

Special Meeting  
April 12, 2004

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ADJOURNMENT: The meeting adjourned at 11:00 p.m. .... 29

The City Council of the City of Palo Alto met on this date in the Council Chambers at 6:05 p.m.

PRESENT: Beecham, Burch, Cordell, Freeman (arrived at 6:15 p.m.), Kishimoto, Mossar, Ojakian

ABSENT: Kleinberg, Morton

### STUDY SESSION

#### 1. Environmental Services Center

The Council held a study session to discuss alternatives for long-term solid waste management in Palo Alto, given the fact that the Palo Alto landfill is scheduled to close in 2011. Once the landfill is closed, it is to become a pastoral park. Staff provided a brief history of the landfill and recycling programs and discussed options for the future, especially after the agreement with the City of Sunnyvale expires in 2021.

Staff provided the following options for future Council consideration:

- Option 1: Build Environmental Service Center utilizing Dedicated Parkland, voter approval required:
  - 1(a) Build a Comprehensive Environmental Service Center on 19 acres at the current landfill site.
  - 1(b) Build a Reduced-Scale Environmental Service Center on 6.5 acres at the current landfill site.
  - 1(c) Build a Household Hazardous Waste and Recycling Facility on 3 acres at the current landfill site.
  
- Option 2: Use the Sunnyvale Material Recovery and Transfer (SMaRT) Station.

Staff indicated the issue would be going before the Policy and Services Committee in the near future. Council looked forward to detailed information regarding the proposals and asked staff to include in the report other sites that may have been considered, the City's use of compost, and how diversion would be affected by only using the SMaRT Station.

Trish Mulvey, 527 Rhodes Drive, expressed support for the full-scale option recommended by staff. She said it was important for Palo Alto to continue taking care of its diversion, both as a convenience to the community and as a cost-effective way to support and control the City's destiny.

Emily Renzel, 1056 Forest Avenue, expressed concern there were important California Environmental Quality Act (CEQA), park dedication ordinance, and Baylands Master Plan issues that had not been resolved. She urged the Council to pursue the SMaRT Station alternative.

**No action required.**

ADJOURNMENT: The meeting adjourned at 6:50 p.m.

The City Council of the City of Palo Alto met on this date in the Council Chambers at 7:00 p.m.

PRESENT: Beecham, Burch, Cordell, Freeman, Kishimoto, Morton, Mossar, Ojakian

ABSENT: Kleinberg

ORAL COMMUNICATIONS

Robert Pritchett, 1957 Cooley Avenue, East Palo Alto, spoke regarding skateboarding incident.

Rebecca Parker, 331 Everett Avenue, spoke regarding traffic calming.

Wei Chiu, 331 Everett Avenue, spoke regarding traffic calming.

Linda Anderson, 267 Bryant Street, spoke regarding traffic calming.

Aram James, 832 Los Robles Avenue, spoke regarding skateboarding incident at Terman Middle School.

Michael Ecoff, 621 Hawthorne Avenue, spoke regarding traffic calming.

Janine Bisharat, 621 Hawthorne Avenue, spoke regarding traffic calming.

Michelle Hamilton, 158 Emerson Street, spoke regarding Downtown traffic calming.

Walter Sedriks, 325 Waverley Street, spoke regarding traffic survey.

Dieter Folta, spoke regarding lessons learned.

Bob McDonald, 169 Bryant Street, spoke regarding traffic calming.

Ken Hake, 575 Everett Avenue, spoke regarding traffic calming.

Josh Mogal, Ruthren Avenue, spoke regarding Downtown trial changes.

Roberto Medrano, Hawthorne Avenue, spoke regarding traffic calming.

Dan Lorimer, 465 Hawthorne Avenue, spoke regarding Downtown North traffic calming.

Tricia Dolkas, 412 Everett Avenue, spoke regarding traffic calming.

Marie-Louise Starling-Bell, 2139 Wellesley, spoke regarding traffic calming in North Palo Alto.

Norman Carroll, University & Emerson, spoke regarding behavior.

Paul Dolkas, 412 Everett Avenue, spoke regarding Downtown traffic calming.

Elaine Haight, 166 Cowper, spoke regarding Downtown North.

Trina Lovercheck, spoke regarding the Opportunity Center capital community campaign.

Mark Nanevicz, 228 Waverley Street, spoke regarding Downtown traffic calming.

Gordana Pavlovic, 602 Hawthorne Avenue, spoke regarding traffic calming.

Lile Elam, 130 Bryant Street, spoke regarding an open street initiative.

Selora Albin, 660 Hawthorne Avenue, spoke regarding traffic calming.

#### APPROVAL OF MINUTES

**MOTION:** Council Member Morton moved, seconded by Freeman, to approve the minutes of March 15, 2004, as corrected and March 22, 2004, as submitted.

**MOTION PASSED** 8-0. Kleinberg absent.

#### CONSENT CALENDAR

Electra von Bragt, 2580 Waverley Street, expressed concern regarding establishing underground utilities in her district. She believed some of the monies going toward the power lines should be spent on education and the City's sewer system.

Robert S. Haggquist, 132 Emerson Street, expressed concern about the Council's approval of Underground Utility District No. 40. He said he did not understand how the City had the power to retroactively legalize something they had already started.

Herb Borock, P.O. Box 632, urged the Council to continue Item No. 5, the Approval of Payment of Certain Mortgage Expenses for Library Director until after recommendations from the Policy and Services Committee on the subject of "At Will" employment for department heads.

Mayor Beecham clarified staff had discussions with Electra von Bragt on payment options to assist her with her portion of the underground utilities.

Council Member Freeman registered "no" votes on Item Nos. 3 through 5.

