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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, Burt, Drekmeier, Espinosa, Kishimoto, Klein, Morton, Schmid, Yeh arrived at 6:10 p.m.

Absent:

### CLOSED SESSION

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

### **Mayor Klein advised no reportable action**

### ORAL COMMUNICATIONS

Wynn Grcich, 3045 Miraloma, Union City, spoke regarding pipes in Palo Alto AstroTurf Bay Area Water Supply and Conservation Agency (BAWSCA).

John K. Abraham, 736 Ellsworth Place, spoke regarding the Noise Ordinance and police demographics.

Louis Nisbet, 720 Waverley Street, spoke regarding the method of billing for utilities.

Jody Andrews, 2253 Santa Polo, spoke regarding Pat Briggs termination.

Alpha Crews, 2221 Louis Road, spoke regarding the termination of Pat Briggs and Rich Curtis.

Yolanda Gonzalez, spoke regarding the termination of Pat Briggs and Rich Curtis.

Mark Petersen-Perez, spoke regarding the independent Police Auditor's Report.

Alex Perez, 2454 W. Bayshore, spoke regarding Pat Briggs and Rich Curtis.

Tony Kienitz, 2300 Hanover Street, spoke regarding Pat Briggs and Rich Curtis.

Louise Singleton, 141 Primrose Way, spoke regarding Pat Briggs and Rich Curtis.

Jody Davidson spoke regarding basement dewatering construction.

Kent Vickery, 727 Colorado, spoke regarding Rich Curtis and Pat Briggs.

Aram James spoke regarding use of tasers by the Police Department.

#### SPECIAL ORDERS OF THE DAY

2. Appointment of Four Candidates to the Public Art Commission for Three Year Terms Ending April 30, 2011.

Council Member Morton suggested waiting to vote on the candidates due to an additional vacancy.

**MOTION:** Council Member Morton moved, seconded by Mayor Klein to defer the vote for appointment of the four candidates until after the interviews for the vacancy for the unexpired term currently recruited for.

Council Member Kishimoto supported the Motion and spoke to the qualifications of the applicants as "professional artists" as stated in the Charter.

Council Member Morton stated recent recruitments had been low and felt more time may produce a greater number of applicants.

Council Member Barton supported the Motion since it did not interfere with the Commission meetings.

Interim Deputy City Manager Kelly Morariu stated two Commissioners had volunteered to continue to serve until their positions were filled.

Council Member Burt supported the Motion.

Council Member Kishimoto requested clarification on the notification of qualifications received by the applicants.

City Clerk Donna Grider stated the application packet contained the required information.

Council Member Kishimoto asked for clarification on the delay of the appointments.

Ms. Grider stated due to the unexpected resignation of Paula Kirkeby the suggestion was to allow for the completion of the recruitment and appoint all five positions at the same time.

Council Member Kishimoto asked whether the interviewing would be for Ms. Kirkeby's position only.

Ms. Grider stated yes, the other recruitments had been completed and were in position for appointment.

Council Member Kishimoto expressed concern over the four interviewed applicants. She stated only one met the "professional artist" qualification.

Ms. Grider stated the recruitment process would follow the established guidelines in the Municipal Code.

Council Member Kishimoto suggested recruitment be re-opened for the previous four positions in line with Ms. Kirkeby's.

Ms. Grider stated the process would take a number of weeks to complete and there would be costs associated with the re-advertisement.

Council Member Kishimoto saw no other way since there was only one qualified person out of the four who applied.

Council Member Schmid stated the Charter denoted the position be held by a "professional artists or educator". He asked why it would exclude "art lovers".

City Attorney Gary Baum clarified the information was in the Palo Alto Municipal Code (PAMC) not the City Charter.

Council Member Morton stated the PAMC would be easier to change than the City Charter.

Mr. Baum agreed.

Mayor Klein suggested all applicants be considered for the five open seats at the end of the recruitment in order to choose the most qualified candidates.

Mr. Baum did not see an issue. He asked the City Clerk to validate the process.

Ms. Grider stated the Council proceeded similarly in previous recruitments. She noted when there were non-qualified candidates, the recruitment was re-opened.

Council Member Yeh did not support the Motion.

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

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103-220

3. Appointment of Two Candidates to the Human Relations Commission  
Three Year Terms for Ending March 31, 2011

First Round of Voting for Human Relations Commission

Voting for Claude Ezran: Barton, Burt, Drekmeier, Espinosa,  
Kishimoto, Klein, Morton, Schmid, Yeh

Voting for Daryl Savage: Barton, Burt, Drekmeier, Espinosa,  
Kishimoto, Klein, Morton, Schmid, Yeh

City Clerk Donna Grider announced that Claude Ezran and Daryl Savage (with 9 votes) were appointed on the first ballot to a three-year term ending March 31, 2011.

PUBLIC HEARINGS ON BUDGET ADOPTION

City Manager Frank Benest presented the 2008-09 Operating and Capital Budgets as recommended by the Finance Committee.

