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February 10, 2003

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ADJOURNMENT: The meeting adjourned at 10:10 p.m.28

The City Council of the City of Palo Alto met on this date in the Council Chambers at 6:00 p.m.

PRESENT: Burch, Freeman, Kishimoto (arrived at 6:05 p.m.), Lytle, Morton, Mossar, Ojakian

ABSENT: Beecham, Kleinberg

CLOSED SESSION

Mayor Mossar noted that Council Member Kleinberg could not participate in the Closed Session due to a conflict of interest because Enron was a source of income to her husband's former law firm.

1. Conference with City Attorney - Existing Litigation
Subject: In re Enron Corp., Debtor, U.S. Bankruptcy Court, Southern District of New York; Case No.: 01-16034(AJG)
Authority: Government Code section 54956.9(a)
2. Conference with City Attorney - Existing Litigation
Subject: In re Pacific Gas and Electric Company, a California Corporation, Debtor, U.S. Bankruptcy Court case No.: 01-30923DM
Authority: Government Code Section 54956.9(a)

The City Council met in Closed Session to discuss matters involving existing litigation as described in Agenda Item Nos. 1 and 2.

Council Member Kleinberg could not participate in the Closed Session because Enron was a source of income to her husband's former law firm.

Mayor Mossar announced that no reportable action was taken on Agenda Item Nos. 1 and 2.

ADJOURNMENT: The meeting adjourned at 6:40 p.m.

The City Council of the City of Palo Alto met on this date in the Council Chambers at 7:00 p.m.

PRESENT: Burch, Freeman, Kishimoto, Kleinberg (arrived at 7:05 p.m.), Lytle, Morton, Mossar, Ojakian

ABSENT: Beecham

ORAL COMMUNICATIONS

None.

APPROVAL OF MINUTES

Mayor Mossar noted that City Clerk Donna Rogers requested the December 16, 2002, City Council minutes be removed from the agenda.

CONSENT CALENDAR

Mayor Mossar announced that Item No. 3 was removed by staff to be continued.

MOTION: Council Member Morton moved, seconded by Ojakian, to approve Consent Calendar Item Nos. 1, 2 and 4.

ADMINISTRATIVE

1. Contract Between the City of Palo Alto and J. W. Riley & Sons, Inc. in the Amount of \$752,905 for FY2002-03 Phase 2 Sidewalk Replacement Project
2. Contract Between the City of Palo Alto and Huntsman Architectural Group in the Amount of \$109,620 for Design Services for the Civic Center Infrastructure Improvements Project - Capital Improvement Project 10102
- ~~3. 1849 Webster Street - Appeal by Lawrence and Jeanne Aufmuth, 627 Seale Avenue, Don and Carol Mullen, 618 Tennyson Avenue, Walter and Amanda Mok, 639 Seale Avenue, Peter Danner, 604 Tennyson Avenue, and Michael Braun, 1828 Webster Street, of the Director of~~

~~Planning and Community Environment's Approval of the Application for a Second Story Addition and a Substantial Remodel of An Existing One Story Single Family Residence, Owned by Elizabeth and Jamie Wong, 1849 Webster Street, under the Single Family Individual Review Program~~

4. Ratification of Appointment of Police Chief

MOTION PASSED 8-0 for Item Nos. 1, 2 and 4, Beecham absent.

City Manager Benest spoke to the appointment of Lynne Johnson as Police Chief.

PUBLIC HEARINGS

5. Public Hearing - The City Council will consider a request by Gene Golobic of Kier & Wright on behalf of James Baer of the Campus for Jewish Life to subdivide a 12.162-acre parcel with an existing five-story building into two parcels for property located at 901 San Antonio Avenue Parcel One will be 4 acres, on which the existing building will remain, and Parcel Two will be 8.162 acres. *(Item to be continued at the request of staff)*

MOTION: Council Member Morton moved, seconded by Burch, to continue the item to the March 3, 2003, regular City Council meeting at the request of staff.

MOTION PASSED 8-0, Beecham absent.

REPORTS OF OFFICIALS

6. Recommendation to Proceed with Development of Options for Financing Needed Infrastructure Repairs and Potential Expansions at Children's Library, Mitchell Park Library, and Mitchell Park Community Center

Assistant City Manager Emily Harrison said the staff report (CMR:111:03) was prepared and finalized prior to staff obtaining new information. The bond measure, which was proposed to fund the expansion of the Children's Library and construction of a new Mitchell Park Library and Community Center, was unsuccessful in November. Those facilities were in need of significant, basic infrastructure repairs. The facilities continued to

deteriorate. Issues included seismic, Americans with Disabilities Act (ADA), and inconvenience to staff and the users of the facilities.

Senior Project Manager Bob Morris said the Children's Library was built in 1940, was 3,400 square feet, and the electrical, mechanical, and plumbing systems were original. The seismic system needed to be retrofitted. In 1995, a structural engineer did a seismic evaluation of the Children's Library and found that the Children's Library needed structural retrofits. ADA improvements were needed; the most significant were the three restrooms, which needed to be brought up to compliance. The roof was original, leaked, and suspected of causing dry rot damage. The Children's Library did not have air conditioning. Staff recommended adding air conditioning to the Children's Library. The Mitchell Park Library suffered from many of the same deficiencies. The building was originally 5,000 square feet in 1958 and expanded to 9,500 square feet in 1975. The electrical, mechanical, and plumbing systems were original and needed to be renovated. ADA deficiencies existed in the Mitchell Park Library, and all five restrooms needed to be brought up to compliance. A seismic evaluation would be done as part of a renovation project. Flooring, ceiling, lighting, windows, and paint needed to be replaced. Air conditioning was recommended. The Mitchell Park Community Center had many of the same problems as the two libraries. The Center was built in 1970, was 10,000 square feet, and most of the systems were original. Staff recommended replacing or renovating the electrical, mechanical, and plumbing systems and doing a seismic evaluation of the facility. ADA deficiencies also existed in the Center, primarily in the restrooms. Staff recommended air conditioning for the Center. The windows needed to be replaced if funding were available.