**MOTION:** Council Member Morton moved, seconded by Mossar, to approve Consent Calendar Item Nos. 1-6.

### LEGISLATIVE

1. Ordinance 4822 entitled "Ordinance of the Council of the City Of Palo Alto Amending Section 12.16.020 of Chapter 12.16 of Title 12 of the Palo Alto Municipal Code by Establishing Underground Utility District No. 40". *(1<sup>st</sup> Reading 03/22/04, Passed 9-0)*
2. Request for Approval of Budget Amendment Ordinance Authorizing Receipt of \$27,176 from the Public Library Fund and Expenditure in the Same Amount

Ordinance 4823 entitled "Ordinance of the Council of the City of Palo Alto Amending the Budget for the Fiscal Year 2003-04 to accept a \$27,176 Grant from the State Public Library Fund and to provide an Additional Appropriation for the Library Department of \$27,176"

### ADMINISTRATIVE

3. Contract Between the City of Palo Alto and Skyhawks Sports Academy For Recreation Youth Sports Camps
4. Renewal of Contract Between the City of Palo Alto and Accela, Inc., in the Amount of \$390,724 for Accela Automation/Velocity Hall Web-Based Permitting Application
5. Approval of Payment of Certain Mortgage Expenses for Library Director
6. Approval of a Contract Between the City of Palo Alto and Manuel Brothers Incorporated in the Amount of \$3,298,892 for Gas Main Replacement Capital Improvement Project 13, GS-03002

**MOTION PASSED** 8-0, for Item Nos. 1, 2, and 6, Kleinberg absent.

**MOTION PASSED** 7-1, for Item Nos. 3, 4, and 5, Freeman "no," Kleinberg absent.

Council Member Freeman stated her "no" vote on Item No. 3 was due to the lack of response to the Request for Proposal (RFP), and because the Skyhawks Sports Academy ran the City's Recreation Youth Sports Camps for ten consecutive years without competition. She registered a "no" vote on Item No. 4 because she did not receive sufficient evidence the current process of using the technology for permitting practices was optimal. She registered a "no" vote on Item No. 5 because Palo Alto was not a private corporation, the City was using taxpayer dollars and the payment of certain mortgage expenses for the Library Director, which was not appropriate considering the budget crisis.

#### REPORTS OF COMMITTEES AND COMMISSIONS

7. Policy and Services Committee Recommendation to the City Council for Approval of City Policy 1-15 for the naming and renaming of City-owned land and facilities.

Council Member Kishimoto expressed her thanks to Greg Betts for his work in researching the topic and presenting the Policy and Services (P&S) Committee with a draft of City Policy 1-15. She also thanked the Palo Alto Historic Association (PAHA) and the Parks and Recreation Commission (PARC) for their assistance.

Open Space and Sciences Superintendent Greg Betts said the Council directed staff to review and revise the City Policy 1-15 on naming of parks and facilities to include such issues as: 1) specific criteria for the naming of lands or facilities in honor of individuals; 2) a role for the name recommendation process for the relatively new Parks and Recreation Commission, or other appropriate commissions; 3) a process for transmitting historical information on the facility to Council as part of the recommendation process; 4) clear criteria to be used for naming or renaming land and facilities; and 5) alternative methods for honoring individuals who had made significant contributions to the community. The intent of a facility naming policy was to guide the naming of City facilities in a fair, objective and consistent manner, aide in the selection of names that were suitable to the property or facility, respectful of the history of the site, and useful to the public in locating a park or facility. Staff met with PAHA and the PARC, both of whom felt there should not be a stipulation that City-owned land and facilities were named in memoriam for individuals.

Council Member Kishimoto said the P&S Committee voted unanimously to accept staff's recommendation to approve City Policy 1-15 with a number of

amendments, which were noted in Attachment C of CMR:217:04. The two significant changes were the naming of the property or facility did not have to occur in memoriam, and the renaming of rooms and subsections of City facilities would be made by the City Manager, but would come to the Council as an item on the Consent Calendar. She found the exercise useful in clarifying both the process and criteria for the naming and renaming of City facilities.

Herb Borock, P.O. Box 632, said the proposal originally came to the Council as a recommendation from four of the Council Members to rename the Arastradero Preserve for former Council Member Enid Pearson. He looked upon the process of revising City Policy 1-15 as a strange way of deciding whether or not to agree with the proposal, which could be voted down by the other five Council Members.

Council Member Mossar said she valued the discussions that ensued regarding the policies for naming and renaming City facilities and property. She expressed her concerns about efforts to find the funding to complete the Arastradero Preserve. In the era of public/private partnerships, the City had to be cautious in the timing of consideration for the naming or renaming of facilities or property. They should be contemplated in a way that would not complicate or cause problems for the private citizens who intend to raise monies for acquisitions.

**MOTION:** Council Member Kishimoto moved, seconded by Morton, that the Policy and Services Committee recommends that the City Council adopt the City Policy 1-15 (attachment to CMR:217:04) for the naming and renaming of City-owned land and facilities in Attachment B (Final Revised Policy) to CMR:217:04 which:

- a) Includes additional specific criteria for the naming of lands or facilities in honor of individuals;
- b) Includes a role in the recommendation process for the Parks and Recreation Commission, or other appropriate commissions;
- c) Creates a new name suggestion form and provides a process for transmitting historical information on the facility to Council as part of the recommendation process;
- d) Establishes a process and evaluation criteria for renaming facilities or City-owned lands; and
- e) Revises the review process for names of facilities within parks, or rooms within facilities that are suggested by the City Manager.

Further, the Policy and Services Committee recommends that the City Council direct staff to explore alternative methods, other than naming of

facilities or City-owned land, for recognizing individuals who have made a significant contribution to the community.

**AMENDMENT:** Council Member Mossar moved, seconded by Burch that the Council include in the motion a policy that "if private fund raising is required, the naming or renaming of the park is delayed until the completion of the fund raising efforts."

