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

PRESENT: Beecham, Burch, Cordell, Freeman, Kishimoto, Kleinberg, Morton, Ojakian

ABSENT: Mossar

ORAL COMMUNICATIONS

Jim Dinkey spoke regarding BART steam power.

Don Letcher, 788 N. Rengstorff, Mountain View, spoke regarding the Mayfield Mall/Hewlett Packard site.

Robert Moss, 4010 Orme Street, spoke regarding flood control and San Francisquito Creek.

APPROVAL OF MINUTES

MOTION: Council Member Morton moved, seconded by Ojakian, to approve the minutes of January 10 and 18, 2005, as submitted.

MOTION PASSED 8-0, Mossar absent.

CONSENT CALENDAR

MOTION: Council Member Morton moved, seconded by Kishimoto, to approve Consent Calendar Item No. 1.

ADMINISTRATIVE

1. Approval of Contract with TruGreen LandCare in an Amount not to Exceed \$325,000 for the 2004-2005 Tree Maintenance Project

MOTION PASSED 8-0, Mossar absent.

PUBLIC HEARINGS

2. Public Hearing: Considering Revisions to the Transfer of Development Rights (TDR) Ordinance for City-Owned Properties, and Revisions to the Downtown CD Zone Ordinance to Increase Residential Density Limits. 1) Proposed Revisions to the Zoning Code, Chapters 18.87, 18.49 and 18.32. The Proposed Zone Changes Would Allow Eligible City-Owned Historic Properties (Category 1 or Category 2) Located in Any Zone District to be "Sender Sites" Under the TDR Ordinance, Transferring Historic or Seismic Rehabilitation Floor Area Bonuses from these Sites to Eligible "Receiver" Sites Located in the Downtown CD Zone District; and Modify the Procedures and Requirements for Granting Floor Area Bonuses. Proposed Changes to Chapter 18.49 also Would Modify Site Development Requirements, and Replace Maximum Residential Density Limit with a Required Maximum Average Unit Size, for Residential and Mixed-Use Projects Located in the CD Zone District to Encourage Use of TDR to Provide Housing Units. The Residential Density on a Mixed Use or Residential Site Would be Limited by the Floor Area Ratio (FAR), Site Development Requirements, Parking Requirements, and Comprehensive Plan Density Limits. 2) Provide Direction to Staff Regarding Possible Changes to Chapter 18.87.040 and 18.87.055 to Increase the Maximum Parking Exemption for Bonus Floor Area from 5,000 Square Feet to 10,000 Square Feet, and to Reduce the Required Distance Between TDR "Receiver" Sites and Residentially Zoned Property.

Director of Planning and Community Environment Steve Emslie gave an overview of recommendations regarding the approval of zoning changes recommended by the Planning and Transportation Commission (P&TC) outlined in staff report CMR:108:05, as follows: 1) to allow the Transfer of Development Right program (TDR) that applied to privately owned buildings to extend to City-owned historic buildings; 2) to make minor changes to the review process for the historic rehabilitation bonus floor area program; and 3) to allow interim use of Commercial Downtown District (CD) of residential

density employed in the South of Forest Avenue (SOFA) 2 Coordinated Area Plan and for Council to discuss the direction of whether staff should explore further changes to the parking exemption and location of receiver sites. He gave an overview of the TDR components outlined in the Ordinance. In addition, he said staff was seeking direction to increase the maximum allowable parking exemption of floor area from 5,000 to 10,000 square feet and whether the distance requirement for receiver sites in the Downtown area could be changed from 150 feet from residentially zoned area located across a public street.

Planning and Transportation Commissioner Pat Burt gave an overview on the P&TC Report, as outlined in staff report CMR:108:05.

Mayor Burch declared the Public Hearing open at 7:29 p.m.

