

**TO:** HONORABLE CITY COUNCIL

**ATTENTION:** FINANCE COMMITTEE

**FROM:** CITY MANAGER                      **DEPARTMENT:** ADMINISTRATIVE SERVICES

**DATE:** OCTOBER 27, 2009                      **CMR:** 407:09

**REPORT TYPE:** Information

**SUBJECT:** Participation of the Planning and Transportation Commission and Other Council Appointed Groups in the Capital Improvement Program (CIP) Capital Budget Process

This is an informational report and no Finance Committee action is required.

**BACKGROUND**

During the CIP capital budget hearing in May 2009, the Planning and Transportation Commission (PTC) provided Council thru the Finance Committee a report on the result of its review of the Capital Improvement Program (CIP) Plan for FY 2010-14.

In summary, the report indicated that the projects in the CIP Plan are consistent with the City's Comprehensive Plan. The report also contained suggestions for improvements in some facets of the CIP Plan. Some of the suggestions were related to the budget process while some are project specific. The letter of the PTC and staff response to the PTC's suggestions is shown in Attachment 1.

The letter of the PTC provided a forum for the Finance Committee to discuss the timing of the PTC's participation in the CIP budget process. The existing CIP budget process does not provide the PTC sufficient opportunity to recommend CIP projects since the CIP Plan is made available to the PTC after the final vetting process has been completed by staff. The PTC receives a copy of the proposed CIP projects a month before the CIP budget hearing with the Finance Committee.

Staff assured the Committee that the CIP budget process would be revisited and staff would return with a report on how to include the PTC in the process sooner.

**DISCUSSION**

In summer 2009, staff from the City Manager's Office and key departments (Public Works, Planning, Utilities, Community Services and Administrative Services) discussed the existing CIP budget process. Staff identified areas that need improvements as follows:

- The group recognized that in addition to the Planning and Transportation Commission, other Council appointed bodies such as the Utilities Advisory Commission, Parks and Recreation Commission, etc. should also be engaged in CIP budget process since many of the CIP projects are within their purview. More over, the City's Municipal Code requires PTC review and input into the CIP. This supports the Council priority on Civic Engagement.
- To provide ample time for the PTC and other Council appointed bodies to comment on new CIP projects, the CIP budget calendar will be revised to provide a time slot for these groups in the early stage of the budget process. The ideal time identified is in the months of October and November. City staff has not finalized the list of projects that will be included in the next year's CIP Plan at this time, and will still be considering what new projects to include. This change in the process gives Council appointed bodies the opportunity to provide input in the early stage of the planning process.
- City management will assign staff liaison to the PTC and to each Council appointed group. The duty of a liaison staff is to convene a meeting with each group in October /November and get their input. Community Services Department staff will be assigned to the Parks and Recreation Commission while Utilities Department staff will coordinate with the Utilities Advisory Commission. Staff from the Planning Department and Public Works Department will work with the PTC.
- Input from the PTC and other Council appointed groups will be summarized and incorporated in the CIP budget document. Recommended projects from these Council appointed bodies will be compared with staff-recommended projects. Projects that were recommended but did not get in to the CIP Plan will be identified for Council/Finance Committee to review during the budget hearing.
- The PTC will be assigned two time slots in the CIP budget process – 1) in October/November to provide input to the proposed CIP Plan, and 2) in April of the following year – to review whether the projects in the proposed CIP Plan are consistent with the City's Comprehensive Plan.

Staff believes that these changes to the CIP budget process strengthen the Council's priority on Civic Engagement by encouraging active participation of various stakeholders in planning the City's CIP Plan.

Staff plans to implement these changes in two phases - Phase 1 (PTC) and Phase 2 (other Council appointed groups). Phase 1 will be implemented in the coming CIP Plan 2011-15 while Phase 2 will be implemented starting with CIP Plan 2012-16.

### **ATTACHMENTS**


Attachment 1 – PTC Letter to Council dated May 11, 2009

Attachment 2 – Staff Response to PTC letter dated May 11, 2009

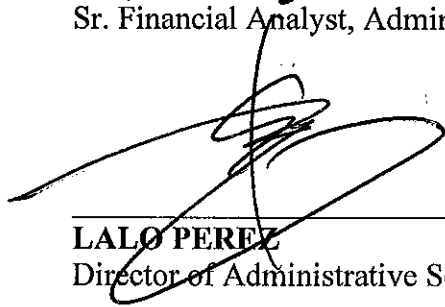
Attachment 3 – City Attorney's Letter to PTC dated May 20, 2009

