

Special Meeting  
November 1, 2011

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ADJOURNMENT: The meeting was adjourned at 12:15 A.M. ....124

The City Council of the City of Palo Alto met on this date in the Council Chambers at 7:03 P.M.

Present: Burt, Espinosa, Holman, Klein, Scharff, Schmid, Shepherd, Yeh

Absent: Price

### CLOSED SESSION

#### 1. CONFERENCE WITH LABOR NEGOTIATORS

City Designated Representatives: City Manager and his designees pursuant to Merit System Rules and Regulations (James Keene, Pamela Antil, Lalo Perez, Joe Saccio, Sandra Blanch, Marcie Scott, Darrell Murray, Dennis Burns) Employee Organization: Palo Alto Police Officers (PAPOA) Association Authority: Government Code Section 54957.6(a)

#### CONFERENCE WITH LABOR NEGOTIATORS

City Designated Representatives: City Manager and his designees pursuant to Merit System Rules and Regulations (James Keene, Pamela Antil, Lalo Perez, Joe Saccio, Sandra Blanch, Marcie Scott, Darrell Murray, Dennis Burns) – Employee Organization: Palo Alto Police Managers' Association (Sworn) – Authority: Government Code Section 54957.6(a)

#### CONFERENCE WITH LABOR NEGOTIATORS

City Designated Representatives: City Manager and his designees pursuant to Merit System Rules and Regulations (James Keene, Pamela Antil, Lalo Perez, Joe Saccio, Sandra Blanch, Marcie Scott, Darrell Murray, Val Fong) Employee Organization: Utilities Management and Professional Association of Palo Alto (UMPAPA) Authority: Government Code Section 54957.6(a)

**MOTION:** Council Member Klein moved, seconded by Vice Mayor Yeh to move the Labor Closed Sessions to Monday, November 14, 2011 at 6:00 P.M.

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

### CITY MANAGER COMMENTS

City Manager, James Keene stated that on November 10, 2011, artist Judith Selby Lang would be installing her On the Road art of LawnBowls at the corner of Cowper and Embarcadero, adjacent to the Palo Alto Lawn Bowls Club. The Community was invited to participate in Sandbag Making Day, on November 5, 2011, 9-4 a.m., at the City's Municipal Service Center (MSC). Sandbags will be stocked at the Mitchell Park Sandbag Station where residents can obtain free sandbags for storm protection. Santa Clara County (SCCO) would be stocking its sandbag station on November 15, 2011, located at Palo Alto Airport. A webcam was installed at the site to monitor the inventory. Information regarding the Webcam was posted on the City's website. The Mayor and Council Members were invited to attend the Second Annual Citizen Corp Council Award Ceremony and panel discussion on November 3, 2011 @ 7 p.m., in the Council Chambers.

#### ORAL COMMUNICATIONS

None

#### CONSENT CALENDAR

**MOTION:** Vice Mayor Yeh moved, seconded by Council Member Shepherd to approve Agenda Item Nos. 2-5.

Council Member Holman registered a No Vote on Consent Item No. 4.

2. Approval of Contract With Joe O'Connell and Blessing Hancock of Creative Machines, Inc. in the Amount of \$130,000 to Create and Install Artworks for the Main Library and Art Center Campus.
3. Approval of a Contract with Clean Innovation Corporation in the Amount of \$94,920 for Downtown Sidewalks Steam Cleaning Services.
4. Approval Of Amendment No. 1 In The Amount Of \$109,844 to Contract No. S11139110 With Horizon Centre, Inc. for a Total Contract Amount of \$188,784 for Additional Work on the Development Center Blueprint Project, Focusing on the Implementation and Transition to the Integrated Processing System Design.
5. Confirmation of Appointment of Jonathan Reichental as Chief Information Officer/Director of Information Technology and Approval of At-Will Employment Contract.

**MOTION PASSED FOR AGENDA ITEMS 2, 3, 5:** 8-0, Price absent

**MOTION PASSED FOR AGENDA ITEM NO. 4:** 7-1 Holman no, Price absent

Mayor Espinosa welcomed Jonathan Reichental, the new Chief Information Officer/Director of Information Technology (IT).

Jonathan Reichental thanked everyone for the opportunity and said he looked forward to starting his new position in December 2011.

ACTION ITEMS

6. Staff Recommendation for a Process and Timeline Addressing the City's and Palo Alto Unified School District's (PAUSD) Interest in the Cubberley Campus and Adjacent Properties.

City Manager, James Keene stated that the Staff had been working with the Palo Alto Unified School District's (PAUSD) School Superintendent on a proposal regarding the School District's interest and plans for the Cubberley site. The proposal had two components: 1) to focus during calendar year 2012, alternatives on issues leading to joint recommendations on plans, and calendar year 2013 on lease renewal issues, and 2) to layout during the first year, a recommended process on how to work through issues related to site planning.

Deputy City Manager, Stephen Emslie clarified that Staff Report ID#2249 had indicated that Council had directed Staff to setup a special recreation fund when the rental income from the City's payments to the District no longer was required. He said the direction was for consideration only.

Herb Borock said it would be helpful to obtain a history of the payments the City made to the School District for the past 25-years for the Cubberley site as well as the City Improvement Program (CIP) expenditures. The information would help the Council in their decision to move forward on a lease renewal and the covenant to not develop at other sites. Additionally, the public may want to see the information.

Council Member Klein asked who would be appointing the members for the Community Advisory Committee (CAC).

Mr. Emslie stated that Staff envisioned for the School Board Members and City Staff to work together in appointing a panel of members.

Council Member Klein stated it would be a Staff appointed committee and not subject to the Brown Act.

Mr. Emslie said that was correct but the Brown Act rules could be adopted if the Council desired.

Council Member Klein asked if the list of community organizations was meant to be exclusive or welcoming of more.

