

Special Meeting
October 4, 2004

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ADJOURNMENT: The meeting adjourned at 11:32 p.m. 40

The City Council of the City of Palo Alto met on this date in the Council Conference Room at 6:10 p.m.

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

ABSENT: Morton

SPECIAL MEETING

1. Meeting with Assemblyman Joe Simitian

No action required.

ADJOURNMENT: The meeting adjourned at 6:58 p.m.

The City Council of the City of Palo Alto met on this date in the Council Chambers at 7:05 p.m.

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

ORAL COMMUNICATIONS

Jim McFall, 1530 Escobita Avenue, spoke regarding the PANDA Program.

CONSENT CALENDAR

Council Member Cordell stated she would not participate in Item No. 11 due to a conflict of interest because she was employed by Stanford University.

Council Member Mossar stated she would not participate in Item No. 11 due to a conflict of interest because her husband was employed by Stanford University.

Council Member Ojakian stated he had missed the September 20, 2004, Council meeting and would abstain on Item Nos. 2-7.

Council Member Freeman registered a no vote on Item Nos. 2-7 and 9.

Council Member Kishimoto registered a no vote on Item Nos. 2-7.

MOTION: Council Member Morton moved, seconded by Burch, to approve Consent Calendar Item Nos. 1-12.

LEGISLATIVE

-  1. Ordinance 4842 entitled "Ordinance of the Council of the City Of Palo Alto Approving and Adopting Plans for Improvements to the Baylands Athletic Center located at John Fletcher Byxbee Recreation Area" (*1st Reading 9/20/04, Passed 8-0, Ojakian absent*)
-  2. Ordinance 4843 entitled "Ordinance of the Council of the City Of Palo Alto Renumbering and Amending Planned Community District PC-2592 (690 San Antonio Road) to Permit Certain Automobile Dealership Design Features" (*1st Reading 9/20/04, Passed 6-2 Freeman, Kishimoto no, Ojakian absent*)
-  3. Ordinance 4844 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 Zone Classification of Property Located at

3045 Park Boulevard from 'GM (B)' to 'GM (B)(AD)' and to Change the Zone Classification of Property Located at 4190 El Camino Real, 3290 Park Boulevard, 762 San Antonio Road, and 4180 El Camino Real from 'CS' to 'CS (AD)' (1st Reading 9/20/04, Passed 6-2 Freeman, Kishimoto no, Ojakian absent)



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6. Ordinance 4847 - Ordinance of the Council of the City Of Palo Alto Renumbering and Amending Planned Community District PC-3350 (1766 Embarcadero Road) to Permit Certain Automobile Dealership Design Features (1st Reading 9/20/04, Passed 6-2 Freeman, Kishimoto no, Ojakian absent)

7. Ordinance 4848 entitled "Ordinance of the Council of the City Of Palo Alto Modifying Section 18.43.030 of the Palo Alto Municipal Code and Rezoning Portions of the Property at 2401, 2409, 2417 Park Boulevard and 101 California Avenue #D101 to Allow Office Uses in Parts of the Ground Floor of Three Buildings on that Site" (1st Reading 9/20/04, Passed 6-2, Freeman, Mossar no, Ojakian absent)

8. Resolution 8459 entitled "Resolution of the Council of the City of Palo Alto Supporting Proposition 1A - Protection of Local Government Revenues"

ADMINISTRATIVE

9. Report of Williamson Act Contracts Within the City of Palo Alto
10. Contract Between the City of Palo Alto and Raines, Melton & Carella, Inc. in the Amount of \$150,000 for the Preparation of a Disinfection Alternatives Work Plan
11. Annual Public Review of Stanford University's Compliance of the Development Agreement for the Sand Hill Corridor Projects
12. Amendment No. Two to Existing Contract No. C2131552 with Blymyer Engineers, Inc. in the Amount of \$93,200 for Construction Management and Technical Support Services, and Additional Work

Related to the Design of an Integrated Fueling Facility at the Municipal Services Center

MOTION PASSED 9-0 for Item Nos. 1, 8, 10, and 12.

MOTION PASSED 6-2-0 for Item Nos. 2-7, Freeman, Kishimoto “no,” Ojakian abstaining.

MOTION PASSED 8-1 for Item No. 9, Freeman “no.”

MOTION PASSED 7-0 for Item No. 11, Cordell, Mossar not participating.

PUBLIC HEARING



13. Public Hearing – The City Council will Consider the Following:

a) Zoning Ordinance Update: Planning and Transportation Commission Recommendations Addressing Revisions to the Current Office, Research, Industrial and Manufacturing Zoning Districts and Related Definitions, and to Incorporate the Revisions into the Zoning Ordinance Update (ZOU) Upon Preparation of Draft Performance Standards and Mixed-Use Criteria

Mayor Beecham stated he asked staff to determine if he had a conflict with Item 13(b), Low Density Residential, since he lived in a RMD Zoning District.

City Attorney Gary Baum opined there was no conflict for Mayor Beecham as there was an exemption and a presumption of no economic effect under the California Code of Regulation sections 18705.2(b) and 18704.2(b)(1).

Council Member Cordell stated she would not participate in the portion of the item related to Item No. 13a (Stanford) due to a conflict of interest because she was employed by Stanford University.

Council Member Mossar stated she would not participate in the portion of the item related to Item No. 13a (Stanford) due to a conflict of interest because her husband was employed by Stanford University.

Mayor Beecham said a public hearing would be held on items 13 (a), (b), and (c), and the colleagues who had conflicts were able to listen to the discussion from another room.

Council Member Mossar clarified Mayor Beecham’s intention was to take the public hearing for the three items at one time while conflicted Council Members were out of the room. That was unfair and did not give the Council Members who were excused an opportunity to ask questions of the speakers.

Because she and Council Member Cordell had conflicts on a narrow piece of the discussion, they were unable to participate as full Council Members. Public testimony should be taken on 13 (a) and then taken on the other two items.

Mayor Beecham said his intent was to give the public five minutes to speak to any item or collection of items. The public hearing would remain open when the Council Members returned, at which time they had the ability to ask questions of speakers.

Council Member Mossar said the issue was of concern on many occasions. A prior incident occurred where she and Council Member Kleinberg vacated the room and, in the meantime, the Council made virtually all decisions. The City Manager, City Attorney's Office, and staff members were asked to structure agendas in such a way that conflicts did not preclude Council Members from participating as fully as they could. The current agenda disadvantaged Council Member Cordell and herself.

Mayor Beecham said he was willing to work to allow the Council Members as much participation as possible. If his colleagues were comfortable with the idea of segmenting the public hearing in order to hear only those who wished to speak on item (a), that would be done.

Director of Planning and Community Environment Steve Emslie said item (a) which related to the Stanford Industrial Park and other zoned districts was submitted to the Council for discussion and direction, and the Ordinance would return to the Council at a later date. Item (b), relating to low density residential (R-E, R-2, and RMD), required that a formal ordinance be returned to the Council. Item (c), relating to single-family residential (R-1), was proposed for Council action at the current meeting.

Contract Planner Curtis Williams said there had been extensive notice of the zoning update process, which included legal notification in newspapers, notices sent to a master zoning mailing list, notices posted on the website, and focus group meetings. The office, research and manufacturing districts were before the Council in the past. At that time, staff was directed to look at a number of items associated with zoning for the districts. Suggestions were made to look at provisions for the biotech and research and development (R&D) industries with regard to height accommodations for extensive equipment needs, to look at provisions for limitations of office use in the research park (RP) district, and to clarify medical office and medical research to create a separate definition for medical research that would be allowed in the medical office and research zone. Staff made recommendations regarding incentives and floor area bonuses. Staff recommended the Council delete the limitations in the Stanford Research

Park, direct staff to monitor the situation, and return to the Council if there were concerns in the future. Medical research was added as an allowable permitted use within the medical office and research zone and provided a definition separate from medical office.

Planning and Transportation Commissioner Karen Holman said the Planning and Transportation Commission (P&TC) met on the industrial manufacturing zone district several times and recommended a 25 percent limit on office. The reason was to support research in the RP. The P&TC encouraged biotech research and development and tax generation by promoting RP.

Mayor Beecham declared the Public Hearing open at 7:25 p.m.

Rachel Samoff, 3527 South Court, expressed appreciation for the evolving working relationship between the Child Care Advisory Council (CCAC) and the Planning Department. Staff worked closely with CCAC to insure that considerations for early childhood programs were considered. The proposal to provide bonus floor area for childcare facilities was supported. CCAC supported requiring a conditional use permit (CUP) when childcare facilities were to be sited in any of the zones.

