City of Palo Alto
City Manager's Report

TO: CITY COUNCIL
ATTN: POLICY AND SERVICES COMMITTEE
FROM: CITY MANAGER
DEPARTMENTS: PUBLIC WORKS
UTILITIES
DATE: DECEMBER 9, 2008
CMR: 443:08
REPORT TYPE: RECOMMENDATION
SUBJECT: Review and Request for Recommendation on Prevailing Wage Issues Related to City Capital Construction Projects

RECOMMENDATION
Staff recommends the Council Policy and Services Committee recommend that Council not change current prevailing wage policy, allowing City “public works” projects be bid without prevailing wage requirements unless prevailing wage is required for the project pursuant to state law, due to potential cost impacts to the City’s General and Enterprise Fund Capital Improvement Programs (CIPs).

EXECUTIVE SUMMARY
At City Council’s request, staff reviewed many of the issues surrounding prevailing wage rates and summarized the findings below. Staff recommends, due to potential cost impacts to the General and Enterprise Fund Capital Improvement Programs (CIPs), Council not change the City’s current prevailing wage policy. This recommendation is made primarily due to the costs needed to address the current General and Enterprise Fund infrastructure program backlog and the additional cost of funding a new Public Safety Building and a new Library and Community Center at Mitchell Park and Library improvements at Main and Downtown Libraries as a result of recent passage of Measure N. Any further increase in costs will impact the City’s ability rehabilitate existing infrastructure, much of which is already well past its life expectancy and in a deteriorated condition. In addition, a prevailing wage requirement could also apply to the many private/public partnerships the City is involved in such as Lytton Plaza, Art Center and possibly the Junior Museum and Zoo. The California Court of Appeal is currently hearing an appeal in the City of Vista case, where the City of Vista, a charter city like Palo Alto, is defending its choice not to pay prevailing wage on its locally funded “public works” projects.

BACKGROUND
On September 17, 2007, City Council approved a contract with Anderson Pacific for a Water Quality Control Plant (WQCP) pump station upgrade related to the reclaimed water pipeline project running from the WQCP to Mountain View (CMR:364:07). Council approved the contract contingent on the contractor assuring the City they would pay their employees prevailing wage on the project. In a related motion Council directed staff to bring the prevailing
wage discussion to the Council Policy and Services Committee (see Attachment B, minutes of September 17, 2007 Council meeting).

What are Prevailing Wage Rates?
The intended purpose of prevailing wage law is to ensure that public construction projects do not lower local wages by allowing contractors to pay wages below the local standard. In 1931, Congress passed the Davis-Bacon Act, which mandated the payment of prevailing wages on all construction projects that receive more than $2,000 of Federal funds – an amount that has remained unchanged today. In subsequent years, especially during the Great Depression, many states and localities passed similar prevailing wage laws. Most states, including California, now have such laws.

Prevailing wages are determined in many different ways across the country. The Federal and California Prevailing Wage calculations are similar because if more than 50% of the workers make the same wage this becomes the prevailing wage for the trade. They differ in the calculation when less than 50% of the workers have the same wage. The Federal Law determines the prevailing wage by averaging all the wages, whereas in California the most common wage occurring becomes the prevailing wage. California’s calculation method usually results in a slightly higher wage than the Federal calculation method.

California passed its prevailing wage law in 1931, the same year the federal Davis-Bacon Act was passed. California Labor Code §1771 requires that any “public works” project that receives more than $1,000 in state funding pay prevailing wages. The Labor Code defines “public works” to include construction, alteration, most demolition, installation or repair work done under contract and paid for in whole or part out of public funds. All capital improvement projects done by the City, including those managed by the Community Services, Utilities or the Public Works Departments are considered “public works” under this law. Although California’s prevailing wage law applies to all of California’s “general law” cities, charter cities are permitted to elect whether to pay prevailing wage on locally funded public works projects that qualify as municipal affairs.

DISCUSSION
Prevailing Wages in Charter Cities
The California Labor Code requires that public agencies pay prevailing wages, as determined by the California Department of Industrial Relations, on most public works projects. As a charter city, Palo Alto is not required to pay prevailing wage rates on “public works” projects, so long as the projects are within the realm of “municipal affairs,” are funded entirely by local funds, and no other statutory exceptions apply. This “home rule” principle, grounded in the California Constitution, allows decisions on expenditure of local funds to be made by locally elected officials. Utilities Enterprise Fund projects are often deemed to be “public works” projects in this context.

Since no precise definition of what constitutes a “municipal affair” has been judicially settled, courts consider the issue on a case by case basis. The expenditure of city funds on local projects and the rates of pay of the workers the City hires to carry out such projects has been held to be a municipal affair. In 1981, Palo Alto passed a resolution to pay prevailing wage “only when required by federal or states grants and on other jobs considered to be of statewide concern.” (See Attachment A: Resolution 5981).
Recently, courts have blurred the issue of whether a charter city may elect not to pay prevailing wage. For example, in 2004, the California Supreme Court in City of Long Beach v. DIR, declined to decide whether prevailing wage law is such a matter of statewide concern that it should override the ability of charter cities to conduct their municipal affairs. Since then, labor unions have mounted a statewide campaign to overturn existing law and declare prevailing wage a matter of state concern. The charter city of Vista is currently defending its choice not to pay prevailing wages in a lawsuit brought by the State Building and Construction Trades Council. Although the trial court reluctantly ruled in favor of Vista in December 2007, the case is pending on appeal. A detailed summary of the case is included in this report’s discussion below.

These recent judicial developments led the City Attorney to recommend that Palo Alto pay prevailing wages on regional projects that transcend the city’s geographic boundaries, even if these projects could be considered municipal affairs. Capital improvement projects related to the City’s Water Quality Control Plant (WQCP) fall into this category. Some Charter Cities have created special categories where they do not pay prevailing wages on low-income housing and maintenance type projects, but do pay prevailing wage on construction projects. To date, Palo Alto has not made this distinction.

Summary of Staff Research
Staff found that there is considerable disagreement on the impacts of prevailing wage rates on project quality found in studies cited by the union groups and builder trade groups. Studies by government agencies, however, concluded that paying prevailing wage rates do not significantly change the quality of construction on most projects.

In a survey of contractors, it was reported that requiring the payment of prevailing wage rates could reduce the quantity of bidders on projects by about 20% percent. Most contractors that are not paying prevailing wages, which make up about 50% of the contractors responding to the survey, will bid prevailing wage contracts. In the majority of cases, the makeup of their workforce does not change to accommodate prevailing wage requirements.

In its surveys of both contractors and other cities, staff found that implementing prevailing wage rates in construction contracts may increase construction costs on City capital improvement contracts by up to 10%. This increase would also affect projects involving private/public partnerships.

The following sections present a summary of the studies related to prevailing wage reviewed by staff and the results of surveys of other cities and contractors. The pending City of Vista case related to the charter city exemption from prevailing wage is also discussed below.

Studies on the Effects of Prevailing Wage
A number of academic and government studies have examined the costs and benefits of prevailing wage. Generally, these studies fall into three different camps:

- Pro-prevailing wages studies, issued by University-level academics, and construction trade organizations.
- Anti-prevailing wage studies, issued by University-level academics, and various policy institutes.
- Government studies, issued by the States of Ohio and Kentucky legislative commissions.
Staff reviewed seventeen such studies, both pro-prevailing wage and anti-prevailing wage, and studies prepared by government organizations. Summaries of these studies are included in the attached memorandum dated February 15, 2008 (Attachment C).

Studies by government organizations provide some of the most interesting insight into the issue of prevailing wage. These studies should, in theory, have no agenda beyond uncovering what is in the best interest of taxpayers. All of the studies examined indicated that prevailing wage laws do not save money. Some studies did, however, equivocate about whether the benefits of prevailing wage — once other unquantifiable factors were taken into account — may be higher than the costs.

The two most-referenced government studies are both studies conducted by state legislative research offices, in Kentucky and Ohio. In Ohio, its Legislative Service Commission issued a study analyzing the effect of a 1997 bill that exempted school districts from being forced to require prevailing wage. The study, which asked contractors for bids under and not under prevailing wage conditions, found that repeal did save money — especially on smaller projects. It asserts that the exemption yielded 1.2 percent in total cost savings in new construction, 10.7 percent savings on building alteration projects and 19.9 percent savings on building additions. This conclusion seems to strongly support the notion that the smaller projects have greater savings when prevailing wages are not required.

Furthermore, the study surveyed school districts to discover if they had noticed any decrease in the quality of construction. Six percent of respondents said that they had noticed higher quality construction since the exemption, 91 percent noted no change and 3 percent said quality had decreased.

In one very unique case, the survey discovered that one school district had put a project out to bid under prevailing wage conditions and then rebid the project without such requirements. The winning bidder in the second case, without prevailing wage, was 5.8 percent lower, yielding a cost savings of more than $500,000. In Kentucky, the legislature also ordered its research arm to study the issue of prevailing wage. The study made a notable number of findings, including learning that 60 percent of workers surveyed were paid more on prevailing wage jobs than on market-rate jobs; the average increase for prevailing wages was 24 percent over the workers' market rates. Among the 141-page report's other findings were:

- 90.7 percent of non-union and 24.4 of union contractors said prevailing wage laws raise construction costs.
- 55.4 percent of small firms (10 or fewer employees) said prevailing wage laws have a negative effect on their business, compared to 73 percent of large firms.
- 95.7 percent of cities and 83.3 percent of municipal utilities that responded believe prevailing wage laws increase construction costs, while, respectively, 7 and zero percent believe laws increase quality.
- More cities believed prevailing wage legislation decreases — not increases — quality of construction.

It is worth noting that the report did not call for the abolishment of prevailing wages in Kentucky. The report did not take an opinion on the issue. Its main overall conclusion on the effectiveness of the legislation, however, is as follows:
To the extent that quality is increased, prevailing wages are an inefficient method to increase quality. The wage requirement results in contractors paying higher wages with no guarantee that these additional wages will result in quality improvements.

Aside from the Kentucky and Ohio reports, there are a number of smaller government reports on the topic. The Federal Congressional Budget Office (CBO) and General Accounting Office (GAO) have both issued reports on prevailing wage, with the GAO asserting that repealing the Davis-Bacon Act would save $1.2 billion annually. The CBO study, written during the early 1980's, was likely the impetus that caused the Reagan Administration to change the definition of prevailing wage to the wage earned by 50 – as opposed to 30 – percent of local wage earners. It found that repeal of Davis-Bacon would save $13 billion (2007 dollars) over five years and that some 20 percent of open shop contractors have no interest in bidding on prevailing wage contracts. It also recommended raising the threshold at which the prevailing law is triggered, as the $2,000 trigger was set in 1931 and has never been increased.

The final government study of note is another state legislative study — Maryland in this case — conducted in 1997. Maryland's Department of Fiscal Services, which issued the study, asserted that repeal of the prevailing wage law then on Maryland's books would save the state between 5 and 15 percent on public works construction.

Survey of California Cities
To further examine the policies of other California municipalities regarding prevailing wage law, staff surveyed dozens of other cities on the topic. The survey was sent out to all members of the Association of Bay Area Governments, as well as to all Charter Cities that had email addresses available. Forty-eight municipalities responded to the survey. Usually, the respondents were public works officials, though a few city managers replied as well. A short summary of the findings follows and the more detailed results are included in Attachment C.

- 42 of 48 cities surveyed pay prevailing wage rates.
- 26 out of 32 Charter Cities pay prevailing wage rates.
- Based on the survey results, staff estimates that paying prevailing wages may increase construction costs in the range of 5% to 10%.
- A large majority of the respondents believe that paying prevailing wages does not increase quality of the work.
- Most believed that requiring prevailing wages decreases the number of bidders on projects.
- Some cities have exceptions to paying prevailing wages for certain types of contracts.

