



**CITY COUNCIL AND COMMUNITY DEVELOPMENT AGENCY  
MINUTES**

**Tuesday, August 5, 2008**

**7:00 p.m.**

**701 Laurel Street, Menlo Park, CA 94025**

**Menlo Park City Council Chambers**

**5:00 p.m. CLOSED SESSION** (Administration Building – City Council Conference Room, 1<sup>st</sup> Floor)

1. **CLOSED SESSION – CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION:** Initiation of Litigation pursuant to Government Code Section § 54956.9(c) – 1 Case. Attendees: Legal Counsel, Robert Lanzone, Aaronson, Dickerson, Cohn and Lanzone, and City Manager Glen Rojas.
2. **CLOSED SESSION – PUBLIC EMPLOYEE PERFORMANCE EVALUATION: CITY MANAGER** pursuant to Government Code Section §54957. Attendees: City Manager Glen Rojas and City Attorney William McClure.

**Report on Closed Session**

**Action:** The City Manager reported that the City Council has determined to join the lawsuit being filed by the Transportation Defense and Education Fund against the California High Speed Rail Authority challenging the final Programmatic Environmental Impact Report. This action is contingent on the City paying no fees or costs associated with the lawsuit. The Council approved this action by the following vote (Ayes – Cline, Fergusson; Noes – Boyle; Absent – Cohen, Robinson). Mayor Cohen and City Attorney McClure were recused from attending this closed session due to a FPPC conflict of interest.

**7:00 p.m. ROLL CALL** – Cohen, Boyle, Cline, Fergusson; Absent - Robinson

**Staff present** – City Manager Rojas, City Attorney McClure, and City Clerk Kelly

**PLEDGE OF ALLEGIANCE**

**A. COMMISSION/COMMITTEE VACANCIES, APPOINTMENTS AND REPORTS**

1. **Commission members and Chamber of Commerce reports.**  
**Action:** Fran Dehn, Chamber of Commerce, announced the Downtown Block Party and Summer Concert in Fremont Park this Wednesday starting at 6:00 p.m.

**B. PRESENTATIONS AND PROCLAMATIONS**

1. **Peninsula Gateway 2020 Presentation.**  
**Action:** This presentation will be rescheduled for a later date.

**C. PUBLIC COMMENT #1**

Milton Borg cautioned that everyone needs to support their local businesses or the City risks losing them to franchises and chain stores.

Anthony Mori, Mori Consultants, informed the Council that he has filed a formal bid protest on Agenda Item D1. He stated that the supplier of the specified video detection system provided one equipment price to four contractors and a significantly lower equipment price

to their preferred contractor, and low bidder. He said that since the City only approved one video detection system, the other contractors were at a disadvantage. He asked that the Council not act on this item tonight and take a week to look into this.

**D. CONSENT CALENDAR**

**Action:** Moved, seconded, carried (Fergusson/Cline; Ayes – Boyle, Cline, Cohen, Fergusson; Absent – Robinson) to adopt the Consent Calendar in one motion as noted.

1. **Adoption of a Resolution appropriating \$190,000 from the Measure A fund balance and \$25,000 from the Traffic Impact Fee Fund Balance and award of Contract to Econolite Traffic Engineering & Maintenance in the amount of \$166,454 for the purchase and installation of Video Detection Systems at various intersections and authorization of a budget of \$215,000 for construction, contingencies, testing, inspection, and construction administration. ([Staff Report #08-104](#))**

This item was removed from the Consent Calendar for discussion at the request of Councilmember Boyle. He asked staff to respond to issues raised by the public speaker.

Chip Taylor, the Transportation Manager, stated that bids were received from five contractors for the furnishing and installation of video detection systems, with the lowest bidder, Econolite Traffic Engineering & Maintenance, supplying a bid of \$166,454, approximately \$76,000 lower than the next lowest bidder. Mr. Taylor said that staff has reviewed the low bidder's references and is satisfied with the firm's qualifications. He also stated that the City did not receive any requests at the time they went out for the bid to approve another system.

In response to questions raised by Councilmember Boyle, the City Attorney said that there is no legal reason to reject the low bid.

**Action:** Moved, seconded, carried (Boyle/Cline; Ayes – Boyle, Cline, Cohen, Fergusson; Absent – Robinson) to adopt Resolution No. 5820 appropriating funds and awarding a contract to Econolite Traffic Engineering & Maintenance for the purchase and installation of video detection systems and authorizing a budget for construction.

