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June 14, 2004

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The City Council of the City of Palo Alto met on this date in the Council Chambers at 6:15 p.m.

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

CLOSED SESSION

1. Conference with Labor Negotiator
Agency Negotiator: City Manager and his designees pursuant to the Merit System Rules and Regulations (William Avery, Leslie Loomis)
Employee Organization: Local 715, Services Employees International Union (SEIU)
Authority: Government Code Section 54957.6

The City Council met in Closed Session to discuss matters involving labor negotiations as described in Agenda Item No. 1.

Mayor Beecham announced there was no reportable action.

ADJOURNMENT: The meeting adjourned at 7:10 p.m.

The City Council of the City of Palo Alto met on this date in the Council Chambers at 7:12 p.m.

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

ORAL COMMUNICATIONS

Bob Mellon, 3865 Corina Way, spoke regarding parking.

Samuel Peterson, spoke regarding *Yank* magazine.

Michael Closson, 354 Poe Street, spoke regarding Acterra benefit concert on June 11, 2004.

Trina Lovercheck, 1070 McGregor Way, spoke regarding Alma Plaza/Albertson's.

Norman Carroll, Emerson & University, spoke regarding teen smoking.

Edie Keating, spoke regarding the concert at Foothills Park.

Stephanie Munoz, 101 Alma Street, Apt. 701, spoke regarding Hyatt Rickey's development.

CONSENT CALENDAR

Council Member Freeman moved, seconded by Kleinberg to remove Item No. 3 to become Item No. 8A.

Council Member Mossar stated she would not participate in Item No. 2 due to family holdings of telecommunications stock.

Council Member Morton asked whether he could participate in Item No. 2 to continue the date the item would be heard.

Interim City Attorney Wynne Furth said she did not believe there was sufficient financial impact to require stepping down, but there was no harm in doing so.

Council Member Morton stated he would not participate in Item No. 2 due to family holdings of telecommunications stock.

Council Member Ojakian stated he would not participate in Item No. 2 due to family holdings of telecommunications stock.

MOTION: Vice Mayor Burch moved, seconded by Kishimoto, to approve Consent Calendar Item Nos. 1 and 2.

LEGISLATIVE

1. Ordinance 4830 entitled "Ordinance of the Council of the City of Palo Alto Adding Chapter 5.24 [Requirement to Divert Construction and Demolition Waste From Landfill] to Title 5 [Health And Sanitation] of the Palo Alto Municipal Code" *(1st Reading 5/17/04, Passed 9-0)*

ADMINISTRATIVE

2. Request to Move Completion of the Consideration of the Fiber to the Home Proposal from August 2 to July 19, 2004

MOTION PASSED 9-0 for Item No. 1.

MOTION PASSED 6-0 for Item No. 2, Morton, Mossar, Ojakian "not participating."

AGENDA CHANGES, ADDITIONS, AND DELETIONS

MOTION: Vice Mayor Burch moved, seconded by Kleinberg, to move Item No. 12 forward to become Item No. 8B ahead of Closed Session Item Nos. 9-11.

MOTION PASSED 9-0.

PUBLIC HEARING

4. Public Hearing: The City Council will consider a report the City Engineer has caused to be prepared and filed with the City Clerk re California Avenue Keystone Lot Parking Project No. 86-01 and California Avenue Parking Project No. 92-13 which provides for the levying of special assessments on the properties within the parking assessment districts created and established for the projects and pursuant to the Resolutions of Intention cited above. The report sets forth the amounts proposed to be levied for the fiscal year 2004-2005 upon the several parcels of real property in the parking assessment districts created to pay the principal and interest of the bonds issued in the projects, which report is open to public inspection.

Mayor Beecham asked whether the City Clerk's office had received written communications from any interested persons.

City Clerk Donna Rogers said no.

Mayor Beecham declared the public hearing open, and receiving no requests to speak, declared the public hearing closed at 7:36 p.m.

Council Member Morton said his office was located within the boundary of the District, but he had no financial interest in the area.

MOTION: Vice Mayor Burch moved, seconded by Mossar, to approve the staff recommendation to adopt the resolutions confirming the Engineer's Report and Assessment Roll for: 1) California Avenue District, Project No. 86-01; and 2) California Avenue District, Project No. 92-13.

