

Special Meeting
January 12, 2004

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FINAL ADJOURNMENT: The meeting adjourned at 10:15 p.m. in memory of Mike Cullen, long-time resident of Palo Alto, a teaching fellow at Stanford University. The meeting would also be adjourned in memory of Bill Miller, a co-founder of the Junior Chamber of Commerce who was named Palo Alto’s first “Young Man of the Year,” created living history of the community, and received a lifetime achievement award from Avenidas.23

The City Council of the City of Palo Alto met on this date in the Council Chambers at 6:47 p.m.

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

ABSENT: Ojakian

SPECIAL ORDERS OF THE DAY

1. Resolution 8390 entitled "Resolution of the Council of the City of Palo Alto Expressing Appreciation to Palo Alto Emergency Preparedness Volunteers for Outstanding Public Service"

Police Chief Lynne Johnson said although a lot had changed in the United States since September 11, 2001, one thing that had not changed was the active participation of community members to get involved. In October 2003, exercises were held for a suicide bomber scenario at an office complex in which a number of people from the community volunteered as victims. She expressed her appreciation to the many volunteers who made the level of realism from the exercises possible.

Fire Chief Ruben Grijalva said each and every day Palo Alto was at risk for natural and man-made disasters. The first best line of defense was a well educated, well prepared community. He thanked the community members who gave of themselves and their time to become better prepared to help their family and their neighbors during any kind of disaster. The breath and scope of the types of emergencies Palo Alto could face were broad. They included: 1) earthquakes; 2) fires and tragedy as seen in Southern California due to the large wild land urban area interface; 3) the potential for flooding capability, which previously faced the community in 1998; 4) the use and transportation of hazardous materials that was spread throughout the community; and 5) the new threat of terrorism. He expressed his appreciation to all of the community disaster service workers and volunteers who helped prepare emergency responders, themselves, and the community to deal with the many kinds of disasters.

Mayor Beecham said he was impressed with the range of volunteers who were present that evening. They included residents from south Palo Alto, north Palo Alto, a mother with children, and people wise with years.

MOTION: Council Member Morton moved, seconded by Kleinberg, to adopt the resolution.

MOTION PASSED 8-0, Ojakian absent.

ADJOURNMENT: The meeting adjourned at 6:55 p.m.

The City Council of the City of Palo Alto met on this date in the Council Chambers at 7:02 p.m.

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

ORAL COMMUNICATIONS

Wayne E. Martin, 3687 Bryant Street, spoke regarding Charleston/Arastradero.

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

Ruth Krucker, 620 Emerson Street, spoke regarding an awning damaged on 620 Emerson Street and the Farmer's Market.

Trish Bubenik, 420 Homer Avenue, spoke regarding SOFA/PAMF park.

CONSENT CALENDAR

Council Member Freeman moved, seconded by Kishimoto, to remove Item No. 3 from the consent Calendar to become Item 7A.

Council Member Kishimoto moved, seconded by Freeman, to remove Item No. 4 from the Consent Calendar to become Item 7B.

MOTION: Council Member Morton moved, seconded by Kishimoto, to approve Consent Calendar Item Nos. 1, 2 and 5.

Council Member Freeman asked whether staff had approached the federal government for their portion of funding for the Mountain View/Moffett Area Water Recycling Facility as a way to reduce Palo Alto's cumulative \$2.7 million share, since they were one of the largest recipient's of the recycling pipeline.

Director of Public Works Glenn Roberts said Moffett Field was under federal jurisdiction. Staff had very preliminary discussions with the cities of Sunnyvale and Mountain View about the possibility of federal funding. Staff would continue in their efforts to attempt to get federal funding and/or federal or state grants to reduce the share of the cost.

ADMINISTRATIVE

1. Adoption of the Mitigated Negative Declaration and Approval of the Project Recommendations for the Mountain View/Moffett Area Water Recycling Facility

Resolution 8391 entitled "Resolution of the Council of the City Of Palo Alto Adopting a Mitigated Negative Declaration for the Mountain View-Moffett Area Recycled Water Recycling Facility Pursuant to the California Environmental Quality Act (03-D-07; 03-EIA-07)"

2. Approval of Appointment of Nellie Ancel as Senior Assistant City Attorney

COUNCIL COMMITTEE RECOMMENDATION

5. The Finance Committee recommends to the City Council to close the 2002-03 Budget and authorize reappropriation of 2002-03 funds into the 2003-04 Budget; close completed capital improvement projects; and transfer remaining balances to the appropriate reserves.