2. **Recommendation for the configuration of the parking lot in front of Nealon Park on Middle Avenue to remain in its current configuration. ([Staff Report #08-102](#))**  
**Action:** Approved the parking configuration of the parking lot in front of Nealon Park to remain in its current configuration and repainting of parking stripes and designation of handicapped parking spaces.
3. **Adoption of a Resolution accepting the public improvements and authorizing the release of the Bonds for the Heritage Oaks Subdivision Project located at 996-1002 Willow Road. ([Staff Report #08-105](#))**  
**Action:** Adopted Resolution No. 5821 accepting public improvements and authorizing release of bonds for Heritage Oaks Subdivision project.
4. **Adoption of a Resolution accepting changes to the Joint Exercise of Powers Agreement for the Housing Endowment and Regional Trust of San Mateo County (HEART). ([Staff Report #08-110](#))**  
**Action:** Adopted Resolution No. 5822 accepting amendment to the JPA for HEART.

5. **Rejection of bids for the San Francisquito Creek Bonde Weir Fish Passage Improvement Project, authorization of a Contract increase for Environmental Permitting in the amount of \$4,000, and authorization to pursue additional funding for construction of the Project in 2009. ([Staff Report #08-094](#))**

This item was removed from the Consent Calendar for discussion by Councilmember Boyle. He stated that he wanted to make it clear for the record that, by taking this action, the City is not committing additional funds or approving a budget for this project. He also stated that it is disappointing that the City's initial estimate was off by so much.

**Action:** Moved, seconded, carried (Cline/Fergusson; Ayes – Boyle, Cline, Cohen, Fergusson; Absent – Robinson) to reject bids for the San Francisquito Creek Bonde Weir Fish Passage Improvement Project, to authorize an increase in the contract amount for the environmental permitting by \$4,000, and to authorize pursuing additional funding for construction of the project in FY 2008-09.

6. **Approval of the amended and restated Joint Exercise of Powers Agreement by and between the Cities of Palo Alto, Menlo Park and East Palo Alto, the Town of Atherton and the Counties of San Mateo and Santa Clara to provide for a Cable Television and Video Franchise Administration and enforcement process consistent with the California Digital Infrastructure and Video Competition Act. ([Staff Report #08-107](#))**

**Action:** Approved amended and restated JPA to provide cable television and video franchise administration.

7. **Authorize the City Manager to execute a one-year extension of the Agreement between the Peninsula Corridor Joint Powers Board and the City of Menlo Park to share the total costs for the operation of the Marsh Road and Willow Road Shuttle Bus Services on a 75 % / 25 % basis. ([Staff Report #08-108](#))**

Removed from the Consent Calendar for discussion by Councilmember Boyle. He asked if staff had any statistics on ridership and the cost per passenger.

Transportation Manager Chip Taylor responded that he did not have the ridership numbers with him, but that the cost per passenger trip is either \$2.12 or \$2.50, depending on the service location, compared to \$7.50 for the cost of a taxi.

**Action:** Moved, seconded, carried (Fergusson/Cline; Ayes – Boyle, Cline, Cohen, Fergusson; Absent – Robinson; to authorize the City Manager to execute a one-year extension of the Agreement with Peninsula Corridor JPA to share costs for operation of the Marsh Road and Willow Road Shuttle Bus Service.

8. **Authorize the City Manager to enter into a Contract with the Ravenswood City School District in an amount not to exceed \$83,025 for the delivery of food services at the Belle Haven Child Development Center. ([Staff Report #08-113](#))**

**Action:** Authorized the City Manager to enter into a contract with Ravenswood City School District in an amount not to exceed \$83,025 for the delivery of food services at the Belle Haven Child Development Center.

9. **Approval of minutes for Council meetings of: a) May 20, 2008; b) June 3, 2008; c) June 10, 2008; d) June 17, 2008; and e) July 1, 2008. ([attachment](#))**

**Action:** Approved minutes as submitted.

## E. PUBLIC HEARINGS

1. **Adoption of a Resolution extending the Building Construction Street Impact Fee to provide for roadway maintenance and repair related to damages caused by building construction activity. ([Staff Report #08-103](#))**

Assistant City Manager Kent Steffens reported that upon direction by the Council and completion of a nexus study, in 2005 the City Council adopted a new building construction street impact fee to provide for roadway maintenance and repair related to damages caused by building construction activity. He stated that the fee was established at 0.58% of the project valuation for construction projects above \$10,000, excluding all building permits classified as residential alterations, or residential repairs. Mr. Steffens said that Resolution No. 5622 adopted by the City Council in September 2005 includes a sunset clause, which provides that the fee will expire three years from its effective date unless extended by Council action.