Ms. Harrison said the staff report (CMR:111:03) indicated the infrastructure improvements recommended by staff exceeded the amount was set aside in the Infrastructure Master Plan (IMP). Estimates in the IMP were in 1996 dollars. Inflation had an impact on staff's ability to carry forward the projects in the IMP. Staff used the Infrastructure Reserve repeatedly during the prior years for projects not in the Infrastructure Reserve. The Infrastructure Reserve was drawn down by approximately \$7 million for projects. Between the impacts of inflation and the use of the Infrastructure Reserve, staff needed to be cautious. A source of funding staff hoped to have was funding from the Library Bond Act. Staff was not successful with its application in the first funding cycle. A joint project with the Palo Alto Unified School District (PAUSD) was submitted for the Mitchell Park Library. Staff did not believe it was worthwhile to put in a second round application for the Mitchell Park Library. The City was not in a position to match the funding, and the application was not strong enough to be confident that a second round would

have a different outcome. Staff looked at applying for the Children's Library as a separate project but did not believe that it would be competitive. At the time the staff report (CMR:111:13) was prepared, staff's recommendation was for the Council to move forward immediately, as part of the mid-year budget process, with a Budget Amendment Ordinance (BAO) for the Children's Library project and put the Mitchell Park Community Center and Library project into the next year's Capital Improvement Program (CIP). Staff asked the Council to look at the design scope of services. Staff was to work with the Library Advisory Commission (LAC) and the Parks and Recreation Commission (PARC) to see how the City could go forward with the New Library Plan and needs for a community center to develop a different plan or alternative funding strategy. There were pros and cons with moving forward expeditiously. Staff knew the facilities continued to deteriorate, and inflation added cost to the projects. One of staff's concerns was if the City moved forward at the current time, repairs were necessary that might be reversed if the City were fortunate enough at a later date to have the funding for expansion. Staff was informed there might be a possibility for a public/private partnership for part of the Children's Library project. Staff looked at putting together a potential "Phase 1" of the Children's Library project that might be appropriate for both public and private investment that could maximize the improvements needed. The "Phase 1" was the north addition in the Children's Library project and provided the ADA compliant restrooms and new programming space. The space currently used at the Children's Library could be repaired and renovated in the manner described to the Council. The space currently used for restrooms could be reprogrammed and made more functional. The cost, \$2.3 million, was significantly less than the full project and brought maximum program benefits.

Mayor Mossar clarified the recommendations in the staff report (CMR:111:03) were put together prior to discussions with the Friends of the Library.

Ms. Harrison said that was correct.

Mayor Mossar asked whether staff would have a new set of staff recommendations at the end of the presentation.

Ms. Harrison said staff would have a new recommendation.

Ellen Wyman, President, Friends of the Children's Library, said Friends of the Palo Alto Library (Friends) was delighted to announce an anonymous donor gave Friends \$150,000 to spark a campaign to raise funds to expand the

Children's Library. The donor said an additional construction grant, in the amount of \$200,000, would be made provided that Friends raised at least \$300,000 from private donors by December 3, 2003. The Friends believed the community would meet the challenge. Depending on how the fund raising campaign was structured and how the City matched the private donations, the Friends believed it was realistic to set a minimum goal of \$1.5 million. The \$1.5 million, combined with the \$800,000 from the City for the repair work, was sufficient to move ahead with needed repairs and the partial expansion of the north wing of the Children's Library. The Friends' dream was to raise enough to fund the full expansion. With the active involvement of the private sector in raising funds, the Friends suggested the recommendations on page 3 of the staff report (CMR:111:03) be revised to reflect the intention to proceed with the expansion of the Library at the same time the repairs were undertaken as follows: (1) Direct staff to move forward with needed infrastructure repairs to Children's Library accommodating to the extent feasible options for the concurrent expansion and to move forward with the needed infrastructure repairs to the Children's Library, Mitchell Park Library and Mitchell Park Community Center, preserving, to the extent feasible, options for expansion in the long term; and (2) Direct staff to work with the Library Advisory Commission (LAC) to review and potentially revise the New Library Plan, and to develop a strategy for implementation of needed library facility and staffing improvements, including the future expansion of Children's Library, and the future expansion or replacement of the Mitchell Park Library. Two things were needed to renovate and expand Children's Library. First, assurance from the City was needed that the City would match private donations and, second, for efficiency and economy, the repair work and the expansion of the building should move ahead at the same time. The Council was urged to consider the need for matching funds as it moved through the budget process. With the City's support in the fund-raising campaign, there was a great City/community team to meet the challenge and expand the Children's Library.

Ms. Harrison said her disagreement with Ms. Wyman had to do with moving forward with both expansion plans and renovation plans at the same time. Staff's preference was to allow the fund-raising effort a reasonable period of time, to December 31, 2003, to see if it were successful and to hold off doing design of renovations until that time. Staff would change the recommendation currently before the Council to state, "Direct staff to move forward expeditiously with needed infrastructure repairs to the Mitchell Park Library and Mitchell Park Community Center, preserving, to the extent feasible, options for expansion in the long term, and to delay design of improvements to the Children's Library until the beginning of 2004 to allow

time for the exploration of a public/private partnership.” Staff agreed with the change to recommendation 3 to eliminate the word “future.”

Mayor Mossar clarified staff did not address the requirement that the City would match private donations.

Ms. Harrison said that was correct. Staff believed the issue of the extent to which the City’s Infrastructure Reserve would be used to match the contributions from the public was something that would be left to the Council for a decision.

Council Member Lytle thanked staff for moving swiftly to regroup after the bond measure and coming up with recommendations to do the minimum necessary improvements to the Children’s and Mitchell Park Libraries.

