Cubberley Community Center.

Rob de Geus, Director of Community Services: [Video started mid-sentence for this item] ... Manager's Offices of one of the new Deputy City Managers soon over the summer so excited about that. I am here with Kristen O'Kane, she is the Assistant Director of Community Services and is the lead on this project. Unlike the two items just before you on the marijuana and the surveillance, where you are taking small steps. We want to take a big bold step with Cubberley. I've had the privilege of overseeing the community center for a number of years and it's a pretty special place. There is a lot happening there and meeting the interest and needs of a lot of community members of all ages. In spite of the age of the facility and the fact that it's falling apart in some areas, it's a pretty amazing place. So, while I love it, it

TRANSCRIPT

could be much, much more and I think it can even be transformative for residents if we're willing to be really visionary in partnership with the school district. We've drafted a scope of services to put out an RFP to get some help to really get going on the Master Plan. The school district is supportive of the draft of that scope and Kristen is going to provide just a little bit more context and then we look forward to your input.

Kristen O'Kane, Assistant Director of Community Services: Good evening Council Members, Kristen O'Kane, Community Services. As Rob mentioned, we are here tonight to share with you an update on Cubberley Community Center Master Planning effort, including the draft scope of work and Staff's recommended next steps. Just a quick background, as you know the City owns 8-acres of the Cubberley site and the school district owns 27-acres and then the City leases those 27-acres and operates the entire site, including the fields at the Cubberley Community Center. The current lease that we have with the school district expires in December 2019. Included in the lease agreement is a provision that the City and school district will jointly develop a Master Plan for the entire site by the end of the lease term. Subsequent to that lease being renewed in 2015, in March 2016 both City Manager Jim Keene and the school district superintendent Max McGee publicly signed a Cubberley's future compact to demonstrate that the two entities will collaboratively work on a Master Plan for the 35-acre site. Since then, City Staff and school district Staff have been working together to develop that scope of work. The draft scope of work that you have in the Staff report was developed jointly between City Staff and school district Staff and has been reviewed by Superintendent Max McGee and his Staff as well. The intent of releasing the request for proposals is to enter into a professional service agreement with a consultant who has experience in creative and effective public engagement and design thinking, who can assist the City and school district Staff in an efficient Master Planning process. The scope will be completed in two phases, with the second phase not starting until the first phase has been successfully completed. Successful completion would include an agreement from both the City Council and the School District Board of Education to go ahead and continue the process and complete the second phase. The first phase consists of creating a stakeholder and community engagement plan, conducting an evaluation of community – of existing community assets and then applying tools of design thinking to conduct a series of workshops that will ultimately lead to the development of conceptual designs for the Cubberley facility. The conceptual designs would then be presented to the community, the various Commissions, the City School Committee and ultimately Council and the Board of Education. The second phase will build off the work completed in Phase One and consolidate the information into a draft Master Plan report, which would include the conceptual designs developed in phase one but focus specifically on a

TRANSCRIPT

preferred conceptual design that is developed through the outreach effort that we did in phase one. The draft report would also include cost estimates for the different scenarios and potential funding opportunities. The ideal outcome at the end of phase two is to have an agreed upon preferred conceptual design and a completed environmental review document. The next step for us is the school district Staff, Bob [Gloton] will be presenting the same scope to the Board of Education on June 20th and we then...

Mr. de Geus: (Inaudible)

Ms. O’Kane: Thursday morning.

Mr. de Geus: Thursday morning, it’s a change.

Ms. O’Kane: Oh, ok.

Vice Mayor Kniss: Ok, what is it going to be now?

Mr. de Geus: It must be the 15th.

Ms. O’Kane: Thursday morning at 9 AM. That’s what the Board – that’s what the School Board website says.

Vice Mayor Kniss: Ok, that’s new. Thank you very much.

Chair Wolbach: Do you want to read since you’ve got you mic on for the record.

Ms. O’Kane: Sure, so the school district Staff will present to the Board of Education on Thursday, June 15th. We would then like to go to the entire Council at the end of or in August with a hope of release (inaudible) the RFP in August or September and having a contract in place by the end of the calendar year. So, thank you for listening and if you have any comments or questions—we’d be interested also in hearing any feedback you have on the scope itself and we’re happy to answer any question you have.

Chair Wolbach: Let’s go to the public. We have a couple of public speakers; Alison Cormack to be followed by Herb Borock and you will each have three minutes.

TRANSCRIPT

Alison Cormack: Good evening. Thank you so much, it's so exciting that we are moving forward on this. It's very exciting. I think this is really thorough work plan. I was very excited to see the broad vision on page two. I love that we are thinking ahead on filling gaps and not just replicating what's there on page four. I'm mostly interested in the timeline for Phase One and in particular for Phase Two. While obviously, you will need to work with a consultant but to me the – we may not be in a rush per say but we're certainly behind still. Even just based on the description that we heard from Staff today. A couple things to consider when you are in phase two, this isn't something that is necessary to be in the RPF and you know, Vice Mayor Kniss remember how we did this with the library. It might be new to some of the other people in the room but you might want to be doing concurrent polling with phase two. We found that inordinately helpful last time. It changed not only what was included but what was not included and while we are on that topic of inclusion, it's possible that there will be other sites within the City that could be affected depending on what is included and what isn't. You can think about the Baylands Athletic Center, you can think about the prior success we had with a more balanced approach across the community. Not making any pre-judgments, I am just saying let's keep that in mind when we are in phase two. This is really an incredible opportunity. I encourage you to send it forward to the City Council. August seems – I guess that's the closest we can do it but you know, nothing was really happening. We started in January, now we're April, now it's June, now it will be August, December and it's going to take a whole year just to get the consultant on board. The main point I want to make is that I think this is a really thorough work plan. I am delighted to see the stakeholder engagement and cannot wait to see this move forward. Thank you, and I am not alone by the way. Lots of people – I am in touch with them and they are like keep going so thanks for that.

