

Special Meeting
June 6, 2005

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ADJOURNMENT: The meeting adjourned at 10:30 p.m. 22

The City Council of the City of Palo Alto met on this date in the Council Chambers at 6:00 p.m.

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

ABSENT: Kishimoto

CLOSED SESSION

1. CONFERENCE WITH LABOR NEGOTIATOR

Agency Negotiator: City Manager and his designees pursuant to the Merit Rules and Regulations (Frank Benest, Russ Carlsen)
Employee Organization: Local 715 Service Employees International Union AFI-CIO (SEIU)

Authority: Government Code Section 54957.6(a)

The City Council met in closed session to discuss matters regarding labor negotiations, as described in Agenda Item No. 1.

Mayor Burch announced there was no reportable action taken.

ADJOURNMENT: The meeting adjourned at 6:55 p.m.

The City Council of the City of Palo Alto met on this date in the Council Chambers at 7:04 p.m.

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

ABSENT: Kishimoto

SPECIAL ORDERS OF THE DAY

1. Selection of Candidates to Interview for Utilities Advisory Committee

MOTION: Council Member Morton moved, seconded by Freeman, to interview all the candidates for the Utilities Advisory Committee.

MOTION PASSED 8-0, Kishimoto absent.

2. Proclamation Commending the Storm Drains for Palo Alto Committee

Mayor Burch presented the Proclamation to Chairperson Larry Klein.

Chairperson Larry Klein said approximately \$20,000 was raised for the Storm Drain Campaign. A surplus of \$21.81 was presented to Mayor Burch to be donated to City for the use in Storm Drain improvements.

No action required.

ORAL COMMUNICATIONS

Bob Lenox, 1745 Webster Street, spoke regarding the Palo Alto Airport.

Gordon Reade, 2266 Bryant Street, spoke regarding the Palo Alto Airport.

Anna Longwell, 3583 Ross Road, spoke regarding the Palo Alto Airport.

Douglas E. Kelly M.D., 877 Lincoln, spoke regarding the Palo Alto Airport.

Herb Borock, P.O. Box 632, spoke regarding the Chief Planning Official.

Policewatch.org spoke regarding the recent Anarchist youth protest in Palo Alto.

Alice Mansell spoke regarding the Palo Alto Airport.

Leighton Read, 375 Coleridge Avenue, spoke regarding the Palo Alto Airport.

Neil Weintraut, Palo Alto Venture Partners, 151 Lytton Avenue, spoke regarding the Palo Alto Airport.

Norman Carroll, 425 High Street #120, spoke regarding Lytton Plaza.

Stephanie Munoz, 101 Alma, spoke regarding use of tax money.

Larry Shapiro, 1901 Embarcadero, spoke regarding the Palo Alto Airport.

Natasha Flaherty, 2106 Shirley Road, Belmont, spoke regarding the Palo Alto Airport.

Vice Mayor Kleinberg reviewed the current Airport situation noting the City and the County had differences regarding the future of the Airport. The County will deliver a master plan on the economic viability for both parties. The City Council would continue to educate the community on the status of the Airport.

City Manager Frank Benest said the City received a letter dated April 29, 2005, requesting the Airport be kept open past the lease period ending 2017. Application deadline was April 25, 2005. On May 5, 2005, he reported he could not meet the deadline. An offer was made to the County, which was declined. Plans to determine the Airport's future would be reviewed by Council.

MOTION: Council Member Mossar moved, seconded by Morton, to approve the minutes of April 25, May 2 and May 9, 2005, as submitted.

MOTION PASSED 8-0, Kishimoto absent.

Richard C. Placone, 601 Chimalus Drive, requested Item No. 3 be removed from the Consent Calendar for discussion.

CONSENT CALENDAR

MOTION: Council Member Freeman moved, seconded by Beecham, to remove Item No. 3 from the Consent Calendar to become Item No. 9A.

