

Special Meeting
September 20, 2010

The City Council of the City of Palo Alto met on this date in the Council Chambers at 6:05 p.m.

Present: Burt, Espinosa, Holman, Klein, Price arrive at 6:16 p.m., Scharff, Schmid, Shepherd, Yeh arrived at 6:26 p.m.

Absent:

Mayor Burt announced the City Manager Comments would be heard immediately following Special Orders of the Day and Council Questions, Comments, and Announcements would be heard before the Closed Session. He also noted that by Council majority the Council meeting on September 27, 2010 would start at 6:00 p.m.

SPECIAL ORDERS OF THE DAY

1. Proclamation Recognizing Leadership in Energy and Environmental Design (LEED) Existing Building Award for 525 University Avenue.

Mayor Burt read the Proclamation into the record.

CITY MANAGER COMMENTS

City Manager, James Keene announced Deputy Chief Roger Bloom was chosen as the Fire Training Officer of the year. The Planning Department was sponsoring a presentation on the evolution of bicycle transportation on September 30th at 4 p.m. in Council Chambers. On September 23rd from 6:30 to 8:30 p.m. at the Escondido School there was to be a community meeting regarding the California Avenue Streetscape Project. He read a press release regarding the update on the PG&E transmission line running through Palo Alto.

09/20/10

ORAL COMMUNICATIONS

Brock Winstead, spoke regarding Senator Simitian's upcoming Town Hall meeting on Saturday, October 2, 2010 from 10:30 a.m. - 12:00 p.m.

Carroll Harrington, Palo Alto, spoke regarding the art exhibit in the City Hall lobby regarding Climate Change.

Michael Ruescher, Palo Alto, spoke regarding the art exhibit in the City Hall lobby regarding Climate Change.

Hinde Sack, spoke regarding the High Speed Rail connection to the Caltrain system.

CONSENT CALENDAR

2. Approval of Council Appointed Officers Committee Recommendation to Authorize City Auditor Leave of Absence.

MOTION: Council Member Klein moved, seconded by Council Member Schmid to approve Agenda Item No. 2.

MOTION PASSED: 9-0

ACTION ITEMS

3. Approval of Recruitment for Acting City Auditor.

Council Member Klein spoke regarding the necessity of an acting City Auditor while the City Auditor was on leave and noted there would be no additional cost due to the leave of the City Auditor being unpaid.

MOTION: Council Member Klein moved, seconded by Vice Mayor Espinosa to direct Staff to conduct an outreach to identify candidates for Acting City Auditor.

MOTION PASSED: 9-0

4. Public Hearing: From Finance Committee: Consider Changes to the City's Refuse Rates, Which, if Adopted, Will Be Effective October 1, 2010 and Adopt a Resolution 9094 Amending the Utility Rate Schedules R-1, R-2, and R-3 for a Refuse Rate Increase; Adoption of Budget Amendment Ordinance 5094 for Fiscal Year 2011 to Adopt Municipal Fee Schedule Increases for the Palo Alto Landfill and Adjust Budgeted Revenues and Expenditures Within the Refuse Fund; and

Direct Staff to Apply for a Permit Modification to Reduce Landfill Operating Days From Seven to Five Days Per Week.

City Manager, James Keene explained the Refuse Fund had a funding gap which needed to be closed. He noted there was a requirement to have a certain level of reserves available in the Fund at the end of each year relating to the eventual closure of the Landfill. He stated there were legacy expenditure costs being paid and, due to the conservation efforts being successful, there were declining revenues in the Refuse Funds.

Solid Waste Manager, Rene Eyerly reviewed the PowerPoint presentation and the Solid Waste Programs. She stated as the City moved forward with the conservation and with its success there was less revenue generated. This was the first in a series of conversations Staff would present to Council in the need for a paradigm shift in how the community paid for the benefits of conservation. She explained there was a \$6.2 million shortfall in which Staff was attempting to bridge with the combination of expense reductions, program deferrals and revenue increases.

Mayor Burt asked for clarification on a procedural question. If the Council moved towards recommended adjustments to the current proposal, what would be the expected timeframe when Staff would return with updated information for final Council approval.

City Attorney, Gary Baum stated Council had multiple options regarding the proposed rate increases. Council could choose not to approve them or they could suggest a decreased amount to the proposed increase. There was not an option to increase the proposed rate increases.

Mayor Burt clarified Council could not suggest an increased rate above what had been advertised.

Mr. Baum stated that was correct. There could not be an increase without proper notification to the public and in the newspaper.

Council Member Scharff asked for clarification on the funds being raised by the mini-can. The Staff report indicated \$130,000 although the presentation reflected \$200,000.

Ms. Eyerly stated the Staff report had a typographical error. The accurate amount should be \$200,000.

Council Member Scharff stated the City had budgeted \$120,000 to collect from the hard to serve areas. If customers are opting out of the program, how was the \$120,000 going to be raised.

Ms. Eyerly stated Staff recognized there would not be a rate increase until October 1, 2010 and that there would only be collection from approximately 500 customers.

Council Member Scharff asked for clarification on the calculations; was the thought process 500 customers multiplied by \$14.20 collected monthly.

Ms. Eyerly stated the collection portion was calculated with the customer base multiplied by the dollar amount; although, the expense was based on the expected 700 customer number.

