

Special Meeting
August 7, 2006

1.	Regional Transit and Transportation Trends and Issues for Palo Alto.....	4
2.	Proclamation Recognizing Palo Alto Reads... <i>Funny in Farsi</i> Month...	6
3.	Parks and Recreation Commission Challenge to the City Council to see which group takes the most steps over a three month period between September 1 and December 1, 2006 per the FY 2006-07 Parks and Recreation Commission priority "Creating a Culture of Fitness in Palo Alto"	6
	ORAL COMMUNICATIONS	7
	APPROVAL OF MINUTES	7
4.	Resolution 8634 entitled "Resolution of the Council of the City of Palo Alto Expressing Appreciation to Michael Kelly Upon His Retirement"	8
5.	2nd Reading - Ordinance of the Council of the City of Palo Alto Adding a New Chapter 18.66 to the Palo Alto Municipal Code to Adopt Regulations Establishing a California Avenue Pedestrian Transit-Oriented Development Combining District	8
6.	Ordinance 4912 entitled "Ordinance of the Council of the City of Palo Alto Authorizing an Amendment to the Contract Between the Board of Administration of the California Public Employees' Retirement System and the City Council, City of Palo Alto to Implement the Pre-Retirement Optional Settlement 2 Death Benefit for Local Fire Members, IAFF Local 1319"	9
7.	Resolution 8635 entitled "Resolution of the Council of the City of Palo Alto Approving the Transmission Agency of Northern California's Amended and Restated Project Agreement No. 5 for Participation in an Open Access Same Time Information System and Delegation of Authority to the City Manager to Execute Amendments to the Agreement"	9

8. City Council Endorsement of the California Publicly Owned Electric Utilities' Principles Addressing Greenhouse Gas Reduction Goals 9
9. Approval of Agreement with Michael J. Gennaco and Robert Miller of OIR Group for Police Auditor Services with Amount Not to Exceed \$19,936 9
10. Approval of Offer and Agreement to Purchase Real Property - 2460 High Street 9
11. Approval of 1101 East Meadow Drive and 1010 East Meadow Circle [06PLN-00135]: Final Map for Standard Pacific Homes to merge two parcels and create one multiple-family lot that would contain 75 condominium style residential units 9
12. Approval of 4219 El Camino Real [05PLN-00235]: Final Map including a street name map for DR Horton Homebuilders creating eleven single-family lots, one multiple-family lot that would contain 170 condominium style residential units, a new public street 9
13. Initiation of Rezoning to Pedestrian and Transit Oriented Development (PTOD) District and Comprehensive Plan Amendment for 195 Page Mill Road 9
14. Approval of Amendment No. One to Existing Purchase Order 4506000261 with Municipal Maintenance Equipment Inc. in the Amount of \$406,988 for the Purchase of Two Compressed Natural Gas-Fueled Street Sweepers 9
15. Council Approval of Appointment of Cara E. Silver as Senior Assistant City Attorney 9
16. Approval of Contract Amendment Extending Agreement with the City of Inglewood for Parking Citation Processing From September 1 to October 31, 2006 10
17. Approval of a Contract with C.F. Archibald Inc. in the Amount of \$3,746,646 for the 2006 Street Maintenance Program Phase 2 Capital Improvement Project PE-86070; Authorization for the City Manager or His Designee to Negotiate and Execute One or More Change Orders to the Contract with C.F. Archibald Inc. for Related, Additional but Unforeseen Work that may Develop during the Project, the Total Value of which Shall Not Exceed \$374,665 10
18. From Policy and Services: Adoption of Procedure for Appointment and Duties of Emergency Standby Council Members 10

19.	Finance Committee Recommendation for Council Approval of Ultra-High-Speed Broadband Request for Proposal (RFP) From Finance Committee Meeting of July 18, 2006.....	10
19.	Finance Committee Recommendation for Council Approval of Ultra-High-Speed Broadband Request for Proposal (RFP) From Finance Committee Meeting of July 18, 2006.....	10
20.	Adoption of an Ordinance to Amend Palo Alto Municipal Code Chapter 16.47 (Approval of Projects with Impacts on Housing) to Remove an Exemption for Hospitals from the In-Lieu Fee Required of Commercial Development Projects with Impacts on Affordable Housing”	11
21.	Potential Strategy Regarding Restrictions on Conversion of Commercial Uses to Residential Use.....	12
22.	Designation of Voting Delegate and Alternate for the 2006 League of California Cities Annual Conference	23
23.	Discussion of Compensation Recommendations for City Manager Frank Benest, City Attorney – Gary Baum, City Auditor – Sharon Erickson and City Clerk – Donna Rogers	23
COUNCIL COMMENTS, ANNOUNCEMENTS, AND REPORTS FROM CONFERENCES		25
24.	CONFERENCE WITH CITY ATTORNEY -- EXISTING LITIGATION.....	26
25.	CONFERENCE WITH CITY ATTORNEY -- EXISTING LITIGATION.....	26
FINAL ADJOURNMENT: The meeting adjourned at 10:45 p.m. in memory of John Duryea, long-time Palo Alto resident.		26

The City Council of the City of Palo Alto met on this date in the Council Chambers at 6:13 p.m.

Present: Beecham (arrived at 7:20 p.m.), Cordell, Kishimoto, Klein, Kleinberg, Morton, Mossar (arrived at 7:20 p.m.)

