

Special Meeting  
January 22, 2007

1.	Joint Annual Meeting with Assemblyman Ira Ruskin to Discuss Issues Related to Palo Alto and Related State Issues .....	3
	ADJOURNMENT: The meeting adjourned at 7:08 p.m .....	3
1.	Proclamation Honoring the 2006 Palo Alto Black And White Ball .....	4
2.	Adoption of a Resolution Expressing Appreciation to Robert Scally upon His Retirement .....	4
3.	Vote and Appointment of Applicants to the Parks and Recreation Commission .....	4
	ORAL COMMUNICATIONS .....	5
	APPROVAL OF MINUTES .....	5
4.	Ordinance 4931 entitled "The Council of the City of Palo Alto Hereby Authorizes Closing of the Budget for Fiscal Year 2005-06, Including Transmission of the City's Comprehensive Annual Financial Report (CAFR), Reappropriation Requests, and Completed Capital Improvement Projects" .....	6
5.	Approval of Expenditures of Up to \$85,000 from the City Council's Contingency Account for Public Polling for the Mitchell Park Library/Community Center, Public Safety Building, and Enhanced Library Operations .....	6
7.	1 <sup>st</sup> Reading - Ordinance of the Council of the City of Palo Alto Amending Section 16.28.080 (Specific Exemptions) and Adding Section 16.28.321 (Construction of Bridges, Culverts and Storm Drain Outfalls) and Section 16.28.322 (Stream Bank Erosion Repair) to Chapter 16.28 (Grading and Erosion and Sediment Control) of Title 16 (Building Regulations) of the Palo Alto Municipal Code.....	6
7A.	(Old #6) Annual Review of Compliance with Development Agreement with Stanford University for the Sand Hill Corridor Projects .....	6

8.	Public Hearing - Adoption of an Ordinance Amending Title 18 (Zoning) to Delete Chapters 18.28 (Multi-Family Residence District Guidelines) and 18.64 (Additional Site Development and Design Regulations for Commercial and Industrial Districts) and to Adopt a New Chapter 18.23 (Performance Criteria for Multi-Family, Commercial, and Industrial Districts); Environmental Assessment: Comprehensive Plan Environmental Impact Report .....	8
9.	Public Hearing - Adoption of an Ordinance Amending Title 18 (Zoning) to Delete Chapter 18.88 (Special Provisions and Exceptions) and to Adopt New Chapters 18.40 (General Standards and Exceptions) and 18.42 (Standards for Special Uses), including New Criteria for Landscaping, Wireless Communications Facilities, Stream Corridor Protection, and Storm Water Protection; Environmental Assessment: Comprehensive Plan Environmental Impact Report .....	21
10.	Finance Committee Forwarding without Recommendation Staff Proposal to Establish a Policy on Rent Charged by the General Fund to the Refuse Fund on Unopened Portions of Landfill .....	26
	COUNCIL COMMENTS, ANNOUNCEMENTS, AND REPORTS FROM CONFERENCES .....	27
11.	CONFERENCE WITH CITY ATTORNEY -- EXISTING LITIGATION.....	28
	FINAL ADJOURNMENT: The meeting adjourned at 11:50 p.m. ....	28

The City Council of the City of Palo Alto met on this date in the Council Conference Room at 6:05 p.m.

Present: Barton, Beecham, Cordell, Drekmeier, Kishimoto, Kleinberg, Morton

Absent: Klein, Mossar

SPECIAL MEETING

1. Joint Annual Meeting with Assemblyman Ira Ruskin to Discuss Issues Related to Palo Alto and Related State Issues

**No action required.**

ORAL COMMUNICATIONS

None.

ADJOURNMENT: The meeting adjourned at 7:08 p.m.

The City Council of the City of Palo Alto met on this date in the Council Chambers at 7:10 p.m.

Present: Barton, Beecham, Cordell, Drekmeier, Kishimoto, Kleinberg, Mossar, Morton

Absent: Klein

SPECIAL ORDERS OF THE DAY

1. Proclamation Honoring the 2006 Palo Alto Black And White Ball

Council Member Morton read the proclamation into the record.

Dan Dykwel thanked the Council for the recognition, and the sponsors and the community for their generous support of the Palo Alto Black and White Ball.

Sunny Dykwel acknowledged the Committee members who were present.

Caroline Willis presented a check in the amount of \$180,000 to Partners in Education.

Susan Bailey, Partners in Education, stated the funds would go towards technology support for the schools.

2. Adoption of a Resolution Expressing Appreciation to Robert Scally upon His Retirement

**MOTION:** Council Member Kleinberg moved, seconded by Morton, to approve the resolution.

**MOTION PASSED** 8-0, Klein absent.

Director of Public Works Glenn Roberts thanked Bob Scally for his service to the City of Palo Alto.

Bob Scally expressed his appreciation to the City of Palo Alto.

3. Vote and Appointment of Applicants to the Parks and Recreation Commission

Council Member Mossar stated there was a strong set of candidates yet few who had expertise in issues related to open space.

**MOTION:** Council Member Mossar moved, seconded by Barton, to continue the selection process of the Park/Recreation Commission until after the City has advertised for additional candidates and completed interviews for the new candidates. Those candidates who have already applied and interviewed continue to be included in the applicant pool and need not do anything further to be actively considered for appointment.

**MOTION PASSED** 6-2, Drekmeier, Kleinberg no, Klein absent.

#### ORAL COMMUNICATIONS

Clark Akatiff, 105 Rinconada Avenue, spoke regarding Juana Briones house.

Mark Petersen-Perez, 434 Addison Avenue, spoke regarding Taser International.

Jeanne Durnford, 1250 University Drive, Menlo Park, spoke regarding CPI.

