MINUTES
REGULAR PALM DESERT CITY COUNCIL MEETING
THURSDAY, MARCH 28, 2019
CIVIC CENTER COUNCIL CHAMBER
73510 FRED WARING DRIVE, PALM DESERT, CA 92260

I. CALL TO ORDER - 3:00 P.M.

Mayor Weber convened the meeting at 3:00 p.m.

II. ROLL CALL

Present:
Councilmember Jan C. Harnik
Councilman Sabby Jonathan
Councilmember Kathleen Kelly
Mayor Pro Tem Gina Nestande
Mayor Susan Marie Weber

Also Present:
Lauri Aylaian, City Manager
Robert W. Hargreaves, City Attorney
Rachelle D. Klassen, City Clerk
Lori Carney, Director of Administrative Services
Russell Grance, Director of Building & Safety
Janet M. Moore, Director of Finance/City Treasurer
Tom Garcia, Director of Public Works
Eric Ceja, Principal Planner
Stephen Y. Aryan, Risk Manager
Ty Davis, Division Chief, Palm Desert Fire/Riverside Co. Fire Dept./Cal Fire
Bryan White, Battalion Chief, Palm Desert Fire/Riverside Co. Fire Dept./Cal Fire
Matt Martello, Asst. Chief, Palm Desert Police/Riverside Co. Sheriff’s Dept.
Grace L. Rocha, Deputy City Clerk

III. ORAL COMMUNICATIONS - A (CLOSED SESSION ITEMS)

None
IV. ADJOURN TO CLOSED SESSION

Request for Closed Session:

A. Conference with Real Property Negotiator pursuant to Government Code Section 54956.8:

1) Property: Desert Rose - 75366 Kelsey Circle North (APN 634-241-053), Palm Desert

   Negotiating Parties:
   Agency: Lauri Aylaian/Veronica Tapia/City of Palm Desert/
Palm Desert Housing Authority
   Property Owner: Robert Shepherd
   Under Negotiation: x Price   x Terms of Payment

B. Conference with Legal Counsel regarding significant exposure to litigation pursuant to Government Code Section 54956.9(d)(2):

   Number of potential cases: 2

With City Council concurrence, Mayor Weber adjourned the meeting to Closed Session at 3:01 p.m. She reconvened the meeting at 4:03 p.m.

V. RECONVENE REGULAR MEETING - 4:00 P.M.

A. REPORT ON ACTION FROM CLOSED SESSION.

Mr. Hargreaves announced that direction was given but no reportable action was taken in the Closed Session just ended.

VI. PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES OF AMERICA - Councilman Sabby Jonathan

VII. INVOCATION/INSPIRATION - Councilmember Jan C. Harnik

VIII. AWARDS AND PRESENTATIONS

A. PRESENTATION OF PROCLAMATION DECLARING THURSDAY, MARCH 28, 2019, AS “ALPHA GAMMA DELTA PALM SPRINGS ALUMNAE CLUB DAY” IN THE CITY OF PALM DESERT.

On behalf of the entire City Council, Mayor Weber presented the proclamation to the Alpha Gamma Delta Palm Springs Chapter, an international women’s fraternity promoting academic excellence, philanthropy, leadership, and personal development. Representatives of the Club were present to receive, specifically one of the Chapter’s founding
members, Peggy Buenzli, who was joined by Club President Dr. Joyce Terill, Vice President Joanna Newhouse, Charter Member Beverly McKeon, and Member Jane Oswald (sp?).

In return Ms. Buenzli extended sincere gratitude to the City for today’s recognition, adding that today the club had approximately 30 members from this community.

B. PRESENTATION OF PROCLAMATION DECLARING APRIL 7-13, 2019, AS “NATIONAL CRIME VICTIMS’ RIGHTS WEEK” IN THE CITY OF PALM DESERT.

On behalf of the entire City Council, Mayor Weber presented the proclamation to Ms. Patty Cardenas, Regional Manager, and Ms. Joanna Tortuga, Victims Services Supervisor, Division of Victims Services - Riverside County District Attorney’s Office.

Ms. Cardenas thanked the City Council for its continued support of their mission, adding Palm Desert’s Civic Center Park is the venue for the local vigil, which will be held this year on Wednesday, April 10. She invited all to come and take part in the beautiful event that is always well attended and means a great deal to those who participate.

C. PRESENTATION TO THE CITY COUNCIL BY PALM DESERT AREA CHAMBER OF COMMERCE PRESIDENT & CEO TODD RHODEN REGARDING TITLE SPONSORSHIP OF THE 55TH ANNUAL PALM DESERT GOLF CART PARADE.

MR. PATRICK KLEIN, General Manager of The Gardens On El Paseo and Chair of the Palm Desert Area Chamber of Commerce’s (PDACC) Golf Cart Parade Committee, introduced those in attendance with him, Ms. Abby Sturgeon, Director of Marketing for the PDACC, and Mr. Todd Rhoden, President & CEO for the PDACC. He went on to say that fellow Golf Cart Parade Committee Members were also present in the audience, Mr. Ray Rodriguez, Ms. Mel Robertson, Mr. Van Tanner, and Mr. Mike Hardin.

He thanked City Council for today’s opportunity to make a presentation and for its continued support of the Palm Desert Golf Cart Parade. This year would mark the event’s 55th Emerald Anniversary. In 2018 it featured:

- More than 80 floats.
- Multitude of high school bands, including the Palm Desert Aztecs.
- Hosting over 300 in the designated senior seating area.
- Tribute to active military, veterans, and first responders.
- Celebration of local heroes, as nominated by the community and its business members.
- Attendance of nearly 10,000 for the parade, who then subsequently shopped and dined on El Paseo on a Sunday afternoon (with Sunday being the shortest day of the week in retail, making a nice added footfall for local businesses and merchants).

MR. KLEIN said that looking forward, the team is seeking to enhance and grow this already unique experience. Efforts are being made toward including the following new features: 1) Collaboration with Mr. Ron De Harte - Professional Parade Consultant, who currently works extensively with Palm Springs on its various parade events; 2) Classic Car Cruise Procession to help promote the parade and kick-off First Weekend, which will resume its seasonal activities soon after this; 3) first-ever “Pooch Paw Parade,” including and promoting local animal adoption agencies throughout the Coachella Valley; 4) elevated VIP area experience with golf and country club-sponsored seating and direct access to the beer, wine, and cocktail garden; 5) Young Professionals designated seating area, with the direct access noted above, for the Chamber’s newly launched network of the same name, which has been quite successful in its first year; 6) development of a “Miss El Paseo” contest and pageant, possibly in conjunction with the El Paseo Parking and Property Improvement District. A few other feature ideas were in the works that are yet to be announced, with all expected to draw additional attention and attract more locals and visitors to the event than ever before. He added that the annual Palm Desert Golf Cart Parade would not exist without the loyal and generous support of the City of Palm Desert. Therefore, the community and Palm Desert Area Chamber of Commerce were humbly requesting the City’s continued confidence and support in order to take the event to new and unprecedented heights, and he and the group present today again thanked the City Council for its consideration.

MR. RHODEN noted that PDACC was honored to put on the “State of the City” luncheon last week, and they appreciated the City’s confidence in allowing it to host the event. He thanked Mayor Weber for the great delivery of her address to the audience there. Further, on behalf of the Golf Cart Parade Committee and PDACC team, he thanked the City Council and staff for the past, present, and future support of the parade. After participating in last year’s event for the first time, he felt it was fantastic celebration. Although, they have heard the voices of parade-goers, City Council, and staff, and they want to elevate it to the next level – making the 55th event the best ever. He said they will continue collaborating with the City to make sure the Golf Cart Parade and Festival accurately reflect just how great Palm Desert is. He noted that approximately half the Chamber staff is new and promised they would continue bringing new and exciting ideas, proudly reporting that they’d recently hosted the largest Peace Officer and Public Safety Luncheon in 2018 and last week’s largest State of the City Luncheon
in the 65-year history of the PDACC. Continued support of the City would be greatly appreciated.

IX. ORAL COMMUNICATIONS - B

MS. TAMMY MARTIN, Executive Director of Friends of the Desert Mountains, addressed the City Council, stating the Friends Board Members, staff, and volunteers wished to thank the City of Palm Desert for their continued support of the Coachella Valley Wildflower Festival. She especially thanked City Management Analyst Vanessa Mager for all her help making it a successful event. She went on to say that with the Federal government shutdown at first of the year, organizers realized if it continued for any length of time, they would have to consider moving their event from the Santa Rosa and San Jacinto Mountains National Monument Visitor Center. Previous years had proven that a capacity issue already existed there, and thanks to the City, this year’s event was allowed to move to Civic Center Park. She noted that this decision was made only five weeks prior to the event, meaning planning a whole new venue; but with the help of key volunteers, they “knocked it into the park.” Attendance in past years was estimated at 2,000; this year it was estimated at double to triple that number at Civic Center Park. She said their 97 volunteers logged over 1,600 hours for the event, 25 of those 97 were youth from the Friends group, Sacred Heart Church, and the Boy Scouts; and the number of recorded hours includes planning, preparation, implementation, and conclusion of the event. She also highlighted survey results:

First-time Attendees - out of 282 responses, 213 were first-timers.
Local Attendees - out of 232 responses, 158 were from the Coachella Valley, 64 from City of Palm Desert; 23 were from Canada, 50 from out-of-state, and 1 from the Philippines.
Survey Comments - “So much more to do;” “great, no buses;” “could bring my dog and also much easier for strollers;” “prefer the Park for accessibility and parking;” “came because of the location;” “love the Park;” “great vendors and exhibitors;” “love it;” “family of 7 traveled to the Valley for the Festival - first time attending;” “wasn’t sure at first, but loved it;” and “very well organized.”

