CCAC Finance Subcommittee
Notes from meeting of July 19, 2012

Present were Susan Bailey, Anne Wilson, Lessa Bouchard, Lanie Wheeler and David Ramberg (City Staff).

We began to flesh out and seek background information for most of the items identified at the initial gathering of the subcommittee.

- **Put together a baseline that shows the revenue steam potential of Cubberley site under various scenarios.** Before we can tackle this we need to have a clearer picture of the current uses and revenue streams. David will provide us with data. Lessa will research information about market rents for similar functional spaces in the community.
- **Layout timeline of bonds, capital improvement plans and other financing that is currently planned or being considered for both the PAUSD and the city (including recommendations of the IBRC).** David provided the committee with currently planned capital improvement projects by the city. Lanie will ask Bob Golton to provide information on potential use of any of the current bond money on the Cubberley/Greendell/525 San Antonio site as well as for any preliminary thoughts on future PAUSD bond issues. David will provide the committee with the Cubberley portion of the IBRC report. The committee would like to explore the various funding mechanisms that might be used to fund future improvements on the site. David will speak with city staff members with expertise in that area. The question of the feasibility of a joint bond measure arose and might be explored (school district boundaries not coterminous with city and bond passage requirements for each are different).
- **Gather and evaluate the financial terms that are in place with other joint use arrangements.** Susan will gather information from the city/school architects on other joint use facilities.
- **Evaluate other scenarios where venture capital/private funding options were leveraged.** We'll wait for Ken to get back to discuss this item as it was his suggestion.
- **Understand the historical money trail for Cubberley including the utility user tax.** Lanie will send the committee a paper she prepared (and Carolyn Tucher edited) outlining the history of the UUT and Lease and Covenant Not to Develop. (it is attached to this email).
- **Look into whether there is a way to add revenue generation to help support the site.** This might require rezoning of a portion of the site if what is contemplated is building spaces for market rate commercial use.

The committee's next meeting will be held on Wednesday, August 1 at 7:00 p.m. at the home of Lanie Wheeler, 362 Diablo Court, Palo Alto 94306.

BACKGROUND ON THE UTILITY USERS TAX

The Utility Users Tax was adopted by the voters of Palo Alto in a pair of ballot measures in November 1987. Measure B was the tax itself; Measure C allowed the City to exceed the spending limit potentially imposed by what was known as the Gann limit on spending in order to collect and spend the tax revenues raised by Measure B.

Measure B read: "Shall an ordinance be adopted which imposes a utility user tax of five percent (5%) of the utility charge on users of electricity, gas, water and telephone in the City of Palo Alto and provides for a reduced tax rate for high volume users and provides for collection of this tax?"

Measure C read: "Shall an ordinance be adopted changing the City of Palo Alto's appropriation limit for each of four fiscal years beginning in fiscal year 1987/88 by increasing said appropriation limit by 5.5 million dollars to allow use of new and existing tax revenue sources in the City of Palo Alto?"

The tax was proposed at a City Council study session in January 1987 by Councilmember Larry Klein as a way the city might help the financially strapped Palo Alto Unified School District. Klein suggested "the city consider levying a tax on water, gas and electric usage and use the money to lease all vacant school property throughout Palo Alto." (Peninsula Times Tribune, January 20, 1987)

The tax was put on the ballot as a general purpose tax with proceeds going into the City's General Fund "for general government purposes of the City". As such, it required only a simple majority for passage. It was clear, however, both from the official ballot arguments and the campaign literature what the primary uses of the tax proceeds would be.

In the official Argument in favor of Measure B, voters were informed that the proceeds would be used to preserve open space at school sites, protect neighborhoods from overdevelopment of surplus school sites, provide revenues to the PAUSD, repair streets and sidewalks, and provide affordable space for arts and culture organizations.

There was an organization formed to support Measure B, called Palo Altans for Civic Excellence. In their campaign literature, the Committee stated:

"Our City Council has endorsed and placed on the November 3rd ballot two measures which should raise approximately $4.35 million dollars for several purposes, particularly:

1. To lease unused school sites from the Palo Alto Unified School District;
2. To undertake certain capital improvements, such as renovation of streets, sidewalks, and sewers.

By leasing school sites we can guarantee that these priceless open spaces will not be developed and removed forever from public use. The fields and playgrounds will still be there for us to enjoy. We will retain the option of reopening schools in future years;

space will be available for arts and non-profit groups; and we will provide the school district with funds required to continue vital educational programs."

There was little formal opposition to Measures B and C. The chief spokesman for the opposition, school board watcher Louis Fein, died in September prior to the election. Former Mayor Jack Wheatley became his replacement, but he was out of town for much of the campaign. Most community presentations were one-sided affairs. The measures enjoyed newspaper editorial support as well as the support of the Chamber of Commerce. Yet Measure B passed by only 178 votes (8,673 yes, 8,495 no).

THE LEASE AND COVENANT NOT TO DEVELOP

The discussions and subsequent vote on the Utility Users Tax took place in the context of quickly shrinking school district enrollment and funding.

Elementary School sites - The PAUSD had already closed ten neighborhood elementary schools (Ventura, (the original) Hoover, Crescent Park, De Anza, Ross Road, Ortega, Garland, Greendell, Van Auken and Fremont Hills). The District successfully rented some of the available space in the closed elementary schools to local nonprofit agencies. Fremont Hills was leased – and continues to be leased – to Pinewood School on a long-term contract. Greendell was converted to District use for special programs. Because capacity considerably exceeded the number of potential tenants, the District's need for funds, and perceived neighborhood sentiment, five of the sites had been sold and developed into housing. Ventura had been sold to the City and sublet to Palo Alto Community Child Care.

Middle school sites - Terman Middle School was closed in 1978 and sold to the City of Palo Alto which subsequently leased the buildings and some of the recreational facilities to the Jewish Community Center. Affordable housing was constructed on a portion of the original school site. Jordan Middle School had been closed and was vacant. Strong neighborhood opposition to the technical college proposed as a tenant by the District and the likelihood that the District might propose to sell the property for another housing development provided strong impetus for going to the voters with the UUT.

Cubberley High School had been closed in 1980 and leased by the District to a variety of tenants, principal among them Foothill College.