The responding cities were also asked to provide comments on the positive and negative effects of paying prevailing wages. These are summarized below:
Positive Effects
- Supportive of labor
- Evens the playing field
- Assures that workers are being treated and paid fairly
- Higher wages allow people to live closer to work
- More professional bidding pool
Higher-quality work

Negative Effects
- Higher costs
- Fewer projects can be built
- Need for extra staffing and paperwork for compliance monitoring
- Smaller pool of bidders

Survey of Contractors
The Staff’s research on prevailing wage did provide a number of insights into the views of construction contractors on the topic of prevailing wage legislation. In addition, staff conducted a survey of contractors bidding work in Palo Alto to best judge the impact a change in Palo Alto’s prevailing wage policy would have on construction projects in Palo Alto.

A summary of the survey results follows:
- Approximately 50% of the contractors responding pay prevailing wages on all contracts.
- Most contractors that do not typically pay prevailing wage rates will bid prevailing wage contracts.
- 70% of the contractors not paying prevailing wage rates use the same labor force when bidding prevailing wage contracts.
- The average of the estimated increase to construction costs associated with paying prevailing wage rates was approximately 8% according to the contractors responding to the survey.

City of Vista Court Case
As discussed previously, the Charter City of Vista is currently defending its decision not to pay prevailing wages in a lawsuit brought by the State Building and Construction Trades Council. The outcome of this case will be very important, as it could determine whether charter cities can continue to exercise their ability to locally determine whether to pay prevailing wages on local projects. Some background on the case is illustrative.

In June 2007, Vista became a Charter City. Before the election, the City prepared a fact sheet discussing common questions regarding the Charter City proposition, including questions and answers regarding the potential tax savings on local public works projects should the City chose to forego prevailing wages on municipal projects. 67% of Vista voters approved the decision to become a Charter City. Vista plans on completing about $100 million in public improvements in the near future; projects which would traditionally be considered within the realm of “municipal affairs” and paid from local revenues.

The State Building and Construction Trades Council of California, a labor union, challenged Vista’s assertion that it was exempt from prevailing wage law, arguing that the prevailing wage statute is of statewide concern. Although the trial court reluctantly found in favor of Vista, in issuing his ruling, the Superior Court judge stated that were he not bound by a preceding case, Vial v. City of San Diego, he would have been inclined to grant the union’s petition. The Vial decision stated that prevailing wage law does not apply to public works projects of a chartered city, “as long as the projects in question are within the realm of ‘municipal affairs.’”
The judge in *Vista*, however, contended that instead of focusing on the *project*, a more appropriate analysis would involve whether the prevailing wage statute is a matter of statewide concern. Had the court not been obligated to follow *Vial*, the court acknowledged that it would have found that the prevailing wage law is a matter of statewide concern and that Vista was therefore bound to follow the law in relation to its pending public works projects.

The petitioner’s appeal is currently pending before the California Court of Appeal and oral argument was heard on Friday, November 14, 2008. A decision is expected in the next two months. Should the court frame the question as suggested by the superior court, and ask whether the prevailing wage statute is a “statewide concern,” it is possible that the Court will answer that question affirmatively, thereby overruling or limiting the *Vial* decision. The California Legislature has previously declared that the prevailing wage statute addresses two important statewide concerns: (1) it prevents public projects from driving down area labor standards and (2) it ensures training opportunities for apprentice construction workers. Even if Vista wins on appeal, observers expect this case will eventually be appealed to the California Supreme Court. A California Supreme Court decision would not be expected on this case for at least another year. The City Attorney’s Office will keep Council informed on the status of this case.

**RESOURCE IMPACT**
The Adopted 2009 Capital Budget includes about $11.5 million in General Fund projects and about $28 million in Enterprise Fund projects that are not now or will not require prevailing wage in their construction contracts. The Enterprise Fund projects include those under the electric, water, gas, wastewater collection, storm drainage and refuse fund programs. Projects constructed by the Wastewater Treatment Fund already require prevailing wage as discussed above and would not be impacted by a change in Council policy. If staff research proves correct, the costs of the 2009 General Fund projects could increase by as much as $1 million and the 2009 Enterprise Fund projects could increase by as much as $2.8 million if Council were to adopt a policy requiring prevailing wage rates be paid on all capital construction projects contracted by the City. It also should be noted that any private/public partnership agreements entered into by the City for capital construction would also require payment of prevailing wage rates on these construction projects (e.g. Art Center, Lytton Plaza, Junior Museum and Zoo).

**POLICY IMPLICATIONS**
The recommendation does not change existing policy. If Council were to change policy and require prevailing wage be paid on all City capital construction projects, Council would need to adopt an ordinance codifying such a requirement.

**ENVIRONMENTAL REVIEW**
Policy and Services Committee review of the prevailing wage policy issues presented in this report does not represent a project under the California Environmental Quality Act (CEQA), pursuant to Section 21065 of the Public Resources Code.
ATTACHMENTS
Attachment A: City of Palo Alto Resolution 5981
Attachment B: Minutes of September 17, 2007 City Council meeting
Attachment C: Prevailing Wage Rate Issues Memorandum of February 15, 2008

PREPARED BY:
MIKE SARTOR
Assistant Public Works Director

TOM M MARSHALL
Assistant Utilities Director

DEPARTMENT HEADS:
GLENN ROBERTS
Director of Public Works

VALERIE O. FONG
Director of Utilities

CITY MANAGER APPROVAL:
JAMES KEENE
City Manager
RESOLUTION NO. 5981
RESOLUTION OF THE COUNCIL OF THE CITY OF PALO ALTO
ESTABLISHING POLICY REGARDING PREVAILING WAGES FOR
PUBLIC PROJECTS

WHEREAS, in the recent case of Vial v. City of San Diego (175
Cal.Rptr. 647, July, 1981), the California Court of Appeal determined
that the subject of "prevailing wages" is a municipal affair and that
Charter cities are not subject to the prevailing wage requirements for
public works projects set forth in the California Labor Code; and

WHEREAS, it is in the City's best interest to obtain the lowest
responsible bid for public projects;

NOW, THEREFORE, the Council of the City of Palo Alto does RESOLVE
as follows:

SECTION 1. It is appropriate to use the Davis-Bacon Act or State
Department of Industrial Relations Wage Determinations only when re-
quired by federal or state grants and on other jobs considered to be of
statewide concern.

SECTION 2. The Council finds that this is not a project under the
California Environmental Quality Act and, therefore, no environmental
impact assessment is necessary.

INTRODUCED AND PASSED: December 14, 1981

AYES: Bechtel, Eyerly, Fletcher, Henderson, Klein, Levy, Renzel,
Witherspoon
NOES: None
ABSTENTIONS: None
ABSENT: Fazzino

ATTEST:
City Clerk

APPROVED AS TO FORM:

City Attorney

APPROVED:

City Manager

Director of Purchasing Services

City Engineer

APPROVED:

Vice Mayor
Special Meeting
September 17, 2007

STUDY SESSION .......................................................... 186

1. Draft Program Environmental Impact Report on San Francisco Public
Utilities Commission's Water System (Hetch-Hetchy) Improvement
Program .......................................................... 186

ORAL COMMUNICATIONS .................................................. 187

APPROVAL OF MINUTES ............................................... 188

CONSENT CALENDAR ..................................................... 188

2. Approval of Record of Land Use Action for a Variance to Allow a Fence
Exceeding the Maximum Fence Height within a Front Yard Setback at
1456 Edgewood Drive ............................................. 188

3. Request for Approval to Cancel October 8, November 5 and November
12 Regular Council Meetings and to Schedule a Special Council Meeting
on November 13 ............................................. 188

4. Acceptance of a Report of Williamson Act Contracts within the City of
Palo .......................................................... 188

4A. (Old Item 3) Request for Approval to Cancel October 8, November 5
and November 12 Regular Council Meetings and to Schedule a Special
Council Meeting on November 13 ..................................... 188

UNFINISHED BUSINESS .................................................. 189

5. Approval of a Wastewater Treatment Enterprise Fund Contract with
Anderson Pacific in the Total Amount of $859,000 for the Recycled
Water Pump Station Upgrade Project at the Regional Water Quality
Control Plant - Capital Improvement Program Project WQ-80021 ........... 189

REPORTS OF COMMITTEES AND COMMISSIONS .............. 191

09/17/2007 102-184
6. Recommendation from the Policy and Services Committee for the City Council to Approve a Tiered Approach for the Continuing Review, Approval, and Implementation of the Zero Waste Operational Plan ...... 191

ADJOURNMENT: The meeting adjourned at 9.45 p.m. ........................................ 205
The City Council of the City of Palo Alto met on this date in the Council Chambers at 6:03 p.m.

Present: Barton, Beecham, Drekmeier (arrived at 7:00 p.m.), Cordell, Kishimoto, Klein, Kleinberg, Morton, Mossar

STUDY SESSION

City Attorney Baum announced that Council Member Drekmeier would not participate in Item 1 since he has a conflict of interest as he is an employee of Tuolumne River Trust.


Assistant Director of Utilities for Resource Management Jane Ratchye provided an overview of the Draft Program Environmental Impact Report (PEIR) on the San Francisco Public Utilities Commission's (SFPUC's) Water System Improvement Program (WSIP). The regional water system that serves Palo Alto gets the majority of its water supplies from the Tuolumne River with the balance coming from locally collected water in the East Bay and the Peninsula. San Francisco has junior water rights on the Tuolumne River while the Modesto and Turlock Irrigation Districts (MID and TID) hold the senior water rights on the Tuolumne River. The regional water system is vulnerable to damage from large earthquakes and is in need of seismic upgrades, pipeline replacements and repairs. Without those improvements, the regional system is subject to water outages from 20 to 60 days. SFPUC's proposed WSIP aims to improve seismic reliability by being able to deliver water to 70% of the connection points within 24 hours after an earthquake. Other objectives for the WSIP include meeting the water supply needs of users of the system as projected to 2030 and subjecting the service area to a maximum of 20% cutbacks in droughts. The Draft PEIR identified the nature and magnitude of impacts associated with the projects as well as program-level mitigation measures. As appropriate, project-level EIRs will be completed for the individual projects included in the WSIP. The growth inducement potential of the WSIP will only be analyzed in the Program EIR and will not be addressed in the project-level EIRs.

The most controversial issue in the Draft PEIR is the projected regional demand growth of 35 million gallons per day (MGD). The WSIP proposes to meet this additional water supply need with 10 MGD of additional conservation and recycled water projects in San Francisco and 25 MGD more water diverted from the Tuolumne River. The PEIR evaluated many alternatives, including the "Modified WSIP", which was designated as the environmentally superior alternative. The Modified WSIP proposes to 09/17/2007 102-186
eliminate the additional diversions from the Tuolumne River by implementing an additional 5-10 MGD of conservation, water recycling, and groundwater use in the wholesale customer service areas and by arranging with MID and TID to transfer 23 MGD of conserved Tuolumne River water. This transfer would be accomplished by SFPUC or its wholesale customers installing water conserving systems in the MID and TID service areas and transferring the conserved water to SFPUC to minimize or avoid additional diversions from the Tuolumne River. The Modified WSIP alternative also has other environmental improvements in the East Bay and the Peninsula.

