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December 15, 2003

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The City Council of the City of Palo Alto met on this date in the Council Chambers at 6:48 p.m.

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

ABSENT: Lytle

SPECIAL ORDERS OF THE DAY

1. Resolution 8380 entitled "Resolution of the Council of the City of Palo Alto Expressing Appreciation to Randy Baldschun Upon His Retirement"

Director of Utilities John Ulrich said Randy Baldshun had provided a remarkable amount of training, development and support to new personnel in the Utilities department. He wished him a great retirement.

Randy Baldschun said in the past 100 years, Palo Alto Utilities had been highly recognized because of the incredible staff and regulators.

MOTION: Council Member Ojakian moved, seconded by Morton, to adopt the Resolution.

MOTION PASSED 8-0, Lytle absent.

2. Resolution 8381 entitled "Resolution of the Council of the City of Palo Alto Expressing Appreciation to Katy Obringer Upon Her Retirement"

Director of Community Services Paul Thiltgen said Katy Obringer made the Children's Library a vital place.

Katy Obringer said she was pleased to have had the opportunity to work in the Palo Alto community and would continue to work with children in the Bay Area.

MOTION: Council Member Ojakian moved, seconded by Morton, to adopt the Resolution.

MOTION PASSED 8-0, Lytle absent.

3. Resolution 8382 entitled "Resolution of the Council of the City of Palo Alto Expressing Appreciation to Del Thorpe Upon His Retirement"

MOTION: Council Member Ojakian moved, seconded by Morton, to adopt the Resolution.

MOTION PASSED 8-0, Lytle absent.

ADJOURNMENT: The meeting adjourned at 7:09 p.m.

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

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

ABSENT: Lytle

ORAL COMMUNICATIONS

Ed Power, 2254 Dartmouth Street, spoke regarding good government.

Jeffrey Blum, spoke regarding proposed budget cutbacks to social services.

Bunny Good, P.O. Box 824, Menlo Park, spoke regarding necessity for referendum on Opportunity Center.

APPROVAL OF MINUTES

MOTION: Council Member Burch moved, seconded by Morton, to approve the minutes of November 10 and 17, 2003, as submitted.

MOTION PASSED 8-0, Lytle absent.

CONSENT CALENDAR

David Smernoff, spoke on Item No. 2 regarding the budget approval for the Arastradero Preserve Gateway Facility.

Mark Cairns, 718 San Carlos Court, spoke on Item No. 8A regarding his public nuisance lawsuit against the City.

John K. Abraham, spoke regarding Item No. 8A stating the City Attorney was rewriting the ordinance unlawfully.

Robert Moss, 4010 Orme Street, spoke on Item No. 8A suggesting the item be removed from the Consent Calendar.

Mayor Mossar said Item No. 8A was a referral to the Planning and Transportation Commission for further discussion.

Council Member Kleinberg asked Interim City Attorney Wynne Furth with regard to Item No. 8 to explain why the contract numbers were gross numbers and how the cost would be tracked with the law firms.

Interim City Attorney Wynne Furth said the contracts were already budgeted with various law firms, and contracts entered into with base amounts did not require City Council approval.

Council Member Morton stated he would not participate in Item No. 6 due to a conflict of interest because his firm was an accountant for the Museum, and Item No. 11 because his family owned stock in both PB and Sempra Energy.

Ms. Furth stated she could not participate in Item No. 11 because her family owned stock in BP Energy.

Council Member Freeman moved, seconded by Kishimoto, to remove Item No. 8A.

Mayor Mossar said Item No. 8A would become Item No. 15A.

Council Member Freeman registered "no" votes for Item Nos. 3, 4 and 8.

MOTION: Council Member Burch moved, seconded by Ojakian, to approve Consent Calendar Items 1-8, 9-12.

