

# CITY COUNCIL MINUTES

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Special Meeting  
March 30, 2009

The City Council of the City of Palo Alto met on this date in the Council Conference Room at 6:04 p.m.

Present: Barton arrived at 7:35 p.m., Burt, Drekmeier, Kishimoto, Klein arrived at 7:35 p.m., Morton, Schmid, Yeh arrived at 6:16 p.m.

Absent: Espinosa

## STUDY SESSION

City Attorney, Gary Baum advised Council Member Barton would not be participating in Agenda Item Number 1 as he was on staff at Stanford University. Council Member Klein would not be participating in Agenda Item Number 1 as his wife was on staff at Stanford University.

1. Continuation of a Study Session to Review the Community Benefits Proposed for Negotiations Regarding the Stanford University Medical Center and Stanford Shopping Center.

Staff introduced the item by describing the potential economic benefits of an expanded shopping center and provided the legal framework for the request project entitlements. John Benvenuto of Simon Property Group provided a statement of support to work with the City to address comments and issues raised in previous public hearings. Staff received comments from the Council on the specific items on the benefits list. Council Member Morton requested a straw vote to demonstrate support for the items on the benefits list. No straw vote was taken, in that Council requested that the list be further refined.

No Action Required by Council

Mayor Drekmeier asked the City Attorney to clarify the City Council's protocol regarding the length of Council meetings.

City Attorney, Gary Baum said the Council had adopted procedures regarding timing on items considered after 10:30 p.m. The Council would make every effort to end the meetings before 11 p.m. The Council generally does not take up new matters after 10:30 p.m. The Council will decide before 10:30 p.m. and announce whether it will begin consideration of any agenda items after 10:30 p.m. and if so, which specific items will be heard.

Mayor Drekmeier said the Council concurred with the procedure and would check on the status of the meeting at 10:00 p.m.

### SPECIAL ORDERS OF THE DAY

2. Appointment of Three Human Relations Commission Members for Terms Ending March 31, 2012.

#### First Round of Voting for Three Human Relations Commission Members

Voting For Ray Bacchetti:                      Barton, Drekmeier, Kishimoto, Klein,  
Morton, Schmid, Yeh

Voting For Dolores Bernardo:                Burt, Drekmeier, Kishimoto, Klein,  
Morton, Schmid, Yeh

Voting For Donald Mendoza:                 Barton, Burt, Morton, Schmid

Voting For Robert Kuhar:

Voting For Jack Hamilton:                    Barton, Burt, Drekmeier, Kishimoto,  
Schmid, Yeh

City Clerk Donna Grider announced that Ray Bacchetti with 7 votes, Dolores Bernardo with 7 votes, and Jack Hamilton with 6 votes each, were appointed to the Human Relations Commission with terms ending March 31, 2012.

### CITY MANAGER COMMENTS

City Manager, James Keene said the SAP on-line billing system was undergoing a conversion. On April 6, 2009, 900 users will be notified that

the system will be off-line during the months of May and June for the Beta test service upgrades. If the test goes well, the new system will be available to the entire public to take advantage of on-line and paperless billing feature. Starting this week and through the month of April, the Zero Waste Program in partnership with Molly Stones Market will be offering three, free, reusable shopping bags to 1700 households. During the week of March 16, 2009, Mitchell Park Youth and Teen Center collaborated with the Mitchell Park Library and celebrated Teen Tech Week. Teens participated in technical designs challenges, Nintendo Week competition, trip to the San Jose Tech Museum and had tech book displays.

### ORAL COMMUNICATIONS

Joe Webb, Woodside, spoke on racism, racial profiling, and a recent Police killing incident in Oakland.

Stanley Mayerson, Doctor, 753 Alma Street, spoke regarding Alma House receiving tax credit for physically disabled residents receiving support services from outside agencies and lack of security for tenants.

John K. Abraham, 736 Ellsworth Place, spoke regarding Palo Alto's demographic data and questioned how data is derived regarding racial profiling and traffic stops.

Stephanie Munoz, 101 Alma, spoke regarding Stanford Hospital and was not in support of having Stanford's low-income jobs without having low-income housing.

Mike Francois, 224 Gardenia Way, East Palo Alto, spoke regarding the Black culture not condoning the killing of police officers.

Mayor Drekmeier spoke regarding a State Bar investigation against City Attorney Gary Baum of a complaint filed by Mark Peterson-Perez. On February 23, 2009, the Office of the Chief Trial Counsel issued a letter clearing the City Attorney of any wrong doing.

### APPROVAL OF MINUTES

**MOTION:** Vice Mayor Morton moved, seconded by Council Member Barton to approve the minutes of March 2, 2009 as amended.

