

Special Meeting  
June 22, 2009

The City Council of the City of Palo Alto met on this date in the Council Chambers at 7:07 p.m.

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

Absent: Schmid

SPECIAL ORDERS OF THE DAY

1. Resolution 8952 entitled "Resolution of the Council of the City of Palo Alto Expressing Appreciation to Patricia M. Briggs Upon Her Retirement."

Council Member Klein read the Resolution Expressing Appreciation to Patricia M. Briggs Upon Her Retirement.

**MOTION:** Vice Mayor Morton moved, seconded by Council Member Kishimoto to adopt the Resolution expressing appreciation to Patricia M. Briggs upon her retirement.

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

Arts & Sciences Division Manager, Linda Craighead said it was a privilege and an honor to have worked with Ms. Briggs for the past 18 years.

Patricia Briggs said she started her employment with the City on June 12, 1961, and spoke of the numerous theatre productions, classes, and special events she had been involved in throughout the years and thanked City employees, City Council Members and the community for their support during her tenure of 48-years with the City of Palo Alto.

- 1A. Selection of Candidates to be Interviewed for the Library Advisory Commission.

**MOTION:** Council Member Barton moved, seconded by Vice Mayor Morton to interview the five new candidates for the Library Advisory Commission, excluding Sara Hart and Marc Marchiel who have already been interviewed.

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

#### CITY MANAGER COMMENTS

City Manager, James Keene announced the City was in the process of recruiting candidates for the Planning and Transportation Commission (P&TC) for two, four-year terms, ending July 31, 2013. Effective July 1, 2009, GreenWaste of Palo Alto would be the City's new contractor for waste collection. As part of the Zero Waste Plan, an annual cleanup day would be offered to businesses, property managers, and multi-unit complexes focusing on reuse and recyclables materials. Customers could schedule a one pick-up day per calendar year for up to four bulky items. Businesses and multi-unit complex customers could take one step closer with the collection of compostable materials including organics, such as food scrapes, landscape debris, and compostable plastics. Expanded recycling would be accepted in the blue recycling containers to include more plastics, hard cover books, scrap metal, cell phones in sealed bag, and electronics. Collection would be available six times per week in multiple size containers.

Mayor Drekmeier announced that Council Member Kishimoto had been appointed to the Peninsula Cities Coalition on High Speed Rail. Alternates were Council Members Barton and Burt.

#### ORAL COMMUNICATIONS

Christine Cray-Rudin, 4270 Terman Drive #103, spoke of the Police Department conducting racial profiling on Blacks, Hispanics, and low-income citizens.

Betsy Allyn, spoke regarding the Friends of the Palo Alto Library's (FOPAL) donation. She said for the year 2009-10, \$175,000 was granted to the Libraries of which \$67,000 was for collections and \$108,000 for the Library Director's discretion. FOPAL's Finance Committee would conduct a mid-year review to determine whether further grants could be considered.

Andrew Jentsch, spoke regarding his concerns with personnel issues with the City.

Wynn Grcich, 3045 Miraloma Way, Union City, spoke regarding the dangers of fluoride in water and urged the Council to help stop water fluoridation.

William Landgraf, 762 Stone Lane, spoke of how City managers lacked in span of control of their employees.

Stephanie Munoz, 101 Alma, said the County no longer had land sites for housing to accommodate Stanford Hospital's low-income employees except on Stanford property. She urged the Council to move forward in requesting the land.

Bob Moss, 4010 Orme Street, said every body of water on the planet contained fluoride and how it occurred naturally. Palo Alto had been adding fluoride to its drinking water for the past 55 years and the amount was well below the level to cause negative impacts.

### CONSENT CALENDAR

Council Member Klein advised he would not be participating in Agenda Item No. 7 as his wife is on staff at Stanford University.

Council Member Barton advised he would not be participating in Agenda Item No. 7 as he is on staff at Stanford University.

Council Member Yeh requested clarification on Agenda Item No. 7 for a project amendment submitted by the applicant in early 2009 regarding the Lucille Packard Children's Hospital.

Senior Assistant City Attorney, Cara Silver said the Amendment did not involve square footage but had a different footprint and architectural features that would impact the Environmental Impact Report (EIR). Visual simulations needed to be revised and the biological tree impact needed to be reviewed.

**MOTION:** Vice Mayor Morton moved, seconded by Council Member Kishimoto to approve Agenda Item Nos. 2-7.

2. Approval of a Recommendation from the Historic Resources Board of the Designation of the Rectory at 745 Waverley Street (St. Thomas Aquinas) as a Category 2 on the City's Historic Inventory and Record of Land Use Action.
3. Approval of California Department of Transportation Disadvantaged Business Enterprise Program Implementation Agreement for Local Agencies.
4. Approval of an Amendment Extending the Agreement Between the City of Palo Alto and the Palo Alto Unified School District for Maintenance and Capital Improvements of City and District Owned Athletic Fields, Tennis Courts, and Basketball Courts and Continuance of School

District Athletic Fields and Court Usage by the General Public for a Period of Six Months.

5. Ordinance 5043 entitled "Ordinance of the Council of the City of Palo Alto Amending Section 16.28.080 (Specific Exemptions) of Title 16 (Building Regulations) of the Palo Alto Municipal Code to Require Excavation and Grading Permits for Basements and Below-grade Parking Structures."
6. Resolution 8953 entitled "Resolution of the Council of the City of Palo Alto Authorizing the Filing of an Application for Federal American Recovery and Reinvestment Act of 2009 Funding in the Amount of Approximately \$210,000 for the Alma Street Concrete Rehabilitation Project."
7. Approval of Supplement to Reimbursement Agreement between the City of Palo Alto and Stanford University for Reimbursement of Costs Related to Stanford Hospital Projects and Project Schedule Update.

**MOTION PASSED for Item Nos. 2-6:** 8-0 Schmid absent

**MOTION PASSED for Item No. 7:** 6-0 Barton, Klein not participating, Schmid absent

#### PUBLIC HEARINGS

8. TEFRA Hearing Regarding Conduit Financing for the Kehillah Jewish High School Project Located at 3900 Fabian Way, Palo Alto, California; and Adoption of a Resolution 8954 entitled "Resolution of the Council of the City of Palo Alto Approving the Issuance of Revenue Bonds by the California Municipal Finance Authority in an Aggregate Principal Amount Not to Exceed \$16,000,000 for the Purpose of Financing the Acquisition of Real Property, Facilities, Equipment and Improvements of Educational Facilities and the Payment of Various Cost of Issuing the Bonds."

Senior Financial Analyst Tarun Narayan gave a presentation as per outlined in Staff Report CMR:264:09

Public hearing opened at 7:52 p.m.

Leonard Lehmann, 850 Los Trancos Road, Kehillah Jewish High School (Kehillah) representative stated he was available for questions.

Public hearing closed at 7:53 p.m.

**MOTION:** Council Member Barton moved, seconded by Council Member Kishimoto to Adopt the Resolution approving the issuance of bonds by the California Municipal Finance Authority (CMFA) for the benefit of Kehillah Jewish High School in financing Kehillah Jewish High School.

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

#### REPORTS OF COMMITTEES AND COMMISSIONS

9. Finance Committee Recommendation to Direct Placement of Proposed Business License Tax Measure on November 2009 Ballot.

