

Special Council Meeting
May 7, 2007

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	ADJOURNMENT: The meeting adjourned at 12:10 a.m.	34

The City Council of the City of Palo Alto met on this date in the Council Chambers at 6:30 p.m.

PRESENT: Barton, Beecham, Cordell, Drekmeier, Kishimoto, Klein, Kleinberg, Morton, Mossar

CLOSED SESSION

1. CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Authority: Government Code Section 54956.8
Property: 2785 Park Boulevard, Palo Alto, CA, APN: 132-31-042
Negotiating Party: Bruce Knoblock, Essex Park Boulevard, LLC, a Delaware Limited Liability Company
City Negotiator: Frank Benest, Emily Harrison, Carl Yeats, Cara Silver, F. Gale Connor
Subject of Potential Negotiations: Price and Terms of Payment

2. CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Authority: Government Code Section 54956.8
Property: 2747 Park Boulevard, Palo Alto, CA, APN: 132-31-071
Negotiating Party: Robert & Patricia Brown and Allan & Patricia Brown, Brown Fairchild Park Investment Company, L.P.
City Negotiator: Frank Benest, Emily Harrison, Carl Yeats, Cara Silver, F. Gale Connor
Subject of Potential Negotiations: Price and Terms of Payment

Mayor Kishimoto reported no action was taken.

The meeting adjourned at 7:00 p.m.

The City Council of the City of Palo Alto met on this date in the Council Chambers at 7:05 p.m.

PRESENT: Barton, Beecham, Cordell, Drekmeier, Kishimoto, Klein, Kleinberg, Morton, Mossar

SPECIAL ORDERS OF THE DAY

3. Selection of Applicants to Interview for the Historic Resources Board

MOTION: Council Member Morton moved, seconded by Barton, to interview all applicants for the Historic Resources Board.

MOTION PASSED 8-1 Beecham no.

4. Selection of Applicants to Interview for the Human Relations Commission

MOTION: Council Member Barton moved, seconded by Morton, to interview all applicants for the Human Relations Commission.

MOTION PASSED 9-0

5. Resolution 8704 Expressing Appreciation to Ray Romero Upon His Retirement

Director of Public Works Glenn Roberts, acknowledged Ray for his hard work.

6. Resolution 8705 Expressing Appreciation to Walter Petelle Upon His Retirement

Mr. Roberts thanked Walter for his hard work.

Facilities Carpenter Walter Petelle stated it was an honor and a privilege working for the City of Palo Alto.

MOTION: Council Member Beecham moved, seconded by Morton, to approve the Resolution Expressing Appreciation to Ray Romero Upon His

Retirement and the Resolution Expressing Appreciation to Walter Petelle Upon His Retirement.

MOTION PASSED 9-0.

ORAL COMMUNICATIONS

Judith Wasserman, AIA, 751 Southampton Dr., spoke regarding Architecture Week.

Don Letcher, 788 No. Rengstorff Avenue, Mountain View, spoke regarding the INS raids on illegal immigrants in Palo Alto and he recommended that the Human Relations Commission set a policy of whether the City declares itself a Sanctuary City.

Danielle Martell spoke regarding the community.

John K. Abraham, 736 Ellsworth Place, spoke regarding demographic data.

Mark Petersen-Perez spoke regarding the Police Department.

David Solnick, 227 Webster Street, spoke regarding the protected tree ordinance.

Bob Moss, 4010 Orme, spoke regarding the Teleminder failure.

APPROVAL OF MINUTES

MOTION: Vice Mayor Klein moved, seconded by Morton, to adopt the minutes of April 3 and April 9, 2007 as corrected.

MOTION PASSED 9-0.

CONSENT CALENDAR

MOTION: Council Member Drekmeier moved, seconded by Cordell, to pull Agenda Item No. 13 from the Consent Calendar.

Council Member Kleinberg noted she would vote no on Agenda Item No. 15.

MOTION: Council Member Morton moved, seconded by Barton, to approve the following items on the Consent Calendar:

7. **Ordinance 4946 "Ordinance of the City Council of Palo Alto entitled Adoption of an Ordinance Approving and Adopting a Plan for Improvement to Heritage Park"** *(1st Reading 04/16/07, Passed 9-0)*
8. Resolution 8706 Expressing Appreciation to Steve Alban Upon His Retirement

9. Resolution 8707 entitled the "Council of the City of Palo Alto Hereby Approves the Report of the Advisory Board for Fiscal Year 2007-08 in Connection with the Palo Alto Downtown Business Improvement District"

Resolution 8708 entitled the "Council of the City of Palo Alto Hereby Declares its Intention to Levy an Assessment Against Businesses within the Downtown Palo Alto Business Improvement District for Fiscal Year 2007-08 and Setting a Time and Place for Hearing Objections Thereto"

10. Finance Committee Recommendation to Accept the Auditor's Office Quarterly Report as of March 31, 2007
11. Approval of Contract C07122215 with Group 4 Architecture, Research + Planning, Inc., in the Amount of \$1,280,400 for Preliminary Architectural and Engineering Design Services for the Mitchell Park Library and Community Center, Main Library, and Downtown Library–Capital Improvement Program Project PE-04012
12. Approval of an Agreement with Robert Half International, Inc. in the Amount of \$130,000 for Contracted IT Services in Support of the Information Technology Services Provider (ITSP) Services
14. Preservation of the Below Market Rate (BMR) Unit at 502 Thain Way in Barron Square: 1) Approval of the City's Acquisition of 502 Thain Way for the Purpose of Resale to a New BMR Buyer; and 2) Authorization for a Deferred Payment Loan for Repairs and Renovation
15. Recommendation of the Council/Council Appointed Officers Committee Regarding Contract Amendment with CPS Executive Search for Council Appointed Officer Evaluations

MOTION PASSED 9-0 for items 7-12 and 14.

MOTION PASSED 8-1 for item 15 Kleinberg no.

16. (Old No. 13) Approval of an Enterprise Fund Contract with Romic

Council Member Drekmeier expressed his concern with entering into a contract with Romic. They were known to recycle hazardous chemicals and have a number of violations. East Palo Alto has gone on record asking them to leave the community. He stated he would not want to go into business with a company who is at odds with neighbors of Palo Alto.

