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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, Kleinberg, Morton, Mossar, Ojakian

ABSENT: Freeman, Kishimoto

### STUDY SESSION

#### 1. Emergency Preparedness

Staff provided an update on Emergency Preparedness activities during the last year using the new governance model. Staff described how the Steering Committee and Working groups operate; provided a summary of the accomplishments of the last year, including training, equipment purchases, assertiveness in pursuing alternative funding sources, and participation in regional activities. While much has been accomplished, there was still more work planned especially in the areas of training, including training for City Council Members, and the Standby Emergency Council Members. The emphasis during the past year had been on terrorism, but the plan for the coming year was to hold an earthquake exercise that would include assistance from the Palo Alto Unified School District (PAUSD).

**No action required.**

ADJOURNMENT: The meeting adjourned at 6:55 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 (arrived at 7:10 p.m.), Kleinberg, Morton, Mossar, Ojakian

ABSENT: Kishimoto

### ORAL COMMUNICATIONS

Mike Liveright, 260 Byron Street, spoke regarding the Downtown Library.

Norman Carroll, Emerson Street and University Avenue, spoke regarding recycling cans.

### APPROVAL OF MINUTES

**MOTION:** Council Member Morton moved, seconded by Mossar, to approve the minutes of May 17, 2004, as submitted.

**MOTION PASSED** 7-0, Freeman, Kishimoto absent.

### CONSENT CALENDAR

Council Member Cordell asked whether there was an anti-discrimination clause in the contract for Item No. 5.

Assistant City Manager Emily Harrison said Attachment D to CMR:344:04 addressed the issue.

**MOTION:** Vice Mayor Burch moved, seconded by Morton, to approve Consent Calendar Item Nos. 1-6.

### LEGISLATIVE

1. Ordinance 4831 entitled "Ordinance of the Council of the City of Palo Alto Amending Section 18.08.040 of the Palo Alto Municipal Code (The Zoning Map) to Change the Classification of Property Known as 2701 El Camino Real From CN and RM-40 to PC Planned Community4831" (*1<sup>st</sup> Reading 05/03/04, Passed 8-0, Freeman "not participating"*)
2. Approval of a Budget Amendment Ordinance (BAO) Transferring \$75,000 from the University Avenue Parking District Fund, the Electric

Fund, and the Police Department Communication Services Existing Operating Budget into the Civic Center Parking - Security Upgrade Capital Improvement Program Project Number PD-04011; and Approval of a Contract with Acme Security Systems to Purchase Hardware and Installation Services and Upgrade Security Monitoring Equipment in the Civic Center Parking Structure and Police Department  
*(Item Continued From 6/7/04 At The Request Of Staff)*

Ordinance 4832 entitled "Ordinance of the Council of the City of Palo Alto Amending the Budget for the Fiscal Year 2003-04 to Establish Capital Improvement Program Project Number CIP PD-04011, Civic Center Parking - Security Upgrade; to Provide an Appropriation in the Amount of \$73,000 from the University Avenue Parking District, the Electric Fund Operating Budget, and the Police Department Communication Services Existing Operating Budget"

Contract Between the City of Palo Alto and Acme Security Systems in the Amount of \$73,000 to Purchase Hardware and Installation Services and upgrade Security Monitoring equipment in the Civic Center Parking Structure and Police Department.

3. Resolution Adopting Extended Free Parking from Two To Three Hours In California Avenue Area Parking Structures Three And Five

Resolution 8431 entitled "Resolution of the Council of the City of Palo Alto Approving and Adopting Changes in the City of Palo Alto's Restricted Parking Zones in the California Avenue District"

#### ADMINISTRATIVE

4. Contract Amendment Between the City of Palo Alto and Public Safety Systems, Inc. for Software Applications and Enhancements of Public Safety Computer Systems
5. Contract Between the City of Palo Alto and Shaw Pipeline, Inc. in the Amount of \$1,891,450 for Water Main Replacement Project 17, Capital Improvement Project WS-03004
6. Contract Between the City of Palo Alto and Monterey Mechanical Company in the Amount of \$729,763 for the Landfill Gas Afterburner Project for the Water Quality Control Plant (Wastewater Treatment Capital Improvement Program Project WW4012 and Equipment Replacement Program WQ04010)

**MOTION PASSED** 7-0, Freeman, Kishimoto absent.

#### AGENDA CHANGES, ADDITIONS, AND DELETIONS

Mayor Beecham requested the Closed Session items be brought forward ahead of Item No. 8.

Council Member Morton said the Public Hearing was published in the Agenda and should stay in that order.