Ann Balin, 2385 Columbia, said she and her husband were in negotiations with Stanford Land Management for two years regarding the property at 1501 California Avenue. A clean room was permitted to be constructed without any input from College Terrace. The Police Department documented that the noise ordinance was violated. An acoustical engineer, hired by Stanford, performed the arduous task of showing how noise pollution could be mitigated and witnessed the foul odors coming from Alza. (She read into the record a letter she sent to the Council). The Council was urged to look at the matter.

Therese Brekke, Land Use and Environmental Planning, Stanford University, asked that the Council delete a phrase in the definition of medical research that was included by the P&TC at its hearing on June 30, 2004. The phrase, "located within a medical office" implied that medical research must be located within a medical office. Stanford University was concerned because there was a great deal of academic medical research that existed along Welch Road, independent of medical office use.

Tony Carrasco, 583 Glenbrook Drive, read a letter from John Barton, Chair of the Chamber of Commerce Board of Directors. The Chamber was opposed to any cap on professional office uses, as defined by the proposed ordinance, and felt it was important to preserve the staff recommendation regarding how R&D spaces were classified. Placing a cap on professional office use limited the flexibility of long-term leaseholders and restricted business

flexibility in the RP. Vitality in the RP was critical to the business in the surrounding neighborhoods and to the community at large. Overall, employment in the RP was down since the 1980s. The Chamber asked that the Council allow the users of the RP flexibility, knowing they were limited by the terms of their leaseholds with Stanford Management. The staff proposal of an annual monitoring system for ensuring the balance of professional office space and other uses in the Stanford Research Park was supported. The Chamber supported a definition of R&D for manufacturing occupancies, which permitted the support services to be excluded from the definition of professional office use.

Jean Snider, Stanford Research Park Director, 2770 Sand Hill Road, Menlo Park, said Stanford participated in the process during the prior years through numerous study sessions, focus groups, and public hearings, and commended staff and the P&TC for soliciting input from the many RP stakeholders. The staff and P&TC's hard work and understanding of the complexity involved in the task laid the foundation for the recommendations currently before the Council. The City and Stanford shared several common goals, one of which was to maintain the integrity and success of a world-class research and development business community. The Stanford Research Park was considered a best in class example of successful research parks. Putting a zoning cap on office uses would not provide a benefit that Stanford and the City desired, which was to reduce traffic and the use of single occupancy vehicles by employees of the park. The reason was that densities for most R&D users equaled that of most office users. There was no distinction between how many employees occupied each square foot of a software or mature biotech company versus a service office user such as a law or financial services firm. The City and Stanford needed to continue to work together creatively to change the area. The Zoning Ordinance was an inappropriate and ineffectual tool for addressing traffic mitigations. The City and Stanford shared the common goal of maintaining the research and development emphasis of the Stanford Research Park. Early in the process, Stanford acknowledged they had a policy in place, through ground leases, which capped service office uses in the Park. Stanford was diligent and successful in administering the policy, keeping service office uses below the 25 percent cap recommended by the P&TC. Stanford supported staff's alternative to monitor rather than cap service office uses and would cooperate with the City to obtain the appropriate data to monitor the service office percentage. Stanford believed an official cap would create uncertainty about how a building's allowable use could be affected in the future, how the City would administer the cap, and how timely and easy the process would be for a business. Stanford was concerned about an additional layer of City approval in an already complex and extremely competitive environment in which to do business, and what it would do to undermine Stanford's ability

to attract world-class tenants who desired a long-term commitment to the RP.

John Igoe, 900 Mariner's Island Boulevard, San Mateo, supported the staff recommendation and believed the proposed modifications were reasonable and provided the City with the opportunity to clarify certain definitions and, at the same time, recognizing the need that existing and potential high tech and biotech occupants of the Stanford Research Park had a need for flexibility.

Herb Borock, P.O. Box 632, said the existing GM manufacturing zone was missing from the current proposal. The GM and GM-B zones were shown in different shades on the map but both were allocated in the new proposed zoning as GM. The "B" was originally applied in the zoning for areas with substantial transportation problems, which resulted in the lowering of the maximum floor area ratio (FAR) and prohibiting uses such as R&D in retail. The zone currently applied to the project from Mr. Holbach before the Council the prior week. Some people might be under the impression that the draft ordinance was the one Mr. Holbach currently had the entitlement to use. The existing ordinance recognized that R&D and retail in the area should be prohibited as both permitted and conditional uses. The City identified the particular part of town in the Housing Element as an area for housing. In August 2003, staff proposed to the P&TC a land use change and a zoning change. Actions taken by the Council might restrict freedom of action on the Holbach project. The Council might need to retain the restrictions currently in the "B" of the GM Zone in the Zoning Ordinance rather than delegate to the Architectural and Review Board (ARB). Staff needed to proceed with the implementation of the Housing Element for the site.

Chop Keenan, 700 Emerson Street, urged the Council to be flexible in the zone and supported the staff recommendation of the 25 percent monitoring and no special reclassification or constriction on professional office versus R&D. Law firms such as Wilson Sonsoni or an investment bank that were integral to the success of the R&D functions, should not be excluded. There was a \$5 per square foot transportation fee in the park that he did not want to see get lost. The fee helped mitigate traffic issues.

Steve Dostart, 777 High Street, supported the staff recommendation. Stanford did a fabulous job over the prior 50 years creating and managing a vibrant and successful research park. There was a risk to current landowners that property values were damaged if the definition were changed and a cap added.

James Freitas, Mozart Development Company, 1068 East Meadow Circle, was concerned how an office cap would adversely affect the value of his property. If a cap were approved, the request was the current office uses in the existing ground leases with Stanford would be grandfathered in for the remainder of their lease term.

Joy Ogawa, College Terrace, said the maximum building height should not be changed for properties in the RP located adjacent to or directly across the street from single-family residences. If Stanford Management Company wanted to build structures over 35 feet high on California Avenue, there should be an application for a variance. The neighbors then had an opportunity to have concerns addressed. Biotech companies might cause environmental impacts and should not be located next to residences. The office limitation was the "one crumb" that staff and the P&TC offered to address residential neighbors' concerns. Stanford tried to dictate the wording of the office limitation to define 100 percent administrative offices as being R&D, which would have been a mockery of the Palo Alto Municipal Code (PAMC). The P&TC recommended a compromise limitation on professional offices only, ignoring administrative offices. Staff recommended there be no office limitation included in the PAMC to give Stanford flexibility. The P&TC and staff recommended that medical research be defined as located within a medical office was supported.

Bud Mission, Director of Site Services, Roche, 3431 Hillview Avenue, expressed Roche's support in urging the Council's approval of the P&TC's recommended changes regarding the Zoning Ordinance Update (ZOU) with respect to the RP. Roche and Syntex maintained a relationship for 40 years with bordering residential across Arastradero Road for mitigating odors and noise abatement. Roche felt staff looked at the height issue in a way that allowed for additional height with a provision for further setback when bordering residential. With the Architectural Site Review Board (ASRB)'s review, the matter could be sensitively addressed. At the current time, many companies were at a crucial point in their development, pondering the economics of whether to continue to operate in a high cost area or pull up stakes and move to an alternate less-regulated community. Businesses needed to know the City was serious about eliminating excessive regulations.

Lee Wieder, 637 Middlefield Road, concurred with the recommendation to have a 50 percent bonus if the site were used and shared by more than one employer. The CUP made issues relating to compatibility of a project in an industrial park controllable by the Council.

Sid Espinosa, 3000 Hanover Street, representing Hewlett Packard, said Hewlett Packard was an active member of the community and proud tenant

of the Stanford Research Park. The Council was urged to support the staff recommendation. One big issue was traffic and the perception that traffic increased within the RP. The perceived traffic increase came with the perception that office and R&D uses created different issues in terms of density. Some people suggested a cap be set at 25 percent in order to limit the increased density. R&D use meant higher density. Stanford did a good job at administering the correct balance between office and R&D use. Hewlett Packard was a strong advocate for alternative transportation.

Mayor Beecham declared the Public Hearing closed at 7:58 p.m.

Council Member Morton referred to page 14 of Attachment A, Office, Research and Manufacturing Districts, of the staff report (CMR:439:04) and asked for an example of the difference of the allowability if the phrase "located within the medical office" were removed.

Mr. Williams said staff was not intimately familiar with the issue but understood it to be primarily one of academic research differing from a medical office. There could be academic research going on in the office space without having an actual doctor's office.

