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May 10, 2004

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The City Council of the City of Palo Alto met on this date in the Council Chambers at 6:15 p.m.

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

CLOSED SESSION

1. Public Employment  
Position: City Attorney  
Authority: Government Code Section 54957

The City Council met in Closed Session to discuss matters involving public employment as described in Agenda Item No. 1.

**Mayor Beecham announced there was no reportable action.**

ADJOURNMENT: The meeting adjourned at 6:59 p.m.

Special Meeting  
May 10, 2004

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

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

Special Orders of the Day

1. Resolution 8418 entitled "Resolution of the Council of the City of Palo Alto Expressing Appreciation to William Garvey for His Outstanding Public Service to the City of Palo Alto"

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

**MOTION PASSED** 8-0, Cordell absent.

2. Resolution 8419 entitled "Resolution of the Council of the City of Palo Alto Expressing Appreciation to Lynn Torin for Her Outstanding Public Service to the City of Palo Alto".

Lynn Torin expressed her appreciation for the efforts everyone had made on behalf of the City.

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

**MOTION PASSED** 8-0, Cordell absent.

ADJOURNMENT: The meeting adjourned at 7:04 p.m.

***AT THIS POINT IN THE PROCEEDINGS, THE CITY COUNCIL WILL ADJOURN TO A SPECIAL MEETING AS THE PALO ALTO REDEVELOPMENT AGENCY***

Regular Meeting  
May 10, 2004

The City Council of the City of Palo Alto met on this date in the Council Chambers at 7:07 p.m.

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

ORAL COMMUNICATIONS

05/10/04

97-376

Christianne Cook spoke regarding video cameras in patrol cars, the attitude of the police, and the ACLU.

Norman Carroll, University and Emerson, thanked the Council, staff and citizens for the Opportunity Center groundbreaking.

Lynn Chiapella, 631 Colorado, spoke regarding the Director's Hearing on expansion of telecommunications on a building on Colorado Street.

Ed Powers, 2254 Dartmouth Street, spoke regarding good government and the destruction of waterfront in Palo Alto.

#### APPROVAL OF MINUTES

**MOTION:** Council Member Ojakian moved, seconded by Morton, to approve the minutes of April 12, 2004, as submitted.

**MOTION PASSED** 8-1, Beecham absent.

#### CONSENT CALENDAR

Council Member Morton stated he would not participate in Item No. 2 because his company provided audit services for Adolescent Counseling Services, Inc.

**MOTION:** Council Member Ojakian moved, seconded by Freeman, to approve Consent Calendar Item Nos. 1 - 4.

#### LEGISLATIVE



1. Adoption of Resolution Preliminarily Approving BID Advisory Board's 2004-2005 Budget Report

Adoption of Resolution of Intention to Levy 2004-2005 Assessments in the Palo Alto Downtown Business Improvement District and Setting of a Date and Time for the Public Hearing on the Levy of Assessments

Approval to Waive the 10 percent Late Charge Fee for 2003-04 Annual BID Assessment

Resolution 8420 entitled "Resolution of the Council of the City of Palo Alto Approving the Report of the Advisory Board for Fiscal Year 2004-2005 in Connection with the Palo Alto Downtown Business Improvement District"

Resolution 8421 entitled "Resolution of the Council of the City of Palo Alto Declaring its Intention to Levy an Assessment Against Businesses Within the Downtown Palo Alto Business Improvement District for Fiscal Year 2004-2005 and Setting a Time and Place for Hearing Objections Thereto"

#### ADMINISTRATIVE

2. Amendment No. 1 to Agreement No. C04100297 Between the City of Palo Alto and Adolescent Counseling Services, Inc. Concerning the City's Funding of the Rehabilitation of the Caravan House Facility at 2361 High Street
3. Recommendation to Cancel the July 6, 2004 City Council Meeting

#### COUNCIL COMMITTEE RECOMMENDATION

4. The Finance Committee recommends to the City Council adoption of an ordinance authorizing the City Manager to execute a Custom Product Contract with the Western Area Power Administration for the option to purchase electric power Custom Products with a cost not to exceed \$2,000,000 per year and not to exceed \$10,000,000 during the term of the agreement from January 1, 2005 through September 30, 2010; and to execute electric commodity day-ahead schedule firming service transactions under the terms of the agreement and subject to proposed parameter and limitations.

