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July 20, 2009

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The City Council of the City of Palo Alto met on this date in the Council Chambers at 7:07 p.m.

Present: Barton, Burt, Drekmeier, Espinosa, Kishimoto, Klein arrived @ 7:12 p.m., Schmid, Yeh

Absent:

STUDY SESSION 7:00 P.M. – 8:00 P.M.

1. Status Report from Composting Task Force.

The Co-Chairs of the Compost Blue Ribbon Task Force (CBRTF) briefed the Council on their activities to date and their preliminary recommendations. The CBRTF was established by Council on January 12, 2009 and began its work in March. It was to complete its work in approximately six months in August 2009. The key preliminary recommendations of the group were: 1) begin work to establish an Anaerobic Processing Facility at the Embarcadero Road/Airport Site now, with a move to Aerated Static Piles at that site by 2012, or as soon as possible, 2) take yard trimmings to Z-Best (Gilroy area) in 2012 if the Aerated Static Pile facility is not ready by then, and 3) discontinue composting at Byxbee Hills Park (current Landfill) upon the sooner of the availability of the Aerated Static Pile facility at the Embarcadero Road/Airport Site, or cessation of acceptance of yard trimmings (in conjunction with the planned Landfill closure) at the current compost facility. Due to the recommendations involving the southeastern corner of the Palo Alto Airport, four people associated with the Airport spoke about the problems and issues associated with locating compost facilities on the current Airport site. Council Members asked questions of the CBRTF and the Airport representatives as the issues were explored and gave input on the content of the CBRTF report, which would be finalized in August. The CBRTF was urged to coordinate with Airport representatives as the Report was written and recommendations were finalized.

SPECIAL ORDERS OF THE DAY

2. Proclamation Welcoming Exchange Students from Oaxaca, Mexico

Mayor Drekmeier welcomed the visitors from Oaxaca, Mexico and read the Proclamation into the record.

Mark Petersen-Perez welcomed the exchange students from Oaxaca, Mexico.

3. Appointments to the Library Advisory Commission for Two Unexpired Terms Ending January 31, 2010 and One Unexpired Term Ending January 31, 2011.

Council Member Barton said due to family issues he was unable to attend or view the video regarding the Library Advisory Commission (LAC) interviews and would abstain from voting on the appointments.

First Round of Voting for Two Unexpired Term Ending January 31, 2010 and One Unexpired Term Ending January 31, 2001 on the Library Advisory Commission

Voting For Sara Hart:	Yeh
Voting For Eileen Landauer:	Burt, Drekmeier, Kishimoto
Voting For Marc Marchiel:	Espinosa, Klein, Morton, Yeh
Voting For Vibhu Mittal:	Burt, Drekmeier, Espinosa, Kishimoto, Klein, Schmid, Yeh
Voting For Theivanai Palaniappan:	Burt, Drekmeier, Espinosa, Kishimoto, Morton, Schmid
Voting For Kristin Vetter:	Klein, Morton, Schmid

City Clerk, Donna Grider announced that Vibhu Mittal with 7 votes was appointed to the Library Advisory Commission for the one unexpired term ending January 31, 2011, and Theivanai Palaniappan with 6 votes was appointed to the Library Advisory Commission unexpired term ending January 31, 2010.

Second Round of Voting for One Unexpired Term Ending January 31, 2010 on the Library Advisory Commission

Voting For Eileen Landauer:	Burt
Voting For Marc Marchiel:	Drekmeier, Espinosa, Kishimoto, Klein, Morton, Schmid, Yeh

City Clerk Donna Grider announced that Marc Marchiel with 7 votes was appointed to the Library Advisory Commission unexpired term ending January 31, 2010.

CITY MANAGER COMMENTS

City Manager, James Keene said there was a model of the future Mitchell Park Library and Community Center displayed in the front lobby of City Hall. The exhibit would be moved to the Mitchell Park Community Center lobby and displayed from August 25 through September 18, 2009. Transition of the GreenWaste hauler was progressing quite well. Fifty percent of the calls-for-service pertained to side and backyard pick-up, 20 percent on placing orders for garbage carts, 18 percent on down-sizing to smaller garbage containers, and 7 percent related to questions regarding recycling and commercial collection of compostables which increased due to the new recycling outreach service. During this past week, 1,000 "Recycle Buddy" receptacles were distributed to multi-unit complexes, meeting one of the Zero-Waste goals. The 2009 Senior Games slogan was "Long Live the Challenge." The Senior Games organizing committee was still looking for volunteers for their assistance from August 1 to 15, 2009. Those interested may log onto www.2009seniorgames.org.

Council Member Klein recognized and thanked City Manager Keene on his efforts to help meet the City's financial deficit by voluntarily giving up 5 percent of his pay.

