

Special Meeting  
December 01, 2008

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The City Council of the City of Palo Alto met on this date in the Council Chambers at 7:03 p.m.

Present: Barton, Burt, Drekmeier, Espinosa, Kishimoto, Klein, Morton, Schmid, Yeh

Absent:

### STUDY SESSION

#### 1. 2020 Peninsula Gateway Corridor (US101) Study Presentation.

The Executive Director of the City/County Association of Governments (C/CAG) of San Mateo County, Richard Napier, made a presentation on the 2020 Peninsula Gateway Corridor (US 101) Study to the Council. The purpose of this study was to define and evaluate alternative traffic improvements and to identify short, medium and long range roadway improvement options for addressing traffic congestion and local community impact due to regional traffic on Highway 101 from Highway 84 (Woodside Road) to Highway 85 (Stevens Creek Freeway) in Mountain View and includes Highway 84 Bayfront Expressway from the Dumbarton Bridge Landing to Highway 101.

The Action Plan included three projects in Palo Alto: 1) The Embarcadero/Oregon Expressway Interchange Project, 2) The San Antonio Road Interchange Project, and 3) Implementation of Intelligent Transportation System (ITS) and Traffic Incident Management on East Bayshore Road to designate it as a reliever route to provide congestion relief during an incident.

Council had some questions and made comments on the Embarcadero/Oregon and the San Antonio Road Interchange projects. Council expressed interest in a year-round bicycle/pedestrian overcrossing over Highway 101 near San Antonio Road, and inquired about how this project can be incorporated into the upcoming capital projects on Highway 101. Staff committed to monitor the projects and report back to Council as the projects in the Action Plan are further developed and finalized.

Art Kraemer, 1116 Forest Avenue, asked Council to go back and look at the original plan for the Baylands. He stated Council might want to reconsider plans after more public outreach on the matter.

### SPECIAL ORDERS OF THE DAY

2. Resolution 8866 entitled "Resolution of the Council of the City of Palo Alto Expressing Appreciation to Melinda Wing Upon Her Retirement."

**MOTION:** Council Member Morton moved, seconded by Council Member Schmid to adopt the Resolution expressing appreciation to Melinda Wing upon her retirement.

**MOTION PASSED:** 9-0

3. Selection of Candidates to be Interviewed for the Parks and Recreation Commission

**MOTION:** Council Member Morton moved, seconded by Vice Mayor Drekmeier to interview all seven candidates for the Parks and Recreation Commission.

**MOTION PASSED:** 9-0

#### CITY MANAGER COMMENTS

City Manager, James Keene reported on the 26<sup>th</sup> Annual Palo Alto Toys for Kids Drive. He stressed the state of the economy made this drive especially important.

#### ORAL COMMUNICATIONS

Kathy A. Figueroa, 439 Alberta Way, Unit A210, Los Gatos, spoke regarding the need for ongoing training for the police in racial profiling to encompass all races.

Thomas M. Pamilla, 455 E. Charleston Road, spoke regarding Adlai E. Stevenson House. He expressed thanks to Council for their generosity which afforded them many improvements at this senior housing facility.

Adolfo Riedel spoke regarding Services Employees International Union (SEIU) and three critical points: 1) the viability of the new police building plans and fund efficiencies; 2) outside contracts for golf course maintenance; and 3) concern over the City's budget in view of the current economic situation in the country.

Golf Course Maintenance Person, John J. Peterson spoke regarding his maintenance work at the golf course, and that of fellow employees. He

asked Council to support them versus giving their jobs to outside contractors.

Utility Field Services Inspector, Lynn Krug spoke regarding SEIU and the high performance of the current golf course maintenance Staff. She spoke to quality of service of the Palo Alto service employees.

Utility Systems Operator, Mike Keate spoke regarding SEIU. He expressed support for the City of Palo Alto employees who wished to continue working to their highest capabilities for the City.

Wynn Grcich, 3045 Miraloma, Union City, spoke regarding fluoride and cited information from the Cancer Institute regarding the effects of chlorinated and chloraminated water supplies.

Mike Francois, 224 Gardenia Way, East Palo Alto, spoke regarding Police Chief Lynne Johnson's retirement. He suggested a continued look at the police stop audit numbers.

Carroll Harrington, 830 Melville, spoke regarding the incredible nature of Stevenson House. She spoke to the City's green and sustainability efforts.

John K. Abraham, 736 Ellsworth Place, spoke regarding demographic data and gave examples to illustrate problems with this type of data analysis.

#### CONSENT CALENDAR

Steve Broadbent, 575 Washington Avenue, spoke regarding Agenda Item No. 4, the Conflict of Interest Code. He pointed to the omission of the Planning & Transportation Commission in the appendix section for appointed officials.

Robert Moss, 4010 Orme Street, spoke regarding Agenda Item No. 6 and offered the consideration of zoning this area a Commercial Zone (CN) versus a Planned Community (PC).

Herb Borock, PO Box 632, asked for consideration of the removal of Agenda Item No. 6 from the Consent Calendar in order that it be sent to the Planning & Transportation Commission for review.

Mayor Klein advised he was not participating in Agenda Item No. 7 as his wife was on staff at Stanford University.