Council Member Cordell stated Romic is operating with a provisional permit and she is concerned about doing business with a company that is causing problems for a neighboring City.

Council Member Mossar stated she did not support doing business with this company and asked for information from staff regarding how this was an acceptable action.

Council Member Morton asked whether this contract was for the hauling to remove ash from the water-processing center to the Central Valley.

Director of Public Works Glenn Roberts stated that was correct and this would be a back up contract to the primary method of disposal of the ash. The primary method of disposal is to use the ash as agricultural soil in the Central Valley, which was done by a different hauler. There are batches of the ash with a higher than normal copper concentration and when the levels are that high the ash cannot be used as a soil amendment. In these cases, the ash would need to be transported to Kettleman City where it would be disposed of in a Class One landfill.

Council Member Mossar stated that information was not reflected in the staff report.

Council Member Cordell stated the information just presented did not change her view. She did not support this item

MOTION: Council Member Morton moved, seconded by Beecham, to do the following: 1) Approve and authorize the City Manager or his designee to execute the attached contract with Romic Environmental Technologies Corporation in the amount of \$213,128 for provision of services for transportation and disposal of ash for the Regional Water Quality Control Plant (Attachment A); 2) Authorize the City Manager or his designee to negotiate and execute one or more change orders to the contract with Romic Environmental Technologies Corporation for related, additional but unforeseen work which may develop during the project, the total value of which shall not exceed \$21,213 per year; 3) Authorize the City Manager or his designee to exercise the option to renew the contract for the second and third year at a five percent increase per year provided the contractor is responsive to the City's needs and the quality of the contractor's work is acceptable during the prior year(s) of the contract.

Council Member Morton added that Romic has had problems in the past and have slowly made efforts to change. He supported the approval of this contract.

Vice Mayor Klein stated he wanted a further investigation of Romic. In the past, there have been problems with East Palo Alto and Romic, which have been well documented. He asked if the Sanitary District and East Palo Alto were two different things.

Mr. Roberts replied they are two separate entities. The Sanitary District deals with the discharge from Romic into the sewer system.

Vice Mayor Klein asked whether Romic's problems have been with the City of East Palo Alto.

Mr. Roberts replied as far as land use that was correct.

Vice Mayor Klein stated he would like to discuss this with the City Officials of East Palo Alto. The next bid is \$22,000 higher but this may not be the right situation.

Mr. Roberts added this would need to be acted upon before the end of the month because that is when the bids expire. The second bid has some non-responsive issues.

Vice Mayor Klein stated this item should be continued to find out more information. He asked what the standards were if a company could be rejected based on the character of the company.

SUBSTITUTE MOTION: Vice Mayor Klein moved, seconded by Drekmeier, to continue this Agenda Item to a Council meeting on a date to be determined.

City Manager Frank Benest added that staff would support this motion to find out whether there was a responsible second bid.

Mayor Kishimoto stated she looked at the various county policies regarding the disposal of the bio-slug, ash and the trend of increasing copper. This was not a good trend and more counties are beginning to reject it. She asked whether there was any reason there was more copper in the bio-slug and ash.

Manager of Environmental Compliance Phil Bobel replied it was not clear as to why the copper amounts have risen. The amount of copper found was

only slightly greater, but when an acid extraction test was performed more was coming out than before.

Mayor Kishimoto asked whether this was happening to other Wastewater Treatment Plants.

Mr. Bobel stated it is California and we have an incinerator, which makes us unique. This copper rule is applied only in California. Nationally, there is no hazardous waste limit for copper.

Mayor Kishimoto asked whether Palo Alto is one of the few Wastewater Treatment Plants that does incinerate.

Mr. Bobel stated that was correct and the plants that do incinerate are all experiencing this problem.

Mayor Kishimoto stated East Palo Alto would suffer the most with the copper being emitted into the air but this contract is for transport of the ash not the copper emissions.

Council Member Morton asked whether more information would be available in a week or so.

Mr. Benest stated there would be specific information available from East Palo Alto and whether there is a second response for the bid.

SUBSTITUTE MOTION PASSED 7-2 Barton, Beecham no.

Council Member Kleinberg clarified her no vote for number 15 was because the City should not be paying for this luxury. This work should be done by the City.

REPORTS OF OFFICIALS

16. 1st Reading entitled "Ordinance Authorizing the City Manager to Purchase a Portion of the City's Electricity Requirements from Certain Pre-Qualified Electricity Suppliers Under Specified Terms and Conditions During Calendar Years 2007 Through 2022, Inclusive"

Council Member Morton stated he would be unable to participate in this item due to a conflict because of family holdings of stock in some of the companies.

Council Member Mossar stated she would be unable to participate in this

item due to a conflict because of family holdings of stock in some of the companies.

City Attorney Gary Baum stated in the future major financial companies are starting to acquire the utility company stocks. Therefore, where there was no conflict in the past from holding a utility stock, in the event the trust holds financial stock, they might need to be re-examined.

Senior Resources Planner for Utilities Shia Swaminathan stated since 2004 the Council approved four agreements with suppliers for electricity: BP Energy Company, Coral Power, LLC and Sempra Energy Trading Corporation for a total contract of about \$77 million. Since March 2007, there are outstanding contracts of about \$22 million. Since 2004, there were a number of industry changes. A Request for Proposal (RFP) was sent out for new suppliers and nine responses were received from suppliers. Two were rejected.

Council Member Drekmeier asked whether there were any potential challenges with entering into contracts that the City might not need.

Mr. Swaminathan stated the additional, renewable contracts were anticipated and some room was left for those contracts. Their strategy was to buy for an average hydro year.

MOTION: Vice Mayor Klein moved, seconded by Beecham, to approve the following staff recommendation:

1. Authorize the City Manager to negotiate and sign new, amended, or restated Master Agreements with the following electricity suppliers:
 - a. Conoco Phillips Company
 - b. Coral Powers, LLC
 - c. Sempra Energy Trading Corporation
 - d. BP Energy Company
 - e. JP Morgan Ventires Energy Corporation
 - f. Powerex Corporation
 - g. Pacific Summit Energy, LLC
2. Authorize the City Manager or his designee to execute multiple transactions under the Master Agreements with one or more of the above suppliers to procure electricity supplies and related services sufficient to meet the City's forecasted electricity load, with the date for delivery of the electricity for each transaction not to exceed 36 months from the date the transaction is executed. The delivery date for any transaction will not extend beyond December 2022,

and the maximum aggregate transaction limit under each Master Agreement shall be \$75 million.