Mr. Emslie said it was welcoming of more.

Council Member Klein stated that the role of the CAC would be to work on issues at the same time as the Policy Advisory Committee (PAC). He asked how that would work.

Mr. Emslie stated Staff envisioned the meetings to be driven by site planning and architectural issues of how the campus could be shared. One committee could react on a proposal and provide input to the other. The PAC could send issues and questions to the CAC to explore. The two committees would run in parallel and blend together.

City Manager Keene stated that the Technical Advisory Committee (TAC) would work independently. Once the PAC and CAC were up and running, a decision could be made on how things should be staged or sequenced.

**MOTION:** Council Member Klein moved, seconded by Council Member Shepherd to direct Staff to form a:

1. Collaborative PAUSD and City Process Timeline on Cubberley. An initial 14 month process which anticipates reaching City and PAUSD consensus on a Cubberley Master Plan by the end of 2012. Such Master Plan may include alternative scenarios.
2. A Technical Advisory Committee to be established, co-chaired by the City Manager and Superintendent, focusing on developing the technical foundations for eventual policy decision making. TAC members would also include City departmental representatives including Community Services, Administrative Services, Planning, Attorney's Office and Public Works, and their PAUSD counterparts.
3. A Policy Advisory Committee (PAC) is proposed to be comprised of two PAUSD Board Members and three City Council Members appointed by the Mayor and Board President.
4. Community Advisory Committee (CAC) will be a cross section group of community stakeholders (15-20 members).

FURTHERMORE, that the Ventura and Greendell school sites and connectivity issues shall be included in the study; that the representatives of the Chamber, PACC and one or more environmental organizations should be included as part of the CAC; that the CAC commence meeting in February or March 2012 and report to the PAC no later than October 15, 2012 which shall commence its discussions on receipt of the CAC report; the CAC be appointed by City and PAUSD staff and not be covered by the Brown Act although its processes shall be transparent and similar to the Brown Act.

Council Member Klein raised concerns regarding the effectiveness of two committees working in parallel. He preferred the traditional practice for committees to work in accordance to a timeline, report back to the Council, and in this instance to the School District as well, and then move forward.

Council Member Shepherd asked that the Greendale School site be included in the planning process. She asked how transparency would work without Brown Act rules.

Mr. Keene said Staff would look at options to keep the Council and the community well informed through communication and a webpage.

Council Member Shepherd stated she did not want decisions to be made behind closed doors.

Mr. Keene stated that Guiding Principles would need to be established on how the process would work and how business would be conducted.

Council Member Shepherd asked about the 8-acres. She said the city owned them and the community does not consider them part of the public school portion of the Cubberley. She said this may limit development prospects and asked how quickly that issue could be addressed.

Mr. Keene stated that could take place during the initial period when the TAC assembled statistical information and programming needs.

Council Member Shepherd said she felt the Motion was even-handed and placed the School District and the City on a level for input and exploration of the site. She noted that the 8-acres were obtained by the City 10-years ago to build something such as a community center. This process was a fresh way of looking at the site. She hoped that the School Board and the City would articulate on what public education could look like and to work through the community center inspired at that location. She expressed the need for transparency as the process moved forward.

Council Member Schmid raised concerns regarding moving forward on setting up committees without a clear sense on what they would be working on. He felt the focus of attention should be clarified prior to voting. The City was dealing with a lease and a covenant to not develop. He stated the document covered three issues: the City's lease at the Cubberley site; an agreement to not develop other school properties in town, and to have City-sponsored child-care at each campus. He asked what the Committee's involvement would be in these issues. He spoke of the \$7 million payments from the City that had been divided between the three aspects of the lease and covenant and asked if the Committees would be dealing with these issues.

Mr. Keene stated that was not the intent. The proposed process was to separate the planning and land use demands from the lease and covenant discussions. Staff and the Council would revisit the process after land use scenarios were developed to help with the lease and covenant issues in calendar year 2013.

Council Member Schmid stated that Greendale was a pre-school, an elementary school, and day-care located on the property and asked how the City would address the School District's needs since they conflicted with City issues.

Mr. Keene stated it would be difficult to address those issues at this point. A clear understanding would need to be made on what the drivers and implications were which would be part of alternative scenarios.

Council Member Schmid said it was important to have a clear understanding of what was being done during the first year prior to moving forward. He said the Staff Report noted that the School District was asked to update their school population predictions. He noted that the Housing Element was 4-years overdue; the City had not given public notice of how many houses would be built by 2014, and was in the process of committing to the Regional Housing Needs Allocation (RHNA) process regarding a 25-year growth rate that could bring the Palo Alto's population to 80,000. He said it would be difficult for the School District to come up with a plan without an idea of what the City's long-term forecast was for the community. The City should have a clear statement on the City's current Housing Element and what the City was going to do with the future RHNA allocations before the technical processes begin.

Mr. Keene agreed with the challenges outlined by Council Member Schmid. He said Staff anticipated having scenarios rather than a plan during the first year. He said implications could be made if the City was fortunate to see the

future numbers in growth by March 2012. He felt the City should use alternative assumptions rather than hold up the scenario planning process if those numbers were not reached.

Council Member Schmid noted the PAC would consist of three Council Members and two Board Members. He raised concerns regarding the statement "PAC's mission to forward a recommendation." He asked if the Council had the right to say that the Committee had a majority that would forward a recommendation. He felt there should be some sensitivity to the School District and to consider the PAC's mission to reach consensus or to have both sides agree to a recommendation.

Mr. Keene said the Staff report noted that Staff viewed the Council and the Board Members to be intermediaries between Staff and the governing bodies. Staff did not see the Board Members having authority to make decisions on behalf of the governing bodies. They were to keep the lines of communications open and flowing. There was a need for mutual interest and consensus between the School District, the City, and stakeholders in order for the process to work correctly.