Absent: Barton, Drekmeier

STUDY SESSION

1. Regional Transit and Transportation Trends and Issues for Palo Alto
 1. Palo Alto Comprehensive Plan Transportation Goals
 2. The Big Picture – Transportation Outlook: Now and 2030
 - a. Santa Clara County Mode Split Comparison
 - b. ABAG 2030 Job Growth and Housing Growth Projections
 3. Major regional transportation plans
 - a. Valley Transportation Plan 2030 and Measure A
 - b. Peninsula Gateway 2020 Corridor Study
 - c. Dumbarton Rail, High Speed Rail
 - d. Local Transit, shuttle services and VTA Community Bus Program
 - e. El Camino: Grand Boulevard and Bus Rapid Transit
 - f. County Expressway Enhancements
 - g. Smart Growth Strategies: Network of Neighborhoods
 4. VTA Measure A
 - a. 30-year Overview
 - b. North County projects
 - i. Caltrain
 - (1) Upgrades and Electrification
 - (2) Palo Alto and California Avenue stations
 - (a) Palo Alto stations rank 1st and 11th busiest
 - (b) 2025 Service Plan envisions increase from 96 to 172 trains
 - (c) Vehicle parking demand could triple at both stations
 - ii. Palo Alto Intermodal Transit Center
 - iii. El Camino Bus Rapid Transit
 5. Peninsula Gateway 101 Corridor Study
 - a. Describe study area and participating agencies
 - b. Focus on Roadway capacity improvements
 - c. Develop broad universe of projects
 - i. Implications for changes to San Antonio/Hwy 101 interchange

- ii. Auxiliary Lanes on Hwy 101
 - iii. Capacity Improvements on Willow and University approaches to Dumbarton Bridge
- 6. Local Transit and Shuttle Services Opportunities
 - a. History of VTA service cutbacks
 - b. Palo Alto Shuttle history and costs
 - c. VTA Community Bus Program partnership with Palo Alto
- 7. Transit-Oriented Development in Palo Alto: prospects
 - a. University Ave is 2nd busiest station on line, enjoys frequent service
 - b. Relatively good bike, pedestrian, shuttle links for "last mile" to doorstep
 - c. Still low transit usage compared to Bay Area
 - d. Policy question on access: provide more parking?
 - e. Policy question: how much transit-oriented development along El Camino?
- 8. County Transportation Funding Picture
 - a. Palo Alto contributes approximately \$20 million per year in sales taxes towards transportation funding in Santa Clara County
 - b. Summary of planned projects and funding commitments
- 9. Summary of City's Funding Request to VTA and Regional Agencies
 - a. Request to VTA for Measure A Funding for Palo Alto Intermodal Transit Center by 2015
 - b. Request to Board of Supervisors for release of \$13.0 million in Measure B funds for ADA and platform improvements at Palo Alto and California Avenue stations
 - c. Request to Caltrain JPB Board for restoration of service to California Avenue Station
 - d. Request to VTA for Community Bus program project in Palo Alto
 - e. Request to MTC and VTA for funding of California Avenue streetscape project
 - f. Request to VTA for Stanford Avenue/El Camino Real context-sensitive streetscape demonstration project
- 10. Policy Issues for Council
 - a. Role of land use patterns (PTOD, mixed use) in support of transit and alternative transportation
 - b. Position on Caltrain electrification and grade separations
 - c. Need for future parking structures at Caltrain stations as Caltrain service plan evolves

- d. Position on capacity improvements on Highway 101 and approaches to the Dumbarton Bridge
- e. Continued commitment to local shuttle and bus services

No Action Required.

SPECIAL ORDERS OF THE DAY

2. Proclamation Recognizing **Palo Alto Reads... *Funny in Farsi*** Month

Interim Library Director Diane Jennings invited the Council and the community to read ***Funny in Farsi***, and participate in some of the many planned activities for the Fall. She was pleased the library would be partnering with the Palo Alto Unified School District (PAUSD) to offer the first of many events; a talk by the author Firoozeh Dumas, which was scheduled for October 10, 2006 at the Haymaker Theater on the Palo Alto High School campus.

Marie Scigliano, Director of Educational Technology at PAUSD, said she was excited to participate in "Palo Alto Reads" and encouraged everyone to attend the kickoff event taking place on October 10, 2006.

Maya Spector, Coordinator Library Programs, said the library had approximately 50 copies of the book *Funny in Farsi: a Memoir of Growing Up Iranian in America*. She encouraged everyone to read it.

Mayor Kleinberg said the "Palo Alto Reads" program reflected the community's intellectual and academic concerns, interest and passion. It also reflected an ongoing effort to collaborate with the PAUSD to give children and youth an opportunity to learn more about cultural differences.

3. Parks and Recreation Commission Challenge to the City Council to see which group takes the most steps over a three month period between September 1 and December 1, 2006 per the FY 2006-07 Parks and Recreation Commission priority "Creating a Culture of Fitness in Palo Alto"

Anne Cribbs, Parks and Recreation Commissioner (PARC), said the PARC issued a challenge to the City Council to create a culture of fitness of Palo Alto. The idea involved: 1) wearing a pedometer and traveling at least 10,000 steps per day; 2) swimming an hour per day; or 3) biking an hour per day. Stanford had provided staff with the opportunity to use their 'stepping out' program for the period of September 1 to December 1, 2006. She asked Mayor Kleinberg whether she would accept the challenge.

Mayor Kleinberg said she would accept the challenge on behalf of her colleagues.

Council Member Cordell asked how 10,000 steps a day equated to one hour of swimming.