Ordinance 1<sup>st</sup> Reading entitled "Ordinance of the Council of the City of Palo Alto Authorizing the Negotiation and Execution of the Western Area Power Administration Custom Products Contract and to Subscribe to the Day-Ahead Firming Service Product Under Specified Terms and Conditions During the Period January 1, 2005 Through September 30, 2010, Inclusive"

**MOTION PASSED** 8-0 for Item Nos. 1 and 3-4, Beecham absent.

**MOTION PASSED** 7-0 for Item No. 2, Morton "not participating," Beecham absent.

#### PUBLIC HEARINGS

5. Public Hearing - Ordinance streamlining planning procedures by modifying and consolidating regulations from Palo Alto Municipal Code, including Chapters 16.48 (Architectural Review), 18.90 (Variances, Home Improvement Exceptions, and Conditional Use Permits), 18.91

(Design Enhancement Exceptions), 18.92 and 18.93 (Appeals), and 18.99 (Administrative Approval of Minor Changes in Projects). New Chapters 18.76 (Permits and Approvals), 18.77 (Procedures for Permits and Approvals) and 18.78 (Appeals) will also be added.

City Auditor Sharon Erickson said in October 2003, the City Auditor's office issued an audit of the Development Review Process (DRP). As part of the review, more than 60 persons were interviewed including representatives of City staff, Planning and Transportation Commissioners (P&TC), Architectural Review Board (ARB) members, consultants, contractors, developers, business owners, residents, and neighbors. The comments from most people were remarkably similar; Palo Alto spent too much time on a process that could be redundant, uncoordinated and wasteful. A total of 34 recommendations were made to simplify the process, clarify rules and responsibilities, improve turnaround times, and address quality assurance issues. The Planning Department had an aggressive work plan to implement all of the audit recommendations. Those recommendations included: 1) to simplify and reduce the number of development review processes and include time requirements; 2) to establish one standard simple process for appeals to include timelines; 3) to review and approve most minor architectural reviews at the staff level; 4) to permit the Director to make decisions on architectural review applications in the absence of a timely ARB recommendation; and 4) to give the P&TC an increased responsibility for quasi-judicial land use matters. The City Auditor's office would continue to work with staff to implement the audit recommendations and ensure Palo Alto's DRP was timely and fair.

Director of Planning and Community Environment Steve Emslie said the streamlining process was based on the premise the majority of the work met with the general consensus of the applicants, residents and businesses. The proposed amendments were intended to allow for more robust noticing upfront, including electronic communication with the neighborhood groups. The four objectives of the proposed ordinance include: 1) reorganize the Zoning Code to make it easier to use; 2) respond to the Audit recommendations; 3) respond to neighborhood concerns by providing more frequent and extensive noticing, including electronic notice; and 4) clarify the findings for variances. He reviewed the Standard Staff Review Process for variances and use permits. In addition to the Audit recommendations, staff had incorporated administrative policies to help streamline the process, make reforms and provide greater management oversight. At present, staff was completing the recommendations within six months of the program's implementation.

Planning and Transportation Commissioner Michael Griffin said the Commissioners were sensitive to the Measure J implications of the proposal

and felt the proposed ordinance respected the voters' widespread desire to improve the City's overall efficiency. The P&TC believed posting the applicant's plans and having the Request for Hearing form on the City's website would enhance the public's access to the process.

Vice Mayor Burch declared the Public Hearing open.

Interim City Attorney Wynne Furth said the existing code used calendar and working days, which caused a great deal of confusion because Administrative Offices were closed on 9/80 Fridays and the holiday furlough. She suggested the insertion of a 'Definition of Days' into the definition section of Title 18 that specifically explained the 'Days' meant calendar days. It would also explain that additional time was available until the Administrative Offices reopened.

Doug Moran, 790 Matadero Avenue, said the flow chart (Attachment B in CMR:261:04) did not indicate to residents the timeframe for notification nor the time to get clarification from staff. He endorsed the proposal that allowed the resident's to participate earlier.

Annette Ashton, 2747 Bryant Street, applauded the Planning Department's desire to respond to the recent Audit recommendations and move forward to streamline the present process. She said in March 2004, a neighborhood outreach meeting was held, whereby more than 30 neighborhood leaders were in attendance. They unanimously recommended two votes for the number of Council Members required to do a 'Call-Up' for the appeal. In addition, the neighborhood leaders strongly endorsed the on-line method of noticing.