Chairman of the Finance Committee, Council Member Morton presented the "cautious budget" for uncertain times. He trusted sales tax to hold, with voters increasing the Transient Occupancy Tax (TOT), maintaining spending levels, funding for healthy infrastructure and CIP program, continuing to fund retiree medical benefits and being one of the few communities in California that now actually funds and recognizes the liability. In increases, he listed the City's policy of trying to cushion the community from radical swings in utility costs, with a rate raise of roughly 8% overall. This was a balanced budget with the subtraction of a small amount of money out of the Council Contingency.

4. Public Hearing: Consider Changes to the 2008-09 Water and Refuse Rates

Deputy City Attorney Amy Bartell stated the 2006 California Supreme Court decision set forth rules for local governments to follow prior to increasing property-related fees including water and refuse. The hearing on water and refuse rates was a majority protest hearing. The proposed changes to the other utility rates (connection and capacity fees) were not subject to Proposition 218. Therefore the property-related fees will be considered after in a separate public hearing.

Mayor Klein opened the Public Hearing at 9:21 p.m. on the water and refuse rates. There were no speakers and closed the Public Hearing at 9:23 p.m. He asked the City Clerk to provide the count for written protests.

City Clerk Donna Grider stated she had received 62 protests on water and 60 protests on refuse.

Mayor Klein stated there were 19,916 water customers subject to the water rate increase, meaning 9,959 protests would need to be received in order to create a majority protest. The total number received was 62, which is not higher than 50 percent. He further stated that there were 19,222 refuse customers subject to the refuse rate increase, meaning that 9,612 protests would need to be received in order to create a majority protest. The total number received was 60, which is not higher than 50 percent. Therefore, the increase could be approved with Agenda Item Number 6.

5. Public Hearing: Consider Changes to the 2008-09 Electric and Gas Rates, the Electric, Water, Gas and Wastewater Connection Fees and the Water and Wastewater Capacity Fees.

Mayor Klein opened the Public Hearing at 9:23 p.m. on the 2008-09 electric and gas rates. There were no speakers and closed the Public Hearing at 9:23 p.m.

Council Member Espinosa asked for clarification on whether the increased funds would flow through the General Fund (GF) for other purposes.

Director of Administrative Services Lalo Perez reported that the GF owned property throughout the city, and if Enterprise Funds were needed to occupy the same property, the City had a policy, approved by Council, on charging rent of those properties.

Mayor Klein noted the increases would be considered with the budget approval in Agenda Item Number 6.

6. Public Hearing: (CMR:269:08) Adoption of the 2008-09 Budget, and **Approval of a Budget Adoption Ordinance, including 1) Exhibit A - The City Manager's 2008-09 Proposed Budget; 2) Exhibit B - All changes detailed in the Amendments to the City Manager's 2008-09 Proposed Budget; 3) Exhibit C – Proposed 2008-09 Municipal Fee Schedule; 4) Exhibit D - Revised Pages to the 2008-09 Table of Organization; 5) Exhibit E - Amendments to the 2008-09 Proposed Municipal Fee Schedule**

Ordinance 5009 entitled "Ordinance of the Council of the City of Palo Alto **Adopting the Budget for the Fiscal Year 2008-09**"

- a. The Finance Committee Recommends that the City Council Adopt Sections of the 2008-09 Budget, Pertaining to the CIP for the

Emergency Water Supply Project and the Ordinance Portions Related Thereto.

- b. The Finance Committee Recommends that the City Council Adopt the 2008-09 Budget, Pertaining to the Police and Fire Department Budgets as Modified and the Portions of the CIP Relating to Stanford and the Ordinance Portions Related Thereto.
- c. The Finance Committee Recommends that the City Council Adopt Sections of the Community Services and Planning and Community Environment Department 2008-09 Budgets as Modified, Pertaining to Nonprofit Entities, Including Community Services Block Grant (CDBG) and Human Services Resource Allocation Process (HSRAP) and the Ordinance Portions Related Thereto.
- d. The Finance Committee Recommends that the City Council Approve One-Time Funding from the 2008-09 City Council Contingency as Follows: \$30,000 for Earth Month; \$15,000 for Community Environmental Action Partnership; \$30,000 for the Palo Alto Airport Expert; and the Ordinance Portions Related Thereto.
- e. The Finance Committee Recommends the City Council Adopt the Remaining Items in the 2008-09 Budget as Modified and the Ordinance Portions and Resolutions Related Thereto.
- f. The Finance Committee Recommends the City Council Adopt the Following Resolutions:
  - (i) Resolution 8826 entitled "Resolution of the Council of the City of Palo Alto Adopting an Electric Rate Increase and Amending Utility Rate Schedules E-1, E-1-G, E-2, E-2-G, E-4, E-4-G, E-4-TOU, E-7, E-7-G, E-7-TOU, E-14, E-16, E-18, and E-18-G".
  - (ii) Resolution 8827 entitled "Resolution of the Council of the City of Palo Alto Adopting a Water Rate Increase and Amending Utility Rate Schedules W-1, W-2, W-4, and W-7".
  - (iii) Resolution 8828 entitled "Resolution of the Council of the City of Palo Alto Adopting a Natural Gas Rate Increase and Amending Utility Rate Schedules G-1, G-2, G-6 and G-10".
  - (iv) Resolution 8829 entitled "Resolution of the Council of the City of Palo Alto Adopting a Refuse Rate Increase and Amending Utility Rate Schedules R-1, R-2, and R-3".

