TO:                  HONORABLE CITY COUNCIL
ATTENTION:           FINANCE COMMITTEE
FROM:            CITY MANAGER               DEPARTMENT:        ADMINISTRATIVE SERVICES
DATE:             MARCH 20, 2007               CMR:  105:07
SUBJECT:          RECOMMENDATION TO IMPLEMENT BUSINESS REGISTRY PROGRAM AND FEE

RECOMMENDATION
Staff requests that the Finance Committee make recommendations to Council regarding:

• Approval of the proposed business registry program (BRP) ordinance
• Approval of the proposed business registry fee (BRF)
• Approval of exemption of non-profit organizations from the business registry fee
• Confirmation of Council’s intent to exempt home-based businesses from the BRP
• Approval of a 60-day grace period for existing businesses to comply with required permits
• Approval of an annual increase in the BRF equal to the Consumer Price Index (CPI) for all urban consumers for the San Francisco-Oakland-San Jose, California Metropolitan Area.

BACKGROUND
On January 23, 2006, staff reported to Council regarding business license tax and business registry fee options. After much discussion, Council elected to proceed with a business registry which would pass through nominal implementation costs to businesses, rather than a business license tax which is typically revenue oriented, believing that the business community and the City would benefit from the information collected through the registry program. Council Members directed staff to determine the feasibility of minimizing the impact of the registry fee on the smallest businesses and to exempt non-profit organizations. Staff reported that a business registry would yield many benefits to the City and its residents and businesses, including:

• Gathering data needed to support economic development planning between businesses and the City.

• Assisting City businesses and residents in locating goods and services closer to home, promoting retail, business-to-business sales, and e-commerce.
Helping the City to better understand its business community, and helping make the City's planning, fire, public safety, and security assistance activities more responsive to business needs.

Providing data to develop recommendations on land use trends and to better coordinate transportation programs such as commute coordination and transportation demand management.

Providing the Regional Water Quality Control Plant with updated information to identify all facilities that must comply with the sewer use ordinance.

Allowing the City to make available to businesses and residents valuable business profile information through a centralized database on the City’s web site, and therefore increasing e-commerce within the City.

Allowing the City to integrate sales tax information with other measures of business activity (e.g. transient occupancy tax generators) in Palo Alto.

Providing data to help update GIS information thereby improving the information available to the City’s emergency response teams and Public Works and Utilities staff for informed, timely, and accurate decision-making.

Helping encourage businesses to obtain appropriate permits and comply with applicable codes, zoning and safety requirements.

Helping protect the interests of legitimate Palo Alto businesses in the City from unfair competition from businesses operating in violation of federal, state, and local laws.

DISCUSSION
Since the January 23, 2006 Council meeting, staff has undertaken the following:

1. Development of Initial Database of Palo Alto Businesses: Staff compiled the BRF databases from a number of sources, including the Franchise Tax Board; “Reference USA,” an online database; and the City’s utilities billing system. A master list of all businesses in Palo Alto was assembled. Its 13,000 items include home-based businesses that will be identified and eliminated during the initial registration process, as well as probable duplicates and/or businesses that have since relocated.

2. Consultation with Other California Cities with a BRF: Staff spoke with 5 other cities in California -- Diamond Bar, Windsor, Temecula, Encinitas, and Agoura Hills -- regarding implementation of their business registry program. In addition, staff visited the cities of Fremont and Benicia to review demonstrations of their business registry software, and discussed business license tax administration with the cities of Menlo Park, Cupertino and Hayward.
3. **Development of Application Form**: Staff developed and circulated to other departments a list of questions to pose to Palo Alto businesses for incorporation into the registry and for use by City departments such as Planning, Police and Fire. (See Attachment B: Sample Application Form)

4. **Fee Structure**: Staff analyzed the legal limits on the fee structure, legality of imposing late fees, and appropriate exemptions from the registry and/or registry fee. A tiered fee structure is typically implemented when processing the data from certain classes of businesses costs the City more than processing other classes. Since this is not the case here, a flat fee structure is recommended. Cities are authorized to assess license fees by local ordinance provided such fees do not exceed the reasonable costs associated with the BRP. Any additional tax on local businesses would be subject to a two-thirds vote under Article XIII of the California Constitution.

Based on staff’s cost model analysis, which represents 6,000 to 8,000 businesses, the fee for businesses will be in the $35 to $55 range with a $35 annual renewal fee and a $25 late fee. The final fee within this range will be based upon the scope of exemptions determined by Council. The BRF cost model considers all program expenses including staffing, technology, printing and mail, and administrative overhead. Staff proposes that current businesses must comply with the business registration requirements within 60 days of the effective date of the ordinance and that new businesses comply within 30 days of opening their businesses. Regarding late fees, staff is recommending that a late fee would be appropriate for businesses that do not pay the registry fee within 30 days of the due date.

5. **Exemptions**: The types of businesses that are exempt from business license tax, by the US Constitution, or Federal or State statutes (such as banks, insurance companies, and nonprofit organizations) are not necessarily exempt from a BRF. Other California cities with a business registry do not exempt any types of business: businesses doing business but not based in the City, nonprofit organizations, and home-based businesses are all subject to the fee. Pursuant to the earlier expressed intent of Palo Alto’s City Council, the proposed ordinance exempts home-based businesses from the registry altogether and exempts non-profit organizations from the registry fee. While the BRF model as designed supports Council’s intent, it must be noted that to the extent any specific types of businesses or organizations are included in the registry but exempted from the registry fee, the operating cost associated with such a fee exemption must be borne by the General Fund rather than by other businesses in the BRP. The State of California, Office of the Attorney General lists more than 900 non-profit organizations in the City of Palo Alto. Staff refined the list by including only those businesses with a Palo Alto zip code. The State’s Registry of Charitable Trust includes traditional non-profit organizations such as the American Red Cross and the YMCA. In addition, the Charitable Trust database includes numerous charities that register with the State of California as non-profit organizations. It is estimated that the cost of exempting non-profits from the BRF requirement will be approximately $27,000.