Joy Ogawa, 2305 Yale Street, said the only aspect of streamlining designed to help neighbors was staff's promise of earlier notification. Sections 18.77.060 and 18.77.070 did not include the language of initial notification and should be modified. She did not believe the 21-day time period should start until the notice was posted and felt that staff bundled changes to the variance findings along with the streamlining changes, which deserved more scrutiny.

Heather Trossman, 769 Garland Drive, said the Palo Alto Chamber of Commerce (Chamber) endorsed the Planning Code amendments creating residential permit application process streamlining. The Chamber also endorsed the City's proposed changes that served to streamline the application process for Home Improvement Exceptions (HIE's) and Individual Reviews (IR's). They encouraged effective staff training once those changes were put in place, so the actual "on the ground" experience for permit applicants would truly feel streamlined.



Betsy Allyn, 4186 Willmar Drive, said she appreciated open government in a timely manner. She agreed with the requirement that two Council votes should be necessary to remove an item from the Consent Calendar.

Bob Moss, 4010 Orme Street, said having only two Council Members remove an item for discussion was appropriate. He admired the City Auditor's recommendations and concerns about speeding up the process, but it should be done cautiously. Although the City was capable of posting agenda items in text form on the website, they could not post graphics and photographs. In order for people to understand and read those items, the accompanying photographs and graphics should be posted as well. He also felt the six-foot side yard setback was an example where staff had spent too much time looking at nonsense variances.

Lynn Chiapella, 631 Colorado Avenue, concurred with Mr. Moss on the six-foot setback variances. She said minor ARB and Conditional Use Permit (CUP) changes had been used to expand existing development into more useable space by converting janitorial, recycling and storage on-site space into other kinds of space.

Mayor Beecham declared the Public Hearing closed.

**MOTION:** Council Member Morton moved, seconded by Kishimoto, to approve the staff recommendation to introduce for 1<sup>st</sup> Reading Ordinance streamlining planning procedures by modifying and consolidating regulations from Palo Alto Municipal Code, by Adding Chapters 2.21 (Architectural Review Board), 18.76 (Permits and Approvals), 18.77 (Procedures for Permits and Approvals), and 18.78 (Appeals), Deleting Chapters 16.48 (Architectural Review), 18.90 (Variances, Home Improvement Exceptions, and Conditional Use Permits), 18.91 (Design Enhancement Exceptions), 18.92 And 18.93 (Appeals), and 18.99 (Administrative Approval of Minor Changes in Projects), Adding Sections 18.88.200 and 18.88.210, and Modifying Cross-References in Various Other Code Sections.

Ordinance 1<sup>st</sup> Reading entitled "Ordinance of the Council of the City of Palo Alto Streamlining Planning Procedures by Adding Chapters 2.21 (Architectural Review Board), 18.76 (Permits and Approvals), 18.77 (Procedures for Permits and Approvals), and 18.78 (Appeals), Deleting Chapters 16.48 (Architectural Review), 18.90 (Variances, Home Improvement Exceptions, and Conditional Use Permits), 18.91 (Design Enhancement Exceptions), 18.92 And 18.93 (Appeals), and 18.99 (Administrative Approval of Minor Changes in Projects), Adding Sections 18.88.200 and 18.88.210, and Modifying Cross-References in Various Other Code Sections"

Council Member Morton asked staff to ensure the community that early notification would be a highlighted period of time for the public hearing. He suggested adding the word "minimum" to the 14 days after the tentative Director's Hearing for notification.

Ms. Furth clarified Section 18.04.030 should be amended to include a definition of days which meant calendar days, provided the last day upon which an action needed to be taken was a weekend or official holiday or a day upon which the City Clerk's office was not open to the public. The time in which to complete the action would be extended to the next regular business day. She referred to Section 18.77.080 (Page 89 of Exhibit 3 in CMR:261:04) and asked to revise the last sentence in the paragraph as follows: "Typographical and/or publishing errors shall not invalidate the notice ~~or any city action~~ if error is non-prejudicial".

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER**

Ms. Furth said with respect to the 14-day period, it did not say "minimum" because it was during the appeal, which was a fixed period of time; however, the Section could be amended to say "or such longer period as determined by the Director at the time the approval was granted."

