

Special Meeting  
April 04, 2011

The City Council of the City of Palo Alto met on this date in the Council Chambers at 6:02 p.m.

Present: Burt, Espinosa, Holman, Klein, Price, Scharff, Schmid, Shepherd, Yeh arrived at 6:15 p.m.

Absent:

#### CLOSED SESSIONS

1. CONFERENCE WITH LABOR NEGOTIATORS

City Designated Representatives: City Manager and his designees pursuant to Merit System Rules and Regulations (James Keene, Pamela Antil, Lalo Perez, Joe Saccio, Sandra Blanch, Marcie Scott, Darrell Murray)

Employee Organization: Service Employees International Union, Local 521

Authority: Government Code Section 54957.6(a)

CONFERENCE WITH LABOR NEGOTIATORS

City Designated Representatives: City Manager and his designees pursuant to Merit System Rules and Regulations (James Keene, Pamela Antil, Dennis Burns, Lalo Perez, Joe Saccio, Sandra Blanch, Marcie Scott, Darrell Murray)

Employee Organization: International Association of Fire Fighters, Local 1319

Authority: Government Code Section 54957.6(a)

The City Council returned from the Closed Sessions at 7:56 p.m. and Mayor Espinosa advised no reportable action.

04/04/2011

## SPECIAL ORDERS OF THE DAY

### 2. Community Partners Non-Profit Presentation-Gamble Gardens.

Jane Stocklin, Gamble Garden volunteer shared with the Council that Miss Gamble cherished her garden at 1431 Waverley Street. It engaged her mind and her creativity and she was a faithful steward of the highest regard for the property. She passed that stewardship to the City of Palo Alto, who then passed it to a dedicated group of people who had vision and a plan to keep her values thriving through a community horticultural gathering place. The Elizabeth F. Gamble Garden was born on May 13, 1985. Gamble Garden has been noted as a Point of Historical interest in the State of California. Since 1985, conservatively, \$1.4 million dollars has been invested to refresh the original character of the 109 year-old house and garden. Volunteers continue to design, plant, and maintain, with a fine-tuned schedule, the 2.5-acre cozy garden. They welcome 25,000 guests annually, young and old, many who stroll, find a moment of solitude and drink in the broad beautiful view of the garden while others attend classes, demonstrations, docent tours and a myriad of fun events within the boundaries of a bustling garden. They rely on support from our members, rentals, classes, endowment, fundraising, and special events such as Spring Tour.

### 3. Selection of Candidates to be Interviewed for the Public Art Commission for Four (4) Terms Ending on April 30, 2014.

Council Member Scharff stated the usual process was to interview all of the candidates. He offered to change the process for this Commission and move forward with reappointment of the four incumbents. He noted two of them had not been on the Commission more than six months and it seemed unfair to put them through the interview process again so soon.

**MOTION:** Council Member Scharff moved, seconded by Council Member Price to not interview any of the candidates, and to bring back the appointment of current Public Art Commissioners Douglas Brown, Trish Collins, Larisa Usich, and Ally Richter on the Consent Calendar at the City Council meeting on April 11, 2011.

Council Member Price stated her agreement with the reappointment of the incumbents, especially in this particular incidence where two of them had not served a full term.

**SUBSTITUTE MOTION:** Council Member Holman moved, seconded by Council Member Schmid to interview all candidates for the Public Art Commission for four (4) terms ending on April 30, 2014.

Council Member Holman stated interviewing candidates gave the Council an opportunity to hear the concerns of the public on how best to serve the community. She felt the Council would be best served by interviewing the full contingent of candidates.

Council Member Schmid stated serving on a Board or Commission brought valuable attributes to the City. He felt the role as a Council Member was enhanced by the involvement of the community members. He elaborated the importance of the relationship between Council and the Commissioners began with the interview process.

Council Member Shepherd stated she supported the Substitute Motion and felt interviewing candidates gave the Council an opportunity to hear from the candidates.

Council Member Burt stated if the original Motion were to prevail, he suggested conveying to the other applicants the reasons why Council was not performing full interviews and encourage them not to preclude themselves from applying in the future. He noted, although he felt the current Commission was doing an outstanding job, he supported the Substitute Motion.

