

Special Meeting  
December 14, 2009

The City Council of the City of Palo Alto met on this date in the Council Chambers at 6:33 p.m.

Present: Barton, Burt, Drekmeier, Espinosa arrived at 6:50 p.m., Kishimoto arrived at 6:40 p.m., Klein, Morton, Schmid, Yeh arrived at 7:10 p.m.

Absent:

#### CLOSED SESSION

1. CONFERENCE WITH LEGAL COUNSEL - POTENTIAL/ANTICIPATED LITIGATION

Subject: Significant Exposure to Litigation against the City of Palo Alto by Summerhill Redwood Gate LLC  
Authority: Government Code § 54956.9(b)(3)(C)

The City Council reconvened from the Closed Session at 7:05 p.m.

City Attorney, Gary Baum reported that the City Council voted 7-1, Drekmeier no, Yeh absent, to approve a settlement with Summerhill Redwood Gate LLC.

#### STUDY SESSION

2. Joint Meeting with the Utilities Advisory Commission Regarding City Utilities Issues.

The City Council met with six of the seven Utility Advisory Commission (UAC) Members in their Annual Joint Study Session Meeting on December 14, 2009, with Commissioner Eglash absent. The discussion

focused primarily on two areas: the Scope of the UAC and its areas of responsibilities, and communications. The City Council Ad Hoc Subcommittee on the UAC will review the discussion and incorporate their recommendations, including potential UAC Bylaws, for consideration and future action by the UAC and the City Council. In the discussion of Scope, the topics ranged from areas of the Utilities Department that could conceivably be included under the UAC Charter and purview, including Wastewater Collection, Commercial Fiber Optics, Utilities operations and finance (capital and operating budgets, ratemaking and finance policies for stability versus market pricing, review of the effectiveness of prior policy and financial decisions, strategic partnering with other utilities, and technological risk-taking, and early proactive action on legislative and regulatory matters.) The discussion about communication included the need for improved clarity on both sides, particularly when the City Council directs the UAC to act on or review a particular matter. The attendees agreed upon the need to expand public outreach through workshops by the UAC to solicit community input on important decisions. Outreach should be made to local subject matter experts in the community that could add value to the UAC review of Utilities matters.

#### SPECIAL ORDERS OF THE DAY

3. Resolution 9014 entitled "Resolution of the Council of the City of Palo Alto Expressing Appreciation to Susie Ord Upon Her Retirement."

Council Member Schmid read the Resolution expressing appreciation to Susie Ord upon her retirement.

**MOTION:** Council Member Schmid moved, seconded by Vice Mayor Morton to adopt the Resolution expressing appreciation to Susie Ord Upon Her Retirement.

**MOTION PASSED:** 9-0

Council Member Kishimoto thanked Ms. Ord for her years of service with the City of Palo Alto.

Ms. Ord spoke on her experience serving the City of Palo Alto.

4. Resolution 9015 entitled "Resolution of the Council of the City of Palo Alto Expressing Appreciation to Anun Arunamata Upon His Retirement."

Council Member Kishimoto read the Resolution expressing appreciation to Anun Arunamata upon his retirement.

**MOTION:** Council Member Kishimoto moved, seconded by Council Member Espinosa to adopt the Resolution expressing appreciation to Anun Arunamata Upon His Retirement.

**MOTION PASSED:** 9-0

Mr. Arunamata spoke on his appreciation serving the City of Palo Alto.

5. Resolution 9016 entitled "Resolution of the Council of the City of Palo Alto Expressing Appreciation to Liz Thomas Upon Her Retirement."

Council Member Barton read the Resolution expressing appreciation to Liz Thomas upon her retirement.

**MOTION:** Council Member Barton moved, seconded by Vice Mayor Morton to adopt the Resolution expressing appreciation to Liz Thomas Upon Her Retirement.

**MOTION PASSED:** 9-0

Ms. Thomas spoke on her appreciation serving the City of Palo Alto.

6. Proclamation Expressing Appreciation to Sam Yates for His Outstanding Efforts with the Color of Palo Alto.

Council Member Espinosa read the Proclamation expressing appreciation to Sam Yates for his efforts with the Color of Palo Alto.

Mr. Yates gave a PowerPoint presentation which outlined his efforts with the Color of Palo Alto. He spoke on the process of arriving at the four Colors of Palo Alto.

Mayor Drekmeier thanked Mr. Yates for his efforts with the Color of Palo Alto.

Vice Mayor Morton stated Mr. Yates's efforts assisted in creating the Nation's first photo-assisted 9-1-1 emergency response system.

7. Proclamation Expressing Appreciation to Sunny Dykwel for Being Selected as One of the 100 Most Influential Filipina Women in the United States.

Mayor Drekmeier read the Proclamation expressing appreciation to Sunny Dykwel for being selected as one of the 100 most influential Filipina women in the United States in 2009.

Sunny Dykwel stated it was an honor to be recognized by the City Council, and to have received an award by the Filipina Women's Network. She spoke on her experience participating in the Filipina Women's Network.

Council Member Kishimoto spoke on her appreciation toward Ms. Dykwel.

Council Member Espinosa spoke on his appreciation toward Ms. Dykwel.

Mayor Drekmeier congratulated Ms. Dykwel for receiving the award from the Filipina Women's Network.

8. Proclamation Commending the Outstanding Public Service of Nancy Nagel, Karl Van Orsdol, Wendy Hediger, and Julie Weiss on the City's Sustainability Team.

Council Member Klein read the Proclamation commending the outstanding public service of Nancy Nagel, Karl Van Orsdol, Wendy Hediger and Julie Weiss on the City's Sustainability Team.

Mayor Drekmeier presented a souvenir to the City's Sustainability Team for their efforts.

Ms. Nagel spoke on the Sustainability Team's experience serving the City's many environmental goals.

Mayor Drekmeier thanked the City's Sustainability Team for their efforts on the various environmental projects they took part in.

#### CITY MANAGER COMMENTS

City Manager, James Keene spoke on the following topics: 1) the Public Works Department Operations Division created a Tree Removal Policy that identified why and how trees are to be removed, and outreach efforts to be performed prior to tree removal; 2) Lytton Plaza reopening ribbon cutting ceremony scheduled on December 18, 2009; 3) parking enforcement would be temporarily extended to three hours in the downtown area and the California Avenue shopping district for the holiday season; and 4) his experience and gratitude working with outgoing Mayor Drekmeier and Council Members Barton, Kishimoto, and Morton.

## ORAL COMMUNICATIONS

Wynn Grcich, 30166 Industrial Park Way #296, Hayward, spoke on fluoride carcinogens in drinking water.

Mike Francois, 224 Gardenia Way, East Palo Alto, spoke on toxic wastewater and contaminants used in landscapes and golf courses throughout California.

Vince Larkin, KZSU, made a presentation in honor of outgoing Vice Mayor Morton.

