Recommendation from Policy & Services Committee Regarding Adoption of Two Resolutions Calling a Special Election for November 8, 2011 Submitting to the Electorate (1) A Measure To Eliminate the Binding Interest Arbitration Requirement for Disputes with Public Safety Employees by Repealing Article V of the City Charter, and (2) A Measure To Substantially Modify the Binding Interest Arbitration Requirement for Disputes with Public Safety Employees by Amending Article V of the City Charter; and Adoption of an Ordinance Adding Section 2.36.040 to the Palo Alto Municipal Code to Require Impartial Mediation for Impasses in Labor Contract Negotiations

This is a joint report from the City Manager and City Attorney.

RECOMMENDATION

On July 12, 2011, the Policy & Services Committee recommended that the City Council consider adoption of the following matters:

1. A resolution calling a special election for November 8, 2011 to submit to the electorate a measure to repeal Article V of the City Charter to eliminate the binding interest arbitration requirement for disputes with public safety employee organizations, and a companion ordinance adding section 2.36.040 to the Palo Alto Municipal Code to require non-binding mediation for impasses in labor negotiations with all recognized employee organizations.

OR

2. A resolution calling a special election for November 8, 2011 to submit to the electorate a measure to amend Article V of the Charter to substantially
modify the binding interest arbitration requirement for disputes with public safety employee organizations.

DISCUSSION

A. The Way It Is Now
Article V of the City Charter requires binding arbitration to resolve fire and police department employee disputes. It prohibits the City from making any change to existing benefits or conditions of employment for these employees unless and until the parties reach agreement or a determination is made through binding arbitration.

The City and recognized employee organizations, including police, fire and the non-safety unions, may mutually agree to mediate labor disputes. However, mediation is currently not required for any group.

B. Council and Committee Deliberations
In August 2010, the Council considered placing a measure on the November 2010 ballot to repeal Article V, but voted not to place repeal on the ballot in order to have more time to review and analyze the issue.

On May 10 and June 7, 2011, Staff presented information to the Policy & Services Committee regarding the history and policy rationales associated with binding arbitration provisions. On June 7, the Committee voted to return the matter to the Council for direction. On June 20, 2011 the Council reviewed the issue and directed the Policy & Services Committee to make recommendations for language to repeal Article V and for language to substantially modify Article V. On June 28, the Committee considered the issue and gave direction to staff to draft (1) language repealing article V, along with a companion ordinance to require mediation for all employee groups, and (2) language substantially modifying Article V to include certain factors and components discussed at that meeting. On July 12, staff presented language on these items to the Committee and the Committee directed staff to move the items forward to the full Council with minor changes.
The background information and analysis, and prior staff reports on this issue were included with materials submitted for the June 20, 2011 Council meeting, available online at 

The materials considered by the Policy & Services Committee on June 28 are available online at 

The attached resolutions and ordinance reflect the Committee’s requested changes. The attached resolutions also include non-substantive changes intended to clarify the language and correct clerical errors.

C. Repeal of Interest Arbitration and Adoption of Mediation Ordinance
The Council may adopt the resolution proposing repeal of Article V, the binding interest arbitration requirement. If the voters approve the measure, repeal would be effective upon certification and filing with the Secretary of State and would apply to any matter in which an arbitration decision had not become final and binding by that effective date.

If the Council pursues repeal of arbitration, the Policy & Services Committee recommended that the Council adopt an ordinance to establish non-binding mediation as an alternative impasse resolution procedure for all employee groups. The attached ordinance would require the City and employee organizations begin mediation upon a declaration of impasse or 45 days prior to expiration of an agreement, whichever occurs earlier. If the parties are unable to reach agreement within 14 days of beginning mediation, there is no further obligation to mediate. The parties may also mutually agree to forego or discontinue mediation at any time. In order to ensure that dates can be timely scheduled with a mediator, the ordinance requires selection of a mediator 120 days prior to expiration of a contract. These specific time parameters provide two benefits. First, by requiring mediation prior to expiration of a contract, the ordinance sets parameters for timeframes that will more closely align contract negotiations with the City budget, allowing for more accurate planning. Second, they allow for mediation as an additional step in the impasse resolution process but place reasonable time limits on the process, providing some incentive to reach mutual agreement within the timeframe.
If repeal was presented to and approved by the voters and the Council adopted the mediation ordinance, the combination of provisions would mean that the City and public safety organizations would be required to engage in mediation on declaration of an impasse, but if issues were not resolved in mediation, the parties would not be required to go to arbitration and the City could instead choose to unilaterally implement terms and conditions of employment.

In addition, the City and non-safety unions would also be required to engage in mediation on declaration of any impasse. The ordinance would not alter the City’s existing authority to choose to unilaterally implement terms and conditions of employment for these groups, except that mediation would be required prior to implementation.

If the Council chooses to adopt the repeal resolution and mediation ordinance, a second reading for the ordinance would be required and could be scheduled for the August 1, 2011 meeting or for a meeting in September after the Council break.

**D. Modification of Interest Arbitration**

The Council may adopt a resolution proposing substantial modification of Article V. As drafted, the amendment to Article V would be effective, if the voters approve it, upon certification and filing with the Secretary of State and would apply to any matter in which an arbitration decision had not become final and binding by that effective date, except for any arbitration proceeding in which the last offer or offers of settlement have been submitted to the arbitration board for final determination before the effective date of the amendment.

The substantial modification of Article V requested by the Committee is a comprehensive overhaul of interest arbitration. Among other changes, the amendment would:

- Limit interest arbitration to wages, salaries and other forms of pay.
- Exclude from arbitration all other matters, including staffing, operations, work rules, policies and health and retirement benefit plans. Final decision making authority on these items would be returned to the Council and City Manager.
- Align labor negotiations and arbitration with the City’s budget cycle to
improve planning.

• Require the arbitrator to base the award on the City's official financial documents.

• Require the arbitrator to consider current and projected revenue growth or contraction, and the City's other needs, such as programs, services, infrastructure maintenance and improvements, and reserves.

• Require the arbitrator to follow enumerated factors in awarding compensation, including: the City’s ability to meet the cost of the contract from ongoing revenues without reducing City services; recruitment and retention; increases or decreases in compensation for other City workers; the compensation of similar employees in other jurisdictions; and increases or decreases in the cost of living.

• Prohibit retroactive increases in compensation and creation of unfunded liabilities.

• Combine mediation with arbitration to efficiently resolve disputes.

E. Consultations with Labor
As discussed in the June 20 staff report, meet and confer over a charter change on binding interest arbitration is not required because interest arbitration is a permissive, not mandatory subject of bargaining. DiQuisto v. County of Santa Clara (2010) 181 Cal.App.4th 236. However, staff provided the fire and police organizations the opportunity for informal discussion and comment by informing them of the dates the Policy & Services Committee reviewed the item and providing copies of the reports. No oral or written comment was received from those organizations at the meetings.

F. Submitting a Charter Amendment to the Voters
The State Constitution and State Law require voters to ratify charter amendments and repeal measures. A measure will pass if a majority of those voting cast votes in favor of the proposal. Approved measures become effective on certification and filing with the Secretary of State.

To submit a charter amendment to the voters, the Council must adopt a resolution submitting the matter to the electorate. The attached resolutions contain the question that would appear on the ballot, as well as the full text of the proposed measure. To submit a matter for the November 2011 election, the final deadline to adopt a resolution is August 1, 2011.
In addition, the resolutions also direct the City Attorney to prepare an impartial analysis of the measure and set the deadlines for ballot arguments and rebuttal arguments. The Council may also choose to appoint members to prepare and submit these arguments. The deadlines for submitting arguments are established by State law and set forth in the resolutions.

FISCAL IMPACT

The City Clerk and the Santa Clara County Registrar of Voters estimate that the total cost to put one measure on the November 8, 2011 ballot will be $121,800.

ENVIRONMENTAL IMPACT

Repeal or modification of binding interest arbitration and an ordinance requiring mediation for labor contracts are not projects under the California Environmental Quality Act; therefore, no CEQA review is required.