Mayor Espinosa stated he supported the Substitute Motion, because not interviewing all candidates set a poor precedent.

Council Member Scharff recommended the Policy & Services Committee review the process set for interviews.

Council Member Burt stated there needed to be a clear distinction between a policy and a practice. There was not a policy in place to interview all candidates, although doing so may be the current practice. He stated there was room for review on the process of a member serving a short-term term.

**SUBSTITUTE MOTION PASSED:** 7-2 Price, Scharff no

#### CITY MANAGER COMMENTS

City Manager, James Keene spoke regarding: 1) the press release regarding ISC attempting to discontinue the ISP service to the City, 2) the City had been recognized within the American Red Cross Silicon Valley Chapter regarding its emergency preparedness program, 3) the storm drain system work on Channing Avenue will continue for the next 6 months, 4) the Palo Alto Art Center going on the road due to construction and will re-open in the Summer of 2012, 5) the City was awarded a recognition by the American Public Power Association (APPA) reliable public provider of utilities, and 6)

the Palo Alto Junior Museum and Zoo received an American Heritage Grant to repair the insect collection.

#### ORAL COMMUNICATIONS

John Morris spoke regarding AT&T cell tower installation at 395 Leland Avenue.

Neva Yarkin spoke regarding cell towers and the radiation output they produced.

Michael Francois spoke regarding bio-cremation.

Carroll Harrington spoke regarding working with two public/private partnerships within the past year and a documentary called Carbon Nation.

Stephanie Munoz spoke regarding employee medical benefits.

#### CONSENT CALENDAR

**MOTION:** Council Member Scharff moved to pull Agenda Item No. 4 to become Agenda Item No. 5a.

4. ~~Adoption of Two Resolutions (1) Adopting a Compensation Plan for Management and Professional Personnel and Council Appointees and Rescinding Resolution Nos., XXXX, XXXX, and XXXX and (2) Amending Section 1701 of the Merit System Rules and Regulations to Incorporate the 20XX-20XX Compensation Plan for Management and Professional Personnel and Council Appointees.~~

**MOTION PASSED: 9-0**

#### ACTION

5. Public Hearing: Approval of a Conditional Use Permit and a Record of Land Use Action Amending an Existing Conditional Use Permit to Allow the Addition of Two Wireless Fidelity (Wi-Fi) Antennas Mounted to the Front Façade of the Hotel President at 488 University Avenue.

Mayor Espinosa stated he had attended meetings with members of the community who shared their concerns regarding the Fidelity Antennas. He had also met with the Applicant on March 30, 2011 although there were no discussions of issues which had not been previously discussed in an open forum.

Council Member Burt stated he had met with Michelle Kraus, a resident of the City.

Vice Mayor Yeh stated he had met with the residents of 488 University Avenue and the Applicant.

Council Member Price stated she had met with the Applicant the week prior to discuss alternative locations and the community concern regarding health issues surrounding wireless antenna emissions.

Council Member Schmid stated he had a telephone conversation with the Applicant regarding the health concerns and was referred to the Hammond Study.

Director of Planning and Community Environment, Curtis Williams stated Staff had prepared a list of frequently asked questions which attempted to answer some of the basic questions and concerns voiced surrounding the wireless communications facilities. Staff was making arrangements to hold a Study Session or workshop to provide the freedom of discussion absent of any specific application or topic in dealing with the wireless communications facilities. He clarified Federal law dictated certain constraints the City had to follow. He reiterated Staff and the Planning and Transportation Commission (P&TC) were recommending approval.

Planning Manager, Amy French gave a presentation on the location of the antennas. Although both the Planning Department and the P&TC approved the project moving forward it was not without conditions of the Record of Land Use Action (ROLUA), specifically Condition No. 4 which speaks to both; the test results and 2) the installation and maintenance of the antennas.

Mr. Williams apologized to Council Member Holman for Staff's response to a written question sent prior to the meeting. She had asked whether Staff had reviewed other buildings to determine whether there was a less visible location for the placement of the antennas. He explained within the packet there was material regarding the Applicant's attempts to locate a less visible location for the antennas. There were buildings reviewed and the Applicant had indicated why the antenna location of those sites would not satisfy the coverage needs from a directional or height standpoint.