Vice Mayor Morton thanked Mr. Larkin for his presentation.

John Abraham, 736 Ellsworth Place, summarized a spreadsheet he presented to the City Council on his remarks on the Police Department's demographic data.

Robert Moss, 4010 Orme Street, spoke on his appreciation toward outgoing Mayor Drekmeier and Council Members Barton, Kishimoto, and Morton.

Tim Gray, 4173 Park Boulevard, spoke on encouraging civic engagement by the public.

Mark Petersen-Perez, spoke on his Public Record Request regarding the Police Department's overtime budget to determine how public funds were spent and the Fair Labor Standards Act law.

Aram James, spoke on a handout regarding banning tasers.

## APPROVAL OF MINUTES

**MOTION:** Vice Mayor Morton moved, seconded by Council Member Barton to approve the minutes of November 9, 2009 as corrected, and November 16, 2009.

**MOTION PASSED:** 9-0

## CONSENT CALENDAR

Guy Stockbridge, 2972 Larking Avenue, Clovis, addressed the Letter of Protest submitted by Goodland Landscaping Construction Inc. regarding Agenda Item No. 10.

Erin Sanchez, 251 Lafayette Circle #350, Lafayette, spoke on the Letter of Protest by Goodland Landscaping Construction Inc. regarding Agenda Item No. 10. It was her belief Elite Landscaping Inc., was given an unfair competitive advantage in the bidding process and their bid should be rejected.

Tom Wortham, Goodland Landscaping Construction Inc., spoke on line items from the Request for Proposal submitted by Elite Landscaping Inc., regarding Agenda Item No. 10.

Director of Public Works, Glenn Roberts provided a brief background on Agenda Item No. 10. He urged the City Council to proceed in the awarding of the contract to Elite Landscaping Inc.

Director of Administrative Services, Lalo Perez spoke on the process of reviewing the lowest bidder for the construction of the Greer Park Renovation and Pump Station Replacement Project. He overviewed the issues raised in the Letter of Protest by Goodland Landscaping Construction Inc., and the process of addressing said protest. He overviewed the discrepancies found in Elite Landscaping Inc., and Goodland Landscaping Construction Inc bids. He stated the issues have been addressed and Staff did not find an issue with the discrepancies raised by Goodland Landscaping Construction Inc. Staff made the determination, under Municipal Code Section 2.30.480, to waive the minor irregularities.

Senior Assistant City Attorney, Cara Silver stated the Office of the City Attorney reviewed the protest received by Goodland Landscaping Construction Inc. She stated the error in question was deemed a minor irregularity and the City had the authority to waive said irregularity and award to the lowest monetary bidder.

Lynn Krug, felt Agenda Item No. 16 was a short-term solution to a long-term systemic problem. She stated extending employment to allow limited hourly personnel to work more than 1,000 hours jeopardized the safety of the public and City employees. She stated an organizational plan was desirable.

**MOTION:** Council Member Schmid moved, seconded by Council Member Kishimoto to remove Agenda Item No. 10 from Consent Calendar, to become Agenda Item No. 25a.

**MOTION:** Council Member Burt moved, seconded by Council Member Yeh to remove Agenda Item No. 15 from Consent Calendar, to become Agenda Item No. 30.

**MOTION:** Council Member Klein moved, seconded by Council Member Yeh to remove Agenda Item No. 16 from Consent Calendar, to become Agenda Item No. 31.

**MOTION:** Council Member Burt moved, seconded by Council Member Klein to remove Agenda Item No. 23 from the Consent Calendar to become Agenda Item No. 32.

**MOTION:** Council Member Barton moved, seconded by Vice Mayor Morton to move the 4 pulled items to the end of the Agenda.

**MOTION:** Vice Mayor Morton moved, seconded by Council Member Barton to approve Agenda Item Nos. 11-14, 17-22 and to continue Agenda Item No. 9 to a date uncertain.

**MOTION PASSED:** 9-0

~~9. Approval of an Agreement Between the City of Palo Alto and the Family Resources Foundation in Palo Alto for Mutual Cooperation and Support.~~

~~10. Approval of a Contract with Elite Landscaping Incorporated, in the Amount of \$1,220,075 for Construction of Greer Park Renovation and Pump Station Replacement – Capital Improvement Program Project PE-09002. (continued by Council Motion on November 16, 2009)~~

11. Approval of an Extended Producer Responsibility Policy and Adoption of a Resolution 9017 entitled “Resolution of the Council of the City of Palo Alto Supporting State and National Extended Producer Responsibility Actions.

12. Approval of a Cooperative Agreement with the City of Mountain View for the San Antonio Road Bridge Overpass Repair Project – Capital Improvement Program Project PE-06001.

13. Approval of Amendment No. 1 to Utilities Public Benefit Contract for Commercial Energy Efficiency Programs with Ecology Action to Allow Up to \$559,166 in Additional Funds Over Four Years and Adoption of an Ordinance 5067 Amending the Budget for Fiscal Year 2010 to Provide an Additional Appropriation of \$279,583 within the Electric Fund to Expand Commercial Energy Efficiency Program.

14. Adoption of a Budget Amendment Ordinance 5068 in the Amount of \$381,583 for Costs Related to Constructing a Temporary Library and Teen Center at the Cubberley Community Center; Approval of a Contract with Johnstone Moyer, Inc., in a Total Amount Not to Exceed

\$227,463 to Convert the Cubberley Community Center Auditorium Into a Temporary Library to Replace the Mitchell Park Library (Capital Improvement Program Project PE-09010).

- ~~15. Adoption of a Resolution Authorizing the City Manager to Execute a Letter of Support for the WAVE ONE Application for a \$2,500,000 Grant Funded by the California Energy Commission State Energy Program, and to Negotiate and Execute a Two-Year \$2,835,000 Direct and In-Kind Funded Public/Private Partnership Agreement with WAVE ONE, Contingent Upon the Full Award of the State Grant Applied for by WAVE ONE.~~
- ~~16. Adoption of a Resolution Amending the FY2007-FY2009 Compensation Plan for Limited Hourly Personnel Adopted by Resolution No. 8759 to Revise the Provisions Related to Term of Employment.~~
17. Resolution 9018 entitled "Resolution of the Council of the City of Palo Alto Expressing Appreciation to Janice Hall Upon Her Retirement."
18. Resolution 9019 entitled "Resolution of the Council of the City of Palo Alto Expressing Appreciation to Bradley Herran Upon His Retirement."
19. Resolution 9020 entitled "Resolution of the Council of the City of Palo Alto Expressing Appreciation to Diana Ward Upon Her Retirement."
20. Resolution 9021 entitled "Resolution of the Council of the City of Palo Alto Expressing Appreciation to Gary Clarien Upon His Retirement."
21. Resolution 9022 entitled "Resolution of the Council of the City of Palo Alto Expressing Appreciation to Doug J. Fox Upon His Retirement."
22. Resolution 9023 entitled "Resolution of the Council of the City of Palo Alto Declaring Weeds to be a Nuisance and Setting January 11, 2010 for a Public Hearing for Objections to Proposed Weed Abatement."
- ~~23. Request for Authorization to Increase Existing Agreement with the Law Firm of Duncan Weinberg, Genzer & Pembroke, P.C. by an Additional \$155,000 for a Total Contract Not to Exceed Amount of \$215,000.~~