Council Member Morton clarified the wording would say, "14 days or at such longer period as the Director shall permit".

Mr. Furth said the wording would also say, "At the time that the approval was granted", so that applicant would know their entitlement. Many of the steps the public needed to take in order to move an application along for further review were simply notice filings.

Mr. Emslie said he understood the amendments to the recommendations included codification of initial notice of the completeness of the application, which staff would make part of the ordinance.

Council Member Morton expressed his appreciation to the City Auditor, the Planning Department and the P&TC for the improved streamlining process while still allowing input from the community.

Council Member Kishimoto said she hoped the streamlining process was both fast and accurate. She suggested giving staff some indication on procedures to encourage early and electronic communication to the maximum level possible.

Mr. Emslie said the staff recommendation included a one-year evaluation of the streamlining process. Staff was reluctant to codify the online or email notification procedures without more experience; however, they would if asked to do so.

**AMENDMENT:** Council Member Kishimoto moved, seconded by Freeman, to encourage early notice and/or communication to the public to the maximum level possible.

Council Member Freeman said approximately 90 percent of Palo Alto residents had access to the Internet and/or electronic mail (email). She believed it was time the City took advantage of that method of communication. She also suggested looking into active and passive methodologies.

Council Member Kishimoto clarified the electronic noticing and posting could be worded as a "courtesy" posting. The legal method of notification would remain the same.

Mr. Emslie said that would be the understanding.

Council Member Morton said he would not support the amendment. To make it a legal requirement on how staff communicated with the public would pose additional challenges.

Vice Mayor Burch said he would support the motion with the understanding "to the extent possible."

Ms. Furth said if the Council wished to amend the ordinance, it needed more specificity.

Mayor Beecham asked Council Member Kishimoto whether it was the intent of the Council to urge staff to do it or should it be placed in the ordinance.

Council Member Kishimoto said she would ask staff to return by the Second Reading with wording for the ordinance.

Ms. Furth said if the intent was to give direction to staff for early noticing, web posting and electronic email, she recommended not putting that language in the ordinance, but rather give direction to staff following adoption of the ordinance.

**AMENDMENT WITHDRAWN BY MAKER AND SECONDER**

Council Member Freeman wondered how much legal support would be needed by the ARB.

Ms. Furth said the City Attorney's office would respond whenever the ARB had questions on the information and/or recommendations contained in the staff report.

Council Member Freeman clarified there would be no change in staff's legal assistance to the ARB.

Mayor Beecham said the City Attorney did not speak about change. She spoke on how she anticipated the ARB would be staffed.

City Manager Frank Benest said the City Attorney was responsive to the needs of staff. Adjustments would be made as needed.

Ms. Furth said the City Attorney's staff did not routinely attend staff level decision-making processes or hearings, except when questions arose.

Council Member Freeman said she was concerned about the boards/commissions' access to the City Attorney's office, especially with increased legal decision responsibilities. She expressed her caution on the wording in the ordinance. She asked whether the Council would have the opportunity to add verbiage about "green" or "sustainable building design".

Mr. Emslie said no. The ARB already had a list of 16 guidelines in sustainable and green business practices.

Council Member Freeman said she was concerned the language about green business practices and sustainability was missing from Section 18.76, Permits and Approvals.

Ms. Furth said whenever controversy arose about the application of a rule, the Council appointee's were charged with the interpretation.

Council Member Cordell said she was concerned about self-policing versus having someone else take a look at the process. She asked whether the 12-month review would include any input from the City Auditor.

Mr. Emslie said the 12-month review would include oversight by the City Auditor as well as outreach to the community.

Ms. Erickson said it could be included in the City Auditor's proposed work plan for the following year.

Council Member Cordell asked whether Ms. Ogawa received a response to her comments about notification.

Mr. Emslie said staff understood the Council's motion included codification of the noticing.

Council Member Cordell asked whether the streamlining process would affect large projects, such as Albertson's.

Mr. Emslie said for large projects the applicant had the opportunity to engage in a prescreening process.

Council Member Cordell asked whether there was a legal requirement that the City Council had to be the final arbiter on the issue of an individual putting up a home.

Ms. Furth said there was none.

Council Member Cordell asked whether there had been any discussion of eliminating the Council entirely from the streamlining process. She expressed her concern about whether the Council had the expertise to weigh in on such matters.

