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July 07, 2008

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ADJOURNMENT: The meeting adjourned at 12:00 A.M.....293

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

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

Absent: Morton

CLOSED SESSION

1. Public Employment
Title: City Auditor
Authority: Government Code section 54957(b)

- 1A. Public Employment
Title: City Manager
Authority: Government Code section 54957(b)

Council reconvened from Closed Session at 7:08 p.m.

Mayor Klein advised no reportable action taken

STUDY SESSION

2. Mayor's Advisory Group Presentation on Citywide Broadband Project.

Bern Beecham, a member of the Mayor's Broadband Committee, explained to Council the purpose of the Fiber Optics Utility Enterprise, including current limitations and the City's objective for the past decade. He discussed the Request for Proposal RFP issued in September 2006. Additional discussion was focused on the proposal of the Consortium including funding, building, owning and operating an open access, wholesale fiber network throughout residential and commercial areas of Palo Alto. He went on to explain that the Consortium members included PacketFront, 180Connect, and Axia. The City's obligation included providing the Consortium 36 fibers of the City's 144-288 fiber loop, turn over management of, support of, and revenue from existing dark fiber customers, and seek competitive bids from network service providers where applicable for city needs. He explained why the proposal could potentially work and that previous proposals for Fiber to the Home (FTTH) have had too many risks for the City. He went on to state that several of the risks for the City now included; absence of retail service providers, litigation from others, risk if no project. The Consortium believes that the proposal is reasonable and realistic and they concur with Staff that there should be no General Fund contribution nor liability.

SPECIAL ORDERS OF THE DAY

3. Resolution 8843 stating "Resolution of the Council of the City of Palo Alto Expressing Appreciation to Richard James Upon His Retirement".

Council Member Burt read the Resolution and Mayor Klein presented it to Richard James.

MOTION: Council Member Burt moved, seconded by Council Member Barton to approve the Resolution expressing appreciation to Richard James upon his retirement.

MOTION PASSED: 8-0 Morton absent

4. Selection of Candidates to be Interviewed for the Utilities Advisory Commission.
5. Selection of Candidates to be Interviewed for the Planning & Transportation Commission.

MOTION: Council Member Barton moved, seconded by Council Member Burt to interview all candidates for the Utilities Advisory Commission and the Planning and Transportation Commission.

MOTION PASSED: 8-0 Morton absent

ORAL COMMUNICATIONS

Bob Evans, 2635 Park Blvd., spoke regarding the broadband study session.

Arthur Keller, 3881 Corina Way, spoke regarding the broadband study session.

Robert Moss, 4010 Orme St., spoke regarding the broadband study session.

Robert Smith, 2291 Greer Road, spoke regarding the broadband study session.

Lucy Erman spoke regarding the Palo Alto Children's Theatre.

Mary Carlstead, 147 Walter Hayes, spoke regarding Pat Briggs & Richard Curtis.

Alpha Crews, 2221 Louis Road, spoke regarding Children's Theatre.

Sally Nordlund, 764 Garland Drive, spoke regarding Palo Alto Children's Theatre.

Bonnie Bernstein, 2114 Bellview Drive, spoke regarding choices the city had made with the Children's Theatre.

Ellen Freiberg, 842 Clara Drive, spoke regarding the Children's Theatre.

Carolyn Munson, 4620 Blue Ridge Drive, San Jose, spoke regarding the Children's Theatre.

Stephanie Munoz, 101 Alma, #701, spoke regarding the city employees of the Children's Theatre.

Diane Savage, 1165 San Mateo Drive, Menlo Park, spoke regarding the Children's Theatre.

Brandon Savage, 1472 Magnolia Avenue, San Carlos, spoke regarding the Children's Theatre.

Andy Hayes, Cupertino, spoke regarding the Children's Theatre.

Jeremy Erman, Cowper Street, spoke regarding Pat Briggs and Richard Curtis.