As enrollment continued to decline, the incumbent School Board and Superintendent had determined in February 1987 that the one remaining middle school, JLS Middle School would be closed; Gunn would become the District's sole middle school and Paly the sole high school. The November 1987 election brought not only the enactment of the UUT, but the election of two new School Board members, Diane Reklis and Henry Levin, who opposed the merger decision. By January 1988, when the utility tax went into effect, the School Board had decided to re-open discussions regarding the consolidation of the District's secondary schools.

The Agreement

The Lease and Covenant Not to Develop was signed by the School District and the City on September 1, 1989 (signed for the City by Mayor Larry Klein). It superseded several former agreements related to keeping open space at closed school sites. In brief, its chief components were:

1. Lease of the 35+ acre Cubberley Site at a base rate of $2,700,000 per year.
2. Lease payments for not developing the following school sites and in the following amounts:
    a. Ohlone (old Ohlone site, currently Hoover) $204,742
    b. Garland $182,804
    c. Greendell $182,804
    d. Jane Lathrop Stanford $236,000
    e. Jordan $164,000
3. Lease payment for space at each of the then- existing elementary schools for the purpose of providing on-site childcare for the sum of $300,000 or $27,273 per site beginning in January 1990.

The agreement contains a CPI related annual rent adjustment formula with an inflation cap of 10% for increases in annual payments. However, each five years the agreement remains in force, the rent is reconciled against the actual inflation index. If necessary, the City must make its final payment in years 5, 10, etc. conform to the actual index. Payments in years 6, 11, etc. are based on this reconciled index amount.

The Cubberley Site

The 35-acre Cubberley site includes 11.8 acres of outdoor recreation area; the remaining 24.2 acres is comprised of parking lot area, walkways and approximately 180,000 square feet of buildings.

The City took over rental contracts with existing tenants: California Department of Forestry; California Education Plan (Palo Alto Preparatory School); California Law Revision Commission; Children's Preschool Center; Early Learning Child Care Center; Foothill-DeAnza Community College District (approximately 37,000 square feet of classroom space, the 3000 square foot P Building and the Pavilion and Gym A); Hua Kuang Chinese Reading Room; National Traffic Safety Institute; Peninsula Children's Center; and Wildlife Rescue.

The agreement requires the City to maintain the site to the same standard applied by the School District for sites not in active classroom use. The City is also responsible for all utilities and waste management costs as well as all operating expenses. If a change in the law requires the City to invest $250,000 in a single year, the lease is open to renegotiation.

The City has the right to make any structural changes or improvements it deems necessary, provided that it notifies the School District of any such change costing more than $100,000 for the purpose of allowing the District to comment. At the termination of the lease, the space returned to the District must be useable for school buildings unless the District waives that requirement. No less than 150,000 square feet of buildings must be returned to the District at the end of the lease period.

The contract also specifies terms of a sale to the City, should the District decide to sell the site and the City to purchase it during the fist 25 years of the lease. The City would pay 25% of fair market value for the portion of the site subject to the Naylor Act (the turf areas) and 80% of fair market value for the remainder. From years 26 to 35, the price of the property not subject to the Naylor Act would be 90% of fair market value.

The initial term of the lease was 15 years, through December 31, 2004. The City then had a right to extend the lease for 10 years which it exercised. In the November 2003 CMR: 498:03, it was stated that Cubberley had "become a major hub for community participation. In total, more than 900,000 people and 66 organizations use Cubberley facilities on an annual basis – more than all of Palo Alto's community facilities combined". The lease provides for two subsequent 5year extensions if mutually agreeable to the City and the District.

The contract further provides that the City may terminate the lease under the following conditions:

1. The City Council does not appropriate funds to make lease payments
2. The City exceeds its Gann Limit and the city electorate has not authorized the City to do so.
3. A State or Federal law or a court judgment either prohibits the City from collecting taxes in effect when the lease was signed or reduces City revenues by at least $1.5 million dollars.

<u>The Cubberley "Purchase"</u>

Faced with growing enrollment, the PAUSD re-opened Jordan and in October 1999 began to look at re-opening Terman Middle School. The District set a re-opening date in September 2003. Terman was at the time owned by the City and leased by the Jewish Community Center. The JCC's initial lease period did not expire until 2007. Taking the site back by use of eminent domain would have required the District to prepare an Environmental Impact Report; compensate the City for the lost lease revenue; provide relocation assistance to the JCC and pay any rental difference between the rent the JCC paid at Terman and what it would have to pay at new facilities.

Complex and sometimes contentious negotiations resulted in the following three-party agreements:

1. Stanford University leased to the City for $1 per year for 51 years the 6-acre old Mayfield School site at the corner of Page Mill Road and El Camino Real. The intended use of this parcel was for construction of a new JCC facility. In exchange, Stanford would be permitted to build additional square footage in the Research Park, the amount to be determined by the ultimate size of the new JCC community center.
2. The City, in an acre for acre swap, acquired ownership of 7.97 acres of the Cubberley site. The District took possession of the Terman site. Instead of reducing the annual rent paid by the City to the District for use of Cubberley proportionately (which would have been about $800K) the rent was reduced by $250,000, the approximate amount the JCC was paying to lease Terman. The District retained ownership of the remainder of the Cubberley site. Should the District wish to re-use Cubberley for educational purposes, it must give the City two years notice so that Foothill College (and other tenants) can relocate. The District was granted the right of first refusal should the City decide to sell its portion of the Cubberley site. The City has the right of first refusal should the District decide to sell its portion of Cubberley.
3. Stanford provided funds to the District to renovate the Terman campus as part of its acquisition of additional development rights.

In 2000 the fair market value of Terman's 8 acres was estimated to be $30-35 million (City Council minutes of 12/18/2000, page 91-265) or $35-40 million (letter dated 12/7/2000 from Carl Yeats, Director of Administrative Services, to resident Richard Alexander).

Lease and Covenant Amendments

The Lease and Covenant Not to Develop has been twice amended since its signing, once in July 1998 and again in August 2002.