She stated that even though they had great comments, there were a few that liked the old location; and if it continues at the Park, more wildflowers need to be displayed. Notwithstanding that comment, she said they would love to move the Festival to the Park in order to expand it and be the best one in the Valley. Ms. Martin again thanked the City Council for all of its continued support, adding that last weekend Mayor Weber was present for the event where they honored their volunteers. She then presented to each Councilmember one of the photographs presented to volunteers - that of a hummingbird being born at the National Monument Visitor Center - along with a Friends logo mug and packet of wildflower seeds.
MS. CHRISTY LANE, Palm Desert, first wanted to talk about CV/Link – hoping to instill with City Council a few ideas about it. She was a former triathlete who trained all over the country – in Spokane, Washington, the Rails to Trails recreational venue was similar to that proposed for CV/Link and was beautiful and safe. Although, after September 11th happened, things changed – people became fearful and didn’t utilize it. She asked officials to keep security in mind as they move forward developing CV/Link; she suggested having posted hours and signage to encourage using the “buddy” system for safety, especially for women. When she trained in Redondo Beach on The Strand, restrooms were everywhere, which was also an excellent idea to incorporate in CV/Link. She didn’t want to see happen here what has happened in San Francisco, hoping this area will have restroom facilities available. Personally, she would not be going on the trail by herself even for recreation now, because she was too nervous about the Sanctuary City status in both Palm Springs and Cathedral City. Secondly, she brought with her and called attention to a Palm Desert Monopoly Game, selling at Walmart for $19.95. As a current producer of educational products nationally, she was quite surprised to see it; when she asked around, no one was aware of it locally. So she called the Ohio company, and upon inquiry, was told that they do not have such a novelty featuring Palm Springs. They work with team sports and selected Palm Desert because of its community spirit. She was intrigued by the venues listed on the game board – The Living Desert, Civic Center, El Paseo, McCallum Theatre, but no one in the City had been made aware; the board also included four businesses – The Red Barn, Sherman’s Deli & Bakery, Wilma & Frieda’s Café, and the Fresh Agave Mexican Bar & Grill. When she inquired how any of these proprietors got to be on the board, Fresh Agave’s Manager/Co-owner said she was also unaware, but very pleased to hear. Ms. Lane felt it was a real boon to the brick and mortar retail and restaurant locations chosen for this opportunity, since it is increasingly difficult for them to thrive. She felt it was great publicity but encouraged the City to check into this and see if it could be more involved in its representation with trademark and copyright issues that may be worth pursuing. She said Palm Desert was becoming so big and so international, because it’s special and urged the City Council to take care and not let it become Palm Springs.

X. MAYOR AND COUNCILMEMBER REPORTS & REMARKS TO THE COMMUNITY

A. Councilmember Jan C. Harnik Committee Reports and General Comments.

1. Chamber of Commerce (PDACC) – commented what a great job it had done with State of the City. Commended Mayor Weber for her address that was warm, accurate, and a great representation of the City.

2. Fashion Week Ribbon Cutting - gave special thanks to Mayor Pro Tem Nestande for being the only Councilmember without a scheduling conflict who was available to perform the ribbon cutting for
opening this year’s Fashion Week. Felt it vitally important for the elected officials to support this City signature event.

3. Riverside County Transportation Commission (RCTC) - seeking community input about transportation needs, community members are encouraged to visit https://rebootmycommute.org/ to provide valuable feedback for RCTC’s next 10 years of planning. The website would also be listed in the BrightSide newsletter.

B. Councilman Sabby Jonathan Committee Reports and General Comments.

1. Chamber of Commerce (PDACC) - added his gratitude to the PDACC for all the many things it does to make the community more vibrant and successful, including the golf Cart Parade. Happy to hear the effort being put in to making a wonderful thing even better and looking forward to future success.

2. Joslyn In Bloom - annual luncheon/fashion show. Noted that Palm Desert’s very own Councilmember Kathleen Kelly was one of three women co-recipients (along with Indian Wells Council Representative Kimberly Muzik, and Rancho Mirage Mayor Pro Tem Iris Smotrich) of the Merritt & Penny Joslyn Award, a well-deserved honor, adding that she’d done a great deal there over the years, serving on its Board, including as President, among many other things. He commended her very articulate and meaningful remarks there, making the City very proud.

3. The Leaf Ribbon Cutting - pleased to attend opening of the long-anticipated dispensary on El Paseo. Very encouraged by the amazingly beautiful storefront, one that would rival any high-end jewelry store. Hoping that it achieves all of the City’s expectations to enhance El Paseo and wished them all the best.

4. Desert Community Energy - recent meeting held, and of the three cities participating, only City of Palm Springs voted to move forward with implementation using the 100% carbon-free option. At the DCE Board Meeting, the cities of Cathedral City and Palm Desert voted not to implement at this point, based upon the respective City Councils’ direction, but with both potentially reconsidering the action at a later time. This poses an interesting situation to be explored – possibility of launch with only one city electing to implement. DCE Board will work through the various issues that result. Additionally, each individual city will have an opportunity as a municipal ratepayer (not the residents) to implement the 100% carbon-free option; this matter to come up before City Council at a later time. Finally, very pleased that DCE voted to move forward with the Community Advisory
Committee, given the public interest and requests to participate in the process. Guidelines will be developed for the Committee, and Palm Desert will have an opportunity to place five representatives on it.

C. Councilmember Kathleen Kelly Committee Reports and General Comments.

1. Appreciated colleagues’ kind remarks earlier in the meeting.

2. Chamber of Commerce (PDACC) - added gratitude to the Chamber’s representatives for everything they do; especially pleasing to see how Palm Desert spirit is extended to new businesses to welcome them to the community, and for the State of the City event as well. Commended Mayor Weber for featuring all Palm Desert’s volunteers, specifically all the Committee and Commission Members at the event, which was an excellent choice and one that affirmed compliments to staff spoke for the entire City Council in that regard.

D Mayor Pro Tem Gina Nestande Committee Reports and General Comments.

None

E. Mayor Susan Marie Weber Meeting Summaries Report for the Period of March 4-16, 2019.

With City Council concurrence, the Meeting Summaries Report was received and filed.

1. VFW Post 3699 - 81st Anniversary - pleased and grateful to attend with Councilmember Kelly and present the Quilt of Valor to Nick Neumeyer, who is one of Palm Desert’s Citizens On Patrol (COPS). The lovely quilt was created by Nick’s COPS partner, Karen Summers.

2. Palm Desert Citizens On Patrol (COPS) - reported that COPS Capt. Jeff Alley organized the 2nd Annual Coachella Valley COPs Alliance, with members of all cities’ COP programs participating on March 26. Councilmember Harnik also participated in the forum, with several speakers, lots of education, and networking. Palm Desert has the best COPS program in the Coachella Valley and was proud to host the 2nd Annual Alliance Meeting.

Councilmember Harnik added that Riverside County’s new Sheriff Chad Bianco was the keynote speaker, and he is strongly motivated to make sure that all of those volunteer programs double in size,
because the community being involved helps the Sheriff’s Department do their jobs better.

3. **Senior Inspiration Awards** - Mayor Weber was pleased to honor this year’s Palm Desert Honoree Peg Leo, who volunteers at the Joslyn Center and is the City’s appointed Board Representative.

4. **Avenida Palm Desert** - participated in the project groundbreaking nearby on Portola Avenue, an extraordinary new complex for senior living. Brought a couple of extra hats from the event for her colleagues.

5. **Coffee with the Mayor at Portola Country Club** - this morning’s event featured Principal Planner Eric Ceja, who all were especially pleased to see and visit with there.

6. **Joslyn In Bloom Luncheon & Fashion Show** - congratulated Councilmember Kelly and appreciated her work with the Joslyn Center, particularly for being one of today’s runway models at the Fashion Show.

7. **Palm Desert Area Chamber of Commerce** - expressed gratitude to the PDACC for the wonderful State of the City event where she and her colleagues were able to talk about the City, its generous volunteers, Committee and Commission Members, which mean a great deal to everyone. Special thanks to David Hermann for all of his assistance with the program, including exquisite video presentation, which she appreciated immensely.

F. **City Council Requests for Action.**

1. **Portola Community Center** - Councilmember noted that this request was not on the City’s extensive list of goals and objectives for the current year, but it was relatively small, so she hoped it could be addressed anyway. There was a broken-down sign at the Center, and she hoped a little effort could be expended to place a historically appropriate sign there (compatible with its historic designation).

   Ms Aylaian agreed to look into the matter.

2. **Monterey Crossings Project** - Mayor Pro Tem Nestande asked for a status update on the prospective project, hoping that it would be coming up for discussion and action soon. She said the developer had reached out and wants to get before City Council, elaborating that it is proposed for the open space fronting Monterey Avenue south of Dick Kelly Street.
Mr. Ceja commented that the City is having dialog with that developer-applicant about moving the application forward. Staff presented a couple of options of how to do it; however, there is still ongoing negotiation regarding the affordable housing requirement there. At this point, the developer has chosen not to move forward to public hearing until City Council and staff address affordable housing on the site. Upon inquiry, he said staff is working on that issue.

Ms. Aylaian added that there is a subcommittee of two City Councilmembers working on it with staff.

G. City Council Consideration of Travel Requests/Reports.

None

XI. STAFF REPORTS AND REMARKS

A. City Manager


With City Council concurrence, the Meeting Summaries Report was received and filed.


Ms. Aylaian noted that for April, there is a parallel event with Desert X. At this very moment, there are community members crocheting, preparing, under the direction of an acclaimed artist, a mural that will be hung from City Hall for approximately three months. She added that the mural will feature a woman of historic significance, whose name has not yet been revealed to the general public. This effort is part of a project called, “Love Across the USA,” with one mural component being hung in each of the 50 states - Palm Desert being chosen as California's location. She said on Saturday, April 6, from 3:30 p.m. - 4:30 p.m. there will be a ceremony to commemorate the project where the mural will be hung and unveiled, and she invited everyone to come out and celebrate the event with the City.

B. City Attorney

None
C. City Clerk

None

D. Public Safety

1. Fire Department

None

2. Police Department

None

XII. CONSENT CALENDAR

PALM DESERT CITY COUNCIL

A. MINUTES of the Regular City Council Meeting of March 14, 2019.

Rec: Approve as presented.


Rec: Approve as presented.

C. REQUEST FOR AUTHORIZATION to Purchase Six (6) Zoll Automated External Defibrillators (AEDs).

Rec: By Minute Motion: 1) Authorize purchase of six (6) Zoll Automated External Defibrillators (AEDs) in the amount of approximately $8,200; 2) declare five (5) AED units as surplus to be traded in to Zoll for a reduced purchase cost; 3) authorize use of Riverside County’s vendor, Zoll, under Palm Desert Municipal Code Section 3.30.160 (J) - Sole Source – funds are available in the FY 2018-2019 budget.

D. REQUEST FOR APPROVAL of Amendment No. 2 to Contract No. C32410 - Annual Park Services (Desert Recreation District, Indio, CA).

Rec: By Minute Motion, approve Amendment No. 2 to subject contract with Desert Recreation District, Indio, California, for Annual Park Services as it relates to reimbursable expenses – funds are available in the budgeted account for this program.

Rec: By Minute Motion, authorize an additional $100,000 to Account No. 1104420-4301000 related to Professional Architectural/Engineering, amending the prior authorized amount to a new total not to exceed $400,000 for Plan Review and Inspection Services for the remainder of FY 2018-2019 with named vendors.

F. REQUEST FOR APPROVAL of a Change Order No. 1 in the Amount of $20,000 to El Paseo Parking and Business Improvement District Contract for Marketing Services (FG Creative, Palm Desert, CA) (Contract No. C37060).