Mayor Beecham said the Agenda would be left how it was published.

## PUBLIC HEARING



\*7. Public Hearing: The City Council will consider a Final Environmental Impact Report (FEIR) which has been prepared assessing the potential environmental effects of the Hyatt Rickey's development project - Hyatt Rickey's Hotel and Residential Development located at 4219 El Camino Real. This project was filed with the City in 1999 and proposes redevelopment of the 15.84-acre hotel site with a new hotel facility and multiple-family residential units. This project is currently being revised to address community concerns and FEIR recommendations.

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

Mayor Beecham asked whether there were Council Member quasi-judicial disclosures.

Council Member Mossar said she had met with Mark Solit and Lee Weider regarding previously discussed publicly disclosed email contents and the staff report.

Council Member Freeman said she had a telephone conversation with Deborah Ju regarding public information.

Council Member Ojakian said he had met jointly with Mark Solit, Deborah Ju, and Lane Liroff and discussed the contents of the staff report.

Vice Mayor Burch said he met with Deborah Ju and Mark Solit, as well as other community members.

Council Member Kleinberg said she met with Anne Cribbs, Mark Solit and a member of the Hyatt management to discuss what was in the public record.

Council Member Morton said he met with Mark Solit and Anne Cribbs to discuss public information.

Council Member Cordell said she met with Robin Kennedy, an attorney for the Hyatt, who requested the attendance of Deborah Ju and Lane Liroff. A

subsequent conversation with Deborah Ju had taken place. All information discussed was contained in the public documents.

Director of Planning and Transportation Steve Emslie said the purpose that evening was for the Council to consider the Final Environmental Impact Report (EIR). The project approval was pending before the Architectural Review Board (ARB). Traffic Intrusion on the Residential Environment (TIRE) measured the impacts of new trips on low volume residential streets.

City Attorney's Office Management Specialist Dan Sodergren said only the EIR for the revised project was being reviewed that evening.

Mayor Beecham asked whether the TIRE index was what had been revised in the resolution.

Mr. Emslie said Chief Transportation Official Joe Kott would review the chart to explain the analysis that was reflected in the resolution.

Chief Transportation Official Joe Kott said additional car trips onto two nearby streets were shown on the charts provided for Wilkie Way and Edlee Avenue. Added trips on Wilkie Way were barely perceptible and added trips on Edlee Avenue showed perceived changes, which revealed a small rise in the TIRE index.

Mayor Beecham inquired about the application of the chart used.

Mr. Kott said the chart determined whether adding a certain level of vehicle trips onto a residential street made a difference in the residents' quality of life.

Mayor Beecham said the function was to have the driveway open to Wilkie Way.

Council Member Mossar asked why there were so many changes in the Final EIR.

Special Counsel Roger Beers said new information had been received with regard to the TIRE Index, which indicated there could be an impact from the project on Edlee Avenue. The question was whether the new information was important enough to require recirculation of the EIR. The Council would need to find there was a significant new impact not previously covered in the EIR.

Council Member Mossar asked about the change of policy standards.

Mr. Emslie said the standards were set on each EIR. Project impacts were provided at different standards in order for Council to evaluate them.

Council Member Mossar asked whether the Council was able to determine what standard should be used for the particular project that evening or whether it should be discussed during the specific project approval.

Mr. Emslie said the standard being used should be determined during the specific project approval.

Mayor Beecham said staff had recommended the Wilkie Way driveway be limited to emergency vehicle access by Resolution.

Council Member Morton asked for clarification about the significance of the minimally triggered index with the additional trips.

Mr. Emslie said the threshold was minimally over the index.

Council Member Morton asked whether the additional trips within a 24-hour period would constitute a significant degradation of life in the neighborhood.

Mr. Emslie said any increase on a low volume street would create a perceived impact.

Council Member Morton asked whether an impact could be significantly perceived within a 24-hour hour period.

Mr. Kott said there were always threshold issues. It would not take many cars to have a perceptible impact on low volume residential streets. On higher volume residential streets, it would require many more cars.

Council Member Kleinberg asked for the correct number on the Wilkie Way, Plan B that indicated an additional 558 daily trips. However, under the Ordinance, it referenced 522 daily trips.

Mr. Kott said 558 daily trips was the correct number.

Council Member Kleinberg said an additional 32 to 46 car trips per hour within a 24-hour period on a quiet residential street would be perceptible. There were peaks during rush hour and school hours. She questioned how the index was helpful.

Mr. Kott said there were limited tools available to analyze the problem of the outcome of additional trips added to a residential street. The TIRE index was the best available tool.