MOTION PASSED 7-0 Morton, Mossar not participating.

15. Transmittal of Police Auditor Interim Report

Council Member Cordell stated in March 2006 the Council approved a one-year contract for a Police Auditor. In August, the OIR Group was retained, and prepared a semi-annual report. She stated the decision to have a Police Auditor is one of the wisest decisions the Council has made.

MOTION: Council Member Cordell moved, seconded by Klein, to accept the interim report as provided by the Police Auditors Michael Gennaco and Robert Miller, dated May 7, 2007.

Aram James stated the independent Police Auditor has done a great job reaching out to members of the Police Department, working with the policy and procedures manual and important internal considerations. However, the Police Auditor has not reached out to the community to explain the function of the independent Police Auditors. He did not agree with the presentation of the Taser Task Force and felt it was one-sided.

Mayor Kishimoto stated she appreciated the policy and procedure changes that the Police Auditor recommended.

MOTION PASSED 9-0.

Council Member Cordell asked whether staff would come back with recommendations regarding whether the Police Auditor's jurisdiction would extend to SEIU employees.

City Attorney Gary Baum responded yes and asked to have staff return with a recommendation regarding this inclusion in the policy.

REPORTS OF COMMITTEES AND COMMISSIONS

Mayor Kishimoto noted Agenda Item Nos. 18 and 19 would be heard together.

Mr. Benest suggested the Taser Task Force Chair make a presentation and then Chief Johnson would make a presentation regarding number 19.

18. Transmittal of Taser Task Force Report

19. Final Approval of Expenditure of Citizens Options for Public Safety (COPS) Funds in the Amount of \$149,000 for Purchase of Electro-Muscular Disruption Devices (Tasers), Supplies, and Training in Accordance with the Taser Task Force (TTF) Recommendation

Council Member Cordell stated in January 2007 then Mayor Kleinberg appointed members of the community and City government to the TTF. Their job was to recommend whether or not the Police Department should purchase and deploy tasers. The TTF held six meetings for a total of 16.5 hours, with compliance of the Brown Act. The recommendation on a seven to two vote was that the Council should authorize the use of Tasers in conjunction with the protocol, which accompanied the report.

Police Auditor Michael Gennaco introduced himself as the Police Auditor and Chair of the TTF. He stated certain members of the TTF felt it was important to provide deference to the Chief of Police who had first recommended the Tasers. The seven votes who recommended approving the Tasers wanted to see a policy, training, and outside auditing to ensure the policies and training are complied with and police officers would be held accountable.

Police Chief Lynne Johnson stated the TTF was also asked to have a detailed accounting of the costs associated with the purchase of the Tasers, which is available in the staff report. The additional costs of the training and the cartridges could be paid for with remaining funds from the previous year's Citizen Options for Public Safety (COPS) funding allocation. There would not be any General Fund money used.

Anna Griffin stated she had attended all six meetings held by the TTF and she did not support the Tasers. They are deadly weapons that can kill.

Don Letcher, 788 No. Rengstorff Avenue, Mountain View, stated the Human Relation Commission (HRC) recommended against the purchase of Tasers.

Mark Petersen-Perez, 434 Addison Avenue, asked the Council to consider spending the money on a Crisis Intervention Team. He did not support the Tasers.

John K. Abraham, 736 Ellsworth Place, stated the Police had not demonstrated the need for the Tasers and he did not support them.

Tony Ciampi, 720 Bryant Street, stated Tasers are lethal weapons that cause serious injury and death. He did not support Tasers.

Lois Salo, 3178 Ross Road, stated she attended three TTF meetings and witnessed the video on Tasers. She stated Tasers were a form of torture and she did not support the Tasers.

Richard Konda, 829 N. 6th Street, San Jose, stated Tasers would cause an escalation of violence and he did not support them.

Aram James stated a policy could not be written for an inherently unsafe weapon and the context in which the weapon would be used. He did not support the Tasers.

Richard Cassel, 621 Wellsbury Way, stated the Police must recognize that Tasers could cause deaths. Tasers do not have any specification on performance or how deadly they are since they do not specify the number of amps or coulombs produced.

Nancy Rutherford, 3860 Eastwood Circle, Santa Clara, stated Police used to be well respected and are not today. She agreed with the citizen who stated there needed to be a Crisis Intervention Team. She did not support the Tasers.

Scott Wong, 407 James Road, stated as the President of the Palo Alto Peace Officers Association, he wanted to convey their support for the Tasers. He stated a comprehensive department policy and training curriculum would include strict guidelines for a safe, effective and lawful use of the Tasers.

Darlene stated she attended the TTF meetings, which she felt were pro-tasers and one-sided and she did not support the Tasers.

Steve stated Tasers were used to intimidate, torture, and force people into submission. He did not support the Tasers.

Donna stated that Tasers were deadly, lethal weapons of torture and she did not support Tasers.

Stephanie Munoz, 101 Alma Street, stated the Police today are not models of restraint and she did not support Tasers.

Amy Adams, 1265 Clark, stated there should be independent research and regulations on any kind of device, chemical or weapon that is used. There was no independent, unbiased information that brought us to this conclusion and she did not support the Tasers.

Peter Broadwell, 2325 Cornell Street, stated Tasers dehumanize any

interaction that people have and escalate situations, which at times leads to death. He did not support the Tasers.

Robert Moss, 4010 Orme Street, stated the police officers needed to understand how Tasers work, how to use them correctly, and how to select the proper weapon for each situation. There should be more information and confidence in how we do things and that will take time.