ATTACHMENTS:

- Resolution Calling Special Election for Measure to Eliminate the Binding Interest Arbitration Requirement (PDF)
- Resolution Calling Special Election a Measure to Modify the Binding Interest Arbitration Requirement (PDF)
- Ordinance Adding Section 2.36.040 (Impartial Mediation for Impasses in Labor Negotiations) (PDF)
- DRAFT EXCERPT Binding Arbitration P&S Meeting 07-12-2011 (DOC)
- Public Letter to Council (PDF)

Department Head: Molly Stump, City Attorney
Resolution No. _____
Resolution of the Council of the City of Palo Alto Calling a Special Election for November 8, 2011 Submitting to the Electorate for Special Election a Measure to Eliminate the Binding Interest Arbitration Requirement for Disputes with Public Safety Employees by Repealing Article V of the City Charter

WHEREAS, Article IX, section 1 of the Charter of the City of Palo Alto authorizes the City Council to propose and submit Charter amendments to the voters of the City for approval at any established municipal election date; and

WHEREAS, Article V of the Charter currently requires compulsory arbitration, commonly referred to as binding interest arbitration, as the sole method for resolving disputes with Fire and Police Department employees over all matters involving wages, hours and working conditions; and

WHEREAS, the Santa Clara County Civil Grand Jury issued a report in May 2010 concluding that cities must rein in unsustainable employee costs, and finding that binding arbitration limits the ability of city leaders to craft solutions that work for the City’s budget, resulting in wage and benefit decisions that have been greater than the growth in basic revenue sources; and

WHEREAS, local agencies, including the City of Palo Alto, are currently facing difficult challenges regarding matters affecting the financial viability of local government, and the Council finds and declares that ensuring the City’s financial viability over the long term is critical to the quality of life in and services available to the residents and businesses of the City of Palo Alto; and

WHEREAS, maintaining an effective, efficient and high quality level of City services depends on policies and financial decisions directed toward ensuring the financial stability of the City on a short and long term basis; and

WHEREAS, labor costs are a substantial component of the City’s finances, and high costs can affect the City’s ability to preserve and enhance services; and

WHEREAS, the voters and residents of Palo Alto rely on the City Council to make financial decisions considering both short-term economic impacts as well as the consequences for the City’s long term financial viability; and

WHEREAS, when the City and represented public safety employee organizations are not able to reach agreement on collective bargaining disputes, Article V of the City Charter restricts the ability of the City Council to make decisions on financial matters because it requires that a third party arbitrator make a final decision in any dispute affecting wages, hours and working conditions; and
WHEREAS, because the City Council is duly elected by the electorate of the City of Palo Alto to exercise all powers necessary and appropriate to a municipal corporation and the general welfare of its inhabitants, the Council finds and declares that it is in the best interest of the City, consistent with principles of sound management and fiscal responsibility, and to the fullest extent permitted by State law, to vest in the duly elected City Council final decision making authority over and management of the City’s agreements governing wages, hours or terms and conditions of City employment; and

WHEREAS, in order to ensure that the City has the means to make decisions affecting the City’s short and long term financial health and the flexibility to craft solutions for managing labor costs, the City Council finds that it is in the best interest of the City to propose a Charter Amendment to repeal Article V of the Charter in its entirety, which, if approved, would eliminate the binding arbitration requirement for public safety employee groups and make the dispute resolution procedures under State law applicable to the City’s public safety employees as well as all other represented employee groups; and

WHEREAS, elections will be held on November 8, 2011, in certain school districts and certain special districts in Santa Clara County; and

WHEREAS, pursuant to Education Code section 5342 and Part 3 of Division 10 of the Elections Code commencing at section 10400, such elections may be partially or completely consolidated.

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

SECTION 1. Special Election. Pursuant to Elections Code sections 1405 and 9255 there is called and ordered to be held in the City of Palo Alto, California, on Tuesday, November 8, 2011 a special municipal election. Pursuant to Article IX of the Charter of the City of Palo Alto, this Council orders the following question to be submitted to the voters at the Election:

CITY OF PALO ALTO MEASURE ________:

To provide the City with greater control over employee costs, staffing and services and allow the City Council to make final decisions regarding all matters related to public safety employee compensation, benefits, and working conditions, shall Article V of the Palo Alto City Charter be repealed in its entirety, eliminating the requirement that public safety employee disputes be resolved through binding interest arbitration?

For the Amendment      ___
Against the Amendment   ___

SECTION 2. Adoption of Measure. If a majority of qualified electors voting on such measure shall vote in favor of City of Palo Alto Measure “____”, it shall be deemed ratified and the following provisions shown in strikethrough shall be repealed and deleted from the City Charter:
Article V. Compulsory Arbitration for Fire and Police Department Employee Disputes

Sec. 1. Declaration of Policy.
— It is hereby declared to be the policy of the city of Palo Alto that strikes by firefighters and police officers are not in the public interest and should be prohibited, and that a method should be adopted for peacefully and equitably resolving disputes that might otherwise lead to such strikes.

Sec. 2. Prohibition against Strikes.
— If any firefighter or police officer employed by the city of Palo Alto willfully engages in a strike against the city, said employee shall be dismissed from his or her employment and may not be reinstated or returned to city employment except as a new employee. No officer, board, council or commission shall have the power to grant amnesty to any employee charged with engaging in a strike against the city.

Sec. 3. Obligation to Negotiate in Good Faith.
— The city, through its duly authorized representatives, shall negotiate in good faith with the recognized fire and police department employee organizations on all matters relating to the wages, hours, and other terms and conditions of employment, including the establishment of procedures for the resolution of grievances submitted by either employee organization over the interpretation or application of any negotiated agreement including a provision for binding arbitration of those grievances. Unless and until agreement is reached through negotiations between the city and the recognized employee organization for the fire or police department or a determination is made through the arbitration procedure hereinafter provided, no existing benefit or condition of employment for the members of the fire department or police department bargaining unit shall be eliminated or changed.

Sec. 4. Impasse Resolution Procedures.
— All disputes or controversies pertaining to wages, hours, or terms and conditions of employment which remain unresolved after good faith negotiations between the city and either the fire or police department employee organization shall be submitted to a three-member board of arbitrators upon the declaration of an impasse by the city or by the recognized employee organization involved in the dispute.

— Representatives designated by the city and representatives of the recognized employee organization involved in the dispute, controversy, or grievance shall each select one arbitrator to the board of arbitrators within three days after either party has notified the other, in writing, that it desires to proceed to arbitration. The third member of the arbitration board shall be selected by agreement between the two arbitrators selected by the city and the employee organization, and shall serve as the neutral arbitrator and chairman of the board. In the event that the arbitrators selected by the city and the employee organization cannot agree upon the selection of the third arbitrator within ten days from the date that either party has notified the other that it has declared an impasse, then either party may request the State of California Conciliation Service to provide a list of seven persons who are qualified and experienced as labor arbitrators. If the arbitrators selected by the city and the employee organization cannot agree within three days after receipt of such list on one of seven to act as the third arbitrator, they shall alternately strike names from the list of nominees until only one name remains and that person shall then become the third arbitrator and chairman of the arbitration board.

— Any arbitration convened pursuant to this article shall be conducted in conformance with, subject to, and governed by Title 9 of Part 3 of the California Code of Civil Procedure.

— At the conclusion of the arbitration hearings, the arbitration board shall direct each of the parties to submit, within such time limit as the board may establish, a last offer of settlement on each of the issues in dispute. The arbitration board shall decide each issue by majority vote by selecting whichever last offer of settlement on that issue it finds most nearly conforms with those factors traditionally taken into consideration in the determination of wages, hours, and other terms and conditions of public and private employment, including, but not limited to, changes in the
average consumer price index for goods and services, the wages, hours, and other terms and conditions of employment of other employees performing similar services, and the financial condition of the city and its ability to meet the cost of the award.

—After reaching a decision, the arbitration board shall mail or otherwise deliver a true copy of its decision to the parties. The decision of the arbitration board shall not be publicly disclosed and shall not be binding until ten days after it is delivered to the parties. During that ten-day period the parties may meet privately, attempt to resolve their differences, and by mutual agreement amend or modify any of the decisions of the arbitration board. At the conclusion of the ten-day period, which may be extended by mutual agreement between the parties, the decision of the arbitration board together with any amendments or modifications agreed to by the parties shall be publicly disclosed and shall be binding upon the parties. The city and the recognized employee organization shall take whatever action is necessary to carry out and effectuate the award.

—The expense of any arbitration convened pursuant to this article, including the fee for the services of the chairman of the arbitration board, shall be borne equally by the parties. All other expenses which the parties may incur individually are to be borne by the party incurring such expenses.

(Added by amendment filed with the city clerk, July 17, 1978)

SECTION 3. Notice of Election. Notice of the time and place of holding the election is hereby given, and the City Clerk is authorized, instructed and directed to give further or additional notice of the election in time, form, and manner as required by law.

SECTION 4. Impartial Analysis. Pursuant to California Elections Code section 9280, the City Council hereby directs the City Clerk to transmit a copy of the measure to the City Attorney. The City Attorney shall prepare an impartial analysis of the measure, not to exceed 500 words in length, showing the effect of the measure on the existing law and the operation of the measure, and transmit such impartial analysis to the City Clerk on or before August 23, 2011.

SECTION 5. Ballot Arguments. Pursuant to Elections Code section 9286 et seq., August 16, 2011 at 5:30 p.m. shall be the deadline for submission of arguments in favor of, and arguments against, any local measures on the ballot. If more than one argument for and/or against is received, the priorities established by Elections Code section 9287 shall control.

SECTION 6. Rebuttal Arguments. The provisions of Elections Code section 9285 shall control the submission of any rebuttal arguments. The deadline for filing rebuttal arguments shall be August 23, 2011.

SECTION 7. Effective Date. If a majority of those voting in the election on November 8, 2011 vote for the amendment to repeal Article V of the City Charter, that repeal shall be effective upon certification and filing with the Secretary of State, and shall apply to resolution of all impasses after that date, regardless of when the impasse arose.

SECTION 8. Consolidation Request. The Council of the City of Palo Alto requests the Governing Body of any such other political subdivision, or any officers otherwise authorized by law, to partially or completely consolidate such elections and to further provide that the canvass be made by any body or official authorized by law to canvass the returns of the election, except that in accordance with Article III, section 4, of the Palo Alto Charter, the City
Council must meet and declare the results of said elections; and that this City Council consents to such consolidation.

SECTION 9. Request for County Services. Pursuant to section 10002 of the California Elections Code, the Council of the City of Palo Alto hereby requests the Board of Supervisors of Santa Clara County to permit the Registrar of Voters to render services to the City of Palo Alto relating to the conduct of Palo Alto’s General Municipal and Special Elections which are called to be held on Tuesday, November 8, 2011.

