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November 18, 2002

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ADJOURNMENT: The meeting adjourned at 10:30 p.m. in memory of Jean Bacigalupi, who was president of the Haigh Scatena Foundation, a founding member and board member of Yes Reading, instrumental in the founding of the Community Association for the Retarded, served as president of the Senior Coordinating Council and, until her death, served on the Avenidas Board of Directors.....27

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

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

ABSENT: Beecham, Mossar

PUBLIC ART COMMISSIONERS:

PRESENT: Barton, Cooper, Deem, Frankel, Langevin, Mortkovitz

SPECIAL MEETING

1. Joint Dinner Meeting with the Public Art Commission

**No action required.**

ADJOURNMENT: The meeting adjourned at 7:05 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: Burch, Freeman, Kishimoto, Kleinberg, Lytle, Morton, Ojakian

ABSENT: Beecham, Mossar

### ORAL COMMUNICATIONS

Richard Alexander, 435 Santa Rita, spoke regarding Council Member Morton charging elected officials with violation of the law.

Annette Ashton, 2747 Bryant Street, spoke regarding Community Emergency Preparation.

Council Member Kleinberg noted she and Ms. Ashton had worked on community emergency preparation for over a year. She was pleased that the City and City staff were involved in community emergency preparation and hoped to see a continued collaboration between the City, Palo Alto Unified School District (PAUSD), and neighborhood associations.

### SPECIAL ORDERS OF THE DAY

1. Resolution 8225 entitled "Resolution of the Council of the City of Palo Alto Expressing Appreciation to Gerald Brett for Outstanding Public Service as a Member of the Public Art Commission"

Resolution 8226 entitled "Resolution of the Council of the City of Palo Alto Expressing Appreciation to David Levin for Outstanding Public Service as a Member of the Public Art Commission"

Resolution 8227 entitled "Resolution of the Council of the City of Palo Alto Expressing Appreciation to Marta Thoma for Outstanding Public Service as a Member of the Public Art Commission"

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

**MOTION PASSED** 7-0 Beecham, Mossar absent.

Mayor Ojakian commended Mr. Brett for his work on the Public Art Commission (PAC).

Council Member Freeman thanked Mr. Brett for his years of service to the Palo Alto community.

Council Member Lytle commended and thanked Mr. Brett and Ms. Thoma for being community leaders in the area of art.

Council Member Burch commended Mr. Brett for his perseverance in making art an integral part of the Palo Alto community.

Council Member Morton thanked Mr. Brett for being instrumental in the installation of artwork along California Avenue.

Council Member Kishimoto thanked Ms. Thoma for sharing her talent with Palo Alto.

Ms. Thoma said she enjoyed serving on the PAC.

Council Member Freeman thanked each of the Commissioners for their community service.

Council Member Kleinberg asked Ms. Patrice Langevin to introduce former and current Commissioners who were present at that evening's meeting.

Public Art Commission Chairperson Patrice Langevin introduced Brigid Barton, Barbara Mortkowitz, Ron Cooper, Karen Frankel, and Laura Dean.

Council Member Kleinberg said she enjoyed serving as the liaison for the PAC. The time and energy boards and commissions gave was not always known to the public. The PAC efforts were more visible to the public and were appreciated for enhancing the Palo Alto community.

Mayor Ojakian said he hoped the Council would continue the tradition of recognizing persons who gave service to the City through the various boards and commissions.

## 2. Staff Presentation for New Online Registration for Enjoy Catalog Activities

Recreation, Open Space & Sciences Division Business Manager Robert De Geus said *Enjoy* online was a City website that allowed residents to register for community services, classes, and activities online. The online service did not replace the current registration process but was another option for registration. The software capabilities met City standards and the online registration process was user friendly and convenient to use

Council Member Freeman asked whether the new feature had been tested.

Mr. De Geus replied the feature had been tested and staff worked out problematic areas. A focus group assisted in the summer camp registration issues. The upcoming winter quarter would be another test phase with a limited number of classes offered.

Council Member Freeman said during the demonstration she noticed that the security lock did not show up when entering credit card information online, which indicated it was a secure site. She asked if that feature would be incorporated into the final version.

Mr. De Geus replied that feature would be added after the testing phases were completed.

Council Member Freeman asked whether the barcode used on City library cards could also be used for online registrations.

Mr. De Gues replied the two systems were not compatible but families could choose to use the library barcode as their personal identification number.

Council Member Morton said one of the big issues in Palo Alto was the lack of space for the number of people who registered for classes. He asked whether people with online access could close out a class before classes were opened to on site registration.

Mr. De Geus replied families could not register non-family members and one spot per class would be allowed per household. Every other registration option would still be available and registration times would be the same for online and onsite registrations.

**No action required.**

#### APPROVAL OF MINUTES

Council Member Kleinberg asked City Clerk Donna Rogers about the Colleagues' memo entitled "Corrections to Minutes of October 7, 2002, which was distributed prior to the meeting. She said it was good to be reminded of the details of what Council Member Kishimoto said, but she said it seemed unusual to have such detail in the minutes.

City Clerk Donna Rogers replied Council Member Kleinberg was correct and the Palo Alto Municipal Code (PAMC) stated the City did sense rather than verbatim minutes.