Council Member Morton asked whether the academic research was medical academic research.

Mr. Williams said the research was medical.

Council Member Morton asked whether staff had a particular opinion about whether more academic medical research would be discouraged.

Mr. Williams said theoretically there could be an excess of academic research to the detriment of doctors.

Council Member Morton clarified staff did not have an initial negative reaction to the removal of the phrase.

Mr. Williams said that was correct.

Council Member Morton said if the 50 percent bonus for child care were allowed up front, there was a permanent restriction on the allocation for the facility. The question was asked whether that was part of the use permit and what happened if the childcare facility were removed or reduced.

Mr. Williams said a permanent restriction was needed although he was unsure about the specifics of the enforcement. The City Attorney needed to advise. It was critical to have a mechanism in place to ensure the facility.

Council Member Morton clarified staff had the ability to ensure the service to the community would remain.

Chief Planning Official Lisa Grote said there would be a condition of approval and the facility was required to remain in childcare use or enforcement action would be taken.

Council Member Morton asked about staff's reaction to the suggestion that the height increase not apply to the properties that directly bordered on California Avenue.

Mr. Williams said there was a provision the increase in height, from 35 feet to 40 feet, be set back a minimum of 20 feet from the front of the building. The buildings generally had a 50-foot landscape setback along the front.

Council Member Morton asked whether staff saw a potential for abuse to the adjoining residents if the five-foot increase were allowed on the properties.

Mr. Williams said staff did not believe that would happen.

MOTION: Council Member Morton moved to accept staff's recommendation for the Stanford properties with one change on Attachment "A", Section 18.99.020 (m) (3) located on page 14 to remove the words: "located within medical office."

MOTION DIED FOR LACK OF A SECOND

Council Member Freeman asked how private offices were protected in the Welch Road area if the ordinance were approved with the change in verbiage.

Mr. Williams said there would be no change under the provision. Medical research was included with the medical office definition.

Council Member Freeman clarified the private practitioner had the same protection or lack of protection.

Mr. Williams said if the language stayed the way the Commission recommended, there would be additional protection. If one individual moved out, another medical office had to take its place.

Council Member Kishimoto asked for staff's comments on the GM-B zone.

Mr. Williams said the GM-B zone was recommended for merging with the GM zone a year prior when the item was before the Council. The Planning

Commission made the recommendation primarily because of the difficulty in distinguishing between the uses. In response to Mr. Borock's comment that the FAR was different, the nonresidential industrial, commercial FAR was the same for GM or GM-B. The GM zone currently allowed a mixed-use residential component for an increase to a 1.0 FAR. Staff would return to the Council with suggestions on mixed-use at a later time to address the residential component.

Ms. Grote said the "B" combining district allowed the mixed-use of residential and nonresidential and was worded in the same manner as the combining districts in the LM district. There was a limitation on uses in the redefined GM district. The General Business Office and Professional and Medical Office uses were not allowed in the newly proposed GM zone. Administrative Office needed a CUP.

MOTION: Council Member Kishimoto moved, seconded by Freeman, to accept staff's recommendation on Stanford properties with the addition of approving the Planning and Transportation Commission's recommendation on maintaining a 25 percent cap.

1. Provisions for biotech/R&D needs for increased height or other accommodations for equipment needs (in RP zone only)
2. ~~Delete provisions regarding 25% office limitations in "Research Park" district and replace with monitoring program~~
3. Clarify "medical office" and "medical research"
4. Clarifies that generators and other equipment are allowed outdoors with appropriate screening and setbacks
5. Clarifies "research and development" to provide additional examples

Council Member Kishimoto understood the need to update the zoning for the Stanford Research Park. The City had to be careful not to overregulate. People chose to come to Palo Alto because the City kept high standards. The R&D could become as traffic intensive as professional office. The Zoning and land use was the Council's opportunity to designate a balance for the City. The 25 percent limitation represented a balance.

Council Member Freeman asked whether staff would come up with wording that encouraged further medical research and ensured medical offices would remain.

Mr. Emslie said staff hesitated to provide wording "on the spot." The item would return to the Council, at which time incentives could be explored.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF MAKER AND SECONDER to direct staff to reevaluate the wording on the "medical

office” and “medical research use” in the Welch Road area to provide incentives to keep medical offices but without providing a disincentive for maintaining research use.

Council Member Freeman said she heard someone say the City was not at 25 percent office in Stanford Research Park at the current time. There was a mix of businesses other than only R&D. Continuing the R&D side of the Stanford Research Park was encouraged. The 25 percent was a good number to start with considering that number had not been reached. The possibility existed that Stanford could come back and readdress the situation.

Council Member Kleinberg asked to what extent the Zoning Ordinance protected neighboring residential areas adequately from noise and biohazards.

Ms. Grote said the words, “biological material” were added in the Nuisance and Hazards section. That provided the basis for taking enforcement action against any type of biological materials, nuisance, or hazard. The City had authority over noise, which was enforced by the Police Department.

Mr. Williams said the ordinance was reviewed by the Fire Department. There were changes and references to updated codes.

Council Member Kleinberg asked why the height expansion was necessary for biomedical research.

Mr. Williams said the height was primarily for biotech and other facilities that had extensive needs for mechanical and electrical equipment to properly control temperatures, collect waste, and maintain a clean environment in the building. Those facilities took up extensive space between floors or space on a roof or basement.

Council Member Kleinberg asked whether biological material was collected in machinery on the roof.

Mr. Williams said he could not respond to that question.

Council Member Kleinberg said the City would use existing noise, fumes, and odor controls to enforce the existing standards if biomedical research went on in the Research Park.

Mr. Williams said there had been no significant problems to date.

Council Member Kleinberg said the similarity between medical research and biotech research was raised at the P&TC, but she was unable to find an answer in the P&TC minutes.

Mr. Emslie asked that staff provide an answer.

Council Member Kleinberg asked how the professional office space cap of 25 percent worked with the support office definition.

Mr. Williams said the professional office space was separate from the support office. If the office were basically within the building, that did not count.

Council Member Kleinberg clarified if the service were related but not co-located, it was still allowed.

Mr. Williams said it was not included in the 25 percent.

Council Member Kleinberg asked for clarification about the height limit of buildings on streets bordering residential blocks.

Mr. Williams said there would be an additional setback for the section that was above the 35 feet for buildings that bordered on the residential area.

Council Member Kleinberg clarified there would be a perimeter around a childcare facility where biomedical research was not allowed.

Ms. Grote said that was correct.

Mr. Emslie said there were regulations regarding the amount and type of hazardous materials stored on site. There were regulations at the State level that required a radius from childcare facilities. Childcare facilities required use permits. The permit was discretionary and enabled staff and the P&TC to apply the standards to see what effect there was over future expansion of uses that might contain materials prevented from being located near the childcare facility.

Special Projects Planning Manager John Lusardi said medical research was the clinical application, or the clinical research later on, in the stages of a drug development, which typically involved the application of the drug through a patient and a doctor on a one-on-one environment in a controlled environment. Biotech research was the development of the compound itself; that is, the research and development of the compound that later led to the drug involved in the medical research.

Council Member Ojakian recalled when Palo Alto Square was before the Council, a childcare operation wanted to go in there. The question was raised whether a CUP was required.

Ms. Grote said she believed the existing planned community zone was amended to add childcare as a permitted use. The P&TC and City Council review was required to add the use.

Council Member Ojakian said he would vote against the motion. In terms of the height provisions, he supported keeping the height at the current 35-foot height limit because that was applied to all other situations in the City where operations were close to residential, within 150 feet. Changing the rule for one situation but not another was a concern. Staff's proposal to annually monitor the 25 percent restriction on office use was favored.

Mr. Williams said staff suggested the definition of research and development be elaborated on examples of what might be considered research and development. Some of the Research Park business people suggested including things such as computer peripherals and related products and instrument analysis.

Council Member Ojakian said the Council gave staff direction for a future time when the ordinance came back. Staff would come back with justification for additional items.

Mayor Beecham clarified the 25 percent cap was not in the staff's initial recommendation but was in the P&TC recommendation. The question was asked whether there was currently a 25 percent cap.

Mr. Emslie said there was not a zoning cap. Stanford enforced the height through its issuance of leases.

Mayor Beecham said the City needed to provide the appearance of flexibility. A 25 percent monitoring approach was the way to go.

Council Member Morton said Palo Alto had a world-class industrial park, and the Council did not have the skill to micromanage the industrial park.