Leif Erickson, YCS, 3800 Middlefield Road, spoke regarding East Palo Alto Peace and Unity March and Rally on February 3, 2007.

Marina Latu spoke regarding East Palo Alto Peace and Unity March and Rally and invited the Palo Alto Council to participate.

#### APPROVAL OF MINUTES

**MOTION:** Council Member Morton moved, seconded by Cordell, to approve the minutes of December 11, 2006, as submitted.

**MOTION PASSED** 8-0, Klein absent.

#### CONSENT CALENDAR

Council Member Mossar stated she would not participate in Item No. 6 due to a conflict of interest because her husband was employed by Stanford University.

Council Member Cordell stated she would not participate in Item No. 6 due to a conflict of interest because she was employed by Stanford University.

**MOTION:** Council Member Drekmeier moved, seconded by Mayor Kishimoto, to remove Agenda Item No. 6 for discussion, to become Agenda Item 7a.

**MOTION:** Council Member Barton moved, seconded by Morton, to approve Consent Calendar Items Nos. 4, 5 and 7.

4. **Ordinance 4931 entitled “The Council of the City of Palo Alto Hereby Authorizes Closing of the Budget for Fiscal Year 2005-06, Including Transmission of the City’s Comprehensive Annual Financial Report (CAFR), Reappropriation Requests, and Completed Capital Improvement Projects”**
5. Approval of Expenditures of Up to \$85,000 from the City Council’s Contingency Account for Public Polling for the Mitchell Park Library/Community Center, Public Safety Building, and Enhanced Library Operations
7. 1<sup>st</sup> Reading - **Ordinance of the Council of the City of Palo Alto Amending Section 16.28.080 (Specific Exemptions) and Adding Section 16.28.321 (Construction of Bridges, Culverts and Storm Drain Outfalls) and Section 16.28.322 (Stream Bank Erosion Repair) to Chapter 16.28 (Grading and Erosion and Sediment Control) of Title 16 (Building Regulations) of the Palo Alto Municipal Code**

**MOTION PASSED** 8-0, Klein absent.

Council Member Mossar requested that staff provide the ordinance referenced in Agenda Item 7 to the San Francisquito Creek Joint Powers Authority.

- 7A. (Old #6) Annual Review of Compliance with Development Agreement with Stanford University for the Sand Hill Corridor Projects

Council Member Drekmeier stated he had asked staff to look into the large amount of earth work taking place along Sand Hill Road across the street from the Oak Creek Apartments and, also, the bicycle-pedestrian path that connected Sand Hill Road to Campus Drive along Searsville Road.

Assistant Director of Planning and Community Environment Curtis Williams stated staff needed to verify the information, but the current work was for the Varsity Golf facility, which was permitted by the General Use Permit (GUP.) The path was being relocated closer to Stock Farm Road.

Council Member Drekmeier stated he was surprised the City was not aware that the path would be changed.

Mr. Williams stated he would follow up on Council Member Drekmeier's concerns.

Mayor Kishimoto questioned whether the path was included in the Stanford GUP C-1 trail.

Mr. Williams stated staff would check on the path and get back to the Council.

**MOTION:** Council Member Barton moved, seconded by Morton, to take the following actions: 1) Determine that Stanford University has complied in good faith with the terms and conditions of the Development Agreement; and 2) Direct staff to issue a Certificate of Compliance to the University, according to the provision of Section 10(a) of the Agreement, stating that a) the Agreement remains in effect, and b) Stanford University is not in default.

Council Member Morton suggested the motion should not be contingent on the positive results from the staff follow up.

Council Member Barton questioned whether the path issue was legally part of what was being certified.

Director of Planning and Community Environment Steve Emslie stated the item was part of the requirement of the Development Agreement related to the Sand Hill Road Projects. The Council's action would not prevent staff from returning to the Council with questions or disputes in the implementation of the agreement.

Council Member Drekmeier stated the question was whether the removal of the path violated the Development Agreement.

#### **MOTION WITHDRAWN BY MAKER AND SECONDER**

**MOTION:** Council Member Drekmeier moved, seconded by Kleinberg, to postpone this item until a date following a dialogue between staff and Stanford University for further clarification regarding earth work along Sand Hill Road and the bicycle and pedestrian path that has disappeared.

**MOTION PASSED:** 6-0, Klein absent, Cordell, Mossar not participating.

#### **PUBLIC HEARINGS**

Council Member Kleinberg stated she would not participate in Item No. 8 due to a perception of conflict of interest since Varian is a member of Joint

Venture Silicon Valley Network, her employer, and Varian is the landlord for CPI.

8. Public Hearing - Adoption of an **Ordinance Amending Title 18 (Zoning) to Delete Chapters 18.28 (Multi-Family Residence District Guidelines) and 18.64 (Additional Site Development and Design Regulations for Commercial and Industrial Districts) and to Adopt a New Chapter 18.23 (Performance Criteria for Multi-Family, Commercial, and Industrial Districts);** Environmental Assessment: Comprehensive Plan Environmental Impact Report

Director of Planning and Community Development Steve Emslie stated the City had, in its priority work plan, an update of the Zoning Code. The item before the Council was a new feature of the Zoning Code that established performance criteria that set out the relationship and the interaction between possible conflicting uses.

Assistant Director of Planning and Community Environment Curtis Williams stated that Chapter 18.23 of the Zoning Ordinance applied to all multi-family, commercial, industrial and planned community developments adjacent to residential properties. The purpose of Chapter 18.23 was to provide compatibility with the adjacent uses and would be applied by staff, the Architectural Review Board (ARB), City Council, or the Planning and Transportation Commission (P&TC). Staff looked at nine categories of impacts. Three, in particular, were substantive changes from the existing code: Late Night Uses and Activities; Noise and Vibration; and Hazardous Materials. Staff felt it was appropriate to provide the public and neighboring residents with a better knowledge of what was in their vicinity.

