

Special Meeting  
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The City Council of the City of Palo Alto met on this date in the Council Chambers at 6:02 p.m.

PRESENT: Beecham, Burch, Cordell, Kishimoto, Kleinberg (arrived at 6:10 p.m.), Morton, Mossar, Ojakian

ABSENT: Freeman

ORAL COMMUNICATIONS

None.

CLOSED SESSION

1. CONFERENCE WITH LABOR NEGOTIATOR  
Agency Negotiator: City Manager and his designees pursuant to the Merit Rules and Regulations (Emily Harrison, Russ Carlsen, Carl Yeats, Richard James, Paula Simpson)  
Employee Organization: Local 715 Service Employees International Union AFL-CIO (SEIU) -- SEIU Hourly Unit  
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 7:00 p.m.

The City Council of the City of Palo Alto met on this date in the Council Chambers at 7:03 p.m.

PRESENT: Beecham, Burch, Cordell, Freeman (arrived at 7:50 p.m.), Kishimoto, Kleinberg, Morton, Mossar, Ojakian

SPECIAL ORDERS OF THE DAY

1. Proclamations Welcoming Exchange Students from Oaxaca, Albi and Enschede

**No action required.**

2. Proclamation Recognizing James Kim, Owner of the Cook Book Restaurant at Town and Country Shopping Center

**No action required.**

ORAL COMMUNICATIONS

Roger Smith, 270 Tennyson Avenue, spoke regarding the community.

Danielle Martell spoke regarding public concerns.

Judith Wasserman, 751 Southampton Drive, spoke regarding the jobs-housing imbalance.

Joni Reid, 868 Embarcadero Road, spoke regarding Neighbors Abroad.

Norman Carroll, 425 High Street, #120, spoke regarding the problem of the unhoused population on University Avenue.

Arthur Keller, 3881 Corina Way, spoke regarding jobs and housing.

Robert Moss, 4010 Orme Street, spoke regarding police performance.

Aram James spoke regarding police oversight.

CONSENT CALENDAR

Council Member Mossar stated she would not participate in Item No. 9 due to a conflict of interest because of family holdings in SBC and Comcast.

Council Member Morton stated he would not participate in Item No. 9 due to a conflict of interest because of family holdings in SBC and Comcast and, also, his office was within the boundaries of Utility District 39.

Council Member Ojakian stated he would not participate in Item No. 9 due to a conflict of interest because of family holdings in SBC and Comcast.

**MOTION:** Council Member Beecham moved, seconded by Kishimoto, to approve Item Nos. 3-9 on the Consent Calendar.

#### LEGISLATIVE

3. Resolution 8552 entitled "Resolution of the Council of the City of Palo Alto Approving the Long-Term Power Purchase Agreement (Landfill Gas Power) with Ameresco Keller Canyon L.L.C. for the Purchase of Electricity Generated by Landfill Gas Electric Generating Facilities for a Term of 20 Years and Contract Amount of \$22.8 Million"
4. Ordinance 1<sup>st</sup> Reading entitled "Ordinance of the Council of the City of Palo Alto Amending Sections 16.11.020, 16.11.031, 16.11.040 and 16.11.050 of Chapter 16.11 (Stormwater Pollution Prevention) of the Palo Alto Municipal Code to Implement New Regional Water Quality Control Board Permit Requirements"
5. Resolution 8553 entitled "Resolution of the Council of the City of Palo Alto Authorizing the Submittal of an Application in the Amount of \$150,000 to the Bay Area Air Quality Management District for Funds for Costs Associated with Purchase and Installation of Compressed Natural Gas Fuel Systems on Two New Street Sweepers and Authorizing Execution of the Funding Agreement"

#### ADMINISTRATIVE

6. Agreement with the City of Emeryville for Information Technology Services
7. Approval of a Contract with All City Management Services, Inc. in the Amount Not to Exceed \$296,000 for Adult Crossing Guard Services and Authorization for Additional but Unforeseen Services Not to Exceed \$29,600 and Contract Extensions for Two Additional Years
8. Approval of a Contract with Valley Slurry Seal Company in the Amount of \$268,607 for the 2005 Street Maintenance Program, Phase 3 - Capital Improvement Program Project PE-86070
9. Approval of a Utilities Fund Contract with Can-Am Communication, Inc. in the Amount of \$1,106,204 for Installation of the Utility Trench and

