

Regular Meeting  
June 1, 2009

The City Council of the City of Palo Alto met on this date in the Council Conference Room at 7:04 p.m.

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

Absent:

SPECIAL ORDERS OF THE DAY

1. Selection of Candidates to be Interviewed for the Utilities Advisory Commission.

**MOTION:** Council Member Yeh moved, seconded by Vice Mayor Morton to interview all candidates for the Utilities Advisory Commission.

**MOTION PASSED:** 9-0

2. Resolution 8929 entitled "Resolution of the Council of the City of Palo Alto Expressing Appreciation To Victor Olivas Upon His Retirement."

Vice Mayor Morton read the Resolution Expressing Appreciation To Victor Olivas Upon His Retirement."

**MOTION:** Vice Mayor Morton moved, seconded by Council Member Barton to adopt the Resolution expressing appreciation to Victor Olivas upon his retirement.

**MOTION PASSED:** 9-0

Accounting Specialist, Victor Olivas accepted his Resolution and expressed his appreciation for 21-years of employment with the City of Palo Alto.

3. Proclamations Recognizing the Community Services Department's Four Community Star Award Recipients:

- Expressing Appreciation to the Friends of Palo Alto Children's Theatre
- Expressing Appreciation to DreamCatchers for Outstanding Public Volunteer Service
- Expressing Appreciation to the Palo Alto Rotary Club for Outstanding Public Volunteer Service
- Expressing Appreciation to the American Red Cross for Outstanding Public Service

Interim Director of Community Services Department (CSD), Greg Betts said for the past 14 years, CSD honored and recognized individuals, community clubs, associations, or groups who assisted with community activities in achieving goals and accomplishments.

Council Member Yeh read into the record the Proclamation honoring the Friends of Palo Alto Children's Theatre for Outstanding Public Volunteer Service.

Division Manager for Arts and Sciences, Linda Craighead said the Friends of Palo Alto Children's Theatre was established in 1972. They assisted in producing programs and were the community's sounding-board. They were the first group to enter into a public-private partnership with the City and played a major role in establishing the Magic Castle.

Ralph King, Co-President of the Friends of Palo Alto Children's Theatre, accepted the award and thanked the City for acknowledging many of their achievements throughout the years. He said the Friends would not be in existence if it was not for one achievement not mentioned. In 2008, the Friends, along with the theatre community, helped bring to an end the misguided police investigation at the Children's Theatre. Children's lives had been changed for the better because of the Staff and members of the Children's Theatre.

Rick Saal, Co-President of the Friends of Palo Alto Children's Theatre, said the community could look forward to a brighter future because of the Children's Theatre. He thanked the Council and the City for the award and pledged to continue to work in partnership to help develop the children in the community.

Council Member Schmid read into the record the Proclamation honoring DreamCatchers for Outstanding Public Volunteer Service.

Family Resources Coordinator, Sharon Murphy acknowledged individuals, who through their efforts provided free, long-term, one-on-one tutoring programs to low-income families in the Palo Alto schools. She recognized Kate Young, Director of Resident Services, Palo Alto Housing Corporation, Carol Zepecki, Director of Student Services, Kara Rosenberg, PAUSD Adult

School Principal, Sarah Mummah, Stanford University Intern, who all made the program a success.

Sarah Mummah, Stanford University Intern, said the program consisted of 25 student-volunteer tutors and with a leadership team of 15 Stanford University students. A professional development program for tutors was created to better mentor, serve, and develop future leaders in the field of education.

Council Member Espinosa read into the record the Proclamation honoring the Palo Alto Rotary Club for Outstanding Public Volunteer Service.

Interim Division Manager of Open Space and Parks, Donald Piana who spoke of the public-private partnership with the Palo Alto Rotary Club, through their efforts helped to enhance entry points into the City. He thanked the Palo Alto Rotary Club for providing colorful plans and looked forward to working with the group in developing more enhancement projects.

Council Member Kishimoto thanked and expressed her appreciation for Palo Alto Rotary Club organizer Brian Stein and Palo Alto Rotary Club President Mike Couch.

Brian Stein, Palo Alto Rotary Club organizer, looked forward to working with the City to help enhance the appearance of Palo Alto and in keeping the spirit of the community.

Mike Couch, Palo Alto Rotary President, spoke of the City and the Rotary Club collaborating in upgrading the gateways into Palo Alto and looked forward to continuing the partnership.

Council Member Kishimoto read into the record the Proclamation honoring the American Red Cross for Outstanding Public Service.

Community Services Recreation Division Manager, Robert DeGeus, thanked the American Red Cross, Silicon Valley Chapter, for their contribution in training lifeguards and camp counselors for the City's summer programs. Partnering with the American Red Cross made the programs safer.