Ms. Cribbs said Dr. Walter Borst, an expert on aging in the community, concluded 50 minutes to an hour of swimming was the equivalent of 10,000 steps of walking.

No Action Required.

ORAL COMMUNICATIONS

Tig Tarlton, 359 Channing, spoke regarding Heritage Park Playground.

Douglas Moran, 790 Matadero Avenue, spoke regarding emergency preparedness.

Annette Ashton, 2747 Bryant, spoke regarding CMR 330:06, Emergency Preparedness Update.

Sheri Furman, 3094 Greer Road, spoke regarding emergency preparedness.

Robert Moss, 4010 Orme Street, spoke regarding emergency preparedness.

Albert Dorsky, 3846 Corina Way, spoke regarding emergency/disaster communication.

Herb Borock, P.O. Box 632, requested public identification of Planning Commission applicants who gave rise to Council Member Morton's conflict.

Edel Young, 460 Ferne Avenue, spoke regarding Proposition 89 (public financing of elections).

APPROVAL OF MINUTES

MOTION: Council Member Mossar moved, seconded by Morton, to approve the minutes of July 10, 2006.

Council Member Klein requested a correction to minutes on Agenda Item No. 16, page 21, third paragraph, to change the word "completed" to "contemplated."

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to accept the change requested by Council Member Klein.

MOTION PASSED 7-0, Barton, Drekmeier absent.

Mayor Kleinberg reported a study session was scheduled on September 11, 2006 at 6 p.m. on the emergency preparedness update.

CONSENT CALENDAR

MOTION: Vice Mayor Kishimoto moved, seconded by Morton, to continue Agenda Item Nos. 5 and 13 to the September 11, 2006 Council Meeting.

Council Member Mossar believed a policy had been established requiring a second reading of an ordinance for which Council had already taken action, could only be pulled under extreme circumstances. She asked about the extreme situation.

Vice Mayor Kishimoto said Item 5 had a divided vote and a lengthy discussion. She felt it would be fair to have the full Council present for the vote.

Council Member Morton said a large number of residents indicated they did not believe they were adequately notified.

MOTION PASSED 6-1, Mossar no, Barton, Drekmeier absent.

MOTION: Vice Mayor Kishimoto moved, seconded by Klein, to pull Agenda Item No. 19 from the Consent Calendar but to still be heard as Agenda Item No. 19 immediately after the vote of the Consent Calendar.

MOTION: Vice Mayor Kishimoto moved, seconded by Morton, to approve Consent Calendar Item Nos. 4, 6 through 12, and 14 through 18.

Joy Ogawa, Yale Street, spoke regarding agenda Item No. 10. She was opposed to selling a city-owned public facility zoned land and having the conversion of the proceeds used to build more housing. Residents were concerned how growth had increased demands on the City's infrastructure; however, the infrastructure had not kept up to meet those demands. The decision would have a direct impact on residents' pocketbooks.

Council Member Cordell registered a "no" vote on agenda Item No. 10.

4. Resolution 8634 entitled "Resolution of the Council of the City of Palo Alto Expressing Appreciation to Michael Kelly Upon His Retirement"

5. ~~2nd Reading Ordinance of the Council of the City of Palo Alto Adding a New Chapter 18.66 to the Palo Alto Municipal Code to Adopt Regulations Establishing a California Avenue Pedestrian Transit-Oriented Development Combining District~~ *(1st Reading 7/24/06, Passed 5-4, Barton, Cordell, Morton, Mossar no)* (To be continued to September 11, 2006)

6. Ordinance 4912 entitled "Ordinance of the Council of the City of Palo

Alto Authorizing an Amendment to the Contract Between the Board of Administration of the California Public Employees' Retirement System and the City Council, City of Palo Alto to Implement the Pre-Retirement Optional Settlement 2 Death Benefit for Local Fire Members, IAFF Local 1319" (1st Reading 7/17/06, Passed 9-0)

7. Resolution 8635 entitled "Resolution of the Council of the City of Palo Alto Approving the Transmission Agency of Northern California's Amended and Restated Project Agreement No. 5 for Participation in an Open Access Same Time Information System and Delegation of Authority to the City Manager to Execute Amendments to the Agreement"
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18. From Policy and Services: Adoption of Procedure for Appointment and Duties of Emergency Standby Council Members

Ordinance 1st Reading – “Ordinance of the Council of the City of Palo Alto Hereby Amends Title 2 Chapter 2.12, Section 2.12.090 of the Palo Alto Municipal Code Relating to the Appointment and Duties of the Emergency Standby Council Members”

- ~~19. Finance Committee Recommendation for Council Approval of Ultra-High-Speed Broadband Request for Proposal (RFP) From Finance Committee Meeting of July 18, 2006~~ (Moved to follow Consent Calendar)

MOTION PASSED 7-0 for items 4, 6-9, 11, 12, 14-18, Barton, Drekmeier absent.

MOTION PASSED 6-1 for item 10, Cordell no, Barton, Drekmeier absent.

UNFINISHED BUSINESS

19. Finance Committee Recommendation for Council Approval of Ultra-High-Speed Broadband Request for Proposal (RFP) From Finance Committee Meeting of July 18, 2006

Council Member Mossar stated she would not participate in the item due to a conflict of interest because of family holdings in several telecommunications stocks including SBC and Comcast.

Council Member Morton stated he would not participate in the item due to a conflict of interest because of family holdings in SBC and Comcast.