Council Member Schmid suggested changing the verbiage from "a recommendation" to "joint recommendation."

Council Member Shepherd stated it was her understanding there could be a conflict if a member lived within a certain radius of the site. She asked for the City Attorney to clarify the issue.

City Attorney, Molly Stump a process could be established to not have conflict issues. If the Council used the procedure to setup a multi-member body that doesn't trigger the Brown Act it did not mean you had to have closed meetings.

Council Member Holman said the meetings should be disseminated to groups and publicly noticed. She did not want to see a website developed where citizens would need to check daily to see if a meeting was scheduled for the following day. She asked if the Maker of the Motion had accepted to include the Greendale School site in the planning process.

Mr. Keene confirmed that it was accepted.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to add the Bicycle Advisory Committee to the list of representatives.

Council Member Holman noted that the PAC was expected to report back to the Council and the Board but was not identified as a systematic process. She favored a more iterative process. She suggested that PAC report out to the City Council and the Planning and Transportation Commission (P&TC), who would comment on the progress as the process moved forward.

Mr. Keene stated that Staff envisioned issues to unfold as the process moved forward. The PAC would report back to their governing bodies with periodic updates to the Council. He said a specific date had not yet been determined to appoint the PAC and that the Council may want to wait until there was feedback from the community.

Council Member Holman stated that the Staff Report noted that Staff envisioned the PAC to work under the Guiding Principles adopted by the Council and the School District. She asked where the Guiding Principles were.

Mr. Keene stated there should be a process or period when the Guiding Principles would be adopted as the group was formed and opened to any input from the Council. He said Staff could move forward and setup the CAC if the Motion passed. The first order of business would be to structure the Guiding Principles.

Council Member Holman stated that the project was enormous for Palo Alto. The process needed to be well thought-out, transparent, and done correctly. She wanted to make clear that the 8-acres at the Cubberley site was not referred to as "the 8-acres". "The 8-acres" described a specific piece of land that contained irregular boundaries around buildings and would not allow flexibility to swap pieces with the School District during the planning phase.

Mr. Keene stated that Staff would be obligated to come back to the Council for direction on how to work through any technical issues.

Council Member Holman asked that Charleston Plaza and Green Meadow neighborhood be included for planning purposes.

**AMENDMENT:** Council Member Holman moved, seconded by Council Member XXX to include Charleston Plaza and the Green Meadow neighborhood as part of the land-use planning component.

**AMENDMENT FAILED DUE TO LACK OF A SECOND**

Council Member Holman stated she hoped that the Green Meadow neighborhood would be heard by the CAC for good connectivity to the school site.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** for the sake of clarity that the PAC shall report out regularly and systematically to the City Council.

Council Member Holman asked that the P&TC have an active role in land use planning. The site had many issues that included horizontal mixed use, site planning on site, connectivity issues with commercial development and residential neighborhood. To add the P&TC only made common sense.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** that the Planning and Transportation Commission have an active role in land-use planning to be determined at a future date.

Council Member Burt asked Staff how they would integrate the P&TC into the process with their normal role as an advising body to the Council.

Mr. Keene stated that Staff could not say at this point what the alternatives, scenarios, and plans would be at the end of the year. He preferred an approach where the Staff would report back to the Council and for the Council to give direction that the issue was at an appropriate stage for the P&TC to handle.

Council Member Burt asked if the item would be coming back to the Council after scenarios and plans were determined.

Mr. Keene said yes.

Council Member Burt stated that would be the appropriate time for Staff to provide the Council with better guidance of what was being proposed for the P&TC's role.

Mr. Keene said he would like to get the TAC started as soon as possible and for Staff to return to the Council in January 2012 for direction.

Council Member Burt stated that the P&TC was alluded to as one of the Commissions under the CAC. The P&TC was an advisory body in terms of land use and transportation and suggested that Staff consider having the P&TC's role under the PAC. He clarified the suggestion was not a Motion or a recommendation but as a suggestion for consideration.

Council Member Klein stated he was not in favor of the process and felt it was overkill. He said the matter was not a land use issue and ran the risk of annoying the School Board. The District was not subjected to the City's land use planning and the P&TC was not experienced in planning school sites. The School District did not have a P&TC and one of the goals was to run in parallel in terms of processes. There would be a great deal of negotiations between the City and the School District with regard to finances, ownerships, and decision-making. He felt two P&TC members would be sufficient for the CAC.

Council Member Shepherd stated the matter was focused on the shape of the property for the School District's use and what the City would keep for the Community Center. That would be a task for the TAC group. She felt the only way the P&TC could help with the task was to have borders and boundary issues. She was in favor of Council Member Burt's concept to go to the P&TC deliberatively as issues come up.

Council Member Holman said there would be a point in time when Staff would determine the P&TC's involvement. She spoke of interconnectivity issues and how they related on and offsite, which was more reason for the P&TC to get involved. She did not want to develop an insular site or one without good pedestrian and bicycle connectivity. The goal was not to interfere but to supplement the School District.

Council Member Burt said there were eight City acres that would be repurposed or redeveloped with more intensification in use, which would pull the P&TC into the project. Connectivity should be considered and that transportation elements and connectivity issues required P&TC's involvement.

Council Member Shepherd stated safe routes to schools had its own values and would be part of the project.

Council Member Scharff did not disagree with the P&TC getting involved, but raised concerns of what the project would look like. He felt the discussion should take place in March 2012 after the TAC had a chance to narrow down the issues. He understood the comments made by Council Member Burt and Holman; however, the School District was not under the P&TC in developing a school site. He advised looking at the project with caution and felt the discussion was premature.

Council Member Schmid raised concerns regarding the process being set up for a six-month period of time with a TAC made up of Staff, the CAC appointed by Staff, and a PAC that would report to the Council and the

School District at some point. He asked when the public would have the opportunity to become engaged. He stated the PT&C would bring focus to the community on certain issues.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to add "to be determined at a future date" regarding the Planning and Transportation Commission's active role.