The first amendment stemmed from the re-opening of the "old Ohlone" covenanted site. In exchange for that property two operating school sites were substituted as covenanted sites: Juana Briones and Walter Hays. This substitution accorded with agreements in the original lease covering the potential re-opening of closed sites. This amendment also included provisions for child care space at the re-opened site.

The second amendment was enacted after the City "purchased" the acreage at Cubberley. The first provision was the exchange for the re-opened covenanted Garland site (leased to a private school) of two operating elementary schools, Addison and El Carmelo. The next provision permitted the placement of 9 portables on the covenanted Greendell site for a period not to exceed eight years to accommodate the JCC child development programs. The next two provisions reduced the rent paid for Cubberley by $23,490 per month and redefined the leased space as comprised of 27.48 total acres, 15.94 of which is

outdoor recreation, and 11.94 acres which contain parking areas, walkways and approximately 80,150 square feet of buildings. Finally, the amendment allows the School District to terminate the Cubberley lease after the JCC has left Cubberley in order to open a "Compact High School".

Prepared by:
Lanie Wheeler
May 2010

MEASURES SUBMITTED TO VOTE OF VOTERS

CITY OF PALO ALTO MEASURES

B Shall an ordinance be adopted which imposes a utility users tax of five percent (5%) of the utility charges on users of electricity, gas, water and telephones in the City of Palo Alto and provides for a reduced tax rate for high volume users and provides for collection of this tax?

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AGAINST THE MEASURE	137

C Shall an ordinance be adopted changing the City of Palo Alto's appropriations limit for each of four fiscal years beginning in fiscal year 1987/88 by increasing said appropriations limit by 5.5 million dollars to allow use of new and existing tax revenue sources in the City of Palo Alto?

FOR THE MEASURE	139
AGAINST THE MEASURE	140

D Shall an ordinance be adopted which makes the City of Palo Alto a "Nuclear Weapon Free Zone" by prohibiting nuclear weapons work within the City of Palo Alto, requiring the City to refrain from making investments in and contracts with nuclear weapons contractors and establishing an Economic Conversion Commission to provide the City Council with information and recommendations on the implementation of the ordinance and requiring the posting of signs reading "Nuclear Weapon Free Zone" at all City limit sign post locations and at City Hall?

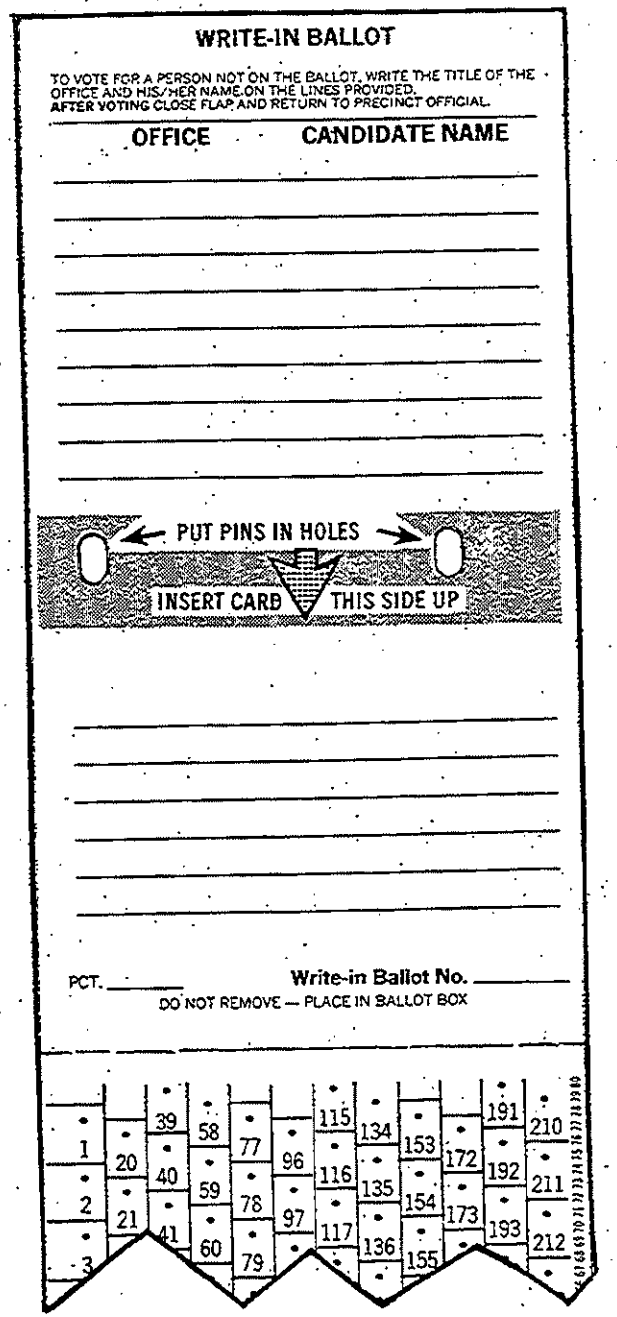
FOR THE MEASURE	143
AGAINST THE MEASURE	144

E Shall an ordinance be adopted which controls gasoline powered leaf blowers by prohibiting the use of any gasoline powered leaf blower that produces more than 70 decibels of noise at a distance of 25 feet and requires the owner of every such leaf blower to obtain a written certification from the police department verifying that the leaf blower does not exceed this noise level?