MOTION PASSED 8-0, Kishimoto absent

MOTION: Council Member Cordell moved, seconded by Kleinberg, to remove Item No. 6 from the Consent Calendar to become Item 9B.

MOTION PASSED 8-0, Kishimoto absent.

LEGISLATIVE

MOTION: Council Member Beecham moved, seconded by Morton, to approve Item Nos. 4, 5, 7, and 8 on the Consent Calendar.

4. Approval of a Budget Amendment Ordinance in the Amount of \$651,393 for Park Infrastructure Replacement; Approval of Award of Contract to Del Conte's Landscaping, Inc. in the Amount of \$651,393 for Park Infrastructure Replacement Including Irrigation and Maxicom Controller, Play Areas Renovation, Pathways and Amenities Replacement at Juana Briones Park (Capital Improvement Program Project PE-00107)

Ordinance 4872 entitled "Ordinance of the Council of the City of Palo Alto Amending the Budget for the Fiscal Year 2004-05 to Provide an Additional Appropriation of \$651,393 from the Infrastructure Reserve into Capital Improvement Program (CIP) Project Number PE-00107, Briones Park Improvements"

Ordinance 4873 entitled "Ordinance of the Council of the City of Palo Alto Amending the Budget for the Fiscal Year 2004-05 to Provide an Additional Appropriation of \$335,000 from the Infrastructure Reserve into Capital Improvement Program (CIP) Project Number PF-01005, Lucie Stern Community Center Improvements"

ADMINISTRATIVE

7. Merger Agreement Between Social Advocates for Youth (SAY) and Emergency Housing Consortium of Santa Clara County (EHC)

COUNCIL COMMITTEE RECOMMENDATION

8. From Finance Committee: Recommendation to Accept the Auditor's Office Quarterly Report.
9. Item removed at the request of staff.

MOTION PASSED 8-0, Kishimoto absent, for items 4, 5, 7 and 8.

- 9A. (Old Item No. 3) Approval of a Budget Amendment Ordinance for Settlement Agreement with Enron for a Total Amount of \$21.5 Million with \$18.06 Million of the Total Coming From the Electric Enterprise Supply Rate Stabilization Reserve and \$3.44 Million Coming From the Gas Enterprise Supply Rate Stabilization Reserve

Council Member Freeman asked what process was used to reach the settlement, the criteria used to determine how reserves could be spent, and who could authorize the expenditures. She questioned why the issue was being voted on when part of the funds had already been paid out.

Senior City Attorney Grant Kolling said Council had approved the settlement in late 2004. In March 2005, a formal vote was taken to approve the details of the settlement and the information released to the press on May 2, 2005. The Brown Act did not require any decision be reported unless the settlement required approval from either a third party or from the court. The Palo Alto Daily News requested disclosure of information on June 6, 2005. Council voted 7-0 on the item and the settlement was disclosed, as stated in the Press Release. The City Charter or Municipal Code did not require Council to approve the \$21.5 million payment, but a transfer of funds through a formal Budget Amendment Ordinance (BAO) was required.

Director of Utilities John Ulrich gave an overview of the spending and approval process of the expenditures. The funds were from the electric and the gas reserves and broken down into supply reserves and distribution reserves. The supply reserve was a mechanism to collect money not spent in supply-related areas and used for contingencies to modulate rate increases. The supply reserves could be used to pay for litigated settlement.

Council Member Freeman asked whether staff could authorize the expenditures or would it require Council's authorization.

Mr. Ulrich said the expenditures were included in the budget and brought forward as a recommendation.

Mr. Kolling clarified the City Attorney's Office recommended the City Council approve the \$21.5 million settlement.

Council Member Freeman questioned post payment and why the Budget Amendment Ordinance (BAO) was brought forward to the public.

Administrative Services Director Carl Yeats said the timing of the payment was based on authorization received from the City Attorney to negotiate the settlement. The BAO was necessary to amend the budget and to recognize the payment in 2004-2005 fiscal year. The settlement disclosure was in each year's financial statements since the original transaction with Enron was terminated. It was in the financial statement notes and recognized as an expense for the current fiscal year.