Mayor Mossar said the Friends of the Library indicated it was important that the City commit to matching private donations. The Assistant City Manager had said the City’s position was if the Council committed to matching funds, a commitment of the Infrastructure Reserve would be required.

Council Member Lytle asked what staff had recommended the Council do about the matching funds.

Ms. Harrison said staff was comfortable with the amount that was estimated for the library improvements being used as a matching contribution for the private fund raising efforts being undertaken. If the private sector were able to exceed \$800,000, there was a policy issue of continuing to match the contributions.

Council Member Lytle said the Council would match up to what it committed for renovations. The door needed to remain open if more money were raised, and the Council could revisit the issue.

Mayor Mossar clarified the Council agreed to accept the revised staff recommendation with an agreement to match up to \$800,000 with a caveat to revisit if the private sector should raise more than \$800,000.

MOTION: Council Member Lytle moved, seconded by Freeman, to approve the staff recommendation to:

- ◆ Direct staff to move forward expeditiously with needed infrastructure repairs to the Mitchell Park Library and Mitchell Park Community

Center, preserving, to the extent feasible, options for expansion in the long term

- ◆ Approve design consultant scope of services so staff may issue Requests for Proposals and proceed with the infrastructure improvements now.
- ◆ Direct staff to work with the Library Advisory Commission (LAC) to review and potentially revise the New Library Plan, and to develop a strategy for implementation of needed library facility and staffing improvements, including the expansion of Children's Library, and the future expansion or replacement of the Mitchell Park Library.
- ◆ Direct staff to work with the Parks and Recreation Commission (PARC) to develop a strategy for implementation of the expansion of the Mitchell Park Community Center.
- ◆ Identify and recommend potential funding options for the aforementioned implementation plans.
- ◆ Direct staff to discontinue pursuit of State Library Bond Act funding.
- ◆ Agreement to match up to \$800,000 with the caveat that Council may choose to revisit should the private sector raise more than \$800,000.

Council Member Freeman clarified the \$800,000 was for renovation of the existing building.

Ms. Harrison said if there were a successful fund raising effort, the money would be pooled with the private contributions, and the project would be much different than a strict renovation project. An expansion and renovation would be done at the same time.

Council Member Freeman asked for a good estimate of the matching needed funds.

Ms. Harrison responded if the fund raising efforts were 50-50 for a \$2.3 million project, the cost was slightly less than \$1.2 million for the City and the same amount for a private donor. If the private fund raising were more successful, the City's contribution might be only the improvements already planned or the \$800,000.

Council Member Freeman clarified the money allocated was the same money that would be allocated as matching funds.

Ms. Harrison said that was correct.

Council Member Morton did not like the word "delay" in the motion.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to change the last item in the motion as follows: ~~Agreement to match up to \$800,000~~ Refer to the Finance Committee for discussion during the 2003/04 budget process creation of a Capital Improvement Project for half of the cost of the Phase 1 Library improvements including as an element a City matching grant of 1:1 up to \$800,000 for monies raised by the Friends of the Library, with the remainder of the funding to be provided by private donations.

Council Member Ojakian clarified the City did the environmental analysis for the Children's Library and the north wing fell within the scope of what was done previously. No additional work needed to be done in that regard.

Ms. Harrison said that was correct.

Council Member Ojakian said staff's comment was that \$2.3 million was required to add the north wing.

Ms. Harrison said \$2.3 million was the cost for both the north wing and complete renovation of the current Children's Library.

Council Member Ojakian was concerned the City would end up with insufficient money to add the north wing.

Ms. Harrison said the substance of the motion was that staff would evaluate how far private fund raising went with the current Council contribution.

Council Member Ojakian said his preference was to go with the \$2.3 million, which gave people trying to raise funds something to work from when working with the public.

INCORPORATED INTO THE MOTION BY THE MAKER AND SECONDER to change the matching funds from \$800,000 to \$1.2 million, using the City's reserves for the additional \$400,000.

Council Member Ojakian said he would vote for the motion, putting a certain amount of money into the Mitchell Park Library and Community Center. His hope and goal was that those facilities were replaced. The Mitchell Park Library was an inferior facility in comparison to what was being built elsewhere in the area. The Council should pursue Library Funds in 2004.

Ms. Harrison said one of the main reasons that staff's recommendation was not competitive had to do with the strength or perceived weakness of the

City's partnership with the PAUSD. The PAUSD was not in a position to make that partnership stronger. There was no current design, and staff had to go back and put significant funding into redesigning the Mitchell Park project.

Council Member Morton thanked the Friends of the Library for giving new impetus to the renovation.

Council Member Burch was not as optimistic as Council Member Ojakian that things were going to turn around or that a ballot measure would pass in the near future. Making the facilities useful was not a waste of money. The libraries served people at the current time and would continue to serve people for the next several years.

Council Member Kleinberg referred to page 2 of the staff report (CMR:111:03), which read, "If improvements are done now, and then expansion or replacement projects occur in the near future, many of the improvements may be redone or demolished, and the cost to design and construct them would potentially be lost." Staff was asked whether that sentence applied under staff's new, revised recommendations.

Ms. Harrison said the sentence would not apply if the City were successful with a public/private partnership for the Children's Library. Staff would try to limit the extent to which it applied to the Mitchell Library.

Council Member Kleinberg was pleased to see the recommendation. The timing concerned her for two reasons. One concern was if improvements were done and later there was more money or it was a redesigned project, the money was wasted. The other concern was the City was in a desperate economic situation. The Council had tough financial decisions to grapple with. Voting to commit funds was not responsible at the current time.

Council Member Kishimoto said the Mitchell Park Library definitely needed air conditioning and she questioned the cost to add air conditioning to the Children's Library.

Mr. Morris said air conditioning for the Children's Library was \$70,000.

Mayor Mossar suggested getting a policy statement on the table.