Council Member Barton advised he was not participating in Agenda Item No. 7 as he is an employee of Stanford University.

Mayor Klein stated Agenda Item No. 4 was removed from the Consent Calendar to be clarified by the City Attorney and the City Clerk for answers to the public question. This item would become Agenda Item No. 13A.

Council Member Morton advised he was voting no on Agenda Item No. 8.

**MOTION:** Council Member Schmid moved, seconded by Council Member Morton to remove Agenda Item No. 6 from the Consent Calendar to become Agenda Item No. 10A.

**MOTION:** Council Member Kishimoto moved, seconded by Council Member Espinosa to approve Consent Calendar Item Nos. 5, 7-10

~~4. Adoption of a Resolution Amending the Conflict of Interest Code for Designated City Officers and Employees as Required by the Political Reform Act and Regulations of the Fair Political Practices Commission and Repealing Resolution No. 8671.~~

5. Approval of Amendments to: 1) Contract S09128961 with KamTech Systems to Add \$94,600 for a Total Not to Exceed Amount of \$177,100; 2) Contract S08125876 with Diether Roth to Add \$88,400 for a Total Not to Exceed Amount of \$172,550; and 3) Contract S07120881 with Ariston Consulting & Technologies, Inc. to Add \$236,400 for a Total Not to Exceed Amount of \$320,900 for the SAP Industry Specific Utilities Customer Care and Service project.

~~6. Approval of a Request to Initiate a Preliminary Review of a Planned Community (PC) Application for Edgewood Plaza, a Mixed Use Development of 24 Single Family Residences and Two Retail Buildings at 2080 Channing Avenue and 2103-2120 St. Francis Drive.~~

~~*\*This item is quasi-judicial and subject to Council's Disclosure Policy*~~

7. Request for Authorization for Vice Mayor to Send a Letter Requesting that the Board of Supervisors of the County of Santa Clara Extend the Public Review Period for the Draft Stanford Sustainable Development Study.

8. Ordinance 5022 entitled "Ordinance of the Council of the City of Palo Alto Amending the Zoning Map of the City of Palo Alto to Change the Zone Designation for 420 Cambridge Avenue from Community Commercial 2 (CC(2)) to the California Avenue Pedestrian and Transit-Oriented Development (PTOD) Combining District."

9. Ordinance 5023 entitled "Ordinance of the Council of the City of Palo Alto Amending Palo Alto Municipal Code Section 2.28.240 (Settlement of Claims and Actions) to Increase the City Attorney's Settlement Authority from \$10,000 to \$35,000."
10. Ordinance 5024 entitled "Ordinance of the Council of the City of Palo Alto Adding Chapter 16.18 of Title 16 of the Palo Alto Municipal Code Establishing Local Energy Efficiency Standards for Certain Buildings and Improvements Covered by the 2005 California Energy Code."

**MOTION PASSED for Item 5, 9-10: 9-0**

**MOTION PASSED for Item 8: 8-1, Morton no**

**MOTION PASSED for Item No. 7: 7-2, Barton, Klein abstaining**

- 10A. (Former No. 6). Approval of a Request to Initiate a Preliminary Review of a Planned Community (PC) Application for Edgewood Plaza, a Mixed Use Development of 24 Single-Family Residences and Two Retail Buildings at 2080 Channing Avenue and 2103-2120 St. Francis Drive.

**MOTION:** Council Member Schmid moved, seconded by Council Member Morton to direct the preliminary review be conducted by the Planning and Transportation Commission (P&TC).

Council Member Schmid stated this item needed further consideration by the Planning and Transportation Commission.

Council Member Morton suggested sound advice from the Planning and Transportation Commission was a key component of the project proposal.

Council Member Kishimoto stated one of the most important environmental issues was the historic aspects of Edgewood Plaza. She asked Staff if a determination of the historical eligibility had been made.

Interim Director of Planning & Community Environment, Curtis Williams, stated it would be part of the Environmental Review process.

Council Member Kishimoto asked if it was possible to make this historical determination prior to the Environmental Review process.



Mr. Williams stated he would check with their consultant. He stated all the historical components of the project would be identified. He stated that the Applicant would be submitting their formal application in early January.

Council Member Kishimoto asked that the Motion include the application be completed prior to the Planning and Transportation Commission hearing, and that the historical determination be made prior to the review process.

City Manager, James Keene noted that the Motion, as proposed, came with some unnecessary tangles if the Applicant was not interested in going to the Planning and Transportation Commission for preliminary review.

Council Member Kishimoto asked if it was solely up to the Applicant how the preliminary review was accomplished.

Mayor Klein stated his understanding was the Applicant had the discretion as to whether or not they even wanted the preliminary review.

Council Member Kishimoto asked if the Motion could still be made to accept the preliminary review with the stipulation that it go first to the Planning and Transportation Commission.

Mayor Klein pointed out that the Applicant's submission of an application before a preliminary review defeated the entire idea of a preliminary review.

City Attorney, Gary Baum stated this ran completely contrary to the Ordinance and process. He stated the point of a preliminary review was to shape an application based upon Council's input.

