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December 9, 2002

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ADJOURNMENT: The meeting adjourned at 11:55 p.m. 28

The City Council of the City of Palo Alto met on this date in the Council Conference Room at 6:05 p.m.

CITY COUNCIL

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

PARKS AND RECREATION COMMISSION

PRESENT: Beckwith, Garvey, Gioumousis, Hagan, Keating, Steiner, Torin

SPECIAL MEETING

1. Joint Dinner Meeting with the Parks and Recreation Commission

No action required.

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

The City Council of the City of Palo Alto met on this date in the Council Chambers at 7:10 p.m.

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

ORAL COMMUNICATIONS

Anne Houghteling, 293 Tennessee Lane, spoke regarding the Edgewood Redevelopment Project.

Greg Kerber, Birch Street, spoke regarding staff's response to complaints.

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

John K. Abraham, 736 Ellsworth Place, spoke regarding complaint process.

Herb Borock, P.O. Box 632, spoke regarding Parks and Recreation Commission minutes of October 22, 2002.

Bob Moss, 4010 Orme Street, spoke regarding staff/Council Member/public communication.

Ed Power, 2254 Dartmouth Street, spoke regarding public politics.

SPECIAL ORDERS OF THE DAY

1. Resolutions Expressing Appreciation to Owen Byrd and Kathryn Schmidt for Outstanding Public Service as Members of the Planning and Transportation Commission

MOTION: Council Member Morton moved, seconded by Mossar, to adopt the resolutions.

Resolution 8233 entitled "Resolution of the Council of the City of Palo Alto Expressing Appreciation to Owen Byrd for Outstanding Public Service as a Member of the Planning and Transportation Commission"

Resolution 8234 entitled "Resolution of the Council of the City of Palo Alto Expressing Appreciation to Kathryn Schmidt for Outstanding Public Service as a Member of the Planning and Transportation Commission"

MOTION PASSED 9-0.

Mayor Ojakian expressed delight in having previously worked with Owen Byrd and Kathryn Schmidt on the Planning and Transportation Commission (P&TC).

Council Member Lytle expressed gratitude to Owen Byrd and Kathryn Schmidt for their contributions on the P&TC.

Council Member Morton expressed appreciation to Owen Byrd and Kathryn Schmidt for their patience and contributions to the City.

Council Member Beecham expressed appreciation to Owen Byrd and Kathryn Schmidt for their leadership on the P&TC.

Kathryn Schmidt thanked the P&TC Commissioners and City staff, with whom she enjoyed working with.

Owen Byrd said he enjoyed participating on the P&TC Commission and being a part of the community.

MOTION: Council Member Burch moved, seconded by Freeman, to move Item No. 8 forward ahead of Approval of Minutes to become Item No. 1A.

MOTION PASSED 9-0.

Mayor Ojakian announced that Item No. 11 would not be heard that evening.

REPORTS OF OFFICIALS



1A. (Old Item 8) Proposal from Friends of the Junior Museum and Zoo for Public/Private Partnership

Assistant City Manager Emily Harrison said the City was approached in September 2001, by Friends of the Palo Alto Junior Museum and Zoo (Friends), to discuss the possibility of pursuing plans to rehabilitate the facility. The public/private partnership, adopted by the Council in 1994, encouraged the development of public/private partnerships for the benefit of the public. Public/private partnerships were defined as the cooperation between the City and the private sector or non-profit organizations to provide services, facilities, or capital projects to the community. City staff received the partnership proposal from Friends, evaluated the pros and cons as outlined in the staff report (CMR:442:02), and recommended in favor of the proposal. Staff did not intend for the Council to approve the Option to Lease that evening, or for any specific project or fee waiver.

Daniel Garber, 2201 Byron Street, President of the Friends of the Junior Museum and Zoo (Friends) Board, acknowledge the support of the members of the community. The Palo Alto Junior Museum and Zoo was a place where elementary school children received supplemental science education in the classrooms. It was also a place for after-school and summer class enrichment programs. He urged the Council to vote in favor of approving the proposed public/private partnership.

Rachel Meyer, 3389 Park Boulevard, Executive Director for the Friends, said the Palo Alto Junior Museum and Zoo was started in 1934 in the basement of a school. In 1941, a building was constructed with private funds. The last addition to the facility was in 1969 when the Zoo was added. Approximately 8,000 children were served both at the school and onsite with the Junior Museum and Zoo's educational programs. The proposal before the Council would not increase programming, but remove the constraints that prevented current programs.

MOTION: Council Member Beecham moved, seconded by Kleinberg, to direct staff to proceed with development of a public/private partnership, including on Option to Lease Agreement with Friends of the Palo Alto Junior Museum and Zoo (Friends) for the purpose of allowing the Friends to initiate the planning process to renovate the Junior Museum and Zoo. The Friends of the Palo Alto Museum and Zoo will provide funding for the entire project.

Council Member Beecham supported the proposed public/private partnership and assured the public that the process would go through the normal review and design analysis to ensure the project met the requirements of the entire community. Embarking on a public/private partnership benefited the City in many ways.

Council Member Kleinberg said she hoped City staff and Commission reviews would be implemented in a way that ensured the Friends could meet the 24-month lease agreement.

Council Member Morton asked whether the second-option condition could be worded to allow the Friends to appoint a project manager that would be the point-of-contact for City coordination.

Ms. Harrison said the Option to Lease and its terms were not before the Council that evening. City staff believed the competency of the project manager was a critical issue.