Cc: Planning and Transportation Commission

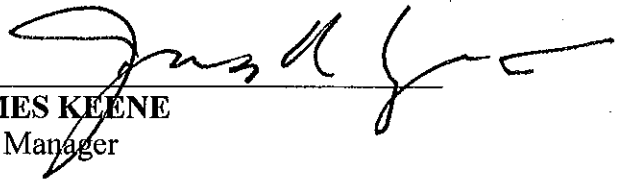
PREPARED BY:

  
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Director of Administrative Services

CITY MANAGER APPROVAL:

  
JAMES KEENE  
City Manager



May 11, 2009

Honorable City Council  
c/o City of Palo Alto  
250 Hamilton Avenue  
Palo Alto, CA 94301

**RE: Review of 2010-2014 Proposed Capital Improvement Plan (CIP)**

The Planning and Transportation Commission (PTC) has completed its review of the 2010-2014 Capital Improvement Plan (CIP) and determined that the projects in the CIP are consistent with the Comprehensive Plan. In addition, the PTC's motion included several suggestions for future CIP priorities and requested that additional information regarding prior CIP projects and the infrastructure backlog be provided next year to aide in the PTC's review and analysis for consistency with the Comprehensive Plan.

At its meeting on May 6, 2009, the PTC passed the following motion on a vote of 6-0 (Commissioner Holman absent):

- 1) The PTC found that the 2010-2014 Capital Improvement Plan is consistent with the Comprehensive Plan,
  - With the following comments on Project PL -11000 Highway 101 Pedestrian / Bicycle Overpass / Underpass:
    - a) That the project description be revised to clarify that the activity is a feasibility study for a year-round crossing [Note: staff has made this change]; and
    - b) That the study should be funded in FY 2009-10 if that significantly increases the likelihood of securing outside funding for its construction.
- 2) The PTC suggested that:
  - a) The Public Works and Utilities Departments improve coordination to promote efficiency and timeliness of CIP projects within the City's right of ways so as to minimize the occurrence of a street being paved then torn up soon thereafter in order to complete a project; and
  - b) The Public Works and Utilities Departments better inform and consult with the public regarding projects that involve work in the City's right of way so as to explain why streets are sometime torn up not too long after being paved; and
  - c) The Public Works Department use paving materials that reduce the need for street resurfacing and increase the life of the streets.

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PTC Review of 2010-2014 CIP

May 11, 2009

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3) The PTC suggested the City consider studying three issues that present opportunities for future CIP projects to better align the City's existing conditions with the Comprehensive Plan:

a) Flood Protection: Study the opportunity for the City to better utilize the City's levee system to improve the public health and safety as well as economic vitality of businesses and public infrastructure located within the creek and tidal flood plains; and

b) San Antonio Road / 101: Study the benefit to the City of constructing a new south-bound on-ramp from east-bound San Antonio Road onto Highway 101; and

c) Neighborhood Amenities: Study improvements in the vicinity of the following developments in South Palo Alto (Vantage, Echelon, Classic Communities, Altaire, TKCJL, Arbor Real, SummerHill's Redwood Gate, Alma Plaza, Mayfield Mall, West Meadow Oaks) so as to address any deficiencies in "public gathering spaces, essential services and pedestrian amenities, to encourage less reliance on the automobile" [excerpt from Vision Statement for Chapter 2 Land Use and Community Design of the Comprehensive Plan].

4) The PTC requested that the City Council direct staff to provide in future the following items to assist the PTC in its review of the CIP and in fulfilling its mission as described in the Municipal Code:

- a) Provide a detailed list of all unfunded major infrastructure backlog projects;
- b) Provide a chronological list of all past, present and future CIP projects in a Gantt chart format.
- c) Provide a map showing the location of all continuing, new and backlog CIP projects.
- d) Provide a list of all infrastructure studies conducted in the past; and
- e) Cross-correlate these lists.

In addition, the PTC noted the following errors in the Proposed Capital Budget book:

- Page iv - In the last full sentence delete the word "in" after \$60.4 million
- Page 69 - Add "Board /Commission Review:" and indicate None
- Page 71 - Foothills Park Interpretive Center (PF-05003): Add PTC review
- New CIP - Ventura Community Center & Park (PE-10002): "Add Telecommunications Impact"
- Page 173 - Correct the map error showing the Arastradero Road gas main project; the gas line was already constructed.
- New CIP - Highway 101 Pedestrian/Bicycle Overcrossing/Undercrossing (PL-11000) should include additional Comprehensive Plan Policy references, namely: Policy L-7, L-46, L-64, L-68, T-1, Goal T-3, T-14, Program T-18, Program T-19, T-16, T-17, Program T-26, T-18, Program C-23, C-27, Program C-25, C-28, Goal C-5, C-29, C-30.