The ad-hoc Council subcommittee (Council Members Beecham, Mossar and Klein) met three times to discuss and develop comments on the Draft PEIR. Overall, the subcommittee members believe that the PEIR is adequate and satisfies CEQA. The subcommittee strongly supports completing the WSIP projects to improve seismic reliability. The subcommittee supports the Modified WSIP, the environmentally superior alternative, especially the concept of a transfer of conserved water from MID and TID. The subcommittee also supports a maximum rationing goal of 10%, rather than the 20 percent in the proposed WSIP. In addition, the subcommittee requests that SFPUC coordinate construction of the WSIP project that is located in Palo Alto with the Gunn High School schedule and that the PEIR reconsider the merits of extending the Santa Clara Valley Water District (SCVWD) West Pipeline to an interconnection point with SFPUC pipelines to improve reliability of both SFPUC’s and SCVWD’s regional water systems.

**No action required.**

**ORAL COMMUNICATIONS**

Phil Plymale spoke regarding the dismissal of a Utility Department employee.

Brandon Porter spoke regarding his dismissal from the Utility Department.

Susan Richardson spoke on behalf of Brandon Porter.

Fred Balin, 2385 Columbia Street, spoke regarding open and transparent government.

Bob Wenzlau, 1409 Dana Avenue, spoke about bike and pedestrian safety at the Embarcadero underpass.

Lynn Chiapella, 631 Colorado, spoke regarding a strip of land on Alma Street at the Oregon Expressway.
APPROVAL OF MINUTES

MOTION: Council Member Mossar moved, seconded by Morton, to approve the minutes of July 30 and August 6, 2007, with corrections as noted.

MOTION PASSED 8-0, Cordell not participating.

CONSENT CALENDAR

MOTION: Council Member Mossar moved, seconded by Klein, to pull Item 3 from the Consent Calendar to become Item 4A.

MOTION: Council Member Morton moved, seconded by Barton, to approve Consent Calendar Item Nos. 2 and 4.

2. Approval of Record of Land Use Action for a Variance to Allow a Fence Exceeding the Maximum Fence Height within a Front Yard Setback at 1456 Edgewood Drive

3. Request for Approval to Cancel October 8, November 5 and November 12 Regular Council Meetings and to Schedule a Special Council Meeting on November 13

4. Acceptance of a Report of Williamson Act Contracts within the City of Palo Alto

MOTION PASSED 9-0.

4A. (Old Item 3) Request for Approval to Cancel October 8, November 5 and November 12 Regular Council Meetings and to Schedule a Special Council Meeting on November 13.

MOTION: Council Member Mossar moved, seconded by Klein, to cancel the October 8 and November 12 Regular Council Meetings but not the November 5 meeting, and to Schedule a Special Council Meeting on November 13.

Council Member Kleinberg inquired about the meeting on November 13. She noted there is a Policy and Services (P&S) meeting scheduled for that night, so there is a conflict.

Assistant City Manager Harrison said tentatively the P&S meeting would be held on Wednesday rather than Tuesday.

Council Member Kleinberg said she probably would not be able to participate on November 13 because Golden Guardian is scheduled on that date.

09/17/2007
MOTION PASSED  8-1, Drekmeyer no.

UNFINISHED BUSINESS

5. Approval of a Wastewater Treatment Enterprise Fund Contract with Anderson Pacific in the Total Amount of $859,000 for the Recycled Water Pump Station Upgrade Project at the Regional Water Quality Control Plant - Capital Improvement Program Project WQ-80021.

City Manager Frank Benest reported the contractor confirmed he pays prevailing wage, which has been documented. The contractor also indicated that should there be any ruling by the Department of Industrial Relations that he did not in some instance pay prevailing wage, he would be responsible and not the City of Palo Alto. Therefore, staff recommends the Council approve this contract to assure the work would be done this year.

Council Member Barton said he would like to make a two-part Motion to accept the staff recommendation including acceptance of the contractor’s offer to provide a certified payroll. As the second part, he would like to refer the prevailing wage policy question to the Policy and Services Committee.

City Attorney Gary Baum asked if there was any public comment.

Council Member Beecham said this item was continued from last week with public comment taken at that time. He asked whether it was necessary to reopen the public comment.

Mr. Baum replied that legally it is. This has not been done in the past for a true public hearing because the public hearing has been opened and closed. In this instance, the Brown Act requires that there be public comment on each item before the Council. There is an exception if the meeting was continued because it was midnight and the meeting would be convened the next day on the same item because then it is considered to be the same meeting. In this instance, the matter was continued and it is considered to be a new meeting.

Council Member Beecham asked if it is appropriate to limit the comments to those who had not spoken before.

Mr. Baum said no. Speakers could be requested not to raise new issues but we cannot limit the individuals who are speaking.

Mayor Kishimoto opened the public comment.
Juan Garza, 1493 Park Avenue, San Jose said the contractor’s e-mail does not say they are going to pay prevailing wage. It says “if” and there is a big difference. Secondly, he forwarded the decision from the Supreme Court of the State from the City of Santa Clara. In the present case, the revenue bonds are to be issued to finance the petitioner’s share of the regional water pollution control facility involving efforts of several cities acting in common. The total costs will be approximately $30 million and the facilities cannot be constructed without the petitioner’s participation in the payment of these costs. Furthermore, the sewage treatment facilities will protect not only the health and safety of the petitioner’s inhabitants but the health of all inhabitants in the San Francisco Bay Area. The Supreme Court determined in certain situations a municipal affair is a statewide concern. There is a larger project of which this smaller project is part and parcel and, therefore, that greater project cannot go forward without this happening. Decisions like these need to be made and hard choices have to be taken. The City Manager failed to point out the other contractor submitted a letter in writing saying he can get this job done by December 31, 2008.

Josue Garcia, 2102 Almaden Road #101, San Jose, urged Council to reject the bid and rebid the contract. He thanked Council for looking into the whole prevailing wage issue. Workers are having a hard time making a living and this will provide health insurance and a pension and training for workers.

Jeff Salvotti, 2350 Lundy Place, San Jose, spoke on behalf of the Sheet Metal Workers, Local 104. He also urged Council to reject the bid and rebid with the requirement for prevailing wage.

Mayor Kishimoto closed the Public Comment Period at 7:30 p.m.

**MOTION:** Council Member Barton moved, seconded by Drekmeier, to accept staff’s recommendation to approve the contract including acceptance of the contractor’s offer to provide a certified payroll.

**MOTION PASSED 9-0.**

**MOTION:** Council Member Barton moved, seconded by Drekmeier, to refer the prevailing wage policy discussion to the Policy and Services Committee (P&S).

Council Member Drekmeier said the population is growing and water is going to be in shorter supply. It is therefore important that this recycled water project move forward. He felt that Council needs to thoroughly vet the issue, learn from other districts that use prevailing wage, to see if there is a better product and also examine the fairness issue.

09/17/2007
Council Member Mossar said she would not vote to refer this to the P&S Committee. Prevailing wage is an interesting concept but it does not begin to heal the social problems that have been outlined.

Council Member Morton said those who have been on the Finance Committee know the struggles a city has to fund projects. If the whole financing equation of the bid process is going to be changed, substantial amounts of money would be added to future projects without actually knowing the cost. He is not opposed to the prevailing wage but is opposed to mandating it.

Council Member Cordell said she had a position directly opposed to Council Members Mossar and Morton. There is nothing wrong with discussion since it is quite clear this is a very important issue. It is about people, about workers, about their ability to survive and it is absolutely essential as a progressive city we have the discussion. This will allow for a reasoned and humane decision about whether or not to pursue this policy. She supports referring this issue to the P&S Committee.

Vice Mayor Klein stated he would support the Motion since it does not require much staff time. If prevailing wage indicates an increase in the cost of projects, there is an obligation to the citizens to turn it down. The burden is on those who are proponents of this to support the statements that Council Member Cordell has made about fairness and social justice. It is a question of how does the economy really work. Palo Alto has not had prevailing wage for the 110 years of existence and satisfactory projects have been built. He noted these were his preliminary thoughts but he would support moving it to the P&S Committee.

Council Member Kleinberg said it would be an interesting conversation and she certainly can commit to being open minded. She felt the community wants Council Members to be fair to those who work under government contracts in the City. She was looking forward to the conversation but doubts it will come back to this Council as it is currently constituted.

Mayor Kishimoto stated she would support the referral to P&S, but there are many other things she needed to know before voting on the issue.

**MOTION PASSED** 6–3 Beecham, Morton, Mossar no.

**REPORTS OF COMMITTEES AND COMMISSIONS**

6. Recommendation from the Policy and Services Committee for the City Council to Approve a Tiered Approach for the Continuing Review, Approval, and Implementation of the Zero Waste Operational Plan

09/17/2007 102–191
**MOTION:** Council Member Mossar moved, seconded by Morton, to approve the Policy and Services Committee and staff recommendation to a tiered approach for the continuing review, approval, and implementation of the Zero Waste Operational Plan (ZWOP). Specifically:

Programs – Direct staff to immediately begin implementing any recommended programs that will have minor budgetary impact. As for the other programs, direct staff to begin identifying costs and funding mechanisms, including inclusion of specified programs in the Request for Proposals for new collection services to be bid in spring 2008. Implementation of such programs will be reviewed and evaluated based upon their cost and diversion effectiveness.

Policies – Approve plan and continue the discussion of new policies and regulatory requirements such as mandatory recycling and product bans to give staff direction on whether to pursue such actions in conjunction with the start of the new collection contract in 2009.

Facilities – Approve the regional facilities approach in the Request for Proposals for new collection services and continue the discussion of local facilities such as the relocation of the recycling center in a separate process which is already under way. These activities will be included in the RFP as alternatives, to be reviewed and evaluated at that time based upon their cost effectiveness.

Public Works Director Glenn Roberts introduced Russ Reiserer, Solid Waste Program Manager, and Ruth Abe, Vice President of Brown Vince Associates, who was the consultant in the preparation of this Plan. This item represents a culmination of three years work, starting with the Blue Ribbon Task Force developing the Zero Waste Operational Plan (ZWOP) and policies, statements and goals adopted by Council a year ago and the Operational Plan. Nothing that Council does tonight binds the Council, the City, or the staff to actually finally implement any of these measures. Staff is requesting an indication of Council’s policy direction in this matter. The tiered approach is meant to indicate a phased implementation tied to many other events. The Waste Composition Study and the Zero Waste Operational Plan embodies recommendations and next steps. In November 2004, the Council directed staff to develop a Zero Waste Plan. In October 2005, Council adopted that Zero Waste Plan goals and directed staff to try and attain 73 percent diversion by 2011 and strive for zero waste or close by 2020-21. That Strategic Plan was approved and Council directed staff to develop the Operational Plan. This Plan has been sent to the Policy and Services Committee twice. In March 2007, it was reviewed and direction was given to make modifications and enhancements to clarify certain issues. In July 2007, the P&S Committee recommended approval of this Plan. The big issue here is the development and implementation of the next hauling...
contract for garbage collection and processing services in Palo Alto. We have essentially been under the same hauler under two different names for the past 56 years; PASCO and then PASCO being acquired by Waste Management. The current contract with Waste Management/PASCO will expire on June 30, 2009. Staff will come back to in a Study Session on October 1. The elements of the Zero Waste Plan are key to helping scope the services in the new collection contract so there is a key relationship here between these two activities. We need policy direction on zero waste goals so we can shape that proposal for new collection services. The first related activity is when our landfill closes, which is estimated to be 2011 based on current rates of fill. Some key events occur in 2021 when our contract with the SMART Station, Sunnyvale and Mountain View partners, expires and when the contract for refuse disposal and landfill at Kirby Canyon expires. In 2005, a Waste Composition Study was prepared to start this effort. Zero waste is a systematic approach to dealing with the problem. It recognizes that discarded materials have value. Our current diversion rate is about 63 percent in the year 2007. There are certain things we can do in the short term. We are trying to do those things without having to negotiate with our current hauler for any additional services. We are not recommending undertaking any major service changes with the current contract. In the mid-term, to about 2011, we can focus on the new hauling contract; then from 2011 to 2021 some significant improvements and increases can be made. There will be some cost implications and every additional ton diverted costs more money. Subsequently, in the new hauling contract those issues will be included in the proposal as alternatives that can be costed out. We will bring it to the Council in 2008 with an analysis and recommendation of how much it will actually cost, what will be the impact on rate, what will be the benefit of tonnages diverted. At that time, we will make a recommendation as to what new services to implement. Staff is requesting that we continue the efforts of waste prevention through legislation, policies, ordinances, outreach and assistance. Also, we are working to incorporate environmentally preferable purchasing standards, continue to promote green building activities and sustainable landscaping gardening. On regional priorities, we would continue to work with partners on legislative actions and research, development and advocacy. In terms of our recommended programs, we are looking for direction of what to implement in the new hauling contract focusing heavily on the question of organics. We believe the commercial sector food waste is a real target of opportunity in the new contract. We are recommending the new RFP include a provision for that service to see what it costs. We are also looking to expand the type of materials collected at curbside. This policy document recommends two categories of types of facility use; primarily utilizing existing regional facilities wherever possible for the processing of the curbside recyclables, for the construction and demolition debris, and for new organic processing. It does not recommend any major new local facilities. Regulatory support is one of the most significant issues in this document in 09/17/2007
terms of policy issues and public involvement. If we want to get to zero waste, or as close to it as possible, it will not likely be entirely on a voluntary basis. This plan contains a recommendation for a potential mandatory participation ordinance in recycling that would involve a three-year phased implementation program where the first year would be an educational process. The second year would be a warning process and the third year would be enforcement. This would not begin until 2009 consistent with the new collection contract. We are also looking at potential product bans. The plan has looked at issues like Styrofoam and plastic bags. Policy direction is needed to pursue that and bring it back to you. Plastic bags are the biggest single trash item in the creeks. Staff recommends this Plan be approved tonight in concept and approve the tiered approach and give direction to come back with those details on October 1 during the Study Session on the new Refuse Collection Contract.