Council Member Morton said when the item came back before the Council the second-option condition should include words that allowed City staff to review the competency of the Friends' project manager.

Council Member Beecham said the change would not be necessary since the motion did not state the comments of Council Member Morton.

Council Member Morton withdrew his request.

Council Members Freeman and Kishimoto expressed support for the proposed project.

Council Member Burch complimented the young people who were present in the audience.

Mayor Ojakian acknowledged that a public/private partnership had worked with the Children's Theater, and would certainly work for the Junior Museum and Zoo.

MOTION PASSED 9-0.

APPROVAL OF MINUTES

MOTION: Council Member Burch moved, seconded by Morton, to approve the minutes of October 21, 2002, as corrected.

MOTION PASSED 9-0.

CONSENT CALENDAR

MOTION: Council Member Morton moved, seconded by Mossar, to approve Consent Calendar Item Nos. 2, 3 and 5-7 with Item No. 4 being removed at the request of staff.

LEGISLATIVE

2. Biennial Review of Conflict of Interest Code and Annual Revisions of Designated Positions

Resolution 8235 entitled "Resolution of the Council of the City of Palo Alto Amending the Conflict of Interest Code for Designated City Officers and Employees as Required by the Political Reform Act and Regulations of the Fair Political Practices Commission and Repealing Resolution No. 8020"

3. Weed Abatement Program - Set Public Hearing

Resolution 8236 entitled "Resolution of the Council of the City of Palo Alto Declaring Weeds to be a Nuisance and Setting a Hearing for Objections to their Proposed Destruction or Removal"

ADMINISTRATIVE



4. ~~Amendment No. 1 to Contract No. C1131960 Between the City of Palo Alto and DES Architects & Engineers in an Amount Not to Exceed \$21,620 for Services Associated with Additional Design Development, Construction Documents, Bid Assistance, and Reimbursable Expenses for Improvements to Three Baylands Parking Lots and Harbor Road (CIP 10003) (Item pulled at the request of staff)~~
5. Agreement Between the City of Palo Alto and Interstate Gas Services, Inc in an Amount Not to Exceed \$306,000 for Natural Gas Operations Services over the Period from January 1, 2003 to December 31, 2005
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Mayor Ojakian asked whether staff had considered the suggestions outlined in the memo submitted by the City Auditor.

City Manager Frank Benest said yes. Staff's intention was to incorporate those suggestions.

Council Member Kishimoto said it was a good idea to enter into Inter-City agreements whether Palo Alto was in a financial crunch or not. She would like to see the City enter into reciprocal agreements with the other cities as well.



7. Contract Between the City the Palo Alto and Ranger Pipelines Incorporated in the Amount of \$1,666,239 for Project 14 Sanitary Sewer Rehabilitation

MOTION PASSED 9-0 for Item Nos. 2, 3 and 5-7.

Mayor Ojakian said Item No. 6 was an example where staff had found a creative way of coming up with money that did not require taxpayer funds.

UNFINISHED BUSINESS

9. Colleagues Memo from Mayor Mossar and Council Member Kleinberg re Opening the Record of the October 30, 2002 Closed Session (**Continued from December 9, 2002**)

MOTION: Council Member Beecham, seconded by Mossar that the City Council determine that the confidentiality of the record of the October 30, 2002 meeting is not necessary or appropriate for the agenda item, that the closed session be opened to the public, depending on Ariel Calonne waiving his personnel rights in the matter of this item.

Council Member Beecham said the City Council's Closed Session of October 30, 2002, was a good faith effort by the Council to resolve a confidential matter. Subsequent to that meeting, many of the elements of the discussion and other matters had appeared in the public realm, which caused some damage to the community and the reputation of the Council.

Vice Mayor Mossar said there were misunderstandings and misapprehensions about the situation and would serve everyone to have complete information.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER that the intent of the Council was to be bound by the terms of the employee contract.

Council Member Kleinberg said personnel and performance evaluation matters were confidential between Council and Council-Appointed Officers (CAO's), as a term of the employee contract. Any violation of the contract term could put the City at risk. Opening the record for the requested matter only would include parameters being set.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER that the intent of the Council was to open the record for this matter only and encourage the release of written matters pertinent to this matter only.

Vice Mayor Mossar asked whether the incorporation included the matters that lead up to the meeting as well as the meeting itself.

Council Member Kleinberg said yes.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to encourage each Council Member to release the written communications sent to one or more Council Members or Council Appointed Officers as it relates to this matter. The intent on the record from each Council Member would be all materials, transcripts, or conversations pertinent to this matter.

Vice Mayor Mossar asked about the release of verbal communications between Council Members and CAO's.

Council Member Kleinberg said her intention was not to include any verbal communications.

Council Member Kleinberg suggested to her colleagues an agreement to waive the Attorney/Client privileges used for the matter with Mr. Peter Sturgis and Mr. Richard Brown. As a group, the Council could decide to waive that privilege.

Council Member Beecham asked whether the Senior Assistant City Attorney had any comments on that issue.

Senior Assistant City Attorney Bill Mayfield noted that a request had come from the *Palo Alto Weekly (Weekly)*, to cure and correct violations of the Ralph M. Brown Act that occurred in connection with a closed session meeting held by the Council on October 30, 2002. He recommended the Council defer action in order to consult with outside Counsel Michael Jenkins on the legal implications of the demand letter. The issue raised by the *Weekly* was whether the meeting was properly noticed and whether the action was properly reported at the end of the closed session. He conveyed the request of Mr. Jenkins, who had asked for the opportunity to communicate with the Council before they took the vote to effectively open up the discussions from the closed session. He believed the closed session communication of October 30, 2002, if made available to the public, could have legal ramifications of potential litigation depending on how the Council reacted to it.