Fire Marshal Dan Firth provided a brief update on the hazardous materials program administered by the Fire Department. The City had stringent regulations. In 1983, Santa Clara County and the City of Palo Alto developed a model hazardous material storage ordinance, which established reporting requirements, controls, the public right to know, and training. The Toxic Gas Ordinance was developed jointly in 1990. Both ordinances were incorporated into the Uniform Fire Code, which was used in 11 western states. Businesses with hazardous materials had to file a Hazardous Materials Business Plan if they exceeded the State reporting threshold. The primary purpose was for emergency response, to make the information available to the public, and to require the business to raise the level of awareness of hazards to the surrounding area.

Council Member Kleinberg asked for an update on the recent settlement with CPI.



Senior Deputy City Attorney Donald Larkin stated the City reached a settlement with CPI over the hazardous materials release that took place in February 2006. The Fire Department's investigation and the third party evaluation identified a number of practices and corrective actions, including changes to CPI's internal waste handling and emergency notification procedures. In addition to the changes, CPI agreed to pay \$20,000 which incorporated reimbursement for staff costs as well as a penalty for the failure to notify the Fire Department of the release of hazardous materials.

Planning and Transportation Commissioner Arthur Keller stated the Planning and Transportation Commission (P&TC) had thoughtful discussions and came to a good consensus. The input and feedback from the critically affected residents of Barron Park was appreciated.

Council Member Barton said staff mentioned that including hazardous materials in a zoning ordinance was unusual and asked why staff is proceeding with the inclusion in the Zoning Ordinance.

Mr. Williams stated staff knew there was the potential for hazardous materials and, after discussions with residents of Barron Park, the fact there was not a good way for the public to know what was happening was apparent. Staff felt the planning process was appropriate for providing the public's right to know.

Council Member Barton questioned the City's ability to affect Title 19, which was the State law, and the City's ability to make changes.

Mr. Larkin stated the City would be preempted from impacting Title 19 directly. The City could reference Title 19 but could not change the requirements.

Council Member Barton questioned whether the businesses or individuals affected by Title 19 would be ruled by Title 19 regulations rather than the City's regulations.

Mr. Larkin stated that was correct.

Council Member Barton mentioned the 25 percent cap in the ordinance and asked whether any changes could be made.

Mr. Larkin responded that the 25 percent was within the context of Title 19. The City would be unable to change threshold requirements.

Council Member Barton stated his nonlegal reading was that one could increase by 25 percent multiple times.

Mr. Larkin said the 25 percent was over the November 1, 2006, levels and was the maximum amount.

Council Member Barton questioned the Title 19 thresholds.

Mr. Firth said the Title 19 thresholds were significantly higher than the numbers Palo Alto and the model ordinance established.

Council Member Barton questioned the City's limits and abilities with regard to changing the 25 percent.

Mr. Larkin said there was a concern about preemption if the amount were lowered to a level that would preclude any expansion. Setting a level that precluded any expansion of an existing, permitted facility was a concern with regard to running into an issue with preemption by Federal and State regulations as well as County regulations.

City Attorney Gary Baum stated any time the Council passed an ordinance, the basic threshold was that the ordinance had a rational basis.

Council Member Beecham questioned how the City could regulate Title 19 reporting threshold amounts of materials.

Mr. Larkin stated the ordinance was crafted to put the burden on the City and City Planning staff to enforce the right to know and public notice. The City could regulate location of businesses. In terms of restricting existing businesses, the City would have to rezone the property and do an amortization.

Council Member Beecham questioned the permitting of Title 19 facilities.

Mr. Firth stated facilities were permitted by the County of Santa Clara and the Palo Alto Fire Department. He stated the permit was issued under the Hazardous Materials Storage Ordinance which authorized a business to have hazardous materials at its facilities. The type of hazardous materials permitted were specified.

Council Member Beecham questioned whether the City had to allow businesses to have materials as provided by Title 19 figures.

Mr. Firth stated the City had no existing authority to limit the amount of materials that a business could have at its facility if the business met the established requirements.

Council Member Beecham questioned whether there were constraints within a site on locations of the facilities and whether the City had the ability to set limits, such as setbacks from the property line or from other uses.

Mr. Firth stated there were no constraints under the Fire Code and the Building Code had setback requirements for buildings of any type which differed for various uses.

Council Member Beecham questioned whether the City had the ability to constrain more than the ordinary setback of buildings from the property line for facilities that might use Title 19 chemicals.

Mr. Firth stated that might mean a change in the Building Code.

Mr. Emslie stated the Fire Department enforced the I Codes or International Conference of Codes, and I Codes were adopted at the State level. Each jurisdiction was given an amount of time to make limited exceptions to the code. The exceptions were spelled out by State law as relating to geography, topography, and climate.

Council Member Beecham questioned whether the City could require setbacks to Title 19 activities beyond what the ordinary building setbacks were.

Mr. Emslie stated setback changes could be made if the change related to a topographic or physical feature.

Council Member Morton asked the Fire Marshal to explain what went wrong with the CPI release and what assurances residents had that the problem would not happen again.

Mr. Firth stated that CPI had a concentrated plating solution that was discharged into a concentrated acid waste tank. CPI believed there was water or other contamination present in the waste tank that caused a reaction and the release of fumes. Procedures were changed to ensure that the concentrated plating solutions were not put into the waste tank and retrained its staff to ensure such an incident would not occur in the future. CPI also changed its reporting procedures to notify the Fire Department of any release to the environment.