LEGISLATIVE

1. Recommendation that Council Adopt the Resolution Declaring Weeds to be a Nuisance and Set February 2, 2004 for a Public Hearing

Resolution 8383 entitled "Resolution of the Council of the City of Palo Alto Declaring Weeds to be a Nuisance and Setting a Hearing for Objections to Their Proposed Destruction or Removal"



2. Approval of a Budget Amendment Ordinance to Commit Funds for Reimbursable Grant Funding in the Amount of \$299,536; Approval of a Contract with A & A Construction in the Amount of \$522,000 for the Construction of the Arastradero Preserve Gateway Facility, Subject to Simultaneous Approval of a Deduct Change Order to the Construction Contract in the Amount of \$74,000, for a Total Contract Amount of \$448,000

Ordinance 4810 entitled "Ordinance of the Council of the City of Palo Alto Amending the Budget for the Fiscal Year 2003-04 to Increase Revenue in the Amount of \$135,711 and Increase Expense in the

Amount of \$299,536 for CIP OS-98012 (Arastradero Preserve Gateway Facility Project)”

Contract with A&A Construction in the Amount of \$504,000 for the Construction of the Arastradero Preserve Gateway Facility, Subject to Simultaneous Approval of a Deduct Change Order to the Construction Contract in the Amount of \$56,000 for a Total Contract Amount of \$448,000

3. Approval of the City of Palo Alto’s 2003-04 Disadvantaged Business Enterprise (DBE) Program & Adoption of a Resolution Implementing the Program

Resolution 8384 entitled “Resolution of the Council of the City of Palo Alto Adopting the 2003-04 Disadvantaged Business Enterprise (DBE) Program for Federally Funded City Transportation Projects”

ADMINISTRATIVE

4. Approval of Agreements for Animal Services Between the City of Palo Alto and the Cities of Los Altos, Los Altos Hills, and Mountain View for Emergency Animal Control and Sheltering Services from January 1, 2004 to June 30, 2014 and Approval of Agreement for Animal Services Between the City of Palo Alto and the City of Sunnyvale for Sheltering Services from January 1, 2004 through June 30, 2024

Agreement for Animal Services Between the City of Palo Alto and the City of Los Altos

Agreement for Animal Services Between the City of Palo Alto and the Town of Los Altos Hills

Agreement for Animal Services Between the City of Palo Alto and the City of Mountain View

Agreement for Animal Services Between the City of Palo Alto and the City of Sunnyvale

5. Contract for a Utilities Expenditure in the Amount of \$78,682 to McDonald Family LCC for Installation, Maintenance and Monitoring of Geothermal Heat Pump Demonstration Project at 2151 and 2185 Park Boulevard, Palo Alto
6. Request to Approve Landscape Master Plan for Williams House (351 Homer Avenue) as Part of Lease Agreement Between City of Palo Alto, owner, and Museum of American Heritage, tenant.

7. 2003 Shoreline Concert Season Results and Recommendation to Direct Staff to Meet Annually with Clear Channel Communication Staff and Report Annually on the Shoreline Concert Season
8. Request for Authorization to Increase Amount of Existing Contracts with the Law Firms of Sidley & Austin; Roger Beers; Richards Watson & Gershon; Spiegel & McDiarmid; Moses & Singer; Davis Wright & Tremaine; and McCarthy & Berlin

COUNCIL COMMITTEE RECOMMENDATION

9. Finance Committee Recommendation for Adoption of Two Resolutions to Revise Utility Rate Stabilization Reserve Guidelines and Terminate Gas Rate Schedule G-7

Resolution 8385 entitled "Resolution of the Council of the City of Palo Alto Eliminating Schedule G-7 of the City of Palo Alto Utilities Rates and Charges Pertaining to Gas Service"

Resolution 8386 entitled "Resolution of the Council of the City of Palo Alto Authorizing Revisions to the Reserve Guidelines for the Electric Supply Rate Stabilization Reserve, the Electric Distribution Rate Stabilization Reserve, and the Gas Supply Rate Stabilization Reserve"

10. Finance Committee recommendation to exercise its option for a ten-year extension on the Lease and Covenant not to Develop (Agreement) with the Palo Alto Unified School District (PAUSD), which will expire December 31, 2004.
11. Finance Committee recommendation to introduce an Ordinance and approve four electric master agreements as follows:
 1. Approve and authorize the Mayor to execute Master Agreements with the following suppliers who have been deemed qualified to do business with the City with respect to electricity purchases and sales for the period January 2004 through December 2011, under the terms discussed in the report:
 - a. BP Energy Company;
 - b. Coral Power, LLC;
 - c. Duke Energy Marketing America, LLC;
 - d. Sempra Energy Trading Corporation
 2. Authorize the City Manager or his designee to manage these Master Agreements, and to execute one or more electric

commodity transactions in accordance with the terms of the contract.