Patricia Bubenik, American Red Cross Executive Vice President, expressed her appreciation for the partnership. She said the American Red Cross mission was to help the community prevent, prepare for, and respond to all emergencies. She said on January 1, 2009, the Palo Alto Area Chapter merged with the Santa Clara Valley Chapter and became the Silicon Valley Chapter of the American Red Cross serving over two-million people in Santa Clara County.

Barb Lawson, Silicon Valley American Red Cross CEO, thanked the City and Palo Alto community for the recognition. She said being in partnership with the City and the community's involvement made their job easier. She expressed her appreciation for what the City had done. There were over 2,000 volunteers in the County without Federal funding and through partnering with the Park and Recreation Division, they were able to help train the community on emergency issues.

#### CITY MANAGER COMMENTS

City Manager James Keene said on May 16, 2009, over 60 volunteers participated in the National River Cleanup Day. Eight-hundred pounds of trash, debris, and recyclable items were removed from Palo Alto creeks and waterways. The City received the Comprehensive Annual Financial Report Award from the Government Finance Officers Association (GFOA) for financial reporting for FY 2008. It was the City's 14<sup>th</sup> consecutive year in receiving the award. In June, the Water Quality Annual Report was produced and distributed by the Utilities Department to all their customers. It contained information as to where water comes from and how the City met or exceeded State and Federal drinking water standards for calendar year 2008. Palo Alto Utilities ranked 3<sup>rd</sup> in Solar Energy National Survey. The City's Photovoltaic (PV) Partners Program made the Solar Electric Power Association's top ten list for the second year. The report identified the City's Utilities Department for having the most solar electricity in their portfolio. The Advanced Placement (AP) Environmental Science classes at Palo Alto High School conducted a week-long laboratory Sewer Science Project and received the U.S. Environmental Protection Agency (EPA) Award.

Mayor Drekmeier reported the appointment of Council Member Klein to serve as the fourth member to the High Speed Rail Ad Hoc Committee.

#### ORAL COMMUNICATIONS

John K. Abraham, 736 Ellworth Place, said the Police Department proposed to reduce the Crime Analysis Program that supported the Demographic Data Program. The reduction would eliminate distribution of the data to the public. He urged the Council to continue the program which was the only demographic data monitoring service on racial profiling in Palo Alto.

Andrew Jentsch, Palo Alto, spoke regarding the unfair treatment he received as a City of Palo Alto Fire Department employee for 22-years.

Dennis Upton, P.O. Box 60186, Palo Alto, spoke regarding injustice against citizens of corporations with which the City does business.

Beth Colehower, 2110 Derby Avenue, Capitola, spoke regarding the Red Meets Green Community Day at Stevenson House on June 6, 2009. The community had the opportunity to meet with representatives from organizations that focused on safety and sustainability exhibitions.

Mark Petersen-Perez, spoke on restoring police trust in the community.

Wynn Grcich, 3045 Miraloma Way, Union City, spoke regarding her complaint with the Police Department and Art Jensen with Bay Area Water Supply and Conservation Agency (BAWSCA) regarding water fluoridation.

Hector Perez spoke regarding unfair treatment he and his friends received from the Palo Alto Police Department while playing in a neighborhood park.

Mike Francois, 224 Gardenia Way, East Palo Alto, spoke regarding 60,000 chemical spills in the nation killing 250 people annually and the ill affects of chlorine. He urged the Council to continue the research of alternative technology to disinfect water.

Aram James spoke of his public records request on the finalists for the Police Chief.

#### APPROVAL OF MINUTES

**MOTION:** Council Member Kishimoto moved, seconded by Council Member Barton to approve the minutes of April 27, May 4, as written and May 11, 2009, with revisions.

**MOTION PASSED:** 9-0

#### CONSENT CALENDAR

**MOTION:** Council Member Barton moved, seconded by Council Member Klein to approve Agenda Item Nos. 4-10.

Mayor Drekmeier advised he would not be participating in Agenda Item No. 5 as he is employed by the Tuolumne River Trust.

4. Resolution 8930 entitled "Resolution of the Council of the City of Palo Alto Calling a General Municipal Election (GME) of Council Members, Requesting the Services of the Registrar of Voters, and Ordering the Consolidation of Said Election."
5. Finance Committee Recommendation to Adopt Three Resolutions: 1) Resolution 8931 entitled "Resolution of the Council of the City of Palo Alto Approving Water Supply Agreement with the City and County of San Francisco"; 2) Resolution 8932 entitled "Resolution of the Council

of the City of Palo Alto Approving Palo Alto's Individual Water Sales Contract with the City and County of San Francisco"; and 3) Resolution 8933 entitled "Resolution of the Council of the City of Palo Alto Adopting Findings for Purposes of the California Environmental Quality Act in Connection with Approval of a Water Supply Agreement with the City and County of San Francisco."