Council Member Morton questioned whether the current steps were in addition to what would have been CPI's emergency response plan.

Mr. Firth stated that CPI's original emergency response plan included monitoring or testing to determine the nature of the release and notifying

the Fire Department and 911 if they believed the release reached thresholds that might cause a danger to the environment or public health.

Council Member Morton questioned whether only residents within the primary zone of 150 feet would be notified.

Mr. Williams said the 150 foot zone was for general hazardous material occupancy, and Title 19 included a management plan that defined affected residents that could range in other directions.

Mr. Firth said the affected area was what was determined by the offsite consequence analysis. If a business reached the thresholds, the business was required to determine a worst case scenario and do an offsite consequence analysis. The affected residents were those within the offsite consequence analysis that would be adversely impacted.

Council Member Morton stated the definition of affected residents, such as in the CPI case, was small.

Mr. Williams stated the neighbors, in their thorough analysis of the CPI cases, showed the area of potentially affected residents as being approximately 1,000 feet.

Council Member Morton questioned why any increase would be allowed without a public hearing.

Mr. Larkin said the City did not have a public hearing for a RMP because the permit was ministerial rather than discretionary.

Council Member Morton stated the only thing was the right to know, which went back to who was notified.

Mr. Larkin stated that was correct. The intent was to notify as broadly as possible based on the maximum risk.

Council Member Morton stated he not believe the Barron Park residents felt the City notified as wide an area as possible.

Mr. Larkin said, at the time, there were no notification requirements for a Title 19 facility. The City proposed to add the notification requirements.

Mr. Firth stated that, under State law, the County administered the RMP. The County was required to post a 45-day public awareness notice that a RMP was available to be reviewed at the County offices.

Council Member Drekmeier stated his understanding was that Title 19 did not allow a certain amount of hazardous chemicals but only required reporting.

Mr. Firth stated that was correct.

Council Member Drekmeier stated he noticed in the report that the City had ten sites with bio-safety level 2 or 3 labs and asked whether bio-hazards and genetically modified materials were covered by Title 19.

Mr. Firth stated to his knowledge they were not covered.

Council Member Drekmeier questioned whether there was anything in Title 19 about cumulative impacts.

Mr. Firth stated he did not believe so.

Council Member Drekmeier questioned how the City would go about phasing out hazardous chemicals if that were a goal of the City.

Mr. Emslie stated the City would look at groups or types of businesses that tended to use hazardous materials, and the City had broad discretion in determining location and permitted uses.

Mr. Keller pointed out there were two locations in Palo Alto with Title 19 hazardous materials: CPI and the Regional Water Quality Control Plant. The City needed to make sure that whatever regulation implemented with respect to CPI, the City had to be careful about how the regulation affected the Regional Water Quality Control Plan.

Council Member Mossar stated the ordinance was designed to make sure that new projects and significantly renewed projects were compatible and well designed.

Council Member Cordell stated staff indicated under Title 19, the facility that housed the hazardous waste had to come up with a worst case scenario, which resulted in notification of residents who would be impacted.

Mr. Williams stated that was correct.

Council Member Cordell questioned who came up with the worst case scenario.

Mr. Firth explained that businesses generally hired third party consulting firms to come up with the worst case scenario.

Council Member Cordell questioned the incentive for a company to develop a worst case scenario that encompassed a large number of residents versus a small number.

Mr. Firth responded the County of Santa Clara reviewed the Risk Management Plan (RMP) to determine whether it was complete and appropriate.

Council Member Cordell questioned whether the County had found a worst case scenario inaccurate.

Mr. Firth stated he was not aware of any inaccuracies.

Mr. Baum stated he was aware of an incident in another city in the County where quality control was done by a regulatory authority which questioned the assumptions that were entered into.

Council Member Morton clarified that the proposal would allow the Fire Department to see the plans and allow the Council to respond to the County, on behalf of the City, to the level of risk management

Mr. Firth stated that was correct, and the City would provide comments to the County.

Council Member Morton clarified that passing the legislation gave Palo Alto an opportunity to see whether the worst case scenario made sense.

Mr. Firth stated the Fire Department received copies of the worst case scenarios for both businesses in Palo Alto.

Mayor Kishimoto questioned whether the County's approval process was appealable.

Mr. Firth stated the County merely approved the adequacy of a RMP but did not have the authority to reject it.

Mr. Larkin stated the County had the authority to reject the RMP but did not have the authority to reject the application for the hazardous materials, if the plan were compliant.

Mr. Williams stated there was no discretion for the Fire Marshal to deny the permit if the criteria were met.

Mayor Kishimoto questioned whether it was possible for the City to require that the right to know take place prior the issuance of the permit.

Mr. Williams stated the requirement would add burden to the Planning Department and Fire Department staff.

Mayor Kishimoto questioned whether there was a scientific rationale for the 25 percent threshold.

Mr. Williams stated he was unaware of any scientific rationale but noted there was concern in the business community about capping at 30-33 percent.

Public Hearing opened at 8:50 p.m.

Romie Georgia, 3445 Tippawingo, stated her concern about businesses with hazardous chemicals near residential neighborhoods.

Art Liberman, 751 Chimalus Drive, spoke in opposition to the proposal to allow CPI to increase its hazardous materials by 25 percent.

Fred Balin, 2385 Columbia Street, stated his opposition to any new Title 19 sites without approval of the City Council.

Jeff Dean, 710 Chimalus Drive, encouraged the City to require explicit City Council approval for any permit to build or remodel a Title 19 facility.

Bill Kelly, 632 Chimalus Drive, spoke in opposition to the current proposal.

John Dunec, 748 Chimalus Drive, spoke about the results of a possible hazardous waste release in the air.