Council Member Cordell stated she received an e-mail referring to a report titled "Use of Tasers by Law Enforcement Agencies Guidelines and Recommendations" prepared for the City of Mountain View, Human Relations Commission, and altered by the Stanford Criminal Justice Center. She stated she had contacted the Stanford Criminal Justice Center and they had written recommendations for the use of Tasers by the Police Officers in Mountain View. The Executive Director of Mountain View Kara Dansky said, "The Palo Alto Draft is consistent with our recommendations." Ms. Dansky made the following recommendations, which are inconsistent with the policy for Palo Alto: 1) sworn employees complete the training set forth by the International Association of Chief of Police (IACP); 2) the use of Tasers be limited to situations in which the use of lethal force would be permitted; 3) Police Officers be encouraged to use Tasers as an alternative to lethal force only; 4) prohibit the knowing use of Tasers on people who are obviously under the influence of drugs and those who are known to be taking psychiatric medications; 5) the purpose of Tasers is to subdue violent and dangerous individuals, recommendation is to adopt a policy prohibiting the use of Tasers for the purpose of inflicting punishment or pain.

Ms. Johnson stated our draft policy almost mirrors the IACP policy. She strongly disagreed with the recommendations of limiting the use of Tasers to lethal force situations stating it puts police officers in dangerous positions. She stated our draft policy is the only agency that requires Crisis Intervention Training as part of the Taser training. She stated in many instances using Tasers as an alternative to lethal force would work, although deadly force would be necessary. She strongly disagreed with using Tasers on people under the influence of drugs. Often people who are under the influence exhibit super human strength and the Police Officer must use the appropriate means to stop them. She stated the recommendation to adopt a policy prohibiting the use of Tasers for inflicting punishment is in the policy.

Council Member Cordell asked if the Council decided that the Police could use Tasers but to limit them to situations where lethal force would be permitted, would the Officers still want the Tasers.

Ms. Johnson stated it would be putting the police officers in a dangerous

position because there are a number of situations where the officers' lives could be at risk but they would still want the Tasers.

Council Member Cordell asked on page 3 of the protocol, on section 308.A5 on Taser Usage, it stated, "Generally, a subject fleeing should not be the sole justification for use of an Electronic Control Device (ECD). Severity of the offenses and other circumstances should be considered before officers' use an ECD on a fleeing subject." She had concerns on "other circumstances" and "severity of the offenses" being too vague.

Assistant City Attorney Don Larkin stated that sentence was taken right out of the case law.

Council Member Cordell stated she wanted more specificity.

Ms. Johnson asked that different types of situations be covered in the training.

Council Member Cordell asked in the situation of a shoplifter lunging at an officer, would a Taser be used.

Ms. Johnson replied yes if the person was presenting a potential danger to the officer.

Council Member Drekmeier stated the public has access to Tasers, which may put officers at risk.

Ms. Johnson replied yes there was on-line access to stun guns, which are 600,000 volts that any person could purchase. If the stun gun were used on someone randomly, it would be illegal. However, if you were defending yourself, it would be considered legal.

Council Member Drekmeier asked whether there was a regulation on this.

Ms. Johnson replied no.

Council Member Drekmeier asked whether the City could create a regulation.

Ms. Johnson stated it could be created similar to gun laws, but people coming into Palo Alto may not abide by it.

Council Member Drekmeier asked for more information on the use of force statistics in Palo Alto.

Ms. Johnson replied that compared to most agencies our size, the use of force statistics are low. There were eight instances in 2006. Use of force is considered as a person sustaining visible injuries or complaints of pain and would need to be taken to the hospital. There are incidents where officers have had to use their hands, with no injury and no complaint of pain, which are not counted in the incidents.

Council Member Barton asked when the last time an officer discharged a firearm at a human in Palo Alto.

Ms. Johnson stated about four years ago there was a situation where a person was shot and killed.

Council Member Barton asked of the eight uses of force in 2006, how many officers were injured and were the injuries severe.

Ms. Johnson replied there were approximately two and the injuries were not severe.

Mayor Kishimoto asked of the eight uses of force how many would have used a Taser instead.

Police Captain Dennis Burns replied it would be a difficult question to answer as each situation was different. Each individual officer would respond based on their height, weight, experience and training and the situation.

Council Member Morton stated he has heard when an officer is in a situation where a gun is determined to be necessary, the officer is not instructed to shoot to wound but to shoot to kill. He asked whether that is why a Taser would be considered a less lethal weapon because a gun would be used to kill.

Ms. Johnson stated that is one reason. The other reason is the chance of a person dying as a result of being tased, hit by a baton, or sprayed with pepper spray, would be much less severe than a gun.

Council Member Morton asked whether the deaths from Tasers were a result of the actual tasing.

Ms. Johnson stated she was not aware of too many situations where Medical Examiners have stated that a Taser actually caused the death. There have been cases where Tasers were contributing factors to deaths. There is a controversial medical condition called Excited Delirium, which is most often seen in people who have a history of substance abuse or excess of alcohol

use. People who have been hit in the face or hit with a baton or been pepper sprayed could die as a result of it. The person's metabolism and heart rate goes up and it could be the physical interaction that caused the death not necessarily the Tasers. This is a new condition and not all medical professionals recognize it but in all the research it seems to be a definite factor.

Council Member Morton asked if there a risk of reverse liability if someone is shot or severely wounded by a gun, but had a Taser been used the injury or death would have not occurred. Is there some exposure to not having Tasers.

Mr. Larkin stated there is no case law on the subject. Tasers have been around since the 1970s. There has been some recent legal information that has been raised on that issue but it has not been tested.

Ms. Johnson stated there has been one case where an officer shot a person and the family sued the Police Department because they were one of the few agencies that did not have Tasers. She was not sure of the outcome of the trial.

Council Member Morton asked whether it was a weapon officers would wear or one that would be found in the officer's car.

Ms. Johnson stated each officer would have one and it would be found on the non-revolver side of the officer. In all the situations encountered by officers, there is no time to go to the car and get a weapon. Tasers would be portable and readily accessible when needed.

Council Member Morton stated in an officer's point of view, the Taser being portable would be an added advantage. However, to the community because it would be readily available, it could be used more often. He stated he once found a hospitalized woman who wandered away from Stanford Hospital on his street. He called the police and when they arrived, there were eight officers with drawn guns. He asked in this type of situation would Tasers be drawn.

