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2. Ordinance 4884 entitled "Ordinance of the Council of the City of Palo Alto Updating the Office, Research, and Manufacturing Districts of Title 18 [Zoning] of the Palo Alto Municipal Code by Enacting Portions of a New Chapter 18.20 [Office Research, and Manufacturing Districts]" 5

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	FINAL ADJOURNMENT: The meeting adjourned at 11:00 p.m.	26

The City Council of the City of Palo Alto met on this date in the Council Chambers at 7:03 p.m.

PRESENT: Beecham, Burch, Cordell, Freeman (arrived at 7:10 p.m.), Kishimoto, Kleinberg, Morton, Mossar, Ojakian

ORAL COMMUNICATIONS

Danielle Martell spoke regarding public concerns.

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

Tricia Dolkas, 412 Everett Avenue, spoke regarding library website links.

Stephanie Munoz, 101 Alma Street, Apt. 701, spoke regarding proportion balance.

Herb Borock, P.O. Box 632, spoke regarding telecommunications lobbyist disclosure ordinance.

APPROVAL OF MINUTES

October 11, 2005

October 17, 2005

At the request of the City Clerk, the minutes will be removed from the agenda.

CONSENT CALENDAR

Council Member Freeman stated she would vote "no" on Item No. 5.

Council Member Kishimoto stated she would vote "no" on Item No. 1.

Vice Mayor Kleinberg stated she would vote "no" on Item No. 2.

Council Member Mossar stated she would vote "no" on Item No. 2.

Council Member Mossar stated she would not participate in Item Nos. 1 and 3 due to a conflict of interest because her husband was employed by Stanford University.

Council Member Cordell stated she would not participate in Item Nos. 1 and 3 due to a conflict of interest because she was employed by Stanford University.

Director of Planning and Community Environment Steve Emslie said the ordinances did not provide direction to amend the land use zoning district for transient or pedestrian zones around the California Avenue area. Staff was pursuing the matter under its work program in the Zoning Ordinance Update (ZOU). The ZOU was necessary due to Council's action to eliminate housing from the General Manufacturing (GM) zone, which put the area around California Avenue in conflict with the City's Comprehensive (Comp) Plan.

Xenia Hammer, 861 Sharon Court, spoke regarding Item No. 4. She said the issue of flood control for San Francisquito Creek was a top priority for the Crescent Park Neighborhood Association and the City of Palo Alto. She encouraged the Council to approve the resolution to move ahead with the feasibility phase of the Army Corps of Engineer's (COE) project.

Art Kraemer, 1116 Forest Avenue, spoke regarding Item No. 4. He concurred with the comments of Xenia Hammer. He hoped the Council would put consideration to near term flood mitigation on a future agenda.

John Guiscin, 225 Middlefield Road, spoke regarding Item No. 4. He indicated on a recent walk in the creek at the Middlefield Bridge he encountered an encampment of people living in the creek with tents, chairs, bicycles and supplies. He also found an overgrown jungle of debris. He encouraged to Council and the community to get involved to solve the short-term problem to reduce flood for the coming winter.

Arthur Keller, 3881 Corina Way, spoke regarding Item No. 4. He expressed his appreciation to the San Francisquito Creek Joint Powers Authority (JPA) and Council Member Mossar for their work in reducing the flood problem for the creek and the bay.

Barton Hecktman, 1941 Channing Avenue, spoke regarding Item No. 4. He encouraged the Council to take the first step of approving the feasibility study, but keep in mind additional measures were needed to reduce the risks of flooding until the long-term project was completed.

MOTION: Council Member Morton moved, seconded by Ojakian, to approve Item Nos. 1 through 5 on the Consent Calendar.

1. Ordinance 4883 entitled "Ordinance of the Council of the City of Palo Alto Updating the Office, Research, and Manufacturing Districts of Title 18 [Zoning] of the Palo Alto Municipal Code by Amending Chapters 18.04 [Definitions], Repealing Chapters 18.37 [Office Research District Regulations], 18.55 [GM General Manufacturing District Regulations], 18.57 [General

Manufacturing Combining District (B) Regulations], 18.60 [Limited Industrial/Research Park District Regulations] and 18.63 [Limited Industrial Site Combining District (3, 5) Regulations] in its Entirety and Enacting Portions of a New Chapter 18.20 [Office Research, and Manufacturing Districts]" *(1st Reading 10/11/05, Passed 6-1, Kishimoto voting no, Cordell, Mossar, not participating)*

2. Ordinance 4884 entitled "Ordinance of the Council of the City of Palo Alto Updating the Office, Research, and Manufacturing Districts of Title 18 [Zoning] of the Palo Alto Municipal Code by Enacting Portions of a New Chapter 18.20 [Office Research, and Manufacturing Districts]" *(1st Reading 10/11/05, Passed 7-2, Kleinberg, Mossar no)*
3. Ordinance 4885 entitled "Ordinance of the Council of the City of Palo Alto Amending the Budget for the Fiscal Year 2005-06 to Provide Additional Appropriation from the Water Fund Rate Stabilization Reserve of \$244,980 into Capital Improvement Program (CIP) Project Number WS-01010, Reservoir Booster Station Improvements; \$71,916 into Capital Improvement Program (CIP) Project Number WS01011, Distribution System Water Quality Enhancements; and \$37,825 into Capital Program (CIP) Project Number WS-01012, Booster Station Improvements"
4. Resolution 8565 entitled "Resolution Authorizing the City's Representative to the San Francisquito Creek Joint Powers Authority to Vote for the Approval of a Cost Share Agreement with the United States Army Corps of Engineers for the Feasibility Phase of a San Francisquito Creek Flood Damage Reduction and Ecosystem Restoration Project"
5. Approval of Contract with Advanced Data Processing West, Incorporated for 7 Percent of Net Collected Revenue for all Advanced Life Support (ALS) and Basic Life Support (BLS) Ambulance Transport Services for a One Year Term That Can Automatically Renew for Two Additional One Year Periods