Council Member Kleinberg said the flow of traffic in a suburban neighborhood might be more perceptible during peak hours.

Mr. Kott agreed.

Council Member Kleinberg asked if there was an index more compatible and useful for quiet suburban neighborhoods.

Mr. Kott said Palo Alto was engaged in the only update in the country of the TIRE index.

Council Member Kleinberg asked if there was early information available.

Mr. Kott said surveys had been completed but there were no answers available to date.

Council Member Cordell asked staff whether the TIRE index assessment would become irrelevant if the Council supported the recommendation to limit the driveway to emergency access.

Mr. Emslie confirmed.

Council Member Freeman stated the accesses were driveways on El Camino Real, on Charleston Road and on Wilkie Way. She asked whether legally, EIRs would go before a policy making body that did not include the application.

Mr. Beers said staff was asking the Council to consider the revised project.

Council Member Mossar said the Council was certifying an EIR, not approving a project.

Mayor Beecham declared the Public Hearing open at 8:00 p.m.

Mark Solit, Owner and Representative of Hyatt Ricky's, said the final EIR document was five years in the making. The revised project mitigated almost all of the impacts in the Draft EIR. California Environmental Quality Act (CEQA) would provide for certification of the document.

Rob Steinberg, Steinberg Group Architects, said the current plan had an urban edge along El Camino Real and Charleston Avenue, it maintained a safe entry onto the site, provided a good transition from urban to suburban, retained the grove of trees, removed automobiles from the streets, and would be a good neighbor to the Elk's Club property when it was developed.

Council Member Ojakian asked Mr. Steinberg whether the plan was an all-residential project.

Mr. Steinberg confirmed.

Council Member Ojakian asked whether retail had been considered.

Mr. Solit said it had been considered, but the elements of hotel and retail would have created a mixed-use project.

Council Member Ojakian asked Mr. Solit what the problem would be.

Mr. Solit said when there was a mix of uses, there would need to be a site and design review which would need to go through all of the elements of Palo Alto's review and process.

Council Member Ojakian asked Mr. Solit whether there were plans to plant trees along El Camino Real.

Mr. Steinberg said he would like the presentation of trees in their project on El Camino Real, which would contribute to the City's benefit as well as the homeowners.

Council Member Ojakian asked whether there were plans for outdoor amenities, such as a park.

Mr. Steinberg said both public and private open space was being shown.

Council Member Morton asked whether there were remaining facts that the Council should be made aware of.

Mr. Solit said there were no elements over 35-feet, there would not be a driveway off Charleston Avenue, and there would be single-family residential along Wilkie Way frontage.

Mr. Steinberg said there was sensitivity to adjacent properties.

Council Member Cordell asked Mr. Steinberg whether he saw a problem if the driveway were limited to emergency ingress and egress.

Mr. Solit said he was always ready to manage the traffic of the driveway so there would be no significant impact.

Council Member Cordell asked if the driveway were limited to emergency access, whether he saw a problem with the development.

Mr. Solit said at the project approval hearing, he wanted to show how an entrance/exit could service some of the development without a significant impact.

Mayor Beecham stated the EIR was being reviewed that evening.

Anastasia Koozmin, 425 Wilton Avenue, said if the project was impeded, it impeded progress. Affordable housing was needed.

Rob Herman, 2228 Wellsley Street, said it was difficult to do business in Palo Alto.

Gerald Moorman, 1300 Oakcreek Drive, said the individuals who would live in the project were not getting what they wanted.

Peter Vilkin, 673 Maybell Avenue, said he hoped the EIR would be certified, as the project was an asset to the community.

Rita Milman, 345 Sheridan Avenue, said she supported the certification as more housing and progress was needed.

Roger Kohler, 4291 Wilkie Way, said if the Council had any trepidation about approving the project, it should not be approved that evening.

Penny Ellson, 513 El Capitan Place, said before the EIR was certified, it needed to be understood what law or precedent allowed the Council to approve the qualified certification. Without a change of language in the resolution, Hyatt Rickey's could propose a larger project.

Myllicent Hamilton, 4014 Ben Lomond Drive, said the community was most concerned with traffic and how it affected school children and seniors. She believed the Charleston/Arastradero Corridor Plan trial needed to be implemented prior to the Hyatt Rickey's project. Hyatt Rickey's needed to be legally bound to follow through on their stated intent not to submit an application for a larger project.

Herb Borock, P.O. Box 632, said the application before the Council was a preliminary ARB application, which should occur before the formal application for discretionary approval.