Historic Resources Board Member Beth Bunnenberg, 2351 Ramona Street, said the idea of applying TDRs to City-owned historic property came from members of the public. The Historic Resources Board (HRB) supported extending the TDR program to provide additional funding for City resources to restore historic properties. Most historic properties retained their integrity if they were kept small and not built out to the limit. It was an incentive to keep buildings in their historic configuration. The requirement of a historic structure's report was a vital piece of information on what was historic and important to save on a building for construction, destruction, or repair purposes. The HRB supported the idea of assuring the proceeds from the TDR sales be used exclusively for historic rehabilitation of City-owned historic buildings and whether something met the Secretary of the Interior's Standards for Rehabilitation. Continued care would be made on a building once money was spent on it. Rehabilitation plans must show materials used and materials to be removed.

Herb Borock, P.O. Box 632, said an environmental review should be required prior to approving a project because of parking impacts. The process did not allow a way to address the issue on a project-by-project basis. The proposal gave developers the ability to develop in the Downtown area without providing parking. Council had the opportunity to make a decision in

determining the sender sites, but the real decision was on the receiver sites. The Ordinance stated the City Manager could develop a process. The City Manager lacked the authority to decide when the Council made decisions, which could only be accomplished by an Ordinance. He suggested amending the Ordinance so the decisions would come before the Council. Council adopted a policy 20 years prior for leasing City lands and the fair price was to be decided by Council. When portions of rights were sold, Council should be the decision-maker, which should be stated in the Ordinance.

Mayor Burch declared the Public Hearing closed at 7:35 p.m.

Council Member Morton asked which buildings could be transferred in dollars or in build-out terms. In regard to providing additional funding for historic renovation on City-owned, but not City-operated parcels, such as the Roth Building, the Museum of American Heritage Building, and the Lucie Stern Sea Scout Building, did all buildings qualify or only the Roth Building where historic renovations had not taken place. He asked if the Museum of American Heritage Building would qualify since a non-profit group had restored the property.

Mr. Emslie said a building would not qualify if improvements had already been made to the building and could not be applied retroactively.

Council Member Morton queried in a case where no additional square footage could be purchased or sold by the City, the City could not go back and try to sell the Museum and use the profits to renovate the Sea Scout Building.

Mr. Emslie said that was correct.

Council Member Morton asked how the sales value would be calculated for the Roth Building.

Mr. Emslie referred him to the matrix (CMR:108:05 Attachment C) that provided the estimate of potential seismic and historic bonus to each eligible building. The Roth Building offered 4,250 square feet. He said a high market value was \$400 to \$500 per square foot but it could be as low as

\$100 per square foot.

Council Member Morton asked whether the property that sold the rights had first rights on the monies or did staff determine where it was used.

Mr. Emslie said, by Ordinance, it must be pledged to the particular site even if it was operated by a non-profit.

Council Member Morton asked why it required a protective covenant if it was City-owned property.

Mr. Emslie said it was required for private buildings but all aspects of the program apply equally to public buildings. It would be a covenant plus a lease condition.

Council Member Morton asked in calculating parking, could the exemption of the 5,000 square feet remain and "with staff's recommendation and Council's approval, it could be increased to 10,000 square feet" be added, and not leave it open to 10,000 square feet at staff's discretion.

Mr. Emslie said staff was not recommending an increase. Staff would ask Council if they were interested in pursuing and would return to Council with more detailed analysis and options.

Council Member Morton asked what the dollar value was on an additional 5,000 square feet exception from parking.

Mr. Emslie said the in-lieu fee would be approximately \$50,000. The parking rate was four spaces per 1,000 square feet, or 20 spaces for the 5,000 square feet giving an approximate value of \$1 million.

Vice Mayor Kleinberg referred to Section 8.32.090 (e) of the drafted Ordinance regarding TDR sales and asked whether the Ordinance had authority to delegate from City Council to the City Manager.

City Attorney Gary Baum said no. The Charter delegated control to the City

Manager on the accounts and funding once Council approved the budget.

Council Member Morton clarified it was a requirement that the City Manager open a separate bank account and separate accounting.

Mr. Baum said that was correct, and expenditures could be focused on one project.

Vice Mayor Kleinberg asked what the 47,834 figure represented at the bottom of matrix (CMR:108:05 Attachment C) .

Mr. Emslie said it was the potential bonus square footage of everything on the matrix including previously rehabilitated buildings.

Vice Mayor Kleinberg questioned why the large difference between 47,834 and 80,668.

