

Special Meeting
August 2, 2004

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The City Council of the City of Palo Alto met on this date in the Council Chambers at 6:45 p.m.

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

ABSENT: Freeman

SPECIAL ORDERS OF THE DAY

1. Proclamations Welcoming the Albi, France and American Exchange Students
2. Proclamations Welcoming the Oaxaca, Mexico and American Exchange Students

No action required.

ADJOURNMENT: The meeting adjourned at 7:00 p.m.

The City Council of the City of Palo Alto met on this date in the Council Chambers at 7:02 p.m.

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

ABSENT: Freeman

CLOSED SESSION

The meeting adjourned at 7:02 p.m. to a Closed Session.

1. Conference with Labor Negotiator
Agency Negotiator: City Manager and his designees pursuant to the Merit System Rules and Regulations (Frank Benest, Leslie Loomis)
Employee Organization: Unrepresented Employee Group:
Management Professional Employees Authority: Government Code section 54957.6(a)

The Council reconvened at 7:20 p.m. to the regular City Council meeting.

The City Council met in Closed Session to discuss matters concerning labor negotiations with the Management Professional Employees, as described in Agenda Item No. 1.

Mayor Beecham announced there was no reportable action taken.

ORAL COMMUNICATIONS

Seth Yatovitz, 207 High Street, spoke regarding finances.

Ed Power, 2254 Dartmouth Street, spoke regarding good government.

Norman Carroll, Emerson & University, spoke regarding Proposition 209.

Dieter Folta, Palo Alto spoke regarding Mr. Hopkins.

Enid Pearson, Forest Court, thanked the Council for adding her name to the Arastradero Park.

Samuel Peterson spoke regarding *Yank* newspaper.

Paul Grimsrud, 3955 Bibbits Drive, spoke regarding electric power facilities.

APPROVAL OF MINUTES

MOTION: Council Member Ojakian moved, seconded by Burch, to approve the minutes of June 28, 2004, as submitted.

MOTION PASSED 7-0-1, Freeman absent, Kishimoto abstaining.

CONSENT CALENDAR

MOTION: Council Member Morton moved, seconded by Mossar, to approve Consent Calendar Item Nos. 2-8.

LEGISLATIVE

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ADMINISTRATIVE



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MOTION PASSED 8-0 for Item Nos. 3-8, Freeman absent.

MOTION PASSED 7-0-1 for Item No. 2, Freeman absent, Kishimoto abstaining.

Council Member Kishimoto said she abstained from voting on Item No. 2 because she was not present at the July 12, 2004, Council meeting for the first reading and did not partake in the discussion.

Council Member Kleinberg thanked staff for bringing forward the Keyser Marston Associates Analysis to support the City of Palo Alto's Below Market Rate (BMR) Housing Program.

REPORTS OF OFFICIALS

9. The Policy and Services Committee Forwards without Recommendation the Draft Scope of Services for an Environmental Impact Report for the Proposed Environmental Services Center (ESC)

Council Member Kishimoto said the Policy and Services (P&S) Committee reviewed the item on May 19, 2004. She gave a summary of what had transpired at the meeting stating that Public Works Director Glenn Roberts and Senior Planner Virginia Warheit gave a presentation regarding the Baylands Master Plan and the Byxbee Master Plan. Ms. Warheit had said the parklands were dedicated in 1965 and in 1978; the Baylands Master Plan was adopted and incorporated into the Comprehensive Plan (Comp Plan). The Baylands Master Plan balanced the competing needs of the land for facilities that housed the Regional Wastewater Quality Control Plant (RWQCP), Municipal Service Center (MSC), the airport, and parklands that were divided into passive and active recreational areas along Embarcadero Road. A major part of the plan was the Pastoral Park created from landfill and provided a panoramic view of the entire South Bay and surrounding marshlands. The main difference in the two motions that resulted at the P&S Committee meeting was whether the 19-acre proposal would remain or not. Three alternatives were added to the Scope of Services: 1) a study on active recreational uses; 2) regional and interjurisdictional cooperation; and 3) a commitment to minimize the impact on parkland.