Council Member Mossar said the Peninsula Open Space Trust (POST) had stepped in and gave the City a short period of time to put together funding to add the additional acreage of land to complete the Arastradero Preserve. The City now had a little more than a year to fill the funding gap. The Council had looked at every opportunity to garner as much public dollars as possible to pay POST back the approximate \$3.5 million owed.

Vice Mayor Burch expressed his support for the amendment.

Council Member Morton referred to Item 2 on page 3, Attachment A in CMR:217:04 and expressed his concern about the way the amendment was phrased. He suggested introducing the preference to not do anything that would endanger the fund-raising as opposed to prohibit the naming or renaming of the facility or property.

Council Member Kishimoto expressed opposition to the amendment. She believed the issue raised by Council Member Mossar was addressed in the criteria guidelines for renaming existing facilities or parks, and would not stand in the way of fund-raising.

Council Member Freeman expressed opposition to the amendment.

Council Member Cordell said one of the goals of the P&S Committee was to keep in the "flexibility" of City Policy 1-15, which made it possible to accommodate the concerns of Council Member Mossar. She believed the issue could be adequately addressed by the adoption of the Policy.

Council Member Mossar clarified she was not making the proposal to allow the Arastradero Preserve to be named after a donor. She had asked for adequate time not to create any political controversy over the next year.

Mayor Beecham expressed opposition to the amendment. He believed the Policy as written was adequate on the point raised by Council Member Mossar.

**AMENDMENT FAILED** 1-7, Mossar "yes," Kleinberg absent.

Council Member Morton said while the Revised City Policy 1-15 allowed a park or facility to be named for a living person, it did so only in compelling circumstances. He did not believe the Policy had radically changed the tradition of naming areas within the City in memoriam, but rather opened it up.

Council Member Ojakian asked whether there was anything in the Policy that would prevent a plaque being placed after the removal of a structure.

Assistant City Manager Harrison said no.

Council Member Ojakian said it was suggested that a plaque could be placed recognizing those individuals who contributed to the Arastradero Preserve, and asked whether that could still occur.

Ms. Harrison said yes.

Vice Mayor Burch said the P&S Committee did a lot of work to revise the Policy and he was anxious to see it go forward.

**MOTION PASSED** 7-1, Mossar "no", Kleinberg absent.

Council Member Cordell asked what the next step was in the effort to rename the Arastradero Preserve after Enid Pearson.

Mr. Betts said with the adoption of a formal nomination form, the nominator would provide background information on what they felt were the important contributions Enid Pearson had made to the community, which could be transmitted to the Council. The staff would check back with PAHA to confirm their decision, and then bring it back to the PARC for a public hearing.

Vice Mayor Burch asked whether the assumption had been made that the Arastradero Preserve would be renamed after Enid Pearson, or was there the option of not renaming it and leaving it as it was.

Ms. Harrison said the issue raised by Vice Mayor Burch was scheduled for an upcoming Policy and Services Committee meeting and would be discussed then.

Council Member Mossar opined that Vice Mayor Burch's question touched on her concern and City Policy 1-15 would not prevent it.

RECESS: 8:45 p.m. to 8:50 p.m.

PUBLIC HEARINGS

8. Public Hearing: The City Council will consider adoption of an ordinance modifying Palo Alto Municipal Code Chapter 16.52 (Flood Hazard Regulations) pertaining to the review of improvements to existing structures in the Special Flood Hazard Area. The ordinance will establish a definition for the term "market value" as used in the flood hazard regulations, clarify the health and safety exclusions from the flood hazard regulations, modify the provisions for exempting specified historic structures from the flood hazard regulations, modify crawl space construction standards, and expand the prohibition of basements for structures in the Special Flood Hazard Area.

Council Member Freeman asked for clarification as to whether she could participate because she lived within the 500-foot circle of the Flood Zone area.

Interim City Attorney Wynne Furth said the Flood Zone area in Palo Alto was so large that more than 10 percent of the people lived in it. Therefore, the "Public Generally" exception applied and Council Member Freeman could participate.

Director of Public Works Glenn Roberts said Item No. 8 involved proposed changes to the Palo Alto Municipal Code (PAMC) Chapter 16.52 that governed development of properties within the Flood Zone. Flood insurance was a program that was not available from the private sector. In order to ensure the insurance was available and property owners would be able to obtain financing within flood zones, the federal government introduced the National Flood Insurance Protection (NFIP) Program in 1968. The City of Palo Alto first adopted the regulations of that program in 1979. In return for providing the flood insurance coverage, the federal government asked regulations be promulgated as to the manner in which development could occur in the flood zone in an attempt to minimize the risks and loss potential. A number of issues had risen over the past several years that were recommendations from the Federal Emergency Management Agency (FEMA) on audits conducted about the City's program. Palo Alto enjoyed a good relationship and reputation with FEMA. Every property owner within the City was afforded a 15 percent discount on their flood insurance rates in return for recognition of the manner in which Palo Alto's program was implemented. The issues before the Council included the question of 1) "market value" definition; 2) methodology for valuing existing residential structures; 3) clarification of health and safety exclusions from those items included in the valuations; 4) clarification of crawl space standards; 5) recommendation for prohibition of new and expanded basements within flood zone areas; and 6) recommendation for an exclusion from the flood zone requirements for locally designated historic structures. The issue of "market value" definition had been around for approximately eight years;