6. **Estimate of Costs of Implementation**: Staff developed in detail its cost model for implementation including staffing costs, software costs, printing and mailing, postage, and overhead. Since staff has no way of knowing, prior to processing the first mailing to businesses, exactly how many unique, non-exempt businesses exist in Palo Alto, the cost
model represents staff’s best estimate of costs and not an exact calculation. The initial master database contains 13,000 businesses, of which staff estimates that 6,000 – 8,000 will remain after the initial mailing is completed and any duplicates, non-operating, or exempt businesses are deleted. Please see the Resource Impact section and Attachment C: Financial Model for details on the cost model.

7. **Software Research:** Staff researched a number of options for managing the database requirements of the BRF, and determined that the Accela database, which the City already uses for Development Center permits, will serve the business registry program’s business purposes. In addition to the initial implementation, Accela’s components will fulfill the City’s phased implementation process, which includes on-line registration and information gathering.

8. **Presentation to the Chamber of Commerce Government Action Committee (GAC) and Chamber Board:** Staff met on October 4, 2006 with the GAC to update its members on the implementation of the registry and to gain their continued input on the project. As a result of that meeting, many of the questions on the registration form were modified and a detailed explanation sheet was developed to explain the reasoning for specific questions. The GAC wanted to know how the information collected by the BRF would be used and what parts of the questionnaire would be public information. In addition, the GAC questioned the logic of exempting home-based businesses from the registry. The GAC felt strongly that home-based businesses must be included as paying participants in the business registry program. In the event home-based businesses were included in the registry, the cost of the initial BRF implementation will increase by approximately 4 percent to $346,000, and the cost of annual renewals will increase by 33% to $260,000. This amount could be passed through to home-based businesses through the same nominal flat rate fee charged to other businesses, or alternatively subsidized by the General Fund. At this time, staff is not recommending inclusion of home-based businesses, but intends to further analyze the issue in the second phase of the BRF implementation.

The GAC expressed concern that when businesses applied for a business license certificate, the City would require compliance with other planning, building and regulatory permit requirements. The GAC therefore recommended that the City offer an amnesty period for businesses that are not in compliance with City ordinances that require permits. Staff recommends that Council authorize a 60-day grace period for businesses to comply with ordinance requirements before penalties are invoked.

9. **Creation of Ordinance for Council approval:** The City Attorney has prepared the implementing legislation for Council approval thereby making the business registry fee program a part of the Palo Alto Municipal Code. (See Attachment A.)
Next Steps
The tasks which staff must complete before implementation include:

- **Development and Implementation of a Marketing Plan**: The benefits of the BRF must be clearly communicated to businesses, residents, and City staff. Staff must develop a plan to convey the message to encourage participation in the program.

- **Collection and Enforcement Coordination**: To make the registry effective and fair, all businesses must participate. Conversations with other cities indicate that coordination of permit issuance is a strong enforcement tool to ensure compliance. The City’s model does not include enforcement cost. As such, the best leverage the City has for enforcing the requirement to participate in the BRF is by coordinating with all other permits required for businesses operating in Palo Alto. This information will be available to other departments through Accela. Administrative Services will work with the Planning, Fire and Police Departments to ensure that other permits are not issued without proof of participation in the BRF.

- **Web Site Development**: This will be part of Phase 2 of the program implementation. A web site with registry information accessible to the public and to businesses is a key benefit of the registry. However, Phase 2 will not be accomplished until after the initial implementation is completed.

- **Program Launch**: Planned for July, 2007. Business registry applications will be mailed to businesses in June 2007. However, beginning in April 2007, based on Council direction, staff will contact businesses listed on the database to determine if they are home-based businesses and eliminate them from the database.

### RESOURCE IMPACT
Cost estimates are approximate, since staff does not know the number of businesses in the City. Staff’s estimate is that there are 6,000 – 8,000 non-home-based businesses within Palo Alto. The estimated resource impacts are summarized in the table below:

<table>
<thead>
<tr>
<th>Number of Businesses</th>
<th>6,000</th>
<th>8,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of Implementation</td>
<td>$322,000</td>
<td>$333,000</td>
</tr>
<tr>
<td>Cost of Annual Renewal</td>
<td>$173,000</td>
<td>$217,000</td>
</tr>
</tbody>
</table>

To recover the costs of the program, staff is proposing an initial application fee of $55, based on the more conservative estimate of 6,000 businesses, with an annual renewal fee of $35.

Further, staff proposes an annual increase in the BRF equal to the Consumer Price Index – All Urban Consumers for the San Francisco-Oakland-San Jose, CA Metropolitan Area.

### POLICY IMPLICATIONS
The actions described in this report are consistent with Council’s policy and program direction provided at its January 23, 2006 meeting. The business registry program requires that all businesses except home-based businesses register with the City and pay a fee to cover the cost of such registration.
**ENVIRONMENTAL REVIEW**
The actions described in this report do not constitute a project for the purposes of the California Environmental Quality Act.

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**ATTACHMENTS:**
Attachment A: BRF Ordinance  
Attachment B: BRF Application Form  
Attachment C: BRF Financial Model