Council Member Kishimoto asked the Planning Staff if the preliminary review would not be of the actual application.

Mr. Williams stated generally it was done prior to the application submission. He stated the Municipal Code allowed the process either way. It could be done with application having been submitted or not. He stated the preliminary review allowed shaping of the concepts for a more specific application submittal for Planning and Transportation Commission review.

Council Member Kishimoto asked whether it made sense to have the historical designation clarified prior to Council or the Planning and Transportation Commission review.

Mr. Williams did not think that was necessary. He stated the specific historic elements would be made known through the environmental analysis at a

later date. He stressed the preliminary review as being a very front-end process identifying the issues and concerns prior to plan proposal. There was nothing binding about preliminary review in that it was more of a study session forum.

Council Member Kishimoto stated the proposal included the demolition of buildings. She felt it was important to know the historic designation prior to commenting on the demolition plans.

Mr. Keene stated these were issues that would come up in the preliminary review. He stated the Applicant gauges with Council what the concerns were. If unresolved, then the Applicant knows which issues required further consideration in the formal application.

Vice Mayor Drekmeier asked if there had been any investigation of the Historical Registry eligibility.

Mr. Williams stated that had not been done.

Council Member Barton encouraged his Colleagues to vote no on the Motion. He suggested following the preliminary review process as had been done on prior complex projects.

Mayor Klein asked Staff if an additional alternative was saying no to a preliminary review.

Mr. Williams stated this was an additional alternative.

Council Member Yeh stated if this was truly a Study Session, what Council decided could be taken into consideration by the Planning and Transportation Commission. He reiterated that Council's input was nonbinding.

Mr. Williams stated that was correct and notes from the Study Session would be provided to the Applicant for consideration.

Council Member Yeh stated for that reason, the third option was appealing. He stated other City boards' input may be desired since there were other components such as the historical aspects and the role of the Architectural Review Board (ARB). He questioned whether the third option had ever been exercised in a mixed use project of this scale. He asked if it was unheard of to have other boards sit in on the process.

Mr. Williams stated he was not aware of this being done before. It was possible to invite other boards' to sit in on the conversations.

Mr. Baum stated his opinion was that preliminary reviews were held with a significant number of due process issues already. He was not comfortable with a joint meeting with Boards and Commissions due to the magnitude of decision-making in a quasi-judicial setting prior to a decision being made.

Council Member Burt stated the Applicant and Council would benefit from the Planning and Transportation Commission involvement in the preliminary review. He stated the first option was not asking for an either/or process but a sequential process. This did not exclude Council's participation but allowed information from the Planning and Transportation Commission.

Mayor Klein stated the fourth alternative was consideration of not holding a preliminary review. He stated the preliminary review held merit, but also saw it as being used as a means for Council to set broad policies. He stated making these decisions upfront ended the process rather than started it. He spoke to the need to hear from the Planning and Transportation Commission and the Applicant at a later date.

**SUBSTITUTE MOTION:** Mayor Klein moved, seconded by Council Member XXXX to deny the request for the preliminary review by the Planning and Transportation Commission.

#### **SUBSTITUTE MOTION FAILED FOR LACK OF A SECOND**

Council Member Kishimoto asked what the Historic Resources Board's (HRB) role was in the review.

Mr. Williams stated it went to the HRB and the Architectural Review Board (ARB) simultaneously.

Council Member Kishimoto asked if re-zoning was included in the preliminary review process.

Mr. Williams stated this was an opportunity for that particular input.

Council Member Kishimoto felt there was much to be gained from a preliminary review.

**AMENDMENT:** Council Member Kishimoto moved, seconded by Council Member Yeh that prior to the preliminary review by the P&TC there be a determination of the eligibility of the historic status by Staff.

Council Member Kishimoto asked if the eligibility designation was done by the State.

Mr. Williams stated an eligibility report would be sufficient for review through the process.

Council Member Barton felt the Amendment was self-defeating.

Council Member Espinosa asked Staff what impact this would have on the timing of the review process.

Mr. Williams stated it could take up to four months to return to Council.

Council Member Burt asked if the Staff's determination of historical status would affect the Applicant's determination on how they wished to proceed.

Mr. Williams stated Staff would not go through the preliminary process if they were required to wait for a historic report.

Council Member Burt asked if this would be a timing reason for Staff.

Mr. Williams stated it affected timing and their interest in getting some conceptual feedback upfront.

Council Member Morton stated he would like some information from the Planning and Transportation Commission in order to understand the historically sensitive areas.

Council Member Yeh stated additional information on the historical components would be helpful.

Mr. Williams stated there would be the conceptual level with some basic understanding of the historical components. The details on specific components of the historical analysis would not be there.

Council Member Yeh asked if there was a general ratio available on the percentage of the project that involved historical buildings. He stated he would withdraw his second if this was a small percentage of the land.

Mr. Williams stated he was not clear on the percentage but it probably included most of the original buildings on the site.

Mayor Klein stated he was voting against the Amendment out of concern for a clean procedure without additional and or endless steps.

**AMENDMENT FAILED:** 3-6 Espinosa, Kishimoto Yeh, yes

Council Member Schmid stressed the importance of the decisions on this project and its wide range of policy issues.