Resolution 8429 entitled "A Resolution of the Council of the City Of Palo Alto Confirming Engineer's Report and Assessment Roll California Avenue Parking Project No. 92-13 (For Fiscal Year 2004-2005)"

Resolution 8430 entitled "A Resolution of the Council of the City of Palo Alto Confirming Engineer's Report and Assessment Roll California Avenue Keystone Lot Parking Project No. 86-01 (For Fiscal Year 2004-2005)"

MOTION PASSED 9-0.

5. Public Hearing: Adoption of the Proposed Fiscal Year 2004-05 Budget
(Item to be continued to 6/28/2004 at request of staff)

Council Member Freeman expressed concern about continuing the budget adoption item to the latter part of June. She believed it would be difficult to make any substantive changes before the due date of June 30, 2004.

Assistant City Manager Emily Harrison said, if necessary, staff would continue the public hearing for the budget adoption to June 29, 2004.

MOTION: Council Member Mossar moved, seconded by Morton, to continue the item at the request of staff to the Council Meeting of June 28, 2004.

MOTION PASSED 8-1, Freeman "no."

6. Public Hearing: The City Council will consider a request by Campus for Jewish Life (CJL) and Bridge Urban Infill Land Development (BUILD) to conduct a preliminary review of a planned community project with affordable/attainable housing units, a community center and senior

housing at 901 San Antonio Road

Director of Planning and Community Environment Steve Emslie said the project was divided into two parts. The larger part was the Campus for Jewish Life (CJL) property, which proposed 165 units for a senior assisted-living facility, and a 115 square-foot community center. The smaller part was the Bridge Urban Infill Land Development (BUILD) property, which proposed a maximum of 65 senior rental units, and 165 for-sale market rate flats. The total site encompassed 12 acres and the combined Floor Area Ratio (FAR) was 1.26, which equated to a 1.08 FAR for CJL and a 1.61 FAR for BUILD. The Council would have the opportunity to give feedback to the Planning staff early in the process and provide guidance as the project moved forward into more concrete design phases.

Interim City Attorney Wynne Furth said the item before the Council that evening was a study session, and nothing agreed to by Council was binding. The purpose of the preliminary review was threefold: 1) it provided an opportunity for the public to get early information about the project in a formal public setting; 2) it allowed the applicant to get early and non-binding comments from decision makers; and 3) it allowed staff to hear comments from the Council on how the general policies should be applied with respect to the site.

Mayor Beecham declared the public hearing open at 7:53 p.m.

Shelly Hebert, Executive Director of CJL, said the Jewish Community Center (JCC) had been a part of the Palo Alto community for over 40 years. It served persons of all ages, faiths and backgrounds. The JCC's programs and services were open to the entire community, and approximately one-half of the participants came from outside the Jewish community. The JCC's partner in the CJL was the Jewish Home of San Francisco (JHSF), who had a long and deep history of commitment to serving the elderly.

Terezia Nemeth, BUILD and Bridge Housing Corporation, said Bridge Housing Corporation (Bridge) was a non-profit organization that was formed in San Francisco for the purpose of providing affordable housing, which they had been doing for the past 21 years. Bridge had produced more than 10,400 housing units in over 40 communities through California, mostly in the Bay Area. They had also conducted substantial master planning efforts with mixed-use and mixed income projects. Those projects served both the residential rental and homeownership markets.

Rob Steinberg, The Steinberg Group, 1130 Bryant Street, said the site was located in proximity to Highway 101 and bordered San Antonio Road, and Charleston Roads, and Fabian Way. The site was usual in that it was near

residential homes and services, but was surrounded by light industrial buildings. The 12-acre site would include approximately 265,000 square feet of non-residential use. The present proposal looked at projected parking and traffic studies from the Institute of Traffic Engineers and compared the way they would analyze a single non-residential building versus the proposed uses of for-sale and senior housing and a community center. At first glance, there would actually be a reduction in both the morning and evening peak hours. The site, being insulated from adjacent residential, offered more flexibility than could be found on an infill site. It offered freeway access from a number of different streets, and the size of the property combined with the possibility of reduced traffic was an interesting opportunity. There was a flood plain issue, which required lifting the building; however, the Regional Water Quality Control Board (RWQCB) did not want the building pushed down. In addition, the site slopped approximately six feet from one end of the site to the other. He reviewed and discussed an outline of the buildings, facilities and housing contained on the CJL.