Acting City Attorney, Don Larkin stated under the Telecommunication Act of 1996 there was a statutory timeline of 150 days, during which time action must be taken. He clarified a failure to take action during this meeting would result in going beyond the 150 day statutory limit.

Planning and Transportation Commissioner, Dan Garber stated the P&TC had approved the Staff recommendation with the caveat the equipment being

placed on the roof would be tested to verify they met the Federal Communication Commission (FCC) radio frequency limits and that there be no access needed through the residents' properties.

Public hearing opened at 9:10 p.m.

Paul Albritton, Attorney for the Applicant, discussed the explosive growth of wireless use over the past decade within the United States, the gap identified by the Applicant around the existing facility at the Hotel President, the alternate designs and locations researched by the Applicant, and the Federal Laws in place with respect to this type of equipment. He noted the Applicant had complied with the Palo Alto Municipal Code by placing the antenna in the least obtrusive location, collocated with an existing facility, structure mounted, and was included within an architectural feature of the building.

Yvette Davis, Co-Owner of Burg Davis Public Affairs, stated her firm assisted the Applicant with public outreach. She noted not all of the community members supporting the project could be in attendance during the Council meeting and presented a video from the community participants.

Mr. Albritton presented the Wi-Fi node and elaborated the node would emit radio frequency 20 times below the Federal Standard.

Jeff Hoel spoke regarding his concern for the radio frequency report presented by the Applicant.

Robert Smith spoke regarding the Applicant being the first of many to come before Council.

TJ Loebbarkin spoke regarding the health and privacy concerns collective of the residents of University Avenue.

Michelle Kraus spoke regarding the health and privacy concerns collective of the residents of University Avenue.

Jeffrey Jones spoke regarding his concerns for the Applicant not being truthful with respect to their findings and the invasion of privacy of the residents.

Mary Riordan spoke regarding being a shareholder of AT&T and a resident of 488 University Avenue. She spoke for the desire of AT&T to perform well although not at the expense of her health and safety.

Richard Brand spoke regarding his concern for the Applicant putting in a network solution which did not appear to be a public benefit.

Haim Kedar spoke regarding the Applicant becoming a monopoly and the City allowing it to occur by approving this project.

Stacey Harger spoke regarding the Applicant being more concerned with themselves than with the community they were portraying to be assisting.

Leon Beauchman spoke in support of the project and believed the impact on the environment was minimal.

Jean Bozman spoke regarding the emitting affects of radio frequency for the residents where the antennas would be located.

Stephanie Munoz spoke regarding the Applicant making money without the City receiving any benefit.

Iqbal Serang spoke regarding the application being based on the original Director's Review in 2005 which did not include the installation of antennas.

Lisa Bozman spoke regarding her concern for the Applicant placing the antennas on the only residential location on the street. She stated the Applicant mentioned the benefit to themselves and to their customers but to no one else.

Bob Moss spoke regarding the Applicant not needing to enter the apartments during the installation of the antennas and the privacy issue with respect to the recurring maintenance.

Charlene Loo spoke regarding the cellular companies taking advantage of the City and land grabbing. She stated it was in Palo Alto's best interest to set-up a long term strategic plan in order to support the City's value and character.

Herb Borock spoke regarding there being a number of environmental impacts which had not been mitigated; thereby approving the project would be in violation of the California Environmental Quality Act (CEQA).

Mr. Albritton stated the normal way to relieve capacity was to build another cell site, and install antennas on another building or build another tower. The Applicant felt this was the most elegant way of resolving capacity without impacting more residents. He clarified the Applicant was very willing to comply with the conditions set forth in the approval of the P&TC which required all maintenance and installation be performed from the exterior as feasible. He noted AT&T was a public utility with 40,000 customers in the City and the proposed project would benefit them.

Public hearing closed at 9:58 p.m.

Council Member Schmid asked for clarification that the Applicant was AT&T and that the Applicant was cooperating with the owner of the property.

Mr. Williams stated that was correct; there was a direct relationship between the landlord and the company.

Council Member Schmid asked for clarification regarding a 1954 law which regulated the privacy of a tenant's property indicated by the special relationship between a landlord and their tenant. He asked how that information applied to the current situation.