SUBSTITUTE MOTION: Council Member Morton moved, seconded by Kleinberg, to support the staff recommendation to accept the Planning and Transportation Commission's recommendations to approve the proposed revisions (CMR:439:04) to the current office research, industrial and manufacturing zoning districts and related definitions, and to incorporate the revisions into the Zoning Ordinance Update (ZOU) upon preparation of draft performance standards and mixed use criteria. Further, to accept staff's

recommendation to accept an alternative to the Planning and Transportation Commission's recommendation for establishing how the 25 percent limitation on office space is counted in the Research Park (RP) Zoning District, which would be to delete that proposed revision to the code and to direct staff to monitor office space in the zone and identify whether, and when, the amount approaches 25 percent. Also, to approve two additions: 1) remove phrase "located within a medical office;" and 2) ask staff to incorporate a statement that the height increase will honor the 150 ft. set back for directly adjacent residential uses, as applied elsewhere in the community, or at least come back to Council if it is believed it has a major negative impact on attracting biotech companies.

Council Member Kleinberg supported the motion because the recommendation about the 25 percent limitation on office space was a solution in search of a problem. Stanford wanted a research park and did a good job balancing the needs. The Fire and Police Departments did not see any problems. The setback compromise was supported.

Council Member Freeman asked whether the maker of the motion would accept the notion of staff returning with an idea on incentivizing medical office.

Council Member Morton said he did not want to include that in the motion because he did not want it to become a condition for Stanford.

AMENDMENT TO SUBSTITUTE MOTION: Council Member Freeman moved, seconded by Kishimoto, to direct staff to reevaluate the wording on the "medical office" and "medical research use" in the Welch Road area to provide incentives to keep medical offices but without a disincentive for medical research use.

AMENDMENT TO SUBSTITUTE MOTION PASSED 4-3, Kleinberg, Morton, Ojakian no.

Council Member Kishimoto referred to the Comprehensive Plan (Comp Plan), under "Employment Districts," Policy L-42 indicates "Encourage employment districts to develop in a way that encourages transit, pedestrian, and bicycle travel and reduces the number of auto trips for daily errands." A Program discussed modifying existing zoning regulations and creating incentives for services to reduce traffic. Policy L-43 said, "Provide sidewalks, pedestrian paths, and connections to the Citywide Bikeway System within employment districts, pursue opportunities to build sidewalks and path and renovation and expansion projects." A program attached to that said, "Design the path and sidewalks." The Stanford Research Park had one policy: Policy L-44, "Develop the Stanford Research Park as a compact employment center

serviced by a variety of transportation modes.” The recurring theme of the ZOU was to implement the Comp Plan.

~~**AMENDMENT:** Council Member Kishimoto moved, seconded by Freeman, to direct staff when item returned, to bring back the design guidelines or other regulations to add bicycle, pedestrian, and transit facilities to make the Research Park multi-modal and implement Comprehensive Plan policies L-42, L-43 and L-44.~~

Mr. Emslie said staff constantly looked at ways of promoting transit use in the Research Park. There was information that might be beneficial in evaluating recommendations that staff brought back to the Council. Staff believed information could be brought back to the Council in a timely manner.

Council Member Freeman clarified the motion was suggestive of what might happen in the Stanford Research Park and did not necessarily regulate Stanford at the current time to do anything that would monetarily influence its building.

Mr. Emslie said that was correct.

Council Member Freeman said the document helped the Council in the future.

Mr. Baum said a motion to amend an amendment was in order but to amend an amendment to an amendment was not.

Mayor Beecham said the motion was to amend a substitute motion.

SUBSTITUTE MOTION PASSED AS AMENDED 6-1, Kishimoto no.

MOTION: Council Member Kishimoto moved, seconded by Freeman, to direct staff to bring back design guidelines or other regulations to add bicycle, pedestrian, and transit facilities to make the Stanford Research Park multi-modal and to implement Comp Plan policies L-42, L-43 and L-44.

Council Member Kleinberg supported the policies but was concerned about the creation of bicycle and pedestrian paths for people to multi-modal with no particular place to go.

Council Member Ojakian clarified staff dealt with transportation through the Mayfield agreement.

Mr. Emslie said that was correct and the tentative release date was the middle of October.

Council Member Ojakian asked why something additional was needed at the current time and suggested waiting for the results of the Mayfield report.

Mr. Emslie said that was an option. Staff was familiar with the work that went into the Mayfield report and was able to report back in the context of the Zoning Code. Staff did not anticipate going back to the Council for the final Stanford Research Park zones until after the Mayfield SEIR.

Council Member Ojakian asked whether Council Members' concerns with the Comp Plan policies could be considered in the same discussion with the SEIR.

Mr. Emslie said that was an option.

Council Member Morton agreed having the discussion twice was a burden to the audience and community.

MOTION TO TABLE: Council Member Ojakian moved, seconded by Morton, to table the motion until the Mayfield Supplemental Environmental Impact Report (SEIR) returns to Council for discussion and approval since there is cumulative impact analysis regarding transportation trends and how different modes of transportation affect the ZOU.

Mr. Baum said under Roberts Rules, a motion to table took precedence. The Council could do a motion to table or a motion to continue. A motion to continue was to a date certain or a date in the future.

Council Member Freeman asked how information from the SEIR bridged to the ZOU.

Mr. Emslie said staff could not have the discussion because it was limited to the SEIR. There was cumulative impact analysis about transportation trends and how it was affected by different modes of transportation. Staff suggested continuing the discussion to a later time.

Council Member Freeman asked whether the Council looked at the ordinance after the SEIR went through.

Mr. Emslie said that was correct.

Council Member Freeman clarified the Council looked at the information in conjunction with the ZOU if Council Member Kishimoto's motion passed.

Mr. Baum said a motion to table was not debatable.

MOTION TO TABLE PASSED 4-3, Beecham, Freeman, Kishimoto no.

Council Members Mossar and Cordell returned to the Council discussion since the Stanford Lands item was completed.

Mr. Williams reiterated the one major issue of change was the increased height for biotech and R&D in areas along Embarcadero and towards the Sun Microsystems' site.

MOTION: Council Member Morton moved, seconded by Burch, to adopt a parallel provision to what was adopted for the Stanford Lands, to allow the additional height, with the 150 foot setback for anything adjacent to residential.

MOTION PASSED 9-0.

Mayor Beecham announced that public hearing Item Nos. 13b and 13c would be heard together.

~~a) Zoning Ordinance Update: Low Density Residential. Revisions to Low Density Residential (R-E, R-2, and RMD) Zoning Districts, Including the Neighborhood Preservation (NP) Combining District. Commission's Review and Recommendation to the City Council Preliminary Approval of the Low Density Residential Chapter (18.10) of Title 18 (Zoning Ordinance) of the Palo Alto Municipal Code~~

~~e) Zoning Ordinance Update: Adoption of an Ordinance Adopting a Revised Single Family Residential (R-1) Chapter (18.12); Amending Related Definitions Contained in Chapter 18.04 and Related Home Improvement Exception Provisions in 18.76 and 18.77; and Incorporating Related R-1 Single Story Height Combining District (S) Regulations Contained in 18.13, Related Special Residential Building Site Combining District Regulations Contained in Chapter 18.15, and Related R-1 Single Family Individual Review Provisions Contained in Chapter 18.14 into Chapters 18.12, 18.76 (Permits and Approvals) and 18.77 (Processing of Permits and Approvals) of Title 18 (Zoning Ordinance) of the Palo Alto Municipal Code~~

~~Ordinance 1st Reading entitled "Ordinance of the Council of the City of Palo Alto Updating the R-1 Zone District Regulations, the R-1 Individual Review Process, and the Home Improvement~~

~~Exception Process of Title 18 [Zoning] of the Palo Alto Municipal Code by Amending Chapters 18.04, 18.12, 18.08, 18.12, 18.13, 18.14, 18.15, 18.77, 18.88 and Amending Cross References in Various Other Code Sections"~~

Robert Moss, 4010 Orme Street, expressed concern about two aspects of the residential zoning. One concern had to do with basements. In Sections 1804, 1812.040, and 1812.090, basements were not counted as part of the FAR except if the first floor were not three feet above grade or if the basement were used as a second housing unit. There was no limit on how deep the basement could go. One of the Planning and Transportation Commissioners talked about a new home where the basement was between 17 and 19 feet deep. There were places in Palo Alto where 18 feet down was in ground water. Some areas had ground water contamination. Basements should be limited to no more than eight feet below grade. Basements were only counted as a second unit if someone said they were converting their basement. Fifty percent of the basement should be counted against the FAR to preclude people from converting basements to second units. The second concern was allowing second units without limit in any neighborhood. That had the potential for having almost every property in some areas converted to duplexes by default. No more than one third of homes on any one street should be allowed to have a second unit.