Substructure, and Approval of the Specific Agreement for Joint Participation Installation of Underground Facilities System with SBC California and Comcast Corporation of California IX, Inc. for Underground Utility District No. 39

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

**MOTION PASSED** 5-0 for Item No. 9, Freeman absent, Morton, Mossar, Ojakian not participating.

#### REPORTS OF OFFICIALS

10. Response to Council Direction to Assess Feasibility of a Public-Private Partnership to Construct a Police Building on a Site Adjacent to the Civic Center; and Recommendation to Issue a Request for Statement of Interest to Build a "Turn-Key" Facility

Assistant City Manager Emily Harrison said there were cost advantages to the proposed "turn-key" proposal for the police building.

Director of Public Works Glenn Roberts said the Council had directed staff to evaluate a proposal from a developer. With a "turn-key" proposal, the developer would undertake the design and construction activities and turn a completed facility over to the City. The developer estimated the cost could be \$40 to \$45 million dollars, saving \$5 to \$10 million dollars over prior estimates. Staff requested to be directed to proceed and issue Requests for Statements of Interest (SOI) from private parties.

Kevin Ball, 365 Forest Ave. #2B, said there was concern in the community about losing the residential nature of Gilman Street with the addition of a police building.

Phillip Kirkeley suggested the City assess the properties they owned on which to build a police building.

Vice Mayor Kleinberg said there were concerns about a 24-hour access building in a residential area. She inquired what steps would involve an Environmental Impact Review (EIR) and what options could be added to the criteria.

Mr. Roberts said an EIR would include a detailed analysis of noise and traffic impacts, public meetings, draft reports for comment and review by the public, and an evaluation process to discuss the impacts.

City Attorney Gary Baum said an EIR would be required; a section of the EIR would address the impact upon the neighbors.

Vice Mayor Kleinberg asked about the alternative of renovating and expanding the City Hall site and questioned the cost to lease additional space.

Mr. Roberts said the \$3.5 million was the total cost capitalized over a 50-year life span.

**MOTION:** Vice Mayor Kleinberg moved, seconded by Beecham, to approve the staff recommendation to direct staff to issue a Request for Statement of Interest (SOI) for a "turn-key" police building project and return with a comparison of the "turn-key" proposal to the previously approved plan to renovate and expand the existing police building. Responses to a SOI would then be evaluated based on the following criteria:

1. Developer has control or ability to deliver fee-title to land, preferably in a downtown location
2. The proposed site would need to accommodate a police building of up to 60,000 square feet
3. The developer has the ability to construct a building of up to 60,000 square feet with associated parking
4. Developer or developer's team experience and qualifications building comparably-sized projects with "essential" and "green" building elements
5. Cost of the proposed project
6. Proposed construction financing terms and willingness to commit to a guaranteed maximum price
7. Developer's control of needed land for the project and its suitability for a police building
8. Timeline for proposed construction and police occupancy

Furthermore, to include a change in criteria that proposals will be accepted from developers for use of private land, a combination of public and private land, or suitable public land.

Vice Mayor Kleinberg said the project should go forward to observe what types of options materialized.

Council Member Beecham said he believed a SOI was a good way to proceed.

Council Member Morton said he had two homeowner's associations that were within 500 feet of the proposed project and was concerned if he could participate.

Mr. Baum said because the matter was conceptual, Council Member Morton had the legal right to participate.

Council Member Mossar asked for clarification of the cost savings information when the item returned to Council.

Council Member Cordell asked whether it was the first “turn-key” project the City had undertaken and noted a private developer had initiated the project.

Ms. Harrison said yes and it was recognized the private developer had access to significant cost savings.

Council Member Cordell asked whether the City Auditor had approved the process.

City Auditor Sharon Erickson said opening a fair and transparent process would generate the best project at the best price.

Council Member Freeman said some of the criteria in the staff report (CMR:349:05) narrowed the opportunity for participation. She suggested amending the motion to remove Bullet No. 1 under Criteria.