FOR THE MEASURE	146
AGAINST THE MEASURE	147

E

SAMPLE OF THE WRITE-IN BALLOT



FULL TEXT OF ORDINANCE PROPOSED BY MEASURE B

If a majority of the qualified electors voting on such measure shall vote in favor of City of Palo Alto Measure B, it shall be deemed ratified and shall read as follows:

ORDINANCE NO. XX-XX

ORDINANCE OF THE PEOPLE OF THE CITY OF PALO ALTO AMENDING THE PALO ALTO MUNICIPAL CODE BY ADDING CHAPTER 2.35 TO TITLE 2 THEREOF, ESTABLISHING A UTILITY USERS TAX AND PROVIDING FOR THE COLLECTION THEREOF

The People of the City of Palo Alto do ORDAIN as follows:

SECTION 1. Title 2 of the Palo Alto Municipal Code is hereby amended by adding a new chapter thereto which shall read as follows:

Chapter 2.35
UTILITY USERS TAX

Sections:

2.35.010 Short Title.
2.35.020 Tax Imposed.
2.35.030 Disposition of Tax Revenue.
2.35.040 Definitions.
2.35.050 Constitutional Exemption.
2.35.060 Electricity Users Tax.
2.35.070 Gas Users Tax.
2.35.080 Water Users Tax.
2.35.090 Telephone Users Tax.
2.35.100 Tax Rate for High Volume Service Users.
2.35.110 Council Authorization to Suspend Collection of A Portion of Tax for Limited Periods of Time.
2.35.120 Collection of Tax.
2.35.130 Reporting and Remitting.
2.35.140 Penalty for Delinquency.
2.35.150 Records.
2.35.160 Failure to Pay Tax — Administrative Remedy.
2.35.170 Actions to Collect.
2.35.180 Administrative Rules, Regulations and Agreements.
2.35.190 Refunds.

2.35.010. Short Title. This Chapter shall be known as the Utility Users Tax.

2.35.020. Tax Imposed. There is hereby established and imposed, commencing on the effective date of this chapter, a utility users tax at the rate set forth in this chapter.

2.35.030. Disposition Of Tax Revenue. The tax imposed by this chapter is for the purpose of raising revenues for the general governmental purposes of the City. All of the proceeds from the tax imposed by this chapter shall be placed in the City's General Fund.

2.35.040. Definitions. Except where context otherwise requires, the definitions given in this section govern the construction of this chapter:

A. "City" means the City of Palo Alto.

B. "Month" means a calendar month.

C. "Person" means any natural person, firm, association, joint venture, joint stock company, partnership of any kind, club, Massachusetts business or common law trust or society, organization, corporation (foreign and domestic), business trust of any kind, or the manager, lessee, agent, servant, officer or employee of any of them.

D. "Service supplier" means a person required to collect and remit a tax imposed by this Chapter and includes the City's Utilities Department with respect to a tax imposed on the use of gas, electricity and water and any Telephone Corporation with respect to the tax imposed on the use of telephone services.

E. "Service user" means a person required to pay a tax imposed by this Chapter.

F. "Utility Tax Year" means the period beginning on the effective date of this ordinance and ending June 30, 1988, for the initial utility tax year. Thereafter, the utility tax year shall be the 12-month period beginning July 1 and ending June 30 of the next succeeding calendar year.

G. "Telephone Corporation" means the same as defined in Section 234 of the Public Utilities Code of the State.

2.35.050. Constitutional Exemption.
Nothing in this Chapter shall be construed as imposing a tax upon the City of Palo Alto or any other person if imposition of such tax upon that person would be in violation of the Constitution of the United States or that of the State of California.

2.35.060. Electricity Users Tax.

A. There is imposed a tax upon every person in the City using electricity in the City. The tax imposed by this section shall be at the rate of five percent (5%) of the charges to a service user made for such electricity by a service supplier, except as provided in Section 2.35.100. Said tax shall be paid by the person paying for such electricity.

B. "Charges," as used in this section, shall include charges made for metered energy and charges for service including customer charges, service charges, standby charges, charges for temporary services, demand charges, and annual and monthly charges.

C. As used in this section, the term "using electricity" shall not be construed to mean the storage of such electricity by a person in a battery owned or possessed by him for use in an automobile or other machinery or device apart from the premises upon which the electricity was received; provided, however, that the term shall include the receiving of such electricity for the purpose of using it in the charging of batteries; nor shall the term include the mere transmission or receiving of such electricity by a governmental agency at a point within the City for resale.

2.35.070. Gas Users Tax.

A. There is imposed a tax upon every person in the City using gas in the City which is delivered through mains or pipes. The tax imposed by this section shall be at the rate of five percent (5%) of the charges to a service user made for such gas by a service supplier, except as provided in Section 2.35.100. Said tax shall be paid by the person paying for such gas.

B. "Charges," as used in this section, shall include charges made for metered gas and charges for service, including customer charges, service charges, demand charges, standby charges, charges for temporary service, and annual and monthly charges.

C. There shall be excluded from the base on which the tax imposed in this section is computed charges made for gas which is to be resold and delivered through mains or pipes and charges made for gas to be used in the generation of electrical energy by a governmental agency.

2.35.080. Water Users Tax.

A. There is imposed a tax upon every person in the City using water which is delivered through mains or pipes in the City. The tax imposed by this section shall be at the rate of five percent (5%) of the charges to a service user made for such water by a service supplier, except as provided in Section 2.35.100. Said tax shall be paid by the person paying for such water.

B. "Charges," as used in this section, shall include charges for metered water and charges for service, including cusomer charges, service charges, standby charges, charges for temporary service, and annual and monthly charges.

C. There shall be excluded from the base on which the tax imposed in this section is computed charges made for water which is to be resold and delivered through mains or pipes and charges made for water used in the generation of electrical energy by a governmental agency.

2.35.090. Telephone Users Tax.

A. There is imposed a tax upon every person in the City, using intrastate telephone communication services in the City, other than a telephone corporation. The tax imposed by this section shall be at the rate of five percent (5%) of the charges made to a service user for such services by a service supplier and shall be paid by the person paying for such services.

B. As used in this section, the term "charges" shall not include charges for services paid for by inserting coins in a coin-operated telephone except that where such coin-operated services are furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be included in the base for computing the amount of tax due; nor shall the term "telephone communications services" include land mobile services or maritime mobile services as defined in Section 2.1 of Title 47 of the Code of Federal Regulations, or any amendment or replacement thereof. The term "telephone communication services" refers to that service which provides access to a telephone system and the privilege of telephonic quality communication with substantially all persons having telephone stations which are part of such telephone system. The term "telephone communication services" also refers to that

service which provides access to a telephone system for data and/or video to the extent permitted by law. The telephone users tax is intended to, and does, apply to all charges billed to a telephone account having a situs in the City, irrespective of whether a particular communication service originates and/or terminates within the City. The situs shall be the service address if known; otherwise the billing address.