Senior Planner Virginia Warheit clarified the figures included all buildings eligible for both historic and seismic bonuses.

Vice Mayor Kleinberg clarified that approximately 80,000 square feet of public buildings were eligible for potential development in the Downtown area.

Mr. Emslie said that was correct.

Vice Mayor Kleinberg asked whether any private buildings were eligible in terms of square footage and TDRs.

Mr. Emslie said the program applied to private buildings, but he did not know the approximate footage.

Vice Mayor Kleinberg said she was not concerned about the actual footage but wanted to get a sense of eligible private footage because: 1) there was not a sense of potential build out in the Downtown area; and 2) if developers wanted to make commercial office buildings, there was over 80,000 square

feet of new office building space without a companion amount of housing.

Mr. Emslie said the Downtown development could not exceed the cap of approximately 275,000 square feet.

Vice Mayor Kleinberg raised concerns about unit size and how the cap on the unit size was determined. She understood the desire to maximize the number of units, but building several smaller units did not create a family-friendly neighborhood with potential turnover instead of neighborhood stability.

Mr. Emslie said the main effect proposed in the Ordinance was to address a problem specific to developing sites smaller than 8,500 square feet or less because the density application would apply. While there was a sufficient amount of floor area eligible for the site, the density would require that construction would go into one very large unit. In order to address the Downtown zoning, it was suggested to bring in the SOFA formula to provide more plentiful units.

Mr. Burt said there were a limited number of perspective receiver sites in the Downtown area that could absorb TDRs and, although there was potential for certain square footage, the sites did not exist as good candidates.

Ms. Warheit said in 1996, when the TDR program was established, there were five or six times more receiver sites than sender sites. One qualification was the site owner had to want to do something with the site. Even if the site qualified, it did not mean it would become a receiver site. It would become a sender site if the owner rehabilitated the building, which generated the TDR. When adding all 18 buildings listed, the 80,000 square foot figure was technically correct but, in reality, it was a meaningless number.

Vice Mayor Kleinberg felt the parking study needed more review before committing \$40,000 toward the project. She preferred keeping the money and restrictions and concurred with Council Member Morton's request to not extend the square footage to 10,000. She was not in favor of more office

space in the Downtown area. She suggested locking in TDR sales to residential or perhaps a certain percent for residential or a mixed-use of retail downstairs and something else upstairs.

Council Member Kishimoto asked whether every receiver site had a review process.

Mr. Emslie said receiver sites would require following the City's Architectural Review Board (ARB) program. In most cases, an exterior change resulting in square footage would require ARB approval. The ARB may not be required if the change were not visible but, in most cases, visible work would require ARB review, a public hearing, and could be appealed.

Council Member Kishimoto clarified that staff would agree that the two criteria added by Council were part of the staff recommendation.

Mr. Emslie confirmed. Staff was suggesting the information be passed on to the Zoning Code team, which would then go back to Council for consideration after the Downtown analysis was completed.

Council Member Kishimoto said her concern was when the information was passed on, that it would be clear the exploration was for properties that were residential or lower Floor Area Ratio (FAR) than the adjacent sites.

Mr. Emslie said that would be the direction staff would pass on, and it would be made clear to the zoning team so they would use it as the parameter in developing options.

Council Member Kishimoto asked whether it should be included in the motion.

Mr. Emslie felt it would be good to include in the decision.

Council Member Kishimoto raised concern regarding process and expected revenue. She referred to Ordinance, Section 2 (b) and asked should Council look at bidding parameters or would Council need to approve acceptance of

the bid.

Real Property Manager Bill Fellman said staff proposed to use the same process for selling property. A minimum bid would be set and return to Council with a Request for Bid Proposal (RFP) for review. It would then be advertised, and the sealed bids would qualify for oral bids, at which time the highest bid would be brought back to Council for approval.

Council Member Kishimoto did not think that was written into the Ordinance.

Mr. Fellman said the Real Estate process was used in selling property.

Council Member Kishimoto asked whether it was the process used by the City Manager when establishing the formal bidding procedure.

Mr. Fellman said it was included in the report that went to the P&TC.