Erika Enos, 2110 Columbia, College Terrace Resident's Association, read into the record a letter sent to the Council by Kathy Durham. The letter indicated the College Terrace Resident's Association Board of Directors were concerned about changes that impacted the neighborhood. College Terrace contained a large portion of Palo Alto's substandard lots, yet no notice was given to the Neighborhood Association Officers or to individual residents, who were involved in recent efforts to prevent erosion of current restrictions on the lots. If a particular business were to be impacted disproportionately, special efforts would have been made to include the businesses in the discussion of changes prior to reaching City Council level. There was a need for a buffer or transition zone between the buildings on redeveloped blocks in the Research Park and the single-family housing across the street on California Avenue. Residents wanted to know what was going on in their neighborhood.

Adam Atito, 3181 Louis Road, opposed item 13 (c) because there was no reason for the issue of merging lots to be restricted. Property in Palo Alto was very expensive. There were other ways to find affordable housing than by prohibiting lot mergers.

Natalie Cardenas, 345 South San Antonio Road, Los Altos, reinforced comments made by Mr. Atito with regard to the lot combination limits. With respect to the size of lots being limited, that appeared to be a solution in

search of a problem. Staff indicated there were a limited number of combined lots that resulted in a loss of housing stock. The subdivisions and other housing opportunities created in Palo Alto mitigated any potential losses that might occur on the rare occasion when someone chose to combine lots. Staff was asked to share the numbers in relation to lot mergers versus the number of new housing units created as a result of subdivisions.

Arthur Keller, 3881 Corina Way, said Council Members and staff were aware of schedules and deadlines, but members of the community had a difficult time following when issues were considered. Notifying people through interest lists was easy to do. One issue of concern was the issue regarding people who lived in flood zones. Properties in flood zones were limited in height and had to be a certain distance off the ground to clear the height. Exhibit A of the staff report (CMR:437:04), Chapter 18.12-040, Table 2, indicated for Side Yard Daylight Plane, 10 feet at interior side lot line, with a foot note reference for the consideration of being in a flood hazard zone. The home improvement exception on Section 18.12-130, mentioned issues about accessory structures with regard to side daylight planes with no adjustments for additions in a flood hazard area. As a result, people who were far enough into a flood hazard area could not build an accessory structure. A similar adjustment should be made for a flood hazard structure.

Annette Ashton, 2747 Bryant Street, referred to Section 18.12-040(i) key revisions of the Site Development Standards included commentary about the development standards for noise producing equipment. As a neighbor, the issue was noise and density and, as setbacks were lessened, the noise issue became increasingly important. The concept of garage placement and second story site coverage on substandard lots was not favored.

Deborah Ju, 371 Whitclem Drive, spoke in opposition to the new provisions that made the addition of second units in R-1 districts easier. Her impression was that a new State law necessitated the changes but it appeared the Governor vetoed the law. If the changes were mandated, the Council was urged to tailor the provisions as nearly as possible to comply. If the changes were not mandated, the Council was urged to vote against the changes. The proposed language in 18.12-010 allowing second units "where consistent with the site" was vague and subjective and should be rejected. Criteria were lacking, and there would be endless conflict about whether or not a particular unit was consistent on the site. A provision was included that appeared to allow counting of street parking toward parking requirements for second units. Increased street parking made it difficult for street cleaners to keep streets clean and difficult for bicycle riders to navigate. Current zoning regulations contained important safeguards that protected the privacy of neighbors and reflected community expectations about what was

compatible in an R-1 neighborhood. The regulations reflected widespread community expectations and should not be thrown aside.

Roger Pierno, 1200 College Avenue, expressed opposition to several aspects of the proposed changes to substandard lot restrictions; in particular, the elimination of the 17-foot height limit, the elimination of the one habitable floor restriction and the changes in the contextual front set backs. His property was within a few hundred feet of many substandard lots. The proposed changes had a direct adverse impact on his and his neighbors' properties. The restrictions were developed during a time of great redevelopment pressures with a great amount of public input. The rules should not be arbitrarily changed without more public input. The changes provided a windfall for a few individuals and developers at the expense of others in the neighborhood. The Council was urged to have staff justify why the changes should be made and obtain true public input from the most effected neighborhoods.

Betsy Allyn, Loma Drive, said she lived in College Terrace for 13 years when her husband was in graduate school. The area had always been a nonconforming and iconoclastic area, both in residents and houses. The charm of the neighborhood should not be destroyed by the proposed changes for substandard lots. The 17-foot height maximum and the one habitable floor should remain. A neighborhood was more than a collection of houses. Second units in R-1 zone areas must be exactly written and delineated to protect neighborhood character and compatibility. The addition of the admonition, "No variances allowed," went a long way to help developers and architects to understand the strict guidelines and the consistency needed.

William Spangler, 471 Carolina Lane, agreed with some of the concerns about second dwelling units. The definitions under day care homes mentioned that large day care homes were 7-14 children, and the small day care home was 8 or fewer, which meant that 7 to 8 children were considered both large and small simultaneously. His suggestion was that what was drafted was not perfect. The daylight plane was a concern because of the term "average grade" which was unfortunate and needed clarification. Elevations and daylight plane base elevation should be mentioned because the existing use of grades needed to be very specific. With regard to the table under "R-1 Residential Development Standards," specifically the maximum site coverage, his understanding was without an "S" overlay, the site coverage was limited to 35 percent regardless of one or more multiple story development. The table did not currently indicate that, and there was no indication the language changed. The extra bonus above the basic R-1 development in the "S combining district" made sense but there was confusion with a single story development with a higher limit above the 35

percent wanting to add a second story. The Council needed to look at cutting back to the 35 percent, as if the property were developed multiple story or have an "S" overlay applied to the property to lock the property in to only a single story.

Joy Ogawa said she tried to keep up with the ZOU, but the City made that difficult to do. The focus groups on the items were held years prior and most of the residents' concerns were conveniently forgotten at the end stage of the process. In the intervening period, many scheduled ZOU meetings were postponed to dates uncertain, and no ZOU meetings were held for a year or more. The meetings started happening again with much information in a short period, and residents were unable to keep up with what was happening. The Council's consideration of approval of an ordinance for R-1 single family residential was a concern because the majority of the affected residents and homeowners had no clue as to what was proposed. The City needed to do a better job of informing the affected residents of the proposed changes. The low density residential affected her because she lived across the street from the zone.

Roger Kohler, 4291 Wilkie Way, said the Building Code required light wells had to be at least three feet wide, and the Zoning Ordinance specified light wells could not be wider than three feet. Flexibility was needed. The daylight plane for 10-12 years was measured from the top of the roof sheathing, which was designed by the original Planning Commissioners in 1988-89. Some years ago, the measurement was changed to the top of roofing materials. Measuring the height of the daylight plane was difficult for inspectors in the field. Design review for single family homes took from one to three months due to a lack of staff and a complicated program. Since all homes were required to have a covered parking space, the one covered parking space should be exempted from floor area calculations. The floor area ratio (FAR) went into effect because of large homes. The Design Review was designed to reduce bulk and impact of neighborhoods. The floor area bulk installation was controllable with design review.

Dan Rausch, 935 Elsinore Drive, applauded some of the adjustments made to the R-1 S section because it was an attempt to clarify a process for making a zoning change. If the regulations were specific about applying and removing R-1 S overlays, putting percentages in was a good idea. The vote process, timelines, and who was eligible to vote needed to be defined.

Mayor Beecham declared the Public Hearing closed at 9:50 p.m.

Mr. Williams said many of the changes in the low density residential districts, which included the R-E, R-2, and RMD zones, were carryovers from what was done in the R-1 District. To the extent the Council changed criteria such as basements, the changes would be incorporated into the low-density

residential districts. The areas that were particular to low density residential included incorporation of the neighborhood preservation overlay combining district into the low-density residential chapter in the Zoning Ordinance. There were provisions for substandard lots in the R-2 District similar to the R-1 proposed provision. There was a proposed increase in lot coverage for the first floor for single story development in the R-2 District to provide incentive to keeping things on the first floor. There were changes to the second dwelling units, which included encouraging more of a variety of second units. There were current restrictions on second units in the R-2 not being allowed until there was a 7,500-square-foot lot, but under the current proposal, a second unit was allowed on a 6,000-square-foot R-1 lot. Staff suggested allowing a small, less than 450-square-foot unit, on those lots that were at least as large as an R-1 lot to allow the equivalency to what an R-1 lot could do. Currently, one acre was necessary in the R-E zone to have a second dwelling unit, and staff suggested allowing small units of 450 square feet or less on lots less than one acre in the R-E zone.