- (v) Resolution 8830 entitled "Resolution of the Council of the City of Palo Alto Amending Utility Rate Schedule D-1 (Storm and Surface Water Drainage) To Increase Storm Drain Rates By 3.8% Per Month Per Equivalent Residential Unit".
- (vi) Resolution 8831 entitled "Resolution of the Council of the City of Palo Alto Amending Utility Rate Schedules E-15, G-5, W-5, and S-5 of the City of Palo Alto Utilities Rates and Charges Pertaining to Service Connection Fees".
- (vii) Resolution 8832 entitled "Resolution of the Council of the City of Palo Alto Amending the Compensation Plan for Management and Professional Personnel and Council Appointees Adopted by Resolution No. 8748 to Change the Title and Compensation of One Classification"
- (viii) Resolution 8833 entitled "Resolution of the Council of the City of Palo Alto Amending the Compensation Plan for Classified Personnel (SEIU) Adopted by Resolution No. 8658 to Add One Classification"

City Attorney Gary Baum noted that Council conflicts in the budget approval must be dealt with first before the voting.

Public Hearing opened at 9:29 p.m.

John Smith PASCO representative, 2000 Geng Road, stated Council was aware of the disagreement with PASCO's compensation regarding the budget for 2008-09.

Herb Borock, P.O. Box 632, requested the Council restore sense minutes to the Finance and Policy & Services Committees'. He mentioned the cost and importance associated with their return. He also expressed concern over the Management Fellows Program as being unique to the skills of the current City Manager.

Public Hearing was closed at 9:37 p.m.

Mayor Klein advised he would not be participating in Agenda Item Nos. 6a and 6b due to his wife being on the faculty at Stanford University.

Council Member Barton advised he would not be participating in Agenda Item Nos. 6a and 6b due to being employed by Stanford University, and Agenda Item No. 6c as there is a CDBG budget project within 500 feet of his residence.

**MOTION:** Council Member Morton moved, seconded by Council Member Espinosa to adopt: 1) Agenda Item No. 6a of the 2008-09 Budget, Pertaining to the CIP for the Emergency Water Supply Project and the Ordinance Portions Related Thereto; and 2) Agenda Item No. 6b of the 2008-09 Budget,

Pertaining to the Police and Fire Department Budgets as Modified and the Portions of the CIP Relating to Stanford and the Ordinance Portions Related Thereto.

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

Council Member Morton advised that he would not be participating in Agenda Item No. 6c as it contains funding for some non-profit organizations which his firm provides audit services.

Vice Mayor Drekmeier noted that Council Member Barton also excused himself from Agenda Item No. 6c as there was a CDBG budget project within 500 feet of his residence.

**MOTION:** Council Member Kishimoto moved, seconded by Council Member Schmid to adopt Agenda Item No. 6c that pertains to sections of the Community Services and Planning and Community Environment Department 2008-09 Budgets as Modified, Pertaining to Nonprofit Entities, Including Community Services Block Grant (CDBG) and Human Services Resource Allocation Process (HSRAP) and the Ordinance Portions Related Thereto.

**MOTION PASSED:** 7-0 Barton, Morton not participating

Council Member Yeh advised that he would not be participating in Agenda Item No. 6d(1) as the firm he works for has conducted audits for the County Airport and there are current discussions occurring with the Palo Alto Airport.

**MOTION:** Council Member Morton moved, seconded by Council Member Espinosa to approve the Finance Committee Recommendation that the City Council Approve One-Time Funding from the 2008-09 City Council Contingency for \$30,000 for the Palo Alto Airport Expert; and the Ordinance Portions Related Thereto.

**MOTION PASSED:** 8-0 Yeh not participating

**MOTION:** Council Member Morton moved, seconded by Vice Mayor Drekmeier that the City Council approve the balance of Agenda Item No. 6d including One-Time Funding from the 2008-09 City Council Contingency as Follows: \$30,000 for Earth Month; \$15,000 for Community Environmental Action Partnership; and the Ordinance Portions Related Thereto.

**MOTION PASSED:** 9-0

Council Member Schmid believed it was necessary for Council to provide \$10,000 for the return of sense minutes.

City Clerk Donna Grider clarified the \$10,000 figure was based on last years' budget information, and noted it had increased to \$15,000.

