

Special Meeting  
December 12, 2011

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, Scharff, Schmid, Yeh  
arrived at 7:43 P.M.

Absent: Shepherd

#### STUDY SESSION

##### 1. Joint Study Session with the San Francisquito Creek JPA.

San Francisquito Creek Joint Powers Authority (JPA) Executive Director, Len Materman, made a PowerPoint presentation that provided updated information regarding the JPA's purpose and mission, the fluvial and tidal flood risks affecting Palo Alto and surrounding communities, various flood protection projects that the JPA is pursuing, and potential funding sources for flood protection projects. Council Member Burt, who serves as the City of Palo Alto representative on the JPA Board of Directors, thanked Mr. Materman for his presentation and asked Council to focus on two primary issues: 1) whether the JPA should strive to provide 50-year or 100-year protection from San Francisquito Creek flooding, and 2) whether the JPA should take a lead role in providing protection from tidal flooding. He explained that there are two primary sources of flooding – fluvial flooding caused by the overtopping of San Francisquito Creek, and tidal flooding caused by overtopping or failure of bay front levees. He described the number of parcels at risk of flooding from one or both of the flood sources in Palo Alto and surrounding communities. He described the efforts by the JPA and the Santa Clara Valley Water District (District) to plan and design flood protection projects to address both fluvial and tidal flooding. Mr. Materman also gave status updates on federal funding from the Army Corps of Engineers and pending applications from the JPA and the District for a State of California grant for evaluation, planning, and design of bay front levee improvements. Lastly, he reported on the District's tentative plans for a

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special tax measure (Clean, Safe Water) on the November 2012 ballot and the JPA's consideration of a future assessment or special tax to fund flood protection measures upstream of Highway 101. District staff representative Liang Lee provided clarifying comments regarding the scope and funding amounts for the District's Clean, Safe Water ballot measure. Mr. Materman answered questions from Council Members regarding the presentation and about the scope and funding of the potential capital flood protection projects. Council Members asked about project funding, the relative risks of fluvial vs. tidal flooding, and the timetable for the proposed flood protection projects. Members of the public addressed the Council to advocate for mutual cooperation on the District's proposed ballot measure, and to express concern about the potential private property impacts of floodwalls along the creek and the slow pace of progress towards project implementation.

### SPECIAL ORDERS OF THE DAY

2. Community Presentation: Palo Alto Housing Corporation Community Partnership.

Candice Gonzales, Executive Director of the Palo Alto Housing Corporation, provided an overview of the services and facilities that the PAHC administers throughout Palo Alto. The mission of the PAHC is to foster, develop, acquire, build and manage low- and moderate- income housing in Palo Alto and the San Francisco Bay Area. It was established in 1970 and has served as the City's administrator for the Below Market Rate (BMR) program since 1975. PAHC owns and operates more than 700 rental units serving over 1,500 residents. The PAHC receives funding from the City, County of Santa Clara, the Housing Trust of Santa Clara County and other State, Federal and private organizations. PAHC also provide services to residents such as on-site educational workshops and classes, referrals to social services and events that build community and strengthen community ties. Council Members expressed their support for the PAHC, the facilities PAHC runs and their programs to acquire additional housing for the people they serve.

3. Adoption of Resolution 9218 Expressing Appreciation to Sandra C. Brown Upon Her Retirement.

Council Member Holman read the Resolution into the record.

**MOTION:** Council Member Holman moved, seconded by Vice Mayor Yeh to adopt the Resolution expressing appreciation to Sandra C. Brown Upon her Retirement.

PaloAltoFreePress.com indicated Ms. Brown and the City Attorney's office had discriminated against the Palo Alto Free Press.

Victor Ojakian thanked Ms. Brown for her service to the City.

George Browning commented on the high standards and integrity of the Police Department and Ms. Brown.

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

Sandra Brown expressed her appreciation to the Community, her coworkers and the City Council.

Dennis Burns, Palo Alto Police Chief, commented on Ms. Brown's service to the City.

Mayor Espinosa expressed appreciation to Ms. Brown for her service to the Community.

#### CITY MANAGER COMMENTS

James Keene, City Manager, reported that the downtown library will be open to the public on Fridays beginning January 6, 2012, and that the Senior New Year's Eve Bash will be held on December 30, 2011 at the Oshman Family Jewish Community Center.