however, nothing had changed in the administration of the program in which the definition had been handled over those eight years. The issue was whether or not the practice that had been consistently administered should be codified into the PAMC regulations. Staff believed by putting the "market value" definition in the regulations it would promote consistency in permit review and resolve the question of whether or not the practice should apply to all properties consistently. Residential Valuation Methodology was historically different than current past practice had been. In previous years, staff used a valuation factor for existing homes of \$120 per square foot, which was rejected by FEMA's audit. They recommended a customized valuation based on the building's size, age, quality of construction and amenities, after which an initial screening would be conducted based on cost-estimating guides, and the applicant would be provided the option of getting a professional appraisal based on the "market value" definition. In the area of Health and Safety Exclusions, staff recommended that certain corrections to building deficiencies be allowed to go forward without triggering the substantially proving criteria requiring the building to be raised. If the building had been red tagged, unfit for occupancy, and required major improvements for health and safety reasons, those requirements would not be calculated as part of the cost in affect to raise the structure. Crawl space standards would prohibit sub-grade crawl spaces in new construction. It would allow the ground elevation in the crawl space to be the same as the ground elevation on the outside of the foundation. It would also avoid an applicant from having to raise a structure solely to eliminate a sub-grade crawl space. The residential basement prohibition recommendation prohibited new or expanded residential basements in the flood zone areas. Staff believed it would prevent an increase in health and safety risks posed by basements. In residential properties, the risks were greater because basements were often occupied as a living room and/or bedroom. During the flood of 1990, there was a substantial response requirement by the City and the Fire Department to respond to, evacuate, and pump out basements in the flood zone area. Staff also believed it would close a small loophole that presently allowed a new basement to be built under an existing building, as long as it was non-substantial or less than 50 percent of the value of the building. The historic structure inclusion would expand the floodplain regulations to allow for exclusion of historic structures to include locally designated structures, and would apply only if the proposed modification retained the building's historic status and provided an incentive for voluntary historic designation of eligible structures. The Flood Hazard Regulation was originally included in the Historic Preservation Ordinance adopted by Council in 1999, but was overturned by voter referendum in 2000. The proposed changes to the PAMC complied with the FEMA audit requirements, provided clarity, certainty, and consistency for building permit applicants, maintained the City's good standing in the NFIP, and retained the resident's eligibility for the 15 percent discount on their premiums.

Council Member Morton clarified the City went through an audit with FEMA in 2000 in which Palo Alto was in compliance.

Mr. Roberts said FEMA did find the City to be in compliance, but they also made recommendations for changes.

Council Member Morton said he wanted to ensure the FEMA recommendations were those of FEMA and not of an individual auditor.

Mr. Roberts said he believed they were both. The recommendations of FEMA in written correspondence between FEMA administrators and himself, offered specific responses from the audit and how the issues should be defined.

Council Member Mossar asked for clarification of how Attachment B of CMR:212:04, the Flood Zone Map, came to be.

Mr. Roberts said the Flood Zone Map was based upon maps, which were provided to staff and prepared by FEMA that designated areas of potential flooding risks within the City. The methodology involved work done by FEMA in conjunction with the United States Army Corp of Engineers to assess the risk of flooding both from creek and tidal flooding in the event of the 100-year storm. They evaluated what they believed the maximum depth of water to be, the elevation of the ground and how far out that would potentially spread, which then determined the limits where the water surface elevation would run into on higher ground.

Council Member Mossar said although one could look at the map and say the flood zones were irrational, but she asked whether it would be true to say it looked irrational, but in fact the elevations varied and were not completely flat.

Mr. Roberts said that was correct. The reasons the lines were not completely linear was because the ground surface elevations varied.

Council Member Mossar asked for clarification of how property owners were notified they were in the flood zone area.

Mr. Roberts said there were several things that occurred. The City mailed annual notices to all properties within the flood zone that reminded them of their flood zone status, their insurance requirements, and preparedness tips for winter storms. Additionally, the Flood Zone Map was available on-line through the City's website. There was also a legally mandated disclosure requirement during any real estate transaction.

Public Works Senior Engineer Joe Teresi said other than through mailings and outreach by the City and the Santa Clara Valley Water District (SCVWD), the additional times people became most aware they were in the floodplain was when they acquired a mortgage for property or applied for a building permit.

Council Member Mossar asked if the Council adopted the regulations and someone was required to change the elevation or eliminate a basement in any new construction, would those buildings be functionally removed from the flood zone and would flood insurance be required.

Mr. Roberts said any individual property within the flood zone could request a review and status by conducting a survey to see if the property was found to be above the flood elevation. FEMA would then process a map amendment.

Mr. Teresi clarified in order for a property to be removed from the floodplain, the owner would need to show that the land the house was built upon was higher than the flood elevation, not the floor of the building. The owner was still required to purchase flood insurance; however, that cost would decrease. The insurance costs would increase astronomically if they did not elevate the floor of the building after doing a substantial improvement.

Council Member Mossar said the purpose of the changes was to minimize the public exposure to the risk factors of dwellings that did not meet flood elevation requirements.

Mr. Roberts said yes. FEMA was trying to minimize the loss potential, the amount of claims that were paid, and reduce the liability to the taxpayer.

Council Member Cordell said with respect to methodology, the City had been using the "cookie-cutter" approach by saying the cost factor was \$120 per square-foot for living space and \$60 per square-foot for garage. She asked whether the customized proposal, as suggested by the auditor was a fair assessment.

Mr. Roberts said yes.

Council Member Cordell said the problem, as mentioned in CMR:212:04 was that unit costs might not be accurate; perhaps below what it actually costs to build in Palo Alto. She asked what the remedy was to fix the problem.

Mr. Roberts said staff believed the vast majority of applications they saw did not approach the 50 percent threshold trigger and would be approved even with the lower square footage value. Secondly, staff had developed a

streamlining process whereby a computerized spreadsheet model could quickly screen and see whether a problem could arise or not. If a problem did occur, the applicant had the option of getting an appraisal to document the higher value.

Council Member Cordell asked whether the task of documenting the higher unit cost for construction in Palo Alto was typically on the property owner or would the City take a look at it and make the adjustment.