Mayor Ojakian asked whether the Council's actions that evening were contingent upon communications with Mr. Jenkins.

Mr. Mayfield said communicating with Mr. Jenkins would afford the Council the opportunity to coordinate their actions with the legal advice Mr. Jenkins would provide.

Vice Mayor Mossar clarified she understood the Council might want to proceed in its present direction, but should afford themselves the opportunity of communicating with Mr. Jenkins before doing so.

Mr. Mayfield said that was correct. It was his recommendation from a legal standpoint.

City Manager Benest said he would be greatly concerned if, by opening the record to the closed session in question, it set a precedent for any personnel action, negotiation about real estate, or labor relations in the future. It was one thing to appropriately report out an outcome, however, it was quite another to cite the October 30, 2002, closed session in the future.

Mr. Mayfield strenuously agreed with the City Manager that opening the closed session would pose the danger of creating a precedent, which could jeopardize the confidentiality of future lawfully closed and confidential meetings.

Council Member Beecham asked how soon could discussions occur with Mr. Jenkins, and under what context would those discussions be held.

Mr. Mayfield said Mr. Jenkins had not indicated to him a preference for a proposed executive session or simply the opportunity to communicate with the Council in a written format.

SUBSTITUTE MOTION: Council Member Beecham, seconded by Mossar, to continue this matter to a date uncertain.

Council Member Beecham said he understood from Senior Assistant City Attorney Mayfield there were serious issues to be discussed and the Council needed to understand them thoroughly.

Vice Mayor Mossar concurred with the substitute motion.

Council Member Burch said he understood there were two reasons for not going forward on the item that evening. One had to do with the letter received from the *Weekly*, which could put the Council in danger of being sued. The other reason would set a precedent, if the Council opened the closed session. He inferred from Mr. Mayfield's comments the Council should never waive their rights to confidentiality.

Mr. Mayfield said his intention was not to indicate it was inappropriate in the present matter. He hoped the Council would bear in mind that once a waiver was made, it would affect how matters of the same type came before the Council in the future.

Mayor Ojakian clarified the Council had the ability, within the law, to open up the closed session, but should do so after discussions had occurred with Mr. Jenkins.

Council Member Burch said it would invalidate any advice given to the Council by Mr. Jenkins.

Mr. Mayfield said Mr. Jenkins' advice would not be abandoned unless the Council agreed to allow each of their colleagues to assess the information on their own.

Council Member Freeman said she was not clear on the purpose or the goal of opening the closed session. The pressure of the press and some of the public to force the closed session to be opened, was not enough for her to understand why the item was before the Council that evening. She believed all the issues related to the matter had been resolved and did not require further discussion.

SUBSTITUTE MOTION: Council Member Freeman requested that the item not be continued and it not be brought up again.

SUBSTITUTE MOTION FAILED FOR LACK OF A SECOND.

Council Member Freeman asked what were the ramifications to the person or persons who leaked information about the closed session to the media, as it related to Section 2.04.040(b) of the Palo Alto Municipal Code (PAMC).

Mayor Ojakian said it was possible that information became available to the public during the course of tough questioning by reporters and the piecing together of certain incorrect facts.

Council Member Freeman said there was detailed information in the newspaper that was privy only to those persons in the closed session.

Mr. Mayfield said Section 2.04.040(b) of the PAMC provided for Council censure. Those censures could go in several directions depending on how the Council perceived what was brought forth in the course of the mutual disclosure. It was not clear what the language "any other penalty provided under this code or state law" referred to. He said state law did not address the issue, but the PAMC did provide for the violation of any section of the code as a misdemeanor.

Council Member Freeman said if her colleagues voted in favor of opening the closed session, it would further deteriorate public trust, employee trust, and the trust between CAO's and the Council.

Council Member Kleinberg expressed her disappointment at the way the colleague memo and proposed solution had turned into an event that cast dispersions on one another. She believed the intent of the memo and the amendments to the main motion, was to restrict and limit an effort to build credibility with the public based on calls for clarification. She did not believe the code section that referenced to confidentiality of closed sessions provided a blanket proscription over the entire meeting that was held. It was destructive to assume base motivations on behalf of fellow colleagues.

Mayor Ojakian said he was opposed to the motion. He was not comfortable asking a City staff member to give up his/her right to privacy to divulge private information. He believed the closed session that was held, was done so lawfully.

Council Member Morton asked whether the discussions from Mr. Jenkins would come back to the Council in closed session.

Mr. Mayfield said he did not want to prejudge whether there would be the legal predicate for an executive session on the matter or whether Mr. Jenkins would report his thoughts and recommendations to the Council in written form.

Mayor Ojakian clarified that because there was potential legal action against a corporation, the Attorney's Office would need to take action on whether there was a need to have a closed-door session based on a legal matter.

Mr. Mayfield said that was correct. The Attorney's Office would need to seek legal advice and communicate those findings with the City Council. It might be appropriate to obtain that advice in advance of making a decision on the matter that evening.

Council Member Morton said he would vote to defer the matter.