Council Member Kleinberg asked whether the corrections were verbatim. Ms. Rogers replied yes.

Council Member Kleinberg said Council needed instructions regarding sense and verbatim minutes.

Mayor Ojakian suggested Ms. Rogers send a memo to Council regarding minutes.

Council Member Kishimoto said she asked for better sense minutes and appreciated the verbatim detail. There was a one-minute summary of a statement she had made when, in fact, she had spoken for five minutes. She was looking for something between sense and verbatim minutes.

Council Member Lytle said the minutes before Council contained a controversial topic, and she believed it was important because there was an independent investigation going on. She directed Ms. Rogers to retain copies of the videotape so a transcription could be made later if necessary.

**MOTION:** Council Member Lytle moved, seconded by Freeman, to approve the minutes of October 7, 2002, as corrected, and to direct the City Clerk to retain the videotape until independent investigation was completed.

Council Member Morton asked whether Council would approve the minutes with verbatim additions.

Mayor Ojakian replied that was correct.

Council Member Morton asked whether the long paragraph would replace the short paragraph on 94-471 and if it was verbatim or Council Member Kishimoto's sense of what she said.

Ms. Rogers replied the corrected paragraph was verbatim.

Council Member Morton asked whether that changed Council's procedure to have sense minutes instead of verbatim minutes if the minutes were approved.

Mayor Ojakian said Ms. Rogers would send a memo to the Council with the procedures for minutes. The addition to the motion was to retain the videotape of the meeting until the independent investigation was completed.

Council Member Freeman said she wanted to extend the time the videotape was retained. She asked whether she could make an amendment to the motion to retain the videotape for six months.

Council Member Lytle said her intent was to retain the videotape until the controversy or the investigation was completed. She did not know the length of time that would take.

Ms. Rogers said the Clerk's Office retained videotapes for six months, and she understood Council Member Lytle's motion to continue to retain the tapes until the investigation was completed.

Council Member Freeman said she assumed videotapes were inadmissible after minutes were approved. She asked whether that was a different circumstance.

City Attorney Ariel Calonne replied the minutes were Council's binding record of actions taken. If the videotape revealed something other than what was contained in the minutes, it could not be changed after the minutes were approved, because Council had accepted the minutes. As far as the text between the actions, the minutes did not preclude someone from proving another statement was made. Minutes were conclusive as to actions taken. Videotapes, if available, could be used to supplement the text between the motions as evidence about what happened. Videotapes were the best method to use without having the City Clerk's Office transcribe verbatim minutes.

Council Member Burch said he was not comfortable with the corrections to the October 7, 2002 minutes. He understood Council Member Kishimoto's rationale in requesting the verbatim minutes, but he was concerned that a lot of verbiage was used on behalf of one Council Member. He asked how that fit in with the context of what was being discussed before the minutes were approved.

Mayor Ojakian asked Council Member Burch whether he wanted to vote no or make an alternative motion.

**SUBSTITUTE MOTION:** Council Member Burch moved, seconded by Morton, to delay approval of the minutes.

Council Member Lytle said she would withdraw her motion.

Council Member Freeman asked Ms. Rogers if they were verbatim minutes, could they be changed.

Ms. Rogers replied if Council determined by a majority vote, that they wanted to approve verbatim minutes, they could not be altered.



Mayor Ojakian asked Ms. Rogers if the November 18, 2002, memo addressed to City Council entitled Corrections to the Minutes of October 7, 2002 were verbatim from the videotape of that meeting.

Ms. Rogers replied that was correct.

Council Member Burch said Council had been working with sense minutes and they were abbreviated versions of what Council said without an emotional tone. It was not equitable to make one Council Member's statements verbatim and other Council Members statements sense. He suggested minutes should all be sense or verbatim.

Council Member Kleinberg said she raised the earlier comment because continuity and following the traditions and PAMC were important. She did not foresee a problem with accommodating that request if the request was a one time only request. Council Member Kishimoto was the liaison and wanted to include certain details. She would vote in favor of the minutes to accommodate Council Member Kishimoto's request.

Mayor Ojakian said he would entertain additional comments only if they were different from what had already been stated.

Council Member Freeman said Council set a precedent in July 2002 when Vice Mayor Mossar made a recommendation for verbatim minutes to be placed into Council minutes.

Mayor Ojakian asked Mr. Calonne if the City policy required Council to have verbatim minutes.

Mr. Calonne replied that Ms. Rogers had advised Council correctly. He understood Council Member Burch to say he wanted to review the minutes to make sure they were accurate.

Council Member Freeman said there might be a time in the future when she would request verbatim minutes.

Council Member Kishimoto clarified that she did not request verbatim minutes to create a long discussion. She had asked for better sense minutes and did not specifically ask for verbatim minutes.

Council Member Lytle said she would vote for the motion for continuance.