Ms. Johnson replied the situation described would not call for weapons to be drawn. She would need to know more information on the situation to be able to answer accurately.

Council Member Morton stated the officers might have received more information from Stanford. He asked whether it would be an individual officer's decision or if there was someone in command to tell them to draw

their Tasers.

Ms. Johnson replied it would be the individual officer's decision and that is why there would be decision-making as part of the training.

Council Member Morton asked if there might be a time where a Taser would save someone's life versus being killed by a gun.

Ms. Johnson stated there are workers' compensation claims where officers attempted to arrest and subdue a person who is violent and, in return, have been bitten or fell and hurt themselves. In this type of situation, a Taser would be used.

Council Member Morton stated his concern was for the community at large and this would be a more humane way to handle a situation.

Ms. Johnson stated in most cases, thousands of people's lives have been saved by the use of Tasers. Ms. Johnson stated the media does not cover those types of situations. However, speaking to colleagues across the countries that have used Tasers, they have had no deaths and no serious injuries.

Council Member Cordell asked for clarification if a shoplifter became aggressive wouldn't it be appropriate for the officer to pull a gun and use lethal force.

Ms. Johnson stated she was correct.

Council Member Cordell asked whether it would be appropriate under the policy envisioned for the City to use Tasers.

Ms. Johnson stated given the right circumstances that would be appropriate.

Council Member Cordell asked if the policy stated Tasers could only be used where lethal force would be permitted, what would the officer do with the person in this situation.

Ms. Johnson stated the officer would have to go hands on with the person.

Council Member Cordell asked whether it would be with pepper spray and batons.

Ms. Johnson stated possibly.

Mayor Kishimoto asked whether there were any official statistics.

Chief Johnson replied there are no official statistics.

Mayor Kishimoto asked whether there were statistics for firearms.

Chief Johnson stated yes.

Mayor Kishimoto stated she was concerned on the lack of regulation and quality control. She asked whether there was any quality control on firearms and if there is a test to make sure a gun worked that morning or not.

Chief Johnson stated there was not any federal or state agency that regulated what Police Departments could use.

Mayor Kishimoto inquired about the lack of technical specifications.

Police Sergeant Natasha Powers stated there are technical specifications for every part of the Taser.

Mayor Kishimoto asked for clarification on technical specifications for currents and amps.

Ms. Powers stated 2.1 mille amps is the current specification.

Mayor Kishimoto asked whether the manufacturer ensures the specifications and tests them.

Ms. Powers stated it was tested by their own laboratories and she was not sure of any independent testing.

Mayor Kishimoto asked whether the Department of Justice (DOJ) has done preliminary or comprehensive testing.

Chief Johnson stated the DOJ and the Military are doing more testing. There have been more independent studies. The Potomac Institute in Washington D.C. has done a study and there are other agencies that are also doing independent studies.

Council Member Drekmeier stated that in Palo Alto there is no justification to move forward right now.

MOTION: Council Member Drekmeier moved, seconded by Mossar, to put the Department's request for implementation of Tasers on hold until

independent scientific research deems Tasers safe; the Department should support independently funded research into Taser use; the Department should support regulation of Tasers by a government agency; and the TTF should be reconvened in 18-24 months to review the state of the medical evidence and possibly reconsider its recommendation.

Council Member Mossar stated she did not understand why Tasers would be needed. There are no rules for pregnant women, children, or the elderly being tased and there needed to be. There was not enough information to support or purchase the Tasers.

Council Member Beecham asked about the motion that stated "The Department should continue to equip officers with less lethal tools rather than Tasers provided they have been independently proven to be safe." He asked whether batons and pepper spray have been independently proven to be safe and whether they should be removed if there is no independent proof.

Chief Johnson responded they have not been proven safe. There is no tool less lethal, which could be guaranteed to be safe, which will not cause serious injury or death.

INCORPORATED INTO MOTION WITH CONSENT OF MAKER AND SECONDER to remove the following line from the motion: The Department should continue to equip officers with less lethal tools other than Tasers provided they have been independently proven to be safe.

Council Member Beecham stated a Taser seemed to be far less lethal than a gun and has the potential to save a life that otherwise would not be saved.

Council Member Barton stated Tasers may not ever be independently deemed safe and asked to add to the motion a request for implementation to be on hold, until more independent scientific research is available.

Council Member Morton acknowledged the motion but stated this would return in 18 months and he did not support this motion to return to Council.

Vice Mayor Klein stated in any incident where any kind of force is used there are two parties at risk. One is the potential perpetrator and the other is the officer. There had been no sufficient mention to that. There are people who will do harm to our Police Officers and there are hundreds of officers each year who die in the line of duty. He asked how many weapons a Police officer carries on their belt.

Chief Johnson replied a Palo Alto Police Officer carries four weapons on their belt.

Vice Mayor Klein stated he was not sure how there could be standards on what a police officer could do in a certain situation. Situations are very risky and can change in a fraction of a second and it would be impossible to expect a police officer to consult before dealing with a situation. He stated the Council would not have anymore information in 18 or 24 months and Tasers could be a valuable tool for the officers and would prove beneficial.

Council Member Kleinberg stated there were statements from people who thought she was subjected to pressure when she appointed the TTF. She stated it was not true and she had voted against formation of the TTF but had been required to appoint members to the Force. She stated she was very concerned about the guidelines, which are vague. Police officers have to be able to make split second decisions and not have to run down a list of criteria of when to use a Taser. She stated she did not support Tasers.

Council Member Cordell stated she had concerns with the motion being so unclear but did not want to wait 18 to 24 months to deal with this issue. Tasers serve three purposes: 1) Officers' safety; 2) To protect members of the public; and 3) An alternate to deadly force. She stated she did not support the motion because it was delaying a decision that needed to be made tonight. She asked for a Substitute Motion to purchase Tasers to deploy them using protocol and asked to include that the use of Tasers be limited to circumstances in which lethal force could be permitted.

SUBSTITUTE MOTION: Council Member Cordell moved, seconded by Barton, to authorize the Palo Alto Police Department to purchase Tasers to deploy using a protocol, which includes that the use of Tasers be limited to circumstances in which the use of lethal force would be permitted.