Kathlee Walkup, 233 Marmona Drive, Menlo Park, spoke regarding the Children's Theatre.

Nancy Ferguson, 721 Forest Avenue, spoke regarding the Children's Theatre.

Leif Erickson, 4075 Laguna Way, spoke regarding Pat Briggs.

Carl Gillespie, Jr., 4142 Amaranta Court, spoke regarding the Children's Theatre.

Suzan Stewart, 1550 Middlefield, spoke regarding Pat Briggs' termination.

Trudi Reinhardt, 3440 Kenneth, spoke regarding the Children's Theatre.

Ernest Kinsolving, 402 Roosevelt Avenue, Redwood City, spoke regarding the Palo Alto Children's Theatre.

Jay Moon spoke regarding Pat Briggs.

Heather Vickery, 727 Colorado Avenue, spoke regarding the Children's Theatre.

Sanford Forte, 280 College Avenue, spoke regarding Fiber to the Home.

Marie Huang, spoke regarding the Children's Theatre.

Kent Vickery, 727 Colorado, spoke regarding the Children's Theatre.

Council took a break at 9:03 p.m., and returned at 9:08 p.m.

APPROVAL OF MINUTES

MOTION: Council Member Barton moved, seconded by Council Member Yeh to approve the minutes of May 19 and June 02, 2008.

MOTION PASSED: 8-0 Morton absent

CONSENT CALENDAR

Council Member Barton advised that he would not be participating in Agenda Item Number 8 per Government Code Section 1090 due to being on faculty at Stanford University.

Mayor Klein advised that he would not be participating in Agenda Item Number 8 per Government Code Section 1090 due to his wife being on faculty at Stanford University.

MOTION: Council Member Kishimoto moved, seconded by Council Member Barton to pull Consent Calendar Item No. 9 to become Agenda Item No. 11A.

MOTION: Council Member Burt moved, seconded by Council Member Schmid to pull Consent Calendar Item No. 10 to become Agenda Item No. 11B.

MOTION: Vice Mayor Drekmeier moved, seconded by Council Member Espinosa to approve Consent Calendar Item Nos. 6-8, 11.

6. Adoption of Resolution 8844: (1) Resolution of the Council of the City of Palo Alto Adopting a Compensation Plan for Management and Professional Personnel and Council Appointees and Rescinding Resolution Nos. 8748, 8799, 8821, 8832, and Resolution 8845 (2) Resolution of the Council of the City of Palo Alto Amending Section

1701 of the Merit System Rules and Regulations to Incorporate the 2008-2009 Compensation Plan for Management and Professional Personnel and Council Appointees.

7. Approval of Master Agreement for Installation of Underground Facilities with Pacific Bell Telephone Company dba AT&T California and Comcast of California IX, Inc.
8. Annual Public Review and Approval of Compliance of Development Agreement with Stanford University for the Sand Hill Corridor Projects.
- ~~9. Approval of an Area Median Income-Based Resale Price Formula for the Below Market Rate Ownership Program.~~
- ~~10. Adoption of an **Ordinance Amending Chapter 9.79 (Newsracks) of Title 9 (Public Peace, Morals and Safety) of the Palo Alto Municipal Code to Create a Special Newsrack Area in the California Avenue Commercial Area** and Approval of Newsrack Regulations for California Avenue Special Newsrack Area.~~
11. Ordinance 5011 stating "Ordinance of the Council of the City of Palo Alto Amending the Zoning Map of the City of Palo Alto to Change the Zone Designation for Approximately 0.45 Acres, Located at 2995 Middlefield Road, from Planned Community (PC 3779) to Neighborhood Commercial (CN) Zone District with a Retail Shopping (R) Combining District".

MOTION PASSED for Item Nos. 6, 7, 11: 8-0 Morton absent

MOTION PASSED For Item No. 8: 6-0 Barton, Klein not participating, Morton absent

- 11a. (former No.9) Approval of an Area Median Income-Based Resale Price Formula for the Below Market Rate Ownership Program.