The services shall be of the type normally performed by the Registrar of Voters in assisting the clerks of municipalities in the conduct of elections including, but not limited to, checking registrations, mailing ballots, hiring election officers and arranging for polling places, receiving absent voter ballot applications, mailing and receiving absent voter ballots and opening and counting same, providing and distributing election supplies, and furnishing voting machines.

Subject to approval of the Board of Supervisors of Santa Clara County of the foregoing request, the City Clerk is hereby authorized to take all necessary actions to engage the services of the Registrar of Voters of the County of Santa Clara to aid in the conduct of said elections including canvassing the returns of said election. Further, the Director of Administrative Services is authorized and directed to pay the cost of said services provided that no payment shall be made for services which the Registrar of Voters is otherwise required by law to perform.

SECTION 10. Transmittal of Resolution. The City Clerk is directed to submit a certified copy of this resolution to the Board of Supervisors of the County of Santa Clara and to the Registrar of Voters and take all other actions necessary in order to facilitate the Special Election in the timeframe specified herein and comply with the applicable provisions of the Elections Code, City Charter, ordinances resolutions and policies related to the conduct of special municipal elections.
SECTION 11. Exemption from CEQA. The Council finds that this ballot measure to 
repeal binding interest arbitration from the City Charter is not a project under the California 
Environmental Quality Act and, therefore, no environmental impact assessment is necessary.

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

__________________________
City Clerk

__________________________
Mayor

APPROVED AS TO FORM:

__________________________
City Attorney

__________________________
City Manager

__________________________
Director of Human Resources

__________________________
Director of Administrative Services
Resolution No. ___
Resolution of the Council of the City of Palo Alto Calling a Special Election for November 8, 2011 Submitting to the Electorate for Special Election a Measure to Substantially Modify the Binding Interest Arbitration Requirement for Disputes with Public Safety Employees by Amending Article V of the City Charter

WHEREAS, Article IX, section 1 of the Charter of the City of Palo Alto authorizes the City Council to propose and submit Charter amendments to the voters of the City for approval at any established municipal election date; and

WHEREAS, Article V of the Charter currently requires compulsory arbitration, commonly referred to as binding interest arbitration, as the sole method for resolving disputes with Fire and Police Department employees over all matters involving wages, hours and working conditions; and

WHEREAS, the Santa Clara County Civil Grand Jury issued a report in May 2010 concluding that cities must rein in unsustainable employee costs, and finding that binding arbitration limits the ability of city leaders to craft solutions that work for the City’s budget, resulting in wage and benefit decisions that have been greater than the growth in basic revenue sources; and

WHEREAS, local agencies, including the City of Palo Alto, are currently facing difficult challenges regarding matters affecting the financial viability of local government, and the Council finds and declares that ensuring the City’s financial viability over the long term is critical to the quality of life in and services available to the residents and businesses of the City of Palo Alto; and

WHEREAS, maintaining an effective, efficient and high quality level of City services depends on policies and financial decisions directed toward ensuring the financial stability of the City on a short and long term basis; and

WHEREAS, labor costs are a substantial component of the City’s finances, and high costs can affect the City’s ability to preserve and enhance services; and

WHEREAS, the voters and residents of Palo Alto rely on the City Council to make financial decisions considering both short-term economic impacts as well as the consequences for the City’s long term financial viability; and

WHEREAS, when the City and represented public safety employee organizations are not able to reach agreement on collective bargaining disputes, Article V of the City Charter restricts the ability of the City Council to make decisions on financial matters because it requires that a third party arbitrator make a final decision in any dispute affecting wages, hours and working conditions; and
WHEREAS, the existing provisions of Article V preclude the City from making any changes to existing benefits or conditions of employment for members of public safety employee organizations unless and until the City and the employee organization reach agreement on such matters or a third party arbitrator makes a final decision on the matter; and

WHEREAS, the existing provisions of Article V that govern how a third party arbitrator makes a decision are extremely broad and give the arbitrator wide discretion to consider numerous factors in making a final and binding decision on matters affecting employee wages, hours and working, without requiring full consideration of the City’s short and long-term budget and financial forecast, or the impact of labor contracts on public services, programs and activities, and

WHEREAS, the Council finds and declares that the collective bargaining provisions set forth in state law (Government Code section 3500 et seq) are an effective way to establish wages, benefits and working conditions, and recognizes that, because public safety employees in California do not have the right to strike, binding interest arbitration can be a fair and equitable way to resolve certain disputes; and

WHEREAS, the Council finds and declares that the broad authority granted to an arbitrator under the existing provisions of Article V could lead to final and binding decisions that might strain the City’s budget and constrain its ability to make decisions promoting effective and efficient use of staff and other resources, and that this broad authority has created an imbalance that has the potential to undermine the duly elected City Council’s final decision-making authority over and management of the City’s finances; and

WHEREAS, the City Council finds that it is in the best interest of the City to propose an Amendment to Article V of the Charter to substantially modify the binding interest arbitration requirement for public safety to (1) exclude from arbitration matters unrelated to compensation, including staffing, operations, work rules, policies and health and retirement benefit plans and return final decision making authority on these items to the Council and City Manager; (2) require the arbitrator to consider current and projected revenue growth or contraction, and the City’s other needs, such as programs, services, infrastructure maintenance and improvements, and reserves; (3) require the arbitrator to follow enumerated factors in awarding compensation, including: the city’s ability to meet the cost of the contract from ongoing revenues without reducing City services; recruitment and retention; increases or decreases in compensation for other City workers; the compensation of similar employees in other jurisdictions; and increases or decreases in the cost of living; and (4) prohibit retroactive increases in compensation and creation of unfunded liabilities; and

WHEREAS, elections will be held on November 8, 2011, in certain school districts and certain special districts in Santa Clara County; and

WHEREAS, pursuant to Education Code section 5342 and Part 3 of Division 10 of the Elections Code commencing at section 10400, such elections may be partially or completely consolidated.

NOW, THEREFORE, the City Council of the City of Palo Alto does hereby RESOLVE as follows:
SECTION 1. Special Election. Pursuant to Elections Code sections 1405 and 9255 there is called and ordered to be held in the City of Palo Alto, California, on Tuesday, November 8, 2011 a special municipal election. Pursuant to Article IX of the Charter of the City of Palo Alto, this Council orders the following question to be submitted to the voters at the Election:

CITY OF PALO ALTO MEASURE ________:

To provide the City with greater control over employee costs, staffing and services, shall Article V of the Charter be amended to exclude all issues except compensation from binding arbitration for public safety employees; require arbitrators to consider revenue growth or contraction and limit compensation to amounts that can be paid from ongoing revenues without reducing city services; and prohibit arbitrators from granting retroactive increases in employee compensation or creating new unfunded liabilities?

For the Amendment
Against the Amendment

SECTION 2. Adoption of Measure. If a majority of qualified electors voting on such measure shall vote in favor of City of Palo Alto Measure “____”, it shall be deemed ratified and Article V of the City Charter shall be amended to as shown in Exhibit “A” to this resolution.

SECTION 3. Notice of Election. Notice of the time and place of holding the election is hereby given, and the City Clerk is authorized, instructed and directed to give further or additional notice of the election in time, form, and manner as required by law.

SECTION 4. Impartial Analysis. Pursuant to California Elections Code section 9280, the City Council hereby directs the City Clerk to transmit a copy of the measure to the City Attorney. The City Attorney shall prepare an impartial analysis of the measure, not to exceed 500 words in length, showing the effect of the measure on the existing law and the operation of the measure, and transmit such impartial analysis to the City Clerk on or before August 23, 2011.

SECTION 5. Ballot Arguments. Pursuant to Elections Code section 9286 et seq., August 16, 2011 at 5:30 p.m. shall be the deadline for submission of arguments in favor of, and arguments against, any local measures on the ballot. If more than one argument for and/or against is received, the priorities established by Elections Code section 9287 shall control.

SECTION 6. Rebuttal Arguments. The provisions of Elections Code section 9285 shall control the submission of any rebuttal arguments. The deadline for filing rebuttal arguments shall be August 23, 2011.

SECTION 7. Effective Date. If a majority of those voting in the election on November 8, 2011 vote for the amendment to substantially modify Article V of the City Charter, that amendment shall be effective upon certification and filing with the Secretary of State, and shall apply to resolution of all impasses after that date, regardless of when the impasse arose, except for any arbitration proceeding in which the last offer or offers of settlement have been
submitted to the arbitration board for final determination before the effective date of this amendment.

SECTION 8. Consolidation Request. The Council of the City of Palo Alto requests the Governing Body of any such other political subdivision, or any officers otherwise authorized by law, to partially or completely consolidate such elections and to further provide that the canvass be made by any body or official authorized by law to canvass the returns of the election, except that in accordance with Article III, section 4, of the Palo Alto Charter, the City Council must meet and declare the results of said elections; and that this City Council consents to such consolidation.

SECTION 9. Request for County Services. Pursuant to section 10002 of the California Elections Code, the Council of the City of Palo Alto hereby requests the Board of Supervisors of Santa Clara County to permit the Registrar of Voters to render services to the City of Palo Alto relating to the conduct of Palo Alto’s General Municipal and Special Elections which are called to be held on Tuesday, November 8, 2011.