Assistant City Manager Emily Harrison clarified that Council was being asked
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to approve a Request for Proposal (RFP) for a consultant to perform an Environmental Impact Report (EIR). She said alternatives could be added or deleted from the drafted RFP. The City Auditor was asked to provide additional information on the Proposed Environmental Services Center (ESC) agendized for October 18, 2004. A contract would not be awarded until after Council met with the City Auditor.

Public Works Director Glenn Roberts said the landfill would close in 2011 and questioned the future of Palo Alto's solid waste programs once the landfill closed. There had been a plan in existence for the past 30- to 40-years to convert landfill into parkland. Staff raised concerns regarding program functions that complied with State laws in recycling, community values of sustainability and waste reduction, and support of the Refuse Fund in a cost-effective manner. If the land converted to parkland, all programs would disappear and would no longer be under Palo Alto's jurisdiction. He gave a summary of the proposed ESC project, as outlined in staff report (CMR:364:04)

Director of Planning and Community Environment Steve Emslie gave an overview of the Environmental Impact Report (EIR) process. He said the EIR was an objective description of the potential impacts the ESC would have. The analysis provided necessary information for making decisions and placing mitigation measures on a proposed project, which included a list of feasible alternatives with extensive versions of the project, alternative sites for the project, and a no project alternative. Upon the approval of an RFP, staff would return with recommendations from the environmental consultant. The final contract and Scope of Services would be prepared for Council's consideration. A scoping session would be held with the general public and stakeholders with input taken prior to the preparation of an environmental analysis. The Notice of Preparation (NOP) would be publicized through mailings, publications, and other means to reach the public and stakeholders. NOP comments would be considered in the Draft EIR, which would be circulated to all interested parties. Comments would be taken and the EIR finalized. It would return to Council for consideration prior to placing the ESC before the voters as an amendment to the Park Improvement Ordinance.

Mayor Beecham declared the public hearing open.

Alexandra Mayer, 1427 Byron Street, supported an EIR including a green park and a 19-acre facility. She described her vision of a "sustainability center." She said the site would be perfect for a recycling and educational facility. The facility could include exhibits to educate the public on all facets of caring for the earth. The recycling programs would remain. The ESC could be named the Environment and Recycling Teaching Headquarters

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(EARTH). The EARTH would be an extension of the Park, bringing park people and the recycling people together.

Walter Hays, 355 Parkside Drive, echoed Ms. Mayer's comments. The Center would be a recycling and sustainability center where people could learn and tour the ESC and the Regional Water Quality Control Plant (RWQCP). Waste reduction and environmental justice were key portions of any concept of sustainability. He was in favor of an EIR and getting the facts before making a decision on the project and urged Council to approve an RFP.

Clark Akatiff, 105 Rinconada, was in favor of the ESC project. He said to reject the project meant not having a waste facility in Palo Alto and waste would need to be disposed elsewhere.

Steve Mullen, 10 Phillips Road, said the ESC project would help improve and maintain the environment.

Trish Mulvey, 527 Rhodes, was in support of circulating an RFP for all options including the 19-acre facility. The RFP would give Council and the public information necessary in making their decision should the project require a vote.

Michael Closson, Executive Director of Acterra, 354 Poe Street, said Acterra's Board agreed to endorse the preparation of an EIR as long as it included a waste reduction alternative. He was reluctant to support the EIR because the concept was not comprehensive enough on dealing with waste. He felt the ESC would limit other alternatives. Recycling may be a solution but to the wrong problem. Landfills fill up and resources become increasingly scarce. "Zero Waste" was a new emerging field and he offered to organize a Study Session for Council and staff to explore the new concept.

Council Member Mossar asked Mr. Closson whether the concerns he noted were Acterra's views or his personal comments.

Mr. Closson clarified those were his personal comments and the Board endorsed the idea of pursuing an EIR as long as it had a significant waste reduction alternative.