Council Member Lytle expressed concern that the spirit and intent of the colleague memo would not achieve its purpose; which was clarification. Instead it would cause additional confusion, misinformation, and misunderstanding. She believed the memo that was released from closed session was a breach of law, ethics, and trust. She asked whether there were potential risks from the *Weekly* if the Council voted to drop the issue before hearing from Mr. Jenkins.

Mayor Ojakian said the Council had legal action taken against them and would need to address the item that evening.

Mr. Mayfield said if the Council decided to take action that evening to remove the question for Mr. Jenkins by voting to disclose everything, it would complicate his ability to communicate with the Council. However, if the Council voted to defer the matter, Mr. Jenkins would have the opportunity to communicate his findings, which would not hurt his ability to deal with the *Weekly's* potential litigation.

Council Member Lytle said she did not believe there was any evidence of the Council's need to continue the matter at the public's expense.

Council Member Kishimoto said Mayor Ojakian made a decision in October 2002, based on advice from the City Attorney's office, to hold a closed session. That closed session was titled in such a way as to protect the privacy and personnel rights of an employee. She said any decisions the Council made that evening about the past situation would be different from those made as they moved forward.

Council Member Kleinberg asked Mr. Mayfield if there were any historical situations similar to the matter before them that evening which made him concerned about a precedent being set.

Mr. Mayfield said no. His concern about precedent setting was drawn from a number of areas of the law, whereby if confidentiality could not be counted on in the future, it undermined the assurance of persons whom had confidential communications given to them.

Council Member Kleinberg clarified it was possible Mr. Jenkins could advise the Council to do nothing in response to the *Weekly's* request to cure a violation, because he believed there was no violation of the Brown Act. She asked whether the Council would first have to wait to hear from Mr. Jenkins, and then wait to see if the *Weekly* had any judicial remedies.

Mr. Mayfield said that was correct. The *Weekly's* request was for the City Council to acknowledge a violation of the Brown Act, rescind any actions taken, and disclose all the details of motions made. All of which was based on their reading of the Brown Act.

Council Member Freeman said the Open in Public document stated; "Disclosure of other closed session information is risky at best. The only completely safe way to divulge closed session discussions is pursuant to a court order issued under Section 54960(a) of the Brown Act." She asked whether the information she cited, which was a state law, superceded the PAMC.

Mr. Mayfield said yes, as a general matter. State law superceded local law except on matters of purely local interest. The document Council Member Freeman cited from was not a restatement of the legal terms and requirements of the Brown Act, it was good legal advice. The only safe way to deal with disclosure was to obtain a court order.

Council Member Freeman asked whether the Council was opening itself up for an issue, if the matter was from a vote of the Council instead of from a mandamus.

Mr. Mayfield said there were complexities to whether the Council was opening itself up to liabilities, which Mr. Jenkins could better address.

SUBSTITUTE MOTION FAILED 4-5, Beecham, Burch, Mossar, Morton "yes."

COUNCIL TOOK NO FURTHER ACTION ON THE MOTION.

RECESS: 9:40 p.m. to 9:50 p.m.

Ann Avis, Palo Alto Foundation for Education, said the Palo Alto Foundation for Education (PAFE) raised funds to benefit all public schools in the Palo Alto Unified School District (PAUSD). They awarded teacher grants and matched private dollars with needs for the schools. The PAUSD had invested bond funds totally \$11 million in new science facilities at both Palo Alto and Gunn High Schools. The bond funds, however, only covered what was nailed to the walls and floors. PAFE invested \$1 million in new equipment and technology, which would be allocated equally to both high schools. She presented a video regarding the One Million-Dollar High School Science Campaign.

10. PUBLIC HEARING: The Palo Alto City Council will consider the following application and alternate project for 2300 East Bayshore Road: **(Continued from 10/15/02)**

Application by Carol Jansen on behalf of A&P Family Investments to allow a 110,000-square-foot, two-story office building with surface and underground parking facilities on a 5.66-acre site replacing an existing restaurant and office buildings totaling 41,700 square feet, requiring: 1) a Comprehensive Plan Amendment to change the land use designation of a 1.84-acre parcel from "Service Commercial" to "Research/Office Park"; 2) a rezoning of the 5.66-acre site to a Planned Community (PC); and 3) a merging of a 3.82-acre parcel with the 1.84-acre parcel to create a single 5.66-acre parcel. Environmental Assessment: A draft Initial Study was prepared but not completed. File Nos: 02-CPA-01, 02-EIA-03, 02-PC-01.

Alternate project recommended by staff and the Planning and Transportation Commission comprised of the Comprehensive Plan amendment, a rezoning of the 1.84-acre parcel to the LM(D)(3) zone, consistent with the zoning of the adjacent 3.82 parcel, and adoption of a Negative Declaration. Environmental Assessment: A Negative Declaration has been prepared and released for public review on August 28, 2002. File Nos: 02-CPA-01, 02-ZC-03, 02-EIA-11.

Director of Planning and Community Environment Steven Emslie said the proposed project was an application for a new Planned Community (PC) zone
12/09/02

that covered approximately 5.50 acres of land adjacent to Highway 101, and the Embarcadero and East Bayshore Roads. The site contained a PC zone, which was a site-specific zoning tool that was customized to a particular project and allowed a narrow range of uses. The applicant proposed to expand the zoning to the entire site and amend it to allow an office building in excess of 100,000 square feet. The Planning and Transportation Commission (P&TC) voted 7-0 to deny the requested PC project. Staff understood the rationale in reevaluating and redeveloping the site on a comprehensive basis, and saw the wisdom in proceeding with the base zone. The LM(D)(3) was comprised of a substantial amount of property under consideration for redevelopment, and was the predominate zone in the East Bayshore industrial area. There were a few exceptions to the LM(D)(3) zone, which were primarily PC zones and site-specific. Staff was supportive of amendments necessary to address the former Scott's Restaurant building to LM(D)(3) in the Research/Office (RO) designation under the Comprehensive Plan (Comp Plan), which was necessary in order to realize the comprehensive redevelopment of the site.