Ordinance 4816 entitled "Ordinance of the Council of the City of Palo Alto Closing the 2002-03 Fiscal Year, Including Transmission of the City's Comprehensive Annual Financial Report (CAFR), Reappropriation Requests, and Completed Capital Improvement Projects"

MOTION PASSED 9-0 for Item Nos. 1, 2 and 5.

Council Member Morton extended his complements to staff for the many hours that went into a putting together the difficult budget.

PUBLIC HEARINGS



6. Public Hearing: The City Council will consider the proposed establishment of a Downtown Business Improvement District (BID) and levy of assessments on businesses generally located in the Downtown Area of Palo Alto.

Economic Development Manager Susan Arpan said the Downtown Palo Alto Business Improvement District (Downtown BID) was initiated in the fall of 2002 by the Downtown businesses. In December 2002, a petition was submitted to the City Council with over 50 signatures. The Downtown BID Advisory Board was comprised of 15 members. The Advisory Board prepared a report to the City Council, which included: 1) a recommended revised Downtown BID budget based on projected BID revenue; 2) a recommended method and basis for levying the assessment (cost benefit analysis); 3) recommended improvements and activities to be accomplished with the Downtown BID funds; and 4) recommended timeframe for initiation of the Downtown BID assessment and activities. The approval of the Downtown
01/12/03

BID was an effective tool in enhancing the economic viability of downtown. It could assist in unifying the Downtown area and provide such activities as enhanced Downtown maintenance, promotional events, banners and directional markers, staff personnel to coordinate Downtown activities, development of a business directory and information, and marketing materials and maps to highlight Downtown businesses. A joint notice was sent to each business about the rescheduled public meeting and public hearing, and included a new individual assessment notice. Single- person businesses had their assessment decreased and an exemption was put into place for businesses that operated less than 25 percent of their time in the Downtown BID. The Council action for that evening was as follows: 1) hold the public hearing and hear testimony regarding the establishment of a BID for Downtown Palo Alto; 2) listen to the report on the protests received thus far; and if there was no majority protest, 3) consider adoption of an ordinance establishing a Palo Alto Downtown BID and authorize the levy of assessments in the manner described in the ordinance. Of the number of protests received to date, there was not presently a majority protest. Staff did receive protests from 3.7 percent of the businesses. Of those, 3.4 percent were of letter form not email and those businesses that met all the requirements of a protest of a Downtown BID represented 1.4 percent. If the ordinance was adopted that evening, a second reading would occur on February 2, 2004, at which time a resolution to levy the assessment would be presented to Council for approval. Staff anticipated the City would contract with an outside non-profit organization (non-profit) to provide the Downtown BID activities for fiscal year 2003-04, with an annual reauthorization at which time the Council would review the Downtown BID activities and budget for fiscal year 2005.

Council Member Mossar clarified the annual review was the time when the Council would consider continuing the Downtown BID. She asked whether the Council could also consider changing the boundaries or assessment formula during that time.

Ms. Arpan said yes. If the Council decided to change the boundaries or increase the amount of the assessments, staff would need to follow the 45-day noticing process.

Council Member Freeman asked what was the cost associated with contracting with an outside non-profit for BID activities and was it budgeted.

Ms. Arpan said the traditional model for BID's allowed for a non-profit to contract with the City on a cost-reimbursable basis to provide BID activities.

Council Member Freeman asked what would the cost be and was it budgeted.

Ms. Arpan said there would not be any cost. The annual Downtown BID assessment would pay for whatever activities they did.

Council Member Freeman asked whether it would be an open Request for Proposal (RFP) type process.

Senior Assistant City Attorney Nellie Ancel said in the traditional model, the Board of Directors of the non-profit generally became the Advisory Board to the City. It was anticipated a Downtown association would be incorporated as a non-profit and that board would be appointed as the advisory board that made recommendations as to what the Downtown BID would do.

Interim City Attorney Wynne Furth said it was a model of self-governance by the BID.

Council Member Freeman asked whether the current advisory board made up that non-profit, or how would that be determined.

Ms. Ancel said it would come to the Council as a recommendation once the non-profit was formed. It was not a requirement, but one that other cities used that had BID's.

Council Member Morton asked whether any of the other cities researched used their local Chamber of Commerce (Chamber) as the non-profit that would provide Downtown BID activities.