City Manager, James Keene reviewed Council's directives since 2007 and their progress on the Business License Tax (BLT), its' priority to preserve General Fund services while also reducing the significant infrastructure backlog. Impacts to the business community were considered. He noted that if Council proceeded with the BLT, this was scheduled for the November 2009 ballot. The revenue from the BLT, if approved, cannot be used to balance the newly adopted budget. It potentially provided a revenue stream toward funding General Fund services and brought with it an increased ability to deal with the infrastructure backlog for the City. No specific identifications for the potential BLT funds have been made, however. Under \$2 million was estimated to remain in the City's infrastructure reserve by the end of 2010. He reiterated that he, his Staff, and the Finance Committee had been working on the BLT for a long period of time. He reviewed the deadline for action on the BLT for the November ballot including an Ordinance adoption by Council on July 20, 2009.

Administrative Services Director, Lalo Perez reviewed with Council where the process for the BLT began to where talks ended with the Finance Committee. This included information on the consultant service which helped to review the varied tax methodologies and also to determine the number of potential businesses in the City. Data determined there were 9,000 businesses existing in the City, and 2,500 businesses were identified from Sales Tax data in determining gross sales data which was then categorized by business sectors. Revenue assessments and modeling were done to approximate revenue generation. Information was obtained from Reference USA in ascertaining the number of employees in the community. The cost of doing business in Palo Alto was analyzed versus the costs in neighboring communities. Ten meetings were held with members of the business community between March and May of 2009 with significant feedback. Comments from these meetings were reviewed. Meeting and discussion was hosted by the Chamber of Commerce in consideration of alternative revenue generations. Three suggestions from the Chamber meetings included: 1) Increasing the Utilities User Tax (UUT) to generate approximately \$3 million; 2) Increasing Sales Tax, for the generation of approximately \$4 million; and

3) Increasing the Documentary Transfer Tax (DTT) to generate approximately \$3 million.

Management Specialist, Sherilyn Tran spoke on the cost of doing business in Palo Alto. Staff, by Finance Committee's directive in March 2009, did an analysis and cost comparison for doing business in Palo Alto versus neighboring cities. Six cities were in the study: Sunnyvale, Mountain View, Santa Clara, Redwood City, Menlo Park and San Mateo. Three cost areas were studied: fees, taxes, and commercial property rental rates. The current costs for doing business in Palo Alto were not significantly higher than the comparison cities. The City's fees and taxes are not significantly higher than the other cities with the Transient Occupancy Tax (TOT), which is 2 percent higher than the majority of the cities, while its UUT is in line with Redwood City. Palo Alto is the only city in the comparison group which does not currently have a BLT. Additional mandatory costs for doing business in Palo Alto included development impact fees, plan check reviews, and signage costs, which are conditional and dependent on the business type and specific needs. All cities in the study have their own mandatory conditional costs dependent on the specific needs of each community. Water, gas and electrical cost comparisons for doing business were studied. Utility user data from three businesses in the City were compared to the rates for the comparison cities. Overall, Palo Alto businesses pay less for utilities than the comparison cities. The cost of commercial property rental comparisons for research and development (R&D), retail, and office were reviewed, with Palo Alto coming in with one of the highest rents when compared to the other cities. However, the City also had the lowest vacancy rate for office space and the second lowest vacancy rate for R&D space. The cost of doing business in Palo Alto, based on the above study, brought Staff to the conclusion that doing business in the City is not significantly higher than the neighboring cities in terms of city-mandated costs.

Mr. Perez summarized the Finance Committee's actions spanning March through the present time. Motions and directions from the Committee included moving forward with the BLT recommendation to full Council with an annual generated revenue of approximately \$3 million net, with an implementation date of July 1, 2010, and an option to delay the effective date, with all businesses subject to the BLT with no exemptions other than statutory exceptions for the first three units of a multi-unit rental class. The cap was increased to \$30,000 for all businesses other than retail which remained at \$20,000. Using the full-time equivalent (FTE) in order to determine employee numbers was recommended. The Finance Committee was evenly divided on the tax methodology between gross receipts and the employee headcount methodologies. Direction was given to reduce the business classifications and/or merge categories as one classification; personal services and hotels was merged with retail while business services merged with the professional classification. Guidance was given on

development of a wider tax rate distribution between professional and retail classifications. Direction was given for the provision of additional revenue models based on gross receipts and employee FTE count. Staff was asked to evaluate alternative tax methodologies for multi-unit rental and commercial property. Staff's original recommendation was for gross receipts with the direction to do per-unit rents for the multi-units and square footage for the commercial property. He recapped the tax methodologies and tax models which he and staff studied. After reviewing comments from the business community and the Finance Committee on reducing the tax to \$3 million in forecasted revenues, Staff reduced the tax by more than 50 percent in the business categories. He addressed the concerns over double-taxation and pass-through from landlords to the tenants. He noted Staff needed direction from Council on the type of tax methodology. An additional directive was needed for the administration costs of the BLT program. The issue still stood on whether or not to provide an exemption for nonprofits under the employee tax methodology. He reviewed the administrative cost approximations for implementing and enforcing the BLT. Staff decided to start with temporary staffing for administration as well as implementation and enforcement of the BLT to better assess staffing needs for the long-term. Staff recommended beginning with 2.5 temporary staffing positions in order to perform the varied functions which he reviewed. Variable costs were noted for forms, envelopes and software. A \$10,000 contingency was requested in this regard. When the exact needs for administration of the BLT were known, Staff would then return to Council for authorization to convert any existing temporary positions to permanent status. The estimated costs for this change-over went from the temporary administrative cost estimates of \$160,000 to \$290,000 in permanent administration. The rise in costs reflected the ability for these positions to also provide code enforcement on the collection of the BLT when necessary. Based on the review done by the consultants, as well as the history of neighboring cities in California, it was noted that 80 percent of businesses self-report and pay. Collection efforts were necessary for the remaining 20 percent of the businesses which did not report or pay. He reviewed their suggested employee count and costs for administration of the BLT with that of surrounding cities. Cities with and without enforcement costs for the tax were included in their comparison. He stated Staff's recommendations for 2.5 positions were comparable based on this information. He stressed that starting the program on their proposed temporary basis with these 2.5 employees lent for an opportunity to adjust along the way to better fit the long-term outlook for the tax and its enforcement. He stated any costs for enforcement of non-registered and non-paying businesses was offset by the recovery of these BLT revenues. He reviewed the duties of the 2.5 employees, which included community outreach and education on the BLT, development and reporting of forms, instructional guidelines and letters of introduction of the BLT as well as the creation of a database with existing information with the goal to have an online system in the future. BLT

staffing would also process payments and mail BLT certifications, do enforcement and prepare and submit the data required by the State. He reviewed the necessary steps BLT staffing would follow in managing the program. In closing his presentation, he noted Staff's recommendations for the BLT in following with the recommendations from the Finance Committee, which included addressing the City's infrastructure backlog. For that reason, Staff recommended the gross receipts model. Staff was in agreement with the \$3 million net in revenue forecasted in the models. Staff asked for direction on continuing to finalize the BLT Ordinance for placement on the ballot of November 2009, with a return to Council on July 20, 2009 with this document.