Mr. Roberts said staff would not initiate the process. It was important to remember the City was not dealing with a number but a ratio of the cost of the improvements to the value of the existing structure. Both the numerator and denominator of that ratio were equally low.

Council Member Cordell stated the Auditor said the methodology needed to be changed in order to be in compliance and continue to have the benefit of the flood insurance. However, the auditor did not say Palo Alto had to come up with a definition of "market value", although they recommended it. She asked whether that was accurate.

Mr. Roberts said that was what the auditor said. In addition, staff wrote letters to the FEMA Regional Office, whose response was for Palo Alto to use the definition of "market value" based on square footage construction, and to disallow the use of an income-based methodology.

Council Member Cordell asked whether Palo Alto was out of compliance if they did not define "market value".

Mr. Roberts said it was not necessarily a matter of including it in the statutory requirements of the PAMC, but more a matter of what FEMA was requiring of them in applying the evaluation of projects.

Council Member Cordell said FEMA's statement was not to use income-based methodology to determine "market value". She said Loren Brown of Vance Brown Builders suggested "market value" was defined as the sales price. She asked whether it was appropriate to go in that direction.

Mr. Roberts said staff had not asked FEMA that question. However, FEMA had communicated with staff advising them what methodology they wanted used, which was the depreciated-value methodology.

Mr. Teresi said the problem with the idea of calling "market value" the price the buyer and seller had agreed upon was it would include the value of the land, which was the majority of the value in most real estate transactions.

FEMA's policy was to exclude land value in the "market value" because it was the structure that would become damaged.

Mr. Roberts said in all the applicants the City's had received, it was not a matter of a property for sale, but rather an owner proposing to make modifications to their property. He did not believe it would be appropriate to use the word, "sales price."

Council Member Kishimoto said she believed FEMA's intention was to reflect more of what it would cost for FEMA to replace a damaged home.

Mr. Roberts said replacement value was a more accurate description and FEMA indicated that in some of their materials.

Council Member Kishimoto said she recalled that Edgewood Plaza, which was slated for future redevelopment, was in the floodplain. She asked whether the parking was restricted to podium parking because of floodplain or cost issues. She also asked what was the difference between residential, commercial, and mixed-use properties in relationship to basements, parking and storage.

Mr. Roberts said the redevelopment of Edgewood Plaza was consistent with the floodplain regulations, both past and proposed.

Council Member Kishimoto asked whether full underground parking could have been built.

Mr. Roberts said in residential property areas FEMA opposed the construction of basements. They could be built, however, in commercial property areas if they were flood-proofed.

Council Member Kishimoto clarified underground parking would technically have been allowed in the Edgewood shopping center.

Mr. Roberts said that was correct.

Council Member Ojakian asked for clarification between depreciated replacement cost and the fair market value. He believed it had little to do with buyer and seller, and more with the cost of the structure.

Mr. Roberts said the depreciation aspect was not a linear application of a rate per year. It was something that could be factored out entirely through the appraisal process.

Council Member Morton referred to page 4, line 24, Attachment A in CMR:212:04, which stated the use of replacement costs or accrued depreciation factors may be approved at the discretion of the floodplain administrator. He said it did not give the option to the applicant, but rather to staff. He believed the wording needed to be changed if an applicant could bring in an appraisal of what was already admitted as possibly understated replacement costs. He asked whether he was right in his reading of the language.

Mr. Roberts said staff had intended it to be interpreted that way. As with any regulatory process, staff had to review and screen whatever material were submitted, but administratively they would accept any report from a certified professional appraiser.

Council Member Morton asked whether the ordinance could include that language.

Mr. Teresi said the staff wanted to make sure the appraisal was done in such a way that it was consistent with the definition. Staff would not want to accept an appraisal based on an analysis of comparable sales in the neighborhood. Although it was coming from an appraiser, it was not an appropriate methodology.

Ms. Furth said her recommendation would be to not accept just any appraisal submitted. It was crucial for the staff to have the ability to evaluate them.

Council Member Morton said he agreed with the Interim City Attorney's recommendation. On the other hand, he did not feel it was appropriate for staff to represent that it was at the applicant's option if that was not the case.

Mr. Roberts qualified his original intent was to state it was the applicant's option to initiate an appraisal.

Council Member Freeman asked whether the recommended methodology met or exceeded FEMA's requirements.

Mr. Roberts said he believed it met FEMA's administrative requirements. Council Member Freeman clarified the City was not doing anything over and above what FEMA required.

Mr. Roberts said yes. The question that had been debated was whether to target the administrative requirements or Federal statute requirements,

which went beyond the definitions in the Federal statutes to comply with their administrative requirements.

Council Member Freeman asked whether it went beyond what was necessary for the 15 percent reduction in insurance costs.

Mr. Roberts said he did not believe it did because the discount was an administrative recommendation.

Council Member Freeman asked whether staff had analyzed various properties in the area to determine what the financial impact would be with the new methodology.

Mr. Roberts said staff ran trial examples, met with an outside panel of developers, appraisers, architects, and residential interests and concluded the net effect (price per square foot of construction) was unchanged. The ratios stayed about the same and the panel preferred that method.

Council Member Freeman asked whether that data was available for review.

Mr. Roberts said yes. The names and addresses would be edited of course.

Mayor Beecham declared the Public Hearing open at 9:32 p.m.

David Weinstoc, Federal Emergency Management Agency (FEMA), 1111 Broadway, Oakland, said he reviewed the changes and agreed with most of them and felt others could be more stringent. FEMA encouraged communities to exceed the requirements whenever their interests were at stake. He said 35-40 percent of the flood insurance claims across the country were not in flood zones. Some communities required appraisals for the substantial improvement calculations while others had a 50 percent threshold over a 10-year rolling period.