6. Approval of a Sole Source Schedule Order with AssetWorks, Inc. in the Amount of \$162,474 for the Acquisition and Purchase of a Fuel Transaction Management System and Related Software Installation Services.
7. Resolution 8934 entitled "Resolution of the Council of the City of Palo Alto Amending Utilities Rule and Regulation 21 (Special Water Utility Regulation) Governing the City's Water Cross-Connection Control Program."
8. Approval of a Change Order to the Contract with AJF Builders, Inc. to add \$89,447 for a Total Contract Amount of \$623,698 for Fire Stations 5 and 8 Improvements – Capital Improvement Program Project PF – 01004
9. Finance Committee Recommendation to Accept the Auditor's Office Quarterly Report as of March 31, 2009.
10. Ordinance 5040 entitled "Ordinance of the Council of the City of Palo Alto Amending Chapter 5.24 of the City of Palo Alto Municipal Code (Requirements to Divert Construction and Demolition Waste from Landfill) to Increase Diversion Rate and Expand Applicability to Projects in Excess of \$25,000."

**MOTION PASSED for Agenda Item Nos. 4, 6-10: 9-0**

**MOTION PASSED for Agenda Item No.5: 8-0** Drekmeier not participating.

AGENDA CHANGES, ADDITIONS, AND DELETIONS

**MOTION:** Council Member Espinosa moved, seconded by Vice Mayor Morton to move Agenda Item No. 18 forward to become Agenda Item No. 10A.

**MOTION PASSED: 9-0**

**MOTION:** Vice Mayor Morton moved, seconded by Council Member Kishimoto to continue Public Hearing Agenda Item No. 14 to July 6, 2009,

Agenda Item No. 15 to July 13, 2009, and Agenda Item No. 17 to a date uncertain.

14. Adoption of Two Ordinances: (1) Repealing Chapter 16.17 of the Palo Alto Municipal Code and Amending Title 16 to Adopt a New Chapter 16.17, California Energy Code, 2008 Edition; and (2) Repealing Chapter 16.18 of the Palo Alto Municipal Code and Amending Title 16 to Adopt a New Chapter 16.18, Establishing Local Energy Efficiency Standards for Certain Buildings and Improvements Covered by the 2008 California Energy Code.
15. Initiation of (1) a Zone Change from Neighborhood Commercial (CN) District to Planned Community (PC) District at 2180 El Camino Real (The New College Terrace Centre) for a Mixed Use Project Having 61,960 Square Feet of Floor Area Including 8,000 Square Feet of Grocery (Intended for JJ&F Market), 5,580 Square Feet of Other Retail, 14 Affordable One-Bedroom Residential Units, 39,980 Square Feet of Office Use, and Two Levels of Below-Grade and Surface Parking Facilities Providing 227 Spaces, and (2) a Comprehensive Plan Amendment to Assign the Mixed Use Land Use Designation to a Site Currently Designated as Neighborhood Commercial. The Planning and Transportation Commission Recommends Denial of Both Requests for Initiation.
17. Adoption of Five Resolutions Relating to the Palo Alto Recycled Water Project: (1) Resolution Adopting a Mitigated Negative Declaration for the City of Palo Alto Recycled Water Project Pursuant to the California Environmental Quality Act; (2) Resolution Establishing a Water Capital Reserve Fund in Accordance with the State Water Resources Control Board's Requirements for State Revolving Fund Program; (3) Resolution Designating Certain Palo Alto Recycled Water Pipeline Project Expenditures to be Reimbursed by Proceeds From State Revolving Fund; (4) Resolution Establishing One or More Dedicated Sources of Revenue for Repayment of Funding Pursuant to the Federal Clean Water Act Amendments; (5) Resolution Repealing Resolution No. 8913 and Authorizing the City Manager to Sign and File a Financial Assistance Application and Execute a State Revolving Fund Financial Assistance Agreement in an Amount Not to Exceed \$37 Million From the State Water Resources Control Board for the Design and Construction of the Palo Alto Recycled Water Project

**MOTION PASSED:** 9-0

10A. (Former No. 18) Transmittal and Discussion of Report from the Independent Police Auditor Regarding Children's Theatre Police Investigation.