**MOTION PASSED:** 8-0 Espinosa Absent

CONSENT CALENDAR

**MOTION:** Council Member Burt moved, seconded by Council Member Yeh to remove Agenda Item Number 4 from the Consent Calendar to become Agenda Item Number 6A.

Council Member Barton advised he would not be participating in Agenda Item Number 5 as his residence is on Charleston Road.

**MOTION:** Vice Mayor Morton moved, seconded by Council Member Kishimoto to approve Consent Calendar Item Nos. 3, 5, 6.

3. Approval of a Utilities Enterprise Fund Contract with D'Arcy & Harty Construction, Inc. in the Total not to Exceed Amount of \$1,782,800 for Wastewater Collection System Rehabilitation Capital Improvement Program Project WC-07004 (Project 20 - Barron Park).
4. ~~Ordinance 5032 Amending Chapter 5.35 ("Retail Sales Requirement for Paper Bags") of Title 5 ("Health and Sanitation") of the Palo Alto Municipal Code to Place a Limited Prohibition on Single Use Plastic Checkout Bags.~~
5. Ordinance 5034 entitled "Ordinance of the Council of the City of Palo Alto Amending Section 18.08.040 of the Palo Alto Municipal Code (The Zoning Map) to Change the Classification of Property Located at 488 West Charleston Road from PC Planned Community 2565 to PC Planned Community \_\_\_\_\_."
6. Ordinance 5033 entitled "Ordinance of the Council of the City of Palo Alto Amending Section 9.72.070 of Chapter 9.72 [Mandatory Response to Request for Discussion of Disputes Between Landlord and Tenants] of Title 9 of the Palo Alto Municipal Code to Void Rent Increases Given Without Notice of the Right to Mediation."

**MOTION PASSED for Item Numbers 3, 6:** 8-0 Espinosa absent

**MOTION PASSED for Item Number 5:** 7-0 Barton not participating, Espinosa absent

6A. (Former No. 4) Ordinance 5032 entitled "Ordinance of the Council of the City of Palo Alto Amending Chapter 5.35 ("Retail Sales - Requirement for Paper Bags") of Title 5 ("Health and Sanitation") of the Palo Alto Municipal Code to Place a Limited Prohibition on Single-Use Plastic Checkout Bags."

Jerome Mullins, 345 Sheridan Avenue, spoke regarding the use of high-quality cloth bags and encouraged the public to use the bags when shopping. He suggested printing earthquake preparedness advice and pictures of Palo Alto's wildlife on the sides of the bags as an incentive to modify the public's behavior to use cloth bags.

**MOTION:** Council Member Burt moved, seconded by Council Member Yeh to delay the final adoption of the Ordinance pending a Closed Session with the City Attorney.

Council Member Yeh asked the City Attorney's interpretation of the "at place" document regarding the City of Manhattan Beach and the opportunity to discuss the item in a Closed Session.

City Attorney, Gary Baum said the document was the final ruling as opposed to the verbal ruling of the Manhattan case. The petitioner's attorney asked him to inform the City Council of the judgment and Writ of Mandate.

Vice Mayor Morton asked whether the City of San Francisco had a plastic bag ordinance.

Mr. Baum said they had a plastic ordinance in place for a few years but it was never challenged. To his knowledge the City of San Francisco never had an environmental review but recently there was a movement against these types of things. The City of Oakland was first to encounter a lawsuit followed by the City of Manhattan Beach.

Vice Mayor Morton encouraged the Council to move forward quickly with the EIR process and he supported prohibiting plastic bags.

Council Member Burt asked whether a Closed Session would delay implementation of the Ordinance.

City Manager, James Keene said the scheduled implementation date was September 2009. A Closed Session in the near future would not impact the

action or subsequent directives on the paper bag ordinance which had a longer return date back to the Council.

Council Member Barton was in support of the Motion.

**MOTION FAILED:** 4-4 Drekmeier, Kishimoto, Klein, Morton no, Espinosa absent

**MOTION:** Vice Mayor Morton moved, seconded by Council Member Kishimoto to adopt the Ordinance.

**MOTION PASSED:** 5-3 Barton, Burt, Yeh no, Espinosa absent

AGENDA CHANGES, ADDITIONS, AND DELETIONS

**MOTION:** Vice Mayor Morton moved, seconded by Mayor Drekmeier to move Agenda Item Number 9 forward to be heard at this time.

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

6B. (Former No. 9) Approval of a Memorandum of Understanding with Capay Valley Growers, Incorporated to Operate a Community Supported Agriculture (CSA) Pilot Program at Palo Alto City Hall King Plaza.

**MOTION:** Vice Mayor Morton moved, seconded by Mayor Drekmeier that the City Council approve the Memorandum of Understanding with Capay Valley Growers, Inc. to operate a Community Supported Agriculture (CSA) Pilot Program at Palo Alto City Hall King Plaza.