MOTION: Council Member Kishimoto moved, seconded by Beecham, to approve the staff and Planning and Transportation Commission (P&TC) recommendation to:

1. Approve the proposed revisions to the Zoning Code, Chapters 18.87, 18.49 and 18.32, to allow eligible City-owned historic properties (Category 1 or Category 2), including historic properties that are also seismic risk properties (Seismic Category I, II, or III), located in any zone district to be "sender sites" under the TDR ordinance, transferring historic or seismic rehabilitation floor area bonuses from these sites to eligible "receiver" sites located in the Downtown CD Zone District;
2. Modify the procedures and requirements for granting floor area bonuses;
3. Modify the residential density and site development requirements for residential mixed use projects located in the CD-C zone district to facilitate use of TDR for residential use; and

Modify Page 2 of the Ordinance to give direction to staff that the TDR bids return to the Council when the Request for Proposal (RFP) is issued and bids accepted, as per the City's formal bidding procedures.

Ordinance 1st Reading entitled "Ordinance Amending Title 18 [Zoning] of the Palo Alto Municipal Code to Amend Chapters 18.32 [Public Facilities District Regulations], 18.49 [CD Commercial Downtown District Regulations], and 18.87 [Transferable Developments Rights] to Include Certain City-Owned Buildings as Sender Sites in the Transferable Development Rights Program"

City Attorney Gary Baum suggested the bidding process be directed to staff because it was a process to be adopted under the Code and not be codified. It would mean amending the Ordinance each time a change was made.

Council Member Morton suggested adding the words "the City's formal bidding procedures" to clarify a bidding procedure was already in place and must be followed.

Mr. Baum agreed.

Council Member Kishimoto accepted the change to the motion.

Council Member Beecham asked for a summary on the history of TDR sales in Palo Alto.

Mr. Emslie said there were six sales since the program started ten years prior.

Council Member Beecham said the program had been around awhile but with moderate activity. The process enabled the City to take advantage of what the private sector was able to use. There were several buildings up for renovation, but the process was slow and did not happen regularly. It gave the City flexibility and offered funds for renovations to be made by the community. He asked Council Member Kishimoto what her intentions were on the SOFA 2 mixed use standards and the 5,000 to 10,000 square foot

bonus and whether she was going to leave it to the Zoning Ordinance Update (ZOU) process.

Council Member Kishimoto said she was going to table it and not make it a part of the ZOU since it required \$40,000.

Council Member Freeman asked which TDRs had been sold and where were they located.

Ms. Warheit said she knew of three properties. The property located on Emerson Street, which involved two historic buildings, and a new building on the corner of Hamilton Avenue and Emerson Street. All three buildings were completed at the same time and involved bonus floor areas. TDR's had been sold from a Victorian house on Tasso Street, but she was unsure of where they went or if they were built. A sandwich shop was restored in the SOFA area where the TDR was transferred but not built. TDR's did not have to be built; they could be purchased with the intent of not using them and held for resale.

Council Member Freeman raised concern on appearance. She said she appreciated the donor site matrix but missed the identification of the potential receiver sites and the owners of those sites. The CMR referenced developers and property owners making suggestions. She wanted to know if the suggestions were made at a noticed meeting where the public was present and whether other meetings had taken place where issues were brought up as proposals.

Mr. Emslie said data was collected from the stakeholders that involved Downtown property owners with many suggestions that were not included. The recommendation at the meeting was to determine if Council would be interested in pursuing some suggestions.

Council Member Freeman said she wanted to see equality between TDR beneficiaries and what the public received. She was told by the City Attorney that there were no legal matters surrounding the issue, but she felt there was the appearance of potential public exclusion if issues came up

before a public meeting. She raised concern regarding jobs-housing imbalance and recognized the importance of affordable housing. She asked if the SOFA 2 formula were used, what would be the maximum availability of Below Market Rate (BMR) units versus expensive housing.

Mr. Emslie said the BMR requirement would apply to all projects over the size threshold. If a project were large enough to include BMRs, 15 percent would be set aside for low to moderate-income housing. The SOFA requirement would make it possible to have more than one unit on a small site. The SOFA 2 analysis revealed the possibility of building an upper-story of two or three units above an existing commercial building. It would provide incremental housing growth in areas with services and a pedestrian and urban type of lifestyle. It addressed small units in a constrained environment that added mixed-use to commercial buildings.