City Manager, James Keene thanked Independent Police Auditor (IPA) Michael Gennaco for the IPA Report. On behalf of the City Staff and the Administration, he apologized to the Children's Theatre Staff, the Friends of Palo Alto Children's Theatre, the Council, and the community on the Staff's part regarding the Children's Theater criminal investigation. The IPA Report indicated the investigation was poorly handled and questioned the necessity and effectiveness of the investigation. All recommendations in the IPA Report would be acted upon and administrative procedures would be improved beyond those already instituted by the organization.

Mayor Drekmeier, for the record, said the audience gave City Manager Keene a standing ovation.

Aram James, spoke regarding Acting Police Chief Dennis Burns' qualifications and credibility in filling the Police Chief's position.

Suzan Stewart, 1550 Middlefield Road, recognized the Friends' services to the community. She provided the Council with a follow up document to the IPA Report and said the Police Department was not only to blame for the investigation but the Administration concurred on what had happened. The former City Manager and the Administration were obligated to explain to the Police their knowledge of the Theatre's operations.

Jon Parsons, 1545 Edgewood Drive, expressed his disappointment on how the City Attorney's Office handled the investigation. The incident was published on the Internet with the Children's Theatre Director's personal information. He said in addition to Mr. Keene's apology, a note should be posted on the Internet along with the IPA Report to clarify the misguided investigation.

Robert Moss, 4010 Orme Street, said errors occurred in upper-management on how the investigation was handled. The Police Department should have been more responsive in seeing that manual requirements were followed and the investigation process was properly performed.

Mark Petersen-Perez said it was disturbing to know those who allegedly committed the crimes were not charged and that the Chief of Police chose to exercise a different standard of law that was convenient.

Bob Smith, 2291 Greer, said the Council had an obligation to clearly state the investigation was mishandled, its lack of evidence in the case, and withholding exculpatory information.

Kent Vickery, 727 Colorado Avenue, echoed Mr. Smith's statement. He asked the Council to join with hundreds of the Friends from all over the world to celebrate a 50-year contribution to the community on Sunday, June

14, 2009, 2 P.M., at the Theater, on behalf of Children's Theatre Director Pat Briggs.

Council Member Espinosa noted that he was a member of a Council subcommittee who worked with the IPA to ensure the audit was done correctly. The investigation noted stones unturned and information which needed to be brought to light. Those involved in the audit were all in agreement that all aspects of the case had been investigated. It was important for the City and the Council to speak out publically and promptly in response to the IPA Report.

**MOTION:** Council Member Espinosa moved, seconded by Council Member Klein to direct the Independent Police Auditor Subcommittee to work with the City Manager and City Attorney to bring back to the Council a coordinated response to the Independent Police Auditor (IPA) Report.

Mayor Drekmeier asked for clarification whether the response should be a statement or an action plan to move forward.

Council Member Espinosa said both should be done quickly with recommendations included.

Mayor Drekmeier suggested one document to include the statement and another to include a plan to move forward.

Council Member Espinosa concurred. He said the IPA tried to make sense of a situation that did not make sense to anyone. It was a horrific experience for the community. The IPA identified serious problems in community operations and suggested recommendations in solving them.

Council Member Klein asked why the City Attorney's Office felt the need to recuse themselves.

Senior Assistant City Attorney, Cara Silver said the City Attorney's Office did not feel they should recuse themselves but requested the City Manager to be the contact person.

Mr. Keene said he was in agreement.

Council Member Klein said Mr. Gennaco provided a great service to the community and thanked him for the excellent report. He said those who supported the accused, the Friends of Children's Theatre, and those who spoke up were the heroes. He commended his colleagues for doing their job. There was a need to acknowledge the victims and alleviate the pain those people suffered. Those who were sworn to do right in the community wrongfully carried out their duties and should have been at this evening's meeting to apologize to those who were wrongfully accused.

Vice Mayor Morton said the incident should never have happened. He asked for forgiveness from those who had to endure the situation and said the Council should have dealt with the situation sooner.

**AMENDMENT:** Council Member Yeh moved, seconded by Council Member Schmid that the City Auditor be included with the team preparing the response to the IPA Report.

Council Member Schmid said by including the City Auditor in the process it would help prevent a reoccurrence of the incident and ensure such an incident would not become a police matter. Errors could be detected early on in the process.

Council Member Burt said he would not support the Amendment because the cash handling procedures were already part of the City Auditor's work plan supported by the Council. To include the City Auditor in this team would only confuse the two issues.

Council Member Kishimoto expressed her apologies and asked forgiveness to those who suffered through the 18-month ordeal and joined her Colleagues in setting the record straight.

Mayor Drekmeier said the Motion had 2 parts: 1) to create a statement of regret and apology and 2) to move forward to included cash handling procedures. He expressed the importance of including the City Auditor as part of the team.

Mr. Keene clarified directions for the City Auditor already existed.