Vice Mayor Kleinberg requested clarification.

Ms. Harrison said the wording in the staff report (CMR:349:05) should be changed to add “combination of public and private land was acceptable.”

**SUBSTITUTE MOTION:** Council Member Freeman moved to accept the staff recommendation but remove Bullet Nos. 1 and 7 under the criteria.

Vice Mayor Kleinberg asked the reason for the criteria in the staff’s recommendation.

Ms. Harrison said a “turn-key” proposal ensured there was land with the building included. Companies would be required, by criteria, to identify a reasonable site on which to build.

**SUBSTITUTE MOTION FAILED FOR LACK OF A SECOND**

Council Member Kishimoto asked whether the \$45 million estimate included the purchase of land and how much of the cost was for land.

Mr. Roberts confirmed it included the purchase of land, which was estimated at \$3 million.

Council Member Kishimoto said resources would be diverted from other new capital projects if the project were debt financed. The staff report (CMR:349:05) indicated \$3 million would be needed to finance the debt.

Mr. Roberts confirmed there was an unfunded gap.

Council Member Kishimoto said the impending projects should be prioritized.

Council Member Morton said he was concerned about the impact on the General Fund.

Ms. Harrison said a property tax increase would pay the general obligation bond.

Council Member Morton said the police building needed to be upgraded, but he was concerned about the cost.

Council Member Cordell said a building was needed that enabled the police to operate properly.

Vice Mayor Kleinberg said research was being conducted to determine whether there were developers who could provide the City with a better arrangement.

Council Member Freeman asked whether removing the necessity of owning property Downtown would open the process.

Ms. Erickson said staff had a preference of a Downtown location. The developer would have control of a parcel; a site would be part of the project.

Mr. Baum said it was requested that the site control requirement be removed.

Council Member Freeman noted that requirement had not been changed.

Vice Mayor Kleinberg said a combination of public and private land was allowed.

Council Member Freeman said if a developer, or a construction company with a developer, found land they would have the ability to compete with someone who could to deliver fee title to land.

Ms. Harrison said the criteria required an essential services facility to be placed in a suitable area; the land could be private, a combination of public and private land, or it could be the identification of a publicly appropriate police building.

Council Member Beecham said a funding plan had been received from staff.

**MOTION PASSED** 8-1, Kishimoto no.

COUNCIL MATTERS

10A. Colleagues Memo from Mayor Burch, Vice Mayor Kleinberg and Council Member Beecham Regarding Redevelopment of Municipal Services Center for Auto Dealerships

Vice Mayor Kleinberg said the message to the public should be clear that the City cared about maintaining the sales tax from auto dealerships.

**MOTION:** Vice Mayor Kleinberg moved, seconded by Beecham, to direct staff to evaluate the feasibility of, and strategies for, relocating current City operations from the Municipal Services Center (MSC) on East Bayshore Road in order to redevelop that property as a site for automobile dealerships. Further, to include asking staff to give this feasibility study a high priority in its work plan over the next several months in order to report back to the Council on its preliminary findings by year's end.

Emily Renzel, 1056 Forest Street, said the MSC property was not an ideal site for an auto dealership.

Heather Rosmarin, 1982 West Bayshore Road, #137, East Palo Alto, requested City staff to have sensitivity to its East Palo Alto neighbors and to ensure visuals were easily accessible online.

Arthur Keller, 3881 Corina Way, suggested alternative sites for auto dealerships.

Council Member Mossar said she felt the mix of the site and the proposed use was a problem; the area was used for recreational purposes.

Council Member Morton said he believed the issue would need a vote of the community to approve any action on the part of the Council.

Vice Mayor Kleinberg asked whether the site was dedicated parkland.

Director of Planning and Community Environment Steve Emslie said the MSC site was not dedicated parkland.

Council Member Morton noted there were blocks of vacant buildings on West Bayshore Road.

Council Member Cordell asked whether other possibilities were being considered to attract auto dealerships.

Mayor Burch said the April 7, 2005 Colleagues Memo asked the Council to review other possibilities.

Mr. Emslie said staff was reviewing the problem of relocating the auto dealerships.