The services shall be of the type normally performed by the Registrar of Voters in assisting the clerks of municipalities in the conduct of elections including, but not limited to, checking registrations, mailing ballots, hiring election officers and arranging for polling places, receiving absent voter ballot applications, mailing and receiving absent voter ballots and opening and counting same, providing and distributing election supplies, and furnishing voting machines.

Subject to approval of the Board of Supervisors of Santa Clara County of the foregoing request, the City Clerk is hereby authorized to take all necessary actions to engage the services of the Registrar of Voters of the County of Santa Clara to aid in the conduct of said elections including canvassing the returns of said election. Further, the Director of Administrative Services is authorized and directed to pay the cost of said services provided that no payment shall be made for services which the Registrar of Voters is otherwise required by law to perform.

SECTION 10. Transmittal of Resolution. The City Clerk is directed to submit a certified copy of this resolution to the Board of Supervisors of the County of Santa Clara and to the Registrar of Voters and take all other actions necessary in order to facilitate the Special Election in the timeframe specified herein and comply with the applicable provisions of the Elections Code, City Charter, ordinances resolutions and policies related to the conduct of special municipal elections.
SECTION 11. Exemption from CEQA. The Council finds that this ballot measure to amend the City Charter is not a project under the California Environmental Quality Act and, therefore, no environmental impact assessment is necessary.

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

__________________________________________  __________________________________________
City Clerk                                  Mayor

APPROVED AS TO FORM:

__________________________________________  __________________________________________
City Attorney                              City Manager

__________________________________________  __________________________________________
Director of Human Resources

__________________________________________  __________________________________________
Director of Administrative Services
EXHIBIT "A"

Charter of the City of Palo Alto

Article V. Compulsory Arbitration for Fire and Police Department Employee Disputes

Sec. 1. Declaration of policy.

It is hereby declared to be the policy of the city of Palo Alto that strikes by firefighters and police officers are unlawful in the state of California and not in the public interest and should be prohibited, and that a method should be adopted for peacefully and equitably resolving disputes that might otherwise lead to such strikes for firefighters and police officers who are not lawfully permitted to strike.

Sec. 2. Prohibition against strikes.

If any firefighter or peace officer employed by the city of Palo Alto willfully engages in a strike against the city, said employee shall be dismissed from his or her employment and may not be reinstated or returned to city employment except as a new employee. No officer, board, council or commission shall have the power to grant amnesty to any employee charged with engaging in a strike against the city.

Sec. 3. Obligation to negotiate in good faith.

The city and recognized fire and police department employee organizations, through their duly authorized representatives, shall negotiate in good faith with the recognized fire and police department employee organizations on all matters relating to the wages, hours, and other terms and conditions of city employment, including the establishment of procedures for the resolution of grievances submitted by either employee organization over the interpretation or application of any negotiated agreement including a provision for binding arbitration of those grievances on matters within the scope of representation under the Meyers-Milias-Brown Act and shall endeavor to reach agreement prior to the city's adoption of its final budget for the ensuing year. Unless and until agreement is reached through negotiations between the city and the recognized employee organization for the fire or police department or a determination is made through the arbitration procedure hereinafter provided, no existing benefits or conditions of employment subject to mandatory arbitration under this article for the members of the fire department or police department bargaining unit shall not be eliminated or changed. Only disputes and controversies described in section 4(a) of this article and not excluded by section 4(b) shall be subject to the arbitration requirements set forth in this article; all other disputes shall be resolved according to the procedures set forth in Government Code section 3500 et seq.

Sec. 4. Impasse resolution procedures.

(a) All disputes or controversies pertaining to wages, hours, or terms and conditions of employment Except as further limited in Section 4(b), disputes or controversies arising from compensation matters contained in or proposed for a memorandum of agreement
which remain unresolved after good faith negotiations between the city and either the fire
or police department employee organization shall be submitted to a three-member board
of arbitrators upon the declaration of an impasse by the city or by the recognized
employee organization involved in the dispute.

“Compensation” is defined as wages, salaries, overtime pay, special pay, all-premium
pay, incentives, reimbursements and allowances; employer and employee contributions to
fund pension, other retirement savings programs, medical, dental and vision coverage for
employees and retirees, life insurance, disability benefits, and other insurance benefits;
professional development and training benefits; and vacation, holiday, sick and other paid
time off.

(b) Notwithstanding any other provisions of this Article, the following matters are
excluded from interest arbitration and the arbitration board is prohibited from considering
any such matters, or issuing any award or other relief relating to these matters:

(1) All matters not within the mandatory scope of bargaining, including but not
limited to the merits, necessity and organization of any service or activity provided by the
city; direction of the work force; the mission and operation of city departments,
employees and officers; standards or levels of service offered to the public; elimination of
positions; and the methods, means and personnel by which the city’s operations are to be
conducted;

(2) All rules, policies and procedures;
(3) The number and type of positions and assignment of employees to positions;
(4) Staffing levels, including staffing levels for equipment;
(5) Scheduling of work and activities;
(6) Use of part time employees;
(7) Contracting or subcontracting out of work or services;
(8) Any impasse arising during the term of a closed memorandum of agreement,
except for negotiation of a successor memorandum of agreement;
(9) Any decision to call an election or submit a matter to the electorate, and any
dispute arising from the content of a matter to be submitted to the electorate;
(10) Plan design, benefit formulas, eligibility and levels of benefits with respect to
all health, welfare and retirement benefits for employees and retirees; and
(11) Any compensation or benefit that is vested or capable of becoming vested.

(c) Not later than 180 days prior to expiration of a memorandum of agreement,
representatives designated by the city and representatives of the recognized police and
fire employee organization involved in the dispute, controversy or grievance shall each
select one arbitrator to the board of arbitrators within three days after either party has
notified the other, in writing, that it desires to proceed to arbitration. The, and shall select
a third member of the arbitration board shall be selected by agreement between the two
arbitrators selected by the city and the employee organization, and shall serve as the
neutral mediator, arbitrator and chairman of the board. In the event that the arbitrators
selected by the city and the employee organization cannot agree upon the selection of the
third arbitrator within ten days from the date that either party has notified the other that it
has declared an impasse within fifteen (15) days, then either party may request the State
of California Mediation and Conciliation Service (“SMCS”) or similar mutually
agreeable agency to provide a list of seven persons attorneys licensed to practice in
California who are qualified and experienced as labor interest arbitrators and who are
members of the National Academy of Arbitrators. If the arbitrators selected by the city and the employee organization cannot agree within three days after receipt of such list on one of seven to act as the third arbitrator, they shall alternately strike names from the list of nominees until only one name remains and that person shall then become the third arbitrator and chairman of the arbitration board. **The parties shall schedule the arbitration hearings at a time that allows receipt of a binding decision prior to the city’s adoption of its final budget for the ensuing year.**

(d) Any arbitration convened pursuant to this article shall be conducted in conformance with, subject to, and governed by Title 9 of Part 3 of the California Code of Civil Procedure, to the extent that such procedures do not conflict with this article.

(e) Notwithstanding any other provision of this Charter to the contrary, the authority, jurisdiction, and powers of the arbitration board are limited by the provisions of this article.

The neutral arbitrator, in the exercise of his or her discretion, may meet privately with the parties at any time before or after arbitration proceedings commence to mediate or mediate/arbitrate the dispute. With mutual agreement of the parties, the arbitration board may also adopt other reasonable procedures designed to encourage an agreement between the parties, expedite the arbitration hearing process, or reduce the cost of the process.

(f) At the conclusion of the arbitration hearings, the arbitration board shall direct each of the parties to submit, within such time limit as the board may establish, a last offer of settlement on each of the issues in dispute.

(g) The arbitration board shall decide each issue by majority vote according to the following procedure:

1. The arbitration board shall consider and conform the award to the information contained in the city’s official financial documents, as adopted by the council, including but not limited to the comprehensive annual financial report, the adopted budget (including text, policies, and goals described therein) and ongoing approved budget adjustments, the capital budget, the long range financial forecast and any actuarial analysis of long-term costs of any new or ongoing liability. **Official financial documents adopted or approved by the council shall be deemed complete and accurate and the employee organization shall bear the burden to establish otherwise by clear and convincing evidence.**

2. Based on the city’s officially adopted financial documents, the arbitration board shall consider the city’s costs to fund all city services, programs and activities, including but not limited to costs related to personnel, contracts, liabilities, debt service, supplies and materials, maintenance of appropriate reserves as provided by city policy, and infrastructure maintenance and improvements as determined by the council. **Based on the city’s officially adopted financial documents, the arbitration board shall also consider projected net revenue growth or contraction and other long-range financial projections.** In light of the foregoing costs and revenues the arbitration board shall identify the revenues available to meet the costs of ongoing and new provisions in the memorandum of agreement.