Rec: By Minute Motion, authorize: 1) Change Order No. 1 to El Paseo Parking and Business Improvement District (EPPBID) Marketing Services Contract with FG Creative, Palm Desert, California, in the amount of $20,000; 2) City Manager to execute said Change Order; 3) appropriation of $7,500 of unobligated EPPBID monies to Account No. 2714491-4321500 for this purpose.

G. REQUEST FOR AWARD OF CONTRACT for the 2019 Citywide Palm Tree Pruning Project to Reliable Tree Works, Inc., in the Total Amount of the Base Bid of $148,120 (Contract No. C38170, Project No. 931-19) (Joint Consideration with the Palm Desert Housing Authority - Item P below).

Rec: By Minute Motion, award/authorize: 1) Subject contract for the 2019 Citywide Palm Tree Pruning Project to Reliable Tree Works, Inc., Coachella, California, in the total amount of the base bid of $148,120 (City - $134,200, Housing Authority - $13,920); 2) Director of Finance to set aside an additional 20% contingency in the total amount of $29,624 (City - $26,840, Housing Authority - $2,784); 3) City Manager/Executive Director or designee to review and approve written requests for use of the contingency for unforeseen conditions, per Section 3.30.170 (A) of Ordinance No. 1335; 4) Mayor/Chairman to execute said contract; 5) Mayor/Chairman to execute the Notice of Completion upon satisfactory completion of said work – funds are available relative to the City and Assessment Districts in Parks and Recreation Account Nos. 1104610-4332001, 1104611-4332001, 1104610-4337100; Repair/Maintenance Medians Account No. 1104614-4337001; Desert Willow Account No. 4414195-4332000; and Assessment District Fund 200 Accounts; and for the Housing Authority, funds are set aside in the 2018-2019 and proposed 2019-2020 Housing Authority Operating Budgets.
H. REQUEST FOR ACCEPTANCE OF WORK for Contract No. C36980 – 2018 Citywide Tree Pruning Program (Project No. 932-18) (George Salinas Tree Preservation, Yorba Linda, CA) (Joint Consideration with the Palm Desert Housing Authority - Item Q below).

Rec: By Minute Motion, accept the work as complete and authorize the City Clerk to file a Notice of Completion for the subject project.

I. REQUEST FOR APPROVAL of the ZERO The End of Prostate Cancer 5K - Saturday, September 14, 2019 – Civic Center Park (Gavin McKiernan/Mercury Events, Applicant).

Rec: By Minute Motion, approve: 1) ZERO The End of Prostate Cancer 5K scheduled for Saturday, September 14, 2019, to take place in Civic Center Park; 2) temporary waiver of Palm Desert Municipal Code (PDMC) Sections: a) 11.01.020 - Hours of Use in City Parks; b) 11.01.140 - Amplified Sound in City Parks; c) 11.01.080(O) - Placement of Advertising Signage in City Parks; d) 11.01.080(Q) - Vendor Sales in City Parks; e) 11.01.080(W) - Possession/Consumption of Alcohol in City Parks, pursuant to PDMC Section 9.58.040.

J. REQUEST FOR APPROVAL of the 2019 Paint El Paseo Pink Event and Road Closure – Saturday, October 12 (Desert Cancer Foundation, Applicant).

Rec: By Minute Motion, approve: 1) Desert Cancer Foundation’s Paint El Paseo Pink charitable walk on Saturday, October 12, 2019; 2) road closures on El Paseo between Highway 74 and Portola Avenue.

K. REQUEST FOR APPROVAL of Martha’s Village & Kitchen’s 2019 Thanksgiving Day 5K - Thursday, November 28 (Martha’s Village & Kitchen, Applicant).

Rec: By Minute Motion, approve: 1) Martha’s Village & Kitchen’s Thanksgiving Day 5K scheduled for Thursday, November 28, 2019; 2) road closures on El Paseo between Highway 74 and Portola Avenue; 3) consumption of alcoholic beverages on City-owned property, pursuant to PDMC Section 9.58.040.
L. REQUEST FOR APPROVAL of the 2019 Ronnie’s House for Hope Winter Festival - Saturday, December 7 (Jennifer Loza, President/Executive Director, Applicant).

Rec: By Minute Motion, approve: 1) 2019 Ronnie’s House for Hope Winter Festival scheduled for Saturday, December 7; 2) temporary waiver of Palm Desert Municipal Code (PDMC) Sections: a) 11.01.140 - Amplified Sound in City Parks; b) 11.01.080(O) - Placement of Advertising Signage in City Parks; c) 11.01.080(Q) - Vendor Sales in City Parks; d) 11.01.080(W) - Possession/Consumption of Alcohol in City Parks, pursuant to PDMC Section 9.58.040.

SUCCESSOR AGENCY TO THE PALM DESERT REDEVELOPMENT AGENCY

M. MINUTES of the March 14, 2019, Regular Meeting of the Board of Directors of the Successor Agency to the Palm Desert Redevelopment Agency.

Rec: Approve as presented.


Rec: Approve as presented.

PALM DESERT HOUSING AUTHORITY

O. MINUTES of the Housing Authority Meeting of March 14, 2019.

Rec: Approve as presented.

P. REQUEST FOR AWARD OF CONTRACT for the 2019 Citywide Palm Tree Pruning Project to Reliable Tree Works, Inc., in the Total Amount of the Base Bid of $148,120 (Contract No. C38710, Project No. 931-19) (Joint Consideration with the Palm Desert City Council - Item G above).

Rec: By Minute Motion, award/authorize: 1) Subject contract for the 2019 Citywide Palm Tree Pruning Project to Reliable Tree Works, Inc., Coachella, California, in the total amount of the base bid of $148,120 (City - $134,200, Housing Authority - $13,920); 2) Director of Finance to set aside an additional 20% contingency in the total amount of $29,624 (City - $26,840, Housing Authority - $2,784); 3) City Manager/Executive Director or designee to review and approve written requests for use of the contingency for unforeseen conditions, per Section 3.30.170 (A) of Ordinance No. 1335; 4) Mayor/Chairman to execute said contract; 5) Mayor/Chairman to execute the Notice of Completion upon satisfactory completion of said work – funds are
available relative to the City and Assessment Districts in Parks and Recreation Account Nos. 1104610-4332001, 1104611-4332001, 1104610-4337100; Repair/Maintenance Medians Account No. 1104614-4337001; Desert Willow Account No. 4414195-4332000; and Assessment District Fund 200 Accounts; and for the Housing Authority, funds are set aside in the 2018-2019 and proposed 2019-2020 Housing Authority Operating Budgets.

Q. REQUEST FOR ACCEPTANCE OF WORK for Contract No. C36980 – 2018 Citywide Tree Pruning Program (Project No. 932-18) (George Salinas Tree Preservation, Yorba Linda, CA) (Joint Consideration with the Palm Desert City Council - Item H above).

Rec: By Minute Motion, accept the work as complete and authorize the City Clerk to file a Notice of Completion for the subject project.

R. RESOLUTION NO. HA - 90 - A Resolution of the Housing Authority of the City of Palm Desert, California, Setting Forth Its Findings and Authorizing the Destruction of Records from the Department of Housing, as Indicated on the Records Retention Schedule (Adopted October 25, 2018) – Home Improvement Program Records.

Rec: Waive further reading and adopt.

Upon a motion by Kelly, second by Nestande, and 5-0 vote of the City Council, Successor Agency Board, and Housing Authority Board (AYES: Harnik, Jonathan, Kelly, Nestande, and Weber; NOES: None), the Consent Calendar was approved as presented.

XIII. CONSENT ITEMS HELD OVER

None

XIV. RESOLUTIONS


Ms. Carney commented that the Resolution represents an amendment to the Allocated Positions adopted each year, with two specific changes being requested. First, a housekeeping matter to list the position of Assistant City Manager (ACM). During the organizational review last year when the Salary Schedule was adopted, staff was still evaluating where and how the ACM would be listed, and it was not included. The City Manager has now decided
how she will use that position, and it needs to be reflected on the list of allocated positions. Secondly, the other matter relates to how the City handles temporary employees and student interns. Currently, the City contracts with staffing agencies for temporary employees and for the payroll service to student interns. In most cases that works fine. However, there are a couple of situations where it does not provide the tracking and reporting required for the City to comply with CalPERS laws; those are cases in which there is a long-term temporary assignment (more than six [6] months).

She went on to say that, specifically, this relates to Code Compliance, as there has been an additional temporary Code Compliance Officer focused on short-term rental compliance presently. Staff requests keeping the same person on the team as the City continues evaluating the short-term rental program through its sunset (December 31, 2019). Because CalPERS has specific and complex requirements for tracking of hours, how people are reported, and how the City tracks designation of temporary employees, it will be more beneficial and provide liability protection for the City if it runs the temporary employee through its own payroll. She stated that the employee would be paid at the same rate as currently, but they would not be eligible for full benefits (i.e., under State Law, this employee would be entitled to three [3] days of sick leave, but no vacation, health or life insurance). Further, she said in the future there may be similar situations with Office Specialist for long-term leaves, etc. Therefore, if the need for a long-term temporary employee comes about, the subject request for action provides that individual could be run through City payroll.

Responding to question about what was meant by the employee not being eligible for benefits, Ms. Carney said there are a number of benefits – health insurance, life insurance, and long-term disability, for which a temporary employee would not be eligible. Although, there are situations in which a temporary employee could earn CalPERS service credit. Even though they are a temporary employee for the City, working here more than 1,000 hours needs to be tracked, as does the type of work being performed. She explained that according to CalPERS regulations, if a temporary employee is essentially performing the functions of a regular employee, there are situations in which they could earn CalPERS service credit for that time. Further responding, she said that if City Council didn’t adopt the resolution, the City would have to stop using the individual who has been performing in the Code Compliance temporary position and contract with a different agency for a different person for a very short amount of time. For that position, the negative impact would be that the person who has been working in this high-touch situation with short-term rentals has learned the City’s neighborhoods and who key players are (concerned neighbors, repeat offenders and/or areas where complaints are generated). While the City is going through the process of evaluating and anticipating sunset for certain short-term rental permits in designated neighborhoods, staff believes it much more beneficial to retain the same
individual with whom residents have become accustomed to working; they have his cell phone number to make direct contact and have a level of comfort with him. If City Council rejects the Resolution, staff would need to reevaluate how this is being handled in order to prevent CalPERS liability.

When asked about other or inadvertent triggers for such an issue, Ms. Carney affirmed there are other triggers for CalPERS membership, which are very complex; going through a staffing agency does not help the City track, not only hours, but the rate of pay. Additionally, there is a CalPERS rule that, in essence, says “once a member, always a member.” For example, she observed that there are people who work in a public agency and, for whatever reason other than retirement (which has another set of complex rules), don’t work in that capacity because they quit or were laid off. These folks often seek temporary employment with staffing agencies to do similar work because they possess those skills. Regulations state that once an individual is a member of CalPERS and has contributions on deposit there, that person remains a member, and the City cannot avoid that obligation by going through a third-party staffing agency. Case law has been established on this fact after a famous case involving Metropolitan Water District employees who sued the District over this very situation – believing they deserved CalPERS contributions made on their behalf. She acknowledged that it is an additional expense for the Code Compliance position – the reason it’s important for the City to designate it “limited term” and evaluate it at least annually, if not every six months with the City Manager and affected Department Head to make sure it’s the best solution to the situation.