**MOTION PASSED:** 9-0

ACTION ITEMS

24. PUBLIC HEARING: Approval of (1) a Mitigated Negative Declaration; (2) a Site and Design Review Application for the Demolition of Three Commercial Buildings (Including the Palo Alto Bowl and Motel 6) and the Construction of a Four-Story Building Containing 167 Hotel

Guestrooms, and 26 Three-Story Residential Townhomes on a Site Comprised of Four Parcels of Land Zoned RM-1, RM-15 and CS; (3) a Tentative Map Merging the Four Parcels into a 3.62 Acre Parcel for Condominium Subdivision into a Hotel Unit and 26 Residential Units; and (4) a Record of Land Use Action for Approval of the Project Located at 4301 and 4329 El Camino Real.

Director of Planning and Community Environment, Curtis Williams provided a brief history on the proposed project. The site consisted of multiple zoning designations, as follows: Service Commercial (CS), Multi-Family Residential (RM-15), and Single Family Residential (R-1). The proposed project was for a mixed-use neighborhood, which would include a 167 guest room hotel, multi-family residential units, and single-family residential homes. The proposed project was consistent with the land-use designation and Comprehensive Plan. He spoke on the significant financial components associated with the proposed project. The proposed Homewood Suites Hotel would generate \$850,000 to \$1 million annually in Transit Occupancy Tax, along with other annual revenues in the form of property taxes, sales tax, and utility user taxes. He stated \$920,000 from impact fees did not include commercial housing impact fees, which would bring the one-time revenue total to approximately \$2.9 million. He spoke on the community benefits associated with the proposed project, which included a dedication of a public pedestrian and bicycle path easement located at the rear of the site and traffic calming measures. He spoke on the two main site accesses to the residential and hotel portions of the proposed project. The proposed project was not subject to the Private Streets Initiative. He stated blended Floor Area Ratio (FAR) was used to find the allowable FAR for the CS zoning and RM-15 zoning, which was averaged and used to calculate the allowable R-1. The proposed project achieved Staff's intent to possess a lower density residential portion adjacent to the residential developments to the rear of the proposed project. Staff, the Planning and Transportation Commission (P&TC) and Architectural Review Board (ARB) recommend that the City Council adopt the Mitigated Negative Declaration and approve the Record of Land Use Action approving the Site and Design Review and Tentative Map application. He suggested recommending approval of the two conditions, brought to the attention by Council Member Kishimoto, contained within Attachment A, to remove condition Number 3, and amend condition Number 5 in that same section to ...Applicant shall provide the City with \$25,000 for proposed traffic calming measures.

Planning & Transportation Commissioner, Lee Lippert spoke on the history of the proposed project. He stated the Palo Alto Bowl site was rezoned, per the recommendation of the P&TC, two years ago from multi-family to commercial. He spoke on the proposed pedestrian and bicycle easement which would contribute to the safety of pedestrian travel. He stated the

proposed project should not be compared to Arbor Real, as the Applicant had corrected many of the parking issues observed in said development.

Council Member Burt requested the zoning at Arbor Real.

Mr. Williams stated the zoning at Arbor Real was RM-30.

Council Member Burt stated, prior to rezoning the Palo Alto Bowl site, the Arbor Real Residential Project would have been the sort of project expected at the Palo Alto Bowl site.

Mr. Williams stated that was correct. He stated an entire residential project could have been at the Palo Alto Bowl site prior to its rezoning.

Council Member Burt inquired whether there was a legal way in which the City Council could mandate that the Palo Alto Bowl be retained as a bowling alley.

City Attorney, Gary Baum stated the City could potentially purchase the property, which would require the City to operate the bowling alley.

Council Member Kishimoto stated the underlying zoning, which merged the four lots containing multiple zoning districts, into one parcel for subdivision was difficult to understand. She inquired whether it would be clear in the future to determine the underlying zoning for a particular piece of zoning within the parcel.

Mr. Williams stated the underlying zoning would not be changing. He stated the hotel had its own 2.0 FAR, and the residential portion was tied together as one part of a complex composition. He stated an Applicant would not be allowed to change a lot unless they returned to the City. He stated four parcels were proposed to be merged into one, with a condominium map on top that would specify the air space for each unit within the Covenants, Conditions and Restrictions.

Council Member Kishimoto stated any change to a lot would require the approval of the City Council and the blending of parcels, with multiple zonings within the underlying zoning, may need to be untangled.

Mr. Williams stated a minor change on one site, which did not affect the net-zero, would most likely be approved. A proposed project that increased the FAR or height criteria would be required to return to the City Council for approval.

Council Member Kishimoto inquired whether the RM-15 portion of the proposed project conformed to RM-15 standards.

Mr. Williams stated the RM-15 portion of the proposed project was very close to the RM-15 standards, however it contained blended standards. He stated it possessed a slightly higher FAR total than the RM-15 standards allowed. He stated blending the standards was aligned with Staff's intent to create a project containing a tiered mixed community project.

Council Member Kishimoto inquired why the Applicant did not approach the City for a Planned Community project.

Mr. Williams stated the Applicant would argue that some aspects of the proposed project contained community benefits. He stated the Applicant's intent was to conform to law, and the project may not have qualified as a Planned Community.

Council Member Kishimoto spoke on her discomfort approving the proposed project. She inquired whether the common open space belonged to the hotel or residential lot.

Mr. Williams stated the common open space area was counted as part of the total residential area because it served the residential common space requirement.

Steinberg Architects Associate, Jonathan Chao, stated the residential common open space was on the residential lot.

Council Member Kishimoto inquired who would be responsible for maintaining the common open space.

Mr. Chao stated the maintenance of the common open space would be the responsibility of the Homeowners Association (HOA) in conjunction with the hotel.

Council Member Kishimoto inquired whether the maintenance terms were clearly defined in one of the project documents.

Mr. Baum stated the maintenance agreement should be defined in the Covenants, Conditions and Restrictions.

Mr. Williams stated if the maintenance terms and responsibilities were not currently defined in the conditions, Staff would add them to the Covenants, Conditions and Restrictions.

Council Member Kishimoto inquired whether the common open space was dedicated park space.

Mr. Williams stated the common open space was not dedicated park space.

Council Member Kishimoto inquired whether there were design discussions on a pedestrian-friendly facade that could be seen from El Camino Real.

Mr. Williams stated the ARB had extensive discussions on creating a more pedestrian-friendly facade off El Camino Real.