3. The arbitration board shall determine the city’s cost to provide all components of compensation and benefits, both ongoing and new, in the proposed memorandum of agreement.
(h) Based on the foregoing, the arbitration board shall by selecting whichever last offer of settlement on each issue it finds by a preponderance of the evidence most nearly conforms with those following substantive factors traditionally taken into consideration in the determination of wages, hours, and other terms and conditions of public and private employment, including, but not limited to, changes in the average consumer price index for goods and services, the wages, hours, and other terms and conditions of employment of other employees performing similar services, and the financial condition of the city and its ability to meet the cost of the award, in descending order of priority:

(1) The city’s ability to meet the total cost of the contract from on-going revenues without reducing city services;

(2) The city’s ability to recruit and retain employees;

(3) The total compensation, and rate of increase or decrease in total compensation, for other bargaining units and unrepresented employees, excluding any special adjustments specific to a classification or subset of a represented unit;

(4) The total compensation of employees performing similar services in other jurisdictions; and

(5) The rate of increase or decrease in the cost of living, as measured by relevant factors including but not limited to the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the San-Francisco-Oakland-San Jose metropolitan statistical area.

(i) The arbitration board shall not issue an award that does any of the following:

(1) Funds ongoing benefits from a one-time source;

(2) Creates any new or additional unfunded liability for which the city will be obligated to pay;

(3) Undermines internal equity among related classifications in the city’s classification/compensation system, disturbs key compensation relationships within the classification/compensation system, or causes or exacerbates compaction with other classes or units;

(4) Provides any retroactive increase in compensation;

(5) Provides compensation beyond available and projected revenue growth; or

(6) Is reasonably likely to cause the city to default on legal obligations, including bonds, contracts, and similar commitments.

(i) After reaching a decision, the arbitration board shall issue written findings on each and every one of the above procedural and substantive factors as they may be applicable to each and every issue determined in the award, and mail or otherwise deliver a true copy of its decision to the parties. The decision of the arbitration board shall not be publicly disclosed and shall not be binding until ten days after it is delivered to the parties. During that ten-day period the parties may meet privately, attempt to resolve their differences, and by mutual agreement amend or modify any of the decisions of the arbitration board. At the conclusion of the ten-day period, which may be extended by mutual agreement between the parties, the decision of the arbitration board together with any amendments or modifications agreed to by the parties shall be publicly disclosed and shall be binding upon the parties. However, the decision of the arbitration board may be judicially challenged by either party as provided in section 6. The city and the recognized
employee organization shall take whatever action is necessary to carry out and effectuate the award.

(k) The expense of any mediation or arbitration convened pursuant to this article, including the fee for the services of the chairman of the arbitration board, shall be borne equally by the parties. All other expenses which the parties may incur individually are to be borne by the party incurring such expenses.

Section 5.

Unless otherwise mandated by state law, all arbitration hearings shall be open to the public for observation and all documents submitted in an arbitration hearing shall be public records. Mediation proceedings and deliberations of the arbitration board shall be confidential and closed to the public.

Section 6.

Compliance with the provisions of this article shall be mandatory and enforceable through judicial proceedings, including but not limited to proceedings pursuant to section 1085 of the Code of Civil Procedure; failure to comply with the provisions of this article shall also constitute an act in excess of jurisdiction.

Section 7.

This article shall be effective upon certification and filing with the Secretary of State, and shall apply to resolution of all impasses after that date, regardless of when the impasse arose, except for any arbitration proceeding in which the last offers of settlement required by section 4(f) have been submitted to the arbitration board for final determination before the effective date of this provision.

Section 8.

The voters declare that the provisions of this article are not severable and none would have been enacted without the others. Should any portion of this article be enjoined or declared invalid, all provisions shall be deemed invalid and inoperative and there shall be no compulsory impasse arbitration for fire and police department employee disputes.
Ordinance No. _____
Ordinance of the Council of the City of Palo Alto Adding
Section 2.36.040 (Impartial Mediation for Impasses in Labor
Negotiations) to Chapter 2.36 (Personnel Procedures) of Title
2 (Administrative Code)

WHEREAS, the City follows state law requirements for collective bargaining with
public employee organizations regarding matters pertaining to wages, hours and working
conditions; and

WHEREAS, if the parties are unable to reach agreement on terms for a
Memorandum of Agreement and either party declares impasse, state law provides that the City
may unilaterally implement certain terms and conditions of employment; and

WHEREAS, terms and conditions of employment for which the City and an
employee organization can mutually agree are generally more favorable than unilateral
implementation for both parties, in that mutual agreement can promote more positive employer-
employee relations in comparison to terms implemented by the City; provide both parties with
more control over the outcome of a dispute; increase predictability in gains and losses; preserve
more amicable working relationships; and promote cooperation and problem-solving between the
City, employees and employee organizations; and

WHEREAS, mediation is an interest-based process that can promote mutual
agreement; and

WHEREAS, the City Council finds and declares that it is in the best interest of the
City to engage in non-binding mediation when an impasse in labor negotiations is declared.

Now, therefore, the Council of the City of Palo Alto does ORDAIN as follows:

SECTION 1. Section 2.36.040 (Impartial Mediation for Impasses in Labor
Negotiations) is hereby added to Chapter 2.36 of the Palo Alto Municipal Code to read as
follows:

(a) All disputes or controversies between the City and an employee organization
pertaining to matters within the scope of representation as defined under the Meyers-Milias-
Brown Act as it applies to the City of Palo Alto regarding matters contained in or proposed for a
memorandum of agreement (“MOA”) which remain unresolved after good faith negotiations
shall be submitted to impartial mediation upon the declaration of impasse by the City or by the
recognized employee organization involved in the dispute.

(b) Not later than 120 days prior to expiration of an MOA, representatives
designated by the City and representatives of the recognized employee organization shall select
and schedule an impartial mediator to hear the dispute. In the event that the City and the
employee organization cannot agree upon the selection the mediator, then either party may
request the State of California Mediation and Conciliation Service ("SMCS") provide a mediator.

(c) The parties shall commence mediation if no agreement has been reached 45 days before the expiration of the current MOA, or impasse has been declared, whichever occurs sooner. If no agreement between the parties has been reached within 14 calendar days after the start of mediation, the parties shall have no further obligation to participate in mediation, except upon mutual agreement.

(d) Notwithstanding any other provision of this section, the City and the employee organization may mutually agree not to engage in mediation or to discontinue mediation proceedings at any time during the 14 day mediation period.

(e) The cost of any mediation convened pursuant to this section, including any fee for services of the mediator, shall be borne equally by the parties. All other expenses which the parties may incur individually are to be borne by the party incurring such expenses.

(f) This ordinance shall be effective upon certification and filing with the Secretary of State a ballot measure to repeal Article V from the City Charter approved by a majority of those voting in the November 8, 2011 election. In the event that a measure to repeal Charter Article V is not approved then this ordinance shall not become operative and shall have no force or effect.

SECTION 2. If the ballot measure described in section 2.36.040(f) is not effective by February 1, 2012, this ordinance shall be deemed rescinded and the City Clerk and the City Attorney are authorized to take all actions necessary to remove it from the Palo Alto Municipal Code.

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** NOT YET APPROVED **

SECTION 3. The Council finds that this ordinance is not a project under the California Environmental Quality Act and, therefore, no environmental impact assessment is necessary.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

______________________________  ________________________________
City Clerk                                Mayor

APPROVED AS TO FORM:

______________________________  ________________________________
City Attorney                          City Manager

APPROVED:

______________________________
Director of Human Resources

______________________________
Director of Administrative Services
1. Further review and discussion regarding possible charter amendments to (1) repeal binding interest arbitration provision in city charter for public safety; and (2) substantially modify binding interest arbitration provision in city charter for public safety.

City Attorney, Molly Stump reviewed the draft Resolution calling for a repeal of Binding Arbitration, the accompanying Ordinance which would require mandatory mediation; and then she moved on to the substantial revisions on the Interest Arbitration provision explaining what changes had occurred and requesting the Committee’s direction. She stated Staff worked on the “where as” portion of the draft Resolution per Council Member Holman’s request. She noted the body of the Charter Amendment itself presented to the Committee previously was a complete strike through of article 5; which was the Binding Interest Arbitration provision. She stated Section 7 was a substantive area of change regarding the effective date for a Charter Amendment. State law required that an item approved by the voters was effective no sooner than the date the election was certified by the City Council and filed with the Secretary of State. The draft showed the earliest legal implementation date for a straight repeal; that meant any matter which had not progressed into a binding resolution under the prior language, would then be under the new procedures; which would be no Interest Arbitration. She reiterated the procedure; once Arbitration had begun there was an Arbitration Board, there were proceedings, evidence was received, and each party at the close of the evidence submitted final offers. The Board then issues a non-public decision to be transmitted to the parties remaining with them for ten days. This provides both parties an opportunity to work with each other and consider whether they would agree to any modifications. At the end of the ten day period the decision would be binding and both parties would need to take necessary steps to implement the decision. Under the suggested effective date any matter which had gone to the ten day period would then become binding, was resolved under the prior procedure;
however, if the matter had not gone the ten days the matter would fall under the new rule of no Interest Arbitration. Staff was asked to draft an Ordinance which required mediation. This meant all disputes between the City and all employee groups would use mandatory mediation with respect to certain impasses. Staff incorporated the two most significant restricting aspects of the types of impasses: 1) mandatory subjects, what was required to be bargained under State law and 2) items under negotiation as part of a Memorandum of Understanding (MOU). She noted the items which could be excluded from mediation under that type of a proceeding would be management rights that the City may for good labor relations want to be discussing or items that may have come about during the terms of a Memorandum of Agreement (MOA). She clarified the basic time framework was parallel to the proceedings as the Binding Interest Arbitration modifications. The section stated that 180 days prior to the expiration of an MOA the City as a Union would chose a mediator and it was required if no agreement had been reached during the negotiation 30-days prior to the expiration of the MOA or whenever impasse had been declared the parties would start the mediation process. The parties were obligated to participate in the process for 14 calendar days after which they were no longer obligated to continue if the mediation had not been successful; although, the parties could continue if the decision was made upon mutual agreement to do so. The final section indicated the cost of mediation would be shared between the City and the employee group.