Responding to question about the other positions named in the Resolution and how they may be impacted by the “limited term” designation, Ms. Carney answered that for those limited term appointments, there are no property rights. She added the Palm Desert Municipal Code is very clear about seasonal and temporary employee types that are at-will and can be released without property right to their employment or any kind of process for releasing them at that time. She pointed out that she is also requesting in the Resolution to add the position of Student Intern, which is a position currently being employed through an agency. Here again, it would be easier for the City to track the 1,000 hours, knowing that it never retains a student worker any longer than that.

Further, she confirmed both that passing the Resolution did not commit the City to keeping such a structure forever, and that closer to the end of 2019 staff would be able to determine whether or not the Code Compliance position was required for a longer period of time, meaning the temporary position would conclude and the City would go through the normal process of filling it. She responded that in speaking with the Director of Community Development, he wished to evaluate it in January or February 2020 after the
program sunsets in order to determine the need. If the position is to become permanent, it would be reviewed and determined as part of the budget process for adding to Allocated Positions at that time.

Upon inquiry about why the Assistant City Manager (ACM) would be included with the other temporary positions being considered here, Ms. Carney said that position was not considered temporary. She was asking to modify the Salary Schedule and Allocated Positions by adding ACM to the City Manager Department as indicated in Exhibit “A” of the Resolution in the Schedule of Authorized/Allocated Positions. The other positions were highlighted as: 1) Temporary/Unassigned Department under Administrative Services; and 2) Limited Term Appointment (Temporary Employee) for Code Compliance Department. Additionally, the ACM would be a contract position for the City designated for a specific term at-will.

Councilman Jonathan moved to waive further reading and adopt Resolution No. 2019-11, amending portions of Resolution No. 2018-58, “Exhibit A,” Salary Ranges, and Allocated Classifications. Motion was seconded by Mayor Pro Tem Nestande and carried by 5-0 vote (AYES: Harnik, Jonathan, Kelly, Nestande, and Weber; NOES: None).

XV. ORDINANCES

A. For Introduction:

None

B. For Adoption:

1. ORDINANCE NO. 1346 - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM DESERT, CALIFORNIA, CONSIDERING APPROVING A THIRD AMENDMENT TO DEVELOPMENT AGREEMENT 02-01 (STONE EAGLE DEVELOPMENT) LOCATED WEST OF THE PALM VALLEY STORM CHANNEL, AT THE TERMINATION OF OLD STONE TRAIL (APN 652-090-002), Case No. DA 02-01 Amendment No. 3 (Eagle 605, LLC, Applicant).

Mr. Ceja stated at the March 14, 2019, meeting, City Council approved an amendment to the Development Agreement, as well as proposed plan for development at Stone Eagle. This represents second reading for that amendment.

Mayor Pro Tem Nestande moved to waive further reading and adopt Ordinance No. 1346. Motion was seconded by Councilmember Kelly and carried by 5-0 vote (AYES: Harnik, Jonathan, Kelly, Nestande, and Weber; NOES: None).

XVI. NEW BUSINESS
A. CONSIDERATION OF THE PROVISION OF CITY ATTORNEY SERVICES TO THE CITY OF PALM DESERT.

Note: City Attorney Robert W. Hargreaves recused himself from the meeting at 4:59 p.m., for a conflict of interest, in advance of any discussion or action on this matter. He returned to the meeting at 5:36 p.m. following the vote.

Management Analyst Christopher Gerry reported the matter here seeks City Council direction regarding City Attorney Services, with the existing agreement for contracted services with the firm of Best, Best & Krieger set to terminate in August 2019. It was competitively awarded in 2009 and subsequently extended for an additional five-year term by the Council in 2014. He said that a comparative analysis of contracted City Attorney Services relative to in-house counsels was previously requested and included in the printed staff report. Recommendation here includes two options: 1) Direct staff to issue a Request For Proposals (RFP) for contracted City Attorney Services; or 2) to extend the agreement with Best, Best & Krieger for an additional five years under the same terms and conditions. If directed to issue the RFP, staff would return to City Council with a recommended legal firm on July 11, 2019. Mr. Gerry offered to answer questions.

Mayor Weber said her only concern about this and why it was coming forward now was that the City really doesn’t have a “City Attorney.” Palm Desert has a contracted-out agency that sends a person over to act as the City Attorney. She didn’t have a problem with that until she started noticing that when one partner would come and work with the City, then another would come in, but the second didn’t know what the first one had learned in a review of the issues. She had become quite concerned about this over the last three or four years and didn’t know how it could be solved. She also understood that it was more expensive to have an in-house attorney and supported the idea of contracting out for such services; but there have been a couple of instances where the City Attorney had to recuse himself because the issue before Palm Desert’s City Council was one in which he also represented the other side. She felt that was awkward; and at that point, the City Attorney should have known ahead of time that someone else from the firm should have been at the meeting instead. Therefore, she could see value in having a dedicated in-house City Attorney compared to a contracted firm, unless the contract firm could figure out a way to share information among themselves more efficiently and effectively.

Ms. Aylaian responded that with regard to recusal over a client conflict of interest, whomever is serving as City Attorney at any given meeting, the recusal would apply no matter who is sitting in the chair - the conflict goes with the firm.
Councilman Jonathan clarified that he felt point being made by Mayor Weber was that there would less likely, or very remotely, be such conflicts with a dedicated in-house City Attorney. Ms. Aylaian agreed.

Mayor Pro Tem Nestande commented that the cost of the City having its own in-house attorney is a lot higher than the present arrangement, and while she didn’t have the same amount of experience as her colleagues, didn’t see it as a major issue.

Councilmember Kelly thanked Mr. Gerry for his very thorough analysis, helping her rule out the option of directly hiring an in-house City Attorney. Beyond the analysis here and her own experience with the law, she presumed the necessity to bring in specialized counsel could even exacerbate the cost differential discussed in the printed report. Even though relatively new to the Council herself, she’s been impressed when an alternate attorney is present, that the person has been briefed. She suggested that may be a topic where the City could achieve more consistent results just by communicating such feedback. She agreed that there is a downside to utilizing a firm that has such extensive experience in government representation and, therefore, has multiple clients. However, there is a huge upside, that being the degree to which that firm has expertise, which is cultivated in the representation of other clients. She felt the huge advantage overwhelms the occasional difficulty of conflicts and was quite content to accept staff’s recommendation that rules out taking it in-house, leaving the question of going to RFP or not. In her opinion, knowledge of Palm Desert’s issues is hugely beneficial – a timesaver, as is knowledge of the cast of characters. Her personal perception is that under the current arrangement, the City benefits not only from institutional knowledge, but, frankly, from demonstrated wisdom, which she was skeptical could be accurately assessed with an RFP. Putting the City through the cost and staff through the time of an RFP is not warranted.

Councilman Jonathan added his praise to Mr. Gerry for the comprehensive yet understandable report, which he also felt was a very worthwhile analysis of an important question that any City should face and evaluate – having a firm or in-house counsel. While he shared the Mayor’s concerns about some of the perceived deficiencies experienced, he felt the cost of going in-house eliminates that option. However, he believed some of the concerns needed to be addressed with whomever the City Attorney is or whatever firm it is and was confident they could be resolved, reiterating that going in-house is probably not a prudent direction to take. Regarding an RFP, he understood the confidence in BB&K (Best, Best & Krieger) expressed by Councilmember Kelly, but to conclude that it is the best firm out there for the City without going through a comprehensive RFP process is not prudent city governance. For example, everyone appreciated the good work done by Kemper Sports Management at Desert Willow; but the City appropriately
went through an RFP process for their continued management there, because it’s good governance. He added that since the City’s incorporation in 1973, it has utilized the same firm and never gone out to an RFP, which was unconscionable, and the very opposite of transparent. City Council owed it to themselves and to the residents, even though he thought BB&K is going to be tough to beat – he really appreciates all the good service it provides the City. But it’s unknown whether or not it is the best option, cost-wise, service-wise, quality-wise, and in all other respects, until RFP process is exercised. He observed that when the City went through such a process with RPM Company for management of the Palm Desert Housing Authority Residential Rental Properties, and with Kemper Sports Management for Desert Willow, even though the current service providers turned out to be the best option in both instances, there were changes made for the betterment of the City and its residents as a result. The Kemper contract was vastly improved – not only does it now cost the City less, but it gets more for the money. Going through the normal-cost-of-doing-business-for-any-city RFP process, just as is done for janitorial services, is warranted; he couldn’t imagine that it would not be done for something so significant as legal services, both in their importance and in dollars spent by the City for them. He emphasized to his colleagues that good governance dictates such an exercise, and regardless of who is selected, it will end up being a better contract and relationship than presently.

Councilmember Harnik added her praise for the staff report. She asked whether or not the City went through any RFP for City Attorney Services prior to the 2009 process, and Mr. Gerry responded that although he was relatively new to the City, was unaware of any RFP done prior to the 2009 process with eight or nine responses and three interviews conducted, resulting in the current contract with BB&K (Best, Best & Krieger). She wondered what problem needed solving here - lack of trust as a result of receiving bad City Attorney advice, or was it just a matter of tightening up a contract, which could be done without an RFP.

In answer to Councilmember Harnik’s question about the cost for going through an RFP, that was estimated at a 90- to 120-day process and one she felt was a laborious staff endeavor, Mr. Gerry was unable to quantify the dollar amount, but offered to explain the steps instead. He detailed that if City Council directed staff to issue an RFP, first step would be to submit a notice to the newspaper. Next would be to draft an RFP, release it, receive proposals, issue proposals to the evaluation committee, rank and review them, schedule interviews with the most competitive legal firms, conduct interviews, and submit a staff report to recommend legal firm(s), setting aside two Council Meetings for discussion. He said depending on the direction chosen by City Council, there may be some overlaps in services or cross-training required.
Councilmember Harnik noted staff time within City Hall was of great concern to her, acknowledging points made by both Mayor Weber and Councilmember Kelly for the need to express more clearly the City Council’s desires. She felt Assistant City Attorney Campos had done a good job when he substitutes for Mr. Hargreaves, but the City should be assured that the two of them communicate more efficiently if it’s an issue. She related that when City Council has dealt with Mr. Hargreaves on sensitive issues in Closed Session, the breadth and depth of his knowledge of City history have helped navigate some difficult issues and avoid others. She questioned how the City would go through an RFP and ask a legal firm to rate its wisdom or for a sample of what their advice would have been on a legal issue previously faced by the City, especially on that which cannot be divulged, or how they would quantify what their firm “knows.” The historical knowledge and wisdom that the current City Attorney possesses is invaluable. She didn’t think it would be realistic to bring someone else in and assume they can be brought up-to-date through all that BB&K already knows and has done with Palm Desert. Although, she recalled a matter where the City Attorney recused himself because he sits on the Angel View Board, and it was not due to BB&K having a conflict, it was his own; because he’s involved in the community and volunteers his time – just like Councilmembers do and sometimes have to recuse themselves from items. She couldn’t fault someone caring for and being involved in the community, who then occasionally has to recuse themselves from a matter. Further, she went on to relate that she was reading The Daily Journal yesterday, a legal newspaper publication, which contained an in-depth article about STRs (Short-Term Rentals) that seemed to be “the gold standard,” and it was written by a lawyer at BB&K (Best, Best & Krieger) – another resource that the City can access. She encouraged taking a close look at this matter, because it was different than a golf course management contract.