Council Member Cordell asked how many specific kinds of identified sites were being considered.

Mr. Emslie said there were a few additional sites being considered.

Council Member Cordell asked that the MSC map attachment be placed on the web.

Council Member Kishimoto asked whether there were any obligations under the Animal Shelter agreements.

Mr. Roberts said there were obligations to the partner cities, which included expanding the Animal Shelter.

Council Member Kishimoto asked to what location would the MSC and the Animal Shelter be moved.

Mr. Roberts said he did not know.

Council Member Kishimoto said she was concerned about losing public facility land. She asked whether the maker would consider an amendment to state there should not be a net loss of public facility.

Mayor Burch said the maker indicated she would not consider the amendment to the motion.

Council Member Freeman said she believed there were other ways of generating tax without building auto malls.

Mayor Burch said the auto dealerships had indicated the site would be ideal. Negative reactions were premature until more information was received.

Council Member Mossar stated she had trouble envisioning an auto mall that is compatible with the Baylands Master Plan, but she agreed it was an important proposal to study in an effort to keep auto dealerships in Palo Alto.

Vice Mayor Kleinberg said there was no anticipation that any of the City's values would be diminished.

Mr. Emslie said the site was difficult and there was no easy solution to the problem, but it met many of the desirable qualities for the auto dealers.

Council Member Mossar asked about signage for the auto dealers.

Mr. Emslie said the site was considered freeway frontage, which diminished the need for more remote or higher signs to provide visibility. The architecture itself could become the signage.

Council Member Mossar expressed support for the motion and said it was worth studying the site for auto dealers.

Mayor Burch said the City Manager did not want staff to pursue the matter if the Council would not consider an auto dealership for the site.

Council Member Morton said he did not believe the community would accept an auto dealership in the Baylands. He asked staff the cost to purchase 17 acres of land.

Mr. Emslie said land would cost approximately \$3.2 million per acre.

Council Member Morton said the cost would be approximately \$51 million to replace the land.

Vice Mayor Kleinberg said it was requested that the MSC location be reviewed first. The property would be redeveloped, not sold.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** that the motion will not involve any transfer of title of land.

Council Member Kishimoto asked whether the City had to charge a market rate for the property.

City Attorney Gary Baum said new laws prevented auto dealers from outside the City's market, a 40-mile range determined by the Highway 101 corridor, to be brought in or subsidized. It was possible there were limits on leasing below the market rate. The land could not be sold below market.

Council Member Kishimoto said the City should try to keep the auto dealerships.

Council Member Freeman said the MSC property was surrounded by open space and an auto dealership would be intrusive.

Council Member Ojakian said the auto dealers indicated they did not have enough space. It was important to be proactive to keep the dealerships in Palo Alto.

**MOTION PASSED** 5-4 Cordell, Freeman, Kishimoto, Morton no.

10B. Colleagues Memo from Mayor Burch, Council Member Morton and Council Member Ojakian Regarding Carports and R1 Gross Floor Area

Council Member Ojakian said the exclusion of carports from the calculation of gross floor area needed reconsideration.

Nancy Alexander, 435 Santa Rita Avenue, said there should be a moratorium on third floor additions.

Chris Draper, Government Affairs Coordinator for the Silicon Valley Association of Realtors, said there were differences between garages and carports and their uses.

Robert Moss, 4010 Orme Street, said carports, garages, and family rooms should be included in Floor Area Ratio (FAR).

Council Member Ojakian asked whether the staff presentation to the P&TC on the R1 zone was different from what the P&TC voted on.

Director of Planning and Community Environment Steve Emslie said the staff proposed that no changes be made to the R1 zone.

Mayor Burch asked whether third floor additions could be built if they met the height limit.

Mr. Emslie said the City regulated height of construction in R1 zones to a maximum height of 30 feet for most roofs.

Mayor Burch asked whether any third floor plans had been denied.

Mr. Emslie said attics, areas above second floors, and third floor equivalents, were addressed in the Code and were counted towards FAR if they were over a certain height.

Council Member Ojakian said no changes were made to the height limit when the R1 zone was heard in April. He asked whether there had been height limit exceptions made to homes in the flood zone.