Council Member Yeh asked whether the timing of the pilot program would impact the City budget cuts or lay-offs since it involved a hiring decision.

Interim Deputy City Manager Kelly Morariu clarified the program would involve an independent contractor and not Staff personnel. The position would require 5 to 7 hours per week maximum.

Council Member Yeh asked what the long-term support would be if the pilot program were to continue.

Ms. Morariu said that would be determined as the program moved forward.

City Manager, James Keene said Staff would return to the Council with the information once determined.

Council Member Barton asked why the City was subsidizing the program.

Ms. Morariu said Staff felt the program would support Civic Engagement, one of Council's priorities, environmental protection, as well as encourage City employees to a healthier life-style and eating choices. The City's investment would be small but the payoff would be good. There would be an on-going evaluation of the program as it moved forward focusing on long-term costs and implications.

Mr. Keene said the short-term cost was estimated on the high-end and the program would include outreach to downtown businesses and City Staff. A sustainability coordinator would be coming on board in approximately 3 months and would assume the responsibility to oversee the program.

Ms. Morariu said the City had located a U.S. Department of Agriculture grant that provided funding in marketing Farmers' Markets and would be submitting an application to help off-set the marketing the costs.

Council Member Kishimoto asked whether other providers were being considered other than Capay Valley Growers. She supported the Motion.

Ms. Morariu said she had spoken to other growers, but since it was a pilot program Staff wanted to start small. There would be an on-going evaluation of the program to determine its continuation and the possibility of incorporating other growers. To clarify Council Members Barton and Yeh's concerns, the Staff member would not be sitting in the plaza with the market on a weekly basis. It would be someone coordinating the logistics in-house, overseeing the outreach portion, and ensuring the appropriate equipment was being used for set up.

Council Member Barton raised concerns regarding the City subsidizing the program. He asked if it would kill the project if Council were to approve the program stripping out City costs.

Mr. Keene said the project had great potential and Staff would make it work. The organization and citizens would benefit from the outreach portion as it would introduce people to a healthier life-style.

Council Member Burt concurred with the favorable aspects of the program. He asked if civic funds were used to support the other farmers markets that were held in Palo Alto on weekends.

Ms. Morariu said she did not know.

Vice Mayor Morton was in favor of the Motion. He said the success of the pilot program would enable the City to supplement the market with other growers and the cost would shift to an approved funding that would lessen the need to draw the entire \$15,000.

Herb Borock, P.O. Box 632, said the Municipal Code stated commercial activities not associated with and supportive of City programs or City sponsored activities were prohibited within the Civic Center Plaza. Staff Report CMR 195:09 indicated the pilot program activities were supportive of City programs. He said the Memorandum of Understanding (MOU) and the Staff report should be more specific to assist the Council in making an informed choice. The proposal singled out one produce provider having a relationship with a private business in Palo Alto. This differed from the Downtown and the California Avenue Farmers Markets which are open equally to farmers and produce providers. He felt the program guaranteed a place for one particular supplier that provided employees of one particular business.

Council Member Klein said the program was not set up to benefit one or certain produce suppliers. It was geared to change health habits, purchase foods from the local areas and move towards the right direction in regards to climate change. The success of the program could allow other vendors to participate. Vendors could accept a small charge and in turn the program administrator could be paid from that source instead of using City funds.

**SUBSTITUTE MOTION:** Council Member Yeh moved, seconded by Council Member Burt to delay the implementation of the pilot program until the City Manager has hired a Sustainability Coordinator to support this pilot program, work with Capay Valley Growers, direct Staff to look at grant opportunities, and for the City to open the program to a variety of vendors to participate.

Council Member Burt was in favor of the pilot program but opposed singling out one supplier.

Mr. Keene recognized the Council's concerns. Staff felt opening the program to a variety of vendors could transform into a market where people would come solely to purchase and was unsure as to whether an analysis and assessment could be done with a small overhead. Staff's thought was to not have just another Farmers Market but to explore building a deep on-going relationship with local producers and consumers.

Council Member Schmid asked whether the funds were for start up or a permanent subsidy to the operation and whether Staff was going to be aggressive in finding other suppliers to participate.

Ms. Morariu said it was the cost for the program and would be evaluated as the pilot program moved forward. Opening the program to other vendors would be determined after an analysis and assessment of the program was completed.

Mayor Drekmeier said Capay Valley Growers was a coalition of 30 growers. The variety of produce would be delivered in one truck to minimize the time for growers to be away from their farms and eliminate greenhouse gases. He said it was a small investment for the payback and made sense to start small and learn from the pilot.

Council Member Klein supported the Motion. He felt the program would benefit the City's daytime population and a small perk for City employees during these troubled times when compensation was being reduced.