Council Member Barton asked if there was an age requirement on the Senior Games volunteers.

Recreation Manager, Rob DeGues said there was an opportunity for high school students to participate. Options could be found on the Senior Games website.

ORAL COMMUNICATIONS

William Cutler, 4114 Park Boulevard, spoke regarding citizen's engagement and how the City handled complex and contentious issues. He suggested establishing a citizen's engagement task force to create a process template and handbook.

Wynn Grcich, 3045 Miraloma Way, Union City spoke regarding fluoridation and carcinogens in drinking water. She said the Carcinogen Identification Committee advised the California Environmental Protection Agency (Cal/EPA) to see if fluoride should be included on Proposition 65's list of chemicals and warnings posted publicly.

Mark Petersen-Perez, spoke regarding redress of grievances.

Aram James, spoke regarding the new Police Chief's search and requested the City Manager to provide him with the qualifications of the three finalist for the position.

Director Patrick Kwok, Santa Clara Valley Water District, Board of Director's Representative said the Cities of Palo Alto, Menlo Park, and East Palo Alto joined San Mateo County and formed the Joint Powers Authority (JPA) 10-years ago to establish a flood protection project. A consultant had been retained and Staff would be making recommendations to the Council to decide which options would be most beneficial for the City. Recommendations would then be forwarded to the JPA Board informing them of the work that was required to complete Phase 1 of the project. In 2001, the agencies joined together to build the San Francisquito Levy Raising Project that helped prevent downstream flooding into Highway 101. The project required a 2-year environmental and design process. The Water District had \$14 million from the Clean, Safe Creeks Initiative and the Watershed Protection Project to help fund the design and implementation of the project.

CONSENT CALENDAR

MOTION: Council Member Kishimoto moved, seconded by Council Member Schmid to pull Agenda Item No. 6 from the Consent Calendar to become Agenda Item No. 6a.

Herb Borock, P.O. Box 632, raised concerns regarding Agenda Item No. 4 with the material used for replacement of the water main pipes.

MOTION: Vice Mayor Morton moved, seconded by Council Member Barton to approve Agenda Item Nos. 4-5.

4. Approval of a Utilities Enterprise Fund Contract with Ranger Pipelines Inc. in a Total Not to Exceed Amount of \$5,227,975 for Capital Improvement Program WS-07003, Water Main Replacement Project 21 (WMR Project 21) and WS-08017, Water Main Replacement Project 22 (WMR Project 22), in the Crescent Park, Community Center, Old Palo Alto, Evergreen Park, and Ventura Subdivisions and Approval of a Budget Amendment Ordinance 5044 to Increase Appropriations in a Total Amount of \$286,709 for WMR Project 21 and WMR Project 22.
5. Approval of the City of Palo Alto Sanitary Sewer Management Plan as Required by the State Water Resource Control Board.

- ~~5. Approval of a Final Map to Subdivide Three Lots into Separate Parcels and Approval of Community Room Use Agreement at 3401, 3415, 3445 Alma Street (Alma Plaza).~~

MOTION PASSED for Agenda Item Nos. 4-5: 9-0

AGENDA CHANGES, ADDITIONS, AND DELETIONS

- 6a. (Former No. 6) Approval of a Final Map to Subdivide Three Lots into Separate Parcels and Approval of Community Room Use Agreement at 3401, 3415, 3445 Alma Street (Alma Plaza).

Council Member Kishimoto asked whether the Covenants, Conditions, and Restrictions (CC&R) for the 37 single-family residents had been reviewed prior to approving the Final Map. The CC&R required owners to maintain private garages to ensure two cars could be parked inside at all times.

Interim Director of Planning, Curtis Williams confirmed the CC&R had been reviewed by the Planning Director and the City Attorney.

Council Member Kishimoto asked whether the CC&R was drafted and presented to the Council.

Mr. Williams said the CC&Rs are not brought before the Council. They are approved by the Planning Director and the City Attorney.

Council Member Kishimoto asked whether the subdivision improvement agreement had been finalized and signed prior to approval of the Final Map.

Mr. Williams confirmed it had been reviewed and approved by the Public Works Director and the City Attorney.

Council Member Kishimoto asked the City Attorney to clarify vesting of the project.

City Attorney, Gary Baum said the condition of approval and the vesting rights occurred at the time when the tentative subdivision map was passed. The City was governed by the Subdivision Map Act which stated a Final Map must be approved as long as it substantially complied with the conditions of the Tentative Map. The City Attorney and Staff had determined that threshold had been met.

Council Member Kishimoto asked if the back parcel had been vested.

Mr. Baum said all the rights under the map were vested with the parcel and run with the land.