MOTION PASSED 6-1 for Item No. 1, Kishimoto no, Cordell, Mossar not participating.

MOTION PASSED 7-2 for Item No. 2, Kleinberg, Mossar no.

MOTION PASSED 7-0 for Item No. 3, Cordell, Mossar not participating.

MOTION PASSED 9-0 for Item No. 4.

MOTION PASSED 8-1 for Item No. 5, Freeman no.

Director of Community Services Richard James spoke regarding the community garden. He said all garden fees would be frozen with everyone paying the same amount as in the previous year. Staff had begun discussions with the gardeners. The item would come before the Parks and Recreation Commission (PARC) in December for review and recommendations. Staff's goal was to keep the community garden a quality and sustainable program while reducing fees for the gardeners.

Council Member Morton said he understood the PARC meeting for December had been cancelled.

Mr. James said the PARC's regular meeting had been cancelled and rescheduled for December 27, 2005.

Council Member Freeman spoke regarding her "no" vote on Item No. 5. She said staff did not initiate a Request for Proposal (RFP), but used information from the City of San Bernardino. She recommended future assurance of open-bidding after the current contract was let.

PUBLIC HEARINGS

6. Public Hearing: Consideration of Recommendations of Staff and the Planning and Transportation Commission to Approve the Permanent Implementation of the Second Downtown North Trial Traffic-Calming Plan. The Recommended Plan Includes Traffic Circles on Everett at Emerson, Everett at Webster, and Hawthorne at Cowper; Speed Tables on Hawthorne Near High and on Palo Alto Avenue Between Alma and Emerson; Right Turn Restrictions Between 7 a.m. and 10 a.m. from Middlefield onto Hawthorne and Everett; and Left Turn Restrictions Between 7 a.m. and 10 a.m. and 3 p.m. and 6 p.m. from Alma onto Hawthorne and Everett

Council Member Beecham stated he would not participate in the item due to a conflict of interest because his residence was within 500 feet of the property.

Acting Chief Transportation Official Gayle Likens said in May 2004, the Council directed staff to remove most of the elements of the first Downtown North Trial Plan, which included a number of street closures. The second Trial Plan began in September 2004, and incorporated less restrictive measures in an "open streets" plan composed of traffic circles, speed tables and turn restrictions from the major arterial streets. Staff completed the evaluation of the second trial, conducted a postcard survey of the residences in the Downtown

North neighborhood, and held a public meeting with residents of the study area. The Planning and Transportation Commission (P&TC) and staff recommended the Council hold a public hearing regarding the results of the second Downtown North Traffic Calming Trial, and approve the permanent retention of the second Trial Plan with the exception of landscaping the traffic circles with plant materials, as it would add to the unfunded maintenance backlog of the Public Works and Parks staff. The P&TC included other recommendations, as outlined in Attachment B of the staff report (CMR:427:05). The second Trial Plan reduced cut-through traffic by 75 percent, maintained an acceptable Level of Service D (LOS-D) at signalized intersections, vehicular speeds fell by 1.7 miles per hour to below 25 miles per hour on residential streets, emergency services response times were not exceeded due to the new traffic calming measures, and no other service providers reported any impacts. The overall response from neighbors in Downtown North showed a 77 percent support for retention of the second Trial Plan for traffic calming measures.

Planning and Transportation Commission Chair Pat Burt said the P&TC expressed strong support for the overall impact of the Trial Plan. There was significant outcome from measures that reduced the speed and improved the safety of the neighborhood without having a complete closure of streets in the neighborhood. The only recommendation the P&TC and staff differed on was the addition of landscaping the traffic circles. The P&TC believed modest landscaping that did not interfere with visual sight lines was an important addition. The P&TC did not have an opportunity to comment on the cost impacts cited in the staff report (CMR:427:05).

Mayor Burch declared the Public Hearing open at 7:50 p.m.

Ed Glazier, 255 Everett Avenue, expressed his belief that too much time and money had been spent on the project.

Janice Hough, 189 Bryant Street, said although she would be happy to see the traffic circles removed, it was a compromise solution and it worked.

Joe Durand, 275 Hawthorne Avenue, applauded the success of the second Downtown Trial, and asked the Council to make it permanent.

Tricia Dolkas, 412 Everett Avenue, asked the Council to evaluate the possibility of native landscaping in the traffic circles.

Sara Benson, 245 Emerson Street, expressed support for the second Downtown Trial.

Pat Markevitch, 231 Emerson Street, said she would like to see the traffic circle at the intersection of Everett Avenue and Emerson Street removed in the interest of pedestrian and vehicle safety.