Jeanette Marquess, 806 Los Robles Avenue, urged Council to reject the EIR and seek alternative services not including any part of the Baylands. She said open space was in short supply. Locating the ESC at the Baylands would eliminate any hope of configuring the Baylands to meet park, recreation, and open space needs for the citizens in Palo Alto.

Edie Keating, 3553 Alma Street, spoke regarding the intrusive noise the ESC would create and the site not fitting aesthetically in the Baylands.

John K. Abraham, 736 Ellsworth Place, did not support processing an EIR and addressed the noise issues the ESC would create.

Jean McCown, Member Board of Directors, Government Action Committee, Chamber of Commerce, 527 Seale Avenue, supported authorizing a RFP to keep the process moving forward.

David Coale, 766 Josina Avenue, supported the processing of an EIR. He urged Council to broaden the scope of the EIR, making it more comprehensive to include the surrounding community should it require a vote on trading parkland for the ESC site.

Betsy Allyn, Willmar Drive, said she would not support having the ESC project on dedicated parkland or near the Bay. She proposed the continued use of the SMaRT Station, an agreement on the Los Altos land, providing full curbside recycling services, eliminating composting, or moving the process elsewhere.

Enid Pearson, Forest Court, said the ESC operations did not belong in the Baylands and would permanently destroy part of the Park. She urged Council to end the recycling operations and reaffirm that the ESC become parkland. She asked Council to say "no" to the Public Works Department's proposal and direct staff to ensure that Palo Alto become a full partner in the regional garbage effort and use the SMaRT Station and Kirby Canyon Landfill to the fullest extent.

Ellie Gioumousis, 992 Loma Verde Avenue, asked Council to reject the plan and not take 19 acres of parkland.

Emily Renzel, 1056 Forest Avenue, did not support the project. She urged Council not to use parkland for an industrial processing plant. It would have long-term adverse impacts on the Baylands.

Ellen Fletcher, 777-San Antonio Road, urged Council to go forward with the RFP. She said an EIR would provide information on impacts and ramifications needed to determine the future construction of the ESC site.

Douglas B. Maran, 790 Matadero Avenue, did not support moving forward on the EIR. He felt the presentation contributed more concerns to such a complex issue and preferred to wait for the City Auditor's Report to help get a more reasonable structure for the EIR.

Karen White, 146 Walter Hays Drive, asked Council to consider waiting for the City Auditor's Report before scoping an EIR to see what worked. She suggested establishing a policy for the future partnership with Sunnyvale and Mountain View and to add to the alternate sites list industrial land that could be purchased with the Refuse Fund. She cautioned the Council to be aware of Waste Management Inc. (WMI) asking Palo Alto to give up parkland in the future for a transfer station and making it into a profit center when the Oakland plant reached its capacity.

Annette Glanckopf, 2247 Bryant Street, said she was against the location of the ESC facilities in the Baylands.

Bob Wenzlau, 1409 Dana Avenue, encouraged Council to explore the options offered in the EIR and to use the community's resources to accommodate the preservation and resource recovery goals.

Thomas Jordan, 474 Churchill Avenue, was not in agreement with the proposal. He advised hiring an outside solid waste expert rather than having an EIR to look for alternatives that had not been proposed.

Bob Moss, 4010 Orme Street, suggested waiting for City Auditor's Report before going forward with the EIR.

Mayor Beecham declared the Public Hearing closed.

Mr. Roberts clarified points raised in the testimony. He said WMI was not involved in the project. It was totally a staff initiative since 1998 and prior to WMI purchasing the Palo Alto Sanitation Company (PASCO). He confirmed the reduced scope alternative acreage was smaller than the 7.5 acres of composting facilities. He addressed the concern regarding the environmental analysis and the first time using the California Environmental Quality Act (CEQA) procedure that had two baseline conditions. One was comparing the noise level of the existing landfill operations and the other to the future use of parklands.

MOTION: Council Member Morton moved, seconded by Mossar, to approve the staff recommendation to proceed with issuing a Request for Proposal (RFP) for a consultant to perform an Environmental Impact Report (EIR) for the Proposed Environmental Services Center (ESC).