Mayor Kleinberg stated she would not participate in the item due to conflict of interest because her work at Joint Venture Silicon Valley Network has to do with the broadband companies and their financial partners.

City Attorney Gary Baum stated Section 2.04.320 of the Palo Alto Municipal Code and Section 7 of the City Charter required a majority of the Council Members be present for certain decisions involving City business. One item requiring five affirmative votes was the approval of the Universal Broadband contract. Another item was approval to continue the Hospital Exemption ordinance (Agenda Item No. 20). Since two Council Members were absent that evening, and three had conflicts of interest there were only four Council Members able to participate. The participation of one Council Member who would otherwise not be allowed to participate was legally required in order to have a majority of five Council Members to take action. One of the conflicted members may be randomly selected to participate in the item in order to achieve the minimum group required. The City Clerk would assist in the random selection.

Council Member Mossar said she was not sure whether any of the conflicted Council Members was up-to-date and conversant in the issues. She questioned whether the discussion should be put over to another date.

Mayor Kleinberg said it was possible for the non-conflicted members to make a motion to agendize the item for another date.

City Attorney Gary Baum said if the conflicted members were removed, there would no longer be a quorum. An option would be for the City Clerk to continue the item due to the lack of a quorum.

Mayor Kleinberg said she was familiar with the issue because of the work of her organization.

Council Member Cordell said there ought to be more Council Members present to discuss the matter, and believed it should be continued.

Mr. Baum said the Brown Act provided that any matters on the Council's agenda may be continued by staff (City Clerk) in the event there was not a quorum.

City Clerk Donna Rogers stated due to the lack of a quorum, Agenda Item 19 would be continued to September 18, 2006.

Council reconvened with seven members present.

~~20. Adoption of an Ordinance to Amend Palo Alto Municipal Code Chapter 16.47 (Approval of Projects with Impacts on Housing) to Remove an Exemption for Hospitals from the In-Lieu Fee Required of Commercial Development Projects with Impacts on Affordable Housing"~~ *(Continued from 7/10/06, Item to be continued by Council Motion to 09/18/06)*

Council Member Mossar stated she would not participate in the item due to a conflict of interest because her husband was employed by Stanford University.

Council Member Klein stated he would not participate in the item due to a conflict of interest because his wife was employed by Stanford University.

Council Member Cordell stated she would not participate in the item due to a conflict of interest because she was employed by Stanford University.

City Attorney Gary Baum said based on the same issue as previously addressed, the conflicted Council Members could either draw straws, a provision allowed for in the Political Reform Act, or if the members chose not to draw straws the City Clerk was empowered to continue the matter.

Council Member Mossar understood because it was suggested the matter be continued but she had no problem drawing straws.

Mr. Baum said Government Code (GC) 1090 would normally not allow drawing straws, but because there was an exemption to GC 1090, it was acceptable.

City Clerk Donna Rogers conducted a random drawing of the three conflicted council members and Council Member Cordell was selected to participate in the item.

MOTION: Council Member Beecham moved, seconded by Kishimoto, to continue Agenda Item No. 20 to be heard at the September 18, 2006, Council Meeting.

MOTION PASSED 5-0, Klein, Mossar not participating, Barton, Drekmeier absent.

REPORTS OF OFFICIALS

21. Potential Strategy Regarding Restrictions on Conversion of Commercial Uses to Residential Use

Director of Planning and Community Environment Steve Emslie referred to the staff report (CMR:312:06), which provided an overview of the options outlined per Council's direction to investigate the potential short-term solutions for properties zoned residential that were in commercial use. The two properties most at risk in terms of potential redevelopment were the Mayflower Motel and Palo Alto Bowl; both sites were located on El Camino Real. Staff had worked closely with the City Attorney's office in developing an agreement between the analyses of both properties. Four options were analyzed to limit conversions of existing nonresidential uses to residential

use: 1) prohibit housing in those zones through a zoning amendment; 2) require conditional use permits for housing; 3) allow only mixed residential uses with ground floor retail; and 4) place a moratorium on all new housing. The two options that presented the most realistic and direct approach in dealing with the Council's concerns included prohibiting residential uses in all commercial zones, and allowing mixed use sites with commercial or retail uses on the ground floor with housing to be developed on the upper floor(s).

Council Member Morton questioned the impact on the Fry's site, and whether it fell under a different zoning.

Mr. Emslie said Fry's was listed as one of the sites identified in Attachment 'C' of the staff report (CMR:312:06).

Sheri Furman, 3094 Greer Road, requested that Alma Plaza, as well as Edgewood Plaza and Town and Country, would be included as sites to be studied regarding the conversion. Those sites met the objectives to preserve revenue generating commercial uses, provide local services for residential areas, and ensure compliance with the housing sites inventory and State housing law. She urged the Council to enact Option A2, which eliminated 'stand alone' housing in commercial zones.

Robert Moss, 4010 Orme Street, said the development of housing in place of retail was an economic loss to the City. He favored ground floor retail with housing above.

Joy Ogawa, Yale Street, said the ground floor retail protection ordinance was written to prohibit office uses unless established prior to March 19, 2001, although residential use was permitted. She wondered how existing residential uses would impact areas where neighborhood commercial zones existed.

Herb Borock, P.O. Box 632, understood with regard to a conflict of interest, if the Council reached a point where they did not have a quorum the meeting had to adjourn. He also believed whenever the need arose to substitute conflicted members to create a quorum, they were prohibited from substituting for absent members who were not conflicted. He did not believe the meeting that evening was valid.

