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September 17, 2002

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of Dan Logan, Executive Director of Midpeninsula YMCA, for  
a speedy recovery from a recent bicycle accident.....420

The City Council of the City of Palo Alto met on this date in the Cubberley Community Theatre, Room M3, 4000 Middlefield Road, at 6:05 p.m.

PRESENT: Beecham, Burch, Freeman, Kishimoto, Kleinberg, Lytle, Morton (arrived at 6:45 p.m.), Ojakian

ABSENT: Mossar

CLOSED SESSION

1. Subject: Conference with Police Chief Regarding Security of City Facilities  
Authority: Government Code section 54957

The City Council met in Closed Session to discuss matters involving Security of City Facilities as described in Agenda Item No. 1.

**Mayor Ojakian announced that no reportable action was taken on Agenda Item No. 1.**

ADJOURNMENT: The meeting adjourned at 7:10 p.m.

Special Meeting  
September 17, 2002

The City Council of the City of Palo Alto met on this date in the Cubberley Community Theatre, 4000 Middlefield Road, at 7:10 p.m.

PRESENT: Beecham, Burch, Freeman, Kishimoto, Kleinberg, Lytle, Morton, Ojakian

ABSENT: Mossar

Mayor Ojakian requested that the meeting be adjourned in honor of Dan Logan, Executive Director of Midpeninsula YMCA, for a speedy recovery from his recent bicycle accident.

ORAL COMMUNICATIONS

Herb Borock, P.O. Box 632, spoke regarding the Bressler property auction on October 10, 2002.

Bunny Good, P.O. Box 824, spoke regarding the Homer Tunnel.

Lynn Chiapella, 631 Colorado Avenue, spoke regarding zoning litigation and a need for a Zoning Administrator.

Mark Lawrence, 446 Marion Way, spoke regarding traffic problems.

APPROVAL OF MINUTES

**MOTION:** Council Member Morton moved, seconded by Burch, to approve the minutes of July 8 and 15, 2002, as submitted.

**MOTION PASSED** 8-0, Mossar absent.

CONSENT CALENDAR

**MOTION:** Council Member Morton moved, seconded by Beecham, to approve Item Nos. 1-3 on the Consent Calendar.

Council Member Freeman requested that Consent Calendar items have complete information so the public could get questions answered through the packet rather than needing to ask.

ADMINISTRATIVE

1. Request for Authority to Participate as Amicus Curiae in California Court of Appeal Case *Border Business Park, Inc. v. City of San Diego*

Lynn Chiapella, 631 Colorado Avenue, urged the Council not to vote on something they did not understand.

2. Employment Agreement for Code Enforcement Services with Lance Bayer
3. Authorization of the Council of the City of Palo Alto to the City Attorney's Office to Enter Into Contracts with Outside Entities To Provide Legal, Consulting and Training Services

**MOTION PASSED** 8-0, Mossar absent.

CLOSED SESSION

Council Member Morton would not participate in Item No. 4 due to a conflict of interest because he was the Founder of Community Skating, Inc.

**MOTION:** Council Member Lytle moved, seconded by Beecham, to hear Closed Session Item No. 5 later at the end of the agenda to become Item No. 8.

**MOTION PASSED** 8-0, Mossar absent.

The meeting adjourned to a Closed Session at 7:30 p.m.

4. Conference with City Attorney -- Existing Litigation  
Subject: Wei Wang and Weyyi Wang v. City of Palo Alto, et al.; SCC# CV802799  
Authority: Government Code section 54956.9(a)

Herb Borock, P.O. Box 632, said he hoped the Council would take to heart comments noted in the City Attorney's staff report.

The City Council met in Closed Session to discuss matters involving existing litigation as described in Agenda Item No. 4.

**Mayor Ojakian announced that no reportable action was taken on Agenda Item No. 4.**

The City Council reconvened at 7:45 p.m.

PUBLIC HEARINGS

6. PUBLIC HEARING: The City Council will consider modifications to Palo Alto Municipal Code section 18.32.070 regulating the height of solid walls or fences required to be constructed and maintained on properties within the Public Facilities (PF) zone where the property abuts any residentially zoned property. The existing requirement is that the height of the wall or fence be within the range of five and eight feet. The modification to be considered would provide for the maximum height to be within a range of eight feet to ten feet where the additional height is needed for mitigation of environmental impacts resulting from the use of the Public Facilities zoned property.