Beth Guislin, 225 Middlefield Road, asked the Council to first analyze the traffic issues on Middlefield Road between Lytton and Palo Alto Avenues, and then recommend a solution.

Stephanie Munoz, 101 Alma Street, urged the Council to put speed tables on Palo Alto Avenue.

John Guislin, 225 Middlefield Road, said the City put in place a plan that initially included multiple street closures while ignoring Policy T-33 of the Comprehensive (Comp) Plan. He urged the Council to take a look at the heavy traffic burden on Middlefield Road and Lytton Avenue because of the diversion from Plan Two.

Steven Fram, 614 Everett Avenue, expressed support for the second Downtown Trial because of the reduction in cut through traffic and the safety of the neighborhood for children.

Ken Hake, 575 Everett Avenue, urged the Council to adopt the permanent implementation of the second Downtown Trial, with a wider traffic circle at Everett Avenue and Webster Street.

Dan Lorimer, 465 Hawthorne Avenue, expressed support for the retention of the second Downtown Trial. He asked the Council to consider putting traffic circles at intersections surrounding Johnson Park.

Steve Kutner, 275 Hawthorne Avenue, urged the Council to approve the current Trial Plan, consider reducing some restrictions and to not add any new measures.

Erika Enos, 2110 Columbia Street, urged the Council to adopt the permanent implementation of the Trial Plan, and allow for landscaping in the traffic circles either by the City or the neighbors.

Ann Gilas, 459 Hawthorne Avenue, urged the Council to accept the Trial Plan even though more stringent measures were not in place.

James Markevitch, 231 Emerson Street, expressed support for the second Downtown Trial Plan.

Richard C. Brand, 281 Addison Avenue, recommended the Council look at moving the stop line four or five feet back from the point of the intersection.

Mayor Burch declared the Public Hearing closed at 8:12 p.m.

Council Member Morton expressed concern about the traffic circle at Emerson Street and Everett Avenue, and asked whether its removal would have a major impact.

Director of Planning and Community Environment Steve Emslie said staff had a plan in place that worked, and any major changes to add or delete devices was strongly opposed.

Council Member Morton asked whether staff had any objection to having the traffic circles landscaped by the neighbors.

Mr. Emslie said no.

Council Member Morton asked whether the addition of an advisory committee that allowed staff to explore the possibility of landscaping by the neighbors was acceptable.

Assistant City Manager Emily Harrison said staff would prefer to come back to Council with a plan after having talked to the neighbors.

Council Member Morton said he understood there was still a concern about Johnson Park. He asked whether staff would come back and recommend a speed table on either side of the park if they believed it was better than a stop sign.

Mr. Emslie said yes.

MOTION: Council Member Morton moved, seconded by Kishimoto to approve the following action:

1. Conduct a public hearing regarding the results of the second Downtown North traffic calming trial project; and
2. Approve the permanent retention of the second Downtown North Traffic Calming trial project, with additional work outlined in this report under the recommendation of Board/Commission Review and Recommendations except for letter "a". Furthermore, to have staff return after a discussion with neighbors about landscaping the traffic circles.

Vice Mayor Kleinberg asked whether all of staff's recommendations were being included in the motion.

Council Member Morton said he was recommending everything included in Attachment A of the staff report (CMR:427:05).

Vice Mayor Kleinberg said it was unclear what the motion entailed.

Council Member Morton asked whether Attachment A highlighted the presentation made by staff.

Ms. Harrison said staff only disagreed with the P&TC on the additional cost for landscaping the traffic circles.

Council Member Morton said the motion would include the recommendations from the P&TC and staff.

Council Member Mossar said staff's recommendation was not to landscape the traffic circles.

Council Member Morton said there would be an attached condition for staff to discuss the issue of landscaping with the neighbors.

Council Member Mossar said the motion did not include the condition the traffic circles would be landscaped. If after discussions with the neighbors, staff felt there was no way to do it, the traffic circles would remain untouched.

Council Member Morton said the basic measures that appeared on Attachment A, included the Board/Commission recommendations plus the direction to staff to discuss with the neighbors landscaping of the traffic circles.

Council Member Kishimoto clarified her understanding of the motion was to adopt the P&TC recommendations with the exception of "letter a", with staff returning to Council after a discussion with neighbors about landscaping the traffic circles.

Council Member Morton said that was correct. He expressed his thanks to the community for their patience in working out a solution.

Council Member Kishimoto congratulated the neighborhood and staff for coming together with a viable traffic calming plan.

SUBSTITUTE MOTION: Vice Mayor Kleinberg moved, seconded by Mossar, to make permanent the installations for the second Downtown North Traffic Calming trial project with no other modifications except the following:

1. Staff is to return with options for installation of landscaping in traffic circles; and
2. Staff is to return with feasibility study for non-vertical measures for increased vehicular and pedestrian safety in Johnson Park.

Vice Mayor Kleinberg said given the overwhelming success of the second Trial, she believed the neighborhood was safer. Some of the recommendations from the P&TC were intuitive things, such as crossing the street at right angles, and the exemption of emergency vehicles from the turn prohibition signs. She suggested applying the additional \$60,000 towards enhancing the traffic circles.

Council Member Mossar said the Council set as its priority for traffic calming safer school routes, and perhaps the additional \$60,000 could be spent on other such projects. She was opposed to continuing the study and evaluation process.

