



CITY OF PALO ALTO CITY COUNCIL FINAL MINUTES

Special Meeting
January 28, 2019

The City Council of the City of Palo Alto met on this date in the Council Chambers at 6:08 P.M.

Present: Cormack, DuBois, Filseth, Fine, Kniss, Kou, Tanaka

Absent:

Closed Session

1. CONFERENCE WITH LABOR NEGOTIATORS

THIS ITEM WILL NOT BE HEARD THIS EVENING.

Agenda Changes, Additions and Deletions

None.

City Manager Comments

Mayor Filseth announced that public comment for Agenda Item Number 7 was heard on December 3, 2018; therefore, the Council would not hear additional public comment during the meeting.

Ed Shikada, City Manager, reported the North Ventura Coordinated Area Plan (NVCAP) community meeting was scheduled for February 5. Staff was planning a Town Hall meeting for March 11 regarding the NVCAP. More than 160 people attended the third Cubberley Co-Design community meeting. The Council would receive results of the Co-Design community meetings in a Study Session scheduled for February 11. On February 2, the Council would hold its annual Retreat. The Magical Bridge Playground was featured at the World Economic Forum in Davos, Switzerland.

Council Member Kniss asked how the Magical Bridge came to be a part of the Forum.

Mr. Shikada did not know.

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Oral Communications

Joseph Haletky remarked regarding a significant increase in his rent, which he could not afford. He had contacted Palo Alto Housing but had not received a response.

Karen Kao advised that the tenants of the Hotel President were considering a class action lawsuit against the City of Palo Alto on the basis of the Planning Commission providing AJ Capital with incorrect information.

Minutes Approval

2. Approval of Action Minutes for the January 14, 2019 Council Meeting.

Council Member Cormack requested the Amendment at the bottom of Page 4 reflect Council Member Tanaka rather than Council Member Cormack moved to require glazing on the rear egress windows.

Mayor Filseth concurred.

Jessica Brettle, Assistant City Clerk, advised that Staff could review the video and correct the Minutes.

MOTION: Council Member Cormack moved, seconded by Mayor Filseth to approve the Action Minutes for the January 14, 2019 Council Meeting with the following change to the discussion in Agenda Item 7:

AMENDMENT: Council Member Tanaka moved, seconded by Council Member XXX to require glazing on the rear egress windows.

MOTION PASSED: 7-0

Consent Calendar

Council Member Tanaka registered a no vote on Agenda Item Number 3.

MOTION: Council Member Kniss moved, seconded by Vice Mayor Fine to approve Agenda Item Numbers 3-5.

3. Approval of Contract Number C19171177 With Smith Group for a Total Not-to-Exceed Amount of \$2,212,100 to Provide Design and Construction Support Services for the Operations Center (WQ-14002) at the Regional Water Quality Control Plant.
4. Approval of the Acceptance and Appropriation of State of California Citizens Options for Public Safety (COPS) Funds and Approval of a

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Budget Amendment in the Supplemental Law Enforcement Services Fund.

5. Finance Committee Recommends the City Council Approve the Fiscal Year (FY) 2018 Comprehensive Annual Financial Report (CAFR); Approve Amendments to FY 2018 Budget in Various Funds; and Approve a FY 2019 Budget Amendment in the General Fund.

MOTION PASSED FOR AGENDA ITEM NUMBER 3: 6-1 Tanaka no

MOTION PASSED FOR AGENDA ITEM NUMBERS 4-5: 7-0

Council Member Tanaka believed the Council needed to prioritize the infrastructure backlog. He questioned whether the water treatment plant could be considered a landmark. The Staff Report was not clear as to the need for a new operations center. Most operations centers were fully automated and required fewer employees. In contrast, the number of employees would increase after construction of this project.

Action Items

6. Request for Approval to: 1) Negotiate Agreements With Midpeninsula Community Media Center (Media Center) to Purchase its Building at 900 San Antonio Road, Using PEG Fees; and 2) Negotiate a new Agreement Between the City of Palo Alto (on Behalf of the Joint Powers Board) and the Media Center for Public, Education, and Government (PEG) Access Channel Support Services; Approval of Amendment Number 2 to Agreement Number C12142180 Between the City of Palo Alto (on Behalf of the Joint Powers Board) and the Media Center to Extend the Existing Agreement to June 30, 2019.

David Ramberg, Administrative Services Assistant Director, reported Palo Alto, East Palo Alto, Menlo Park, Atherton, and unincorporated areas of Santa Clara County and San Mateo County signed a Cable Joint Powers Agreement (JPA) in 1983. The JPA's sole purpose was to provide cable television services on a unified network. Cable companies, currently Comcast and AT&T, paid five percent of their gross revenues to Palo Alto as administrator of the JPA for access to rights-of-way in order to install cable distribution infrastructure. As JPA administrator, the City of Palo Alto Council distributed revenues to the JPA members based on cable subscribership. The amount of franchise fee revenues totaled approximately \$1.8 million per year, of which Palo Alto received approximately \$882,000 per year because approximately 49 percent of subscribers were located in Palo Alto. Each cable subscriber paid \$0.88 per month as a public, education, and government (PEG) fee. The cable companies remitted the

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PEG fee revenues to Palo Alto as administrator of the JPA, and all PEG revenues were utilized to support PEG services provided by the Media Center. Each of the JPA members had designated the Media Center as the PEG provider. In aggregate, PEG revenue totaled approximately \$325,000 per year. The Media Center purchased its building in 2003 with funds from the sale of Cable Co-Op. An audit by the City Auditor found the Media Center utilized PEG revenue for operating expenses when use of PEG revenue was restricted to capital expenses. Since the audit, Staff had created a reserve fund for PEG revenues and used PEG revenues for capital equipment only. In 2016, the Policy and Services Committee (P&S) directed Staff to adhere to Federal requirements and to find a means to make the Media Center whole and provide financial stability. P&S also directed Staff to explore the possibility of purchasing the Media Center building over time with PEG revenue. Staff believed purchase of the building was the most viable option for the Media Center's long-term sustainability. Staff and the Media Center had negotiated an agreement to purchase the building and dedicate the building for PEG purposes for the life of the building. The building had not been appraised to determine its value. Under a hypothetical scenario of valuing the building at \$5 million, utilizing 70 percent of PEG revenue to purchase the building, and retaining 30 percent of PEG revenue in the reserve fund, the building could be purchased over 20 years. Key terms of the agreement included an appraisal to determine the building's value; a series of fixed installment payments; a real estate purchase agreement to transfer immediately the building's title to the JPA; a requirement for the building to be used for PEG services over its lifespan; a building use agreement to allow the Media Center to utilize the building for PEG activities without paying rent; and an allowance for the Media Center to use a small portion of the building for non-PEG activities. The primary risk to purchasing the building was the erosion of PEG revenue due to consumers shifting to use of internet services and legislative changes that could impact revenue and/or PEG channels. The building purchase agreement could address the risk by providing a period of renegotiation. Alternatives to purchasing the building were dedicating franchise fees to the Media Center, which would impact the General Fund, and utilizing the Cable Fund Reserve to support the Media Center. The Cable Fund Reserve balance was approximately \$691,000, which would cover two to three years of PEG revenue. Staff had presented the terms of the agreement to staff of JPA members and received conceptual approval. If directed by the Council, Staff would obtain JPA member approval of the terms, obtain a building inspection and appraisal, negotiate a real estate purchase agreement and a building use agreement, develop a new Media Center PEG support services agreement, and present final agreements to JPA members for approval in 6-12 months.

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Michael Kim related his positive experiences with learning television and film production at the Media Center. His Media Center mentors wrote recommendation letters to colleges on his behalf. The Media Center provided opportunities for high school students to learn and volunteer.

Larry Moody, East Palo Alto City Council Member, remarked that the Media Center was a news outlet for East Palo Alto. The East Palo Alto community utilized the Media Center as training for young people. Many youth programs had originated through the Media Center. The City of East Palo Alto allocated funds to the Media Center so that the Media Center could work directly in the community. The Media Center was a gathering place for residents of different communities to meet and interact. His four children had benefited from working at the Media Center, and his family had benefited from Media Center programs.

Sue Perdy Pelosi, Midpeninsula Media Center Board President, advised that the Media Center taught skills and broadcast hundreds of programs and more than 450 hours of government meetings. The Media Center partnered with nonprofits to provide programming and provided a mobile media program for local sports. Ms. Perdy Pelosi read a letter from the Media Center Board.

Stephanie Munoz recommended the Council limit an agreement for any rights-of-way or material goods to a specific time period.

Council Member DuBois felt the services and skills offered by the Media Center translated to streaming media and the future of media. The issue was freedom of speech and people's ability to have a voice and to share their message. He inquired about the Access Corporation.