Council Member Kishimoto said the policy statement was to ask staff to consider the \$70,000. The question was asked as to how much the estimates increased since 1998. For the Children's Library, the estimate went up 36 percent, and 50 percent for the Mitchell complex. The question

was asked whether construction costs had gone up considerably and, if the costs went up, what were the implications for the IMP Fund.

Ms. Harrison said staff needed to discuss the issue when doing the budget. Staff estimated construction cost inflation was approximately 4 percent per year.

Council Member Kishimoto supported the motion because of the work the community put into the libraries. It was a decision the Council was deciding to make outside the context of looking at the overall IMP program. The Council and staff should not look at further expenditures prior to looking at the overall picture.

Mayor Mossar said she could not support the motion. The City knew it had \$800,000 to spend on the libraries. Decisions about going into the reserves legitimately belonged in the hands of the budget process.

SUBSTITUTE MOTION: Mayor Mossar moved, seconded by Kleinberg, to direct staff to size a public/private partnership to renovate and expand the libraries up to an \$800,000 commitment for the City of Palo Alto.

Council Member Lytle asked how the Council dealt with Mitchell Park. She shared the sentiments of Council Member Ojakian, who was hopeful the Council could return with a more full-scale renovation and limit the expenditures, and Council Member Kleinberg, who wanted the expenditure evaluated.

Council Member Freeman understood the IMP fund was \$30 million.

Ms. Harrison said the reserve at the current time was approximately \$30 million. The cost of the two projects was \$2.2 million, of which IMP funding of approximately \$1.5 million was originally earmarked.

Council Member Freeman clarified the difference of the net delta was \$691,000 out of \$30 million to handle two buildings that were in major disrepair and needed to be taken care of.

SUBSTITUTE MOTION RESTATED: to direct staff to size a public/private partnership to renovate and expand the libraries up to a \$2.25 million commitment for the City of Palo Alto for the Children's and Mitchell Park Libraries.

SUBSTITUTE MOTION WITHDRAWN BY SECONDER

Council Member Kleinberg said the City was in bad economic straits, and she did not know what the next twelve months would bring or what the community wanted to tell the Council. The Council needed to reevaluate the decision made in the prior 18-24 months about Mitchell Park.

SUBSTITUTE MOTION DIED FOR LACK OF A SECOND

Mayor Mossar clarified the City would match private donations up to \$800,000.

Ms. Harrison said that was the original motion from the Council.

Mayor Mossar asked why the amount at one point was \$800,000 and then jumped to \$2.2 million.

Ms. Harrison said the staff recommendation was limited to the Children's Library, and staff had not envisioned going beyond Children's as a public/private partnership. The public part of the public/private partnership was limited to the amount of public funding allocated to the Children's Library.

SUBSTITUTE MOTION: Mayor Mossar moved, seconded by Kleinberg, to direct staff to size a public/private partnership for a maximum City match of \$800,000 for the Children's Library.

Council Member Morton asked his colleagues to vote against the substitute motion because it was confusing. He added bullet 7 to the main motion, which said the project went through the normal CIP budget process. Council Member Ojikian had said if the community raised half the cost, the Council would provide the match.

Ms. Harrison said staff would recommend not going with the BAO if it were to pursue the public/private partnership.

SUBSTITUTE MOTION FAILED 3-5, Burch, Kleinberg, Mossar "yes," Beecham absent.

MOTION PASSED 6-2, Kleinberg, Mossar "no," Beecham absent.

ORDINANCES AND RESOLUTIONS

7. Ordinance 4778 entitled "Ordinance of the Council of the City of Palo Alto Amending Chapter 9.10 of Title 9 (Peace, Morals, and Safety) of the Palo Alto Municipal Code Regulating Noise in Order to Clarify the Restrictions on Construction, Demolition, or Repair Activities and the Restrictions on Public Street Cleaning in Business Districts" *(1st Reading 1/21/03, Passed 5-4, Freeman, Kishimoto, Kleinberg, Lytle "no.") Item continued from February 3, 2003*

MOTION: Council Member Burch moved, seconded by Morton, to approve the staff recommendation to amend Palo Alto Municipal Code Section 9.10 in the following manner:

- Section 9.10.060(k)(1) be amended to include business district sidewalk cleaning; and
- Section 9.10.060(b) be amended to indicate that the requirements for construction in nonresidential areas, which is authorized by valid City building permits shall be the same as those for residential areas.

Council Member Freeman said she initiated removing the item from the Consent Calendar on January 21, 2003. A substitute motion would not affect the City or the business owners but would be beneficial to the neighbors, based on the PAMC, which read "It is hereby declared to be the policy of the City that the peace, health, safety, and welfare of the citizens of Palo Alto require protection from excessive, unnecessary and unreasonable noises from any and all sources in the community. It is the intention of the City Council to control the adverse effect of such noise sources on the citizens under any condition of use especially those conditions of use which have the most severe impact upon any person."

SUBSTITUTE MOTION: Council Member Freeman moved, seconded by Kleinberg, to amend the ordinance to ask staff to review possibilities of restricting only private cleaning limiting either days of week for sidewalk cleaning with the Green Machine, which is allowed in the California Avenue Business District; discuss the hours restrictions with the California Avenue Business District owners; return to the Council with those results; and bring the ordinance back for a first reading.

Mayor Mossar clarified Council Member Freeman made suggestions for future amendments to be brought back to the Council for consideration.

Council Member Freeman said her comments were based on instructions by the City Attorney earlier in the day.

Mayor Mossar said she did not hear specific amendments but heard directions to staff to investigate other issues.

City Attorney Ariel Calonne said he suggested if the Council wanted to limit private cleaning to specific days or hours of the week, which could be incorporated after discussion with the private business owners.

Mayor Mossar suggested voting on the main motion.

Council Member Freeman said she preferred to go ahead with the substitute motion because it was the opposite of the current motion.

Mr. Calonne said the substitute motion was in order.

Mayor Mossar clarified the substitute motion was a direction to staff to do further work.