#### ORAL COMMUNICATIONS

Joe Webb discussed handing out leaflets at a Palo Alto Players production. He said his right to free speech was inhibited when they told him he could not hand out the leaflets. He said several of the Human Relations Commission members had walked out when he brought his situation before them.

Craig Allen stated he was a long-time golfer, played regularly at the Palo Alto Golf Course, and served on the Palo Alto Golf Advisory Council and presided over the Palo Alto Golf Club. He informed the Council that the Winter Holiday Classic golf tournament would be held on December 21. He encouraged all members of the Council to visit the course during the tournament, to see how a reasonably priced golf course could make a difference to young athletes.

Kip Husty stated he did not finish his comments the prior week regarding police policies pertaining to demonstrations. He said the police needed to be restrained. He indicated this was an important issue because people get hurt. He stated a lack of oversight would result in culpability. He said the Council could make a good policy, which would save the City much embarrassment and future lawsuits.

Mark Petersen-Perez discussed his experiences with the Palo Alto Police Department, stating his disappointment at their investigation into his alleged

crime. He also discussed the City's discrimination against the Palo Alto Free Press as a news media organization, when no other city had taken that position. He stated it was shameful conduct.

Fred Balin discussed Business Association of California Avenue (BACA) and the California Avenue Area Development Association (CAADA). He indicated a key discussion should be the connection between the new BACA and CAADA. He felt the Community, especially the California Avenue business community, needed to clearly understand what happened within CAADA from 2005 to 2009, during the early days of the streetscape process. He said he was writing an article that among other things called for the business leaders of BACA to address how they would ensure they would not become the CAADA of 2009.

### CONSENT CALENDAR

**MOTION:** Council Member Holman moved, seconded by Council Member Klein to approve Agenda Item Nos. 4-13.

Annette Glanckoph spoke in support of Ken Dueker being hired as the Director of Emergency Services.

Lydia Kou spoke in support of Ken Dueker being hired as the Director of Emergency Services.

4. Adoption of Resolution 9212 Approving and Authorizing the City Manager's Execution of the Northern California Power Agency Meter Maintenance Program Agreement and Metering Equipment Transfer Letter of Agreement and Bill of Sale.
5. Approval of the Acceptance of Citizens Options For Public Safety (COPS) Funds In The Amount Of \$104,944 For the Police Chief's Request to Purchase Property and Evidence Room Storage Improvements, Traffic Accident Reconstruction Equipment and Software, Replacement Two-Way Crisis Communication System, Replacement Less Lethal Launchers, Infrared Radar Binoculars, and Portable Radio Transmitter.
6. Finance Committee Recommendation to: 1) Approve Amendment No. 1 to Contract No. C11140925 with Ecology Action for up to \$300,000 for Additional Business Energy Efficiency Rebates for a Total Not to Exceed Amount of \$1,817,397 through FY 2014; 2) Approve Amendment No. 1 to Contract No. C10134341 with OPOWER, Inc. for up to \$250,000 for Additional Home Energy Reports For a Total Not to Exceed Amount of \$843,083 through FY 2013; and 3) Adopt Ordinance 5135 Amending the Budget for FY 2012 to Provide an

Additional Appropriation of \$425,000 Within the Electric Fund for Two Demand-Side Management Programs.

7. Adoption of Resolution 9213 Declaring Weeds to be a Public Nuisance and Setting January 9, 2012 for a Public Hearing for Objections to Proposed Weed Abatement.
8. Adoption of Resolutions 9214 and 9215 Adopting a Program for Enforcement of the City's Renewable Portfolio Standards Program and a Renewable Energy Resources Procurement Plan.
9. Approval of a Transfer in the Amount of \$65,000 From the Stanford University Medical Center Development Agreement into the Community Services Department's Operating Budget for Project Safety Net.
10. Adoption of Resolution 9216 Declaring Results of the Consolidated Special Municipal Election Held on November 8, 2011.
11. Finance Committee Recommendation on Plan for Elimination of the Recycling Center and Retaining the Household Hazardous Waste Dropoff Facility; Adoption of Resolution 9217 Amending the Comprehensive Plan to Eliminate Program N-55 and Adoption of Ordinance 5136 Amending Municipal Code to Eliminate Local Recycling Center Requirement.
12. Approval of Three Year Sublease Agreement with Surveymonkey.com, LLC for office space at 285 Hamilton Avenue.
13. Confirmation of Appointment of Kenneth Dueker as Director of the Office of Emergency Services and Approval of At-Will Employment Contract.