Council Member Beecham said Sonoma County and Santa Clara County were involved in the same situation. He asked the City Attorney if he knew of other agencies that had been in the same situation and had settled

Mr. Kolling said the only other agency he was aware of in negotiations with Enron was the Metropolitan Water District of Southern California. The cities of Roseville, Redding, and Riverside, and a municipal agency in Utah had settled.

Council Member Beecham said apparently 90 to 95 percent were in similar suits and had settled.

Mr. Kolling said he did not know the exact percentage but there were a large number of companies that negotiated power, gas, and financial contracts and other small entities relating to power transactions had settled.

Council Member Beecham asked whether their settlements had been made public.

Mr. Kolling said the information could probably be obtained from the court website, but it was difficult to ascertain what Enron had filed against the agencies and the amount of each settlement.

Council Member Beecham asked the City Attorney whether Palo Alto was the only agency who had disclosed its settlement and if the others have been kept confidential.

Mr. Kolling said he was not aware of any other settlements.

MOTION: Council Member Beecham moved, seconded by Mossar, to approve a Budget Amendment Ordinance (BAO) for the purpose of the settlement agreement between the City and Enron for a total amount of \$21.5 million, with \$18.06 million of the total coming from the Electric Utility Supply Rate Stabilization Reserve and \$3.44 million coming from the Gas Utility Supply Rate Stabilization Reserve

Ordinance 4874 entitled "Ordinance of the Council of the City of Palo Alto Amending the Budget for the Fiscal Year 2004-05 to Provide an Additional Appropriation of \$21,500,000 for the Settlement Agreement with the Enron Companies

Council Member Morton stated Enron had asked for a settlement of approximately \$65 million, which was a court mandated mediation, and Palo Alto settled for approximately 30 cents on the dollar.

Mr. Kolling said that was correct. Based on a principal claim of \$48 million, plus accrued interest since November 2001 over a four-year period at a 9 percent interest rate under the contract, the total is approximately \$65 million. The mediation order required the negotiated terms with Enron to be kept confidential.

Council Member Morton said because of the disclosure requirement Palo Alto accepted, the terms of the agreement could not be disclosed.

Mr. Kolling said that was correct. Council was advised that negotiated terms could not be discussed.

MOTION PASSED 8-0, Kishimoto absent.

9B. (Old Item No. 6) Approval of the City Manager Appointment of Russ Carlsen as Human Resources Director

Council Member Cordell said she was in full support of Russ Carlsen's appointment. She questioned the auto allowance of \$325 per month when the individual would be residing in Palo Alto and the long-term rental provision of \$500 per month of up to 3 years with an annual salary of \$144,310. She asked the records reflect she was fully in

favor of Mr. Carlsen's appointment but took exception to the two items mentioned in the contract.

Assistant City Manager Harrison said the same auto allowance was given to each department head. In terms of the housing subsidy, Mr. Carlsen's rental expense doubled when moving from Seattle into a studio apartment in Palo Alto.

Council Member Morton said it was impossible to bring people here and not provide a large housing supplement of low interest loans for acquisition of a home or additional monies. He was in favor of the appointment.

Council Member Freeman asked if a time limit could be placed on the temporary living expense provision.

Ms. Harrison said the Management Compensation Agreement allowed an indefinite extension. Mr. Carlsen had asked to limit it to one year beyond the 48-month limitation but did not ask for a home loan or any of the other available benefits stated in the contract. He chose to rent rather than to ask for assistance in purchasing a home.

Council Member Freeman recommended approval of Mr. Carlsen's appointment and to modify Section 5.5.4 to limit the temporary living expenses.

Vice Mayor Kleinberg questioned the authority to modify.

Mr. Benest clarified he followed the guidelines for benefits listed in the Council-approved Management Compensation Plan, negotiated the employment agreement, and made the appointment.

