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March 12, 2007

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FINAL ADJOURNMENT: The meeting adjourned at 9:45 p.m. 16

Regular Meeting
March 12, 2007

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

PRESENT: Barton, Beecham, Cordell, Drekmeier, Kishimoto, Kleinberg, Morton

ABSENT: Klein, Mossar

Mayor Kishimoto asked whether Agenda Item No. 5 would be continued.

Assistant City Manager Emily Harrison recommended moving Item No. 5 to the April 3rd Council Meeting.

MOTION: Council Member Beecham moved, seconded by Morton, to continue Agenda Item No. 5 to April 3, 2007.

5. Public Hearing: Approval of a Negative Declaration, pursuant to CEQA for Each of the Sites

Approval of a Resolution Adopting an Amendment to the Comprehensive Plan Land Use Map by Changing the Land Use Designation for 4329 El Camino Real, 3981 El Camino Real, 4151 Middlefield Road and 725 San Antonio Avenue from Multiple Family to Service Commercial

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MOTION PASSED 7-0 Klein, Mossar absent.

ORAL COMMUNICATIONS

None.

SPECIAL ORDERS OF THE DAY

Selection of Applicants to Interview for the Library Advisory Commission

MOTION: Council Member Morton moved, seconded by Drekmeier, to interview all three candidates for the Library Advisory Commission.

MOTION PASSED 7-0 Klein, Mossar absent.

CONSENT CALENDAR

Council Member Morton stated he would not be able to participate in Item No. 1 because of a conflict of interest due to family holdings of stock in Sempra.

MOTION: Council Member Beecham moved, seconded by Barton, to approve Consent Calendar Item Nos. 1-4 and 4a.

1. Ordinance 4936 entitled "**Ordinance** of the Council of the City of Palo Alto **Authorizing the City Manager to Purchase a Portion of the City's Natural Gas Requirements from Certain Pre-qualified Natural Gas Suppliers Under Specified Terms and Conditions During Calendar Years 2007 through 2022, Inclusive**"
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3. Recommendation to Adopt Amendment to Council Procedures Regarding Multiple Appellants at City Council Hearings
4. Request for Authorization to Increase Existing Contract with the Law Firm of Littler & Mendelson by an Additional \$40,000 for a Total Contract Not to Exceed Amount of \$165,000
- 4a. Approval of Contract with HF&H Consultants, LLC in an Amount Not to Exceed \$205,164 to Assist the City in the Solicitation Process for a New Solid Waste and Recycling Collection and Processing Agreement

MOTION PASSED 6-0 for Item No. 1, Morton not participating, Klein, Mossar absent.

MOTION PASSED 7-0 for Items 2-4a, Klein, Mossar absent.

PUBLIC HEARINGS

6. Public Hearing: 1st Reading - Adoption of an **Ordinance Amending Section 18.10.070(a) of the Palo Alto Municipal Code Prohibiting Second Units, Including Airspace Rights Thereto, Under Different Ownership from the Initial Dwelling, in the RMD and R-2 Zoning Districts**

Council Member Beecham stated he would not be able to participate in Agenda Item No. 6 due to a conflict of interest because his home is located in the RMD zone.

Assistant Director of Planning and Community Environment Curtis Williams stated there were technical corrections needed in the Ordinance.

Mayor Kishimoto opened the Public Hearing at 7:10 p.m.

Herb Borock, P.O. Box 632, stated this Ordinance would not be necessary and he opposed the Ordinance.

Mayor Kishimoto closed the Public Hearing at 7:15 p.m.

Council Member Morton stated the Ordinance is necessary to prevent condominium subdivision in the future and he would approve the Ordinance.

MOTION: Council Member Morton moved, seconded by Barton, to accept staff and the Planning and Transportation Commission's recommendation to adopt the ordinance to prohibit second dwelling units, including associated airspace rights, under different ownership from the initial dwelling unit in the RMD and R-2 zoning districts.

MOTION PASSED 6-0 Beecham not participating, Klein, Mossar absent.

Council Member Barton stated the people from Stanford had not yet arrived and, therefore, he asked to hold the closed session at this time and move Item No. 5 to later in the meeting.

MOTION: Council Member Morton moved, seconded by Barton, to move Agenda Item No. 9 ahead of Item No. 7 to become Item No. 6a.

MOTION PASSED 7-0 Klein, Mossar absent.