Chair Wolbach: Thank you, Alison. The next speaker – actually the final speaker is Herb Borock. Welcome, Herb.

Herb Borock: Thank you, Chair Wolbach, good evening Committee Members. Four weeks ago, when there was a scheduled meeting of the City School Liaison Committee that had an agenda item for Cubberley RFP and also an agenda item on public employee housing. I sent a letter to the City Council and the Board of Education regarding those agenda items where I advised or reminded the Council and the Board that (inaudible) had been signed by the governor that specifically created a State policy supporting housing for teachers and school district employees. It permits school districts and developers in receipt of local or State funds or tax credits designated for affordable rental housing to restrict occupancy to teachers and school district employees on land owned by the school districts. It seemed to me that

TRANSCRIPT

having such a large site and an opportunity to plan and the suggestion from time to time that comes to the Council that there be affordable housing because teachers and perhaps other school district employees need it. That it seemed that the school district having its own land should be able to do that at Cubberley. Also, seeing the Council's ability and decisions to intensify development on sites, here we have a site that is basically one-story, that there seems to be adequate room for a new development to include housing for school district employees. Not just teachers but also the classified employees that is affordable housing. Unlike a lot of developments such as last night, where you have a proposal for a fairly dense project on a relatively small site. In Cubberley, there is a large site that includes playing fields that provide a buffer between the developed area and the adjoining residential neighborhood and then a wide street separating Cubberley property from the housing across Middlefield Road. Looking at the proposal, it seems to be saying let's continue doing what we are doing, even though the details are going to be different. I believe that an early date – that I would hope the School Board and the City Council would include a housing within this for two reasons. First, if there's going to be requests that we find affordable housing for school district employees, it seems the school district needs to step up and secondly it would provide for the City housing against our allocations that we need to meet. Thank you.

Chair Wolbach: Thank you, Mr. Borock and I'll bring it back to – first I want to ask Staff if you have thoughts regarding any of the public speakers and if not, back to my colleagues for any questions, comments or motions.

Vice Mayor Kniss: I do. Thank you; that's your job. Herb, thank you; bravo. We have not only talked about putting housing there but a group of us is going down next week to look at Santa Clara's housing, which they've had in place for quite some time and I think it's called Maestro. We are following through on that because I think that's such a terrific idea. I think your second idea is equally interesting. We should intensify the use on that property. There really is no question so as we look at this, remember that we can go up two stories and I think that we have – sometimes you still feel like you are wasting your breath. You have not been discussing Cubberley for so long. I wish I knew what it would take for us to just really move this forward. It's almost like we need dynamite because – well, this has been closed since 1987. We are – I mean it's aging in place and not very prettily so I have been there any number of times. I realize that when we try to do something, we will again hear from the arts and the various other communities and the humanities and that's always tough because it's very inexpensive housing but I would urge your – whomever you choose for this, to look carefully at everything that has been suggested in the past. There has been a huge report and Alison is an expert on that huge long report.

TRANSCRIPT

There is a lot to be used from the past but there is a great deal to be said for something that has been sitting there now for 40-years; longer and has just been kind of deteriorated around, not only edges but in the middle as well. I don't know what else we could tell you other than picking somebody who is creative and who's done this before and this has such possibilities but it definitely does for housing. At the same time, I know we're going to hear from neighborhoods and so forth about what they don't want to have done. It's going to take some – I think some real determination, almost some bravery to go forth with this and alter Cubberley from what's been for – you know, whenever it was put up, I think in the 60's initially.

Mr. de Geus: Just one comment on that. I completely agree and we did do a lot of work with the Cubberley Community Advisory Committee that met for a year with a lot of good folks and there was four volumes that came out of that. One of such was on facilities and they did some really interesting work and actually found that with a multi-story sort of creative design, it could fit all – not that we want to do this necessarily but just for the sake of (inaudible), we can fit all of the activity that happens at Cubberley within 8-acres if we have a new design. There is 35-acres out there so there is a real possibility here.

Vice Mayor Kniss: One last thing on that and I'll turn it back to you. Task 3 on Page 98, it always sounds easy. Get a stakeholder group and a community engagement plan and I am sorry our City manager isn't here but I think he recently said to me, I am – I hope I don't get the assignment of having to choose the people who are going to be on the stakeholder group again for a whole variety of reasons. So just to say that final selection of the group by the City Manager and superintendent, maybe you want to think that through slightly differently. Thank you, Chair.

Chair Wolbach: Did you want to make any Motions?

Vice Mayor Kniss: Well, yes but I haven't given Lydia (crosstalk)

Chair Wolbach: (Inaudible) I'm sorry. Lydia, go right ahead, I'm sorry.

Council Member Kou: I see that the funding over here for the – oh, we have a Master Plan or the Capitol Budget is \$414,000 is that from our side or of that from both PAUSD and City of Palo Alto?

Ms. O'Kane: That is the City's budget.

TRANSCRIPT

Council Member Kou: So, how is the funding going to work?

Ms. O’Kane: We still need to work that out and we will need some sort of cost sharing agreement with the school district but they have—Super Intendant McGee has told us verbally that they do intent on contributing to the cost of the master planning effort. What that is, we don’t know at this time.

Council Member Kou: Yeah, because I mean there is a large share. Seventy-seven some percent that is the school’s district so unless you know that they would like to work out a plan where the City can get more acreage you know. Anyway, I am glad to hear that and is it ok if I...

Vice Mayor Kniss: (Inaudible) We’re (inaudible) for all the track (inaudible) somehow and I think this time we should say this should be shared...

Council Member Kou: Absolutely.

Vice Mayor Kniss: ...because we’ve already taken it on yet again and it’s very easy just to say they’ll handle it at the City so I totally agree with Lydia.

Council Member Kou: If I may, I’d like to make the motion for you to take it forward and recommend to Council to go ahead with the RFP.

Vice Mayor Kniss: And do you want to include in there – I actually would like to see in the Motion a shared funding plan for the RFP.