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

Ken Dueker thanked the City Council, Community and coworkers for their support.

#### AGENDA CHANGES, ADDITIONS, AND DELETIONS

13a. (Former Agenda Item Nos. 15 and 16)

**MOTION:** Council Member Scharff moved, seconded by Vice Mayor Yeh to continue:

1) Agenda Item No. 15- Public Hearing: Appeal of an Architectural Review Approval and a Record of Land Use Action Regarding the Director's

Architectural Review Approval of A Three Story Development Consisting of 84 Rental Residential Units In 104,971 Square Feet Within the Upper Floors, 50,467 S.F. Ground Floor Research and Development Area, Subterranean and Surface Parking Facilities, and Offsite Improvements, With Two Concessions Under State Housing Density Bonus Law (GC65915) On A 2.5 Acre Parcel at 195 Page Mill Road And 2865 Park Boulevard to January 30, 2012; and

2) Agenda Item No. 16- Finance Committee Recommendation to Approve Two Resolutions Adopting Utility Rate Schedule, Approving Changes to Utilities Rule and Regulation, and Approving Agreements for a Local Renewable Energy Feed-in Tariff Program and to Approve an Ordinance Amending Two Sections of Chapter 2.30 of the Municipal Code Relating to Facilitation of a Feed-in Tariff Program to a date uncertain.

Donna Grider, City Clerk, asked that the public hearing be continued to a date certain, January 30, 2012.

Council Member Burt inquired if both Agenda Item Nos. 15 and 16 were continued to January 30, 2012.

Mayor Espinosa indicated it was Agenda Item 15 only.

**MOTION PASSED:** 7-0 Klein, Shepherd absent

#### ACTION ITEMS

14. Consideration of an Acquisition Loan in the Amount of \$1.29 Million with Palo Alto Housing Corporation for the Purchase of 2811-2825 Alma St.

Steven Turner, Advanced Planning Manager, stated Staff recommended, at the request of the Palo Alto Housing Corporation, that Council approve a loan in the amount of \$1.29 million from the Cities Commercial Housing Fund. This loan would be for the acquisition and closing costs of two parcels at 2811-2825 Alma Street. These parcels would be rehabilitated and rented out at below market rates. This loan would be consistent with the purpose of the Housing Fund and language in the Housing Element. This would be a second loan to the Opportunity Fund Loan; the total of the two loans would be \$1.79 million which was the accepted offer by the owner of the parcels. The terms of the loan were consistent with similar past projects.

Candace Gonzales, Executive Director of Palo Alto Housing Corporation (PAHC), expressed appreciation for the City Council's consideration of their request. She indicated the City was a critical partner to their developments.

Joy Ogawa noted the City Council's unanimous vote to renew its contract with PAHC to administer the Below Market Rate (BMR) program on October 17. She recounted incidents regarding PAHA's banning of a sukkah during the holiday season. She indicated renewal of the PAHC contract was placed on the Consent Agenda, which allowed the Council to sidestep the issue of the PAHC's questionable policies and actions. She stated normally she would support the use of housing funds to purchase and preserve rental properties; however, the City needed to perform due diligence to ensure the money was not given to a landlord who violated City policies and engaged in bad behavior.

Council Member Schmid stated it was important for Palo Alto to have a large number of low-cost rental units. He indicated it was difficult to put this in the context of the City's obligations, especially the Association of Bay Area Governments (ABAG) Regional Housing Needs Allocation (RHNA) allocation numbers, since the City did not have a Housing Element for 2007 to 2014. He stated this was a purchase of six units of low-income housing, with the possibility of purchasing another adjacent unit to add four more units of low-income housing. He indicated the purchase of all ten low-income units would total \$2.5 million. He asked if the purchase was the most effective use of the monies in the Housing Fund in order to achieve the targets of expanding the number of low-rent units.

Mr. Turner stated it was a strategy for maintaining and keeping the units as low-income housing; otherwise, the units could be sold to developers or another property owner who wished to convert or redevelop the units. He indicated a benefit of purchasing the two lots, and hopefully the adjacent two lots, by the PAHC was developing additional below-market rate units. He stated the City could receive RHNA credit during the next housing cycle for these units without building new units.

Ms. Gonzales indicated the rental rates of the units were below market because of the condition of the property, but the tenants needed to be qualified as low income.