Councilman Jonathan cautioned that the issue here today was not a referendum on BB&K’s performance or whether or not they should be retained. It was about whether or not the service should be put to RFP (Request For Proposals), and he assumed BB&K would submit a proposal that the City could evaluate against the rest of the field and find out if they are the best option. He clarified that he was a fan of BB&K’s, knows many of the individuals involved, respecting and admiring them; therefore, his position on the matter at hand was not a criticism of any of them or the firm.

Upon inquiry by Councilman Jonathan regarding how many RFP processes the City goes through annually, Ms. Aylaian said approximately a half dozen. Further responding to question of when and why an RFP is issued (i.e., only when there is a problem or dissatisfaction with a current vendor), she said RFPs are typically done because the City is embarking on a new undertaking and looking for a vendor to help with it, such as scooters. There are only agreements with a couple of private firms for which the City would go through
an occasional RFP process – operators of the golf course, legal services, or auditors. In follow-up, she said there was a difference in terminology for RFP, RFP/RFQ (Request For Proposals/Request For Qualifications), and for recurring maintenance services, like tree trimming. She explained that one is cost-based; but with professional services it’s an RFQ/RFP, where qualifications are considered first, cost is second, but not the deciding factor. There were further questions from Councilman Jonathan and explanations from Ms. Aylaian in this same vein regarding various bids and contracts let by the City each year and the processes followed for each.

If City Council decided not to go out to RFP but amend the existing agreement, Mayor Weber asked when it would be appropriate for Council to make comment about the items of concern or if it would be incorporated into the amended agreement. Alternatively, she asked whether or not Councilmembers should bring things up to the City Attorney as they occur. Ms. Aylaian answered that if the City Council were to decide not to issue an RFP, but there were changes it wanted to see in performance, staff could be directed to prepare an amendment to incorporate specific changes during the extension period; it would then be brought back for approval.

Councilmember Kelly expressed her reasons for not supporting use of the RFP process, because the City Attorney relationship is about so much more than just getting a correct answer to a question of law. If it was just about that, she was sure there was software available; It needs to be a human being who can evaluate the legal question in the context of the City of Palm Desert’s values. She had experienced four personal attributes leading her to believe the City is being extremely well served by the current City Attorney. Those four attributes would be difficult or impossible to assess accurately in an RFP process. First is the capacity to deliver bad news to elected officials who don’t want to hear it, which is huge. The City needs a City Attorney who’s confident and experienced enough to stand up to elected officials as necessary; without these, they are not well served. She’d seen in the current City Attorney the capacity to think imaginatively, to not just settle for the law’s first answer but press for alternative ways of approaching a question to help achieve City goals. She believed those two traits, coupled with institutional knowledge and gold old-fashioned wisdom, which was hard to come by, made this decision a slam-dunk and the RFP process unsuitable. City Council simply could not satisfy itself through someone’s self-reporting that they have those qualities in equal measure. She really respected everything that had been said about the usual importance of following the RFP process and agreed it was healthy in the case of Kemper Sports; but it didn’t strike her as the right fit here. Therefore, she favored option #2; although, didn’t think it was as much about seeking specific amendments as it was simply ensuring that the Mayor has a chance to participate in conferences to articulate the general issues that have come up.
Councilmember Kelly moved to, by Minute Motion, extend the agreement with Best, Best & Krieger for contracted City Attorney Services for an additional five (5) years under the same terms and conditions as the existing (Contract No. C28881), ensuring that the Mayor has a chance to participate in conferences to articulate issues that have come up. Motion was seconded by Councilmember Harnik.

Councilman Jonathan heard and appreciated Councilmember Kelly’s thoughtful and persuasive comments. He went on to ask if she knew in her mind and heart that the City is getting the very best legal service possible at the most effective cost.

Councilmember Kelly answered she knew testing that would pose a huge risk. Further responding, said she knew that the City was getting superlative service and that the RFP process would not enable it to identify with sufficient reliability whether or not an alternative could be better.

Councilman Jonathan pointed out that was the very reason for going through an RFP process, and very possibly he and Councilmember Kelly could come to that very conclusion afterward; but it was unknown presently. He said the City Council owes it to itself, to the residents, and to the ideal of transparency to go through the process, even if it results in confirmation of Councilmember Kelly’s conclusion that the City has what it needs already.

Mayor Weber noted that the City performed an RFP process in 2009, and pulling that paperwork back out, tidying it up somewhat, would still take time, but it was nothing that hadn’t been done before. Additionally, she felt it gave everyone a chance to examine what exactly is being asked of the outside firm representing the City. It was a lot different time than 10 years ago, and from when the City started dealing with BB&K in 1973 with one attorney from that time until he passed away in 2015. She added that when dealing with a firm, the City was getting a variety of attorneys that it hoped, as discussed, were equally briefed on the issues. Therefore, she believed an RFP would help nail down more specifically the issues being dealt with now, how other people might want to consider handling them, and draw to the City Council’s attention exactly why it contracts out and what it was looking for. She agreed with both Councilman Jonathan and Councilmember Kelly that more than likely BB&K will come out way ahead of anyone else in the process because of the personalities that the City has had the good fortune of working with. Moreover, she felt it was appropriate to go out to RFP, as it had been a long time since that was performed, adding that it was not a criticism of BB&K’s performance to date but merely good business for the City to take a look at all alternatives.

Mayor Weber called for the vote, and the motion carried on a 3-2 vote (AYES: Harnik, Kelly, and Nestande; NOES: Jonathan and Weber).
For purposes of clarification:

Councilmember Kelly moved to, by Minute Motion, extend the agreement with Best, Best & Krieger for contracted City Attorney Services for an additional five (5) years under the same terms and conditions as the existing (Contract No. C28881), ensuring that the Mayor has a chance to participate in conferences to articulate issues that have come up. Motion was seconded by Councilmember Harnik and carried by a 3-2 vote (AYES: Harnik, Kelly, and Nestande; NOES: Jonathan and Weber).

XVII. CONTINUED BUSINESS

None

XVIII. OLD BUSINESS

None

XIX. PUBLIC HEARINGS

A. REQUEST FOR APPROVAL OF A ZONING ORDINANCE AMENDMENT, AMENDING THE CITY’S ZONING MAP TO EXPAND THE DOWNTOWN CORE OVERLAY DISTRICT TO SELECT PARCELS LOCATED ALONG EL PASEO AND HIGHWAY 111; AND FOR ADOPTION OF A NOTICE OF EXEMPTION IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA), Case No. ZOA 19-0001 (City of Palm Desert, Applicant).

Mr. Ceja said this subject Zoning Ordinance Amendment (ZOA) consideration was to expand the Downtown Core Overlay Zone, calling attention to the map in Councilmembers’ packets illustrating proposed parcels. He explained that the City’s new General Plan identified a large area within the commercial core, along Highway 111 and El Paseo, as the Downtown District, which was then divided into four categories of the Zoning Ordinance:

– Downtown
– Downtown Edge
– Downtown Core
– Transition Overlay

The Downtown Core Overlay was intended to be much more intensely developed and focused around key intersections in the City. Staff took the time to identify where those areas should apply during the Zoning Ordinance update; therefore, the current Downtown Core Overlay is focused around San Pablo, Highway 111, San Pablo/El Paseo, as well as Portola/Highway 111, and some other intersections along Highway 111. With the ZOA, the Director is charged with authority for implementing the General Plan through the Zoning Ordinance and felt this was an ideal time for the City
to reevaluate the Downtown Core to see where else it should apply for more intense development.

He said after careful review, the following intersections were selected – El Paseo/Monterey-Highway 74, Lupine, Larkspur, El Paseo/San Luis Rey, and El Paseo/Portola Avenue, because of their key locations that are contiguous to many of the other Downtown Core properties. Further, the Downtown Core Overlay doesn’t change permitted uses or conditionally permitted uses for the properties. Development standards that would change are that the Downtown Core allows potential for a four-story building for more intense development at intersections and prohibits ground-floor residential, which is why it is applied to places like El Paseo and Highway 111. Staff notified property owners in January 2019, and of the few phone calls received, most were excited about the zone change opportunity; and for those to which the Downtown Core Overlay would not apply wanted it too as well. Matter was considered by Planning Commission on March 5, and with exception of the Chair being absent, unanimously recommended approval of the ZOA to the City Council.

 Responding to question about the difference in allowing a four- or five-story building, Mr. Ceja said there was a footnote in the regulation that stated if the property owner proposed substantial public realm improvements, like on the frontage road, or provided a larger public space in front of their building, they could apply for a fifth story. Further responding to inquiry about where changes to the current zoning would occur and the process for making an application for four stories, he said it would not be a variance, because the fourth story would be allowed in the Zoning Ordinance. However, the applicant would have to go through an extensive application and review process with Architectural Review and Planning Commissions, allowing opportunity to evaluate architecture, site design, parking, etc. He affirmed that City Council could call up for review any decision of the Architectural Review or Planning Commissions. Regarding question as to how the City would avoid the “tunnel effect” that now exists on Palm Canyon Drive in Palm Springs, he said there was no development standard in Palm Desert’s Code that requires buildings to be stepped back; although, it has been applied as a matter of policy at the staff level. It has informally worked with applicants on building sites, asking them whenever they get to a second or third story to start pulling the building away from the street with two ways to do so - either stepping the building back or literally pulling it further back from the street. Staff was very keen to avoiding the “tunneling effect,” one way is through the Architectural Review and Planning Commission consideration. He agreed that in the prior Zoning Ordinance there was a provision regarding corner lots where a ratio of building setback to height was applied and that such a provision could be included here too.
Upon inquiry about the area on San Pablo Avenue north of Highway 111 that may lend itself to taller structures (3, 4, or 5 stories) and would even enhance Highway 111, as indicated by the City’s consultant on the General Plan, Mr. Ceja said many of the parcels along Highway 111 already have the Downtown Core designation -- the entire block along Highway 111 at San Pablo, Las Palmas, and San Carlos. He added the other area would be across from Sage on Highway 111, with other focused parcels being at San Luis Rey and Portola.