Council Member Kishimoto asked, if 80 percent of the City's businesses were likely to comply with reporting and payment of the tax, what method was proposed for auditing the remaining 20 percent.

Mr. Perez stated if a comparison of available data noted that a particular business did not have a BLT, then follow-up, verification and enforcement would ensue. A walk-through of the business district to review the addition of new business was also suggested as a manner in which to audit the situation. New utility account data for new business was an additional way to track and contact new businesses that had not yet registered and paid their BLT. Another trigger that may attract their attention is a large business with significant revenue generation, who has submitted the minimum BLT, may require further follow-up and verification. With the suggested staffing level at a temporary start-up of 2.5 employees, full enforcement throughout the City was not planned. BLT staff's duties were dedicated to processing and administration of the program. During the non-renewal cycle, BLT staff had the freedom to follow along with data comparisons and follow through to catch up any unreported businesses.

Vice Mayor Morton asked if the City had access to State information on sales tax accounts and 1099 issuances, if the BLT Ordinance was in place.

Mr. Perez noted this was his understanding as well; once a BLT Ordinance was in effect, the City then had access to State data.

Council Member Kishimoto asked what kind of cross-checking and auditing measures might take place under the employee headcount tax method.

Mr. Perez stated follow-up and cross-checking was along the same lines as he had previously mentioned, although it was less clear on how they would do this since there is less information available for comparison. Experience and process, however, was the same as he had discussed previously with the expectation going in that approximately 80 percent of the businesses

were likely to comply and follow through. Any available State data was also available for cross-checking.

Council Member Kishimoto noted the State's Employee Development information was an access area as well if the Ordinance passed.

Mr. Perez agreed, once the Ordinance was in place, the City then had access to this data.

Council Member Kishimoto asked what measures were taken in protecting confidentiality regarding fee and tax information.

Cara Silver, Senior Assistant City Attorney noted the amount of taxes paid by taxpayers was typically kept confidential. However, there was distinction between taxes versus fees. Development fees and the like were not confidential.

Vice Mayor Morton noted this was the same for the utility actions, which were also not public information.

Ms. Silver stated similar rules governed sales tax and the like.

Mr. Perez said the added language had been worked into the Ordinance which clarified that the BLT staff was not privy to client and other privileged information files.

Council Member Kishimoto spoke to some concerns and questions she had received from a community member, Herb Borock, with regard to the presumed employee numbers for Stanford Hospital and Palo Alto Medical Foundation (PAMF).

Mr. Perez stated it could not be ascertained from the information provided as to whether or not the number of positions provided were FTE's or headcount. The estimate of 5,000 was for FTE status, but headcount was higher. Staff used conservative numbers at this point since they did not have the exact data on headcount versus FTE.

Council Member Kishimoto asked if the determination of this was likely to be clearer, after the Ordinance passed, and once they had access to State information.

Mr. Perez stated this was the likely case. They do not have access to this information as of yet. He noted they were following the self-reporting rule of thumb that employers follow through with this information. They can then look at the data received from Reference USA in trying to cross-check and discuss with the businesses on their numbers.

Council Member Kishimoto asked for clarification and any estimations on the revenue caps.

Mr. Perez noted several issues arose in this area in that they do not know how a company might apportion their employees. An exact number of employees working within the City was necessary in this assessment as well as their FTE status. Based on data they have already reviewed, Staff noticed that 8-10 businesses would exceed the cap on the per-employee basis and nearly the same would exceed with the gross receipts methodology. Only one or two businesses were consistent in these findings while the others differ dependent on the tax methodology.

Council Member Kishimoto asked for clarification on why Staff recommended the gross receipts methodology over employee headcount, other than the apportionment being much easier.

Ms. Silver noted this was not stated in the Staff report, but this was actually the opposite in that apportionment was easier for the employee headcount methodology. Typically, employee headcount apportionment included the number of employees physically present in Palo Alto, which were then attributed to the City's taxable activity. Those employed outside the City were apportioned outside the City. She noted the language in Staff's report may have been confusing, but the point remained that there were apportionment issues with any type of methodology. However, Staff believed that the employee count methodology was easier to apportion than the gross receipts methodology.

Council Member Kishimoto noted the proposed costs for administration of the tax were \$30,000 for both the employee headcount and gross receipts methodology. She asked if this was a rough estimate of costs since it appeared that the headcount methodology was easier in administration.

Mr. Perez stated the estimated costs were based on the assumption that there were 9,000 businesses existing within the City and their activities. It was estimated to take 15-20 minutes to process initial applications. It may prove less staff was necessary, once the process was initiated and better understood, which is why Staff had recommended the use of 2.5 employees on a temporary staffing basis at lower cost while determining the need.

Council Member Kishimoto asked how much thought was given to streamlining the administration of the BLT process for both the City and the payee. If computerized as much as possible, she questioned whether it was conceivable that the payee would spend no more than 5 minutes per year, as well as the City spending no more than 5 minutes per year on each application.

Mr. Perez stated it was difficult to assess or estimate the time and costs at this point but administration of the BLT planned to reach the highest level of efficiency. A meeting with a vendor who had implemented an online system for the City of Houston was planned for the near future. Eight fields of information were required by the State on BLT applications. Additional fields may be added by the City as they assess the makeup of the BLT applications and forms.

Vice Mayor Morton noted, when talking about these required fields, some fields were as simple as the business name, address and phone.

Mr. Perez stated this was correct; most cities use a one-page form. The form itself was not at any great expense. He had a sample for Council's review.

Council Member Kishimoto was interested in seeing a sample form. She noted, even with those common fields, this was the same as the County Assessor filing forms. Once an account was established, renewal every year is less time consuming since many fields auto-filled at renewal time.

Mr. Perez stated this was correct; fewer changes or new information existed at renewal time. He noted the initial setup required more time with the ongoing information gathering easier with some automatic notifications going out to the businesses as a long-term goal and part of their scope review. The more automated they became, a business had the ability to sign on to the system at any time of the day.

Council Member Yeh stated that Staff's information on the cost comparisons for doing business in the City was helpful in this current discussion as well as in future discussions. He asked how accurate their estimate was for the presence of 9,000 businesses in the City. He asked what percentage of businesses this potentially captured.

Mr. Perez stated it was difficult to answer this when considering the businesses on the professional side. However, they were fairly confident in their numbers for the retail businesses since a data set existed because of the sales tax information. They know, for example, where they stand on their estimates with regard to home-based businesses and any other businesses which existed under their radar. He assured Council that Staff had vetted out seven different data sets. The estimated number of businesses in the City had originally been 20,000. However, after reviewing the data and eliminating any duplications or businesses which had moved out of the area, they had arrived at the 9,000 number. In comparing the City to the area communities and their average number of businesses, they were reasonably in line in their estimates.

Council Member Yeh asked about the process used in developing the research data. If Staff mapped out an ideal process in which to develop all of these estimates, would it be preferable to have a registry in place prior to any analysis.

Mr. Perez stated there was no doubt that a registry, already in place, provided a more confident set of numbers for potential tax revenues. However, the consultant had advised Staff in that it took approximately three years to establish a base of data upon the implementation of the BLT. He reiterated that 80 percent of businesses self-report and this three-year approximated start-up allows for the remaining 20 percent of the businesses to get onboard.