City Manager Frank Benest said the Downtown BID was a much more targeted focus for businesses and marketing Downtown as opposed to the Chamber, which had a larger focus responding to the issues of the total business community. He was not aware of any city where the Chamber Board was the board for the BID. Mayor Beecham said he understood the annual reauthorization would return to the Council in May or June of 2004. He thought that was rather quick since the Downtown BID would not be up and running by that time.

Ms. Arpan said because the next fiscal year began July 1, 2004, staff wanted to return to the Council in order to be able to make any recommended changes and complete the required 45-day notice without any lapse in the operations of the Downtown BID.

Mayor Beecham clarified the actions the Council took that evening were for the remainder the current fiscal year.

Ms. Arpan said yes.

Mayor Beecham declared the Public Hearing open at 7:30 p.m.

Bunny Good, P.O. Box 824, Menlo Park, expressed opposition to the Downtown BID. Such an assessment served to drive up prices at a time when the economy was struggling. She said she was a low-income shopper and was not interested in paying to set up the BID to expend future monies on balloons, banners, snowball parties, and sand parties just to name a few. She saw the levy assessment as a plan to pay for Homer Tunnel, which was proposed to be the object of a Downtown assessment in 1996, although Planning staff declared the tunnel project of no benefit to the Downtown area.

Stephanie Wansek, Cardinal Hotel, expressed support for the Downtown BID. It was a priority for her that the selected board represent fairly the diverse composition of the Downtown businesses.

Israel Zehavi, BID Advisory Board Member, 201 Hamilton Avenue, expressed support for the Downtown BID. The Downtown Marketing Committee was a volunteer group that had been in operation for the past 10 years. Many of the participants in the group had put in thousands of dollars every year for the success of downtown. He saw the Downtown BID as a benefit to retailers, professionals, and the community as a whole.

Faith Bell, BID Advisory Board Member, 536 Emerson Street, said to-date there had been eight formal BID outreach meetings.

Chris Storer, 536 Emerson Street, said the process of developing the Downtown BID was an exploration in the options that were open to Palo Alto. It maintained some of the accountability and the authority of the elected body to control it, yet it was still a grassroots effort coming from the community.

Beth Rosenthal, BID Advisory Board Member, 550 Hamilton Avenue, said the Council was very helpful when, at the October 27, 2003 meeting, the Advisory Board was directed to revise the proposed fee structure to make it fairer to small business owners and professionals. Although many professionals and small business owners still did not support the concept of the Downtown BID, the fact that the assessment had been lowered caused the number and intensity of protests to diminish. She asked the Council to issue a directive to the Advisory Board regarding the composition of the Board of the Downtown BID, for whom by-laws were being developed. The present Downtown BID Advisory Board had 20 percent of its representation from the retail sector, although retail constituted only 16 percent of the membership. The service sector consisted of 12 percent of the membership, but only had 7 percent representation on the current Advisory Board. Lodging was over-represented with 7 percent Board membership, while the professional community had 29 percent representation, although it

constituted 59 percent of the district. She hoped in approving the formation of the Downtown BID, the Council would direct the Advisory Board to have the Board of the Downtown BID fairly reflect the community it served.

Bruce Gee, 261 Hamilton Avenue #311, concurred with the comments of Beth Rosenthal. In addition, when one compared BID's in other cities with that of Palo Alto, the Downtown area was far from blighted or in need of improvements. Everything was not perfect, but new construction and businesses were taking place. He felt the benefits were strongly skewed to businesses that had retail, restaurants, and landowners, but not to any of the professionals.

Roxy Rapp, P.O. Box 1672, said he had only become aware of a BID in the past year. He did research on the subject and found out that for some cities, a BID was a wonderful idea and became successful. In other cities, BID's were not so successful. They did not have a strong Chamber of Commerce or strong landlords that wanted to take care of their properties. In order to make the BID successful for Palo Alto, it first required a Downtown BID Advisory Board to hold outreach meetings, come up with the bylaws and the budget, sell it to the businesses and then present it the Council. He was concerned that if the BID did not work, what would it take to dissolve it.

Norman Carroll, P.O. Box 213, expressed support for the Downtown BID.

Sunny Dykwel, BID Advisory Board Member, said the Board held numerous outreach meetings in an attempt to reach more professionals. In other cities, the BID representation reflected the amount of money that was paid toward the BID by certain business types.

Susan Kaplan, 550 Hamilton Avenue, said she had previously expressed concern about the lack of adequate representation for professionals on the Advisory Board. She believed there should be some provision for evaluation of the Downtown BID so people could tell whether it had worked or not.