Council Member Freeman said she had been informed that mixed-use in Europe was successful, but had experienced seeing mixed-use become a blighted situation during economic depression.

Mr. Emslie said Palo Alto had proven to be a desirable Downtown area. Judging the performance on residential properties, units had retained extremely high values and quality was maintained for a long period of time.

Council Member Freeman asked if there were any limitations in selling a TDR several times.

Mr. Emslie said TDRs could only be sold once after renovations were completed on a building and it was for the life of the building.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER that the Council include allowing TDRs to be transferred to smaller sites or areas where mixed-use would be appropriate.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER that the Council encourage TDRs be used for housing on smaller sites, including the SOFA 2 mixed-use standards.

AMENDMENT: Council Member Morton moved to include that Council explore the benefit to the City of increasing the maximum allowed parking exemption for bonus floor area, under certain conditions, from 5,000 square feet to 10,000 square feet with the understanding that the process will include the requirement to be recommended by Council and a neighborhood impact report.

Council Member Beecham asked what the cost and timeframe would be if the amendment was included.

Mr. Emslie said the cost would be \$40,000 for a parking analysis and the additional work was included in staff's work program, which would be completed in the next 12 months.

AMENDMENT FAILED FOR LACK OF A SECOND

~~4 Determine whether staff should further explore possible changes to Chapter 18.87.055, increasing the maximum allowed parking exemption for bonus floor area, under certain conditions, from 5000 square feet to 10,000 square feet, as well as changes to Chapter 18.87.040 that reduce the required distance between certain TDR "receiver" sites and residentially zoned property.~~

MOTION PASSED 7-1, Freeman no, Mossar absent.

REPORTS OF OFFICIALS

3. Service Efforts and Accomplishments Report FY 2003-04

City Auditor Sharon Erickson gave a presentation of the Auditor's Third Annual Service Efforts and Accomplishments (SEA) Report. It provided information on staffing, workload, results for each City department and their five-year historical trend, comparison to other Cities and results of a citizen's survey. All informational data was outlined in the SEA Report FY 2003-04, dated February 2005. A copy of the report could be obtained from the City

Auditor's Office or from the City's web at: www.cityofpaloalto.org/auditor/reports.

Council Member Kishimoto said it was a fantastic report. It provided a comprehensive view of the community and a good resource for the budget process. It showed the City's strengths, weaknesses, and comparisons of the past five years. It projected the higher levels of activities and the use of volunteers and outside leverage for fund-raising. She noted various positions had been added throughout the years with the understanding they would be cost-recovery positions.

Council Member Morton noted the amount spent for services, including the high quality of education provided to the community, which was larger than that provided for libraries. He felt a need to focus on those numbers. He spoke of operating transfers and accounting for capital projects. Inter-fund transfers without the capital project funding were relatively small numbers. It was important to remind the community that monies raised in the community went back into the community. He noted staff increased in some areas but, overall, the City had maintained a high level of service with relatively small growth in staff in the last five years. The increase in revenue generated by many of the departments was much larger than the growth in expenditures.

Council Member Ojakian referred to page 2.6 of the Report and asked whether the City was reimbursed for maintaining the 26 acres of Utility sites.

Assistant City Manager Emily Harrison said the City was reimbursed.

Council Member Ojakian said reimbursements should be shown. Under Fire Safety and Disaster Preparedness Presentations on page 3.6 of the Report he asked why the impact was the presentations.

Ms. Harrison said it created a greater awareness in the community. In the event of an emergency, there would be a prepared infrastructure of community members, who would be able to respond and lead others in the response. The first level of response would be at the neighborhood level.

City Manager Benest said in the last five to seven years the increase in spending was on libraries, traffic safety, planning, and disaster preparedness. They were conscious decisions made for good reasons.

Council Member Ojakian referenced page 5.3 of the Report, and asked why there was an increase in Planning Applications Completed and in the Average Time for Completing Major Applications.