CLOSED SESSION

- 6a. (Old No. 9) CONFERENCE WITH CITY ATTORNEY -- EXISTING LITIGATION
Subject: Naymark v. City of San Jose, et al., Santa Clara County Superior Court Case no. 1-07-CV-080008

Authority: Government Code section 54956.9(a)

Council adjourned to Closed Session at 7:20 p.m.

Council reconvened into Open Session at 7:30 p.m.

Mayor Kishimoto announced there was no reportable action taken.

MOTION: Council Member Morton moved, seconded by Cordell, to move Item No. 8 forward to become Item No. 6b.

MOTION PASSED 7-0 Klein, Mossar absent

REPORTS OF COMMITTEES AND COMMISSIONS

6b. (Old No. 8) Finance Committee Recommends Prioritization of Potential Park Projects Utilizing Park Development Fees

Council Member Morton stated a reserve has accumulated from the park development fees. Staff requested the Finance Committee to prioritize the projects that the fees would be funding.

MOTION: Council Member Morton moved, seconded by Barton, to approve the Finance Committee's recommendation to:

1. Approve the use of development impact fees for the top ten ranked 2006-2011 park improvement projects; and
2. Consistent with the prioritized list, direct staff to proceed with the planning and development of proposed park projects as funds are available from the Park Development Fee Fund.

Mayor Kishimoto read comments from Council Member Mossar that suggested adding new criteria to help diversify project types to be funded from the park development fee fund.

Mayor Kishimoto opened the Public Hearing at 7:35 p.m.

Charles Scott, 3136 Genevieve Court, stated park development plans had been delayed by installing the drainage for natural turf and suggested improvements for Greer Park.

Herb Borock, P.O. Box 632, suggested allocation of the funds after the Planning and Transportation Commission and City Council hold public hearings to change the master plan for Greer Park.

Planning and Transportation Commissioner Patrick Burt stated the criteria was very narrow for allocation of the funds and asked that new parks are considered.

Mayor Kishimoto closed the Public Hearing at 7:43 p.m.

Council Member Kleinberg expressed concern regarding the lack of attention to new parks' acquisition.

SUBSTITUTE MOTION: Council Member Kleinberg moved, seconded by Kishimoto, to refer the item to the Parks and Recreation Commission (PARC) for further analysis and any immediate items for health and safety reasons be brought forward to Council by staff.

Council Member Barton stated he did not support the Substitute Motion. He mentioned the top three items ranked on the 2006-2009 potential park projects were new parks.

Council Member Morton stated sending the projects to PARC for analysis would only delay the projects.

Council Member Drekmeier recommended amending the initial motion to encourage the use of funding for acquisition and expansion.

Council Member Cordell stated she would not support the Substitute Motion.

Mayor Kishimoto questioned the five-year timeframe to accumulate enough money for new parkland.

City Attorney Gary Baum replied the plan must be in place for the new parkland within five years.

Mayor Kishimoto asked whether this would be required by the Ordinance.

Mr. Baum responded this was State law.

Mayor Kishimoto asked if there were a plan in place, would it be possible to keep accumulating funds for the new park.

Mr. Baum confirmed that was correct.

Mayor Kishimoto questioned whether there would be a location in mind for the use of the \$1 million dollars in the fund that would be allocated for acquisition of land.

Open Space, Parks Division Manager Greg Betts stated land acquisition would be an option. He commented if there were a list of prioritization of parcels, it could cause land speculation and escalate costs.

Mayor Kishimoto asked whether the \$1 million dollars would be in anticipation of what would accumulate within the next five years.

Mr. Betts answered that was correct and added it was a placeholder.

Mayor Kishimoto questioned the diversity of uses of the funds.

Mr. Betts stated the money would be used to affect the greatest number of people.

Mayor Kishimoto questioned whether other projects would also be a part of long-term planning.

Mr. Betts stated a matrix would be created to decide what needs would be met.

Mayor Kishimoto stated she agreed with the first motion.

SUBSTITUTE MOTION WITHDRAWN BY MAKER AND SECONDER.

Council Member Kleinberg stated the criteria had not been closely developed in accordance with the Comprehensive Plan and she would not be supporting the motion.

Council Member Beecham clarified Council Members in the past had focused on acquiring new parklands and tried to enhance the existing parks.

Council Member Kleinberg asked whether past parklands would be using park impact fees.

Council Member Beecham inquired whether the question would be to find additional parkland or to acquire additional parkland.