Mayor Beecham declared the Public Hearing closed at 8:00 p.m.

MOTION: Council Member Morton moved, seconded by Freeman, to approve the staff recommendation to: 1) Hold a Public Hearing to hear testimony regarding the establishment of a Downtown Business Improvement District (BID); 2) Hear a report on determination of existence of majority protest; and 3) If there is no majority protest, adopt the Ordinance of the City of Palo Alto establishing the Downtown Palo Alto Business Improvement District (BID) and authorizing the levy of assessments in the manner described in the Ordinance.

Ordinance 1st Reading entitled "Ordinance of the Council of the City of Palo Alto Establishing the Downtown Palo Alto Business Improvement District in the City of Palo Alto"

Council Member Morton said if the Downtown BID was put in place now, the Council would have the opportunity to review it in May 2004, and decide whether to include it in the funding for 2004-05. Keeping the Downtown area alive and vital without asking for significant dollars from the City was worth the initial trial of the Downtown BID.

Council Member Freeman said as a liaison to the Downtown Marketing Association she could attest to their willingness to be open to other points of view. She expressed support for the Downtown BID.

Ms. Ancel asked staff make a final report on the determination of existence of majority protest.

Ms. Arpan said there had not been any additional protests received. The numbers stated at the beginning of the meeting were the same.

Mayor Beecham noted for the record the number of protests recorded fell short of the 50 percent that would otherwise stop the process.

Council Member Kleinberg asked whether the assessment schedule was the result of a compromise arrived at through the Advisory Committee process and was it a unanimous decision.

Ms. Arpan said the decision was a unanimous one and the Committee did come to a compromise.

Council Member Kleinberg asked whether Mr. Gee's comments regarding the assessment schedule were taken into consideration.

Mr. Benest said the Advisory Board took into consideration the comments from Council, as well as put into place an assessment scheduled that conformed to the law, other cities practices, and was sensitive to the diverse makeup of the Downtown businesses.

Council Member Kleinberg said it was the first time she was made aware the assessment votes were weighted votes and not one vote per business. She asked whether weighted vote was BID law.

Ms. Ancel said yes.

Council Member Kleinberg said she was concerned about the ultimate makeup of the ongoing Advisory Board and was interested in the thinking used to support the request that the Advisory Board reflect the percentage membership of the businesses in the Downtown BID.

Ms. Arpan said the original composition of the Advisory Board was a beginning because the City did not have a business license tax and was unaware of the number of businesses in each of the categories until the process was undertaken for establishing a BID.

Council Member Kleinberg said in going forward it would be appropriate to have a greater representation on the Board that was reflective of the percentage of businesses being assessed. The professionals represented almost 60 percent of those businesses; however, their representation on the Advisory Board was the same as retail. She asked how the decision to leave the representation of professionals as it was transpired.

Ms. Arpan said staff had looked at it in terms of the weighted membership.

Council Member Kleinberg said in looking at terms of dollars assessed rather than population, was it typical of BID's.

Ms. Arpan said it was typical of BID's.

Council Member Kleinberg expressed support for the BID. She said Palo Alto was faced with downturns in retail revenues, and it was important everyone did what they could to enhance the consumer environment in the Downtown area. The BID provided a promise for making downtown more attractive. She expressed concern about the perception of those being assessed that the process was not a fair one; however, she believed an effort had been made to make it fair.

Council Member Cordell asked whether the Council was bound to the composition of the Advisory Board in terms of its representation if they voted in support of the motion.

Mr. Benest replied no. The Advisory Board would develop its bylaws including the composition of its members and the numbers allocated.

Council Member Cordell clarified the material before the Council was just a draft of the composition, but when the Council voted, they were not bound by the information contained therein in terms of the representation.

Mr. Benest said that was correct.

Council Member Cordell said Ms. Kaplan raised the question of how the Council would measure the success of the BID. She asked whether it should be a component of the motion and was it under development.

Mr. Benest said the Board would develop an action plan for the coming year, including budget. Based upon those results it would become evident whether the BID had done what it was intended to do.

Council Member Cordell asked whether staff had a notion about what "success" meant in terms of the BID.

Mr. Benest said it was based on a combination of factors such as: 1) sales tax revenues; 2) vacancy rates; and 3) participation in special activities in addition to other group indicators in terms of hard quantitative data. There would also be verifiable outcomes, which were related to the work plan.