Council Member Kishimoto spoke on the possibility of using the existing Heritage Oak tree and opening up the courtyard to the view off El Camino Real.

Architectural Review Board Chair, Alexander Lew, spoke on the process the ARB undertook reviewing the proposed project. He stated it was the most discussed issue of the ARB. The first scheme had an opening off El Camino Real, and subsequent schemes opened the courtyard toward the townhouses to create a private common open space between the hotel and residential area. The result created a long elevation facing El Camino Real. He overviewed the area facing El Camino Real that displayed trellises and secondary windows to mitigate the fact that the main entrance was on the side which created a look of a secondary entrance off El Camino Real.

Council Member Kishimoto inquired whether the ARB proposed a requirement to create an open space facing El Camino Real.

Mr. Lew asked for a study for an alternative entrance facing El Camino Real. He stated the ARB's main issue on this site was the Heritage Oak tree; and the Applicant had a strong intent to create an entrance using the Heritage Oak tree, even though the entrance was not on El Camino Real.

Council Member Kishimoto inquired on the fees associated with traffic calming.

Mr. Williams stated \$60,000 included developing plans, a traffic calming study, and working with the neighborhood. He stated \$25,000 would include the implementation of the proposed project.

Council Member Kishimoto requested Staff to identify the boundaries for where the lines were drawn on the Tentative Map, between the hotel and residential area.

Premier Properties Management owner and Applicant, Jim Baer stated the land was zoned as a condominium parcel. The land was a single parcel and was unitized under State law. To solve the issue for the maintenance of the common open space area, he would accept the condition that it would be the responsibility of the HOA. He stated there was a six foot wall separating the hotel and its garden area from the residence's common open space area.

Council Member Kishimoto inquired what the key elements were on the Tentative Map.

Mr. Williams stated the approval of the Tentative Map would approve the merger of the four lots into one lot, and approve the development on the condominium parcel. The City did not have discretion over the specific way the condominium units were arranged. He spoke on the delineation of the hotel unit and residential units.

Vice Mayor Morton inquired why there could not be one inclusive zoning that would reflect the proposed project's plans.

Mr. Williams stated the Site and Design Plan restrained the zoning of the property. He stated any change to the Site and Design Plan would require an amendment to the Site and Design, and would require the process return to the City Council. He stated the residential portion of the lot could be rezoned to RM-30.

Vice Mayor Morton inquired whether the proposed zoning was a way for the City Council to limit what could be done on the density of the residential portion of the lot.

Mr. Williams stated that was correct.

Vice Mayor Morton spoke on his frustration that the proposed project did not include a pedestrian-friendly design facing El Camino Real.

Mr. Williams stated doubling the street trees on El Camino Real was planned as part of the proposed project.

Vice Mayor Morton stated there was no landscape or openness proposed on the facade facing El Camino Real.

Mr. Williams stated there was planned landscape between the proposed development and El Camino Real.

Mr. Lew reiterated that the El Camino Real facade was the main concern of the ARB. The proposed project was approved with the condition to return to the ARB Consent Calendar, and asked for the previous version of the façade, which contained an additional setback on the fourth floor. The previous version of the elevation also contained a greater modulation. The ARB in general supported the previous version more than Staffs recommendation. He stated member of the public had spoken in opposition of the site plan. He stated, before the final review, the applicant added the trellis along with base of the building facing El Camino Real. He stated the trellis would project and accentuate the building.

Vice Mayor Morton stated his main concern was the length and height of the wall facing El Camino Real.

Mr. Lew stated there were unusual circumstances to the proposed project, including setbacks to protect the Heritage Oak tree near the courtyard that were required by the Applicant.

Mr. Williams stated there would be 10-15 feet between the hotel and the property line which would contain landscaping facing El Camino Real.

Council Member Schmid requested that the Transit Occupancy Tax revenue be restated.

Mr. Williams stated the Transient Occupancy Tax was estimated between \$850,000 and \$1 million. He stated there would be other tax increases such as property tax, sales tax, and utility tax increases which would total approximately \$250,000.

Council Member Schmid requested an overview of the recent changes to the City's code regarding long-term extended stay and Transit Occupancy Tax.

Mr. Williams stated the Ordinance required that if an Applicant wanted to have extended stay rooms, they would be required to enter into a Development Agreement with the City. He stated this rule would apply to the proposed project. He indicated that the Applicant did not have the intent to enter into a Development Agreement with the City.

Council Member Schmid stated the Applicant had zero intent; therefore, the extended stay rooms would pay the Transit Occupancy Tax.

Mr. Williams stated that was correct. He stated guests would be required to leave after 30 days, and reregister again to trigger the Transit Occupancy Tax. He stated this process was outlined in the City's Municipal Code. He stated a condition could be added into the agreement to require the compliance with the provision within the City's Municipal Code.

Council Member Schmid stated the common open space was the property of the residential portion; however, the hotel garage was underneath this area. He inquired whether the residential space owned a portion of the garage.

Mr. Williams stated the property was one parcel, and the hotel building was defined as one condominium and the individual residential units were each defined as their own condominiums. Everything else on the parcel was maintained by the residences or hotel. The common open space area was included in the residential calculations of the FAR. He stated the residential condominiums did not own what was underneath the ground or the garage area.

City Attorney, Gary Baum stated the HOA owned the common open space area, and would be responsible for maintaining said area.

Mr. Baer stated condominiums were successful devices for complex mixed-use projects. Within a single parcel there were exclusive use areas and exclusive common areas. The garage would have a 3'6" concrete roof which would be the exclusive common area of the hotel; and above would be the common open space which is the exclusive common area for the residential condominiums. He stated there were defined boundaries and a condominium map would be filed, which would be consistent with the Tentative Map. He stated suggestions defining the responsibility of maintaining the care of common areas could be written within the conditions.

Council Member Schmid requested reassurance that the homeowners would not receive a bill on the deterioration of the garage in the future.

Mr. Baer stated the developer of the homes would make sure the hotel was responsible for the structural maintenance of the garage.

Council Member Schmid inquired whether the proposed street, Ryan Lane, qualified as a private street under the City's newly adopted Ordinance.

Mr. Williams stated the proposed street did not meet the definition of a private street under the current Ordinance as the road was proposed with a width of 24 feet. He stated emergency vehicles and garbage collection would not be impacted by the proposed street.

Council Member Schmid inquired whether the El Camino Real Guidelines had influence or authority on the proposed project.

Mr. Williams stated the El Camino Real Guidelines were not law; however, several guidelines were incorporated within the Zoning Ordinance in terms of the context-based criteria for the commercial zones. It served as a basis for the Site and Design review.

Council Member Schmid stated the El Camino Real Guidelines may not be working as intended from its originators on the proposed project.

Council Member Espinosa inquired on an update to the bowling alley relocation efforts.

Mr. Williams stated Staff had not been part of these discussions.