Council Member Kou: Proportional? Do you want to put the word proportional...

Vice Mayor Kniss: Proportional would be a very nice word although, that certainly gives them the lion share, doesn’t it?

Council Member Kou: Or – as long as we don’t say something like equal. (crosstalk)

Vice Mayor Kniss: Use proportional, proportional is fine.

Council Member Kou: I am sure we will leave it in your capable hands to make sure it’s fair for us.

TRANSCRIPT

Vice Mayor Kniss: Second.

MOTION: Council Member Kou moved, seconded by Vice Mayor Kniss to recommend the City Council direct the Community Services Department to release a Request for Proposals for a Consulting Firm to assist the City of Palo Alto and Palo Alto Unified School District with master planning of the Cubberley Community Center, including a negotiated cost sharing agreement.

Council Member Kou: Any discussion?

Chair Wolbach: Any other comments...

Council Member Kou: Any other comments?

Chair Wolbach: ... (inaudible) the Motion?

Council Member Kou: Oh no, I think I said everything that I think I need to say, thank you.

Mr. de Geus: Just to clarify on the proportional. Are we saying that we would expect the school district to pay the percentage of the land they own compared to the percentage of ours? So, they would pay three – two-thirds and we would a third of the cost of the master planning? I just – I don't want anything to stall us further.

Vice Mayor Kniss: How about a negotiated plan instead of saying proportional, would that work?

Mr. de Geus: That would be great.

Council Member Kou: The negotiated plan would come back to Council for agreement, right?

Vice Mayor Kniss: Yeah, thank you. Let's consider...

Council Member Kou: We don't want to stall it.

Vice Mayor Kniss: ...negotiation. No, I – no.

Council Member Kou: Thank you.

TRANSCRIPT

Vice Mayor Kniss: As Alison said, it's been 40-years and I think we ought to just keep it rolling.

Chair Wolbach: Ok and I think the emphasis or perhaps we might want to include as a caveat that we still do not want to delay the RFP and that negotiation does not cause a delay. That was the intention of the maker and the seconder, right?

Vice Mayor Kniss: Yes, of course.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND THE SECONDER to add to the Motion "and that the negotiation will not cause a delay to the RFP."

Chair Wolbach: With that, I will be supporting the Motion. I will also add since I didn't speak earlier on this, that I actually really agree with, I think everything that I heard from both of our public speakers. So, you can just review their comments and I concur from both Alison Cormack and Herb Borock on this one. I do – and just to add to that, this has been a long time coming. There was so much work put into by the Cubberley Citizens Advisory Committee and their excellent report. I do want to make sure that we don't just try and completely start over and that is well incorporated and I do see that in the scope – the draft scope of work; I think that's important. I appreciate that Staff has referenced that so clearly and I do think that as Vice Mayor Kniss pointed out earlier and echoing what we heard from the public that if there is an opportunity to have an intensity in the physical use of that fairly substantial property, that may allow some school district employee housing; both certified and classified, that is certainly worth exploring. I also wanted to mention that as we have been talking about senior services in Palo Alto, I just want to really emphasize that I think there's an opportunity to at least explore that in the future. Really having not just a downtown north Palo Alto Senior Center and Senior nutrition program but there may be an opportunity to mirror that in south Palo Alto; potentially at Cubberley. I think the non-profits associated with that, Avenidas and La Comida, should definitely be included in that conversation. I am sure that will happen. So, any other discussion at all? Alright, all in favor of the Motion? It passed unanimously.

MOTION RESTATED: Council Member Kou moved, seconded by Vice Mayor Kniss to recommend the City Council direct the Community Services Department to release a Request for Proposals for a Consulting Firm to assist the City of Palo Alto and Palo Alto Unified School District with master planning of the Cubberley Community Center, including a negotiated cost

TRANSCRIPT

sharing agreement, and that the negotiation will not cause a delay to the RFP.

MOTION PASSED: 3-0 DuBois absent

Vice Mayor Kniss: I have one question for Alison. Alison, do you know where (inaudible) study school meeting is going to be. If they have moved the meeting back again to the 15th?

Ms. Cormack: The one you are talking about in Santa Clara is the one on the 20th...

Vice Mayor Kniss: In the afternoon?

Ms. Cormack: That's in the afternoon. The location was not specified but it's (inaudible) and then the School Board meeting on Thursday morning, (inaudible) at eight and then Cubberley and one other item on (inaudible) and open session at 9 AM

Vice Mayor Kniss: Is that the 15th or the 20th? Ok, so we may be back to having City school on the 20th in the morning but I... (crosstalk)

Chair Wolbach: Just actually,

Ms. Cormack: (Inaudible) the School Board website says (inaudible).

Chair Wolbach: Maybe the City Clerk might have information about that.

Jessica Brettle, Assistant City Clerk: As far as we know, it's the 20th but it's in the afternoon for the tour and there's no formal agenda for that meeting.

Vice Mayor Kniss: Thank you. That's helpful to know.

Chair Wolbach: Thank you very much to the public and the Staff on that one.

4. Staff Recommendation That the Policy and Services Committee Recommend the City Council Accept the Status Update of the Audit for Contract Oversight: Trenching and Installation of Electric Substructure.

TRANSCRIPT

Chair Wolbach: Alright, well, moving on to our last couple of items of the evening, both with the City Auditor. Item 4 is – oh, yeah, here we go. I was just looking for the important part. Here we go, Item 4 is a status update of the audit for contract oversight trenching and installation of the electric substructure. Good time for any members of the public to put in any speaker cards. In the meantime, any Staff presentation on item four?