Council Member Morton said it was important for the RFP to contain the 19-acre option and to not preclude the possibility of a study that was important to the community. He wanted to insure the continuation of the 14,000 tons of curbside recovery and the 27,000 tons staff recycled from the landfill. The 19 acres bordered on a sewage treatment plant and was an appropriate

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location for a recycle program. It included composting and methane recovery that were environmental functions. He felt the community needed to know the impacts and requirements necessary to preserve the functions and it was Council's responsibility to provide the information in order to make an informed choice. He requested the EIR include ESC impacts at the Baylands and explore alternatives of accommodating the site functions elsewhere in the community.

Council Member Mossar said there was a lot of conversation about what the public needed to do in order to make changes to open space uses. The EIR should provide information on the impacts and mitigations to determine whether to keep or transport the garbage to other communities. The need to deal with community waste was a real need the community had. She supported staff's recommendation.

AMENDMENT: Council Member Kishimoto moved, seconded by Cordell, to approve the scope of work with exclusion of the 19-acre proposal.

Council Member Kishimoto said in 1999, Brown, Vence, and Associates (BVA) developed a conceptual feasibility study that showed a 6.2-acre area could house a material recovery facility transfer station, a small composting facility, a small wood-chip processing area, and a Household Hazard Waste (HHW) facility at the landfill and handle 100 percent of the City's recycling and waste without utilizing the SMaRT Station. She could not justify keeping the 19-acre proposal when it involved dedicated parkland. The EIR was being done out of sequence. The BVA report confirmed her reason for excluding the 19-acre proposal.

Council Member Cordell supported the amendment but raised concerns regarding the process, which was flawed. The Auditor's financial analysis should have preceded and not followed the development of the Scope of Services. Staff informed Council that "time was of the essence" and felt a matter with major significance was presented in a rush and pressured manner. The Council needed all the essential information to make the right decisions since it would have major impacts on the Baylands. EIR's identify a project and it was not a study giving equal weight to all of the alternatives. She said a 6.2-acre site for the ESC needed to be explored other than having it located in the Baylands and for staff to develop an aggressive source reduction strategy.

Vice Mayor Burch said he would not support the amendment and reminded Council the action to be taken at the meeting was to vote for or against an RFP.

Mayor Beecham opposed the amendment. He said it was important to have

for the community all available information on the options. He supported the original amendment.

AMENDMENT FAILED 3-5, Cordell, Kishimoto, Kleinberg yes, Freeman absent.

AMENDMENT: Council Member Kishimoto moved to consider recommendations by PARC to include in alternatives the reconfiguration of golf course to accommodate recycling and transfer station, playing fields and other public facilities, while retaining the 18-hole course. It would be an alternative to be looked at in the evaluation process that the EIR had become.

AMENDMENT FAILED FOR LACK OF A SECOND

AMENDMENT: Council Member Kishimoto moved to direct staff to develop two feasible sites outside the Baylands as alternatives to evaluate.

Mayor Beecham clarified it was not for staff to develop, but that the contractor include in the Scope of Work that the EIR include two sites outside of the Baylands.

Council Member Kleinberg asked to clarify whether it was to examine all varieties of acreages.

Council Member Kishimoto said to evaluate only six-acre areas.

Mayor Beecham said the clarification was for whatever acreage size that could be found.

Council Member Morton said the RFP was clear that staff was being asked to look at alternatives. He saw no benefit to limiting it to two, and if staff wanted to come up with three or four alternatives, it seemed an unnecessary complication to the RFP. He asked his colleagues to vote for the original motion.

Council Member Cordell clarified Council Member Kishimoto's amendment referenced specifically alternative sites.

Council Member Kishimoto said the process would not get done unless Council made it very clear and placed great importance to evaluate two other alternatives outside of the Baylands.

City Attorney Gary Baum said in order to achieve the goal he advised that the EIR include reasonable alternative sites.

Council Member Kishimoto said she accepted the suggestion and to use the EIR as a feasible study.

Mayor Beecham asked if her amendment was to include "reasonable alternative sites outside the Baylands."