Doug Jensen, Community Services, elaborated on how they had come up with the 9,000 estimate for businesses within the City. He stated they had used a database integration technology where multiple diverse databases including sales tax, property tax, phone records, marketing directories, State licensing and contractor files, along with any data source available were used. These data sources were then honed down to a valid Palo Alto address. Anything within the databases that was not physically within the City were purged in order to come up with a business distributive subset which came to 9,000 by estimate. He echoed Mr. Perez's concern that a percentage of accuracy was not feasible for that number at this point, but the number had been carefully vetted. Professionally, he stated their estimate of 9,000 was very close.

Council Member Yeh asked how other jurisdictions approached this in order to develop their BLTs.

Mr. Jensen stated the cities, in their comparison study, had held a BLT Ordinance for many years and that this had been developed over time. Costs of implementing a registry and enforcement of a voluntary registry still involved holes or missing information.

Council Member Yeh asked for a description of the registry aspects within some of the other jurisdictions. He questioned if there was any kind of cost recovery associated and how fees were structured on the registry side. He asked what other cities had done with any additional information they had received in these registries.

Mr. Jensen noted cities using a registry-only on a voluntary basis had no enforcement and routinely received information from 80 percent of their businesses. Cities with a BLT Ordinance in place for many years had more accurate numbers with regard to their business community and the business types.

Council Member Yeh asked if they had seen any specific usage of that data.

Mr. Jensen stated certain things were recommended, such as employee headcounts, emergency contact information, alarm system information, and public safety information.

Council Member Yeh stated the CMR included discussion over implementation of the BLT and collections in the first quarter of 2011. He noted three years was cited as an adequate timeframe to gather and build an accurate business registry. He asked what steps were included in assessing this information at the one-year point in a three-year process of data accumulation to be sure they were moving towards a more precise number.

Mr. Perez stated a registry database was assistive in reaching the more accurate number of businesses in the City. He reiterated that 100 percent compliance was not expected. A dataset for home-based businesses would arise in their ongoing establishment of the BLT.

Council Member Yeh stated the timing of the election process for the proposed BLT was either November 2009 or November 2011. He asked if collections were initiated in January 2011, and there was also an election in November 2011, given what had been said with regard to the potential benefits of additional provisions in estimating revenue, number and type of businesses and their distribution throughout the City, how would Staff view ramping up something if there were a vote in November 2011. He asked if this was facilitated by having a business registry in place already, or not.

Mr. Perez stated the process was likely to establish more quickly with more data and time to set up the tax process, itself, with the business registry database in place by the time the election occurred in 2011.

Mr. Keene stated the value added by the business registry was related to the yield of the total revenues the City received being totally accurate. The focus was on the equity or impact of the individual business owner which was separate from the yield to the City of the revenues from a BLT. He noted another issue arose in whether or not the estimates of the average per category or the median per category were accurate. Without the business registry it was important to keep in mind the realm of the realistic based upon all the factors that exist.

Mr. Perez reviewed with Council a BLT application form used by the City of Menlo Park. He noted copies of other cities' forms existed as well to provide Council with further examples.

Council Member Burt asked for clarification of the logistics if Council asked them to return with two alternatives: 1) a form of the BLT, and 2) an alternative real estate transfer tax. He questioned whether Staff had adequate time to return with these alternatives while also having time to engage the public and gauge their opinions.

Mr. Keene stated this was predicated on whether or not Council directed them on what they wanted to see in either case. Pending any results of any survey data, the Ordinances in either case would be in draft form. Additionally, he asked Mr. Perez what additional things were possible other than simply a survey mode or gear.

Mr. Perez noted the simple mode for public information and opinion included the use of some phone-sampling along with public survey.

Council Member Klein asked for clarification on the issue of nonprofits and their place in the BLT Ordinance.

Ms. Silver stated nonprofits were statutorily exempt from a gross receipts tax but were not necessarily statutorily exempt from the employee-based tax. If Council gave direction for implementation of an employee-based tax, an issue under consideration was whether they also wanted to exempt the nonprofits. Most Ordinances exempted nonprofits. Two large nonprofits in Palo Alto, Stanford University Medical Center and PAMF had two of the City's highest employee counts.

Mr. Keene added it was Council's discretion to exclude nonprofits above a certain size from this exemption.

Council Member Klein stated Staff was leaning toward the exclusion of the largest nonprofits if he had understood materials presented. If this were the case, he asked if the smaller nonprofits had been included in the BLT calculations.

Mr. Perez stated these were included in the employee base dependent on the information received from Reference USA.

Council Member Klein asked for an explanation of the rationale for including the smaller nonprofits but excluding the larger nonprofits.

Mr. Perez stated their recommendation was to exclude any nonprofit that had 100 FTEs or less, unless advised otherwise by Council.

Council Member Klein asked how they arrived at the threshold of 100 FTEs or below.

Mr. Perez stated this was likely to include most of the smaller nonprofits.

Vice Mayor Morton asked if nonprofits could be excluded by activities as well as by size.

Ms. Silver stated they needed to research that issue since she had never seen it done in the past.

Vice Mayor Morton addressed the sample BLT form presented by Staff. He noted this was the initiation form and had lines for additional years' calculations. He asked for clarification of this.

Mr. Perez stated he was not able to speak on the example form they had in Powerpoint which was for the City of Menlo Park. He had not reviewed this form. Staff had an example form from the City of Oakland, however, where they have two forms; one form was for initiation and the second form for an existing business. He noted they could look at either option; one form with additional lines for additional years' calculations, and or the two-form system.

Vice Mayor Morton asked for clarification on the implementation period for the BLT. He noted there was the struggle in the current year to fill the \$10 million gap in the City's budget. He questioned what the downfalls were in implementing this tax later than July 1, 2010, since the first reporting period was January or February of 2011.

Mr. Keene stated if the tax was not implemented before July 1, 2010, this lent to impacts on the Fiscal Year 2011 budget, in the second year of the City's bi-annual budget process. An almost \$3 million existing deficit was projected in the tentative budget adoption. Addressing reductions was necessary in the 2011 budget already. Potential uncertainties also existed in relationship to the State's budget, which may increase the estimated \$3 million gap. Deficits beyond the \$3 million level had significant City service impacts. Reinvestments in the City's infrastructure were also in a compromised position, which was projected to be sitting at \$1-1.6 million remaining in the City's infrastructure reserve at the end of 2011.

Vice Mayor Morton noted that there was two-fold importance in that the Union needed to see that the community was contributing, while at the same time the community needed to see that the Unions were contributing.

Council Member Espinosa asked why Staff has not come back with the recommendation for a task force in studying the broader range of issues, and also having a more transparent discussion about other tax alternatives.

Mr. Keene stated Staff was specifically responding to prior Council directives which date back to 2007 when considering the BLT. While there had been no task force, they have not been lacking in reaction, input, commentary and alternative recommendations. He noted they were talking about taxation, which was always a heated issue. In order for effective dialogue, it was important to clearly define the new tax revenues they wished to proceed with. Discussions with representatives of the business community were fraught with opposition to the gross receipts tax methodology and the employee basis was preferable. However, even in pushing forward on the employee headcount methodology, there was no clear sense of support from the business community.

Mayor Drekmeier asked for clarification of the employee headcount methodology in an instance where work is being done within the City by hired contractors from a business that exists outside the City.