Ed Shikada, Assistant City Manager: I think I'll speak to this and I have a follow-up for this audit. This is actually an old audit as you note. It was originally issued back in October in 2013. This was the result of a fairly unusual type of contract in which we had a contractor doing as-needed work. So, while the original recommendations covered a variety of issues, the remaining outstanding issues really relate to oversight of billing. Again, under the specific type but also more broadly. Just perhaps a reminder of the importance of oversight over contractor billings, as well as contractor performance in how the Staff is able to feed that performance back to the decision making or decisions making involving either extensions of contracts or future awards of contracts. On that basis, we've got a couple of follow-up items. One relates to the filling of a vacant project coordinator position within the Utilities Department and we're currently evaluating and redefining some of the duties that are falling under that position. That said, we're also proceeding with the training necessary in order to institutionalize the steps required among Staff that are in place as well as both for this recommendation and the other, which relates to the contract performance. Working with Public Works Department because subsequent to the audit, the Public Works Department undertook its accreditation process, as well as— putting my City manager's office hat on-- always wanting to maximize the coordination and integration of the work that happened between Public Works and Utilities are recognizing that in both cases, the procurement for the contracts are handled through the Administrative Services Department. So, we've got a few items to close out on these two recommendations and I think that by the time we come back with the next report, we'll be able to say that they are closed.

Chair Wolbach: City Auditor or the Staff have anything to add to that?

Harriet Richardson, City Auditor: No, Senior Auditor, Houman Boussina is here and he reviewed – he's the Auditor who conducted the audit before my time here and he also...

Mr. Shikada: Mine too.

TRANSCRIPT

Ms. Richardson: ... and he also reviewed the status report and agreed with what they reported as the status.

Vice Mayor Kniss: (Inaudible).

Chair Wolbach: Ok, and the City Auditor feels comfortable with this update that we've received from the City Manager?

Ms. Richardson: Yes.

Chair Wolbach: Ok, any members of the public to speak on this one? None, ok. I'll turn to my colleagues. Any questions, comments or Motions?

Vice Mayor Kniss: I move approval.

Chair Wolbach: I'll second...

Council Member Kou: I'll second (inaudible) (crosstalk)

MOTION: Vice Mayor Kniss moved, seconded by Council Member Kou to recommend the City Council accept the Status of Audit Recommendations for the Contract Oversight: Trenching and Installation of Electric Substructure Audit.

Chair Wolbach: Kou seconded it. Ok. (crosstalk). Alright, would you like to speak to your motion?

Vice Mayor Kniss: This is a long time in coming. I really don't have any hesitancy with this. I think this has only been postponed because there wasn't special time to fit it into the regular – into the agenda. So, no, I don't have anything to add to that and would urge your full support.

Chair Wolbach: Lydia, anything to speak to in regarding your second?

Council Member Kou: Just thank you very much, Harriet, for your recommendations over here and getting this taken off and moving forward with it too. I agree with everything Vice Mayor Liz Kniss said.

Chair Wolbach: Excellent. Ok, all in favor? Passed unanimously. Great and so thank you very much.

TRANSCRIPT

MOTION PASSED: 3-0 DuBois absent

Vice Mayor Kniss: Thank you.

5. Utilities Department: Cross Bore Inspection Contract Audit.

Chair Wolbach: Alright, we're now back on track to end by 9 o'clock, hopefully, or earlier. We might end earlier if possible. Let Staff enjoy – oh, here we go. So now we're going to move onto item five, our last real item of the evening and that is Utilities Department Cross Bore Inspection Contract audit. We have one member of the public to speak to this. Any other speaker cards now is a good time to get them in. Again, I will turn to Staff for a presentation and then we will go to the public and then back to the Committee.

Vice Mayor Kniss: Not something that I am terribly familiar with; cross bores.

Mr. Shikada: Not familiar, that's a good thing.

Harriet Richardson, City Auditor: Good evening Mr. Chair and Members of the Committee. Harriet Richardson, City Auditor here with Senior Auditor Houman Boussina to present the cross bore inspection contract audit. So, to address Council Member Kniss's comment, we start off – if you look up at the screen, there is a picture of what a cross bore is on the right side. It's when one utility line, such as a gas line is inadvertently installed through another – it cuts through another such as a sewer line and that's what we are showing in the picture on the right there. The picture on the left is the desired installation. The picture on the right is not and so if you end up with a cross bore and a plumber or resident accidentally cuts into the gas line when they are opening a cross bore sewer line, gas may be introduced into the connected structure – the building that you see there - and that can cause an explosion. The federal law requires the City to develop and implement a procedure to identify, monitor and address gas pipeline risk. In 2011, the City entered into an 18-month, \$3.5 million contract with Hydromax USA to use closed circuit television inspection methods to inspect the City's main and lateral sewer lines to identify cross bores and document sewer line conditions in accordance with industry standards set by the National Association of Sewer Service Companies or NASSCO. Our audit focused on assessing Hydromax's compliance with key contract terms, such as inspection of all 18,000 known City laterals and connected privately owned laterals and the City's oversight of the contract. One thing that I want

TRANSCRIPT

to point out is that we did this audit at the request of the City Manager's Office because this contract was not able to be completed as anticipated and in knowing that they would want to go out for a future contract where the work can be completed, the City Manager's Office wanted to know what they could do differently to ensure success on a future contract. At this point...

Vice Mayor Kniss: Just one, I just have to know how could you do that? How could you – do you just accidentally not know where there's another pipe and you cut into it?

Ms. Richardson: The – do you want to address – I'll let—Utilities is here to address that. They could probably explain it...

Vice Mayor Kniss: It just seems as though...

Ed Shikada, Assistant City Manager: This is really a phenomenon after the advent of trenchless technologies so the gas line itself was bored in after an existing structure was already there. In some cases, the sanitary sewer could be in place for decades and not documented as to the location. So, Robert, why don't you go ahead.

Vice Mayor Kniss: So, you really could bore right through one that already exists, is that the case?

Robert Item, Senior Engineer for Utilities: Yes.

Vice Mayor Kniss: You wouldn't know because it's boring rather than trenching?

Mr. Item: Correct.

Vice Mayor Kniss: That helps because I couldn't quite figure out how you could have even happened.

