

Special Meeting
November 24, 2003

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The City Council of the City of Palo Alto met on this date in the Council Chambers at 6:02 p.m.

CITY COUNCIL

PRESENT: Beecham, Burch, Freeman, Kishimoto, Kleinberg, (teleconferencing from Boca Raton, FL), Lytle (arrived at 6:55 p.m.), Mossar, Ojakian

ABSENT: Morton

PLANNING AND TRANSPORTATION COMMISSION

PRESENT: Bialson, Cassel (arrived at 6:22 p.m.), Griffith, Holman, Packer

ABSENT: Bellomo, Burt

SPECIAL MEETING

1. Study Session with the Planning and Transportation Commission re: Charleston/Arastradero Corridor Plan

City Council and the Planning and Transportation Commission convened in a joint study session to receive and discuss a progress report regarding the Charleston-Arastradero Corridor Plan, which Council on 14 April 2003 directed staff to complete by 31 January 2003 (CMR:430:03). A staff report (CMR:524:03) was prepared and sent in advance of the study session to members of Council and the Commission. The Director of Planning and Community Environment presented opening remarks, followed by the Chief Transportation Official and Mr. Terry Bottomley of Bottomley and Associates who gave presentations on the Corridor Plan. A public comment period followed these presentations. Members of Council and the Planning and Transportation Commission asked staff questions regarding the proposed Charleston-Arastradero Corridor Plan and discussed both the provisions and the underlying concepts of the Plan. Members of both bodies made statements as regards the purpose of the Corridor Plan and associated implementation issues.

No action required.

ADJOURNMENT: The meeting adjourned at 8:03 p.m.

The City Council of the City of Palo Alto met on this date in the Council Chambers at 8:08 p.m.

PRESENT: Beecham, Burch, Freeman, Kishimoto, Kleinberg,
(teleconferencing from Boca Raton, FL) Lytle, Mossar, Ojakian

ABSENT: Morton

ORAL COMMUNICATIONS

Eugene Nickell, 900 Loma Verde Avenue, spoke regarding the Business Improvement District (BID).

Charlotte Nasr, 101 Alma, spoke regarding opposition to roadblocks – North Downtown Traffic Calming.

Jane Stern, 230 Emerson, spoke regarding street calming project.

Ed Glazier, 255 Everett Avenue, spoke regarding Traffic Calming Downtown North.

Stanley Smith, 610 Wildwood Lane, spoke regarding the flood danger next month.

Norman Carroll spoke regarding road signage.

Mayor Mossar announced the Federal government had approved New Start Funding of \$100,000 for San Francisquito Creek and \$100,000 for flooding issues of the Bay.

SPECIAL ORDERS OF THE DAY

1. Appointment of Candidates to the Architectural Review Board (ARB)

Mayor Mossar proposed to continue the appointment to the December 1, 2003, regular City Council meeting, and hold an interview at 5:45 p.m. on December 1 for Mr. Jessup.

BY A CONSENSUS OF COUNCIL to interview Mr. Jessup for the Architectural Review Board (ARB) on December 1, 2003, at 5:45 p.m. and continue the appointment of the ARB to the regular agenda at 7 p.m. on December 1, 2003

REPORTS OF OFFICIALS

11/24/03

2. Recommendation to Direct the City Manager to Pursue Special Legislation to Correct an Anomaly in State Law Regarding Conflict of Interest

Mayor Mossar would not participate in the item due to a conflict of interest because her husband was employed by Stanford University.

Vice Mayor Beecham said Senator Byron Sher and Assemblyman Joe Simitian would be asked to carry a small Bill to the State in January to clarify the law was intended to apply to non-profit entities.

Council Member Burch asked for the difference between sitting Council Members who recused themselves because of conflict of interest and the current issue.

Vice Mayor Beecham said State Government Code 1090 prohibited the City to contract with a company when an employee sitting on the council had been with the company for less than three years.

Council Member Kleinberg asked about LaDoris Cordell's previous employment with Stanford being added to meet the three-year minimum.

Interim Attorney Wynne Furth said Section 1091-B2 stated employees of the contracting party needed to be employed for at least three years prior to the officer originally accepting his or her office.

MOTION: Council Member Burch moved, seconded by Lytle, to approve the staff recommendation to direct the City Manager and Vice Mayor Beecham to pursue, with the support of Stanford University, special legislation to correct the anomaly in California law that precludes any contracts or agreements between Stanford University and the City of Palo Alto in the event that an employee of Stanford University becomes a member of the City Council.

Herb Borock, P.O. Box 632, recommended determination whether LaDoris Cordell's prior employment by the Stanford Law School would be counted towards the three years and a determination if January 1, 2004 were the date that applied if she were to take the Oath of Office on March 1, 2004.