Council Member Kleinberg asked for clarification.

Council Member Beecham stated the acquisition in the past had been through various funds.

Council Member Cordell asked if Council Member Kleinberg would be concerned with projects that have no Council direction and need to be reevaluated.

Council Member Kleinberg stated if the criteria were approved, the Council is going forward with priorities that have not had the Council's direction.

Council Member Cordell asked whether the Council would be approving projects or approving criteria.

Mayor Kishimoto responded the Council would not approve criteria.

Council Member Cordell stated by approving these projects the Council is approving all the criteria.

Council Member Kleinberg stated Attachment A had the inclusion of the two items added at the Finance Committee.

Mayor Kishimoto stated the wording of the motion does not include the criteria.

Council Member Cordell requested clarification.

Council Member Kleinberg stated if the result of criteria usage is approved, the list is inherently approved.

Council Member Cordell asked to clarify if the motion was approved, would the criteria still be reexamined by PARC.

Mayor Kishimoto stated when this item would return to Council these comments would be taken into consideration.

Council Member Morton stated the criteria would be modified when this item returns to the Council.

Mayor Kishimoto suggested the criteria be more specific regarding percentage of funds to each project when this comes to the Council the next time. She asked what the relationship was with turf and lighting, considering \$750,000 would be spent.

Director of Community Services Richard James replied the synthetic turf could be used 14 hours a day, all year, with or without lighting. Natural turf could not.

MOTION PASSED 6-1 Kleinberg no, Klein, Mossar absent.

7. Public Hearing: **1st Reading** - Adoption of an **Ordinance Amending Section 16.47.030 (Exemptions) of Title 16 (Building Regulations) of the Palo Alto Municipal Code to Remove an Exemption for Hospitals from the Housing In-Lieu Fee** *(Item continued from 02/12/07)*

Council Member Cordell stated she would not participate in Item No. 7 due to a conflict of interest because she was employed by Stanford University.

City Manager Frank Benest recommended the Council remove the exemption for hospitals and institute an appropriate fee.

Director of Planning and Community Environment Steve Emslie stated the fee from the hospitals would create affordable housing for residents of Palo Alto.

Kate Funk, Keyser Marston Associates, Inc., stated the jobs/housing analysis would update programs or put new programs in place, which include the medical/hospital component.

Council Member Kleinberg asked whether Santa Clara County data would be used.

Ms. Funk replied they would use the Santa Clara County Compensation Level data.

Council Member Kleinberg asked the reason for not using San Mateo County data considering the hospital was on the border of the two county lines.

Ms. Funk stated a similar analysis was done in San Mateo County, which was not significantly different. She stated a comparison of the two counties would have made minimal difference.

Council Member Kleinberg inquired why the San Mateo County data would not be used.

Ms. Funk responded the information where the project was located would be generally used.

Council Member Kleinberg asked whether Ms. Funk had reviewed the response analysis from the other professional group.

Ms. Funk declared she had just received it.

Council Member Kleinberg asked whether data not about hospitals would be used.

Ms. Funk responded the information used would be from a collection of medical facilities. She stated this would be a generic analysis, not exactly about Stanford.

Council Member Drekmeier asked to explain the affordability gap from Attachment B, page 3.

Ms. Funk stated the affordability gap was what the costs would be to develop the unit and what the purchaser could afford.

Council Member Drekmeier asked for the difference in amounts between low income and moderate income.

Ms. Funk replied the very low and low incomes would be accommodated in rental units; whereas, the moderate components would be accommodated in condominiums.

Council Member Drekmeier inquired about the difference between apartments and condominiums.

Ms. Funk stated the Below Market Rate (BMR) program focused on condominium units; whereas, the apartments would be an estimate of what the minimum building costs would be.

Council Member Drekmeier inquired whether the market would be the reason.

Ms. Funk responded they do not have experience for market rate rentals to determine the exact cost.

Council Member Drekmeier asked if 157 new housing units would be needed per 100,000 square feet.

Ms. Funk confirmed it was 157 worker households per 100,000 square feet.

Council Member Drekmeier asked whether 2,000 new housing units would be needed.

Ms. Funk stated yes.

City Attorney Gary Baum recommended the Council adopt the Ordinance. He pointed out there were a number of factors ignored by the Stanford consultant report: 1) the fee would be only charged on an expansion; and 2) a clinic is not a hospital but they do create an impact. It is unquestionable that the hospital and office expansion would increase the need for affordable housing in Palo Alto.