ORIGINAL MOTION WITHDRAWN BY MAKER

Council Member Ojakian asked what would happen to the replacement of a single handicapped ramp with two perpendicular handicapped ramps, if the motion passed as amended.

Mr. Emslie said the single handicapped ramp would become permanent.

Council Member Ojakian asked what the impact would be.

Mr. Emslie said the concern for having additional handicapped ramps in the direction of the crosswalk rather than in the center of the intersection was for safety; however, the identified reduction in speeds and positive benefits of the measures would offset the need to move forward immediately. Staff would continue to monitor the situation and bring it back to Council if needed.

Council Member Ojakian clarified in staff's opinion changing the trajectory of how the handicapped ramps worked would not cause a safety issue.

Mr. Emslie said that was correct.

Council Member Ojakian said pedestrian and vehicular safety in the vicinity of Johnson Park was a continual issue. He asked if in staff's opinion the area was safe for children to use.

Mr. Emslie said staff did not believe additional vertical devices were necessary in the area to maintain the degree of safety.

Council Member Ojakian expressed support for the motion, and believed it was important to do something about landscaping the traffic circles. He also had a concern about safety around Johnson Park and felt it should be addressed.

AMENDMENT: Council Member Kishimoto moved, seconded by Ojakian, to evaluate the desirability and feasibility of additional non-vertical measures for pedestrian and vehicular safety in the vicinity of Johnson Park.

Vice Mayor Kleinberg asked whether there was any data to suggest a problem of excessive speeding around Johnson Park, which made it particularly unsafe.

Council Member Mossar believed the issue of safety around Johnson Park had been looked at carefully during the first and second Downtown Trial.

Ms. Likens said staff looked at accidents in the vicinity of Hawthorne Avenue and Waverley Street and found only one reported accident in the past six years. It was a two vehicle accident and no pedestrians were involved. Staff had not prepared a focused study of the Johnson Park area.

Vice Mayor Kleinberg clarified there was no specific data to confirm the need for anything special at Johnson Park at the present time.

Mr. Emslie said that was correct.

Vice Mayor Kleinberg said she would prefer the motion to remain unchanged, but for Council to provide direction for staff to study safety around all the City parks.

Council Member Kishimoto said she would envision striping the corners around Johnson Park to create a safer environment.

AMENDMENT PASSED 4-3, Cordell, Kleinberg, Mossar no, Morton absent, Beecham not participating.

AMENDMENT: Council Member Kishimoto moved to consider replacement, as feasible, of the single handicapped ramp at each corner of intersections containing traffic circles with two perpendicular (to the street being crossed) handicapped ramps.

AMENDMENT DIED FOR LACK OF SECOND

Council Member Freeman stated for the record the traffic circle at Everett Avenue and Webster Street was smaller than the other traffic circles because of the smaller intersection and to meet the requirement for emergency vehicle access. She asked for the City's cost to maintain the picket fences at Middlefield Road and Palo Alto Avenue and if they could be removed.

Mr. Emslie said the incremental cost of maintaining the fences was much less than landscaping and they could be removed.

Council Member Freeman asked for the cost and whether money could be moved from picket fence painting to landscaping the traffic circles.

Mr. Emslie said he believed the cost was negligible.

Council Member Freeman asked whether there were safety issues related to them being removed.

Mr. Emslie said no.

Council Member Freeman asked whether the street closure at Palo Alto Avenue and Middlefield Road was included in the landscaping idea.

Mr. Emslie said it only included the traffic circles.

Council Member Freeman asked whether the picket fences aided in motorists' understanding of the road closure.

Mr. Emslie said yes. On Palo Alto Avenue, it increased the visibility of the street closure.

Council Member Freeman asked whether other picket fences existed in Downtown North.

Mr. Emslie said yes. There was one on Waverley Street near Johnson Park.

Council Member Freeman asked whether they were proven to be effective safety measures.

Mr. Emslie said they did not provide closure or other diversion, but were an adjunct to the street.

AMENDMENT: Council Member Freeman moved to remove picket fences except for the ones located at Palo Alto Avenue and Middlefield Road.

Council Member Mossar clarified there had not been any discussion of whether the picket fences would remain or be removed.

Mr. Emslie said the motion included a proposal to landscape the traffic circles, but did not include the picket fences.

Vice Mayor Kleinberg said she would not support the amendment. The motion was a balanced mutually-agreeable compromise.

Council Member Freeman said the removal of the picket fences was a cost savings measure to reduce maintenance and provide more funds for landscaping the traffic circles.

AMENDMENT FAILED FOR LACK OF A SECOND

Council Member Cordell expressed appreciation to the Council in voting to take down the street closures after the First Trial. She and her colleagues believed the community, although divided, would come together. She asked her colleagues to end the Second Trial by making the traffic calming measures permanent. She expressed support for the motion.

MOTION PASSED AS AMENDED 8-0, Beecham not participating.

ORDINANCES AND RESOLUTIONS

7. Ordinance 1st Reading entitled "Ordinance of the Council of the City of Palo Alto Adding Section 22.08.331 of Chapter 22.08 [Park Dedications] of Title 2 of the Palo Alto Municipal Code to Dedicate a 13.27 Acre Parcel of Land [Parcel 3] Formerly Known as the Arastradero Gateway Preserve"

Herb Borock, P.O. Box 632, said it was inappropriate to include Arastradero Road in the park dedication because along Page Mill Road stood Montebello Preserve on one side and Los Trancos Road on the other. He believed the item was not properly agendized since the wording requesting to initiate a zone change was omitted from the agenda title, although it was mentioned in the staff report (CMR:419:05).