Eric Germa, 3179 David Avenue, said housing was needed and growth should not be stopped.

Kelly Germa, 3179 David Avenue, said housing and business progress should not be delayed.

Paul Mousalam, Palo Alto, said the project was a responsible one.

George P. Eshoo, 702 Marshall, Suite 500, Redwood City, said the project was a good one.

Sunny Dykwel, 480 Gary Court, said Hyatt Rickey's had the right to develop the property as they choose.

Bud Mission, 3431 Hillview Avenue, said it was important to complete the CEQA process to let future applicants know there was finality to the process.

Steve V.Z., 262 Whitclem Court, said he was against the access road onto Wilkie Way.

Robert Moss, 4010 Orme Street, said the EIR, which had been reviewed, did not include the project before the Council that evening. The other projects included hotel and housing combined. He said the Council must be explicit as to what they would be certifying.

Stephanie Munoz, 101 Alma Street, said Palo Alto needed housing for single individuals. The Hyatt Rickey's tower should not be torn down to comply with Palo Alto's building height limits, but be used for housing.

Barbara Schussman, Bingham, McCutchen LLP, 1332 North California Avenue, Suite 250, Walnut Creek, said the project applicant had brought a proposal to the City that addressed the environmental impacts and reduced the impacts and alleviated mitigation measures. The existing mitigation measures in the EIR proposed limiting vehicular access on the Wilkie Way driveway to emergency vehicles and reduced the impact to less than significant. There was not an impediment to certify the EIR based on the TIRE analysis.

Lane Liroff, Wilkie Way, said the project should be certified and the Wilkie Way access should be closed.

Becky Epstein, 256 Edlee Avenue, said the EIR erroneously concluded that the driveway at Wilkie Way was a legal pre-existing driveway. The conclusion should be stricken from the EIR before it was certified.

Carlin Otto, 231 Whitclem Court, spoke about the TIRE index. To trigger the lower threshold index, the traffic had increased by 26 percent; to trigger the higher index, the traffic had increased by 56 percent. After minor changes were made to the EIR, it should be certified.

Deborah Ju, 371 Whitclem, said the EIR should be certified for the revised project with the modified resolution concluding there was a significant impact at Wilkie Way. Wilkie Way was designated as a Class 3 bike route in the Palo Alto Transportation Plan and used as a significant school commute corridor.

Mr. Solit said he had always been willing to mitigate significant impacts from the Wilkie Way driveway.

Robin Kennedy spoke about legal documents obtained from First American Title Company that indicated the present location of the Wilkie Way driveway was created in 1952. Two deeds were conveyed to Rickey's Studio and Hotel by two parties; a grant deed over the 20 foot-wide driveway, the 226 feet closest to Wilkie Way, and an easement at that property. An agreement was also entered into for joint vehicle driveway between the properties, which included improvements, construction, and materials.

Mayor Beecham declared the Public Hearing closed at 9:10 p.m.

Mayor Beecham asked staff what authority the City had to issue a limited approval of the EIR.

Mr. Beers said the initial EIR project had been revised. The resolution from the Council needed to be clear that only the revised project was being certified.

Council Member Morton said what was being reviewed that evening was the 185 units. He spoke about the neighbor's concerns that Hyatt Rickey's could return with a substantially denser project, and he questioned whether that could happen.

**MOTION:** Council Member Morton moved, seconded by Burch, to approve the staff recommendation to adopt the resolution (Attachment 1 to CMR:311:04) certifying the Final Environmental Impact Report (FEIR) and Mitigation Monitoring and Reporting Program (MMRP) prepared for the proposed revised Hyatt Rickey's Hotel and residential project; with the following corrections to the resolution: Page 2: second paragraph tenth line remove the word "substantially" and Page 8: second paragraph twenty-third line change the number 522 to 558.

Resolution 8432 entitled "Resolution of the Council of the City of Palo Alto Certifying the Adequacy of the Final Environmental Impact Report (Final EIR) for the Revised Hyatt Rickey's Development Project and Making Findings Thereon Pursuant to the California Environmental Quality Act"

Vice Mayor Burch said the word "substantially" should be removed to read "application or any other project more dense than the revised project." In 1999, the refusal of the applicant to provide a project that could be approved caused the project's five-year delay.

Council Member Freeman asked about the Public Services and Utilities section. She asked about water distribution to 185 households. She asked whether the taxpayer would assume the cost.

Mr. Sodergren said that part of the project would be reviewed and incorporated as part of the subdivision approval process.