City Attorney Ariel Calonne said staff was asking the Council to amend the Palo Alto Municipal Code (PAMC) to assure the law was clear at the time the trial court heard the case. Under California law, the relevant rules on cases, such as the one being presented, were the ones in effect at the time the matter was heard by the Court. Staff's recommendation that the Council choose that route did not indicate the Council action was unlawful. He believed the Council had the power to require a 10-foot sound mitigation wall. The Public Facility (PF) zoning required a wall between 5 to 8 feet in height along common property lines. That wall would provide a minimum level of protection for neighbors from the PF use. The Council had evidence that a wall higher than 8 feet would be useful in reducing the fair amount of noise from the outdoor skating facility and the use of the tennis court.

Director of Planning and Community and Environment Steven Emslie said the proposed legislation would end an apparent conflict, as described by the City Attorney, and would provide clarity to staff when implementing mitigation measures. Staff was in support of the legislation.

Vice-Chair of the Planning and Transportation Commission (P&TC) Bonnie Packard explained the actions of the Planning and Transportation Commission (P&TC) meeting held in August 2002. The P&TC members looked at the Ordinance change to see if it made sense and could be applied to any situation. There was concern about the procedural questions being raised and whether staff should look further into the fence ordinance before moving forward. The P&TC approved moving forward with the proposed change to the ordinance in a 4-2 vote.

Natalie Fisher, 736 Ellsworth Place, said changing the law after the judgment was filed seemed unfair and unethical to many people in the City and was a poor precedent to set. She urged the Council not to let the wall height for Price Court residents

affect the need for a 10-foot sound wall for Ellsworth residents.

Louise Herring, 3945 Nelson Drive, said she purchased her house in 1978 when Cubberley was a functioning high school behind her back fence. She had to replace and repair her 6-foot fence twice, and neither the City nor the Palo Alto Unified School District (PAUSD) was willing to contribute to its replacement. The entire area surrounding the Cubberley site consisted of Eichler homes. Eichler homes were 8 to 10 feet in height and could not handle a 10-foot fence on its property line without obstructing the homeowners' view of the floor-to-ceiling glass at the back of their home.

John K. Abraham, 736 Ellsworth Place, said the neighbors in his area wanted a 10-foot wall along the Ellsworth Canal Masonry as previously directed by the City Council.

Lynn Chiapella, 631 Colorado Avenue, expressed opposition to the site for a private tennis club and park, which the neighbors could not use. A 10-foot wall would block all possible sun to Eichler homes in the winter. She suggested putting the 10-foot wall several feet on the other side of the existing trees to leave a little landscape and fence cover.

Robert Grossman, 3036 Price Court, said he was appalled the City wanted to change the present ordinance. He believed the City must consider all reasonable options.

Gil Walker, 3029 Price Court, supported Wei Wang and her property.

Laura Agigian, 3030 Price Court, said she was dismayed the City had opted to change an ordinance to dismiss valid concerns of one of its residence. The wall would affect the quality of life for the Wang's.

Roberta London, 3019 Price Court, said she was disturbed at the sound of trees being chopped down on the other side of Ms. Wang's fence. She would have preferred an 8-foot wall put on the other side of the trees, which she believed would help buffer the noise. She was opposed to the proposed legislation.

Grace R. Butler, 3024 Price Court, concurred with the comments made by Ms. London.

Wei Wang, 3054 Price Court, said she was never given the opportunity to discuss with the City Attorney other ways to mitigate noise impacts on adjacent residents, other than

changing the law. To moot the lawsuit, City staff violated a notice of hearing code, because none of her neighbors were notified of the public hearing before the P&TC on August 21, 2002. She believed the intention of the ordinance change was to single-out an individual residential property owner.

Audrey Sullivan Jacobs, 245 Lytton Avenue, said she had been representing Community Skating, Inc. (CSI) for the past two years to provide a top-rate tennis facility at the former Chuck Thompson Swim Club. All of the residents who lived on Price Court opted for an 8-foot sound wall except for Ms. Wang. She urged the Council to adopt the amended ordinance so that the CSI tennis project could proceed.

