

Special Meeting
May 12, 2008

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ADJOURNMENT: The meeting was adjourned at 11:46 p.m.		30

The City Council of the City of Palo Alto met on this date in the Council Chambers at 5:05 p.m.

Present: Barton, Burt arrived at 5:25 p.m., Drekmeier, Espinosa arrived at 5:15 p.m., Kishimoto, Klein, Morton arrived at 5:05 p.m., Schmid, Yeh arrived at 5:20 p.m.

CLOSED SESSION

1. Public Employment

Title: City Manager

Authority: Government Code § 54957(b)

2. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Authority: Government Code Section 54956.8

Property: 2747 Park Boulevard, Palo Alto, CA, APN: 132-31-071

Negotiating Party: Robert & Patricia Brown and Allan & Patricia Brown, Loren Brown, Brown Fairchild Park Investment Company, L.P.

City Negotiators: Frank Benest, Kelly Morariu, Glenn Roberts, Mike Sartor, Cara Silver, F. Gale Connor, Steve Emslie

Subject of Potential Negotiations: Price and Terms of Payment

Council returned from the Closed Session at 7:23 p.m.

Mayor Klein advised no reportable action taken.

SPECIAL ORDERS OF THE DAY

3. Selection of Candidates to be interviewed for the Human Relations Commission.

Council Member Burt asked if the Council Members were interested in having a larger pool of candidates.

Council Member Morton stated that in the past that had been tried through advertising and was not successful.

MOTION: Council Member Barton moved, seconded by Council Member Espinosa to interview the two candidates.

MOTION PASSED: 9-0

4. Selection of Candidates to be interviewed for the Public Art Commission.

MOTION: Council Member Barton moved, seconded by Council Member Morton to interview all applicants including the late applicant for the Public Art Commission.

MOTION PASSED: 9-0

ORAL COMMUNICATIONS

John K. Abraham, 736 Ellsworth Place, spoke regarding demographic series.

Bill Ross, 2103 Amherst Street, spoke regarding preliminary review of the College Terrace Center Project and the development of the JJ&F parcel with regards to communications with the area residents.

Kathryn Varda, 1141 Cedar Street, spoke regarding Palo Alto Children's Theatre.

Ralph King, spoke regarding Palo Alto Children's Theatre.

Suzan Stewart, 1550 Middlefield Road, spoke regarding Palo Alto Children's Theatre.

Alex Perez, 893 Colorado Avenue, spoke regarding Palo Alto Children's Theatre.

CONSENT CALENDAR

MOTION: Council Member Morton moved, seconded by Mayor Klein to approve Consent Calendar Item Nos. 5-8.

5. Utilities Advisory Commission Recommends Adoption of Resolution 8814 stating, "Resolution of the Council of the City of Palo Alto Approving the Agreement for Assignment of Rights Relating to and Amending the Seattle City Light Capacity and Third Phase Agreement by and Among Certain Northern California Power Agency Members, Including Palo Alto, Which Will Transfer its Interests in the Agreement to the City of Santa Clara".
6. Adoption of Resolution 8815 stating, "Resolution of the Council of the City of Palo Alto Adopting Guidelines for the Submission and Tabulation

of Protests in Connection with Rate Hearings Conducted Pursuant to Article XIID, Section 6 of the California Constitution.

7. Appointment of Kelly Morariu as City Manager Pro Tem Effective May 16-22, 2008 and Steve Emslie as City Manager Pro Tem Effective May 23-31, 2008.

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8. Adoption of Ordinance 5002 stating "Ordinance of the Council of the City of Palo Alto Adding Chapter 16.12 (Recycled Water) to Title 16 of the Municipal Code to Require the Use of Recycled Water for Irrigation, Toilet and Urinal Flushing and Trap Priming.

Council Member Kishimoto asked if the Amendment to Agenda Item No. 7 At Places memo was included in the Motion for the Consent Calendar.

Mayor Klein confirmed the incorporation of the Amendment.

MOTION PASSED: 9-0

MOTION: Mayor Klein moved, seconded by Council Member Espinosa to bring forward Agenda Item Number 10 to become Agenda Item Number 8A.

MOTION PASSED: 9-0

PUBLIC HEARINGS

- 8A. (former No. 10.) Public Hearing on the Levy of Proposed Assessments in Connection with the Palo Alto Downtown Business Improvement District and Adoption of a Resolution 8816 stating "Resolution of the Council of the City of Palo Alto Confirming the Report of the Advisory Board and Levying an Assessment for Fiscal Year 2008-09 in Connection with the Downtown Palo Alto Business Improvement District".

Director of Planning and Community Environment Steve Emslie reported that State law requires the Business Improvement District be reauthorized by the City Council annually.

Economic Development Manager Susan Barnes stated the City Council gave preliminary approval of this item on April 14, 2008 and approved the Notice to Levy Assessments, as well as setting the Public Hearing for this meeting.

Mayor Klein stated this is the time and place for the Public Hearing on levy of assessments on the Palo Alto Downtown Business Improvement District for the Fiscal Year 2008-09. In February of 2004 the City established the Palo Alto Downtown Business Improvement District, the Council appointed a

Board of Directors of Palo Alto Downtown Business and Professional Association as the Advisory Board for the Business Improvement District. Annually the City Council must hold a public hearing to authorize the levy of an assessment for the next fiscal year. On April 14, 2008 the Council set this time and day as the date and time for the public hearing for the proposed levy of an assessment for Fiscal Year 2009. The Advisory Board has prepared its annual report for the 2008-09 fiscal year and submitted it to the Council.

Palo Alto Downtown Business and Professional Association President Sherry Bijan reported the accomplishments and ongoing projects from the past year.

Garden Court Hotel Manager and Palo Alto Downtown Business and Professional Association Chair Barbara Gross asked for the reauthorization of the Palo Alto Downtown Business Improvement District and the Palo Alto Downtown Business and Professional Association to continue to increase and improve their services.