Mr. Ramberg explained that the Access Corporation was essentially the Media Center.

Keri Stokstad, Midpeninsula Media Center Executive Director, added that the balance of funds from the sale of Cable Co-Op was approximately \$5.6 million, of which \$900,000 was sequestered PEG funds.

Council Member DuBois asked if all JPA members needed to approve the proposed transaction.

Mr. Ramberg replied that Staff believed the City of Palo Alto as JPA administrator had the authority to approve the agreement singularly, but Staff would present it to all JPA communities for formal approval.

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Council Member DuBois asked who would control the building in 20 or 30 years.

Mr. Ramberg explained that the title to the building would transfer to the JPA, and the JPA would control the asset.

Council Member DuBois asked if the member cities would own the building.

Mr. Ramberg indicated the cities as members of the JPA would own the building.

Council Member DuBois believed the proposed purchase was the best way to ensure the correct funds were used for capital and operating expenses. The City had the foresight to create an endowment that could fund the Media Center for many years.

MOTION: Council Member DuBois moved, seconded by Council Member Kniss to:

- A. Direct Staff to negotiate agreements (real estate purchase and building use) to purchase the Media Center's building at 900 San Antonio Road, using cable television public, education and government (PEG) fees;
- B. Direct Staff to negotiate a new agreement between the City of Palo Alto, on behalf of the Joint Powers, and the Media Center for PEG access channel support services that will conform to the terms of the real estate purchase and building use agreements; and
- C. Approve Amendment Number Two to Agreement Number C12142180 between the City of Palo Alto, representing the Joint Powers communities, and the Media Center to extend the existing agreement for six months to June 30, 2019, to allow time to complete the new arrangement for the use of PEG fees.

Council Member Kniss felt the purchase would be a good step for the Media Center. The Media Center had been used in a number of ways throughout the years. She inquired whether the Finance Committee or P&S had reviewed the proposal.

Mr. Ramberg related that Staff provided status updates to P&S via the audit reporting process.

Council Member Kou commented on the Media Center's engagement with the community. She inquired whether Staff had discussed the Media Center

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having a first right of refusal should the JPA members want to sell the building in the future.

Kiely Nose, Administrative Services Interim Director, advised that it could be negotiated.

Council Member DuBois asked who constituted the Media Center.

Mr. Ramberg clarified that the Media Center was a standalone nonprofit entity.

Council Member Kou wanted to provide the Media Center with an opportunity to purchase the building if the JPA chose to sell it in the future.

Council Member DuBois inquired regarding reasons for the JPA members to want to sell the building.

Council Member Kou explained that a right of first refusal would be a protection for the Media Center.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to add that the Media Center shall be provided the first right of refusal should the JPA choose to dispose of the asset.

Council Member Tanaka understood the JPA members would not fund the purchase. He inquired about the restriction on funds.

Mr. Ramberg reiterated that the Media Center was restricted from using PEG revenue for operating expenses.

Council Member Tanaka asked if that restriction applied to the Media Center paying rent.

Mr. Ramberg replied rent or staff or things of that nature.

Council Member Tanaka inquired regarding the funds the Media Center used to pay operating expenses.

Mr. Ramberg reported the Media Center had used funds from the Cable Co-Op sale and other funds in order to pay operating expenses.

Council Member Tanaka asked about the source of JPA funds to purchase the building.

Ms. Nose explained that a portion of PEG fees paid to the JPA would fund the purchase of the building over time.

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Council Member Tanaka asked if this was a method for the Media Center to utilize PEG funds for operating expenses.

Ed Shikada, City Manager, clarified that the JPA would own the asset, and the Media Center could use the sale proceeds for its expenses.

Council Member Tanaka inquired about the consequences for the member cities should PEG revenue not be sufficient for payments to the Media Center.

Mr. Ramberg advised that Staff was not proposing to utilize all annual PEG revenues so that a reserve could build and be used. Staff proposed including a provision in the sale agreement for the JPA members and the Media Center to renegotiate the agreement should legislative action eliminate PEG funds. Before renegotiating, Staff would explore a source of funds to replace the PEG funds.

Mayor Filseth understood the worst-case scenario would be sale of the building.

Mr. Shikada reported the JPA members could also sell their interest in the building as the JPA's interest in the building would grow over the life of the sale agreement.

Council Member Tanaka asked if the JPA would have control over the building once its interest in the building reached 51 percent.

Mr. Shikada reiterated that the JPA would take title to the building at the time of sale even though payment would be made over several years. One of the key terms of the tentative agreement between the JPA and the Media Center was to meet and confer if there were changes that significantly impacted the existence or amount of PEG fees.

Council Member Tanaka suggested the agreement specifically address the likelihood of PEG fees being insufficient or nonexistent rather than trigger a discussion.

Mr. Shikada remarked that the possibility of legislative changes was unknown as legislation around PEG fees continued to evolve. A successor fee could be imposed if the PEG fee was eliminated.

Council Member Tanaka requested the method used to calculate each JPA member's portion of fees.

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Mr. Ramberg indicated fees were allocated based on subscribership, and approximately 49 percent of subscribers were located within the City of Palo Alto.

Council Member Tanaka asked if a possible solution was the JPA cities funding shortfalls in PEG fees.

Mr. Shikada advised that the tentative agreement provided for a consultation, which could include discussion of such a scenario. Staff could not assume the response of JPA cities.

Council Member Tanaka wanted to ensure that each JPA member would be responsible for filling any funding gaps.

Mr. Shikada clarified that the terms of the agreement would spell out a contingent scenario. Should legislative action affect funding, the parties to the agreement would determine the disposition of the building.

Council Member Tanaka asked if the JPA would retain title to the building should funding not be sufficient.

Mr. Shikada answered yes. He was not suggesting the JPA would retain title without making required payments.

Molly Stump, City Attorney, added that the parties had negotiated a term sheet. The term sheet would have to be reduced to a real estate purchase agreement. Workout arrangements would be spelled out in the agreement. Staff would present a final agreement to the Council for approval. Should liquidation of the asset be necessary, it would likely be a Council item as well.

Council Member Tanaka asked whether the first right of refusal set a sale price.

Ms. Stump advised that negotiations regarding a provision for a first right of refusal would include a sale price.

Council Member Tanaka believed the sale price should be the market price.

Ms. Stump related that Staff would negotiate with the Media Center and present the results to the Council.

Council Member Tanaka inquired regarding an interest rate.

Ms. Nose stated an interest rate had not been negotiated. The final terms would be presented to the Council as JPA administrator for approval.

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Council Member Tanaka commented that the Media Center was an asset, especially for high school students. He questioned whether locating the Media Center closer to or on a Palo Alto high school campus would be more convenient for students.

Council Member Cormack appreciated Staff listing alternatives in the Staff Report. She inquired about viewership numbers.

Ms. Perdy Pelosi stated Nielsen ratings were not available for community access television. Reports of issues with channels were the best measure of viewership. If the Council wished, she could provide viewership information for online programming.

MOTION AS AMENDED RESTATED: Council Member DuBois moved, seconded by Council Member Kniss to:

- A. Direct Staff to negotiate agreements (real estate purchase and building use) to purchase the Media Center's building at 900 San Antonio Road, using cable television public, education and government (PEG) fees;
- B. Direct Staff to negotiate a new agreement between the City of Palo Alto, on behalf of the Joint Powers, and the Media Center for PEG access channel support services that will conform to the terms of the real estate purchase and building use agreements;
- C. Approve Amendment Number Two to Agreement Number C12142180 between the City of Palo Alto, representing the Joint Powers communities, and the Media Center to extend the existing agreement for six months to June 30, 2019, to allow time to complete the new arrangement for the use of PEG fees; and
- D. The Media Center shall be provided the first right of refusal should the JPA choose to dispose of the asset

MOTION AS AMENDED PASSED: 7-0

7. PUBLIC HEARING: Adoption of an Ordinance Amending Various Sections of Title 18 of the Palo Alto Municipal Code Related to Residential and Mixed-use Development Standards Including, but not Limited to; Minimum and Maximum Unit Density, Unit Size, Floor Area Ratio, Height, and Open Space Including Rooftop Gardens; Parking Requirements Including, but not Limited to; Regulations Related to In-lieu Parking for Downtown Commercial Uses and Retail Parking for Mixed Use Projects; Exclusively Residential Projects in Certain

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Commercial Zoning Districts; Ground-floor Retail and Retail Preservation Provisions; the Entitlement Approval Process; and Other Regulations Governing Residential, Multi-family Residential and Commercial Zoning Districts, all to Promote Housing Development Opportunities in These Zoning Districts in Furtherance of Implementation of the Comprehensive Plan. CEQA: Determination of Consistency With the Comprehensive Plan Environmental Impact Report (EIR) Certified and Adopted on November 13, 2017 by Council Resolution Number 9720. The Planning and Transportation Commission Recommended Approval of the Proposed Ordinance on October 10, 2018 (Continued From December 3, 2018).