Herman Raney, 3973 Bibbits Drive, expressed his support for the project. He believed it would be an exciting change for the neighborhood and the City.

Eddie Keating, 3553 Alma Street, No. 5, expressed her support for the project. She believed it was a valuable project and fit with the City's need for affordable housing.

Larry Mitchell, 3888 Grove Avenue, expressed his support for the project.

Angelica Volterra expressed her concern about the environmental review of the proposed project, and the analysis and review of the traffic impacts. She believed the current traffic impact was misleading, because the former Sun Microsystems building had been vacant for sometime, thereby generating no traffic. There should be an analysis of the traffic impacts using a zero baseline because the complex of buildings being proposed would generate new traffic at the site.

Jean Wilcox, 4005 Sutherland Drive, expressed her support for the project; however, she had some reservations, which she hoped would be addressed during the approval process. She was concerned about the building's height exceeding 60 feet in some areas because of groundwater problems, elevator shafts and air conditioning equipment. In addition she had concerns about cut-through traffic into residential neighborhoods. She supported the proposal for an egress going west from the CJL/Bridge project onto San Antonio Road.

Betsy Allyn, Willmar Drive, expressed concern about maintaining the Charleston school/commute corridor, the 50-foot height limit, and the traffic

impacts from Charleston Road and Fabian Way.

Robert Moss, 4010 Orme Street, said in order for the project to be successful, a number of issues would need to be addressed including: 1) the claim the site was unique and therefore exceptions should be given for height requirements and land use; 2) the exclusive rental of Below Market Rate (BMR) units to seniors, which undercut the jobs/housing imbalance; and 3) the traffic and parking impacts on the neighborhoods.

Penny Ellison, Co-chair Civic Affairs Committee for Greenmeadow Community Association (GCA), 513 El Capitan Place, said a primary concern of the GCA was the traffic impacts on the Charleston/Arastradero school corridor. For all the support the plan had received, funding for the safety improvements in the plan was less certain than immediate funding for the capacity improvements. She urged the Council to follow the Charleston/Arastradero plan closely to ensure that funding of the safety improvements and the trial materialized before the CJL/Bridge project began construction.

Herb Borock, P.O. Box 632, said he believed the project before the Council under the development prescreening ordinance was a two-step process, and he found nothing in the staff report (CMR:323:04) to indicate that had been done.

Dorothy Bender, 591 Military Way, said the parcel presented a number of challenges to the City. It was in the flood zone, was on a hazardous waste site, was surrounded by industrial buildings, was close to the Bayshore Freeway, and not far from a residential community. In addition, there was not a neighborhood serving grocery store or other amenities nearby. She hoped the EIR would address her concerns of zoning, density, traffic and air quality.

Stephanie Munoz, 101 Alma, Apt. 701, said the traffic at Terman was spread throughout the day, and she believed the traffic at the proposed site would also be spread throughout the day. She expressed her support for an appropriate increase in the building's height. She would not want to see the project become squatter and denser, thereby decreasing the amount of open space.

Toni Stein, 800 Magnolia, Menlo Park, said the Bridge senior rental seemed alienating in its placement away from the other senior residents, and it lacked any green space.

Mayor Beecham declared the public hearing closed at 8:42 p.m.

Council Member Cordell asked whether staff had a response to Dr. Volterra's comment about the traffic impact utilizing a zero baseline. She also asked for further discussion of the height issue. She said she understood the 50-foot height limit was set so structures would not exceed four stories.

Mr. Emslie said he was not aware of any direct tie to the number of stories and the 50-foot height limit. However, he did know of examples to the height limit exception, and of variances that were granted to other projects in the City.

Jim Baer, applicant, spoke to his slideshow presentation which illustrated the height of the buildings for CJL, and included the setbacks to four-story over podium, the site constraints, the tools for determining height, the peculiarities of height measurements, and the variance findings.

Council Member Kleinberg asked whether there was any validity to the comment that certain non-profit organizations had asked for variances in order to make a profit.

Ms. Hebert confirmed both the JCC and the Jewish Home were non-profit organizations, and there was no profit to be made in that context. In order to be viable and sustainable, non-profit organizations had to plan projects that were financially feasible and supportable.