Council Member Kishimoto asked staff to comment on the depreciation process of the Below Market Rate (BMR) units.

Interim Director of Planning and Community Environment Curtis Williams stated the formula brought the sale points closer to that of a new unit; however the intent was to maintain a moderate income level of the units.

Council Member Kishimoto asked staff to provide a cost plan for updating an older unit in preparation for sale.

Mr. Williams stated the highest cost spent had been fifty thousand dollars although the average cost was much lower.

Council Member Kishimoto asked whether the retroactivity applied only to the new units.

Mr. Williams stated yes.

Council Member Kishimoto asked whether staff had concerns of units not selling.

Mr. Williams stated there was not a large concern although there was always a potential.

MOTION: Council Member Kishimoto moved, seconded by Vice Mayor Drekmeier to refer this item to the Policy and Services Committee for review.

Council Member Schmid stated Council was looking for an alternative pricing scheme between the CPI program and the median income. The use of median income was based on ABAG's guidelines and target goals in the BMR housing criteria. The original direction from Council was to substitute Area Median Income (AMI) for CPI.

Council Member Yeh asked the number of potential units in within the year and the terms of unit turnover.

Manager of Planning and Community Environment Cathy Siegel stated there were on average 6 to 10 resale units per year and new construction determined the number of units coming.

Council Member Kishimoto stated the agreed formula for the selling price of the units was eighty percent of the AMI including depreciation.

MOTION PASSED: 5-3 Espinosa, Klein, Schmid no, Morton absent

11b. (former No. 10) Adoption of an Ordinance Amending Chapter 9.79 (Newsracks) of Title 9 (Public Peace, Morals and Safety) of the Palo Alto Municipal Code to Create a Special Newsrack Area in the California Avenue Commercial Area and Approval of Newsrack Regulations for California Avenue Special Newsrack Area.

MOTION: Mayor Klein moved, seconded by Council Member Barton to move Agenda Item No. 11b (former No. 10) to the July 14, 2008 Council agenda.

MOTION PASSED: 8-0 Morton absent

REPORTS OF OFFICIALS

12. Review of Polling Results for Library/Community Center Bond Measure and Direction to Staff on a November 2008 Bond Measure.

Interim Deputy City Manager Kelly Morariu stated the polling results were sent to Council earlier in the day.

David Metz, representative of Fairbank, Maslin, Maullin & Associates overviewed the methodology of the polling process and presented the findings.

Mayor Klein stated the numbers represented during the findings were not accurate.

Mr. Metz stated each election resulted differently and he acknowledged the numbers presented were possible outcomes.

Vice Mayor Drekmeier asked which libraries currently did not meet earthquake safety standards.

Director of Public Works Glenn Roberts stated all of the libraries met the code standards at the time they were built or retrofitted. He stated none of them met the current code.

Vice Mayor Drekmeier asked whether it would be a fair statement to say the object was to bring the libraries up to the current safety code.

Mr. Roberts stated yes.

Vice Mayor Drekmeier asked whether the polling had increased in favor of the bond from 2007.

Mr. Metz stated yes, however the numbers were still within the margin of error.

Vice Mayor Drekmeier asked whether there had been an adequate education campaign after the completion of the first polling.

Ms. Morariu stated there was always more that could be accomplished, however, the education effort was made on the needs component and the advocacy effort focused on the bond measure.

Council Member Schmid asked whether it was possible to identify voters who may have changed their vote in the polling from last time.

Mr. Metz stated no, the voter files had not been updated as of yet.

Council Member Schmid asked whether the survey had critical information that could be used to gain knowledge in an effort to alter the outcome of the voters opinion.

Mr. Metz stated the data could be analyzed to find what was appealing or concerning about the proposal to the voters.

Council Member Schmid asked whether cross-tabs to evaluate survey research were available and where they could be viewed.