Mayor Klein stated he would be voting no on the Motion to keep the process moving. He cited concerns over the money spent on this additional process and the loss of Staff focus in a long-term process where time and money were valuable.

Mr. Keene wished to make it clear that, on Council direction, the Ordinance required concurrence of the Applicant for a preliminary review.

Mayor Klein noted the Applicant may withdraw if the process needed to go through the Planning and Transportation Commission.

**MOTION PASSED:** 6-3 Barton, Klein, Yeh no

#### REPORTS OF OFFICIALS

11. Evaluation of Alternatives and Direction on Implementation of a Bike Rental/Bike Sharing Program for Palo Alto.

Transportation Manager, Gayle Likens, stated the report provided an evaluation of the alternatives in the Bike Sharing and Bike Rental Program. This was in response to Council's direction of July 21, 2008 to evaluate the Library Bikes proposal and other similar bike programs. Council's guidance suggested a proposal with a focus on commuters, availability of outside funding and a limit to the City's financial contribution to the moderate subsidy level. She gave an overview of staff's extensive research, local business and stakeholder interest group meetings, and Staff's participation in a regional meeting of countywide interest groups. She outlined staff's two courses of action in response to Council's assignment: 1) Staff's recommendation to defer action on a local program for one year in order to continue their collaboration efforts in exploring a regional or countywide program with commonality across City boundaries; or 2) if Council directs, moving forward with a request for proposals for a local independent stand-alone program. She summarized the activities to date and introduced Staff in their research and collaborative efforts in exploration of the Bike Share Program.

City Manager, James Keene stressed the importance of the program. He spoke to the pros and cons of the library-styled bike program which included a high City subsidy. He stated efforts focused on a more suitable option for the City.

Council Member Morton asked if the Senior Games would be the pilot program for the bike rentals. He asked if this was the ideal test project for the program.

Anne Cribbs, 2450 Aques, stated the idea included the potential underwriting of the bike program for the seniors by Humana. She stated the bikes would be donated to the community after the Senior Games.

Council Member Morton stressed the need for their active participation in the pilot project since they may be the beneficiaries of the bikes.

Council Member Schmid stated the bike program seemed to be for commuters but not the community at large. He had concerns over liability issues.

Richard Swent, 2930 Clara, commended Staff on their report and reminded everyone of the timeline of the project. He looked forward to future progress on the issue.

Bill Wright Burton, PO Box 4343, Arcata, stated the City of Arcata was trying to keep costs low and focus on liability issues in their bike rental pilot project.

Jeff Selzer, 171 University Avenue, spoke on the bike rental program. He spoke to doing it right the first time, and a long-term approach to the process.

Shirley Ingalls, Mountain View, spoke on the bike rental program and the Green Ribbon Task Force's interest in this area. She supported the regional aspects of the program.

Arthur Keller, 3881 Corina Way, felt it was worthwhile to understand the demographic usage of the proposed bike program in the City of Palo Alto.

Council Member Burt suggested the focus be on who would be served by the project and the project's main purpose. He stated occasional commuters were the body served. Purposes, he felt were several-fold and significant in impact. He spoke to the issue of automobile commuting and the effects on

climate change as the foremost front of many discussions which affected the City.

**MOTION:** Council Member Burt moved, seconded by Council Member Kishimoto to defer action on an independent local bike sharing program for approximately one year, but continue collaboration with Santa Clara Valley Transportation Authority (VTA) and other local partners to explore establishment of a regional bike sharing program including a potential pilot project in Palo Alto and evaluation of a more comprehensive bicycle program for the business districts to encourage biking with both long-term and short-term solutions.

Council Member Burt cited four considerations for the short-term of this measure: 1) bike rack considerations for the rental bikes; 2) preparation for comprehensive bike programs; 3) evaluation of a subsidy and partners for a bike rental program at the bike station at Caltrain, or a motor program at City Hall for employees; and 4) infrastructure consideration and smart programming of the pilot program.

Council Member Kishimoto spoke to the bigger vision and the already increased bike to commuter ratio. She stressed there was room for continued growth in the bike numbers. She spoke to the need for the proposed program to be action-oriented and not study-only.

Council Member Espinosa wished for clarification in that a study would be an update of the Bicycle Master Plan for the City with a focus on impact areas. He asked if the idea went into potential partners and other parameters.

Council Member Burt stated it was not a full update to the Bicycle Master Plan but a subset in dealing with Business Districts. He hoped further partnerships would be pursued.

Council Member Espinosa asked for information on the recommendation for inclusion of an employee shared bicycle fleet.

Administrative Services Department Management Specialist, Lila Youn, cited for an example, the City of Morgan Hill had a project still in the planning stages and did not offer much data to date.

Council Member Espinosa asked about further information on employee bike share programs for City employees and whether or not this was considered.

Ms. Likens stated at some point in the past, bikes had been obtained through the Police Department and offered then to interested commuters. She stated the program was worthy of re-evaluation.

Council Member Espinosa labeled this an exciting visionary project and also a time to look at the citywide Bicycle Master Plan. He asked if a six-month update was possible rather than waiting one year for a progress report.