City Attorney Gary Baum said if the meeting was adjourned due to a lack of quorum the Council simply reconvened, which they did.

Council Member Klein referred to page 4 of Attachment 'A' under multi-family residential zones. He asked whether Council could select from any of the six parcels or were all of them to be included.

Mr. Baum said any of the six parcels could be selected as long as there was a rational basis.

Council Member Cordell clarified there were two types of properties that caused concern: 1) those zoned commercial, which could be utilized for housing in the future; and 2) those zoned residential which presently had commercial use. She asked if the Council followed one or both of the routes, did the rezoning have to be completed before the November 7 election.

Mr. Baum said staff would have to use an urgency ordinance to rezone.

Council Member Cordell said both options if followed required rezoning; one to mixed-use and the other specifically zoned commercial.

Mr. Baum said if housing was totally eliminated as an option it might require greater environmental review, which made the November election timeframe impossible. The mixed-use did not require a Comp Plan amendment and could be done by November 7 if staff was available to do the work.

Council Member Cordell asked whether the process had to be completed or initiated by November 7.

Mr. Baum said it had to be completed. It could be curtailed, however, by an urgency ordinance.

Mayor Kleinberg asked what would happen if the Council stated only the housing had to be 100 percent affordable.

Mr. Baum said staff would need to conduct research on the matter, but he believed it was legal as long as it was narrow in scope.

Council Member Morton asked if the Council approved amending the commercial zone to delete housing as a permitted use what were the next steps and the timeline.

Mr. Baum said the more dramatic step of eliminating housing from commercial zones as opposed to mixed-use involved a multi-step process that required a Comp Plan amendment as well as a zone change. It could also require substantial environmental review and possibly an Environmental Impact Report (EIR).

Council Member Morton asked why an EIR might be required.

Mr. Baum said traffic studies would be needed because housing was being prohibited as opposed to adjusting the type of housing. In turn, the Comp Plan would need to be modified to reflect those changes.

Mr. Emslie said staff had initiated a number of zoning amendments through the Zoning Ordinance Update (ZOU) process, all of which were consistent with the Comp Plan. If staff were to draw back from the Comp Plan they would not be able to use the analysis from 1997.

Council Member Morton asked if the Council were to adopt the solution to delete housing in an area which currently permitted it, such as Fry's, would it require an EIR in order to eliminate housing or to continue commercial zoning.

Mr. Emslie said it would require an amendment to the Comp Plan land use designations to call for an exclusive commercial zone and possibly an amendment to the Comp Plan EIR or a stand alone EIR.

Council Member Morton questioned if staff had felt it was an urgent issue the Council would have been informed.

Mr. Emslie said that was correct. It was not possible to do a conventional zone change for the proposed sites in time for the November election. However, an interim urgency measure was possible in order to get all the requisite paperwork done and hearings completed.

Council Member Morton asked whether those steps could be completed in short order.

Mr. Baum said the urgency ordinance would only save 45 days. Staff did not have the grounds to do a moratorium.

Council Member Morton asked if the Council approved a motion to remove housing as a permitted use from the commercial zone, and then set in motion a series of events which may not get completed by the November election, what would be the next step.

Mr. Emslie said staff could make the text changes to the commercial zones, which was scheduled to come before the Council in fall 2006. However, the zones could still not be applied to the six parcels without the required environmental review.

Mr. Baum clarified staff would not have time to complete the mixed-use change with the assumed negative declaration.

Mr. Emslie said the Comp Plan environmental analysis could be used to complete the mixed-use changes while the work program was already in place. It could not, however, be applied to the six parcels because they were identified for residential uses and, therefore, involved a change in the Comp Plan.

Vice Mayor Kishimoto asked if there was anything that could be done to apply any new zoning or change to the six parcels.

Mr. Emslie said the Anderson Initiative, if passed, had far-reaching impacts on the ability to determine land use in all California cities. Rezoning was essentially a "taking" or substantial erosion of the land use control that was applied at the local level.

Vice Mayor Kishimoto asked what steps could the Council take in terms of rezoning or reducing housing by the November election.

Mr. Emslie said if the Council wanted to make zone changes, such as retain ground floor commercial uses in a mixed-use or commercial fashion, staff could accommodate that with the current zoning process underway. The six parcels zoned multi-family were more problematic and involved more detailed environmental review and could not be done before November 7.

Mayor Kleinberg asked if the six parcels were rezoned to mixed-use would everything previously stated apply.

Mr. Emslie said it would help because mixed-use had already been identified in the Comp Plan and a change was not required.

Vice Mayor Kishimoto said there was the possibility of losing Alma Plaza and Edgewood, two neighborhood centers, to a mixed-use development. She asked whether staff had any recommendations on how to protect the two centers.

Mr. Emslie said the Alma and Edgewood Plaza sites were zoned Planned Community (PC), and there was land use zoning. The Council had already exercised the greatest amount of land use discretion on those sites.

Council Member Klein asked whether Option A2, as described in Attachment 'A' of the staff report (CMR:312:06), could be completed by the November election, and if staff could also consider a modification if there was an urgency ordinance in place.

Mr. Emslie said yes it could be done; however, it did not address the six parcels.

Council Member Klein asked whether the six parcels, if changed to mixed-use housing with commercial on the ground floor, could be completed by the November election.

Mr. Emslie said no. It would involve a Comp Plan change which staff did not have the analysis or the environmental work to support such a change.