**COUNCIL MEMBER BURT WITHDREW HIS SECOND.**

**SUBSTITUTE MOTION FAILED FOR LACK OF A SECOND.**

**MOTION PASSED:** 6-2 Barton, Yeh no, Espinosa absent

#### REPORTS OF OFFICIALS

7. Approval of (a) Scoping Comments Letter for the San Francisco to San Jose High Speed Train Project Environmental Impact Report/Environmental Impact Statement, (b) Memorandum of Understanding with Various Peninsula Cities in Order to Form the Peninsula Cities Consortium (PCC) for Interaction with the California High Speed Rail Authority and (c) Comment Letter to Caltrain Joint Powers Board regarding the Memorandum of Understanding with California High Speed Rail Authority.

Interim Deputy City Manager, Steve Emslie said the item was a followup to the High Speed Rail (HSR) Session held earlier in March 2009. The California High Speed Rail Authority (Authority) solicited comments from Staff and community members regarding the scoping report due in April 2009. A presentation was provided as outlined in the Staff report (CMR 192:09) which included Staff's recommendations.

Planning and Transportation Commissioner, Lee Lippert said on March 18, 2009, the Planning and Transportation Commission (P&TC) met and discussed the HSR project. P&TC's purview was not to take a position on the HSR merits but review a draft letter to the Authority regarding the Environmental Impact Report/Environmental Impact Statement (EIR/EIS). The letter contained the scope of work for the HSR project and 62 items for the Council's consideration. The City needed to begin drafting policies regarding HSR and incorporate them into the Comprehensive Plan update.

Carolyn Dobervich, 241 Parkside, spoke regarding Greenmeadow Neighborhood being on the Federal and State Historic Site Registry.

Former Mayor Mike Cobb, spoke of the major impacts the City of Palo Alto would face if the HSR project were to move forward.

Beth Bunnenberg, 2351 Ramon Street, Historic Resources Board (HRB) Representative, spoke of the historic structures located along the Caltrain right-of-way and requested the properties be carefully considered in the EIR.

Lisa Steinbach, Greenmeadow Neighborhood, spoke regarding the Caltrain expansion to accommodate the HSR system and its impact to their neighborhood.

William Cutler, 4114 Park Boulevard, said he was not opposed to the HSR system. The project needed to be done correctly and not impose a large physical volume in communities.

Nadia Naik, 1825 Emerson Street, urged the Council not to delay addressing the EIR problem and direct the City Attorney to file an amicus brief in support of lawsuits filed by the Cities of Menlo Park and Atherton.

Andrew Bogan, 435 Sheridan Avenue #102, said filing an amicus brief would badly compromise the City's ability to work closely with Regional and State

authorities to ensure the best HSR system. It would reduce the chances of having the mid-peninsula station in Palo Alto thus getting all the cost and no benefits of HSR passing through Palo Alto.

Amy Friedman, 2115 Park Boulevard, spoke regarding the impact of the HSR going through her neighborhood. She asked that her neighbors be given a chance to weigh in and join the lawsuit.

Jim McFall, 1530 Escobita Drive, asked the Council to address the correct and actual easements and right-of-ways of properties in HSR plan.

Herb Borock, P.O. Box 632, spoke regarding the Memorandum of Understanding (MOU) and raised concerns about the cities of Atherton and Menlo Park opposing the HSR route. Council should focus on the scoping comments.

Mary Brodbeck, 2383 South Court, spoke of dealing with the HSR Authority and their ever-changing legislative rules and urged the Council to take action.

Faith Brigel, Byron Street, was in support of filing the amicus brief. She stated more community input and HSR information was needed prior to moving on the project. She was for HSR but felt it was not the right time for the project and a horrendous situation was being imposed on future generations.

Sara Armstrong, 4118 Park Boulevard, spoke regarding the EIR process and for the City to send a message that it values the integrity of the process.

Steve Broadbent, 575 Washington Avenue, supported the amicus brief. He said an exhaustive study should be made on the groundwater regime before trenching or tunnel alternatives were considered. Toxic fumes should be considered regarding the Caltrain right-of-way and evaluate air quality and its negative impacts in Palo Alto. The HSR station should go before a public vote for consideration.

Hinda Sack, 4104 Park Boulevard, spoke of the community having little knowledge regarding the HSR project. People seemed to favor the idea of having a HSR system but opposed having a high elevated solution for Palo Alto.

William Zavmeh, 912 Clara Drive, said a train stop in Palo Alto would help reduce the noise of the HSR system. Level of noise lessens as train approaches a stop and also at the point of acceleration.

Council Member Barton suggested to include a California Environmental Quality Act (CEQA) review in the EIR and also be noted in the Mayor's draft letter in Staff report (CMR 192:09) Attachment 1.

Mr. Emslie agreed to be more specific and expand more on the EIR/EIS statement.