In response to questions raised by members of the Council, Mr. Steffens reviewed the process used to determine how the fee was calculated and indicated that it could only be raised after completion of another nexus study. He reported that the fees collected are not designated to make improvements to specific streets and that school districts, as State agencies, are exempt from paying these fees.

The Mayor opened the public hearing.

Elias Blawie spoke in favor of staff's recommendation. He suggested that the Council consider its policy on exempting residential remodels based on the number of these and the impact they have on City streets.

**Action:** Moved, seconded, carried (Fergusson/Boyle; Ayes – Boyle, Cline, Cohen, Fergusson; Absent – Robinson) to close the public hearing.

Councilmember Fergusson questioned whether the amount of the fee is in line with the cost of repairing the streets.

Mayor Cohen suggested the fee be reviewed every three years.

Councilmember Boyle agreed that it is important to keep track of the cost of street repairs to ensure the fee is sufficient to cover repairs and agreed with the need to review the fee every few years.

**Action:** Moved, seconded, carried (Boyle/Fergusson; Ayes – Boyle, Cline, Cohen, Fergusson; Absent – Robinson) to adopt Resolution No. 5823 extending the building construction street impact fee at the current rate and amending the resolution to include the following language "by the end of 2010 and every three years thereafter the Council shall review the amount of the fee and shall consider whether to require a new nexus study be prepared to evaluate the amount of the fee."

## F. REGULAR BUSINESS

1. **Designating a voting delegate and two alternates to the 2008 League of California Cities Annual Conference. ([Staff Report #08-101](#))**

Members of the Council discussed which members might attend the Conference.

**Action:** Moved, seconded, carried (Boyle/Fergusson; Ayes – Boyle, Cline, Cohen, Fergusson; Absent – Robinson) to designate Mayor Cohen as the voting delegate and Vice Mayor Robinson and Councilmember Boyle as alternates.

2. **Consideration of a Resolution approving the revised Investment Policy for the City and the Community Development Agency of Menlo Park, to become effective immediately. ([Staff Report #08-111](#))**

Carol Augustine, Finance Director, informed the Council that State law requires cities to annually review their Investment Policy. She reported that the City contracts with MBIA Municipal Investors Service Corporation to provide an annual review and update of the Policy and that MBIA has not made any recommendations for changes to the Policy for this year. Ms. Augustine noted that staff is recommending one change, which would provide for a review of the Policy by the Finance and Audit Committee prior to presenting it to the Council for consideration and approval.

Councilmember Boyle questioned the make up of the investments especially in the area of federal securities such as FNMA, FHLB, and FHLMC, and the difference between negotiable and non-negotiable certificates of deposit. The Finance Director explained the difference between negotiable and non-negotiable certificates of deposit and pointed out that the Policy allows for investment in federal instruments that maintain at least an AAA rating.

Councilmember Fergusson expressed concern that the Policy does not clearly identify all of the assets of the City, including property assets and other types of assets and it would be helpful if the policy stated what types of assets it applies to. The Finance Director reported that the City has \$109 million held in investments, out of \$120 million in current assets. She noted that the City has approximately \$308 million in non-current assets for a total of approximately \$500 million in total assets, which includes all capital assets and infrastructure. She stated that the City has approximately \$100 million in both current and non-current liabilities.

Councilmember Cline questioned how the consultant could recommend no change in the Investment Policy for this year based on the market, especially with the collapse of home loans, and why the Policy would not include some restriction on these types of securities. The Finance Director responded that the Investment Policy allows for investing in these types of securities as long as they meet the AAA rating and that the Policy should be flexible enough to withstand economic conditions.

No members of the public spoke.

Councilmember Boyle suggested that the Council may want to consider amending the Policy to allow staff to buy investments with maturities beyond five years without having to get Council approval. He stated that he believed that based on the size of the City's portfolio, some of the City's investments should be in longer term investments. He also stated that he is uncomfortable with the language in the Policy that allows for unlimited investment in federal agency securities and would like to see some restrictions or guidelines in the Policy regarding either limiting the percentage or types of investments.