Mayor Filseth announced the Council would not hear public comment as it had heard public comment when the Agenda Item was presented in December.

Jonathan Lait, Planning and Community Environment Interim Director, reported the Council addressed this item on November 26 and December 3. In Multifamily Residential (RM) districts, the Council changed RM-15 zoning to RM-20, established minimum densities for development, allowed nonconforming properties to be redeveloped under the new requirements, and discussed redevelopment of single-family and duplex properties without requiring them to meet minimum densities. In the Downtown Commercial (CD(C)) district, the Council eliminated the density requirement, established a minimum average unit size, exempted a portion of the retail component and waived some parking in mixed-use developments, precluded curb cuts on University Avenue, and allowed housing-only projects except where preempted by the ground-floor (GF) or retail preservation overlay, allowed rooftops to qualify for a portion of the open space requirement for multifamily buildings, modified open space performance standards, established a Housing Incentive Program (HIP), and created a one-year moratorium on the in-lieu parking program for upper-story office uses. The Council discussed but did not act on possible reductions to parking requirements based on proximity to rail. Regarding Citywide issues, the Council established a consistent open space standard for multifamily housing, eliminated Site and Design Review from multifamily projects but maintained Architectural Review Board (ARB) review, exempted 100-percent affordable housing projects from the retail preservation requirement except in GF and retail shopping (R) combining districts, modified multifamily parking requirements, and exempted 1,500 square feet of ground-floor retail space from parking requirements. In the RM district, the Council would discuss exempting 100-percent affordable housing projects from the requirement for a minimum of 1,500 square feet of neighborhood-serving retail in the RM zone. For the California Avenue (CC(2)) zoning district, the

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Council would consider eliminating the maximum residential density requirement, allowing residential-only development except where precluded by the R overlay or the retail preservation requirement, precluding curb cuts on California Avenue except for City projects, allowing rooftop open space to qualify for up to 60 percent of the open space requirement, and implementing an HIP. In the El Camino Real area, the Council would discuss eliminating residential density standards, allowing rooftop open space to qualify for up to 60 percent of the open space requirement, allowing residential-only development except where retail preservation requirements were established, requiring ground-floor residential design standards, and implementing an HIP. With respect to Citywide revisions, Staff requested the Council update the definition of open space and rooftop open space performance standards and clarify the exemption of 100-percent affordable housing projects from the Retail Preservation Ordinance. The proposed Ordinance in Attachment A contained the language originally proposed by Staff and not the Council's December 3 actions. The Council had broad discretion regarding the review process. Staff proposed eliminating Site and Design Review so that housing projects would receive the same review as commercial projects. The Council could revise the proposed Ordinance so that retail preservation exemptions for affordable housing projects were keyed to 80 percent of area median income (AMI). The Municipal Code did not prohibit rooftop decks, but projects often did not propose rooftop decks because of height and accessibility requirements.

Mayor Filseth suggested the Council ask general questions prior to Council Members recusing themselves.

Molly Stump, City Attorney, recommended the Council ask general questions in an attempt to avoid conflicted topics.

Mayor Filseth announced the Council would discuss the RM-15 areas first, the California Avenue area second, and then the El Camino Real area. The proposed Ordinance attempted to balance the community's desire for more housing with not changing the City's landscape. The proposed Ordinance attempted to improve the economics of building housing by reducing parking requirements and increasing unit densities.

Mayor Filseth advised he would not be participating in this part of the Agenda Item due to his owning property in an RM-15 zone.

Vice Mayor Fine requested Mr. Lait describe the issue for the RM zoning district.

Mr. Lait explained that the Code required a multifamily development of 40 or more units in the RM zone to provide 1,500 square feet of neighborhood-

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serving retail space. Because developers had difficulty obtaining financing for affordable housing projects with retail space, Staff proposed exempting affordable housing projects from the requirement for neighborhood-serving retail space. In the December meeting, the Council's intention to exempt large affordable housing projects from the retail requirement was not memorialized in the Motion.

Council Member DuBois hoped the Council would revisit some of the Citywide issues discussed in the December meeting. The Council should consider more generally some of the amendments it made to the Downtown district.

Mr. Lait indicated the Council directed Staff to explore and present those items in a future Agenda Item.

Council Member DuBois clarified that some of the components of the Downtown discussion could be applied Citywide. He did not support waiving the retail requirement for affordable housing projects restricted to 20 percent above AMI. He expressed concern that the affordable housing overlay would favor market-rate housing. He wanted to ensure the overlay was attractive to below-market-rate (BMR) projects by providing additional incentives. He proposed retaining the retail exemption for BMR projects. He inquired whether existing retail space in the RM zone had to provide parking for retail employees.

Mr. Lait advised that the Council's discussion of parking exemptions in Downtown did not apply in this situation.

MOTION: Council Member DuBois moved, seconded by Council Member Kniss to exempt 100-percent affordable housing projects from meeting the minimum 1,500 square feet neighborhood-serving retail requirement in RM zones, with an average not to exceed 60 percent of the area median income, except for a building manager's unit.

Mr. Lait related that Title 16 of the Municipal Code established the parameters of an affordable housing project, which was very-low, low, and moderate housing. Moderate was defined as units at 120 percent of AMI or approximately \$125,000 for a family of four.

Ed Shikada, City Manager, remarked that Palo Alto's moderate affordable units were significantly less than market rate.

Council Member DuBois noted the proposed Ordinance contained multiple definitions of affordable housing.

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Mr. Lait clarified that the State utilized the Federal standard and applied the moderate level. The City's moderate level was consistent with the State standard. Across agencies, the income levels were pretty consistent. A 120-percent AMI project would not be perceived as a market-rate project.

Council Member DuBois added that the proposed Ordinance contained conditions for projects to qualify for Federal tax credits. If a housing project was restricted to 120 percent, it might not qualify for Federal tax credits.

Mr. Lait agreed that it probably would not.

Council Member DuBois intended to capture incentives that would allow nonprofit developers of affordable housing to find locations to build in Palo Alto. Perhaps the Motion should include the language about Federal tax credits.

Mr. Lait explained that language throughout the proposed Ordinance referred to 120 percent of AMI. Where the language deviated from 120 percent, the intention was to apply by-right the affordable housing overlay. When a project that proposed a deed restriction to Federal tax income levels was subject to the review process, the project would apply for the HIP and take advantage of the elements of the affordable housing overlay. That was the only area where the language was keyed to the 80-percent standard.

Council Member DuBois requested the proper wording to limit the retail exemption to those projects.

Vice Mayor Fine offered language of projects subsidized at the rate of 100-percent AMI or below.

Council Member DuBois wished to ensure a project that was eligible for a retail exemption could qualify for Federal tax credits.

Vice Mayor Fine suggested a BMR project at 30 percent could have a source of financing other than Federal tax credits.

Council Member DuBois clarified that a project would be eligible for Federal tax credits but would not be required to obtain Federal tax credits.

Vice Mayor Fine asked if Council Member DuBois intended to make the retail exemption contingent on a qualification for tax credits.

Council Member DuBois explained that a project would qualify as affordable housing under Federal law.

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Mr. Lait stated the language of "with an average not to exceed 60 percent of the area median income except for the manager's unit" met Council Member DuBois' intent.

Council Member DuBois revised the language to "not to exceed 80 percent."

Mr. Lait preferred 60 percent or 120 percent in order to be consistent.

Council Member DuBois asked if the financing requirement had increased from 60 percent to 80 percent.

Mr. Lait answered yes.

Council Member DuBois inquired whether the requirement should be 80 percent throughout the Code.

Mr. Lait explained that a provision of the Code provided flexibility for the requirement to change.

MOTION RESTATED: Council Member DuBois moved, seconded by Council Member Kniss to exempt 100-percent affordable housing projects from meeting the minimum 1,500 square foot neighborhood-serving retail requirement in RM zones, with an average not to exceed 60 percent of the area median income, except for a building manager's unit.

Council Member Kniss asked if the Motion incorporated the language Mr. Lait suggested.

Mr. Lait responded yes.

Council Member Cormack asked if most projects in Palo Alto met the 60 percent threshold.

Mr. Lait noted the City did not have an extensive track record on the issue. Recent discussions with housing providers disclosed that funding was available at the 60/80 percent threshold.

Council Member Cormack inquired whether a project with a threshold of 120 percent would be required to provide retail space.

Council Member DuBois explained that the average would be 60 percent such that a few units could meet a threshold of 120 percent.