Mr. Larkin stated that was correct. Landlord tenant issues needed to be resolved between the two parties and the City had no involvement.

Council Member Schmid stated the Council was being asked to make a decision not knowing the tenant/landlord outcome.

Mr. Larkin stated if the tenant and landlord were unable to work out access then the project would not be able to move forward. He noted the City was not a party to that contractual agreement.

Council Member Schmid asked for clarification with respect to the 2005 Director's decision regarding placing an antenna on the roof, was this project a subsidiary contract to that decision.

Mr. Williams stated the 2005 application was for a macro-cell facility based on the roof for the phone service. He clarified he was unaware of the notification requirement in 2005. He stated with the current application, the notification was sent to neighbors once the application was submitted. He noted the initial list for notification was based on the County records and the secondary notification sent included the City's utility records.

Council Member Schmid stated the timing for notification had been met by the City Staff.

Mr. Williams stated that was correct.

Council Member Klein stated tenants were required by written lease or common law to quiet enjoyment of their premises. He asked how the Applicant intended to circumvent the quiet enjoyment if they had to enter the premises of a tenant without their permission.

Mr. Albritton stated the quiet enjoyment clause was common in all commercial leases, although that did not mean there was not access for



maintenance issues. He stated under the current circumstances, the landlord required access to maintain and update the balcony area.

Council Member Klein clarified the Applicant would not be maintaining or updating the balcony.

Mr. Albritton stated the Applicant would be maintaining an area of which the landlord had leased to them which was a shared combined area.

Council Member Klein summarized the landlord had the right to grant access to the balcony to install items that may be of no benefit to the tenant nevertheless profitable to the landlord.

Mr. Albritton stated there could be notice provided to tenants, a specified time set aside where access could be granted without disruption to the tenants.

Council Member Klein suggested altering the language of bullet 5 in Section 6 of the draft ROLUA to: the Applicant shall make the initial installation of the antennas without requiring access through the apartments.

Mr. Albritton stated he had been advised by the Applicant that they would be willing to adjust said language. He felt it would be wise to leave the discretionary language in Section 5 pertaining to the Planning Director with respect to the safety of the historic building.

Council Member Klein asked the comfort level of the following language: the Applicant shall make the initial installation of the antennas without requiring access through the apartments, unless the City of Palo Alto Planning Director finds on the basis of substantial evidence that it would be in the public interest to do otherwise.

Mr. Albritton stated yes, that would be acceptable language.

Council Member Scharff asked whether the cherry picker machinery would block University Avenue access.

Mr. Albritton stated yes, his understanding was it could block access temporarily.

Council Member Scharff asked how long temporarily was.

Mr. Albritton stated his understanding was the installation could be completed in a single day.

Mr. Williams stated Staff had reviewed the possible incident and it had been determined there would need to be "No Parking" signage posted along the frontage and the equipment would possibly block off a full single lane with directional cones in place.

Council Member Scharff asked if there would be two lanes of traffic flow on University Avenue.

Mr. Williams stated that was correct.

Council Member Scharff asked if the Applicant was to go through a tenants unit to install or provide maintenance for the antennas, how long would there be interruption in their premises.

Mr. Albritton stated the installation portion may be several hours for installation and there was one on either side of the balcony.

Council Member Scharff asked if the Applicant needed to enter through a tenants unit there would only be a need for two units, was that correct.

Mr. Albritton stated the balcony was open through the length of the building although there were only two units which opened to the balcony with window views to the other units.

Council Member Scharff asked whether Item Number 4 in the Conditions of Approval had been met.

Mr. Williams stated yes, Item Number 4 had been satisfied.

Council Member Scharff asked whether the condition should be removed since it had been satisfied.

Mr. Williams stated it was preferred to retain the items as recognition of what had been required of an Applicant.

Council Member Scharff stated in addressing the Civil Code of 1953 and 1954, the standard practice was the owner could enter the apartment given 24 hour notice to the tenant. He asked how many times per year would the unit need maintenance.

Mr. Albritton clarified the installation response from earlier; the installation would take between two to four units per antenna and from 4 hours to 8 hours. He stated in terms of maintenance, the units being installed were recommended at a maximum of 3 times per year to a minimum of once every two to three years.