Mr. Calonne said the substitute motion was direction for staff to pursue a change to the ordinance.

Council Member Freeman felt something could be crafted that would not impact the City financially or the business owners on California Avenue.

John K. Abraham, 736 Ellsworth Place, said he did a search for the noisiest piece of construction equipment, which was the pile driver at 110 decibels (dBA) at 25 feet, and that was what the ordinance permitted. With regard to sidewalk cleaning, he found it difficult to obtain information. There were two elements: the Green Machine, which was a slow moving vehicle, whereas sidewalk pressure cleaning took a full day to do each side of California Avenue. Adding up all the hours and days, the total was 36 days per year for the entire City for sidewalk cleaning with pressure. Pressure cleaning took one tenth of a year. The question was asked why the City gave carte blanche to a full seven day per week when only 10 percent was needed. Any private contractor could do sidewalk cleaning at any time. Two instances included 4 a.m. pressure sidewalk cleaning. That was unjust. The residents wanted the same rules for public as private. An unfair burden was created for certain residents who lived on California Avenue. The Council was asked to give consideration to California Avenue residents.

Lynn Chiapella, 631 Colorado Avenue, agreed with Mr. Abraham. The sidewalk cleaning presented serious problems to people who were not represented by the City Council, most of whom were renters. The impact was tremendous on the renters and people who lived near the business

district every night between 10 p.m. and 8 a.m. when the equipment could be operated at 95 dBA. The Council opened Pandora's box allowing every business, at their own discretion, to operate between 10 p.m. and 8 a.m. for sidewalk cleaning. The City should handle the sidewalk cleaning. If businesses wanted to clean their sidewalks late at night, they should use a Green Machine or something of equivalent 75-80 dBA.

Joy Ogawa, 2305 Yale Street, appealed to the City Council to reconsider the noise ordinance amendments that discriminated against the residents who lived in business districts. She hoped at least one Council Member would reconsider and be willing to investigate looking into the feasibility of limiting the hours of sidewalk cleaning so that business district residents could be spared being subjected to the loud noise during early hours of the morning. The noise ordinance was a form of environmental justice because it established a law that resulted in unfair treatment of the lower income residents who lived within business districts. The City's Housing Element proposed to build more affordable housing as in-fill within business districts. The City should do all it could to protect the environmental quality of the business district residents. The City Attorney previously advised the Council the City had the authority to enact the ordinance.

City Attorney Ariel Calonne reminded the Council the ordinance was intended to be declaratory of existing law. Staff's interpretation of the existing ordinance was what the document said. The Council needed five votes to pass the ordinance.

Mayor Mossar clarified that by referring the matter to staff, the existing ordinance stood until such time as amended by the Council.

Mr. Calonne said that was correct.

Council Member Kishimoto said a little care in crafting the motion would not impair the operations of the cleaners but could make a difference in the quality of life for some people.

Council Member Lytle said other cities were able to adjust both public and private sidewalk cleaning and steaming practices to accommodate residents' peace and health in the downtowns. She supported the substitute motion.

Council Member Kleinberg said the Council looked at ways to increase residential units and mixed units in the business districts. The public and private policies should be in agreement.

Council Member Burch recalled seeing an email regarding complaints on California Avenue. There were seven or nine complaints in the prior year, and five of the complaints were from one person. The Council was asked to change an ordinance based on complaints from two or three people. He would not support the substitute motion.

Council Member Morton asked whom the Council was trying to protect. Only one person in the area complained. California Avenue was a vibrant restaurant district. The sidewalks could only be cleaned after closure of the restaurants. The restaurants contributed to the economic base, and there were relatively no inhabitants on California Avenue. The existing law needed to be implemented.

Council Member Ojakian said the policy for second readings not being approved had to do with whether there were new and compelling reasons to discard the previous action.

Council Member Freeman said her questions to staff were made public. Staff's answer to her question was, "One way for the California Avenue business owners to agree on specific days of the week when private cleaning could take place. Another way was to amend the existing ordinance limiting the days of the week the cleaning was allowed. Note, if the decision is made to limit the days of the week, it could impact City services by eliminating the opportunity to clean on days other than those identified in the ordinance." There was new information; there was information about restricting days on weekends and holidays, and there was information about the dBA levels. The last sentence of the ordinance said, "It is the intention of the City Council to control the adverse effect of such noise sources on the citizen under any condition of use, especially those conditions of use which have the most severe impact upon any person." Staff should look at ways with the California Avenue business owners to see if noise could be eliminated without impacting the City or business owners but also helping the citizens who were impacted.

Mayor Mossar said she did not believe staff agreed but had suggested things that could be done.

Council Member Freeman said she did not hear staff say they disagreed.

Mayor Mossar said her interpretation was that staff gave Council Member Freeman ideas of things that could be done.

SUBSTITUTE MOTION FAILED 4-4, Freeman, Kishimoto, Kleinberg, Lytle "yes."

Council Member Ojakian reiterated his previous statement in hopes that one of his colleagues would vote for the original motion with the understanding that their convictions had already been expressed in their original vote.

MOTION PASSED 5-3, Freeman, Kishimoto, Kleinberg "no," Beecham absent.

Council Member Lytle explained that the point of continuing would be an ineffective action because Vice Mayor Beecham was firm on his vote and there was no reason to delay. She had already expressed her position and did not mind switching for the purpose of efficiency.

COUNCIL MATTERS

8. Council Members Jim Burch and Judy Kleinberg re Discussion of a Resolution Opposing Preemptive Military Action Against Iraq

Mayor Mossar noted that she would turn the meeting over to former Mayor Ojakian as she had to leave the meeting.

MOTION: Council Member Kleinberg moved, seconded by Burch, that the City of Palo Alto adopt a resolution at a future meeting stating that due to the diversion of national, state, and local resources to support a war effort and the heavy financial burden it would present for the community, and due to the potential loss of life in such an effort, among those the sons and daughters of Palo Alto residents, the City of Palo Alto is opposed to a preemptive U.S. invasion of Iraq without proof of an imminent threat from Iraq to the national security of the United States, and supports instead a multilateral diplomatic approach to the Iraq situation, sanctioned and directed by the United Nations.