Council Member Cormack asked if a project for which the average exceeded 60 percent would be required to provide retail space.

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Mr. Lait answered yes. It would not be restricted to 120 percent; it would be whatever the market would bear.

Vice Mayor Fine noted the Council had discussed development standards and levels of subsidy a number of times. AMI was based on standards for the County of Santa Clara, not the City of Palo Alto. The market rate in Palo Alto was roughly twice AMI. He felt 60 percent was too stringent. Palo Alto Housing had reported affordable housing projects could not be a mixed-use project and receive low-income tax credits.

Council Member DuBois understood Staff indicated a provision in the proposed Ordinance allowed them to adjust the percentage to 80 percent.

Mr. Lait recommended the Motion state 80 percent. The Council may wish to consider changing the language of Number 2 on Packet Page 326 to 80 percent.

Council Member DuBois concurred with changing both references to 80 percent.

Vice Mayor Fine felt 100 percent would be fair. A project could utilize low-income housing tax credits and other Federal affordable housing financing instruments with a restriction of up to 100 percent.

Council Member DuBois proposed 80 percent because of the Federal tax credits and in consideration of people with very low and low incomes.

Vice Mayor Fine agreed the City should provide more regulatory flexibility for low-income units. However, the City would be lucky to receive an application for a project at 80 or 100 percent.

AMENDMENT: Vice Mayor Fine moved, seconded by Council Member Cormack to change the Motion to state "... not to exceed 100 percent of the area median income"

Vice Mayor Fine commented that the City could provide flexibility because of the dearth of affordable housing in Palo Alto.

Council Member DuBois believed a project above the 80-percent threshold should not have any restrictions against retail. The Council should require 1,500 square feet of retail for a project of 40 units or more. Not requiring retail space was an incentive for developers to provide housing for lower incomes.

Council Member Kniss would support the Amendment because of Vice Mayor Fine's argument.

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Council Member Kou recalled Palo Alto Housing speaking about the difficulty of obtaining tax credits for projects with a threshold of 100 percent. To address the Palo Alto issue, the Council should utilize 80 percent rather than 100 percent. She would not support the Amendment.

AMENDMENT FAILED: 3-3 DuBois, Kou, Tanaka no, Filseth recused

INCORPORATED INTO THE WITH THE CONSENT OF THE MAKER AND SECONDER to change the Motion to state "... not to exceed 80 percent of the area median income."

MOTION AS AMENDED RESTATED: Council Member DuBois moved, seconded by Council Member Kniss to exempt 100 percent affordable housing projects from meeting the minimum 1,500 square feet neighborhood serving retail requirement in RM zones, with an average not to exceed 80 percent of the area median income, except for a building manager's unit.

MOTION AS AMENDED PASSED: 6-0 Filseth recused

Council took a break from 8:17 P.M. to 8:25 P.M.

Mayor Filseth returned to the meeting at 8:25 P.M.

Council Member Kniss advised she would not be participating in this part of the Agenda Item due to her owning property within 500 feet of the California Avenue CC(2) zoning district.

Mr. Lait reported Staff proposed eliminating the density standard for residential projects in the CC(2) zone. The existing standards for height, setbacks, and floor area as provided in the Code would be the controls. Residential-only developments would be allowed in the CC(2) zone except in locations where the R overlay and the Retail Preservation Ordinance applied. Currently, housing was allowed in the CC(2) zone in mixed-use projects only. Staff proposed a provision to preclude curb cuts on California Avenue, except for City projects, principally because of Senate Bill (SB) 35. The Council would determine whether a curb cut for a City project would be allowed. Allowing rooftop open space to fulfill up to 60 percent of the open space requirement freed up space for housing units. Consistent with the Downtown Commercial district, Staff proposed an HIP for the California Avenue area in order to preserve local control, to ensure a review process, and to provide for environmental review. As an incentive, the HIP would allow more residential floor area through a waiver process. Currently, an office building could be constructed in the California Avenue area with a 2.0 floor area ratio (FAR) and a residential project with a 0.6 FAR.

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Mayor Filseth inquired whether future revisions of the affordable housing overlay development standards would impact this.

Mr. Lait explained that a developer could request a waiver to match those standards. If the standards changed, the waiver would change.

Council Member Kou asked if the HIP could supersede SB 35.

Mr. Lait replied no. The benefits of the HIP were intended to entice a developer to utilize the HIP process rather than the SB 35 process.

Council Member Kou inquired whether the HIP would require Planning and Transportation Commission (PTC) review of a project.

Mr. Lait responded no. Eliminating Site and Design Review for housing projects created the same review process for housing projects as for commercial projects.

Council Member Kou asked if the Planning Director would be the ultimate decision maker.

Mr. Lait explained that the ARB provided a recommendation to the Director, and the Director made the decision under the existing process. The Director's decision was appealable to the City Council. Staff did not propose a change to the existing process.

Council Member DuBois believed a discussion of housing interaction with hotel FAR and increasing residential FAR in exchange for decreasing commercial FAR would be logical.

Mr. Lait advised that the Council could direct Staff to review those concepts. Staff may want to study changing hotel FAR to 2.0 for other parts of the City. He wanted to include some language to clarify that when Staff returned with a work plan for the next year or two.

Council Member DuBois asked if the total FAR would remain at 2.0 under the HIP.

Mr. Lait clarified that Staff proposed allowing residential FAR to increase from 0.6 up to 2.0.

Council Member DuBois asked if a 2.0 FAR had been allowed but not encouraged.

Mr. Lait remarked that a 2.0 FAR for residential projects could cause some developers to consider residential rather than commercial projects. The

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economics would continue to favor commercial projects, but a 2.0 FAR for residential projects would create some parity between residential and commercial projects.

Council Member DuBois inquired whether the California Avenue area included some Neighborhood Commercial (CN) zoning.

Mr. Lait reported CN zoning was part of the El Camino Real discussion. The standards applied to some CC(2) zones located on El Camino Real.

Council Member DuBois asked if a minimum amount of housing in a mixed-use building was necessary for a project to qualify for the HIP.

Mr. Lait indicated a minimum of three units qualified as multifamily under local standards.

Council Member DuBois inquired whether a project for a commercial building containing three housing units would qualify for the HIP.

Mr. Lait replied yes.

Council Member DuBois requested the benefits such a project would achieve.

Mr. Lait advised that the project would qualify for the benefits provided by the HIP.

Council Member DuBois stated the project could construct three very large housing units and some office space and be exempt from some parking.

Mr. Lait explained that the HIP entitled a project to an FAR of up to 2.0 for residential units and a waiver from the affordable housing overlay.

Council Member DuBois commented that Senate Bill (SB) 35 focused on affordable housing, while the HIP could provide non-affordable housing.

Mr. Lait related that the Downtown Commercial district restricted the average unit size to 1,500 square feet. The Council could direct Staff to consider an average unit size for the California Avenue area. When reviewing projects, Staff encouraged developers to increase the number of housing units by reducing their size.

Council Member DuBois expressed concern regarding the interaction of parking requirements and Residential Preferential Parking Permit (RPP) districts. Parking requirements should err in favor of over-parking until a balance could be achieved. He inquired whether the discussion of Citywide issues would include parking.

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Mr. Lait reported a discussion of parking occurred previously.

Council Member DuBois remarked that any action taken at the end of a long Council meeting should not be considered final.

Mr. Lait advised that the Motion from the December meeting was clear with respect to parking.

Council Member DuBois noted the Council was attempting to incentivize a large amount of housing in Downtown. Historic studies found the City to be under-parked by more than 1,000 cars. Most parking garages were funded through Business Assessment Districts. The Council may want to consider allowing residents in the Downtown and California Avenue areas to purchase permits in garages and reconsider the number of permits allowed per unit in RPP districts and the types of businesses eligible for parking permits. In December, the Council referred part of the parking analysis to the PTC. He was unclear whether offsite parking meant on-street parking or private offsite parking. He hoped the Council would provide an explicit definition of offsite parking and ask the PTC to make recommendations regarding the impacts on RPP districts. The Staff presentation did not note the Council's referral to the PTC.

Mr. Lait concurred that the presentation summarized only those topics before the Council.

Council Member DuBois asked which part of the parking discussion was continued.

Mr. Lait related that a reduction of the parking requirements for properties located within a half mile of fixed rail stations was continued due to a 3-3 vote.

MOTION: Council Member DuBois moved, seconded by Council Member XX to direct the Planning and Transportation Commission to study interactions between the RPP districts and these Ordinance changes.

Mayor Filseth asked if Council Member DuBois wished to ensure the instruction to consider offsite parking included interaction with local RPPs.

Council Member DuBois clarified that the PTC should evaluate the number of permits, opting out of an RPP as part of a Transportation Demand Management (TDM) program, and the types of businesses eligible to participate in RPP districts.