Mr. Lusardi said staff made attempts to notice as many people as possible. Notifications were done through the newspaper, card mailings to those on a list, and updated website. The R-1 chapter covered 74 percent of the City, and staff asked the Council to adopt the R-1 chapter in advance of the whole ZOU. The R-1 chapter created a standalone chapter and incorporated many issues that had always been on the periphery of the R-1 single-family land use and incorporated key references to the review process. The R-1 chapter made helpful references to other sections of the Code, working with the Historic Resources Board (HRB) and the Architectural Review Board (ARB). It improved the existing Code by adding key reference tables, deleting metric references, and providing clarifying language. The key revisions were formatting, and a cleaner, standalone chapter where everything was self-contained with respect to the R-1 single-family residential district. The chapter clarified and brought forward development standards, implemented housing elements, and clarified the review process involved in the R-1 District. The development standards within the R-1 chapter were recommended by the P&TC. The P&TC recommended equipment noise, equipment be located entirely within the building envelope, and all such equipment be fully housed and insulated. Staff suggested a different recommendation. The full housing of equipment sometimes presented issues as far as the operation and warranty of the equipment. Staff asked for more flexibility and suggested the Council consider options to retain the existing language in the ordinance that the equipment, if visible, be screened and fenced from the public right-of-way and allow the Director to have discretion to screen and/or house the equipment based on the existing conditions on the site. Concerns from the community included the issue of lot merger and maximum lot size. Reiterating the purpose of the regulation was to implement Program H-5 from the Housing Element adopted by Council,

which was to address the loss of housing due to the combination of single-family residential lots. The lot merger regulation was not over exhausted but would prevent the merger of two 5,000-square-foot lots where two single-family houses could be lost. The predominant number of lot mergers that occurred removed underlying lot lines and created lots of 6,000 and 7,000 square feet. Staff found one lot merger during the prior 18 months that resulted in a 10,000-square-foot lot and the loss of a rental unit. Staff proposed the creation of a 9,999-square-foot maximum lot size to address the 5,000 square foot lots that were predominant and typical in many areas of the City. Staff recognized substandard lots were a key issue in the community and would continue to work with the community to address their issues. The proposal provided an opportunity to look at substandard lots and allow for moderate additions to substandard lots on second stories. In 1986-87, second stories were prohibited on substandard lots because there was no review process in place. Staff believed, with the individual review process, that second stories on substandard lots could be achieved while maintaining neighborhood compatibility. Other incentives were added by increasing the lot coverage on the ground floor to encourage ground floor expansion. Second stories on substandard lots had to be looked at in total, including the development standards. The daylight plane for side and rear did not change, and the setback requirements did not change. The P&TC recommended a 30-foot building height. The individual review consultant suggested a second story on a substandard lot was possible at 24 feet. Staff needed to add revised language in the ordinance that clearly stated the intent of the daylight plane and what it was intended to do. Staff needed to make a cross reference in the HIE section, which made reference to historic houses and cross reference with the HRB section that was further along in the chapter. Staff continued to work with the P&TC on contextual issues with respect to low density residential.

Ms. Holman said her job was to give the Council a highlight of the P&TC's votes when there was a split vote. The vote on lot mergers was 5-0-0-2, in support of lot mergers rather than 4-2-1 as indicated in the minutes. The motion on substandard lots, allowing the second habitable floors, resulted in a split vote. Those in favor had concerns about the type of structures being built on substandard lots, had consideration that allowing larger homes might discourage lot mergers, and the flexibility allowed for more livable housing units. Those who opposed the motion appreciated the eclectic neighborhoods such as College Terrace and Downtown North that benefited from the more modest massing, as currently limited, and the need to retain attainable and sustainable housing types. Both pros and cons had concerns about elimination of contextual garage placement. Regarding the single story overlay recommendations, the aye votes favored clarification and clearing up the process. Those who voted against were concerned the percentages were too low and were not a high enough threshold to meet the majority view.

With regard to contextual front setbacks with the 30-foot or greater setback being applied prior to the contextual front setback regulations went into place, those in favor felt a range was more appropriate than potentially creating a new setback, which the contextual front setback did in some people's view. Those who voted against said the trend was to build to the minimum set back and that two-story construction with smaller setbacks had larger impacts. Everyone was in favor of the two dwelling unit recommendations concept. The votes against the motion were because of allowing a required parking place to be located in the front setback. Regarding service equipment, the pros were to bring Palo Alto up to standards held by other communities and to address impacts on neighbors, such as the impacts caused by the amenities should be borne by those enjoying the amenity. The no votes were because the regulations were too restrictive for some lots and that equipment had been improved in the last years. The P&TC's intention was not to nullify warranties but the intention was to get the impact borne by the people enjoying the amenities.

Mayor Beecham said the Council heard from a number of residents about notice and being able to keep up with what was going on and understood there were late notices and a lack of notice in some cases. The Council had a substantial packet to review on the ZOU. The matter had been through substantial process with some items already before the Council, and all the issues went through the P&TC. The Council had items 13(b) and 13(c) to consider, and 13(b) incorporated much of what was in 13(c.)

Council Member Kleinberg was impressed by all the comments made and suggested putting over the discussion of the R-1 District to a full, careful, and detailed conversation.

Council Member Mossar said she was concerned about the issue of public notice and participation. The City met its legal requirements with meetings, notices in the newspaper, and post cards. The lack of public participation at the current meeting spoke loudly that the City had not done adequate notice.

MOTION: Council Member Mossar, seconded by Ojakian, to continue items 13(b) and 13(c), and to direct staff to conduct public workshops, and only after the public has the opportunity to understand the implications to their properties could the item return to Council for approval.

Council Member Mossar said she and Council Member Ojakian had personal experience with the historic ordinance. In the beginning, there were few people in the Chambers, and the matter seemed non-controversial. As the public came to understand they could or could not build a second story and could or could not combine lots, people became engaged. The public clearly

did not have an opportunity to understand the regulations. More input was necessary before moving forward.

Council Member Morton asked whether comments from the public could be considered in detail by staff and brought back to the Council.

MOTION PASSED 8-1, Burch "no."

Council Member Kleinberg asked whether members of the public who spoke at the current meeting would be precluded from speaking at another meeting.

Mayor Beecham said the public hearing was not continued, and a new public hearing, with no limitation, would be held when the item came back to the Council.



14. Public Hearing: The Palo Alto City Council will Consider the Proposed Transportation Strategic Plan, Including Transportation System Performance Indicators and Transportation Implementation Plan Project and Program Priorities, to Implement the Palo Alto Comprehensive Plan Transportation Element, Bicycle Transportation Plan, and Other Council-Adopted Transportation Policies.

Chief Transportation Official Joe Kott said the Finance Committee and the Planning and Transportation Commission (P&TC) reviewed the proposed Transportation Strategic Plan, including Citywide transportation performance indicators and transportation implementation plan project priorities. The purpose of the proposed Strategic Plan was to guide staff in grant seeking and guide development of the transportation projects in the capital improvement program, to focus staff work program efforts and energies, to link goals and policies to projects and programs, and foster effective longer term perspective in transportation planning and programming. The performance indicators were measures of success or attainment of stated policies, goals, and objectives and measured the direction and rate of progress toward goals and policies. The performance indicators proposed to track trends over time and were the basis for an annual report card on transportation system performance. A few years prior, the Council directed Transportation staff to prepare an annual report. Staff collected data since then, including completion of an electronic travel diary of more than 900 Palo Altans. Information on performance indicators would be disseminated through the City's website and through the annual report on transportation system performance and trends. The Transportation Implementation Plan took the Comprehensive Plan (Comp Plan) projects and programs, which were not prioritized in the plan, and placed them in broad priority categories based on Comp Plan goals and policies. Staff's approach included project

readiness as a consideration in ranking transportation projects. The assessment on priorities was done by consideration of citywide benefit; that is, projects that were of most benefit to most people ranked highest. The performance indicators were listed in Attachment A to the staff report (CMF:432:04), and the transportation implementation plan elements were listed in Attachment B to the staff report. Palo Alto had an emphasis on bicycling with further emphasis on development of public transit, both local and regional. There was also an emphasis on applying new technologies in traffic management, particularly in terms of computerizing and automating the traffic signal system.