MOTION: Council Member Mossar moved, seconded by Kleinberg, to: 1) introduce an ordinance (Attachment A of CMR:419:05) for 1st reading reserving 13.27 acres of land formerly owned by the Peninsula Open Space Trust and purchased by the City of Palo Alto on September 31, 2005, for park, recreation and/or conservation lands and uses; and 2) direct Planning staff to initiate a zone change from Open Space to Public Facilities.

Council Member Mossar said approval of the motion was the next step in ensuring the lands were protected. She expressed support for the motion.

Council Member Morton expressed support for the motion.

Council Member Freeman asked whether there was an issue with how the item was agendized.

City Attorney Gary Baum said since the zone change would not take place that evening, the Council was being asked to request staff to bring the item to the P&TC.

Council Member Freeman said Exhibit A-21.9 of the staff report (CMR:419:05) indicated Arastradero Road was part and parcel of the property. She asked whether it was a part of the open space.

Manager Open Space and Sciences Greg Betts said yes. The Bressler Property did extend across the road and included Arastradero Road. He clarified other roads, such as Embarcadero Road in the Baylands, Foothills Park, Las Trampas Valley Road, and Madera Point Hill incorporated roads that were part of open space parks.

Council Member Freeman asked whether the portion of the Bressler Property not part of the Arastradero Road right-of-way was included.

Mr. Betts said the entire parcel of property including the right-of-way would be incorporated into park land. It was not broken up in any way.

Council Member Freeman asked the whether the change in the Comp Plan Use Map would occur after the commission reviewed it. Mr. Baum said it would follow to the extent necessary.

Council Member Kishimoto said it was important that staff notice agenda items carefully because often the agenda was the only thing the public saw.

Mayor Burch said the agenda indicated the park land dedication.

Council Member Kishimoto said the agenda did not indicate a recommendation to initiate a zone change.

MOTION PASSED 9-0.

REPORTS OF OFFICIALS

8. Approval of a Resolution Establishing a Storm Drain Oversight Committee

Director of Public Works Glenn Roberts said the item was a follow-up from the recommendations of the Blue Ribbon Task Force (BRTF) and was incorporated by the City Council into the ballot measure, which was approved by the voters on April 26, 2005.

MOTION: Council Member Morton moved, seconded by Mossar, to approve the staff recommendation to approve the resolution establishing a Storm Drain Oversight Committee and direct staff to proceed with the solicitation of potential Committee members.

Council Member Morton said he looked forward to new and improved storm drains, and agreed an oversight committee was needed to implement the measure.

Council Member Freeman requested the motion incorporate having alternating terms for the committee members.

Council Member Morton believed staff could make that decision without Council direction.

Assistant City Manager Emily Harrison said staff would need Council's direction to incorporate staggering terms for the committee members.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDED that there is to be alternating terms for the committee members.

Council Member Freeman referred to Section 3(a) in Attachment A of the staff report (CMR:410:05), and asked to remove the specific date of "April 30th each year" to "at least one week prior to submitting it for budget purposes."

Mr. Roberts said staff could connect the date with the Finance Committee action.

Council Member Mossar believed the budget cycle did not have any meaning. The words "prior to the budget cycle" could be in November or September.

Council Member Morton said he would not accept the modified language. He was comfortable with staff's wording of "prior to April 30th."

Mr. Roberts said staff believed the addition of a specific date would give more motivation and certainty to the process.

Council Member Mossar said the advantage of having a date made it clear the Finance Committee would receive the information in a timely manner.

Council Member Freeman said if the budget cycle changed in the future the ordinance would need to be changed with a specific date.

Mr. Baum said the attachment was a resolution, which could be changed by the Council at any meeting.

MOTION PASSED 9-0.

REPORTS OF COMMITTEES AND COMMISSIONS

9. Resolution 8566 entitled "Resolution of the Council of the City of Palo Alto Appointing a Panel of Experts to Review Changes to Existing Police Policies and Procedures Regarding Community Relations and Creating Independent Internal Affairs Review Panel Regarding Internal Investigations and Citizen Complaints"

City Manager Frank Benest said based on a Council Colleagues Memo, a series of discussions were held with the Council and the Human Relations Commission (HRC) about Police Review Functions. After meeting with the Police Chief and the HRC, staff recommended the Council assign the three roles identified in Attachment A of the staff report (CMR:413:05) to the HRC, with the understanding the HRC would act in an advisory role. In addition, an outside Independent Panel of Experts (Expert Panel) would work with the Police Chief and Police Department to provide input about the policies and to ensure the needs of the community were met.

Human Relations Commission Chair Jeff Blum said the Commission felt because of the time commitment and the lack of expertise, the HRC should not be as involved as initially considered. He clarified the HRC felt there should be a member from the Commission and from the American Civil Liberties Union (ACLU) on the Police Review Board. He also believed the HRC should not only be advisory to the Police Chief, but the City Manager and Council as well. Overall, the HRC felt the plan was a good one. The one dissenting vote had to do with the question of how much input the HRC should have over the appointment of the members of the two boards.