Council Member Mossar said Council needed to be realistic and understand there were compromises to be made and should not indicate to the public that there were funds available to buy land.

Council Member Ojakian asked if staff had comments regarding the BVA report.

Mr. Roberts said the BVA report was a study that evaluated the acreage. It proposed leaving the hills intact and not changing the major contours of the landfill, which would not allow composting and bin storage. In developing the 19-acre proposal, staff chose to advocate the full spectrum of solid-waste program needs and the reduced alternatives.

Council Member Ojakian said alternatives resulted from EIR projects but the proposal was different.

Mr. Emslie said it was different because the EIR preceded a policy decision on the project.

Council Member Ojakian supported a RFP but had concerns about having a 50- to 75-foot building in the Baylands. He was in agreement of looking at other options and alternatives.

Council Member Kleinberg supported the amendment and was in agreement of looking at all options and alternatives. She asked whether the amendment envisioned separating portions of processing sites.

Mr. Roberts said that was a possibility but some of the facilities would need to be co-located due to operational reasons.

Council Member Kleinberg said the City had small and useful pieces of properties.

Council Member Morton said he needed a better definition of what "reasonable alternatives" meant.

Mr. Baum said a better word would be "feasible" as defined by the California Environment Quality Act (CEQA).

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER that the EIR include feasible alternative sites outside of the Baylands.

Vice Mayor Burch asked if he were correct in understanding the SMaRT Station would not be replicated in Palo Alto.

Mr. Roberts said there were substantial differences between the SMaRT Station and what was envisioned for the future facility at the ESC. The SMaRT Station became operational in 1993 and did not represent the same concept that staff advocated. The future vision was a next generation technology with a lead certified building to be environment-friendly. The SMaRT Station processed 1,500 tons per day of solid-waste, and the future ESC would handle 350 tons per day or approximately one-quarter or one-fifth of activity the SMaRT station handled.

Vice Mayor Burch said resource reduction was critical. The City was doing everything it could to educate the citizens on resource reduction and how to cut back on waste. He supported the main motion.

Council Member Kleinberg asked what amount of parkland in the Baylands was the City giving up for the site.

Mr. Roberts said he did know.

Council Member Kleinberg addressed passive recreational use and asked whether it limited the EIR analysis since it had assumed having only passive recreational use.

Mr. Baum said it could limit the analysis.

Council Member Kleinberg asked whether the language needed to be changed in order to broaden the analysis.

Mr. Baum said the word "passive" could be dropped but was not sure of the direction of her question.

Council Member Kleinberg said there were several envisioned possibilities for recreational usage in the Baylands that could or could not be done because of landfill in terms of active recreation. She did not want the EIR to preclude those types of possible actions.

Mr. Baum suggested changing the word "passive" to "recreation."

Council Member Morton said the motion was being moved from usage of the 19 acres into a larger area of parkland. He would not accept the amendment.

Council Member Kleinberg asked whether a value analysis could be done on the undeveloped land.

Mr. Roberts asked whether she was asking for an evaluation of the land as if it were neither landfill nor land for the ESC use and to remain as parkland.

Council Member Kleinberg asked what the value of the parkland was in terms of community asset and if the alternative was to remain as parkland.

Mr. Roberts said a cost benefit analysis would be completed as part of evaluation and clarified the intent was to compare the value of the parkland use versus the value of the ESC use.

AMENDMENT: Council Member Kleinberg moved, seconded by Cordell, to remove the word "passive" in areas that speak to passive recreation in the analysis.

Council Member Morton said he understood the issue of passive and non-passive activities in the large area but could not understand how it would apply to the 19 acres.

Council Member Kleinberg asked what the value of the parkland would be if the 19 acres were used for recreational parkland and the ESC was not built.

Council Member Morton asked whether it was to determine the value if it were used for recreational parkland.

Council Member Kleinberg said she did not want to limit it to passive.

Council Member Morton asked Council Member Kleinberg if she was questioning the value of the 19 acres as parkland to allow active and passive recreation. He said he would need to turn to staff before he could accept the amendment.