Mr. Shikada: Not know if it was there.

Mr. Item: Yeah, many times you can imagine too in your residence, you have – yes, excuse me. I am Robert Item, I am a Senior Engineer with the Utilities Department. I have involved in the cross bore project from the inception to currently. So, many times in a residence, we – they have fancy landscapes and all kinds of things going on there. So, there's a real tradeoff

TRANSCRIPT

between actually trying to trench at which would appear at first to be maybe less costly if you add all these other costs to it versus drilling. Drilling has been a preferred method as a matter of fact. Some of these other projects here in the future you will see gas and water being drilled in the – as well as open cut. That was a choice that was made with the new technologies to minimize the open cut work and initially, it saves a significant cost. However, there are some drawbacks and this is one of them. Just making sure that there are no cross bores and most times, it's fairly obvious. Many homeowners will sit there and tell you that, I've been here 40-years and I know where my sewer lateral is and you guys are over here with your gas service; there's no cross bore. Just the same, many of those obvious ones we end up finding a cross bore.

Vice Mayor Kniss: Oh, really?

Mr. Item: Yes, there was one – we have many laterals that may go to one house and then all of a sudden it branches off to the house adjacent and it's unknown.

Vice Mayor Kniss: Have we had any terrible accidents in the City?

Mr. Item: Thankfully we haven't and this is one of the things – I mean this is a relatively costly program. You start talking about millions of dollars but the flip side of it is if you have one accident that you, God forbid, kill anyone or all this, that's tens of millions probably in this area.

Vice Mayor Kniss: So, Lydia, you must know all about this already? I didn't know anything about – I am going to go home and see if we're cross bored; no telling.

Mr. Item: Yes. So, I mean I guess I can let it progress on here and I'll answer anything...

Ms. Richardson: Houman Boussina is going to discuss the audit findings and recommendations.

Houman Boussina, Senior Performance Auditor: Ok, I am Houman and senior performance auditor. This audit has two findings, the first one focuses on the actual contract work that Hydromax completed in the second – the City's oversight. Hydromax invoiced the City about \$2.95 million for 13,725 lateral inspections. The invoices show that Hydromax could not complete 6,625 or forty-eight percent of the 13,725 attempted inspections because of

TRANSCRIPT

obstructions in the City's sewer lines that would have required construction services that were beyond the contract scope. The City's contract required payment for incomplete inspections after reasonable attempts, which is one of the reasons the dollar amount despite not completing all of the inspections. Hydromax inspection records show that it inspected 10,791 or sixty percent of the 18,000 sewer lines in the City's records. Hydromax inspection records were inconsistent and incomplete, potentially duplicative, so we could not determine which inspections Hydromax included in this invoices that I discussed prior. City oversight and incorporating NASSCO contracting guidelines in future contracts can help ensure that future sewer line inspections are accurate, complete and cost-effective. Finding 2 makes several important points. One of the key points is that although the City monitored the Hydromax contract, it did not enforce all the performance objectives cited in the contract or NASSCO standards and did not have NASSCO certified staff or access to the NASSCO manuals to ensure Hydromax conducted the inspections in accordance with the contract requirements and NASSCO standards. Another key point is that we could not validate any of the names or certificate numbers that Hydromax inspectors entered into NASSCO's certified inspection software, which means that Hydromax inspectors may have misrepresented their certification status. Another key point was that some provisions within the contract were inconsistent with other provisions and the contract did not incorporate some of NASSCO's recommended contract language that could have helped the City meet inspection programs, goals and objectives. The final key point is that the City's sewer pipeline records may be incomplete. Hydromax inspected some pipelines that were not in the City's records and there are many parcels in City's records that do not have a corresponding lateral record and the audit report goes into more detail on these issues. The audit report includes four recommendations to the Utilities Department, including identifying and prioritizing sewer pipelines remaining to inspect, identifying missing data in the City's lateral database, incorporating NASSCO provisions in future inspection contracts and identifying gaps in Staff expertise needed to provide oversight of future inspections.

Ms. Richardson: So that concludes our presentation and we're open for questions.

Vice Mayor Kniss: So...

Chair Wolbach: Liz?

Vice Mayor Kniss: ...(inaudible).

TRANSCRIPT

Ms. Richardson: Oh, I do want to point out that the City Manager's Office agreed with all of our recommendations and they submitted an implementation plan with their response.

Vice Mayor Kniss: I quite frankly, most things I feel pretty comfortable with but I don't feel really comfortable with sewer pipelines and cross bores and I am not being flip about it. I just – I don't know enough. I would certainly accept what you have said and certainly be ready to support a motion but – and I am sure this is the kind of thing Lydia would be interested in as well. When we lived in an Eichler, we had the most very unusual sewer system and I think it was called Orange...

Mr. Item: Orangeburg Pipe.

Vice Mayor Kniss: Yes, so I wonder does that still exist in parts of the City because it was certainly not desirable?

Mr. Item: Yeah, Orangeburg pipe is basically a cardboard tube with a coal tar – basically an oil base coating and that was pretty typical, especially after the late 40's, early 50's.

Vice Mayor Kniss: Yeah, when most of the Eichlers were built, right.

Mr. Item: Unfortunately, we're still finding some and I think in a lot of Eichlers, they're slabs and so a lot of that underneath – specifically the house, you're pretty well encased but once you get outside, we found some sewer lines that are barely holding up.

Vice Chair Kniss: I was trying to think what I could add that would sound like I knew something but I just – it sounds like you have done a terrific job. I'm glad to know about cross boring but I don't know if I will be using it a lot on a daily basis but thank you; good report.

Mr. Shikada: Chair and Members of the Committee, at the appropriate time, I would like to make some comments for the Staff.

Chair Wolbach: Go right ahead and then we'll hand it over to Lydia if you're (inaudible).