**MOTION:** Council Member Schmid moved, seconded by Council Member Morton to reinstate City Clerk Office financing of sense minutes for Finance Committee and Policy & Services Committee meetings in the amount of \$15,000, to be taken out of Council Contingency.

City Manager Frank Benest stated he made every effort to streamline the budget and if funds were needed for the return of sense minutes he would make the appropriate adjustments.

Council Member Burt supported the Motion.

Council Member Kishimoto supported the Motion. She asked the length of time the tapes of the meetings were retained.

Chief Information Officer Glenn Loo stated the contract arrangement was for streaming video to be available online for a term of one year. He noted the City Clerk's Department maintained a CD of all recorded city meetings.

**MOTION PASSED:** 9-0

Mayor Klein asked why the School District estimated property tax revenue was double the City's estimate.

Deputy Director of Administrative Services Joe Saccio stated the City of Palo Alto property tax conformed to the increases of the School District with an expected seven percent increase from 2006-07. He stated the estimated increase in property tax revenue projected by the County would be six percent for the 2007-08 fiscal year.

Mayor Klein asked for the estimated revenue increase expected during the 2008-09 fiscal year.

Mr. Saccio stated approximately one million dollars over the revenues for the 2008-09 year. He requested Council be aware of a possible mid-year adjustment due to the anticipated lower sales tax revenue.

Director of Administrative Service Lalo Perez stated there were policies in place for the Excess Revenue Fund with conservative bets on additional revenues outside the initial forecast.

Council Member Barton stated the proposed budget was relying heavily on property tax revenue. He stated property taxes were a lagging indicator

based on assessments that rolled a year to 18 months behind. He cautioned comparing economic times to actual dollars.

Council Member Burt asked how the elimination of one full-time employee (FTE) amounted to only \$40,000.

Mr. Perez stated the position was frozen last fiscal year with the funding removed. The \$40,000 savings was from the elimination of paychecks being mailed due to the change to direct deposits only.

Council Member Burt clarified in 2007-08 there was a vacant position without funding and in 2008-09 that position has been removed.

Mr. Perez stated that was correct.

Council Member Burt asked whether there were funds saved or whether the savings were in productivity gains from direct deposit.

Mr. Perez stated it was the latter.

Council Member Morton noted the importance of understanding the portion of the property tax to the city is a fraction of what the School District gets. He suggested the staff's best guess be accepted at the time it was put together with no further changes in revenue projections.

Council Member Kishimoto asked whether the "Best Bets" were being adopted.

City Manager Frank Benest stated the "Best Bets" was a variety of revenue increases and expense reductions.

Council Member Kishimoto asked whether the "Best Bets" were already incorporated into the budget.

Mr. Benest stated yes.

Mr. Perez stated some of the "Best Bets" needed to return to Council for further action.

Council Member Kishimoto asked about the Open Space Assistant referred to in the "Best Bets".

Mr. Perez stated the person in that position had retired.

Council Member Yeh asked whether the Pedestrian and School Safe Corridors

Program was incorporated into the budget.

Mr. Benest stated the Safe Corridors Program was being funded.

Mr. Perez stated the program was being reinstated with a full staff of four academy cadets with less overtime required.

Mr. Benest stated there were light duty positions in the program maintained with the anticipation of a \$15,000 reduction in overtime.

Council Member Yeh asked what the ear-marked \$6.7 million for schools pertained to.

Mr. Benest stated it was for a variety of items, including the Cubberley lease, half the cost of elementary and middle school fields, the School Resource Officers, the Bike Safety Program, and Crossing Guards.

Mayor Klein noted the monies paid to the school was pursuant to a contract agreement with the School District. He noted the day-care facilities at each of the school sites was contractual between the City and the School District.

Council Member Yeh thanked the Mayor for clarification. He stated that all of this had been framed as a conceptual approval for the "Best Bets". He wondered what would happen mid-year with regard to the design of the Public Safety Building.

Mr. Benest pointed out that once there were designs provided, the numbers would be clearer as for the debt issuance, and may go back to the Finance Committee and to the full Council for discussion of the pros and cons.

**MOTION:** Vice Mayor Drekmeier moved, seconded by Council Member Morton to continue with the team approach for the Environmental Sustainability position for 2008-09 budget.

Mayor Klein did not support the Motion.

Vice Mayor Drekmeier thought the City was fortunate to have a great team with a comprehensive approach and stated support for the Motion.

Council Member Morton added there was a clear expertise with the group approach.

Mayor Klein stated four-in-one was inefficient when those four had other responsibilities and he did not support the team approach.

Council Member Burt saw good arguments on both sides. He stood, however,

with the current process with notation to revisit next year.

Council Member Barton understood staff preferred the group model and thought the process was micro-managed. He stated it was difficult to hold people accountable for achievements when they were told what was to be done and how they must organize.

Council Member Kishimoto agreed on the team, saw no micro-managing, with the decision by Council and agreed in a year a one-person position may be valid.