Michel Adar, 706 Chimalus Drive, spoke about issues that had occurred since CPI was built in the 1960's, including ground water contamination.

Douglas Moran, 790 Matadero Avenue, spoke about issues involved with hazardous material businesses in residential areas.

Robert Moss, 4010 Orme Street, spoke about the City's primary responsibility for protecting public health and safety, and issues with approving businesses with toxic materials in residential areas.

Jeanne Durnford, 1250 University Drive, Menlo Park, stated the facility should stay at its current level.

Public Hearing Closed at 9:18 p.m.

Council Member Barton questioned whether the City Council could ban future Title 19 facilities using the City's planning power.

Mr. Larkin stated that was yet to be determined.

Mr. Baum stated he had grave concerns about adopting a total ban on Title 19 uses. His suggestion was that the Council impose a Conditional Use Permit (CUP) requirement.

**MOTION:** Council Member Barton moved, seconded by Beecham, to approve adding Section 18.23.010 with the following revisions to Section 18.23.100, Sub-Section (B)(vi):

- Limit new and enlarged occupancies in excess of Title 19 thresholds to require a Council-imposed Conditional Use Permit (CUP).
- 25 percent shall be revised to 10 percent.
- Direct staff to work with CPI and the City of Palo Alto to reduce materials as soon as possible to sub-Title 19 thresholds.
- Strike the second sentence in (B)(vi) regarding the Fire Marshal discretion.
- Report back to Council.

Council Member Barton stated he appreciated the City being on the cutting edge of bringing the issue into the Zoning Ordinance.

Council Member Beecham acknowledged the public's concerns and stated the Council struggled to find a way to effectively control what was in the City. He believed future Title 19 materials coming into the City would be limited.

Council Member Morton questioned whether wording could be added to (B)(vi) "or (b) to increase with a Council approved CUP the quantity of hazardous materials that already exceeds Title 19 thresholds to a quantity in excess of 10 percent."

Mr. Larkin responded that putting a CUP on an existing use was problematic.

Council Member Morton stated there was an increase of an existing use, and asked whether the 10 percent increase could be required to go back to Council prior to approval.

Mr. Baum stated there was an existing business with existing rights. Not allowing the 10 percent with the Fire Department guidelines was problematic.

Council Member Morton clarified the Council had no power to limit the increase.

Mr. Larkin stated the idea was to give the business the flexibility to operate under its existing permit.



Council Member Morton stated the company's ability to operate was limited when it got the 10 percent increase.

Mr. Baum said the business would have no ability to adjust its business if the City did not give the opportunity for flexibility.

Council Member Morton stated that notification had been woefully inadequate. Notifying only properties within 150 feet was not adequate.

Council Member Beecham asked staff about examples of uses that would be affected.

Mr. Firth stated that, under the proposal, if someone wanted to install a tool that used hazardous materials, the Fire Department would do an evaluation to see if the business met the criteria, issue the permit, and then notify the community that the permit was issued. Uses might include restaurants, dry cleaners, gas stations, body shops, photo developing operations and plating shops.

Mayor Kishimoto asked about residences.

Mr. Firth stated if a resident was authorized to run a business out of his or her home and had hazardous materials, the resident would be subject to the Fire Department requirements.

Council Member Beecham questioned whether gasoline qualified as one of the items.

Mr. Firth stated gasoline was a hazardous material that was regulated under the ordinance.

Council Member Morton stated the issue was how far the notification area was.

**AMENDMENT TO THE MOTION:** Council Member Morton moved, seconded by Barton, to increase public notification from 150 feet to 600 feet.

Council Member Barton suggested the language matrix might be based on the planning process for the project.

Mr. Emslie stated the standard notification for land use decisions was 600 feet.

Council Member Mossar pointed out one speaker mentioned there were only two Title 9 facilities in San Jose and asked staff whether that was accurate.

Mr. Firth said there were 25 RMP facilities in the County and perhaps only two plating facilities large enough to be RMP facilities.

Council Member Mossar stated reviewing intimate details of businesses that were a normal part of citizen's lives was not a good use of public resources. Staff was asked how the proposed language affected the Water Treatment Plant.

Director of Public Works Glenn Roberts stated the facilities at the Water Quality Control Plant were in compliance with the new regulations. The worst case scenario analysis was done and an emergency response plan was prepared and was on file with the Fire Department.

Council Member Morton stated residents were most upset by the fact that they did not receive notification of the problem at CPI.

Council Member Cordell clarified Council Member Morton's amendment for notification at 600 feet included all hazardous materials

Council Member Morton said that was correct, and it should be consistent with the other area of the Zoning Code.

Council Member Cordell asked about the notification under proposed Title 19 limitations.

Mr. Williams stated notification was to the worst case scenario defined area.

Council Member Barton stated he seconded the amendment for the purpose of the clarity of the process, but he was swayed by the distinct difference between a discretionary process of zoning and a ministerial process of the hazardous material under the sub Title 19 thresholds.

Council Member Drekmeier stated his problem with the amendment was that something such as helium did not strike him as a hazardous material. Staff was asked whether there was a way to satisfy Council Member Morton's desire to notify people about dangers without creating an excessive burden.

Mr. Firth said notification could be based on the hazard category; for instance, helium was an asphyxiant and hydrogen cyanide was a poison. Certain hazard characteristics could be specified for notification.

Council Member Morton stated the notification covered categories that were considered hazardous.

Mr. Firth said that was correct.

Mayor Kishimoto stated she would not support the amendment.