Mr. Shikada: So, I would like to thank the auditor and Houman for the work. As Harriet noted, I actually requested this audit early on when I first joined the Utilities Department, recognizing the magnitude of dollars that were

TRANSCRIPT

expended on this contract, as well as the inability to ultimately complete the goals that were originally laid out. I appreciate the work and the forensic review on helping us identify some really important recommendations on how we move forward with this. I also had the opportunity through the audit process to I think, provide or learn some important context in terms of how this contract originally came together. I think it is notable that the contract itself was originally put in place within a year after San Bruno and the explosion and much of the follow-up work that was done both in terms of identifying some of the key risk areas, as well as then undertaking this contract to address any potential risk here in Palo Alto. The effort undertaken immediately after that really had been carried on for a number of years, maybe a little too long before we identified the need to revisit the contract, so I think we're at the point that as we take the audit recommendations going forward, this will give us some good baseline information for the next version of the contract. As I think you may have read, both in the audit as well as in our Staff report on this topic that one of the major learnings through this original contract was that what had originally been established as an inspection contract, ultimately, we've concluded that it needs to also involve the inclusion of repairs as a part of the scope of work so that you could address the issues immediately once blockages were identified. Not just sewer blockages but maybe the result of roots and the like to enable going forward. Why don't I stop there and we can talk maybe about some of the particulars as needed.

Chair Wolbach: I apologize (inaudible) to Herb Borock, our one public speaker on this issue. I want to give you three minutes to share your comments with us.

Herb Borock: As I understand, the reports to the Committee and to the Utilities Advisory Commission last year, this audit refers to work that was done – that was completed by the end of 2013, which is what, 3 ½ years ago. It came – first, it came to the Utilities Advisory Commission a year ago on June 1st and at that point, it was over 13,000 pipes that had been inspected. Now, to find that it's over 13,000 invoices but 3,000 less pipes that have been inspected by a company that didn't have apparently the appropriate skills that we now know are needed to do this and that asked for extensive contract amendments and additions of payments that were approved. I don't have the confidence based upon what I have seen that there's any way to know whether we overpaid. Whether we actually got what they said they had given us. That's a substantial amount of money. Also, I am concerned about the amount of time that it's taken to make it this far. Even accounting for the time of the audit, if you subtract the time of the audit, it's still a long time to follow this. The other is whether this approach of doing the entire City was the right one because if we had done a smaller

TRANSCRIPT

piece that we could find these problems that needed to be corrected at that time. For example, doing it at the same time as say a sewer project that was being done in a particular neighborhood. That you are doing that piece of the system or when someone is doing a development project requiring it be done because as I understand it, the camera looks at the entire lateral hole – through the entire property that is being serviced – the entire part of the lateral that's the responsibility of the property owner. There have been, as reported to the Utilities Advisory Commission, there are other cross bores in other utilities that were found in the sewers and in addition, a larger number of suspected cross bores. That's my main thing is the financial thing because the contract thing would have been written differently and the bidding might have been different if those additions had been part of the contract. Thank you.

Chair Wolbach: Thank you, Mr. Borock. Lydia, do you have any questions or comments on this one?

Council Member Kou: I guess I'd ask how confident are we that this contractor had done their job correctly? So, the ones that they have inspected and how confident are we that they've done it right?

Ms. Richardson: I think that would be a better question for Utilities because we don't have the technical skills to address that.

Council Member Kou: Rob?

Chair Wolbach: (Inaudible) utilities here, Director?

Mr. Shikada: I'll let Robert take the first crack at it.

Mr. Item: Ok, first a little bit more background that when we chose this contractor, we chose it at a time that this was a legacy cross bore inspection which we're investigating cross bores after the fact, was – we're kind of in the – more of the cutting edge. Especially when we're talking from our sewer main street or yes, sewer main on the street, all the way to the structure. There were several – there were a couple other cities that have investigated their legacy cross bores but they usually all stopped right at the property line and so they were much shorter.

Council Member Kou: Like this right?

TRANSCRIPT

Mr. Item: Correct, so our inspection was -- the intent and it varies from house to house, was to go in generally from the sewer main in the street all the way to the structure and so in that per se, we did this with a thinking that we would have multi-levels of inspection, which at the time, that was something that wasn't -- we -- you can get a person like Roto-Rooter, they'll go out and they'll snake it through and they'll go we're done; here's a video. From our experience -- because in the past we knew that this was an issue throughout our cross bore projects, we have required the contractor that was doing the work to actually video tape it and then they would submit it to us in-house and we would review it. This has been the common practice to ensure that there haven't been cross bores. When we embarked on this project, we understood that we weren't -- how safe are you if a -- not to say anything about the Staff in general but a person that doesn't always look for cross bores on the kind of day-to-day basis if you would or if it was just one view through the pipe, then you have one level of inspection. This contractor was with three levels of inspection and so you would have the initial person doing the inspection in the field, then you would have another person in the office then coding the NASSCO coding. Then you would you have another person again, reviewing the tapes, looking at a -- we gave it our GIS so they would be able to identify any crossing gas lines on the -- that we know about, any crossing gas lines on the sewer path. Then that person would look at it further to say hey, was there a problem there? Let me take a look at it. So far through this program, we have not had a thing where our ops. crews have found another cross bore in one inspected -- from one that was inspected by Hydromax. A matter of fact, they actually had but they found out that it happened after Hydromax was there. So, far you ask how good -- it's kind of like over time the proof is in the pudding kind of thing. We'll see and we try to be -- there's always a risk. I mean, are you ninety-nine percent certain? Ninety-nine point nine nine and it goes on and on. Obviously, as you get into the small fractions, the cost goes up and it's beyond. Again, along with the findings, we're focused on actually seeing that it's going to involve construction and construction is expensive. We're focused on prioritizing what we have and narrowing it down to what -- to the ones that are the most critical and then working from there.

Council Member Kou: Ok, thank you for the explanation. Then, I think Ed had answered that because I said -- I had a question of the one that are cross bored, is it going to be needed to be corrected? So, you did mention that now with the new...