Council Member Kishimoto said it appeared that under the Community Room Use Agreement, No. 7, indicated the room use was for City classes only. She asked the wording be clarified to stipulate that it was a meeting room for community use, and administered and scheduled by the Parks and Recreation Department.

Mr. Baum referred to Ordinance No. 4956 which covered Council Member Kishimoto's concerns.

Mr. Williams said it would not be a problem to add the words "meeting room for community use." He clarified under Community Room Use Agreement, No. 7, "Parks and Recreation Department" was changed to Community Services Department. Reference to Section 10 should be Section 8.

MOTION: Council Member Kishimoto moved, seconded by Council Member Schmid to continue this Agenda Item to July 27, 2009 until after the discussion of the Private Streets Initiative.

Mr. Williams said regardless of the Initiative, the basis for the Final Map action was consistent with the Tentative Map. It was the basis, by law, for the Council to act on a Final Map and not whether a perspective law may or may not apply.

Council Member Kishimoto said whether the Initiative and the Final Map may or may not be tied, she saw no reason not to postpone the discussion until after the Private Street Initiative was discussed.

Council Member Schmid raised concerns of having an issue brought before the Council where the Council had no choice. He questioned his voting rights and said it was a matter of understanding what he was required to do.

Mr. Baum said he could not advise the Council Members to vote one way or another. The Council's mandate was to review the Final Map to see if it substantially complied with conditions imposed in the Tentative Map, and if they matched, the Council would be required to pass the Tentative Map.

SUBSTITUTE MOTION: Vice Mayor Morton moved, seconded by Council Member Barton to: 1) Approve the proposed Final Map for 3401, 3415, 3445 Alma Street (Alma Plaza) to subdivide the subject site into one mixed use lot, one smaller commercial lot, 37 single family fee lots, private streets/common areas and a 9,694-sq. foot public park, and 2) Approve the related Community Room and Lease Agreement.

Mayor Drekmeier stated the public now were to speak to the Agenda Item.

Julie Baigent, 60 Buck Court, Woodside, Attorney for the Applicant, said the hearing was not a discretionary but an administrative act to determine whether the conditions to the Tentative Map had been satisfied. Staff confirmed the conditions were met. The Council did not have the option of putting it over until the Initiative was discussed. The subdivision map was clear and the Council was required to make a decision at the next regular meeting after the Final Map had been submitted to the City, which was this evening's meeting.

Robert Moss, 4010 Orme Street, said adoption of the Private Street Initiative would affect Alma Plaza. Six-hundred and ninety signatures were obtained in eight days to support the Initiative.

Len Filppu, 3621 Ramona Circle, spoke regarding the unresolved over-flow parking problem during the Alma Plaza controversy. He urged the Council to wait until they reviewed the Private Streets Initiative before addressing Alma Plaza's Final Map.

Wendy Mann, 12 Roosevelt Circle, spoke of having narrow streets in seismic area and the feasibility of fire trucks and large emergency vehicles getting through the streets.

Mary Gordon, 16 Roosevelt Circle, raised concerns regarding the minimum street widths of the project and its safety.

Council Member Klein said the Council had previously voted on the issue and it no longer could be viewed as a proposal. It was not to discuss the impacts to the Alma Plaza or review the widths of the streets but to determine whether the conditions set forth in the Tentative Map had been met by the applicant. Staff advised the conditions had been met and the Council was now legally obligated to approve it. It was not the proposal put forth by the applicant but the narrow question that State law leaves in the Council's hands as to whether the tentative conditions of the map had been met. The applicant had 18 months from approval of the Site & Design to start the project which would terminate if it was not started during this timeframe. The Council needed to recognize what was being voted on and to move forward and approve the Final Map.

Council Member Burt echoed and concurred with Council Member Klein's comments.

Council Member Yeh said circumstances had changed with the housing developer and asked what impact did it have on the applicant.

Mr. Williams said the applicant was Trestle Alma Plaza, LLC, and Greenbriar Homes was not a participant. The Below Market Rate (BMR) Agreement was with Trestle and runs with the land.

Council Member Yeh asked whether a subsequent developer would be required to develop the same configurations similar to those approved by the Council if the application were approved without Greenbriar Homes.

Mr. Williams said the Site and Design was a separate approval and the Planned Community (PC) governed. Any substantial changes would need to go back to the Planning and Transportation (P&TC) Commission and the Council for approval. The BMR Agreement was tied to the number and types of units proposed but not to a specific design.

Mr. Baum said configuration changes would require the approval process, but aesthetic changes in the Site & Design would not.

Council Member Yeh said the term of approval was two years from the date of the Council's approval and asked if it was approval of the Final or the Tentative Map.

Mr. Williams said approval was on the Site and Design and not the map.