Public Hearing opened at 7:55 p.m.

Palo Alto Downtown Business Improvement District Advocacy Chair Sunny Dykwel stated support for the reauthorization of the District.

Public Hearing closed at 7:58 p.m.

Council Member Kishimoto stated that she enjoys her role as liaison to the Downtown Business Association. She expressed support for the projects and efforts of the organization.

MOTION: Council Member Kishimoto moved, seconded by Council Member Espinosa to accept Staff recommendation to; 1) Hold a public hearing on the levy of proposed assessments in Fiscal Year 2008-09 in connection with the Downtown Palo Alto Business Improvement District and; 2) Approve a Resolution 8816 stating "Resolution of the Council of the City of Palo Alto confirming the report of the Advisory Board and levying an assessment for Fiscal Year 2008-09 in connection with the Downtown Palo Alto Business Improvement District."

Council Member Espinosa stated that the work done has been exemplary and that Barbara Gross and all the participants deserve special recognition for their efforts.

Council Member Morton asked if the word 'confirming' is required language as opposed to using the word 'accepting'.

City Attorney Baum stated that the City Council is confirming an assessment.

Ms. Barnes stated that there were no protests against the levying of the assessment.

Mr. Baum stated that the City Clerk should add that to the record.

MOTION PASSED: 9-0

Council Member Barton excused himself from Agenda Item Number 9 due to conflicts for work he is performing that possibly pertains to this item and on Agenda Item Number 11 due to living on Charleston Road. He left the Council meeting at 8:03 p.m.

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9. Adoption of 1) a 1st Reading of an **Ordinance of the City Council of the City of Palo Alto Amending Title 18 (Zoning) of the Palo Alto Municipal Code to Add a New Chapter 18.44 (Green Building Regulations)** and 2) a Resolution of the City Council of the City of Palo Alto Adopting Green Building Standards for Compliance for Private Development Projects.

Assistant Director of Planning and Community Environment, Curtis Williams reported Green Building Ordinance has been prepared to coordinate with existing Ordinances and initiatives that relate to Green Building activities. The Ordinance would apply only to applications submitted after the effective date of the Ordinance. Applications submitted prior to the effective date would not be subject to these regulations with the possible exception of some commercial projects.

Chief Building Official Larry Perlin outlined the Green Building Compliance Standards contained in the Resolutions, Table A for commercial projects, and Table B for residential projects. Commercial projects will be reviewed based on the LEED Green Building Checklists. Residential projects will be required to use the Build it Green, Green Point Rated green building system, which includes separate checklists for multi-family and single family. Verification will be performed in one of several ways based on classification of the project. He stated that incentives are provided in the Ordinance for historic structures. Mr. Perlin stated that the Ordinance also has provisions for enforcement.

Mr. Williams stated the Ordinance includes provisions for exemptions, appeals to the City Council, incentives related to utilities and drainage, a plan for a City award program, the possibility of planning incentives, and an annual review process. He stated an implementation plan is still being developed and would require some contract services until City Staff is

trained. He stated that additional staff may be required to fully implement this internally. There are three key issues to be discussed: LEED Silver versus LEED Gold Certification level, Built It Green's three concerns as outlined in a letter to the City, and concerns regarding the impacts of residential basements. This is the first comprehensive Green Building Ordinance in either Santa Clara or San Mateo County.

Vice Mayor Drekmeier asked if it was feasible to deduct points for use of concrete as a deterrent especially in terms of basements.

Mr. Williams stated that there would be a lot of work to investigate that notion and provide an alternative solution.

Vice Mayor Drekmeier stated that dewatering was an important concern and the possibility that points would be deducted for that action as well. He then stated his preference for basements to count against floor area ratio and the possibility of discussing that at a later date. He asked if modifying the house size threshold of 2,550 square feet that triggered an additional point to be required per 70 square feet down to 2,000 square feet would cause any problems.

Mr. Williams stated that it would not cause problems. The 2,550 figure is the floor area ratio allowed on a standard lot.

Chairperson, Planning & Transportation Commissioner, Karen Holman stated the Commission is very supportive of a Green Building Code. The concerns of the Commission were; the cost to owners to go through the process, reuse of existing resources, use of the proper checklist for multi-family projects, a sufficient number of qualified raters, and impacts of basements. She stated that while the Commission passed a Motion addressing these concerns, her dissenting vote was to indicate her desire for further attention to dewatering, and issues around concrete use and basements.

Council Member Morton asked for clarification on the \$100,000 threshold set for multi-family development.

Mr. Williams stated that multi-family was the most difficult target number to determine because historically there has not been much remodeling done to these structures.

Council Member Morton stated that if the Palo Alto Housing Corporation were to upgrade six units they would cross that line and asked if this should be looked at on a per unit basis.

Mr. Williams stated that because \$100,000 could be a fairly low level to reach, that only a checklist is required at that point and Staff will consult with the Applicant.

Council Member Morton stated that the intent is to be a negotiation between the Applicant and the City.

Mr. Williams confirmed his statement.

Council Member Morton asked why retention of an historic structure is assigned only ten points. He asked why more points are not given as incentive to encourage preservation.

Mr. Williams stated this point structure allows the historic structure to retain its historic classification and be certified as green. If more points were given in this way the structure would qualify for certification from Build it Green. He stated that most historic structures would probably be rated using a renovation checklist where the criteria is different.

Council Member Morton stated that by definition the historic structures would not be new build projects. He asked if it was the size of the addition that would determine which category is used.

Mr. Williams stated that until the project reaches the \$350,000 level, none of this applies.

Council Member Morton asked if there were any elements that Staff would have liked to include or that may be included in a future update.

Mr. Williams stated that incentives are outside the Ordinance and the enforcement and verification sections are very open right now to accommodate a learning curve.