Council Member Schmid stated his experience on the Council with PAHC was building new units. He noted the cost of housing on Charleston and 801 Alma was approximately \$210,000 per unit, and the cost per unit of these ten units was approximately \$250,000.

Ms. Gonzales clarified that the Tree House cost per unit, which included site acquisition and construction, was closer to \$500,000 to \$600,000. She thought the Charleston and 801 Alma units did not include acquisition.

Council Member Schmid asked if the City's portion on the Charleston and 801 Alma units was a percentage of the total rather than the total.

Ms. Gonzalez indicated it was.

Council Member Schmid stated the City would receive ownership of the property and not any new properties with the proposed purchase. He asked if the City participated in construction, would the units become more expensive than prior purchases.

Ms. Gonzalez indicated it would be more expensive. She stated the PAHC's goal was to build new construction when feasible. She indicated new parcels were rare in Palo Alto, and part of RHNA allowed up to 25 percent of acquisition rehab when new construction was not feasible. She said PAHC would still meet its new construction or rehab goals.

Council Member Schmid noted Palo Alto was an expensive area. He stated the City was spending key assets on rehab rather than obtaining new properties. He inquired if there was a strategy of moving housing funding into rehab versus new construction.

Mr. Turner indicated it was not a shift from developing new housing. He felt it was a unique opportunity at this point to purchase six units, rehabilitate them, and have them available for below-market rate renters. He thought the preference was to develop additional housing and, if PAHC could secure the adjacent site, that would become a reality.

Council Member Schmid expressed concern about spending \$2.4 million or \$2.5 million for a net addition of four low-cost rental units.

Council Member Scharff inquired about how the RHNA rules worked. He thought there had been a phone conversation regarding the RHNA allocation for the next cycle. He asked if Staff was sure the City would receive an RHNA allocation on this project.

Mr. Turner stated there was nothing in writing regarding the RHNA allocation, but Staff discovered this was a possibility. He said Staff had contacted the California Department of Housing and Community Development (HCD) to determine the requirements for capturing these units during the next cycle. He indicated regulations were regarding relocation costs of renters who did not meet income requirements had been discussed with the HDC. Staff was confident the City met the regulations to capture the units in the next cycle.

Council Member Scharff felt this was a tentative response, and asked again if the allocation was definite.

Mr. Turner indicated it was not definite.

Council Member Scharff referenced Staff Report information stating the purchase could not be counted in the current cycle, because it was not within the first three years of the allocation. He noted the timeframe of purchasing this property in 2011, rehabilitation occurring in 2012 or 2013, and the new RHNA allocation beginning in 2015. He asked if work had to be performed during the allocation period itself, to be counted toward the RHNA allocation.

Mr. Turner felt units purchased for rehabilitation prior to the cycle could be counted for the next cycle if the City met HCD regulations.

Tim Wong, Housing Senior Planner, understood from discussions with HCD that since acquisition and rehabilitation did not occur in the current planning period, it would be applied to future planning periods, namely 2015.

Council Member Scharff inquired whether the current tenants in the six units were considered moderate income at 60 percent of median income, or low income versus very low income.

Mr. Wong stated 60 percent of median was considered low income; 51 percent to 80 percent of area median income was defined as low income.

Council Member Scharff asked if he remembered correctly that the City met the very low income requirements on the last RHNA, but there were difficulties in meeting the low and moderate income housing.

Mr. Wong indicated the City did not have enough very-low-income housing, but was unsure about the low income figures.

Council Member Scharff expressed concern about purchasing the proposed low-income housing units, then purchasing the adjacent low-income units and replacing all the units with very-low income units, while receiving RHNA credit for both projects.

Mr. Turner indicated that scenario would have issues. He felt the future project was not defined. He stated Staff would work with PAHC to create the best possible project concerning the six low income units to provide the correct RHNA credit.

Council Member Scharff asked if the Council was supporting a long-term project involving destruction of rental housing.

Mr. Turner indicated it was not.

Council Member Scharff noted an Ordinance which required property owners who tore down rental housing to replace it with rental housing. He asked

whether future projects for this acquisition would maintain the property as rental housing rather than for-sale housing.

Mr. Turner stated that would be the intent.