Mayor Kishimoto thanked Mr. Roberts for his presentation, thanked staff for three years of hard work and the members of the Zero Waste Task Force and the P&S Committee.

Council Member Barton said this is a far-reaching document in multiple ways. Policy direction is requested on some very broad issues and sets a scope of work for staff for a period of time to come. We cannot underestimate the amount time as well as the value of at least considering the costs and benefits. It is important to understand this document is connected to a schedule and feasibility to the new waste hauling contract. He inquired whether the $3.95 expected increase in cost of one can was per month or per can.

Mr. Roberts replied a single can per month is $19.25 now and, therefore, it would be about a 15 percent increase.

Council Member Barton asked if the $3.95 is an internal cost.

Mr. Roberts said that is correct. Landfill capacity has not been an issue because Kirby Canyon exists and has a lot of capacity left. That will become an issue in the future and more costly over time. It is cost effective to pay more now to minimize those future costs.

Council Member Morton said a cost scenario is required that tells you the pick-up cost as well as the non-pick-up cost. Those are very hard to measure such as auto pollution. He said he agrees the attempt is to prevent long-term degradation costs. He said he does not understand why we talk about phasing in or making it voluntary. He would prefer Council selects a date and say “no more plastic bags.” It may take awhile to accomplish and we would not enforce it. The same applies to composting. He fully supports the efforts and the possibility of moving more quickly.
Vice Mayor Klein said he would like to understand what we are voting for and what we are not voting for and inquired whether the new policies are included as part of the plan and, if they are not, what is being approved.

Mr. Roberts stated staff was trying to be cautious about how far this approval is taken because some of these will require further review, ordinance development and perhaps environmental review. Vice Mayor Klein’s point is well taken. Council is being asked to give staff policy direction tonight. We will require further direction in the implementation vehicles.

Vice Mayor Klein said if the plan is approved there are 25 or 30 separate items. While he had no problem with the mandatory program in concept, he is not quite clear what we are talking about.

Mr. Roberts said that will need to come back to Council with the details of a specific implementation program, an ordinance, an enforcement mechanism and a time frame.

Vice Mayor Klein stated the item talks about facilities, which says “approve the regional facilities approach and continue the discussion of local facilities.” Perhaps it could be said that we are approving the regional facilities with certain exceptions that may come along. If we approve the regional, then we are saying we are not going local; but if we are considering the local then we are not going totally regional.

Mr. Roberts replied the idea is to have Council direct staff to pursue the use of regional facilities for all of the heavy duty processing activities. Not having a processing center in Palo Alto is consistent with the direction that came out of the discussion on the proposed environmental services center about four years ago. Those kinds of things will be sought in the new collection and processing contract from providers who have them existing and located elsewhere. No new such facility would be proposed or built. The question of whether there should be a local recycling drop-off center and a permanent home for the household hazardous waste facility, both of which are local facilities, will be spun off to a separate discussion.

Vice Mayor Klein referred to the part under programs that says “direct staff to immediately begin implementing the recommended programs that will have minor budgetary impact.” He is troubled by that because he does not know what minor budgetary impact means. He would like to see some metrics.

Mr. Roberts said the intent was that it would not require any new budgetary authority from the City Council.

09/17/2007
Vice Mayor Klein asked whether Public Works has that authority to some degree with what was passed in the budget this year. He does not like voting for something that is approving policies if they have minor budgetary impact.

Mr. Roberts said this Plan was working on expanding existing programs. Some examples would be increased recycling in the downtown area, adding more recycling containers in the downtown for special events, festivals and things of that nature, and more education and technical outreach and support to schools and private industry.

Vice Mayor Klein said he felt there should be a list of the programs and, if they are so small and within existing programs, staff ought to just implement them.

Mayor Kishimoto opened the Public Hearing.

Dora Goldstein, 620 Sand Hill Road, said as a part of the Zero Waste Operational Plan, the opportunity should be taken to enact a ban on polystyrene food containers. Several cities have already done so such as Berkeley, Portland, San Francisco and Oakland. New York City is currently considering such a ban. Most Palo Alto restaurants already use recyclable containers. Polystyrene containers are used here not only in restaurants but in other dining venues. The Zero Waste Operational Plan suggests adding polystyrene to the list of components that can be recycled on the curbside single stream pickups.

Bob Wenzlau, 1409 Dana, said the Plan will be challenging to implement. Even as one of the Task group members, he found it challenging from the standpoint of participation because you really do not get the chance to consider specific programs and specific recommendations. As the document went forward, a number of the comments he made ended up being lost, which was disappointing. He appreciated Council Member Morton’s remarks when he said that October 1 could be the day Palo Alto makes a statement on mandating recycling and product bans. These types of programs should have a schedule and he urged Council to consider doing that. Finally, he felt the organic waste issue should be handled locally. He disagrees that it is regional. He recommends revisiting local management of organic waste.

Mayor Kishimoto asked for clarity regarding a ban on plastics. She felt a timeline would be helpful. There is a lot of anxiety on the part of the Council to move forward. She inquired if this conceptual plan is approved tonight, the next steps would be on bans which are outside the hauling contract. The hauling contract is a huge milestone. She would have some questions later regarding conceptually approving the local drop-off recycling. She also has

09/17/2007
questions on why 2.2 acres is needed, as opposed to half an acre, and also on household hazardous waste.

Mr. Roberts said he must have created a misimpression and he wants to be very clear. Council is not being asked to approve any local facilities tonight. Those discussions are continuing.

Mayor Kishimoto asked Mr. Roberts to confirm the site design for a temporary 2.2 acre site is going to Planning and Transportation Commission (P&TC).

Mr. Roberts said that is correct and it is a different issue. It is the temporary relocation of that facility in order to be able to complete the build-out of the landfill and the build-out of the Byxbee Park grading plan. It must be moved from where it is presently located or the landfill and the grading plan cannot be completed. That is not an element of the Zero Waste Plan. The Zero Waste Plan looks beyond that timeline. The issue will be going to the P&TC on September 26.

Mayor Kishimoto said it is part of the whole waste strategy. For example, we approved the CIP for the temporary location but it was with the understanding it was a placeholder and we would actually have more discussion on it.

Mr. Roberts said after it goes to P&TC in September, assuming they take action, it will come to Council later this fall. Regarding the product bans and mandatory recycling, staff is an enthusiastic proponent of those issues but we clearly need to hear from the City Council whether to pursue those policies. There will be a tremendous amount of legal work needed as well as technical work. We will need to research those model ordinances and case law, develop an implementation strategy and get back to you with a timeline. Right now, what we have proposed and what this Plan says is to develop those product bans in that mandatory recycling effort concurrent with the new collection contract beginning in 2009, which is 18 months away.

Council Member Kleinberg said she wanted to follow-up on Mayor Kishimoto’s and Vice Mayor Klein’s questions. In the recommendation, under Policies, Approved Plan, are we approving this Plan.

Mr. Roberts replied yes.

Council Member Kleinberg said some of the things the Mayor just asked are in conflict with some of the ideas we might want staff to pursue if the Council agreed should there be something to look into. She stated she is concerned with the amount of recycling done by commercial businesses,
mainly offices. There is not enough aggressive activity in this Plan to reward commercial recycling. Under Maximizing Recycling, the Plan says approximately 50 percent of commercial businesses participate in the City’s recycling program. Then it says there’s going to be a recycling approach rolled out with the commencement of new services in July 2009.

Council Member Kleinberg asked why is it necessary to wait for a new contract to get businesses to recycle now if only 50 percent are doing it.

Mr. Roberts said staff is recommending the most prudent and effective course of action is to follow that time frame for two reasons: 1) because of the time it will take to develop and implement these mandatory programs, ordinances, and enforcement measures; and 2) to make it concurrent with the new contract. We don’t recommend trying to negotiate for increased services with the current hauler given some contractual disputes. We recommend it would be far better to have this go into effect with the proposals and contract for the new hauler. Lastly, this will require some additional resources for staffing and we don’t want to add Full Time Equivalents (FTE) to City staff if we can avoid it. We want to make these programs the responsibility of the new hauler and have it be their staff that does those things so we don’t add to our FTEs and retiree medical liability to do this.

Council Member Kleinberg asked Mr. Roberts if it was correct to state that we are not going to be more aggressive in encouraging the other 50 percent of the businesses to recycle because we should wait for our contract business to take that responsibility in July 2009.

Mr. Roberts said yes in part. Mr. Reiserer reminded him of another piece as well that there is a logistical problem in getting everybody involved in getting them all carts and finding them all places to store those carts and bins in an area that the trucks access. There are implementation timeline needs, ordinance development, legal requirements, logistical issues and cost issues.

Council Member Kleinberg asked if during the interim we could partner with other organizations in the City such as Chamber of Commerce, CAADA and other business organizations and associations, while we are busy promoting Destination Palo Alto. She said there are creative ways that don’t require a lot of staff time that could be partnerships. Regarding the issue of plastic bags and polystyrene, the SMART Station cannot process the plastic bags at the moment, and people cannot tell the difference between a biodegradable plastic bag and a non-biodegradable bag. Could staff research methodologies and systems that are used by other government organizations to deal with non-degradable materials such as polystyrene and Styrofoam and non-biodegradable plastic bags and put that into the 09/17/2007
Operational Plan. On page 47 of the Zero Waste Advocacy Plan, it suggests not getting rid of plastic bags but having a levy on packaging materials that included plastic bags.

Mr. Roberts said there are a couple of different types of sources that need to be understood. Even if those materials are banned here in Palo Alto, they will still occur in our waste stream and in residents’ refuse. Polystyrene packaging comes through UPS in things that are purchased. That’s why we continue to suggest they be collected at the curb and recycled. The alternative will be to have it go into the waste stream. That’s why a second level of a levy is also considered.