**SUBSTITUTE MOTION PASSED** 7-0, Beecham, Mossar absent.

CONSENT CALENDAR

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

### LEGISLATIVE

3. Resolution Ratifying the Agreement to Extend the Existing Natural Gas Transmission and Storage Services Contract with Pacific Gas and Electric Company (PG&E)

Resolution 8228 entitled "Resolution of the Council of the City of Palo Alto Ratifying the Execution of the Natural Gas Firm Transmission and Storage Services Extension Agreement with Pacific Gas and Electric Company"

### ADMINISTRATIVE

4. Contract Between the City of Palo Alto and MBA of California, Inc., in the Amount of \$748,299 for a Three-Year Period for Rental and Maintenance of Convenience Copiers
5. ~~Approval of the Continuation of the Fiber to the Home Trial~~

**MOTION PASSED** 7-0 for Item Nos. 3 and 4, Beecham, Mossar absent.

### UNFINISHED BUSINESS

6. Report of the Director of Planning and Community Environment to the City Council to Request a Budget Amendment Ordinance for a Massing Study for SoFA 2 (***Continued from November 12, 2002***)

Chief Planning Official Lisa Grote requested authorization to pay for a massing model for the South of Forest Avenue (SOFA) Phase 2 Coordinated Area Plan. The massing model was required for the Coordinated Area Plan Ordinance approved in 1997. It called for graphic representation of goals and policies in a coordinated area plan and how they related to proposed development standards. The massing model was a traditional massing model rather than a computer generated model so that it was accessible to the public. It also made it easier to work with the sites that were potentially available for redevelopment. The massing model was available for the Architectural Review Board (ARB), the Historic Resources Board (HRB), Planning and Transportation Commission (P&TC), and the Council. It cost \$30,000 and took five to six weeks to complete. Staff recommended approval to proceed with the model.

Herb Borock, P.O. Box 632 said the recommendation to have a physical model rather than a computer-generated model was a good idea. It would allow viewing at a height and distance that was in scale to the model itself. In order for the model to be useful, it would have to be a reasonable scale so it would be large enough to see. He hoped the model would be user-friendly and something the boards and commissions and Council would find valuable.

Council Member Morton stated he could not participate in the item due to a conflict of interest because he had a client within the SOFA Plan area.

City Attorney Calonne said the request was unusual. The Budget Amendment Ordinance (BAO) was not before the Council that evening, instead there was a request from staff to prepare the BAO. That was technically a five-vote item and the BAO would take six votes. He suggested the Council adhere to the five vote requirement that evening knowing it would take six votes to pass the ordinance when it went back before Council.

Council Member Kleinberg said the subject of the staff report (CMR:446:02) sounded like a BAO request. She suggested a title change if it was not a BAO request.

Mr. Calonne replied that was true but staff had not prepared the BAO. He said several staff members had noted it was an unusual approach to a BAO. It was something that would be addressed in the future, and he did not view it as a significant problem.

Council Member Kleinberg said she did not want extra staff work but it should be clarified when there was a motion. She asked Ms. Grote the status of the massing model.

Ms. Grote replied the work had started and staff asked Mr. Benest for funds from the City Manager's Contingency Fund to pay for startup of the model and would receive reimbursement through the BAO.

Council Member Kleinberg asked whether staff was requesting funds they had already spent.

Ms. Grote replied yes.

Council Member Kleinberg said it had come to her attention as well as other Council Members that concerned residents believed the model was based on ideas and concepts that were rarely approved by the ARB, such as podium parking. She asked how effective the model would be if it was based on unrealistic, impractical concepts.

Ms. Grote said the ARB discussed the issue of podium parking and it was written in the Plan and not counted as part of the floor area ratio (FAR). They acknowledged they did not usually approve that type of development. Since it was written into the Plan it could be considered in the future and was not something that would be viewed as negative. There was a clause in the proposed wording that would limit podium parking so it was less than four feet above grade to be easily shielded or screened from pedestrian view. ARB was agreeable to the proposed language and recommended approval of the conceptual plan to the Commission and Council.

Council Member Kleinberg asked if the model would be in keeping with the traditional practices that had been approved in the City. Would it be effective for the Commissions and Council to review.

Ms. Grote replied it would be based on proposed language of both sets of plans, which called for the allowance of podium parking.

Council Member Freeman asked if the model would have the form and function suggested by Mr. Borock.

Ms. Grote replied the model would be 30 scale, one inch equaled 30 feet. The model would measure 4½ feet long by 2½ feet wide and have a magnetized base for those sites that could be redeveloped. Staff could then put the different FAR proposals on those sites. The buildings would be movable and could be placed on various sites of the model.

Council Member Freeman asked whether the cost for the massing model and the computer-generated model would be equivalent.

Ms. Grote replied the massing model would probably cost less than \$30,000. It was a labor-intensive effort and it was not unusual that the cost be comparative.

Council Member Freeman asked whether staff would have the exact cost when the BAO was presented to Council.

Council Member Lytle said the model was an important part of the process, and she was pleased with the direction staff had taken in having a hands-on working model. She believed the cost was less than a computer simulated model and the massing model would work best for comparing recommendations.

**MOTION:** Council Member Lytle moved, seconded by Kishimoto, to approve the staff recommendation to allocate the \$30,000 needed to build a

traditional massing model for the South of Forest Avenue (SOFA) area because it is a useful tool for analyzing physical changes in an area.

Council Member Kishimoto said she appreciated staff going forward with the request. She believed it was important to the decision-making process for SOFA 2.

Council Member Burch said he would support the motion because he favored that model over the computer-generated model.