Barry Swenson Builders Staff Member, Aaron Barger, stated there have been discussions with the bowling alley owners to relocate the Palo Alto Bowl to Homestead Lane in Cupertino. He stated extending the lease with the Palo Alto Bowl was discussed to keep the bowling alley operating as long as possible.

Public hearing opened at 10:28 p.m.

Mr. Baer spoke on the history of the proposed project, and its support from the P&TC and ARB. On March 12, 2007 the City Council changed the zoning designation along El Camino Real to incorporate Service Commercial (CS) with a hotel overlay with the hope that the zone change would provide an opportunity for a mixed-use project that would include a hotel with up to a 2.0 FAR. He spoke on the City Council's concern regarding site access from the proposed street which would allow additional parking for the residents and hotel guests. He spoke on the community benefits, City revenue enhancements, and neighborhood support. He stated the El Camino Real Guidelines were adopted within the CS zone as a setback guidance, and provided 10-15 feet of landscaping between the hotel and sidewalk. The proposed project lender was prepared to finance development of the hotel and likely to commence in the Spring of 2011. Construction of the homes would commence as soon as financing was available. He stated the proposed project had been changed dramatically in its overall intensity and land use.

Steinberg Architects Principle, Rob Zirkle, spoke on the positive collaboration between City Staff, P&TC, ARB and neighborhood associations.

Natasha Temple, 1355 San Domar Drive #1, Mountain View, urged the City Council to save Palo Alto Bowl.

Mary Howland, 547 Bryson Avenue, spoke on the role Palo Alto Bowl played in the community and felt it should be kept in its current location.

Dawn Wood, 420 Wilson Avenue, spoke on the countless ways Palo Alto Bowl served the community.

Kirsten Essenmarker, 1524 Channing Avenue, urged the City Council to save Palo Alto Bowl.

Stacey Ashlund, 4065 Campana Drive, urged the City Council to save Palo Alto Bowl as it served the needs of special education students.

Debi Snipp, 637 Los Robles Avenue, urged the City Council to save Palo Alto Bowl.

Stephanie Munoz, 101 Alma Street, urged the City Council to save Palo Alto Bowl.

Robert Moss, 4010 Orme Street, urged the City Council to deny the Site and Design Review application because the proposed project violated the Private Streets Initiative.

Linnea Wickstrom, 450 Monroe Drive, stated the Applicant met most of the key needs of the neighborhood. The Monroe Park Neighborhood Association (MPNA) requested the City ensure Staff expedite the implementation of the Traffic Calming Study that incorporated the recommendations by MPNA.

Stewart Cobb, 737 East Charleston Road, urged the City Council to review the zoning of recreation sites within Palo Alto, and ensure developers do not turn said sites into condo blocks.

Herb Borock, P.O. Box 632, spoke on the proposed project's violations to the California Environmental Quality Act because it violated the City's Zoning Code.

Timothy Gray, 4173 Park Boulevard, spoke on the idea of dedicating a portion of the revenues gained from the proposed project to recreational and community gathering facilities.

John Hallgren, 3941 El Camino Real, requested that the City Council consider the vacant lot on the corner of Arastradero Road and El Camino as a relocation site for the Palo Alto Bowl.

Public hearing closed at 11:01 p.m.

**MOTION:** Council Member Barton moved, seconded by Council Member Klein to: 1) Adopt the Mitigated Negative Declaration, 2) Approve the Record of Land Use Action approving a Site and Design Review and Tentative Map application to allow the construction of a new mixed use project including one four-story, 167-unit hotel and 26 three-story detached and duplex-type condominium units located at 4301-4329 El Camino Real subject to the findings and conditions of approval contained in the Record of Land Use Action, 3) Remove bullet Number 3 in Attachment A, under the section titled Planning and Transportation Division, and 4) Change Number 5 in that same section to ...Applicant shall provide the City with \$25,000 for proposed traffic calming measures.

Council Member Barton stated the obligation for the City Council to consider was not saving Palo Alto Bowl, but the property rights for the owners of the property. The property owners were proposing a project that met the Zoning Ordinance.

Council Member Klein spoke on the legality rights of the property owners of the proposed project. He stated the City Council did not own the land Palo Alto Bowl resided on, and the City Council needed to allow the property owner discretion on decision making for their property. He stated citizen involvement in fundraising efforts may be a possibility to relocate Palo Alto Bowl. Nevertheless, he spoke on the positive process and the community benefits moving forward.

Vice Mayor Morton spoke in opposition of concealing the common open space behind the proposed wall facing El Camino Real. He stated he would support the Motion on the condition that the facade design return to the ARB. He spoke on the loss of the Palo Alto Bowl.

**AMENDMENT:** Vice Mayor Morton moved, seconded by Council Member Kishimoto to send the Tentative Map back to the Architectural Review Board (ARB) for redesign of the facade on El Camino Real and to open the Heritage Oak up to El Camino Real.

Vice Mayor Morton requested that the Tentative Map return to the ARB to break up the proposed wall facing El Camino Real to ensure the common open space and Heritage Oak Tree become part of the visual field.

Council Member Kishimoto inquired whether this topic would return to the ARB regardless of the Amendment.

Mr. Williams stated this topic was scheduled to return to the ARB; however, he stated the topic would not have been focused on the direction the Amendment proposed. He spoke on the topics the ARB was to address,

which included reexamining the El Camino Real elevation and considering landscaping that complimented the trellis feature along El Camino Real.

Vice Mayor Morton stated the Amendment was to deter the solid wall along El Camino Real, and reevaluate the Tentative Map to expose the Heritage Oak tree.

Council Member Kishimoto stated the Amendment called for more modulation. She addressed the loss of Palo Alto Bowl and the trends seen with other community gathering facilities. She spoke on the current budget restraints and alternate facilities such as the Lawn Bowl at Bowling Green Park. She spoke on the possibility of letting future City Council Members look at the Comprehensive Plan's distribution of services and setting designated areas as Commercial Recreation. She acknowledged the positive aspects of the process and proposed project.

Council Member Burt spoke on the loss of Palo Alto Bowl, and the potential for creating recreation overlay zones to incentivize developers with bonuses for building recreational facilities. He spoke on the advantages of hotel developments. He felt the Amendment was complex and consisted of a prescriptive outcome.

Council Member Yeh spoke on the need for Transit Occupancy Tax, as it could be spent on Parks and Recreation programs. He stated the City Council prioritized land use to diversify the City's revenue base to provide the services the community supported. He spoke on the loss of the Palo Alto Bowl; however, he felt the proposed project had many positive benefits.

Council Member Schmid spoke on the positive community benefits of the proposed project, as follows: 1) consistent with South El Camino Real Comprehensive Plan; 2) generated Transit Occupancy Tax; 3) encouraged the building of hotels in the specific area; and 4) a demonstrative positive negotiating process with surrounding neighborhoods. He spoke on the loss of the Palo Alto Bowl. He spoke on the notion, that within 90 days, the City Council has a Study Session on the positive and negative aspects of the El Camino Guidelines.