Bunny Good, P.O. Box 824, Menlo Park, suggested the word "archaic" not be used when referring to the law.

Martin Stone, 260 El Verano, said LaDoris Cordell should not have been allowed to run for election. The mistake needed to be corrected so not to disenfranchise the citizens of the City.

Vice Mayor Bern Beecham said Council Member-Elect LaDoris Cordell was eligible to take her seat. Code 1090 did not have an agency or commission that would be responsible for its implementation or administration.

Council Member Lytle said LaDoris Cordell was appropriately elected. It was believed Ms. Cordell was exempt from the provision due to Stanford's non-profit status.

Council Member Ojakian asked what Stanford agreements and dollar amounts would be at risk.

City Manager Frank Benest said there were millions of dollars at risk.

Council Member Ojakian asked if a list of agreements with Stanford had been produced to keep the public informed.

Mr. Benest said a list could be identified.

Council Member Ojakian said it would be beneficial to define why the issue was being approached in the manner it was. Possibly the dates of the contract renewals should be shown. He asked what would happen if the legislature did not change the legislation.

Mr. Benest said there was difficulty with the ongoing contracts that might come up for renewal or amendment. They could not be renewed or amended except on a case-by-case basis. Separate legal analysis would need to be made.

Ms. Furth said the City's first step would be to look for alternate parties with whom to contract.

Council Member Ojakian said the City would be in jeopardy of losing contracts with Stanford.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to add to ask the City Attorney to get a definitive binding ruling with the Stanford University Attorney on the previous years served by LaDoris Cordell.

Council Member Freeman asked for a list of relevant Stanford contracts that would be at risk within the next three months.

Mr. Benest said no Stanford contracts would be at risk in the first quarter of 2004.

Ms. Furth said the routine agreements with the Stanford Research Park for basic provisions of utilities needed to be handled.

Council Member Freeman asked if there were issues in the first three months.

Mr. Benest said from the City's review, it was believed that there were not any contracts with Stanford in the first three months of 2004.

Ms. Furth said she believed that everything known could be managed.

Council Member Kleinberg asked about the Mayfield site.

Mr. Benest said the City and Stanford had agreed to a cost sharing provision for the supplemental Environmental Impact Report (EIR), which would come to the Council before January 1, 2004. The City was the lead agency for the environmental assessment and an agreement with Stanford was not needed. The Mayfield Development Agreement would not be made until late spring or summer.

Council Member Freeman said the legislation would be regarding Council Members voting and if staff would be permitted to work on issues without a vote of the Council.

Mr. Benest said the contract had already been entered into and work should continue on the Supplemental EIR. Staff would stop negotiating as of January 1, 2004 on any development agreement with Stanford related to Mayfield.

Ms. Furth said there were no specific cases where a conflict ceased because Section 1090 was amended. The negotiations with Stanford on the Development Agreement would need to be stopped as of January 1, 2004 and not resumed until after the legislation was received.

Council Member Freeman asked if the City's Municipal Code could be an option.

Vice Mayor Beecham said State law governed over City code.

Council Member Freeman said she was referring to the swearing-in date.

Vice Mayor Beecham said that would require a charter amendment.

Council Member Freeman said a matrix would be helpful to see all the options available. She asked that responsibility be given to someone to verify eligibility of candidates.

Ms. Furth said it was lawful for Council Member-Elect Cordell to take office. The issue was the ability of the City to make contracts.

Vice Mayor Beecham said the issue could be referred to the Policy and Services Committee.

Council Member Lytle said the election was valid. The issue was the City had a legal problem with contracts.

Council Member Kishimoto said the conflict of interest laws were important and were taken seriously.

Council Member Freeman asked Ms. Furth the difference between a trust and a corporation.

Ms. Furth said a corporation was an entity chartered by the state. A trust was an agreement between the donor and a trustee who was handed something of value. The trust would be managed for the benefit of beneficiaries under a set of instructions. Stanford was a tax-exempt trust with corporate powers.

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

Council Member Kleinberg and Interim City Attorney Wynne Furth left the meeting at 9:08 p.m.

Council Member Freeman asked if the vote included evaluating Council Member-Elect Cordell's term of employment at Stanford.

Vice Mayor Beecham said it did.

APPROVAL OF MINUTES

John Fredrich, 210 Homer Avenue, #3, asked for the October 7, 2003 Council Minutes to be corrected. He read from the City Manager's Report 459:03 in Section 1 and asked that the following be added; "By the development agreement, the City would accept the lease as mitigation for any community service impacts on the City resulting from the development at Stanford authorized by the county in December 2000."

MOTION: Council Member Burch moved, seconded by Kishimoto, to approve the minutes of October 7, 2003, as corrected.

MOTION PASSED 7-0, Kleinberg, Morton absent.