**MOTION:** Council Member Scharff moved, seconded by Council Member Shepherd to: 1) uphold the Director of Planning and Community Environment's decision, with the additional approval conditions suggested by the Planning & Transportation Commission, and 2) approve the Conditional Use Permit 10PLN-00285, amending the existing use permit based upon the Findings and Conditions of Approval in the Record of Land Use Action.

Council Member Scharff stated clearly the Applicant had made good faith attempts to cooperate with the City and good Wi-Fi was necessary. He felt there was a balanced interest received with this project.

Council Member Shepherd stated it was a benefit for Palo Alto to become known as not having dead cellular zones and it clear cellular lines were critical for its economic development and emergency preparation.

Council Member Holman stated there were two antennas and she asked the number of units per antenna.

Mr. Albritton stated there would be a footlocker sized radio unit on the roof and two antenna boxes on either side of the balcony.

Council Member Holman asked who was financially responsible for the cherry picker equipment and the street blocking during its use.

Mr. Williams stated the street blockage was done through a street work permit issued through the Public Works Department to the Applicant and all fees pertaining to the street closure were included in the permit.

Council Member Holman asked the number of businesses that would possibly be disrupted during each of the three shut down times for maintenance.

Mr. Williams stated at the present time he was uncertain as to the level of disruption that would be occurring during those situations. The sidewalks and business frontages would be available although there would be no parking.

Council Member Holman stated she understood the radio frequency emissions met or were under the FCC regulations; however, she asked about the affects of the emissions as they accumulate.

Bill Hemet, professional engineer in the State of California, stated yes, the accumulative emissions remained under the FCC regulations.

Council Member Holman stated she was uncomfortable that there had not been a peer review due to the values shown by the Applicant to be adequate according to the FCC) limits. She stated there had been information

presented to Council with respect to the values exceeding those limits. She stated without Staff opinion or a peer review to follow-up with she was uncertain which one was accurate.

Mr. Williams stated a peer review would be one of the topics to discuss at the workshop with Council. He stated Staff had seen a significant number of reports with respect to antennas of similar size and were comfortable enough with this particular project given the large margin of difference in terms of the FCC standard.

Council Member Holman asked why the Applicant felt the alternative location at 525 University Avenue was aesthetically inferior. She stated the location in question had multiple other cellular facilities in place and asked why this project would be different.

Mr. Williams stated he was uncertain as to where the antennas for those facilities were located. He stated the other facilities may be located on the roof of the structure which placed them out of the line of sight where these antennas would be located on the façade of the structure creating a visible blight.

Ms. French stated 525 University Avenue was a 13 story high structure and the current antennas were visible on the edge of the roof if you were to look directly up.

Council Member Holman stated the Applicant had made reference to the reasons why 428 University Avenue was not used; sighting 1) it was a 4-story commercial building where Wi-Fi nodes would need to be mounted on a 5 foot tall rooftop tri-pods rising above the parapet, 2) there was not likely a fiber optic connection that would be sufficient to the AT&T data network. She asked how to find out whether or not there was adequate fiber optic connection and whose fiber optic would it be.

Mr. Williams stated Staff could determine whose fiber optic would be at the location and whether or not it was an adequate connection for the project. He stated the concern was more of a visibility issue with this particular site.

Council Member Holman stated the building at 432 University Avenue was approximately 45-feet tall. She stated she was uncertain of the height of the parapet although if the tri-pod was only 5-feet high she could not imagine the tri-pod being visible.

Mr. Albritton stated the parapet on 432 University Avenue was 4-feet high.

Council Member Holman stated it was a 5-foot tri-pod hidden behind a 4-foot parapet on a 45-foot tall structure, she asked how visible could it be.

Mr. Albritton stated 535 University Avenue was a 15-story building and the antenna power range was 800 feet. At that height they would not reach the street level. The Applicant comments in the alternatives report stated there would need to be a full macro site built in order to provide off-loads capacity, which housed 12 4-foot antennas, they would be very visible opposed to the proposed façade antennas. He noted 428 and 432 University Avenue sites had stone façades which indicated there would need to be tri-pods in line of sight with the street making them visible. The City code required the antennas be architecturally incorporated into the building. He clarified at the proposed site there was adequate fiber optic connection since the building housed a cell site on the roof.