Council Member Freeman said Mr. Carlsen was an excellent addition to the staff but raised concern regarding the continuation of perquisites the City could not afford.

Council Member Beecham confirmed the continuous problem of having to attract qualified people when affordable housing was difficult to find in the Bay Area. He supported Mr. Carlsen's appointment.

MOTION: Council Member Morton moved, seconded by Beecham, to confirm the appointment of Russell Carlsen as City of Palo Alto Human Resources Director.

Council Member Mossar said the hiring practices had changed. Senior staff was being hired as "at will" employees, which meant they did not have any rights to their job and could be terminated at any time. It attracted top-notch people giving management the flexibility to run the organization in the best way possible. The City would not be burdened with long-term employees not carrying their weight. In exchange, besides having the financial incentive to compensate for the high-priced housing market, a good financial offer would need to be made to have an individual take the risk to relocate knowing they could be terminated and not have any rights to appeal.

MOTION PASSED 7-1, Freeman no, Kishimoto absent.

Council Member Freeman clarified she approved of Mr. Carlsen, but her "no" vote was based on the financial situation surrounding his appointment.

Council Member Beecham stated the action was the appointment of the individual.

Mr. Benest introduced Mr. Carlsen and said he had a Master's Degree in Management and Human Resources from the University of Redlands and a Bachelor's Degree from the University of Washington, extensive management experience both in the public and private sector, he was a former city manager and served as interim city manager and interim department head in a number of cities. Mr. Carlsen's appointment was based on his outstanding performance as the City's Interim Human Resources Director for the past several months.

Mr. Russ Carlsen thanked the Council and stated it was a privilege to be part of the City.

COUNCIL MATTERS

MOTION: Council Member Morton moved, seconded by Freeman, to move Item No. 11 forward ahead of Item No. 10 and to handle Item 11B prior to 11A.

MOTION PASSED 8-0, Kishimoto absent.

11. Report from CAO Committee:

- B) Approval of CAO Evaluation and Compensation Process for 2005-06

Council Member Mossar, Chairperson of Council Appointed Officer Committee (CAO), said Item 11B was for Council to approve the Evaluation and Compensation process for 2005-06. It was the second year for the process. The Committee met in an open session with the CAO's, the Human Resources Director and John Shannon facilitated. The 2004-05 process was updated making it compliant with the status of the process. Staff would work with Mr. Shannon to amend his contract and to complete the process by September 2005.

MOTION: Council Member Mossar moved, seconded by Morton, to approve the CAO Evaluation and Compensation Process for Fiscal Year 2005-2006 and negotiate a contract with John Shannon, Facilitator. Further, that the Relationship of Compensation and Performance, page 3, will be drafted in conformance with Item 11A.

Council Member Cordell referred to 11B on page 3, "annual general salary increase that takes into account the cost of living, labor market survey, and increases granted to other groups of City employees." She needed clarification on 11A where Council was asked to decide whether CAO's would receive the same control point increases as management and professional employees.

Council Mossar said the section was under discussion and language would need to conform to the situation when 11A was discussed.

Council Member Cordell clarified her concern was in section 11A and supported 11B.

Council Member Mossar clarified her motion by saying Relationship of Compensation and Performance, Segment Number 1, would be drafted in conformity with Council's decision on 11A.

MOTION PASSED 8-0, Kishimoto absent

RECESS: 8:35 p.m. to 8:45 p.m.

11. Report from CAO Committee:

A) Recommended Changes to Employment Agreement for City Manager Frank Benest and for CAO Compensation

Mary Carlstead, 149 Walter Hays, spoke regarding the "Golden Handshake" to CEOs in large corporations all over the country and the receipt of unconscionable perks. Palo Altans were hurting with bond issues, utility and fee increases, and certain groups of citizens

enduring financial difficulties. She sympathized with the City Manager's setbacks but felt the package being offered to the City Manager was inappropriate. Setting such precedence was dangerous since it would need to be done for every future city manager. The City would end up with multiple properties.