In answer to comment and inquiry about adopting the subject proposal resulting in the existence of 3½ blocks continuously designated with the Downtown Core characterization instead of discreet corners, Mr. Ceja agreed that would be the result. Additionally, he confirmed that as configured, Hotel Paseo could be bordered on two sides by potentially four- or five-story structures - to the west (The Gardens) and to the north at the intersection. Further responding to question, he said the direction under the General Plan is to focus on “key intersections.” The Director felt in looking at this during the General Plan process, a lot of key intersections were missed as being identified; this may be the opportunity to re-look at them. Therefore, he said they specifically looked at signalized intersections – San Luis Rey, Portola, and El Paseo, back to Monterey and El Paseo. Additionally, he answered that under the status quo, there were various procedures that could be utilized to consider a developer coming in with a four- or five-story concept – the variance may not be the most appropriate, but a change of zone or development agreement could be applied to propose something in excess of the Zoning Ordinance. He affirmed that Hotel Paseo was approved under such a process.

Councilmember Harnik said she had serious concerns about the aforementioned “canyon” or “tunnel” effect. She remembered talk about “modulated massing,” but an opportunity was missed at the east end of El Paseo/Highway 111 with a building right on the street that was not an asset to the character of the area. Further, she was concerned about radically changing the character of downtown, because once that happens, it alters one of the City’s most important pedestrian-friendly, revenue-generating assets forever. Although, she didn’t see a problem with someone proposing a larger-mass project at Highway 111/Highway 74, just as Hotel Paseo did and worked very hard to achieve. She added that one of the great attributes of El Paseo is natural light, especially during season; taking a chance of losing it an hour earlier there would be a mistake. It would be more appropriate for someone coming in wanting to develop a four- or five-story building to be taken under consideration, not for the entire City, but a very small area that deserves such due consideration.

Mayor Weber declared the public hearing **open** and invited testimony SUPPORTING or OPPOSING Case No. ZOA 19-0001.
MR. MARK BRAGG, United States Investment Company, Palm Springs, CA, stated his company was primarily a residential developer interested in Palm Desert, especially along El Paseo, and he’d met individually with four City Councilmembers about such prospects. He said the issue of “canyonization” is important – unacceptable to him and most others he could think of, primarily because he, too, was a person of some taste. But he said there are developers out there who have none nor the ability to get into a conversation with neighbors in the area about to be changed and arrive at a mutually acceptable conclusion. He certainly didn’t intend to bully the City Council in this process and suggested that if it didn’t want to be pushed into something unwanted, there were provisions possible in acceptance of the overlay that would require conversation among well-intentioned people to arrive at a mutually acceptable conclusion. That was how he would approach design of a taller-than-expected building variation. It was important and all that would be necessary, because he didn’t want to see the City Council codify something firm that would, then, have to be amended or subject of a variance application in the future rather than just working it out.

MR. PATRICK KLEIN, General Manager, The Gardens On El Paseo, Palm Desert, noticed in the presentation that it would not be an option for The Gardens to grow to 3+ stories, and while that was unfortunate, there were no plans for it currently. However, in looking at the map he thought about last year when the Gibbs Group submitted their current state of El Paseo report. He said it raised concerns about the relatively high number of vacancies quoted at 15%, which led to comments about accuracy, but acknowledged that there are nodes along the street with high vacancies. He understood how precious this particular retail and business district is to the City. But there is a need to open minds to further expansion and development that requires going vertical, without question, after running out of real estate in every direction. He believed zones identified on the map could inherently address some of the problems with dwindling business in/on certain areas and corners and could come at zero or minimal cost to the City. Whereas, the Gibbs Group’s plan for improvements with all the alternatives come at a very sizable cost; while they alone would help businesses without having to go vertical, he estimated it would be years of implementation before results were realized. Further, he knew through conversations with others in the City that some of these areas were already identified as development-ready as soon as zoning is allowed. In addition, he felt allowing residential on the second, third, and above floors to create an urban center was the ideal recipe for a thriving retail corridor with year-round footfall to the shops, merchants, and diners. Therefore, he personally was in full support of staff’s recommendation, as well as speaking on behalf of The Gardens On El Paseo and Taubman Company. Regarding concerns for the “tunneling/canyon” effect, he imagined that if there were design issues when submitted by the developer, the Architectural Review Commission has opportunity to strike down/amend any such plans. He believed the locations identified were very
strategic, as The Gardens and Village quadrants were already nearly 100% occupied at the 50-yard-line/strongest segment of the district. He added that the west needs help, especially now that Gucci is moving to The Gardens, as well as Bottega Veneta, as does the east end. With this zoning and the Gibbs Group proposals, he predicted it would result in an even more exceptional corridor in years to come.

With no further public testimony offered, Mayor Weber closed the public hearing.

In answer to Councilmember Harnik’s inquiry about the ability for The Gardens’ site to increase its height to five stories, Mr. Ceja said they do already have the Downtown Core Overlay that allows for it. Further responding to question, he said the four corners on El Paseo and San Pablo would allow for three, four, or five stories, as do the four corners of San Pablo/Highway 111, properties at Sage/Highway 111, Monterey/Highway 111, San Luis Rey/Highway 111, and Portola/Highway 111. Councilmember Kelly was disappointed that there wasn’t a pictorial representation of the total overlay area if this proposal was adopted.

Councilmember Harnik thought it wasn’t impossible that a four-story building would be built on any of the proposed nodes, especially if it was a building of architectural significance and appropriate massing. Still, it had to be looked at long and hard before changing the character of El Paseo. She said the City has done a great job; because it went through a long and arduous process with Hotel Paseo, it ended up with a wonderful product. She suggested when making changes of such magnitude, it should first be looked at closely, with a lot of discussion and engagement.

Mayor Pro Tem Nestande said she understood there would be checks and balances along the way with both the Architectural Review and Planning Commissions’ review. Further, it was an oversight that these corners weren’t part of the Downtown Core Overlay initially. If Mr. Klein’s comments about El Paseo were heeded, she believed it was vitally important for City Council to approve this ZOA (Zoning Ordinance Amendment).

Councilmember Kelly suspected that if any specific proposal was before this City Council, agreement would be reached about whether or not it was a good or bad thing for El Paseo - there was a proven track record in this regard. Nevertheless, she was extremely concerned about creating a presumption that four-story developments are necessarily a good thing for most of El Paseo, which is what this proposal would establish. In her rough calculations, she was confident that this would designate more than 60% of the street as “Core” for which four stories is presumptively correct. That meant it took the notion well past key nodes or intersections at more than half the street. She observed if that presumption was created, City Council hasn’t
put itself in the best possible position for scrutinizing development proposals to ensure the best result, even though the Planning and Architectural Review Commissions do excellent work within the parameters set by City Council. Hence, she was much more comfortable keeping the current designation/overlay and working with developers who come forward for other sites to see if they have something significant enough to warrant approval. This would be a better way to guard against the “canyonization effect.”

Councilman Jonathan shared the concerns, in addition to another that in fact, the City wants to change the character of El Paseo – what the whole vision is about for the Downtown Core. He agreed that caution was warranted to change it for the better and not for worse. He found both Mr. Bragg’s and Mr. Klein’s comments very cogent, specifically reference to the urban center. When he thought about an urban center, it was in concept; not about the height but having everything one needs being be right there. The combination of retail, restaurants, hotels, and residential all in the same area was what he envisioned for the new, better “El Paseo II,” but that wasn’t possible without going three, four, and, potentially, five stories. He envisioned something retaining the character as discussed but also making it new and vibrant, and there are some key nodes and parcels that lend themselves to the aforementioned development, including retail on the first story, stepped back to a balcony with hotel on the second story, stepped back further to a balcony with residences on the third and fourth stories, as seen in other downtowns. El Paseo can have it too, but only if City Council allows the zoning. He wanted to encourage that kind of development; otherwise, developers won’t even call City Hall – they’ve been calling because they know it’s being considered. He hoped to do that being proposed by staff, because some of the nodes to be added were critical for growth as described. He knows developers considering projects that would not be obtrusive or create a tunnel/canyon effect in areas without the overlay zone that would benefit from it, making El Paseo more beautiful and usable. Ideally, he hoped there was a way to put the word out to developers that the City was open to this type of development, maybe by having an overlay district and creating a specific bar that they have to overcome. It’s not an automatic yes, and they should understand the need to deal with the tunnel effect, a step-back would be expected, and a special type of ‘variance’ would be required to accomplish it.

Mayor Pro Tem Nestande believed that process was covered in the Architectural Review and Planning Commissions’ review and suggested that a provision for final authority by City Council could be added to the regulation.
Councilman Jonathan expressed mixed feelings, wondering if there was another mechanism that makes the threshold slightly higher instead, pointing out that a normal project already goes through Architectural Review and Planning Commissions and is done. He foresaw that here unless City Council calls it up, which was extremely unusual, hoping for an alternate procedure where a project would be allowed after being given greater scrutiny initially.

Mr. Ceja replied that there were a number of ways to accomplish this. It could be written into the Code about stepping back buildings after a certain height; or if an application seeks to exceed three stories, it automatically requires a Council Hearing, or other methods staff could explore to protect and guard against the tunnel/canyon effect. Further responding to how the City could limit projects to ensure architectural integrity and compatibility if it’s wildly successful in attracting applicants, he said the Director of Community Development is charged with reviewing the General Plan and Zoning Ordinance, and periodically coming back and making recommendations for changes. In this instance, staff didn’t feel it had been aggressive enough; there are development interests for El Paseo and Highway 111 approaching the City looking for a fourth or potentially fifth story – the reason this case was brought forward at this time to identify key intersections for moving forward. At some point in the future when the City feels it’s time to step on the brakes, it can come back and review with another Zoning Ordinance Amendment (ZOA).

Councilman Jonathan asked for clarification that the City Council could take staff’s recommendation, modified by adding: 1) Step-back element applied on a case-by-case basis to avoid the tunnel effect; 2) requirement that anything over two or three stories would have to come before City Council for approval; 3) the Downtown Core Overlay District to be reviewed periodically for any modifications.

Councilmember Kelly felt it would be critical to include the provision that a fourth story requires Council approval; otherwise, this creates an entitlement that can’t be taken away. However, it may make this category of properties different from how the Downtown Core Overlay is currently defined. Therefore, she didn’t think this could move forward tonight, other than instructing staff to bring something back as described. She appreciated the debate on it, because City Council wants to be supportive of the evolution of El Paseo in a constructive direction; and a requirement for the extra story to come back for approval would be key.