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Mayor Filseth inquired whether language of "include interactions with local RPPs" would provide the PTC with latitude to evaluate the points Council Member DuBois raised.

Mr. Shikada responded yes.

Council Member DuBois wanted the PTC to evaluate the interactions with RPP districts in Downtown and California Avenue.

Mr. Shikada reported the evaluation was already part of the work plan as directed by the Council in December and as part of the sustainability of the RPP Program. The interaction between off-street parking requirements and RPP districts would be evaluated Citywide.

Council Member DuBois wanted the evaluation to occur before any RPP applications were submitted.

Mr. Shikada understood the priority of parking for the Council and community.

MOTION WITHDRAWN BY THE MAKER

MOTION: Council Member DuBois moved, seconded by Vice Mayor Fine to approve the following modifications to the Ordinance related to the California Avenue CC(2) Zoning District:

- A. Unit Density. Eliminate the unit density requirement restricting the maximum density, which is currently 30 dwelling units per acre;
- B. Residential Only Development. Allow housing-only projects to be constructed, except on properties in the retail shopping (R) combining district or where the retail preservation ordinance applies;
- C. Driveway Approach. Reinforce existing City policy and guidelines to preclude curb cuts on California Avenue, except for City-owned parcels or City-sponsored projects;
- D. Open Space. Allow rooftops to qualify for up to 60 percent of the usable open space requirement for the multi-family residential portion of a project, subject to objective performance standards;
- E. Housing Incentive Program (HIP)
 - i. Increase residential FAR from 0.6 to 2.0;

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- ii. Allow Affordable Housing Overlay development standards (without legislative process);
 - iii. Discretionary review by ARB required; and
- F. Direct Staff to analyze the interaction of housing production in the CC(2) zones in regards to the hotel FAR and methods to match increases in residential FAR with a decrease in commercial FAR for mixed-use projects.

Council Member DuBois noted Part F of the Motion contained the same language as the Motion for the Downtown zone. The Council incentivized hotel production by increasing the FAR temporarily but never decreased the FAR. The analysis would determine whether the proposed Ordinance would encourage housing if other incentives remained in place.

Vice Mayor Fine requested clarification of the Council temporarily increasing hotel FAR.

Council Member DuBois explained that hotel FAR had been 1.5, and the Council increased it to 2.0 after the loss of a hotel. The increase in hotel FAR was discussed as a temporary measure to spur hotel production.

Vice Mayor Fine asked if the Motion included the Staff recommendation.

Council Member DuBois answered yes.

Vice Mayor Fine remarked that the Motion did a good job of encouraging housing production without significantly changing the community. He asked if the Planning Director would have the ability to waive some or all restrictions.

Mr. Lait reported Staff would review waivers through the usual application review process. Some waivers could be approved and some denied. The waivers were meant to be utilized.

Vice Mayor Fine requested an update of the City's status regarding SB 35 and the Regional Housing Needs Assessment (RHNA).

Mr. Lait indicated an update would be provided in March.

Vice Mayor Fine concurred with evaluating the interactions of the RPP districts and other parking issues with the changes. He did not agree with the linking of increased housing production with decreased hotel FAR, but he would support it in order to see the results of the evaluation.

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Council Member Kou asked if the City's requirement for 15-percent inclusionary housing was low on the BMR side.

Mr. Lait explained that because the City was at the 50-percent mark, the State requirement would be a higher affordable standard than the City's current affordability provision. The City came close to not fulfilling its requirements for the most recent period. If a year passed in which the City failed to produce and issue building permits for housing units, it could fall under the 10-percent provision. In that regard, the City's standard would be higher than the State provision.

Council Member Kou inquired whether the HIP required a minimum number of units.

Mr. Lait responded that the minimum number was 15 percent.

Council Member Kou asked if the affordability requirement was 50 percent under the HIP.

Mr. Lait reported a qualifying SB 35 project would have to meet a number of standards including two-thirds of the development would have to be dedicated to residential uses and 50 percent of those residential uses would be subject to an affordability standard. The existing Zoning Code included a 15-percent inclusionary requirement for ownership units and an in-lieu fee for rental housing. The HIP would continue the 15-percent requirement for onsite affordability for ownership units and subject to the in-lieu fees for rental housing. In the future, the Council would consider an Ordinance that would look at increasing the 15 percent to 20 percent.

Mr. Shikada explained that under SB 35 a project with two-thirds residential uses and 50-percent affordable would not be required to provide parking if it was located near transit. Also, the project would not be subject to design review or a California Environmental Quality Act (CEQA) analysis. Palo Alto's customary review requirements would be waived if a project chose to proceed under SB 35. The intent of the HIP was to retain the customary review requirements while providing incentives.

Council Member Kou requested the rationale for Staff proposing a maximum residential FAR of 2.0 when SB 35 allowed an FAR of 1.0 or 1.35.

Mr. Lait clarified that Staff proposed a 3.0 FAR for Downtown, 2.0 for California Avenue, and 1.5 for El Camino Real in order to recognize the different intensities of development in each area and to provide residential development with the same FAR as office development.

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Council Member Kou noted the 15-percent inclusionary requirement pertained to ownership properties, and rental properties were not addressed.

Mr. Lait related that rental properties would be addressed in a separate policy initiative.

Council Member Kou wanted a provision that addressed noise pollution and enforcement of noise issues.

Mr. Lait recalled the Council's December 3 discussion of the Noise Ordinance and enforcement. Staff had acknowledged that enforcement needed work. Including noise and enforcement in the proposed Ordinance would be difficult.

Council Member Kou believed noise issues needed to be addressed.

Mayor Filseth clarified the issue as allowing rooftops to qualify towards the open space requirement. He inquired whether a Motion could address the Noise Ordinance for rooftop decks.

Ms. Stump advised that the Council could not change the Noise Ordinance itself, but the Council could direct Staff to work on it.

Mayor Filseth inquired whether the City had a perceived problem with noise on rooftop decks at the current time independent of the pending Motion.

Mr. Lait noted the City received complaints about noise, but the complaints could not be isolated to rooftop decks. There were few rooftop decks in the City. People who chose to live in Downtown, the California Avenue area, or the El Camino Real area might experience a bit more noise due to the different activities in the area. If that was not acceptable from a policy perspective, concerns about noise could moderate the Council's interest in rooftop decks. A rooftop deck would impact the number of units produced on a site.

Mayor Filseth understood rooftop decks were currently legal. The intent of the proposed Ordinance was to spur housing production, which meant rooftop decks were favorable with or without the rooftop bonus. A noise problem on rooftop decks appeared to be independent of the proposed Ordinance. If the proposed Ordinance did spur housing production, in all likelihood rooftop decks would be more numerous in the next several years. The Council may need to review it in the future.

Mr. Lait reported the Council could impose standards to help mitigate noise impacts. Existing development standards did not allow rooftop access to

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exceed the height limit, which probably was part of the reason for the lack of roof decks.

Council Member DuBois asked if the Council would discuss rooftop performance standards.

Mayor Filseth reported they would be discussed under Citywide issues.

Council Member Cormack requested the rationale for proposing 60 percent and 75 percent for usable open space on rooftops.

Mr. Lait explained that Staff originally proposed 75 percent for all areas, and the PTC felt each neighborhood warranted a specific percentage.

Council Member Cormack requested clarification of the interaction of housing production with the hotel FAR.

Council Member DuBois advised that the language of Part F was the same language the Council adopted on December 3 for Downtown. These programs were intended to incentivize housing, but the Council was not changing any commercial zoning requirements. He questioned whether providing housing incentives without decreasing commercial FAR would result in any housing development.

Council Member Cormack asked how the interaction would be analyzed.

Council Member DuBois reiterated Staff's comment that the issue was a part of the work plan.

Council Member Cormack inquired regarding the number of hotels on California Avenue.

Mr. Lait did not know.

Council Member Cormack asked if Part F required the same analysis of California Avenue as of the Downtown.

Mr. Lait answered yes. He did not find any other California Avenue hotels.

Council Member Cormack questioned whether the California Avenue area was the right location to reduce hotel FAR.

Council Member DuBois believed commercial development would continue until commercial FAR was converted to residential FAR.

Council Member Cormack asked if the provision should be applied Citywide.

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Council Member DuBois responded yes; however, the structure of the meeting prevented that. Hotels were allowed only in certain zones.

MOTION PASSED: 5-1 Kou no, Kniss recused

Council took a break from 9:19 P.M. to 9:31 P.M.

Council Member Kniss returned to the meeting at 9:30 P.M.

Council Member Kniss commented on the live broadcast of the meeting not indicating the item under discussion.

Council Member Cormack agreed that some broadcasts did not have a banner indicating the item being discussed.