Council Member Espinosa stated the Amendment would require a major redesign. He encouraged members of the public to originate ideas on funding the relocation Palo Alto Bowl. He spoke on examples from members from the public that had been successful in creating community gathering places.

Vice Mayor Morton spoke on past developments which consisted of overbuilt structures. He felt challenging developers on proposed plans that do not work for the community was worth the developer's inconvenience.

Council Member Burt requested clarity on the Amendment.

Vice Mayor Morton stated the Amendment was for the ARB to not approve a design that contained a solid wall on El Camino Real, and require visibility of the Heritage Oak tree on El Camino Real.

**AMENDMENT FAILED:** 3-6 Kishimoto, Morton, Schmid yes

Mayor Drekmeier stated the Motion was to adopt Staff recommendations, with the additional recommendation to remove condition Number 3 in Attachment A, and amend condition Number 5 in that same section to ...Applicant shall provide the City with \$25,000 for proposed traffic calming measures.

Mr. Williams felt the recommendation should be modified to read that the proposed \$25,000 for proposed traffic calming measures be determined by the Planning Director in consort with the neighborhood associations.

Council Member Burt stated reexamining what worked and did not work in the El Camino Real Guidelines could be covered in the City Council Retreat.

**MOTION PASSED:** 7-2 Kishimoto, Morton no

Council Member Klein stated there were several Consent Calendar Items that must be heard due to various deadlines.

**MOTION:** Council Member Klein moved, seconded by Council Member Barton to continue Agenda Item No. 25 to January 11, 2010 and Agenda Item Nos. 27, 28, 29 to a date uncertain.

**MOTION PASSED:** 9-0

Mayor Drekmeier reminded the City Council that there was a policy in place to advise Staff, by early afternoon, if they requested a Consent Item be removed from the Consent Calendar.

~~25. PUBLIC HEARING: Pursuant to Government Code Section 30061, Title 3, Division 3, Relating to the Supplemental Law Enforcement Services Fund, to Consider the Police Chief's Request to Purchase Computer Forensic Software, Global Positioning Devices, Radio Earpieces, Remote Area Lighting Systems, Patrol Team Operation Kits, Replacement K-9 Unit, and Additional Funding for the Crime Scene Evidence Collection Vehicle.~~

25a. (Former No. 10.) Approval of a Contract with Elite Landscaping Incorporated, in the Amount of \$1,220,075 for Construction of Greer Park Renovation and Pump Station Replacement - Capital Improvement Program Project PE-09002. *(continued by Council Motion on November 16, 2009)*

Council Member Schmid stated GoodLand Landscape Construction Inc. protested and raised questions regarding the bidding process that awarded the bid to Elite Landscaping Inc.

Director of Administrative Services, Lalo Perez stated there was a section in the Rules of Bid Submittal Guidelines that addressed the issues brought forth by Goodland Landscape Inc. If there was an error in the written and numerical amount, the written amount shall be the designated amount.

Council Member Schmid stated GoodLand Landscape Construction Inc. cited a statement that read the actual arithmetic total, stated by the bidder, shall govern. He stated this implied that adding that total up should govern what the total in the column was.

Mr. Perez stated the City's Municipal Code section was used as a supplement in handling this protest. He stated the minor irregularities seen in the bid did not impact the bid. There were minor irregularities seen in both bidders, and felt the numbers did not change the subtotal or total.

City Attorney, Gary Baum stated Staff was permitted to waive minor irregularities in the bid process.

**MOTION:** Vice Mayor Morton moved, seconded by Council Member Barton to: 1) Approve and authorize the City Manager or his designee to execute a contract with Elite Landscaping Incorporated in the amount of \$1,220,075 for construction of the Greer Park renovation and Pump Station Replacement project; and 2) Authorize the City Manager or his designee to negotiate and execute one or more change order to the contract with Elite Landscaping Incorporated for related, additional but unforeseen work that may develop during the project, the total value of which shall not exceed \$122,000.

**MOTION PASSED:** 9-0

26. PUBLIC HEARING: Approval of Proposed Participation by the City of Palo Alto the "City" in the CaliforniaFIRST Program of the California Statewide Communities Development Authority. Participation in the CaliforniaFIRST Program will Enable Property Owners to Finance Renewable Energy, Energy Efficiency and Water Efficiency

Improvements on Their Property Through the Levy of Contractual Assessments Pursuant to Chapter 29 of Division 7 of the Streets & Highways Code ("Chapter 29") and the Issuance of Improvement Bonds Under the Improvement Bond Act of 1915 (Streets and Highways Code Sections 8500 and Following) Upon the Security of the Unpaid Contractual Assessments. Chapter 29 Provides that Assessments May be Levied Under its Provisions Only with the Free and Willing Consent of the Owner of Each Lot or Parcel on Which an Assessment is Levied at the Time the Assessment is Levied; and 1) Adoption of a Resolution 9024 entitled "Resolution of the Council of the City of Palo Alto Authorizing the City of Palo Alto to Join the CaliforniaFIRST Program"; Authorizing the California Statewide Communities Development Authority to Accept Applications from Property Owners, Conduct Contractual Assessment Proceedings and Levy Contractual Assessments Within the Territory of the City of Palo Alto and Authorizing Related Actions, and 2) Resolution 9025 entitled "Resolution of the Council of the City of Palo Alto Authorizing Sacramento County to Apply for and Receive State Energy Program Funds on Behalf of the City of Palo Alto."

Assistant to the City Manager, Debra Van Duynhoven, stated the Agenda Item was for an approval of participation in the State Energy Program application with CaliforniaFIRST, and the adoption of two Resolutions authorizing the City to join the CaliforniaFIRST Program and authorize Sacramento County to apply for and receive State Energy Program Funds. The CaliforniaFIRST Program was being instituted by California Communities to allow owners of properties to finance renewable energy, energy efficiency, and water efficiency improvements. If the property owner chose to participate, the improvements would be financed by the issuance of bonds by California Communities. The proposed Resolution authorized California Communities to accept applications from owners of residential properties for financing through the CaliforniaFIRST Program, and authorized California Communities to conduct assessment proceedings and levy assessments against the properties of participants. She indicated the City had submitted a Letter of Support. Staff had scheduled a Public Hearing, which was a requirement of the CaliforniaFIRST Program. She spoke on the benefits to the City, property owners, and residents.

Utilities Marketing Services Manager, Joyce Kinnear, spoke on the financing methods for the Utilities Customer Energy Efficiency Financing Program. The CaliforniaFIRST application would be an excellent partner to the Energy Efficiency Financing Program which had been approved by Council. If approved, some Staff resources and costs would be required. If the State Energy Program grant application was not successful, the City would be responsible for the CaliforniaFIRST set-up fee of \$12,500, unless the City

opted to rescind its participation from the program. Staff anticipated that funds would be available from the Public Benefit Budget.