Herb Borock, P.O. Box 632, questioned where an "at place memo" came from regarding information on a housing loan, and a missing date on Item 11A, Attachment A. He spoke of the employment agreement being amended by a shared-equity agreement. He said under the City Charter, an employment agreement could only be amended through Council's vote, and the Brown Act required an agenda public session. It appeared the restated agreement was to legalize an action and was done illegally. He referenced the City paying part of the property tax with the implication it related to the Manager's retirement. He suggested linking the two: 1) the proposed \$10,000 is done as linked to a resignation by the end of the year; or 2) only to be paid after resignation.

MOTION: Council Member Mossar moved, seconded by Beecham, to approve recommended changes to the setting of CAO salaries as follows:

- a) All CAOs will receive the same Council-approved control point increases as the City's Management and Professional Employees. The Council may also grant individual incentive awards to each CAO based on performance.
- b) The Council retains the discretion to grant special labor market and/or internal equity adjustments to individual CAOs. When comparing compensation either against the labor market or internally this comparison will be done on a total compensation basis. (Total compensation is defined as the sum of all salary and benefits paid.)

Council Member Cordell said to support 1A meant giving automatic increases to CAOs. Increases should be earned, reviewed individually, and given through Council's vote.

MOTION PASSED 5-3 Cordell, Freeman, Kleinberg no, Kishimoto absent.

Council Member Mossar said she would work with the consultant to adjust the language in the Performance Evaluation criteria to conform to the decision. The second portion of 11A was two-fold. She said the

house in question was co-owned with Mr. Benest. When Mr. Benest was hired, he negotiated Council assistance in purchasing a home. The City owned 57 percent and shared property tax obligations with Mr. Benest. Both parties would reap proportionate share in the equity of the home. Mr. Benest resides in the home at Council's discretion. Palo Alto was one of the first communities in the State of California to deal with the issue of high property values and attracting highly talented people into senior management positions.

MOTION: Council Member Mossar, seconded by Beecham, to approve the City Manager Agreement: Ability to Stay in his Home After Retirement with conditions as follows:

- a) City Manager may stay in his home after retirement until December 31, 2017 or until his children have graduated or left Palo Alto public schools whichever occurs first.
- b) The existing provisions regarding sale of home (Section 6.9, Employment Agreement) remain in effect if termination occurs prior to retirement.

To approve the City Manager: Property Tax Payment as follows:

The City Manager may elect to have the City pay its proportionate share of property taxes, determined based upon the City's equity share.

- 1) In exchange for electing to have the City's pay its proportionate share of the property tax, the City Manager's base salary will be reduced by \$10,000. This will have the impact of making the tax payment approximately cost neutral to the City.
- 2) The City's share of property tax would be added to the Total Compensation calculation for the City Manager.

Council Member Morton gave an overview of the benefits in co-investing with the City Manager. He said if the \$900,000 the City invested as co-owner in the property were left in the investment portfolio, it would have earned about \$35,000 annually. The City's investment in the property accelerated beyond the 4 percent and had no loss in terms in resources by making it possible to get one of the premier managers in the State. It was less expensive for Mr. Benest to have the City pay the legally obligated share of the property taxes. Currently, the City was not paying any property tax. It was not a loss

to the City; it was exchanging dollars. He urged his colleagues to support the provision.

Vice Mayor Kleinberg did not support the amendment for the following economic and financial reasons: 1) it created a precedence of making the same offer to other CAOs; 2) bad timing when employees' livelihoods were at stake; 3) projected a mixed message to public; and 4) leveraged investments for future executives.

Council Member Cordell echoed Vice Mayor Kleinberg's concerns and agreed with Ms. Carlstead's comments. She said she was supportive of the City Manager's family but it would not be in the best interest of the City to adopt the recommendation.

Mayor Burch asked what percentage the loan represented of the total investment portfolio.