Mayor Pro Tem Nestande questioned the efficiency in that process, as developers may avoid the City if the zoning wasn’t set.
Councilmember Harnik was hearing confusion about whether or not the City Council is for/against mixed use, but that wasn’t today’s question, believing each Councilmember has previously expressed support for it being an asset on El Paseo. Congruently, she hadn’t heard anyone specifically object to a five-story building there either, just that they wanted to see it and make sure it’s in the best interest of existing businesses and overall goal for the area. It was certainly easy to see where five stories would be far more palatable on the north side of Highway 111. She added that the City Council could talk about checks and balances, then called attention again to the One El Paseo project – there were checks and balances there, but the building is right on the sidewalk without any modulation or setback, and it’s not an asset to the street. She felt the City Council had to look at this request very carefully, because when that’s how it’s done, a great project can result (i.e., Hotel Paseo); it should not be automatic for anyone to come in and build a four-story building. She said there was a reason developers were looking at El Paseo, it’s a prime location for building, and the City wants them to enhance it even more. She was sure that the Community Development Department has a good idea of what City Council fears on El Paseo, and they can at least walk applicants through that part of the process to get them to this point – it was City planning, it’s not a simple thing, and it’s forever. She said the answers were yes, developers welcome; yes, mixed use is desirable; yes, consideration of three, four, even five stories would be given, but it had to be done right.

Councilman Jonathan moved to, by Minute Motion, continue to a date uncertain, with staff to return the matter, including recommendations for expansion of the Downtown Overlay Zone that would provide added review and options regarding mandatory City Council review of height and massing conditions in order to retain compatibility in the affected location and area overall. Motion was seconded by Councilmember Harnik and carried by 5-0 vote (AYES: Harnik, Jonathan, Kelly, Nestande, and Weber; NOES: None).

B. REQUEST FOR APPROVAL OF A ZONING ORDINANCE AMENDMENT, AMENDING THE EL PASEO OVERLAY DISTRICT AND THE DOWNTOWN DISTRICT TO ALLOW PROFESSIONAL OFFICE-TYPE USES ON THE GROUND FLOOR FRONTING EL PASEO IN CERTAIN LOCATIONS; AND
FOR ADOPTION OF A NOTICE OF EXEMPTION IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA), Case No. ZOA 19-0002 (City of Palm Desert, Applicant).

Associate Planner Kevin Swartz reviewed the printed staff report provided in the agenda packets, highlighting that there are seven blocks within the one-mile length of El Paseo from Highway 74 to Portola Avenue with 12 existing office uses fronting along El Paseo. He described from west to east, as follows:

- Highway 74 to Ocotillo - 0 office uses.
- Ocotillo to Sage - 2 office uses on the north side.
- Sage to Lupine - 2 office uses on the north side.
- Lupine to San Pablo - 0 office uses.
- San Pablo to Larkspur - 0 office uses.
- Larkspur to San Luis Rey - 3 office uses (1-north, 2-south).
- San Luis Rey to Portola - 4 office uses (2-north, 2-south).

Mr. Swartz went on to say that staff had consulted with Mr. Gibbs/Gibbs Planning Group and received recommendations from both the El Paseo Property Parking and Business Improvement District Board (EPPBID) and Planning Commission. Based on those decisions, staff recommends the following:

1. No Office Uses allowed on corner lots – calling attention to the prior discussion at this City Council Meeting where intersections were described as being key. Discussions have occurred to consider street improvements, implementing bulb-outs for locations of businesses that interact with the street, such as restaurants or mixed use, not office uses.

2. No Office Uses allowed to abut one another – a concern of the EPPBID – creating a long block of dead space with three suites in a row of office frontage – this is undesirable.

3. Types of Allowable Office Uses – discussed at the March 14 City Council Meeting, professional offices such as accounting, architectural, advertising, and travel agencies are desirable. Bail bonds, financial institutions, or medical offices are not desirable.

4. Process for Office Uses – consensus of interested parties concluded that requiring a Conditional Use Permit (CUP) would be best course of action, allowing both staff and the Planning Commission to review Office Uses with regard to business type, location, land use compatibility, and parking. There is also a process for City Council to call up a CUP, or if Planning Commission denied an applicant, it could be appealed to City Council.
5. Consideration of percentages – review of a couple of different percentage options given. One was to create a buffer of 200 or 300 feet around each office; however, each block in the mile is relatively short, leading to abandoning this concept. Second was to look at building square footage, and it was agreed this would be to difficult to maintain. The third option of looking at the total linear frontage within each block seemed workable at 15% - it wasn’t the result of a mathematical formula, but a concept suggested by EPPBID (El Paseo Property Parking and Business Improvement District Board) at 10%-20%, and the Gibbs Group recommended 10%-15%. For example, on the north side from Ocotillo to Sage it was 745 feet, meaning 112 feet of linear frontage would be allowable – one or two lots; or if a suite was divided, it would represent two office uses.

Mr. Swartz went on to say that he spoke with Mr. Gibbs earlier in the week, who felt the aforementioned recommendations were good; although, he stated the City should also look at another:

6. Requiring Exterior of Buildings to appear as a retail use, which would apply to both a new building or tenant improvement. It would be very undesirable for an office user to go into a retail building and stucco over the exterior frontage, closing it off.

He said it was staff’s belief that this language was probably not required, given the required CUP process. If there were any exterior modifications proposed, they would have to go before the City’s Architectural Review Commission. Findings would have to be made for compliance with the General Plan and Zoning, each of which contain language, especially in the Downtown Core, that the buildings should look like a retail use. He went on to review the specific modifications being proposed in the El Paseo Overlay and Downtown Districts within the respective Municipal Code Sections, as well as the 111 Development Code.

Upon inquiry regarding prospective mixed use for the corner of the former Union Bank location, he affirmed that if an applicant came in for that corner and were proposing dividing a building into suites, the use fronting the corner would have to be retail or restaurant. Further responding to question about mixed use with a residential component above, possibly a first floor secure entrance with doorman for the residential, he said the intent was for a business-type office and not of a residential-component-related use.

In answer to question about two exclusions, relating to a recent ribbon-cutting for a very high-end and upscale dental office on El Paseo, understandably for attraction of the El Paseo clientele, and an existing plastic surgeon use there, Mr. Swartz said the logic for excluding all medical uses was about reserving parking availability for retail and restaurant uses on the street.
Additionally, he said dentists were categorized the same as urgent care; therefore, if such a use was allowed, it was possible that an urgent care could be located there, which was felt to be incompatible. Further, he confirmed that the CUP process could deal with that aspect from a land use-compatibility standpoint.

Mr. Swartz affirmed that any Office Professional use needed a CUP and part of that process required the applicant show compatibility with the intent and purpose of the chapter, which was to encourage a continuous pattern of pedestrian-oriented uses.

Councilmember Kelly noted that while financial institutions were also an exclusion, she’d recently seen televison ads for banks in which they were promoting their new approach to visiting the bank, which looks just like a coffee shop with opportunities for engagement. Therefore, she wondered if the proposed financial institutions exclusion was based on a dated perception of what they may look like. Mr. Swartz agreed that may be the case, as banks typically create a dead zone, as experienced with Union Bank and Bank of America, and then on the other end with Pomona First Federal. However, he concurred that businesses change their model.

Responding to inquiry about how much total office space could be located on El Paseo based on this modification, Mr. Swartz said staff had not made such a calculation.

Councilman Jonathan said he would like to know how much square footage would be potentially added to El Paseo if all the possibilities were filled with office uses. He also felt the language in the proposed ordinance was pretty loose when it used terms such as, “...for example, accounting, attorneys, and investment firms;” “...for example, advertising, architectural, photography, and travel agencies;” or “...include, but are not limited to, medical, financial, etc.” He didn’t think it was a comprehensive list and didn’t know how that would be possible, just looking at the Business Codes and Internal Revenue Code with a thousand different businesses listed. He asked if staff had a mechanism for determining how a business could locate on El Paseo if it wasn’t specifically excluded, even though City Council had given pretty strong indication of the intent to exclude it.

Mr. Swartz replied that would be the Conditional Use Permit process (CUP), staff could always make a recommendation for denial, and Planning Commission could uphold it. Alternatively, if Planning Commission approved the use, City Council could call it up. He said it was a judgment call, agreeing that it would be difficult.

Mayor Weber asked for confirmation that the reason for excluding medical, financial, and utility-type uses was the perception that people would drive to
the street and park, do their business with those uses, then leave; whereas, those visiting permitted uses would tend to stay on the street and generate foot traffic for shopping and eating, and Mr. Swartz agreed. He illustrated that in the case of an investment firm, that business would invite clients to their office, then ‘wine and dine them’ on the street.

Mayor Weber declared the public hearing open and invited testimony SUPPORTING or OPPOSING Case No. ZOA 19-0002. With no testimony offered, she declared the public hearing closed.

Councilman Jonathan said he saw the intent but also the danger; the potential positive benefit of encouraging a reasonable amount of office development is to generate more people on the street. Ideally, they would frequent the El Paseo businesses – retailers, restaurants and bars. He called Mr. Gibbs, because he wanted to understand directly his perspective, and he agreed that was the objective of allowing office in a downtown district. But the danger for El Paseo is that if there’s too much or not the right kind, it would squash the very thing that makes it so special. He felt perhaps it’s a blessing not to have a larger downtown area, as the larger downtown areas that use this strategy effectively have businesses in one section (the business district) with an adjacent entertainment district so that when the office people want to go to a restaurant, store, or bar after work, it’s within walking or e-scooter distance; but they’re not intermingled. He didn’t think it advantageous to encourage more office right on the street that is really defined by retail and for which the City’s consultant said that what was really needed and wants to go in there is more restaurants and bars.

Mayor Pro Tem Nestande pointed out that with the previous agenda item, if the City started going to two, three, or even four stories, office uses could be on the second floor with retail on the bottom. She felt these two public hearing items went hand-in-hand in their synergy.

Councilmember Kelly said right way, right amount, right type sounded great, and what’s proposed here is a 15% cap per block. She asked if Councilman Jonathan was comforted that the City was paying attention to keeping it at the right amount.

Councilman Jonathan responded he was comforted that it was being thought about but unsure it was the right percentage or if any other alternatives existed, such as certain areas that, at least for now, should not have that zoning. For instance, the west end of El Paseo is very focused on high-end retail, he didn’t think it needed office; part of the solution may be that 15% is okay, but not for every block. He reiterated that the essence of El Paseo is retail and restaurants, with our expert saying the greatest need is for the latter. He went on to say that, ideally, if restaurants and bars and retailers were lining up to fill all the empty spaces, this discussion would not be taking
place. Since that wasn’t the case, the expert also said that the way to encourage some of that was with the right amount and type of office. While he was glad the City was thinking about this and instituting a limit, was unsure it was done in the most effective manner.