Council Member Scharff clarified, the breakdown for the \$500,000 was an expected \$200,000 from the mini-can collection, \$50,000 to \$60,000 of revenue from the hard to serve areas with the remainder being received from the larger can collections. On a second note, he had a concern regarding the .1 Full Time Employee (FTE) shown on page 3. He stated during a Finance Committee meeting the Director of Public Works, Glenn Roberts explicitly clarified the .1 FTE at a cost of \$10,883 should not be in the budget yet.

Assistant Director of Public Works, Paul Dornell stated when the General Fund Budget was approved it restored 90 percent of a full-time position. The Refuse Fund needed to allocate the balance of 10 percent of the position.

Council Member Scharff stated in the Finance Committee minutes on page 4: Mr. Roberts stated it shouldn't have been listed. It was a non-issue. He said the .1 FTE was the Engineering Technician that was eliminated during the budget process. Staff discovered that 10 percent of the position was funded by Refuse. Staff thought the small Refuse portion had been cut, but it hadn't and therefore did not need to be restored.

Mr. Keene stated after hearing the clarification from the Finance Committee Minutes, he agreed it appeared to be a non-issue.

Ms. Eyerly stated the 10 percent was included to reconcile the budget.

Council Member Scharff stated, then it should be included.

Council Member Shepherd stated she wanted to have a clear picture regarding the alleys. Her understanding was the customers could bring their cans to the front curb or ask the driver to collect cans from backyard areas at a cost of \$3.32 per month. The truck would be driving down the alley to collect the cans from the customers who have opted to have alley pick-up. Would it be a correct statement to say GreenWaste was to be paid the hard to serve areas fee whether the customers curb their cans or not.

Ms. Eyerly stated there was a side yard or hard to serve on alley service which was at a cost of \$3.32 per month. She stated the goal was to have all of the alley customers' move to the standardized service so there would be no need for the special trucks.

Council Member Shepherd stated there had not been a mandate to eliminate the service.

Ms. Eyerly stated there had been internal discussions to that effect although there had not been a consensus to move forward.

Council Member Shepherd asked how much the subsidy was for the mini-can users.

Ms. Eyerly stated the cost differential between the \$15.00 and the \$20.00 can was approximately \$250,000.

Council Member Shepherd asked what should the mini-can users have been paying.

Ms. Eyerly stated the fee was \$20.00.

Council Member Yeh asked if Staff knew the cost of service for each level of service why was there a need for a Cost of Service Study.

Mr. Dornell stated the \$20.00 rate in 2009 was based on the rate calculations that were completed with the information that was available to Staff at that time. The Cost of Service Study would assist Staff in determining the number of customers utilizing which size can. The intent of the Cost of Service Study was to target the cost for each service in 2010 dollars in order to insert the appropriate numbers to bring to Council.

Council Member Yeh stated at present time there was no definitive subsidized rate information for any service level based on the current or proposed rates.

Mr. Keene stated the proposal was being driven by an interim revenue expenditure gap. He stated in an effort to close the gap, Staff proposed changes to bring the mini-can closer to what the true cost of service was. He noted between the years 2007–2009 the number of customers doubled who used the 20-gallon can and he estimated that number would continue to grow.

Council Member Yeh asked whether there had been discussions with the partners of the SMaRT® Station on their use and whether they were underutilizing their quota or required a higher capacity. He questioned whether the share Palo Alto paid could be lowered.

Ms. Eyerly stated Staff was in contact with both Sunnyvale and Mountain View regarding their usage. This year was the first year Sunnyvale would not meet their tonnage requirement which had shifted their interest. She noted the tonnage requirement could be adjusted by 10 percent every ten years which would be 2011. Palo Alto would be adjusting the tonnage requirement down at that time.

Council Member Yeh stated in anticipation of a \$1,000,000 deficit for the year, loaning \$600,000 from the General Fund would only increase the deficit. He asked how would the loan be reimbursed and what were the potential impacted service cuts with the greater deficit.

Director of Administrative Services, Lalo Perez stated he had received verbal notification from the State that the City would be allowed to utilize the funds set aside for the Landfill Closure Fund requirement so therefore there was a minimal likelihood of the request for a loan in the amount of \$600,000. He suggested waiting for the written confirmation to the fact prior to removing the request.

Mr. Keene clarified there remained a \$189,000 deficit which needed to be covered.

Vice Mayor Espinosa stated as a City we know we are trying to get people down to a smaller size garbage can in general. We have been pushing these issues and it has obviously had ancillary effects. It would make sense to not be focused on a common dollar per gallon of service model but really looking at a continuum in a sense of activity in a certain direction.

Ms. Eyerly stated there were many versions of setting the conservation pricing to promote moving people into the smaller gallon cans. In reviewing the smaller rate increase for the 20-gallon sized cans was not inappropriate.

Vice Mayor Espinosa asked for clarification on what gain was expected from the Cost of Services Study.

Ms. Eyerly stated the previous study was completed nine years ago and the information collected was on a completely different system. The comprehensive Cost of Services Study would be reviewing all of the components of the services provided, including household hazardous waste,

street sweeping, the landfill and how all of the costs were allocated across the entire rate structure.

Vice Mayor Espinosa shared his concern regarding the gap in information being spread decades apart. He requested Staff research whether there were models available in real time data. He stated the City was in a dramatic shift transitioning how they dealt with composting, recycling and waste so he did not feel it was reasonable to delve so deeply into information that was going to be outdated almost before it was completed.