Vice Mayor Morton clarified the problem at the Children's Theatre was not in the handling of cash. He said the investigation was mishandled causing injustice to peoples lives. He asked Council Members Yeh and Schmid to withdraw their Amendment and to bring it up at a future meeting.

Mayor Drekmeier clarified the Amendment was to include the City Auditor in the group composed of City Manager and the Council subcommittee to drafting the statements.

Council Member Klein concurred with Vice Mayor Morton. He said the committee assignment was a moral issue. The City had done wrong and an apology was in order. The cash handling issue and the City Auditor being involved were important, but low on the moral calculus. He did not support the Amendment.

Council Member Yeh agreed there were flaws with the investigation. He said to apologize meant wanting the City to improve. He wanted the City to look

at its management practices and in order to do so was to intertwine the two issues. The statement needed to include the apology and the process in crafting a solution for the Council to manage the bureaucracy.

Council Member Schmid said the police had independence in their investigation. The goal was to try and create knowledge and transparency regarding procedures for the Council to have oversight responsibilities in matters such as these.

Mayor Drekmeier asked the Maker and the Secunder of the Motion if they were set on including the follow up actions along with the statement of apology.

Council Member Espinosa and the Council Member Klein said yes.

Council Member Burt said he appreciated the intention of the Amendment, but the City Auditor's actions were already in the works and did not alter anything.

Council Member Kishimoto asked whether Mr. Gennaco was being included in the consultation.

Mayor Drekmeier said he did not hear that in the Amendment and asked if Mr. Gennaco was being included.

Council Member Kishimoto said it made sense to include Mr. Gennaco.

Mike Gennaco said it was difficult for an elected body to intercede and try to oversee a pending criminal investigation. An early independent consultation with the District Attorney's (DA) Office could have kept the matter on track. He offered his expertise and prosecutorial experience to the Police Department to take a look at the evidence and help the Department determine whether to go with an audit, a referral, or visit the DA's Office sooner rather than later.

Council Member Yeh said with all the work Mr. Gennaco had done it was of benefit to include him in going forward with the Motion.

**INCORPORATED INTO THE AMENDMENT WITH CONSENT OF MAKER AND SECONDER** to include Michael Gennaco in the Independent Police Auditor Subcommittee making the coordinated response.

Council Member Barton said the key point of the statement would be lost if the City Auditor and the Police Auditor were added. Focus needed to be on the apology statement and then to move forward in stating how the City would improve in the future.

Mayor Drekmeier said his understanding of the Motion was to issue a statement to include the City's regrets and to follow up with actions on how the City would move forward.

Council Member Schmid asked if the Council was going to move forward on the basis of the report or to acknowledge that more information was needed.

Council Member Espinosa said he wanted to Call the Question.

Mayor Drekmeier stated he was asking the Maker and the Seconder to respond to Council Member Schmid's questions.

Council Member Espinosa said he thought the question had been answered.

Mr. Keene said it was clear the Council wanted to issue an apology and felt that could be accomplished. He thought procedural issues were more involved and should be discussed at length. He suggested separating the two issues and to move ahead on the apology this week.

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

**MOTION PASSED:** 6-3 Kishimoto, Schmid, Yeh no

#### **AMENDMENT WITHDRAWN BY THE MAKER AND SECONDER**

Council Member Yeh said the reason for withdrawing the Amendment was because he saw the merit in the City Manager's suggestion. The issue regarding procedures merit full discussion and he appreciated the fact that it would come back to a full Council for discussion.

**MOTION PASSED:** 9-0

#### UNFINISHED BUSINESS

11. Discussion on Termination of Option Agreements Between the City and Essex Park Boulevard, LLC and Brown-Fairchild Park Investment Company, L.P. for the Purchase of the Properties Located at 2785 Park Boulevard and 2747 Park Boulevard, Respectively and Direction to Pursue Alternative Land Banking Options for Public Safety Building.

Real Property Manager, Martha Miller gave a presentation as outlined in Staff Report CMR:226:09.

City Manager James Keene said the recommendations were to execute the Notices of Termination of the Option Agreements that would remove the City from the option and pursue landbanking options. The City had sunk costs in

option payments and design. The action would allow the City to pursue negotiations and come back to the Council with a better proposal. He said it was the time to consider entering into a new option as whether to pursue landbanking or move forward in a new direction.

Council Member Burt asked what the comparative acreage was of the site for landbanking.

Ms. Miller said the two Park Boulevard sites total 1.63 acres that included a .04 acres owned by the City in comparison to 1.4 acres which was the new site at 3045 Park Boulevard.