C. Notwithstanding the provisions of subsection A of this section, the tax imposed under this section shall not be imposed upon any persons for using intrastate telephone communication services to the extent that the amounts paid for such services are exempt from or not subject to the tax imposed under Division 2, Part 20 of the California Revenue and Taxation Code, or the tax imposed under Section 4251 of the Internal Revenue Code, or any amendment or replacement thereof.

2.35.100. Tax Rate for High Volume Service Users.

A. The tax rate imposed on electricity, gas and water users in Sections 2.35.060, 2.35.070 and 2.35.080 respectively shall be three percent (3%) on all utility charges to a service user exceeding the cumulative amount of $800,000 for water, gas and electricity or any combination thereof during any utility tax year and shall be two percent (2%) of the amount of utility charges exceeding the cumulative amount of $2,400,000 for water, gas or electricity or any combination thereof during any utility tax year.

B. Commencing on July 1, 1988, and every July 1 thereafter, the Director of Finance shall annually adjust the three percent (3%) and two percent (2%) tax rate thresholds specified in subsection A of this section by the annual change in the Consumer Price Index, All Urban Consumers, for the San Francisco-Oakland-San Jose Metropolitan Area published by the Bureau of Labor Statistics or any replacement Index published by said Bureau ("Index") for the preceding year as illustrated by the following formula:

$$NT = T\left(\frac{A}{B}\right)$$

NT = New threshold for the upcoming utility tax year
T = Current threshold
A = The Index for April preceding the upcoming utility tax year
B = The Index for the previous April.

For example, on July 1, 1988, the thresholds shall be adjusted by multiplying them by the April 1988 Index divided by the April 1987 Index.

C. Where any person can establish to the satisfaction of the Director of Finance that they are a person responsible for the payment of one or more taxes under this chapter, they may aggregate charges for gas, electricity or water or any combination thereof for purposes of determining the application of the reduced rate pursuant to this section. The City Manager shall develop and publish written regulations for determining which person(s) is a service user for the purposes of implementing the lower rates authorized by this section. Such regulations may be amended from time to time.

2.35.110. Council Authorization to Suspend Collection of A Portion of Tax For Limited Periods of Time. The City Council may from time to time determine to collect less than the five percent (5%) tax imposed by Sections 2.35.060, 2.35.070, 2.35.080, and 2.35.090 from all service users and may suspend a portion of the maximum rates by passage of an ordinance stating:

1. The Council's intention to suspend collection of a portion of said tax.
2. The duration of the suspension which in no event shall exceed 1 year.
3. The exact portion of the tax, collection of which is being suspended.

This rate suspension shall apply to all service users across the board and shall be in effect for one year from the effective date of said ordinance.

2.35.120. Collection of Tax.

A. Every service supplier shall collect the amount of tax imposed by this Chapter from the service user.

B. The tax shall be collected insofar as practicable at the same time as, and along with the collection of charges made in accordance with the regular billing practice of the service supplier. Except in those cases where a service user pays the full amount of said charges but does not pay any portion of a tax imposed by this Chapter, or where a service user has notified a service supplier that he is refusing to pay a tax imposed by this Chapter which said service supplier is required to collect, if the amount paid by a service user is less than the full amount of the charge and tax which has accrued for the billing period, a proportionate share of both the charge and

tax shall be deemed to have been paid.

C. The duty to collect the tax from a service user shall commence thirty (30) days after the effective date of this Chapter. If a person receives more than one billing, one or more being for a different period than another, the duty to collect shall arise separately for each billing period.

2.35.130. Reporting and Remitting. Each service supplier, shall, on or before the last day of each month, make a return to the Director of Finance, on forms provided by him, stating the amount of taxes billed by the service supplier during the preceding month. At the time the return is filed, the full amount of the tax collected shall be remitted to the Director of Finance. The Director of Finance may require further information in the return. Returns and remittances are due immediately upon cessation of business for any reason.

2.35.140. Penalty for Delinquency.

A. Taxes collected from a service user which are not remitted to the tax administrator on or before the due dates provided in this chapter are delinquent.

B. Penalties for delinquency in remittance of any tax collected or any deficiency in remittance, shall attach and be paid by the person required to collect and remit at the rate of ten percent (10%) of the total tax collected or imposed herein.

C. The Director of Finance shall have power to impose additional penalties upon persons required to collect and remit taxes under the provisions of this chapter for fraud or negligence in reporting or remitting at the rate of ten percent (10%) of the amount of the tax collected or as recomputed by the Director of Finance.

D. Every penalty imposed under the provisions of this section shall become a part of the tax required to be remitted.

2.35.150. Records. It shall be the duty of every service supplier required to collect and remit to the City any tax imposed by this Chapter to keep and preserve, for a period of three (3) years, all records as may be necessary to determine the amount of such tax as such service supplier may have been required to collect and remit to the City, which records the Director of Finance shall have the right to inspect at all reasonable times.

2.35.160. Failure to Pay Tax — Administrative Remedy. Whenever the Director of Finance determines that a service user has deliberately withheld the amount of the tax owed by him from the amounts remitted to a service supplier, or that a service user has failed to pay the amount of the tax for a period of four (4) or more billing periods, or whenever the Director of Finance deems it in the best interest of the City, he shall relieve the service supplier of the obligation to collect taxes due under this Chapter from certain named service users for specified billing periods. The Director of Finance shall notify the service user that he has assumed responsibility to collect the taxes due for the stated periods and demand payment of such taxes. The notice shall be served on the service user by handing it to him personally or by deposit of the notice in the United States mail, postage prepaid thereon, addressed to the service user at the address to which the billing was made by the service supplier, or, should the service user have changed his address, to his last known address. If a service user fails to remit the tax to the Director of Finance within fifteen (15) days from the date of the service of the notice upon him, which shall be the date of mailing if service is not accomplished in person, a penalty of twenty-five percent (25%) of the amount of the tax set forth in the notice shall be imposed, but not less than $5. The penalty shall become part of the tax herein required to be paid.

2.35.170. Actions to Collect. Any tax required to be paid by a service user under the provisions of this Chapter shall be a debt owed by the service user to the City. Any such tax collected from a service user which has not been remitted to the Director of Finance shall be deemed a debt owed to the City by the person required to collect and remit. Any person owing money to the City under the provisions of this Chapter shall be liable to an action brought in the name of the City for the recovery of such amount including applicable penalties and attorneys fees.