Council Member Kleinberg said the matter was difficult and important. The issue was not war versus no war but rather war now unilaterally without an imminent threat, which would result in the expending of national resources needed in Palo Alto and other places. While the leaders of Iraq might be undemocratic and immoral demagogues, to date no conclusive evidence was presented that Iraq had intentions of harming the people of the United States or that Iraq presented a clear and present danger to the United States. Absent such clear evidence, a first strike unilateral war was in contradiction of the articles of the United Nations Charter and the principles

of international law for the peaceful, diplomatic resolution of dispute. If it were merely a matter of the loss of innocent civilian life in Iraq and placing the sons and daughters of residents of Palo Alto who served in the military in danger, there would be a strong moral argument against such a preemptive action. There was a more direct interest in the City in opposing such an action by the Federal Government, and that was the impact of such a war on the City's economy and the health and well-being of the citizens. Most cities and states suffered fiscal crisis where programs that benefited working people and the poor were threatened by severe budget cuts. Estimates of the cost of an Iraq war ranged from \$60 billion to \$1.6 trillion, when the war's aftermath was included. The lower figure represented between one and two percent of the current U.S. gross domestic profit, an amount that could go a long way to meeting health, safety, and education needs. The 1990-91 Gulf War Crisis cost approximately \$80 billion, and 80 percent of that cost was paid by allies, specifically Germany and Saudi Arabia, which was highly unlikely at the present time. If the United States were to shoulder the burden alone of waging the war unilaterally, the estimate of the total of how much the taxpayers of Palo Alto had to pay of their federal income taxes on a war and post war occupation of Iraq was produced by a group called the "National Priorities Project." That group estimated that, based on a total estimated cost to the nation of \$100 billion, \$10 billion in individual income taxes would be diverted from California, as a whole, and \$39 million in individual income tax from Palo Alto. The massive public expenditures required for military engagement were better spent addressing crisis conditions in employment, housing, health care, education, infrastructure, and the environment. The expenditures resulted in ballooning deficits, thereby weakening the already sluggish State economy and ensuring further reductions in Federal and State aid to Palo Alto, Santa Clara County, and the State of California, all of which negatively impacted Palo Alto citizens.

Council Member Burch said there was no sympathy for a nation threatening to use weapons of mass destruction. There was an urgent need for genuine, multi-lateral action to eliminate weapons of mass destruction worldwide. Unilateral action must be based on imminent use of the weapons against a nation's interest or citizens. Governments around the world opposed U.S. unilateral action against Iraq and supported the full pursuit of diplomatic resolutions and weapons inspection prior to any further military action against Iraq. An international consensus did not currently exist in support of United States military action, with most of the world's nations opposed to unilateral preemptive military action by the United States. Palo Alto's resolution would state it was in the best interest of the country and for peace among the nations of the world for the United States to act in concert

with the United Nations and not unilaterally to bring about Iraq's compliance to disarmament of weapons of mass destruction. The United Nations Weapons Inspectors, whose mandate was to finish the job of earlier inspection teams by finding and rendering harmless any remaining weapons of mass destruction, needed to be supported. War should be the last resort after exhausting all diplomatic and political means. The United States or any other country should not undertake the war unilaterally or preemptively. Neither the United Nations Charter nor International law justified attacking another nation that posed no direct threat, nor there was no evidence of a direct threat from Iraq to the United States. Until there was such clear evidence, the expenditure of lives and money was premature and unwarranted. It was within the Council's sphere of responsibility to the citizens to express opposition to violation of the United Nations Charter by unilateral, preemptive military action against Iraq. A war with Iraq threatened to further destabilize the Middle East, possibly leading to a wider regional war, making the citizens of Palo Alto, the United States, and the world less safe. Increased costs of security in Palo Alto would rise, which created an additional financial burden on residents at a time when the City did not have funds to repair libraries and community centers or upgrade storm drains and playing fields. At some point in the course of the weapons inspections or the failure of all diplomatic strategies, the sacrifice might become necessary. The case for making the sacrifice at the present time was not persuasive.

Council Member Kleinberg said the citizens of Palo Alto and their local elected officials had the constitutional right and duty to petition the national government on the matter of grave concern to the community, as part of the national and international debate currently under way. While the City Council could not speak for all its residents, many people asked to speak out on the issue facing the nation, which had serious consequences for the City and residents. The public sentiment in Palo Alto was overwhelmingly opposed to a unilateral preemptive war in Iraq. As of 6:30 p.m. that day, 130 local emails were received in support of the resolution, and only 10 against. Congresswoman Eshoo had received approximately 1,000 telephone calls in favor of her anti-preemptive strike stance and only four calls against. Numerous church and human rights organizations and millions of average Americans expressed opposition to a preemptive unilateral war with Iraq. A petition was to be presented to the Council with a number of signatures in support of the resolution. The Council Chambers was filled, standing room only, with many supporters of such a resolution. As of the prior Friday, 72 State legislators and City and County Councils adopted resolutions opposing a war with Iraq, or a majority of their memberships signed letters to that effect, according to a coalition called, "Cities for Peace." Twelve cities and

two counties were included. Congressional representatives needed to be made aware of the City/resident's anti-war stance. Reverend Martin Luther King, Jr., said, "Poverty, urban problems, and social progress generally are ignored when the guns of war become a national obsession." The Council was urged to heed his words and focus on domestic problems.

Winter Dellenbach, 859 LaPara Avenue, thanked Council Members Kleinberg and Burch for sponsoring the resolution. The absence of Mayor Mossar confused and insulted her. During prior years, the Council took positions on issues outside the exact purview of the City. Palo Alto was in Silicon Valley, and half the corporations in Silicon Valley currently did defense work. The Council was asked to support the resolution. War was easier to prevent than to stop once it was started.