Council Member Holman stated if the tenants were in possession of lease agreements which allowed this type of access; the Council would not be having this discussion.

Mr. Larkin stated he had not reviewed the tenant lease agreements and was not comfortable making comment with respect to the availability of balcony access. In a general sense, there were a number of legal reasons which granted a landlord access to a tenant's space.

Council Member Price suggested a modification to the condition recommended by the P&TC to explicitly state; the residents would be notified in advance of the date and timing of both the installation and ongoing maintenance as appropriate.

Mr. Albritton stated AT&T would do everything possible to avoid disruption to the tenants; thereby ensuring there would be adequate notice given them of upcoming necessary work.

Mr. Williams stated there was no standard process language for that type of condition; although, with the direction from Council the language could be added. He noted there was not an enforcement mechanism in place to ensure the condition was being followed.

Council Member Price suggested an Amendment to the Motion to add the language that residents, directly affected, would be notified at least 3 days in advance of the date and timing of the installation and maintenance of the equipment as needed.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to add to Section 6 under the Conditions of Approval, Paragraph 5 that residents, directly affected, will be notified at

least 3 days in advance of the date and timing of the installation and maintenance of the equipment as needed.

Council Member Shepherd stated from the landlord perspective, if the leases rolled, the language needed to be included in the new agreements so it was clear to the incoming tenant.

Council Member Klein proposed an Amendment to the Motion with respect to the language that the Applicant shall make the initial installation of the antennas without requiring access to the resident apartments unless the Director of Planning & Community Environment finds for reasons of public health and safety that such access that is otherwise legally permissible was necessary.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to add to Section 6 under the Conditions of Approval, Paragraph 5 that the applicant shall make the initial installation of the antennas without requiring access to the resident apartments unless the Director of Planning & Community Environment finds for reasons of public health and safety that such access that is otherwise legally permissible is necessary.

Council Member Shepherd asked if the Applicant should compensate the tenant for access to their premises.

Council Member Klein stated if the Applicant has permission from tenants to enter their premises, there should be no desire for objection.

Council Member Shepherd asked whether the language was clearly identified to that fact.

Council Member Klein stated if the Applicant had the agreement of the tenant, and there were only a few number of tenants affected, how would the matter be brought to the attention of the Director of Planning.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** that the Applicant receive written permission from the affected tenant(s) for the installation or maintenance of their equipment.

Council Member Klein stated there was a lot of discussion on alternative sites, he felt it was inappropriate for Council to locate alternate locations for projects. Council was to determine whether the site in question was appropriate. He stated safety issues were discussed with respect to the radiation emission, that was an FCC requirement not that of Council.

Vice Mayor Yeh stated the Municipal Code mentioned collocation; although, without descriptive determination of implementation of the collocation criteria. He had concern with a singular location becoming inundated with the same type of facilities from multiple vendors. He stated the City should have access to all relevant data with respect to the emissions including what the emission standards were and what they would be with the additive effect. He encouraged a moratorium on applications of this type of system until the City was clear on its strategy.

Council Member Burt stated initially there were concerns regarding the practical aspects surrounding installation, access, aesthetics, and safety which have now been met. Although the Applicant did not do their due diligence with respect to the attention to the tenants; the City's noticing process did not seem to recognize the tenants individually opposed to the landlord. The City was now essentially caught in a situation of permitting access which would have been, without the current corrections, to the detriment of the tenants. He felt, in the future, when possible to utilize commercial buildings rather than residential was more suitable.

Mayor Espinosa asked if Council did not approve moving forward at this time; what steps could be taken by either the Council or the Applicant.

Mr. Larkin stated ultimately it was at the discretion of the Applicant on whether they chose to move forward to receive an order by the courts to proceed with the project.

Mayor Espinosa stated concern for the process and the future list of anticipated applications being received throughout the City for antenna placement. He stated as a City there needed to be determinations made as to the location of cellular towers, the types of contracts they felt would be appropriate, the type of facilities the City may want to build, were there profit models which could be reviewed, and competing interests. He extended his appreciation to the P&TC for their independent steps taken to ensure the FCC guidelines were being adhered to and were met.