SUBSTITUTE MOTION PASSED: 8-1 Schmid no

REPORTS OF COMMITTEES AND COMMISSIONS

7. Adoption of Resolution Calling a Special Election for November 3, 2009, for Submittal to the Qualified Electors of the City a Measure Related to Business License Tax.

Director of Administrative Services, Lalo Perez provided a slide presentation to recap and confirm the Council's direction on June 22, 2009, regarding Business License Tax (BLT). The presentation covered updates on the model refinements which included the exemptions of non-profits, recommended taxing process for real estate agents, revised revenue model and tax rates, implementation recommendation for the Council's approval, and Administrative Cost updates. He said the Council's recommendation was for Staff to implement a BLT program based on full-time employees' equivalent of 2,080 hours and to include contractors. Multi-unit rentals with four or more units would be taxed and based per unit. Commercial property would be taxed on per square footage basis. The Staff anticipated an annual net revenue of \$3 million from the BLT. The majority of the neighboring communities did not tax nonprofits and therefore nonprofits were being

exempt from the BLT model. Brokerage firms would pay the BLT for all brokers and agents based on a full-time equivalent and include apportionment of 50 percent. The BLT would be paid by independent brokers or agents including their employees. The adjustments changed the tax rate for professional, business services, and miscellaneous increased from \$88 to \$95 for tax rate per employee. Retail, personal services, hotels, and wholesale manufacturing decreased from \$40 to \$34. There were no changes in multi-unit retail and commercial property tax rate. The ongoing estimated administrative cost was \$257,626, with net revenue of \$3,060,693. The implementation recommendation was no tax from January 1 to June 30, 2010; 50 percent of the established tax rate from July 1 to December 30, 2010, due January 1, 2011, with a 30-day grace period; 100 percent of the established tax rate from January 1 to December 31, 2011, due January 1, 2012, and 100 percent of the established tax rate from January 1 to December 31, 2012 and due on January 1, 2013. The implementation cost increased by \$14,000 to provide medical and leave time benefits for hourly employees and a decrease of \$73,000 by changing the 2.5 Code Enforcement positions to an Accounting Specialist staffing level. Rather than having a Code Enforcement Officer issuing citations at the business sites, the Revenue Collections Supervisor would be notified and have the ability to issue the citation. The goal was to have the program automated and on-line. Staff's recommendations were 1) to adopt a Resolution by submitting the proposed BLT Ordinance ballot measure to voters in the November 3, 2009 General Municipal Election, 2) designate up to four Council Members to author the argument in favor of the measure, 3) authorize submittal of rebuttal arguments, and 4) to approve the revised rate structure that included an exemption for nonprofit organizations.

Robert Moss, 4010 Orme Street, said he was in support of the BLT concept. He needed clarification on how employees were counted if they did not work the 2080 hours per year and how were hours calculated if work was done out-of-town.

John Hackmann said the City's financial problem was due to a spending problem and not the lack of BLT. He felt the BLT was a work in progress and certain particulars of the Ordinance were still unclear. He urged the Council to exempt home-based businesses and eliminate the criminal penalties on false statements that could be argued as being intentional if BLT were passed.

Council Member Barton asked whether the program covered a business with sole proprietorship, with no employees, but had a consultant working out-of-state.

Assistant City Attorney, Cara Silver said the out-of-state contractor issue was covered in the apportionment guidelines and not in the body of the Ordinance.

Council Member Barton asked Staff to clarify the definition of a full-time equivalent on a business being operated by one person.

Ms. Silver said the one-person was considered as one employee.

Council Member Barton asked if the number of businesses were under estimated in the first full year would the City had the ability to lower the rates immediately or would it need to go back out to the public.

Ms. Silver said it was a voter initiative and believed it would need to go back out to the voters.

Council Member Barton requested to change the due date of January 1, since it would require businesses to close their books during a holiday.

Vice Mayor Morton clarified that sales tax, payroll tax, property tax were all due on January 1. The word due did not mean the filing date but the date used for calculations. He said in tax language the reporting date was the due date and businesses normally filed on January 31.

Mr. Perez confirmed there was a 30-day grace period.

Vice Mayor Morton suggested using the State's terminology when using the words filing date as opposed to grace period. Additionally, he advised to use the State's definition of apportionment. He explained that if the law was governed by State apportionment it meant it was where the money was earned. If an employee worked in Palo Alto and went out-of-state temporarily to do work, the place of work would be Palo Alto, unless under State law there was another place of work in another area. He urged Staff not to establish the City's own definition of apportionment since there was several law cases relating to the word.

Ms. Silver said the City was creating its own apportionment method as it related to the number of employees. The guideline would divide City-based and non City-based employees. A City-based employee was defined as an employee doing more than 50 percent of their work in the City. All hours worked outside of the City could be deducted.