Council Member Burt asked if Mr. Keene was describing Guiding Principles that were process based and not outcome based.

Mr. Keene said they were process based.

Council Member Burt stated the Guiding Principles were self-governing rules as opposed to predetermining outcomes at a higher level.

Mr. Keene said that was correct.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** the meetings will be open to the public and posted on the internet where feasible, advanced information will be available to the public, and outcomes from the meetings be available to the public

Council Member Scharff asked if Council Member Burt was asking for Senses Meeting Minutes.

Council Member Burt said no. He clarified that outcomes from meetings should be summarized and made available to the public.

Council Member Schmid asked if "open" meant open communication from the public.

Council Member Burt said it meant open for participation at the meetings and that participation needed to be addressed in the Guiding Principle.

Council Member Shepherd asked to include "meetings to be publically noticed."

Council Member Burt said that was a formality with legal ramifications.

Council Member Shepherd asked how can "meetings publically noticed" be included.

Ms. Stump stated the Council could decide if you want to have a public notice requirement. There was balance was between providing formal notice for the public, and decreasing flexibility. She suggested that when the meeting time was set it shall be posted on the internet to let the public know about the meeting. Council Member Shepherd stated to include "open to the public and posted on the internet where feasible."

Council Member Burt said that was acceptable.

Vice Mayor Yeh asked if there was a mechanism where people could subscribe or opt to be notified of different City activities.

Mr. Keene stated that Staff would review vehicles and ways to inform the public. He said consensus and agreements needed to be built in for the project to work. The public needed to be informed, be knowledgeable, and involved in order for that to happen. Staff will bring back a communication plan.

Mayor Espinosa stated that the public now had the ability to sign up to receive information on regular basis via e-mail. The feature would be enhanced when the new website rolled out in the New Year.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND THE SECONDER** to add "and connectivity issues shall be" to the Motion as a study component.

Vice Mayor Yeh stated he was in favor of the process and the capability to engage in communication with all stakeholder groups. He said the City had a relationship and a partnership with the School District to not create an environment with surprises. He supported the Motion.

Council Member Scharff felt the process would work once the TAC convened and narrow down the issues in reaching agreements. It was important to stay on track and meet the March 2012 target date to establish the foundation for the CAC.

Mr. Keene stated it was an issue for the TAC to have City Staff and the School District on the same page in terms of requirements and could mean having to bring in outside assistance to make that happen. The School District's Superintendent had agreed to cost-sharing if assistance was needed.

Mayor Espinosa stated that the Council would want the City to develop a process in partnering with the School District to come up with a comprehensive and a long-term plan and to be transparent and inclusive.

Council Member Schmid said his understanding was that the Cubberley contract expired at the end of 2014 and a 12-month notice needed to be given by either party setting a hard deadline for 2013 for conclusion. He raised concerns of the CAC working on its own for six months and felt it would be beneficial to have overlap with the PAC.

**AMENDMENT:** Council Member Schmid moved, seconded by Council Member XXX that the Policy Advisory Commission would start in June with opportunity for interactions with Community Advisory Commission

**AMENDMENT FAILED DUE TO LACK OF A SECOND**

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** that the PAC will start in June 2012 and receive a report from the CAC midway through the CAC meeting period.

Council Member Holman noted that Council Member Klein had requested to add Acterra to the process and did not see that added.

Council Member Klein stated the language was changed and added the verbiage "one or more environmental organizations."

Council Member Holman asked if the Guiding Principles would come to Council for adoption.

Mr. Keene said yes, with a caveat that there was another party in the process and amendments and clarifications would be made as the process unfolds.

Council Member Holman stated the Motion had many parts. She asked that the Motion be added to the Staff report that comes back to the Council for quick reference and clarity.

Mr. Keene said that could be done.

**MOTION PASSED:** 8-0 Price Absent

7. Finance Committee Recommendation to Adopt Resolution 9206 entitled "Resolution of the Council of the City of Palo Alto Approving

Renaming the Calaveras Reserve to the Electric Special Project Reserve and Adopting Electric Special Project Reserve Guidelines”.

Senior Resource Planner, Monica Padilla stated Staff was requesting Council’s approval to change the purpose of the Calaveras Reserve 1) to fund only special projects, 2) to rename the reserve as the Electric Special Project (ESP) Reserve, 3) to adopt a new set of ESP Guidelines, and 4) to develop a process for selecting eligible projects. She said the ESP Reserve Guidelines would benefit the electric ratepayers, fund projects that had significant impact and demonstrate a need with a minimum value of \$1 million, and try to commit funds by the end of Fiscal Year (FY) 2015. Any uncommitted funds by the end of FY2020 would be transferred to the Electric Supply Rate Stabilization Reserve and the ESP Reserve would terminate at that time.

Utilities Advisory Commissioner, William Berry stated that the Utilities Advisory Commission (UAC) had voted unanimously to support the proposal to change the use of the Calaveras Reserve.

Council Member Scharff stated that the Finance Committee had agreed with the proposal that would allow funding of impactful projects. Any uncommitted monies transferred to the Electric Supply Rate Stabilization Reserve would be used for the projects.

Jeff Hoel spoke regarding the use of the funds to benefit anyone other than the electric ratepayers. He felt the Smart Grid project could benefit not only the electric utility but gas and water utilities as well. He said projects should have an estimated cost with a maximum range. The estimated cost could be tightened as the project progressed. Any uncommitted money could go into a fund beyond FY2015 with no expiration date. He preferred having a perpetual fund where monies could be barrow to fund a project and the project could payback over time. This would allow projects to continue into the future. He asked the Council to consider his request.

Council Member Burt referred to the Recommendation that stated “should not be speculative or risky in nature.” He asked if the intent was to avoid high risk.