Mr. Lait reported Staff proposed to eliminate the maximum residential density, to allow rooftop open space to qualify for up to 60 percent of the open space requirement, to allow residential-only development except in locations where precluded by the Retail Preservation Ordinance, to prohibit ground-floor dwelling units from fronting directly on El Camino Real, and to adopt an HIP. On December 3, the Council adopted a Citywide proposal to exempt the first 1,500 square feet of retail space in a mixed-use project from parking requirements. Under the HIP, an applicant could increase the FAR from 0.5 in the CN zone and 0.6 in the Service Commercial (CS) zone up to 1.5 and eliminate or reduce the 50-percent lot coverage requirement.

Vice Mayor Fine asked if the phrase "ground-floor design residential standards" was an existing requirement.

Mr. Lait advised that the standards were new.

Vice Mayor Fine wanted to understand ground-floor design standards.

Mr. Lait explained that a residential unit could not face El Camino Real.

Vice Mayor Fine shared the schools of thought for locating buildings close to or away from El Camino Real.

MOTION: Vice Mayor Fine moved, seconded by Council Member Kniss to approve the following modifications to the Ordinance related to properties adjacent to El Camino Real in the CN and CS Zoning Districts:

- A. Unit Density. Eliminate the unit density requirement restricting the maximum density, which currently ranges from 15 to 30 dwelling units per acre;

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- B. Open Space. Allow rooftops to qualify for up to 60 percent of the usable open space requirement for the multi-family residential portion of a project, subject to objective performance standards;
- C. Residential Only Development. Allow housing-only projects to be constructed except on properties where the retail preservation ordinance applies;
- D. Ground Floor Residential Design Standards. Adopt objective design standards to create an attractive active appearance for residential development on the ground-floor, while also maintaining privacy for residents:
 - i. Individual dwelling units shall not be permitted on the ground-floor fronting El Camino Real. Instead, the ground-floor frontage on El Camino Real may include common areas, such as lobbies, stoops, community rooms, and work-out spaces with windows and architectural detail to create visualize interest. Ground floor residential would be permitted beyond the common areas or if set back away from El Camino Real;
 - ii. Parking shall be located behind buildings or below grade, or, where those options are not feasible, screened by landscaping, low walls, or structured garages with architectural detail;
- E. Housing Incentive Program (HIP).
 - i. Increase residential FAR from 0.5 (CN) and 0.6 (CS) to 1.5;
 - ii. Eliminate 50 percent lot coverage requirement;
 - iii. Allow Affordable Housing Overlay development standards (without legislative process); and
 - iv. Discretionary review by ARB required.

Vice Mayor Fine noted the proposals were similar to the proposals for Downtown and California Avenue.

Council Member Kniss inquired regarding State requirements for rooftop decks.

Mr. Lait indicated SB 35 did not address rooftops. Rooftop decks were subject to local zoning requirements.

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Council Member Kniss asked if there was a way to get around the zoning requirements.

Mr. Lait related that the roof deck would have to exceed the height limit.

Council Member Kniss requested the impacts to the building of incorporating a rooftop deck into a project.

Mr. Lait explained the requirements for elevators and stairs and for permanent features. The building could be designed to the maximum height limit, and the proposed change would allow a stair and elevator to exceed the height limit so that the rooftop could be used as a deck and count toward the open space requirement.

Council Member Kniss asked if a floor of the building would have to be removed in order to incorporate a rooftop deck unless the Council provided an exception for access elements to exceed the height limit.

Mr. Lait replied yes. The PTC suggested a rooftop deck count towards only 60 percent of the open space requirement so that the building would have some modulation.

Council Member DuBois inquired whether the CS and CN zones applied to South Palo Alto rather than the length of El Camino Real.

Mr. Lait clarified that the area was primarily south of the University. Town & Country and the hotels were zoned Community Commercial (CC). Staff did not propose any changes to the CC zones.

Council Member DuBois asked if the housing in CN and CS zones would be almost identical with the proposed changes. He asked if CN would be protected in any way in terms of neighborhood commercial uses.

Mr. Lait advised that Staff proposed only one change to land uses, and that was residential uses could occur on the ground floor if it was not already required as part of retail preservation.

Council Member DuBois asked if the proposed change would increase allowed lot coverage from 50 percent to 100 percent.

Mr. Lait explained that a developer could request a waiver from the requirement for 50 percent of the lot not to be covered. In theory, lot coverage could increase to 100 percent, which could reduce the height of a building. The waiver would be available through the HIP only.

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Council Member DuBois reiterated his concern about a project with only three housing units being eligible for the HIP. He questioned whether developers would be motivated to include only three housing units in order to obtain 100-percent lot coverage.

Mr. Lait noted a waiver request was subject to discretionary approval. The review process would probably not result in the use of waivers for projects with only a few penthouses.

Council Member DuBois remarked that the Council had done nothing to make commercial development less attractive in the areas where the Council wanted to incent housing. Housing was more likely to occur in residential areas rather than in more dense areas close to transportation. He inquired whether the policy for replacement of trees would remain in effect.

Mr. Lait responded yes.

Council Member Kou was concerned about the CS and CN zones abutting single-family homes. Buildings would be massive next to residential homes. The community would raise issues with this. The proposals for El Camino needed additional study.

MOTION PASSED: 6-1 Kou no

Mr. Lait reported the proposed changes were to redefine open space and to establish open space performance standards. The proposed Ordinance did not provide an exemption from the retail preservation requirement for 100-percent affordable housing projects on El Camino Real. The Council could include an exemption from the retail preservation requirement. The definition of open space was not new. Staff transferred it from one section to another section of the Code.

Mayor Filseth requested Staff review the development standards for rooftop decks.

Mr. Lait advised that Citywide standards for rooftop decks included prohibiting up-lighting; allowing features that provide access to the rooftop deck to extend above the height limit; allowing permanent features to exceed the height limit by no more than 12 feet; and prohibiting access and permanent features from intersecting a plane measured at a 45-degree angle.

Vice Mayor Fine asked if the intersecting a plane standard moved features toward the center of the building.

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Mr. Lait answered yes. Additional standards allowed a rooftop garden on a second or higher story; limited use of the deck to residents of the building; required access features to be pushed away from the building edge; required lighting to be turned off at 10:00 P.M.; required 15-25 percent of the rooftop to be landscaped with raised beds; required equipment that emitted noise and/or exhaust to be directed away from open space; required compliance with the City's Noise Ordinance; and prohibited sound-amplifying equipment.

Council Member Kniss noted locations of rooftop gardens in the Downtown area. Perhaps Staff could provide the Council with examples of existing rooftop decks.

Mr. Lait added that a rooftop deck would be subject to Architectural Review and the standards.

Council Member DuBois requested the rationale for limiting shade structures to a height of 12 feet.

Mr. Lait explained that 12 feet provided a bit of space between headroom and a structure off the elevator.

Council Member DuBois was concerned that a shade structure could be another roof.

Mr. Lait added that the shade structure would be subject to the prohibition against intersecting a plane measured 45 degrees from the edge of the building. Depending on the height of the building, the shade structure probably would not be visible from the street.

Council Member DuBois asked if there could be a coverage limit for shade structures.

Mr. Lait clarified that a portion of a shade structure may count toward floor area. Floor area was not allowed above the height limit.

Council Member DuBois inquired whether Staff discussed hours of use.

Mr. Lait responded no, other than the lighting cutoff time of 10:00 P.M. A standard limiting the hours of use would be simple to add.

Council Member DuBois inquired regarding enforcement of residents only using a rooftop deck.

Mr. Lait remarked that someone would complain to the City about a commercial tenant utilizing a roof deck, at which time Staff could pursue the matter through typical Code enforcement means.

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Council Member DuBois expressed concern about allowing a rooftop deck at the second or higher story because of noise and suggested revising the standard to the third or higher story.