Planning Manager Amy French said Planning staff and the P&TC had concerns about the development intensity proposed by the A&P Family Investments project. The proposed PC project was a two-story 110,000 square-foot building. The floor area was outside of what was planned for "build-out" of Palo Alto envisioned in the Comp Plan, specifically Policy L-8, which required maintaining the limit of new non-residential floor area per the Citywide Land Use and Transportation Study of 1989. The P&TC members were concerned about current traffic congestion in the area and the jobs/housing imbalance. Attachment A of the October 15, 2002, staff report (CMR:411:02) provided findings for denial of the requested PC District. Staff did support a resolution amending the restaurant parcel from Service Commercial (CS) to RO Park (Attachment C of CMR:411:02). The change in designation would still allow a diversity of uses called for in the Comp Plan and was supported by Policies L-46, L-5, and L-7. Staff also supported the rezoning of the parcel from PC to LM(D)(3), which would allow up to 24,000 square feet. That was 15,600 more square feet than the former restaurant building provided in floor area.

Mayor Ojakian asked the Senior Assistant City Attorney whether the item was quasi-judicial and subject to Council's Disclosure Policy.

Senior Assistant City Attorney Wynne Furth said although the item was largely legislative, there was a request for PC zoning and Council disclosure was appropriate out of an abundance of caution.

Council Member Lytle said she had been contacted by the applicants and by Carol Jensen acting on their behalf.

Council Member Morton said he had spoken with Mr. Peery and Carol Jensen.

Council Member Burch said he had spoken with Mr. Peery and Carol Jensen, and conducted a site visit.

Vice Mayor Mossar said she had nothing to disclose.

Mayor Ojakian said he had spoken with the Peery's approximately 8 months prior, and recently conducted a site visit.

Council Member Kleinberg said she had spoken with the Peery's and Carol Jensen, and conducted a site visit.

Council Member Kishimoto said she had spoken with Carol Jensen and Angelica Volterra, and conducted a site visit with Mr. Peery.

Council Member Beecham said he had conducted a site visit with Richard and Jason Peery, and had spoken with Carol Jensen and received electronic mail from her.

Council Member Freeman said she had spoken with Mr. Peery and conducted a site visit with him as well.

Vice Mayor Mossar asked staff if it was their intention to rezone one or both of the parcels to LM(D)(3).

Mr. Emslie said the rezoning would encompass the former Scott's Restaurant building, which was the area designated for PC.

Vice Mayor Mossar clarified the second parcel was already zoned LM(D)(3).

Mr. Emslie said that was correct.

Vice Mayor Mossar asked for a summary of the allowable uses in LM(D)(3).

Mr. Emslie said LM(D)(3) zoning allowed for childcare, all forms of residential housing, and restaurants, which did require a use permit.

Vice Mayor Mossar said whether LM(D)(3) zoning allowed for an auto dealership.

Mr. Emslie said an auto dealership would fall under Retail Services, which are conditionally permitted under LM(D)(3) zoning.

Vice Mayor Mossar said it sounded as if LM(D)(3) was a broad zone, which was compatible with other zoning in the area.

Mr. Emslie said that was correct. It predominantly governed the uses in the area.

Mayor Ojakian declared the Public Hearing open at 10:10 p.m.

Cliff Chang, Principal, Hoover & Associates Architects, showed a slideshow presentation of the exterior scheme of the proposed project, which began as a two-story office park in the midst of Highway 101 and Embarcadero and East Bayshore Roads. Initially, the building was an L-shaped scheme with an entry statement, which broke the building down into two parts towards the entry. One aspect of the project was the creation of underground parking, which would minimize on-grade parking and allow for greater landscaped areas around the building. The design was a sustainable one with a light-colored pallet and improved solar orientation to reduce exposure on the building.

Fred Choa, Traffic Consultant, Fehr & Peers Associates, 3685 Mt. Diablo Boulevard, Lafayette, said he had completed approximately three revisions of the traffic study by looking at the potential impacts of the project. Traffic studies were conducted at the intersection of East Bayshore and Embarcadero Roads, south of the project at San Antonio Road, and north of the project at University Avenue. City staff in the Transportation Division assisted his office in developing the scope of work, which scenarios to anticipate, including the proposed Ikea project, and any future conditions with or without their proposed project. The overall conclusion found that the project as proposed resulted in no significant traffic impacts at all intersections except Highway 101 at San Antonio Road. That intersection had been unsignalized for many years, which made it difficult to make the turn left movement during the morning and evening peak hours. Caltrans and the Cities of Palo Alto and Mountain View have been working jointly to mitigate that intersection. It was hoped the intersection would be completed as part of the Sun Microsystems redevelopment project. Signal coordination was discussed along the East Bayshore Road corridor as a means of improving traffic flow for residents of Palo Alto and motorists traveling to and from the Dumbarton Bridge.

Richard Peery, 2200 Cowper Street, asked the Council for their consideration of the proposed project.