Ms. Silver stated Council had the flexibility to define how an employer can or will be taxed and also the definition of an employee within the Ordinance. Staff proposed that contractors which are a part of the primary aspect of a business were considered as employees if they did the majority of their work inside the City limits. This was distinguished from consultant-type employees who rarely work within the company and inside the City.

Mayor Drekmeier asked if a Motion was needed to clarify this or whether they were voting on it as is.

Ms. Silver stated they wanted further direction and clarification on this.

Mayor Drekmeier stated one of the concerns over the gross receipts tax was that it may penalize employee-heavy businesses such as restaurants that operate on a margin. Many businesses were more opposed to gross receipts versus the employee headcount methodology. He asked if there were any businesses that were more opposed to the headcount methodologies than the gross receipts method.

Mr. Perez stated no one had reported a better liking for the gross receipts tax methodology in any of the meetings he had attended in the business community.

Mr. Keene stated, even with the adjustment of the tax rate in order to result in a yield in using the gross receipts tax, this did not necessarily translate into a shift in opinions regarding the methodologies. He stated the gross receipts tax also brought with it the concern over access to information for any business.

Lee Wieder, 637 Middlefield Road, was of the opinion that BLT based on the gross receipts methodology was not the answer. He noted small and large business community members that had met with Council Members Burt, Klein and Schmid were unanimously opposed to this tax methodology. He stressed more time was necessary to clarify the complexities involved in implementation of the BLT as well as exploration of other revenue avenues. He suggested further exploration of the businesses in town and compilation of a business tax registry prior to further discussion of a gross receipts tax methodology.

Matthew Stewart, 3325 Louis Road, spoke on the need for common sense reformation in this time of economic downturn. He stated the gross receipts tax was one example of a common sense reform. While the alternative methodology of employee headcount was more expedient, he stressed expediency was not to be confused with good policy. Gross receipts was the best policy, and he was in support of this.

Dr. Earl Whetstone, 744 Middlefield Road, a dentist within the City, spoke on the gross receipts methodology and concerns he had over this with regard to businesses such as his own practice. He stated the gross receipts methodology was not reflective of his business. He noted the sizeable amount in his business, which is written off every year due to insurance issues and other un-collectables. This lent to potential billing for money he never collected.

Dr. Susan Kaplan, 550 Hamilton Avenue #201, a licensed psychologist, spoke on the flawed process on the creation of the BLT and the preferred gross receipts methodology, if the Ordinance passed. She concurred with concerns and comments expressed by the Chamber of Commerce. She believed further alternatives have not yet been fully explored and hoped discussions would continue. She noted professionals held a strong preference for the employee headcount methodology versus the gross receipts method. She spoke on the continued concern over invasion of privacy with the gross receipts method.

Jack Birnbaum, 3520 Greer Road, noted that the biggest challenge was not whether the BLT should be a gross receipts methodology versus employee headcount. He noted, more importantly, one does not raise costs and prices during hard economic times. He noted that public employee benefits and salaries far exceed those of 43 percent of the people in private industry.

Dr. Beth Rosenthal, PhD, 550 Hamilton Avenue, also a psychologist within the City limits, waived her opportunity to speak since her points were well-made by two earlier speakers, Dr. Kaplan and Lee Weider. She added, however, that she was in support of Council Member Burt's suggestion to do

some polling to understand where residents and the business community stood on the issue.

Joshua Howard, Executive Director for the California Apartment Association, and the Tri-County Division, spoke as a representative of the multi-unit housing industry in the City. He spoke on behalf of several rental property owners in the City. They recognized the City's need for additional revenues. Their position on this, however, remained the same in that they opposed the gross receipts tax but would not oppose a flat rate tax if this came forward.

Sherry Bijan, Palo Alto Downtown Business and Professional Association, noted her personal stance as Executive Director of PAD/BPA was the strong feeling that the business community has not been engaged in adequate dialogue regarding the business licensing tax matter. They strongly recommended the setup of a task force and further discussion. She also read and submitted a letter from a venture capital business owner in the City.

Greg Osborn, 1450 Greenwood Avenue, stated behavior in the City's business community was likely to change with the implementation of a gross receipts tax methodology. He stressed this was not the right time for such a tax implementation and cited the already vacant storefronts in the City. He questions what restraints would be in place if this type of tax methodology were put in place.

Jeff Selzer, 171 University Avenue, spoke and represented Palo Alto Bicycles. He noted his business was not going anywhere and was very much a part of the City. However, he stressed that his business was incredibly civically minded and wanted the City to succeed. He noted the gross receipts tax was not the best option.

Robert Moss, 4010 Orme Street, stated the City was more than 30 years overdue in instituting a Business License Tax. He stressed the City should move forward on this and was in support of this. He noted reasons why this tax was better off using the employee headcount method instead of gross receipts. However, he felt a small gross receipts portion could also be added in case this method was more effective for the future. He made suggestions on the nonprofit exceptions as well.

Dennis Martin, 69 Lester Avenue, spoke in representation of National Association of Industrial and Office Properties (NAIOP). NAIOP supported Palo Alto Chamber of Commerce in the establishment of a business registry with a nominal fee in order to engage in comprehensive outreach and dialogue with the business community on the needs and options of the BLT. He was in support of postponement of this item for the November ballot.

Paula Sandas, Palo Alto Chamber of Commerce, noted the Chamber was against the gross receipts methodology and had continued their request for the establishment of a Blue Ribbon Task Force on the BLT and the institution of a revenue-neutral business registry in order to get an accurate picture of the number and type of businesses in the City.

Mayor Drekmeier asked if the Chamber had a position on the employee headcount methodology or whether they stood neutral on this.

Ms. Sandas stated they stood neutral on this.

Mayor Drekmeier asked if it were safe to say that the Chamber felt the employee headcount was the lesser of the two tax evils.

Ms. Sandas stated it was safe to say they felt it was the lesser of the two evils when considering both methodologies.

William D. Ross, 2103 Amherst Street, was in opposition of Staff's recommendations and the implementation of a gross receipts BLT. He supported the Chamber's views on the matter and as articulated by previous speakers. His opposition was also based on his 27 years experience with the gross receipts methodology usage at the site of his second office in Los Angeles, where he was audited three times in formal audit and six times informally. He spoke to the inadequacies in confidentiality of client records in his experience.

Robert Herriot, 2066 Byron Street, noted the City's budget does not present historical data, so there is no way to track whether the City is spending in a sustainable manner. He hoped for rejection of the proposal for the BLT and hoped that future budgets would bring along with them some historical facts to support their changes. He spoke and gave examples of the pros and cons of such a tax.

Herb Borock, P.O. Box 632, spoke on the two independent sources for the number of employers in the City, the US Census Bureau and the Employment Development Department. He noted an Ordinance was not needed to obtain aggregate data. He noted the varying ways this information could be used in cross-checking and auditing. He discussed apportionment issues, surveys of public opinion, and comparisons with other cities all with regard to the BLT.

Adam Montgomery, 19400 Stevens Creek Blvd. #100, Cupertino, in representation of the Silicon Valley Association of Realtors, spoke in support of the comments made by Ms. Sandas on behalf of the Chamber of Commerce. He illustrated two additional points on the timing of the BLT and the alternatives of such taxation.