Loren Brown, 334 Kingsley Avenue, concurred with the comments made by Ms. Sullivan Jacobs and supported the proposal to modify the ordinance to permit a 10-foot sound wall.

Herb Borock, P.O. Box 632, urged the Council to let the trial court make a decision without changing the ordinance.

Linda Jensen, 3009 Middlefield Road, urged the Council to amend the Code to allow for a 10-foot sound wall where appropriate. The code amendment would bring an end to a long cycle of delays for the CSI tennis project. She said CSI had agreed to install whatever facilities and walls the City determined were desired and required.

Weyyi Wang, 3054 Price Court, urged the Council to remove the item from that evening's agenda because of the following:

1. The proposed amendment to the zoning ordinance was not exempt from the California Environmental Quality Act (CEQA).
2. The 12-day hearing notice, required by the PAMC, was not provided for the P&TC meeting on the proposed amendment.
3. The P&TC did not have a separate meeting to initiate a change to the zoning ordinance.
4. Council Member Jack Morton participated in the public hearing held before the P&TC meeting on August 21, 2002, in violation of the conflict of interest provisions of the Political Reform Act.
5. The public hearing notice for the P&TC meeting held on August 21, 2002, violated the Brown Act for agenda description.

Chuck Bradley, 2957 Waverley Street, said he represented the Palo Alto Tennis Club in 1991, and wrote the initial proposal. He urged the Council to move forward with the proposed



legislation, although he offered a partial solution. He worked closely with the Santa Clara Valley Water District (SCVWD) and was aware the floodwalls along Matadero Creek were being raised, which could absorb some of the sound. He suggested that City staff contact the SCVWD's Senior Project Manager Leyan Lee.

Bob Moss, 4010 Orme Street, said if the Council agreed to adopt the ordinance changes, a compromise should be made. He suggested the sound wall on Price Court remain less than 8 feet in height, and the language in Section 2 of the Ordinance be modified to read, the sound wall "may be or could be" directly on the property line.

Jan Van der Laan, Board of Directors of Winter Lodge, 3090 Ross Road, recalled that Ms. Wang initially argued vehemently in favor of the sound wall and wanted it to be higher than 10 feet. It was only after the Winter Lodge obtained the lease for the property that she changed her mind and was opposed to the wall.

Council Member Beecham asked the City Attorney whether anything in the information received that evening would prevent the Council from taking action on the staff recommendation.

Mr. Calonne said no.

**MOTION:** Council Member Beecham moved, seconded by Lytle, to introduce an ordinance for first reading amending Palo Alto Municipal Code section 18.32.070, with a change on page 1 of the ordinance, Section 2, paragraph 2, 10<sup>th</sup> line, after the word "site," to add the language "and as approved by the Council on a case by case basis."

Ordinance 1<sup>st</sup> Reading entitled "Ordinance of the Council of the City of Palo Alto Amending Title 18 (Zoning), Chapter 18.32 (PF Public Facility District Regulations), Section 18.32.070 (Special Conditions), Subsection (A)(2) of the Palo Alto Municipal Code to Modify the Fencing Requirements in the Public Facilities District"

Council Member Beecham said the proposed amendment to the legislation was not revisiting the policy made by the Council one year prior. That policy set a number of mitigations for the Winter Lodge and what needed to be done to take care of noise and other issues. The present ordinance would allow staff to implement that policy more fully. There were concerns by the public whether it was fair to enact an ordinance one year after setting up policy. He believed the policy previously set, and the ordinance being voted on that evening, would not change what had already been approved for any particular neighbor.

Council Member Lytle believed the intent of the City was to put the property back into public recreational use. The City needed to do the best it could to achieve City policy. She supported the motion.

Council Member Kishimoto asked whether staff could clarify the conditions of use, as related to the hours of operation for the tennis courts and lighting.

Mr. Calonne said the conditions of the use permit approved by the Council were subsequently abandoned. Afterwards, a letter was sent to CSI directing compliance with the major conditions, as required by the lease. Those conditions included hours of operation limitations, removal of the security lighting to prevent improper nighttime use, and posting of a 24-hour contact number.