Mr. Emslie said yes. A height limit change was made five years previously when the Internal Review (IR) standards were adopted for homes in the flood zone.

Council Member Ojakian asked if the recommendations in the Colleagues Memo were adopted, when would the item be heard by the P&TC.

Mr. Emslie said there was a tentative date reserved for the hearing on August 31, 2005.

**MOTION:** Council Member Ojakian moved, seconded by Morton, to direct the Planning and Transportation Commission to reconsider the exclusion of

carports that are completely open on three or more sides from the calculation of the gross floor area.

Council Member Morton said the community wanted the quality of their neighborhoods preserved and had been encouraged to maintain a one-story residence.

Mr. Emslie said the Code contained allowances to encourage one-story residences.

Council Member Morton asked whether a moratorium should be placed on the transfer of square footage to third floor additions.

Mr. Emslie believed staff could get the issue scheduled for the P&TC and returned to the Council expeditiously.

Council Member Kishimoto said the item would not prevent third floor additions.

Mr. Emslie said the ability of a resident to count a garage in the FAR and then convert it into a carport, would be removed.

Council Member Kishimoto said third floor additions would continue to be allowed with the IR restrictions and process. She asked if procedurally was it necessary to return to the P&TC.

Mr. Emslie said a new amendment to the Code had been initiated. The Council would need to take action to initiate the process and then it would go to the P&TC.

Council Member Freeman said a moratorium could be avoided by obtaining a date certain for the item to return.

Vice Mayor Kleinberg questioned if the issue was being sent to the P&TC with a request to reverse their vote or were they being asked to reconsider. The process should be open and the Architectural Review Board (ARB) judgment and input should be included.

Council Member Ojakian said third floor additions were not part of the motion. The P&TC was being asked to reconsider their vote.

Vice Mayor Kleinberg asked whether the P&TC would receive a copy of the Colleagues Memo if it were passed.

Council Member Morton said for background information, there was a perception in the community that a garage could be dismantled and the space transferred to a third floor addition.

Council Member Freeman asked whether there was a date certain when the item would return to Council.

Assistant City Manager Emily Harrison said it would return on September 26, 2005.

Council Member Mossar said the motion included language that implied the Council wanted the P&TC to reverse its decision.

Council Member Cordell asked whether there had been a rush to convert carports into garages.

Mr. Emslie said no.

Council Member Beecham said the Council would expect the P&TC's honest and independent advice.

**MOTION PASSED** 6-3 Cordell, Kleinberg, Mossar no.

#### COUNCIL COMMENTS, QUESTIONS, AND ANNOUNCEMENTS

Council Member Morton recommended resolutions of appreciation to Michael Griffin and Bonnie Packer for their service on the Planning and Transportation Commission.

Assistant City Manager Emily Harrison said it was a routine matter and that staff would schedule resolutions of appreciation for Council approval.

Council Member Ojakian stated he appreciated the job of Police Chief Lynne Johnson and also commended Mayor Burch for his work the past eight months.

#### CLOSED SESSION

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

City Attorney Gary Baum announced there would not be a need for Agenda Item 12 regarding Pacific Gas and Electric Company. The City had concluded the litigation on the bankruptcy and remaining claims had been assigned to Northern California Power Agency (NCPA), which was a prior Council Closed Session direction. Therefore, no further action was needed.

#### 11. CONFERENCE WITH CITY ATTORNEY - POTENTIAL/ANTICIPATED LITIGATION

Subject: Significant Exposure to Litigation on One Matter (Claim of Jameel Douglas)

Authority: Government Code Section 54956.9 (b)(1) & (b)(3)(C)

08/08/05

12. CONFERENCE WITH CITY ATTORNEY - EXISTING LITIGATION

Subject: In re Pacific Gas and Electric Company, a California Corporation,  
Debtor, U.S. Bankruptcy Court case No.: 01-30923DM

Authority: Government Code Section 54956.9(a)

The City Council met in Closed Session to discuss matters regarding potential /anticipated litigation and existing litigation as described in Agenda Item No. 11.

**Mayor Burch announced there was no reportable action taken.**

FINAL ADJOURNMENT: The meeting adjourned at 10:45 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.