Ms. Eyerly stated Staff concurred a decade between accurate information was too long of a span. The comprehensive Cost to Services Study was designed for the City to be able to run frequent checks on the cost of service levels annually or more frequent as necessary. She noted with the dynamic nature of the systems, Staff would be looking for a more comprehensive study to be completed every two to three years.

Council Member Price asked for clarification on the duration of the GreenWaste contract.

Ms. Eyerly stated the GreenWaste contract was for a term of eight years which began in 2009. The base of the contract runs through 2017 with four one-year options through to 2021.

Council Member Price asked whether there was an option to revisit the contract earlier than 2017 given the changing environment the City was in.

Ms. Eyerly stated there was a provision in the contract to propose different service levels or different options.

Council Member Price asked if the results of the Cost of Services Study made findings which suggested the rate structure should be adjusted, would it be feasible as a result of the Study for Staff to revisit the rate structure.

Ms. Eyerly stated the intent of the Study was to incorporate a comprehensive and better aligned rate structure across the program.

Council Member Price asked if there were a mechanism being put in place to assess or identify future issues to avoid a reoccurrence of a similar situation.

Ms. Eyerly stated the intent was to put into place a mechanism for long term forecasting.

Council Member Schmid asked why the Rate Stabilization Reserve and the State Mandated Transition to Parkland Reserve appeared to be conjoined and used out of the same account.

Mr. Perez stated both Reserves impacted one another. The purpose of the Rate Stabilization Reserve (RSR) was to allow flexibility when there were differences in the budget. He noted over the past few years as a result of the increase of the required liability of \$3 million compounded with the deficit and the recession, funds needed to be drawn elsewhere which in essence brought the RSR to a negative position; therefore, losing the flexibility of the Fund for the year 2011.

Council Member Schmid stated since rate payers have been paying into that Reserve, would it not make sense to have set-up a separate account.

Mr. Perez stated the State required the City to recognize the liability although there was no requirement to separate the accounts. Staff could certainly comply with the recommendation if so directed.

Council Member Schmid noted there was a difference in the GreenWaste contract from the information provided in the presentation to the Staff Report. The Staff Report mentioned the contract at \$1.5 million and in the presentation it was \$800,000. Staff had noted in 2011 there was a possibility to have a reduction of 10 percent although the calculated difference in the amounts was 6 percent. He asked why the entire 10 percent was not utilized.

Ms. Eyerly stated the 10 percent cut-back mentioned earlier was in reference to the SMaRT® Station contract. The GreenWaste contract had two adjustments this fiscal year; the initial adjustment was completed at mid-year in the amount of \$797,000 which inadvertently did not make it into the initial report. During the Finance Committee meeting Staff presented the revised budget and explained the reconciliation amount was included in the revised budget with the \$800,000.

Council Member Schmid stated in 2009 there was a rate increase of 17 percent which yielded a 2 percent increase in revenue. He asked how Staff would assure the proposed rate increase would balance the budget.

Ms. Eyerly stated in terms of assurances Staff had made an attempt to do more projections for the revenue in association with the rate increase. One of the key issues needing to be identified in the Cost of Services Study was the City had a conservation pricing structure set up; therefore, any adjustment was an incentive to move downward.

Council Member Schmid stated it appeared by Staffs' communications the rate structure was opaque and it was uncertain how the rate increase would work through the budget. He asked why Mountain View had much lower increases than Palo Alto respective of the SMaRT® Station.

Mr. Dornell stated the SMaRT® Station was a large piece of the refuse system. Each piece had a cost associated with it as in the household hazardous waste program, the recycling center, the street sweeping program, the landfill and the SMaRT® Station. Palo Alto incurred a \$3 million expense in running the landfill whereas neither Sunnyvale nor Mountain View had that expense.

Council Member Schmid stated in reference to other services, Palo Alto had discontinued commercial dumping in the landfill at a cost of \$2.2 million over the past 18 months with no decrease in Staff associated with that operation. Now the City was going to the rate payer to request an increase in the rate to cover a \$2.2 million shortfall.

Mr. Keene stated the revenue decrease was driven by other policy decisions as a City. Those costs needed to be spread over the other rate paying sources in order to ensure there were sufficient landfill closure funds. He clarified once the landfill was closed there would be a long-term cost reduction.

Council Member Schmid stated the Refuse Program had many complexities to the operation and it seemed difficult to understand trying to simplify it on a singular portion of the overall program.

Council Member Klein asked whether enacting a fee for recycling was being considered.

Ms. Eyerly stated yes.

Council Member Klein asked whether there was information on other Cities charging for recycling.

Ms. Eyerly stated at present time Berkeley was the only City actively charging for recycling services. There were several Cities in the East Bay area considering enacting a fee for recycling.

Council Member Klein asked the fee Berkeley was charging for recycling.

Ms. Eyerly stated Staff confirmed Berkeley was charging a fee of \$5.00 per household.

Council Member Klein asked whether Staff would be requesting the Consultant evaluate other possible charges through the Refuse system; items such as street sweeping.

Ms. Eyerly stated yes, as a part of the Cost of Service Study other fees for service would be reviewed.

Council Member Klein stated his understanding was the GreenWaste contract had a re-opener provision in the year 2011.

Ms. Eyerly stated yes, there was a re-opener clause in the GreenWaste contract which allowed the City to return to the Company with adjustments to the contract or services.