CONSENT CALENDAR

Bunny Good, P.O. Box 824, Menlo Park, spoke regarding Item No. 10 and about the need for voter approval for the Opportunity Center.

Mayor Mossar would not participate in Item No. 3 due to a conflict of interest because she owned property near the SOFA area.

MOTION: Council Member Burch moved, seconded by Ojakian, to approve Consent Calendar Items 3-14.

LEGISLATIVE

3. Ordinance 4808 entitled "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" (*1st reading passed 11/10/03, 5-1, Ojakian "no," Morton, Mossar "not participating," Kleinberg absent*)
4. Ordinance 4809 entitled "Ordinance of the Council of the City of Palo Alto Amending Chapter 2.08 of Title 2 of the Palo Alto Municipal Code to Revise Sections 2.08.020 [Approval Of City Manager's Appointments], 2.08.210 [Department Of Community Services] and Add Section 2.08.230 Creating a New Department of Libraries" (*1st Reading 11/10/03, Passed 8-0, Kleinberg absent*)
5. Approval of Resolution Adopting Memorandum of Agreement Between the City of Palo and International Association of Fire Fighters (IAFF, Local 1319) Memorandum of Agreement and Resolution Adopting Compensation Plan

Resolution 8362 entitled "Resolution of the Council of the City of Palo Alto Adopting a Compensation Plan for Fire Department Personnel (IAFF) and Rescinding Resolution Nos. 8030, 8243, 8252 And 8300"

Resolution 8363 entitled "Resolution of the Council of the City of Palo Alto Amending Section 1501 of the Merit System Rules and Regulations Regarding the Memorandum of Agreement Between the City of Palo Alto and Local 1319, International Association of Fire Fighters"

6. Approval of Resolution Adopting Memorandum of Agreement Between the City of Palo Alto and the Palo Alto Fire Chiefs Association and Resolution Adopting Compensation Plan

Resolution 8364 entitled "Resolution of the Council of the City of Palo Alto Adopting a Compensation Plan for Palo Alto Fire Chiefs' Association Management Personnel and Rescinding Resolution Nos. 8125, 8245 And 8254"

Resolution 8365 entitled "Resolution of the Council of the City of Palo Alto Amending Section 1801 of the Merit System Rules and Regulations Regarding the Memorandum of Agreement Between the City of Palo Alto and the Palo Alto Fire Chiefs' Association"

7. Approval of Resolution Electing to Establish a Health Benefit Vesting Requirement for Future Retirees Under the Public Employees' Medical and Hospital Care Act (PEMHCA) for IAFF, Local 1319, International Association of Firefighters and Fire Chiefs Association

Resolution 8366 entitled "Resolution of the Council of the City of Palo Alto Electing to Establish a Health Benefit Vesting Requirement for Future Retirees from the Palo Alto Fire Chiefs' Association Under the Public Employees' Medical and Hospital Care Act"

Resolution 8367 entitled "Resolution of the Council of the City of Palo Alto Electing to Establish a Health Benefit Vesting Requirement for Future Retirees from Local 1319, International Association of Fire Fighters Under the Public Employees' Medical And Hospital Care Act"

8. Approval of Resolution Fixing the Amount of the City's Contribution Under the Public Employees Medical and Hospital Care Act (PEMHCA) Health Plans at the Specified Current Peace Officers Research Association (PORAC) Rates for IAFF, Local 1319, International Association of Firefighters (IAFF) and Fire Chiefs Association

Resolution 8368 entitled "Resolution of the Council of the City of Palo Alto Fixing the Employer's Contribution Under the Public Employees' Medical and Hospital Care Act With Respect to Members of the Palo Alto Fire Chiefs' Association and Rescinding Resolution No. 8068"

Resolution 8369 entitled "Resolution of the Council of the City of Palo Alto Fixing the Employer's Contribution Under the Public Employees' Medical and Hospital Care Act with Respect to Members of Local 1319, International Association of Fire Fighters and Rescinding Resolution No. 8069"

9. Human Relations Commission Recommendation to the City Council to Adopt a Resolution Supporting the Prohibition of Racial Profiling in the City of Palo Alto

Resolution 8370 entitled "Resolution of the Council of the City of Palo Alto Regarding Racial Profiling"

10. Adoption of a Resolution Authorizing the Housing Authority of the County of Santa Clara to Issue Bonds and Acquire Mortgage Loans to Finance the Acquisition and Construction of a Multifamily Rental Housing Project in the City of Palo Alto

Resolution 8371 entitled "Resolution of the Council of the City of Palo Alto Authorizing the Housing Authority of the County Of Santa Clara to Issue Bonds and Acquire Mortgage Loans to Finance the Acquisition and Construction of a Multifamily Rental Housing Project in the City of Palo Alto"

11. Adoption of the Bicycle Transportation Plan and Addendum to the Comprehensive Plan Update Final Environmental Impact Report