2.35.180. Administrative Rules, Regulations and Agreements. The City Manager shall have the authority to adopt rules and regulations not inconsistent with the provisions of this Chapter for the purpose of carrying out and enforcing the payment, collection and remittance of any tax herein imposed, and the City Manager may also make administrative agreements to vary the strict requirements of this Chapter so that the collection of any tax imposed herein may be made in conformance with the billing procedures of a particular service supplier so long as the over-all results of such agreements result in collection of the tax in conformance with the general purpose and scope of this Chapter. A copy of such rules and regulations and a copy of any such agreement shall be on file and available for public examination in the Office of the City Clerk. Failure or refusal to comply with any such rules, regulations or agreements promulgated under this section shall be deemed a violation of this Chapter.

2.35.190. Refunds.

A. Whenever the amount of any tax has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Director of Finance under this Chapter, it may be refunded as provided in this section.

B. A service supplier may claim a refund or take as credit against taxes collected and remitted, the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the Director of Finance that the service user from whom the tax has been collected did not owe the tax; provided however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the service user or credited to charges subsequently payable by the service user to the service supplier.

C. No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto.

SECTION 2. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this ordinance or any part thereof.

IMPARTIAL ANALYSIS OF MEASURE B

The measure submits for voter approval an ordinance which establishes a utility users tax in Palo Alto. The tax would be imposed on all persons using electricity, gas, water and telephone services in the City of Palo Alto. Any natural person, firm, corporation, partnership or other entity or organization using utilities will be required to pay the tax. The tax would not be imposed on the City itself or upon any other person or entity which is constitutionally exempt. Primarily, this exemption would apply to governmental agencies.

This ordinance establishes a tax rate of five percent (5%) on all charges for electricity, gas, water and telephone service with a reduced tax rate for high volume users of electricity, gas and water. A "high volume" user would pay the five percent (5%) tax rate on electricity, gas and water charges until the total charges for all such services reached $800,000 in a single year. For the rest of that year, the tax rate on additional charges for those services would be three percent (3%) on amounts between $800,000 and $2.4 million, and two percent (2%) on amounts over $2.4 million. These amounts, the $800,000 and the $2.4 million, would be indexed annually for inflation so that as the cost of living increases or decreases, as reflected by the Consumer Price Index, the aggregate amounts eligible for reduced rates would change. The reduced rates for high volume usage would not apply to tax rates for telephone service, which would remain at five percent (5%) even for high volume users.

If the voters adopt this measure, the tax rate on electricity, gas, water and telephone service for all users could be set at less than 5% by a City Council ordinance providing for a lower rate; however, the Council could not raise the rate above 5%. Such an ordinance lowering the rate would have to be renewed annually.

The service suppliers, those entities which supply electricity, gas, water and telephone services, would be required to collect the applicable utility tax as part of their regular customer billings. Service suppliers would be required to report and remit the utility users taxes to the City's Finance Director. The ordinance also establishes penalties for delinquency, remedies for failure to pay taxes and authorizes refunds as appropriate. The ordinance also provides that the City Manager may establish rules and regulations for administering the utility users tax which are consistent with this measure.

According to a report prepared by the City's Director of Finance, this measure will cost the average single family utility customer approximately $52 per year and raise $4.35 million in revenues for the City. If this utility users tax measure passes, all proceeds from this tax will be placed in the City's General Fund for general government purposes of the City.

To be effective, this measure must be approved by a majority of the voters voting at this election.

DIANE NORTHWAY
City Attorney

ARGUMENT IN FAVOR OF MEASURE B

— Does Palo Alto need to preserve the open space provided by surplus school sites?
Yes.

— Does Palo Alto need to protect its neighborhoods from overdevelopment of surplus school sites?
Yes.

— Does Palo Alto need to provide additional revenues to our school district so we can continue to have excellent schools?
Yes.

— Does Palo Alto need to make substantial repairs to its streets and sidewalks?
Yes.

— Does Palo Alto need to provide additional affordable space for its arts and cultural organizations?
Yes.

All these items cost money. For the City to pay for them it needs an additional revenue source. The only possibility is a utility users tax. If authorized by the voters, this tax would raise $4.35 million per year through a 5% tax on certain utility bills (electricity, gas, water, telephone). This is a fair and equitable tax. Homeowners and renters would pay 28% of the total; business, 72%. The average homeowner would pay $60 per year. Business is treated fairly since the tax rate would decline on amounts billed in excess of $800,000 per year.

The funds raised would become part of the general fund usable for any lawful purpose. Initially, they would likely be used: 1) to pay the School District approximately $3,000,000 per year for a lease of the Jordan and JLS school sites and its commitment not to develop any other surplus school site, both for 15 years; 2) to fund about $1,000,000 per year of needed repair to streets and sidewalks (there is a 15 to 50 year backlog of street/sidewalk repairs). Portions of the leased school sites would probably be leased to cultural organizations at affordable rates.

Through this tax everyone will win: school children, pedestrians, drivers, school neighbors, arts and cultural groups and the business community. Please join us in voting "yes" on Measure "B".

Palo Alto City Council, Jack Sutorius, Vice Mayor (on a 7-0 vote, 1 not participating, 1 absent)
Palo Alto Chamber of Commerce, Gary Cavalli, President
Alan Henderson, Mayor, 1979-81
Carolyn Tucher, Trustee, Palo Alto Unified School District
George B. Richardson, Coordinator, Palo Altans for Civic Excellence

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE B

As a supportive but wary citizen, vote NO on Measures B and C. Simply stated, a recent District projection shows that in future years, under current law, it will have a large surplus, not a deficit. So, Palo Alto has no need to provide additional revenues to 'our' school district. We don't need to raise $4.35 million annually in PERPETUITY, $3 million of which would go annually for a 15 year school/city lease to fund non-existent deficits. Accordingly, we don't need to raise the Gann limit either.

Open space can be preserved and affordable space for arts provided for relatively little money; neighborhoods can be largely protected from overdevelopment through the City's zoning and land use power.