**MOTION:** Council Member Kishimoto moved, seconded by Vice Mayor Morton to approve Staff recommendations to; 1) Approve and authorize the Mayor to sign the letter to the California High Speed Rail Authority (Authority) outlining Palo Alto's scoping comments for the San Francisco to San Jose High Speed Train Project Environmental Impact Report/Environmental Impact Statement (EIR/EIS), 2) Approve and authorize the Mayor to sign the Memorandum of Understanding to join the Peninsula Cities Consortium for interaction with the California High Speed Rail Authority and authorize City Attorney to make non-substantive changes to the MOU, and 3) Approve and authorize the Mayor to sign the letter to Caltrain Joint Powers Board with comments and objections to proposed Memorandum of Understanding with the California High Speed Rail Authority.

Council Member Kishimoto said the City of Atherton had approved the MOU. The Cities of Menlo Park, Mountain View, Sunnyvale, Burlingame, Redwood City and Belmont were in the process of reviewing or showed an interest in joining the coalition. There was a plan to share with Caltrain and the Authority the idea of bringing together world experts in areas of project financing, urban design, and technical people from the agencies to bring forward best ideas in reviewing all options including tunnel and above grade structures.

Council Member Schmid asked whether it was beneficial to separately review each proposal of the Motion.

Vice Mayor Morton was in agreement to Council Member Schmid's request.

Council Member Kishimoto said there were no Amendments to Number 1.

Vice Mayor Morton said there was contention of environmental responses being overridden and ignored and asked whether it should be included.

Mr. Emslie said it was an issue not relative to being studied in the EIR and could be addressed in a separate correspondence.

Council Member Klein asked who owned the air-rights over and underneath Caltrain's right-of-way.

City Attorney, Gary Baum said air-rights were not outlined in the documents but found ground or land-rights were vested in the Joint Powers Board and a co-tendency created with SamTrans.

Council Member Klein asked whether the Union Pacific Railroad had certain rights.

Mr. Emslie said in the transfer of the right-of-way in the early 1990's, formally Southern Pacific, there were reservations of freight-rights on the Caltrain right-of-way and those endured.

Council Member Klein asked whether their approval was required on projects using track upgrade.

Mr. Emslie said they were involved in negotiations because of their rights.

Council Member Klein needed clarification regarding a separate letter being sent by the Historic Resources Board (HRB).

Planning and Transportation Manager, Gayle Likens said she was aware of the HRB's intent to send a separate letter but could not confirm one was sent. HRB's comments regarding historic issues were incorporated into the letter.

Council Member Klein raised concerns regarding the process and felt one document should be sent and not have the various Boards and Commissions send separate documents. He asked the City Attorney whether the Boards and Commissions had the ability to send separate documents or did it require the Council's approval.

Mr. Baum said recommendations were routed to the Council and generally they did not send letters on their own. He asked whether it took precedence in the past.

Council Member Klein said only the Human Relations Commission (HRC) had that authority.

Mr. Baum confirmed it was his understanding as well.

Historic Resources Board Member, Beth Bunnenberg said there were times when the HRB communicated directly with the State Office of Historic Preservation (SHPO) and confirmed it was HRB intent to send a separate letter to SHPO.

Council Member Klein said it was important the City spoke in one voice and not several going in different directions.

Mr. Emslie said Staff would consult with the HRB Chair and incorporate their comments into the Mayor's letter and making it one. There was a regulatory relationship between SHPO and the HRB and a need for them to communicate directly in order to retain certified local government rights.

Mr. Baum confirmed there would be one separate letter sent regarding the scoping issue.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to change the following on Attachment A: line four of the first paragraph to add "or below" between "along and 3.8 miles"; the last line of the first paragraph to remove the word "potentially"; to change all references to the affected parks to four from three in the document.

Council Member Schmid suggested adding the following concerns regarding toxic plumes, cost of potential above ground eminent domain, economic cost of undergrounding, what it meant to the Association of Bay Area Government (ABAG) mandates, zoning and right-of-way controls, retaining the control over underground tunneling, and negotiations between Caltrain and Authority should be explicit, transparent, and open.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to have the Authority be specific on potential economic impacts and right of way use/costs.

**INCORPORATED INTO MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to specifically mention the City's new emergency water supply reservoir and the impact that tunneling might potentially have; request HSR to re-evaluate the Highway 101 option.

Vice Mayor Morton said he seconded the Motion because he wanted Palo Alto to have a loud and clear voice in the process. He did not feel the City could convince the Authority to build underground. He wanted to see a train stop in San Jose if the project was not underground and to have a system that was more rational for the Palo Alto community.

Mayor Drekmeier advised that Council would vote for each recommendation separately.