Council Member Kishimoto questioned whether trees had been removed in front of Ms. Wang's property. She said the PF Zoning required a 10-foot landscaped buffer.

Chief Planning Official Lisa Grote said as part of the Conditional Use Permit there were two rows of landscaping to be included in front of the new sound wall. Some of the existing trees would remain and others were approved for removal.

Council Member Kishimoto asked the City Attorney for a response to allegations raised by Mr. Borock in his letter to the Council.

Mr. Calonne said the Planning Division acknowledged the PT&C public hearing notice did not have the customary 12-day notice. However, under State law the meeting was noticed properly and, if the error was not prejudicial, it did not provide grounds for overturning the decision. He said that another concern had to do with the propriety of a variance. He would be more concerned about the Council attempting to grant a variance on the basis that the property was uniquely situated than on a code amendment. The purpose of the sound wall was to mitigate what was claimed to be a significant environmental impact. If the ordinance amendment were used again, the City would have to go through an environmental review process.

Council Member Kishimoto commented in the future she hoped that City staff would comply with the public hearing requirements. She also said mitigations could also cause environmental impacts.

Mr. Calonne clarified that a noticing defect made sense if the government was attempting to hide what they were trying to do. He was proud of the open and direct manner in which staff had communicated the situation to the public and the Council.

**AMENDMENT:** Council Member Kishimoto moved, seconded by Freeman, that the PF zoning state "any solid wall or fence between 5 to 8 feet shall be maintained with a landscape screen, and change PF Zoning so that could be within a buffer zone."

Council Member Beecham encouraged his colleagues to make the PF zoning change at the Zoning Ordinance Update (ZOU). He recalled a previous discussion on the issue, which questioned the location of the wall. The concern then was not to have it inboard because there was a section of land that could not be maintained. It was agreed to put the fence on the property line for that purpose. The ordinance before the Council stated, "the wall should be constructed and maintained along the common site line." That language was in the pre-existing ordinance and was not recommended for change. He was uncomfortable making the change that evening.

Council Member Lytle commented as the wall was moved off public property, it diminished the public's right of use. There was a potential for giving public land to private purpose, which the City did not have the right to do.

**AMENDMENT WITHDRAWN BY MAKER AND SECONDER**

**AMENDMENT:** Council Member Kishimoto moved, seconded by Freeman, to direct staff and the Planning and Transportation Commission to review placement of sound walls in PF Zones, whether on the property line or in the buffer zone.

Council Member Freeman asked whether the change in the ordinance that was not highlighted was exempt from being discussed or modified that evening.

Mr. Calonne said the PAMC allowed the Council to modify zoning ordinance regulations. If the issue related to a boundary change or Comprehensive Plan (Comp Plan) change, then it would need to be sent back to the P&TC. In the current case, he did not believe that needed to be done.

Council Member Freeman said it was in the interest of public trust for the City to adhere to the policies, codes, and practices that had been adopted and abided by. She asked whether lawful compliance to the California Environmental Quality Act (CEQA) overruled City ordinances.

Mr. Calonne said he did not believe so. Environmental law required some other source of power to make its recommendations happen. The fact that a 10-foot sound wall was recommended did not independently authorize the Council to do so.

Council Member Freeman asked whether CEQA compliance required a 10-foot sound wall if the City did not have it presently listed in the ordinance.

Mr. Calonne said he did not believe that just because the PAMC required 8 feet, it could not extend higher. The Council had the policy power in developing conditional use permits to impose reasonable measures to protect the health and safety of the public.

Council Member Freeman said she would like to add a condition that anytime a 10-foot wall was considered around a PF zoned property, the Council would need to address it, there would be public hearings, and it would not be allowed through planning alone.

Council Member Burch said he hoped the decision made that evening would resolve the issue. He supported the motion.

Council Member Kleinberg said the CSI had put forth many mitigated measures. Nine years prior, the Council thought it was an important project for the community and for the youth. She supported the motion.

Mayor Ojakian supported the motion. He expressed concern about changing the fence ordinance in PF zones and having 10-foot walls put up.

Council Member Freeman said there should be flexibility given to have the wall moved within the buffer zone instead of directly on the property line, as a mitigation to the property owner.