Ms. Harrison said it was based on the complexity of the application and made reference to large projects that had taken place in the Stanford and the SOFA areas.

Council Member Ojakian asked if it was possible to footnote one-time or exceptional projects.

Ms. Erickson suggested using a measure to show the average time and show the percentage achieved within a targeted timeframe, as footnotes.

Mr. Benest said Council had raised concerns regarding the time for processing building permits. The data report indicated a great headway in processing applications.

Ms. Erickson said there was a drastic reduction in the time for processing building permits. More work needed to be done on the development review. She felt it would be beneficial to take Council Member Ojakian's footnote suggestion and investigate what caused the numbers to increase, or to show the complexity or verify whether the majority of applications were processed timely.

Council Member Ojakian referenced page 7.9 of the Report, under Refuse Fund, the operating revenue was running better than the operating expense. He asked the reason for the change in the past three years.

Ms. Erickson said it was appropriate to run down the reserves if there was more than what was needed.

Council Member Ojakian referenced page 9.3 of the Report, under General Fund Reserve, he noted the dollar amount increase and asked what the cap was.

Mr. Benest said Council policy was to maintain a reserve between 15 and 20 percent. The key indicator was at 18 ½ percent, which was a good place to be, and it had been maintained at that percent even through very difficult times.

Council Member Ojakian said he raised a question regarding the number of computer workstations and asked if 978 new workstations had been purchased.

Ms. Erickson said it was a total of workstations. Some employees did not have workstations five years prior and had now been provided with one. She added there were still a great number of employees, such as field crews that still did not have a workstation.

Council Member Ojakian commended the Auditor for her fine work and asked that the Report be continued.

Vice Mayor Kleinberg said another way to look at the data was to project ahead in terms of certain segments in the community that were not well served. The numbers should tell where annual budget dollars were spent and the direction the City was going. It was important to look at childcare services, senior services, and affordable housing to determine which end of the spectrum needed attention. She noted that 84 percent of the community purchased from the Internet, and there was a need to recapture local sales tax revenue. She raised concern regarding Citywide training hours that was up almost 200 percent and whether it included temporary or part-time employees.

Mr. Benest said there was more training required for full-time and regular part-time staff and occasionally for hourly staff. There was mandated training such as in sexual harassment, safety, police and fire. Many employees received technical training and a range of discretionary training.

Ms. Erickson added there were significant training hours needed for the new SAP Program.

Council Member Freeman asked for clarification on the percentage of home recycling being down a point from the past year; however, the Auditor provided a figure in her presentation that indicated Palo Alto was doing better.

Ms. Erickson said her presentation figure reflected total tons.

Council Member Freeman raised concern of various characteristics in the community. Overall appearance of Palo Alto was 86 percent; opportunities to attend cultural events was 83 percent; openness and acceptance was down to 73 percent, and she would like to see a percentage increase in working with the government. She questioned the employee-training budget.

Council Member Beecham said more focus was needed on the Streets Reconstructive Expenditures, which was lower than other cities, and the significant drop in the past year of residents dissatisfied with Storm Drains. The expense on vehicle maintenance was higher than other cities. He asked whether other cost benefits needed to be reviewed.

Ms. Erickson said added research may be required but other cities may be using vehicles differently than Palo Alto.

Council Member Beecham noted Jobs/Housing imbalance being higher than other cities. Compared to Mountain View, Palo Alto had twice as many jobs per resident and noted Code Enforcement and Police operating expenses were high.

Mayor Burch commended Ms. Erickson on the Report. It was an excellent study and, since it was completed with questions used nationwide, it was a good across-the-states comparison.

No action required.

COUNCIL MATTERS

4. Colleagues Memo from Mayor Burch and Council Member Freeman re: Police Review Body

Mayor Burch read into the record the Colleague's memo authored by Council Member Freeman and himself.

Council Member Freeman said the intent of the memo was to allow discussion on the topic. She felt it was a good idea to examine issues within the Human Relation Commission (HRC). Approval of a Police Review Body would allow the HRC to review, make comments, listen to the public, and bring issues to Council for action.