Council Member Mossar expressed support for the motion. She said the Downtown Marketing group had worked hard over the years for the benefit of the Downtown area, and the BID process acknowledged the Downtown Marketing Association had tried valiantly, but it was not enough. She believed it was the City's responsibility to establish the Downtown BID.

Vice Mayor Burch expressed support for the Downtown BID.

Council Member Kishimoto expressed support for the Downtown BID. She said Downtown Palo Alto was a wonderful area but could stand to be improved.

Mayor Beecham said there had been a question about success and how to measure it. In his opinion, he did not believe it was possible to actively measure the success of the BID. However, the Downtown BID could help make the downtown attractive and emphasize what needed to be changed. He favored the representation of the present BID Advisory Committee and felt it was appropriate on the basis of a dollar-by-dollar representation of the groups. He expressed his support for the Downtown BID.

Ms. Ancel said the exhibits to the Ordinance included a map of the boundaries and the description for the methodology for the assessment, which referenced the Resolution of Intention and included the schedule and amounts of assessments.

Ms. Furth said the Council had previously adopted the Schedules of Assessment and Proposal for Assessment. The Ordinance that was before the Council that evening referenced the previous Council actions, set forth the final boundaries included in Exhibit "A" to Attachment 4, and Exhibit "B",

which was a General Statement regarding the Cost-Benefit Analysis for BID Businesses Using the Traditional Three Criteria Formula.

MOTION PASSED 9-0.

COUNCIL MATTERS

7. Council Ad Hoc Committee on Council Appointed Officers re Approval of Job Description and Profile, and Composition of Blue Ribbon Committee for City Attorney Recruitment

Council Member Kleinberg said any language referencing "Blue Ribbon Committee" should read Blue Ribbon Panel. The 2003 Council Appointed Officers (CAO) Committee prepared a report and recommendation following the direction of the City Council regarding the hiring of an executive recruitment firm and the role of the Blue Ribbon Panel. The CAO Committee worked with the City Manager, the Human Resources Director, and Executive Recruiter, Bob Murray, to develop the recommended job description, profile, composition of the Blue Ribbon Panel, and the timeline. The Blue Ribbon Panel would not be interviewing the candidates; however, the Council and the Executive Recruiter would. Two guidelines were used in developing the Blue Ribbon Panel format. The first was flexibility for the Mayor in making appointments, and the second was to keep the group small. The Mayor should have the opportunity and discretion to create an optimum group with the right combination of skills, background, experience and chemistry to get the work done. The CAO Committee agreed that a six-member Blue Ribbon Panel was an efficient size and those appointed might fit more than one category. The Council would have access to all the resumes, but the CAO Committee endeavored to provide a process that would present Council with the top candidates for consideration in the shortest amount of time. The Recruitment Schedule was designed as a five-month process. If the process worked smoothly and a candidate emerged that the Council agreed to, a new City Attorney should be appointed by June 1, 2004.

Council Member Cordell said in regard to the qualifications of the six-member Blue Ribbon Panel, she urged the Mayor to appoint individuals who had some experience with Municipal Law and, if possible, with city attorneys. In addition, while the Blue Ribbon Panel was advisory to the Council, she hoped their involvement would be more than pro forma, specifically she recommended the Council allow the Blue Ribbon Panel to interview the finalists and then make their recommendations to the Council, which was non-binding.

MOTION: Council Member Kleinberg moved, seconded by Mossar, to approve the Ad Hoc Committee on Council Appointed Officer's

recommendation to approve the revised draft City Attorney job description, the profile for the position, and the criteria for members of the Blue Ribbon Panel.

Council Member Kleinberg said she recalled there was a desire on the part of the majority of the Council to restrict the work of the Panel in order to promote the activity of the Council in terms of its involvement. She hoped the Mayor would be presented with people who had some background in City Municipal law, but should also be allowed the ultimate discretion to put together the right combination of people.

Council Member Morton expressed concern that the Council did not transfer the responsibility of identifying the most qualified applicant to a citizen's committee. He was pleased to have them as part of the sorting process; however, it was still the Council's responsibility to identify whom they felt was the most appropriate applicant.

Council Member Freeman asked whether there was a legal difference between Committee and Panel.

Council Member Kleinberg said she made that distinction because the Mayor might possibly appoint a Search Committee of Council Members and it helped in determining which group was being referred to.

Council Member Freeman recommended Council Member Cordell be added to the CAO Ad Hoc Committee, due in part to her experience in four of the six criteria areas for the Blue Ribbon Panel.

Mayor Beecham clarified the CAO Ad Hoc Committee members were appointed by the Mayor with the consent of the Council.