Measure B is silent on the use of the tax revenues. The Argument in its Favor says that the revenue "would likely" be used for schools and streets; leased sites will "probably" be leased to cultural organizations. "Likely", "probably" are weasel words of unaccountable officials. Accountable officials would state a measure's purpose in its text.

continued at Rebuttal at Measure C.

Louis Fein, Executive Director, P.A.L.A.
Jack R. Wheatley, Former Mayor of Palo Alto, 1970-71
Dorothy M. Monica, Former, P.T.A. Council President
Royce M. Cole, Former P.A.U.S.D. Board Member

ARGUMENT AGAINST MEASURE B

Vote NO!

Recently the City made education a high priority. The Palo Alto Unified School District claimed that for years hence it would have a deficit of $3 million, annually. To fund this deficit a school/city committee chose a tax on City utility users over a District parcel tax, largely because they thought the former would require only a majority to pass, the latter ⅔.

The vehicle for funding the deficit is a city/school lease. The City pays the District about $3 million annually for 15 years in exchange for the District leasing two secondary schools to the City and the District promising not to develop other unused sites.

But the deficit projection is now discredited! By 1991-92 under current law and including interest income the District will have surplus of at least $6,794,606 even with a 5% annual employee salary increase and minimal program cuts (District's own 1987 April Projection). Clearly, no tax is required to fund a non-existent deficit. The measure is crafted to intentionally conceal from the voters that this is a special purpose school tax, which the State Constitution and laws intend ⅔ for passage. Such nefarious means aren't justified by the noble ends of aiding schools even if they need money.

The tax lasts forever even after the termination of the 15 year lease. The lease serves neither schools nor taxpayers. If the lease is cancelled or if the District withdraws a leased site for school use, the District lease income will be diminished and the City will have unneeded tax money.

Vote NO. If the District can convince its taxpayers that it needs money to improve education, it should under law ask them all (not only Palo Altans) to foot the bill.

Louis Fein, Executive Director, P.A.L.A.
Jack R. Wheatley, Mayor, Palo Alto, '70-'71
Dorothy M. Monica, Former P.T.A. Council President
Royce M. Cole, Former P.A.U.S.D. Board member

REBUTTAL TO ARGUMENT AGAINST MEASURE B

A "Yes" vote on Measure B will help Palo Alto solve several pressing problems:

— **Land Use and Open Space.** The overdevelopment of surplus school sites such as Crescent Park, Ortega and Ross Road has shown that we cannot continue down that path. The funds from Measure B will allow the City to lease some surplus school sites and to obtain an agreement from the School District not to develop the others for a period of 15 years. This will protect our neighborhoods, preserve our open space and maintain the school sites if they are needed for school use in the future.

— **Additional Income for Schools.** The agreement between the City and the School District would provide approximately $3,000,000 per year for our schools. They need the money. Financial support of Palo Alto schools is presently 30% to 40% less than comparable school districts nationally.

— **Streets and Sidewalks.** We have a backlog of 15 years of road repairs, 50 years of sidewalk repairs. Further delay will only increase the cost — and the risk to public safety. Measure B could provide about $1,000,000 per year for these needed repairs.

— **Arts and Cultural Organizations.** Many of these organizations can no longer find affordable space in our community. The school sites leased by the City would be a natural for them.

Palo Alto prides itself on being a community of fine neighborhoods, ample open space, superb schools, excellent maintenance and stimulating arts and culture. Let's keep it that way. Please vote "yes" on Measure B.

Palo Alto City Council, Jack Sutorius, Vice Mayor (on a 7-0 vote, 1 absent, 1 not participating)
Palo Alto Chamber of Commerce, Gary Cavalli, President
Alan Henderson, Mayor, 1979-81
Carolyn Tucher, Trustee, Palo Alto Unified School District
George B. Richardson, Coordinator, Palo Altans for Civic Excellence

FULL TEXT OF ORDINANCE PROPOSED BY MEASURE C

If the majority of the qualified electors voting on such measure shall vote in favor of the City of Palo Alto Measure C, it shall be deemed ratified and shall read as follows:

ORDINANCE NO. XX-XX

AN ORDINANCE OF THE PEOPLE OF THE CITY OF PALO ALTO CHANGING THE APPROPRIATIONS LIMIT FOR FISCAL YEARS 1987/1988 THROUGH 1990/1991

The People of the City of Palo Alto do ordain as follows:

SECTION 1. Change of Appropriation Limit. The appropriations limit for fiscal years 1987/1988 through 1990/1991 set pursuant to Article XIII B of the California Constitution is changed to the extent set forth in Section 2 of this Ordinance.

SECTION 2. Authority to Appropriate Proceeds of Taxes in Fiscal Years 1987/1988 through 1990/1991. The City of Palo Alto's appropriations limit for fiscal years 1987/1988 through 1990/1991 provided for in Article XIII B of the California Constitution shall be changed by increasing the appropriations limit as calculated without this ordinance authorization ("the 1987/1988 base amount") by 5.5 million dollars to allow appropriation of new or increased proceeds of taxes. The sum resulting from addition of said 5.5 million dollars shall be the revised base amount which revised base amount shall be used to calculate the appropriations limit for three subsequent fiscal years through 1990/91.

SECTION 3. In the event that the authorization approved by this ordinance is not extended or further changed by the voters, Palo Alto's appropriations limit in fiscal year 1991/1992 shall be the 1987/1988 base amount adjusted for changes in the cost of living and population in the interim fiscal years and thereafter as calculated in accordance with Article XIII B of the California Constitution.

IMPARTIAL ANALYSIS OF MEASURE C

Measure C allows the City Council to spend revenues which it anticipates collecting; it is not a tax increase. If adopted, it would permit the City to use funds that it will have collected from a variety of sources of revenue, including the utility users tax measure also on this ballot, if that measure passes. The City Council has placed Measure C on the ballot to comply with the restrictions of Proposition 4, commonly known as the Gann Initiative, which was adopted by the voters of California in 1979 and became Article XIII B of the California Constitution. Proposition 4 limits the amount of tax revenues which may be appropriated by governmental entities. It requires that, if a governmental entity receives tax revenues in excess of the amount it is authorized to appropriate in a given fiscal year, the excess tax revenues must be returned by revision of the tax rates or fee schedules within the next two years.