Council Member Scharff said yes.

Council Member Burt recommended that the language should read “should not be speculative or *high risk* in nature.” Additionally, he referred to Recommendation 3e and asked if the fund was an Evergreen Fund.

He said the funds needed to be committed by 2015 for any new monies to get into the fund.

Council Member Scharff confirmed that the fund would terminate at the end of FY2015. He clarified that the Finance Committee did not discuss the issue to have the Calaveras Fund be an evergreen fund. He stated the fund had \$50 million; no new monies were going into the fund other than interest earned. He stated that the UAC and the Finance Committee had considered not waiting for the perfect project but to have a sense of what projects the funds could be used for by the end of FY2015.

Council Member Burt stated the Finance Committee had discussions a few years ago regarding types of funds and the possibilities of using the fund to look into seeding or to evaluate innovative programs. He raised concerns that there could be a high risk in evaluating an innovative program. This would have a reduced risk if the program were to go into a selection phase. He asked if the language in recommendation 3c would limit the process if that approach was intended.

Council Member Scharff stated the thought was to consider projects of \$1 million or more. He asked Council Member Burt if he was referring to piloting programs or the risky nature aspect.

Council Member Burt stated that an evaluation could be required on alternatives in order to get to a large project, or to do a pilot on a promising program prior to putting several million dollars into a project. A pilot scale could have a higher risk than the subsequent project. He asked if the language in Recommendation 3c would preclude doing a study or a pilot.

Council Member Scharff said Staff had indicated they would come back with a process on how to determine which projects could be done.

Council Member Burt said Recommendation 3c stated "the projects must have verifiable value" and suggested changing the language to indicate "the *final* projects".

Ms. Ratchye stated the funds would be used for large projects that could not find funding elsewhere.

Council Member Burt stated he agreed with larger projects but there could be a need for a moderate amount to do a study or a pilot to get to that larger amount. The Finance Committee's prior discussions stated that studies and pilots could be funded through these types of funds, however,

Staff had indicated that money would need to come out of the Rate Stabilization Funds rather than the Calaveras Fund.

Ms. Ratchye stated that small amounts of monies were being used from the Calaveras Fund to finance small portions such as a piece for the Anaerobic Digestion Fund subsidized by the Electric Utility. The UAC was not in favor of taking small amounts from the reserves and stipulated that the Calaveras Fund was intended for large projects.

Council Member Burt asked if the intent would preclude doing a study or a pilot program by virtue of the language in Recommendation 3c. He asked if the language should be modified.

Council Member Shepherd said there were Capital Improvement Project (CIP) funds that could be used to augment options or to complete studies and pilots in moving towards the big project.

Vice Mayor Yeh stated he did not feel the language precluded pilots. He suggested adding the language "have verifiable value and should include a *risk assessment*" that would make the intent more open-ended. He said the question he presented to the Finance Committee was about how the issue would move forward to the Council on an ongoing basis in terms of the projects that were being considered.

Ms. Ratchye stated the process would be for the projects to move forward as stated in the prior guidelines. Projects would be vetted through the UAC and the Finance Committee prior to going to the Council. She asked Vice Mayor Yeh if he was asking for periodic status reports on the reserved funds or the projects that were being considered.

Vice Mayor Yeh suggested that the UAC Quarterly Report include a status update of potential projects.

Council Member Holman stated she was not in favor of the rush to spend approach. The monies could not be used for a redundant power source if it was placed in the Rate Stabilization Fund.

Ms. Padilla clarified the target date of 2015 was not to spend the funds by that date but to determine how to spend the funds. Funds not committed by 2020 would be returned to the Rate Stabilization Reserves.

Council Member Holman said that target date was less than three years away. She was not in favor of the short timeline.

**MOTION:** Council Member Burt moved, seconded by Council Member Scharff to accept Staff, the Utilities Advisory Commission (UAC), and the Finance Committee recommendation to adopt the Resolution and:

1. Change the purpose of the Calaveras Reserve from partially funding above market electric costs and partially funding projects that benefit electric ratepayers to entirely funding projects that benefit electric ratepayers;
2. Rename the Calaveras Reserve as the Electric Special Project (ESP) Reserve; and
3. Adopt the following ESP Reserve guidelines:
  - a. The purpose of the ESP Reserve is to fund projects that benefit electric ratepayers;
  - b. ESP Reserve funds are to be used for projects of significant impact;
  - c. Projects proposed for funding must demonstrate a need and/or value to electric ratepayers. The projects must have verifiable value and not be speculative, or be high risk in nature;
  - d. Projects proposed for funding must be substantial in size, requiring funding of at least \$1 million;
  - e. A goal is to commit all funds in the ESP Reserve by end of fiscal year FY 2015; and
  - f. Any uncommitted funds remaining at the end of FY 2020 will be transferred to the Electric Supply Rate Stabilization Reserve and the ESP Reserve will be closed.
  - g. Funds may be used for analysis and pilot projects which would be the basis for planned large projects.

In addition, the Finance Committee recommends that the Council direct Staff to identify a process for selecting eligible projects.

Council Member Scharff stated he was in agreement with Council Member Burt's suggestion regarding completing pilots as long as they moved forward to larger impact projects.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER TO** replace the language in 3e that states "commit all funds" to "identify preferred projects for".

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER TO** change "and/or" to "and" in 3c.

**AMENDMENT:** Council Member Holman moved, seconded by Council Member XXX to delete 3e and 3f.

## **AMENDMENT FAILED DUE TO LACK OF SECOND**

### **MOTION AS AMENDED PASSED: 8-0 Price Absent**

8. Finance Committee Recommendation to Change the Gas Purchasing Strategy to Implement Market-based, Monthly Adjusted Gas Supply Rates.