Council Member Kleinberg referred to Page 2 of the Memorandum and noted the Ad Hoc Committee suggested the Mayor might want to reconstitute the CAO Committee into a Search Committee and appoint a fourth member at his discretion.

Council Member Mossar said it was important to note the present CAO Ad Hoc Committee was formed in 2003 and their worked spanned into 2004, which left it up to the Mayor to decide how the Committee was constituted and how he chose to handle it.

Council Member Freeman clarified the Mayor might opt to change the makeup of the CAO Ad Hoc Committee.

Mayor Beecham said yes. It should be noted it was at his discretion. He accepted Council Member Freeman's recommendation to include Council Member Cordell.

Council Member Freeman recommended the on-line version of the Municipal Code be kept current.

City Manager Frank Benest said the Council was interested in three things in terms of the City Attorney. The first was the job description, which fit the standard format. If there was a duty, major responsibility or qualification that was not included, the Council could have staff consider that input. Second was the profile, which was a marketing piece to attract qualified candidates, and the third were things the Council would like the new City Attorney to do once they became permanent. Whether the on-line version of the Municipal Code was current was not a job description issue for the document before the Council.

Council Member Freeman said she thought job descriptions were developed based on need. She would also like to add language to the job description, which stated, "regularly educates officials and commissioners, and senior staff on laws regarding public information and Brown Act requirements."

Council Member Kleinberg said the language referring to expertise on the Brown Act was noted in the revised document. How the new City Attorney would go about doing any of the duties was not part of the job description, but of their job performance.

Council Member Freeman asked whether language stating, "act as a parliamentarian at Council meetings" was listed.

Mayor Beecham said the City Attorney advised the Council of the rules under which the Council operated, gave reasonable latitude to the Mayor, and final discretion to the Council.

Interim City Attorney Wynne Furth said the City Attorney's office brought copies of the Council's policies and protocols to every meeting, and staff answered questions when asked.

Council Member Freeman referred to Essential Qualifications on the City Attorney Job Description and asked what "significant" meant as it related to top-level legal experience as a specialist in municipal law and experience managing a legal staff.

Council Member Kleinberg said the language came from the executive recruiter, who felt it was a word that would signal qualifications to the City Attorney pool.

Council Member Freeman referred to the compensation portion of the City Attorney position where it noted a car allowance. She understood it was one of the issues still under discussion, and would hate for candidates to anticipate benefits listed in a marketing piece that might not come to fruition.

Council Member Kleinberg said every aspect of the compensation section was open to negotiations. If there was not the potential to negotiate for any of the benefits, it might dissuade some of the best candidates.

Council Member Kishimoto said she would like to see the job description to include more emphasis on code enforcement. She inquired if the Blue Ribbon Panel were elevated to ensure the candidates were qualified why would they not have a role in interviewing them.

Mr. Benest said in speaking with the recruiter, there were two issues: 1) the six month time commitment from the Interim City Attorney from the beginning of her effort to provide those services to the City; and 2) the concern of confidentiality and reticent of qualified candidates.

Council Member Cordell said she was appreciative of Council Member Freeman's confidence in her abilities to be helpful if chosen as a member of the CAO Ad Hoc Committee; however, as the newest member on the Council she had a lot to learn. She believed it was essential the Council had the last say on who the City Attorney would be; however, she suggested that if the Blue Ribbon Panel were to interview the candidates and make recommendations, it would not diminish the Council's responsibility to make the final decision.

Vice Mayor Burch said the Council should come to a clear decision that evening whether to recommend the Blue Ribbon Panel interview the candidates as opposed to merely reviewing the resumes in depth and making suggestions.

Council Member Mossar said she was quite comfortable with the recommendations of the CAO Ad Hoc Committee, and concurred with the comments of the City Manager that any additions to the process would add to the time schedule as well as the recruiting costs. The CAO Ad Hoc Committee had discussions with the recruiter about complexities that were brought on by the Council, and she was convinced that having the Blue

Ribbon Panel work with the recruiter to "winnow out" the finalists for Council's consideration was the best choice.

Council Member Morton said if there was going to be a community-based Blue Ribbon Panel, the role of the Council needed clear definition.

Council Member Kleinberg clarified the recommendations of the CAO Ad Hoc Committee were developed following a discussion of the Council about what the expectations were for the Blue Ribbon Panel. The Council expressed the desire to limit the role of the Blue Ribbon Panel; however, she proposed not hiring a recruiter and allowing the Blue Ribbon Panel to do all of the work, including interviewing candidates.