Council Member Mossar said she would not accept the amendment.

Mr. Roberts said in terms of evaluating passive open space, staff could review the Los Altos Treatment Plant site appraisal and determine the value of adjacent open space. There would be a problem with the landfill portion since it was not suitable for active recreational use.

Council Member Kleinberg said it was not whether the 19 acres could be used for other recreation but by placing the ESC on the land would it preclude nearby active recreational usage. She felt the word "passive" limited the analysis.

Council Member Mossar said her non-acceptance of the amendment was because the motion introduced another complicated policy issue of playing fields in the Baylands. It was controversial, and she did not want the EIR to be the vehicle to address the issue.

AMENDMENT FAILED 2-6, Cordell, Kleinberg yes, Freeman absent.

AMENDMENT: Council Member Kleinberg moved to add the wording in the Scope of Services under Task 4, "The cost analyses shall include but not be limited to:" and then the descriptive bullet points so it was not a limitation but a exemplar of what could be done.

INCORPORATED INTO MOTION WITH THE CONSENT OF MAKER AND THE SECONDER to change the wording in the Attachment G Scope of Services under Task 4 in CMR:364:04, from "The cost benefit analyses shall include:" to "Should include but not be limited to:"

Council Member Kleinberg said the RFP for an EIR generated a proposal that would turn into the public's vote to undo parkland. She suggested having an educational sustainability center separate from the ESC. She addressed Mr. Clossen's "Zero Waste" approach and asked why have an ESC if there was zero waste. She would vote for the RFP if the EIR provided all the facts she was looking for and looked forward to seeing the factual analysis.

Council Member Kishimoto asked for clarification on the constraints placed on the BVA Report. The calculated figures were used to design the facility, to size refuse receiving storage, and to process and transfer operations. The report covered all scenarios, including the 100 percent processing on a 6.2-acre site. She asked why the report, that had been commissioned and paid for, was not taken more seriously into consideration. She expanded on the cost and issues incurred in acquiring and developing alternative outside sites. She said in December 2001, when the other half of the Los Altos Water Treatment Plant was acquired, the Refuse Reserve Fund had \$11.1 million. It was her understanding that the fund was reduced to \$2.2 million. The amendment she was going to suggest actually fed into Council Member Kleinberg's suggestion to add an alternative to evaluate aggressive source reduction strategies to reduce the need for recycling and refuse management land.

Council Member Morton said he would not accept Council Member
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Kishimoto's suggested amendment. What was being asked was to evaluate the possibilities in terms of land usage.

Mayor Beecham suggested asking staff to return with an assessment of how to reduce the waste and to incorporate the assessment into the needs for the ESC. He asked staff to clarify the recommendation that needed to be voted on.

Ms. Harrison said staff's recommendation was only to proceed with issuing an RFP for a consultant to perform an EIR for an ESC.

Mayor Beecham said there were two incorporations to the motion: 1) to include feasible alternative sites outside the Baylands; and 2) Under Task 4, that the cost benefit analyses be clarified to include but not be limited to the list.

MOTION PASSED 6-2, Cordell, Kishimoto no, Freeman absent.

MOTION: Council Member Kishimoto moved, seconded by Beecham, for staff to return to the Council with a strategic plan on waste reduction and management to be scheduled before approval of the Environmental Service Center (ESC) Environmental Impact Report (EIR).

Ms. Harrison asked if Council wanted to bring back the strategic plan at the time the EIR results came back.

Mayor Beecham said Council needed the time to work on the strategic plan.

Ms. Harrison said staff would bring it back during the processing of the EIR. Council Member Kleinberg asked if reducing landfill from house demolition was in the works.

Mr. Roberts said yes. Staff could report back in the interim on the current programs and activities and follow up with additional initiatives.

Council Member Kishimoto said Palo Alto prided itself on being leaders. Palo Alto was down to 55 percent diversion that was barely above the State's minimum. If Palo Alto could achieve a 15 percent renewable rate by 2015, 75 percent could be reached. She hoped aggressive goals could be set rather than adding small programs in increments. Recycling was extremely expensive in terms of economic, land and environmental resources. A great emphasis should be made on waste reduction.