Mr. Keene explained that Staff had been discussing the gas purchasing strategy for a number of years. Staff planned to explain their process for working through different gas purchasing alternatives and their proposal to move away from the ten-year strategy of laddering gas purchases to a market competition model.

Senior Resource Planner, Karla Dailey, explained that the Gas Utility Long-Term Plan (GULP) provided direction on gas purchasing, energy efficiency, regulatory advocacy, and climate protection. The Utilities Strategic Plan provided direction on reliability and safety, customer satisfaction, cost management, and environmental sustainability. There were references to the gas purchasing strategy in both the gas purchasing section of the GULP and the customer satisfaction section of the Utilities Strategic Plan. She stated the current laddering strategy was developed in response to the energy crisis. In 2000, gas prices increased dramatically. As a result, the City was forced to impose several very large rate increases and to nearly exhaust their reserves. The City reacted to that situation by implementing a laddered gas purchasing approach, rather than subjecting themselves to open market gas prices. In June 2010, Staff made a presentation to the Utilities Advisory Commission (UAC), in which they reviewed all of the high-level alternatives for the GULP guidelines. They discussed the advantages and disadvantages of reliance on the open market versus fixed rate gas prices. In October 2010, the UAC approved the GULP. The GULP specified that the City would continue with the laddering strategy, but that Staff would conduct further review. In December 2010, the Finance Committee approved the GULP and asked that explicit language be added directing Staff to review the gas laddering strategy. In February 2011, the UAC approved Utilities Strategic Plan, which included language similar to that in the GULP. Having received a clear directive to review the gas laddering strategy, Staff took a ground-up approach to their analysis. In September 2011, Staff presented a recommendation to move to a market price based supply rate to the Finance Committee. The Finance Committee supported the recommendation. Over the course of their analysis, Staff considered alterations to laddering periods, laddering targets, financial reserves, and rates. The criteria used to evaluate each of the alternatives included the implementation cost, the impact to customer bills, the value of rate stability,

the relationship between energy price and the economy, and the gas rates as compared to neighboring cities. Staff avoided making predictions regarding future gas prices, as the prices tended to be extremely unpredictable. She noted that while the cost of a laddered portfolio was less volatile than the spot market approach, when the prices were about the same when averaged over time. A consequence of the laddered approach was that the City's gas rates lagged behind the market rate, however, they eventually caught up. The nature of a laddered approach was that one would always pay less than the market price as it increased and more than the market price as it decreased. She emphasized that the long run costs equaled the market, regardless of purchasing strategy. While Pacific Gas and Electric (PG&E) benchmarking hadn't been included as an official criteria in their analysis, it was an important factor to the community. Staff felt there was a good chance that market based rates would compliment what was happening in the economy. Their analysis had clearly shown that stable rates, such as those produced by the laddering method, did not result in stable bills for customers. A market rate approach could reduce the need for reserves by passing on the market costs to the customers, and could result in an overall savings. In order to move to a new gas purchasing strategy, the City would need to design monthly market-based supply rates, develop a new gas commodity purchasing plan, update relevant sections of the GULP, establish a timeline for rate rollout, and conduct customer outreach. If the City were to move to a market-based gas purchasing strategy, customer outreach would need to be a very large part of the process. She noted that in July 2001, the UAC had disagreed with Staff's recommendation for a change in gas purchasing strategy. The UAC was not comfortable transitioning to a completely market-based supply rate. They felt there was value in the stabilization of rates, but expressed a desire for a shorter laddering period. The UAC's alternative recommendation was that the City set a gas supply rate objective at a maximum change of 20 percent per year. When Staff presented the alternative recommendation to the Finance Committee, they suggested the proposal be accompanied by a laddering period of 18 months. Staff also estimated that in order to enact the UAC recommendation, the City would need to maintain \$12 million in reserves. Notwithstanding the UAC recommendation, the Finance Committee and Staff unanimously recommended that Council approve the development of a market price-based, monthly-adjusted gas supply rate.

William Berry, UAC Commissioner, explained that the UAC had been uncomfortable with the idea of moving completely from the cost stability of the laddering approach to a market-based approach. He stated Ms. Dailey's presentation had included some information that had not been presented to the UAC.

Council Member Scharff stated that as a Member of the Finance Committee, he was struck by the fact that the slight rate stabilization received from the laddered approach had not resulted in more stability for customer bills. Although the laddered approach delayed market fluctuations, the graphs presented by Staff clearly demonstrated that the bills for City customers went just as high as, and often higher, than those of PG&E customers. The fact that market-based rates would complement the economy was an important factor, which the UAC had not considered. He stated that both the UAC and the Finance Committee had considered the current strategy to be no longer appropriate and felt that changes had to be made.

**MOTION:** Council Member Scharff moved, seconded by Council Member Schmid to direct Staff to develop market price-based, monthly-adjusted gas supply rates.

Council Member Schmid explained that the laddering strategy was more costly than the market-based strategy. He quoted information from the Staff Report, which stated that over the last ten years the average monthly market price per MMBtu for gas had been \$5.65, whereas the City had paid an average of \$6.32. Thus, the City had paid 12 percent more than they would have had they paid a market-based price, which he described as a price premium for risk avoidance. He remarked that offering clear signals to consumers regarding the cost of gas would likely help the City's efficiency programs.

Mayor Espinosa asked why, in light of the fact that new information became available after the initial UAC review, the Finance Committee had not returned the Item to the UAC for a second review.

Council Member Scharff stated that the Finance Committee did not feel it necessary to return the Item to the UAC for a second review.

Vice Mayor Yeh stated that he had remaining concerns regarding the reserve funds. He inquired as to the value proposition of the City's utilities and asked how City utilities differed in that respect from investor owned utilities.

Jane Ratchye, Assistant Director of Utilities, explained that under the Staff proposal, any spikes to the market rate would be passed directly to the customer and the City would not insulate those market fluctuations with reserve funds. The market-based strategy was already in effect for the City's largest gas customers, and had been for quite some time. As with PG&E, Staff had not proposed any consumer protections against market fluctuations.