Council Member Kleinberg asked what the levy would be on.

Mr. Roberts said it is a fine or penalty for the use if that business continues to use the product.

Council Member Kleinberg said in other words, we would ban plastic and then there would be some kind of a fine if a business continued to use them.

Mr. Roberts said that is his recommendation. This was proposed originally as an alternative. Council might want to consider implementing the ban.

Council Member Kleinberg noted if she votes for this Plan tonight, is she voting for the “Guiding Principle” that, sooner rather than later, we may have staff help us consider a ban on non-biodegradable products made of plastics, Styrofoam, polystyrene etc.

Mr. Roberts stated the Plan is less specific in what Council is saying. It appears to be the majority opinion of what you would like us to do. If you were to vote for this Plan, in general, staff would come back and propose an alternative. If you want to be more specific and tell us to go develop a product ban, we will take that direction from among these alternatives.

Council Member Kleinberg stated it has to do with the use of parkland. She said she does not want to be voting for the use of parkland for recycling centers or anything else. That is a much larger conversation the Council ought to have with constituent input. Dedicated parkland is a non-renewable resource. She requested assurance that dedicated parkland would not be a possible site location for a relocated recycling center.

Mr. Roberts said he needed to answer this question very clearly and very specifically. There is nothing in this Plan that refers to any use of parkland. In fact, he believes there is a significant reference in the report to the opposite that was added at the discussion of the Task Force and at the initiative of former Council Member Renzel, who wanted to make sure it was
clear in the Plan. At Council’s direction you have given us another assignment to pursue the question of composting and left open that question. So, while your action tonight on this Plan clearly does not commit to any parkland, there is another process under way that has many alternatives regarding that potential issue.

Council Member Kleinberg asked whether under 4.3 of the Plan when there is language like “not on City parklands unless consistent with the Baylands Master Plan,” doesn’t necessarily say “not on City parklands.” In other words, there is a loophole.

Mr. Roberts said that is because the Byxbee Park Master Plan and the Baylands Master Plan show a small site on Byxbee parkland for a potential future recycling center. That potential is consistent with the City’s adopted Comprehensive Plan and park’s Master Plans.

Council Member Mossar said the P&S Committee talked about this and it has come to us with their unanimous recommendation. This is a huge 50,000 foot view of what the roadmap looks like and there are so many policies and financial issues buried herein that we couldn’t possibly approve any of them tonight and, even if we thought we were, we couldn’t possibly tie the hands of next year’s Council and the Council the year after that and so forth. This is a general roadmap and a great body of work. Best wishes to next year’s Council and the Councils to follow in implementing the Plan. There is a lot of controversy and a lot of work to be done. What is important is that there is the will and the interest to pursue these issues and it is going to take a lot of work on the part of the Council and the staff and the community to get to this ultimate goal.

Council Member Morton said the community believes that environmental degradation is no longer tolerable and, if something is not recyclable, should we take steps to ban it. Staff has attempted not to tie anything down and will come back periodically with requests for direction. A Zero Waste Commission was established, which has done their best to provide as much information as possible. The decision tonight is not how to go forward.

Council Member Barton said he thought these policy topics are being referred back to staff for further evaluation. Some of them will come back as they look here and some will be modified. Some of them require policy changes and policy implementation.

Council Member Cordell stated if the Motion is approved, a follow up motion will be needed. Any action taken by a Council at the beginning of terms or the end often binds future councils. The motion basically approves a tiered approach that the P&S Committee would review. It is not clear whether staff is being directed to pursue and bring back to Council at some point a policies 09/17/2007 102-200
and regulatory requirement such as mandatory recycling. It is necessary to be somewhat specific in directions to staff.

Council Member Mossar said she would agree to include that particular direction in the Motion because it is the first tier, as well as to direct staff to come back with a list of programs with minor budgetary impacts.

**INCORPORATED INTO MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to direct staff to return to the Council with a list of programs with minor budgetary impacts recommended for immediate implementation.

Council Member Cordell also recommended mandatory recycling and product bans. Staff should be directed to start working on that even though it probably will not come back before several Council Members leave.

Council Member Mossar said it would be easy to say yes but it is a big question and she is not comfortable putting that in the Motion.

Council Member Cordell said that is her only concern so that staff does not waste its time studying some issue that is not approved by the Council.

Council Member Mossar said the recommendation includes policies such as mandatory recycling and product bans to give staff direction on whether to pursue such actions in conjunction with the start of a new collection contract in 2009. She noted her Motion includes the section “Recommendations down to Committee Review and Recommendations.”

Vice Mayor Klein said he thinks that the Zero Waste Operational Plan is a fascinating document; a terrific job by citizens but it deserves to be reviewed by Council recommendation by recommendation. He stated he is in favor in concept of the plan and to direct staff to begin identifying costs and funding mechanisms for specified programs. There needs to be a mechanism where Council goes through the Zero Waste Operational Plan in the same way we go through a budget. It is essential to be careful as to what is being approved. He recommended that staff come back with an analysis to lead Council through everything in the Operational Plan.

**SUBSTITUTE MOTION:** Vice Mayor Klein moved, seconded by Kishimoto, to approve the general direction of the Zero Waste Operational Plan and to direct staff to: provide Council with a list of the recommended programs that would have minor budgetary impact; begin identifying costs and funding mechanisms of the various recommendations of the Plan and identify costs and critique specified programs to include in the Request for Proposals (RFP) for the waste hauling contract. Council would provide guidance to the staff that they are: in favor of mandatory product bans; the regional facilities

09/17/2007
approach in the RFP for new collection services with the possible exception of the relocation of the Recycling Center as well as the Hazardous Facility and to remove any size reference of the program.

Mayor Kishimoto said a timeline is not being set tonight by asking staff to come back with recommendations of what is feasible. Regarding the regional facilities for the recycling and household hazardous waste, justification for the 2.2 acres needs to be made.

Mr. Roberts replied removing a reference to a specific size of any particular nature is fine. Staff will return to Council with specifics to justify what is needed.

Mayor Kishimoto said the current drop-off site is less than half an acre.

Mr. Roberts said the issue of the temporary location of the recycling center is not part of this Plan. This Plan is a process for studying where the permanent location should be after that time limit that you suggest for a temporary location would expire.

Mayor Kishimoto said she understood there would be a temporary and a permanent location. She asked whether it would be made clear to the P&TC that it was only a vague conceptual approval at the Council level during the budget process.

Mr. Roberts said he believed the Chair of the P&TC understood that.

Vice Mayor Klein said he did not feel this discussion was appropriate for Council to be doing since it is not on the agenda. He did not like the idea of advising the P&TC what they should recommend.

Mayor Kishimoto said it was an interpretation of what the Council has approved.

Council Member Drekmeyer stated the Plan is an amazing document and when covering this much material can be very challenging. However, this is one of the most exciting things that we are doing in Palo Alto. This is an opportunity to be leaders beyond what we have been in the past. He noted he also had a similar question to Council Member Morton’s and asked Vice Mayor Klein to explain the difference between the Substitute Motion and the Original Motion.

Vice Mayor Klein said he thinks his motion differs in a variety of ways from the staff recommendation. He stated he believes the Council needs to go through the plan item by item. Either the Plan is approved or not. If you
approve it then you don’t have the further discussion. The Substitute Motion takes a more discreet approach rather than a broad sweeping approach.

Council Member Mossar said the argument is about semantics even though everything being discussed is important. She noted she is uncomfortable with the Substitute Motion because although she may personally approve of product bans and mandatory recycling she has been on the Council when mandatory actions were taken and it was disastrous. Staff will pursue mandatory recycling and product bans but it will be put it through a public process to get public buy-in. This City has been an environmental leader on a number of issues and we have led the region in water quality. This has been done by cooperative programs with the various polluters. The City of Palo Alto did that and we did not do it by mandatory programs. The public must be involved in the conversation. There are the top 10 waste prevention priorities for the City. Development of this Plan was not private but the individual policies have not been vetted in a public session.

Council Member Beecham said he agrees with a lot of Council Member Mossar’s comments but believes there needs to be a strategic plan on how we spend the people’s money in order to get the biggest bang for the buck. This is not it. It is a good Plan and may be a good way to start but without that overall plan limited resources will be misspent.

Mayor Kishimoto said there is one more speaker and then the public hearing would be closed.

Stephanie Munoz, 101 Alma, said she would like to suggest that Council direct staff to write to the municipalities and the county directors in the three Westbay counties saying Palo Alto has received significant testimony urging us to ban Styrofoam food containers. I would like to see you put the ban for the Styrofoam food containers on the agenda as soon as legally possible. Susan Arpan should tell all the businesses on University Avenue and California Avenue to join the curbside program and put the papers out in a box, bag or a plastic container out on the curbside.

Council Member Kleinberg said she was feeling that if she votes in favor of this she is voting for it in principle because there is so much detail and this is a wonderful document. It is a remarkable leap forward for the kinds of things that we really care about and is something a previous group did direct staff to work towards. We are not voting for ordinances tonight. Section 7.0, Recommendations and Action Plan, the very first policy recommended is to make waste prevention the number one priority. She is voting for the principle, the ideas, the guidance it is giving staff and the understanding that staff will return with some hard nosed ideas presented to study and adopt. She stated she would support the original Motion to adopt in principle the Zero Waste Operation Plan and the rest of the recommendations.

09/17/2007
Council Member Morton said he would vote for the original Motion as well.

Vice Mayor Klein said he has tried to be specific in the Substitute Motion by saying the general approach is being approved in principle. As for the comment that Council Member Mossar made about mandatory programs, we are not adopting any specific programs.

Council Member Cordell said she would support the Substitute Motion because she believes it is imperative direction be given to staff and the original motion does not do that. For the benefit of staff, if nothing else, the substitute motion is important.

**SUBSTITUTE MOTION PASSED:** 5-4, Barton, Beecham, Morton, Mossar no.

Assistant City Manager Emily Harrison clarified the assignments do not have to be completed before discussions begin about the new waste hauling contract because staff will return and will have detail of the elements to the Zero Waste in the refuse hauling contract.

**COUNCIL COMMENTS, ANNOUNCEMENTS, AND REPORTS FROM CONFERENCES**

Council Member Morton noted as liaison to the 2009 Senior Games, he attended the first meeting of the major sponsors of the Games and their visit to the Stanford facilities.

Mayor Kishimoto noted she attended the Sundance Mayor’s Summit on climate Protection. The conference was sponsored by the International Consortium of Landscape and Ecological Engineering (ICLEE).

Mayor Kishimoto reminded her colleagues there would be a Brown Bag meeting on September 26, 2007 at 4 p.m. in the Council Chambers regarding Financing Options for Green Initiatives for Individual Homeowners, Businesses and Government. She noted on Saturday, September 15, 2007, a Golden Spike Ceremony was held regarding the creation of a trail tying Foothill Park with Los Trancos from the Bay to the Ridge and thanked Council Members Mossar and Kleinberg for their work on the negotiations on the Bressler Property. Mayor Kishimoto requested an update from the City Manager on the Valley Transit Authority (VTA) shuttle.

Assistant City Manager Harrison stated a kick-off meeting was scheduled for September 25, 2007; the VTA and the City Community Bus Study, which included Stanford, the Marguerite, the Palo Alto Unified School District (PAUSD) PTA, and the Neighborhood Associations. Two community meeting 09/17/2007 102-204
workshops would be scheduled; the first meeting for community input had not been scheduled; the second meeting with the draft service proposal was scheduled for November 14, 2007 and would be with the Planning and Transportation Commission. The final plan would go to the VTA Planning Operations Committee in December 2007 with the VTA Board of Directors receiving the plan in January 2008.