Council Member Kleinberg said having a model was a good idea. They were effective in showing what was being proposed. However, she would not vote for the recommendation based on the principle of two matters. First, she found it unusual the money had already been spent before Council approved the request. Secondly, she was concerned that the model was already underway and that there had been valuable suggestions presented that evening. Council could have had more input if staff had received approval before expending the funds. On those two principles, she would not vote in favor of the motion.

Mayor Ojakian said he would support the motion. He asked Mr. Benest to clarify whether the funds for the item would come from the City Manager's Contingency Fund.

City Manager Frank Benest replied the preliminary funds came from the City Manager's Contingency Fund. It was staff's desire to move the process forward when staff reported back to the boards and commissions with new information that was generated by Council comments. Staff and P&TC asked him to supply the preliminary funds because there were projects waiting for Council decision. He agreed because the ordinance required staff doing so with the understanding they would approach Council for a request for a BAO.

Mayor Ojakian said he was comfortable with the decision Council was making. The decision was not to spend the money because the City Manager was able to supply the money from the City Manager's Contingency Fund. The decision being made was whether to move the money from one category to another.

City Attorney Ariel Calonne said the funds would come from an unappropriated reserve so it was a budget amendment, but the City Manager had the authority to provide the funds. He would have given legal advice if it were a required part of the Area Plan. However, at that time it made sense to proceed without delaying the intended course of action.

Mayor Ojakian said the item would be referred back to Council. It was a process of moving funds and Council could choose to deny the request.

Mr. Calonne agreed.

Mayor Ojakian said the decision would be whether Council wanted to move money from one category to another and not a decision to spend the money.

**MOTION PASSED** 5-1, Kleinberg "no", Morton "not participating," Beecham, Mossar absent.

7. PUBLIC HEARING: The City Council will consider the Draft Phase 2 of the South of Forest (SOFA) Coordinated Area Plan, including properties in the boundaries of Forest Avenue, Ramona Street, Addison Avenue, and Alma Street (***Continued from October 7, 2002 - Item to be continued at the request of staff***)

~~Ordinance of the Council of the City of Palo Alto Adopting the South of Forest Area Coordinated Area Plan, Phase 2 and Amending Section 18.08.040 of the Palo Alto Municipal Code (The Zoning Map) to Change the Classification of Certain Properties Generally Bounded by Forest Avenue, Ramona Street, Addison Avenue, and Alma Street to South of Forest Area, Phase 2 Districts~~

**MOTION:** Council Member Burch moved, seconded by Kishimoto, to continue the item to a date uncertain.

Council Member Lytle asked if there was a date when Council could continue the matter to a date certain.

Mayor Ojakian replied the reason the item was being continued to a date uncertain was because the massing study had to be completed.

City Manager Benest said the massing study had to be completed and staff had to respond to questions from the boards and commissions. The P&TC could possibly want the matter back before it returned to Council.

Council Member Lytle said she did not mind continuing the item to a date uncertain. Her intent in continuing the item was not to put off Council's decision on the SOFA Plan. The working model could be assembled in a couple of weeks, and since the City had already contracted for the massing model, she wanted to see Council move quickly on the matter.

Mayor Ojakian said the process would not be delayed indefinitely but it was difficult to determine the date when the model would be completed and the boards and commissions would complete their review.

Council Member Freeman asked whether it would be reasonable to use Mr. Benest's term and "fast track" the SOFA Plan to avoid unnecessary delay.

Mr. Benest replied staff had reviewed how they could go to boards and commissions simultaneously instead of sequentially in an effort to expedite the review process.

Council Member Freeman said she wanted the public to understand Council was not delaying the process.

**MOTION PASSED** 6-0, Morton "not participating," Beecham, Mossar absent.

#### PUBLIC HEARINGS

8. PUBLIC HEARING: The Palo Alto City Council will consider an appeal by Alden Romney of the decision of the Director of Planning and Community Environment for a Conditional Use Permit application by Neal Aronson to allow the establishment of a Commercial Recreation facility at 611, 619, and 623 Emerson Street. This establishment will provide retail apparel, nutrition and wellness services for both men and women.

Mayor Ojakian noted the item was a quasi-judicial matter in which Council was required to disclose outside contacts.

Council Member Morton said he did not meet with the applicant.

Council Member Burch said he met with applicant.

Mayor Ojakian said he had received a phone call from the applicant but did not meet with him.

Council Member Kleinberg said she had received a phone call from the applicant but did not meet with applicant.

Council Member Kishimoto said she met with applicant on the site.

Mayor Ojakian asked Council Member Kishimoto if that meeting prejudiced her decision on the matter.

Council Member Kishimoto replied no.

Council Member Freeman said she met with the applicant on site along with Council Members Burch and Kishimoto.

Mayor Ojakian said he met with City Attorney Ariel Calonne regarding the matter before them and Mr. Calonne had cautioned the matter was of a quasi-judicial nature. He reminded Council and the public of the formalities Council would follow to assure fairness. Council expected public testimony to be serious and truthful. Copies of written documents used to substantiate comments should be provided to the City Clerk. The Mayor had the right to exclude irrelevant or redundant testimony.

Council Member Lytle said she did not contact any outside parties but visited the site.