**AMENDMENT FAILED** 1-6, Morton yes, Kleinberg not participating, Klein absent.

Council Member Cordell stated she would like to see a ban on future facilities and appreciated the fact the City Attorney said that could not be done because of the liability. When the issue about limiting the increase in the amount of Title 19 Hazardous materials came up, the Council was told it could not limit the amount. Subsection (vii) on page 10 of Attachment B, Chapter 18.23, gave discretion to the Fire Marshal to increase the buffer zone. The Council should be part of the discretion.

Mr. Baum stated chlorine was used in the Waste Water Treatment Plant, which was a material regulated through Title 19. There were other systems such as chlorimine or bromine which may or not be on the list. The possibility was that in the future the Waste Water Treatment Plant might come before the Council saying it could reduce, for instance, 25,000 cubic feet of chlorine to 1,000 of something else. That would be a Title 19, and would be approved by the Council.

Council Member Cordell stated the sentiment seemed to be the Council did not want new facilities. Concern was expressed as to how to indicate the current Council's sentiments to future Council Members.

Mr. Baum stated staff would remind the applicants.

Mayor Kishimoto stated the 300 foot threshold limit was probably covered through the CUP process.

Council Member Cordell stated the language gave complete discretion to the Fire Marshal.

Mr. Williams stated staff would take the provision out of section (vi) and leave the determination to the Council.

Council Member Drekmeier questioned how the City monitored biohazards, genetically modified materials, and radioactive materials.

Mr. Firth said the materials were permitted under the hazardous materials storage ordinance. The biohazardous materials were lumped under ideologic agents, and the permits covered highly toxic and other health hazards including ideologic agents. The Fire Department had met with the industry to talk about appropriate levels of oversight or control and was still in the information gathering stage.

Council Member Drekmeier asked about radioactive materials.

Mr. Firth responded that radioactive materials were required to be reported under the hazardous materials business plan requirement.

Mr. Larkin said there was a law requiring permits to be renewed every ten years.

Council Member Drekmeier commented that most of the neighbors' needs were being met.

**MOTION PASSED** 7-0, Kleinberg not participating, Klein absent.

Council Member Mossar referred to Attachment B, Chapter 18.23.010, Purpose and Applicability, and stated there were a lot of lofty goals, including minimizing impacts to make new developments and major architectural review projects compatible and to enhance the desirability of proposed developments. Page 2, of Section 18.23.020, Trash Disposal and Recycling, only discussed screening and placement. There was no language that said the City wanted recycling facilities. Her suggestion was that recycling areas should make it feasible and practical for the public to recycle.

Mr. Williams stated staff could add one more criteria to say that any recycling and disposal facility should be placed so they are most usable to the residents or businesses.

Council Member Mossar referred to page 8 of Section 18.23.080, Vehicular, Pedestrian and Bicycle Site Access, which provided guidelines for locations of driveways but the section did not say that there should be pedestrian and bicycle access. Staff was asked whether that was a section that should include the value of non-automobile uses.

Mr. Williams stated there was language elsewhere to use when reviewing projects.

Council Member Mossar said the purpose of Section 18.23 was to enhance the desirability but it was not specified that it was expected.

**MOTION:** Council Member Mossar moved, seconded by Morton, to delete Chapters 18.28 and 18.64 from the Zoning Ordinance, and to revise Section 18.23.020 to add language that reflects the need for usable recycling facilities, and that in section 18.23.080 language be added that underlines the value and importance to the community of having bicycle and pedestrian facilities on site and to connect to other sites.

Council Member Barton stated his concern with applicants and developers going to the City, familiar with the old ordinance, and not aware of the important parts of the Section.

Mayor Kishimoto complimented staff, the PT&C, and public for the many significant improvements that the section represents.

**MOTION PASSED** 7-0, Kleinberg not participating, Klein absent.

9. Public Hearing - Adoption of an **Ordinance Amending Title 18 (Zoning) to Delete Chapter 18.88 (Special Provisions and Exceptions) and to Adopt New Chapters 18.40 (General Standards and Exceptions) and 18.42 (Standards for Special Uses), including New Criteria for Landscaping, Wireless Communications Facilities, Stream Corridor Protection, and Storm Water Protection**; Environmental Assessment: Comprehensive Plan Environmental Impact Report

Assistant Director of Planning and Community Environment Curtis Williams stated the Zoning Code currently included Chapter 18.88, which included many different types of provisions. Staff's goal was to reorganize the Chapter to make more sense and to add provisions that needed change. The Code language was separated into two chapters: 18.40, General Standards and Exceptions; and 18.42, Standards for Special Uses. New sections were included for landscaping, water resources, and wireless communications facilities. At the City Attorney's suggestion, text that limited the number of onsale liquor permits was deleted.

Public Hearing was opened at 10:30 p.m.

Sheri Furman, 3094 Greer Road, spoke about Chapter 18.40, creeks in her area, and restrictions on resident's properties, and asked that the Council exempt homes in R-1 zones next to a channelized creek.

Denny Petrosian spoke about the wireless issue, which she did not believe had full enough discussion, and urged the Council to keep this issue at the Planning level.

Public Hearing was closed at 10:37 p.m.

Council Member Kleinberg requested that Section 18.42, which included Wireless Communications, be taken separately. She had a conflict of interest due to her position with Joint Venture Silicon Valley, which was the coordinator of the Wireless Silicon Valley Project and would be seeking to install wireless facilities throughout Palo Alto.

City Attorney Gary Baum explained that per the Brown Act, the conflicted matter needed to be discussed first.

Mayor Kishimoto stated the Council would first consider Section 18.42.110.

Council Member Beecham referred to page 5 of the staff report (CMR:119:07), which addressed antennas not higher than the building height. His question was whether the antennas would be on the walls or roof of the building.

Mr. Williams stated the intent was that antennas could be on the roof of the building if equipment was already on the roof that did not exceed the height.