Ordinance 1st Reading entitled "Ordinance of the Council of the City of Palo Alto Authorizing the City Manager to Purchase a Portion of the City's Electricity Requirements from Certain Prequalified Electricity Suppliers Under Specified Terms and Conditions During Calendar Years 2004 through 2011, Inclusive"

12. Policy and Services Committee recommendation to adopt Guidelines 1 through 4 for off-site telephone participation in Council meetings. Further, to note who is teleconferencing, track specific costs, discourage use of cell phones, and ask the City Clerk to report quarterly.

MOTION PASSED 8-0 for Item Nos. 1, 2, 5, 7, 9, 10, & 12, Lytle absent.

MOTION PASSED 7-1 for Item Nos. 3, 4 and 8, Freeman "no", Lytle absent.

MOTION PASSED 7-0 for Item Nos. 6 and 11, Morton "not participating" Lytle absent.

Council Member Kishimoto was pleased the Arastradero Preserve Gateway Facility, Item No. 2, would go forward. She spoke to Item No. 6 and asked staff to be sensitive to aspects that could not be reversed in the Landscape Master Plan for Williams House.

Council Member Burch expressed pleasure to see that the Arastradero Preserve Gateway Facility would go forward.

Council Member Freeman said her "no" vote on Item No. 3 was because the percentage was extremely low and the City Manager Report's (CMR) original objective had been changed. She voted "no" on Item No. 4, because an additional 1.5 head count had been established without an escape clause, which required Palo Alto to be solely responsible for paying benefits until attrition circumstances arose should the agreement fail anytime in the next 20 years. She voted "no" on Item No. 8 because she would like to examine the City Attorney's budget for increasing the amounts of existing contracts with the law firms.

PUBLIC HEARINGS



13. Public Meeting: Recommendation to City Council to Accept and Approve the Revised Report and Recommendations of the Downtown

Business Improvement District (BID) Advisory Board and Adopt the Resolution of Intention that Declares the City Council's Intent to Form a Downtown Business Improvement District and Levy the Assessment on Businesses Located in the BID and Agendize a Public Hearing for January 12, 2004 at Which Interested Persons Can Testify

Mayor Mossar read a prepared statement regarding the evening's rescheduled Public Meeting and the establishment of a proposed Palo Alto downtown Business Improvement District, which would levy an assessment on businesses in the district for Fiscal Year 2003/2004.

Stephanie Wansek, Chairperson of the Business Improvement District (BID) Advisory Board, said a BID would enhance the economic viability of downtown Palo Alto and would unify the downtown area.

Manager of Economic Resources Susan Arpan said the BID supported the City's objectives. It was a key milestone of the City and one of the Top 5 priorities under long-range finances, which supported a number of Compensation Plan objectives. Another public hearing would be held on January 12, 2004, for protests or public testimony. Upon approval, the City Council would adopt an ordinance to establish the BID and levy the annual assessments.

Mayor Mossar declared the Public Meeting open at 7:55 p.m.

Bunny Good, P.O. Box 824, Menlo Park asked if previous public submissions regarding the BID would be included or excluded at the Public Hearing for the January 12, 2004 Council Meeting. She felt the acronym BID was confusing to the public.

Georgie Gleim, 140 Island Drive, said the BID would ultimately enable the 900 downtown businesses to communicate with one other and create events the public would enjoy.

Barbara Gross, 520 Cowper Avenue, said the BID provided the needed communication system where goals could be set, strategies implemented and tactics followed-up with action.

Mayor Mossar declared the Public Meeting closed at 8:02 p.m.