John Halkmann, Palo Alto, spoke in opposition of the BLT. He noted the income and gross receipt tax methodology was upsetting to the community. He suggested looking into existing tax structures to increase tax revenues for the City. He also suggested looking into volunteer contributions or a voluntary tax acceleration in this regard.

**MOTION:** Council Member Barton moved, seconded by Council Member Yeh, to direct Staff to create a revenue neutral business registry and a Blue Ribbon Task Force Committee to create proposals for revenue development and savings to potentially appear on 2011 ballot.

Council Member Barton noted there were several components related to this. He was generally opposed to the tax whether it was a gross receipts or per capita tax. He did not feel the timing was appropriate for the City to look at such a tax. He felt additional savings potentials existed within their budget over the next period of time. There was an opportunity to work with the business community in looking for savings in process and potential for revenue in ways that serve the City and business community in a win-win situation. The current proposed tax was a win-lose situation and not the proper route for the City to take at the present time. He was skeptical of the cost of the business analysis presented by Staff and felt it did not cover the extractions which came along with building permits and the time it takes to secure and sign off on these permits in moving a business fully into the City or expand a business. He believed further discussion and study was in order.

Council Member Yeh was in support of the Motion in that he thought there were other opportunities for the City to continue in their dialogue with the business community. Once the tax is in place it is in place for good, generally speaking, and he did not know any cases where a tax went off the books at a later date. This merited more thought and discussion in getting things right the first time. He spoke to the accuracy issues and making sure that an adequate dataset is available to allow for correct predicted revenues for any business-based licensing tax. Precision was important when working on budget issues versus the potential budget deficits or surpluses. Additionally, he asked if there were some kind of November 2011 vote, with a registry in place, would these potential funds actually be collected in January of 2012. If so, this lent to a one-year gap. He noted a registry in place expedited the implementation of the tax and the usage of its funds.

Mr. Perez stated this one-year gap assumption was correct if it was also assumed that they would collect on the prior year's data of the registry. Businesses would pay the tax in January of 2012 on the prior year's data in keeping with Council Member Yeh's comment and question.

Council Member Yeh noted a task force then allowed for the business community and the City to determine what data was needed in order to make sure they were collecting what was most appropriate. Whether they collected by the gross receipts or employee headcount method, there was no set form for what the business registry actually required. He stated data empowered the City and the business community to work together in the promotion of economic vitality.

Vice Mayor Morton noted November 2011 was the next time this item would reach the ballot if it did not make the November 2009 general election ballot.

Mr. Keene stated this was correct in that there was a two-year delay in voting on this if it missed the November 2009 ballot; however, a business registry implementation for cost recovery was possible prior to this.

Council Member Klein stated he was in opposition of the gross receipts tax methodology. He did not support the gross receipts methodology and would speak on it further if the Motion failed. If they could speed up the collection of the tax to January 1, 2012 from July 1, 2012, they would not be saving a year, but would be saving half a year. At best, a two-year delay remained a delay of at least 18 months of revenue, which was a loss to the City and increased the budget gap by \$4.5 - 6 million. It was unacceptable to spend money on a Blue Ribbon Task Force at this time for this issue as it was fraught with problems and also delayed a decision on the BLT. He noted this was an issue for the entire City and merited outreach and discussion with both the entire community and not just the business sector.

Council Member Espinosa did not agree that the development of the task force was a delay tactic. He was not in support of the gross receipts approach, but did support the Motion with the reasons for it already being well stated. He added that the timing of the task was wrong in that the current economic times and factors made it important to do everything possible in ensuring every business in the community was successful. He noted further discussion and study was still warranted with regard to the BLT.

Vice Mayor Morton noted that this issue had been debated for decades with Palo Alto being one of the few cities in Northern California without a Business License Tax. He did not believe that there was a big threat of businesses leaving town due to the tax. He stressed what this potential revenue did for existing services in the City as well as ramping up of these services and building on the City's infrastructure. He did not agree with deferment of these potential revenues for up to two years while it was further assessed and discussed.

Council Member Burt noted that the Finance Committee and Council had struggled with the BLT issue for a considerable amount of time. He was disappointed that this tax had not been implemented sooner. He did have some concerns about moving forward in the current timeframe. There was still a lack of good information though they had heard from a sizable sampling of the business community. He noted Palo Alto Online contained imprecise polling which has raised the question of whether the resident community is in support of the BLT. He addressed the possibility of increasing the Real Estate Transfer Tax. He stressed the need for additional information and was disappointed that there was not majority support in pursuing the option of an employee-based BLT and the real estate transfer tax to look at gauging this for community support. He agreed the City faced economic difficulties and had already made sizable cuts in staffing and asked employees to make sacrifices with similar or greater problems possible in the next several years. The necessity existed to invest in the infrastructure and to have some portion of the budget shortfalls come from new revenue.

**SUBSTITUTE MOTION:** Council Member Burt moved, seconded by Council Member Kishimoto, to direct Staff to come back in two to three weeks with a gauge of public support for three alternatives; 1) Postpone the Business License Tax until additional evaluation has been completed, 2) Evaluate interest in Real Estate Property Tax based upon the gain of property value, and 3) Gauge public support for employee headcount base Business License Tax.

Council Member Burt stated his Substitute Motion held the best chance for not stalling their discussions. It provided a better opportunity for a more informed decision. Another area he hoped might receive further evaluation for the employee headcount method of the BLT included a modification to what was in Staff's report with regard to nonprofits and further gradations between professional and business services and those of retail and personal services in the rate structure.

Council Member Kishimoto asked for clarification on the estimated startup and ongoing costs for a business registry. She asked if it was the same \$330,000 which had previously been discussed.

Mr. Perez stated it was this same \$333,000. If this was done permanently, Staff suggested using temporary staffing to ensure themselves of the adequate amount of staffing and administrative costs.

Council Member Kishimoto asked if this meant they were basically taking the gross receipts option off the table for discussion. Of the two choices, she definitely favored the employee headcount in its stability and ease of administration. Confidentiality issues did not come into play with the employee headcount methodology. She understood from the need from the

business community there was a desire for better outreach, but in reading through the detailed analysis she agreed with Council Member Klein that the structure proposed for the employee headcount approach with the BLT was concise, straightforward and rational. She noted the frustration of both businesses and the community at large, the system was biased against the Council and community holding any control over personnel costs. The newly passed budget included an increase in salaries and benefits each year at \$5 million per year.

Mr. Perez stated this was not true for the salary portion of the budget.

Council Member Kishimoto asked if this was true of the benefit portion of the newly adopted budget.

Mr. Perez stated this required a further look at the actual numbers in the newly adopted budget.

Council Member Kishimoto stated she recalled, salaries and benefit increases were lumped together in the new budget, with a year-to-year rise at \$5 million per year.

Mr. Keene stated in looking at 2010 there was actually a reduction in salary and benefits since there were basically no pay increases for the majority of City employees. They had yet to receive an additional \$3 million in revenues and other compensation adjustments in order to balance the 2010 budget.

Mr. Perez recalled there was \$2.5 million in benefits that were not allocated in 2009 but were reallocated for 2010 as part of the numbered increase.

Council Member Kishimoto stated she had pointed this out due to the fact the business and residential community desire more control over the budget and salary negotiations. With regard to the Substitute Motion, and given the disagreement which existed, this was the only way to move forward.