Council Member Morton said the basic definition of a substantial improvement was 50 percent of "market value". He asked whether within the formula the definition of "market value" was crucial and determined the calculations.

Mr. Weinstoc said yes.

Council Member Morton referred to page G2 of the glossary in the Property Acquisition Handbook, and said the definition of fair "market value" was the price the property would bring in a competitive and open market. He said it seemed staff had built into the ordinance a definition of "market value" that was not in FEMA's own publications. The Supreme Court had dealt

extensively because of litigation of condemnation as to what "market value" was. In all cases it came down to the willing buyer and willing seller, which would vary in regions. It was not based on depreciated replacement costs, but rather a market appraisal understanding. He asked whether that was the case.

Mr. Weinstoc said that was not the case for substantial improvement.

Council Member Morton asked whether, as a federal agency, FEMA was bound to accept the interpretations of federal requirements for the definition of "market value"

Mr. Weinstoc said he did not know the answer to that question.

Council Member Mossar called for Point of Order.

Mayor Beecham said although it was a contentious issue for a number of people who owned property in the floodplain, staff was trying to figure out what was best for the community.

Council Member Morton said at issue was the debate on the definition of "market value", which would affect approximately 15 percent of the homes and businesses in the community. That definition would determine what obligations or burdens were imposed upon property owners when they requested improvements. He had hoped to get a clear idea of whether FEMA set the definition of "market value", whether the definition was common usage or set by the courts.

Mayor Beecham said he would like to keep the process moving with just questions.

Council Member Morton asked whether FEMA believed it had the right to set the definition of "market value" for administrative procedures.

Mr. Roberts clarified the question of "market value" did not affect the approximately 4,000 residential homes in question. It only applied to the approximately 250 commercial properties in the flood zone.

Mr. Weinstoc said FEMA wanted consistent application of the national flood insurance regulations.

Council Member Mossar asked whether the "market value" involved the replacement costs of the property.

Mr. Weinstoc said yes.

Council Member Freeman clarified the proposed methodology would provide the baseline requirement that FEMA expected in order for the residents to get the 15 percent discount in flood insurance.

Mr. Weinstoc said that was only part of it. Palo Alto was one of only a handful of communities classified as a CRS-Class 7 whereby the community saved \$412,000 a year in flood insurance premiums through local representatives, such as Senior Engineer Joe Teresi and his staff.

Council Member Freeman asked whether Palo Alto was at the recommendation limit or had exceeded it.

Mr. Weinstoc said the next discount reduction was 20 percent. The community would need to save \$527,000 a year in flood insurance premiums.

Council Member Cordell understood there were other cities or jurisdictions that utilized the definition being proposed by staff, and asked where those cities were located.

Mr. Weinstoc said Mr. Teresi submitted the definition of "market value" to FEMA's staff, who not only agreed with it but found it to be clearly stated. Other communities who saw it adopted it.

Mr. Teresi said in answer to Council Member Cordell's question, the local agencies of San Mateo, Lafayette, Mill Valley, Brentwood and Contra Costa County had utilized Palo Alto's definition of "market value". The staff submitted the definition of "market value" to FEMA for review. FEMA felt the definition was right on point and they, along with the State of California, adopted the definition in the model floodplain ordinance.

Ms. Furth said what staff had tried to do was come up with a system that was transparent. Secondly, they developed a methodology that was inexpensive to apply and lastly, they developed an alternative. Another set of analysis factors was the audit comments. The general view was the City had permitted more construction on a particular site than was appropriate without flood-proofing the building to a greater extent. The question then became was the formula more demanding than it needed to be in order to get the level of insurance reduction. She believed the answer to that question was "no".

Loren Brown, 334 Kingsley Avenue, said the crux of the issue being considered by Council was the incorporation of the specific definition of "market value" in the floodplain ordinance. The definition chosen had the potential to financially affect approximately 4,600 properties within the flood

zone. It impacted residential properties as well as commercial properties. He said the definition for "market value" proposed by staff was not acceptable to flood hazard property owners. It was inconsistent with the normal meaning or common understanding of the term, was subject to a legal challenge, and was not appropriate for different property types. A better definition for "market value" existed in the Uniform Appraisal Standard for Federal Land Acquisitions and should be adopted by City Council.

Mayor Beecham asked how could the "market value" of the property versus the "market value" of the structure be brought together.

Mr. Brown said the Federal legislation was written with the words "market value" as opposed to replacement cost.

Mayor Beecham asked would that be of the structure or the parcel.

Mr. Brown said it was of the structure. There was a different way to determine "market value" for each type of structure based on its use. As an example, a commercial building was typically sold on the basis of income capitalization unless they had a sales comparison to go by. An apartment house was not bought on the bricks and mortar, but on the income potential of the property.

Mayor Beecham asked how one differentiated the income provided by the value of the property being located in Palo Alto versus that same building being located in Modesto.

Mr. Brown said there would be a subtraction of the land component from the equation. The threshold of the substantial improvement dropped significantly when it went from an income capitalization basis or sales comparison basis to depreciated replacement costs.

Council Member Morton asked for further explanation of lowering the threshold. He expressed concern that if there was no reasonable definition for "market value", individuals would be subject to flood improvements that would otherwise not be needed.

Mr. Brown said part of the Council's charge was to look at the interest of Palo Alto property owners and consider whether they would want a lower or higher threshold.

Council Member Morton asked whether the effect of adding the reduction for depreciation would lower the threshold.

Mr. Brown said yes.

Council Member Kishimoto said she did not understand Mr. Brown's concern because staff indicated the ratio of the numerator and the denominator was important. The Peer Review Panel noted the construction costs listed in the means square-foot costs were lower than actual local costs, but acknowledged those costs were consistent with costs typically submitted by applicants.