Council Member Freeman asked for confirmation that natural gas, police services, and sewers, which fell under the heading of Public Services and Utilities fall under the EIR except for water distribution.

Mr. Emslie said no, what was being said was all infrastructure related to and to serve the project would be borne by the project through conditions, which would all be part of the applicant's responsibility and incorporated as conditions of approval.

Council Member Freeman asked why it had not been included.

Mr. Emslie said a study would need to be completed to satisfy the environmental concerns. The study would indicate whether the capacity of the water supply needed to be increased to the site. Conditions would then be implemented as follow-up on the study.

Council Member Freeman said she wanted to state for the record, if the applicant identified conditions that needed to be implemented, the applicant would absorb the costs.

Mr. Emslie confirmed.

Council Member Freeman said the legal documentation received for the Wilkie Way driveway had not been obtained by the staff. She questioned whether the staff had seen and reviewed the documentation. She also questioned whether legal requirements required acceptance of the documentation as presented from an attorney hired by the applicant.

Mr. Sodergren said a Staff Report concluded that because the driveway at Wilkie Way existed prior to 1955, it was a legal non-conforming use and the information provided by the applicant confirms staff's finding.

Mr. Emslie said the information staff had reviewed involved a series of aerial photographs historically dated, which showed the driveway location changing between 1952 and 1955. There was a period from January 1955 to June 1955 that showed the driveway in its present location.

Chief Planning Official Lisa Grote said there were aerial photos, which were certified by the City Historian. A June 1955 photo showed the driveway aligned with Edlee Way. The first photo showed the driveway offset from Edlee Way. Sometime between 1953 and 1955, the driveway location was changed. In January 1955 the City implemented the Open Area District, which required a Conditional Use Permit (CUP) to be issued for any new driveways. There was no record of a CUP being issued between January 1955 and June 1955. Staff concluded the driveway was moved prior to the January 1955 date. Information provided that evening by the applicant reinforced the conclusion.

Mayor Beecham said information received that evening had not been reviewed and was not part of the official record.

Ms. Grote confirmed.

Council Member Freeman asked whether the driveway was legal for use as currently used and as proposed.

Ms. Grote said the driveway was an existing non-conforming situation.

Council Member Freeman asked about the single-family homes proposed on Wilkie Way and whether the landscape buffers on Wilkie Way and Charleston Avenue would be legally maintained and whether individual driveways could come out through the buffer.

Mr. Sodergren said the landscape buffer was part of the zoning and the project would need to comply.

Council Member Freeman asked what the requirements were to build a driveway across the buffer.

Mr. Sodergren said it would require a CUP.

Council Member Freeman asked whether the Council or the Planning and Transportation Commission (P&TC) approved the CUP.

Mr. Sodergren said it would begin as a Director's Hearing.

Ms. Grote said the new permit process approved would go into effect July 7, 2004. When a CUP was applied for, it would be a Director's Decision. If interested individuals requested a hearing the P&TC would hear it. A further request for review would be put on the City Council's Consent Calendar, which required three Council Members votes in order to be heard at a Public Hearing.

Council Member Freeman asked whether the maker of the motion would accept a friendly amendment to maintain the landscape buffer.

Council Member Morton said there was already a zoning restriction in place.

Mr. Sodergren said it was part of the existing zoning designation on the property and any project would have to comply with it.

Council Member Freeman said the zoning could be changed with a Director's Hearing.

Mayor Beecham asked if Council Member Morton would consider a friendly amendment.

Council Member Morton declined.

Council Member Freeman noted there had been a significant scale-down of the project. She said legal comments made that evening were in the record and provided coverage of what had been accepted.

Council Member Ojakian said in the resolution, the site was mentioned as a 15.54-acre site and the EIR referred to it as a 15.84-acre site.

Ms. Grote said the correct size was 15.8 acres.

Council Member Ojakian asked the staff what would come back to the Council after the EIR was certified.

Mr. Emslie said there was an Architectural Review and the Tentative Subdivision Map. An appeal of the ARB would return to the Council. The Tentative Subdivision Map would return to the Council regardless of an appeal.

Council Member Ojakian asked whether Mr. Solit's comments about adding the mixed-use would create a different process.

Mr. Emslie said mixed-use in that zone district required site and design review approval. Site and design required the ARB, the P&TC, and City Council hearings.

Council Member Ojakian said in the Comprehensive Plan the City had pushed for mixed-use on the property.

Mr. Emslie said staff was revising the new zoning code and eliminating steps that would provide incentive for mixed-use.

Mr. Emslie said there would not be a requirement.

Council Member Ojakian said the Council needed to look at lost opportunities.