Vice Mayor Yeh replied that his understanding from the Finance Committee discussions was that Staff planned to present additional information to Council regarding the reserve funds. He felt that it was possible for Staff to implement a policy whereby reserve funds were made available when the market spiked beyond a certain point. That type of policy would help mitigate a catastrophic spike in gas prices and protect residential customers.

Ms. Ratchye stated that in order to pursue that policy direction, Staff would first need to determine how much of an impact an extreme market spike would have on an average residential bill. Staff could return with an analysis of those potential impacts and of the various alternatives available for developing reserve fund price protection.

Vice Mayor Yeh observed that Council could only approve the Item in concept at that time, as many of the important details had yet to be finalized.

Ms. Ratchye replied that Staff had only presented an overall policy direction and that many of the implementation pieces would need to come back at a later date for UAC and Council approval. She noted that laddered gas purchasing had been frozen for the duration of the purchasing strategy consideration process.

Vice Mayor Yeh commented that it would be helpful if Staff provided a clear timeline for the various implementation phases. Some implementation steps, such as the freezing of gas purchasing, had already been taken, and emphasized that it was important for Council to understand exactly where the Item was in the process. He did not feel comfortable freezing gas purchases until a comprehensive and fully fleshed-out gas purchasing plan had been approved. The data showed that the gas laddering strategy failed to decrease volatility to customer bills. He emphasized that it was very important to determine exactly why that strategy failed to achieve its intended objective.

Ms. Ratchye replied that the laddering strategy did achieve the objective of stabilizing the City's costs, and therefore their rates. When Staff analyzed the strategy further, they noticed that stable rates did not prevent extreme customer bill volatility. The primary driver in determining the amount of a bill was usage, and the fact that people used so much more energy in the winter than in the summer overshadowed the effect of a stable rate.

Vice Mayor Yeh asked what Staff proposed in terms of customer outreach.

Ms. Ratchye replied that Staff considered customer outreach to be extremely important, but had not yet discussed that aspect of the proposal. A timeline for implementation still needed to be developed.

Council Member Burt stated he was one of the Council Members who had initially urged Staff to reexamine the laddering purchasing strategy, based that on the fact that there had been several years of declining rates and long-term projections reflected a continuing strong supply. The strategy's main objective was to balance stability and competitiveness.

Ms. Ratchye stated that another of the listed objectives was to continue the laddering strategy, but that Staff had received direction from both the Finance Committee and the Strategic Plan to reevaluate that strategy.

Council Member Burt indicated that the reevaluation was to have been completed within the context of the stated objective, which was to balance stability and competitiveness. Instead, the current Staff proposal represented a complete change in course and recommended the City's gas purchasing strategy focus exclusively on competitiveness. He expressed concern regarding Staff's process for developing the proposal, but suggested that he was still undecided as to its merit. He explained that Staff was directed by a vote of Council to complete a review of the laddering strategy within the given objective. Instead, Staff approached the UAC with a new proposal, which did not coincide with the Council determined objective. He felt Staff should have offered their current proposal in addition to that which was requested. He expressed displeasure that the UAC and the Finance Committee had not been presented with the original Council commissioned analysis. Rates had been decreasing over the previous several years and because of the laddering program the City was paying a higher price than the market rate. PG&E projected moderate future rate increases. He expressed concern that the City might abandon their rate stabilization strategy at the very moment that the rates began to increase and the laddering strategy would be of most benefit. He emphasized the importance of balancing stability and competitiveness. He agreed with Staff's observation that stable rates did not result in stable bills for customers, but did not feel that was a justification for assuming that greater rate stability did not result in greater stability to customer bills. He noted that although one of Staff's reasons for making their current recommendation was that it could reduce the need for reserves, the interest earned from the current reserve funds was used to maintain the City's bond rating. He inquired as to the benefit of full time equivalent savings.

Ms. Ratchye stated that full time equivalent savings referred to the savings received from making small monthly purchases of gas rather than fewer

large purchases. She explained that Staff had created a good deal of risk management infrastructure to accommodate the long-term fixed price purchasing strategy. Staff reviewed the City's portfolio on a weekly basis and the market rate changed daily. The proposed strategy would eliminate all of the forward purchases and instead, Staff would make very short-term purchases.

Council Member Burt asked whether it was true that staff had frozen all laddered gas purchases. If so, how long it had been since the last new laddered purchases.

Ms. Ratchye stated that Staff had not made any new gas purchases for almost a year.

Council Member Burt asked how often laddered gas purchases were typically made, prior to the decision to stop.

Ms. Ratchye replied that the purchases had previously been made on a monthly basis.

Council Member Burt inquired as to whether Council had given Staff direction to freeze the laddered purchases.

Kara Dailey, Senior Utilities Resource Planner, stated that the objective approved by Council was to balance stability with market exposure. The Director of Utilities approved the amount of gas purchased and the frequency with which it was purchased, via a bi-annually Staff developed procurement plan.

Council Member Burt replied that there had been a failure to communicate. He stated Council had not been consulted regarding the decision to freeze laddered purchases and expressed concern that the existing policy had been disregarded without proper communication.

**SUBSTITUTE MOTION:** Council Member Burt moved, seconded by Vice Mayor Yeh to have this agenda item return to the Utilities Advisory Commission for Staff to present two alternatives; 1) balancing stability and competitiveness, and 2) Staff's recommendation for a competitiveness proposal to return to Finance Committee for discussion and Council for approval.

Vice Mayor Yeh stated that it was an incredibly complex issue, but that he was open to Staff's proposal to shift to a market-based purchasing strategy. He indicated a lack of urgency to move away from the current strategy,

which he explained would allow Staff time to fully develop the proposal. He felt that the proposal development process would resolve many of Council's outstanding questions and provide ample opportunities for discussion at the committee level.