Council Member Morton said it was less than a third of 1 percent.

Council Member Freeman echoed Vice Mayor Kleinberg and Council Member Cordell's comments. She asked what the ramifications were on total compensations based on City paying the taxes.

Council Member Mossar said it was included in total compensation and defined as the sum total of salary plus all benefits.

Council Member Freeman asked how the City Manager benefited by the \$10,000 in taxes being paid by the City and deducted from his salary.

Council Member Morton said it did not impact the City budget.

Council Member Freeman said she had several questions that were left unanswered and would not support the motion.

Council Member Beecham said in terms of the City's financial situation and budget issues, the recommendations were cost-neutral and calculated to have no impact on the budget.

Council Member Ojakian said by the City paying the \$10,000 in taxes and the City Manager's salary reduced by the same amount, the City would save money in the long-term. The base-pay would be less in subsequent years and the increases would be against smaller amounts.

Council Member Mossar said that was correct and the benefit liability would be reduced.

Council Member Ojakian raised concern in providing the City Manager with a home after he terminated from the City and living in the home rent-free.

Council Member Mossar spoke regarding the process and contract negotiations. The recommendations were contract negotiations between the CAO Committee and Mr. Benest through a negotiator. If the terms were not acceptable, Council could request the CAO Committee to renegotiate the terms with Mr. Benest.

Mr. Benest said upon retirement, he would continue to pay the mortgage to the City and the property would continue to appreciate in value for the City.

Council Member Ojakian asked if the full mortgage was paid by Mr. Benest.

Mr. Benest said he paid the full mortgage to the City. He said he and the City were equity-partners on the house and had an appreciating value for both partners. There was a loan where he paid the City portfolio rate plus a quarter percent. He would continue to pay the full mortgage after retirement and the City would continue to receive the mortgage payment and the house would continue as an appreciating investment for the City.

Council Morton commented on the issue of retention. He said the CAO Committee negotiated a package that would guarantee a top-rate city manager for as long as he chooses to work. He clarified the earning power of the City equity share would earn 4 percent per year by placing the \$900,000 back into the investment portfolio and the appreciation would meet the investment goal.

Council Member Ojakian said he had no problems with the investment portion. His issue was in the perception of having a former employee living in a City-owned property.

Council Member Morton said the trade-off was the investment continued to earn its appreciation.

Council Member Mossar added the CAO Committee wanted to ensure that Mr. Benest remained with the City.

MOTION PASSED 5-3 Cordell, Freeman, Kleinberg no, Kishimoto absent.

REPORTS OF OFFICIALS

10. Response to Grand Jury's Final Report, Transfer of Dedicated Parkland Within the City of Palo Alto

City Attorney Gary Baum said the Civil Grand Jury Report contained three findings. The policies and procedures were reviewed regarding Dedicated Parkland and the interaction with the Palo Alto Unified School District (PAUSD). The recommendations were: 1) to adopt policies to govern interactions with other public entities that use City parks; 2) to adhere to the City Charter as it relates to the transfer disposal of abandonment or discontinuance City parkland; and 3) any reconstruction, development adjacent to the City parkland, prior to being handled, should have a certified survey. The City agreed to all three recommendations. The findings were: 1) there was an ad hoc approach to the agreements with the PAUSD and others using the City parkland; 2) the City's approach on Rinconada Parkland transfer; and 3) the PAUSD had located and constructed buildings on dedicated parklands. The City was required under the Penal Code to respond to the Grand Jury and the presiding judge. A recommended response was prepared to agree in adopting all three recommendations and finding them to be prudent. The City was in disagreement with finding No. 2 regarding the parkland swap, and Council could make adjustments where they deemed fit.

Betsy Allyn, Willmar Drive in Greenacres II, said the joint use agreement should explicitly specify the terms and use provision and the general public's access use. The City should abide by its Charter and allow citizens access to their park, as dictated by the Park Dedication Ordinance (PDO). She said the PAUSD had exclusive use on signs keeping citizens out of the park and had destroyed two tennis courts on land they did not own. The PDO stated the City needed to go to the public prior to making changes to the parks.