Council Member Kleinberg said she did not meet with or speak with the applicant. She asked Mr. Calonne whether it would have prejudiced her if she met with anyone involved with the matter before the meeting.

City Attorney Ariel Calonne replied that had been a subject of Policy and Services (P&S) Committee discussion. The policy discouraged ex parte contacts, but if that happened they needed to be disclosed only to the extent they significantly influenced one's decision-making. The P&S Committee would review the policy and evaluate whether the policy should emphatically state meetings be excluded.

Council Member Morton asked Mr. Calonne to define what was included in ex parte' and the scope of the expression.

Mr. Calonne replied it meant discussions outside of the Council hearing.

Council Member Morton asked whether that meant anything not in the public comment.

Mr. Calonne replied that was correct.

Council Member Morton asked whether that meant any contact about an issue related to an agenda item.

Mr. Calonne replied that was correct. It was permissible to accept a call from the applicant requesting a meeting.

Mayor Ojakian clarified that was permissible for quasi-judicial matters.

Council Member Freeman recommended the City Attorney's Office should alert Council Members of proper procedures when issues of that type arose.



Mr. Calonne said the Attorney's Office was assigned that responsibility and the agenda item should show an asterisk that indicated the matter was quasi-judicial. He apologized for the oversight.

Council Member Morton asked Mr. Calonne whether appeals were considered quasi-judicial matters.

Mr. Calonne replied all appeals were quasi-judicial matters.

Council Member Morton asked whether EIR matters were considered quasi-judicial.

Mr. Calonne replied the exclusions were PC zoning, zone changes, and General Plan or Comprehensive Plan amendments.

Mayor Ojakian suggested Mr. Calonne provide a document to Council Members to answer those types of questions.

Mr. Calonne said he would provide the document to Council Members.

Chief Planning Official Lisa Grote said the appeal was for a fitness facility at 611 Emerson Street. It was considered a commercial recreation facility and that was why it was a conditionally permitted use within the Downtown area rather than a permitted use.

Mayor Ojakian declared the Public Hearing open at 8:47 p.m.

Alden Romney, appellant, represented customers of two Reach Fitness facilities located within two blocks of 611 Emerson Street. He was not opposed to the competition of having a fitness facility nearby, but was opposed to the difficulty his customers would have for parking spaces. Reach Fitness had a parking lot to accommodate some of their customers. He said the situation would be different if the applicant also had a parking lot. The proposed fitness center would offer scheduled classes, which would bring customers into the area at the same hour as opposed to area restaurants with customers, which arrived at various times. The Downtown parking garages under construction would not alleviate the need for additional parking spaces. He expressed support for the type of business proposed by the applicant. He was opposed to the impact the proposed business would have on his customers and feared they would go elsewhere if parking became an issue. He also had concerns about how the City would monitor the use of the facility.

Neal Aronson, applicant for the Conditional Use Permit (CUP) at 611 Emerson Street, said he reviewed the reasons why City staff and the

Planning Commission had approved the permit. He asked Ken Hayes, Project Architect, to review the technical considerations related to the site and proposed use.

Mr. Hayes said the appellant's concerns focused on parking. He showed two graphics depicting the parking requirements for Vivre Studios. The PAMC required one parking space for every four occupants in their building, which totaled 29 parking spaces. That requirement was consistent with the Downtown Parking Assessment District. The required number of parking spaces for restaurants was 82 spaces, which was a different figure from the one submitted by staff. For retail use, the required number of parking spaces was 34 spaces. It was interesting to note offices, restaurants, and retail businesses did not require a CUP and had Mr. Aronson designed a similar type business they would not need the CUP. The parking supply radius map depicted the sphere of influence for the current Downtown parking structures and those under construction. The City Hall and Ramona Street parking garages served the project site. Three parking garages served the proposed site and gave customers enough parking spaces with adequate pedestrian walkways to the proposed site.

Mr. Aronson said his business intended to fill a void in the Downtown Palo Alto area for a convenient, clean, modern, handicap accessible, full service, fitness and wellness facility. His market focused on Palo Alto residents and Downtown employees and professionals. His business would not have the peak hour parking impact alleged by the appellant. He calculated 14 percent or nine of their proposed classes would commence at the peak lunch hours, which were from 12:30 p.m. to 1:30 p.m. on weekdays. Eleven percent or seven of their classes would commence during the peak dinner hours, which were 6:30 p.m. to 8:30 p.m. That meant 75 percent of their classes fell outside of the peak Downtown parking hours. The staff report (CMR:449:02) erroneously stated less than 75 percent of the classes were held during the peak hours for Downtown restaurants. He clarified 25 percent or less of the classes would be offered during peak hours. During the lease negotiations there were two restaurants vying for the site. If either of those restaurants had secured the lease, a CUP would not have been needed but a restaurant would have adversely affected the Downtown parking by tripling the need for additional parking spaces. During that time of economic uncertainty, respected Palo Alto residents invested their time and money in the well being of Downtown in order to build a well balanced community. He asked Council to consider the recommendation of the P&TC and staff when making their decision.

Ruth Krucker, Stanford Florist, 620 Emerson Street, said the site had been vacant for four years and a suitable occupant had not been found. Parking for her customers would not be affected. There were similar businesses in

Downtown Palo Alto within proximity to one another and it had not been a problem in prior years. She did not foresee a problem with granting the applicant's request. Vivre Studio customers would possibly generate revenue for local businesses.