Mr. Emslie clarified to Vice Mayor Mossar it was the restaurant portion of the site that was zoned Service Commercial (CS), which would allow for an auto dealership. The balance of the site, designated as RO, would not.

Vice Mayor Mossar asked whether it pertained to the current zoning.

Mr. Emslie said the PC zoning under current Comp Plan would have to be amended to allow for an auto dealership.

Angelica Volterra, P.O. Box 1724, was opposed to the proposed A&P Family Investment Project that was documented by staff in the City Manager's Report (CMR:470:02). She did not believe there had been an adequate economic analysis of the effects of staff's proposed Comp Plan change from CS to RO including the possible loss of tax revenue and the possible exacerbation of the existing jobs/housing imbalance. She disagreed with the applicant's assertion of the lack of retail viability in that area given the vitality of other nearby retail establishments. She believed an adequate and thorough traffic analysis was needed to compare the present Comp Plan zoning and designation with the proposed Comp Plan zoning and changes. She also suggested an in depth analysis comparing the LM(D)(3) zoning with the LM(D)(5) zoning at the proposed location, as the LM(D)(5) zoning would create fewer environmental impacts.

Bunny Good, P.O. Box 824, Menlo Park, was opposed to the proposed A&P Family Investment project. She did not believe the applicant took proper care of the building when he leased it as a restaurant.

John Baca, 484 Oxford Street, urged the Council to take no action on the project and deny the PC application.

Joy Ogawa, 2305 Yale Street, was opposed to the proposed project and urged the Council to deny the PC application. She was also opposed to staff's recommendation for a change to the Comp Plan's land use designation from CS to RO Park, and the zoning change from the present PC to LM(D)(3).

Daniel Garber, 2201 Byron Street, encouraged the Council to approach the applicant's proposal with flexibility and creativity. He urged the Council to keep an open mind to creating opportunities out of projects such as the one proposed that evening.

Bob Moss, 4010 Orme Street, urged the Council to reject the proposed PC project. Palo Alto already had a high office vacancy rate, close to 25-percent. He believed the area should be rezoned for commercial use, because auto dealerships would generate tax revenues for the City. He noted that a number of auto dealerships had left the area because of too few zoned areas for their use.

Carol Jansen, 575 Hawthorne Avenue, said the traffic analysis did take into account the traffic projections for the IKEA store. The uses of the East Bayshore Employment District were employment and open space.

Mayor Ojakian declared the Public Hearing closed at 10:48 p.m.

Council Member Kishimoto asked staff why they recommended rezoning and changing the land-use designation now as opposed to the next year, when the Council was scheduled to review the Planning and Transportation Commission recommendations on the overall LM zone.

Mr. Emslie said those changes were text changes not map changes. Staff's rationale had to do with multiple zones under one ownership and the desire to reutilize underdeveloped or vacant pieces of property. It was extremely difficult to develop those under two different zones and two different Comp Plans. The site needed to be viewed on a comprehensive basis and remove some of the artificial constraints that would prevent an orderly development. Council Member Kishimoto asked what analysis did staff complete to make the recommendation of RO.

Mr. Emslie said the LM(D)(3) allowed a wide variety of other retail sales, which included automobile related retail, such as an auto parts store. It also offered the flexibility to look at interesting and diverse projects for the site.

Council Member Freeman asked what was the process the proposed project went through and whether it was the correct process.

Mr. Emslie said the applicants had developed specific architectural drawings, which were reviewed by the Architectural Review Board (ARB) on numerous occasions. Staff had hoped to redirect their energies in the future to take advantage of the pre-screening process, which would enable the Council and the P&TC to give general guidance to applicants in terms of the Comp Plan and zoning objectives.

Council Member Freeman asked whether the original policy was to present the project to the ARB first and then the P&TC.

Mr. Emslie said the policy involved a two-step process. It was first initiated by the P&TC, and then forwarded to the ARB. The P&TC would discuss the broader issues and the ARB would make a recommendation of the project back to the P&TC. The P&TC would then present its recommendation to the Council based on input from the ARB.

Ms. French said the applicant came forward with an initial application for both preliminary ARB review and a PC project, which they have the option to do.

Ms. Furth said when the PC district application was reviewed by the P&TC, the recommendation was denial, and they forward their recommendation to the Council without review from the ARB.

Council Member Morton asked whether the former Scott's Restaurant building was Research/Office with a PC overlay.

Mr. Emslie said no. It was CS Comp Plan with a PC overly.

Council Member Morton asked what would the build out be if both parcels were CS.

Mr. Emslie said the build out would increase from .3 to .5 Floor Area Ratio (FAR) under the CS Comp Plan designation.

Council Member Morton clarified that by choosing LM(D)(3) zoning, the applicant would be forced to a lower density.

Mr. Emslie said that was correct.

Council Member Morton asked whether the Council was required to deny the PC if they voted in favor of the LM(D)(3) zoning.

Mr. Emslie said the PC would need to be acted on as a separate motion.

Council Member Morton asked whether staff's recommendation to deny the PC would have been different if the public benefit was made clearer.

Mr. Emslie said no. The public benefit could never outweigh a project that did not conform to the City's development policy.

Council Member Morton said he was troubled the City chose to "densify" El Camino Real by building mixed-use projects, but when it came to a space on the freeway, it was given the lowest zoning possible.

Council Member Kleinberg asked whether it was possible to put mixed-use or all housing on the other side of Highway 101 on the same type of corner.

Mr. Emslie said Council's action that evening would continue to allow, as a permitted use, housing to be put on that site. However, that permissive

policy had not always been successful in equalizing the City's jobs/housing balance. The approach would be to create a narrower zone.