MOTION PASSED 8-0, Freeman absent.

COUNCIL MATTERS

10. Colleagues Memo from Vice Mayor Burch and Council Members Ojakian and Freeman re Financial Information Regarding Award of Lease at 445 Bryant Street

Council Member Ojakian said Council Member Freeman, Vice Mayor Burch, and he asked Council to direct staff to come back with a financial report on the property located on 445 Bryant Street.

Neal Aronson, 150 Waverley Street, said fitness facilities drew its members from a five-mile radius. He advised Council to not base their decision on new revenue that would be brought to the community by the new facility. Overhead was a large part of the fitness balance sheet. For the City to offer a full profit business a subsidy in rent of an already competitive market place, other fitness businesses would suffer economically. Council established criteria for an RFP, which was executed by staff. If the Council did not like the results, their responsibility would be to reject all the applications and bids, revise the RFP and go back out to the market. To reject the process, the results and recommendations, and not to start over was not fair to the RFP, to the losers, and taxpayers who would bare the burden of a hasty decision. Anything less than market rate was a subsidy and on the back of other services provided.

Sabena Puri, 786 W. Greenwich Place, said a fair decision was not made on 445 Bryant Street. Her party came through with a higher bid than Form Fitness and was voided. She believed the information provided by the fitness center created confusion. The City informed her that maximization of lease income was the key criteria for evaluating the bids. She urged Council to look at the numbers because the conclusion was inaccurate. In cumulative cash flows for the City, the higher rent generated sales tax and capital investment results from Crimson Palate, Inc. DBA Saffron Club Restaurant (Saffron), which would generate 41 percent or \$1.2 million more than Form Fitness. Saffron's bid was 26 percent higher. Fitness centers catered to clients that lived within a 4- to 5- mile radius from the facility. Saffron was not limited to a small geographic area and would attract clients throughout the Bay Area. She urged Council to reconsider the decision that was made on July 19, 2004.

Neeraj Bharadwaj disagreed with the July 19 decision. He said it was flawed for three reasons: 1) Council's discussion ignored the time value of rental payments. Saffron's rent started at \$3 per square foot, which was 62 percent higher than Form Fitness; 2) Council did not factor in sales tax revenues from Saffron. Saffron would bring in \$40,000 per year and Form Fitness would not generate sales tax revenues; and 3) Council did not factor

benefits from tenant improvements to the City. As per the proposals, the City needed to pay \$295,000 for Saffron improvements versus \$74,000 for Form Fitness. Saffron's contribution was \$1 million from its own capital for tenant improvements for handicap access, sprinkler systems, and restrooms; three times what the City was providing. The City would benefit from the tenant improvements at the end of the lease. Saffron would generate \$1.2 million more than Form Fitness in net cash flow to the City than Form Fitness over the 10-year period. He encouraged Council to award the lease to Saffron.

Herb Borock, P.O. Box 632, said the restaurant expressed their concern of Council making a decision on criteria different than what they were asked to submit a proposal on. He felt the reason why the two conversations happened was because Council never approved the Request for Proposal (RFP). He said staff never gave Council a response that directly answered the policies and procedures and who had the authority to decide what was in the RFP. Council was prohibited from giving responders a fair hearing if Council was not the body that set the terms through the proposal. There was the question as to whether the public noticing requirement was followed of advertising the RFP, and the June 19 hearing, in an adjudicated newspaper.

Norman Carroll, Emerson & University, said there were 90 eating-places in the Downtown Area and five were non-operating restaurant sites not requiring subsidies from the City and could pay market rent. Form Fitness was an existing business growing in the same market it served and only required \$25,000 for improvements. If vacated, it would cost less to renovate for a new tenant and would cost the same if the new tenant were a restaurant.

Sassan Goldfsham, 203 Forest Avenue, supported Form Fitness. He said gyms put in bathrooms, showers, walls, and the equipment occupied the remaining space. Restaurants had all the valuable improvements if occupied by another restaurant; otherwise there was the expense of removing all of the equipment.