Ms. Morariu stated yes, they were kept in the City Managers' office.

Council Member Burt asked for clarification on the survey numbers.

Mr. Metz stated each set of numbers listed signified both the positive and negative arguments.

Council Member Burt asked if the turnout on the November election could impact the likelihood of success.

Mr. Metz stated the turn-out was likely to be close to a record and a large factor would be based on the young, renters, and lower income voters.

Ms. Morariu stated there had been refinement of costs for custodial, maintenance, utilities, and painting. The basis for the cost per facility was on the incremental square footage increase where the Mitchell Park library would be a larger collection.

Alison Cormack, 3487 Ross Road, read a list of surrounding city's who had newer libraries built since 2000. She shared her encouragement for the probability of reaching the two-thirds votes necessary to further the library bond.

Pat Markevitch, Chairperson of the Parks and Recreation Commission (PARC), 231 Emerson, stated the PARC supported the measure and urged Council to move forward.

Susie Thom, 753 Maplewood Place, stated the library vision the city was working towards was to be the future for the community. She stated the work being done now would be a gift left for the next thirty or more years.

Valerie Stinger, Chairperson of the Library Advisory Commission (LAC), 721 Christine Drive, stated the LAC was prepared to examine the polling results, the findings in general and any specific question Council may have then return with a response for Councils' future deliberation.

Arthur Keller, 3881 Corina Way, stated as the level of assessed value went up the property tax amount lowered over time.

Sanford Forte, 280 College Avenue, stated the focus had been on cost rather than the rate of benefit return to citizens and businesses.

Vice Mayor Drekmeier requested staff to confer with other cities where similar restructuring had occurred with the use of natural resources.

Mr. Roberts stated staff would pursue further detail as the project entered into the design phase.

Vice Mayor Drekmeier asked whether the language in the bond could be flexible.

City Attorney Gary Baum stated he would confirm with the Bond Counsel and suggested the Motion reflect the language probability.

Vice Mayor Drekmeier supported the Measure and moving forward with the LEED Gold standard.

Council Member Espinosa stated his encouragement for the upcoming library advocacy campaign.

MOTION: Council Member Espinosa moved, seconded by Council Member Barton that; 1) the Council move forward with November 2008 bond measure, to include verbiage that the bonds are issued up to a total of \$75 million in case of a major donation by a private donor, and 2) Staff to pursue LEED Gold building standards for the new Mitchell Park Library/Community Center, and 3) Staff to include design costs spent to date (\$1.5 million) on the library/community center projects in the bond measure.

Council Member Barton stated the data received was positive and encouraging.

Council Member Schmid stated he was encouraged by the strength of the community willing to move forward with the bond.

AMENDMENT: Council Member Schmid moved, seconded by XXXX to delete Item Nos. 2 and 3 from the Motion.

Amendment failed for lack of second.

Mayor Klein stated his support for the Motion, moving forward with the LEED Gold standard.

AMENDMENT: Mayor Klein moved, seconded by Council Member Burt to delete Item No. 3 from the Motion.

City Manager Frank Benest stated the Council had previously authorized staff to incorporate the design costs into the bond election.

Mayor Klein stated his concern was the design costs had not been included throughout the process and therefore to include them at the end would take funding away from the project.

Council Member Burt stated incorporating the LEED Gold standard was fiscally prudent.

Council Member Kishimoto asked whether the increase in the utility cost was due to the increase in square footage.

Ms. Morariu stated yes, as the design and LEED Gold elements were refined, the cost estimates may change, however at present staff had presented the most accurate estimate.

Council Member Kishimoto asked whether the estimated five full-time employees (FTE) mentioned in the report was larger than the original estimate.

Director of Libraries Diane Jennings stated the number of FTE's required depended on which conceptual model was adopted. The consultant recommended three FTE for the two-story library, one for the community center and one facility mechanic.