Ms. Nemeth said Bridge was made up of two components: 1) the senior rental, which was not for profit. It was affordable housing for very-low income seniors, and 2) the market rate housing, which was for profit. BUILD would need to make a return for the California Public Employees Retirement System (CalPers). However, part of the mandate was to make it happen in such a way that it improved a community. That would be achieved by making the housing units attainable.

Council Member Kleinberg asked whether the senior rental housing was designed to be set apart, or could any of the suggestions presented inform the way the project moved forward.

Ms. Nemeth said the layout of the site was constrained. It was long, narrow and did not have a front entrance on San Antonio Road because of its location relative to the freeway's exit. Bridge was working with the JCC to integrate the senior housing with the CJL's facilities.

Council Member Kleinberg asked what was the projected cost of the project.

Ms. Hebert said the JCC was in the process of fine-tuning the project's cost estimates. She believed the total fundraising campaign would be

approximately \$122 million in donated funds, which was the net number after the current estimates for what was possible through tax-exempt bond financing for the senior's portion of the project.

Council Member Kleinberg asked staff whether the fee projections were fairly accurate, and did they believe they had enough detail for the design review.

Mr. Emslie said the estimates, although rough, were in the range, and were likely to escalate to cost-of-living adjustments by the time the project came on line.

Council Member Kleinberg asked whether the Council would be able to give staff specific directions about the adoption of certain positions to follow, such as impact fees given the project was a Planned Community (PC) zone.

Ms. Furth said the Council could provide guidance about their views; however, those views were not binding on any further considerations or on the staff.

Council Member Kleinberg asked whether public access to the JCC facilities could constitute a public benefit in lieu of some or all of the impact fees.

Mr. Emslie said staff agreed that access of the general public to the recreation facilities was, in principle, a foundation for the preparation of a public benefit. Staff was willing to explore any offset as it related to the impact fees.

Council Member Kleinberg urged her colleagues to move cautiously in its direction to staff as the Council considered the large non-profit project for Palo Alto and the imposition or reduction of transportation impact fees. She asked staff to consider bringing back information about negotiations of a public/private partnership between the CJL organization and the City for the use and access of the JCC's facilities in conjunction with certain City programs that were difficult to fund. She would also like her colleagues to treat the JCC and the senior care component of the center as the replacement of the former Sun Microsystems building, and accept staff's traffic analysis of trip-generation using the previous trip numbers when the building was occupied.

Council Member Mossar said she was not comfortable using a zero base for calculating traffic impacts. There had previously been and would now be use on the site. She expressed her support for looking at ways to partner for the use of the on-site facilities. She recalled when the Council approved in concept, the Charleston Corridor Study, but they made no commitments as to the timeline for its implementation, and asked if that was correct.

Mr. Emslie said yes.

Council Member Mossar believed it was important the Corridor Study moved forward. She expressed her discomfort over the potential size of the impact fees because the project had so much non-profit and affordable housing benefit to the community, especially if a public/private partnership could be negotiated regarding the facilities. She encouraged staff to look at ways to trade fees for benefits.

Council Member Morton said he wondered why there seemed to be an absolute 50-foot height everywhere in the City, and asked whether staff considered consolidating some of the buildings. He also asked whether there would be mandated or contracted rent level restrictions for the life of the project, which would determine the qualifications, and what was the expectation.

Mr. Emslie said a lot would depend on the funding source, which would dictate the term of affordability requirements. The 65 rental units proposed by Bridge would presumably be operated by Bridge, however that had not been ironed out. The non-profit assisted living units would presumably be operated by CJL. Both organizations would have covenants, which would be approved by the Council through the City's BMR agreement.

Council Member Morton clarified there might be preferential housing for Palo Alto residents.

Mr. Emslie said yes. The Palo Alto Housing Corporation (PAHC) maintained the City's housing availability and waiting lists, which ensured the overwhelming need for affordable housing through the provision of housing for those on the waiting list.

Ms. Furth said because the site was in a PC district, not simply a BMR project, the Council had the power to describe and define the affordability characteristics and duration of it in both the zoning and financing agreement. While Palo Alto did and could operate its program to deal with local needs, the use of various federal and state funds as well as basic rights to travel rules limit the ability of preferences to Palo Alto residents.

Council Member Morton said the intent was not to preclude Bridge from the operation or screening, but the City had a long tradition with the PAHC as the primary qualifier for BMR units. He concurred with the comments of his colleagues to explore the possibility of community access to some of the CJL's facilities in exchange for impact fees.