Don Letcher, 788 North Rengstorff, Mountain View, said there was not a place where Mountain View and Palo Alto citizens could go to complain about inappropriate police actions and felt it was important to establish a review board with power to discipline.

Mark Petersen-Perez wanted to see changes made in the Police Department. An oversight commission entrusted with power to discipline officers would help reduce corruption in the department.

Aram James spoke on the topic of police misconduct and expressed disagreement on how police oversight issues were handled by City staff. He said an oversight commission could review Police Department policies that could result in wrongful convictions.

Christiane Cook, 1234 Emerson, was not in favor of having a review board under HRC's jurisdiction. Through past experience, she had found the HRC to be inadequate and faced long delays in resolving a problem.

Richard Shapiro spoke of his arrest for public disturbance and how the law in Santa Clara County mistreated him.

Shawna Wilson was in support of having the Police Review Board under the HRC, but the decision would need to be made by Council. The HRC decided to add a police subcommittee instead of a Police Liaison. She announced a Community Police meeting would be held on February 23, 2005, from 7-9 p.m. at the Palo Alto Unitarian Church and urged the community to attend. It would give citizens the opportunity to voice their opinions regarding the Police Department.

Herb Borock, P.O. Box 632, said the HRC had jurisdiction to act on human relations matters when the HRC found a person or groups of persons, who did not fully benefit from the Police Department services or were treated unfairly. The HRC had the authority to recommend local legislation or other actions to the Council relating to such matters. Citizens were looking for a body with authority. Other communities had police review boards with authority to act.

Brian Wax said he was not in support of a Police Review Board. He said the number of errors committed by the Palo Alto Police Department resulting in criminal complaints or violations of civil rights was minuscule and did not merit having an oversight committee.

Bob Moss, 4010 Orme Street, said the number of formal complaints against the Police Department during the past several years averaged 30 per year for everything and excessive force and brutality was four or five per year. The HRC reviewed police complaints, reported back to Council, and could be instructed to return with results.

Council Member Freeman said there might be a small number of incidents but only 7 percent of the population was in the category of Hispanic, Black or African-American. There could be issues that needed review. With the notion of openness in government and increased public scrutiny, a Police Review Board would be a benefit to the community and the police force. It was a way to examine a situation brought to Council by members of the population. The HRC was asked to examine issues brought to the meeting and return to Council with results. The results would not preclude the

Council from thinking of other options or listening to the public again with other issues. It was a starting point and a way for the community to start a civil open dialogue.

MOTION: Council Member Freeman moved, seconded by Burch, to ask the City Manager to agendaize discussion of the responsibilities of this review body as soon as possible, after providing the Human Relations Commission with an opportunity for its review and input.

Council Member Cordell stated she was aware of the City Auditor's survey of Palo Alto residents, which showed a high approval rate of the Police Department. She did not dispute the survey results, but given the small African-American and Latino population in Palo Alto, she felt only a few, if any, participated in the survey. The number of contacts between Police and African-Americans and Latinos was disproportionate to the numbers. She supported the recommendation and looked forward to HRC's feedback on the proposal. She was not confident such a route was the way to go in getting the results they were looking for, but it was a start. Her preference was to create a position in the City for a police auditor, someone with experience in law enforcement, legal training and independence. It would be a half-time position, on a trial basis for one year and would perform oversight and review of police conduct, similar to the auditor utilized by the City of San Jose for their Police Department.

Council Member Morton did not support the recommendation. He said there was a need to examine issues and have a civil dialogue for openness. He did not think there was a problem in the community on how people were treated. The City had a mechanism to review police officer's conduct. The first line of the jurisdiction of the HRC stated it had, by City design and the Charter, the discretion to act with respect to any human relations matter. Anyone who wished to bring a complaint could file the complaint with the HRC, which would intercede and conduct a review of the issue. Individuals should bring their complaints before the HRC. By acting on the proposal, it implied there was something wrong with the community and the policing. He did not feel it was necessary to create another level of bureaucracy to handle what he did not believe the majority of the community members felt

was a problem.