Council Member Drekmeier asked the distinction between a hospital and a clinic.

Mr. Baum replied according to law, a clinic and hospital have vastly different uses.

Council Member Drekmeier asked whether this would affect both of the uses of the fee as well as other organizations such as the Palo Alto Medical Foundation.

Mr. Baum replied yes.

Mr. Emslie replied the Code defines clinics separately from hospitals and the Palo Alto Medical Foundation would not be considered a hospital.

Mr. Baum corrected himself stating it would only affect hospitals.

Council Member Drekmeier asked whether this would also apply to the clinic aspect as well.

Mr. Emslie stated based on the information given it would apply to the hospitals.

Council Member Drekmeier asked if Stanford came forward and stated the 1.3 million square feet would be split into half as clinic and half as hospital, would there have to be a discussion on the impact fees.

Mr. Emslie stated yes.

Mayor Kishimoto clarified this agenda item would be removing an exemption.

Mr. Benest asked, as a public policy, should hospitals be required to mitigate the demand for housing when they employ lower income workers.

Mr. Baum clarified Stanford's consultant did not recognize there was a clinic in Palo Alto; whereas, half of the impact would be from a clinic. Therefore, the description of what would be done in hospitals would not be relevant to the discussion.

Mayor Kishimoto confirmed clinics were never exempt.

Council Member Beecham asked whether the 1.3 million square feet would be considered all hospital usage.

Mr. Benest stated it would be recommended that hospitals not be exempt. Hospitals should be required to mitigate this demand from a public policy perspective

Mayor Kishimoto declared the Public Hearing open at 8:40 p.m.

Robert Moss, 4010 Orme Street, stated he agreed with the staff recommendation to impose fees. Patients of the hospitals, as well as their families, put demands on parks, traffic, libraries and other City facilities, which justified the imposed fees.

Edie Keating stated she supported the impact fees that provide funds for affordable housing. The community could benefit greatly from affordable housing.

Mark Sabin, 533 Alberta Avenue, Sunnyvale, raised a concern regarding taking away quality health care to build houses and did not support the impact fees.

Walter Sedriks, 325 Waverley Street, stated the Stanford Management Company was the biggest developer in the region and had often tried to use the academic mission of Stanford as a cover for commercial development. He stated he supported the fees.

Herb Borock, P.O. Box 632, stated he supported the impact fees and expressed concern that there was no clarity in the zoning code as to what defines hospitals and clinics.

Jean McCown, 527 Seale Avenue, stated she disagreed with the impact fees. The fees would diminish the financial resources, which go to the mission of the hospitals and provide health care services to the community.

Mark Tortoride, Stanford Hospital/LPCH, clarified one third of the 1.3 million square feet would be to house existing programs, which would not have any employment growth. By licensing-out patient clinics under a hospital license, the clinics would operate under Health and Safety Code Section 1200. A hospital license has strict standards of the Uniform Building Code applied in

California facilities, which has space and environmental requirements and adds costs to the facility.

Stephanie Munoz, 101 Alma Street, stated she supported the impact fees and Stanford should address the transportation issues.

Mayor Kishimoto declared the Public Hearing closed at 9:04 p.m.

Mayor Kishimoto reminded the Council five votes were required for this Ordinance to pass.

Mr. Benest clarified the following: 1) the major postponement was due to a request by Stanford to update the Nexus study; 2) the difference between a hospital, clinic or office would not be an issue. It was a public policy question; and 3) this would make a distinction between Stanford Hospital, a non-profit, and vulnerable community non-profits.

Council Member Barton clarified building codes have inflators for everything, which are not specific to hospitals. He stated he supported the fee with clear direction to the City Manager that this is the floor for affordable housing.

Council Member Morton stated he wanted to help strengthen the City by supporting the fee and, if needed, the exemption would be reinstated.

Council Member Drekmeier asked whether the fee has been \$16/square foot since 1984.

Mr. Emslie replied that this fee had increased.

Council Member Drekmeier stated the fee would need to be negotiated with Stanford and Stanford would have to build a lot of the affordable housing.

MOTION: Council Member Drekmeier moved, seconded by Barton, to accept staff Recommendation to Adopt the Ordinance Removing an Exemption for Hospitals from the Housing In-lieu Fee (Chapter 16.47 of the Palo Alto Municipal Code); explicit direction to City Manager that this is the floor for affordable housing, not the ceiling during negotiations.