Mayor Kishimoto noted she and Supervisor Liz Kniss were working on the Palo Alto Walks and Rolls campaign to be held the first week of October 2007. A community bike ride was scheduled on October 6, 2007.

**ADJOURNMENT:** The meeting adjourned at 9:45 p.m.

---

**ATTEST:**

City Clerk

**APPROVED:**

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.

09/17/2007
Memorandum

TO:        Mike Sartor
           Assistant Director Public Works

FROM:     Evan Goldin
           Management Specialist

DATE:     February 15, 2008

SUBJECT:  Review of Potential Impacts of Requiring Prevailing Wage Rates on all
           City Construction Projects

DISCUSSION
What is Prevailing Wage and What Are Its Origins?
Prevailing wage laws require public works contractors to pay their employees standard local
wages. They are seen as a means to prevent contractors from reducing wages to better compete
for construction work. Proponents argue that prevailing wage laws “remove wages from the
equation,” and ensure higher-quality construction.

The laws first originated as state enactments in the late 1800s. The biggest milestone for the
laws, however, was the passage of the Davis-Bacon Act of 1931, which mandated the payment
of prevailing wages on all construction projects that receive more than $2,000 – an amount that
has remained unchanged today. The Act was a response to a construction contract for a hospital
in New York City, which was won by a firm that sought to bring in cheap labor from the South.
Construction firms in New York and national labor leaders lobbied Congress, arguing that the
government should not use its massive economic might to drive down wages. Instead, it should
help support and cultivate a highly skilled, highly paid construction workforce.

In subsequent years, especially during the height of the Great Depression, many states and
localities passed similar prevailing wage laws. Most states, including California, now have such
laws, meaning that public works projects in those states that meet various thresholds of state
funding must pay prevailing wages.

How is Prevailing Wage determined?
The definition of a “prevailing wage” has long been a point of contention. The original Davis-
Bacon Act stated that workers will earn “wages that will be determined by the U.S. secretary of
labor to be prevailing for the corresponding classes of laborers and mechanics employed on
projects of a character similar to the contract work in the city, town, village, or other civil
subdivision of the state in which the work is to be performed.” The Act did not explicitly call for
the application of union wages on affected projects, but the Department of Labor’s practices
have often resulted in such use of union rates.
The Davis-Bacon Act has resulted in the use of the "modal" method to determine prevailing wages. Originally, the Act was carried out such that if more than 30 percent of workers in a specific employee classification were paid the same wage, that wage was deemed to be "prevailing" and thereby was made the prevailing wage for that job type. President Reagan, however, raised that minimum to 50 percent, so that if the majority of workers in a classification are earning the same wage, that wage is deemed prevailing. If the majority of a classification of workers, however, is not earning the same wage, the wages of those employees are averaged to calculate the prevailing wage.

**Prevailing Wage in California and Local Municipalities**

California passed its prevailing wage law in 1931, the same year the federal Davis-Bacon Act was passed. California’s law, Sections 1770-1781, is one of the more stringent of state-level prevailing wage legislation, stating:

> Except for public works projects of one thousand dollars ($1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

This law has come to mean that any if any public works project receives more than $1,000 in state funding, prevailing wage law is triggered. Even if the vast majority of funding comes from municipal or private sources, the law still applies if the project receives more than $1,000 in funding.

The state’s prevailing wage law applies to all of California’s “General Law” cities — municipalities that choose to govern under the framework of the California Government Code. However, California gives municipal governments the “home rule” option, meaning that they have the choice of operating as General Law cities or choose to operate under their own charter, giving them much wider latitude in running their own affairs. These municipalities — known as “Charter Cities” — can make their own decision regarding prevailing wage in cases where funding is wholly local. Most Charter Cities have chosen to require the payment of prevailing wages on local projects. In the case of Palo Alto, however, the City has elected not to pay prevailing on local public works projects to date.

**Survey of Municipalities**

To further examine the policies of other California municipalities regarding prevailing wage law, the City of Palo Alto surveyed dozens of other cities on the topic. The survey was sent out to all members of the Association of Bay Area Governments, as well as to all Charter Cities that had email addresses available. Forty-eight municipalities responded to the survey. Usually, the respondents were public works officials, though a few city managers replied as well. The findings are summarized below:

**Question 1:** Does your city require contractors to pay prevailing wages on any municipal contracts?
As we can see from the results of this question, requiring the payment of prevailing wages is the norm among California municipalities, even Charter Cities. Out of the 48 cities surveyed, only six do not require municipal contractors to pay their employees prevailing wages. Of our sample, 32 were Charter Cities — the only ones allowed to not require prevailing wages.

As a point of reference, cities that answered “No” to this question were instantly sent to the end of the survey, as there was little other data of use that could be gathered from them. Accordingly, the pool of respondents is smaller for the rest of the survey.

**Question 2: If possible, estimate by what percentage paying prevailing wages affect your overall project costs (not just wages). Be sure to note whether it is an increase or decrease:**

Twenty-eight cities answered this question. Of those, 13 cities responded with a numerical answer. Many such answers were a range between two digits, such as “Increases cost by 30%-40%”; in these cases the average of the two digits was taken. Most of the others either simply stated, “don’t know,” or claimed to have no basis for comparison. The answers from those that provided percentage changes ranged from a low of 5 percent to a high of 35 percent. All replies claimed positive project cost increases. Of the respondents, the average stated overall project cost increase was 20.6 percent.

Three of the respondents seemed supportive of prevailing wages. One suggested that higher productivity might lead to lower overall project costs. Another noted that the three biggest city contractors are union, so they pay prevailing wages regardless. The third argued there are hidden costs to not requiring prevailing wages:

Certainly there are “hidden” costs of not requiring that prevailing wages be paid. Those are costs that are borne by taxpayers for health care of the uninsured and other
government assistance that may be needed when workers receive no retirement or training programs.

**Question 3: What impact does prevailing wage have on the quality of construction in your city?**

<table>
<thead>
<tr>
<th>Response</th>
<th>Number</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Noticeably higher quality</td>
<td>5</td>
<td>25%</td>
</tr>
<tr>
<td>Minimally higher quality</td>
<td>1</td>
<td>5%</td>
</tr>
<tr>
<td>No impact on quality</td>
<td>13</td>
<td>75%</td>
</tr>
<tr>
<td>Lower quality</td>
<td>1</td>
<td>5%</td>
</tr>
</tbody>
</table>

The vast majority of cities that responded to this question with a definitive answer believe that prevailing wage does not have a noticeable impact on the quality of construction. Six claimed to not to know or to not be able to judge well enough to respond. Eighty percent of those believe that requiring prevailing wages does not increase quality at all, and one respondent even claimed it lowered quality (though it’s likely they were including other factors in their judgment).

Of those that believed it did not impact quality, many were of the view that “prevailing wage does not seem to be the issue, competence or skill level is more of the issue.” Another noted that prevailing wage is not a determinant of quality; project specifications are the determinant:

> Regardless of paying or not paying prevailing wages, the contractor need to construct the improvement in accordance with the plans and specifications, and the City's construction standards.

The cities that noticed an increase in quality due to requiring prevailing wage believe that paying prevailing wages ensures a project a high-quality workforce. One noted simply, “Paying prevailing wage ensures that quality tradesman work on City projects.” Another believed that requiring prevailing wages “may make it more difficult for less experienced contractors to bid.”

**Question 4: How does prevailing wage affect the number of bidders on public construction projects in your city?**

After evaluating the results of this question, one matter seems certain: requiring prevailing wage does not increase the field of bidders. All respondents either replied that they believe prevailing wage decreases the field of bidders, has no impact whatsoever or they were unable to provide an answer.
The respondents were almost evenly split over the issue. Twelve noted that prevailing wage reduces the number of bidders, and 11 believe that it has no impact. Many made statements such as “less bidders are willing to participate.” One went on to explain:

Prevailing wage has less effect on the larger projects. On smaller projects ... you have small contractors potentially wanting to bid but won't, due to the fact that they are not tooled up to produce the paper work for Certified Payroll. These contractors may even pay prevailing rates or above, they just don't want to hassle with extra paperwork and the costs to produce it.

However, many cities also argued that prevailing wage did not seem to have an impact. One city noted that “Our contracting community has a high number of government (state, county and city) contracts to bid on, so they are used to it.” Another said:

A majority of our projects are large-scale projects that only the big construction companies can bid on due to bonding requirements. These bigger construction companies at least pay union scale which in most cases equal to prevailing wages.

Overall, while the field was split on the issue, since the majority of the cities found a measurable impact, it’s reasonable to assume that requiring wage does limit the pool of bidders, at least on occasion.

*Question 5: Are any construction projects excluded from prevailing wage requirements, such as maintenance? Please explain:*

One of the goals of the City’s study was to find out how uniformly prevailing wages requirements are applied. Obviously, in General Law cities, all municipal contractors must pay prevailing wage for projects over $1,000. However, in Charter Cities, there are widespread
differences in the application of prevailing wage regulations. Many Charter Cities have decided
to mandate the payment of prevailing wages in some cases, such as all projects over a certain
monetary threshold, but not require it in other cases, such as on maintenance projects. The results
"Are any construction projects excluding from prevailing wage requirements" are as follows:

<table>
<thead>
<tr>
<th>Response</th>
<th>Number</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>11</td>
<td>44%</td>
</tr>
<tr>
<td>Some maintenance</td>
<td>9</td>
<td>36%</td>
</tr>
<tr>
<td>Yes</td>
<td>2</td>
<td>8%</td>
</tr>
<tr>
<td>Projects w/ affordable housing</td>
<td>1</td>
<td>4%</td>
</tr>
<tr>
<td>Public works less than $25k,</td>
<td>1</td>
<td>4%</td>
</tr>
<tr>
<td>maintenance less than $15k</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Some</td>
<td>1</td>
<td>4%</td>
</tr>
</tbody>
</table>

The application of prevailing wage regulations varies greatly among California cities. More than
50 percent of respondents — if you include those who responded “yes,” “some,” “maintenance
less than $15k” and “some maintenance” — exclude at least some types of maintenance from
prevailing wage requirements. If the City of Palo Alto were to adopt this policy, it would
certainly not be alone. A few cities were more specific, excluding only maintenance that was
deemed “routine” or that “extends the life of a public asset.” Policies vary greatly on the matter.

Question 6: List any positive effects that come as a result of paying prevailing wage:

Survey respondents noted a wide range of positive effects. The comments generally fit into the
following categories:

- Supportive of labor
- Evens the playing field
- Assures that workers are being treated and paid fairly
- Higher wages allow people to live closer to work
- More professional bidding pool
- Higher-quality work

Most respondents did not leave lengthy comments. Many simply noted that “Paying of prevailing
wage evens the playing field for all contractors bidding on the projects.” The most common
comment regarded how paying prevailing wages increased the quality of life of construction
workers, such as:

It gives some assurance to the City Council that contract employees are treated
fairly and are receiving an equitable wage with benefits consistent with that of City
employees.

Question 7: List any negative effects that come as a result of paying prevailing wage:
The comments generally fit into the following categories:

- Higher costs
- Fewer projects can be built
- Need for extra staffing and paperwork for compliance monitoring
- Smaller pool of bidders

The negative effects respondents pointed to was much more narrowly focused than the list of positive effects. Higher costs were the main drawback cited by those who filled out the survey. One respondent noted,

> The higher costs that the City/Agency needs to pay does not financially justify the relative limited benefits to few residents and majority of non-locals. Makes region less competitive. Substantial administrative/monitoring burden.