Council Member Cordell said it was advisable to designate of number of members for the Expert Panel. Also, the language in the recommendation was unclear as to the kinds of people that were needed on the panel, such as a former Mayor, a Police Chief, or retired Judge. She noted with regard to the Independent Review of Internal Investigations (Internal Investigations), the City Charter stated only the City Attorney, the Police Chief, and the City Manager could be privy to those investigations; yet, the panel would include the City Auditor and the Human Resources Director who were not permitted to have access to such information. She asked how the issue would be addressed.

City Attorney Gary Baum said the Human Resources Director would work under the auspices of the City Manager and was normally in the chain of discipline. The City Auditor would also be working within the same authority and would enter into a separate confidentiality agreement.

Council Member Cordell asked whether those two persons could legally be involved.

Mr. Baum said yes.

Christianne Cook, 1234 Emerson Street, believed the Police Review Board should not consist of HRC members because of potential conflicts.

Aram James believed staff's proposal contained the false promise of oversight and any real oversight was illusory. He suggested the Council turn down the proposal.

Herb Borock, P.O. Box 632, referred to page 2 of the staff report (CMR:413:05), which referred to the procedures for the Expert Panel having to do with community relations. He found the term vague and did not believe it applied to the examples set forth for the panel to review.

Stephanie Munoz, 101 Alma Street, expressed opposition to City staff being on the Police Oversight Committee.

Council Member Morton asked what the budget impact was for a specialized outside legal counsel on the Internal Investigations panel.

Police Chief Lynne Johnson said going back to 2000, the City received an average of 21.8 citizen complaints per year. There was one officer involved shooting and one case of moral turpitude.

Council Member Morton asked whether outside legal counsel had been utilized in those cases.

Mr. Baum said no. The City Attorney's Office was not involved in citizen complaints, but was generally involved in reviewing Internal Affairs (IA) investigations. Staff anticipated a sum less than \$25,000 for the first year, which could be absorbed in the City Attorney's budget.

Council Member Morton said he did not want to find out a year hence that programs at the Children's Theater would be cut in order to fund IA Investigations.

Mr. Baum said his office could absorb the cost going forward; however, he could not predict future years or any change in circumstances.

Council Member Morton clarified the numbers were relatively small, yet it seemed staff had set up a new structure even though he did not believe there were any major failures.

Council Member Cordell said the item was in various parts. The first part dealt with the function of the HRC. As a body, they were advisory with three distinct functions. Another dealt with the Internal Investigation situations and was a critical component. The third dealt with the Expert Panel, who would assist and advise the Police Chief on various policies and procedures. The policy did not address a problem that did not already exist, and she hoped her colleagues would support the motion.

MOTION: Council Member Cordell moved, seconded by Ojakian, to approve the Human Relations Commission (HRC) and staff recommendation to assign the three roles identified in the Police Review Functions policy to the HRC, with the understanding that the HRC is acting in an advisory role only, and that this role is consistent with the HRC's historical function. In addition, approve a resolution appointing a panel of experts to review changes to existing police policies and procedures regarding community relations and creating independent internal affairs review panel regarding internal investigations and citizen complaints.

Council Member Ojakian expressed his thanks to Council Member Cordell for her work on the functions proposed for the HRC and believed it was time to move ahead.

Vice Mayor Kleinberg asked whether the Police Department's Strategic Plan would be reviewed by the Council.

Mr. Benest said strategic plans would come to the Council as informational reports. The Council does not approve the strategic plans of departments.

Vice Mayor Kleinberg questioned the HRC's involvement.

Mr. Benest said the HRC's involvement included: 1) input into the development of the plan; 2) comments on the draft plan; and 3) progress reports on how the department was doing. Those progress reports would also be provided to the Council. Council's involvement would be the result of the Strategic Plans coming forward as part of the budget with performance goals generated by those Plans.

Vice Mayor Kleinberg said she was unsure why the Council could not review the Police Department's Strategic Plan. It was assuring to know the goals and milestones would be reported out to the Council; however, she would like there to be a way of looking at the strategic plan without it being embedded into the budget. She asked with regard to the Internal Investigations who would appoint the specialized outside legal counsel.

Mr. Benest said the City Attorney would.

Vice Mayor Kleinberg said she thought it would be a volunteer position, but had learned the person would be paid.

Mr. Baum said the thought was to have outside legal expertise available, and it would be a paid consultant in order to maintain the attorney/client privilege.

Mr. Benest said staff did not anticipate using the outside legal counsel on every citizen complaint or investigation. They would only be used when members of the panel indicated the need for specialized expertise.

Vice Mayor Kleinberg expressed concern about a paid outside legal counsel reporting to the City Attorney, with a built-in perception by the public that it was perhaps not neutral enough. She asked who would call the meetings for the Policy Review Panel.

Mr. Benest said the City Manager and Police Chief would call the meetings to periodically review new or updated policies.

Vice Mayor Kleinberg asked who would establish the agenda for the meetings and who would be the staff.

Mr. Benest said the City Manager would establish the agenda and the meetings would include the Police Chief and some outside expertise, who provided advice to police departments in terms of state-of-the-art police policies and practices.