Council Member Burt said when the City was told to move forward and purchase the second parcel at the Essex property site it was necessary to have the acreage to achieve the purposes of a new Public Safety Building (PSB) and to meet Green Building standards. He asked why now those objectives were feasible on 1.4 acres when previously it was necessary to have the 1.63 acres.

Director of Utilities Glenn Roberts said it was still not clear as to whether those objectives could be achieved on the new site at the same cost. The smaller site would require reconsolidation of a parking garage and the main administration structure and would need to be taken into consideration.

Vice Mayor Morton asked if there was a way to execute the Notice of Termination and the City to be credited the sunk costs if future negotiations were successful.

Senior Assistant City Attorney, Cara Silver said it could be included in the direction to terminate. There had been preliminary discussions with the owners of the Essex and the Brown-Fairchild properties and both property owners indicated they would be willing to credit the already paid options to a newly negotiated price. That would not be the case for the 3045 Park Boulevard site.

Council Member Kishimoto asked the City Manager whether he would be returning to the Council with landbanking options and would Mezzanine options be included.

Mr. Keene said Mezzanine options would probably be included at that time.

Council Member Espinosa asked the City Manager how the current issue played into the timeline in moving forward with the new PSB.

Mr. Keene said the timeline for the PSB had changed and was uncertain. The question on landbanking options would apply to the two Park Avenue properties and meant the City did not have the capital funds to move

forward on the project. Staff was working towards bringing back to the Council the best alternatives to stay on the current course.

Vice Mayor Morton asked if it was possible to landbank the 1.6 acres and did the agreement require that a PSB be developed on that site or could the site be utilized for other City developments such as housing.

Mr. Keene said those were possibilities but Staff did not have specific information at the present time to help decide which direction to take.

Ray Bacchetti, 850 Webster Street #700, said the Blue Ribbon Task Force (BRTF) viewed 20 sites and the City found one suitable for the PSB. He said it was unlikely that more land remained to accommodate a 21<sup>st</sup> Century PSB.

Robert Moss, 4010 Orme, encouraged the Council to move forward with Staff's recommendation and was in favor of applying the sunk costs towards the purchase of the existing site.

Elizabeth Alexis, 347 Diablo Court, said there was not a better time than during the economic downturn to make a capital investment. It was an opportunity to get the land at a discount, construction costs had plummeted.

**MOTION:** Council Member Barton moved, seconded by Council Member Klein to; 1) Authorize the City Manager to execute the Notices of Termination of the Option Agreements between the City and Essex Park Boulevard, LLC, for the purchase of the property located at 2785 Park Boulevard; and between the City and Brown Fairchild-Park Investment Company, L.P., for the purchase of the property located at 2747 Park Boulevard, and 2) Direct Staff to pursue landbanking options which will generally accommodate the facility needs set forth in the Blue Ribbon Task Force Report approved by the Council in June 2006.

Council Member Barton said it was wise to take advantage of the economic conditions.

Council Member Espinosa supported the Motion.

Mr. Keene said Staff would negotiate the best price on the two properties and bring the numbers back to the Council.

Vice Mayor Morton supported the Motion. He said if the Motion was approved, he would like to give Staff the ability to say the Council requested payments be applied even if it was not a condition for termination.

**MOTION PASSED: 9-0**

Vice Mayor Morton asked if Staff needed direction to negotiate the carry-over of the option payments.

Mr. Keene said Staff would move forward to pursue the issue.

## PUBLIC HEARINGS

12. Resolution 8935 entitled "Resolution of the Council of the City of Palo Alto to Amend the Comprehensive Plan to Incorporate the Santa Clara County Comprehensive Land Use Plan for the Palo Alto Airport (PAO CLUP) by 1) Amending Map L-2 to Include the Airport Influence Area (AIA) Established in the PAO CLUP and 2) Amending the "Land Use" Element to Include Program L-2B and a Supplemental Text Box to Establish a Program for Monitoring Development Within the AIA."

Interim Director of Planning and Community Environment, Curtis Williams said what was being considered was to incorporate features of the County's enacted Comprehensive Land Use Plan (PAO CLUP) into the City's Comprehensive Plan (Comp Plan). The intent of the plan was to avoid conflicts with development outside the airport area in proximity relative to building height, noise, and safety impacts. The City's Land Use Plan should be consistent with (PAO CLUP). Staff proposed it to be consistent in terms of adding Program L-2B and Map L-2 amendments to the Comp Plan. Since the City had a number of regulations in the BayLands and developed areas close to the airport, it was anticipated the recommendations in the Land Use Plan be similar to those already in place. One significant change was in some cases an Avigation Easement may be required to dictate height and to not impair airspace or a public disclosure document about potential noise or safety impacts.