MOTION: Vice Mayor Morton moved, seconded by Council Member Schmid to: 1) Adopt the Resolution submitting the proposed Business License Tax Ordinance ballot measure to voters in the November 3, 2009 general municipal election, 2) Mayor to Designate up to four Council Members to

author the argument in favor of the measure, 3) Authorize submittal of rebuttal arguments, and 4) Approve the revised rate structure that includes exemptions for all non-profit organizations.

Council Member Schmid said the City had diversified the tax base and noted the importance of adding a BLT. Palo Alto was the only community in the Bay Area without a BLT. He said the tax was 3 percent of the total General Fund's income. He urged the Council to support the Motion.

Council Member Kishimoto asked whether Staff was going to return with the issue regarding hobby and the potential over-lap with occupancy tax.

Mr. Perez said it was noted in Staff Report CMR:319:09, that if the BLT passed the Election, Staff would return with the next year's budget with a recommendation to reduce or eliminate the occupancy fee permit.

Ms. Silver said the hobby issue could be addressed through an administrative guideline and added to the Ordinance.

Council Member Kishimoto asked what percentage were home-based businesses.

Mr. Perez said due to lack of data he was not able to provide that information. He said Legal's advice was, if the Council so desired, home-based businesses could be exempt.

Council Member Kishimoto asked what amount could the City expected from home-based businesses.

Mr. Perez said sufficient data had not been obtained to estimate the amount.

AMENDMENT: Council Member Kishimoto moved, seconded by Council Member XXXX to exempt home based businesses.

Vice Mayor Morton said Palo Alto was a consulting community and felt the \$75 minimum fee was not unreasonable and home-based businesses should not be exempt. He did not support the Amendment.

Council Member Schmid said according to the American Community Survey done by the Census Bureau, there were 5,000 self-employed people in Palo Alto.

AMENDMENT FAILED DUE TO LACK OF A SECOND

Council Member Yeh said he was in support of the BLT but felt it was not the right time. His focus was more on information and had concerns about not having any type of data development or knowledge focused on the business community. The program was more on the implementation of a tax as opposed to building a business registry. He asked whether Staff had the necessary skills to develop the business registry and was it part of the BLT program.

Mr. Perez said it would be an aggressive schedule in attempting to put a business registry in place by January 2010. The cost would be comparable to the BLT. It would be an involved process with 80 percent of the businesses being self-reporting and the other 20 percent would need to be obtained. He did not feel there would be 100 percent compliance in creating the registry and would depend on the willingness of the community to report.

Council Member Yeh said being committed to gathering such data would contribute to understanding the community better. The information would be relevant in creating a registry and would touch on the City's services, infrastructure, communication, and FTE calculations versus head count in regards to human impacts since the BLT was calculated on FTE basis.

Mr. Perez said he did not foresee a problem in collecting the additional data but hoped the business community would see the importance of their input.

Council Member Yeh raised concerns about the timing of the BLT. If the City were to move forward on a 50 percent tax collection it could result in a potential \$1.5 million delay. It was important to have the data, integrity, and the number of home-based businesses.

Council Member Klein was in support of placing the BLT on the November 2009 ballot. He said with a 6-month phased-in period, the estimated revenue that would be lost would be more like \$2.5 to \$3 million minimum. The first tax would be due on January 2011. There was a need for the additional revenue due to the structural change in the economy. He corrected a speaker who referred to the BLT as a funding pension for City employees. Pension obligations were fixed for employees and retirees. A reduction in income does not go towards the reduction of pensions being paid to retirees but was generated from current programs such as community, police, and fire services and reduced compensation going forward. Under the State's constitution no funds would come out of existing pensions.

Ms. Silver confirmed that was correct.

Council Member Espinosa was not in support of moving forward with the BLT proposal at the current time.

Council Member Burt asked what the impact would be to Council Member Yeh's concept of holding a BLT election in November 2011 and asked how soon after the election could implementation occur if adopted.

Mr. Perez said provided the registry system and software process were in place and able to accommodate the BLT model, a business registry could be in place on December 31, 2011 and taxes due in January 2012.

Council Member Burt asked whether December 31, 2011 still would be the effective date if it were necessary to push the date out 60- to 90-days for internal administrative reasons.

Mr. Perez said he did not see any reason why that date would be a problem.

SUBSTITUTE MOTION: Council Member Burt moved, seconded by Council Member Yeh to proceed with a full cost recovery business registry and defer submitting the Business License Tax until November 2011.

Council Member Burt said he did not foresee a significant economic impact to postpone the election date to November 2011 and felt it was an appropriate approach. He urged the Council to support the Motion.