Council Member Holman stated the Los Altos Treatment Plant site was charged a rental fee which was paid by the Utilities Department in 2005 and 2007. She asked whether there was an anticipated utility rate impact due to the \$420,000 being paid in 2010.

Mr. Perez stated there was no scheduled change in the rates.

Council Member Holman asked whether the Utilities Department had the capacity to absorb the \$420,000.

Mr. Perez stated yes.

Council Member Holman stated the service fee for the Los Altos Hills customers for a 32-gallon can was \$33.77 monthly. She stated the whole of Los Altos Hills could be considered a hard to serve area, in that case the Palo Alto customers would be charged the hard to serve rate in addition to the 32-gallon rate for a total of \$47.28 per month. She had concerns with the fee being so much greater than the surrounding area.

Mr. Dornell stated Palo Alto factored in the collection amount from GreenWaste then added in the remainder of fees for the costs of the other services provided.

Council Member Holman asked whether there was a Staff reduction when the City stopped accepting commercial waste at the landfill.

Mr. Dornell stated there was no Staff reduction due to the fact the landfill remained in operation seven days per week with the same operating hours. There was a proposal going to Council from Staff to reduce the operating hours to five days per week which would reduce Staff levels at the landfill.

Mr. Keene stated there would be challenges in reducing the operational hours of the landfill in terms of the volume impacts. There were layers of services and various policy alternatives being worked through in reference to the refuse services. The objective to compare Palo Alto services with surrounding City services was to break out the individual costs for specific services.

Council Member Holman asked what would happen if the landfill closed tomorrow in terms of revenues and expenses.

Mr. Dornell stated the City was losing money and as long as the landfill remained open, the Refuse Fund would continue to lose money. He stated the current permit allowed the landfill to be filled to a specified capacity. Once the capacity had been met, the landfill would be able to shut down. He noted the State would need to approve the landfill being shut down prior to its permitted capacity.

Mayor Burt asked if accepting commercial waste recommenced, would it expedite reaching the permitted capacity limit.

Mr. Dornell stated yes.

Mayor Burt asked if there was a revenue stream in accepting commercial waste.

Mr. Dornell stated yes.

Mayor Burt asked if the City was to move forward with the recycling facility of organic materials at the landfill, would there need to be a recontouring and would there be a potential permitting issue.

Mr. Dornell stated yes; although, if the State authorized a recontouring their preference would be to see all landfills closed down as soon as possible.

Mayor Burt stated the concept of the anaerobic digestion had been discussed for approximately a year. He asked whether there had been any discussion with the State on their acceptance given the environmental value.

Mr. Dornell stated the advice received was the State would be reluctant to reopen a section of the landfill once it had been closed.

Mayor Burt asked if there was a way to recuse ourselves from the contract without a legislative action.

Mr. Sartor asked for clarification on the question.

Mayor Burt clarified his reference was to the contractual agreement the City's had throughout the State with landfills.

Mr. Dornell stated in order to attempt to accomplish the goal, Staff had recommended sub-leasing the area not being used by the City to outside agencies; therefore, bringing in a revenue source for the use of the landfill.

Mayor Burt stated that recommendation had been discussed previously and was halted because there were no perspective buyers. He asked if there were perspective buyers available at present.

Mr. Dornell stated a number of agencies were locked into long-term contracts and were uninterested in making payments for the contracts currently in play.

Mayor Burt asked if there was a calculation on the cost for the extra street sweeping.

Mr. Dornell stated that was one of the factors being studied by the Cost of Services Study.

Mr. Keene stated Staff could provide an estimated cost having knowledge of the number of customers and the cost of street sweeping.

Mayor Burt asked how it was possible to have had a 17 percent rate increase in 2009 and merely a 2 percent revenue increase while the cost for household had essentially remained level.

Mr. Dornell stated the cost per household had gone down which explained the decrease in revenue.

Mayor Burt stated Staff cited a 2 percent revenue increase.

Mr. Dornell stated that was correct, he intended to say expenses. The expenses had remained the same while the revenue had increased.

Mayor Burt asked if the revenue went up 2 percent was that not on average what was being paid per household and business.

Ms. Eyerly stated yes. There was a 17 percent increase across the board while a majority of the revenue shortfall came from the commercial accounts.

Mayor Burt stated his critical question was contrary to looking whether our cost per gallon of container was going up, but what was the City having to pay for trash removal per household.

Ms. Eyerly stated that was correct and the Cost of Services Study would be able to assist in pinpointing the increases of costs that were not associated with a direct fee.

Mr. Baum stated the proceeding was governed by Proposition 218 which required the City follow specific procedures and specific noticing prior to increasing any rate. Tonight's hearing provided an opportunity to those who wished to protest the proposed rate increase during the hearing.

Public hearing opened at 8:15 p.m.

Mimi Wolf, Palo Alto, spoke regarding the waste reducers being penalized by collection rate increases.

Joseph Baldwin, Palo Alto, spokesperson for the 10 Waverly Park residences spoke against the rate increase. He noted their free compostable bin cost went from zero to \$94.18 monthly.

John Abraham, Palo Alto, spoke regarding the residents on private streets being fully financially responsible for the damage caused by the waste collection vehicles.

David Creemer, Palo Alto, spoke regarding the 20 percent of residents complying with the green initiative and still being penalized.