Council Member Mossar said two years prior the Council received numerous e-mails from residents who argued the amount of commercial development in Palo Alto was untenable and had a huge impact on the community. At that time, the Council worked hard to reduce the amount of commercial use in the community because of its perceived detrimental impact and its relatively limited sales tax base. Tonight, the Council was being asked to rezone property to something the community did not want two years ago. The Council needed to be cognizant of huge population growth pressures in the Bay Area and their impact on the economy. Retail, just like transportation, required density and Palo Alto's policies were escalating in a direction that discouraged density. She encouraged her colleagues not to take the matter lightly.

Council Member Morton asked which option, if any, reflected the retention of commercial uses in residential areas, and could be completed by the November 7 election.

Mr. Emslie said the Comp Plan anticipated those conversions and it would be problematic.

Council Member Morton said the impact of the dot com bust was the loss of sales tax revenues from restaurants and other businesses during daytime hours. The preservation of services such as medical/dental offices and the California State Automobile Association (CSAA) was what brought people into Palo Alto to shop and dine. He believed some commercial uses were beneficial to the community and should be preserved.

MOTION: Council Member Klein moved, seconded by Cordell, to approve the City Attorney's Option A2, as follows: Council-passed ordinance modifying zoning to eliminate "stand-alone" housing in Commercial zones (excluding those sites listed within the Housing Inventory) but to continue to allow "mixed-use" housing with commercial on the ground floor in those zones.

Council Member Klein said the housing inventory listed in Attachment 'B' of the staff report (CMR:312:06) noted the housing units Council had approved in the period 1999 to 2006, as compared to the City's needs under the Association of Bay Area Governments (ABAG). Other key properties coming before the Council included the Alma Substation, the Campus for Jewish Life (CJL), and Bridge Urban Infill Land Development (BUILD), which posed impacts to the school district, to the environment, and financially to the City. He felt Palo Alto had done its share in building a large amount of housing and now needed to take steps to cut back.

Council Member Cordell concurred with the comments of Council Member Klein.

Council Member Beecham expressed support for the motion. He was comfortable leaving the Housing Element alone and would not decrease the Council commitment.

Council Member Morton asked whether it was possible for the Council to vote in favor of the motion and then later on have the ability to eliminate mixed-use zoning and make it solely commercial.

Mr. Baum said yes. The Council could approve one now and another one later.

Council Member Morton expressed support for the motion and would have liked to have seen Option A1, an ordinance modifying zoning to eliminate housing in commercial zones, completed by November 7.

Vice Mayor Kishimoto asked whether adherence to not having medical/professional business offices located on the ground floor applied to all the 'C' zones.

Mr. Emslie said it applied in the context of the ground floor conversion. It prevented a protected use (retail, personal services, residential) from converting to offices in the 'C' zones under the ground floor protection ordinance.

Vice Mayor Kishimoto asked what would happen if it was an empty lot with a new application coming in.

Mr. Emslie said the ground floor retail would not apply because it did not establish a protected use prior to March 19, 2001.

Vice Mayor Kishimoto said theoretically an applicant could submit an all office application.

Mr. Emslie said yes.

Vice Mayor Kishimoto said her intent was to protect retail, especially neighborhood retail.

Council Member Mossar clarified Option A2 sounded like what her colleagues wanted, but it was mixed-use zoning with commercial use. Commercial use did not include the small coffee shop. She was not confident that by approving the motion the result would be neighborhood serving retail and low density housing.

Mayor Kleinberg said she was passionate about the City providing enough affordable housing in the community so past discussions of transit

orientation and mass transit actually worked. She favored something that did not prohibit housing; however, she did not want more office buildings.

Council Member Mossar noted an example in a commercial zone of housing over commercial on El Camino Real. In that instance, the concern had been the housing was almost immediately converted to office. She encouraged her colleagues to be precise in the language or there would be a repeat of the same type of project.

Mayor Kleinberg asked whether there was any way to control the commercial use so that it was retail serving.

Mr. Emslie said yes. It was an accepted convention for cities to zone commercial and retail uses separate from office use.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to amend the motion to state "retail" and not "commercial."

Council Member Klein asked whether the incorporation would cause any delays.

Mr. Emslie said no.

MOTION PASSED 7-2, Barton, Drekmeier absent.

MOTION: Council Member Klein moved, seconded by Cordell, to ask staff to initiate the rezoning process for the last four of the six properties on Attachment C.

Council Member Klein said it was important to keep the City's commercial enterprises in place by making the zoning consistent with its current uses. Whether the Anderson Initiative passed in November or not, it would be important to move forward and get it done.

Council Member Cordell said irregardless of whether the Anderson Initiative passed, by taking a use already in existence and having it remain that way had merit. The Anderson Initiative would probably go through legal challenges for a number of years even after the election.

Council Member Mossar said the zoning suggested the motion could turn Fry's into an office park. She clarified that none of the four parcels was in the City's Housing Element.

Mr. Emslie said that was correct.

Council Member Mossar expressed concern about what the sites would become when they were rezoned commercial, and what opportunities would be lost.

Council Member Morton asked why the neighborhood serving retail parcels (i.e. Surgery Center, CSAA, and the Medical Office) were excluded from the motion.

Council Member Klein said the Surgery Center and the CSAA offices were already in the midst of the residential neighborhood. The medical office site, at a maximum yield of seven units, seemed too small to worry about.

Council Member Morton said the Surgery Center and CSAA offices surrounded the Downey House, which was entirely commercial. He proposed including all six parcels in order to keep those areas that served the City's population.