Council Member Yeh was in support of the team structure and requested a job description be made available for the four-person team.

City Manager Benest believed the team required a work plan with set goals and annual outcomes.

Council Member Espinosa found issue with the lack of accountability in a team environment.

**MOTION PASSED:** 7-2 Klein, Espinosa no

Council Member Kishimoto asked for clarification regarding the Landlord Registry Fee and the anticipated fees for mediation.

City Manager Benest stated the Registry fees would be revisited. He stated the mediation cost for services paid to outside agencies was approximately \$65,000.

Council Member Kishimoto asked whether the fees were for registration or mediation services.

Mr. Benest stated the purpose of the Registry was to provide a fee for the service based program.

City Attorney Gary Baum stated the likelihood would be a per-landlord charge allowing them to be a part of the process.

Council Member Kishimoto asked in what form this item would return to Council.

Mr. Baum stated an Ordinance change was necessary to adopt the fee.

Council Member Kishimoto clarified there would be an Ordinance change with  
06/09/08

the adoption of a fee.

Mr. Baum stated yes and the fee schedule would be amended.

Mr. Benest stated staff work needed to be done prior to returning to Council.

Mr. Baum cited a City of Los Angeles case approving such a fee.

Council Member Kishimoto asked whether the process was the same for code enforcement.

Planning Department Administrator, Jon Abendschein stated code enforcement cost/recovery was related to building/planning fees.

**MOTION:** Council Member Morton moved, seconded by Council Member Espinosa that the Council adopt Item 6e in the 2008-09 Budget as Modified and the Ordinance Portions and Resolutions Related Thereto.

Council Member Schmid felt the forecast was conservative resulting in the achievement of budgeted targets. He stated the budget was a strategic tool that defined the City's direction.

Council Member Espinosa thanked his colleagues and recommended "Best Bets" be more clearly summarized to avoid further confusion.

Mr. Benest stated an informational report would be completed for follow-up.

Council Member Burt suggested achieving long-term infrastructure needs by finding funding in technology investment as a strategy tool.

**MOTION PASSED:** 9-0

**MOTION:** Council Member Morton moved, seconded by Council Member Schmid that the Council approve Agenda Item Nos. 6f(1-8).

Council Member Morton stated the items indicated were rate schedules adopted in concept within the overall budget.

**MOTION PASSED:** 9-0

#### CONSENT CALENDAR

**MOTION:** Council Member Morton moved, seconded by Council Member Barton to approve Consent Calendar Item Numbers 7-10.

7. Ordinance 5010 entitled "Ordinance of the Council of the City of Palo Alto for the Fiscal Year 2008-2009 to Amend the Table of Organization

to Add One (1.0 FTE) Assistant Director Public Works Position and Eliminate One (1.0 FTE) Deputy Director, Public Works Operations Position

8. Resolution 8834 entitled "Resolution of the Council of the City of Palo Alto Determining the Calculation of the Appropriations Limit of the City of Palo Alto for Fiscal Year 2008-09"
9. Annual Adoption of the City's Investment Policy
10. Appointment of Steve Emslie as City Manager Pro Tem from June 16 Through June 22 Including the June 16, 2008 City Council Meeting and Appointment of Kelly Morariu as City Manager Pro Tem June 23 and June 24 Including the June 23, 2008 City Council Meeting

**MOTION PASSED: 9-0**

#### REPORT OF OFFICIALS

11. Approval of Council Appointed Officer (CAO) Evaluation Forms and Review of Evaluation Timeline

Consultant Sherry Lund asked Council to look at the performance evaluation forms for any changes.

Council Member Schmid asked whether the forms could be completed on-line.

M. Lund stated it was possible but had not been set-up.

Council Member Schmid asks for the on-line location.

Ms. Lund stated the forms were approved and would be released to the Council Appointed Officer's (CAO's) by morning for self-evaluations.

Council Member Burt asked when the prior evaluations would be received.

Ms. Lund asked which prior evaluations.

Council Member Burt clarified, the CAO evaluations.

Ms. Lund asked whether he meant the self-assessments.

Council Member Burt stated he meant the prior year evaluations, the references in the evaluation form, for instance, as to development goals set

within prior Council review. He stated there were four new Council Members that had not seen the previous goals set.

Ms. Lund stated the developmental goals set last year were part of the self-evaluation, listed in the self-assessment, with each CAO responding to how he or she felt they had accomplished them.

Mayor Klein thought this to be contrary to prior procedure. He stated Council usually received a binder with all of the evaluations from the prior year. He asked whether that process had changed.

Ms. Lund stated she would accommodate the procedure.

Council Member Burt asked whether there was typically a reporting of the amount of time spent for professional development.

Council Member Barton stated this had not been formally done during his tenure on the Council.

Council Member Burt asked whether it had been informal.

Council Member Barton thought the CAO's, in their self-evaluation and in the narrative of the work, discussed their accomplishments in relationship to their goals.