Council Member Kleinberg said those were policy issues being raised. She asked whether there were any environmental reasons.

Mr. Emslie said the closer development extended to the bay, there were issues of safety, which could be technically resolved through structural engineering and site preparation. Noise and air quality impacts were also an issue.

Mayor Ojakian said the original staff report (CMR:411:02) indicated four recommendations from the Planning Staff. He asked whether the P&TC unanimously approved all four of those recommendations.

Mr. Emslie said yes.

Vice Mayor Mossar said she was interested in maximizing the ability to increase sales tax revenues by the sales of automobiles. She believed the proposed site was a good one for that although testimony was presented that negated the option. She did not want to take any action that evening which would preclude the Council's ability to do that. She asked for clarification of which of staff's recommendations might need to be continued for future discussion.

Mr. Emslie said if the Council was interested in preserving the CS zoning for a possible automobile sales site, they should not implement the LM(D)(3) zoning or RO Comp Plan designation for the balance of the site.

MOTION: Vice Mayor Mossar moved, seconded by Burch, to approve the staff and Planning and Transportation Commission (P&TC) recommendation as follows: 1) Deny the Planned Community (PC) requested by A&P Family Investments for a 110,000- square-foot, two-story office building on a 5.66-acre site (based upon recommended finding for denial set forth in Attachment A of CMR:411:02; and 2) refer recommendations 2-4 back to the Planning and Transportation Commission for discussion of potential zoning to allow automobile retail sales, recommendations 2-4 being adoption of revised Negative Declaration amending the land use map of the Palo Alto Comprehensive Plan to change the designation of the 1.84-acre parcel at 2300 East Bayshore from Service Commercial to Research/Office Park; changing the zoning classification of the 1.84-acre parcel to LM(D)(3) if an appropriate project having no greater than 0.3:1 Floor Area Ratio is submitted.

~~Resolution of the Council of the City of Palo Alto Amending the Land Use Map of the Palo Alto Comprehensive Plan to Change the Designation of a 1.84 Acre Parcel at 2300 East Bayshore Road From 'Service Commercial' to 'Research/Office Park'~~

~~Ordinance of the Council of the City of Palo Alto Amending the Zoning Map of the City of Palo Alto to Change the Designation of a 1.84 Acre Parcel at 2300 East Bayshore Road From 'Planned Community' To LM (D)(3) "Limited Industrial with Combining Districts"~~

Council Member Burch said the City was in difficult financial times and did not need another office building. He hoped the possibility of using the site as an automobile dealership for perhaps 10 years would increase sales tax revenues for the City. He had spoken to various auto dealers in the City and they all desired visibility and space where they could be seen.

Council Member Freeman asked whether the site was already zoned LM(D)(3) or LM(D)(5), based on the City's first cut.

Mr. Emslie said the majority of the area was designated LM(D)(3) with the exception of PC's that had been granted over the years.

Council Member Morton said he did not want to protect Mr. Peery from the financial risk of building a quality office building. He would like to see the corner upgraded, the buildings filled, and people to cross the street and shop at Albertson's. That was how he envisioned obtaining sales tax revenues in the community. He was opposed to the motion.

Council Member Beecham expressed support for the motion. The staff report (CMR:411:02) indicated the basis for denial of the PC, which he agreed with. In particular, it was not compatible with the Comp Plan. He appreciated the effort to find benefits in the area that could be applied to the site, but he did not believe they rose to level he would want to see for the increased square footage for office space.

Council Member Kleinberg expressed support for the motion. The proposal would add approximately 200 new jobs and increase the housing deficient by over 100 units, which would worsen the City's job/housing imbalance. Staff needed to break open the traditional views of where housing should go or the City would be left with limited sites for housing.

INCORPORATED INTO THE MOTION BY THE MAKER AND SECONDER that the potential for rezoning for housing and mixed use also be reviewed.

Vice Mayor Mossar said there was no transit service for the proposed location. The City already had a shuttle service which was expensive, operated on limited hours, and would not transport people across the street to shop at Albertson's. She was aware the City's water treatment facility was an issue for its neighbors, who were commercial businesses. She said she was willing to have the P&TC look at the potential for rezoning the site for housing.

Council Member Freeman expressed support for the motion. She had concerns about infrastructure issues that she did not believe had been addressed.

Council Member Kishimoto expressed support for the motion. She noted for Mr. Peery the housing impact fee, which was zero last year, was only one-third of the actual cost to the City.

Council Member Lytle said she was in favor of constructing athletic fields in the Baylands. She said the reason the area was called an Employment District was because City Planners believed it would be far better to risk daytime users lives in a liquefaction occurrence than it would to have the risk of a 24-hour population of residents. One of the constraints to housing in the area was solid landfill, which turned into water in an earthquake. She asked her colleagues to consider not putting residents in an area of prime risk for natural disaster.

Council Member Beecham suggested not sending the matter to the Planning and Transportation Commission (P&TC) for further analysis. He did not believe there would be any development in the short term in the area of commercial services. Staff was presently involved in the Zoning Ordinance Update (ZOU), which was taking up a lot of Planning staff's time. In addition, the Mayor had setup an Ad Hoc Committee on the Economic Base who was looking at what the City needed to do to improve its economics.

Vice Mayor Mossar asked Council Member Beecham if he was suggesting no zoning.

Council Member Beecham said he was suggesting either no zoning or change the zoning it to LM(D)(3).