Council Member Beecham questioned whether a structure less than 50 feet could be placed on the roof and antennas added subsequently.

Mr. Williams stated he supposed antennas could be placed on the roof as long as they were screened and not visible.

**MOTION:** Council Member Beecham moved, seconded by Barton, to approve Section 18.42.110, Wireless Communications Facilities.

Council Member Drekmeier spoke to the issue of Utility User Tax (UUT) and how the cell phone companies were trying to get out of the tax. Staff was asked whether the ordinance could be used to encourage cell phone companies to agree with the City.

City Auditor Sharon Erickson stated that, to her knowledge, all cell phone companies currently paid UUT.

Council Member Drekmeier stated that could change in a couple of years.

Mr. Baum stated the City had an instance in the past where one carrier did not pay but concurrently had an application before the City. His position was the City could not accept the carrier as a lessor because they had shown they did not pay their debts.

Mayor Kishimoto stated she had discussions with members of the Los Altos City Council regarding their approach. Staff was asked to review Los Altos' approach to regulating wireless.

Mr. Williams stated staff reviewed the issue with other local cities.

**MOTION PASSED** 7-0, Kleinberg not participating, Klein absent.

**MOTION:** Council Member Morton moved, seconded by Barton, to approve staff and the Planning and Transportation Commission's recommendation to adopt the ordinance to delete current Chapter 18.88 and to add new Chapters 18.40 and 18.42 to address miscellaneous general standards and exceptions and standards for special uses, respectively, including criteria for landscaping, stream corridor protection, and storm water protection. Staff further recommended inclusion of amended language provided by the Planning Arborist subsequent to the P&TC recommendation as specified.

Council Member Barton spoke about concrete streams versus regular streams and asked how the numbers, in terms of distances, ratios, and slopes, related to the Water District. The Water District had some issues already in place.

Director of Public Works Glenn Roberts said what was presented to the Council was a three and a half year effort in a process known as the Santa Clara County Creek Collaborative, initiated in 2003 by the Water District's proposal for an amendment to its Countywide ordinance. The proposal was to expand the jurisdiction, and the cities had technical and legal issues with what was proposed at the time. The result was the collaborative process which was consistent with what water districts in other cities were doing.

Council Member Barton clarified the Water District did not separate out its concrete channels from its natural riparian channels.

Mr. Roberts stated there were different and increasing standards for the natural channels.

Council Member Barton suggested if Palo Alto did not think the standards made sense on concrete channels, rules would still be in place by the Water District.

Mr. Roberts stated Palo Alto agreed that in turn for participating in the process and developing and agreeing to the common standards Countywide, the Water District would pull back on its expressed desire to take over the regulatory process. An exception process was included where it was possible to approve things through a certain review if it were found there was no significant impact on the concrete channels.

Council Member Beecham asked about the process for an exception and that staff level review could allow a variance to the Section.

Mr. Williams stated that was correct. The exception could be granted by the Public Works Director as long as he found the stability was maintained and there were no adverse impacts on the riparian vegetation.

Council Member Kleinberg referred to page 10 of Attachment B, Chapter 18.40, section (3) and asked the reasoning for protecting a stream by not building a deck, not allowing a trash enclosure, not allowing a particular color and restricting nighttime lighting.

Mr. Roberts said the basic principle was that within concrete blind channels, there were some riparian habitat and wildlife issues. The goals were designed to try to minimize any negative impact on that type of habitat.

Council Member Kleinberg clarified trash enclosures and decks were allowed if it met the 20 feet landward from the top of the bank requirement and she questioned what a typical setback from the bank was.

Mr. Roberts stated the setback varied depending upon the particular subdivision.

Council Member Kleinberg clarified that current colors and accessory structures were grandfathered in.

Mr. Roberts stated that was his understanding.

Council Member Mossar stated that future needs and public costs were at risk. Residents expected their deck, trash enclosure, lighting fixtures, and landscaping to be protected from a natural disaster, and they expect the public to be responsible for financial consequences of the loss of those amenities.

Mayor Kishimoto referred to page 3 of the staff report (CMF:119:07) which indicated, "Trees and shrubs shall be planted so that at maturity they do not interfere ... to the maximum extent feasible, with solar panel/collector access to adjacent lots." Staff was asked whether the property owner had discretion.

Mr. Williams said there was discretion, but there was a burden on the resident if there were solar panels on the property next door.

Mayor Kishimoto stated she preferred to keep "to the maximum extent feasible" out of the recommendation.

Council Member Beecham suggested "so as feasible."

Mayor Kishimoto stated the wording would be, "to the extent feasible."

Council Member Mossar questioned whether there was a problem when a resident had a small oak tree in their yard that turned into a heritage oak over time, and the neighbor put on solar panels.



Mayor Kishimoto stated people should not be restrained from planting new oak trees because it might overshadow a neighbor's solar panels.

Mr. Williams suggested saying, "and where feasible with solar panel collectors."

Council Member Beecham stated the recommendation only related to new plantings.

Mr. Williams stated staff would work on language and suggested, "...building plans consistent with the building and landscaping for the site is feasible to protect them."

Council Member Morton suggested deleting the sentence.

Mayor Kishimoto agreed with deleting the sentence.

Council Member Kleinberg referred to page 8 of Attachment C, Chapter 18.50, section (5), which read, "All required perimeter yards shall be landscaped." Staff was asked to clarify "required perimeter yard."

Mr. Williams stated the required perimeter yard was the setback.

Council Member Kleinberg pointed out she would be required to landscape a part of her property that no one saw except the trash collector.

Mr. Williams stated the language was overkill.

Council Member Barton said he read the section to mean no bare earth in order to prevent bare earth and erosion from property to property.