Council Member Burt requested a summary on an annual basis, for the professional development and the amount of time spent on each goal.

**MOTION:** Council Member Burt moved, seconded by Council Member Schmid to approve the CAO Evaluation Forms to include time spent on professional development offsite.

Council Member Morton stated prior years evaluations needed only be mentioned in reference to the goals that were set and their accomplishments.

Council Member Espinosa asked for clarification on the Motion.

Council Member Burt stated the goal was to be informed as to how the CAO's accomplished their goals and at what level that assisted them in their job function.

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

## PUBLIC HEARINGS

12. Resolution 8835 entitled "Resolution of the Council of the City of Palo Alto Confirming Engineer's Report and Assessment Roll California Avenue Parking Project No. 92-13 (for Fiscal Year 2008-2009)"

Mayor Klein asked the City Clerk to provide the count for written protests.

City Clerk Donna Grider reported none were received.

Council Member Morton advised that he would not be participating in this item as his office was within this area and he owned a minuscule portion of a building in the area.

Public Hearing opened and closed at 10:57 p.m. without public comment.

**MOTION:** Council Member Kishimoto moved, seconded by Council Member Barton to adopt Resolution 8835 entitled "Resolution of the Council of the City of Palo Alto Confirming Engineer's Report and Assessment Roll, California Avenue Parking Project No. 92-13 (for Fiscal Year 2008-2009)".

**MOTION PASSED:** 8-0 Morton not participating

#### COUNCIL MATTERS

13. Referral of the Criminal Investigation of the Children's Theatre to Either the City Auditor or the Police Auditor

Mayor Klein noted the public would speak first.

Susan Phillips Moskowitz, 1941 Tasso Street, spoke to the investigation offering the following questions:

- 1) What of the wall between the administration and the investigators.
- 2) Where was the leak for the termination.
- 3) When did the police learn of the Statute of Limitations issues.
- 4) Was the investigation pursued after the limitations.
- 5) Why was the Yore Report released prior to the hearing.
- 6) Why did the police not consider explicit and implicit approval by the City in conducting the costume sales.
- 7) Did the City Manager urge Yore to go to Texas.
- 8) What of the DA's conclusion that there was no conclusion as to embezzlement since property never left the theatre.
- 9) Why did the police not take the above, property related issue, into account.

Katie Christman, 1340 Byron Street, stressed innocence over being proven guilty, in support of Rich Curtis.

Rick Saal, Bryant Street, spoke on the Theatre Board; he questioned the Yore Report, his interview, and was in favor of revisiting the investigation.

Ralph King, 10 Howkinson, spoke regarding the travelers checks.

Suzan Stewart, 1550 Middlefield Road, spoke regarding her concern of the use of traveler's checks.

Jon Parsons, 1545 Edgewood Drive, spoke in favor of an independent and fair reinvestigation.

Hrishi Srinagesh, 819 Sutter Avenue, had been involved with the Theatre as an actor and volunteer. He urged the reinstatement of the employees.

Revata, 819 Sutter Avenue, noted her support of Pat, Michael, Rich and Allison, and for the reinvestigation.

JoAnne Wetzel, 787 Stone Lane, wrote and photographed a book about the Theatre, and spoke in favor of the reinvestigation.

Bernard Cohen, 851 Sonoma, Stanford, stressed the need for revisiting the investigation.

Herb Borock, P.O. Box 632, asked whether the audit of the investigation, would be done by the Police Auditor or the City Auditor.

Council Member Morton recognized the public's questions and put forth his own questions:

- 1) Is it safe to assume that staff deliberately withheld information about the traveler's checks.
- 2) If traveler's checks were not admitted into the initial inventory, because the focus was on missing equipment, did police jump to an unfounded conclusion that the omission was clear evidence of an attempt to cover up embezzlement.
- 3) Is it standard police policy to refuse to meet with potential witnesses as Sergeant York apparently did, if they request to have an attorney accompany them.
- 4) Why was the above allowed to stand unless it's City policy.
- 5) Why had Sergeant Yore assume the \$10,460 came from City funds. What investigation was done to verify that.
- 6) Did the police in Palo Alto ignore comments of the Assistant District Attorney about these traveler's checks.
- 7) What was the rationale for closing down the theatre with a show of police force, when the primary users were children.

- 8) Was the advice of other senior staff ignored in the closing the of the Theatre.
- 9) With regard to costume sales, why was the long history of same and additional performances ignored, even after being confirmed by a trip to Texas to interview Leon Kaplan, the retired Director of Arts and Culture.
- 10) Was the testimony of former Director of Arts and Culture, Leon Kaplan, distorted, disregarded or otherwise dismissed.
- 11) When the police showed up, unannounced, in Texas to interview former staff, was this usual police customs.
- 12) Is it standard police policy to release affidavits while an investigation is pending.
- 13) What does the above mean with regard to the police's objectivity in the handling of this case.
- 14) Did the release of the police report with what appeared to be unsubstantiated accusations further violate theatre staff's rights to a fair hearing and to deny them consideration of innocence which would be customary in most cases.
- 15) Why did the police seem to lose complete interest in the original burglary.
- 16) Was Sergeant Yore adequately supervised during the 11-month investigation.
- 17) Was the investigation dragged on because of the police's inability to challenge their own presupposition of guilt.
- 18) Was there any precedent for prohibiting current theatre staff from talking to furloughed staff or each other after Michael's death.