Mr. Brown said FEMA had acted as the insurance carrier to bring down the threshold to reduce their costs, which was contrary to "market value" because "market value" should be an open and free market without pressure from a particular interest group.

Frederick B. Rose, 2405 Thomas Drive, said with the exception of the 15 percent discount and the aggregate amount of \$412,000 savings, he did not find in CMR:212:04 a cost benefit analysis of what it cost the City and the landowners in terms of meeting various levels of stipulations from FEMA. The 15 percent discount saved him approximately \$200 per year in insurance, which he would happily pay rather than have the pressure on the "market value" of the houses. He urged the Council to take a look at the costs and the benefits in a broader economic form.

Natalie Cardenas, Government Affairs Director for Silicon Valley Association of Realtors, 345 S. San Antonio Road, Los Altos, said she echoed some concerns already raised. She acknowledged that 25 percent of Palo Alto laid within the floodplain, and the proposed changes would have an impact on property values. She urged the Council to keep in mind the lifecycle of any property was approximately 50 years, and many of the properties in the floodplain had already reached that stage.

Robert Moss, 4010 Orme Street, said the proposed ordinance defined replacement costs as a structure based on a square foot cost factor determined in reference to a Building Cost Estimating Guide recognized by the building construction industry. He believed it must be explicit that it applied to building costs in Palo Alto, not in Eureka or Riverside.

Aaron McDugan expressed opposition to the proposed definition of "market value". He believed it was being imposed at the staff level; however, FEMA being the governing body for the insurance company, appeared to agree because the replacement cost for the property would go down.

Mike Liveright, 260 Byron Street, said he lived in the flood zone and expected to be hurt by the proposed changes; however, he believed staff had done a good job. He felt the definition of "market value" and the replacement costs were incorrect; however, the ratio of those two figures

was roughly correct. If an improvement he needed did not pass the first step, he could seek the assistance of a certified appraiser.

Mayor Beecham declared the Public Hearing closed at 10:18 p.m.

Council Member Morton referred to Item 24, in Attachment A of CMR:212:04 and asked what the affect was if the language "... and adjusting that cost figure by the amount of depreciation which has accrued since the structure was constructed", was removed, and ... "and applicable to the Peninsula or Bay Area..." was added.

Mr. Roberts said as to the second point, there would be no effective change. That had always been staff's intent. As to the first point, it would have the net affect of assigning a higher value to the structures and thereby decreasing the threshold at which substantial improvements were triggered.

Council Member Morton said staff would still have to estimate the cost to replace the structure to a new condition. He asked whether the calculation had become any more difficult or any less reliable.

Mr. Roberts said the calculation could be procedurally and technically simplified; however, in some instances the calculation was less accurate. No matter what basis of definition was used for "market value", be it replacement cost, income based or sales price, a poorly maintained, rundown, dilapidated structure would be worth less money than one in good condition.

Council Member Morton said that was different than saying it had to be reduced by depreciation. He suggested saying the cost to replace the structure must take into consideration an obsolescence factor.

Mr. Roberts said staff had attempted to liberalize the issue of depreciation. They recognized a well-maintained older property might have little or no depreciation.

Council Member Morton clarified the reason the language was being included for depreciation was for the rare example where the structure was not well maintained. It allowed staff to make an adjustment to the cost. He said he was unsure how that was applied.

Mr. Teresi said the language in the proposed definition was consistent with the guidance and training received from FEMA. Staff calculated the proposed table for depreciation and the maximum factor was 18 percent. It would be inconsistent with FEMA's training to simply call "market value" the same as replacement costs.

Council Member Morton said he thought it was agreed that replacement costs was a definable number.

Mr. Roberts said he believed Mr. Teresi meant to say it would be inconsistent to simply define "market value" the same as undepreciated replacement costs.

**MOTION:** Council Member Morton moved to modify Chapter 24 of Attachment A of CMR:212:04 as follows: "Market Value of the structure" means that value of a structure determined by estimating the cost to replace the structure in a new condition ~~and adjusting that cost figure by the amount of depreciation which has accrued since the structure was constructed.~~ The cost of replacement of the structure shall be based on a square foot cost factor determined by reference to a building cost estimating guide recognized by the building construction industry, ~~as approved by the floodplain administrator and applicable to the Peninsula or Bay Area. The amount of depreciation shall be determined by taking into account the age and physical deterioration and functional obsolescence, as approved by the floodplain administrator, but shall not include economic or other forms of external obsolescence.~~ The use of replacement costs ~~or accrued depreciation factors~~ different from those contained in recognized building cost estimating guides may be approved at the discretion of the floodplain administrator only if such factors are included in a report prepared by an independent professional appraiser and supported by a written explanation of the differences."

### **MOTION DIED FOR LACK OF A SECOND**

Council Member Mossar asked whether there was a supposition that the older the home the more likely it was to be replaced or upgraded, at which time the property owner was best suited to include flood protection for their home.

Mr. Roberts said even if a home were well maintained, it would not meet the standards of today's new construction. Homes today had a lot more electrical capacity wired into them, and there was a greater demand for facilities being built into them. A 50-year old home that was well maintained would not have the same value as a recently constructed one. The depreciation took into account that difference over time.

Council Member Mossar said there was a supposition that it was in the public's best interest, when doing major reconstruction, to include flood protection.

Mr. Roberts said that was correct.

Council Member Mossar said she believed it would be irresponsible to throw safety as an issue overboard. There had been a number of people in the community who suffered real damage from flooding. She cautioned her colleagues about ignoring the safety factor.

Mayor Beecham asked when projects were done on residential or commercial property, they were done on a permit-by-permit basis. They were not additives as opposed to Americans with Disabilities Act (ADA) requirements.

Mr. Roberts said yes. Staff looked at all permits that were open at a given point in time. If there were multiple permits opened, it would be an accumulative analysis. Historically, closed-out permits were not included in the calculation.