Lee Birdsey, Palo Alto, spoke regarding taking careful consideration for the composting contract and noted all of Palo Alto was a City no matter the type of street a portion was located on.

Robert Moss, Palo Alto, stated paying per gallon was agreeable although the fee should be based on the usage of the can not the mandated size of the can.

Herbert Fischgrund, Palo Alto, spoke regarding residents being charged for participating in the Zero Waste Program. He stated there needed to be a straight across the board charge.

Herb Borock, Palo Alto, spoke regarding the Staff request for \$850,000 from the General Fund while the Budget Amendment Ordinance request indicated a \$240,000 loan amount.

Emily Renzel, Palo Alto, spoke regarding protesting the rate increase. She requested Council consider a modified version of the Finance Committees' recommendation to close the recycling center.

Stephanie Munoz, Palo Alto, spoke regarding recycling taking the hauling business away from GreenWaste which in turn was causing the rate increases.

Wynn Grcich, Hayward, spoke regarding the process of removing copper elements through anaerobic digestion.

Ray Crozier, Palo Alto, spoke regarding the utility bills cost correlating with usage while the refuse rates increase no matter what your usage.

Tim Lynch, Palo Alto, spoke against the rate increase and suggested reopening the landfill to commercial haulers.

Caran Chappell, Palo Alto, spoke regarding an alternating pick-up schedule for green waste and recyclables.

Public hearing closed at 8:41 p.m.

Mr. Baum stated the City Clerk needed to read the perfunctory count into the records in order to determine whether the item could proceed.

Mayor Burt requested the City Clerk to provide the count of the number of written protests received against the proposed rate increase.

City Clerk, Donna Grider stated 153 written protests were received.

Mayor Burt stated the total number of protests received was 153 which was not higher than the 50 percent required. Since there was not a majority of protests on refuse rates, a Motion to adopt the refuse rate may be made at this time.

Council Member Holman asked whether private streets and alleyways were swept once a week.

Mr. Dornell stated private streets did not receive that service.

Council Member Scharff stated there were two items occurring; there was a deficit in the Refuse Fund which Council was working toward closing the gap and completing a Comprehensive Study. Once the Study was completed it was to return to Council for further review. He stated he would not be

supportive of raising the rates on the mini-can or the hard to serve areas without further review.

MOTION: Council Member Scharff moved, seconded by Council Member Yeh to: 1) adopt the Resolution Amending the Utility Rate Schedules R-1, R-2, and R-3 for a Refuse Rate Increase with the exception of the increase to mini can and hard to serve areas, 2) adopt the Budget Amendment Ordinance for Fiscal Year 2011 to adopt the Municipal Fee Schedule increases for the Palo Alto Landfill and adjust budgeted revenues and expenditures within the Refuse Fund, delete \$246,000 out of the Zero Waste Outreach Funds, and 3) authorize Staff to loan the Refuse Fund up to \$840,000 from the General Fund.

Mr. Keene requested to confirm there were no outstanding contracts predestined for the \$246,000.

Ms. Eyerly stated there were outstanding contractual obligations in the outreach budget in the amount of \$95,000.

Mr. Keene stated it appeared there was \$150,000 available and there was \$95,000 obligated to contracts which Staff needed to investigate further.

Council Member Scharff urged Council to support the Motion and take a systematic approach to rates and review the Cost of Service Study.

Council Member Yeh stated if Staff received written approval from the State the General Fund would not need to loan the Refuse Fund the Staff requested amount.

Mr. Perez stated at present the un-audited cash balance at the close of 2010 was \$7.9 million in cash. Staff reported to Council a net of approximately \$195,000, which would have come out of the \$7.9 million. He clarified with the States approval there was flexibility in the Fund although Staff needed to monitor the Fund closely and return to Council expeditiously if a need arose.

Council Member Yeh stated the Motion was definitely one that makes sense. The community was committed in terms of moving towards conservation and its absolutely the wrong message to send at this point without guaranteeing that this was even tied to a cost savings in service.

Council Member Shepherd stated she supported the Motion which she felt was appropriate. She requested verification Staff had the ability to shift the funds.

Mr. Baum stated under Proposition 218 the cost for the service should be equivalent to the cost the customer was charged. There was not supposed to be cross-subsidization.

Mayor Burt clarified the question was whether the Motion complied with Proposition 218.

Council Member Shepherd stated at the present time the City was out of compliance with the Proposition 218 regulations.

Mr. Baum stated the Motion brought the City closer to being in compliance with Proposition 218. There were a number of outstanding issues which was the reason behind the rate study.

Mayor Burt asked whether the rate study was necessary to know clearly what would need to be done to be in compliance with Proposition 218. In the absence of the rate study, was the City in jeopardy of remaining out of compliance with Proposition 218.

Mr. Baum stated yes, although lessened by the Council actions being taken by the Motion on the Table.

Mayor Burt clarified the Motion moved the City closer to compliance.

Mr. Baum stated Staff's recommendation was closer to compliance with Proposition 218; although, Council and the community had provided a number of reasons why the recommendation may not be advisable.

Mr. Keene stated a remedy to the issue was the Cost of Service Study which should be completed during the course of the year. The intent of the Study would be to specifically inform Staff where the City was in respect to being in compliance with the Proposition 218 regulations.

Mayor Burt asked whether the timeline was the fall 2010 to receive the completed Study.