He stated the next logical step would be to have the Police Auditor review the entire investigation and return with a clear guideline for preventing a future occurrence.

**MOTION:** Council Member Morton moved, seconded by Mayor Klein to direct the City Attorney to negotiate an outline of services with the Police Auditor to evaluate the Children's Theatre investigation which would include but not be limited to: 1) Police Auditor's report be made directly to the City Council; 2) list of questions to be answered by the Police Auditor's report include and be broader than the questions in CMR 277:08 paragraph 2; 3) include but not be limited to questions posed by Council Member Morton, Susie Moskowitz, and Mayor Klein several weeks ago; 4) and that the scope of services be greater than is listed in CMR 277:08 paragraph 2, last sentence; and 5) the City Attorney arrange for a meeting with Policy & Services Committee where these items can be discussed and the contract scope of services be set forth.

Mayor Klein stated the investigation needed to have a clear vision including carefully considered questions that needed to be answered. He suggested the City Attorney meet with Council or the Policy and Services Committee to clarify the appropriate questions and draw up a contract for the investigation services of the Police Auditor.

Council Member Burt agreed and asked if the Policy and Service Committee would work out the final pieces for the contract and return to Council for approval.

Mayor Klein stated it either went to the Policy and Services Committee or would return to the full Council.

Council Member Burt saw no reason to return to the Policy and Services Committee.

Mayor Klein stated utilizing the concerns already stated and the interviews to be completed, the chosen Auditor would develop a reasonable list of questions.

Council Member Burt agreed with the notion that Council would have final opportunity with any additional questions.

Council Member Yeh asked about the developed Scope of Services to review the cash handling, expense reimbursement, and travel expense procedures.

City Manager Frank Benest stated the scope of work would be shared with the Council.

Council Member Yeh asked whether the Scope of Services would be part of the Motion.

Council Member Espinosa asked the City Attorney whether expanding the scope of the investigation fit the Police Auditor's profile.

City Attorney Gary Baum stated the current request exceeded the normal scope of a Police Auditor. He noted a new contract and a budget adjustment would be required to proceed.

Council Member Espinosa agreed on the need for answers and transparency, further investigation into all the questions which go beyond a police audit investigation, including staff's actions and the relationship between City staff and the police audit. He expressed community and Council desire for questions larger than the scope of what a Police Auditor would do.

Council Member Morton stated the Police Auditor may find the original investigation was well-run and that would be the decision.

Mayor Klein agreed the City Attorney should negotiate the Police Auditor contract with the use of deliberate and neutral language so as not to color the outcome of the report.

Council Member Barton stated support of the Motion with the changes.

Council Member Morton stated support of the Motion.

**AMENDMENT:** Council Member Schmid moved, seconded by Council Member Barton to replace Police Auditor with City Auditor.

Council Member Schmid stated the investigation should not be a replay of what had been done and instead suggested a look at processes and procedures by the Council. He stated the Police Auditor had a narrow scope to investigate such matters and suggested it was more appropriate for the City Auditor.

Council Member Yeh stated the City Auditor was better suited to review the investigation and it would promote the healing. He stated support for the Amendment.

Council Member Burt saw two issues in question were these under the scope of the Police Auditor. He found legitimate questions and importance to pursue the answers with an objective third party. He further cited the separate forward-looking issue which is the basis of Council Member Schmid's Motion. However, he felt the more important issue was whether the police audit should be done or not.

Mr. Benest initiated the review process of the cash handling procedures and had directed staff to develop the Scope of Services. He stated upon its completion, a Request for Proposal (RFP) would be done.

Council Member Burt asked whether the review had been initiated.

Mr. Benest stated the process had been initiation.

Council Member Burt stated the question was whether this administrative review of citywide practices be done by the City Auditor or by this other entity the City Manager would hire.

Mayor Klein stated that Council Member Schmid's Amendment to the Motion was a simple one to replace Police Auditor with City Auditor. Council Member

Burt's' suggestions were more involved, which would be an audit similar to what was listed in the last paragraph on page one of the CMR.

Council Member Burt stated his proposed change to the Amendment, if accepted, would be that the City Auditor not replace the Police Auditor but be a separate audit replacing the City Manager's audit.

Council Member Morton stated the community has been at this for seven months and that not one person has expressed the need for a cash handling audit. He felt the community wanted to know how things went wrong. He expressed the need for review of cash handling procedures, but that this was irrelevant to what the community needs, so if the Council does this, they are not listening to their constituents.