Council Member Klein stated he did not see a provision where the parties could opt out.

Ms. Stump stated that was correct, mediation would be mandatory.

Council Member Klein stated there should be a provision allowing parties to opt out of the mediation process if they so chose.

Ms. Stump stated Staff could add the provision to the draft.

City Manager, James Keene stated if both parties agreed to no mediation the provision would apply.

Council Member Klein stated currently there was the option to proceed with mediation; he requested there be an option to not proceed with mediation.

Ms. Stump clarified the suggestion was to set-up mediation as a requirement unless both parties agreed to opt out of the procedure.

Council Member Burt stated his agreement with adding the opt out provision.
Council Member Holman shared her agreement to the provision and asked what the procedure would be if one party opted out thereby creating a hostile environment in mediation. If the provision was both parties needed to agree to opt out of mediation, both parties should need to agree to enter into mediation as well.

Council Member Burt stated he felt the purpose of the provision would be to obligate both parties to go through the mediation process and he noted there would always be a party that may not be enthusiastic about participating in the process.

Ms. Stump stated under the current procedure where there was no rule on mediation, both parties could agree to use mediation. The mediation process did not require the parties to reach an agreement but there was value in going through the process of having a neutral third party.

Chair Price stated the issue of requiring mediation was important. The City had been in situations recently where different sides at different times were willing to participate in the process. She felt it was useful to require both parties take steps to reach a solution. She asked whether the City had the right to impose mediation.

Ms. Stump stated if the two pieces brought before the Committee were adopted, in the coupling of the repeals Resolution and the Ordinance then yes that was correct. There was a State law which indicated once the parties had gone through the contract negotiations and reached impasse and used any local in part procedure, in the case of Palo Alto would be mediation then the City would be able to implement its last offer.

Chair Price stated in the context described that could be the outcome of the current situation.

Ms. Stump stated that was correct.

Chair Price stated that was what had happened in the past.

Council Member Klein stated that was incorrect, in the recent past there was no mediation.

Senior Deputy City Attorney, Melissa Tronquet stated during the 2009 negotiations there was no mediation due to the local rules not requiring it which was why the situation went straight to implementation.

Chair Price asked what items would be excluded from the mediation process.
Ms. Stump stated it was broader than what was expressed because during the MOU or MOA negotiations either party could open new topics which would be appropriate for inclusion in an MOA. If those topics became subject of the bargaining and there was an impasse there would then be a mandatory mediation.

Chair Price asked whether there was Staff knowledge of other communities were they had mandatory mediation.

Ms. Tronquet stated what Staff was proposing was similar to what Stockton, San Francisco, and San Leandro had.

Ms. Stump stated Staff could retrieve further survey data if directed to do so.

Daryl Murray, IDEA, mentioned a number of the transit statutes in California had a provision that required the parties to comply with mediation upon the request of either party after a certain period of negotiations had gone past.

Council Member Burt shared stated there had been occasions in the private sector where both parties were directed to go into mediation and one party entered with skepticism and in the end there was a resolution which otherwise would not have occurred.

Ms. Stump asked for clarification on whether the Committee wanted language to allow for this Ordinance to be adopted after the Council break and before an election.

Council Member Burt stated in moving forward with the Staff recommendation Council would have communicated clearly to the electorate what process would be in place after the election; but that would occur only if Council opted to put the repeal on ballot. He asked if the Council opted to put the reform on ballot there would be no point in adopting the Ordinance.

Ms. Stump stated it could be adopted thereby showing the processes, there would be mandatory mediation and then Arbitration.

Council Member Burt stated the Ordinance was initially envisioned to be coupled with the repeal rather than the reform and under that assumption the Council would not want to adopt the Ordinance unless Council were placing the repeal on the ballot. He clarified he would support adopting the Ordinance if Council elected to put the repeal on ballot.

**MOTION:** Council Member Burt moved, seconded by Council Member Holman to
accept the proposed language that coupled the proposed Ordinance with a vote to repeal Binding Interest Arbitration.

Council Member Holman suggested adding a language into the Ordinance or a second Ordinance stating if neither party agreed to mediation it was not required.

Council Member Burt agreed as the Maker to incorporate the language into the Motion.

**INCORPORATED INTO THE MOTION WITH CONSENT OF THE MAKER AND SECONDER** that language will be added to the ordinance, or a new ordinance will be created stating that if neither party agreed to mediation it would not be required.

Chair Price stated she did not support the Motion because the language on the required mediation was in the context of the Charter language related to repeal. For it to come potentially in advance to the electorate making the decision was not clear. She felt it would be premature to include such language prior to the election.

Council Member Holman stated her agreement with the logic behind the statement made by Council Members Prices; although the Motion showed good faith as to what was intended. The language in the Motion was the Committee’s agreement to mediate should Arbitration be thrown out.

Chair Price stated she felt there was ample time to address the language if there were sufficient votes to put it on the ballot. She approved of the concept as a process.

Council Member Klein stated his support as the Motion applied to all of the bargaining units and it would set-up a time system. He felt having such a system in place was beneficial sooner rather than later.

Herb Borock spoke on the general item of Ballot Measure. He stated in August 2010 the Council voted against placing a measure to appeal the Charter provision for Binding Arbitration and currently there were only four Council Members who wished to repeal. He felt there could be a compromise between the employee groups and the Council. He did not feel it was productive to for the Council to reconcile the two positions.

Fred Ingle stated he wished for a democratic government and at one point the citizens removed the authority from the Council by amending the City Charter. Now there was an issue with the budget being overrun and the citizens complain to the Council who replied they were unable to do anything due to the City Charter. He felt it should be returned to the citizens to decide whether to remove it from the Charter or not.
Bob Moss shared information regarding Clearwater Rhode Island, a small town about to go bankrupt. The State of Rhode Island had a law which required Police and Fire to engage in negotiations on all matters regarding income, payments, and policy regarding work. If the negotiations fail it was required Binding Arbitration; as a result, the Firefighters in Rhode Island were the highest paid in the entire country with their Police being the sixth highest paid. He noted Arbitration being allowed to go on unfettered could have serious impacts on City budgets and services.

Herb Borock spoke regarding mediation. He stated if the Committee proceeds with the mediation Ordinance it should be mandatory.

Council Member Burt restated the Motion. The Policy & Services Committee recommended to the Council that Staff provide for Council consideration an Ordinance that would require mandatory mediation and would be effective should Arbitration repeal be adopted by the voters and mediation could be bypassed if both parties agreed to do so.

**MOTION PASSED:** 3-1, Price no

Chair Price asked when Staff would be prepared to move forward to the full Council.

Ms. Stump stated the additional language could be added top the draft promptly and she believed the schedule noticed to the public was for the item to return to the Committee on Thursday, July 14, 2011. Once the Committee approved the changed documentation it would be presented to the full Council on Monday, July 18, 2011.

Council Member Holman stated the requested changes were minor. She said the packet for the July 18th Council Meeting would be released the following day. Language could be included to indicate whether the Committee would be meeting on the day after packet was released.

Council Member Klein stated the earliest the information could be sent out would be the following Friday.

Council Member Holman agreed but added that information regarding the agenda should be released as quickly as possible.

Council Member Burt stated the Committee had been directed by the full Council to present both alternatives; a repeal and a reform.

**MOTION:** Council Member Burt moved, seconded by Council Member Holman that the
draft Resolution attached to the Staff Report calling for an election to repeal Binding Interest Arbitration be referred to Council for action and consideration.

Council Member Holman stated the draft Resolution was accurate and contained the suggestions made by the Council; however, the second “where as” on the resolution did not appear to be a strong enough statement.

**INCORPORATED INTO MOTION WITH CONSENT OF MAKER AND SECONDED**

to change the language on the proposed ordinance, the second “where as” from tools to means, or other language as recommended by City Attorney’s office.

Chair Price stated her understanding was the request of the Council was to bring both options forward. She stated no matter what the personal opinions were with respect to either the repeal or reform it was not directly related to this particular Motion.

Ms. Stump clarified the Committee had discretion on how they wished to handle the matter before them; although, ultimately the Council would make the determination which required a vote of five or more.

Council Member Klein stated the Policy & Services Committee had an obligation to return to the full Council with two documents for their consideration. He stated he would vote accordingly to support the Motion although his vote may vary during the Council meeting. He noted the repeal language was easier to draft and the document was basically completed although felt it should not move forward to the Council packet tomorrow before the work was complete with respect to the reform document.

**INCORPORATED INTO THE MOTION WITH CONSENT OF THE MAKER AND SECONDER**

the item will not move forward to the full Council until both documents had been completed.