Council Member Schmid inquired on the priority of the repayment of the loans.

City Attorney, Gary Baum stated the loans would be repaid through property tax and therefore were a priority. He stated property owners' monthly utility bills would be greatly reduced, and may balance out a higher property tax.

City Manager, James Keene stated the investment would not be significant on the property tax for the life of the loan.

Ms. Kinnear stated property owners would not be allowed to participate in the program for more than ten percent of the equity in their home.

Council Member Schmid inquired why the City was submitting a letter to Sacramento County.

Ms. Kinnear stated the pilot program was developed by a statewide organization, and Sacramento County was taking the lead role on behalf of the fourteen Counties applying for the grant.

Mr. Keene stated California Communities was a Joint Powers Authority (JPA) sponsored by the League of California Cities and the California State Association of Counties. He stated California Communities was one of the leaders in creating pulled financing for local governments. He indicated Sacramento County was serving as a member of the local government, and serving as said capacity on behalf of the JPA.

Council Member Yeh inquired how Staff anticipated educating property owners and residences if this project were to move forward. He inquired what the average levied property assessment was in the City of Berkeley.

Mr. Keene stated Staff met with the City of Berkeley, and his recollection of the average levied property assessment was roughly \$20,000. He stated further data could be supplied from the City of Berkeley.

Ms. Kinnear stated the Utilities Department would market the proposed program through the City's internet, workshops, and flyers. Staff estimated assistance to residents in the program requirements for CaliforniaFIRST and for efficiency and renewable energy upgrades would be required by the Utilities Department and questions regarding customers' tax bills may need to be addressed and redirected to the County.

Public hearing opened and closed without public comment at 12:09 a.m.

**MOTION:** Council Member Espinosa moved, seconded by Vice Mayor Morton to: 1) Authorize the City Manager to sign and submit the Letter of Commitment to the California Energy Commission (CEC), 2) Adopt a Resolution authorizing the City of Palo Alto to join the CaliforniaFIRST Program, and 3) Adopt a Resolution authorizing Sacramento County to apply for and receive State Energy Program funds.

Council Member Espinosa requested that future Staff Reports contain the anticipated dollar amount as a resource impact.

**MOTION PASSED:** 9-0

~~27. Presentation of Service Efforts and Accomplishments Report for Fiscal Year 2009 – Annual Report on City Government Performance.~~

~~28. Approval of the Finance Committee Recommendation to Adopt a Budget Amendment Ordinance (BAO) to Transfer \$809,000 from the General Fund Budget Stabilization Reserve (BSR) to the Technology Fund in Fiscal Year 2010.~~

~~29. Ad Hoc Committee Monthly Report on High Speed Rail.~~

30. (Former No. 15.) Resolution 9026 entitled “Resolution of the Council of the City of Palo Alto Authorizing the City Manager to Execute a Letter of Support for the WAVE ONE Application for a \$2,500,000 Grant Funded by the California Energy Commission State Energy Program”, and to Negotiate and Execute a Two-Year \$2,835,000 Direct and In-Kind Funded Public/Private Partnership Agreement with WAVE ONE, Contingent Upon the Full Award of the State Grant Applied for by WAVE ONE.

Council Member Burt stated the \$725,000 funding for administration and implementation of lighting efficiency improvements had not been finalized. He inquired where the funding would originate from.

City Manager, James Keene stated there was a range of possibilities identified, and available, which included Utility Funds and the City’s Infrastructure Reserve Fund. He stated funding would only be required if the grant was successful; Staff had sufficient time to return to the City Council with potential funding sources.

Council Member Burt inquired whether supporting the Agenda Item would automatically oblige the City to move forward with the grant funding.

Mr. Keene stated if the grant was not successful, the City was not responsible for funding the program. He stated proceeding with the grant funding would happen parallel to Staff conducting an analysis for the \$725,000 funding.

Utilities Customer Support Services Assistant Director, Tom Auzenne, stated that was correct. He stated if the grant was not successful, the City was not responsible or obligated to the WAVE ONE program. He stated on December 7, 2009, the City Council had authorized the \$2 million Electric Efficiency Financing Program for small businesses. Additional funding would be found after the funding from WAVE ONE had been granted.

Council Member Burt stated energy efficiencies and decrease demand on purchasing new expensive energy would reduce residents' monthly electricity utility bills. It was his belief the Utility Fund would be an appropriate place to allocate the \$725,000.

Mr. Keene stated there was a schedule that needed to be pursued to be competitive for the grant, and the ability to leverage City funding was a key factor to be successful for the WAVE ONE grant. He stated Staff would return to the City Council to discuss the range of options and the City Council had flexibility to determine the funding source.

Herb Borock, PO Box 632, spoke on the proposed funding for the WAVE ONE Program. He felt there was a lack of supporting materials.

Jim Baer, 172 University Avenue, spoke on the intention, benefits, and leverage the City would gain by participating in the WAVE ONE Program.

Council Member Schmid inquired whether funding property owners outside of the downtown area may require returning to the Calaveras Fund for additional funding.

Mr. Auzenne stated that was correct. He stated the Electric Efficiency Financing Program would be presented to the public on a first-come-first-served basis.

Council Member Schmid stated Staff may be committing to a project that could run over \$2 million.

Mr. Keene stated that was correct.

Council Member Schmid inquired whether program services would be cut from the General Fund if the \$725,000 was not found in other funding sources.

Mr. Keene stated funding the \$725,000 was dependent upon whether the WAVE ONE grant was awarded.

Council Member Schmid inquired on the date the City should expect to hear from the WAVE ONE.

Mr. Baer stated February 12, 2010. He stated funds were anticipated to be delivered on April 1, 2010.

Vice Mayor Morton stated energy efficiency would reinforce the City Council's environmental protection goal.

**MOTION:** Vice Mayor Morton moved, seconded by Council Member Espinosa to adopt a Resolution: 1) Authorizing the City Manager to execute a Letter of Support of WAVE ONE grant application for \$2.5 million in energy efficiency funding from the State Energy Program Municipal and Commercial Building Targeted Measure Retrofit Program (MCR), 2) Authorizing the City Manager, contingent upon the full award of the state grant applied for by WAVE ONE, to negotiate and execute a Letter of Intent and a Public/Private Partnership Agreement with WAVE ONE, providing \$2,835,000 in direct and in-kind City funding, in exchange for WAVE ONE implementing \$2.5 million grant MCR Program in downtown Palo Alto, and WAVE ONE obtaining commitments for an additional \$1.5 million in energy efficient investments over two years by the downtown property owners currently leasing to small and medium-sized commercial businesses. The City would provide the following as "leveraged funds" identified in WAVE ONE's MCR grant application to the California Energy Commission: 1) Up to \$725,000 as direct City funding for the administration and implementation of lighting efficiency improvements, with paybacks of less than five years in city-owned garages parking lots, and Civic Center stairwells. Potential sources of funding have yet to be finalized, but may include a loan from the Utilities Calaveras Reserve, with interest paid by the General Fund, or funding from the City Infrastructure Reserve. 2) Up to 900 hours of Staff time (approximately \$110,000 in salary and benefits) over the next two years as in-kind funding by the City Manager's Office, City Attorney's Office, the Public Works, Planning and Community Environment, and Utilities Departments, in support of the WAVE ONE MCR Program targeting downtown businesses; 3) A new \$2 million Electric Efficiency Financing Program, funded by the Calaveras Reserve; and 4) Revisit the City letter to make it stronger and more distinctive.