Mayor Beecham expressed support for the motion. He was confident the Council Members could represent the community and select the best individual as well as anyone could.

AMENDMENT: Council Member Cordell moved, seconded by Kleinberg, that the majority of the Blue Ribbon Panel be permitted to interview the finalists.

Council Member Cordell said having the Blue Ribbon Panel interview the finalists would in no way diminish her belief the Council was a competent body who were capable of reviewing credentials. She believed the Panel could enhance the process at very little cost.

Vice Mayor Burch stated it was not necessary for all members of Panel to interview the candidates in an effort to save time.

AMENDMENT PASSED 6-3, Beecham, Morton, Mossar "no."

MOTION AS AMENDED PASSED 8-1, Freeman "no."

Council Member Kleinberg said those interested in serving on the Blue Ribbon Panel should contact the Mayor in writing by February 1, 2004.



7A. (Old Item No. 3) Approval to Add Scope of Services to the Design of the Mitchell Park Library and Community Center Capital Improvement Program Project to Provide for a Space Programming Study to Improve the Functionality at the Current Mitchell Park Library Facility

Council Member Freeman asked whether there was a narrower estimate for the space design architect. If the project was believed to cost \$100 per hour and was estimated to take between 100 and 500 hours to determine a space layout for Mitchell Park, she believed that to be a high number of hours.

Assistant Director of Public Works Mike Sartor said the Interim Library Director spoke with Group 4 architects, who gave an interim cost proposal of approximately \$40,000 for a Space Programming Study. When staff got into actual review of proposals for the design of the work at Mitchell Park Library the estimate would be fine-tuned.

MOTION: Council Member Freeman moved to cap the range of the Space Programming Study at \$25,000.

Council Member Freeman said the staff report (CMR:112:04) stated staff could supplement some of the work. She hoped the City could find adequate space consultants at a cost of \$25,000.

Council Member Cordell asked Council Member Freeman how she arrived at the figure of \$25,000 versus \$50,000.

Council Member Freeman said she picked a number that was higher than \$10,000 but lower than \$50,000, because she felt the amount needed to be capped at a figure that was reasonable for a space layout.

Council Member Cordell asked whether staff had an idea of the hourly rate for the space consultant.

City Manager Frank Benest said the key issue was whether the space study was based on functions and programs provided by staff, and then involve the consultant to develop the space study and recommendations, or did it involve user groups and the community. If the latter was of importance that was where the extra monies were generated.

MOTION FAILED FOR LACK OF A SECOND

MOTION: Council Member Morton moved, seconded by Mossar, to approve the addition of a space programming study for the Mitchell Park Library to be in the upcoming Request for Proposal (RFP) for the selection of a design architect for the project.

Council Member Kishimoto said she was uncomfortable with the range of \$10,000 to \$50,000 and thought it should be tightened. She favored some outreach, but hoped staff would return with an amount on the lower end of the range.

Council Member Ojakian asked whether the Council was precluded from doing anything else at Mitchell Park in the near future if the project moved forward.

Mr. Benest said the assumption was the major focus of expanding and enhancing facilities at the libraries, including the Children's Library in the next four to five years. The City did not have monies other than fixing up existing facilities. Staff believed it was possible and were optimistic that once the Children's Library was completed, people would focus on Mitchell Park and perhaps some discussion would ensue on the mid-to long-term improvements at Mitchell Park.

Council Member Ojakian clarified staff's expectation was to do more at Mitchell Park further down the road than what was being proposed and did not see it as a waste of money.

Mr. Benest said that was correct. Staff believed they could get more space and better utilize the facility, which was good use of money in the near term.

Council Member Ojakian expressed support for the motion. He was concerned that the library facilities in Palo Alto were second-rate in comparison to other communities.

Council Member Cordell said she was supportive of staff's response on how the monies would be spent, but agreed the Council needed to be kept aware and were ever vigilant on the issue.

Council Member Freeman expressed support for the motion. She was in favor of improving the Mitchell Park library, but had a concern that the proposal was a little loose.

MOTION PASSED 9-0.

7B. (Old Item No. 4) Approval and Adoption of a Park Improvement Ordinance Associated with Plans for a Native Plant Potting Area in the City-Owned Baylands at the Duck Pond Maintenance Yard

Council Member Kishimoto asked whether there was enough protection in the bird sanctuary with the large number of visitors and nature lovers.