AMENDMENT: Council Member Morton moved to include the other two sites in the motion.

AMENDMENT FAILS FOR LACK OF SECOND

Council Member Beecham said two weeks prior in discussions about the Pedestrian Transit Oriented Development (PTOD) the Council directed staff to work on the Fry's site. He asked whether it was the intent of the maker of the motion to supersede the previously-approved motion.

Council Member Klein said he believed it was consistent with the motion.

Council Member Beecham said it may not be in terms of the timing. He recalled the timing was left open on the previous discussion of Fry's which was critical. He would prefer to let the previous action stand as opposed to having an overlay with the motion currently on the table.

Council Member Klein said he was in favor of eliminating the Fry's site from the motion.

Council Member Cordell asked what would be staff's direction in regard to the Fry's site if it was eliminated from the motion.

Council Member Beecham understood staff would be directed to work with the stakeholders to find a solution to retain Fry's on its present site.

Council Member Cordell asked what would happen if a resolution could not be reached.

Mr. Emslie said staff would evaluate and present options to the Council.

Council Member Cordell expressed concern about other options should staff's progress fall short.

Mr. Emslie said staff had already begun contacting the owners and initiating discussions. He suggested returning to Council with a status report prior to November 7 if acceptable options had not been reached.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to remove Fry's from the list, leaving the last three properties on the list, since staff was directed to work further with Fry's.

Vice Mayor Kishimoto asked whether there would be a specific commercial zoning designation.

Council Member Klein said he would leave that for staff's recommendation.

Vice Mayor Kishimoto said while she expressed support for the motion, the Council was open to listening to the community's input.

Council Member Mossar clarified Palo Alto currently allowed housing in areas zoned commercial.

Mr. Emslie said that was correct.

Council Member Mossar asked whether housing could be built if the three sites were changed to commercial use.

Mr. Emslie said no. The first part of the motion was to eliminate or restrict housing from commercial zones. Restricted housing would be limited to mixed-use with ground floor retail. Staff was on track to have the latter in place before November 7.

Council Member Morton clarified Council's direction to staff was to find a way to preserve Fry's and asked that it be included in Option A1.

Mr. Emslie said Council's direction was to preserve commercial and retail uses in that area and it would be possible to include the site in Option A1.

Council Member Morton clarified by removing the Fry's site from the motion did not negate the possibility of modifying zoning to eliminate housing in commercial zones.

Mr. Emslie said that was correct.

Council Member Mossar asked whether the prior motion for a zoning change to commercial meant someone could not build SummerWinds Nursery on the site.

Mr. Emslie said the first part of the motion addressed all the commercial districts, which did not include the six parcels.

Council Member Mossar understood the first motion for “stand-alone” housing in commercial zones was eliminated; however, “mixed-use” housing with commercial on the ground floor was permitted. She stated SummerWinds Nursery could be built, but housing would not be allowed on the site.

Mr. Emslie said it would have to be mixed-use with commercial on the ground floor and residential above it.

Council Member Mossar clarified with the Palo Alto Bowl, bowling would be on the ground floor with residential units above it.

Mr. Emslie said that was correct. Commercial uses would be permitted although housing was optional.

Council Member Mossar was opposed to the motion. She wanted to leave opportunities open for residential development and felt the Council needed to be mindful of the impacts commercial zoning had on the community.

Mayor Kleinberg expressed concern about not allowing housing on El Camino Real. El Camino Real was a transit corridor, the Grand Boulevard design was underway, and there would be an effort to cluster housing in such a way as to have neighborhood serving retail and office buildings nearby. She did not want ‘spot zoning’ to prevent that design from happening. SummerWinds Nursery was also on a major artery and provided easy access to and from Highway 101. A more in depth analysis of that site was warranted. She could not support the motion.

Council Member Morton said the intent would be to preserve commercial uses on the SummerWinds Nursery site. He clarified the proposed motion would allow for commercial zoning and the deletion of housing, including mixed-use housing.

Mr. Emslie said that was correct.

Council Member Morton clarified the three sites identified in the motion would all remain commercial uses with no housing.

Mr. Emslie said that was Council’s direction to staff.

Council Member Klein said it should be clear that sites in Option A2 were not the same as those in Option B1 of the staff report (CMR:312:06). Presently there would be nothing to prevent the six parcels from reverting to housing. Housing would be a dramatic loss to the City's flexibility. Palo Alto was ahead of where it wanted to be in the Comp Plan. He was opposed to housing being built on a haphazard basis.

MOTION PASSED 5-2, Kleinberg, Mossar no, Barton, Drekmeier absent.

COUNCIL MATTERS

22. Designation of Voting Delegate and Alternate for the 2006 League of California Cities Annual Conference

Mayor Kleinberg said four Council Members including herself were scheduled to attend the 2006 League of California Cities Annual Conference. Although she would be attending the event, she did not want to be considered a voting delegate. Consistent with the League bylaws, the Council must designate a voting delegate and alternate.

MOTION: Vice Mayor Kishimoto moved, seconded by Kleinberg, to hereby designate Council Members Klein and Barton, as voting delegate and alternate respectively for the 2006 League of California Cities Annual Conference in San Diego from September 6-9, 2006.

MOTION PASSED 7-0, Barton, Drekmeier absent.