Ms. Likens stated an updated report could be provided in six months, but the VTA's more extensive report would take longer.

Vice Mayor Drekeimer agreed the project and conversations were constructive. He spoke to continued efforts to reduce the number of cars versus bikes on the road. He spoke to the challenges of the bike share program versus bike ownership and or driving or using other public transportation. He supported the idea of issuing a Request for Proposal (RFP). He spoke to more public outreach and information on bike usage and upkeep as well as used bike donations to areas in the City.

Council Member Morton supported the Motion. He stated however, that a model with a focus on bike sharing in areas of the City was more appropriate.

Council Member Yeh supported the Motion. He asked if the City had a bike helmet law in place and how that factored into the proposed bike rental program.

Ms. Likens stated the bike helmet law in California was for juveniles only, with some exceptions such as City employees conducting City business on a bicycle. She stated whether the Bike Share Program would have a helmet rule was yet to be determined.

Council Member Yeh assumed liability issues came into play. He asked how other jurisdictions had addressed them.

Ms. Likens stated there was a waiver form for participants which was kept in the database. She was not aware if helmet use was included in the waiver format.

Ms. Youn stated she was not aware of any cities which required the use of a helmet.

Council Member Yeh stated adults were not immune to bike accidents and stressed the importance of helmets for everyone and appreciated further



input on the progress. He stated bike availability and affordability did not preclude problems with scheduling and usage of public transportation. He cited ownership versus rental as competing components that may undermine a regional Bike Share Program.

Council Member Schmid agreed with many of the varying ideas. He stated Staff should be given the widest discretion possible, which the current Motion precluded with the directive to look specifically at only two Business Districts.

**AMENDMENT:** Council Member Schmid moved, seconded by Council Member Morton to remove the additional wording in the Motion "evaluation of a more comprehensive bicycle program for Business Districts to encourage biking with both long-term and short-term solutions."

Council Member Morton asked if they were looking at a pilot for the bike rental or were they setting up a program to encourage biking. He stated the two were combined, but the VTA would be looking at the feasibility of bike rental.

Mayor Klein stated he was voting against the Amendment. He stated the initial Motion made the most sense. He agreed the City was unique in its needs so examples from other City's were not entirely helpful. He stated pilots such as the Senior Games also did not speak to the City's unique needs. He stated the Motion on the Table required everyone to do intense further study on how to accomplish the program which was beneficial to all involved.

Council Member Burt offered clarification that it was not the objective to get everyone bikes. The core objective was to make bike riding convenient and accessible for those who chose that avenue of transportation.

**AMENDMENT FAILED:** 2-7 Morton, Schmid yes

**MOTION PASSED:** 9-0

12. Approval of an Amendment to Contract S07117566 with the Police Auditor (OIR Group) to Add \$20,000 for Evaluation of the Police Department's Policy, Training, Practices and Demographic Data Collection on Racial Profiling for a Total Not to Exceed Amount of \$72,000.

City Manager, James Keene stated Staff had taken Council's directive and built the Scope of Services for the Police Auditor with a preliminary report in

75 days. The \$20,000 addition to the contract came out of Council's Contingency Fund.

Council Member Yeh stated there was public concern on whether an Ombudsman would be included in the contract.

Mr. Keene stated the Police Auditor functioned as an Ombudsman himself.

City Attorney, Gary Baum stated it could be part of the report to explain better the Police Auditor's role.

Mr. Keene stated that one of the conclusions in the study will include greater transparency in reporting which will lead to better communication with the community.

Council Member Burt stated the concern over the data collection had been on analysis and interpretation. He asked if analysis could be included as part of the outcomes sought from the Police Auditor.

Mr. Keene stated that was all under the umbrella of data collection and reporting, but they would include the language adjustment to make it clear.

Council Member Schmid asked if they were merely getting a description of the design for a study or if the \$20,000 was including the work being done.

Mr. Keene stated the estimated \$20,000 was based on billable hours with a built-in mechanism to report to Council. The expectation was the \$20,000 was designed for the project in its entirety.

Council Member Schmid suggested the Motion state that.

Council Member Morton asked if the deadlines for this current audit were expected to run parallel with the audit regarding the Children's Theatre.

Mr. Keene stated they were separate contracts and would run parallel.

John K. Abraham, 736 Ellsworth Place, spoke on racial profiling. He stressed the need for a clear idea of what was happening in this process and the difficulties in the assessment of racial profiling statistics. He spoke to the amount of money spent in this arena.

**MOTION:** Council Member Barton moved, seconded by Council Member Morton to accept Staff recommendation for Council to approve the amendment with the Police Auditor (OIR Group) to add \$20,000 to the

existing Police Auditor contract to evaluate the Police Department's policy, training, practices and demographic data collection on racial profiling for a total not to exceed contract amount of \$72,000, including analysis and interpretation methodology, using the Department of Justice's definition of racial profiling, and to authorize the funds from the Council Contingency fund be used to pay for this review.

Council Member Barton stated it was a straightforward exercise and they needed to move forward.

Council Member Morton stated the 75-day reporting period offered a window for additional concerns to be dealt with.

Council Member Kishimoto spoke in favor of the Motion and the Police Auditor's qualifications.