**MOTION FOR RECOMMENDATION NO. 1:** Council Member Kishimoto moved, seconded by Vice Mayor Morton to approve Staff recommendation Number 1 with the following amendments; 1) Approve or modify and approve, and authorize the Mayor to sign the letter to the California High Speed Rail Authority (Authority) outlining Palo Alto's scoping comments for the San Francisco to San Jose High Speed Train Project Environmental Impact Report/Environmental Impact Statement (EIR/EIS), 2) Change the following on Attachment A: line four of the first paragraph to add "or below" between along and 3.8 miles, and the last line of the first paragraph to remove the word "potentially", 3) To change all references to the affected parks to four from three, 4) Have the Authority conduct further study of the economic impacts, and right of way use/costs, 5) Specifically mention the City's new emergency water supply reservoir and the impact that tunneling might potentially have; request the Authority to re-evaluate the Highway 101 option.

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

**MOTION:** Council Member Burt moved, seconded by Council Member Klein to continue Agenda Item Number 8 to April 6, 2009.

City Manager, James Keene said he did not see a problem in postponing the item.

Anne Cribbs, 2450 Agnes Way, said there would be no problem in postponing the item for another week; however, delaying the item any longer may diminish benefits of Senior Games.

**MOTION FAILED:** 4-4 Drekmeier, Morton, Schmid, Yeh no, Espinosa absent

**MOTION FOR RECOMMENDATION NO. 2:** Council Member Kishimoto moved, seconded by Vice Mayor Morton to approve recommendation number 2 to Approve and authorize the Mayor to sign the Memorandum of Understanding (MOU) to join the Peninsula Cities Consortium for interaction with the California High Speed Rail Authority and authorize City Attorney to make non-substantive changes to the MOU.

Council Member Klein said the MOU did not make reference to who provided staffing and who bore the consortium costs.

Mr. Baum said costs were not referenced because the Peninsula Cities Consortium (PCC) did not have the ability to incur costs or liabilities. Staffing was handled on an informal basis and would be on a formal basis once the consortium was created.

Council Member Klein said through experience he found one city accepts more work than others and asked how staffing would be handled.

Mr. Baum said when forming the group, the initial thought was not to have staffing since it required a funding process and would cause delay in moving forward for Council's approval.

Council Member Kishimoto said the City Attorney was correct. The goal was to start simple. If there was a proposal to fund a planning study, it would be presented to each city to pay their share.

Council Member Klein said the City was one of the larger agencies in the group with more Staff and he was concerned the City could end up doing a large portion of the work and incur expenses.

**INCORPORATED INTO MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to add that the consortium should identify a potential budget work-plan with cost sharing.

**INCORPORATED INTO MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to direct Staff that minimal costs be incurred (less than \$10k) until cost sharing agreement is in place.

**INCORPORATED INTO MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to change the language in Item Number F, in Attachment B, "as it continues up the peninsula" to "as it impacts the peninsula."

Council Member Klein referred to Attachment B, page 2, paragraph 4, and asked what was meant by "The Chair shall determine all tie votes."

Mr. Baum said it meant in the event of a tie vote the Chair would be the deciding vote.

**INCORPORATED INTO MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** in Attachment B, page 2, paragraph 4, to delete the sentence "The Chair shall determine all tie votes."

Council Member Schmid raised concerns about marketing a consortium when the agencies may not have a common interest. Palo Alto was unique and had special interests. He did not want to be in a situation of convincing the Authority of the consortium speaking as a group and in a 6-2 vote end up isolated and not having a voice. He asked whether the City was weakening its representative position by agreeing to go along with majority vote.

Council Member Kishimoto said the purpose of the consortium was to create dialogue among the cities and define areas of common concern.

Vice Mayor Morton asked the City Attorney if the Council felt the consortium's interest were incompatible with the City, could the City withdraw from the MOU at anytime.

Mr. Baum said yes. The whole point of the group was to act together. The coalition could not bind any one city and each city was allowed to take their own position should they choose to.

**MOTION:** Council Member Barton moved, seconded by Vice Mayor Morton to Call the Question.

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

**MOTION RESTATED FOR RECOMMENDATION NO. 2:** Council Member Kishimoto moved, seconded by Vice Mayor Morton to approve recommendation Number 2 with the following amendments; 1) Approve and authorize the Mayor to sign the Memorandum of Understanding to join the Peninsula Cities Consortium for interaction with the California High Speed Rail Authority, 2) Authorize City Attorney to make non-substantive changes to the MOU, 3) Add that the consortium should identify potential budget work-plan with cost sharing, 4) Direct Staff that minimal costs be incurred (less than \$10k) until cost sharing agreement is in place, 5) Change the language in Item Number F, in Attachment B, "as it continues up the peninsula" to "as it impacts the peninsula", and 6) Attachment B, page 2, paragraph 4, to delete the sentence "The Chair shall determine all tie votes".