23. Discussion of Compensation Recommendations for City Manager Frank Benest, City Attorney – Gary Baum, City Auditor – Sharon Erickson and City Clerk – Donna Rogers

Council Member Morton said the Council Appointed Officers (CAO) committee met with and reviewed the four CAOs after meeting with the City Council. Although the CAO committee did not recommend a bonus for the City Manager, he requested to modify the CAOs recommendation to authorize a bonus of \$4,000.

Mayor Kleinberg asked whether a formal motion was required on a recommendation from the CAO committee.

City Attorney Gary Baum said a formal motion was required.

MOTION: Council Member Morton moved, seconded by Beecham, to approve the CAO Committee recommendations for compensation, as follows:

- No adjustment to CAO base salaries. As per contracts, each CAO officer will be given the same percentage increase as the management group and will continue to receive the same

benefits for retirement, medical, dental and vision coverage, and deferred compensation.

- Bonuses are recommended as follows:
 - City Attorney \$4,000
 - City Auditor \$6,000
 - City Clerk \$3,000
 - City Manager No Recommendation

Furthermore, authorize a bonus of \$4,000 to the City Manager.

Council Member Mossar recommended separating the motion into two actions.

MOTION WITHDRAWN BY MAKER AND SECONDER

MOTION: Council Member Morton moved, seconded by Beecham, to approve the CAO Committee recommendations for compensation, as follows:

- No adjustment to CAO base salaries. As per contracts, each CAO officer will be given the same percentage increase as the management group and will continue to receive the same benefits for retirement, medical, dental and vision coverage, and deferred compensation.
- Bonuses are recommended as follows:
 - City Attorney \$4,000
 - City Auditor \$6,000
 - City Clerk \$3,000

MOTION PASSED 7-0, Barton, Drekmeier absent.

MOTION: Council Member Morton moved, seconded by Beecham, to authorize a bonus of \$4,000 for the City Manager.

Council Member Mossar said she would be voting against the motion. Bonuses granted to the CAOs were in special recognition for performance and achievement. While Palo Alto had an outstanding City Manager and a capable individual who, along with his staff, had accomplished a great deal, the past year had been fraught with difficulties. She had no doubt the City Manager would merit a bonus in the future.

Council Member Klein said he hoped and expected to be able to grant a bonus for the City Manager. He wanted him to succeed. His successes were in turn the successes of Palo Alto. He was unable to make that finding for the 2005-06 fiscal year. He would be voting against the motion.

Council Member Cordell said the motion proposed a two percent bonus for the City Manager, which would be less than what the other CAOs received. She believed Palo Alto had one of the best city managers in the country. He had suffered huge losses in his life over the past two years and doubted

anyone could come through without being affected. Legitimate criticisms had been conveyed to him that concerned the Council, and his ability to do better in the coming year. The message should be that he was valued, had many successes, and the Council did expect more and encouraged him to commit to doing that. She expressed support for the motion.

Vice Mayor Kishimoto expressed support for a smaller, more nominal amount. She concurred with the comments of Council Members Klein and Mossar.

Mayor Kleinberg said in her experience bonuses were given to people who did not reach perfection and whose achievements may not have risen to the level of all expectations. Bonuses were not seen as a complete measure of achievement, but in recognition of optimism and commitment, as well as incentive. It was also important in terms of the other parties the City negotiated with to signify Council's faith in the City Manager's performance and his ability to meet all expectations. She expressed support for the motion.

Council Member Beecham said by the community's own evaluation, Palo Alto was one of the best cities in the country, and it was due in large part to what the City did. There were a number of great things going on that were accredited to the City Manager. He believed a bonus was appropriate and would support the motion.

Council Member Morton said Palo Alto was one of the best managed cities in the country, and it was not by chance. It was because the City Manager was committed to his job, and staff was committed to him. The bonus signified that although it was not a perfect year a large amount of energy and effort went into it.

MOTION PASSED 4-3, Kishimoto, Klein, Mossar no, Barton, Drekmeier absent.

COUNCIL COMMENTS, ANNOUNCEMENTS, AND REPORTS FROM CONFERENCES

Council Member Mossar reported she was on a panel discussing water supply at the League of Cities Conference in Monterey last week. She was happy to report on the wonderful things Palo Alto is doing regarding water. She requested the meeting adjourn tonight in honor of John Duryea, who passed away two weeks ago and was close to many in the community.

Vice Mayor Kishimoto congratulated Reed Stevens, a Palo Alto resident, who won Round Nine of the Formula BMW San Jose Grand Prix competition on Saturday, July 29, 2006.

The meeting adjourned at 10:13 p.m. to a Closed Session

Mr. Baum stated he would not participate in Item No. 25 because his wife works for Hewlett Packard and, therefore, Senior Deputy City Attorney Donald Larkin would handle the Item in Closed Session. Also, he stated that Item No. 24 would not be heard this evening.

~~24. CONFERENCE WITH CITY ATTORNEY -- EXISTING LITIGATION~~

~~Subject: The Embarcadero Publishing Company dba Palo Alto Weekly v. The City of Palo Alto, the City Council of the City of Palo Alto SCC#CV814137~~

~~Authority: Government Code section 54956.9(a)~~

25. CONFERENCE WITH CITY ATTORNEY -- EXISTING LITIGATION

Subject: Telik, Inc., et al. v. City of Palo Alto, et al., Santa Clara Superior 1-04-CV-027100

Authority: Government Code section 54956.9(a)

Mayor Kleinberg reported no action was taken.

FINAL ADJOURNMENT: The meeting adjourned at 10:45 p.m. in memory of John Duryea, long-time Palo Alto resident.