Council Member Schmid asked whether the levy shown in the BayLands Master Plan would be a problem since it was in close proximity to the airport landing area.

Senior Planner Gloria Humble said Staff identified two segments of the levy on either side of the runway that were within the approach surface and the runway protection zone. Regulation associated to the zones contained height limitations. The segments were within restrictive portions of the surfaces.

Council Member Schmid asked whether there would be a problem in dealing with levy issues.

Ms. Humble said the levies were along the San Francisquito Creek and were higher than bayside levies.

Council Member Schmid said he was referring to the levies on the south side

of the airport. In December 2006, the Santa Clara Board of Supervisors voted to terminate its responsibilities and turn it over to the City. He asked who in the City would be responsible.

Ms. Humble said she thought it was Public Works Maintenance. The surface and runway protection zone height limitations would become an issue if the Shoreline Study advised to raise them in order to improve flood protection.

Council Member Schmid raised concerns that by voting at this evening's meeting it could have an impact on the City's ability to respond to the Water District's recommendations regarding the levies.

Ms. Humble said the Shoreline Study required the Water District to meet the Federal Aviation Administration (FAA) regulations whether the PAO CLUP was adopted or not.

Mr. Williams said the restrictions applied because of FAA regulations and Airport Land Use Commission (ALUC) regulations and not as a result of incorporating the CLUP into the Comprehensive Plan. Regulations were in place to provide limitations on the approach surface and runway protection zone.

Ms. Humble said the Water District would not have to deal with incorporating the CLUP into the City's Comprehensive Plan.

Council Member Schmid said there was a parcel of land north of Embarcadero Road bordering the airport hangers that was empty and unused. What kind of restrictions would the plan put on the potential use of the site such as placement of a compost facility.

Ralph Britton, County of Santa Clara-Airport Land Use Commission, advised to look at the policies in addition to the map because what was allowed in the turning zone was different from what was allowed in the runway protection zone. Restrictions would depend on the size of an assembly.

Ms. Humble said restrictions could be found in the Land Use Compatibility Policies, Safety Zone Compatibility Guidelines.

Council Member Schmid said it did not include height.

Ms. Humble said height limitations could be found in Land Use Compatibility Guidelines, Section 3.4.

Mr. Britton said they were Federal regulations.

Public Hearing opened at 10:41 p.m.

Ralph Britton, 240 Rinconada Avenue, thanked the Staff and the Santa Clara County (SCCO) in preparing Staff Report CMR:262:09. He said Walter B. Windus, PE Aviation Consultant, volunteered his time in developed the three airport plans at no cost to the County or the City. The plans would have cost thousands of dollars.

Public Hearing closed at 10:42 p.m.

**MOTION:** Vice Mayor Morton moved, seconded by Council Member Kishimoto to adopt the Resolution to amend the Comprehensive Plan to incorporate the Santa Clara County Comprehensive Land Use Plan for the Palo Alto Airport by 1) Amending Map L-2 to include the Airport Influence Area (AIA) established in the PAO CLUP and 2) Amending the "Land Use" Element to include Program L-2B and a supplemental text box to establish a program for monitoring development within the AIA.

**MOTION PASSED:** 9-0

13. Public Hearing on the Levy of Proposed Assessments in Connection With the Palo Alto Downtown Business Improvement District and Adoption of a Resolution 8936 entitled 'Resolution of the Council of the City of Palo Alto Confirming the Report of the Advisory Board and Levying an Assessment for Fiscal Year 2009-10 in Connection With the Downtown Palo Alto Business Improvement District.

Mayor Drekmeier said this was the time and place for a Public Hearing on the Levy of an Assessment on Businesses in the Palo Alto Downtown Business Improvement District (BID) for Fiscal Year 2009-10. In February 2004, the City established the Palo Alto Downtown BID. Annually, the City Council levied an assessment. On May 4, 2009, the Council set the time and day for a public hearing on the proposed levy of an assessment for Fiscal Year 2009-10. The Council appointed the Board of Directors of Downtown Business and Professional Association as the Advisory Board for the BID. The Advisory Board prepared its annual report for Fiscal Year 2009-10 and submitted to the Council. The City published the required notice in a local newspaper on record on May 8, 2009, regarding reauthorization of the BID for 2009-10 as required by law. All interested persons would have an opportunity to provide testimony at this evening's meeting. At the conclusion of the public hearing, the Council will determine whether a majority protest exists. A majority protest would exist if owners of businesses that would pay 50 percent or more of the proposed levy of an assessment have filed and not withdrawn a written protest.

Economic Development and Redevelopment Manager, Susan Barnes gave a presentation as outlined in Staff Report CMR:241:09.