Councilmember Kelly said the most appealing factor for her, referring back to Councilman Jonathan’s comments earlier tonight, was creation of an “urban center” as a place where everything you need is accessible by foot and the endgame the City is pointing toward. She was persuaded by this effort of trying to mix in some alternative destinations that are carefully selected to really support retail and restaurants, because they will be drawing additional people to the street. For her it was a matter of figuring out the right way, right amount, and right type, and this seemed to be a good start. She appreciated the Mayor’s point about why medical offices should be excluded; although, she still saw some appeal for financial institutions, given the direction banks are taking in newly presenting themselves as gathering places instead of just ATMs, but acknowledged that may just be a micro-point in the big picture. In answer to Councilman Jonathan’s question about the merit of excluding some portions of El Paseo from the proposed zone, she said it was worth discussing. She pointed out that when the City passed its cannabis regulation, it similarly worked with geography to designate one part of the street as unsuitable, the same logic could apply here.

Councilmember Harnik commented that limiting the use to a certain percentage was very prudent, and by her calculations, 15% would be less than 800 feet on one side of El Paseo. She related that when she gets her own teeth cleaned, she’s feeling pretty good about herself and may very well want to shop after leaving the dentist’s office. She didn’t think those types of uses were necessarily the opposite of retail or restaurant. Instead, she felt that by integrating it throughout the length of El Paseo, there are symbiotic relationships to medical uses, like someone getting a facial – this was the type of clientele the City wants to attract for a pedestrian-friendly, luxury street. Then that person would likely go to have lunch afterward, go into a financial institution, or an architect’s office. The principals and employees of those professional offices would also go to lunch or dinner and drinks after work, in addition to taking their clients for the same attractions. She urged her colleagues to remember that while everyone wants more retail, its character was changing too; by having more mixed use, it would build more valuable foot traffic. She didn’t think there was a reason to be afraid, because this was a great start. Further, the CUP (Conditional Use Permit) is the safety net for protecting the street from incompatible uses and ensuring whatever is approved would be an asset on El Paseo. As far as accountants, attorneys, advertising, architectural, and investment firms, if well integrated, it means traffic going in and out of those offices; and their clients with disposable income frequent nearby businesses where they’re needed. She felt those types of firms were assets, and this request needed to be looked

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at realistically so the City can go forward. If those businesses don’t do well, there was always opportunity for retail. She emphasized that the 1987 overlay needed to be considered one more time – there was nothing else the City was doing the same way it did then.

Councilman Jonathan rebutted that some things deserve to be the same, while others needed to change. He felt key to making change is getting it right and agreed the City needed to be realistic. For instance, he crosses El Paseo at San Pablo and recently counted 22 people crossing the street – they were walking El Paseo, but it wasn’t to go to their accountant, dentist, or doctor – they were looking at the Apple Store, going to a bar or a restaurant, and to The Gardens. He also crosses El Paseo east of that intersection and didn’t think he ever saw more than two people crossing the street, because offices are there. Hence, that was the concerning danger – he didn’t want to build dead zones on El Paseo or take away the very essence that attracts those types of pedestrians to it. He agreed that ideally, all the current vacancies would be filled by extra special stores or restaurants and bars that don’t exist anywhere else in the desert, and mixed use where people can stay at a hotel or short-term rental, or at an apartment or condo. Likewise, he felt in an ideal situation, an office could enhance El Paseo, but was concerned that there was a very great danger that it could have the exact opposite impact. Mayor Pro Tem Nestande agreed.

Mayor Weber asked about the current percentage of existing offices on the street. Mr. Swartz responded that his report provided the linear frontage but he had not performed a calculation of the current percentage from those frontages. He concurred that it may be at 15% on the existing, especially on the east end of the street where there are already four (4) businesses. He further confirmed that the way currently construed, it would be 15% on each side of the street.

In answer to question about the process where current locations were approved for Office Professional use, Mr. Swartz replied that there used to be a provision in the Municipal Code stating if buildings were built prior to 1987, office uses were allowed.

Councilmember Harnik believed it well understood by all that the corners being referenced were not vibrant ones, being more “yesterday’s bank” model and not what is being planned going forward. She added that the reason people from the Apple Store weren’t going to their accountants is because there’s an Apple Store. Conversely, there are undeniable vacancies – places where different types of businesses could locate, encouraging her colleagues not to be afraid of this concept. She absolutely agreed, however, that the former Union Bank site, current Bank of America, and Pomona First Federal were located on tough corners that were all grandfathered in, which cannot be changed unfortunately. Further, she agreed that without question,
the City can make sure future use of office space is well interspersed and a complement to other businesses for creating foot traffic.

Mayor Weber restated that by passing the ordinance proposed in this case, the City was planning ahead to make sure that future offices would be interspersed. Yet it may be discovered when the calculation is performed that the maximum percentage already exists. Mr. Swartz offered to perform the calculations and bring them back to City Council.

Mayor Pro Tem Nestande called attention to issues existing on the east end not attracting foot traffic where businesses and financial institutions are located.

Councilman Jonathan agreed on that point, adding he would almost prefer to see one section of El Paseo, possibly the east end, that encourages the kind of office development being discussed for enhancing the area. He was still of the opinion that there was a potential benefit, but the risk outweighed it. Therefore, he, for one, was not prepared to move forward with encouraging office use, believing that was a move backward. Maybe at a later time it could be considered; but the City just completed the study, was starting on reconfiguration of El Paseo, and moving forward with Buxton to look for specific businesses. He thought that collective effort needed a chance to succeed before it’s undermined by encouraging office use in the heart of El Paseo.

Mayor Weber felt Councilman Jonathan wasn’t completely opposed to office use, just not on the ground floor, since it is being allowed on the second and third floors.

Councilman Jonathan agreed, adding that the subject request would encourage additional office use beyond that already allowed, and he couldn’t support that. Mayor Pro Tem Nestande said she couldn’t either.

Councilmember Kelly observed that it may be helpful for staff to calculate exactly how many potential additional offices are at issue. In the interim, she suggested Councilmembers pay attention to where current vacancies are and whether they are suitable to the proposed uses. Plans in the works will take years and decades to unfold, so if some amount of flexibility would be helpful in the very short-term to bring people to the street, she was prepared to provide it. She felt everyone had asked legitimate questions and some refinement of the information may provide comfort.

Councilmember Harnik reminded her colleagues that the proposed regulation included, "make all office uses subject to a CUP," that she felt was adequate protection and provided the opportunity to make a better decision. That wasn’t the case when the big, old-school banks were approved for the corner
of El Paseo and San Luis Rey. That being said, she urged flexibility in order to respond to future needs and agreed that the requested information would be beneficial for moving forward: 1) Current linear footage; 2) type of businesses; 3) current vacancies.

Mayor Weber didn’t disagree with those comments. Yet she’d heard conflicting statements here about what checks were in place compared to those proposed and whose advice should be followed, leaving her distrustful of the process and in the future when personnel or City Council changes occur, that certain uses could slide in without having specificity about this zoning.

Mr. Swartz responded there is language in the City’s General Plan and Zoning Ordinance addressing frontage in the downtown area that must appear as retail, and is part of the Conditional Use Permit (CUP) application process requiring findings be made that the use is consistent with the General Plan and Zoning. Therefore, he felt the language was already stated. Upon inquiry about how aesthetics are checked or approved in the process, he said the application goes before the Architectural Review Commission.

Mayor Weber restated her colleagues’ sentiments that the City should get into the 21st century and allow opportunity for ground floor offices, but then other discussion elicited remarks that the City Council is uncomfortable allowing certain kinds of businesses, which means every one coming forward will require a separate analysis procedure.

Councilmember Harnik recounted that the subject case only involved a confined area of one mile, not the entirety of the City where each and every business would have to go through a CUP.

Councilman Jonathan concurred, adding that the mile was extremely unique and important to the City. He agreed that forward movement was necessary for the City’s vision into the 21st century, office use not being the way to accomplish it and, in fact, quite the opposite. He could not move forward with this matter as proposed, but was okay if his colleagues wanted to continue looking at it. He would be happier not adopting this ordinance and moving forward without action, because the City is in the early stages of a massive effort to create a Downtown District and redefine El Paseo as a modern, vibrant, relevant street and entertainment district, and critical part of the City Core. He reemphasized that effort needed to be able to mature and succeed before it’s adjusted, and this was premature.

Councilmember Kelly offered that she’d heard more agreement than was reflected in the comments. She believed the entire City Council endorsed the
vision, and it was just a matter of whether or not these were relevant services to that vision.

Councilmember Kelly moved to continue the matter to the City Council Meeting of April 25, 2019, enabling staff to return with answers to questions raised in this meeting. Councilmember Harnik seconded the motion, and it FAILED on a 2-3 vote (AYES: Harnik and Kelly; NOES: Jonathan, Nestande, and Weber).

Councilmembers commented about there being no action and whether or not they should pursue another motion. In answer to question, Mr. Hargreaves confirmed that unless a substitute motion was made, the matter receives no action and the City Council moves forward on the agenda.

Councilmember Harnik moved to continue the matter to April 25, 2019, with the mandatory CUP (Conditional Use Permit) in place on this issue and directing staff to provide the requested information, including current percentage of office uses (not retail or restaurant), current vacancies and their locations, at that time. Motion was seconded by Councilmember Kelly.

Councilman Jonathan reiterated that he had all the information he needed, and taking any move toward more office on El Paseo at this point is premature.

Councilmember Harnik countered that those who have vacant buildings there might have a whole different viewpoint and want people in their buildings, and Councilman Jonathan agreed, unless the steps currently in place are successful.

Mayor Weber called for the vote on the second motion, and it FAILED on a 2-3 vote (AYES: Harnik and Kelly; NOES: Jonathan, Nestande, and Weber).

Councilmember Kelly moved to: 1) Waive further reading and pass Ordinance No. 1348 to second reading, approving Zoning Ordinance Amendment 19-0002 to Palm Desert Municipal Code Section 25.28.040 - El Paseo Overlay District (EPOD) and Palm Desert Municipal Code Section 25.18.040 - Downtown District (DD), allowing professional office-type uses on the ground floor fronting El Paseo in certain locations, excluding the portion of El Paseo west of Lupine Lane, based on criteria identified within the Analysis section; 2) by Minute Motion, adopt a Notice of Exemption, in accordance with CEQA, for the case. Motion was seconded by Councilmember Harnik and it FAILED on a 2-3 vote (AYES: Harnik and Kelly; NOES: Jonathan, Nestande, and Weber).

XX. ADJOURNMENT

With City Council concurrence, Mayor Weber adjourned the meeting at 7:08 p.m.
MINUTES
REGULAR PALM DESERT CITY COUNCIL MEETING
MARCH 28, 2019

SUSAN MARIE WEBER, MAYOR

ATTEST:

RACHELLE D. KLASSEN, CITY CLERK
CITY OF PALM DESERT, CALIFORNIA