Mr. Calonne asked whether the desired flexibility was in the 10-foot provision or the entire ordinance.

Council Member Kishimoto said it applied to any wall.

Council Member Freeman said it gave the option for the fence to be located at the property line or in the buffer zone.

Council Member Kleinberg asked whether the intent of the motion was to impact the Price Court and Ellsworth properties.

Council Member Kishimoto said yes.

Council Member Beecham said he would not support the amendment because there were too many unanswered questions.

Council Member Lytle said she would not support the amendment because it had not been fully analyzed.

Council Member Burch was opposed to the amendment.

Council Member Kleinberg said the amendment was too complicated to support without input from the Planning staff.

**INCORPORATED INTO THE MOTION BY THE MAKER AND THE SECONDER** to direct staff to look at introducing flexibility into the PF Zone to allow for the siting of the sound wall.

**AMENDMENT FAILED** 3-4, Beecham, Freeman, Kishimoto "yes," Morton "not participating," Mossar absent.

**MAIN MOTION PASSED** 7-0, Morton "not participating," Mossar absent.

**MOTION:** Council Member Freeman moved, seconded by Kishimoto, that staff review sound wall situations in PF Zones but not associated with this particular issue.

Council Member Lytle said she would not support the motion because she could not see the present circumstance arising in the near future.

Council Member Kleinberg asked whether the motion could be looked at as part of the ZOU.

Mayor Ojakian affirmed that staff said yes.

**MOTION PASSED** 5-2, Beecham, Ojakian "no," Morton "not participating," Mossar absent.

**RECESS:** 9:30 to 9:40 p.m.

7. **PUBLIC HEARING:** The City Council will consider changes to development impact fees.

Council Member Kleinberg stated she would not participate in the item due to a potential conflict of interest because her husband's law firm represented Stanford in land use matters.

Mayor Ojakian said the proposal before the Council was a recommendation from the Finance Committee.

Council Member Burch, said as Chair of the Finance Committee, the Council adopted ordinances related to the development impact fees in March 2002 and then referred the matter to the Finance Committee for further study on a number of issues. The Finance Committee voted 4-0 to exempt new childcare facilities from development impact fees for parks, community centers, and libraries. The vote was 4-0 to establish a category of large new homes greater than 3,000 square feet, and to modify the Municipal Fee Schedule (MFS) to increase the fee charge to that category of homes to the full recovery level. Additionally, the Committee voted in agreement to establish a new category of small multi-family units less than 900 square feet, and modify the MFS to decrease the fee charge for that category of homes. Although the fees were not large, a message was sent of the preference to discourage large homes and encourage smaller buildings. The vote was 4-0 to direct an Environmental Impact Report (EIR) for new development in the Stanford Research Park to include an analysis of a range of transportation mitigation and traffic calming measures. The Committee acknowledged there was a nexus study for citywide transportation impact fees, which would evaluate alternative transportation improvements planned for completion in 2003. The vote was 3-1 to establish a one-time 1,500-square-foot per site exemption from impact fees for new space, which, by law, could only be used for retail, restaurant, automotive, or personal service. The Finance Committee did not vote to expand the exemption for below market rate (BMR) units because they felt it was not appropriate to reward developers for including units that were already required.

Chuck Bradley, 2957 Waverley Street, said he strongly recommended the City Council exempt single-family homes from the ordinance because it was an excessive financial burden.

Deborah Ju, 371 Whitclem Drive, urged the Council to eliminate an exemption to the current provision governing development impact fees, which provided that mixed-use projects had to pay either the commercial development impact fee or the residential BMR or in-lieu fee, whichever was greater. The looseness of the mixed-use provision made it vulnerable to spurious claims and led to the loss of a great deal of money to the City's housing trust fund.

Mark Sabin, 533 Alberta Avenue, Sunnyvale, said the multi-family units of 900 square feet or less would only provide a two-bedroom home, which did not allow for much of a family. He urged the Council to increase the square-footage for multi-family

units. He said the idea of including an analysis of a range of transportation mitigation and traffic calming measures for the Stanford Research Park was nebulous. He wondered how the established range would be determined.