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

**MOTION FOR RECOMMENDATION NO. 3:** Council Member Kishimoto moved, seconded by Vice Mayor Morton to approve recommendation number 3 to Approve and authorize the Mayor to sign the letter to Caltrain Joint Powers Board with comments and objections to proposed Memorandum of Understanding with the California High Speed Rail Authority.

**INCORPORATED INTO MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to change in the third paragraph the word "with" to "without" and add "encourage adequate CEQA review."

Council Member Yeh asked whether Caltrain could disregard the letter, pass the MOU with HSR, and lock in a certain configuration.

Mr. Emslie said the letter would be presented to the Authority with no expectations that it will result in positive changes. The MOU would go forward as currently drafted.

Council Member Yeh raised concerns that as the process moved forward the City should transmit to Caltrain the concerns listed in the letter to HSR (Authority).

Mr. Emslie said Staff intends to make that point loud and clear on Thursday.

**INCORPORATED INTO MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to attach the first letter to California High Speed Rail Authority and have the language of duplicity spelled out.

Council Member Burt said he was discouraged by the response received after being assured by Caltrain that they would represent the City as a constituency and support the City.

**INCORPORATED INTO MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to send a copy of the letter approved in Number 3 to the High Speed Rail Authority.

Mr. Keene said to make the letter more direct he suggested the following changes be added: 1) 2<sup>nd</sup> paragraph, change the sentence from "The City of Palo Alto would like to make two comments regarding the MOU" to "The City of Palo Alto is compelled to make two critical comments regarding the MOU, 2) 3<sup>rd</sup> paragraph, remove qualifying words such as, "would request removal of" to read "request removal of" 3) 3<sup>rd</sup> paragraph, end of last sentence to read "and required environmental including all appropriate CEQA requirements", 4) 4<sup>th</sup> paragraph "should be done in a meaningful way which does not suppose track" change the word "suppose" to "presuppose", 5) 4<sup>th</sup> paragraph, last sentence, change from "to early consultation on a range of alternatives" to "to early consultation in our involvement on a range of alternatives", 6) 5<sup>th</sup> paragraph, after the words "these comments" insert "and we look forward to making changes that insure a fair transparent and inclusive process.

**INCORPORATED INTO MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** language tightening up the letter as set forth by the City Manager.

Council Member Kishimoto noted the railroad and the land belonged to the three counties, San Francisco, San Mateo, and Santa Clara and to examine the issue of rent or payments for use of right-of-way by the HSR.

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

8. Approval of an Agreement with the National Senior Games Association and the 2009 National Senior Games Local Organizing Committee for a Gold-Level Sponsorship in an Amount Not to Exceed \$350,000.

Interim Deputy City Manager Kelly Morariu provided an overview of the Staff report (CMR 194:09).

Anne Cribbs, 2450 Agnes Way, thanked City Staff for working through the agreement since November 2008 and the Council's consideration to review the Senior Games agreement.

Paul Losch, Parks and Recreation Committee (PARC) Commissioner and resident, spoke of the volunteers who are volunteering their time to ensure the activities ran smoothly. He asked the City to be supportive in the recruitment process of volunteers.

Herb Borock, P.O. Box 632, was not in favor of the agreement. He said the games would move forward regardless. City businesses would accrue the benefits without the City's participation. Funds provided by the City would go towards paying someone's salary.

Paula Sandas, Chamber of Commerce, spoke in support of the agreement.

Steve Player, 1874 Guinda Street, said the Senior Games sent a message regarding fitness, green environment, and responsibility for sustainable games to encourage seniors to keep active.

Terry Hogan, 1775 Guinda Street, said both local and National staff would be in attendance and would make the best of resources received. He urged the Council to support the agreement.

Carl Anderson, 4044 Amaranta Avenue, he said as a host city it was appropriate for the City to provide in-kind support but felt the City's cash contribution was more a social rather than a business decision. He preferred excess City money be directed to local non-profits.

Council Member Yeh asked whether there was outreach to try and leverage the funding with other municipalities and what percentage comprised the entire budget.

Ms. Cribbs said the total budget was \$4.8 million. San Jose was the only jurisdiction contacted. The bulk of athletes would stay close to where the activities were taking place. San Jose was the closest and biggest neighboring city and would be contributing.

Council Member Yeh asked whether Cities of Los Altos and Menlo Park were approached.

Ms. Cribbs said they had not been contacted yet.

Council Member Yeh said the potential for leveraging the dollars across jurisdictions could benefit from the Transient Occupancy Tax (TOT).

Ms. Cribbs said they looked to the hotels in the neighboring cities to accommodate participants and visitors. Information could be obtained as to where people were staying and the City could contact those jurisdictions for support after registration closed.

Council Member Yeh asked if that was a definite plan and questioned why other cities were not helping to support if they potentially would benefit from the games.

Ms. Cribbs said she would be willing to move forward in getting support once they find out what Palo Alto was going to do.