MOTION: Council Member Morton moved, seconded by Beecham, to approve the staff recommendation to adopt a resolution that confirms the Revised Report of the Downtown Business Improvement District (BID) Advisory Board, declares the City Council's intent to form a Downtown Business Improvement District (BID) and levies the assessment of

businesses located in the BID, and sets a public hearing on January 12, 2004 at which interested persons can testify.

Resolution 8387 entitled "Resolution of the Council of the City of Palo Alto Confirming the Revised Report of the Advisory Board in Connection with the Establishment of the Proposed Downtown Palo Alto Business Improvement District, Declaring its Intention to Establish said District, Declaring its Intention to Levy an Assessment on Businesses Within said District for Fiscal Year 2003-2004, and Setting a Time and Place for a Public Hearing on the Establishment of the District and the Levy of the Assessment"

Council Member Morton acknowledged the efforts of the Downtown Business District group of volunteers.

Vice Mayor Beecham acknowledged the businesses of downtown Palo Alto and their efforts to improve themselves and the City of Palo Alto.

Council Member Kleinberg said the City would incur costs of \$5,000 and asked if it would be reimbursed by the BID.

City Manager Benest said the \$5,000 would be the City's contribution to support the BID.

Council Member Kleinberg asked how the \$5,000 amount was determined.

Mr. Benest said the \$5,000 was a minimal amount and should not increase.

Council Member Kleinberg asked if staff returned to Council whether the dollar amount would increase.

Mr. Benest confirmed Staff would return to Council.

Council Member Kleinberg asked for ongoing tracking and an evaluation. She queried the planned ongoing governance regarding the groups being represented.

Ms. Arpan said the Board of Directors would look into the formation of a 501(c)(3) corporate status. The City would contract with that entity to provide the BID services.

Council Member Kleinberg asked to what extent the City had governance of the Board of Directors.

Ms. Arpan said BIDs needed to be reauthorized annually. Starting in May 2004, authorization for fiscal year July 1, 2004 to June 30, 2005 would be implemented.

Council Member Kleinberg asked about the legal role of the BID as a 501(c)(3) corporate status.

Ms. Arpan said the Board of Directors would make the decisions regarding the operation of the BID, and the City Council would authorize the BID annually.

Council Member Kleinberg said the Council would partner and subsidize the BID to some extent. She acknowledged the BID would be its own organization and not a City run organization except as an annual reauthorization.

Ms. Arpan said she would prepare the annual reauthorization and work with the BID.

Mr. Benest said a separate Board would operate the BID.

MOTION PASSED 8-0, Lytle absent.

14. Public Hearing: Pursuant to Government Code Section 30061, Title 3, Division 3, Relating to the Supplemental Law Enforcement Services Fund to Consider the Police Chief's Request for Funding Frontline Law Enforcement Programs

MOTION: Council Member Burch moved, seconded by Morton, to approve the staff recommendation to approve the acceptance of Citizens Options for Public Safety (COPS) funds in the amount of \$100,000 for the purchase of ballistic shields, replacement shotguns, digital audio recorders, covert vehicle tracking system, and enhanced training exercises.

MOTION PASSED 8-0, Lytle absent.

ORDINANCES AND RESOLUTIONS

15. Adoption of an Ordinance Relating to the Utilities Department to Change the Division Name of Administrative Services to Customer Services to Accurately Reflect to Customer Focus and Nature of Responsibilities of that Division and to Make Changes to the Palo Alto Municipal Code to Clarify Current Practices

Ordinance 1st Reading entitled "Ordinance of the Council of the City of Palo Alto Amending Section 2.08.200 of Chapter 2.08 of Title 2 of the Palo Alto Municipal Code to Effect Changes to the Duties of the Director of Utilities and Changes in the Organizational Structure of the Department of Utilities"

MOTION: Council Member Morton moved, seconded by Ojakian, to approve the staff report introducing an Ordinance amending Section 2.08.200 of Chapter 2.08 of the Palo Alto Municipal Code to reflect changes within the Utilities Department.

MOTION PASSED 8-0, Lytle absent.