Council Member Yeh supported the Motion. He asked if they were procedurally okay in increasing the contract above the formally bid amount.

Mr. Baum stated this was an amendment to the Police Auditor's contract and not a new contract and was procedurally correct.

Council Member Burt stated the Supreme Court ruling on the definition of racial profiling needed to be reviewed. He noted the heart of the matter was to determine whether our Policing practices had been discriminatory or inappropriate.

Mr. Keene stated a good starting point included: 1) the desire to engage the existing Police Auditor in this arena; 2) the Police Auditor to the best of his expertise could report and guide on this issue; 3) there would be additional ongoing conversations with Council on the issue; and 4) the backdrop was broad enough to allow for additional directives upon his reports to Council.

Mayor Klein stated it was his understanding that the City's policy on racial profiling was based on language borrowed from the very intensive description of same by the US Justice Department. He stated this was far more restrictive language than that of the Supreme Court on the subject.

Council Member Burt asked if this was indeed what was used in the Police policies.

Mayor Klein stated yes, similar type of restrictive language was used in their current policy.

Mr. Baum stated that was exactly why the word policy was added to language and recommendations.

**MOTION PASSED: 9-0**

#### COUNCIL MATTERS

13. Colleague's Memo from Mayor Klein and Council Members Barton and Morton Requesting Conceptual Approval of City of Palo Alto Gold-Level Sponsorship for 2009 National Senior Games, Direction to Staff to Negotiate a Contract with the National Senior Games Associates (NSGA) and Form a Staff Working Group in Support of the Games.

Vice Mayor Drekmeier stated the Senior Games benefited the City and its businesses. He asked where things stood with the business tax and the usage of those funds.

City Manager, James Keene stated the analysis and outreach on the Business License Tax continued. He stated it could not go into effect prior to a vote by the people. This would occur no sooner than November 2009.

City Attorney, Gary Baum verified this required a vote at the same time as Council elections in November 2009 or 2011.

Council Member Burt asked about Destination Palo Alto's role in the Games. He asked if promotion of special events was under their scope.

Interim Deputy City Manager, Kelly Morariu stated that was correct. Destination Palo Alto assists in the marketing of events, but the Senior Games were not specifically called out in the contract.

Council Member Burt asked if there were discussions with Destination Palo Alto for an additional understanding of their work on the hotel promotion for the event.

Ms. Morariu stated there had been preliminary conversations with the San Mateo Convention and Visitors Bureau with regard to the availability of hotel space. Specifics on this were upcoming.

Council Member Kishimoto asked Ms. Cribbs whether the Bike Share Program was feasible for the Senior Games.

Anne Cribbs, 2450 Aques, stated the bike sharing was possible even without Humana's underwriting. They were working with Stanford's Sustainability Group on zero-waste and would continue this as well as work with sponsors

on reduction of the low-value give-aways and replace them with more interactive and educational type activities. The Metropolitan Transportation Commission (MTC) was supplying rides on Caltrains and transit buses as well as additional shuttle transit lines to decrease the impact on Stanford commuters. The farmer's market plans have moved ahead with organic foods and local food sources. Water stations would be used as opposed to numerous disposable water bottles. The torch, she stated was also sustainable with further information pending. She stated there was also a Green Team working with Stanford community outreach for reuse and recycling during the Games.

Council Member Kishimoto asked if an estimated Transportation Occupancy Tax (TOT) had been made for the City.

Ms. Cribbs stated there were 4,000-4,500 hotel rooms available which included Menlo Park, but Palo Alto's numbers were not done specifically.

Mr. Keene stated the follow-up work on funding and staffing included a parallel analysis on the TOT return.

Mayor Klein cited numbers on the average hotel rooms at \$150 per night, generating \$18 in TOT revenue. In order to cover \$250,000, this required the rental of an additional 1,400 rooms over the time of the Senior Games. He stated these were rooms that would not be rented otherwise, and since hotels in the area were routinely vacant over the weekends, this was a low bar figure.

Council Member Kishimoto asked how many days or weeks the event was held.

Ms. Cribbs stated the event stretched from August 1 to August 15, 2009; however, sponsors' and athletes' time included additional days and afforded a 15 to 17 day stretch.

Council Member Burt asked if there were 14,000 room nights in two weeks, they were speaking to an incremental increase of 1,000 room nights per night. He stated the current occupancy rate had dropped in recent months but had been as high as 80 percent prior to that. He stated at 75 percent occupation of 3,000 rooms, revealed a maximum at 100 percent occupancy in those two weeks of 750 per night. He stated the same hotel room essentially cannot be booked twice in the same night.

Mayor Klein stated there were a defined number of hotel rooms during the Tour of California.

Mr. Keene stated an accurate count of the hotel rooms and projected baseline occupancies given the economy, the late summer time period and the weekend play-outs was important in their estimations. He stated Staff would return to Council at a later date for final approval with the information.

Ms. Morariu stated the Tour of California's numbers spoke to the teams coming early for training, and without an actual number for the hotel rooms, it basically estimated \$95,000-\$125,000 net increase in hotel tax for that week.