Council Member Yeh said the Chamber of Commerce expressed a strong interest in partnering with the City to develop the business registry. It would be a powerful statement for the business community to endorse the BLT by placing it on the ballot. By deferring to 2011, it would give the City the opportunity to make clear that the City was interested in the health of the business community.

Vice Mayor Morton did not support the Motion.

Council Member Klein did not support the Motion.

Council Member Espinosa was in support of the Motion. He felt the issue would fail at the ballot box in November 2009 and that businesses would want to work with the Council to find a better way in moving forward.

SUBSTITUTE MOTION FAILED: 3-6 Burt, Espinosa, Yeh yes

Council Member Yeh asked whether a business registry would be included in the original Motion.

Vice Mayor Morton said by nature it was a registry since all data would be obtained when the BLT information form was completed.

Council Member Kishimoto asked whether clarification of hobby would be included in the Motion.

Vice Mayor Morton said a business should be defined to include professions, trades, and occupations. A hobby by definition would not fall under this category and by adding the words "whether or not conducted at a profit" means a hobby would not be conducted at a profit.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to include the following wording in the Ordinance under section 4.61.020(B) "whether or not conducted at a profit."

MOTION PASSED: 7-2 Espinosa, Yeh no

REPORTS OF OFFICIALS

8. Recommendation to the San Francisquito Creek Joint Powers Authority Regarding (JPA) a Preferred Alternative for an Initial Flood Protection Project on San Francisquito Creek.

Council Member Barton left the meeting at 11:05 p.m.

Director of Public Works, Glenn Roberts provided a presentation as outlined in Staff Report CMR:321:09.

Wynn Grcich, 3045 Miraloma Way, Union City, spoke of a desalination plant on her side of the bay and flooding could pollute the waters with arsenic from the plant. Any support the City could provide to eliminate flooding would prevent a health hazard to the community.

Norman Beamer, 1005 University Avenue, said he was in favor of Staff's recommendation. He asked consideration be made regarding the Chaucer Avenue bridge acting as a dam. Flooding to Chaucer Avenue could cause damage and inverse condemnation.

Jean McCown, Stanford University, said it was not clear what the benefits were in the upstream options to prevent flooding. It was suggested that JPA provide flood maps that would show areas that were less prone to flooding or would not flood if an upstream basin was constructed. She clarified Stanford's own development projects did not contribute to runoffs into the creek. Stanford project's that were built on County land were required to

construct and maintain storm drainage improvements to prevent the increase in peak runoffs and downstream flooding.

Art Kraemer, 1156 Forest Avenue, said that a long-term solution to this issue would involve some type of prevention upstream.

Mayor Drekmeier asked the City Attorney to explain how the conflict of interest issue should be handled.

City Attorney, Gary Baum said two of the Council Members were conflicted with the upstream project that impacted Stanford. It was determined the issue could be divided into two segments that were not related to each other. The two conflicted Council Members would need to leave the meeting for the Council to consider and make a conclusion as whether to recommend downstream over upstream. The two conflicted members would then return for all Council Members to consider the downstream options and proceed to making a decision on that segment.

Council Member Klein advised he would not participate in this item as it pertained to the upstream basin portion on Stanford University land as his wife was on the Stanford University faculty.

Mayor Drekmeier stated that No. 1 and 3 of Staff's recommendation would be discussed at this point of the meeting.

MOTION: Vice Mayor Morton moved, seconded by Council Member Kishimoto to 1) Recommend the downstream flood protection alternatives for the JPA's Initial Flood Protection Project, and 2) Continue discussions with Stanford University on future opportunities for upstream detention basins.

Vice Mayor Morton said the JPA should continue discussions with Stanford on future opportunities for upstream detention or retention.

Council Member Espinosa asked Mr. Materman about the timing and expectations regarding upstream conversations with Stanford.

Len Materman, San Francisquito Creek Joint Powers of Authority (JPA) said the JPA would be reviewing all of the alternatives and he would be making recommendations to the Board regarding the downstream context on what was required for design and environmental planning. The Staff Report was accurate in stating that the cost of the upstream site exceeded the available resources. If the City and other JPA member agencies do not pursue upstream detention now, the project will be substantially larger in accomplishing the 1 percent (100-year) flood protection. The U.S. Army

Corps of Engineering (Corps) predicted that Federal funds would come through in 2017 at the end of the feasibility study and completion of the Federal preferred plan. The upstream detention site noted in Alternative 2, had 14 percent of the 100-year flow but would not get through to Middlefield area and could reduce the projects between Middlefield and Highway 101 from a 100-year to a 50-year protection project. It would be easier to achieve a 50-year protection project by detaining water upstream. The solution of working along the creek between Highway 101 and Middlefield Road would be costly without an upstream detention. There were 2,000 property owners in Palo Alto that paid into the National Flood Insurance program. The annual cost of the insurance was \$2 million to cover San Francisquito Creek flooding. His recommendation to the JPA Board was to have the 100-year protection be standard. The long-term goal was to get people out of the flood plain and the protection plan would bring into the fold the life-safety issues that were prevalent in East Palo Alto. He said the JPA had been studying project alternatives for six years and felt this was the time to move forward and secure upstream detention and utilize the funds for the downstream project.