Council Member Morton said staff was directed to review the proposal. Two proposals were presented. Council had the ability to review the proposals and decide who should be awarded the lease and would be subsidized by the City. The decision was based on how the community would benefit. In reviewing the financial data, he was not convinced to add another restaurant in the area. Realtors expressed the need to increase office occupancy. Restaurants could not be filled if office buildings were unoccupied. Downtown sales tax was generated through full occupancy. Major space owners in the community were in favor of Form Fitness because that type of

business offered enhancement to long-term office tenants.

Council Member Mossar echoed Council Member Morton's comments and would not support another restaurant. She read from Mr. Bill Rueller's correspondence, which stated that in evaluating alternatives, risk and financial returns must be considered and because of the risk factor, he would not consider investing in interior improvements that were very costly and very specialized. Flexibility was the key. She wanted future Councils to have the flexibility and to not get driven into one restaurant tenant after another because of the capital investment required from the first restaurant.

MOTION: Council Member Ojakian moved, seconded by Burch, to direct staff to return in September, prior to Council action to award the lease with the following:

- a. A comparison of the overall economic benefits provided to the General Fund by both proposals over the 10-year term of the lease, including General Fund sales tax revenue generated;
- b. A comparison of the net cost to the General Fund for both proposals over the 10-year term of the lease. This would take into account the difference in the debt service over the ten-year life of the lease resulting from the difference in tenant improvements paid out of the bond proceeds;
- c. Information regarding an appropriate valuation methodology to compare the two proposals over their 10-year lease term (e.g. net present value, net future value, etc.)

Council Member Ojakian said it was important that Council and the public clearly know the financial situation.

Vice Mayor Burch said it was not Council's position to decide on a restaurant or a fitness club but to look at the financials and what would provide the greatest yield to the City on its investment.

Council Member Cordell said when the matter was voted on previously, there was strong disagreement. The Colleague's Memo implied the Council Members who voted for the fitness center did not fully understand what was being considered. They understood. She felt the only reason to bring a matter back to Council, once it was voted on, was if there was new and different information to be presented. Council's decision was based on dollars and the quality of the business. She was not supportive of reopening the matter.

Mayor Beecham would not support reopening the matter and agreed with Council Member Cordell.

MOTION FAILED 2-6, Burch, Ojakian yes, Freeman absent.

COUNCIL COMMENTS, QUESTIONS AND ANNOUNCEMENTS

Council Member Kleinberg noted she and other Council Members had received an anonymous letter with complaints concerning matters in certain neighborhoods. She confirmed there was a policy not to follow up on anonymous complaints.

Council Member Ojakian requested the meeting be adjourned in honor of Jimmy Larkin, born to Patrick and Jennifer Larkin, City of Palo Alto employees, on July 2, 2004.

Council Member Burch stated Officer William Baldwin died over the past weekend and noted his 23 years on the Police force. He requested staff return with a proclamation honoring him and to adjourn the meeting in his memory.

CLOSED SESSION

The meeting adjourned at 11:15 p.m. to a Closed Session.

11. Conference with City Attorney -- Existing Litigation
Subject: Service Employees' International Union, Local 715 (Miller)
v. City of Palo Alto, CSMCS Case No. Arb.-03-1899
Authority: Government Code section 54956.9(a)

The City Council met in Closed Session to discuss matters concerning existing litigation as described in Agenda Item No. 11.

Mayor Beecham announced the following is the City Council's report out of that closed session, per Government Code, Section 54957.1(a)(3)(A): City accepts the settlement offer signed by Kirk Miller. Mr. Miller has waived all existing and future claims in exchange for \$60,000.

FINAL ADJOURNMENT: The meeting adjourned at 11:30 p.m in honor of Jimmy Larkin, born to Patrick and Jennifer Larkin, City of Palo Alto employees, on July 2, 2004. Further, the meeting was adjourned in memory of Officer William Baldwin, a 23-year Palo Alto Police veteran, who died over the past weekend.

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.