Council Member Kishimoto asked for clarification of the staff report

(CMR:323:04). In the recommendation section, staff recommended a BMR requirement of 15 percent on the Bridge property and 20 percent on the CJL property. Elsewhere in the report, Bridge had proposed a 30 percent requirement.

Mr. Emslie said the recommendation was in reference to the minimum requirements.

Council Member Kishimoto said she would still like to see a BMR requirement of 20 percent overall for the 12-acre site. She asked for clarification on whether all occupants and users of the site would have equal access to the recreational facilities.

Ms. Hebert said one advantage of co-locating a community center with the type of housing being developed by BUILD and with the senior housing was that programs and services of the JCC would be accessible to the residents living on the site.

Council Member Kishimoto asked whether the occupants of the very-low affordable housing would be asked to pay membership fees.

Ms. Hebert said as part of the agreement with BUILD it was anticipated some type of advantageous membership would be available to the residents of the project, although no specific details had been determined.

Council Member Kishimoto asked whether progress had been made on finding funding for the Charleston/Arastradero corridor trial.

Mr. Emslie said staff had submitted several grant applications including the Valley Transportation Authority (VTA) program, which was a three-year program that could provide significant progress in implementing the trial improvements.

Council Member Kishimoto said she understood the applicants had asked for reduced parking; however, she believed with fewer seniors having vehicles, the on-site day care center, and school-aged children commuting to nearby schools, a shuttle seemed necessary.

Ms. Hebert said part of the planning for the senior residential project on the CJL was transportation services through a shuttle or other comparable type of service. In addition, it was important for the project to be developed as a walkable pedestrian- and bicycle-friendly environment, and to make it possible for children to get to the site readily to participate in the recreational and after-school programs.

Council Member Kishimoto reiterated the height limit was not an aesthetic issue, but went along with lot coverage, open space requirements, and other zoning requirements. The height limit agreed to by the City was part of a deliberative process of controlling all the impacts of growth, such as traffic and schools, and was not one-dimensional. She favored a height increase by one-half of the necessary elevation to satisfy the flood plain. She encouraged as much clarity on the complex set of development agreements with the potential use of Transfer Development Rights (TDR) or other tools to make the obligations of each parcel owner as clear as possible. She would also like to know how much private open space per unit and common open space was anticipated.

Council Member Ojakian said he did not want the site to remain a commercial site with a 96-foot high building on it. He was aware the project would need to honor the California Environmental Quality Act (CEQA), however, there were reasons for giving overriding considerations and projects were not just approved based on CEQA. They were approved based on whether a good community need was being met. He concurred with the comments of Council Member Kleinberg regarding impact fees. He expressed his support for the project and was interested in seeing how the inter-generational aspect would play out.

Vice Mayor Burch stated a comment was made that no units could be put on ground level, and nothing could be put on the first floor as a requirement from the RWQCB, but children could use the playing field. He asked what was being done to remediate the land.

Mr. Emslie said there was a longstanding groundwater plume that had not reached the site, but was headed in that direction because of remediation required by the predecessor to Loral, Ford Aerospace. The RWQCB was in the process of reviewing parts of a risk assessment document, which discussed necessary remedial actions. Meanwhile contaminated water was being drawn under the former Sun Microsystems site and had traveled toward the source of the pumping. The RWQCB was concerned that the closeness of the water table compounds could volatilize through the soil and rise upward. He understood the housing units and the recreation facilities would be on podiums to prevent any contact with volatilized compounds from the groundwater.

Vice Mayor Burch asked whether that held true for the playing field as well.

Mr. Emslie said he believed the playing field was over a parking structure.

Ms. Hebert said that was correct. Everything shown on the CJL site was built above a podium with vehicles going underneath.

Vice Mayor Burch asked whether the trees were over a parking garage.

Ms. Hebert said yes. Part of the project budget provided for the level of extra construction on top of the podium for the buildings and to provide hardscaping and landscaping, including trees and shrubs, and other kinds of greenery.

Mr. Baer clarified all the perimeter trees were at grade-level to provide natural root growth and larger trees.

Vice Mayor Burch suggested taking a look at routing the City's shuttle to include the CJL site. He said when the former Sun Microsystems building came down he would like to see as much of the materials reused and recycled on site. He concurred with the comments of his colleagues regarding the height limit and the impact fees. He expressed his support for the project.