Public Hearing opened at 10:47 p.m.

Barbara Gross, Palo Alto Downtown Business and Professional Association Advisory Board Chair (PAd) asked for the Council's support and reauthorization of BID for Fiscal Year 2009-10 and PAd to carry out the contract. A summary of BID's activities were submitted to the Council for review. PAd would focus on four major themes in the coming year. 1) Business to Business Communication, 2) Downtown Development, 3) Events and Marketing, and 4) Downtown Oversight.

Public Hearing closed at 10:53 p.m.

**MOTION:** Council Member Barton moved, seconded by Council Member Kishimoto to; 1) Hold a public hearing on the levy of proposed assessments in Fiscal Year 2010 in connection with the Downtown Palo Alto Business Improvement District, and 2) Approve a Resolution confirming the report of the Advisory Board and levying an assessment for Fiscal year 2010 in connection with the Downtown Palo Alto Business Improvement District.

Ms. Barnes reported there were no protests.

Council Member Kishimoto thanked the Board Members and Ms. Gross for their work. She was pleased about the outdoor dining initiative and the impact of the Summer Games.

Vice Mayor Morton expressed his appreciation for the Street Teams who were a model of success for re-integrating people back into a role in society.

**MOTION PASSED:** 9-0

16. Adoption of the 2008/09 Community Development Block Grant Annual Action Plan Amendment to the 2005-10 Consolidated Plan to Provide Funding Awards Under the American Recovery and Reinvestment Act of 2009 in the Amount of \$183,477 (CDBG-R) and Adoption of Resolution 8937 entitled "Resolution of the Council of the City of Palo Alto Approving the Use of Community Development Block Grant American Recovery and Reinvestment Act of 2009 Funds for Fiscal Year 2008-2009."

Interim Director of Planning and Community Environment, Curtis Williams said on May 4, 2009, the Council approved the regular funding cycle for Community Development Block Grant (CDBG). The matter was presented to the Council through joint efforts of Staff and the non-profits. On May 6, 2009, the Federal Government provided the guidelines with an application deadline date of June 5, 2009. Staff Report CMR:266:09 included components for public services, capital and administrative support. He asked the Council to approve the allocations being presented.

Council Member Yeh said under the percentage of distribution only capital applications could be considered for additional funding levels. He said Lytton Gardens did not fit the criteria and asked Staff to explain the \$6,000 difference between the Palo Alto Housing Corporation and Lytton Gardens.

Advance Project Manager, Cathy Siegel said the Housing Corporation agreed to repair a smaller area of sidewalk in the California Park Apartments sidewalk project. Additional work could have been completed if they were given the original amount requested. The Committee and Staff agreed it was important to have resources to help pay for staffing costs which was for additional monitoring, oversight, and reporting to Housing and Urban Development (HUD).

Each project required a separate contract and administered separately than regular CDBG programs. A new consolidated plan would be worked on during Fiscal Year 2009-10 and would require additional monies for consulting services.

Vice Mayor Morton advised that he would not be participating in this item due to living within 500 feet of the California Park Apartments.

Public Hearing opened and closed without public comment at 11:01 p.m.

**MOTION:** Council Member Barton moved, seconded by Council Member Schmid to; 1) Allocate CDBG-R funding as described in the draft 2008/09 Action Plan Amendment and adopt the Resolution, 2) Authorize Staff to submit the 2008-09 Action Plan Amendment to the Department of Housing and Urban Development (HUD) by June 5, 2009 deadline, and 3) Authorize the City Manager or designee, on behalf of the City, to execute the 2008-09 Action Plan Amendment for CDBG-R funds and any other necessary documents concerning the application, and to otherwise bind the City with respect to the application and commitment of funds.

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

#### COUNCIL COMMENTS, ANNOUNCEMENTS, AND REPORTS FROM CONFERENCES

Council Member Kishimoto reported that the Joint Policy Committee adopted six climate change projects for the Bay Area. She also advised that there is movement on the contact sensitive solution and legislation for the High Speed Rail.

Council Member Klein spoke about the upcoming tour of the Hetch Hetchy by the Bay Area Water Supply Conservation Association on July 22-24, 2009.

Vice Mayor Morton spoke about the filing of the Amicus brief by the City against the High Speed Rail Authority.

Council Member Yeh spoke about the Northern California Power Agency report as it pertains to Governor Schwarzenegger's position on Renewable Portfolio Standard.

Mayor Drekmeier spoke about the upcoming Soap Box Derby on June 6, 2009. He reminded everyone about the upcoming Library Oversight Bond Committee interviews on June 4, 2009.

ADJOURNMENT: The meeting adjourned at 11:10 p.m.