Mr. Shikada: To include repairs as a part of the scope.

TRANSCRIPT

Mr. Item: Yes, in the past it's been part of scope and it continues to be part of the scope. Whether our crews are doing the drilling because our crews drill services in currently, to if a contractor is out there doing the work.

Council Member Kou: How do you connect with the homeowner to let them know that you are going to be looking into their lines?

Mr. Item: In a general sense, we give a notice and the intent originally of the Hydromax contract was to lateral launch as much as possible. That means that they are going into the main in the street and then launching up the lateral and so hopefully, that was the original idea and the homeowners wouldn't even know that we were going up to their house. They might see a person walking around with a vest tracking that – where the camera was or is at that point in time but that was pretty much it. It was noninvasive, although as we found out through this project, it involved much more customer interaction because we – because our lines were relatively small, there were issues in terms of offsets and things where the lateral launch camera could not traverse up the main. We ended up having to have the second crew – Hydromax had the second crew to come in and they would first identify with a smaller camera where the laterals were and then have a second crew come in from the top side – now dealing with the homeowner much more intimately, and then videotape that lateral. Sometimes they would have to pull toilets, on the roof, go from the back yard if there is nothing in the front yard to access it. So, there were a number of challenges and as you can probably imagine, there are probably every different kind of combination out there in terms of lateral configurations. We had a lateral that actually went three-quarters of the way around the house.

Council Member Kou: I know in my neighborhood, actually there is a lateral that goes past the back neighbor's property and comes out to the street behind. I mean there are some weird ones out there but anyways. I was wondering, so I never quite understand how – when you put an RF – it's not the RFP but you know when you put out a proposal to ask for the contractors to come in with a bid. How do you choose the bid and why does it always end up being the lowest? Is there a State law for that, if I understand that correctly?

Mr. Shikada: For construction contract, that would be the case. This one was a professional service, correct Robert?

Mr. Item: Yes.

Council Member Kou: So, a level of how much they know.

TRANSCRIPT

Mr. Shikada: It could be a selection based on criteria, as opposed to the lowest responsible bidder which would be typical of construction contracts.

Council Member Kou: Ok, so this is different.

Mr. Shikada: Right. This is done as a professional service.

Council Member Kou: Very good. Ok, I think I'm – I'm also good with the recommendations but thank you.

Chair Wolbach: I just wanted to follow up on something that we heard from the public and just ask for clarification, have we really checked whether we were overcharged for the work delivered and if we were, is there a mechanism by which we plan to recover any excess payments?

Ms. Richardson: We couldn't actually determine that because there wasn't a clear link between the invoices and what those – what laterals were inspected for those invoices so, we couldn't actually determine that. We did check with the City Attorney's Office as we were doing this audit about whether there was any potential for recovery and it wasn't – I didn't ask for a formal opinion, we just had a little discussion—side discussion and she told me that the period of time – the statute of limitations for being able to go back to collect if we had been overcharged was either three or four years. So, whether it was three years or four years, we're beyond that period of time.

Mr. Shikada: If I could add one more thing. That as noted in the audit, one of the learnings is the structure of the contract and this contract required payment for incomplete inspections after reasonable intent – attempts. So, that standard basically said that if they tried and they made reasonable attempts to try and survey the line, that we would be responsible for payment. That set a relatively permissive bar for the contract.

Ms. Richardson: When you look at that, there is – I have to find which page it is on – we did calculate that it did cost – cause us to pay more per lateral inspection than the actual contract terms.

Chair Wolbach: Yeah, like a 7 1/2 percent extra or something. Wasn't it like \$215 instead of \$200?

Ms. Richardson: Correct, I am looking for the actual number, yes.

TRANSCRIPT

Chair Wolbach: Yeah, I am just pulling off...

Ms. Richardson: Yes, \$200 -- \$215, yes.

Chair Wolbach: So, just about 7 1/2 percent. So, how do we plan to review future contract work in a cost-effective way but in a time efficient way so that if we, in the future – this is really a question for the City – and ask Utilities Director Shikada in his role as Assistant City Manager Shikada because this doesn't just apply to one department. It's a broader question for the organization of the City. How do we plan to make sure that in the future, after the contract is done, that we do a little Monday morning review and see if it was screwed up? See if we overpaid and if necessary, recover before the statute of limitations run out? I think that was one of the key questions that is before us to consider. If there – I just want to have some reassurance that we're at least trying to figure out how to answer that question, even if we haven't answered that question yet.

Mr. Shikada: Well, and to be completely frank, that is the reason we are doing this – we did this audit to start with. In my opening comments, I made the point that perhaps just in passing that this probably went too long before we got to this point and decided to initiate the audit but that said, that would certainly be one of the areas. In addition, again, going back to the origins of this contract. This is not an activity that the City would consider routine. I mean it somewhat became routine because of the magnitude of the project and the volume of laterals that needed to be inspected but this is not the kind of activity that we would expect to be doing 10-years from now and beyond. It was done as a specific remediation for a situation that was identified as a priority that needed to be addressed as quickly as possible. So, on that basis, I think that again, if we both in hindsight, as well as going forward on the scope of an effort like this, we'd want to take advantage of best practices as have been discussed to ensure that the structure of the contract, as well as the timeliness and the magnitude of the contract, would allow for more 'as you go' review in ensuring that it was done in a most cost-effective manner.