Mr. Keene stated Staff expected to have a draft in November of 2010 to be reviewed at the City Manager level and be reviewed by the Finance Committee by January 2011.

Council Member Shepherd asked for an explanation on the Staff report regarding a 100 percent increase for the cost of the mini-can by the year 2012.

Ms. Eyerly stated there had been a 100 percent increase in the mini-can users from the year 2007 to 2009.

Council Member Holman asked whether there was a correlation between the cost for services and services delivered. She stated she supported the Motion and asked whether there would be an opportunity to make separate Amendments.

Mayor Burt stated yes, there could be Amendments to the Motion.

Council Member Holman requested an Amendment to the Motion to commence accepting commercial waste.

Mayor Burt clarified the requested Amendment was a separate Motion.

Council Member Klein stated he supported the Motion. He noted under the regulations of Proposition 218 the City was forbidden from subsidizing one service area from another. He felt as though there was subsidizing occurring with the 20-gallon can. He noted the cost received by consumers on any utility was a cost for the infrastructure built in to the service.

Council Member Price stated the Cost of Services Study appeared to be supplying critical information for a better understanding of the rate structures.

Vice Mayor Espinosa stated he supported the Motion. He asked for an explanation on how and where the outreach monies had been spent and what contracts the City may or may not be able to recuse themselves from.

Ms. Eyerly stated there were two contracts. The first provided waste audits and the second was with a Consultant who worked with the schools to assist them with the formation of their green teams.

Vice Mayor Espinosa asked for clarification on the first contract. They had no function for reporting back to Council.

Ms. Eyerly stated that was correct. The contract was with businesses which were participating in the Green Business Program or were looking for ways to be greener and change their services. The Consultant reviewed the businesses waste to determine what was being thrown out and suggested ways they could alter their internal systems.

Vice Mayor Espinosa asked if the above referenced contracts had multi-year terms.

Ms. Eyerly stated both contracts were in the last part of the second year of a three year contract with an option to renew.

Vice Mayor Espinosa asked what the remaining \$160,000 was slated for.

Ms. Eyerly stated the remainder of the funds were anticipated for outreach materials through the end of the year.

Vice Mayor Espinosa asked whether these contracts were on a fiscal calendar and therefore would not be up for renewal until summer of 2011.

Ms. Eyerly stated yes.

Council Member Schmid stated he liked the notion of base incentives to push people towards recycling. He was skeptical that the City would be able to generate the funds that were needed to balance the budget while creating those incentives. He proposed an Amendment that the rate increase would be for 9 months and expired July 1, 2011.

AMENDMENT: Council Member Schmid moved, seconded by Council Member XXXX that the rate increase expire in 9 months on July 1, 2011.

Council Member Scharff asked Council Member Schmid to clarify his Amendment was for the rate increase to expire in 9 months.

Council Member Schmid stated yes, to have the rate increase expire after 9 months.

Council Member Scharff stated the question that arose was if Staff was to have the Comprehensive Study completed in the fall. If the rate increase was to expire in 9 months would Staff have completed the Study and returned to Council with recommendations by July 1, 2011.

Mr. Keene stated one of the driving elements was to ensure there was sufficient cash flow by the end of the Fiscal Year to comply with the State requirement.

Mr. Baum stated due to the complexity of the Study and the lag time with the Proposition 218 requirements the July 1, 2011 deadline seemed to be unreasonable. He recommended against the earlier time frame.

Mayor Burt asked what amount of time appeared reasonable for Staff.

Mr. Keene stated if there was a desire to ensure implementation of cost of service decisions, he did not believe 24 months was necessary. Fall of 2011 seemed ample time to allow Staff to complete the necessary steps to comply with the Proposition 218 requirements.

Mayor Burt asked Council Member Schmid whether he was open to revising the Amendment to 12 months.

Council Member Schmid stated no, his Amendment would stand at 9 months.

AMENDMENT FAILED DUE TO THE LACK OF A SECOND

Mayor Burt asked for clarification that multi-family residentials were being charged more for composting than were single residences.

Ms. Eyerly stated yes. In the commercial rate structure adopted in 2009 there was an error in the rate for cart service which was corrected in the new rate schedule. A small number of customers who had a 96-gallon or less service inadvertently received free service.

Mayor Burt stated he was not asking about commercial.

Ms. Eyerly clarified multi-family apartments of 5 or more units were serviced under the commercial structure.

Mayor Burt stated the multi-family units were treated as commercial although they were an anomaly among residential.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to include 6% rate increase for mini cans.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to exempt multi-unit residential properties up to 10 units from additional composting fee.

Mayor Burt stated when the GreenWaste contract first went before Council it was presented in great detail that bottles, cans and certain paper had and would continue to have value. The remainder of recyclables cost money to recycle but do not end up in the landfill.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER that the rate increase expire in 12 months (October 1, 2011), and that Staff is to return with fully vetted costs within the Cost Study by January 2011.

Council Member Klein stated Staff would need to return to Council in sufficient time to enact the new rates to be in effect on October 1, 2011.

Mr. Keene accepted October 1, 2011 as the 12 month period. He clarified the request to have the General Fund loan the Refuse Fund up to \$840,000 may not need to occur per the conversation Mr. Perez referenced had with the State.

Mayor Burt stated given that Council would expect to have the Cost of Service Study completed no later than January 2011 the assumption would be to begin detailed public dialog in the Winter/Spring months.

Mr. Keene stated that was correct.