Proposition 4 permits a city to change its appropriations limit by a vote of the electors for a period not to exceed four years. If this measure passes, the City will be able to do that.

In a recent report, the City's Finance Director has estimated that if the utility users tax measure, which is also before the voters on this ballot, passes, the City will receive tax revenue in excess of its current appropriations limit. This measure allows the City to increase its current appropriations limit by $5.5 million dollars to permit use of the funds from the utility users tax measure, as well as other existing regular revenue sources, for a period of four years.

— To be effective, this measure must be approved by a majority of the voters voting at this election.

DIANE NORTHWAY
City Attorney

ARGUMENT IN FAVOR OF MEASURE C

This is a companion to Measure B which will not be effective unless the voters also pass this Measure.

In 1979 the voters of California passed Proposition 4 which amended our state constitution to provide a formula for limiting how much money a government agency may **spend**. How much money the agency can **raise** is not relevant for this purpose.

The City of Palo Alto presently is more than two million dollars under its "Proposition 4" limit. However, to spend the $4.35 million which would be raised under Measure B, the voters must also approve the override to the Proposition 4 limit contained in this Measure. The amount of the increase in the Proposition 4 ceiling contained in this measure is based on the amount to be raised by the utility users tax and the potential effects of inflation.

The override is effective for a period of four years — the maximum allowable under Proposition 4. Thus, if Measure B and C are approved at this election, in 1991 Palo Alto voters will be able to decide whether or not the override should continue.

We believe the utility users tax is essential for our community's future. For it to be effective, we must also pass this override.

Please join us in voting yes on both Measures B and C.

Palo Alto City Council, Jack Sutorius, Vice-Mayor (on a 7-0 vote, 1 not participating, 1 absent)
Palo Alto Chamber of Commerce, Gary Cavalli, President
Alan Henderson, Mayor, 1979-81
Carolyn Tucher, Trustee, Palo Alto Unified School District
George B. Richardson, Coordinator, Palo Altans for Civic Excellence

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE C

The 'Impartial' Analysis (Measure C) fails to inform that this tax is in PERPETUITY, although it notes other of its characteristics of appeal to certain voters. The 'Impartial' Analysis (Measure B) fails to note that the city/school lease states that if Measure C fails, the lease is in effect invalid. To make this fact known would tie the Utility Users Tax to the special purpose of aiding schools. That would require ⅔ approval. That, the City wants not to disclose. A signatory of the Arguments in Favor (both B and C) is Palo Alto City Council, Jack Sutorius, Vice-Mayor (on a 8-0 vote, 1 abstaining). The abstainer was Mayor Gail Wooley, a Palo Alto school teacher who was disqualified from voting and participating in discussions on these measures. She has a conflict of interest: the school district would be a financial beneficiary of these tax revenues. It would have been more proper to say, disqualified, rather than abstaining. But that too would have revealed that these measures are special purpose measures requiring ⅔.

The City may deserve the Audacity Award of 1987; but not your vote. Don't be misled. Neither children nor the business community will benefit. Revenues to the District will go on the bargaining table where, under law, the employee unions and the Board negotiates salaries, class size and other matters affecting education. Typically, salaries increase and programs decrease and class size stays high. Only employees stand to benefit.

Louis Fein, Executive Director, P.A.L.A.
Jack R. Wheatley, Former Mayor of Palo Alto 1970-71
Dorothy M. Monica, Former P.T.A. Council President
Royce M. Cole, Former P.A.U.S.D. Board Member

ARGUMENT AGAINST MEASURE C

Although not explicitly stated in this Measure C, the chief reason for asking you to vote to increase the limit on the amount of money the City may legally spend by $22 million over the next four years is to give the City permission to spend annually the $4.5 million it would receive if the Utility Users Tax Measure B passed.

The unexpressed but real reason for asking you to vote for a Utility Users Tax Measure B to raise the $4.5 million annually and forever is to use a major part of these tax revenues to fund, through a 15 year city/school lease, a so-called deficit in the Palo Alto Unified School District.

But the District itself projected in April 1987 in a Multi-Year Financial Projection that, under current law, the District will have a large surplus rather than a deficit during the next few years.

So, with no deficit, a Utility Users Tax is not needed to fund a non-existent deficit (let alone a tax voted in perpetuity). Therefore, the City needs no permission to raise its appropriation limit so it can spend tax revenues it has no justified use for.

Vote NO. Present City resources are adequate to fund its needs without raising the appropriation limit this year.

Even without the school connection, there is compelling, principled reason to vote NO. The City Council should be held accountable and responsible to tell the voters what appropriated funds will be used for in **the text of the measure itself.** The claims and counterclaims in ballot arguments and in campaign rhetoric are not responsible or accountable promises. Only specific language in an ordinance can be. Yet neither this Measure C nor the Utility Users Tax Measure B has any explicit statement of purpose. Don't sign a blank check. Vote NO.

Louis Fein, Executive Director, P.A.L.A.
Jack R. Wheatley, Mayor, Palo Alto 70-71
Dorothy M. Monica, Former PTA Council President
Royce M. Cole, Former, P.A.U.S.D. Board Member

REBUTTAL TO ARGUMENT AGAINST MEASURE C

For the utility tax contained in Measure B to be effective, we must also pass this Measure C.

This "override" to the City's "Proposition 4" limit is good for four years. Thus, the voters will have the opportunity in 1991 to review how the utility user's tax program and the Proposition 4 override are working.

Measures B and C provide a means for us to maintain Palo Alto as an excellent place to live and work. In recognition of this, a broad coalition of government and business, community leaders — including six former mayors of Palo Alto, and neighborhood groups has endorsed these measures.

Please vote Yes on both Measures B and C.

Palo Alto City Council, Jack Sutorius, Vice-Mayor (on a 7-0 vote, 1 absent, 1 not participating).
Palo Alto Chamber of Commerce, Gary Cavalli, President
Alan Henderson, Mayor, 1979-81
Carolyn Tucher, Trustee, Palo Alto Unified School District
Diane A. Caton, Acting Coordinator, Palo Altans for Civic Excellence