Council Member Burt said a 14 percent reduction in flow was important because it would enable the Middlefield to Highway 101 project to be feasible. This was a comprehensive approach and would be successful. It would require a number of different parties to collaborate in addressing a severe need for the region and prevent the loss of human lives on a significant scale in East Palo Alto. Palo Alto, Stanford, and East Palo Alto would need to make in-kind contributions of land. Santa Clara County, San Mateo County, and the Corp could redirect funds from what was being paid into flood insurance and Palo Alto residents could help contribute to the need.

Ms. McCown said Stanford was interested in learning the technical analysis that supported Council Member Burt's suggestion regarding the work that was needed in the middle stretch. It was not present in the studies that had been reviewed and important that Stanford see the analysis of the upstream detention. It was a critical and technical issue for further exploration between the City and Stanford.

Mr. Materman said the upstream and downstream analysis that was done by the JPA's consultant, Philip Williams & Associates, was published in July 2009. The final report stated that detaining the amount of water upstream proposed in Alternative 2, would reduce the middle stretch.

Council Member Schmid asked Staff to confirm the City would continue to give equal priority to the Title Basin Study.

Mr. Roberts clarified the South Bay Shoreline Study continued with a strong emphasis on title flood protection in conjunction with the study to restore the former salt ponds to wetlands. The Santa Clara Water District was a partner in that effort and not the lead agency.

MOTION PASSED: 7-0 Klein not participating, Barton absent

MOTION: Mayor Drekmeier moved, seconded by Vice Mayor Morton to move Agenda Item No. 10 forward to become Agenda Item No. 8a

MOTION PASSED: 8-0 Barton absent

MOTION: Vice Mayor Morton moved, seconded by Council Member Klein to: 1) Recommend channel widening downstream of Highway 101 as the preferred downstream alternative for the JPA'S Initial Flood Protection Project, 2) Direct the Mayor to advocate for this alternative as Palo Alto's representative to the JPA Board of Directors, and 3) Request that the JPA retain a golf course consultant to design modifications to mitigate for project impacts to the Golf Course.

Mr. Roberts confirmed the Motion was to select a widening alternative over the Golf Course diversion alternative.

Vice Mayor Morton asked if there was a need to encourage CalTrans to expedite moving forward with the Fourth Bay Project.

Mr. Roberts said with the help of Senator Simitian and his staff, the project was moving forward very well.

Council Member Klein asked who would be financially responsible for modifications to the Golf Course.

Mr. Roberts said it still had to be negotiated and determined.

Council Member Klein asked whether other agencies had comparable in-kind contributions.

Mr. Roberts said it still needed to be discussed and negotiated.

Council Member Klein asked whether Staff knew of an in-kind contribution that would match the physical changes or improvements that needed to be done to the Golf Course.

Mr. Roberts said there was none directly comparable, but there were in-kind contributions, cash, and a number of ways to mix and match.

Mr. Materman said City Staff and the Golf Course Advisory Committee had discussions and there were implications for widening. Flood protection was the main focus and could alter the configuration of the course. It would cost millions of dollars to pursue a widening project and would involve one fairway and one tee. Details could not be determined until the California Environmental Quality Act (CEQU) report, alternative analysis and engineering design were obtained. The JPA would look for opportunities to improve the Golf Course.

Council Member Burt said his question related to Council Member Klein's concerns regarding other jurisdictions and in-kind impacts. He asked whether it was correct that East Palo Alto would have to have levees that would be closer to Highway 101 and if they would have to accept levees being moved closer to residential homes.

Mr. Materman said the downstream alternatives include the movement of levees towards homes between the Friendship Bridge and Highway 101. Under this scenario, the City will be asked to contribute some land. Santa Clara Water District would contribute 70 percent of the funds and work with San Mateo County to contribute 30 percent in getting through environmental requirements and design. East Palo Alto would have significant impact in terms of the levees moving closer to their homes and the City of Menlo Park would become more involved in moving upstream with Highway 101.

Vice Mayor Morton asked if the cost for cutting-through and moving dirt were covered by contributions.

Mr. Roberts said it would be considered as a project cost and covered by contributions.

Council Member Klein said the Golf Course was dedicated parkland and asked if it would require an election by the voters.

Mr. Roberts said the issue required further research and his understanding was that the existing creek was not part of the dedicated parkland.

Council Member Klein asked whether the City Attorney had input on the issue.