Many agencies made note of the added burden that compliance monitoring can place on a municipal government. One respondent said, “Union organizations frequently request copies of certified payrolls from non-union contractors. This sometimes approaches level of harassment.” Another said simply, “paying prevailing wages … does not assure that you are getting quality or dollar-for-dollar value.”

**Question 8: List any additional comments on the topic:**

Excerpts of note are as follows:

For larger projects, where the majority of the work is done by union labor anyway, prevailing wage is not an issue.

If most of the contractors in your area are union, it may make very little difference, in which case maybe it isn't worth fighting about.

Keeping up with Certified Payroll from the City's side is becoming more and more time consuming — collecting, verifying the payroll. Through the Public Information Act, we are receiving more and more requests for copies of the submitted payroll. (Note: it appears that these requests for copies are only directed to contractors that are non-union). Paying a prevailing wage and securing benefits to employees is a good thing when all is fair. I think [the issue is] not so much what is being paid as much as the competence of the contractor and their employees being able to perform.

**Major Academic and Government Research**

A number of academic and government studies examining the costs and benefits of prevailing wage have been issued. Generally, these studies fall into three different camps:

- Pro-prevailing wages studies, mainly issued by university-level academics
- Anti-prevailing wage studies, generally conducted by think tanks and academics
- Government studies, mainly issued by commissions and budget offices at the state and national levels

The most effective way to summarize these reports is to review each category. A listing of the reports reviewed is included at the end of this memorandum.

**Pro-prevailing wage**

The largest numbers of studies weigh in favor of prevailing wage. Many of these studies seem to be fairly insular, regularly referencing the other studies (a fairly common practice in little-studied fields of academia). Arguably, the most pre-eminent academic in the pro-prevailing wage arena is Peter Philips, a Ph.D. at the University of Utah’s economics department.

Philips studies have focused on a couple different issues. In a study that compared school construction costs in three Midwestern states, Philips found that, after adjusting for inflation, the difference in costs per square foot of new school construction between prevailing wage and non-prevailing wage projects was statistically insignificant. Moreover, he found a number of notable, negative outcomes to the repeal of prevailing wage laws. Firstly, Philips argues that average construction earnings fell almost $2,000 in states that repealed their laws. After Utah’s repeal of its prevailing wage law, construction injury rates increased 14 percent and the percent of road construction projects in Utah that experienced cost overruns went from 2 percent to 7.3 percent. Most important, Philips claims that Utah did not benefit financially from the repeal; because of the rippling effect of decreased incomes, the state’s overall tax revenues decreased. Philip’s final point, however, doesn’t seem to account for the alternative uses — or rippling effects — of the saved money.

The other studies argued that prevailing wage offered a number of additional benefits. Most concentrated on the idea that prevailing wage laws nurture and sustain a well-trained, highly skilled construction workforce. Many argue that this is especially important considering that there were 1,186 construction deaths in 2005, more than any other industry. Furthermore, while Ph.D. Mark Prus found that construction wages are 9 to 15 percent higher in states with prevailing wage laws, he asserts that — all other factors aside — prevailing wage requirements only result in a 3.8 percent increase in overall construction costs, a statistically insignificant amount.

One of the most interesting pro-prevailing wage studies was conducted by Bob Gasperow, of the Construction Labor Research Council, in 2001. Gasperow’s study examined differences between highway construction in “low-cost labor” and “high-cost labor” states among 26 states that spent the most in highway construction. Despite higher labor costs per mile, the total cost of highway construction in the high-cost labor states was $1,017,992 per mile, compared with $1,141,049 for low-cost states.

**Anti-prevailing wage**

The number of papers that argue against the rationale of prevailing wage is smaller than the number of papers that support it. This is likely because — if we assume even a relatively minor increase in costs under prevailing wage — labor groups and construction firms are the direct beneficiaries. However, people who stand to lose are taxpayers, a much more general group that
is less able to coordinate and fund studies of the issue. Nonetheless, a number of anti-prevailing wage studies have been published, mainly from conservative think tanks and universities.

The MacKinac Center for Public Policy issued the most comprehensive think-tank study. The study asserts that prevailing wage forces contractors to pay 40 to 60 percent higher wages, leading to an eventual 10 to 15 percent increase in overall costs. The main beneficiaries, they claim, are union construction workers, who don’t have to compete with non-union workers on wages. They also found that there is no evidence that quality is higher under prevailing wage.

Many of the other anti-prevailing wage studies also focus on the increased cost of requiring prevailing wages. The three other studies that examined the issue found that prevailing wage raised overall construction costs 26.1 percent, 15.5 percent and 11 percent, respectively. Two of those studies were specific to California cities. Furthermore, while some may see higher construction wages a boon, one study points out that higher wages — caused by prevailing wage laws — may lead to increased wages across the entire construction industry, raising costs for all types of projects and decreasing the number of projects built. Economic theory would suggest that this would lead to a decrease in the number of construction workers. Lastly, one study found that prevailing wages were 33 to 50 percent higher than the actual market rates construction workers earn.

**Government Studies**

Studies by government organizations provide some of the most interesting insight into the issue of prevailing wage. These studies should, in theory, have no agenda beyond uncovering what is in the best interest of taxpayers. It is of interest that all of the government studies examined indicated that prevailing wage laws do not save money. However, some studies did equivocate about whether the benefits of prevailing wage — once other unquantifiable factors were taken into account — may be higher than the costs.

The two most-referenced government studies are both studies conducted by state legislative research offices, in Kentucky and Ohio. In Ohio, its Legislative Service Commission issued a study analyzing the effect of a 1997 bill that exempted school districts from requiring prevailing wage. The study, which asked contractors for bids under and not under prevailing wage conditions, found that repeal did save money — especially on smaller projects. It asserts that the exemption yielded 1.2 percent in total cost savings in new construction, 10.7 percent savings in alterations and 19.9 percent savings in additions. This seems to strongly support the notion that the repeal of prevailing wage has cost savings somewhat correlated to the decreasing size of the project.

Furthermore, the study surveyed school districts to discover if they had noticed any decrease in the quality of construction. Six percent of respondents said that they had noticed higher quality construction since the exemption, 91 percent noted no change and 3 percent said quality had decreased. In one very unique case, the survey discovered that one school district had put a project out to bid under prevailing wage conditions and then rebid the project without such requirements. The winning bidder in the second case, without prevailing wage, was 5.8 lower, yielding a cost savings of more than $500,000.
In Kentucky, the legislature also ordered its research arm to conduct a study on the issue of prevailing wage. The study made a notable number of findings, including learning that 60 percent of workers surveyed were paid more on prevailing wage jobs than on market-rate jobs; the average increase for prevailing wages was 24 percent over the workers' market rates. Among the 141-page reports other findings were:

- Ten percent of non-union contractors said that prevailing wage affects their quality of construction. One-third of union contractors said the same.
- 5.7 percent of non-union and 27.9 percent of union contractors said prevailing wage affects workplace safety.
- 90.7 percent of non-union and 24.4 of union contractors said prevailing wage laws raise construction costs.
- 55.4 percent of small firms (10 or fewer employees) said prevailing wage laws have a negative effect on their business, compared to 73 percent of large firms.
- 95.7 percent of cities and 83.3 percent of municipal utilities that responded believe prevailing wage laws increase construction costs, while, respectively, 7 and zero percent believe laws increase quality.
- More cities believed prevailing wage legislation decreases — not increases — quality of construction

It is worth noting that the report did not call for the abolishment of prevailing wages in Kentucky. The report did not take an opinion on the issue. However, its main overall conclusion on the effectiveness of the legislation is as follows:

To the extent that quality is increased, prevailing wages are an inefficient method to increase quality. The wage requirement results in contractors paying higher wages with no guarantee that these additional wages will result in quality improvements.

Aside from the Kentucky and Ohio are reports, there are number of smaller government reports on the topic that are worth noting. The federal Congressional Budget Office and General Accounting Office have both issued reports on prevailing wage, with the GAO asserting that repealing the Davis-Bacon Act would save $1.2 billion annually. The CBO study, written during the Reagan era, was likely the impetus that caused Reagan to change the definition of prevailing wage to the wage earned by 50 – as opposed to 30 – percent of local wage earners. It found that repeal of Davis-Bacon would save $13 billion (2007 dollars) over five years and that some 20 percent of open shop contractors have no interest in bidding on prevailing wage contracts. It also recommended raising the threshold at which the prevailing law is triggered, as the $2,000 trigger was set in 1931 and has never been increased.

The final government study of note is another state legislative study — Maryland in this case — conducted in 1997. Maryland’s Department of Fiscal Services, which issued the study, asserted that repeal of the prevailing wage law then on Maryland’s books would save the state between 5 and 15 percent on public works construction. Lastly, the study found that, “In 1996, Maryland dished out $622,000 in fines to contractors who were illegally paying their employees less than prevailing wages.”
Overall Studies Summary
There is little agreement in the academic community on prevailing wage. Academics seem isolated into two camps — either believing prevailing wage legislation is definitively beneficial for society or definitively detrimental. These studies seem to have found different conclusions on the same topic, so it is left up to the reader to decide.

The government studies should be the most unbiased of the group, as they have in theory, no interest but that of the people. The major government studies, however, all appeared to find that prevailing wage did raise the cost of construction projects. Most did note, however, that prevailing wage does have a multitude of benefits, even if the benefits are not directly outweighed by the costs.

Contractor Survey
The array of research on prevailing wage did provide a number of insights into the views of construction contractors on the topic of prevailing wage legislation. To best judge the affect a change in Palo Alto’s prevailing wage policy would have on local contractors, staff decided to conduct its own study.

An eight-question survey was prepared by staff and posted on a web-based polling service. Staff then assembled a list of 279 contractors who have received contracts from the City and would possibly be affected by a future change in the city’s prevailing wage policy. Of these contractors, 49 responded to the survey. The findings are summarized below:

Question 1: How many employees are on your firm’s payroll?

To get a sense of the size of firms being examined, staff asked the firms to share their size. The number of employees ranged from just one to 1,700. The average number was 134, and the median was 38, with only 15 firms having more than 100 employees.

Question 2: If you have worked on projects subject to prevailing wage, are the prevailing wages set by the state of California about the same as those usually paid to your construction workers for privately funded projects?

One of the most common and most important questions raised by prevailing wage is what impact it has on construction wages. One of the main roles of prevailing wage legislation has always been to “take wages out of the equation” for firms bidding on public works. Proponents argued that firms should be utilizing efficiency and high-quality training to achieve reductions in bid costs, not slashing wages to be the low bidder. By paying prevailing wages, proponents argued the government would be using its massive economic weight to drive down wages. Instead, public works construction employees would be receiving wages deemed to be “prevailing” in the area. However, since the early days of the legislation, detractors have argued that the wages deemed “prevailing” are usually far from market rates — and almost always higher. So as part of the survey, staff sought to determine whether wages paid by contractors on prevailing wage projects were approximately equal to those paid on private projects.
As one can see, many firms are in fact paying wages essentially equal to prevailing wages. For union contractors, this is usually the case, as the union rate for an employee is often equal to the prevailing wage — largely because California uses the modal method to determine prevailing wage. Yet, 22 firms noted that they do not pay their employees the same wages for prevailing and non-prevailing wage jobs. It is worth mentioning that a couple firms did comment that they generally pay above prevailing wage. More conclusions can be made with this data once they are overlaid with the following question.

**Question 3:** When hired for a prevailing wage project, do you use the same workforce that you would use for non-prevailing wage projects or do you hire different employees? Explain if necessary.