Mr. Williams stated the guidelines (5) on page 9 indicated, "The Director may allow a combination of hardscape and landscape to satisfy landscape requirements where permeable surface materials are used and where the visual quality and screening functions of the hardscape/landscape area are maintained." His suggestion was the wording might be moved to section (5) under the Requirements.

Council Member Kleinberg was concerned about the detail that people had to follow.

**INCORPORATED INTO MOTION WITH CONSENT OF MAKER AND SECONDER** to remove the last portion of the sentence in the Planning Arborist's Recommended Clarifications, which was Section 18.40.130(d)(4), "...and to the maximum extent feasible, with solar panel/collector access to

07/01/22 25

adjacent lots.” And to add to Section 18.40.140(e)(5) to add Director discretion to allow a combination of landscape and hardscape to satisfy that condition.

**MOTION PASSED** 8-0, Klein absent

#### REPORTS OF COMMITTEES AND COMMISSIONS

10. Finance Committee Forwarding without Recommendation Staff Proposal to Establish a Policy on Rent Charged by the General Fund to the Refuse Fund on Unopened Portions of Landfill

Assistant Director of Administrative Services Lalo Perez stated in November 2004, the City Auditor made a recommendation for staff to determine whether rent should be charged on closed, undeveloped areas of the landfill. Staff recommended the Refuse Fund pay rent and that the rent charged should be less than full market value, which currently was ten percent of the land value. In December 2006, staff presented to the Finance Committee a plan which called for the rent to be five percent of the land value and for the amount of the rent to be added at the end of the smoothing plan. The recommendation of the Finance Committee was a split vote.

Council Member Mossar stated the people paying the rent were the City’s rate payers. The Council needed to find a way to take the money for future rent and convert the property to active park land for the public.

Mayor Kishimoto stated her support of dedicating some of the funds to pay for the conversion of the park.

Council Member Barton supported taking the rent money to convert the property to a park.

**MOTION:** Council Member Morton moved, seconded by Drekmeier, to approve staff’s proposal, as forwarded without a recommendation from the Finance Committee, to establish a policy on rent charged by the General Fund to the Refuse Fund on closed portions of the landfill whereby the Refuse Fund should pay rent at less than full market value in consideration of the fact that the landfill area cannot be readily converted to the land’s highest and best use to:

1. Establish a policy on rent charged by the General Fund to the Refuse Fund on closed portions of the landfill whereby the Refuse Fund would pay rent at less than full market value in consideration of the fact that the landfill area cannot be readily converted to the land’s highest and best use.
2. Authorize the City Manager to enter into a tolling agreement between the General Fund and the Refuse Fund whereby the

statute of limitations in connection with the collection of back rent shall be tolled and suspended during the period that the agreement is in effect.

3. Direct staff to prepare an agreement between the General Fund and the Refuse Fund regarding use of the City-owned landfill.

Council Member Beecham pointed out that Phases IIA and IIB were closed and not being used by the constituents for refuse. One of the rationales for charging was because the land was not available for park use, but for a cost of approximately \$200,000, the land could be made available.

Council Member Kleinberg pointed out the original Byxbee Landfill Closure and Park Development Schedule indicated that Phases IIA and IIB were to be completed by summer 1995 and the park developed by summer 2003. The public had been waiting for a park. Unused, closed land should be turned into park land. There was no rationale for continuing to pay rent on land that was no longer being used for refuse.

Mayor Kishimoto asked whether there was an estimate for turning the land into a full park.

Director of Public Works Glenn Roberts stated the cost of development was for all the remaining areas, IIA, IIB and IIC, which the Byxbee Master Plan said would be done simultaneously. The estimated cost was \$2 million, which was a General Fund obligation rather than a Refuse Fund obligation.

Council Member Beecham stated he differentiated between making the land into a park versus making it available to the public for much less. That could be done for IIA and IIB separately.

Council Member Morton asked whether there were issues of methane collection that needed to be resolved.

Mr. Roberts said there was a methane collection system on IIA and IIB which was above ground. The system needed to be put underground, which would cost approximately \$200,000.

**MOTION PASSED** 5-3, Beecham, Kleinberg, Mossar no, Klein absent.

***THE CITY COUNCIL ADJOURNED TO A SPECIAL MEETING AT 11:35 P.M.  
AS THE PALO ALTO REDEVELOPMENT AGENCY, AND RECONVENED  
AS THE CITY COUNCIL AT 11:40 P.M.***

COUNCIL COMMENTS, ANNOUNCEMENTS, AND REPORTS FROM CONFERENCES

Council Member Morton referred to the Peace March and Rally in East Palo Alto on February 3, which conflicts with the Council Retreat. He requested the retreat be deferred for an hour to enable Council to participate.

Mayor Kishimoto noted the Rally would follow the March in the afternoon and Council would be able to participate at that time.

Council Member Cordell stated she was in favor of a motion to find an alternate date for the Retreat.

**MOTION:** Council Member Morton moved, seconded by Barton, for staff to work with the Mayor to find an alternate date for the Council Retreat.

**MOTION PASSED:** 8-0, Klein absent.

#### CLOSED SESSION

The meeting adjourned at 11:40 p.m. to a Closed Session.

11. CONFERENCE WITH CITY ATTORNEY -- EXISTING LITIGATION  
Subject: Jaim Nulman, Avelyn Welczer v. City of Palo Alto, California Court of Appeal, Sixth Appellate District, No. H027764 (SCC #CV779831)  
Authority: Government Code section 54956.9(a)

**Mayor Kishimoto announced no reportable action was taken.**

FINAL ADJOURNMENT: The meeting adjourned at 11:50 p.m.

ATTEST:

APPROVED:

---

City Clerk

---

Mayor

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