15A. (Old Item No. 8A) Initiation and Referral to Planning Commission of Amendment to Title 18 (Zoning), Chapter 18.01 (Adoption, Purposes And Enforcement), Section 18.01.60 (Noncompliance A Public Nuisance) of the Palo Alto Municipal Code Relating to the City Attorney's Authorization to Initiate and Prosecute Criminal and Civil Actions to Abate Zoning Violations as Public Nuisances

Herb Borock, P.O. Box 632, urged the Council to reject the matter. Allowing discretion to staff to enforce the zoning ordinances would be a mistake.

MOTION: Council Member Morton, seconded by Beecham, to initiate and refer to the Planning and Transportation Commission the Amendment to Title 18 (Zoning), Chapter 18.01 (Adoption, Purposes and Enforcement), Section 18.01.60 (Noncompliance a Public Nuisance) of the Palo Alto Municipal Code relating to the City Attorney's authorization to initiate and prosecute criminal and civil actions to abate zoning violations as public nuisances.

Council Member Morton said discretion of staff should be considered.

Vice Mayor Beecham said the City must retain the right to enforce the law at its own discretion.

Council Member Freeman confirmed for the record that there was not a process where one could speak first to an agenda item that had been pulled.

Mayor Mossar suggested Councilmember Freeman make it a "no" vote.

Council Member Freeman said she did not feel the Palo Alto Municipal Code (PAMC) of enforcement on non-compliance to public nuisance should be changed.

Council Member Kishimoto asked the City Attorney to comment.

Ms. Furth said an amendment was initiated by referring it to the Planning and Transportation Commission (PTC).

Council Member Kishimoto expressed concerns.

Mayor Mossar said there are reasons for the public, the PTC, and the Council to talk about the pros and cons of the issue.

MOTION PASSED 7-1, Freeman "no," Lytle absent.

COUNCIL COMMENTS, QUESTIONS, AND ANNOUNCEMENTS

Council Member Freeman commented on her "no" vote for Item No. 8A, and said it should not be discussed when there was pending litigation.

Council Member Ojakian recognized Council Member Kishimoto, who was selected by the Santa Clara Valley Transportation Authority, Policy Advisory Committee, as the Vice Chair, and Council Member Kleinberg was elected to be Secretary/Treasurer of the Peninsula Division of League of California Cities.

Council Member Kleinberg noted that December 15, 2003, was the sixth month upon which the Downtown North traffic calming trial was to have terminated. She noted questions in the public about the timing for discussion at the City Council level.

Assistant City Manager Emily Harrison noted the gathering of data did not start until mid-September, the data had been completed, and a hearing with the Planning and Transportation Commission was scheduled for early January. Many discussions were had regarding the Traffic Calming program and the methodology.

Council Member Morton expressed appreciation to Mayor Mossar for her leadership over the past year.

Mayor Mossar thanked her colleagues for the opportunity to serve.

CLOSED SESSION

The meeting adjourned to a Closed Session at 8:35 p.m.

16. Conference with City Attorney -- Existing Litigation
Subject: Pacific Gas and Electric Company, a California Corporation,
Debtor, U.S. Bankruptcy Court Case No. 01-30923DM
Authority: Government Code section 54956.9(a)

17. Conference with City Attorney -- Existing Litigation
Subject: Enron Corporation Bankruptcy, Case No. 01-16034 (AJG)
Authority: Government Code section 54956.9(a)

18. Conference with City Attorney -- Existing Litigation
Subject: Hanna, et al. v. City of Palo Alto, et al., SCC# CV782487;
Flamm and Stevenson v. City of Palo Alto, et al., SCC# CV781800;
Bianchi v. City of Palo Alto, et al., SCC# CV781249
Subject: 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. 16-18.

Mayor Mossar announced there was no reportable action.

FINAL ADJOURNMENT: The meeting adjourned at 9:10 p.m.

ATTEST:

APPROVED:

City Clerk

Mayor

NOTE: Sense minutes (synopsis) are prepared in accordance with Palo Alto Municipal Code Sections 2.04.180(a) and (b). The City Council and Standing Committee meeting tapes are made solely for the purpose of facilitating the preparation of the minutes of the meetings. City Council and Standing Committee meeting tapes are recycled 90 days from the date of the meeting. The tapes are available for members of the public to listen to during regular office hours.