Councilmember Boyle recommended that the Council direct staff to consider

comments made by the Council and to work with the consultant to consider any modifications to the Investment Policy and to present it to the Finance and Audit Committee for review and comment prior to bringing it back to the Council.

**Action:** By Council consensus the Council directed staff to work with the consultant and consider modifications to the Investment Policy based on Council comments and to present the revised Policy to the Finance and Audit Committee prior to returning to Council.

3. **Consideration of state and federal legislative items, including decisions to support or oppose any such legislation, and items listed under Written Communication or Information Item.** - None

**G. CITY MANAGER REPORTS** - None

**H. WRITTEN COMMUNICATION**

1. **Request by Council Members Fergusson and Cline to place an item regarding the High Speed Passenger Train Bond Measure on a future Council Agenda.**  
**[\(attachment\)](#)**

Mayor Cohen and the City Attorney announced that they have a FPPC conflict of interest and will need to be recused.

Councilmember Cline stated that he and Councilmember Fergusson are seeking Council approval to bring forward a resolution regarding the high speed rail measure that will be on the November 4, 2008 ballot for Council discussion and consideration at the meeting of August 26, 2008 or at another meeting in the near future. He stated that they have identified some talking points, which represent issues of concerns, to be considered as part of the resolution.

Councilmember Boyle said he believes that bringing a resolution forward in opposition to high speed rail, prior to first getting the facts, and having a discussion and debate, is putting the cart before the horse. He applauded Councilmembers Cline and Fergusson for attempting to bring the matter before the Council, but suggested a better approach would be to set this matter for a study session and to bring in experts on both sides of the issue, and to give staff time to do some analysis. He asked the City Manager as to the timing for scheduling a study session.

City Manager, Glen Rojas, informed the Council that staff has been in contact with the California High Speed Rail Authority and their Deputy Director is willing to come to the City to give an overview of the project, but won't be available until September. He said that staff neither has the time nor the expertise to put together a comprehensive report and analysis on this topic prior to the election.

Councilmember Fergusson stated that she still would like to see the resolution come forward at the meeting of August 26 for discussion and possible action.

Members of the public commented as follows:

Morris Brown reviewed what is happening with the high speed rail issue and the bond measure in the State legislature. He said that attempts to put the California High Speed Rail Authority under another State agency and attempts to remove this from the

November ballot were both voted down. He said that AB 3034, will be considered on Thursday, and that this bill would amend the ballot measure to address 15 points raised in a Senate Transportation document.

David Schonbrunn, President of TRANSDEF, said he has just come from the Atherton City Council where they voted to join a lawsuit against the California High Speed Rail Authority challenging the EIR for the high speed rail project. He urged the Council and its members to communicate to Senator Simitian, the co-sponsor of AB 3034, of the impact this project will have on the City of Menlo Park. He said that AB 3034 locks in the Pacheco alternative and the EIR findings and it is important that this not pass.

After much Council debate, the Council agreed to schedule a study session for 5:30 p.m. on September 9, 2008 prior to the regular Council meeting and to direct the City Manager to schedule speakers on both sides of the high speed rail issue for this study session. Staff was also directed to provide a status report on the list of speakers available for this study session at the Council meeting of August 26, 2008.

**I. INFORMATION ITEM**

**1. Review of the City's Investment Portfolio as of June 30, 2008. ([Staff Report #08-112](#))**

Geoffrey Bucheim, Financial Services Manager, introduced the quarterly Investment Report.

Councilmember Fergusson said that the comments she made regarding the City's Investment Policy apply to the quarterly Investment Report.

Councilmember Boyle questioned, what role, if any, the Finance and Audit Committee should have in formulating or reviewing the quarterly Investment Report. Members of the Council commented that this could be raised at another time.

**Action:** Received and filed.

**J. COUNCIL MEMBER REPORTS - None**

**K. PUBLIC COMMENT #2**

Dave Schonbrunn introduced his firm, TRANSDEF, as a Bay Area non-profit, with a focus on environmental issues and advocating for regional planning of transportation, planning and air quality. He stated that he looks forward to working with the City on the high speed rail issue.

**L. ADJOURNMENT – Adjourned at 9:50 p.m.**

Respectfully submitted,

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Sherry M. Kelly  
City Clerk

Approved at the Council meeting of August 26, 2008.