**MOTION PASSED** 8-0, Kishimoto absent.

#### UNFINISHED BUSINESS

- \*8. Public Hearing: The City Council will consider: (1) an application by Tony Montooth for a revised Conditional Use Permit (CUP) to allow the sale of alcoholic beverages (beer, wine, alcohol) at Antonio's Nut House located at 321 California Avenue [04-UP-02]; (2) an existing appeal request [03-AP-08] by Tony Montooth of the Director of Planning and Community Environment's approval of an amended Conditional Use Permit in July, 2003 to allow alcoholic beverage service as a conditional use; and (3) a staff recommendation to initiate proceedings to that Would Prohibit Parking in Lot C-7 During Late Night Hours. Zone District: Community Commercial Combining Zone District (CC(2)RP). Environmental Assessment: Exempt from the California Environmental Quality Act *(Item continued from 6/7/04 at the request of applicant)*

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

Director of Planning and Transportation Steve Emslie said the item was initiated from the Director's Review of a Use Permit based on records of public complaints.

Planner Steven Turner said from a Director's Hearing, the Director concluded the hours of operation for Antonio's Nut House should be adjusted with the intention of reducing late night disturbances to residential communities. The owner of the establishment appealed to the Director. The recommendation was for it to be denied.

Planning and Transportation Commissioner Karen Holman said the P&TC had reviewed the project. What had not been discussed was limited hours of use of the parking lot.

Chief Planning Official Lisa Grote said corrections to the ordinance regarding the consistency of condition No. 2, which would read similarly as condition No. 9 that had to do with " . . . there shall be no operations of any kind between the hours of 3 a.m. and 9 a.m. except for cleaning the interior premises and activities associated with kitchen activity in the restaurant. Trash and recycling may take place no earlier than 8 a.m. and by 10 p.m. daily." Condition No. 7 would read "The door at the Birch Street side of the building and the door facing the alley adjacent to lot C7, shall be used only as emergency ingress and egress after 10 p.m."

Council Member Morton stated he would not participate in the item due to a conflict of interest because his office was located across the street from the project.

Vice Mayor Burch said he had spoken to the applicant and Ronna Devincenzi of the California Avenue Development.

Council Member Cordell said she spoke to Greg Kerber at his request, but there was no information disclosed that was not in the record.

Council Member Kleinberg said she spoke with a resident of the neighborhood, which was not in the public record.

Council Member Freeman said she spoke with Mr. Kerber and email with John Abraham.

Mayor Beecham declared the Public hearing open at 9:57 p.m.

Paul McDonald, attorney with Germino, MacKay & McDonald, 2500 El Camino Real, Suite 210, said Antonio's Nut House supported the staff recommendations and the Planning and Transportation Commission's (P&TC) conditions of the use permit with two exceptions. He asked that two conditions be changed: 1) the condition that a door person be stationed seven days a week be changed to Thursday, Friday, and Saturday nights; and 2) a condition stating "a security system shall be installed in such a way that the California Avenue door person could monitor activity from inside the premises," The two conditions were not necessary, as Antonio's Nut House operations or the patrons did not cause the neighbor's concerns. The patrons of The Edge caused the problems. Each of the neighbor's concerns had been addressed with a plan, proposals, and conditions.

John K. Abraham, 736 Ellsworth Place said the proposed plan rewarded Antonio's Nut House's misconduct and guaranteed no action would be taken on any of the neighbor's complaints.

Margot Goldberg, 159 California, said in 14 years she had not had one complaint, as a member of the Board of Director's Homeowner's Association for Palo Alto Central, from any of the 141 homeowners about Antonio's Nut House.

Ronna Devincenzi, 2600 El Camino Real #100, said the California Avenue Area Development Association supported Antonio's Nut House. Antonio's Nut House had plans to reconfigure and beautify their parking lot.

Lawrence Haussler, South Court, said he had a violin shop across the street and had not heard any noise from Antonio's Nut House, even late at night.

Greg Kerber, Birch Street said he wanted compliance with the Palo Alto Municipal Code (PAMC). Planning Manager Julie Caporgno's recommendations needed to be upheld, as they were the only legitimate hearings held.

Lisa Habbeshaw, Birch Court Condominiums, said Antonio's Nut House was an illegal non-conforming use for the past 25 years. She asked that the PAMC and the California Noise Control Act be enforced. Ms. Caporgno's July 2003 report and two subsequent staff reports found public health, safety, welfare violations, and nuisances. The problems continued and the hours of operation needed to be modified.