Council Member Freeman asked for an explanation of 100 shared cars.

Mr. Baer said there was a provision in the parking ordinance that said where there was a mix of uses that did not park at the same peak demand, it allowed up to 20 percent of the total parking requirement to be allocated as shared parking. Absent parking demands for special events, which the developer was working on, there would be enough parking to satisfy the CJL's daytime need as well as a portion of Bridge in the evening.

Council Member Freeman clarified shared cars meant sharing parking.

Mr. Baer said that was correct.

Council Member Freeman said she understood the project was built not only for housing, but also for public use through membership of the non-housing facilities. She asked whether that was correct.

Ms. Hebert said the public's use of the JCC had two primary components. The first component consisted of membership and program participation in the JCC, not unlike a YMCA. The second component involved public access to the facilities that were consistent with the JCC meeting its operational needs.

Council Member Freeman clarified the City could pay for use of the swimming pool and/or soccer field at certain times of the year.

Ms. Nemeth said that was correct.

Council Member Freeman said the JCC facilities were much needed in South Palo Alto; however, it required payment from the City to use them. She agreed with the developers that if they were willing to pay the mitigation dollars, the City should accept them. She asked how much of the senior housing was assisted-living.

Ms. Hebert said all of the senior living at Bridge would be independent living.

Mr. Steinberg said the senior living at CJL had approximately 165 units, of which one-third would be considered assisted-living. Those units would be integrated into the entire complex.

Ms. Nemeth said the JHSF was interested in the notion of aging in place. Rather than segregating portions of its population, they would prefer to have residents remain in their living unit and have services come to them as their needs changed over time.

Council Member Freeman requested of staff an analysis of the traffic impacts delineated in concert with the Charleston/Arastradero trial project. She was interested in knowing the maximum number of BMR units currently in the ordinance, but was not interested in lowering that amount. She suggested integrating the Bridge senior rental housing in a fashion similar to that of the senior assisted-living. She believed it would promote a more unified community. She asked whether an increase in height because of the flood plain issue would set a precedent.

Chief Planning Official Lisa Grote said it would not set a precedent. Variances were evaluated on a case-by-case basis.

Ms. Furth said the site was large enough and there were a number of legal and planning techniques to use to address the issue, which would make it specific to the proposed project.

Council Member Freeman noted for the record if another project came along in the same area, with a similar situation it would be identified separately and not have anything to do with the JCC site. She concurred with the comments of Council Member Kishimoto regarding a height increase by one-half of the necessary elevation to satisfy the flood plain; however, she was on the low end of wanting to have a tremendous amount of increase in that area.

Mayor Beecham said CJL and Bridge were two independent entities that came together as partners to coordinate the site. They had two separate objectives and funding. He believed it was appropriate to calculate the BMR separately for them. He expressed his support for a 15 percent configuration

of BMR units for Bridge. There were credible reasons for considering a variance on the matter, and would be sympathetic to height and FAR requests.

No action required.

RECESS: 9:55 p.m. - 10:00 p.m.

- *7. Public Hearing: The City Council will reconsider an application by Cartmell/Tam Architects on behalf of David Ditzel for Site and Design Review to allow a 1,677 square foot addition to an existing 3,433 single-family residence located at 4010 Page Mill Road and construction of a new swimming pool, including a request for the following variances: a 29'6" side yard setback where a 30' setback is required, construction of an exterior stairway and landing having a 46' front yard setback and construction of a new garage having a 69' front yard setback where a 200' setback is required, and a total impervious area of 13.5%, where 3.5% is normally the maximum allowed. *(Item continued from 6/7/04 at the request of the applicant; staff requests continuance to 7/12/04)*
**This item is quasi-judicial and subject to Council's Disclosure Policy*

MOTION: Council Member Ojakian moved, seconded by Burch, to continue the item at the request of staff to the Council meeting of July 12, 2004.

Council Member Freeman expressed her concern about continuing the item since it had previously been continued from the Council meeting of June 7, 2004.

MOTION PASSED 7-2, Freeman, Kishimoto "no."