**MOTION:** Council Member Burch moved, seconded by Kishimoto, approval of the Finance Committee recommendation to:

1. Introduce the ordinance for first reading to:
  - ◆ Establish a one-time 1,500 square-foot per site exemption from impact fee for new space which, by law, could only be used for retail, restaurant, automotive, or personal service;
  - ◆ Exempt new childcare facilities from development impact fees;
  - ◆ Establish a category of large new homes as those greater than 3,000 square feet, and modify the Municipal Fee Schedule to increase the fee charged for this category of homes to the full cost-recovery level;
  - ◆ Establish a category of small multi-family units as being those 900 square feet or less and modify the Municipal Fee Schedule to decrease the fee charged for this category of homes.
  
2. Direct that an Environmental Impact Report (EIR) for new development in the Stanford Research Park include an analysis of a range of transportation mitigation and traffic calming measures.

Ordinance 1<sup>st</sup> Reading entitled "Ordinance of the Council of the City of Palo Alto Amending Sections 16.45.050, 16.47.030 and 16.58.030 of the Palo Alto Municipal Code to Create Certain Development Impact Fee Exemptions"

Council Member Kishimoto said the Finance Committee's message was in support of local-serving retail, encouraging smaller residential units, and ensuring the traffic impact fees were not limited to widening intersections, but also allowed their use for alternative transportation.

**AMENDMENT:** Council Member Lytle moved, seconded by Beecham, to encourage below market rate (BMR) units by exemption of development impact fees.

Council Member Burch said he did not want to incorporate the exemption of BMR units into the motion.

Council Member Lytle said she would like the Council to look at the mixed-use exemption provision raised by Ms. Ju.

Council Member Beecham agreed that the City do everything possible to encourage BMR units.

Council Member Morton said the City did not encourage BMR units, it required them; generally for a greater density. He did not believe developers would build BMR units if the fees were not required, and it seemed financially irresponsible to surrender fees on a requirement.

Council Member Kishimoto said the only possible compromise would be to exempt the developer impact fees on BMR units over and above any statutory requirements.

Council Member Morton said he was not opposed to that, because the City would receive a benefit that was not a legislative requirement.

**AMENDMENT FAILED** 2-5, Beecham, Kishimoto "yes," Kleinberg "not participating," Mossar absent.

**AMENDMENT:** Council Member Kishimoto moved, seconded by Burch, to exempt below market rate (BMR) units that are included in a project over and above Palo Alto statutory requirements.

**AMENDMENT PASSED** 7-0, Kleinberg "not participating," Mossar absent.

**AMENDMENT:** Council Member Morton moved, seconded by Lytle, to request staff to return to Council with a revision of mixed-use development impact fees per Palo Alto Municipal Code section 16.47.040 so that each portion of the project was responsible for its appropriate share of the impact fees.

Council Member Lytle said as with all the impact fees the City had adopted, the community had been asked whether they believed the fees were overly burdensome and if somehow the profitability had been removed.

City Attorney Ariel Calonne said the City had two distinct sets of housing fees. The one that Ms. Ju mentioned applied to commercial and industrial projects, and was found in the zoning code. The one in the Comp Plan applied to housing projects. The Palo Alto Municipal Code (PAMC) stated that on mixed-use projects, the housing fees were based on the average of the two projects, and it did exempt half of the project.



Council Member Morton said that exemption was what the Council would like staff to review.

Director of Planning and Community Environment Stephen Emslie clarified that staff was directed to return to the Council with changes to the housing fee so the shares of mixed-use projects attributable to commercial fees and residential fees paid the appropriate amounts of each, without averaging or exempting those fees.

Council Member Morton said that was correct.

Mr. Emslie said staff would try to incorporate the changes to the housing fees with those related to the BMR program already scheduled to return to the Council.

**AMENDMENT PASSED** 7-0, Kleinberg "not participating," Mossar absent.

**AMENDMENT:** Council Member Beecham moved, seconded by Kishimoto, to establish 1,500-square-foot units for one-time development impact fees and exempt all ground floor commercial units.

Council Member Beecham said the purpose of the amendment was to encourage a strong ground floor element within the community.