Resolution 8372 entitled "Resolution of the Council of the City of Palo Alto Certifying the Comprehensive Plan Environmental Impact Report as the Environmental Document for the Bicycle Transportation Plan, Certifying an Addendum to the Environmental Impact Report, Restating the Statement of Overriding Considerations Contained in the Environmental Impact Report, and Amending the 1998-2010 City of Palo Alto Comprehensive Plan by Adopting the 2003 Palo Alto Bicycle Transportation Plan"

ADMINISTRATIVE

12. Appointment of Patricia DiCicco to the Historic Resources Board for an Unexpired Term ending May 31, 2004

COUNCIL COMMITTEE RECOMMENDATION

13. The Finance Committee Recommend to the City Council Introduction of the Ordinance of the Council of the City of Palo Alto Approving Natural Gas Master Agreements with BP Energy Company, Conoco Phillips Inc., Coral Energy Resources L.P., Duke Energy Marketing America LLC, and Sempra Energy Trading Corporation for Procurement of Natural Gas and Authorizing the City Manager to Transact up to \$50 Million with Each Supplier Under These Agreements

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 Natural Gas Requirements from Certain Prequalified Natural Gas Suppliers Under Specified Terms and Conditions During Calendar Years 2004 through 2009, Inclusive"

14. The Finance Committee recommends to the City Council Acceptance of the Auditor's Office Quarterly Report

MOTION PASSED 6-0 for Item No. 3, Mossar "not participating," Kleinberg, Morton absent.

MOTION PASSED 7-0 for Item Nos. 4-14, Kleinberg, Morton absent.

PUBLIC HEARINGS

- *15. Public Hearing: The City Council will consider an application by Cartmell/Tam Architects on behalf of David Ditzel for a Site and Design Review for property located at 4010 Page Mill Road to allow a 1,677 square-foot addition to an existing 3,433 single-family residence and construction of a new swimming pool, including a request for the following variances: a 29' 6" side yard setback where a 30' setback is required, construction of an exterior stairway and landing having a 46' front yard setback and construction of a new garage having a 69' front yard setback where a 200' setback is required, and a total impervious surface area of 20.7%, where 3.5% is normally the maximum allowed.

**This item is quasi-judicial and subject to Council's Disclosure Policy*

MOTION: Council Member Ojakian moved, seconded by Beecham, to continue the item to a date uncertain at the request of staff.

MOTION PASSED 7-0, Kleinberg, Morton absent.

COUNCIL MATTERS

16. Colleague Memo from Mayor Mossar and Vice Mayor Beecham regarding the First City Council Meeting in January

MOTION: Council Member Burch moved, seconded by Beecham, to direct staff to plan a regular agenda, taking into account that some amount of time would be required for election of the mayor and vice mayor; for the recognition of Mayor Mossar's service over the past year and the departure of Council Member Lytle; and swearing-in new Council Member LaDoris Cordell, and referral to Policy and Services Committee for the establishment of a policy for future years.

Council Member Kishimoto asked for a supplemental motion to make the practice clear for future years.

Mayor Mossar said the issue should be referred to the Policy and Services Committee.

Council Member Ojakian asked if the three incumbents' swearing-in would occur at the same meeting.

Mayor Mossar said the new and re-elected council members would be sworn in.

Council Member Ojakian said if enough items for an agenda required a regular meeting, it should be separated from the selection of a mayor and a vice-mayor so the Council and the public could get together in a social setting.

Council Member Freeman said it should be sent to the Policy and Services Committee.

Council Member Lytle said the ceremonial event should be separated from the regular Council meeting.

Council Member Burch said it was a ceremonial occasion for reorganization and recognition of the new mayor and new vice-mayor.

Mayor Mossar said Policy and Services would develop a policy for Council's review.

MOTION PASSED 6-1, Ojakian "no," Kleinberg, Morton absent.

16A. Verbal Report from Council CAO Ad Hoc Committee Regarding Selection of Executive Recruitment Firm for City Attorney Recruitment

Council Member Lytle said the Committee making the decision on selection of the new Council Appointment Officer should be comprised of continuing Council Members.

No action required.

COUNCIL COMMENTS, QUESTIONS, AND ANNOUNCEMENTS

Council Member Freeman spoke regarding the vote/survey that would be taken regarding Downtown North traffic diversion, and noted she had attended a Santa Clara County meeting regarding flooding that day.

CLOSED SESSION

The meeting adjourned to a Closed Session at 9:37 p.m.

17. Conference with City Attorney -- Existing Litigation
Subject: Michael Schmidlin v. The City of Palo Alto, et al.; SCC # CV 794565
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 No. 17.

Mayor Mossar announced there was no reportable action.

FINAL ADJOURNMENT: The meeting adjourned at 9:45 p.m.