Mayor Beecham declared the Public Hearing open at 10:15 p.m.

Edward Holland, 1111 Parkinson Avenue, spoke about the project prioritization. The first item under Bicycle/Pedestrian was bike boulevards and the second item was bike and pedestrian facilities that prioritized critical links. The City had only one bike boulevard although a plan showed several. One bike boulevard was planned for Homer Avenue, which was why the tunnel below the railroad tracks was placed where it was. Homer and Channing were found on the low priority list. Bicycles and shuttles were a good way to get around the City. The shuttle did not run on schedule, which resulted in people not using the shuttle. A successful shuttle had to be user-friendly.

Bob Moss, 4010 Orme Street, said he was on the focus group that discussed the issue. Vehicle grade separations were added but only became practical if the proposed bond issue for the ballot in 2006 for high-speed rail passed. Making that a high priority at the current time was premature. With regard to moving light rail from high priority to medium priority, he was on the Transportation 2000 Task Force, and at that time the request was to have the light rail terminate in downtown Sunnyvale. He was one of the people on the task force who argued successfully to have it terminate in Mountain View, with a promise the task force would study moving light rail into Palo Alto in the future. The City had a better chance of getting light rail extended into Palo Alto at perhaps California or University Avenue. The light rail issue should be move up to high priority.

Mayor Beecham declared the Public Hearing closed at 10:25 p.m.

City Attorney Gary Baum said Council Member Freeman asked that the matter be split into two since she lived on one of the streets. The Council could proceed on that portion, and then Council Member Freeman could participate in the balance.

Mayor Beecham asked for clarification on the conflict.

Mr. Baum stated Council Member Freeman lived on Channing Avenue, and there was a conflict in the event the street was studied further and the direction was changed from one-way to two-way. A decision might have an impact on her home.

Council Member Mossar did not understand how the Council could have a general conversation if it were only allowed to discuss one of the elements.

Mr. Baum said if the Council wished to have Council Member Freeman participate in the balance, the discussion would be separated into two pieces.

Council Member Morton clarified if the Council voted that Homer and Channing Avenues were left two-way as an existing priority that might solve the issue.

Mr. Baum said that was correct.

MOTION: Council Member Morton moved, seconded by Ojakian, to leave Homer and Channing Avenues as a low priority.

Council Member Mossar said conceptually the plan was designed to help the Council determine sources of funding. Dealing with the issue was critical in order for the Council to solve the problem.

Mayor Beecham said the conflict of interest was an increasingly complex situation but was not before the Council for discussion at the current meeting.

Council Member Kleinberg said last week she voted against the suggested bike lane for the first or second block of Homer because she did not feel there was a full discussion about how it would work and the impact on commercial uses along the street. The Council should not consider the matter at 10:30 p.m. when people had not been notified about an important issue.

MOTION PASSED 6-2, Kleinberg, Mossar no.

Council Member Mossar said there was reference in the staff report (CMR:432:04) to the Embarcadero Road pathway off the road. The Bicycle Master Plan talked about putting bike lanes on the roadway.

Mr. Kott said the project was taken from the Comp Plan and probably meant improving access from Embarcadero Road to the Baylands.

Council Member Mossar clarified the language in the document specifically talked about an off the road pathway.

Mr. Kott said staff was reluctant to change the wording from the Comp Plan in terms of description of projects. Staff's conceptualization was improving bike access to the Baylands.

Council Member Mossar asked why the Council would not use the language directly from the Bicycle Master Plan, which was the planning document adopted by the Council for its bicycle planning horizon.

MOTION: Council Member Morton moved, seconded by Kishimoto, to approve the Finance Committee's recommendation to adopt the proposed Transportation Strategic Plan, including Transportation System Performance Indicators (Attachment A of CMR:432:04) and Project Prioritization (Attachment B).

Council Member Morton said the conceptual scheme was complicated and the first time the Council tried to develop a structure in which to plan and do measurements. Referring to the staff report (CMR:432:04) Attachment A, the objective was "Promote a healthy and safe school commute." The question was what would staff do when the item returned to the Council and would a threshold be set at current days traveling. Staff was asked how the Council developed thresholds or key indicators to be used to implement the plan.

Mayor Beecham said there were parts of the Plan that referred to Stanford lands and other conflict issues.

Mr. Baum said since Stanford Research Park was mentioned and staff did not have the time to do a financial analysis, the two Council Members with a direct conflict on Stanford should not participate in voting on the plan.

Council Member Mossar said the Finance Committee reviewed the item in October 2003, and at the current meeting some Council Members were told they could not participate in general policy setting for the City.

SUBSTITUTE MOTION: Mayor Beecham moved, seconded by Kleinberg, to continue the item to a date uncertain.

Council Member Cordell said it was her responsibility when reading the staff report, but she did not immediately pick up the Stanford Research Park issue to bring it to the attention of the City Attorney.

Council Member Mossar said she took responsibility, but the issue of the Stanford conflict was before staff for the entire time she was on the Council and was an issue she brought up as an important issue.

Council Member Morton said there was only one page in which the word "Stanford" appeared. The Council could accept the staff recommendation for that and then finalize the plan.

SUBSTITUTE TO SUBSTITUTE MOTION: Council Member Morton moved, seconded by Burch, to separate the portion that referred to Stanford and accept the staff recommendation.

Council Member Kishimoto agreed the document should move forward.

Council Member Cordell said the issue was complex, dealing with bike paths and pedestrian transportation. Her fear was if she and Council Member Mossar stayed, the action might be improper.

Mr. Baum said separating one thing from another was difficult at the current time. The Plan appeared to have effects on Stanford.

Mayor Beecham said he had concerns about unknown ramifications and would not participate in further discussion.

SUBSTITUTE TO SUBSTITUTE MOTION WITHDRAWN BY MAKER

SUBSTITUTE MOTION PASSED 8-0, Mossar absent.

UNFINISHED BUSINESS

15. Public Hearing: The Palo Alto City 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 *(Item continued from 9/20/04) Public Testimony closed.*

City Attorney Gary Baum said Special Counsel Dan Sodergren would represent the Council in the matter, and Special Counsel Lance Bayer would prosecute.

Mayor Beecham said the Council held a lengthy public hearing on the item in the past. The public hearing was closed.

Special Counsel Dan Sodergren said when the Council heard the matter on

May 17, 2004, Mr. Bradshaw asserted he had not been aware of his right to appeal the matter. Staff provided the Bradshaw's with a second notice of their right to file an appeal with the Superior Court. A copy was included in the Council's packet. However, instead of filing a notice of appeal with the Superior Court, the Bradshaw's filed a writ of mandate. The Council's review was limited to determining whether the administrative penalty was satisfied in a timely manner and whether it was timely challenged in court. Staff's position was the administrative penalty was not satisfied and that the petition for writ of mandate filed by Mr. Bradshaw was not the equivalent of a notice of appeal under the Government Code. The Bradshaw's did not timely challenge the matter in court. The Palo Alto Municipal Code (PAMC) could confirm the lien, discharge the lien, or modify the lien.

Council Member Morton said the City had the legal burden to duly inform the homeowner of its original rights back in 2000. Perhaps, due to an oversight, the appropriate document informing the resident of the right to appeal might not have been enclosed in the original notice of finding. In 2004, the City sent a notice to correct an oversight. If the City were allowed to correct the situation at the current time, the situation in which the resident found himself should also be looked at.

Mr. Sodergren said the Council's review should be limited to whether the penalty was timely satisfied and timely challenged. The PAMC allowed discretion based on what the Council deemed fair on ultimately what to do.

Council Member Morton questioned whether the failure on the Council's part to provide due notice at the time impacted the legality of the imposition.

Mr. Sodergren said the decision made in the past was currently under review.

Vice Mayor Burch questioned the assumption that the City failed to provide the notice.