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Additionally, the PTC requests that Planning staff and the City Attorney support the PTC's review of the CIP in future years that allows the PTC full latitude to conduct its review in a manner that fulfills its mandate pursuant to PAMC Section 19.04.040.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Dan Garber', with a horizontal line extending to the right.

Dan Garber, Chair  
Planning and Transportation Commission

## ATTACHMENT 2

### **Response to PTC Letter dated May 11, 2009 Regarding Review of CIP Plan 2010-2014**

**Item # 1 a)** The project description of PL-11000 (Highway 101 Pedestrian/Bicycle Overpass/Underpass) was revised to incorporate the recommendation of the Planning and Transportation Commission; which clarifies that the activity is a feasibility study for a year-round crossing.

**Item #1b)** CIP Project PL-11000 (Highway 101 Pedestrian/Bicycle Overpass/Underpass) was moved from FY 2011 to FY 2010 for funding. The City had submitted an application to the Valley Transit Authority (VTA) for stimulus funding for this project. A feasibility study and analysis were necessary in order to support the application.

Staff is currently preparing a Request for Proposals (RFP) for professional services needed to prepare a feasibility study for a potential Highway 101 Pedestrian/Bicycle Overpass project. The RFP will be issued this fall with a contract targeted to go to Council by the end of this calendar year. In the meantime staff has provided information to Senator Feinstein's office to elevate this project to the Federal level for possible funding.

**Item #2 a)** in response to the City Auditors 2006 Audit of the Street Maintenance Program staff from the Utilities and Public Works Department meet on a monthly basis to coordinate planned street and underground utility capital improvement projects. This is done to prevent planned utility capital construction from occurring after planned street maintenance contracts. Of course the Utility Department and Public Works cannot prevent private developers from installing underground utility connections after new street maintenance work is done. Also, sometimes there are unforeseen emergencies (e.g.: gas and water leaks) requiring utility repairs be done after recently completed street work.

**Item #2 b)** Both the Utilities and Public works Departments notify and conduct outreach to residents before major capital projects. Regarding unforeseen private developments and utility emergencies affecting newly paved streets staff will continue to make it clear to the public and City Council that these events are beyond staff's control.

**Item #2 c)** Approximately 20% of the annual street maintenance program budget is used for preventative maintenance activities such as slurry and cape sealing street repair techniques. These paving techniques reduce the need for street resurfacing typically increasing a street's useful life by five to ten years.

**Item # 3** – Staff will revisit these suggestions in planning for the CIP Plan 2011-15

**Item # 4** – Staff will try its best to provide the information needed by the Planning and Transportation Commission within the time allotted. City's practice limits staff time to respond to public requests to one hour.

Other errors identified in the proposed budget document have now been corrected in the adopted budget document.

#### **Last paragraph**

The City Attorney's Office sent the Planning and Transportation Commission a letter dated May 20, 2009 clarifying the role of PTC in the review of the CIP Plan.  
(Attachment 3)

# REPORT



FROM CITY ATTORNEY

May 20, 2009

COPY

Planning and Transportation Commission  
Palo Alto, California

RE: Planning and Transportation Commission Duties re: Capital  
Improvement Plan

Dear Members of the Planning and Transportation Commission:

We have received a number of questions on the Planning and Transportation Commission's role in the review of the Capital Improvement Plan. Our review of past staff and City Attorney advice indicates that the role of the Commission may have been understated.

The following brief summary of Planning and Transportation Commission's duties under Municipal Code Section 19.04.040 is provided for your information.

Question Presented:

What is the Commission's role in the review of the City's Capital Improvement Program?

Short Answer:

State law requires that the Commission "[a]nnually review the capital improvement program of the city . . . and the local public works projects of other local agencies for their consistency with the general plan<sup>1</sup>." PAMC Section 19.04.040 provides guidelines for that review.

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<sup>1</sup> State law refers to the "General Plan"; Palo Alto has chosen to call its General Plan the Comprehensive Plan.

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#### PLANNING AND TRANSPORTATION COMMISSION

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RE: Planning and Transportation Commission Duties re: Capital Improvement Plan

#### Analysis

The Commission's purview over the capital improvement program is defined in Title 19 of the Palo Alto Municipal Code. Title 19 was enacted by initiative measure in 1962 with the stated purpose of incorporating "Articles 7 and 8, Chapter 3 of Title 7 of the Government Code, which promulgate a system for the preparation and adoption of master plans by general law cities. Such provisions [did] not apply to a charter city unless such a city adopt[ed] them by charter or ordinance." See *Fletcher v. Porter*, 203 Cal.App.2d 313, 317 (upholding the validity of the initiative measure under the Palo Alto City Charter). Municipal Code section 19.04.010, provides that "the primary duty" of the planning commission under Title 19 is "to prepare, adopt and recommend . . . a long-range, comprehensive general plan." All of the Commission's other duties follow from and are directly related to this primary duty.