Council Member Kishimoto asked whether the exemption was limited to zoning, which required ground floor retail, or did it also include ground floor retail that could be converted to other uses.

Council Member Beecham said he wanted to limit it to those areas that required ground floor uses.

Council Member Morton opposed the amendment because the benefit of ground floor retail went to the owner of the building, not the tenant.

Council Member Kishimoto asked the maker of the amendment whether the intention was to limit the exemption fees for ground floor retail to a permanent requirement or easement.

Council Member Beecham said his intention was to have the exemption apply only to those areas that required ground floor retail.

Council Member Burch clarified the amendment on the floor was an exemption of all ground floor retail.

**AMENDMENT FAILED** 2-5, Beecham, Kishimoto "yes," Kleinberg "not participating," Mossar absent.

Council Member Beecham was opposed to the main motion because it discriminated against future residents of Palo Alto. He believed the discrimination was exacerbated by Proposition 13, which assured that those who moved to Palo Alto and built something new, would pay far more in property taxes than the current residents did. The proposed reductions brought forth from the Finance Committee would make a difference of approximately \$16,000 per year which, in his opinion, was not of significant benefit or detriment.

Council Member Lytle said the Finance Committee was attempting to reduce impact fees through a series of exemptions.

**AMENDMENT:** Council Member Freeman moved, seconded by Lytle, to direct staff to return with a status report on development impact fees for new development for storm drains and the possibility of a "Percent for Art" fee.

Council Member Freeman said she was the liaison for the Blue Ribbon Storm Drain Committee and was recently made aware that new development fees for storm drains was a common fee in other municipalities. She believed it was something Palo Alto might want to examine. "Percent for Art" was previously mentioned as a way for the City to contribute to public art. She suggested staff evaluate the possibilities of those issues.

Council Member Lytle asked the maker of the motion whether the request of staff could be modified to a status report on the issues.

Council Member Freeman said she would accept the change.

Council Member Morton requested the item on storm drains be deferred until the issue came back to the Council.

**AMENDMENT FAILED** 3-4, Freeman, Kishimoto, Lytle "yes," Kleinberg "not participating," Mossar absent.

**MAIN MOTION PASSED AS AMENDED** 6-1, Beecham "no," Kleinberg "not participating," Mossar absent.

Council Member Burch said the Finance Committee also requested that staff explore the idea of exempting from development impact fees non-profit organizations providing social services.

COUNCIL COMMENTS, QUESTIONS, AND ANNOUNCEMENTS

Council Member Freeman said City Council Members would be at various locations on September 28, 2002, for Sidewalk Office Hours.

Mayor Ojakian said staff and some of the Council Members would attend a meeting at Mitchell Park on September 18, 2002, to get input on the proposed Mitchell Park Library and Community Center Complex. He also thanked staff members, KZSU, Mid-Peninsula Community Media Center (MCMC), and others who made it possible to hold tonight's meeting offsite.

Council Member Lytle expressed the opinion the City may be at a disadvantage because they did not currently have a Zoning Administrator.

CLOSED SESSION

8. (Old Item No. 5) Conference with City Attorney -- Existing Litigation Subject: Jaim Nulman, Avelyn Welczer v. City of Palo Alto, SCC #CV779831  
Authority: Government Code section 54956.9(a)

Herb Borock, P.O. Box 632, referred to a letter put at Council places that evening regarding litigation on the trade of dedicated parkland without the vote of the people. In his letter were attached minutes that expressed the opinion that the vote of the people was required. He said any solutions that involved Real Estate (RE) transactions should be properly noticed under the Brown Act. The size of the parcel in question was over 1.5 acres and there was a 1-acre minimum requirement in the RE zone. There was a provision for creating a solution.

The City Council met in Closed Session to discuss matters involving existing litigation as described in Agenda Item No. 8.

**Mayor Ojakian announced that no reportable action was taken on Agenda Item No. 8.**

ADJOURNMENT: The meeting adjourned to a Closed Session at 10:40 p.m.

FINAL ADJOURNMENT: The meeting adjourned at 10:55 p.m. in honor of Dan Logan, Executive Director of Midpeninsula YMCA, for a speedy recovery from a recent bicycle accident.

ATTEST:

APPROVED:

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City Clerk

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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.