MOTION: Council Member DuBois moved, seconded by Vice Mayor Fine to approve the following modifications to the Ordinance related to city-wide Rooftop Open Space Performance Standards:

- A. Permanent fixtures on the rooftop shall be placed so as not to exceed height limit for the applicable zoning district, except:
 - i. Elevators, stairs and guardrails may exceed the height limit to allow for access to the rooftop useable open space as and to the extent required to comply with the Americans With Disabilities Act (ADA). These fixtures shall be designed to the lowest height and size feasible;
 - ii. Permanent fixtures associated with the useable open space, such as trellises, shade structures, furniture, and furnishings such as planters, lighting and heaters, may exceed the height limit by up to 12 feet;
 - iii. For the height limit exceptions in (i) and (ii) above, all fixtures shall not intersect a plane measured at a forty-five-degree angle from the edge of the building starting at the rooftop garden surface sloping upward and inward toward the center of the property;
- B. The rooftop garden may be located on the second or higher story or on a roof deck;
- C. The rooftop garden shall be accessible to all residents of dwelling units on the parcel, but not to commercial tenants of a residential mixed-use development;
- D. Structures or fixtures providing a means of access or egress (i.e., stairway, elevator) shall be located away from the building edge to the extent feasible or screened to minimize visibility from the public right-of-way and adjacent buildings and privacy impacts. These access structures or fixtures, when exceeding the height limit, shall be subject to the provisions of subsection (A)(iii) above;
- E. Any lighting shall have cutoff fixtures that cast downward-facing light or consist of low-level string lights. Lights shall be dimmable to control glare and placed on timers to turn off after 10:00 PM. Photometric

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diagrams must be submitted by the applicant to ensure there are no spillover impacts into windows or openings of adjacent properties;

- F. At least 15 percent but no more than 25 percent of the rooftop shall be landscaped with raised beds for gardening, C.3 stormwater planters, or other landscaping. All required landscaped areas shall be equipped with automatic irrigation systems and be properly drained;
- G. Rooftop equipment that emit noise and/or exhaust, including but not limited to vents, flues, generators, pumps, air conditioning compressors, and other protrusions through the roof, shall be directed away and screened from the useable open space areas;
- H. Rooftop open space noise levels shall not exceed exterior residential noise level as defined by Section 9.10.030(a) of this code;
- I. The use of sound amplifying equipment shall be prohibited. Signs shall be affixed adjacent to access elevators and stairs within the rooftop garden providing notice of this prohibition;
- J. Change the Ordinance Section 10, B to replace "second" with "third;" and
- K. Change the Ordinance Section D to delete "or screened."

Vice Mayor Fine asked if a roof deck on a two-story building would be located at the floor plate of a third story.

Mr. Lait replied the finished floor level of the third floor.

Vice Mayor Fine questioned whether story or a specific number of feet was the correct measurement.

Mr. Lait asked if the intent was to distance the noise from the lower levels to the upper levels. Roof decks were already allowed below the height limit. Staff's intent was to allow a roof deck to exceed the height limit.

Vice Mayor Fine asked if the three-story regulation could preclude roof decks that would be desirable.

Council Member DuBois asked if roof decks at a height of 25 feet were desirable.

Vice Mayor Fine reiterated that a two-story building could have a roof deck under the existing standards.

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Council Member DuBois was concerned that noise would result from roof decks on multifamily housing. Requiring a roof deck at the third story or higher on a multifamily residential building could reduce noise for nearby single-family and R-2 homes.

Mayor Filseth asked Council Member DuBois if he intended to prevent low, noisy roof decks.

Council Member DuBois answered yes.

Mr. Lait reiterated that the existing Code allowed roof decks below the height limit. The proposed Ordinance did not address roof decks below the height limit.

Council Member DuBois believed the use of roof decks was a change.

Mr. Lait anticipated developers would maximize the number of housing units and place the roof deck atop the maximum number of housing units. He asked if deleting the provision would eliminate the concern.

Council Member DuBois responded no because roof decks could be located on multiple levels.

Mr. Lait reiterated that the proposed Ordinance did not change an existing policy.

Vice Mayor Fine inquired whether a 50-foot building with a roof deck on top could have a secondary roof deck.

Mr. Lait answered no.

Vice Mayor Fine requested Staff return to the Council if issues arose with implementing a roof deck at the third or higher story.

Council Member Cormack asked if the location of the landscaping affected the discussion.

Vice Mayor Fine responded no.

Mr. Lait clarified that the terms rooftop deck and rooftop garden were used interchangeably.

Council Member Kniss inquired regarding the potential demand for rooftop decks.

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Mr. Lait reported discussions with developers revealed a number of constraints to providing housing, one of which was the open space requirement. To address it, Staff proposed a roof deck count toward the requirement instead of decreasing the requirement.

Council Member Kniss remarked that a rooftop deck was different from a rooftop garden based on the number of plants found on a rooftop garden.

Mr. Lait added that landscaping was required to make a rooftop deck more like a garden.

Council Member Kniss felt a rooftop deck provided a practical purpose rather than an aesthetic purpose.

Mr. Lait requested the Motion include the Citywide up-lighting prohibition established on December 3.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to add to the Motion a new Part L "Include in the Ordinance Citywide up-lighting requirements."

Mr. Lait noted Council Member DuBois requested a change to the definition of open space.

Council Member Cormack inquired regarding safety barriers for rooftop decks.

Mr. Lait advised that a guardrail or parapet would be required. Staff would not allow a rooftop deck to be established without necessary safety barricades.

Council Member Cormack requested the standard height limit of safety barricades.

Mr. Lait responded approximately 42 inches. The ARB would review the design of safety barricades.

Council Member Cormack was not inclined to limit the hours of use of a roof deck.

Council Member Tanaka expressed concern that Part B might eliminate many possibilities and suggested deleting Part B from the Motion.

Council Member DuBois advised that Part B was the primary standard he wanted to charge because of noise and privacy issues.

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Vice Mayor Fine concurred with Council Member Tanaka.

MOTION: Council Member Tanaka moved, seconded by Council Member XXX to remove Part B from the Motion.

MOTION FAILED DUE TO THE LACK OF A SECOND

Council Member Kou thought Staff would have proposed Code enforcement prior to allowing a rooftop deck to count towards the open space requirement and allowing a building to cover 100 percent of the lot. These properties would abut single-family homes and less dense apartment buildings. The Council should not forget the impacts of these standards on existing residents.

MOTION AS AMENDED RESTATED: Council Member DuBois moved, seconded by Vice Mayor Fine to approve the following modifications to the Ordinance related to city-wide Rooftop Open Space Performance Standards:

- A. Permanent fixtures on the rooftop shall be placed so as not to exceed height limit for the applicable zoning district, except:
 - i. Elevators, stairs and guardrails may exceed the height limit to allow for access to the rooftop useable open space as and to the extent required to comply with the Americans With Disabilities Act (ADA). These fixtures shall be designed to the lowest height and size feasible;
 - ii. Permanent fixtures associated with the useable open space, such as trellises, shade structures, furniture, and furnishings such as planters, lighting and heaters, may exceed the height limit by up to 12 feet;
 - iii. For the height limit exceptions in (i) and (ii) above, all fixtures shall not intersect a plane measured at a forty-five-degree angle from the edge of the building starting at the rooftop garden surface sloping upward and inward toward the center of the property;
- B. The rooftop garden may be located on the second or higher story or on a roof deck;
- C. The rooftop garden shall be accessible to all residents of dwelling units on the parcel, but not to commercial tenants of a residential mixed-use development;

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- D. Structures or fixtures providing a means of access or egress (i.e., stairway, elevator) shall be located away from the building edge to the extent feasible or screened to minimize visibility from the public right-of-way and adjacent buildings and privacy impacts. These access structures or fixtures, when exceeding the height limit, shall be subject to the provisions of subsection (A)(iii) above;
- E. Any lighting shall have cutoff fixtures that cast downward-facing light or consist of low-level string lights. Lights shall be dimmable to control glare and placed on timers to turn off after 10:00 PM. Photometric diagrams must be submitted by the applicant to ensure there are no spillover impacts into windows or openings of adjacent properties;
- F. At least 15 percent but no more than 25 percent of the rooftop shall be landscaped with raised beds for gardening, C.3 stormwater planters, or other landscaping. All required landscaped areas shall be equipped with automatic irrigation systems and be properly drained;
- G. Rooftop equipment that emit noise and/or exhaust, including but not limited to vents, flues, generators, pumps, air conditioning compressors, and other protrusions through the roof, shall be directed away and screened from the useable open space areas;
- H. Rooftop open space noise levels shall not exceed exterior residential noise level as defined by Section 9.10.030(a) of this code;
- I. The use of sound amplifying equipment shall be prohibited. Signs shall be affixed adjacent to access elevators and stairs within the rooftop garden providing notice of this prohibition;
- J. Change the Ordinance Section 10, B to replace "second" with "third;"
- K. Change the Ordinance Section D to delete "or screened;" and
- L. Include in the Ordinance Citywide up-lighting requirements.

MOTION AS AMENDED PASSED: 6-1 Kou no

Mr. Lait requested the Council update the open space requirement.

Council Member DuBois expressed concern regarding dwelling units having 150 square feet of open space and micro units having 40 square feet of open space. He suggested the Council passed the requirement without discussion. The people most likely to spend the least amount of time in their units had the least amount of open space. He did not find the requirement

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in the proposed Ordinance. Otherwise, the open space requirement was standard throughout the proposed Ordinance at 150 square feet.