**MOTION PASSED: 4-0**

Ms. Stump reviewed the elements of Article V of the Charter. She stated there had been changes made where language was removed shown by a strikethrough and language added shown as underlined. Section I changes were reflective of the California State law stating that strikes by public safety employees were unlawful. Section II had a minor change in the wording; the word willfully had been inaccurately spelled and corrected. Section III had two changes; the first was a minor change indicating there was a mutual obligation between the employee group and the City to negotiate and in the second change the following language was added “and endeavor to reach agreement on matters within the scope of representation under the Meyers-
Milias-Brown Act prior to the City’s adoption of its final budget for the ensuing year.” This language was a provision in State law and therefore was incorporated. The changes to the latter part of the paragraph were setting up the proposed application of Interest Arbitration to a more limited set of impasses. Under these changes the Charter would specify there could not be unilateral changes with respect to matters which were subject to Interest Arbitration under the new reform Interest Arbitration provision. That would then move all other matters into the standard state and the process was to negotiate matters within the mandatory scope, impasse if it were reached, and then implementation. She explained the last sentence of the paragraph set-up the operative legal language which provided for two categories of impasses; those which were subject to Arbitration within the reformed article and the other impasses which were not subject to Arbitration which would be handled through the standard state processes. Section IV paragraph (a): set-up recovered items; the items that would be subject to the Interest Arbitrator’s jurisdiction, paragraph (b) specifically excluded items which were not included in paragraph (a) or called out to be sure that there was an understanding that they were not covered.

Council Member Klein asked what would be subject to the Arbitration as far as pension and medical. His understanding was the medical coverage would not be covered under Arbitration but the costs of the medical expenses were subject. For example if the current medical plan was $10,000 per employee and the City changed the plan to a lower cost plan that would not be subject to Arbitration.

Ms. Stump stated as long as all of the procedures had been followed with respect to CalPERS and the appropriate negotiations process that was required then the change would not be subject to Arbitration.

Council Member Klein asked whether changes to the pension plan, assuming all of the CalPERS rules and regulations were followed, would be subject to Arbitration. For example if the City chose to change to a two or three tier plan.

Ms. Stump stated it would not be subject to mandatory Arbitration under the drafted language.

Council Member Klein stated the cost share portions of the plan change would be subject to the mandatory Arbitration.

Ms. Stump stated this was not a policy matter. Council could choose to place both items in a mandatory Arbitration setting or leave them both out of the mandatory Arbitration setting and put them under the State law process.
Chair Price asked for clarification that the employee/employer share discussion would be a subject under this language.

Ms. Stump stated that was correct.

Chair Price asked for clarification with respect to overtime costs. For example the staffing at Station 8 in the foothills and other past decisions by Council related to ambulance services. She stated there had been Council decisions related to the use of overtime which had impacted the budget. Often in discussions of costs for services that was not stated as a clarifying point. This had significant financial impacts on the overall costs of services. She understood some of that had been dictated by prior Council decisions. Her goal was to find a way in which the statement was clear that in the considerations of the overall costs there should be recognition of the point she was making.

Mr. Keene stated Staff would reflect how to communicate that point but he believed it would not be part of the draft language as it was written for two reasons; there was overtime in the Fire Department that was generated by City or Council policy that was not a matter of the contract or MOA between the Firefighters Union and the City. That would not be bound by Binding Interest Arbitration. However there were items such as minimum staffing which was a part of the contract and could generate additional overtime use that currently could be subject to Binding Interest Arbitration. He suggested this was the manner in which the City Attorney’s office had drafted the reform language and removed from Binding Interest Arbitration all of the items relating to staffing levels, work rules and the like would no longer be subject to Binding Interest Arbitration. The City could choose during a negotiation to enter into agreements that could have conditions but would not be subject to Arbitration.

Chair Price stated due to the policies minimum staffing was exceeded at times.

Mr. Keene stated that was correct and he felt it was an additional impact on top of the existing minimum staffing requirements that were in the contract.

Ms. Stump stated returned to Section V, paragraph (c) the additional language referenced to the 180 days prior to the expiration of the MOA and where the language began its referral of the Arbitration Board as a Mediation/Arbitrator which was the model the Committee requested Staff return with. Another change was that the neutral party is an attorney, qualified as an Arbitrator, and they are a member of the National Academy of Arbitrators.

Council Member Klein stated his preference for the attorney was they were licensed
Ms. Stump stated there were two manners in which to address the timeline issue; Council could add language to clearly state the parties needed to make reasonable efforts or it could be a requirement that the parties schedule the arbitration hearings to allow them to be completed prior to the adoption of the budget. The changes to paragraph (d) added a phrase that denotes there were other procedures which needed to be complied with or governed over the California Arbitration Act. The changes to paragraph (e) referred to technical issues that made it clear that the voters were requiring that all of the procedures be followed which was connected to the ability to make judicial challenge in the event that did not occur. The second change in paragraph (e) was the mediation piece of the Mediation / Arbitration model that the Committee asked for which allowed the neutral party to ask as both, the mediator and the arbitrator and to be flexible and work back and forth between those two roles and also to adopt other reasonable procedure which would lead to an agreement or reduce the cost of the process. The changes to paragraph (g) were based around two factors which had been discussed between Staff and the Committee. The factors were procedural items and the others were more purely factor items so the items were broken out into list numbers 1 through 3.

Council Member Klein requested the City Attorney discuss the differences between the preponderance of clear and convincing standards.

Ms. Stump stated the general evidentiary standard that governs this situation was the preponderance standard. She said if the evidence was close it would not meet the standard written in the draft Resolution. In paragraph 2 under (g) the arbitrator had two main tasks 1) to identify the City’s costs for all of the City’s services based on the City’s officially adopted financial documentation and 2) use the officially adopted financial documentation to identify where the City’s revenues were in terms of growth, lack of growth, and long range financial projections. The third procedural item was the arbitrator needed to review the items submitted to Arbitration in light of the full or total compensation cost of the contract including the cost of ongoing items and new items. The changes to paragraph (h) prioritized the direction and determination of the arbitrator. The changes to paragraph (i) set-up a list of things in no event the arbitrator may do.

Council Member Klein asked for a clearer explanation of paragraph (h) item 2. He understood retroactive increases in compensation although it also stated if the City did not get the contract completed on time, the existing compensation remained in tact. He asked what the remedy was for that matter.
Mr. Keene stated that situation applied more for if there was not an increase pursued but rather a decrease in compensation.

Council Member Klein agreed but said he was concerned if for example six months after the end of a contract an agreement was reached that included a 5% reduction in compensation. Would there then be a 10 percent reduction for the remaining six months of the year to make up for the total five percent reduction overall.

Ms. Stump stated the language only prohibited retroactive increases the language could be changed to prohibit retroactive decreases.

Council Member Klein stated no, he did not want to prohibit the decrease. His question was what was in place to ensure the agreement was in place to complete the negotiations within the timeline.

Ms. Stump stated the draft Resolution stated at the top of page 3 the parties were required to have a schedule where the Arbitration hearings would be completed prior to the adoption of the budget. Most cities completed their contracts at the same point at which the prior agreement expiring.

Council Member Klein stated there was a history of not completing the contracts prior to their renewal. He asked how to reach the desired five percent reductions per year when the year was half over. He asked whether there could be an imposed 10 percent reduction for six months with a five percent reduction beginning the second year. Or, could the arbitrator do the same thing considering this would be an arbitration matter.

Ms. Stump stated under the current draft Resolution compensation items went to the Interest Arbitrator. If you were asking for a reduction in salary of five percent, no, that could not be imposed under the current draft; that would need to go to arbitration. She noted if for whatever reason the time frame was not what the parties were doing, the contract had expired and the parties were in Interest Arbitration that was a matter for the City to make its offer settlement to reflect the structure the City desired.

Council Member Klein asked what would happen if the parties were just under the time line. He wanted to know if the City would be within their rights to impose a ten percent reduction for the remainder of the year to reach the desired factors.

Ms. Stump stated assuming the City had bargained in good faith and reached impasse that would be something the City would have the ultimate authority to do.

Chair Price stated the Mediation / Arbitration which appeared to be a blended approach
made a lot of sense since it did provide additional flexibility. If anything, it encouraged that the resolution be done through mediation rather than move into Arbitration. She stated given the complexity of the negotiations and the other items before them it made more sense to have a single person involved. She asked whether the language on the top of page 3, the last sentence in paragraph (c) was the exact language as San Francisco’s Mediation / Arbitration process.

Ms. Stump stated she would research the question and return with a response. She did recall the draft language was clearer than San Francisco’s.

Chair Price asked Staff if they felt the language captured one of the Committee’s earlier concerns that the decisions be made prior to the adoption of the budget.

Ms. Stump stated the current draft Resolution had a number of elements which were not present in the current procedure and she was confident the matter would be resolved in the time frame. In an environment where there were increases available on compensation the draft clearly states it did not allow for retroactive implementation.

Chair Price stated the issue of not being retroactive was a catalyst for all parties to seek a resolution.

Ms. Stump stated the language in the draft would perform the function of a timely resolution although in the past several years where the City had been in a reduction environment it would not necessarily have had that practical effect.

Chair Price stated under paragraph (g), number 1, clear and convincing evidence; she asked who had authority to make the determination about what was clear and convincing.

Ms. Stump stated the arbitrator had the authority.

Chair Price stated the arbitrator would review the facts, figures, and findings presented by each party and with that information the arbitrator would make the determination whether it was clear and convincing evidence to make a decision. She stated they were required to review both parties documentation.

Ms. Stump stated in the first incident yes although if the City felt that as a matter of evidence there was sufficient evidence to show that the amount of evidentiary burden had not been met or that the arbitrator did not follow the standard there was an opportunity for the City to go to court and request a judges’ ruling.
Chair Price asked if the arbitrator made their judgment it was not challengeable in the process.