Tom Jordan, 474 Churchill Avenue, spoke regarding his disagreement with Recommendation #1 and the finding in Recommendation #2. He said the City's relationship with Terman School and Terman Park was an error and needed to be corrected. The City agreed to do better in the future. Recommendation #2 spoke of dedicated parkland exchanges occurring without going to the voters. He asked that a report be redrafted by the City Attorney and returned to Council with an appropriate response.

Enid Pearson said she was involved in drafting the Park Dedication Ordinance (PDO) forty years ago. She said it was depressing to know that staff had the ability to interpret the intentions of the authors and the voters of the PDO. She asked that the changes be placed before the voters.

Emily Renzel, 1056 Forest, concurred with the three prior speakers. She was concerned about moving forward instead of going backwards. The language in the Grand Jury Report quoted the Charter, "in an election and any related procedures, presumably election procedures, under Article VIII shall conform to the provisions set forth in general law as it existed January 1, 1965." She said elections and procedures were extracted, not exchanges and other provisions of that law. She urged the Council to go forward and respect the Charter Amendment.

Robert Moss, 4010 Orme Street, said the Charter clearly stated the park use was open to all people at all times. Neither Council nor PAUSD could restrict the use of the Terman Park during school hours. He was in disagreement with the draft response to the Grand Jury.

Herb Borock, P.O. Box 632, spoke of his disagreement with the draft response to the Santa Clara County Grand Jury. He said the response should be consistent and should state disagreement with recommendation No. 2. Staff should redraft the response.

Richard Placone spoke on the policy and plan for allowing residents to use the Terman tennis courts. He said it was not working unless it was for the total convenience of who was at the front desk at Terman School.

Council Member Morton read an excerpt from the Grand Jury Report regarding public access to portions of Terman Park not being used by Terman Middle School. He said although the public was in disagreement of how free the access was, in terms of whether or not the right of the public to access of the parklands, the Grand Jury had not concluded that the right had been denied.

Mr. Baum said it was part of the narrative, but the Grand Jury appears to have concluded that as long as park access to Terman Park was included, it did not constitute a violation of Article VIII of the Charter.

Council Member Morton said the City's agreement ensured the right of the public to access, even though the implementation may be imperfect. He accepted the draft response that the City's Charter did allow contiguous trades. He emphasized supporting and accepting the

response. Surveys should have occurred in the past and should definitely occur in the future. The City should never be in the same position again in having to rectify an encroachment.

MOTION: Council Member Morton moved, seconded by Ojakian, to approve the proposed response to the Grand Jury's Final Report regarding Transfer of Dedicated Parkland with the City of Palo Alto.

Council Member Ojakian said the Grand Jury Report indicated several City departments had been interviewed but not the City Attorney's Office and asked if it was correct.

Mr. Baum said it was and he was not aware that various departments had been contacted.

Council Member Ojakian raised concern regarding a disagreement between the former City Attorney and the current City Attorney as outlined on page 5 of the Report. He said he had e-mailed Mr. Calonne regarding his dealings with Arastadero Preserve in early 1990's. Mr. Calonne reminded him of a memo the Grand Jury did not have, which was released to Council in June 2003. It indicated the State law attached as an appendix to the Charter since 1965 authorizing the City Council without an election to exchange minor portions of the parkland for privately held contiguous land of equal or greater area or value. The procedural features were intended to be incorporated into the Chapter and found no legislative history to the contrary. He felt Mr. Calonne's statements supported the current City Attorney's opinion and although the Grand Jury did not have the document, he indicated there could be a land swap. He supported Mr. Baum's comments on finding No. 2 from June 2003. He asked the memo be placed in the records.

Council Member Freeman asked what happened when there is disagreement in a Grand Jury finding.