MOTION PASSED: 9-0

MOTION: Council Member Holman moved, seconded by Council Member Schmid to recommence accepting commercial waste at the landfill.

Council Member Holman stated there was a revenue stream associated with the commercial waste that could be garnished estimated at \$500,000 to \$1.5 million annually.

Council Member Scharff stated the Finance Committee had extensive discussions regarding recommending commercial waste acceptance. His understanding was with the acceptance of the commercial waste, the anaerobic digestion facility would not be able to move forward.

Mr. Keene stated the landfill was a complex discussion that needed more time than was available during this meeting. Staff had identified October 18, 2010 as a follow-up discussions on composting, landfill operations, future landfill rent options and the landfill trickling closure issue.

Council Member Holman withdrew her Motion.

Mayor Burt asked the City Clerk if the Proposition 218 requirements had been met.

Ms. Grider stated yes.

MOTION PASSED: 9-0

Council took a break from 9:26 p.m. and returned at 9:40 p.m.

5. Direction to Staff Regarding High Speed Rail Issues and Adoption of a Resolution Regarding High Speed Rail.

Deputy City Manager, Steve Emslie gave a brief explanation regarding the At-Place items Council received.

Mayor Burt recommended focusing on the "No Confidence" Resolution which had implications on the Closed Session discussion. He asked Staff in the interest of time to concentrate the presentation on the applicable areas of discussion. He suggested continuing the remaining High Speed Rail items to the Council meeting of September 27, 2010 and to begin the meeting at 6:00 PM.

Management Specialist, Rob Braulik gave a brief presentation focused on the "No Confidence" Resolution.

Council Member Klein suggested reversing the order of the second paragraph under Action on the Resolution letter. The second paragraph that began with "The City Council of Palo Alto continues to believe that Caltrain" was intended to be the last paragraph.

Mayor Burt stated the substance would not be altered, and the change would allow for more fluidity.

Ken Allen, Palo Alto, spokesperson for the Adobe Meadows Neighborhood Association, spoke regarding a resolution passed by the neighborhood.

David Martin spoke regarding Palo Alto maintaining an agile role in the development of the High Speed Rail project.

William Cutler, Palo Alto, spoke regarding the litigation against the Environmental Impact Report.

Jeff Wilfeld, Palo Alto, stated support for Caltrain did not mean support for High Speed Rail.

Caran Chappell, Palo Alto, spoke regarding her support for the Draft Resolution of "No Confidence".

Martin Sommer, Palo Alto, spoke regarding his support for the Federal Railroad Administration (FRA) proposal.

Jim Mcfall, Palo Alto, spoke regarding the option of elevated viaducts and the impacts the High Speed Rail would have on the High Schools.

Terry Holzemer, Palo Alto, stated the options provided by the High Speed Rail Authority were splitting the City in half.

Christopher Poor, Palo Alto, spoke regarding the intent of the High Speed Rail which was to improve the quality of life for the residents of California.

Michael Griffin, Palo Alto, spoke regarding being in favor of the letter to Ray LaHood.

Aram James, Palo Alto, spoke regarding encouraging the City to reach out to corporate entities for funding assistance to complete the High Speed Rail.

Carlin Otto, Palo Alto, spoke regarding her support for passing the draft Resolution of "No Confidence".

Nadia Naik, Palo Alto, CAARD representative, recommended proceeding with caution regarding the draft Resolution of "No Confidence".

Robert Moss, Palo Alto, spoke regarding his support for the draft Resolution of "No Confidence".

Herb Borock, Palo Alto, spoke regarding his support for the Resolution of "No Confidence".

MOTION: Vice Mayor Espinosa moved, seconded by Council Member Shepherd to approve the draft Resolution.

Vice Mayor Espinosa stated initially the thought of a High Speed Rail system was exciting; however, having the Rail Authority as a partner had turned out to be less than cooperative. The time for final decisions was rapidly approaching and there was still a lack of accurate information being presented by the Rail Authority.

Council Member Shepherd stated she would be intrigued to see if Caltrain's view of the corridor was similar to Palo Alto's. She urged her colleagues to support the Motion.

AMENDMENT: Council Member Klein moved, seconded by Council Member Schmid to: 1) replace bullet No. 2 in the Resolution with, Urge the Federal Rail Administration to cease funding Caltrain's High Speed Rail as presently constituted and provide them with a copy of this Resolution, and 2) direct City Staff to write a letter to the Federal Rail Administration supporting permanent Caltrain funding.

Council Member Klein stated it was not intellectually consistent to urge the Governor and the legislature to stop funding the High Speed Rail (HSR) without conveying the same message to the Federal Railroad Administration.

Council Member Schmid stated it seemed ambiguous to vote "No Confidence" in the Rail Authority yet have removed stronger language which originated and lead to a vote of "No Confidence". He clarified the language for the "No Confidence" vote should be more direct and compelling.

Council Member Shepherd stated the FRA was initiated as a freight train organization and had yet to reach the twenty-first century which prohibited them from having guidelines regarding passenger rail. She mentioned there were necessary standards regarding human safety and human conditions living with a rail system that were not being considered.

Council Member Price stated her support for the Amendment. She felt it was important to notify the FRA of Palo Alto's concern for the future of Caltrain. She made note a single Resolution should not be expected to cover every concern or issue. Covering too many points loses the essence of the statement.