One question to which staff was seeking the answer was whether, when a firm is hired for a prevailing wage job, they simply use the same employees. If this turned out to be the case, this would seem to counter the idea that paying prevailing wage increases the quality of construction. If firms used the same workforce regardless of prevailing wage conditions, it’s unlikely paying prevailing wage would increase or decrease quality. To gauge this, we asked firms if they use the same workforce on both types of jobs:
As these data show, few employers are using separate workforces for prevailing and non-prevailing wage jobs. Seven employers said they do in fact use different employees for prevailing and non-prevailing wage jobs, but 42, the overwhelming majority, simply use the same employees. The results of this question are even more interesting when you only examine them from the pool of those firms that pay their employees different wages, depending on the job type.

As the graph shows, nearly all of the firms that vary their wages depending on prevailing wage use the same workers under both conditions. This would seem to run counter to the argument that paying prevailing wages increases quality. If firms are paying different wages yet using the
same employees, it seems far-fetched to believe there is a measurable increase in quality. Overall, few companies are maintaining separate workforces, as one respondent explained, noting they used the "same employees but they are paid a different rate [higher than private]". A handful noted the impracticality of paying workers prevailing wages in some cases, but not in others:

It is almost impossible to find qualified workers who receive prevailing wages for work in every other location that are willing to work for a lower wage in Palo Alto. Low wages equal low work quality.

Question 4: Would prevailing wage requirements deter you from bidding on a project? If so, why?

One of the most common arguments raised by detractors of prevailing wage is that the regulations deter firms from bidding and limit the potential pool of bidders. This is especially true, they argue, with smaller firms who do not bid many prevailing wage jobs. The compliance costs — paperwork, reporting — places a strain on some bidders and many do not want to have different pay scales for different jobs. To gauge the truth of this argument, we asked if prevailing wage requirements would deter firms from bidding on a project.

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>Sometimes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Series1</td>
<td>8</td>
<td>3</td>
<td>38</td>
</tr>
</tbody>
</table>

For vast majority of contractors, the compliance costs of prevailing wage and other factors are not enough to deter firms from bidding on prevailing wage projects. However, 11 out of the 51 firms that responded to this question — 21.6 percent — did indicate that prevailing requirements did, at least sometimes, deter them from bidding on a project. The firms noted a number of
reasons for not pursuing prevailing wage projects, such as reporting requirements being "burdensome. We operate on short margins and additional administrative requirements are a deterrent." Other respondents went further:

In addition to the raw cost of wages, there is the cost associated with compliance paperwork, which is very burdensome. For instance, we add a prevailing wage factor of $5,000 minimum to every bid for paperwork. On a $20,000 bid that costs the client an additional 25 percent, has translated into very minor increase in paychecks for some employees. Of course this money has been taken from somewhere else such as Christmas bonuses, performance bonuses, new equipment and raises.

We obviously bid prevailing wage projects at a much higher rate. Unfortunately, there are many companies that will bid prevailing jobs lower, and knowingly not pay the required wages.

As these companies show, there are a number of firms who are deterred by prevailing wage regulations. Even if they are a minority, this finding shows that prevailing wage requirements will decrease the pool of bidders. Following basic economic principles — that a decrease in supply will lead to higher prices — this conclusion suggests that prevailing wage raises the price of the submitted bids, due to decreased competition. One respondent noted that his or her firm is not deterred by prevailing wage, but "we just charge about 50 percent more for the same work." However, not all contractors were of that mindset. When asked whether they were deterred, one respondent said:

Not at all. On the contrary, it would make Palo Alto more attractive. All contractors would be competing on a level playing field.

Another contractor noted that the requirements truly allow them to take wages out of the equation:

Prevailing rates keep the bidding competition on the same scale. Labor costs the same for our competitors. On private jobs there are non-union contractors taking our work at a lower than union rate.

Lastly, it's worth noting that prevailing wage wasn't a deterrent to small companies alone. The average size of the 11 firms that noted being deterred by the regulations was 233, and five of the firms had more than 50 employees. Therefore, while many studies have argued that prevailing wage requirements disproportionately harm small companies, the firms that claimed to be discouraged by prevailing wage were both large and small — and evenly spread at that.

*Question 5: Approximately what percent of your total project cost, on average, is made up by labor?*

Opponents of prevailing wage argue that the laws raise the cost of construction by increasing the wages paid to construction employees. However, the impact of higher wages varies directly with the proportion of the total construction cost that is made up by labor. As a result, staff sought to find the average proportion of total construction costs that are made up by labor among city
contractors. The survey asked respondents, “Approximately what percent of your total project cost, on average, is made up by labor?” Answers ranged from 15 percent to 80 percent. Of the 39 firms that responded to the question numerically, the average was 45.7 percent. Almost half of the respondents reported that labor costs made up at least 50 percent — the median answer — of total project costs. Answers to this question will provide additional insight when compared to the following question.

*Question 6: By what percent does paying prevailing wages increase or decrease your overall project costs?*

Likely the most important and controversial debates surrounding the issue of prevailing wage is by how much the law actually increases the overall cost of public works construction. Many studies have tried to analyze this, with wildly different findings. Staff asked study participants the percentage change in overall costs caused by prevailing wage.

Thirty-eight firms responded to the question, and their answers ranged from an increased cost of 30 percent to no change in costs whatsoever. The average cost increase cited was 8.24 percent. It’s worth noting that half of the respondents did note no change in costs. However, if a municipality is trying to judge the affect of imposing prevailing wage law, it would be reasonable — based on answers to this question — to assume a 8.24 percent increase.

*Question 7: List any positive effects that come as a result of paying prevailing wage.*

![Bar chart showing positive effects of paying prevailing wages](chart)

<table>
<thead>
<tr>
<th></th>
<th>Contractors</th>
<th>Employees</th>
<th>Level playing field</th>
<th>Quality</th>
<th>None</th>
</tr>
</thead>
<tbody>
<tr>
<td>Series1</td>
<td>4</td>
<td>6</td>
<td>6</td>
<td>9</td>
<td>17</td>
</tr>
</tbody>
</table>

To help clarify the answers to this question, staff grouped the responses by category. Four of the responses claimed that contracting firms are the main beneficiaries of prevailing wage legislation. Six respondents claimed that the main beneficiaries are employees themselves, while
another six noted that main benefit is leveling the playing field for contractors. Nine respondents pointed to increased quality of employees and work as the main benefit, and 17 reported no benefits whatsoever. A sample of the responses is as follows:

Prevents my competitors from using illegal labor to undercut my pricing.

Enables us to build a quality team. Enables our workers to stay in the area. Quality of work goes up

We tend to pay a competitive wage to our employees that will believe will meet and exceed the prevailing wage provision. We see it as a positive that the City recognizes the need to have contractors fairly pay their employees for the value the bring to the project and the City. We see this a supporting our intent to provide services at the highest value and quality.

Creates equality among all bidders. Provides a livable wage for workers living in the Bay Area. Prevents contracts being awarded to out of area contractors who bring in labor force at a lower wage.

None, other than employees make more money.

Question 8: List any negative effects that come as a result of paying prevailing wage:

<table>
<thead>
<tr>
<th></th>
<th>Confusing</th>
<th>Higher costs</th>
<th>Admin costs</th>
<th>No Negatives</th>
</tr>
</thead>
<tbody>
<tr>
<td>Series1</td>
<td>3</td>
<td>9</td>
<td>15</td>
<td>16</td>
</tr>
</tbody>
</table>

After asking respondents to share any positive effects they felt prevailing wage offered, staff also asked respondents to state the negative effects of prevailing wage. Responses essentially covered
four categories. Firms either felt the requirements were confusing, they led to higher overall project costs, the administrative costs were very burdensome or they felt there were no notable downsides to prevailing wage. The firms that believed prevailing wage does not have significant negative effects did not add much else to the answer, but most of the other respondents had additional thoughts on the subject. One of the respondents that believed prevailing wage was confusing noted, “Inconsistent pay scales disrupt employer-employee relationships and create questions in employee mind as to wages and fringe benefits.” Firms that noted the higher costs had more to say:

There is no advantage professionally. It is all about money. Costs everybody more money. The tracking and documentation is difficult along with the fact that even large firms that are some of the best in the valley will not bid on prevailing wage project. This is limiting. As an example, we bid the Animal Shelter in your city and used a framing contractor that provided us with a very good price. We were apparent low bidder. For lack of funding the project went back out to bid and half way through the bid project the city required prevailing wage. That same framing contractor would not bid now. Consequently we had to go to another framing contractor and subsequently lost the bid. Granted, there were other factors, but this one stood out profusely.

Requiring prevailing wages increases the cost to the project owner with little if any benefit. Requiring a bond on the job will eliminate smaller, less qualified contractors, but prevailing wage doesn’t increase the quality of the bidders or the professionalism of the project. It only increases the payroll for the project and raises the cost of the project for the owner.

Sometimes an employee will be paid the same as another employee and yet not be as qualified or skilled. There is no real merit pay. Also it can drive up the cost a little. People may also equate prevailing wage with union workers, which is not correct. There are may of us open shop contractors that perform prevailing wage work and are not signatory to any unions.

Lastly, the firms that noted the higher administrative costs added, for example, “Hugely increased paperwork, hesitation to bid some projects, greater cost to the city,” and “A lot of expensive paperwork is generated for a minor increase in paycheck for a few employees.”

Question 9: Please add any additional comments on the topic.

In the final question on the survey, which asked for addition comment, answers varied widely. Staff has selected a sample of comments below:

Although we are an open shop company (non union) we believe that paying prevailing wages is good. It insures an even playing field and better quality employees. The employees enjoy a higher standard of living. Without prevailing wages the focus is on bringing in the lowest possible wage earners and quality of construction suffers.

I believe that prevailing wages are necessary and fair. They create a level field of competition and prevent workers from being taken advantage of on public projects.
I wish all jobs were prevailing wage. Why? Because the people are more skilled at their trade, better jobs, and would maybe stop contractors from hiring illegals. Most job sites other than prevailing wage work have no one who can speak English.

A number of firms also decided to expand on the negative aspects of prevailing wage:

We like City of Palo Alto work because it is typically not prevailing wage, which gives us more flexibility on projects. As a resident of Palo Alto I would be disappointed if the City gave this up. It will only increase costs of construction. Especially labor intensive projects.

While our senior technicians receive very little if any adjustment to the wages, the extra administrative burden requires us to charge approximately 50% more for Public Works jobs. In addition, we can no longer offer 2 man crew rates with a senior and junior technician, so the service calls are billed at a substantially higher rate.

Please do not require prevailing wage as this will drive away companies like ours in bidding your jobs.

I always see prevailing wage jobs as a political thing; I don't really see whom it helps. My men are paid well for what they do and have full benefits; I don't need anyone telling me what I should pay them. Once it is policy that prevailing wage must be figured and reported on every job with the city I guarantee the cost of your jobs is going to go up.

Living Wage

The concept of a “living wage” is an alternative to paying prevailing wages, and is moderately similar to the concept of a minimum wage. Unlike the minimum wage, which is an arbitrary wage minimum usually not tied to inflation, a living wage is an amount that would allow employees to realistically live, if frugally, in a locality.

The concept is old — the first living wage was passed in New Zealand in 1896 — and living wage laws have recently been implemented around the Bay Area. San Francisco implemented a living wage of $10 per hour in 2000, when the federal minimum wage was $6.75. Most cities that require a living wage, including San Jose — where the living wage is now $12.86 — and San Francisco, only apply living wage requirements to city contracts, not on all businesses within city limits. Many cities have utilized this approach instead of requiring the payment of prevailing wages.
References


Dunn, S., et al. (Oct., 2005). “The Effects of Prevailing Wage Requirements on the Cost of Low-Income Housing”, Program on Housing and Urban Policy, Goldman School of Public Policy, University of California, Berkeley