Peter Holland, 342 Grant, said at the Director's Hearing it was determined that Antonio's Nut House had been operating in a manner detrimental to the public's health and safety. He hoped the conditions being imposed were successful. The City, not the residents, should be enforcing the restrictions.

Mr. McDonald said Antonio's Nut House was asking the neighbors to communicate with them. Over the past year, Antonio's Nut House had worked hard to come up with ideas about each neighbor's concerns. Antonio's Nut House wanted to cooperate with the neighbors, the community, the Council, and the police.

Mayor Beecham declared the Public hearing closed at 10:30 p.m.

**MOTION:** Council Member Cordell moved, seconded by Freeman, to approve the staff and Planning and Transportation Commission recommendation to approve the application [04-UP-02] to amend the existing use permit [73-UP-26], subject to the conditions of approval contained in the Record of Land Use Action (Attachment A of CMR:288:04), to supercede the Director of Planning and Community Environment's July 2003 decision, contingent upon the appeal request (03-AP-08) being withdrawn by Mr. Montooth.

Record of the City Council of the City of Palo Alto Land Use Action for 321 California Avenue: Amended Conditional Use Permit to Allow Alcoholic Beverage Service for a Bone Fide Eating and Drinking Establishment 04-UP-02 (Tony Montooth, Applicant) with the following corrections to the Record of Land Action:

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1. First paragraph, first sentence: ~~within~~the during the review period, a **noticed** revocation hearing ~~may~~ will ...
2. Item number 2, "Hours of Operation":  
**Sunday** **9:00 a.m. to 12:00 a.m.**  
**Monday** through Saturday 9:00 a.m. to 2:00 a.m.

There shall be no operations of any kind between the hours of 3:00 a.m. and 9:00 a.m., except for cleaning the **interior** premises and activities associated with the kitchen in the restaurant. Trash and recycling disposal may take place **no earlier than 8:00 a.m. and no later than 10:00 p.m.** daily.

3. Item number 3, first sentence: The owner/operator of Antonio's Nut House shall provide **within 30 days from the effective date of approval** telephone numbers...
4. Item number 5, first sentence: The business operator **within 30 days from the effective date of approval** shall institute an educational...
5. Item number 6, first sentence: The business operator **within 30 days from the effective date of approval** shall institute a security plan...

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6. Item number 7, second sentence: The door at the Birch Street side of the building and the door facing the alley adjacent to Lot C-7 shall be used **only** as emergency ingress and egress ~~only~~ after 10:00 p.m. Patron shall be instructed to use the California Street door after 10:00 P.M.
7. Item number 8, add the following sentence at the end: **Periodic inspections shall be done to confirm that the serving of alcoholic beverages shall be only allowed in conjunction with the operation of a bona-fide restaurant.**

Council Member Cordell said it should be explicit that a noticed revocation hearing would apply every time. She would refer to staff as to when those should be adopted.

Mr. Emslie said if adopted that evening, it would be 30 days from that date.

Council Member Cordell said she wanted it to be explicit to make sure the community was aware.

Mayor Beecham asked whether she was including staff's recommendations on #7 and #2.

Council Member Cordell confirmed.

Council Member Kleinberg asked about the process.

Mayor Beecham said Council Member Cordell was of the opinion there needed to be wording changes made, but she did not include it in her motion. He asked whether Council Member Kleinberg had a suggestion.

Council Member Kleinberg said she did not. She asked about Council Member Cordell's request to make changes.

Mr. Emslie said staff suggested a replacement condition to the paragraph to require periodic inspections by the City to verify that food was being provided.

Council Member Cordell said that required staff to visit Antonio's Nut House late in the evening.

Council Member Kleinberg said she felt the hours should be reduced on Sunday nights. She asked what legal record would support Antonio's Nut House being treated differently from other establishments open at two o'clock in the morning.

Commissioner Holman said the majority opinion was the hours could remain as they were because there was another establishment a couple of blocks away with later hours. There was a State law that required food service with alcohol service.

Council Member Kleinberg said the heart of the discussion was the late hours. She wanted to hear from staff the legal restrictions encountered when Antonio's Nut House was being treated differently from other establishments in the City.

Special Counsel Roger Beers said the decision to place restrictions on Antonio's Nut House would have to be based on substantial evidence in the record, which created a link between the hours of operation and the restriction imposed by the Council.

Council Member Kleinberg asked whether there was a linkage.

Mr. Emslie said the reason the uses were conditionally permitted was to give the City the ability to make a site specific, case-by-case analysis based on individual circumstances regarding the placement and location of a particular business in relation to other sensitive uses, such as residential. The law provided staff to be specific for creating conditions that related to the regulation of exterior effects for the uses and their surroundings.