Council Member Morton stated his thanks and compliments to Staff for their hard work.

Council Member Burt stated his appreciation to staff. He asked if there were ranges of energy savings or reductions available.

Mr. Williams stated that on the commercial side it was probably shown between 20 and 50 percent as far as greenhouse gas emissions at the various certification levels. On the residential side there is information that indicates a 25 to 30 percent reduction is possible. Build it Green is continuing to analyze that type of information.

Council Member Burt stated his concern about the implementation date. He asked if there is any information from Applicants with pending projects regarding the implementation date.

Mr. Williams stated that there have been discussions with Applicants informing them of this Ordinance prior to submission of their application. Applicants with pending projects have been notified that the City Council will ultimately determine if they would become subject to these regulations.

Council Member Espinosa asked for clarification on the recommended use of LEED Silver versus LEED Gold. He asked specifically about the specification that for larger projects incentives would be provided for Platinum and Gold in the future.

Mr. Williams stated that in reviewing the dollars associated with Silver it was determined that the cost increase is about three to five percent and even more to achieve Gold Certification. Due to the variety of sites and types of projects it is difficult to achieve Gold. Staff felt that in order for Applicants to achieve Gold more exemptions would be needed and initially the program should set a level that is rigorous but achievable with very few exceptions. He explained that there is more flexibility on larger projects that would make attaining Gold more appropriate.

Council Member Espinosa asked if that addressed the incentives referenced for larger projects.

Mr. Williams stated that larger projects could have additional fee incentives as well as recognition programs.

Council Member Espinosa asked about the development and training for staff so as not to create time delays in getting projects certified.

Mr. Williams stated that there is Planning Staff already trained, a Contract Planner who is a LEED Accredited Professional, a couple of Public Works Engineers that are LEED Accredited Professionals, and some Staff members who have gone through Built it Green certified training. Staff can initially handle the flow with the assistance of contract help.

Mr. Perlin stated the program would not be successful if only Building Inspectors were relied upon to do the Green Point Rating. The program would be more successful if there were more reliance on the Green Point Raters from Build it Green. Over time Building Inspectors may be able to incorporate Green Point Rating into their process effectively. He noted his concerns that there may be a shortage of Green Point Raters as more cities go green. Discussions are ongoing in regards to finding a solution to this issue.

Council Member Espinosa asked if financial hardship was being considered in creating the list of exemptions.

Mr. Williams stated that consideration was given to financial hardship however not included. The discussions of the issue lead to the notion that many financial hardships would be classified under other exemptions. There is a lot of flexibility for the Building Official to evaluate the circumstances and make a determination.

Mayor Klein stated that this approach seems to outlaw large houses and using the example it seems there are not enough points available for a 20,000 square foot house.

Mr. Williams stated there is a cap of 150 points in the Table, meaning that it would never be required to accumulate more than 150 points. One home application is aiming for 176 points but the process has not been completed yet.

Mayor Klein asked for the maximum number of points available.

Mr. Williams stated 250 points is the maximum.

Mayor Klein asked if Staff has done its own score of a very large house in the hills.

Mr. Perlin stated he toured a new 4,000 to 5,000 square foot home under construction in Barron Park and found the home will probably achieve over 200 points.

Mayor Klein asked for confirmation that a 20,000 square foot home could also score over 200 point.

Mr. Perlin confirmed that is possible.

Mayor Klein asked for assurance that the City is not imposing problems on the historic homes with the incentives.

Mr. Williams stated that historic buildings have the number one exemption category specifically for that reason. Green Building shouldn't be over-burdensome or change the historic character.

Mayor Klein asked if there are any communities that completely prohibit basements.

Mr. Williams stated that he was not aware of any and could confirm that within 50 miles of Palo Alto there are not unless possibly a flood plain prohibits the creation of basements.

Mayor Klein stated that he would like clarification of the enforcement section of the draft Ordinance. Specifically he asked what happens if someone never moves beyond the 75 percent level to the required 90 percent.

Mr. Williams stated that particularly for the single-family residential projects that the first year would be a voluntary program. He stated that at the time of inspection they need to have enough points to get certified and a plan for attaining the additional points to reach the 90 percent mark. There have been discussions regarding asking for a bond that would be refunded when the Applicant attains all the points.

Mayor Klein stated that the only real enforcement available is with the occupancy permit.

Mr. Perlin stated that a 75 percent minimum is required at the time of final inspection. He stated that there are milestones in the checklist and it indicates at what stage in a project any particular point should be verifiable. He stated that included in the Ordinance is language that allows the Enforcement Official to step in if it appears that a project is not achieving the appropriate points during the course of construction. This process is set up such that it is likely that the Applicant will have exceeded the minimum 75 percent at the time of final inspection.

Mayor Klein stated human nature dictates that if they are required to do 75 percent then that is what they do and not more.

Mr. Perlin stated that most of the points on that checklist will be achieved earlier than the point of final inspection. At the time of final inspection they will have exceeded the minimum and possibly achieve the 90 percent.

Mayor Klein asked why the standard was not set at 90 percent.

Mr. Perlin stated that it is his belief that people will achieve the 90 percent level at the time of final inspection however it is unproven today. This will be evaluated in the initial year and Staff may recommend a higher level at that time. He stated that starting out with these new regulations it is important to set the minimum at the point where a home can be certified through Build it Green.

Council Member Kishimoto asked for an estimate of how many nonresidential projects are in process as referred to in Item 8 of the At Places Document.

Mr. Williams stated there are seven projects that have been acted on by the Architectural Review Board (ARB) and have that entitlement but have not submitted for Building Permits yet. There are 11 applications currently pending in the ARB review process pipeline that have not yet been acted on by ARB, and there are another nine that have had a preliminary application filed. So the total is 18 potential projects.

Council Member Kishimoto asked if all these Applicants have been informed about this Ordinance.

