TO: HONORABLE CITY COUNCIL

FROM: CITY MANAGER

DEPARTMENT: CITY MANAGER’S OFFICE

DATE: JULY 12, 2004

CMR: 330:04

SUBJECT: RECOMMENDATION OF THE POLICY AND SERVICES COMMITTEE REGARDING ENCROACHMENT BY PALO ALTO UNIFIED SCHOOL DISTRICT WALTER HAYS SCHOOL ON RINCONADA PARK

RECOMMENDATION
The Policy and Services Committee recommends Council seek voter approval at the municipal election in November 2005 of a Charter Amendment to exchange minor portions of parkland for contiguous lands of an equal or greater area or value in order to implement Article VIII of the Palo Alto City Charter.

Staff recommends that the City Council accept the Palo Alto Unified School District’s (District) offer, to pay half of the cost of the November 2005 election. In the event that the ballot measure is unsuccessful, staff recommends that Council direct staff to provide the District with written notice to remove the encroachments at the District’s cost within 12 months of the date of the written notice.

BACKGROUND
Several years ago, the Palo Alto Unified School District (PAUSD) mistakenly placed two portable classrooms and constructed playground structures within the boundaries of Rinconada Park. When notified of the encroachment, the District agreed (by resolution – Attachment 2) to correct the encroachment no later than September 1, 2002.

Subsequently, the PAUSD requested that the City consider a proposal of an exchange of land whereby the City grants it the land necessary to accommodate the structures currently on City parkland, and in exchange, the PAUSD would grant the City an equal portion of its land. On June 23, 2003, the City Council referred to the Parks and Recreation Commission an "enabling" ordinance to authorize the exchange of minor portions of parkland for contiguous lands of an equal or greater area of value. On November 13, 2003, the Parks and Recreation Commission voted against the staff
recommendation and recommended that the Council refer the exchange of minor portions of parkland to the voters as an amendment to the City of Palo Alto Charter.

On December 9, 2003, the Policy and Services Committee considered the staff’s recommendation to approve an enabling ordinance to authorize the exchange of minor portions of parkland for contiguous lands of an equal or greater area of value. The Policy and Services Committee heard several speakers that opposed the enabling ordinance. The speakers claimed that they were not opposed to this particular minor exchange of land. However, they were concerned that the enabling ordinance would allow staff to make other exchanges in the future that might be controversial without public input. The Policy and Services Committee, after hearing the testimony, voted 3-1 against the recommendation and instead recommended that the Council refer the exchange of minor portions of parkland to the voters as an amendment to the City of Palo Alto Charter.

On March 31, 2004, the City/School Liaison Committee reviewed the issue and new information from the City Attorney’s Office about the possibility of using a license or lease arrangement to allow the encroachment to continue. The City/School Liaison Committee did not make a recommendation to the Council, but did ask that staff research and present the documentary history of the encroachment when it returned to the City Council for a decision on this issue. The City/School Liaison Committee was also made aware of the District’s prior agreement to remove the encroachment by a date certain and to indemnify the City against any costs resulting from the encroachment.

**DISCUSSION**

In response to the request of the City/School Liaison Committee, staff developed a summary of the history of the encroachment:

**Rinconada Park/Walter Hays Encroachment Timeline**

- **March 1998**: City Surveyor discovers that portable buildings at Walter Hays have been located within Rinconada Park

- **April 13, 1998**: Letter from City Manager June Fleming to then-Superintendent Don Phillips proposing a resolution to the encroachment:
  a) District acknowledges that it inadvertently encroached
  b) Encroachments will be removed by September 1, 2002
  c) During the period of encroachment, District will hold City harmless and pay litigation costs
• **May 19, 1998**: Board of Education adopts a Resolution agreeing to the terms of the April 13, 1998 letter (Attachment 2)

• **May 29, 1998**: Then-Superintendent Phillips signs agreement

• **January 5, 2001**: Letter from Don Phillips requesting a two-year extension (approved verbally by City Manager Frank Benest)

• **March 11, 2002**: Letter from Superintendent Callan presenting proposal from Walter Hays parents to exchange land

• **September 30, 2003**: Letter from City Manager Frank Benest to Superintendent Callan, extending to December 8, 2003

• **November 13, 2003**: Parks and Recreation Commission recommends the Council deny the proposed land exchange

• **December 9, 2003**: Policy and Services Committee consideration of proposed land exchange

• **March 31, 2004**: City/School Liaison Committee review of proposed land exchange

On July 6, 2004, Deputy Superintendent Bob Golton sent a letter to the City supporting the Policy and Services Committee recommendation and offering to pay half of the cost of the election in November 2005 (Attachment 1). The District provided information on what it would cost to relocate the portable classrooms, which are provided with plumbing because of their use for kindergarten classes.

Staff recommends that Council accept the District’s offer for several reasons. Staff is respectful of the fact that dedicated parkland is an issue of such importance to Palo Alto that governing provisions were incorporated into the City Charter by a voter initiative. The District legally obligated itself to cure the encroachment on Rinconada Park by September 1, 2002, as well as indemnifying the City for all costs related to the encroachment (Attachment 2). However, the cost for the District to relocate the encroaching structures is very high, at a time when both the District and the City are struggling to absorb the financial impact of both the continuing recession and the State budget. The District will have every incentive to actively support the ballot measure in
November 2005, given the fact that if the measure loses, it will be obligated to cure the encroachment.

**RESOURCE IMPACT**
The City Clerk’s Office has estimated the cost of a ballot measure on the November 2005 ballot (Policy and Services Committee recommendation) as $100,000. The difference reflects the fact that there will be a Council election in November 2005. Under the terms of the District’s indemnification of the City for litigation costs associated with the encroachment, the District is obligated to pay for the costs of the election. If Council accepts the staff recommendation, the City’s share of the costs of the election would be budgeted in the 2005-07 Budget.

**PREPARED BY:**

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**CITY MANAGER APPROVAL:**

FRANK BENEST
City Manager

**ATTACHMENTS**
Attachment 1: Letter from Bob Golton, Deputy Superintendent, Palo Alto Unified School District
Attachment 2: Resolution of the Palo Alto Unified School District Abating Water Hays School Encroachment into Rinconada Park