Mayor Kishimoto said the latest racial profiling statistics stated they did not detect any racial profiling. The pro of using Tasers is for officer safety and it is easier to recruit when the officers have a wider range of weapons. She stated the cons of having the Tasers were they have no regulations. She stated she supported the main motion and did not think it should come back in 18-24 months. She did not support the substitute motion.

Council Member Morton asked whether there would be more liability if the officers were told to only use the Tasers in a lethal situation.

Mr. Larkin stated it did raise some concern and would need to be looked at more carefully.

Council Member Morton stated he had major concerns that judgment would be taken away from the officers.

Council Member Kleinberg asked to add a recommendation to the motion to come back to Council.

Council Member Cordell stated if the motion passed, the main criteria would be that the use of Tasers would be limited to circumstances in which lethal force would be permitted.

Council Member Kleinberg asked whether staff was being requested to return with an alternative tool for when lethal force was needed and would it need to include the legal issues involved.

Council Member Cordell stated the Center at Stanford had looked into this before.

Council Member Morton asked whether the motion was asking staff to bring this back and set a protocol.

Council Member Cordell stated the Substitute Motion would be to authorize the Police Department to purchase and deploy the use of Tasers, which use would be limited to circumstances under which lethal force would also be permitted. A protocol or policy is requested that would be supportive of that position and then the department would come back with that protocol.

Mayor Kishimoto asked whether it would come back to the Council for one more vote.

Council Member Cordell stated the use of Tasers would be approved and the authorization to buy them. They would only be used where lethal force would be permitted and it would be accompanied by a policy which supported it.

Council Member Beecham stated he would prefer to specify the criteria and have staff include it in the policy.

Mr. Baum suggested staff be directed to alter the policy to reflect the Council's desires and agreement to consult with Stanford's Criminal Justice Center and the Police Auditor, or any other experts on this issue, and go ahead with the policy. The policy would not be brought back to the Council.

Council Member Beecham asked whether the motion was requiring the policy

to come back to the Council.

Chief Johnson asked whether the policy would state the officer must use a Taser first before the use of deadly force.

Council Member Cordell stated the Taser may be used where lethal force would be permitted.

Chief Johnson stated she is not sure how to define the policy since it would be putting the officers in a box.

Mayor Kishimoto stated she thought the policy would be while an officer provides coverage a Taser could be used.

Council Member Beecham asked for more tolerance given to the officers' discretion than what is being described.

Vice Mayor Klein asked whether the language could state "less than lethal force" or substantially similar to those situations, which justified the use of lethal force.

Council Member Cordell stated the Taser should be pulled out in a situation where a gun would be permitted to be drawn. She stated there is not enough information about Tasers and trying to balance officers' safety and what is going on in the streets. When there is more information on Tasers, this policy could change.

Vice Mayor Klein asked whether the policy should still state "in a situation where a gun would be drawn."

Council Member Cordell stated no it should state "when lethal force would be permitted." When an officer pulls a gun it is considered lethal force and if a gun is being permitted to be pulled, a Taser could be pulled.

Chief Johnson expressed her concern for when an officer chooses to use a Taser and the Taser does not work. The officers would then be put in risk.

Council Member Cordell stated she would rather have the officers use the Tasers in very narrow circumstances than to not have them at all.

Council Member Morton asked for clarification on the language of this motion.

Council Member Cordell stated the intent of the motion is that lethal force is

when a gun could be pulled.

Mr. Larkin stated there is a distinction between a gun being drawn and a gun being used. A gun could be drawn when an officer is unaware of what is around a corner and that would not be considered a lethal force situation.

Council Member Cordell clarified that Tasers would be limited to circumstances under which the use of lethal force would be permitted.

Chief Johnson stated a member from the TTF wanted to make a comment.

Darryl Savage stated her concern was whether the Council read the minutes from the TTF meetings. The TTF voted seven to two in favor of the Tasers. She stated that in each situation, officers do not know what will happen and it should not be limited to only lethal force.

AMENDMENT TO SUBSTITUTE MOTION: Vice Mayor Klein moved, seconded by Morton, to define that the use of Tasers would be limited to those situations in which a gun may be drawn.

Mr. Baum stated this is an amendment to the substitute motion and you can only have one amendment to the substitute motion. He stated he did not understand the motion. He asked what was meant by situations where you would draw a gun.

Mr. Larkin stated the standards of when you can draw a gun are not consistent with the use of force standards

Chief Johnson stated there are many situations where an officer could draw their gun such as a prowler in a backyard, or a fight that broke out and people have weapons.

Vice Mayor Klein asked whether she would be comfortable in those situations with an officer using a Taser.

Chief Johnson answered yes.

AMENDMENT TO THE SUBSTITUTE MOTION PASSED 5-4 Cordell, Kishimoto, Kleinberg, Mossar no.

SUBSTITUTE MOTION AS AMENDED PASSED 5-4 Drekmeier, Kishimoto, Kleinberg, Mossar no.

MOTION: Council Member Beecham moved, seconded by Cordell, to approve Staff recommendation for the expenditure of Citizens Options for Public Safety (COPS) funds in the amount of \$149,000 for the purchase of electronic control devices, supplies and training in accordance with the TTF's (TTF) study.

MOTION PASSED 5-4 Drekmeier, Kishimoto, Kleinberg, Mossar no.

Council Member Kleinberg left the meeting at 10:50 p.m.

Council Break - 10:50 p.m. to 10:57 p.m.

PUBLIC HEARINGS

20. Public Hearing: Approving the Use of Community Development Block Grant Funds for Fiscal Years 2007-2008 and the Preliminary Commitment of Funds from Fiscal Year 2008-2009 and Adopting the Amendment to the Consolidated Plan for the Period 2005-2010

Resolution 8709 entitled "Council of the City of Palo Alto Hereby Approves the Use of Community Development Block Grant Funds for FY 2007-2008 and the Preliminary Commitment of Funds form FY 2008-2009 and adopting the Amendment to the Consolidated Plan for the Period 2005-2010"

Council Member Morton stated he would not be able to participate in a portion of this item due to a conflict of interest since his company performs audit services for Project Sentinel.

Council Member Barton stated he would not be able to participate in this item due to a conflict of interest since his wife works for Bridge Housing.