Mr. Williams stated that some of the Applicants in the early stages with ARB have been informed. Others go back over a year and may not have had any discussions regarding this Ordinance. He stated that if the Applicant already had ARB approval, they may have working drawings completed for building.

Council Member Kishimoto asked for confirmation that multi-family residential projects using the criteria in Table B are not required to do anything other than a checklist. She asked why they are not required to reduce their energy use.

Mr. Williams stated that for both multi-family and single family there is no point system for remodeling projects in the Build it Green programs. So a checklist without a point system is all that is available at this time.

Council Member Schmid asked for clarification of language in the CMR, "the periodic Amendments by resolution rather than legislative ordinance."

Mr. Williams stated that the Ordinance allows the inclusion of compliance with green building standards as a zoning requirement. He stated that in this document Palo Alto would adopt the standards by Resolution allowing the flexibility of allowing City Council to enact changes without a full Zoning Ordinance Amendment.

Council Member Schmid stated that the language used regarding bringing changes to the City Council seemed very carefully worded, specifically the use of "anticipating" returning to Council and "expecting" to return to Council.

Mr. Williams stated that it is written into the Ordinance that this will come back to the City Council in one year.

Council Member Schmid stated that the Planning and Transportation Commission had a very interesting discussion about the floodplain, aging Eichlers, and green standards and asked if there was an inconsistency in grouping those three terms as well as the inconsistency of two story structures in Eichler neighborhoods.

Mr. Williams stated that two story structures are most commonly applied for especially in the floodplain. In this particular case the Green Building Standards can address that if there are constraints and the exceptions that might be appropriate for the floodplain.

Council Member Schmid asked if the 60-year-old Eichlers are eligible for the historic exception.

Mr. Williams stated that it may be possible, especially where two story applications go through the Individual Review process, and include an environmental review.

Planning and Transportation Commissioner Karen Holman stated there are two Eichler neighborhoods on the National Register so the historic criteria would apply.

Council Member Yeh asked if there had been any research done of enforcement structures of other jurisdictions with green building ordinances in effect.

Mr. Williams stated other jurisdictions have enforcement structures very similar to Palo Alto. Generally there is a good faith effort clause, and language indicating the Director can require additional green building measures if the Applicant has not complied subsequent to the final inspection. San Mateo County is the only one that takes it a step further in requiring a bond that is posted for about \$5,000 on residential projects and \$10,000 or more on commercial projects that would be forfeited if the appropriate green building level is not achieved.

Council Member Yeh stated that enforcement is important in being able to ensure that the Ordinance is being implemented and reinforced his desire to see the City follow up on this issue.

City Attorney Gary Baum stated that this would be handled akin to other code enforcement matters. Palo Alto does have the full panoply of enforcement mechanisms available if required, however, the intent is to encourage compliance.

Council Member Yeh asked for clarification of the City's ability to look at energy efficiency costs over time specifically for the Public Safety Building and the library project particularly to determine if the savings would pay back the initial investment.

Mr. Williams stated it would be possible on a building-by-building case to look at lifecycle costs, however, he does not know if Public Works has done that. He stated the sustainability staff team has a consultant who will be

tracking the greenhouse gas reductions achieved through this program as well as the other programs the City implemented. They will develop cost analysis on a citywide and programmatic basis.

Council Member Burt asked for confirmation that projects will really reach the 90 percent level at the time of final inspection.

Mr. Perlin stated that is his best guess.

Council Member Burt asked if actions such as double-pane windows will be installed at the time of final inspection and be able to be counted versus not complete and part of the additional work done after the final inspection.

Mr. Perlin stated that with windows being the example it would be clear whether the correct windows were installed well before final inspection. This would be one of the milestones achieved early enough in the process to indicate whether the project is on track for certification or not before the final inspection. Discussions are continuing to define a process whereby the Green Point Raters can track the point levels attained throughout the construction period.

Council Member Burt asked for confirmation of the process by which verification of specific elements could be done prior to the element actually being installed using the example of a solar hot water heater.

Mr. Perlin stated that proper preparation for particular elements could be verified at final inspection. There are a few examples of such situations like landscaping however there are not many things that would not be completed by final inspection.

Council Member Burt asked for more information regarding an Applicant deviating from an approved landscaping plan.

Mr. Perlin stated that not all residential projects require an approved landscaping plan as part of the entitlement. If one is included in their 'green plan' they could potentially after final inspection opt not to install the landscaping.

Council Member Morton asked about Eichler areas with single story overlays that are not historic districts and their eligibility for historic exemptions.

Mr. Williams stated they may not be automatically qualified as the historic neighborhoods would, however if there were certain constraints to green building requirements then it could be eligible to request exemption. He stated that with a single story overlay in place for a new home in those areas would probably be small enough to be able to meet the numbers.

Council took a break at 9:25 p.m. reconvening at 9:30 p.m.

Public Hearing opened at 9:32 p.m.

Chop Keenan, 700 Emerson, spoke regarding the costs associated with this Ordinance for commercial projects.

Steve Dostart, 737 High Street, spoke regarding the lack of outreach to developers regarding this Ordinance and the costs associated with green building.

Steve Broadbent, 575 Washington Avenue, spoke about the impacts of dewatering and residential basements.

Brian Parker, Build it Green, spoke commending Palo Alto's leadership in green building and suggested changes to the Ordinance.

Jim Baer, 172 University Avenue, spoke regarding various issues of practical application of the Ordinance.

Emily Renzel, 1056 Forest Avenue, spoke in support of the green building regulations with concern for ongoing improvements in carbon footprint reductions.

Council Member Burt asked Mr. Baer to explain his concern for an enforcement mechanism other than the Commissioning Agent.

Mr. Baer stated that the certification during the 36 month period be done by a LEED Accredited architect but reinforced by a Commissioning Agent versed in Title 24 requirements.

Mayor Klein asked Mr. Baer to clarify whether the Commissioning agent would be part of the team or an independent.