Joe Webb, 240 Huckleberry, Woodside, submitted a picture book to the Council that showed what happened to Iraqi children after 350 tons of depleted uranium pulverized Iraq.

Enid Pearson, Forest Court, was saddened, after 30 years, to ask the City Council to pass a resolution urging the Federal government not to engage in war. Thirty years prior, the Viet Nam War killed thousands of young men and women and destroyed thousands of other lives off the battlefield. There were people who never recovered from that war. It was time the United States and other nations began to figure out ways for peace; time to stop spending billions of dollars on weapons of destruction; and time to stop supplying weapons. It was time to spend billions of dollars on food, housing, and education, and creating ways to insure better lives for all human beings. The Council was urged to set a precedent in Palo Alto in the name of peace by passing a unanimous resolution condemning the war.

Peter Drekmeier, 1325 Cowper Street, asked for people's email or phone numbers so the Peace Center could let them know about other activities.

Tomas Moran, Alger Drive, Unitarian Universalist Church of Palo Alto, asked the Council to include in the minutes the receipt of a statement of conscience he submitted to the City Clerk, which opposed a war with Iraq. The statement was passed at a special congregational meeting of the Unitarian Universalist Church on February 2, 2003. The statement included, "We the members of the Unitarian Universalist Church of Palo Alto oppose a preemptive war by the United States on Iraq. It is a violation of the United Nations Charter and International and United States law for one nation to use military force against another except in self defense," and "We, as Unitarian Universalists, uphold the inherent worth of dignity of every person,

justice, equity, and compassion in human relations and the goal of the world community, peace, liberty, and justice for all. Thus, we call on President Bush to pursue path toward international security, peace and justice, that do not involve war and violence.” The statement of conscience was one congregation’s response to a deep, disquieting sense of unease that many citizens were feeling in anticipation of military actions contemplated by the Federal government. The Council was asked to join other elected officials around the country that took their leadership to advise the Federal government of the critical time.

David Houston, 1023 Los Trancos Road, Portola Valley, encouraged the City of Palo Alto to adopt a peace initiative with respect to the situation in Iraq and throughout the world. Environmental concerns with respect to military actions were many and included ground water contamination, loss of habitat to humans, plants and other animals. Violence of any kind caused needless pain and suffering and did not resolve issues. Conventional nuclear and biological weapons were some of the worst tools of violence that industrial mankind created. Use of such deadly force in any area that needed food only created fuel for more world chaos and violence, as demonstrated in recent and continuing violence in Afghanistan and nearby countries. The City of Palo Alto was encouraged to continue its efforts to minimize the use of petroleum-based products and other toxins in all its operations and to offer incentives to commercial operations and encourage residents to do the same. By choosing more sustainable and less toxic alternatives to petroleum-based products, the City was able to walk the talk of its peace resolution and provide a more sustainable future for the Bay Area and its residents.

Paul George, 1725 Alma Street, Peace and Justice Center Director, presented a petition with more than 2,000 signatures of Palo Alto residents directed to the City Council in support of a resolution against the war. In addition to the 2,000 signatures, approximately 5,000 people gathered peacefully at City Hall a week prior in determination to stop the war. Millions of people were marching around the world the following weekend. The Council was encouraged to take the challenge that faced the world and to pass the resolution.

Dana Marie St. George, 278 Campesino Avenue, said the Green Party of the United States passed a resolution on September 19, 2002, to take a stand and oppose the Bush Administration’s plans for war in Iraq. Over 70 cities and counties around the country passed anti-war resolutions. Santa Clara County’s Board of Supervisors took a strong leadership role passing an anti-war resolution the prior week. War was the worst possible outcome of

disputes between nations with its terrible waste of lives, destruction of infrastructures, and environmental pollution. The war must be opposed. The Green Party of Santa Clara County urged the Council to pass the resolution.

Dennis Mitrzyk, 201 Maclane, said waging war on the people of Iraq was amoral, foolish, and extremely dangerous. Commanders within the United States's military were cautioning against the reckless adventure. The world was a big, global community. Violence was not an option. Dr. Martin Luther King said, "Violence only breeds more violence." If the United States Government insisted on using its vast, military might to intimidate, maim, and kill whomever it pleased, the United States would be the most hated nation in the history of humanity. The entire world community would rally against the United States. The Weapons Inspectors should continue with their work, even if it took years. The war was unnecessary. The Council was urged to send a clear message to the Bush regime that the people of Palo Alto did not support the war.

Kathleen Namphy, 2060 Amherst Street, said she spent the prior fall in Iraq, working with the Iraq peace team and the Christian Peace Maker teams. While in Iraq, many things she observed deeply affected her. Mothers told her of the fears for their children's lives and health during the prior 12 years of ongoing war and frequent bombings. Hungry children begged for food. Hospitals filled with children with terrible diseases were visited. The mounting evidence indicating the relationship between the use of depleted uranium weapons and the seven fold increase in deadly cancers were disturbing. The treatment for the diseases was not adequate with the strict sanctions in place. Water treatment plants, sanitary sewage treatment plants, and agricultural, irrigation systems that were damaged beyond repair in the war were visited.

Rachelle Marshall, Women's International League for Peace and Freedom, 611 Alvarado Row, Stanford, said she felt privileged listening to the statements by Council Members Kleinberg and Burch. The United States was on the verge of a war against an impoverished country of 22 million people that arms inspectors said posed no serious threat to anyone. Administration officials talked as if a United States attack on Iraq was a surgical operation, which would eliminate Saddam Hussein, liberate the Iraqi people, and make people more secure from terrorism. When "Operation Shock and Awe" began, the only certainty was there would be a terrible toll in human lives. A CBS news report quoted a Pentagon official as saying, "There will not be a safe place in Baghdad. Three to four hundred cruise missiles were intended to be launched on the first day, and that would continue until Iraq

surrendered. The Iraqis knew there would be no safe place when the bombing started.