Ms. Stump clarified the question by asking if the employee group felt they had provided sufficient evidence to show that the City’s financial documents were in error on a point and the arbitrator were not to find that error, under the draft either party had the ability to go to court.

Chair Price asked for clarification on paragraph (i), item 3 where is discussed classification/compensation system.

Ms. Stump stated compaction with respect to other classes or units worked in two ways. There was rank and file and management group in the same public safety organization.

Chair Price stated for clarification that statement referred to the safety unit and not other bargaining units.

Ms. Stump stated that was correct. And the other potential issue for salaries to be in the City’s view to be out of order with the other public safety entities was covered by the language under compensation.

Mr. Keene clarified if an award for Police Sergeants could be so significant that they could impact the salary level between a Sergeant and a Lieutenant technically a Sergeant would be receiving a higher salary than a Lieutenant.

Ms. Stump stated the changes to paragraph (j) added a requirement that the arbitrator had to submit written findings procedural and substantive factors. The reason for the addition was it allowed the parties to understand how the arbitrator had completed the job and reached their conclusion. The second addition was either party had the authority to judicially challenge the decision of the Arbitration Board. The change to paragraph (k) simply added the work Mediation to Arbitration to show the new model. There were four new procedural sections added; section 5 covered the transparency, section 6 covered the RIT of mandate, section 7 covered the filing with the Secretary of State, and section 8 covered the voters’ intent.

Council Member Klein asked for clarification on the terms of the Arbitration Hearing being open to public. He stated the hearings should be open as a court room is open to the public, but not open as a Council meeting is. He suggested language be added to specify the understanding the public did not have the ability to speak during the hearing.
Chair Price suggested the term be: to observe only.

Council Member Klein stated he agreed with the suggested term.

Ms. Tronquet stated she would add the verbiage: shall be open for observation by the public.

Council Member Burt asked for clarification on section 7. He asked for the City Attorney to run through from a practical standpoint if the City was in the midst of a negotiation under the repeal and reform what might happen.

Ms. Stump stated if the parties had gone through the Arbitration proceedings and all of the proceedings had been completed, the evidence was in, and both parties had submitted their final offers. Under the old rules of repeal; once the effective date occurs, Interest Arbitration proceeding would no longer be in existence and you would be under State law in terms of determining and establishing the new contracts. Under the draft reform implementation; that process would continue and the arbitrator would retain jurisdiction, make a decision and that decision would be binding.

Council Member Burt stated in the current situation with the draft it was possible under reform the new rules would not impact the outcome and under repeal the new rules would impact it.

Ms. Stump stated without reference to a specific proceeding it was difficult to respond accurately. The manner in which the effective date was drafted for reform it would be said that if the arbitrator had the matter for decision or in the ten days after the decision had been issued, the prior proceeding would not be disturbed. Under the repeal effective date that would only happen if it got to the point under the prior procedure where it was binding. She reiterated this was a policy decision for the Committee and the Council so it could be drafted differently. The dates could be pushed out further.

Council Member Burt asked whether the dates could be brought in closer.

Ms. Stump stated with respect to the repeal it was at the earliest possible implementation date. With respect to the reform, until it was binding under the existing procedure it was not binding and the voters could make a change.

Chair Price asked for clarification, if the proceedings were in the middle of the ten-day period, a decision had been made and if the repeal issue was to take effect, how would
that impact the situation.

Ms. Stump stated the impact would be when the end of the ten-day period was reached the language would no longer be in the Charter saying that that decision was binding and all parties had an administrative duty to implement it, it would be under the State law procedure. She noted that would give the City the option to implement but not require the City to implement the decision because it did not become binding before the voters removed the procedure.

Herb Borock stated the frequent use of the term clear and convincing evidence was not in the draft language under paragraph (h) but rather by a preponderance of the evidence. He stated it made it unclear as to what was being referenced.

Mr. Keene stated the language clear and convincing evidence was in paragraph (g) item 1.

Mr. Borock stated in section 6 the language a failure to comply with the provisions described in this article shall also constitute an act in excess of jurisdiction. He noted there was not a clear understanding of the meaning. He stated under section 8 the objective of the new section was to replace the existing language on compulsory arbitration. Normally if something had been declared invalid by the court the existing provision remained in tact. He mentioned the effective dates were in concert with the adoption of the budget yet the budget was in a two-year cycle where the second year was in concept.

Bob Moss stated his concern for some of the items under the exclusionary clause under paragraph (b) item 10 and in paragraph (c) he asked why the process would wait until there was a dispute to select a certified arbitrator rather than begin the process with one. He stated it was not clear why the certified arbitrator needed to be an attorney.

Ms. Stump clarified the manner in which the language was drafted it allowed for both the City and the union to choose someone who was not certified, that would require both parties agreement. She clarified the reason behind all three members of the Arbitration Panel meet the qualifications; the structure was dissimilar to the court of appeals where there were three judges who were all attorneys who were appointed by the Governor, they hear a matter equally and then vote. The three parties were all impartial, that was not what was intended with the Arbitration Board structure. The intention was there was one neutral party and with each party was able to select someone who was an advocate to sit on the panel. The three member Arbitration Board was made up of a single neutral body who had the authority to make the decision and two other bodies who were selected to advocate for each side.
Council Member Klein stated in response to Mr. Moss’s concern the reform measure was being revised and in many ways narrowing the subject which led to mandatory Arbitration.

Council Member Burt asked whether the legal counsel or City Staff had reviewed the ramifications that Mr. Borock brought to the discussion with respect to the Stanford contract and how this provision might affect it.

Ms. Stump stated this provision would state which services the City of Palo Alto would need and the number of persons necessary to accomplish those needs. The City Council and the City Manager retain control over the needs of the City and those decisions were not subject to Arbitration.

Council Member Burt clarified there would still be negotiations between a third party and the City as was done currently.

Ms. Stump stated yes, the City needed to meet their legal obligations.

Council Member Burt asked the number of different elements which could be appealed to a judge.

Ms. Stump stated all of the elements could be appealed to a judge. The procedures are not mandatory.

Mr. Keene stated the items were explicitly clear that the arbitrator had jurisdiction and all of those items could be appealed to a judge. In contract, the items in which were explicitly excluded could not be appealed.

Ms. Stump clarified, if the arbitrator were to reach out and make a decision on an issue which was excluded from arbitration.

Mr. Keene stated if the arbitrator ruled in the City’s favor on an item which was excluded the public safety unit could not appeal that decision to the court.

Ms. Stump agreed. Although on an item not subject to arbitration the City would refuse the issue to the arbitrator and therefore if the arbitrator touched the issue in any manner to fight it, the City would go to court and plead the arbitrator had exceeded their area.

Council Member Burt stated for clarification the areas the arbitrator had authority to rule on were all appealable to a judge. The areas it appears the arbitrator did not have
the right to rule on the City could appeal.

Ms. Stump stated the draft allowed access to court if the procedures were not followed.

Council Member Burt asked under what circumstances could a party appeal the arbitrator decision.

Ms. Stump stated it was not sufficient to say we did not win so therefore we choose to appeal. When reasonable counsel for either party was looking at an award you would take a RIT if there was a substantial problem.

Council Member Klein stated the idea of Arbitration was to promote economy and its resources. For that reason, judges did not favor overturning an arbitrator decision. They were available to primarily ensure the arbitrator followed the rule book.

Chair Price stated her agreement that an arbitrator’s rulings were not generally challenged.

**MOTION:** Council Member Klein moved, seconded by Chair Price that the Policy & Services Committee forward the draft Resolution to the full Council as written with the Amendments as follows: paragraph (C) the attorney should be licensed and practicing in the State of California, paragraph (h) delete item 2, Section 5 to add the verbiage shall be open for observation by the public.

Chair Price requested Staff return with a response regarding the overtime issues in terms of the pre-existing policies.

Ms. Stump stated in the draft Resolution the overtime payments were under the item of compensation which could be considered. The various factors did not call for the arbitrator to specifically consider overtime costs; they discuss total compensation in terms of the standard employee benefits which were based on classification.

**MOTION PASSED: 4-0**

Council Member Holman stated she wished to reconsider the Impartial Mediation Ordinance. She did not believe it was necessary for a Motion. She stated in Section 5 in the revision mentioned the Arbitration Hearings being open to the public. She asked if there was a reason why they should not add the same language to the mediation provision.

Ms. Stump stated there was a reason why it should not be added. Mediation by nature
was out of the public view; it was difficult to mediate successfully while members of the public or the other party were in an audience type setting.

Council Member Klein stated the observation only rule applied to Arbitration not Mediation.

Ms. Stump clarified that was the reason the transparency provision was drafted in Section 5 for the Arbitration reform to exclude the Mediation portion.

Council Member Klein stated the objective of the mediation session was for the involved party to be in an environment where they could speak freely without concern of reprisal.
Dear Council:

For what it's worth, I strongly favor repealing the arbitration requirement.

It is clearly undemocratic for the Council to abdicate such critical decisions to a third party. On the other hand, I don't think that the firemen's inability to strike makes such repeal undemocratic.

In my experience in San Jose, the fire and police unions would retain significant clout in terms of community support.

If you decide to continue with arbitration, I also strongly favor requiring mediation as a prerequisite.

Walt
--

Walt Hays
Mediator
650-424-9633