Herb Borock, P.O. Box 632, said he attended the Director's Hearing on September 19, 2002. In previous years, Planning staff did not make recommendations before the Hearing Officer. Staff made recommendations to the Architectural Review Board for design review, and the Director acted on the ARB's recommendation and not on staff's recommendation. He raised a similar issue on the single-family design guidelines for second story additions, and the City Attorney pointed out there was clear legislative authority for staff to make such recommendations. Staff processed applications to determine if they were complete and met the requirements. However, in that case the Hearing Officer asked staff to give a report and then staff gave a recommendation.

Joy Ogawa, 2305 Yale Street, said one of the required findings to grant a CUP was whether that finding could be made. The finding in question read, "The proposed use at the proposed location will not be detrimental or injurious to property or improvements in the vicinity and will not be detrimental to the public health, safety, general welfare, or convenience". She opined increasing the Downtown parking would qualify as detrimental to public convenience. The conditional use finding did not state the use had to be compared to a permitted use.

Julie O'Grady, 1229 Hopkins Avenue said she was pleased with the prospect of a fitness and wellness facility in Downtown Palo Alto. She was a regular patron of Downtown businesses, and the parking issue would not be a deterrent for her continued patronage.

Shelley Jones, 786 Melville Avenue, urged support of the fitness center. She believed the increased parking would not be detrimental to the City and the foot traffic would be an asset to neighboring businesses.

Mr. Romney said the proposed facility would be detrimental to surrounding businesses. He was concerned about his customers and customers for the new wellness facility in finding adequate parking during peak hours. The facility projected having 50 to 60 people on site during hours of peak operation. His customers had already voiced complaints about the parking situation. He had a business in Los Altos for over ten years, which was located next door to a fitness center but each business had their own parking spaces and neither were concerned about competition.

Mr. Aronson thanked the Council and City staff for their time and consideration. He believed the issue was not about parking but about competition. He commented that Reach Fitness had not voiced concerns about parking in previous years. He conducted some research before that evening's meeting and found that from 2000 to date, there were five CUP applications for restaurants in the Downtown area. Several of the applications were for the area in question. They all could have had a significant impact on parking during peak hours. Restaurants have one of the highest parking requirements of all the businesses in the City and generate most of their business during the peak hours. His research indicated there were no comments from Reach Fitness on any other parking related issue over the previous two years.

Mayor Ojakian noted that several speakers said there was competition between the applicant and the appellant. He asked Mr. Calonne if that was a relevant factor in the decision Council would make.

Mr. Calonne said it was irrelevant to the findings the Council had to make. Any competitive motive could affect the decision about whether the statements made by speakers were credible.

Mayor Ojakian declared the Public Hearing closed at 9:25 p.m.

Council Member Kishimoto asked if there was a 30-minute parking space on the block of the proposed wellness facility or could one be installed.

Ms. Grote said a time limit space could be installed and 30 minutes was typical.

Mayor Ojakian asked if that was an issue the City wanted to review at that time or after the parking garages were completed.

Ms. Grote replied there would be no detrimental impact to installing a time-limited space at that time.

**MOTION:** Council Member Kishimoto moved, seconded by Kleinberg, to approve the Planning and Transportation Commission and staff recommendation to deny the appeal and uphold the Director of Planning and Community Environment's original conditional approval of the use permit for a fitness facility at 611, 619, 623 Emerson Street but include some additional conditions which are to add a 30-minute parking spot on Emerson Street, a total capacity cap, and to look at some bicycle parking accommodations.

Mayor Ojakian asked Council Member Kishimoto for clarification of the total capacity cap.

Council Member Kishimoto replied her intent was not to set the capacity cap, and she would leave that decision to staff because she did not know the number of classroom areas in the facility. She was interested in the occupancy allowed by Fire and Building Codes.

Mr. Calonne stated the 30-minute parking spot was a condition not in control of the applicant, you could only require the applicant to pay the costs for installing the parking spot. City staff would have to pursue that issue independently.

Ms. Grote said staff did not intend to cap total attendance or occupancy for the site. Staff attempted to set a capacity for the number of customers, which would limit the number of needed parking spaces in order to regulate the parking impact. The Fire and Building Codes allowed 154 occupants in the building, and staff did not recommend any further cap other than what the Fire and Building Codes allowed.

Council Member Kishimoto said 154 seemed high in view of the parking assessment.

Ms. Grote said it was unlikely that 154 occupants would be in the building at one time and that was the Fire and Building Code occupancy limitation.

Council Member Kishimoto said she wanted to encourage the owner to limit the occupancy cap at 80.

Council Member Kleinberg removed her second on the motion.

### **MOTION WITHDRAWN BY SECONDER**

Mr. Calonne said City staff would cause installation of at least one 30-minute parking space on Emerson Street between Hamilton and Forest Avenues with all reasonable costs paid by the applicant.

**MOTION:** Council Member Kishimoto moved, seconded by Kleinberg, to approve the Planning and Transportation Commission and staff recommendation to deny the appeal and uphold the Director of Planning and Community Environment's original conditional approval of the use permit for a fitness facility at 611, 619, 623 Emerson Street

Council Member Kishimoto said the CUP would compliment any business in the area but would also affect parking.