"[T]he advocates of the [initiative] proposal state[d] the purpose of the ordinance to be the '[c]larification of the duties of the Planning Commission,' not the enlargement of the commission's powers . . ." *Fletcher v. Porter, supra* at 317. One aspect of state law which Title 19 attempted to clarify is the Commission's responsibility to review the capital improvement program for consistency with the general plan.

Government Code section 65103 requires that Commission "[a]nnually review the capital improvement program of the city . . . and the local public works projects of other local agencies for their consistency with the general plan." Section 19.04.040 clarifies how the Commission is to conduct this review, with the primary requirement being that "[t]he general plan shall be the guide for the capital improvement program insofar as the capital improvement program affects the physical development of the city."

Because Section 19.04.040 goes further than state law in defining the Commission's task in reviewing the capital improvement program, Commissioners have asked whether the last two phrases in the section give the Commission additional duties. The section, in its entirety, reads as follows:

19.04.040 Capital improvement program reviewed.

The general plan shall be the guide for the capital improvement program insofar as the capital improvement program affects the physical

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#### RE: Planning and Transportation Commission Duties re: Capital Improvement Plan

development of the city. The planning commission shall submit an annual report to the council regarding the capital improvement program, which shall review each project for its conformity to the master plan; review the program as a whole in order to suggest any improvement in economy or efficiency which might be effected through the combining of various projects; and suggest any needed improvements which do not appear in the program.

The usual rules of statutory construction provide that each phrase in a law is read in context with the other phrases in its section; so too, are individual laws read in context with the chapters in which they appear. *Donovan v. Poway Unified School Dist.*, (2008) 167 Cal.App.4th 567, 592. Therefore, reading the last two phrases in this section as giving the Commission new and separate powers would not be correct. All of the Commission's powers under Title 19 revolve around creating the Comprehensive Plan and reviewing other matters for their consistency with the Comprehensive Plan.

However, the last two phrases do add factors which the Commission may properly consider in reviewing the Capital Improvement Plan for its consistency with the Comprehensive Plan. Specifically, if there are "any needed improvements which do not appear in the program" and whose absence makes the program inconsistent with the general plan, then the Commission may suggest them. Furthermore, if the Commission identifies an "improvement in economy or efficiency which might be effected through the combining of various projects," such combination may be recommended in order to better implement the intent of the Comprehensive Plan.

The Commission's role is limited to the capital improvement program as it "affects the physical development of the city." PAMC 19.04.040. The purview of the Commission does not, therefore, extend to fiscal policy. Section 18 of the City Charter provides that the Administrative Code covers "all rules and regulations relating to fiscal operations . . ." Chapter 2.28 of the Administrative Code sets forth the City's fiscal procedures. These procedures do not allow for Commission review of the City's finances or fiscal policy.

As long as the Commission is not making budgetary recommendations, the scope of their review of the Capital Improvement Program is rather broad. While the Commission may not direct the expenditure of funds, the Commission may comment on

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RE: Planning and Transportation Commission Duties re: Capital Improvement Plan

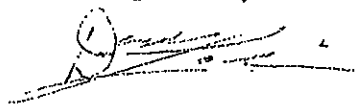
projects and programs as they relate to the physical development of the City, the Capital Improvement Program, and the Comprehensive Plan.

Conclusion:

Under Section 19.04.040, the Commission is tasked with reviewing the capital improvement program for consistency with the general plan. This properly corresponds with the Commission's other duties and allows the Commission to comment on individual projects and the Program as a whole where it is most important and appropriate. Thus, the Commission's purview in this area is ample and they may comment on each project proposed as well as those projects that the Commission deems to be missing from the Capital Improvement Program. The Commission may not, however, direct that funds be spent to accomplish the Capital Improvement Program. The Commission may point out projects that are missing from the CIP in order to achieve goals elucidated in the Comprehensive Plan. Unfortunately, this is a complicated arena and all questions presented may not have been answered. Please contact Donald Larkin or me if you have additional questions or points of clarification.

Law Clerk Abbie Livingston and Assistant City Attorney Donald Larkin contributed to this report.

Respectfully submitted,



GARY M. BAUM  
City Attorney

GMB:syn

cc: City Council  
James Keene, City Manager  
Steve Emslie, Deputy City Manager  
Curtis Williams, Interim Director of Planning  
and Community Environment  
Donald Larkin, Assistant City Attorney