Council Member Kishimoto said since the issue had been brought out in the community, there was a need for discussion. There could be nothing behind them, but there might be constructive reforms that could be made. She referred to a February 2005 report: "Review of National Police Oversight Models for the Eugene Police Commission", which she found useful, and could help Palo Alto avoid repeating research performed by Eugene, Oregon. She urged her colleagues, staff, and the HRC to look at it since it covered Commission goals, functions, and policy areas for review. The City of Eugene had contracted an auditor to review closed internal investigations. She supported the recommendation.

Council Member Ojakian asked whether a Charter Amendment was required to establish an oversight committee.

City Attorney Baum said according to the City Charter, the jurisdiction in control of the Police Department was directly under the City Manager. Creating an oversight committee would require a Charter Amendment, numerous changes to the Municipal Code, and would not comply with the City Manager's form of government. It was creating a different structure for the City.

Council Member Ojakian asked whether an internal auditor/investigator would be compatible with the City Charter and City Manager's duty.

Mr. Baum said he needed to study the issue. It would depend on how it was set up and to whom the appointing authority was and whether it could possibly be accomplished with or without a Charter Amendment. There were limitations upon what any body, except for the Police Chief and City Manager, had on the officer's individual privacy rights, freedom, and the officer's bill of rights.

Council Member Ojakian asked whether there was an issue regarding examining and airing complaints with the HRC since it had been going on for such a long period of time: What authority did the HRC have; did Council

expect anything back from the HRC; and did they need to act on them.

Mr. Baum said the HRC was vested with some inherent authority to do what had already been suggested. The situation set up in the memo was a Police Review Body. The HRC and Council could not be an oversight body. The HRC was a delegating body from Council and an advisory body to Council. It was legal and acceptable in the current framework.

Council Member Ojakian said the memo was a good message and a positive approach and he supported the recommendation.

Council Member Beecham said he believed the City's Police Department worked well for the vast majority of the citizens. He was in support of bringing the item to the HRC.

Vice Mayor Kleinberg supported the motion. She said the point for discussion was whether reliable facts could come from a natural source to set records straight about whether a problem exists. By law, the HRC had the discretion to act in matters where people were treated differently or unfair. They could facilitate the resolution of problems or improve conditions by using encouragement, persuasion and mediation, but they did not have authority. The law would need to change in order to get something done if something was uncovered beyond what the Police Department or City Manager had uncovered. There was a perception, a public relations problem in the general public's minds, and a real problem in the minds of some people in the community. The HRC was extremely well intentioned with many skills, but she felt a need for more authority for a body that could be called into action.

Mayor Burch said accusations needed to be taken seriously. He felt the purpose of the memo was to state the need for a review board and the body that needed to complete the review was the HRC. It was a serious issue that needed to be addressed in a creative and open way. He supported the motion with the understanding not everything could be done in the long run.

MOTION PASSED 7-1, Morton no, Mossar absent.

COUNCIL COMMENTS, QUESTIONS, AND ANNOUNCEMENTS

Council Member Morton applauded staff regarding opening the Downtown Library on Saturdays.

Vice Mayor Kleinberg noted the Santa Clara County Civil Grand Jury was looking for volunteers to serve for 2005-06.

Council Member Freeman stated she had received the Palo Alto Downtown Survey, which gave a sense of what was happening with retail.

Mayor Burch stated Council Member Mossar was not at the meeting because she was representing the City in Washington D.C. He also noted she had been appointed as Vice Chair to the National League of Cities Energy Environment and Natural Resources Policy and Advocacy Committee.

CLOSED SESSION

The meeting adjourned at 11:15 p.m. to a Closed Session.

5. CONFERENCE WITH CITY ATTORNEY -- EXISTING LITIGATION

Subject: City of Palo Alto, a California chartered city vs. Robert T. Chang, Judy W. Chang, Bancplus Mortgage Corp., a Texas corporation, et al; Santa Clara County Superior Court No.: 104CV020516

Authority: Government Code section 54956.9(a)

The City Council met in Closed Session to discuss matters regarding existing litigation, as described in Agenda Item No. 5.

Mayor Burch announced there no reportable action was taken.

FINAL ADJOURNMENT: The meeting adjourned at 11:25 p.m.

ATTEST:

APPROVED:

City Clerk

Mayor

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