Mr. Baer stated they are a member of the team however the Commissioning Agent is a Title 24 specialist and inspects after installation to confirm for instance the energy used in the building is in fact what was specified in the plans. A LEED accredited architect is not able to certify that some technical details are in fact what were built.

Mayor Klein asked if this engineer would be professionally responsible for his evaluation.

Mr. Baer stated they would certify just as they would for LEED that the energy envelope has met whatever threshold is being required for the specific points.

Jennifer Rodriguez, Home Builders Association of Northern California, spoke regarding changes to the point threshold.

Ralph Britton, 240 Rinconada Avenue, spoke in support of the historic considerations provided in the Ordinance.

Jody Davidson spoke in support of the Ordinance and expressed concerns regarding dewatering and basements.

Public Hearing closed at 10:05 p.m.

Mayor Klein stated he found an article in the *Los Angeles Times* by James Hanson, Chief Climatologist for NASA that to preserve the planet his evidence suggests the carbon dioxide emissions that are currently 385 parts per million (ppm) must be reduced to 350 ppm. He stated he felt a sense of urgency and used this information as a guiding principle in analyzing this Ordinance. Mayor Klein stated that Palo Alto has been given much and should take the lead in following up on this issue. He anticipated many Amendments being proposed and would like to have the main Motion introduced and then review the Amendments.

MOTION: Council Member Morton moved, seconded by Council Member Kishimoto to accept Staff, Planning and Transportation Commission, Architectural Review Board, and Historic Resources Commission to adopt the proposed Ordinance to establish Green Building Regulations, and Resolution adopting the attached tables to CMR 237:08, setting forth Green Building compliance thresholds, rating systems, and compliance verification requirements for private development projects, with an effective date of July 2008 including the Amendments from staff listed below:

- 1) Add the following clause (shown in underlined text) to the "GreenPoint Rated Verification" definition, page 4 of the Ordinance (Section 18.44.030 Definitions, item (k)): "including green points allocations across all of the resource categories."
- 2) Add to the wording of "Interim Compliance Effort" (Section 18.44.060 item (8)) to include the resource categories shown in underlined text as follows: "at least 75% of the required minimum total green points and the GPR allocation of minimum points across all resource categories".
- 3) Add a footnote (#6) on Table B, and reference in all boxes where footnote #4 is referenced: "Points shall include GPR minimum points across all resource categories."
- 4) Add the following sentence after the first sentence in the "Threshold Verification by LEED AP" definition, page 6 of the Ordinance (Section 18.44.030 Definitions item (w)): "LEED AP shall provide supporting

- information from the appropriate professionals (e.g. civil engineer, electrical engineer, Title 24 consultant, commissioning agent) to demonstrate compliance with each point on the checklist."
- 5) Add to the list of residential projects subject to checklist point reduction) Section 18.44.050, Incentives for Compliance, item (b) (3)) "and Category 3 and 4 structures on the local inventory and those structures eligible for the National Register of Historic Places."
 - 6) Add to Table A, footnote #5 and to Table B, footnote #4, the words "and incentives" after "exemptions".
 - 7) Add to the governing bodies listed in SECTION 3 of the Ordinance (page 11) "Historic Resources Board" as among the boards to receive a presentation within a year of the effective dated of the Ordinance.
 - 8) If City Council wishes to require compliance for non-residential projects going through the planning entitlement process for which building permits have not yet been submitted, staff suggests adding a sentence to end the paragraph under Section 18.44.020, Applicability as follows: "However, non-residential covered projects with current planning applications in process shall be subject to compliance with this Chapter at the LEED Certified level."

Council Member Morton stated Palo Alto needed to do this and get something on the record. Starting with what Staff has presented as their recommendation for the first step is a good place to begin.

AMENDMENT: Vice Mayor Drekmeier moved, seconded by Mayor Klein to reduce the threshold for single-family residence to 2,000 square feet from 2,550 square feet.

Council Member Morton stated that staff presented a clear formula that they can use based on a standard 6,000 square foot lot and the floor area ratio that is allowed for that. It then seems inconsistent to use that as a threshold. He stated that he wanted to defer to staff's expertise on this and not try to second guess this.

Vice Mayor Drekmeier stated he believed the reason this was included was there is general acknowledgment that larger houses are less green. He stated his reason for choosing 2,000 square feet is the house his parents raised their family in was 1,750 square feet and felt large. By lowering this threshold people are not prevented from building a larger house and would require only eight additional points to go to 2,550 square feet. This number sends the message encouraging more modest homes.

AMENDMENT FAILED: 4-4 Morton, Burt, Espinosa, Schmid no, Barton not participating.

AMENDMENT: Vice Mayor Drekmeier moved, seconded by Council Member Morton that for every 500,000 gallons that are pumped in the dewatering process the builder be penalized one point.

Vice Mayor Drekmeier stated this is an opportunity to encourage the kind of behavior we want to see. He stated that the overall resource use and waste of building basements and dewatering does not create a very green building.

Council Member Morton stated this has impacts in terms of both compaction and growth in the loss of trees. He stated that a large portion of the public would like to see the practice at least discouraged, if not completely stopped.

Council Member Schmid stated his preference for Council Member Morton's comments that we have taken a very aggressive step, set very aggressive standards, and pushing ahead on this. He stated that the Amendments are technical specifications that may or may not have the right numbers. He stated that the information to be presented in June regarding basements and dewatering may indicate that no basements are the right answer, so to give approval at this time to a certain amount of dewatering would seem to be a perverse thing to do. He stated his preference is to support the staff recommendations as a starting point. New standards, codes, materials, and possibilities will most likely present themselves over the next 12 months and what was presented is a good starting point.

Council Member Burt stated he agreed with the comments of Council Member Schmid. He asked staff for their comments on this volume of pumping.