ORDINANCES AND RESOLUTIONS

8. Adoption of the Final Appropriation Limit Calculation Resolution for 2004-05 *(Item to be continued to 6/28/04 at the request of staff)*

MOTION: Vice Mayor Burch moved, seconded by Ojakian, to continue the item at the request of staff to the Council meeting of June 28, 2004.

MOTION PASSED 9-0.

- 8A. (Old Item No. 3) The Council/Council Appointed Officers Committee Recommendation to the City Council re Retention of a Facilitator for CAO Evaluations and Compensation

Council Member Freeman said approximately two years prior, the Council paid \$7,750 for a consultant to assist them on how to adequately evaluate

the Council Appointed Officers (CAO's). She believed the Council could evaluate the CAOs' performance without an outside consultant. She expressed concern that the Request for Proposal (RFP) had already been issued without Council's approval, and was moving forward. She understood it was not common practice for cities to use the process of hiring an outside facilitator to assist with CAO evaluations.

Council Member Kleinberg concurred with most of the comments of Council Member Freeman, in addition to her surprise that the RFP had already been issued without Council direction. She asked to hear from members of the CAO Committee before rendering a vote on the issue.

Council Member Mossar, Chairperson CAO Committee, said the CAO Committee took on the task of looking at the Council's performance evaluation process, which in previous years had been spotty at best. A facilitator was suggested to assist with the process, not to determine the process. The CAO Committee had lengthy discussions of what the appropriate process should be, and developed a timeline that included checkpoints with the Council so they would be intimately involved in the development of the questions. The CAO Committee believed the process would be a significant improvement over Council's best intention to complete the task. The RFP went out in order to complete the process before Council's vacation in fairness to the CAOs. It was an ambitious timeline because the Committee made sure the Council had opportunities to participate in many parts of the development of the process, the evaluations and salary settings.

MOTION: Council Member Mossar moved, seconded by Ojakian that the Council approve the scope of services of the Request for Proposals for a facilitator to assist the Council in completing the evaluations and compensation setting for the Council Appointed Officers for 2003-04, with the option to renew for two additional years if deemed productive.

Council Member Morton said he understood the CAO evaluations were to be done in a timely manner for budget considerations; however, he had difficulty expending further funds to perform a function the Council needed to come together and complete, when the Downtown Library hours had been cut, as well as other cuts to community services. He asked if the Council voted to approve the facilitator, would it return as a contract placed on the Consent Calendar. He was concerned about the cost and the perception the Council needed a consultant to perform its own task.

Council Member Mossar said the item was a Council matter.

Council Member Morton said he would like to know if the item would return to Council a second time.

Assistant City Manager Harrison said the contract could come back to the Council; however, she did not believe it would be of the amount where it would need to, but staff could agendized it for a future date.

Council Member Mossar said the CAO Committee developed an explicit list of tasks, timeframes and responsibilities, and dealt with a schedule that allowed it to be dovetailed with both budget and goal setting for the CAO's.

Council Member Kleinberg asked whether the Committee's schedule was different from what was listed in the Scope of Services (Attachment 1 of CMR:328:04).

Council Member Mossar said the CAO Committee developed a list of tasks and responsibilities for the entire process, which included: 1) selecting the facilitator; 2) working with the facilitator; 3) adopting the appropriate questions; 4) who the facilitator would communicate with; 5) who the Council would communicate with; 6) how the goal setting would occur; and 7) what the timeframe would be for future years.

Mayor Beecham said while he appreciated the sentiments of Council Member Morton, the fact was it did not always happen. The Council Members worked for the City part time, there was precious little continuity from one year to the next, and the methodology of the CAO Chair, who coordinated the evaluations, provided no follow through of reporting, record keeping, or files. There was not a system in place that worked; however, he was optimistic that with the assistance of a facilitator, it would minimally take care of the need to have a schedule and timeframe for his colleagues to come together to give the CAO's the review they needed.

Council Member Kishimoto said for the past three years, the Council had not been successful in providing the CAO's with timely evaluations. She expressed her support for the motion, and hoped in future years there would be a system that worked and could eliminate the need for a consultant.

Council Member Cordell said there were members on the Council who had fulltime jobs, and did not have the time to initiate the process. She expressed her support for the motion, and hoped a process could be put in place for the CAO evaluations to be done on time every year.

Vice Mayor Burch expressed his support for the motion. The CAO Committee believed the appointment of a facilitator was done in fairness to doing the best possible job for the CAO's.