**MOTION:** Council Member Klein moved, seconded by Council Member Scharff to accept Staff recommendation to:

1. Approve the Loan Agreement, in substantial form, with the Palo Alto Housing Corporation (PAHC) with its attached form of promissory note and deed of trust, which authorizes a residual receipts loan of \$1.29 million for acquisition costs;
2. Authorize the City Manager or designee to execute the Loan Agreement and the Regulatory Agreement in substantially identical form;
3. Authorize the City Manager or designee to execute all other documents required to implement the Agreements, including escrow instructions, and to approve all necessary subordination agreements, and direct the City Manager or designee to administer the provisions of the Agreements.

Council Member Klein felt the RHNA program should be eliminated from the State Budget as it did not create new housing for disadvantaged people. He noted that Palo Alto had programs supporting affordable housing prior to the RHNA process. He supported the motion because it was the best use of funds and it would be beneficial to Palo Alto. He felt the units would move outside the category of affordable housing if the City did not purchase them. He felt the possible acquisition of the adjacent property made sense. He stated the City had been able to support approximately 20 units of low-income housing per year since the inception of PAHC. He felt this project was well planned and the City should move forward on it.

Council Member Scharff supported the project because it was a good project. He felt PAHC managed the projects well and he appreciated their efforts.

Vice Mayor Yeh supported the Motion. He questioned funds being taken from the Commercial Housing Fund, while remittances would be deposited into the Residential Housing Fund.

Mr. Wong stated the first page of the report was incorrect and that remittances would be deposited into the Commercial Housing Fund, not the Residential Housing Fund. He indicated the purpose of the Commercial Housing Fund was site acquisition, and this project was an eligible use for those funds.

Vice Mayor Yeh noted the Residential Housing Fund would not be impacted by this project. He referenced the different loan amounts and interest rates reported in the pro forma and Staff Report. He questioned whether the pro forma reflected the proposal or was an earlier analysis.

Mr. Wong indicated the pro forma was an earlier calculation, but was also used to demonstrate that the loan, if needed, could support a mortgage.

Vice Mayor Yeh asked if he understood correctly from the Staff Report that there was no guarantee for repayment or remittance, and there was an option for the City to write off the loan after a certain number of years.

Mr. Wong answered that was correct. He indicated this project did support a mortgage, from the Opportunity Fund. He reported the City's loan would be residual receipts, with a possibility of repayment. He stated the option to forgive would occur after the end of the loan term.

Vice Mayor Yeh explained he asked his questions in order to create a realistic expectation of repayment of the loan. He wondered if Staff's analysis was impacted by the possibility of increasing the loan amount and decreasing the interest rate to obtain a different debt-coverage ratio.

Council Member Holman noted prior projects had been funded by a variety of sources, and inquired about other funding sources for acquisitions such as this.

Mr. Wong explained there was a variety of funding sources for acquisition, but a short escrow period prevented securing multiple funding sources. He indicated funds from the City and the Opportunity Fund were more flexible, allowing them to be more efficient.

Council Member Holman asked if it was possible to secure funding sources after escrow to repay part of the City loan.

Mr. Wong was unsure whether any lenders would want to be in a junior position for the loan. He stated the possibility could be explored.

Council Member Holman stated she had been frustrated by the fact that acquisitions could not be applied to the RHNA allocation, until she later learned this was possible. She inquired if 25 percent of the City's RHNA allocation could be used for acquisitions.

Mr. Wong stated that was correct, but under limited circumstances. He indicated Staff was confident about this circumstance.

Council Member Holman asked if rental housing had to be replaced with rental housing.

Mr. Turner felt that was not entirely accurate. He thought perhaps that was part of the Housing Element Policy, which had been changed through an Ordinance.

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

COUNCIL MEMBER QUESTIONS, COMMENTS, AND ANNOUNCEMENTS

Council Member Price reported on an action recently taken by the Santa Clara Valley Transportation Authority (VTA) Board of Directors. She indicated the VTA awarded a \$772 million design-build contract for the Bay Area Rapid Transit (BART) Silicon Valley-Berryessa Extension Project, which was the first phase of the 16-mile BART extension to Santa Clara Valley. She reported the VTA Board had recommended to Caltrans that a new district be created to include at a minimum Santa Clara County. She stated this recommendation would provide Caltrans engineers to Santa Clara Valley and would reduce the review time for worthy projects. She indicated the recommendation would allow the proposed district to introduce innovative practices and electronic project review and approval.

Mayor Espinosa noted the Police Department's ride-along program remained in effect, and invited Council Members and members of the public to participate. He congratulated the Police Department on an incredible class of officers being promoted.

ADJOURNMENT: The meeting was adjourned at 9:11 P.M.