Senior Project Manager Mr. Bob Morris stated his group is responsible for issuing dewatering permits. There are estimates done of volumes of water at specific sites. Typically it is at least a few million gallons and it can be upwards of ten million gallons over the length of the dewatering operation. He stated that there are many variables that affect the amount of water to be removed. An average job of four months of dewatering at a volume of 30 gallons per minute, which is fairly typical, amounts to maybe five to ten million gallons of water over the four months.

Council Member Burt stated this is something that should be understood more completely to clarify the impacts and this Amendment as proposed could cause up to 20 points for something that is outside the matter at hand. He stated for those reasons he would not be supporting the Amendment.

Council Member Yeh stated he associates himself with Council Member Schmid's comments. He asked when the issue would be back in front of the Council for further discussion.

Mr. Williams stated there is an informational memo due to the Council on June 2, 2008. At that point it would become a matter of scheduling further discussion.

Council Member Espinosa stated he had grave concerns about this issue but not enough information to support this Amendment at this time.

Council Member Kishimoto asked if the Council could make a Motion to refer the matter to the Planning and Transportation Commission for a recommendation. She stated a better understanding of the ecosystem of Palo Alto including the geography and water table locations would be good foundations for future decisions. She indicated that should this Amendment fail she would offer an Amendment to refer this item to the Planning and Transportation Commission.

Council Member Morton stated he would second Council Member Kishimoto's Amendment should it be made. He asked Staff to give an indication of when the Council could have a discussion on the item.

Mayor Klein stated he understood that this is a much more serious problem than may have been understood earlier. He stated that it may be premature to create a formula prior to receiving the information to be presented on June 2, 2008.

AMENDMENT FAILED: 2-6, Drekmeier, Morton yes, Barton not participating.

AMENDMENT: Council Member Kishimoto moved, seconded by Council Member Morton to refer the total array of basement issues to the Planning and Transportation Commission based upon the forthcoming memo from the Public Works staff.

Council Member Espinosa asked for clarification of the term 'the basement issue.' He stated that there are issues around water, the existence of basements, energy usage within basements, and the square footage of basements.

Council Member Kishimoto stated she wanted the Planning and Transportation Commission to look at that array of issues and identify the issues that should be referred to the Public Works Department.

Ms. Holman stated that an array of issues were discussed at the Planning and Transportation Commission and suggested including this list of issues to be part of the report from Public Works.

Vice Mayor Drekmeier stated concrete and the production of concrete should be addressed as well.

AMENDMENT PASSED: 8-0, Barton not participating.

Council Member Morton stated that in the original Staff recommendation there is no mention of enforcement. He stated that when staff returns with the costs of managing the program and the fees associated with implementation, that the cost of enforcement should be included in the report.

AMENDMENT: Council Member Morton moved, seconded by Council Member Yeh to include that when Staff returns with the costs that they include the costs of enforcement.

AMENDMENT PASSED: 8-0, Barton not participating.

Council Member Kishimoto stated staff indicated when they return they will present a proposed schedule of next steps.

Mr. Williams stated his agreement.

AMENDMENT: Mayor Klein moved, seconded by Council Member Morton to amend Ordinance Section 18.44.020 to state that the Ordinance shall not apply to any commercial projects, which have been submitted to the City prior to the December 7, 2007 approval of the Climate Protection Plan excluding any project that has received a building permit.

Mayor Klein stated his reason for this Amendment is the unique pipeline situation that has occurred. There has been lots of notice given to developers and the public. He stated that residential is purposely omitted from the Motion.

Council Member Morton asked the City Attorney if there would be any concern regarding the specific date.

Deputy City Attorney Amy Bartell asked for clarification of the December 2007 date of passage of the Climate Protection Plan requesting confirmation that a public hearing had been held by that date.

Mayor Klein restated the question specifically asking if the Amendment as proposed was legal.

Council Member Morton asked about the effect of going back to a date where a public discussion was held regarding the City Council's intent to deal with climate change issues and if it was acceptable to use that date for all projects in the pipeline as of that date subject to this Ordinance.

Ms. Bartell stated there was no concern with using that date.

Council Member Morton stated that with that confirmation he supported the Amendment and would urge the other Council Members to do the same.

Mayor Klein stated his clarification that any projects submitted prior to that date would be exempt.

Council Member Morton stated that any projects that entered the pipeline after that date would be subject to this Ordinance.

Mr. Williams asked for clarification between applications submitted for planning entitlements and building permits. He asked if this Ordinance would apply if something were submitted for a building permit after December 7, 2007.

Mayor Klein stated that if it were submitted after December 7 it would be subject to the rules.

Mr. Baum stated his request for clarification regarding the use of the word 'application'.

Mayor Klein stated he was referring to all commercial projects using the language in the Climate Protection Plan where it distinguishes between commercial and residential.

Mr. Baum stated that if any of these projects had received a building permit at this point then it would be a different issue. He stated that perhaps the process is long enough that none of the projects submitted since December could have received a building permit.

Mr. Williams stated that it is possible that in six months something could have received a building permit.

Mr. Baum stated that if Mayor Klein excluded items that had received building permits, then there would be no legal considerations.

Mayor Klein agreed to the exclusion of items that had already received building permits.

Council Member Espinosa stated his concern about changing the rules after people are already going through the process. He stated that he felt it was unreasonable to ask for this change regardless of the level of awareness so he will vote against the Motion.

Council Member Burt stated his agreement with Council Member Espinosa. He stated that this is a fairness issue and retroactive regulations could potentially cause unnecessary problems for a very good program.

Council Member Morton stated his view was that these projects will have impacts for the next 60 years. He supported using the date the Climate Protection Ordinance was adopted.

Mayor Klein stated his view that this is not unfair. He stated that staff had informed Applicants regarding the use of the LEED standards.

AMENDMENT PASSED: 6-2, Burt, Espinosa no, Barton not participating.