Herb Borock, P.O. Box 632, said he was opposed to the Council acting on the item that evening, because they did not have all the information. The CAO

Committee minutes that discussed the need and requirement of a facilitator, as well as the updated tasks, timeframes, and schedule referred to by Council Member Mossar should have been available to the Council and the public. Also, in recent times, there had not been a salary increase for the CAO's due to budget constraints, and perhaps prior Council's felt performance reviews were not necessary. He noted with the hiring of the new City Attorney with a \$20,000 salary increase over the previous City Attorney, the CAO's would expect raises as well.

SUBSTITUTE MOTION: Council Member Freeman moved for the Council to deny the scope of services of the Request for Proposals for a facilitator to assist the Council in completing the evaluations and compensation setting for the Council Appointed Officers for 2003-04, and have the Council and CAO Committee work on evaluating the Council Appointed Officers without a facilitator.

Mayor Beecham said he would not accept the substitute motion. If the motion failed then the default would be to not have a facilitator.

Council Member Freeman said she believed it was the Council's responsibility as a group to prioritize what needed to be accomplished. She appreciated the CAO Committee putting together a list of tasks, and believed they were useable whether a facilitator was hired or not. She expressed concern about the funds being used for facilitator as well as the staff time.

Council Member Morton expressed his concern about Item III-B of the Scope of Services (Attachment 1 in CMR:328:04) which stated the consultant would interview the Council Members and the CAO's, and then put them together. He could not vote on the motion unless the wording was revised to indicate it was the Council's responsibility to review the senior City staff. He believed the facilitator should only be used to complete files or gather data.

Mayor Beecham said however the reviews were made; it was the Council's content that went into them. The facilitator merely facilitated and did not provide the content.

Council Member Mossar said the Council would perform the evaluations.

Council Member Morton clarified including meeting directly with the CAO's.

MOTION PASSED 8-1, Freeman "no."

8B. (Old Item No. 12) Appointment of Gary Baum as City Attorney and Approval of Employment Agreement

MOTION: Vice Mayor Burch moved, seconded by Mossar, to appoint Gary Baum as City Attorney and to authorize the Mayor to sign the employment agreement.

Employment Agreement

Council Member Freeman said the Employment Agreement stated Mr. Baum would be credited with 96 hours of sick leave and 80 hours of vacation upon the start of his employment. She asked how he would continue to accrue up to 600 hours.

Mayor Beecham said the Compensation Plan specified how many hours would be accrued per pay period.

Council Member Freeman said the specified number of accrual hours per pay period was not specified in the Agreement.

City Manager Frank Benest said the formula for accruing vacation and sick leave was published in the Management Compensation Plan.

Council Member Freeman supported the appointment of Gary Baum as City Attorney; however, she disagreed with the Relocation Assistance package of a loan up to the lower amount of \$800,000 or 90 percent of the purchase price or appraised value of a home within eight miles of City Hall, the City's cost or payment of flood insurance and earthquake insurance, and the nine-month severance benefit package.

Council Member Morton expressed his support of Gary Baum as City Attorney; however, he was opposed to the increased salary, and was committed to internal advancement of City staff.

Vice Mayor Burch said when the City made a loan to a CAO, it was money the City normally invested; only the rate was better.

MOTION PASSED 7-2, Morton, Ojakian "no."

CLOSED SESSION

The meeting adjourned at 10:34 p.m. to a Closed Session

9. Conference with City Attorney -- Existing Litigation
Subject: In re Pacific Gas and Electric Company, a California Corporation, Debtor, U.S. Bankruptcy Court case No.: 01-30923DM
Authority: Government Code Section 54956.9(a)

10. Conference with City Attorney -- Existing Litigation
Subject: In re Jacqueline B. Bressler; U.S. Bankruptcy Court Case No.: 94-51218ASW
Authority: Government Code section 54956.9(a)
11. Conference with City Attorney -- Existing Litigation
Subject: In re Enron Corp., Debtor, U.S. Bankruptcy Court, Southern District of New York; Case No.: 01-16034(AJG)
Authority: Government Code section 54956.9(a)

The City Council met in Closed Session to discuss matters involving existing litigation as described in Agenda Item Nos. 9, 10, and 11.

Mayor Beecham announced there was no reportable action.

FINAL ADJOURNMENT: The meeting adjourned at 10:55 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.