Vice Mayor Kleinberg referred to Section 1 of Attachment B of the staff report (CMR:413:05), which stated the Council would appoint an Expert Panel to review any changes to existing police policies.

Mr. Benest clarified the Police Chief and City Manager would call the meeting when there was a policy to review. The Council would appoint them.

Vice Mayor Kleinberg said Section 1 also stated the Expert Panel may include former mayors, former police chiefs and others. She said there was no real commitment by the Council as to what any future Council would do in terms of the format and demographics.

Mr. Benest said the Council could identify the number of persons to be included and who should be on the Panel.

Vice Mayor Kleinberg said the language was vague as to the changes to existing police policies and procedures. She asked what constituted a change.

Mr. Benest said periodically there would be new policies, such as video cameras in police cars or other updated policies that involved changes.

Vice Mayor Kleinberg said the way she read the information it had to do with policies and procedures having to do with community relations. She asked whether staff defined video cameras in police cars as a community relations policy.

Mr. Benest believed the whole issue related to police community relations. Staff attempted to identify policies that somehow impacted how the community related to the Police Department, how the Department interacted with the community and the communities perceptions. Policies having to do with video cameras, interrogations and use of force had a large community impact.

Vice Mayor Kleinberg asked whether the issue of tasers would be reviewed by the Expert Panel.

Mr. Benest said the issue was not proposed but it could come up.

Vice Mayor Kleinberg said it would be better if the language was tighter and more specific given its sensitive nature. She noted there was no indication of diversity on the panel other than professional. She hoped for diversity that was ethnic, gender and sexual orientation and identification. Although she applauded the HRC and staff for their work on finding a potential solution, she was not convinced the proposal was formatted enough to be specific, or had a blueprint to know what the milestones and expectations were.

Council Member Cordell agreed the language in Section 1 could be rewritten to include, "the Council would review issues such as... and including but not limited to the use of force." She also agreed with the diversity issue. She would like an indication that the Council could move forward on the concept, and then have it brought back to tighten up the language.

Vice Mayor Kleinberg expressed a concern of having the Expert Panel meet only once a year when the subject matter was of significance to everyone, it would overwhelm the group and not give due consideration to those issues.

Council Member Mossar believed she had been given a concept that had rough edges, and then was being asked to appoint an unspecified number of persons with unspecified qualifications to be advisory to the Police Chief, while the Council's role in the process was unclear. She agreed the review for Internal Investigations did not seem neutral, and the Council would not have access to any of the information. She needed an understanding and reassurance things would improve before she could support the motion.

Mr. Benest said he was trying to navigate between the existing City Charter, which stated the City Manager would oversee the Police Department, and dealing with certain concerns the Council and the community had. He was amenable to the Council articulating what they preferred in terms of the Policy Panel.

Council Member Mossar said what was lacking was an opportunity for the Council to go through the concept and work out the details in ways which worked for them. She suggested the item should go before the Policy and Services Committee.

SUBSTITUTE MOTION: Council Member Mossar moved, seconded by Morton, to approve in concept the staff recommendation and refer the item to the Policy and Services (P&S) Committee to further clarify the details needed, and return the item to the Council for final approval.

Council Member Morton said if the matter was sent to the P&S Committee, the Council should not commit to the concept but rather have the Committee return to the Council with their recommendations.

Council Member Mossar expressed her support for the concept but wanted an opportunity for the Council to look at it in closer detail.

Mr. Baum said the desire to have the Police Review Functions report back to the Council could be incorporated conceptually into each of the pieces. The end result was a report to Council.

Council Member Mossar said it was important for the Council to have a chance to think it through.

Council Member Cordell said she questioned the expertise of the P&S Committee to evaluate the matter, as she believed it took individuals with expertise in the field to formulate the issue.

Mayor Burch said perhaps an Ad Hoc Committee made up of three Council Members should be appointed to develop concepts and proposals and return to Council with their recommendations.

Council Member Freeman expressed concern about the amount of work and money involved for the City Attorney, City Auditor and the Human Resources Director to sit on such a commission. In comparison, the cities of San Jose, Santa Cruz and Sacramento enlisted police auditors. She said perhaps it created too many layers when the City could utilize an outside source.

Mr. Benest clarified the San Jose City Auditor reported to the City Manager at a cost of approximately \$250,000. Palo Alto did not have the volume to justify the expenditure or the amount of time involved. He anticipated a minimum amount of time by the Internal Review Panel, and the time to look at policies with the Expert Panel once or twice per year. He urged the Council to approve the item in concept and then ask staff to return with a specific proposal in response to the questions raised by the Council in terms of the committee, and/or work first with the Ad Hoc Committee in terms of what staff would propose before coming back to the Council.

Council Member Freeman suggested contracting with a person who could handle the issues and had an arms length distance from those who ran the City. She said while she appreciated all the work that had been done, the matter needed to go back to the drawing board.

SUBSTITUTE MOTION WITHDRAWN BY MAKER

SUBSTITUTE MOTION: Mayor Burch moved, seconded by Beecham, to have this item referred to a Council Ad Hoc committee consisting of Vice Mayor Kleinberg, and Council Members Cordell and Mossar to clarify the details and return to Council at a later date.

SUBSTITUTE MOTION PASSED 7-2, Morton, Ojakian no.