Council Member Morton asked staff for its view of putting residential renovation applications on hold for 60 days as proposed by the speaker from Build it Green. He asked for staff's opinion on waiting for the new renovation guidelines to help prevent demolition of homes.

Mr. Williams stated his general agreement with the idea regarding remodeling projects. He also stated his concern about a home being demolished without the use of a point standard. He suggested returning in approximately 90 days when something more substantial is available to present.

Council Member Morton asked if the new home point system would apply if a home was demolished.

Mr. Williams stated that possibly is the way to review it.

Council Member Morton asked for clarification as to whether staff would support such an Amendment and felt this would more likely protect historic and sensitive homes in the community.

Mr. Williams stated that it certainly could not hurt but was unsure of the benefit. He stated that the Amendment would change the wording in Table B that smaller residential projects would be subject to the Home Remodeling Green Building Checklist.

Council Member Morton asked if that would be the proper wording.

Mr. Williams stated yes and added that for the interim time, Staff would use the home remodeling checklist that does not have a point system associated with it.

Council Member Morton asked for clarification regarding the penalty for 50 points versus 70 points. He asked for confirmation that the reason for this was to accommodate historic structures where significant portions were preserved. He asked if Staff felt it would be impossible for Applicants to meet the point requirements once State requirements become clearer. He asked if adjustments could be made in this ordinance in the future to accommodate the State regulations.

AMENDMENT: Council Member Morton moved, seconded by Mayor Klein to place residential remodels on hold subject to the yet to be established standards by Build it Green, and in the interim the home remodeling checklist that doesn't have a point threshold would be used. Staff is to come back to Council when the Build it Green standards are completed.

Mr. Williams stated that the historic exemption should provide the assistance needed. He stated that the Amendment on the floor would also remove all these renovations from that category and would not have a point threshold at all under the remodeling checklist. Also, Table B needed to reflect the Home Remodeling Checklist, which does not have a point threshold. He stated the clarification that staff should come back to City Council when this checklist is developed to review the language.

AMENDMENT PASSED: 8-0, Barton not participating.

AMENDMENT: Mayor Klein moved, seconded by Vice Mayor Drekmeier that regarding the enforcement mechanism in the City Manager Report (CMR), page 5, paragraph 3, change "...however, to require 75% of the green points be achieved prior to the final building inspection" to 90% and change "...and at least 90% of green points to be achieved no later than one year..." to 95%, and staff is to report back in twelve months on how this is working.

Mayor Klein stated that his Amendment is intended to ensure that compliance is achieved at the time of the final building inspection. He stated that his preference would be for Staff to report on the impacts of this in six months.

Vice Mayor Drekmeier stated his concurrence with Mayor Klein.

Council Member Schmid asked for clarification regarding a prior Amendment including enforcement in a future report from staff.

Mayor Klein stated that is correct however this would bring the report on enforcement back in six months rather than 12 months.

Council Member Morton stated the prior Motion was regarding cost of enforcement not the practical application of enforcement.

Council Member Schmid asked about the report going to the Planning and Transportation Commission the first week of June.

Mayor Klein stated his Amendment is to report back on the success of the enforcement mechanism.

Council Member Burt stated that he concurs with the 95 percent after one year. He asked staff to give their view of the practical impact of a 90 percent requirement being achieved upon final inspection.

Mr. Williams stated his belief that it may create more instances of tough negotiations at the end, however, in most cases it will be fine. He stated that he had no objection to the change in percent, however was unsure there would be enough experience in six months to create a report.

Mayor Klein asked if a year would be a better timeframe.

Mr. Williams stated that reporting back in a year would provide a better sense of the status of everything.

Council Member Burt asked if Staff would report back on particularly significant instances of hardship earlier than 12 months, should any arise.

Mr. Williams stated his concurrence and indicated that should a pattern become clear that Staff would bring that forward quickly.

Council Member Morton stated his support for the Amendment and the desire to create an Amendment regarding enforcement on commercial projects and Title 24 specialists next.

Council Member Espinosa stated that he had concerns regarding incentives and the costs associated with this program as well as enforcement. He asked Staff to comment on this particular approach to increasing enforcement or if another approach may be more feasible.

Mr. Williams stated there was not another approach currently available. He stated that continuing to review incentives may assist with incorporating more green building practices in projects. He stated 90 percent is a stringent standard, however very achievable.

Mr. Perlin stated that 90 percent would most likely be met by final inspection in most instances. He stated that the ramification of this Amendment will be

that occupancy will be granted and the homeowner will probably withhold requesting the final inspection until they can achieve the 90 percent required.

Mayor Klein stated his concern for this possible outcome. He stated that if occupancy permits are granted, then the City has no leverage.

Mr. Perlin stated occupancy permits are not issued for residential projects. He stated that when homes meet the basic life safety requirements they can be occupied.

Mayor Klein stated that he wanted the Green Standards to be required at the same point as the basic life safety requirements.

Mr. Perlin stated that would create some hardships for homeowners.

Council Member Kishimoto stated that this may not work.

Council Member Burt stated his concern that community support may be undermined by overreaching regulations. He stated that the regulation is acceptable without this Amendment and will oppose it.

Council Member Morton stated in his view the motivation should be to complete the final inspection and tying it to occupancy has unintended consequences. He stated that as much as he supports the idea, he would not want it tied to occupancy.

Mayor Klein stated he intends to vote in favor of his Amendment because there is great cause for concern. He stated this applies only to new construction.

AMENDMENT FAILED: 3-5, Drekmeier, Espinosa, Klein yes, Barton not participating.

AMENDMENT: Council Member Morton moved, seconded by Vice Mayor Drekmeier that professional regulations for commercial conditions be certified by a qualified state specialist (Title 24 consultant, civil engineer, electrical engineer, commissioning agent).

Mayor Klein asked if there were Title 24 specialists licensed by the state.

Mr. Perlin stated there are different certifications available. He stated that he concurred that a qualified professional should perform this review.