Mayor Burt stated Council could take a stance on any number of harsher statements; although, he cautioned once those stances had been taken they were not easily retracted. Caltrain had made a strong statement that they believed receiving FRA funds in support of their electrification was essential to their survival. He felt uneasy taking a position against the FRA funding at that point in time. He felt Palo Alto needed to continue to support the possibility that Caltrain was on the right track for their own interests while continuing to carefully guard our interests. He stated he would not be supporting the Amendment.

Council Member Scharff stated he supported Caltrain and felt if the High Speed Rail was coming he supported the importance of it being underground or a covered trench. He noted without Federal funding those options were unavailable. He stated he would not be supporting the Amendment.

Council Member Klein stated there was a strong distinction between the High Speed Rail and Caltrain. The Amendment was a clear message to the FRA on where Palo Alto stood.

Council Member Yeh stated there were details within the draft letter as to where Palo Alto had found concerns with the progress of the program.

Mayor Burt stated Palo Alto's position would not affect the Federal outcome although he felt it would affect the City's ability to have a strong voice on the Peninsula both with Caltrain and other Peninsula partners.

AMENDMENT PASSED: 5-4 Burt, Espinosa, Scharff, Shepherd no

AMENDMENT: Council Member Klein moved, seconded by Council Member Holman to add a new bullet No. 3: Urge local U.S. Senator and Member of Congress to oppose further funding of High Speed Rail as presently constituted.

Council Member Klein stated there needed to be consistency in the position taken by City.

Council Member Holman stated she seconded the Amendment because she associated her thoughts with the Maker.

Council Member Yeh stated the Amendment was similar to Item No. 4 listed in the draft letter.

Council Member Klein withdrew his Amendment.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to urge the Peninsula Corridor Joint Powers Board to more aggressively and publicly protect the interests of the communities along the Caltrain Right-of-Way with respect to High Speed Rail.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER for Caltrain to publicly oppose overhead aerial configuration where cities oppose it.

Council Member Schmid stated the Caltrain corridor was the right-of-way for the High Speed Rail coming up the Peninsula.

Mayor Burt stated the Amendment had meaningful and strong statements which lead Palo Alto in the right direction.

AMENDMENT: Council Member Shepherd moved, seconded by Council Member XXXX to include in the Federal Rail Administration letter a request to make National Standards for human compatibility for High Speed Rail design including but not limited to noise and vibration standards, outreach for Contact Sensitive Solutions, and aerial design configuration when going through residential neighborhoods, and that Palo Alto supply the Federal Rail Administration with the current standards we have concerning noise and vibration.

AMENDMENT FAILED DUE TO THE LACK OF A SECOND

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to include as was in the first letter, "consider litigation, if necessary and cost effective to protect the interest of Palo Alto with respect to High Speed Rail."

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to: 1) change Background Section Number 5 title to: Impact on Community and Environment, 2) Background Section Number 5 include in the first sentence ...have major negative impacts on our community and the environment---, and 3) Background Section Number 5 in the second line add air pollution aftervalues, traffic, and *air pollution*, noise, vibrations.

Council Member Holman stated the premise of the HSR project was to improve the environment. She clarified the impacts on the community due to traffic would degrade the air quality.

Council Member Klein stated when the letter was drafted there was purpose behind placing the background after the Resolution which Staff had reversed. He suggested there be wordsmithing prior to the final release.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER that the Mayor and HSR Committee Chair have final approval of Resolution letter.

MOTION PASSED: 9-0

COUNCIL MEMBER QUESTIONS, COMMENTS, AND ANNOUNCEMENTS

Mayor Burt spoke about the meeting, Palo Alto coordinated, that was held at the League of California Cities Conference in San Diego regarding High Speed Rail. Additionally, Governor Schwarzenegger attended this meeting.

Council Member Price asked what the next steps are going to be.

Mayor Burt responded that there would be additional collaboration with other cities.

Council Member Klein spoke about the meeting attended by Governor Schwarzenegger and reported on the results of the voting on the proposed Resolutions at the League of California Cities conference.

CLOSED SESSION

6. Discuss Potential Initiation of Litigation Pursuant to Government Code Section 54956.9(c): Initiation of Litigation in the Matter of City of Palo Alto; Town of Atherton, a Municipal Corporation, Planning and Conservation League, a California Nonprofit Corporation, City of Menlo Park, a Municipal Corporation, Transportation Solutions Defense and Education Fund, a California Nonprofit Corporation, California Rail Foundation, a California Nonprofit Corporation, and Other Similarly Situated Entities, v. California High Speed Rail Authority, a Public Entity.

Herb Borock, Palo Alto, spoke regarding the process needing to be done in Open Session to keep the public involved.

The Council convened into the Closed Session at 11:16 p.m.

City Attorney, Gary Baum announced that the Council approved unanimously to enter into a lawsuit pursuant to Government Code Section 54956.9(c): Initiation of Litigation in the Matter of City of Palo Alto; Town of Atherton, a Municipal Corporation, Planning and Conservation League, a California Nonprofit Corporation, City of Menlo Park, a Municipal Corporation, Transportation Solutions Defense and Education Fund, a California Nonprofit Corporation, California Rail Foundation, a California Nonprofit Corporation, and Other Similarly Situated Entities, v. California High Speed Rail Authority, a Public Entity.

ADJOURNMENT: The meeting adjourned at 12:00 p.m.