Council Member Espinosa applauded the success of WAVE ONE and Mr. Baer's efforts. He felt, without delaying the process, the Letter of Support for the WAVE ONE application be revisited and made stronger.

Mr. Auzenne stated Staff could revisit the strength of the Letter of Support for the WAVE ONE application.

Council Member Espinosa requested that revisiting the Letter of Support be incorporated within the Motion.

Mr. Keene stated Staff would be pleased to make the City's Letter of Support more distinctive and to include a firm commitment of partnership from the City.

Council Member Espinosa inquired whether there was a lobbying component, or outside resources, to further the success of the grant application.

Mr. Auzenne stated there was no intent to create a lobbying effort.

Mr. Baer stated the WAVE ONE application would not qualify as a strong political event. He spoke on several letters of support from high-status community leaders and community organizations and their willingness to assist.

Council Member Yeh spoke on the City's Climate Protection Plan. He inquired whether there was a discussion on the use of data to measure its impacts and track the investments.

Mr. Baer spoke on the projects goal to create a benchmark database to verify square footage and measure existing kilowatt usage at the subpanel level and primary panel level over a multiyear year period. He indicated a portion of the California Energy Commission funds could be used for this purpose.

Council Member Klein stated given the uncertainty of the \$725,000, the City Council should change the wording in the Letter of Intent.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to add to Recommendation (b) on page one of the City Manager's Report 477:09, Prior to executing the agreement, Council will approve the source of the \$725,000.

Council Member Klein stated identifying the funding source for the \$725,000 should have been researched prior to the Agenda Item. He stated the \$725,000 was to finance City owned investments that would be paid back.

Council Member Kishimoto inquired whether property owners that were not part of the downtown area would be eligible to participate in the pilot program.

Mr. Auzenne stated allowing property owners to participate outside of downtown would be up to WAVE ONE.

Mr. Baer stated actively recruiting and database management would take place in downtown; however, WAVE ONE would respond to any property owner who inquires on the program.

Mr. Keene stated he would not execute an agreement without funding in place.

**MOTION PASSED:** 9-0

Council Member Klein spoke on his appreciation toward Council Member Barton for his four years of service on the City Council.

Council Member Barton left the meeting at 12:30 a.m.

31. (Former No. 15) Resolution 9027 Amending the FY2007-FY2009 Compensation Plan for Limited Hourly Personnel Adopted by Resolution No. 8759 to Revise the Provisions Related to Term of Employment.

Council Member Klein stated he was unclear on how much money amending the proposed Resolution would save the City.

City Manager, James Keene stated he was unaware of the exact savings. He stated this would allow for organizational restructuring and flexibility.

Council Member Klein inquired on the importance of approving the proposed Resolution.

Mr. Keene stated adopting the proposed Resolution was important as the City had no provision to temporarily hire a person for more than 1,000 hours. He indicated there were roughly 11 limited hourly positions within the General Fund that could be eligible, and these limited hourly positions were working on key projects.

**MOTION:** Council Member Klein moved, seconded by Vice Mayor Morton to adopt a Resolution amending the FY2007-FY2009 Compensation Plan for limited hourly personnel to revise the provisions related to term of employment allowing for limited hourly personnel to work more than 1,000 hours in a fiscal year with the approval of the City Manager.

Council Member Yeh inquired what type of vetting had been done to ensure hiring practices.

Mr. Keene spoke on the various positions within the City that were filled with limited hourly personnel. He stated the intent of the proposed Resolution was to place a formal review process on the FY2007-FY2009 Compensation Plan for limited hourly personnel.

Human Resources Director, Russ Carlsen stated three-quarters of limited hourly personnel were seasonal which required a rigorous hiring process in the Community Services Department. He indicated other limited hourly personnel employees were qualified individuals that may have held the position at one time as the City recruited for said position. He stated hiring practices were not compromised by the adoption of the proposed Resolution.

Council Member Yeh inquired how the proposed Resolution would expedite, complicate, or compliment the forthcoming hiring process.

Mr. Keene stated changes in the Compensation Plan for this group of employees were tracked through the SEIU Limited Hourly Contract. He stated the Agenda Item did not deal with the entire review of the terms of said contract.

Council Member Yeh inquired whether the proposed Resolution was an authority to perpetuity grant the City Manager authority for limited hourly personnel to work more than 1,000 hours in a fiscal year.

Mr. Keene stated the proposed Resolution would give the City Manager the authority to hire limited personnel beyond 1,000 hours, and would reset at the start of the following year.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** that the City Manager is to provide two, 3-month reports to Council on the eligible positions.

Mr. Keene stated a three month report initially made sense as it related to the budget discussions and a second report at the end of the Fiscal Year, then to revisit the policy to ensure it was the right frequency.

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

32. (Former No. 23.) Request for Authorization to Increase Existing Agreement with the Law Firm of Duncan Weinberg, Genzer & Pembroke, P.C. by an Additional \$155,000 for a Total Contract Not to Exceed Amount of \$215,000.

Council Member Burt inquired on an explanation for the reason of the increase in fees, and why the City was out of funds with the Law Firm of Duncan Weinberg, Genzer & Pembroke, P.C. (Law Firm of Duncan Weinberg)

City Attorney, Gary Baum stated the Law Firm of Duncan Weinberg had been conducting services with the City for several years and there was an increase in joint projects with neighboring utility cities and individual projects. Staff had been utilizing the Law Firm of Duncan Weinberg with extensive work representing the City's electric utility in federal and regional regulatory proceedings before the Federal Energy Regulatory Commission (FERC), Western Electricity Coordinating Council, and other agencies. He stated the bills had increased, and Staff determined the Law Firm of Duncan Weinberg had an additional need to intervene in a series of FERC proceedings. He provided justification on the increase to the existing agreement with the Law Firm of Duncan Weinberg to ensure the City remain in compliance with State laws and regulations.

**MOTION:** Vice Mayor Morton moved, seconded by Council Member Kishimoto to authorize the increase to an existing agreement with the law firm of Duncan Weinberg Genzer & Pembroke, P.C. by an additional \$155,000 for a total contract not to exceed amount of \$215,000.

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

COUNCIL MEMBER QUESTIONS, COMMENTS, AND ANNOUNCEMENTS

None

ADJOURNMENT: The meeting adjourned at 1:00 a.m.