Council Member Kishimoto supported the Amendment.

Council Member Yeh supported the Amendment.

Council Member Espinosa supported the Motion, did not support the Amendment.

AMENDMENT PASSED: 7-1 Espinosa no, Morton absent

MOTION AS AMENDED PASSED: 8-0 Morton absent

COUNCIL MATTERS

13. Acceptance of Transmittal of Police Auditor Semi-Annual Report.

MOTION: Council Member Barton moved, seconded by Council Member Kishimoto to accept the semi-annual report of the Police Auditor.

MOTION PASSED: 8-0 Morton absent

14. Approval of Scope of Services and Agreement for Not to Exceed \$50,000 for a One Year Term with Police Auditor (OIR Group) to Investigate Children's Theatre Police Investigation.

Vice Mayor Drekmeier stated his concern for the cost of the investigation, he asked whether the detail being requested was the cause for the cost.

Michael Gennaco stated yes, a more simplified report would be more cost effective.

Council Member Kishimoto asked for comments regarding the scope of the questions being asked.

Mr. Gennaco stated without review of the questions he could not explain whether they could be combined.

Council Member Kishimoto asked whether it seemed reasonable to lower the proposed dollar amount and return with a request for more funding if it was necessary.

Mr. Gennaco suggested maintaining the original cost with returning to Council halfway for a revisit of the investigation and funding status.

Council Member Burt asked if the questions were presented in a more focused manner could the cost estimate be refined to a not to exceed proposal.

Mr. Gennaco stated yes.

Susan Phillips-Moskowitz stated the investigation was unnecessarily prolonged and the employees needed to be reinstated.

Robert Smith, Greer Road, requested the investigation be performed accurately at any cost and available for public viewing.

Jeremy Orman stated the Yore Report was compelling and conflicting.

Bernard Cohen urged the Council to pursue the Police Audit.

Rick Saul suggested Council request the audit pay special attention to Mr. Parsons letter.

Justine Franklin stated the importance of the investigation was to reinstate trust between the community and the justice system of the city.

Bob Moss stated no matter how thorough the audit in question was, there would be concern from some.

Herb Borock stated if an audit of the police investigation was required, Council should request it through the Department of Justice in Sacramento and not the same Police Auditor who was investigating the police department.

Jonathon Erman stated the Police Auditor should be seen as a positive step opposed to another attack.

Mary Carlstead stated the cost was insignificant compared to the lives and reputations being held in limbo.

Susan Adams stated the cost of the investigation should not be a discussion while the lives of people had been hanging in the balance for several months.

MOTION: Council Member Burt moved, seconded by Mayor Klein for the Mayor to appoint a 3 member Ad Hoc Sub-committee to; 1) refine scope of services, 2) negotiate the terms of the agreement with the Police Auditor, and 3) to return to Council with recommendations on how to proceed.

Mayor Klein stated the questions needed to be refined and combined to a reasonable number.

Council Member Espinosa supported the Motion.

City Attorney Gary Baum stated the Council could give authority to the Committee to move forward therefore bypassing a return visit to the Council.

Council Member Schmid stated the Police Auditor's role appeared to be reviewing the same information reviewed by the police which seemed redundant and time consuming. He recommended the Police Auditor review the policy and procedures, and report requirements, and oversights.

Council Member Yeh recognized the importance of the ongoing process however; the focus of the Police Auditor should be to uncover how the matter occurred and what could be done to prevent a reoccurrence. He stated he did not support the Motion.

Council Member Espinosa stated understanding the mistakes made was required in order to understand necessary changes to the processes.

Mayor Klein stated the audit of the police action was designed to determine whether the Police Department acted properly. The accounting procedures were a separate issue and were to be reviewed separately.

MOTION PASSED: 7-1 Yeh no, Morton absent

MOTION: Council Member Espinosa moved, seconded by Council Member Barton to have the Ad Hoc Committee have the authority to move forward with the agreement without returning to Council.