Steve Player, 1874 Guida Street, spoke in support of the Senior Games as an opportunity for the community. He stated everyone attending the Games, from athletes to their families would be beneficial in promoting the City.

Susie Thom, 753 Maplewood Place, pointed out there had been additional work done with Business Districts to find ways to increase interest during the Senior Games. She also read a letter received from the Hotel Garden Court.

Ms. Cribbs spoke again of her team's interest in continued work with the City in respect to the Senior Games. She gave an update of the progress towards the event.

Council Member Kishimoto asked for an overall view of the financial picture and the levels of sponsorship.

Ms. Cribbs stated the budget hovered around \$6.2 million with an approximate \$1.2 million gap if Palo Alto Gold Sponsorship was included. She stated sponsorship levels were at \$2.5 million for Humana over three Games, and a Gold Level Sponsorship of \$500,000, a Silver at \$250,000 and a Bronze at \$100,000. The City of Palo Alto, Stanford Hospital and Catholic Healthcare West formed the top sponsorship tier which led to asking the National Senior Games Association for a half in-kind, and half cash sponsorship to which they agreed.

Council Member Kishimoto asked if they were looking at other Gold Level Sponsors.

Ms. Cribbs stated there were actually four considered in the total with Humana as the presenting sponsor. She also offered Council the new brochure which featured Palo Alto as top billing.

Herb Borock, P.O. Box 632, asked Council to vote against the agenda item. He reiterated the fact that they were dealing with a gift of public funds.

**MOTION:** Council Member Morton moved, seconded by Council Member Barton to 1) conceptually approve Gold-Level Sponsorship for the 2009 Senior Games, and 2) form a staff working group in support of the Games, and 3) direct Staff to negotiate an agreement with the LOC and NSGA containing the standard terms, and other terms and conditions that Staff believes are appropriate. The agreement will include a delineation of anticipated in-kind services and the agreed upon manner in which these would be calculated. The agreement and funding plan will be presented to the Council for final approval. The additional terms to be negotiated by Staff with NSGA are:

- 1) LOC and NSGA will take all reasonable steps to ensure that all inquired they receive about hotel rooms for the Senior Games will first be referred to Palo Alto hotels.
- 2) The second cash payment will be held as security against the value of the in-kind services exceeding \$250,000 and the cash payment will be reduced to the extent the in-kind services exceed \$250,000.
- 3) If the value of the in-kind services was less than \$250,000, there will be no increase in the cash payment.
- 4) The value of the City's in-kind services will be calculated in the same manner as used for the Tour of California.

Council Member Barton stated the Games were a good opportunity to showcase the City and an investment in the City's future.

Mayor Klein stated the event was a big plus for the City. He stated the cost to the City was outweighed by the benefits.

Vice Mayor Drekmeier asked what the media coverage might be for this event.

Ms. Cribbs stated in other States this made the front page of the paper on a daily basis for the entire 15 days, and there was the potential for national coverage. She stated they set high public relation goals on a State and National levels.

Council Member Espinosa agreed with donation of the in-kind services, but had a problem with the cash outlay and therefore stated he would not support the Motion in view of that component.

Council Member Schmid gave a proposed worse case scenario where an economy-driven decision-making process would lead to fewer showing up for

the event. He asked how this would decrease costs, and how this would be shared among the sponsors.

Ms. Cribbs stated the Games were structured in such a way that the number of participants was known well before the Games. She stated this drove planning ahead as early as May 1, 2009.

Council Member Schmid asked if the costs were tied to the number of people in attendance.

Ms. Cribbs stated yes, in some cases, but there were some fixed cost services.

Council Member Kishimoto spoke as well to the in-kind aspects of the City's participation. She supported some level of cash sponsorship.

Council Member Burt was open to a Bronze level sponsorship of cash and in-kind support which was reflective of strong support by the community in view of the tough financial times.

Council Member Yeh stated the brochure was helpful in fleshing out venues in other jurisdictions. He asked what the outreach had accomplished in this vein.

Ms. Cribbs covered what the City of San Jose provided through their Sport's Authority for their two venues. She spoke of Sunnyvale's softball venue, but was not clear on all aspects of it, and there had not been outreach beyond a supervisory meeting. San Mateo County, she stated was very supportive.

Council Member Yeh asked about strategies to bridge gaps in a cash contribution by setting up challenge grants.

Ms. Cribbs stated she had not seen it done that way in previous years. She stated they would be supportive of Council challenging neighboring community colleagues for grants.

Council Member Yeh stated his concerns regarding cash funding and asked for options for offsetting the amount of non in-kind funding.

Ms. Cribbs stated these avenues were definitely open.

Council Member Schmid asked if the promotion included a budget commitment.



Council Member Morton reiterated that Staff had already indicated their direction to begin preparation of the budget.

Council Member Schmid stated he was comfortable with a move that made their cash contribution in line with the number of people expected at the event.

**AMENDMENT:** Council Member Schmid moved, seconded by Council Member XXXX to have the monetary value of sponsorship depend on the number of people reported in April 2009.

Council Member Schmid stated his understanding of the Motion was dependent on Staff's negotiations of final terms.