Carol Brouillet, 4060 Verdosa Drive, said in the wake of September 11, she went to Washington D.C. to protest the impending war on Afghanistan. The war was not on terrorism but a war of terrorism. A documentary entitled, "Aftermath, Unanswered Questions from 9/11" looked at the unanswered questions behind 9/11.

Taale Laafi Rosellini, P.O. Box 630, Santa Cruz, African Family Film Foundation Director, promoted two publications, "Children of the Gulf War" by Takashi Morizumi and "Addicted to War, Why the U.S. Can't Kick Militarism" by Joel Andreas. She encouraged the Council and citizens to read the publications. She urged the Council to pass the resolution.

Hugh Satterlee, 2399 South Court, said 65 to 70 years prior, people spoke for peace and against war. Peace led to appeasement, which led to a moral catastrophe. He urged the Council to reject any hint of further appeasement of Iraq.

Eve Agiewich, 3427 Janice Way, supported the resolution opposing preemptive military action against Iraq. A preemptive strike was politically and militarily ill-advised, particularly without the support of the United Nations. Council Members Burch and Kleinberg were thanked for their comments. The issue was appropriate for the City Council to consider. As a result of the 9/11 attacks, the civil rights of everyone came under assault. A war against Iraq would result in a further erosion of rights. The Palo Alto Human Relations Commission (HRC) had not taken a position with respect to the war, but it was concerned about the USA Patriot Act passed in the wake of 9/11. There was ample precedent for the Council to take a position on the issues of National and International scope. The Council took positions with respect to Burma and other non-local issues. According to the San Jose Mercury News, at least 64 cities around the country passed resolutions similar to the one proposed by Council Members Kleinberg and Burch. The Council was urged to join the ranks of those opposed to the preemptive military action against Iraq.

Luis Trabbpardo, 4090 Amaranta, said the rest of the world did not deserve to be treated the way the United States was treating it.

Dave Mampel, 2721 Midtown Court, #110, wanted weapons inspection in the United States and invited Iraq to the United States to inspect weapons of mass destruction. All the weapons in the world should be eliminated.

Everyone should support the resolution. Democracy in the country should be supported.

Elaine Elbizri, 2515 Greer Road, read her interpretation of a poem, entitled "Crossing the Swamp" by Mary Oliver.

Council Member Kleinberg said the Council did not have the actual worded resolution but was determining the policy it wanted to adopt. The policy would be incorporated into a resolution that would return to the Council.

City Attorney Ariel Calonne said the resolution required five votes.

Council Member Burch did not believe war, under any circumstance, worked. Eight years of his life were spent working for an organization called, "Beyond War." At the time, people considered only atomic weapons as weapons of mass destruction. At the current time, anyone could have a weapon of mass destruction, such as a vial of small pox or anthrax. He supported the resolution.

Council Member Kishimoto said during the prior several days, people asked her what business the City Council had in passing such a resolution. Her response was that all politics were local. International affairs were not only the business of large government bureaucracies. The motion was supported because of the impact on civil rights and the politics of oil. Many people believed the politics of oil had something to do with why the United States targeted Iraq. One action people could take was personal responsibility to pledge to help reduce America's dependence on oil. The City Council often used the language of the California Environmental Quality Act (CEQA). The prior week, the Council was reminded that it was not allowed to take action against the environment unless there was substantial evidence that there was no feasible alternative. In the democracy, not enough people were convinced there was no feasible alternative.

Council Member Lytle echoed the speaker who said it was an unparalleled privilege to hear the eloquent and well-reasoned rationale of the Colleagues who brought the issue forward and to listen to testimony from the public. She supported placing the resolution on the agenda.

Council Member Ojakian said he would not support the motion because when he was elected he made it clear that he stood for local level issues.

Council Member Morton said opposition to unilateral war was an expression of concern for the people of Iraq. In support of the Mayor, he recognized

that Saddam Hussein was a vicious dictator whose removal benefited both his countrymen and the rest of the world. Underlying his personal opposition to a unilateral war, was the profound hope that Iraq could be freed from the tyranny of Saddam.

Council Member Freeman said she was inundated with emails requesting various gradations on a no preemptive or no unilateral strike on Iraq. Some requests urged the Council to stay out of Federal policy, considering (1) the tremendous workload that faced the City, and (2) the notion that Council Members were not elected to voice the people's perspective on national policy. Constituents associated with the military or President's perspective could not be ignored. The changing reports and information had impacts on most individuals and could not be ignored. Palo Altans, both against war in concept or principal, as well as those with a more protectionist perspective, agreed it was most advisable to have the backing of a United Nations resolution before any forceful action was initiated. In order for humankind to not only survive, but to thrive on earth, diplomacy needed to be used to enable peace. A fear was that issues surrounding the Patriot Act had not been faced. Wording was supported that suggested only in the event to protect citizens from imminent danger, only after the United States exploited all diplomatic avenues, and only with United Nations backing, should any forceful action be considered.

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

Council Member Kleinberg thanked people who spoke about the resolution and signed petitions. There was a feeling of tremendous excitement that the country valued diversity of opinion, and opinions were shared in peace.

Council Member Burch said Council Member Ojakian was a man of incredible integrity, and he knew his vote was difficult for him to make.

Council Member Ojakian thanked everyone for their comments and the way the audience conducted itself in a civilized manner.

COUNCIL COMMENTS, QUESTIONS, AND ANNOUNCEMENTS

Council Member Freeman complimented the City staff on the Clean Up Day, which was February 1, 2003.

Council Member Kishimoto noted the tentative agenda for a Council meeting on March 24, 2003, coincided with the Palo Alto Unified School District vacation.

Council Member Ojakian commended the City Manager regarding his wrap up meeting with the Edgewood Center and the Redevelopment Agency.

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

ATTEST:

APPROVED:

City Clerk

Mayor

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