Superintendent of Open Space and Sciences Greg Betts said when the sign at the duck pond was first put up, the area was primarily a bird sanctuary and a harbor with an active recreational area. The bird sanctuary was closer to 2,000 acres of open space at the Baylands and a variety of shore birds and waterfowl nested throughout the Baylands, not just within the fenced area. It was also important to know the area for the proposed potting of native plants was an area closest to the public area where there were no plants, scrubs, or bushes; therefore, nothing would be cut down to put in the lath house. The setup was designed with a drip watering system to allow

plants to be watered automatically during most of the week. One or two volunteers would tend to the plants and work on seed propagating on the weekends. Most of the activity would occur once or twice a month when volunteers came in to get flats of the native plants to take out to the restoration area. Consideration was given to the types of operational details that could be added to minimize the impact on the wildlife there.

Council Member Kishimoto clarified the bird sanctuary from a nesting point of view was not as critical of an area anymore and the fencing could be changed.

Mr. Betts said that was correct.

Council Member Kishimoto asked whether staff had considered including that in the Baylands Master Plan update.

Mr. Betts said in his discussions with the Planning Department the past Baylands Master Plan had a primary focus on harbor dredging issues as well as closure of the landfill. It was his hope that the updated Baylands Master Plan would also have a conservation element, which had been lacking from past Plans.

Council Member Kishimoto asked whether parking along the duck pond area would compete during the weekends.

Mr. Betts said he did not believe it would. Many of the volunteers who came from Save the Bay or some of the local school groups recognized parking was a problem and carpooled, as well as took advantage of parking at the golf course and the airport.

MOTION: Council Member Kishimoto moved, seconded by Burch, for the approval and adoption of a Park Improvement Ordinance for improvements to the Duck Pond maintenance yard of the City-owned Baylands, to allow for the development of a 1,600-square foot native plant potting area that is intended for the propagation of plants for marsh and riparian habitat restoration projects in the Baylands and along San Francisquito Creek.

Ordinance 1st Reading entitled "Ordinance of the Council of the City of Palo Alto Approving and Adopting Plans for A Native Plant Potting Area in the City-Owned Baylands at the Duck Pond Maintenance Yard"

Council Member Freeman said on a recent walk at the Baylands she noticed a parking lot between the Interpretive Center and the barbeque pits located next to the lath house, and asked whether that location was considered as a

possible location for the native plant potting area, which would not interfere with the duck pond.

Mr. Betts said yes. There were a number of factors that bore on the decision not to move in that direction. First, the availability of water to the overflow parking area would require trenching to put in a new waterline to supply the plants. Second, was the clustering of development or building. A lot of consideration was given not to obstruct bay views. Third, the overflow parking, which was simply gravel and got muddy during the wintertime, was one of the seven restoration sites in the Baylands. The soil was dredging fill from the former harbor and if funds were provided through mitigation monies that possibly could be turned back into lowland marshland.

Council Member Mossar said the proposed project had huge benefits for the Baylands. The City owned a lot of open space property and should be committed to taking advantage of opportunities such as native plant potting areas. Without vegetation in the Baylands there would not be any birds.

Council Member Morton concurred with the comments of Council Member Mossar.

MOTION PASSED 9-0.

COUNCIL COMMENTS, QUESTIONS, AND ANNOUNCEMENTS

Council Member Ojakian requested the meeting be adjourned in memory of Mike Cullen, long-time resident of Palo Alto.

Council Member Kleinberg requested the meeting be adjourned in memory of Bill Miller, a co-founder of the Junior Chamber of Commerce.

CLOSED SESSION

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

Mayor Beecham stated he would not participate in Item No. 8 due to conflict of interest because his campaign committee dealt with Mr. Villareal.

BY A CONSENSUS OF THE COUNCIL to move Item No. 9 forward in front of Item No. 8 due to Mayor's conflict

8. Conference with City Attorney -- Existing Litigation
Subject: Joseph Villareal v. City of Palo Alto, SC Superior Court No.: CV810852
Authority: Government Code section 54956.9(a)

9. 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. 8 and 9.

Vice Mayor Burch announced there was no reportable action.

FINAL ADJOURNMENT: The meeting adjourned at 10:15 p.m. in memory of Mike Cullen, long-time resident of Palo Alto, a teaching fellow at Stanford University. The meeting would also be adjourned in memory of Bill Miller, a co-founder of the Junior Chamber of Commerce who was named Palo Alto's first "Young Man of the Year," created living history of the community, and received a lifetime achievement award from Avenidas.