Mr. Baum said he would need to study the project prior to responding to the question.

MOTION PASSED: 8-0 Barton absent

COUNCIL MATTERS

8a. (Former No. 10) Approval of Review of City Auditor Performance Evaluation Criteria.

Sherry Lund, Sherry L. Lund Associates, Portola Valley, said included in the Council packet was a draft evaluation criteria for the City Auditor. She was seeking the Council's feedback, edits, changes and approval of the document. The City Auditor's position was the most technical of the Council Appointed Officer's (CAO) positions. The draft criteria was developed in collaborating with City Auditor Brouchoud and drew from the City Charter and the Municipal Code to define the mandates of the position. It reflected good leadership practices and elements of being a department manager.

MOTION: Vice Mayor Morton moved, seconded by Council Member Yeh to approve the City Auditor performance evaluation criteria.

Council Member Schmid said each review was different and would find difficulty in answering items 5, 6, and 7 of the evaluation. He would not be interacting and working with the City Auditor in public, leadership, and talent management. It was 43 percent of the space and felt the Council's evaluation time would be better spent on the first 4 items.

Ms. Lund concurred with Council Member Schmid. She said one of the reasons for the Council to get self-evaluations from her through each of the CAO positions was because it gave the CAO's the opportunity to inform the Council of what they were doing in these areas. Additionally, it gave the Council the opportunity to assess if it was the direction they should be managing. She said any changes could be made if the Council so desired.

MOTION PASSED: 8-0 Barton absent

9. High Speed Rail Update.

Deputy City Manager, Steve Emslie gave an update of activities that had taken place since the last update in May 2009. He said the Peninsula Cities Coalition was formed, well organized, and had three meetings. Sub-committees were developed and in the process of organizing around various topics such as impact reports, business plans, and issues relevant to the High Speed Rail (HSR). In the last few weeks the focus was on legislation. Several bills were pending for final approval and converted to 2-year bills and would be dealt with in the Fall when Legislature convened.

Vice Mayor Morton asked how Staff was prepared in responding to issues regarding legislation surrounding the HSR and handle citizen's actions that were displeasing to the Palo Alto community.

Mr. Emslie said the Peninsula Cities Coalition had been unified and represented five cities in the peninsula creating a critical mass of constituents and would get the attention of potential authors of legislation. It would show that the peninsula had more strength than the neighboring cities.

Council Member Burt said there were three fronts that was being pursued. 1) the Peninsula Cities Coalition which consist of 5 member cities and others expressing an interest to join, 2) the Ad Hoc Committee consisting of 4 Council Members who deal with different bills and collaboration with the member cities, and 3) Palo Alto grass roots leaders that were informed individuals and working with other leaders in the neighboring cities. A transcript of the last HSR meeting was shared with the Council. It provided a sense of the degree that the HSR authority was conscious of the work being done and the community's impact it made on the peninsula.

Vice Mayor Morton asked whether there was a lobbyist in Sacramento working on the HSR issue.

Council Member Kishimoto spoke of three upcoming outreach events. 1) Congresswomen Anna Eschoo would be holding a Town Hall Meeting in Menlo Park on Saturday, July 25, 2–3:30 p.m., 2) the HSR Informational Symposium (or "Teach In"), a one-day session intended to bring HSR experts to a series of panel discussions on September 12, 8:30 a.m.- 2:30 p.m., and 3) a two-day Design Workshop bringing urban design professionals to develop design plans for integrating the HSR into the Palo Alto community on October 3 & 4. She said a website had been established for the Peninsula Cities Coalition www.peninsularrail.org

Council Member Klein said in answer to Vice Mayor Morton's question regarding a lobbyist, he said there was a lobbyist and that the Planning and Conservation League had been working toward getting language into legislation.

MOTION: Vice Mayor Morton moved, seconded by Mayor Drekmeier to have a written information report every other month and a public agendaized discussion in the other months.

Council Member Schmid said the HSR was a long-term item and with several meetings taking place in the Fall, it was important to have the opportunity at the end of meetings to discuss updates.

MOTION PASSED: 7-1 Schmid no, Barton absent

COUNCIL COMMENTS, ANNOUNCEMENTS, AND REPORTS FROM CONFERENCES

Council Member Kishimoto spoke on attending the Local Government Summit along with Council Member Burt and Kelly Morariu.

Mayor Drekmeier spoke about attending a meeting last week where the City received two solar energy awards from the Northern California Solar Energy Association

City Manager James Keene reported that the California State Government and the Governor have agreed on the State's Budget. He stated that the State of California will be borrowing approximately \$3 million dollars from the City of Palo Alto to balance the state's budget.

ADJOURNMENT: The meeting adjourned at 12:35 a.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.