Council Member Schmid stated the concern he had heard most was with respect to the health and safety issues. He noted all of the research or data was based on information more than 25 years old; before most of the present technology existed. He supported a discussion to determine the direction of the City be completed prior to another application being received.

Council Member Holman asked the significance of the three year term for monitoring and maintenance. She stated as equipment aged it needed more attention then when it was newer. She stated there was no Condition for Removal of the equipment if the use was abandoned.

Mr. Williams stated the three year term was a timeframe for the City for ease of monitoring and receiving reports. He noted as long as the reports for the first three years continued to remain the same without change in the emission levels Staff felt the terms were sufficient to assume the equipment was under the allowable limits. He stated there was a section in the Municipal Code regarding removal of equipment; although Staff did not include the section in the conditions of this project.

Council Member Holman stated she was not supportive of the project at the proposed location for the reasons of not being satisfied the alternate sights were unacceptable.

**MOTION PASSED:** 8-1 Holman no

Council Member Klein left the meeting at 11:12 p.m.

City Manager, James Keene stated Staff anticipated returning to Council during the month of May for a Study Session regarding the larger issues brought to the attention of Council during this meeting. He expressed his acknowledgment of the importance for this project.

Council Member Shepherd stated having access to cellular service throughout the City was crucial to the Economic Development Plan. She stated she wanted to understand how to fold this into the possibility of City-wide wireless.

Council Member Price asked Staff whether it would be possible for them to return to Council with recommendations regarding flexibility or slippage with respect to the project, acknowledging Staff capacity.

Mr. Keene stated yes, Staff had the capacity to return to Council with recommendations. He stated after the first Study Session there would be questions answered although he noted there may be different questions brought about. He noted when Staff returned to Council it would not be with an explanation for all questions although with the ability to support a deeper conversation. He requested Agenda Item Number 5a (previous Item Number 4) move in front of Item Number 6 due to Staffing availability.

Mayor Espinosa stated Council would be hearing Agenda Item No. 5a next.

5a. (former No. 4) Adoption of Two Resolutions (1) Adopting a Compensation Plan for Management and Professional Personnel and Council Appointees and Rescinding Resolution Nos., XXXX, XXXX, and XXXX and (2) Amending Section 1701 of the Merit System Rules and



Regulations to Incorporate the 20XX-20XX Compensation Plan for Management and Professional Personnel and Council Appointees.

Council Member Scharff stated the reasons for which he pulled the Item from Consent were concerns regarding professional development which covered such things as; gym membership and computer purchases. He stated he was uncertain as to how either of those topics would enhance a Staff member's professional development. He understood the current agreement was not going to be in place much longer; although he felt clarifying the issues prior to the next agreement would be beneficial.

**MOTION:** Council Member Scharff moved, seconded by Vice Mayor Yeh to: 1) adopt Resolution 9156 amending the Compensation Plan for Management and Professional Personnel and Council Appointees and rescinding Resolution Nos., 9001, 9047, and 9072; and (2) adopt Resolution 9157 amending Section 1701 of the Merit System Rules and Regulations to incorporate the 2010-2011 Compensation Plan for Management and Professional Personnel and Council Appointees.

Vice Mayor Yeh stated hopefully the timeframe would be sufficient to revise and revisit the language.

Council Member Schmid asked why the Variable Management Compensation (VMC) was listed as being removed in 2008, 2009, and 2010 yet it was still on the list. He asked why it was on the list. He mentioned the two sentences in the medical cost sharing portion were contradictory to one another and asked which one was correct. He had questions on the packet for provisional employment; he stated there was no reference in Attachment A or B.

Council Member Price stated the agreement before Council was a result of the discussion amongst the Management Professional Group which had been reviewed by the City Manager and Council. She noted there appeared to be internal inconsistencies which needed clarification throughout the document. She stated she would be supporting the document and hoped in the future there would be fewer inconsistencies.

Council Member Holman asked when the Compensation Plan for Management and Professional Personnel and Council Appointees would be returning to Council for the next year.

City Manager, James Keene stated the normal process would be near the end of the first quarter of the new fiscal year.

Council Member Holman stated she had questions regarding the increase in the Retiree Health Plan and she had concerns with the ongoing issues surrounding severance practices, sick leave payouts and vacation payouts.