Mayor Beecham referred to page 4, Attachment A in CMR:212:04, stating the only thing he believed to be at risk was trusting staff to use their discretion in accepting their numbers. He expressed his support for the proposed ordinance.

**MOTION:** Mayor Beecham moved, seconded by Burch, to approve the staff recommendation to adopt the ordinance (Attachment A of CMR:212:04) revising the City's Flood Hazard Regulations (Palo Alto Municipal Code Chapter 16.52).

Ordinance 1<sup>st</sup> Reading entitled "Ordinance of the Council of the City of Palo Alto Amending Palo Alto Municipal Code Sections 16.52.040 and 16.52.130 of Chapter 16.52 Pertaining to Flood Hazard Regulations"

Vice Mayor Burch expressed his support for the proposed ordinance. He said he would like some provision made to revisit the issue in the future to see if it had worked as well as expected.

Council Member Cordell applauded the fact the Federal government offered its insurance program. She too would like to see the analysis from various properties in the area to determine what the financial impact would be with the new methodology.

Council Member Freeman said in Attachment E of CMR:212:04, it described a 54-year old structure with a depreciation of 18 percent and a ratio of 43 percent. If the same calculations were done using an up to 10-year old house, the ratio was 28 percent. There was a bigger impact on the older homes than the newer ones.

**SUBSTITUTE MOTION:** Council Member Freeman moved, seconded by Cordell, to return to Council with numerical examples on a matrix of various

Federal Emergency Management Agency (FEMA) properties, reviewing the age and insurance costs.

Council Member Freeman said the calculations had some complexity to them. It would help the Council to see what those numbers were in examples and for the public to see what impacts it had on them. She believed it would also be helpful to have information on the number of homes that fell into the various percentages being proposed.

Council Member Mossar called for Point of Order.

**SUBSTITUTE MOTION FAILED** 3-5, Cordell, Freeman, Morton "yes," Kleinberg absent.

Council Member Ojakian asked whether there was a timeline on moving forward with the proposed ordinance.

Mr. Roberts said the City was overdue on its next FEMA audit.

Council Member Ojakian expressed support for the motion. He believed it would behoove staff to include an informational report when the item returned for second reading to clarify some of the issues that had been raised.

Council Member Kishimoto expressed support for the motion. Safety was the number one issue. As seen from the last flood, there were a number of residential and commercial structures at risk.

Council Member Morton said the proposed ordinance was not about the importance of flood insurance but about triggering mandated improvements. He expressed opposition to the motion.

Council Member Freeman said she believed safety was a big issue, but her question had more to do with finances.

**MOTION PASSED** 5-3, Cordell, Freeman, Morton, "no," Kleinberg absent.

- \*9. Public Hearing: The Council will consider adopting a resolution confirming the report of delinquent administrative penalty bills and directing that a lien be recorded with the Santa Clara County Recorder's Office against properties located at 1042 Metro Circle, Palo Alto, APN: 127-04-041 and 3376 Ross Road, Palo Alto, APN: 127-48-033

~~Resolution of the Council of the City of Palo Alto Ordering that Certain Unpaid Administrative Penalties and Costs, Including Applicable Recording Fees, be Assessed Charges Against the Properties Involved, Confirming Title Report of the Director of Administrative Services of These Property Assessments, and Directing the Director of Administrative Services to Record for Each Listed Property a Notice of Lien with the Office of the County Recorder of the County of Santa Clara, California~~

*\*This item is quasi-judicial and subject to Council's Disclosure Policy*

**MOTION:** Vice Mayor Burch moved, seconded by Morton, to continue the item to the May 17, 2004, Regular City Council meeting.

**MOTION PASSED** 8-0, Kleinberg absent

#### COUNCIL COMMENTS, QUESTIONS, AND ANNOUNCEMENTS

Council Member Mossar stated she recently attended a Gateway Corridor Outreach meeting in East Palo Alto, which was an outstanding opportunity to hear concerns of both Palo Alto and East Palo Alto.

Council Member Freeman spoke to the two quarterly demographic reports of complaints from the Police Department and asked why the format and timing of the data collection were substantially different and would they be quarterly.

Assistant City Manager Emily Harrison said there was a delay in order for accuracy in the analysis.

Council Member Freeman spoke regarding the Report on Supplies and Service Contracts awarded by the City Manager from 7/2003 - 12/2003, which did not include legal contracts

City Manager Frank Benest said the City Manager did not award legal contracts and the Palo Alto Municipal Code (PAMC) did not require it.

Council Member Freeman queried the Downtown North traffic calming timeframe.

Ms. Harrison said staff had created a second trial plan schedule.

Council Member Freeman stated that she and Council Member Kishimoto would be available for sidewalk hours Saturday, April 17, 2004, at Piazzas from noon to 2 p.m.

Vice Mayor Burch asked if there would be traffic enforcement in the Downtown North area.

Ms. Harrison replied yes.

Vice Mayor Burch said the Sustainable Silicon Valley Project asked for support from the City for a 20 percent reduction in greenhouse gas emission.

Council Member Cordell announced she had completed three months on the Council and commended Mayor Beecham for his running of the meetings; Council on its healthy discussions; and staff for their work. She also said that it was inappropriate of Aram James to involve the Council in an investigation. In response to Dieter Folta, she said it took time to bring about change, especially where race was concerned.

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

ATTEST:

APPROVED:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

NOTE: Sense minutes (synopsis) are prepared in accordance with Palo Alto Municipal Code Sections 2.04.180(a) and (b). The City Council and Standing Committee meeting tapes are made solely for the purpose of facilitating the preparation of the minutes of the meetings. City Council and Standing Committee meeting tapes are recycled 90 days from the date of the meeting. The tapes are available for members of the public to listen to during regular office hours.