Council Member Klein stated that a common investing mistake was shifting from one system to another, which often resulted in a loss at both ends of the equation. He felt the City would likely shift to a market-based purchasing strategy and cautioned future Council's on the dangers of repeating the actions taken in 2001, when Council approved the move to a laddered strategy. He noted that he was not a Council Member in 2001 when the laddered purchasing strategy was adopted and that he had no part in the decision. He felt that a market-based approach made the most sense and that the City was not equipped to be successful at hedging. The market-based approach was the most transparent and straightforward way to deal with the City's customer base. He felt that Council should display discipline by strictly adhering to the market approach, once adopted. In doing so, they should avoid placing limitations of the price of gas. He inquired as to the possibility of offering a one-time customer savings through the use of reserve funds and asked whether that action would negatively impact the City's bond rating.

Ms. Ratchye stated that it would not negatively impact the City's bond rating.

Council Member Klein asked Staff to present a more precise recommendation regarding how much of the reserve fund could be used for one-time customer savings.

Ms. Ratchye replied that Staff would return with that information.

Council Member Klein stated that he understood Council Member Burt's concerns, but also felt that Council should move forward on the issue.

Mayor Espinosa was surprised that when the Finance Committee came to a different conclusion than the UAC, based upon new information regarding the Item that had not been previously considered, the Item was not then returned to the UAC for additional analysis and recommendation. He stated that Staff's supporting data was compelling, but expressed confusion at the process by which the proposal was developed. He was comfortable supporting the Motion, if the current proposal was then used as a broader framework from which to return the Item to both the UAC and the Finance Committee for refinement.

Council Member Holman asked for clarification regarding Council Member Burt's reasons for sending the Item back to the UAC.

Council Member Burt replied that Council would benefit from an in-depth analysis by both the UAC and the Finance Committee of the two alternatives. Approval of the proposal included in the Motion would constitute a clear Council decision to shift to a market-based purchasing strategy. If Staff were to return both the current proposal and a new one, which balanced stability and competitiveness, to the committee level, the UAC would have much more latitude in their decision-making.

Council Member Holman favored the Substitute Motion because it would allow the UAC to weigh all of the options. She felt that the Motion was too narrow.

Council Member Burt stated that it was exceedingly rare to receive a unanimous proposal from any commission, especially the UAC. He acknowledged that the UAC had not been afforded the opportunity to evaluate a fully vetted blended system alternative.

**SUBSTITUTE MOTION FAILED:** 3-5 Burt, Holman, Yeh yes, Price Absent

Vice Mayor Yeh noted that the freezing of laddered gas purchases was in fact a de-facto progression towards a market-based strategy. He asked what Staff's intentions were in terms of a timeline for moving forward with the new strategy, if the Motion were to pass.

Ms. Ratchye responded that Staff had not yet developed a timeline, but that she guessed it would be at least a year before implementation could occur. Staff had identified several other changes that would need to be worked into the timeline if Council were to approve the Motion.

Vice Mayor Yeh asked what Staff felt would be a reasonable timeframe in which to develop a timeline for implementation. He expressed concern that in the absence of a solid timeline, the public would receive misinformation regarding how the shift in purchasing strategy would affect their utility bills.

Ms. Ratchye agreed that customer communication was extremely important and that a timeline would be vital to the success of those communication efforts. She stated the creation of a timeline would necessitate UAC involvement, which would take at least a couple of months.

**INCORPORATED INTO THE MOTION WITH CONSENT OF THE MAKER AND SECONDER** for Staff to return to the Finance Committee with a clear timeline within two months.

Vice Mayor Yeh emphasized the importance of proceeding with caution with regards to the way the item was presented to the public.

Council Member Burt observed that the November 20, 2011 Finance Committee minutes did not reflect an acknowledgement of the fact that the Staff proposal being considered was inconsistent with Council approved policy objectives. He suggested that it may have been an unconscious oversight, but emphasized the need for increased awareness of how Council functioned at a committee level to ensure strict adherence to Council directives in the future.

**MOTION PASSED:** 6-2 Burt, Holman no, Price Absent

#### COUNCIL MEMBER QUESTIONS, COMMENTS, AND ANNOUNCEMENTS

Council Member Shepherd reported that Project Safety Net was creating a job description for a Staff position which would begin as a temporary position but could change to a permanent status.

Mayor Espinosa announced that the Council would be going into a Closed Session to confer with the City Attorney.

The City Council adjourned into the Closed Session at 11:13 P.M.

#### CLOSED SESSION

9. CONFERENCE WITH CITY ATTORNEY—EXISTING LITIGATION

Subject: Schmidlin v. City of Palo Alto

Sixth District Court of Appeal, Case No. H034169

Authority: Government Code section 54956.9(a)

CONFERENCE WITH CITY ATTORNEY—EXISTING LITIGATION

Subject: M. Beck v. D. Lindsey, et al.

Santa Clara County Superior Court Case No. 1-09-CV-157305

Authority: Government Code section 54956.9(a)

CONFERENCE WITH CITY ATTORNEY—POTENTIAL LITIGATION

Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9 (one potential case, as defendant).  
Communications and Power Industries: amortization study.

The City Council reconvened from the Closed Session at 12:15 A.M. and Mayor Espinosa advised no reportable action.

ADJOURNMENT: The meeting was adjourned at 12:15 A.M.

ATTEST:

APPROVED:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

NOTE: Sense minutes (synopsis) are prepared in accordance with Palo Alto Municipal Code Sections 2.04.180(a) and (b). The City Council and Standing Committee meeting tapes are made solely for the purpose of facilitating the preparation of the minutes of the meetings. City Council and Standing Committee meeting tapes are recycled 90 days from the date of the meeting. The tapes are available for members of the public to listen to during regular office hours.