Andrew Pierce, Attorney representing the Bradshaw's, said legal requirements for a lien had not been met. A lien would be taken off the property by legal action if the Council tried to put one on. The notice of appellate rights required by the PAMC was not given until June 28, 2004. Within 20 days, which was the time allowed by law, the Bradshaw's filed a writ in Superior Court. The City Attorney's Office thought the writ, rather than an appeal, was not effective to delay the effect under PAMC Section 12.180, which required the Council to not take action if an appeal were on file. The Government Code was not a different procedure from a writ of mandate. The Code, Section 53069.4, says, "notwithstanding the writ of mandate procedure," The Code said the civil case was limited. The substance

of what was asked for and whether it was filed on time was what mattered. Mr. Bayer's previous report referred to writ of mandate and appeal as though they were the same thing. The analysis of whether the notice was timely relied on cases decided in connection with writs of mandate. Mr. Bayer said, "it's analogous to the requirements for the notice of a right of judicial review by administrative mandamus." The Bradshaws could amend their pleading and call it an appeal. The court would treat it the same, and the lien would be no good. With regard to the merits, the problems were corrected. The fine was as large as it was because the notice of appeal was given so late and accumulated on a daily basis. The issue related to approximately 30 feet of roof that might have had dry rot and some things in the yard that did not belong there, which had been removed. The only effect of putting a lien on the property was it had to be removed by legal action. The Council was asked to not enter the lien prematurely and to not tie up the properties to make it impossible for Mr. Bradshaw to improve his properties.

Senior Assistant City Attorney Lance Bayer said the City had an ordinance for administrative penalties, which set up a community based process in order to get people to conform to the requirements of the Code. The issue was requirements relating to property blight. Mr. Bradshaw was noticed and attended a hearing based on his failure to comply with an order made by City staff. Mr. Bradshaw received a notice of the hearing in advance. Two hearings were held. At the first hearing, Mr. Bradshaw received a notice from the Hearing Officer that directed him to look at the ordinance and particularly directing him to his appellate rights. At the conclusion of each hearing, there was a notice of the hearing decisions that failed to include the right of appeal within 20 days. Out of caution, Mr. Sodergren, on behalf of the City Attorney and the City, sent a new notice. Mr. Pierce failed to mention that in order to have community based administrative hearings, there was a right to appeal but it was not like a writ of mandate. It was not the right of the Superior Court to review the record, the transcripts of the hearing, the evidence, because there were no transcripts and no evidence was preserved from the hearing. The right was a right to a trial de novo, which meant a right to a new trial in front of the Superior Court, in front of a Judge or a commissioner. A trial de novo gave someone a second chance at what should happen, and they were given an opportunity to challenge, for a \$25 filing fee. Mr. Bradshaw was given a copy of the ordinance and directed to look at the appeal rights of the right to a trial de novo. Mr. Bradshaw chose not to act, despite the fact he received numerous invoices from the City. Mr. Sodergren sent the secondary notice, which meant that during the 20-day timeframe, Mr. Bradshaw had a right to a trial de novo rather than a right to have the Superior Court review the record and decide whether or not the hearing office acted properly. There was no trial de novo because Mr. Bradshaw did not act according to what the law required in order to go to

the next step. The Council had a dollar amount that Mr. Bradshaw owed and a strong desire not to relitigate on the part of the City the long, extensive history that he alluded to at the last lengthy hearing on the matter as to why Mr. Bradshaw was before the Council. The recommendation to the Council was to affirm the liens and to adopt the resolution.

Council Member Kleinberg understood the Government Code Section said, "appeal." The City's ordinance said, "writ of mandate."

Mr. Bayer said the appeal rights were the right to an appeal. The writ of mandate language applied to the lien only and not to the appeal rights.

Council Member Morton asked what the Court's reaction would be if the resident did not file the writ but relied on an attorney who interpreted the PAMC.

Mr. Bayer said the procedure was to file the appeal to a trial de novo. The writ did not ask for a new trial but to throw out the Hearing Officer's original decision. There was no legal procedure set up to do that under the codes.

Council Member Cordell did not agree with Mr. Pierce's argument that a writ of mandate was not an appeal. The Council could make findings relative to whether the penalty had been paid. The answer was no. A second finding was whether an appeal was filed, and the answer was no. The third finding was that the Council could do equity, which meant the Council could make the findings and then make a decision that said to pay or not pay all the money. The suggestion was to do equity and to find out whether or not any violations continued to exist. If the violations did not exist, the Council could give relief. The Council could decide that with regard to the notice of appeal sent out on June 28, 2004. The Council could decide equity and there should be a penalty imposed, but perhaps the penalty should accrue from that date. Sanction should be imposed because rules were broken. If violations did not exist, that should be taken into consideration. The amount owed was \$165,000.

Mr. Bayer said there were two situations; one was placing property liens, which were recorded against property for money due and owing. The other situation was equity, which meant having a fair solution. His suggestion was that the fair solution involved payment to the City now as opposed to putting liens on property. When penalties were imposed, people should actually pay the penalties. The equity was worth more in the sense of the City actually getting penalties paid to it as opposed to liens that would not be realized until the sale of property. If the Council were inclined to do equity, that should be done on the basis of what would be paid to the City at the current time.

Council Member Cordell asked how much money was due at the current time.

Mr. Bayer said the amount was subject to negotiation. The major violations occurred over an extensive period of time, and there were some minor violations, some new violations involving vehicles, and violations on Mr. Bradshaw's personal residence going back to the early 1990s. Mr. Bradshaw signed a written agreement with the City in order to discharge a civil lawsuit against him in the early to mid-1990s, which was handled by Mr. Mayfield of the City Attorney's office. The violations were not remedied, and the City endeavored to remedy the violations through City staff.

MOTION: Vice Mayor Burch moved, seconded by Kleinberg, to approve two findings, which are that the administrative penalty has not been paid and the appeal has not been filed.

MOTION PASSED 8-0, Mossar absent.

Vice Mayor Burch said it was obvious some time ago the intention was to not respond to the violations and drag the matter out. If the Council did nothing, code enforcement was a mockery.

MOTION: Vice Mayor Burch moved, seconded by Kleinberg, to file a \$165,000 lien on the property unless both of the following conditions are satisfied within the 60-day period: 1) all code violations are cured; and 2) the payment of a fine of \$50,000 is made.

Council Member Kleinberg assumed Code Enforcement made the determination that the violations were cured.

Director of Administrative Services Carl Yeats said the City would order a reinspection in 60 days. Staff placed a lien on the property if the violations were not taken care of and the \$50,000 fine was not paid within 60 days.

Council Member Kleinberg said the Council did not want to send the message that residents could ignore code enforcement for years with the hopes of wearing down the administrative forces.

Council Member Freeman questioned the \$50,000 fine amount.

Mayor Beecham suspected there was no basis in any numerical analysis that resulted in the \$50,000 amount.

Council Member Freeman asked whether the City Attorney would recommend a basis for the \$50,000 amount.

Mr. Sodergren said once the Council made the initial findings, the Council had the discretion to treat the lien.

Council Member Morton said people could be land rich but borrowing poor. The individual might have had property but not the cash flow in which to do all the repairs within the required time. Setting the dollar amount too high encouraged residents to go to court, which meant the Council incurred more expenses. The \$50,000 amount was a concern.

Council Member Kishimoto said the motion was a fair settlement. The City bent over backwards for many years.

Council Member Cordell explained that by taking the \$165,000 that was owed and taking into consideration when the first complaint was filed four years prior, and dividing the amount resulted in a yearly amount of \$41,250. The proposal of \$50,000 was a little more than one year in penalties. The \$50,000 was fair and not arbitrary.

MOTION PASSED 7-1, Morton no, Mossar absent.

ORDINANCES AND RESOLUTIONS

16. Adoption of Resolution Determining Underground District No. 38 Property Owners Who Elect to Pay Underground Conversion Costs Over a Period of Years

Director of Administrative Services Yeats suggested the Council approve the staff recommendation.

MOTION: Vice Mayor Burch moved, seconded by Ojakian, to accept the staff recommendation to approve and authorize the Mayor to execute the resolution determining Underground District No. 38 property owners electing to pay conversion costs over a period of years, determining and classifying unpaid assessments, and funding loans to property owners from the Reserve for Underground Connections.

Resolution 8460 entitled "Resolution of the Council of the City of Palo Alto Determining Owners of Properties Electing to Pay Conversion Costs over a Period of Years, Determining and Classifying Unpaid Assessments, and Funding Loans to Property Owners From the Electric Reserve for Underground Connections -- Underground Utilities Conversion--Underground Utility Assessment District 38"

MOTION PASSED 8-0, Mossar absent.

COUNCIL COMMENTS, QUESTIONS, AND ANNOUNCEMENTS

Council Member Freeman expressed her appreciation to all who worked on the Black and White Ball.

Council Member Ojakian noted for the record he would have supported Measure I.

Mayor Beecham spoke regarding the PANDA exercise on Saturday, October 1, 2004, and felt it was worthwhile.

ADJOURNMENT: The meeting adjourned at 11:32 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.