Council Member Barton concurred that this was two separate issues (police approach and the cash handling and finances). With no City Auditor at this time, he did not see the reasoning behind pending this issue until such time that one is hired. He would not support the Amendment.

Council Member Kishimoto stated she will not support the Amendment because it meant sending a criminal case to the City Auditor who had not yet been selected. She stated unwillingness to support the original Motion because it had grown out of control. She further noted the criminal case is closed and that movement beyond is necessary and that the focus should be on what can be done currently with the Police Auditor.

Mayor Klein stated he would vote against the proposed Amendment because City Auditors having no experience in what is appropriate for criminal investigations, with the Police Auditors doing this as their livelihood.

Council Member Kishimoto asked if they would interview witnesses having not been previously interviewed.

City Attorney Baum was not sure as they typically conduct their own investigations, but that is different than interviewing officers involved.

Council Member Schmid made note of the constant number of people turning out week after week on this issue along with its effects on the community. He does not see the benefit of what will occur over the next six months with his focus more towards the future.

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

Mr. Baum asked for clarification on his direction to act, since he was being asked to negotiate a Scope of Services.

Mayor Klein asked the City Attorney to give the Police Auditor all the material, asking them to draft a proposal and meet with Council for finalization.

Council Member Espinosa gave thought to what if there were further questions that had not come up and could these be submitted with a deadline, for the City Attorney to send to the Police Auditor.

City Manager Frank Benest stated we needed to assure the Police Auditor that we are looking for an objective report without prejudice.

Council Member Yeh noted the Council will be taking a vote on the full Motion and stated he would not be voting for the Motion. He agreed there were questions to be answered but reiterated that what he has gotten from the public is a hardening of the people involved, and his feeling that an investigation of the investigation will not change any minds.

Council Member Morton stated the Council was attempting to engage the Police Auditor to audit the procedures that were followed.

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

Council Member Burt asked if there is potential duplication of administrative audits if, as the Mayor stated, the City Manager goes forward with initiating an independent audit for cash handling.

Mayor Klein supported agendaing the discussion under Council Matters for a future meeting.

Council Morton noted that cash handling procedures were under the City Manager's responsibility.

Mayor Klein believed there is the consensus that this is not properly agendaed.

14. Colleagues Memo from Vice Mayor Drekmeier, and Council Members Morton and Yeh Regarding Adoption of a Resolution Urging the United States Government to Continue Pressuring the Burmese Junta to Respect the Safety, Human Rights and Freedom of the People of Burma

**MOTION:** Vice Mayor Drekmeier moved, seconded by Council Member Yeh to adopt Resolution 8836 entitled "Resolution of the Council of the City of Palo Alto Urging the United States Government to Continue Pressuring the Burmese Junta to Respect the Safety, Human Rights and Freedom of the People of Burma".

Vice Mayor Drekmeier spoke to the Motion, mindful most present in Council would support freedom/democracy and some finding it was not in Council's scope to take position on international issues.

Council Member Yeh spoke to growing up in Palo Alto oblivious to world issues; however the internet and free press keep issues readily apparent. He cited the information given to Council by the Burmese-American community at prior meetings, and urged Council support.

Kenneth Wong, 1280 15<sup>th</sup> Avenue #309, San Francisco, grew up in Burma, noted reports of aid not getting through.

Barbara Slone, 2002 Barbara Drive, thanked Council Members and urged others to join in compassionate action.

Council Member Morton urged his Colleagues to join in the cause.

Council Member Espinosa also spent time in Burma recently, but does not believe it was of City concern. He was not in support of the Motion.

Council Member Burt expressed mixed feelings on whether it was appropriate for the Council to take such a position on issues of no direct impact to the city.

Mayor Klein associated himself with the remarks of Council Member Espinosa.

Council Member Schmid stated he felt this Motion was beneficial to Palo Alto in bringing a lesson home.

**MOTION PASSED:** 7-2 Espinosa, Klein no

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***AT THIS POINT IN THE PROCEEDINGS, THE CITY COUNCIL WILL  
ADJOURN TO A SPECIAL MEETING AT 12:46 A.M. AS THE PALO ALTO  
REDEVELOPMENT AGENCY, AND RECONVENED AS THE CITY COUNCIL  
AT 12:48 A.M.***

\* \* \* \* \*

COUNCIL COMMENTS, ANNOUNCEMENTS, AND REPORTS FROM CONFERENCES

Council Member Yeh stated that the Northern California Power Agency (NCPA) held a meeting two weeks ago and an action item has come up for NCPA members to contact U.S Senator Barbara Boxer to make their voice heard regarding federal funding for hydro projects and water utilities.

Council Member Kishimoto the Bay Area Air Quality Management District is holding meetings regarding banning wood burning during higher fire danger days.

ADJOURNMENT: The meeting adjourned at 12:51 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.