She stated the Resolution on page 13; section 1 referred to Exhibit A, she noted there was no Exhibit A to review.

Mr. Larkin stated Exhibit A was the Compensation Plan which started on page 15.

Council Member Holman stated on page 10, bullet 5 referred to a Program for Provisional Employment when funding was available; there was no clear explanation as to what the intention of that program was.

Mr. Keene stated there was a more specific description in the Compensation Plan. He stated the Policy & Services Committee may be having a more in-depth conversation with respect to the flexibility of a changing environment of what were considered Management Specialists.

Council Member Holman noted her surprise in seeing the information in the Council packet knowing there had not yet been a discussion with the Policy & Services Committee.

Mr. Keene stated the Council received a generic concept of the request whereas the Policy & Services Committee will have a detailed version for discussion.

Council Member Holman stated with the proviso the item would be returned to Council by September for next years' contract, she would support the Motion.

Herb Borock recommended deleting the provisional employment language.

Mayor Espinosa stated he would follow-up with the City Manager to ensure the requested changes from Council were incorporated into the document and was returned to Council in a timely manner.

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

6. City Clerk's Report Certifying Sufficiency of the City of Palo Alto Green Energy and Compost Initiative.

City Clerk, Donna Grider stated a petition was presented to the City Clerk's Office on the Green Energy and Composting Initiative; the requirements of the City's Charter were met where the proponents did receive valid signatures equaling 12 percent of the last General Municipal Election. She noted within the City's Charter it was clear; if there was language in the petition requesting an election within the year it would be moved forward or the Council would pass the Ordinance: since the petition dealt with parkland the second option was removed from the table due to parkland items being

mandated to a vote of the people. She respectfully requested Council direct Staff to return on August 1, 2011 with a Resolution calling the election for November 2011.

Council Member Scharff asked why the item could not be on the Consent Calendar.

Ms. Grider stated there had been discussion between the City Clerk's Department and the City Attorney's office whether the item should be on Action or Consent, and there was anticipation of questions which determined the placement of the item.

Acting City Attorney, Don Larkin clarified there had been a question from Council which caused Staff to anticipate the item being pulled; therefore, the item was placed under Action in anticipation of further questions.

**MOTION:** Council Member Scharff moved, seconded by Council Member Price to direct Staff to return on August 1, 2011 with a Resolution calling a Special Election for November 8, 2011 on the Initiative Measure.

Vice Mayor Yeh asked whether the authors of the initiative would be granted the option to change the selected election date.

Mr. Larkin stated the election date was in the initiative petition. He clarified the distinction on a Charter Amendment was the City had the discretion to place the Charter Amendment on the next General Municipal Election.

Mr. Yeh asked for clarification that the only way the date would change was if the initiative was re-circulated.

Mr. Larkin stated that was correct, if the initiative was re-circulated with a counter proposal that could change the election date.

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

#### COUNCIL MEMBER QUESTIONS, COMMENTS, AND ANNOUNCEMENTS

Council Member Shepherd spoke regarding the upcoming City Council Rail Committee meeting on April 13, 2011 where the discussion will be centered around the electrification of Caltrain.

Council Member Burt reported that he was a presenter and panelist on two climate change events in Brussels this past week. He also stated that there will be an eight member delegation of European Union Parliament from the Energy and Technology Committee visiting San Francisco and Palo Alto on

April 18-19, 2011. He reported that this trip to Brussels was at his expense and not the City of Palo Alto.

Council Member Price reported on the Tall Tree Awards and wanted to acknowledge the winners. The Youth Community Services held a family day which included activities for families. She also stated that the Citizen Core Council of Palo Alto and Stanford will be hosting an Emergency Preparedness Fair on Sunday, May 1, 2011 at Stanford Shopping Center.

Council Member Holman asked that Staff send out the information on the upcoming City Council Rail Committee meeting on April 13, 2011.

Council Member Scharff reported about attending the Tall Tree Awards, and the Association of Bay Area Governments (ABAG) meeting regarding housing allocations.

Mayor Espinosa reported that April is Earth Month and there are numerous events planned for the month, they are listed on the City's website. There is also the potential of a Congressional Hearing being held in Palo Alto on April 18-19, 2011

ADJOURNMENT: The meeting was adjourned at 11:59 p.m.