Mr. Perez directed Council to page 29 of the General Fund summary where the increase from the 2008-2009 to the 2009-2010 budget was \$2.7 million. The 2010-2011 figures were at a \$5.5 million increase, which included an assumed 3 percent salary increases across all labor groups.

Mr. Keene noted the budget also included the approximate \$3 million deficit.

Mayor Drekmeier stated he was not in support of the original Motion or the Substitute Motion. There was also not time in one week to draft the ballot language needed for completion and vote at the July 20<sup>th</sup> Council meeting. He agreed with Council Member Klein that a Blue Ribbon Task Force was not appropriate for the BLT issue. What was appropriate was similar to what

had been done with the plastic bag ban wherein Council gave direction to Staff to explore the ban, the many stakeholders were invited for discussion, input was considered, but Staff then moved forward with the recommendation which they felt was most compatible with Council direction. His sense was the business community was willing to compromise even though the idea of a BLT is not their favorite idea, and the employee headcount method was something they could live with. He was willing to support the employee headcount methodology for the BLT as well. For the future, he suggested they look for ways in which businesses that had been within the City for many years carried their weight more fully. Commercial rentals also needed further discussion since the City worked hard at making Palo Alto a desirable location for business to which the landlords derive benefit. He looked forward to more diversity among the businesses as well.

Council Member Yeh supported the intentions of the Substitute Motion. He expressed concern, however, about the timeframe in terms of conducting a survey with a return to Council.

Mr. Keene repeated his earlier comment in that whatever Motion or combination thereof came forward, Staff required explicit directives on the components of the BLT in order to begin drafting the Ordinance in readiness for action. It was not a sequential action between doing polling and then drafting of the Ordinance but needed to be done concurrently. It was hard for Staff to predict how effective a survey was when done in such a short timeframe.

Vice Mayor Morton asked what they were asking the community. He reiterated he was against both the Motion and the Substitute Motion because the City needed the BLT and shifting it back to the individuals in the community made the disproportion of the tax burden even greater.

Council Member Klein agreed with Vice Mayor Morton's comments. He opposed the Motion and Substitute Motion. He did not have faith in the quality of information they might receive in their polling suggested with due consideration of the short timeframe. Community education and careful drafting of the questions was necessary. With regard to timing, he stated any tax under discussion was scheduled to take effect on July 1, 2010, with the Council's ability to defer this tax for a year.

Council Member Barton was in opposition of the Substitute Motion but appreciated the intent. He was worried, however, that the Substitute Motion was precipitous and would not have the desired effects.

Council Member Burt clarified a second reading of the proposed Ordinance that was needed at the July 20, 2009 Council meeting. If not, he asked if this could then be scheduled for the meeting on July 27, 2009. In this case,

they had a total of five weeks in order to proceed with the two functions of the Substitute Motion of engaging the public and giving Staff adequate time to compose the Ordinance.

Mr. Keene stated there was no need for a second reading on a fiscal Ordinance. He stated there was a Council meeting on the July 27<sup>th</sup> and asked the City Clerk if this was possible as an addition to the Agenda for that meeting.

City Clerk, Donna Grider stated it was possible and the decision could be made on July 27, 2009.

**SUBSTITUTE MOTION FAILED:** 2-6 Burt, Kishimoto, yes, Schmid absent

Council Member Yeh asked Staff for clarification on whether a BLT is collected on an ongoing basis or a one-time basis during any given calendar year.

Mr. Perez stated Staff had proposed a BLT collection on a one-time per year basis.

Council Member Yeh asked if it was an 18-month loss, if they were on a 12-month collection schedule which made it either January 2010, 2011 or 2012, where the revenue ideally came in within the 30-day order and collections period. He asked if this was a potential \$4.5 - 6 million loss if the anticipated revenue was approximately \$3 million or was this just a \$3 million loss.

Mr. Perez, in terms of the timeframe, stated the Finance Committee had recommended the July 1, 2010 effective date with the collection in the spring of 2011. If this went to the election of November 20, 2011, Council Member Yeh's question was whether or not it was possible to collect this in the spring of 2012. He agreed with the City Attorney that this was possible based on the returns of the prior year. Revenue received in the spring of 2012 was based on the collection amounts due from the calendar year of 2011.

Council Member Yeh clarified the impact, then, was not 1-1/2 years, but one year's worth of revenue since it was a one-time collection.

Mr. Perez stated, assuming that they were collecting on the full year in January of 2012, this was correct.

Council Member Klein appreciated the correction but had also understood in the Motion that the Blue Ribbon Task Force was to also become involved in the City's expense considerations.

Council Member Barton stated this was not the intention of the Motion to have the task force involved in the City's expenditures. The Blue Ribbon Task Force was more specifically proposed to look at revenues while also looking at potential savings through how businesses work, overall. The Blue Ribbon Task Force was there for discussion with the business community and the community on the whole in looking for ways and areas of potential revenue gains as well as potential savings.

Council Member Klein noted he did not understand the potential savings.

Council Member Barton gave the example that if it took six months to get a building permit, and a way was found to do it in three months for the same fee, this was a savings to the City while still providing revenue.

Council Member Klein reiterated he did not understand how that worked without the task force becoming more involved in the City's budget negotiations.

Council Member Barton stated certain budgetary components existed in any possible discussions. However, he did not see it as a problem for the task force, the business community and the community on the whole participating in discussions looking at revenue enhancements and potential cost savings as they relate to the business community.

Council Member Burt clarified the primary beneficiary of any efficiency gains was the business community and not the City from a cost savings or revenue standpoint. He noted permit streamlining, as the given example, was something that the City needed to work on, but he felt this confused the matter they were currently discussing. He did not feel it was accurate to characterize this as a cost savings to the City if this process were streamlined. It was more accurate to characterize it as a potential cost savings to the businesses involved in the permit process. It was not appropriate to include this type of discussion in the task force's activities.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to remove from the Motion "and savings."

Vice Mayor Morton asked a technical question with regard to the State and Federal taxation process which cannot be retroactive. A vote in July of 2012 to implement the tax did not mean collection was retroactive to the first six months of that same year when the law was not in place. He stated this lent to an 18-month delay versus a one-year delay, or may actually be two years upon further consideration.

Ms. Silver stated it was helpful for Staff to have more time to research the implementation of the BLT based on when it was voted in. However, one way to implement the tax was to have the payment of the tax based on the prospective earnings of a business by gross receipts and/or based on current earnings.

**MOTION FAILED:** 3-5 Barton, Espinosa, Yeh yes, Schmid absent

**MOTION:** Vice Mayor Morton moved, seconded by Council Member XXXX to have a hybrid Business License Tax that includes: 1) The Gross Receipts model for professional entities, and 2) For all other businesses to use an employee headcount.

**MOTION FAILED FOR LACK OF SECOND**

**MOTION:** Council Member Barton moved, seconded by Council Member Klein, to proceed with the Business License Tax based upon an employee FTE count with Staff recommendation that: 1) Implementation date of July 1, 2010, 2) Include nonprofits with 100 or more employees, 3) Exempt rentals of 3 units or less, and 4) Commercial property would be taxed at \$0.3 per square foot.

Mr. Keene clarified that, because they were using the same targeted yield, the inclusion of the nonprofits resulted in a reduction of the fee charged to the different categories. Benefit existed, then, for a number of businesses in that regard.