**AMENDMENT FAILED DUE TO LACK OF A SECOND**

Mayor Klein stated this was not consistent with the language of the Motion which asked Colleagues to join in support of the Gold Level Sponsorship, which was clearly defined in the Motion.

**SUBSTITUTE MOTION:** Council Member Kishimoto moved, seconded by Council Member Espinosa to direct Staff to negotiate sponsorship at the Silver Level with determination of cash and in-kind services to be established.

Council Member Kishimoto stated her assumption was most of the sponsorship would be in-kind services.

Council Member Morton asked for clarification that this was not something that was nationally negotiable. He stated a move towards Silver involved \$250,000 cash. He stated if there was disagreement over the amount of monetary support, they should perhaps consider not supporting the Games at all. He stated they had been looking for something like this to bring attention to the City and that this was the now their once-in-a-lifetime opportunity. It should not be undercut when considering how the City would benefit from their maximum contribution. He suggested arguing the merits of the proposal later, but to accept the present negotiations at the Gold Sponsorship level.

Council Member Yeh looked toward a solution where Palo Alto's contribution promoted contributions from other jurisdictions in challenge grants.

**AMENDMENT:** Council Member Yeh moved, seconded by Council Member XXXX that any cash given by the City of Palo Alto be contingent upon another jurisdiction also contributing.

**AMENDMENT FAILED DUE TO LACK OF A SECOND**

Council Member Kishimoto asked if the Silver Sponsorship was required to be all cash.

Ms. Cribbs stated the levels were clear and set by the National Senior Games Association and not negotiated at the local level.

Council Member Kishimoto asked what happened if the City did not contribute the in-kind services.

Mr. Keene stated that regular police services to the Games would count as an in-kind contribution.

Council Member Kishimoto asked what happened beyond that if they did not work out an in-kind contribution. She asked if the City would submit a bill to the Games.

Ms. Morariu stated that had not been discussed.

Council Member Kishimoto asked if Staff would return with an additional proposal if no Action took place.

Mayor Klein did not see where the Council had justification to submit a bill to the Games where no contract existed.

Mr. Baum stated if the City provided services, the City would then charge the entity for those same services, with or without a contract. He stated emergency situations, obviously, were not included.

Mayor Klein asked what happened if the entity stated they would not pay.

Mr. Baum stated then they would not be allowed to use the City facilities and or City Streets.

Council Member Kishimoto asked why they could not go back to the National Committee and ask about these additional monetary concerns over services needed for the Games. She stressed what this meant in overtime dollars for the Police and Public Works Departments. She asked why the City's

potential in-kind contributions in services could not be reconsidered as worth more towards the Gold designation.

Ms. Cribbs stated the information on hotel referrals and the details of the sponsorship came out of the Colleagues' Memo and were things done in any event. She stated any road closures occurred on Stanford grounds and involved paying the campus police. Any additional street closures would be if and when the torch went through town.

Council Member Kishimoto stated it helped but was confusing because the Colleagues' Memo stated the \$250,000 in-kind included primarily police and other safety services.

Ms. Cribbs stated she was not familiar with how the Police Departments' charged for their services.

Council Member Morton stated Staff would return with further information.

Mayor Klein noted the benefit of a statement to note the in-kind services at less than \$250,000 without an increase in cash payment to offset.

**MOTION:** Vice Mayor Drekmeier moved, seconded by Council Member Espinosa to Call the question.

**MOTION PASSED:** 5-4 Kishimoto, Klein, Morton, Yeh, no

**SUBSTITUTE MOTION FAILED:** 4-5 Burt, Espinosa, Kishimoto, Yeh, yes

**MOTION PASSED:** 5-4 Burt, Espinosa, Kishimoto, Yeh, no

13A. (former No. 4). Resolution 8886 Amending the Conflict of Interest Code for Designated City Officers and Employees as Required by the Political Reform Act and Regulations of the Fair Political Practices Commission and Repealing Resolution No. 8671.

City Clerk, Donna Grider stated the reason the City Council, the Planning and Transportation Commission, the City Attorney, the City Manager and the Finance Officer were not included in the Resolution was because Government Code Section 87200 already covered this filing.

Herb Borock, PO Box 632, spoke on the inclusion in the Resolution of citizen advisors to Staff such as Fiber to the Home Committee, and the legal considerations in this decision.

City Attorney, Gary Baum reviewed Municipal Code specifications and forms and in keeping with transparency and fair public disclosure.

**MOTION:** Council Member Morton moved, seconded by Council Member Yeh to approve Staff recommendation to adopt the Conflict of Interest Resolution.

**MOTION PASSED:** 9-0

COUNCIL COMMENTS, ANNOUNCEMENTS, AND REPORTS FROM CONFERENCES

Council Member Barton praised the Palo Alto Fire and Police Departments on their quick response to a vehicle accident he witnessed.

Vice Mayor Drekmeier reminded Council Members about the Santa Clara County Cities Association meeting to be held on Thursday, December 3, 2008 in Gilroy.

Council Member Kishimoto advised that she had been appointed the Chair of the Climate Protection Committee for the Bay Area Air Quality Management District Board.

ADJOURNMENT: The meeting adjourned at 12:23 p.m.

ATTEST:

APPROVED:

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City Clerk

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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.