Council Member Kishimoto said Section 1 of Attachment B should include wording that any meeting would be publicly noticed and open to the public. She suggested changing the wording from "community relations" to "new discretionary policies affecting the public". In Section 3, she felt staff needed to clarify the goal of the IA Review Panel. She noted her review of other cities' examples emphasized reporting to Council on the thoroughness and objectivity of the investigation. She disagreed with the notion that strategic plans were not to be reviewed by the Council. It was the Council's job to review the policies of the City and possibly approve them. She expressed a concern about the demographic data presented by John Abraham.

Mr. Benest said he asked the City Auditor to work with the Police Department to clarify the methodology. Any concerns would be included in the next informational report to make sure it reflected the proper methodology.

Vice Mayor Kleinberg said although staff had spent a lot of time on the matter especially with the HRC, she did not believe the same amount of time was spent with the Council. She recalled the Council reviewed not only the Utilities Department Strategic Plan, but the Libraries Strategic Plan as well. She said whatever plan was put in place should confirm the Police Department was doing the right thing, and it needed to be as transparent as the law allowed.

Council Member Morton said once the Ad Hoc Committee came back, the Council should adopt the portion of the Police Review Functions that related to the HRC. He believed a lot of work had been done in clarifying the role the HRC should propose.

Council Member Ojakian noted the motion did not indicate a date certain for when the Ad Hoc Committee would return to the Council. He asked when it would return. He concurred with the comments of Council Member Morton.

Council Member Cordell said she did not have a time certain.

MOTION: Council Member Cordell moved, seconded by Morton, that the first three sections in the Police Review Functions dealing with roles of the HRC be adopted by Council, including the notation that the HRC is advisory to the Council.

Council Member Mossar clarified the intent of the motion was not to preclude the Council from having a discussion about Council's potential review of the Police Department's Strategic Plan.

Council Member Cordell said that was correct.

Council Member Morton clarified it was the sense of the Council that Section 2 of the Resolution be adopted, and the HRC would report on its measures to the Council as appropriate.

Vice Mayor Kleinberg noted the resolution and the staff report (CMR:413:05) talked about continuing with existing policy. She asked whether there was anything new the Council was voting on in the proposed functions for the HRC.

Mr. Benest said, historically, the HRC had provided an alternative forum which was being formalized. In terms of reviewing the

demographic data, staff had added more information through the car stop survey and had specifically asked the HRC to probe the data, look at its implications, and to work with the Police Department on any changes needed. Staff would like the HRC to have a formal role in the Strategic Plan.

Vice Mayor Kleinberg said she was unsure whether the resolution said everything the City Manager stated.

Mr. Baum said it could be framed as part of the Council's motion, which was a firm directive staff would follow.

Council Member Cordell said her motion was to adopt the Police Review Functions for the HRC and include wording that the HRC was advisory to the Police Chief and the City Council.

Council Member Freeman said the HRC had the responsibility to probe and question the department on the results of its information gathering efforts and make recommendations to the Police Chief. She asked whether the HRC would have the ability to request statistical analysis written in layman's terms for demographic data.

Mr. Benest said staff would be responsive to the HRC. If the HRC felt they wanted further analysis or the data translated in one form or another, it would be provided.

Council Member Cordell said whenever the HRC needed further expertise or an explanation regarding data, they were able to bring in people to help them make sense of the information.

MOTION PASSED 9-0.

COUNCIL COMMENTS, QUESTIONS, AND ANNOUNCEMENTS

Council Member Kishimoto requested an update on the letters received regarding the Stanford Theatre false alarms.

Mayor Burch noted the information was not reported correctly in the recent Stanford Theatre brochure, and there were two sides to the story.

Vice Mayor Kleinberg referred to the invitation to the Santa Clara County Cities Association Holiday Party on December 8, 2005 in the San Jose City Hall Rotunda.

Council Member Freeman asked the City Manager for his perspective on modifying the Library web page on links to local book stores.

Assistant City Manager Harrison noted that staff would look into the matter and respond to the Council.

CLOSED SESSION

The Council adjourned to a Closed Session at 10:45 p.m.

Council Member Morton stated he would not participate in Item Nos. 10 and 11 due to a conflict of interest because of family holdings in SBC, AT&T and Comcast.

Council Member Mossar stated she would not participate in Item Nos. 10 and 11 due to a conflict of interest because of family holdings in SBC, AT&T and Comcast.

Council Member Ojakian stated he would not participate in Item Nos. 10 and 11 due to a conflict of interest because of family holdings in SBC, AT&T and Comcast.

- 10. CONFERENCE WITH CITY ATTORNEY -- EXISTING LITIGATION
Subject: The City of Palo Alto, a municipal corporation v. GTE Mobilnet of California Limited Partnership dba Verizon Wireless, et al., Santa Clara County Superior Court Case No.: 1-04-CV 028047
Authority: Government Code section 54956.9(a)

- 11. CONFERENCE WITH CITY ATTORNEY - ANTICIPATED LITIGATION
Subject: Initiation of litigation by the City of Palo Alto against AT&T Wireless Services, (AKA Cingular Wireless).
Authority: Government Code Section 54956.9(c)

The City Council met in Closed Session to discuss matters regarding existing and anticipated litigation as described in Agenda Item Nos. 10 and 11.

Mayor Burch announced there was no reportable action taken.

FINAL ADJOURNMENT: The meeting adjourned at 11:00 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.