Council Member Kniss requested Council Member DuBois' preferred amount of open space for micro units.

Council Member DuBois wanted to hear his colleagues' comments.

Vice Mayor Fine asked if the 150 square feet was based on the average unit size of 1,500 square feet.

Mr. Lait explained it was based on existing Code provisions and standardized across unit sizes.

Vice Mayor Fine remarked that people who chose to live in a micro unit often spent much of their time in other locations.

Council Member Kniss was not inclined to change the amount absent a compelling reason. Most micro-unit dwellers knew the locations of public open space.

Council Member Cormack asked if the requirement overlapped with the language of "part or all of the required private usable open space areas may be added to the required."

Council Member DuBois clarified that the standards required a specific amount of total open space, which could be divided between private and public open spaces.

Council Member Cormack asked if Council Member DuBois wanted a minimum amount of private open space.

Council Member DuBois stated the minimum amount was 150 square feet of open space, which could be a combination of public and private open space. However, 40 square feet of open space was required for a micro unit.

Mr. Lait reported the existing standards contained a minimum private open space requirement, and private open space was defined differently from common open space. The current standard for private open space in a multifamily zone was 50 square feet. The standards for usable open space were different, which were defined in the proposed Ordinance.

Vice Mayor Fine asked if Staff wanted the Council to discuss the definition of usable open space.

Mr. Lait answered yes.

FINAL MINUTES

MOTION: Vice Mayor Fine moved, seconded by Council Member Kniss to approve the proposed modifications to the definition of “usable open space” in Section 18.04.030 of the Ordinance.

Vice Mayor Fine remarked that the language redefined and, in some cases, restricted usable open space.

Mayor Filseth requested the impacts of the proposed language.

Mr. Lait indicated Staff moved language from one provision into Section 18.04.030. The remaining language expanded the applicability of the space so that developers were aware of all users of the space. The existing Code language did not consider seniors or children as users of open space.

Mayor Filseth requested the consequences of changing the existing language.

Mr. Lait clarified that the proposed language would allow the ARB to ensure the quality of the space catered to different user groups in a generic way.

Mayor Filseth inquired whether a space had to be usable by seniors in order to qualify for open space.

Mr. Lait stated Staff was striving for more universal access to and enjoyment of open space. Open space did not have to cover every possible user group. Staff meant to add qualitative purpose to the definition of open space.

Council Member Cormack expressed delight with the proposed language as it expanded everyone's view of open space.

MOTION PASSED: 6-1 Kou no

Council Member DuBois reported the Council needed to discuss the retail exception in the El Camino Real area.

Mr. Lait advised that the retail exemption for affordable housing projects in the El Camino Real area was not included in the proposed Ordinance.

MOTION: Council Member DuBois moved, seconded by Mayor Filseth to approve the following modifications to the Ordinance related to properties adjacent to El Camino Real in the CN and CS Zoning Districts:

- A. Exempt 100 percent affordable housing projects (120 percent AMI and below) from the retail preservation requirement, with an average not to exceed 80 percent of the area median income, except in the building manager's unit.

FINAL MINUTES

Council Member DuBois inquired whether language regarding one parking space for each employee was needed.

Mr. Lait recalled the Council addressed the exemption under the Citywide provision on December 3. The PTC had recommended against a retail preservation exemption in the El Camino Real area. If the Council was interested in an exemption for the El Camino area, Staff would add language that would affirmatively allow affordable housing projects to meet the standard. The parking component confused things a bit and was outside the typical regulatory standard that applied elsewhere.

Council Member DuBois commented that the exemption for the RM zone required one parking space for employee working.

Mr. Lait noted similar exemptions for the Downtown and California Avenue areas did not contain the employee parking standard.

Council Member DuBois felt the remainder of the City was similar to the RM zones. The parking standard should be applied to areas of the City outside the Downtown and California Avenue areas. Citywide, the Council had exempted the first 1,500 square feet of retail from parking.

Mr. Lait clarified that the 1,500 square feet of retail was separate from the exemption for retail space. The 1,500-square-foot Citywide exemption for mixed-use projects would not require parking for the first 1,500 square feet.

Council Member DuBois reiterated that different standards applied to different zones. Parking was required in RM zones but not in other zones.

Mr. Lait agreed that the standard for RM zones required one parking space.

Council Member DuBois requested the rationale for not requiring a parking space in zones other than CC(2), CS, and CN.

Mr. Lait explained that the 1,500 square feet applied to the Downtown area, the California Avenue area, and CN and CS zones on El Camino. The term Citywide was, in actuality, specific to these zones.

Council Member DuBois asked which zones were left once the Downtown area, California Avenue area, and CN and CS zones on El Camino were removed.

Mr. Lait answered Middlefield, San Antonio, zoning that was not on El Camino, in California Avenue, or in Downtown.

FINAL MINUTES

Council Member DuBois suggested the standard for RM zoning should be applied to those zones.

Mr. Lait stated the proposed Ordinance did not affect those areas. The only true Citywide change contained in the proposed Ordinance pertained to the open space standard and the parking standard.

Vice Mayor Fine preferred the 100 percent AMI and proposed the Motion include that the developer could apply for a waiver if the project was up to 100 percent AMI.

Council Member DuBois noted the Motion applied just to the CS and CN zones along El Camino because the exemption was omitted from the proposed Ordinance.

Council Member Cormack requested a location in the ground-floor and retail combining district.

Mr. Lait advised that the GF would not apply on El Camino, but the R district might. GF applied to Downtown only. The retail preservation requirement should be protected in locations subject to retail preservation. Under the Motion, Staff would craft carve-out language for 100-percent affordable housing projects at or below 80-percent AMI to be exempt from the retail preservation requirement.

MOTION: Council Member DuBois moved, seconded by Mayor Filseth to approve the following modifications to the Ordinance related to properties adjacent to El Camino Real in the CN and CS Zoning Districts:

- B. Exempt 100 percent affordable housing projects (120 percent AMI and below) from the retail preservation requirement, with an average not to exceed 80 percent of the area median income, except in the building manager's unit.

Council Member Cormack asked if the Motion would cause all three zoning districts to be consistent with the Council's action for the Wilton Court project.

Mr. Lait would have to review the Downtown area to ensure the requirement was consistent with the El Camino and California Avenue areas.

Council Member DuBois inquired whether the language of "except in the retail combining districts" could be deleted or moved.

Mr. Lait recommended the language remain in the Motion because a few properties on El Camino were subject to the R district.

FINAL MINUTES

Council Member DuBois suggested the phrase should follow "retail preservation requirement."

Mr. Lait noted the Council previously adopted Citywide provisions for 120 percent AMI. The percentage was reduced to 80 for the California Avenue area.

Mayor Filseth recalled that the Council changed the percentage for the RM district.

Mr. Lait recommended the Council make the percentage 80 across all three areas.

Council Member Cormack noted Downtown would be different with 120 percent. She inquired whether there was a policy reason for having a different percentage for Downtown.

Mr. Lait encouraged the Council to implement the same standard across all areas.

Council Member Cormack asked how the Council could accomplish that.

Mayor Filseth indicated the Council could approve the Motion and offer a subsequent Motion for Downtown.

Vice Mayor Fine proposed a compromise of 100 percent across all areas.

Council Member Cormack would support the compromise.

Council Member DuBois reiterated his wish to provide an incentive for 100-percent affordable housing with an average of 80 percent BMR that was tied to Federal funding and credits.

Council Member Cormack requested the circumstances under which the Council could change the percentage at some point in the future.

Council Member Kniss reported the Council could always revise an Ordinance.

Mr. Lait understood the Council was interested in affordable housing projects that qualified for the Federal income tax credit limit. Staff could work with the City Attorney's Office to draft language that tied the exemption to the Federal income tax credit so that any project that qualified for the credit could take advantage of the program.

MOTION PASSED: 7-0

FINAL MINUTES

Mayor Filseth commented that the totality of the Council's actions was a significant step toward encouraging housing production. Housing supply and demand in the Region were extremely mismatched. The City of Palo Alto had limited job growth to the point that it was as low as 200 and 300 new jobs a year. The Housing Ordinance and the Accessory Dwelling Unit (ADU) Ordinance should create close to 300 housing units per year. Consequently, Palo Alto was approaching jobs/housing growth sustainability while the Region overall continued to add jobs faster than housing. There was no compelling evidence that some State and Regional measures under discussion would affect the jobs/housing balance.

State/Federal Legislation Update/Action

None.

Council Member Questions, Comments and Announcements

Council Member DuBois advised that he would not be present for the Council Retreat but would provide the City Clerk with his thoughts.

Council Member Kou announced Racing Hearts would hold its 2019 5K and 10K on March 24.

Adjournment: The meeting was adjourned at 11:10 P.M.