Mr. Baum said the Grand Jury was a respected entity, looked to for guidance and was highly influential. Their findings were factual and could be accepted or rejected. They examined what occurred, provided the guidance on what needed to be done, and the City had accepted all three recommendations but was in disagreement with one of the findings. The City was not penalized for rejecting a finding but additional action could be taken if a recommendation was rejected.

Council Member Freeman asked whether the agreements and recommendations required reconsideration of the events leading to the investigation.

Mr. Baum said that was not his reading in the Report.

Council Member Freeman asked the City Attorney if his interpretation of the Report was from this point on any occurring situations the City would follow the said recommendations.

Mr. Baum clarified the recommendations were to create and enforce a policy on all future agreements and the agreements to follow the Charter for any transfer, disposal or abandonment, and a certified site survey be conducted on construction, reconstruction, or development adjacent to the parks to prevent any future encroachments.

Council Member Freeman asked whether land-swapping was explicitly stated in the City's Charter.

Mr. Baum said as stated in the Report and in Mr. Calonne's memo of June 2003, the opinion was land-swapping was allowed for minor portions. The City has agreed to follow the Charter and all recommendations as stated in the Report.

Council Member Freeman said it appeared the public was concerned that there were actions taken regarding the use of public parkland and believed it required a vote of the public. It was the basis for taking the issue to the Grand Jury. The recommendations did not explicitly state if a situation occurred again there would be a vote of the public. Was she correct in her understanding.

Mr. Baum said in the event the same situation occurred, it would be analyzed based on the facts and the City would follow the Charter.

Council Member Freeman asked for an amendment that the City Attorney rework the verbiage in the response to include the voting portion of the Charter, as a potential solution.

Council Member Ojakian said he would not accept Council Member Freeman's amendment based on Council Member Morton's original statement to involve surveys in future situations.

Council Member Cordell said she was not made aware of Mr. Calonne's memo and apparently it had not been made known to the Grand Jury. She asked the memo be presented to the Grand Jury to see if it would

have any impact on finding No.2. The Grand Jury had relied on the previous City Attorney's opinion and weighed heavily on their response. Her interpretation of the Charter was even minor exchange should be approved by the electorate.

Mr. Baum said he could include Mr. Ariel Calonne's 2003 memo in response.

INCORPORATED INTO MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to include as an attachment to the response letter the memo from previous City Attorney Ariel Calonne on June 19, 2003.

Council Member Ojakian apologized for his oversight for not passing the memo on to his colleagues.

Council Member Cordell read the following excerpt from Mr. Calonne's memo: "I believed there was no legislative history to the contrary that is that exchanges might not be okay, but believe that it was important for the Council to indicate its interpretation of the Charter by enacting the implementing Ordinance before moving ahead on any park exchange." She questioned whether an Ordinance was implemented.

Mr. Ojakian said an Ordinance was enacted to make the exchange.

Council Member Cordell said from what she heard in terms of legislative intent, she urged her Colleagues to not approve the disagreement with the finding.

Vice Mayor Kleinberg encouraged her colleagues to not quickly dismiss the Grand Jury's finding as to how the City respected the Charter and to not repeat the action in the future.

MOTION PASSED 5-3, Cordell, Freeman, Kleinberg no, Kishimoto absent.

MOTION: Council Member Ojakian moved, seconded by Morton, to direct staff to bring an informational item regarding minor parkland swaps to Council so it can be decided whether it should be agendized.

MOTION PASSED 7-1, Cordell no, Kishimoto absent.

COUNCIL COMMENTS, QUESTIONS, AND ANNOUNCEMENTS

Council Member Ojakian noted the work of Council Member Beecham on Utilities and stated the City was fortunate to have him serve.

CLOSED SESSION

Mayor Burch announced there would be no closed session held that evening.

ADJOURNMENT: The meeting adjourned at 10:30 p.m.

ATTEST:

APPROVED:

City Clerk

Mayor

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