Council Member Morton stated staff should define 'qualified professional.'

Mayor Klein stated that he would prefer that the specialist have a vested interest in the quality of the building.

Mr. Williams stated the LEED Accredited Professional shall provide supporting information from the appropriate professional to demonstrate compliance with each point on the checklist. He stated the Commissioning Agent could be added to the list.

Mayor Klein stated his preference for the use of the word 'confirm' as opposed to 'demonstrate.'

Mr. Williams stated his agreement.

AMENDMENT PASSED: 8-0, Barton not participating.

Council Member Espinosa stated he believed he would have been advocating for much stronger mandatory standards at a Gold or Platinum level when this Ordinance came forward. He stated that with further education however he finds this is a very aggressive plan and is in agreement with the proposal. He stated that it is important to continue working on incentives to achieve higher levels of LEED compliance.

Council Member Burt stated his concurrence with Council Member Espinosa. He stated that unintended consequences are always a concern and in this case it is possibly discouraging a conversion to higher standards. He stated further work on incentives may be the solution to pursue.

Council Member Kishimoto stated the incentives could include considering neighborhoods as a whole versus on a house-by-house basis. She stated that an ecosystem-based process would be a more comprehensive view of the effects of construction in Palo Alto.

Council Member Morton stated the transferring of public dollars for building changes that are ecologically required causes him great concern.

MOTION PASSED: 8-0, Barton not participating.

REPORTS OF OFFICIALS

11. Recommendation from the Planning and Transportation Commission on the Charleston-Arastradero Corridor Improvements – Phase 1 Trial Improvements on Charleston Road and Plan for Phase 2 Trial Implementation on Arastradero Road.

Director of Planning and Community Environment Steve Emslie stated that Transportation Manager Gayle Likens and TJKM representative Gary Kruger will forego their presentation this evening however will be available for questions.

Betty Lum, 4202 Suzanne Drive, spoke in support of the plan.

Nina Bell, 4245 Los Palos Avenue, spoke in support of the plan.

Philip Melese, 674 Arastradero Road, spoke in support of the plan.

Myllicent Hamilton, 4014 Ben Lomond Drive, spoke in support of the plan.

Penny Ellson, 513 El Capitan Place, spoke in support of the plan.

Evan Lurie, 180 Parkside Drive, spoke in support of the plan.

Carlin Otto, 231 Whitclem Court, Charleston Meadows Association, spoke in support of this plan.

Robert Moss, 4010 Orme Street, spoke in support of the plan.

MOTION: Council Member Kishimoto moved, seconded by Council Member Espinosa to accept Staff and Planning and Transportation Commission (PTC) recommendation to:

1) Approve the permanent retention of the Phase 1 trial striping and lane configuration on Charleston Road consisting of: a) a three- lane cross-section from Fabian to Alma Street, including one travel lane in each direction, a wide striped median and left turn pockets at intersections; and b) a modified four-lane cross-section from Alma Street to El Camino Real consisting of two travel lanes in each direction and a narrow striped median;

2) Direct staff to continue monitoring of traffic conditions on Charleston Road after implementation of traffic adaptive signal timing along the entire Charleston/Arastradero Corridor and provide an update in December 2008.

3) Direct staff to work with the Gunn High School administration to implement a trial of the Gunn High School driveway capacity improvements and return to City Council by January 2009 with a recommendation on the Phase 2 trial striping plan for Arastradero Road between El Camino Real and Gunn High School to be implemented by summer 2009.

4) Direct staff to pursue all available grant funding opportunities for the design and construction of the permanent safety and streetscape improvements, including street trees and landscaping, lighting, median

islands and bike lane improvements on Charleston Road as described in the Charleston/Arastradero Corridor Plan.

Council Member Kishimoto stated her appreciation and thanks to Staff and the members of the public who worked so hard to bring this project to this point. She asked staff for information regarding the adaptive signal control system.

Transportation Manager Gayle Likens stated the system will be implemented in the next two months.

Council Member Kishimoto asked Staff if they have reviewed the requests for traffic calming on Georgia Avenue.

Ms. Likens stated that would be handled by the Safe Routes to School Traffic Calming Program. She stated that currently Staff is working on the Maybell-Donald Bicycle Boulevard and that impacts Georgia Avenue so it will be evaluated over the next month.

Council Member Espinosa stated that there has been much praise for staff in regard to this project and added his compliments as well. He stated his praise for the community efforts and successes.

Council Member Yeh stated his appreciation to the Staff and residents for their participation in this process.

Council Member Morton stated his appreciation to all of those who have worked so hard on this project.

Council Member Schmid stated his praise for the drastic improvements through creative solutions. He stated that the Capital Improvement Plan has no funds allocated specifically for this project. He stated his concern regarding the increased number of cars traveling that corridor and the further increases expected and how solutions will be found to manage those increases.

MOTION PASSED: 8-0, Barton not participating.

COUNCIL COMMENTS, ANNOUNCEMENTS, AND REPORTS FROM CONFERENCES

Council Member Kishimoto spoke about the golden spike symbolizing the joining of the Los Trancos Open Space Preserve to Foothills Park and bike to work day is this coming Thursday.

Council Member Morton spoke regarding the California Avenue fountain and those wanting to keep it rather than replace it with static art. He also spoke regarding the Children's Theatre investigation.

ADJOURNMENT: The meeting was adjourned at 11:46 p.m.

ATTEST:

APPROVED:

City Clerk

Mayor

NOTE: Sense minutes (synopsis) are prepared in accordance with Palo Alto Municipal Code Sections 2.04.180(a) and (b). The City Council and Standing Committee meeting tapes are made solely for the purpose of facilitating the preparation of the minutes of the meetings. City Council and Standing Committee meeting tapes are recycled 90 days from the date of the meeting. The tapes are available for members of the public to listen to during regular office hours.