Mr. Benest responded this issue was just about affordable housing.

Council Member Beecham asked whether it would be intended to assess a fee to the Stanford Hospital expansion that would be higher than others in the City.

Mr. Benest stated community benefits, as well as mitigation for impacts, could be negotiated in the development agreement.

Council Member Beecham stated it looked like the policy was going from being exempt, to requiring a super charge for housing impacts. He questioned whether this would be the floor for any project or was it for this one segment.

Mr. Benest stated transportation and affordable housing are the two major impacts.

Council Member Beecham asked for clarification on the Environmental Impact Report (EIR) and whether it would include transportation and housing impacts and would mitigations be recommended.

Mr. Benest stated the EIR would analyze the impacts with specific numbers and there would be a mitigation program for transportation, affordable housing, and other impacts.

Council Member Beecham stated he did not support the motion.

Council Member Morton stated the end cost for Stanford might be greater than the \$16/square foot. He questioned the impact fees for Oak Court and Heritage Court.

Mr. Benest stated there was a package of programs for Oak Court, such as park property, a childcare center, and the Roth Building to mitigate impacts, as well as, provide community benefits.

Council Member Barton stated it was important to distinguish projects that were developable by right and projects that were not. Housing developers had requirements to build affordable housing under the zoning ordinance.

Council Member Kleinberg asked why convalescent homes were removed from the exemption.

Mr. Emslie replied convalescent homes could stay exempt without a major impact on the housing impact.

Council Member Kleinberg asked why there was no waiver possibility provided.

Mr. Baum stated he was not sure whether the issue would be considered.

Mr. Emslie repeated the waiver would not be considered for smaller facilities.

Mr. Baum recommended against the waiver because it would be difficult to administer; however, it could be done through the development agreement.

Council Member Kleinberg asked for clarification on the process.

Mr. Baum stated exempting an individual project would be done through the development agreement.

Council Member Kleinberg asked why other cities include waivers in ordinances.

Mr. Baum replied he had not researched the issue; however, it would be difficult to administer.

Council Member Kleinberg asked whether it would be more difficult to administer a waiver that was pre-planned than to create a waiver in a development agreement.

Mr. Baum stated a waiver would be easy to write into a development agreement but it was difficult to administer a waiver program and decide criteria.

Council Member Kleinberg asked why the exemption was being removed now.

Mr. Benest stated it would be good public policy to eliminate this exemption and it makes sense to establish the floor.

Council Member Kleinberg asked whether this could be a negotiation point.

Mr. Benest stated they just wanted to establish a floor.

Council Member Kleinberg stated there are two facilities trying to expand to provide better community care and the International Building Code (IBC) would be adopted, which would require more changes. She would not support removal of the exemption.

Council Member Drekmeier asked to remove the addendum to the motion and keep the staff recommendation.

Council Member Barton agreed.

RESTATED MOTION: Council Member Drekmeier moved, seconded by Barton, to accept staff Recommendation to Adopt the Ordinance Removing an Exemption for Hospitals from the Housing In-lieu Fee (Chapter 16.47 of the Palo Alto Municipal Code).

Council Member Kleinberg asked whether it was possible to remove convalescent hospitals from the ordinance.

Council Member Drekmeier stated convalescent homes make a profit and could be open for discussion.

Mayor Kishimoto stated the housing impact would be very important to Palo Alto's future and she supported the removal of the exemption although there could be side effects of housing, transportation, open space, and schools.

Council Member Morton stated having the housing impact fees in place would provide a negotiating stance to discuss additional housing with Stanford, which would be needed and would support the removal of the exemption.

MOTION FAILED 4-2 Beecham, Kleinberg no, Cordell not participating, Klein, Mossar, absent

COUNCIL COMMENTS, ANNOUNCEMENTS, AND REPORTS FROM CONFERENCES

Council Member Kleinberg reported she attended the Bay Area Council Annual Event in San Francisco last week and heard a very insightful speech by Ted Turner on climate protection and global warming. There was also a panel of the three regional big city mayors, which was fascinating.

Mayor Kishimoto stated Lieutenant Governor John Garamendi would be coming to meet with the Council and interested public in the Chambers on April 11 at 2 p.m.

FINAL ADJOURNMENT: The meeting adjourned at 9:45 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.