Mr. Perez stressed the inclusion of multi-unit rentals and commercial property. Discussions with the Finance Committee included directions for Staff to return with these per-unit and square-footage components.

Council Member Barton stated his intention was towards Staff's recommendation for an exemption for three units or less.

Mr. Perez clarified there was a three units or less exemption included in Staff's proposal.

Council Member Burt asked for clarity on which option existed in the Motion, the per-employee, unit-based or square-footage option.

Mr. Keene stated Staff's recommendation was in connection with the per-employee basis but there was an obvious and slightly different methodology for the multi-units and the commercial properties.

Council Member Barton noted his understanding was that Staff had recommended exemption of multi-unit rentals of three units or less. He

asked then, what question remained in clarification of the Motion on the floor.

Council Member Burt stated clarification was needed on the balance of Staff's recommendation in that multi-rental units above three were at \$25 per unit while commercial property was at 3 cents per square foot.

Mr. Keene noted this was correct and was worded as such in the Staff report.

Council Member Barton agreed to include this in the Motion.

Council Member Kishimoto suggested inclusion of some language regarding the overlap which may occur in the occupancy tax. She asked for Staff's clarification of this issue prior to their return in July, or would they rather this be made as a recommendation for Staff to include this in order to eliminate any duplications.

Mr. Perez stated that it could be done without a Motion and they would definitely look at this. The question remained on what the impact was to the Occupancy Fee schedule, if they moved forward on the BLT. Staff stated they would look at combining efforts with possible reduction of the fee or the potential elimination of the fee. They would look at all these issues and respond to Council by the next meeting in July.

Council Member Kishimoto asked for clarification on the home-based business issue. She asked how this affected, artists by example, who only sold a few items of their work per year.

Ms. Silver recommended the importance of inclusion of some language which clarified the exclusion of hobby- and art-type home-based businesses from the Business License Tax.

**INCORPORATED INTO MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to exclude hobby level businesses.

Vice Mayor Morton stated they may want to rethink this inclusion. He noted the first question the IRS asks an artist during an audit is whether or not they have a business license. This is the first criterion; if they do not have this licensing they have a harder time proving they are a valid business. For the \$75 fee, he suggested everyone be included, which gives them a defense since most artists and musicians, for example, have negative income for multiple years. In order to defend this during an IRS audit they have to prove that they are doing business as an artist or musician by this same example.

Council Member Kishimoto stated if they wanted to claim themselves as a business via the IRS they also had the option to include themselves in the business registry and by paying the BLT. If not, they had the choice of going with the fact that they were excluded from the tax.

Council Member Yeh asked was it possible to incorporate in the Motion a way to identify additional data within the business registry that may better help the City discover ways to further help the business community.

Ms. Silver stated that a business registry component does not need to be voted on by the voters; however, if that type of language is put into the ballot measure, then Council could not change this without a vote of the people.

Council Member Yeh stated it was not his intent that this be included in the ballot measure language, but that it be part of the Motion.

**INCORPORATED INTO THE MOTION WITH CONSENT OF THE MAKER AND SECONDER** to include a Business Registry to extract data to assist the City with supporting the business community.

Council Member Burt reiterated that the five weeks they had left was ample time for Staff to reach out to the community as well as gathering additional information as to where the community stood on the BLT issues. He felt there was hesitation in the community towards the BLT and perhaps an inclination to support a Real Estate Transfer Tax. However, without further study of this, Council stood to make an uninformed decision on a very important topic.

Vice Mayor Morton did not believe adequate calculations had been done thus far on the impacts of the BLT, which he felt likely stood to hit smaller businesses harder than the larger revenue business community. He did not believe agreements would materialize with the Unions to adjust contractual guaranteed increases unless it was proven that the community was also willing to help in closing the Budget gap. He noted the BLT was not perfect, but it stood to bring needed revenue for the City to move on with many community services from youth to the senior level as well as art and recreation.

Council Member Yeh stated in the City Manager's Report there was also an opening for Council's discretion to delay implementation and this must be codified in the Ordinance and approved by the voters. In follow-up of Council Member's Burt's statements on the appropriateness of timing, he noted the hope was that the economy would rebound by July 2010, with the actual collection schedule of January 2011. He stated if the BLT were put into place without any consideration as to where the economy stood in

January 2011 when collections were scheduled to occur, was there any existing mechanism for Council to state this was detrimental to businesses at that point.

Vice Mayor Morton asked if they had included this delay element within the Motion since the money was needed now and not in two or three years. If this delay element existed he would then vote against the BLT on that basis.

Mr. Perez stated the Motion included Staff's recommendation on the implementation date effective July 1, 2010, with collection in the spring of 2011.

Council Member Kishimoto reiterated the importance of streamlining implementation and enforcement of the BLT for both the business community and the taxpayers on the whole. She noted regret over the fact that BLT revenues cannot be directed toward the City's infrastructure, specifically.

**MOTION PASSED:** 6-2 Burt, Espinosa no, Schmid absent

**MOTION:** Vice Mayor Morton moved, seconded by Mayor Drekmeier, that contractors be considered employees for the Business License Tax.

Vice Mayor Morton noted most small businesses with employee contractors have the Worker's Compensation requirement of identifying these contractors as employees particularly when the contractors are on-site. This and other records provides an easy way for auditing in the rare instance where this may be necessary.

Council Member Kishimoto asked if this was assumed, then, for contractors who worked over 1,000 hours per year.

Vice Mayor Morton stated the contractor will generally have a billing rate which is very easily calculated out to the number of hours.

Council Member Kishimoto asked if he was talking in terms of gardeners and the like.

Vice Mayor Morton noted gardeners and the like were personal services and were not consultants. Homes were not businesses, which meant anyone working in the home as a medical assistant, housekeeper or gardeners would not be included.

He stated the homeowner was technically required to pay taxes on this but he was not commenting on the number in national figures of people who do not report this. He stated that even if you pay a person for work of this

type, you may be an employer of this person, but you are still not a business.

Mayor Drekmeier reiterated this was on the basis of a FTE or a fraction thereof.

Vice Mayor Morton agreed this was the case, otherwise there were too many exemptions at all different levels.

Council Member Barton asked for clarification on the consultant status.

Ms. Silver clarified the proposed language included the distinction between contractors/consultants working on the premises versus those doing discrete activities off-site.

Council Member Barton reiterated this lent to looking at the 1099 employees versus any reimbursable expenses.

Vice Mayor Morton noted that most dentists and other medical professions, for retirement benefit purposes, had no true employees on site but made use of contractors and subcontractors, which under the BLT per employee headcount purposes would be considered as employees.

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

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

Council Member Yeh recognized Human Relations Commissioner Claude Ezran for his work on World Music Day on June 21, 2009. He inquired about the double billing of utilities that occurred.

City Manager James Keene advised the problem had been taken care of and Staff would provide a written report to Council.

Mayor Drekmeier spoke on the success of the World Music Day. He reminded Council members of the special meeting on June 23, 2009 to interview the Utilities Advisory Commission applicants.

Council Member Klein spoke about the demonstration held on June 20, 2009 regarding the Iran conflict.

ADJOURNMENT: The meeting adjourned at 11:32 p.m.