Council Member Yeh said there was a significant deficit that impacted beyond one-time programs and was concerned why Palo Alto was approached first as opposed to a simultaneous outreach.

Ms. Cribbs said the group wanted to work first with Palo Alto and Stanford since they had the most venues and second was San Jose. She was unsure about Los Altos and Menlo Park since their hotels were not in the organized block with the exception of the Marriott.

Council Member Yeh asked whether Stanford Hospital or the Palo Alto Medical Foundation had been approached regarding healthcare support and ambulance service.

Ms. Cribbs said Stanford Hospital was a major sponsor of the event and would provide medical care on site. American Medical Response (AMR) would be providing ambulance service.

Council Member Yeh asked what capacity was the former Community Services Director Richard James holding in the Senior Games.

Ms. Morariu said basically he would be the Project Manager and Senior Games staff liaison.

Council Member Kishimoto asked what the 4,200 room nights represented.

Ms. Morariu said it represented the rooms through the organized blocks held by the local organizing committee. Approximately 1/3 of the athletes go through the organized room blocks and 2/3 through the Internet and other avenues in booking hotel reservations.

Ms. Cribbs said there were approximately 12,000 athletes and it was anticipated they would bring family and with 25 percent using the rooms in the hotel blocks. People on the average stayed 4 to 5 days.

Council Member Burt clarified the 4,200 rooms noted on page 3 of the staff report were room nights being held in the block. The calculation at the bottom of page 5 indicated the total estimated amount of hotel tax revenue was from the rooms held in the block plus other factors. He was interested to know what the vacancy rate was under normal circumstances in a two-week period.

Deputy Director of Administrative Services, Joe Saccio clarified the number of rooms available was 4,200 rooms in 6 hotels. The TOT calculations on revenues between \$110,000 and \$120,000 were conservative. There was 65 - 75 percent room occupancy during summer months. He said with normal occupancy and having 30 percent of rooms available, the \$110,000 to \$120,000 was roughly 25 percent capacity of having occupants stay for the length of the games and getting an average rate of \$150.

**MOTION:** Council Member Klein moved, seconded by Council Member Barton to accept Staff recommendation that City Council approve the agreement in substantially the form presented with the National Senior Games Association for a Gold-Level sponsorship of the 2009 National Senior Games to be hosted at Stanford University and in Palo Alto. The sponsorship totals \$350,000, of which approximately half will be provided in cash and half as in-kind services.

Council Member Klein said he appreciated that a large portion of the money spent would go towards permanent improvements. The event was not just about Senior Games but about Palo Alto attracting similar events in the future. It was important to demonstrate the City treated the people who chose Palo Alto for the event in an appropriate matter as reflected in the proposed agreement.

Council Member Barton said he viewed the event as an investment for the City.

**MOTION PASSED:** 7-1 Yeh no, Espinosa absent

COUNCIL COMMENTS, ANNOUNCEMENTS, AND REPORTS FROM CONFERENCES

Vice Mayor Morton reported on attending the Bay Area City Attorney's Association meeting where our City Attorneys presented our Green Building Ordinance to the group.

Council Member Schmid spoke about attending the Lytton Gardens Board meeting and the work that the City work crews did on the lighting and water systems.

Council Member Klein reported that at a later date he will report on his attendance at the National League of Cities Conference. He also attended the BAWSCA meeting and the discussion was on the major improvements to the Hetchy Hetchy system.

Council Member Barton spoke about the upcoming annual Architects convention in San Francisco, they will be touring several buildings within Palo Alto and Stanford.

CLOSED SESSION

Adjourned to closed session at 11:41 p.m.

CONFERENCE WITH CITY ATTORNEY – Anticipated Litigation

10. Subject: Initiation of amicus curiae litigation in the matter of Town of Atherton, a Municipal Corporation, Planning and Conservation League, a California nonprofit corporation, City of Menlo Park, a Municipal corporation, Transportation Solutions Defense and Education Fund, a California nonprofit corporation, California Rail Foundation, a California nonprofit corporation, and Bayrail Alliance, a California nonprofit corporation, and other similarly situated entities, v. California High Speed Rail Authority, a public entity, Sacramento County Superior Court, Case No.: 34-2008-8000022

Authority: Government Code Section 54956.9(c)

At 12:10 a.m. the City Council reconvened and City Attorney Gary Baum announced that the City Council voted 5-3 to file an amicus curiae brief in support of the Town of Atherton, City of Menlo Park, Transportation Solutions Defense and Education Fund, California Rail Foundation and Bayrail Alliance against the California High Speed Rail Authority.

**MOTION PASSED:** 5-3, Barton, Drekmeier, Kishimoto no, Espinosa absent

**ADJOURNMENT:** The meeting adjourned at 12:12 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.