Council Member Barton stated due to the importance of the matter, it needed to move forward.

Council Member Schmid stated due to the importance of the matter, the Committee results needed to be returned to Council for review.

MOTION PASSED: 5-3 Yeh, Drekmeier, Schmid no, Morton absent

15. Review and Direction on Proposed Scope of Services for Citywide Cash Handling and Travel Reimbursement Audit and Discuss Possible Referral of the Audit to the City Auditor's Office or to a Qualified Outside Accounting or Audit Consultant.

City Manager Frank Benest stated the Scope of Services included reviewing the Fire Department cash handling procedures; at satellite city facilities identifying the practicality of cashiering stations, reviewing cash drawer accountability, evaluating deposit policy and procedures; reviewing the travel policy enforcement including audit travel reimbursements, reviewing city expense reimbursement policies and enforcement, reviewing agreements with outside non-profit Friends' groups and evaluating whether appropriate financial controls exist within the agreements.

Council Member Burt asked for clarification on the last sentence in item 7 of the Scope of Services.

Interim Deputy City Manager Kelly Morariu stated the section was in references to the friends groups. If there were funds exchanged; how were the procedures or invoices being handled.

Council Member Burt stated for clarification, the section was for remittances between the city and the Friends' groups.

Ms. Morariu stated yes.

Herb Borock, P.O. Box 632, stated the City Charter provided the duty of the City Auditor was to provide the Council with an annual work plan. He suggested waiting until the new City Auditor was hired.

Bob Smith, 2291 Greer Road, stated concern with the monitoring of the Friends' groups. The problems appeared to come from within the city's handling of funds.

Council Member Barton stated the Scope of Services was written so the audit was for the City Manager to run the city. He stated the concept needed to be clear whether the Council was tweaking or taking over the audit.

MOTION: Council Member Schmid moved, seconded by Mayor Klein for the City Council to authorize the City Auditor to study citywide cash handling and travel reimbursements, oversight procedures and City Auditor's history of audits on cash services.

Council Member Schmid stated the goal was to have the City Auditor, who reports to the Council, be the responsible party.

Mayor Klein stated the City Manager was in charge of the day-to-day administration of the city and if he deemed it necessary to secure a consultant to improve the function of the government, he had the authority. The duplication of having the City Manager and the City Auditor review was a checks and balances system.

Council Member Yeh asked if the audit was assigned to the City Auditor's office what the current capacity for the office was.

Senior Auditor Renata Khoshroo stated there were two current audits in process and two beginning. She asked whether the question of assignment would be after the City Auditor was onboard or moving forward at present time.

Council Member Yeh asked whether the City Auditor's office was to oversee an outside firm, would that be less disruptive to current staff projects.

Ms. Khoshroo stated yes, that would be more feasible.

Council Member Burt stated he did not see the need for duplication of expense and effort between the Auditor and Managers' office. He wanted to be assured policies were being followed through appropriate administration.

Mr. Benest stated yes.

Council Member Espinosa asked for clarification on the Motion in reference to the use of the City Auditor's office.

Council Member Schmid stated it had been the responsibility of the City Auditor to review the policies in question. He stated the incoming City Auditor would be given the authority to contract out or maintain the project in-house.

Mayor Klein stated contracting out was an unwarranted expense and expressed that was the reason the city had an Auditor's Department.

Council Member Yeh stated moving forward with an outside Auditor would be a budget neutral event with the current salary savings of not having a City Auditor.

Council Member Burt stated the timeline of hiring an outside audit firm with that of hiring the City Auditor was the same.

MOTION PASSED: 8-0 Morton absent

COUNCIL COMMENTS, ANNOUNCEMENTS, AND REPORTS FROM CONFERENCES

None

ADJOURNMENT: The meeting adjourned at 12:00 A.M.

ATTEST:

APPROVED:

City Clerk

Mayor

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