Council Member Kleinberg said the fitness center would not be detrimental to Downtown businesses. She believed the fitness center would encourage patronage in the Downtown area and would bring pedestrian traffic to that area and promote ground floor retail. She noted the weekend schedule for the fitness center indicated shortened hours, which would ease weekend parking for nearby restaurants. A restaurant in the same location would require more parking spaces.

Council Member Freeman said ground floor retail versus office space or other uses was a great concern to the Council. She was pleased the applicant wanted to fill the space with something other than office space. A fitness center would encourage patrons from neighboring areas. The building façade and the quaintness of the area would be preserved while providing a modern facility.

Council Member Morton asked for clarification of the motion. He asked if Council voted to deny the appeal, would Council by default adopt the conditions of approval recommended by P&TC staff.

Mayor Ojakian asked Mr. Calonne for the correct approach for voting on the motion.

Mr. Calonne replied the motion to deny the appeal would approve the staff recommendation with the proposed conditions and a motion to propose changes.

Council Member Morton said he would support the motion but suggested deferring the occupancy cap until after the parking garages were completed. He wanted to hear from the community if the parking proved to be problematic.

Council Member Burch said he found it difficult to believe the City was searching for parking places near a fitness facility since the idea of fitness was for people to walk. A previous CUP issued on October 2, 2002, was appealed. The appeal went to the P&TC who voted unanimously. Now there was another appeal, and Council was going through the process again. He would support the denial of the appeal.

Council Member Lytle supported the main motion and was interested in reviewing the additional conditions. She believed the facility would contribute to Downtown business. She was aware the Reach facility had experienced parking problems in prior years and understood the concerns of the appellant and the need for assurance of parking management. She said it was important for the City to invite new businesses but also protect existing businesses. She asked what criteria would be used to define

excessive parking complaints and which department would respond to those complaints. She would support the motion while holding the applicant to their submittal requirement in terms of total occupancy.

Mr. Calonne said CUPs differed from other land use entitlements because they were designed to tailor conditions for particular use and allowed the City to reopen the permits. The code had standards regarding the reopening of permits. The City had to find a condition had been violated or public health or safety was threatened in order to reopen a permit. The effect of Planning Condition No. 3 was to take away the requirement that Planning had to make a finding before the City could re-open the permit and that allowed Planning to add a condition to the original conditions. It was a significant addition to the CUP.

**MOTION PASSED** 7-0, Beecham, Mossar absent.

**MOTION:** Council Member Kishimoto moved, seconded by Kleinberg, that if City staff determines it to be feasible and desirable, it shall cause installation of at least one 30-minute parking space on Emerson Street between Hamilton and Forest Avenues, with all reasonable striping and signage costs to be paid by the applicant.

Council Member Burch was concerned with establishing the 30-minute parking space. He believed this would start a precedent for other businesses to make similar requests.

Ms. Grote said the City frequently received such requests and it was not unusual to grant such requests.

Council Member Burch said all the parking spaces on Emerson could become 30-minute parking spaces.

Ms. Grote said it would be inappropriate but it was probable for the City to grant requests for Emerson Street as well as other City streets.

Mayor Ojakian said it seemed more appropriate for certain businesses to make such a request but it seemed improbable for a restaurant to make such a request.

Council Member Burch asked whether any business owner could request a 30-minute parking space in front of their business.

Ms. Grote replied the request could be made for any parking space on their street and the request would be reviewed and evaluated.

Council Member Morton asked the Maker and Seconder whether they wanted to add, "subject to the review of the Transportation Official's approval."

Mr. Calonne said he would add the qualifier that City staff would have to determine the space feasible and desirable.

**MOTION PASSED** 6-1, Burch "no," Beecham, Mossar absent.

**MOTION:** Council Member Kishimoto moved, seconded by Kleinberg, to direct staff to work with the applicant to determine a feasible number and location of bicycle parking spaces.

Ms. Grote said the City would work with the applicant to find a suitable location and number of bicycle parking spaces. The City did not require bicycle parking for an existing building in the parking assessment district because they were not adding anything to the existing structure.

Mayor Ojakian asked staff whether they wanted Council to leave the wording for the motion as stated or should the wording allow for some flexibility.

Ms. Grote replied it would be helpful for staff if the wording allowed for some flexibility.

**MOTION PASSED** 7-0, Beecham, Mossar absent.

#### COUNCIL MATTERS

9. Report on Mayor's Ad Hoc Committee on the Preservation of the City's Economic Base

Mayor Ojakian said the purpose of the committee was to assess and evaluate economic trends that affected the City and to see what actions could be taken to assist and retain businesses. He proposed a second round of visits to local businesses, which would involve all Council Members. The initial outreach visits made by himself, Vice Mayor Dena Mossar, Finance Committee Chair Jim Burch, and Chamber of Commerce Liaison Bern Beecham were well received by local business owners.

City Manager Frank Benest said it was a critical issue and he supported the Mayor's suggestion to involve all Council Members. The City would make proposals from the information generated by the visits.

Council Member Lytle said pairing an elected official with a staff person would have an impact on the response of business owners. She was interested in the results that had already been received.