Public Hearing opened at 11:00 p.m.

Ana Santos, 2625 Zanker Road, San Jose, stated on behalf of the Long Term Care Ombudsman Program, she thanked everyone for continuing to support the program, which shows concern for the seniors of our community.

Kathy Schmidt, 948 Ramona Street, stated she was representing Eden Housing and there was an opportunity to build a Senior Affordable Housing Project. She asked that it be tentatively approved for the second funding year.

Ben Metcalf, Bridge Housing, San Francisco, thanked the Council for their ongoing support of the work of Fabian Way Senior Residence.

Public Hearing closed at 11:05 p.m.

MOTION: Council Member Beecham moved, seconded by Mossar, to accept the recommendation from the Finance Committee to approve the following funding allocations:

1. Allocate CDBG funding as recommended by staff and the Citizens Advisory Committee (CAC) in the FY 2007-2008 Action Plan.
2. Adopt the minor amendments to the 2005-2010 Consolidated Plan to conform to new HUD regulations.
3. Authorize staff to submit the FY 2007-2008 Action Plan to the Department of Housing and Urban Development (HUD) by the May 15, 2007 deadline.
4. Authorize the City Manager, on behalf of the City, to execute the FY 2007-2008 application and Action Plan for CDBG funds and any other necessary documents concerning the application, and to otherwise bind the City with respect to the application and commitment of funds.

MOTION PASSED 6-0 Kleinberg absent, Barton, Morton not participating.

21. Public Hearing: Approval of a Record of Land Use Action for a Tentative Map to create two single family residential parcels and a remainder lot at 4249 El Camino Real, Wilkie Way Homes; and a Negative Declaration ***QUASI-JUDICIAL** *(Item continued from 04/16/07)*

Public Hearing was opened and closed at 11:06 p.m.

Mayor Kishimoto stated she appreciated the responses to her questions regarding pedestrian access and the anticipated Quimby Act Parkland for that site.

MOTION: Council Member Morton moved, seconded by Beecham, to accept the Staff and Planning and Transportation Commission recommendation to approve the proposed Tentative Map to create two single family residential parcels and a remainder lot, based upon the findings and conditions contained within the Record of Land Use Action (Attachment A) and approve a Negative Declaration (Attachment B).

MOTION PASSED 8-0 Kleinberg absent.

22. Public Hearing: **Consider an Ordinance Amending the Zoning Map of the City of Palo Alto to Change the Zone Designation for 4225 Middlefield Road, 4233 Middlefield Road, and 710 San Antonio Road from Planned Community No. 1561 Zone Designation to the Service Commercial (CS) Zone Designation with an Automobile Dealership Combining District (AD) Overlay**

Ordinance 4947 entitled "Council of the City of Palo Alto Amends the Zoning Map of the City of Palo Alto to Change the Zone Designation for 4225 Middlefield Road, 4233 Middlefield Road, and 710 San Antonio Road from Planned Community No. 1561 Zone Designation to the Service Commercial (CS) Zone Designation with an Automobile Dealership Combining District (AD) Overlay"

Public Hearing was opened and closed at 11:07 p.m.

MOTION: Council Member Barton moved, seconded by Cordell, to approve staff and the Planning and Transportation Commission recommendation to adopt the proposed Ordinance rezoning three sites from Planned Community (PC-1561) to Service Commercial (CS) district with an Automobile Dealership (AD) combining district overlay based upon the findings contained within the Draft Ordinance (Attachment A) and approve a Negative Declaration (Attachment C).

MOTION PASSED 8-0 Kleinberg absent.

23. Public Hearing: Consideration of an Appeal and Record of Land Use Action for the Planning Director's Denial of Application for Removal of Two Protected Redwood Trees at 526 Lowell Avenue per Section 15270(a) ***QUASI-JUDICIAL** (*Item continued from 04/16/07*)

Council Member Morton stated he had already looked at the property and met with the appellant.

Council Member Drekmeier stated he had received materials and had a phone conversation with the appellant.

Council Member Mossar stated she had provided a copy of the materials to the City Clerk for the public record.

Director of Planning Steve Emslie stated this item was brought to the Council per the appeal procedures and the Council rendered three votes to set this for a full public hearing. This is the time for the reconsideration of the

Directors' decisions to deny the tree removal permit. He also pointed out the information that came to the City Council in the packet. He stated Lee Lippert, Planning and Transportation Commission member, and David Docktor, the Planning Arborist, were also available to answer questions.

Public Hearing opened at 11:09 p.m.

Lauren Bonomi stated the condition of the trees has worsened and it is not safe.

Planning and Transportation Commissioner Lee Lippert stated that the property owners were treated in a fair and courteous manner before the Planning and Transportation Commission.

Alexander, Wilson Street, stated the trees have deteriorated quite a bit.

Gita Dedek, 505 Lowell Avenue, stated the tree was growing over their roof.

Samia Cullen, 545 Washington Avenue, she stated one of her own trees had fallen over onto her garage during a storm.

Rev. Ian Montgomery, 730 Middlefield Road, stated these trees have become a hazard to the house and their health and physical well-being. He supported the removal of the trees.

Nicci Prentice, 4022 Villa, stated she supported removal of the trees.

Lauren Janov, Byron Street, stated the Redwood Tree Ordinance needed to be appealed or revised. She stated it was too restrictive and did not give much concern to the homeowners responsible for their upkeep.

Flavio Bonomi, 526 Lowell Avenue, stated the Ordinance dealt with financial burdens, maintenance costs, property damage, health, safety, liability and quality of life and he supported the motion

Public Hearing closed at 11:40 p.m.

Council Member Morton asked whether the agenda item was not to review the Ordinance, but to determine whether the Planning Director acted appropriately in the denial of the request to cut down two Redwood trees.

Mr. Baum replied he was correct.

Council Member Morton stated in 2004 the Bonomis had an Arborist who stated the trees were in excellent health and neither of the trees had structural problems that could not be dealt with. He did not recommend removing the trees. He asked whether the dispute was about whether the trees were healthy.

Managing Arborist Dave Dockter reported the three Arborists stated the branch growth of the tree could be managed.

Council Member Morton asked whether the Redwood trees produced a level of toxins.