INCORPORATED INTO THE MOTION BY THE MAKER AND SECONDER to delete the language, "and refer recommendations 2-4 back to Planning and Transportation Commission for discussion..." and replace with the language, "and refer recommendations 2-4 to the Zoning Ordinance Update for consideration."

Ms. French said Recommendation No. 3 was regarding a Comp Plan amendment. It involved a land use issue not a zoning issue.

Mr. Emslie said when staff completed the text and applied zoning districts, there may be a need to adjust the Comp Plan.

Vice Mayor Mossar clarified the motion had been adjusted to refer Recommendation Nos. 2-4 to the ZOU rather than the P&TC.

Council Member Freeman asked whether the latest incorporation to the motion would have any impact on the developer being able to offer another option within the next 2-year period.

Mr. Emslie said the developer could propose a project ahead of the ZOU. They could apply for an LM(D)(3) project that met with those standards.

Ms. Furth said under Palo Alto's procedures for amending the zoning code, the P&TC or the City Council had the power to initiate the zone change. The applicant only had the right to do so every year.

Council Member Morton asked whether the item would need to return to Council to make the parcels coherent zoning.

Ms. Furth said there were presently two parcels, which were not unified in zoning, however, each one had consistency between the Comp Plan designation and the zoning.

Council Member Morton clarified the Council was denying the PC zone change and leaving it to the applicant or to either the P&TC or the City Council to start the process over again.

Mayor Ojakian said the one qualifier to the motion was that it included adding auto dealership or housing/mixed-use.

Council Member Lytle suggested added the phrase "denial without prejudice" and allowed an applicant to return within the year.

Ms. Furth said Palo Alto's equivalent to that was to let the applicant petition the City Council to authorize them to go ahead.

Mr. Emslie said staff's position was if a project came in and conformed to LM(D)(3), the project could proceed without any impediments or limitations on timing. It would be a substantially lower intensity project than was originally contemplated in the PC.

MOTION PASSED 7-2, Lytle, Morton "no."

Council Member Lytle said she voted "no" because she would have wanted to receive a PC application with a bigger public benefit in a smaller project.

COUNCIL COMMENTS, QUESTIONS, AND ANNOUNCEMENTS

Council Member Lytle stated she had complete confidence in the City Attorney and all the Council Appointed Officers. The October 7, 2002, meeting was available on videotape and the minutes were available.

MOTION: Council Member Freeman moved, second by Kishimoto, that Council refer the review of policy of complaints and discussion of the City Manager Report (CMR) format to the Policy and Services Committee.

City Manager Frank Benest said staff would have no problem discussion the format of CMR's. There was a fundamental disagreement with the complaint policy. The complaint policy was fine, however the complainant did not always like the response from staff.

MOTION SEPARATED FOR THE PURPOSE OF VOTING

FIRST PART OF MOTION TO refer the review of the complaint handling policy to the Policy and Services (P&S) Committee.

Council Member Freeman said she felt a responsibility to have a discussion on the complaint policy.

Council Member Kleinberg asked whether the role of the P&S Committee was to review how well staff followed Council's policies. If the policy was okay, and it was a question of how it was being followed by staff, was that within the purview of the P&S Committee.

Mr. Benest said technically it was an administrative policy and not within the purview of the P&S Committee. The question of whether staff was following the policy was a discussion to be had with the City Manager about staff's performance.

Vice Mayor Mossar clarified it was not Council's business to tell staff how to write their CMR's.

Assistant City Manager Emily Harrison said the CMR's were designed to give the Council the information they needed to make their decisions. Feedback to the City Manager's Office on how staff could effectively accomplish that was valuable.

Vice Mayor Mossar said she would feel more comfortable had staff had approached the Council and asked for their input rather than the Council taking it on as their job.

Council Member Burch agreed with the City Manager. Complaints should be handled in a timely matter, and dealt with on a specific case-by-case basis.

Council Member Morton expressed opposition to the motion.

MOTION FAILED 3-6, Freeman, Kishimoto, Lytle "yes."

SECOND PART OF MOTION TO refer the format of CMR's to the Policy and Services (P&S) Committee.

Council Member Freeman said she believed what had come up at P&S Committee meetings was formatting issues and what could be contained in the CMR's.

Mayor Ojakian said staff would have input on their approach to CMR's.

MOTION FAILED 4-5, Beecham, Freeman, Kishimoto, Ojakian "yes."

Council Member Kleinberg suggested the City Manager hold a study session to review complaint policies, CMR format, and staff presentations.

Council Member Lytle suggested making a motion to have the City Manager bring an information report or study session regarding the complaint policies and CMR format.

Council Member Burch asked how many of his colleagues had encountered problems with the CMR's. He said did not have a problem with them and it possibly did not need further pursuing.

Council Member Freeman asked staff to address Mr. Borock's concerns regarding the Park and Recreation Commission's minutes of October 22, 2002. She requested information on cutting bushes in the Baylands and around various utility structures.

Mr. Benest said the information Council Member Freeman requested was being compiled and would be available soon.

Mayor Ojakian announced that he and Assistant City Manager Emily Harrison were speaking at the Children's Creative Learning Center (CCLC) on Thursday, December 12, 2002, at 5:30 p.m.

CLOSED SESSION

Mayor Ojakian announced the Closed Session item would not be discussed that evening.

11. ~~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 54956.9(a)~~

ADJOURNMENT: The meeting adjourned at 11:55 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.