Chair Wolbach: I appreciate that and I know there's – I think the City Auditor and Assistant City Manager and the Utilities Director weren't here at the time but I just want to make sure that we're learning – that we really are learning from this as an organization, right? That we don't repeat these mistakes and that we really use, as you've indicated, use this as a learning opportunity; since we can't use it as a cost recovery opportunity at this point. So, tell me if I am wrong but the way I see it is the City Manager's Office is really responsible for ensuring that any contracting done by any

TRANSCRIPT

department has the real support that that Staff needs and that department needs to be able to go out, craft that scope, the RFP, evaluate respondents, pick a respondent, finalize the contract, review the contract and review the work and to go through all of those steps. I don't think that that's – I don't think that should just be – even though we want to empower departments to be active and empower Staff to be active. I don't think it's entirely up to them to feel like they are shooting in the dark without some support from the City Manager's department and from ASD. I just want to make sure that is the case across all departments in the City, especially, when it's a nonroutine contract as was just indicated, right? So, in the future when there is a nonroutine contract, where the department participating in it or in seeking the contract is doing something that is not routine for them, that they have that support from ASD and guidance from ASD, City Attorney, and City Manager's Office. I just want to make that comment and see if there are any thoughts about that.

Mr. Shikada: Oh absolutely, I completely agree. The partners so to speak that you just described, I think are really critical. There's a technical expertise that comes from the department. There's the procurement that ASD would be involved with. There's the structure of the agreement that the City Attorney's Office advises on but again, all -- none of these are exclusive domains for any of the folks that are involved. Again, from the City Manager's Office perspective, really trying to ensure that the resources are provided. At the same time, recalling the last agenda item, having positions filled, ensuring that the people filling positions have the appropriate qualifications. Those kinds of things are equally important so we operate as part of an eco-system so to speak and it's really our ongoing effort to make sure that those bases are all covered and balanced.

Chair Wolbach: I appreciate that and I think that's really the point, right? That all of us in our respective roles have our areas of expertise and especially when we are doing something that is outside of our usual scope, that we can rely on other people within the organization and that we feel supported in the work that we are doing. I think we -- again, not wanting to micromanage departments from the Council, we really look to the City Manager's Office as the place to make sure that coordination is happening and I think that's what we will look for in the future. With that said, I don't think it's something appropriate to include in the motion tonight but I would just put out for consideration that when the next contract on this comes forward, we might want to consider putting it as an action item and not a consent item for the Council.

Vice Mayor Kniss: But this isn't action tonight, is it?

TRANSCRIPT

Mr. Shikada: It's just accepting the audit.

Chair Wolbach: (Crosstalk) Right, right but I – that's right. I said that I don't think it should be in the motion but just – I want to put that out there for...

Mr. Shikada: I think you are referring to the next contract...

Chair Wolbach: Yeah, next contract...

Mr. Shikada: ...related to cross bores.

Chair Wolbach: Thank you for clarifying that. That is exactly what I meant. So, with that, any motions?

Vice Mayor Kniss: I move that we accept the report as given.

Chair Wolbach: I'll second it and any other discussion? Do you need to speak to your motion? I don't think I need to speak any more to my second. Lydia, any other thoughts or questions? Ok, all in favor? Aye. Passes unanimously. Thank you very much for bringing this up. This was an important one and I really appreciate it.

MOTION: Vice Mayor Kniss, seconded by Chair Wolbach to recommend the City Council accept the Utilities Department: Cross Bore Inspection Contract Audit.

MOTION PASSED: 3-0 DuBois absent

Vice Mayor Kniss: Was this motivated by San Bruno?

Mr. Shikada: Yes, (inaudible).

Chair Wolbach: The original investigation [Audio cut out] and then the audit had asked for.

Mr. Shikada: (Inaudible)

Vice Mayor Kniss: This company was hired during the recession, right?

Mr. Shikada: 2011 to (crosstalk)(inaudible)

Future Meetings and Agendas

TRANSCRIPT

Chair Wolbach: Alright, so we're just about wrapped...

Vice Mayor Kniss: Sometimes that's an explanation too.

Chair Wolbach: Sorry, I didn't mean to interrupt you. Just – we're just about wrapped up here right on schedule; it's 9 o'clock. Thank you every – thank you to the public, thank you very much to Staff for updating us on this one. This was again, an important one. Thank you very much and so last item, future meetings, and agendas. I'll look to the City clerk just to confirm our next, at least tentative meeting date.

Jessica Brettle, Assistant City Clerk: So, the next meeting of the Committee will after the Council comes back from their break. It's scheduled for Tuesday, August 22nd. There are five items tentatively scheduled for that meeting. The – a few audits, one on cable franchise, the PEG fees, the City-wide cash handling and travel expense, the overtime audit, the utility water rate and billing audit and then the auditor's office quarterly report. So, it will be very auditor heavy – heavy meeting on August 22nd.

Chair Wolbach: Well, Harriet we look forward to seeing you again the.

Mr. Shikada: Audits in August.

Chair Wolbach: Alright, thank you very much. I also wanted to thank the City's clerk's office for helping us through these meetings.

Vice Mayor Kniss: Are there another that are (inaudible) right away?

Ms. Brettle: Yes, there is one scheduled for September 12th as well but nothing until after the break so you have quite a long break.

Chair Wolbach: For the 22nd, with that one should we try and schedule that for our usual time at 7 or are we ok with doing it at 6?

Vice Mayor Kniss: (Inaudible)

Chair Wolbach: I know earlier at 6 is a little bit easier for Staff, if you guys are ok with that? So, let's (inaudible) (crosstalk)

Ms. Brettle: If that's ok with the Chair, we can proceed with just scheduling the rest of them at 6, unless I hear otherwise?

Chair Wolbach: Yeah, I think that's good and I'll just mention that we actually discussed it last night on Council, doing Council Member comments

TRANSCRIPT

and it came up that this Committee should, on an annual, basis review City Council policy and I don't think – I don't know if there was a chance to really do that last year and let's be sure to identify a time before the end of this calendar year, for this committee to review City Man – sorry, City Council policies...

Ms. Brettle: Policies.

Chair Wolbach: ... and procedures.

Ms. Brettle: No problem. I will take note of that and talk to the clerk and to the City's manager's office and get that in – on the schedule.

Chair Wolbach: Great, thank you very much. With that, this meeting is adjourned. Enjoy your summer.

ADJOURNMENT: Meeting was adjourned at 9:03 P.M.