Council Member Kleinberg asked whether the record supports a reduction of hours on Sunday nights when there were problems specifically on those nights.

Mr. Emslie said it was not specific to Sunday nights, but there had been enough records to satisfy staff that there was presence of late night noise and a reduction of hours would be an appropriate means to reduce the impacts.

Council Member Kleinberg asked whether the owner had agreed.

Mr. Emslie said he did not know whether the owner had agreed.

Council Member Kleinberg said she wanted to hear other comments.

Vice Mayor Burch suggested the conditions should be tested.

**SUBSTITUTE MOTION:** Vice Mayor Burch moved, seconded by Mossar, to accept Council Member Cordell's motion with the exception of not closing at midnight on Sunday but staying open until 2 a.m.

Council Member Mossar said there was no reason to require Antonio's Nut House to close early on Sunday night. If earlier closing were considered, it should be for all establishments that served alcohol in the community.

Council Member Freeman asked staff about Antonio's Nut House being out of compliance for approximately 27 years.

Mr. Emslie said the records were not adequately detailed to show a consistent pattern of non-compliance. There were several documented conditions that had been out of compliance over the years.

Council Member Freeman asked about the administrative record of compliance issues and complaints. She said when there had been complaints, could an establishment be asked to follow stricter guidelines, regardless of what other establishments were doing.

Mr. Emslie said the conditions Council deemed necessary to reduce the level of impact to achieve objectives for compatibility between land uses were within the discretion of the City Council.

Council Member Freeman asked about the legality of imposing a stricter time limitation on a business establishment.

Mayor Beecham said staff had imposed reduced timeframes and believed it was legal.

**AMENDMENT:** Council Member Freeman moved that additional measures for Council consideration be considered regarding the closure of Parking Lot C-7 from 11 p.m. to 4 a.m.

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

Council Member Ojakian asked staff about The Edge nightclub's hours.

Ms. Grote said their hours were until 3 a.m.

Council Member Ojakian asked whether that was every night of the week.

Ms. Grote said she believed so.

Council Member Ojakian asked about the Q nightclub's hours.

Ms. Grote said she had to refer to a list for the answer.

Council Member Ojakian said he did not have trepidations about taking action when necessary but would not support the Substitute Motion.

Council Member Kleinberg said she would like to see whether there would be improvements made for the residents by limiting the patron use of Antonio's Nut House for one night a week.

Mayor Beecham believed the primary issue was in the parking lots.

Vice Mayor Burch removed the Substitute Motion from the floor.

#### **SUBSTITUTE MOTION WITHDRAWN BY MAKER AND SECONDER**

**MOTION PASSED** 7-0, Morton "not participating," Kishimoto absent.

CLOSED SESSION

The meeting adjourned at 11:03 p.m. to a Closed Session.

9. 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 1319, International Association of Fire Fighters (IAFF)  
Authority: Government Code section 54957.6
10. Conference with City Attorney -- Potential Initiation of Litigation  
Subject: Potential initiation of litigation on one matter  
Authority: Government Code Section 54956.9(c)
11. Conference with City Attorney -- Potential /Anticipated Litigation  
Subject: Written liability claim against the City of Palo Alto by DeSilva Gates Construction, LP  
Authority: Government Code Sections 54956.9(b)(1) & (b)(3)(C)

The Council meeting reconvened at 11:15 p.m.

The City Council met in Closed Session to discuss matters involving labor negotiations, potential initiation of litigation, and potential/anticipated litigation as described in Agenda Item No. 9-11.

**Mayor Beecham announced there was no reportable action.**

COUNCIL COMMENTS, QUESTIONS, AND ANNOUNCEMENTS

Mayor Beecham informed his colleagues that Administrative Services Director Carl Yeats was going to be distributing the Finance Committee minutes and staff report early for the budget hearing. He urged his colleagues to review the material carefully because he was going to assume the material would not need to be reviewed in detail at the June 28, 2004, Council meeting. He also asked staff if they had information about the concerns raised by residents on the financing of the Environmental Services Center (ESC).

Assistant City Manager Emily Harrison informed the Council that City Auditor Sharon Erickson had agreed to do a complete review of all of the financial and other questions raised by members of the public about the project; a study session would be scheduled in September and her information would

be presented before the Council was asked to approve a consultant contract for the Environmental Impact Report (EIR) for the ESC.

ADJOURNMENT: The meeting adjourned at 11:30 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.