Mayor Ojakian said the four Council Members had made 20 visits, and he anticipated reviewing the trends that future visits would uncover.

Mr. Benest said staff would generate an appointment schedule for the Council.

Council Member Burch said he appreciated being part of the committee and looked forward to future meetings. Initially, the City picked some of the major businesses to visit. He hoped smaller businesses would be targeted as the program expanded. Smaller businesses did not contribute as much to sales tax, but were just as important to the City's economy.

Mr. Benest said his staff would schedule all Council Members unless they indicated they were not available.

Council Member Burch said the businesses he contacted had specific recommendations for City staff, which they were able to complete. The ability to act promptly was critical in a number of cases and local businesses were appreciative.

Mayor Ojakian said it was satisfying to be able to help local businesses. The interactions were valuable to the City as well as to those who participated.

**No action required.**

#### COUNCIL COMMENTS, QUESTIONS, AND ANNOUNCEMENTS

Council Member Freeman noted the Council had a trial run of meeting the public at various locations in the City. She noted the intent of Council was for that issue to return to Council to determine if it should be continued. She asked for the issue to be added to the agenda before the end of the year.

Mayor Ojakian asked if a formal motion was needed to continue the action or could staff set another round of meetings with the public.

Council Member Freeman noted Council Member Burch had previously asked for a trial and then the Council would determine if they wanted to continue.

Mayor Ojakian asked if Council Members could work through his staff to continue those actions.

City Manager Frank Benest suggested staff schedule more meetings at the beginning of 2003.

Council Member Freeman suggested Council discuss the issue and set a regular timeframe, such as quarterly.

Mr. Benest said the item could be scheduled on a Council agenda.

Mayor Ojakian noted to his colleagues that he did a matrix of interest cards from the public after each Mobile Mayor event and gave it to staff.

Council Member Freeman noted she attended a Lower Peninsula Flood Control and Watershed Advisory Committee meeting. She said the Adobe Creek project would not be finished until 2003, but access across El Camino Real would be provided in mid-December. Also, the Barron Basin had been cleared of debris, and the San Francisquito levee by the golf course was near completion and should be done by the end of November.

Council Member Morton noted that Richard Alexander had made a personal attack. He had submitted his comments from the previous week's Council meeting for the public record. The record should be clear that he made no charges, but the Council had a responsibility to review their behavior individually and collectively. He also noted the budget cuts to the homeless and highlighted the staff's sensitivity and donations to United Way in excess of \$19,000.

Council Member Lytle noted she saw a significant number of dead striped bass as she was walking in the Baylands by Byxbee Park. She requested a report on that issue when the Fish and Game findings were known.

Mayor Ojakian noted he had met with Caltrans at a meeting with Assemblyman Joe Simitian regarding El Camino Real. The main point was that Assemblyman Simitian had stated that in January he would be willing to look at legislation for tree planting on El Camino Real. Also, at the Santa Clara County Cities Association meeting several matters were raised and a request was made that required Council to take action with two key points on housing action and changes in the bylaws. He would cosign a Colleagues' Memo on that issue with Council Member Kishimoto.

Council Member Kleinberg noted a press release had been issued that the City/School Liaison meeting would be held on Tuesday, November 26, 2002, at 9 a.m. at City Hall.

Mayor Ojakian noted the previous week he initiated some action regarding a memo from Council Member Morton. Currently, the independent counsel the City had hired, Mr. Jenkins, was investigating the issue. He continued to emphasize that some of the matters should be referred to the Policy and Services Committee to return to the full Council. He was also working with

the City Manager for a facilitator for the beginning of the year to resolve some of the issues.

City Manager Frank Benest stated he had no knowledge and could not respond to Brown Act violations. He could respond to the concerns expressed in the memo from Council Member Morton regarding possible breaches of the Palo Alto Charter or Municipal Code related to interference in the administrative service of the City. He could also respond to concerns regarding the City's operating procedures and how staff interacted. He had not discovered any violations of the Charter or Municipal Code regarding interference in the administrative service of the City. In part, the November 6, 2002, Colleagues Memo was concerned about overburdening staff with questions about Council agenda items and possible intimidation of senior staff. Council Members had the right to ask questions, and it was the responsibility of staff to respond to those questions. Staff got paid to identify and analyze problems, make professional judgments and recommendations, and answer questions. He had encouraged individual Council Members to meet with individual department Directors and discuss current and upcoming issues. Should a Council Member express a policy perspective, the senior staff knew, based on his explicit instructions, that staff would not change its professional views or recommendations. Having found no violations, everyone needed to improve his/her protocols: how and when Council Members requested information; the manner in which staff responses were disseminated; the time required to research some of the questions; and other operating procedures that would make the Council a more effective governing body and improve interactions with staff.

Council Member Burch requested that the meeting be adjourned in memory of Jean Bacigalupi, a lifelong resident of Palo Alto.

ADJOURNMENT: The meeting adjourned at 10:30 p.m. in memory of Jean Bacigalupi, who was president of the Haigh Scatena Foundation, a founding member and board member of Yes Reading, instrumental in the founding of the Community Association for the Retarded, served as president of the Senior Coordinating Council and, until her death, served on the Avenidas Board of Directors.

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.