Mr. Dockter stated he was not an expert of toxins from the debris.

Council Member Morton asked whether it was a general assumption the trees produced toxic sap.

Mr. Dockter replied no.

Council Member Morton stated that was the second contention in which they were asked to override the Director's findings.

MOTION: Council Member Barton moved, seconded by Mossar, to accept the recommendation of staff and the Planning and Transportation Commission to uphold the Director of Planning and Community Environment's decision to deny the Protected Tree Removal Permit to remove two ordinance-sized Coast Redwoods at 526 Lowell Avenue based upon the findings and conditions in the Record of Land Use Action (Attachment A).

Council Member Barton stated the Arborist in 2004 stated the trees were fine. The current Arborist stated that work contributed to 75 percent root damage. It seems that much of the damage was created by the appellants and that could not be a contributing factor to override these findings.

Council Member Mossar stated this was the same situation as the Planning and Transportation Commission. She stated she could not make the findings.

Vice Mayor Klein acknowledged a very high number of requests for permits have been granted and with that many approvals, he stated the Ordinance might be faulty. He supported overruling the Planning Commission and the Director of Planning.

Council Member Cordell stated the trees were hazardous, posed a danger to the family, and she supported removal of the trees.

Council Member Beecham stated he could not make the findings and the Ordinance did protect the trees. He supported the motion.

Mayor Kishimoto stated there were 40 requests to take down Redwoods last year and asked whether all 40 were granted.

Mr. Dockter replied in 2006 there were 33 removal permits, 14 of those were Redwoods, which were approved.

Mayor Kishimoto asked whether any were rejected.

Mr. Dockter replied none were denied.

Mayor Kishimoto asked what was different about those situations.

Mr. Dockter stated most all of those trees were causing structural damage and several were hazardous.

Mayor Kishimoto stated based on the record and the Ordinance she supported the motion.

MOTION PASSED 6-2 Cordell, Klein no, Kleinberg absent.

COUNCIL MATTERS

24. Colleagues Memo from Council Member Cordell and Mossar: Referral to the Policy and Services Committee of a Policy Discussion of City Council Member Ex-Parte Contacts in Quasi-Judicial Matters and Consideration of a Policy Concerning Communications with the City Council and City Council Candidates Concerning the Upcoming Bid for Refuse Hauling

Council Member Cordell asked that the Council refer to Policy and Services Committee (P&S) a policy concerning Council Ex-Parte Contacts in Quasi-Judicial Matters and to consider a policy with Ex-Parte Contacts for the upcoming bids for Refuse Hauling.

MOTION: Council Member Cordell moved, seconded by Mossar, to refer the following two items to the Policy and Services Committee for review, public discussion and recommendation to the full Council to possible addition to existing Council policies:

- Possible Council adoption of a policy similar to the PT&C policy on quasi-judicial hearings.
- The City Auditor recommendation concerning Council and Council candidate conduct during the bidding of the upcoming refuse hauling contract.

Council Member Mossar stated this was an important conversation to have.

Council Member Morton stated there was limited liability as Elected Officials and, since there was a disclosure requirement, he did not believe it should follow with a similar over-restricted policy. It prohibits Council from operating as representatives of the community including both sides of the issue and he would vote no.

Vice Mayor Klein stated he agreed with Council Member Morton and the recommendations from the City Auditor were unnecessary or unclear and he opposed the referral.

Council Member Barton stated he agreed with the previous two speakers and there was a disclosure point. The nuance cannot be captured in a ten-minute presentation and a five-minute rebuttal.

Council Member Cordell stated we are Public Officials and when the Council decides on Quasi-Judicial Matters it would be done in a public forum: 1) because it is required; and 2) it should be instilled in the public to have trust in what the Council is doing.

Council Member Mossar stated an RFP would be going out for a re-bid for the waste hauling contract. This would be a chance for the Council to discuss any ethical issues that may need to be addressed beforehand.

Tom Jordan, 474 Churchill Avenue, stated this was not meant to be a distinction between an appointed group and an elected group. This is a different way to resolve issues. He was in favor of the Colleague's Memo.

Mayor Kishimoto stated there was value to bringing this to the P&S and she supported the motion.

Council Member Morton stated to restrict the community's ability to contact its Elected Officials because a matter is quasi-judicial seemed to be completely inappropriate in a representative democracy.

Council Member Mossar stated the statement made by Council Member Morton misrepresented the Colleagues' Memo. She stated this was not a vote on policy; it was a vote on a referral.

Council Member Morton stated the language implied this was not a reasonable policy for the community.

Council Member Beecham stated he thought there were restraints on quasi-judicial issues and he would not vote for the motion

Mayor Kishimoto stated the motion would be split into two parts.

MOTION: Council Member Cordell moved, seconded by Mossar, to refer the following item to the Policy and Services Committee for review, public discussion and recommendation to the full Council for possible addition to existing Council policies:

- Possible Council adoption of a policy similar to the PT&C policy on quasi-judicial hearings.

MOTION FAILED 4-4 Cordell, Mossar, Kishimoto, Drekmeier yes, Kleinberg absent.

MOTION: Council Member Cordell moved, seconded by Mossar, to refer the following item to the Policy and Services Committee for review, public discussion and recommendation to the full Council to possible addition to existing Council policies:

- The City Auditor recommendation concerning Council and Council candidate conduct during the bidding of the upcoming refuse hauling contract.

MOTION PASSED 5-3 Beecham, Klein, Morton no, Kleinberg absent.

COUNCIL COMMENTS, ANNOUNCEMENTS, AND REPORTS FROM CONFERENCES

Council Member Beecham reported he attended Northern California Power Authority (NCPA) meetings in Washington, D.C. recently.

Council Member Mossar reported the San Francisquito Creek JPA authorized funding from all five members and the budget has been revised upward to make the organization healthier and able to deal with pending projects.

Council Member Morton pointed out that Mayor Kishimoto handled the bus-cycle very well at the May Fete Parade.

Mayor Kishimoto complimented staff on the May Fete Parade, which was wonderful, and also noted that Bike to Work Day is coming up.

ADJOURNMENT: The meeting adjourned at 12:10 a.m.