Ms. Furth said the City Charter did not permit the Council to delegate authority to Boards/Commissions; however, they could delegate authority to staff. It became apparent that staff hearings did not resolve disputes. Because they could not make final decisions, staff was left with the option of putting those items on the Council's Consent Calendar. Any other approach would require a Charter amendment.

Mr. Benest said if the threshold was not high enough, the present procedures would continue as they had been.

Mr. Griffin said the P&TC did provide an opportunity for persons to fine tune their arguments.

Council Member Kleinberg referred to Section 18.76.020(b)(D)(v) of the draft ordinance and asked whether the definition of "minor" was a standard one, a controlling one, or for the exclusive use of the ARB.

Ms. Furth said the definition of "minor" applied only to that subsection.

Council Member Kleinberg asked whether the definition of "minor" was similar, if not identical elsewhere in the PAMC.

Ms. Furth said she did not believe the definition was used in other categories.

Management Specialist Jon Abendschein said Section 18.76.020 referred to minor changes to site and design and Planned Community (PC) District approvals, which were in the existing Code. The only place in the PAMC where the distinction between "minor" and "major" came in was in the ARB.

Council Member Kleinberg clarified when a project was defined as "minor" it took on a greater significance because it was found only in the ARB section.

Ms. Furth said that was correct.

Council Member Kleinberg asked whether most of the other terms Council Member Freeman mentioned had a contextual descriptive place in the ordinance.

Ms. Furth said the entire title had a definition section, which defined a series of terms used.

Council Member Kleinberg asked about the adjectives.

Ms. Furth said the adjectives were generally given their ordinary meaning. The language for "major" and "minor", including the minor changes aspect, was a design review concept.

Council Member Kleinberg said the terminology struck many as being vague enough to become discretionary and arbitrary. In the name of streamlining, she believed it should have some degree of certainty in order to avoid appeals based on perceived vagueness. She suggested getting feedback from the ARB, the P&TC and staff as to whether the terms were specific enough so they were comfortable with their tasks.

Ms. Furth said feedback on which standards people found troubling to apply was useful. The fact that something was discretionary did not mean it was arbitrary and definitions would not avoid that.

Council Member Kleinberg referred to Section 18.76.040(f) and asked if there were a concern about noise, would staff's understanding of "quiet enjoyment" be included in those conditions.

Mr. Emslie said yes.

Council Member Kleinberg referred to Section 18.77.080 (a) and asked for the definition of "prejudicial."

Ms. Furth said it meant something that was not merely technical, but significantly disadvantaged some participant in the process in a way that mattered. It was about having a process judged to be fair.

Council Member Kleinberg referred to page 21, line 13 of the P&TC minutes of March 24, 2004, and asked what level of architectural skill was envisioned on projects tweaked at the staff level.

Mr. Emslie said in a design review regulatory environment like Palo Alto, it was desirable to have an architectural skill set on staff. He also recognized the need for an ongoing commitment to training staff in that area. The department recently conducted a training session in conjunction with the local chapter of the American Institute of Architects, which held an Architecture 101 class.

Council Member Kleinberg asked whether the skill level in the Planning staff was adequate and would continue to grow.

Mr. Emslie said yes.

**AMENDMENT:** Council Member Kleinberg moved, Mossar seconded, to require a Council call up vote of three to remove an item from the Consent Calendar.

Council Member Kleinberg said she was persuaded four Council Members were too many to call up a vote. It was on the dangerous line of the Brown Act, and yet two members seemed insignificant.

**AMENDMENT PASSED** 6-3, Freeman, Morton, Ojakian "no".

Vice Mayor Burch said he understood when there was a 14-day period, all weekend days and holidays were exempt, and not just the last day. He asked whether that was correct.

Ms. Furth said staff suggested using the State's definition whereby every calendar day counted. If the last day to file an appeal fell on a Saturday or holiday or a 9/80 Friday, the appeal would be brought to the Clerk's Office on the next regular business day. Mail notices would start the day the mailing was made. For preciseness, staff would complete an affidavit of mailing.

Council Member Ojakian referred to page 3 of the staff report (CMR:261:04) under Resource Impact, and asked how the Council would know about the anticipated reduction in staff and Council resources.

Mr. Emslie said that was one of items staff wanted to experience. The Planning Department had a system for tracking the amount of time spent on projects to determine if any changes occurred. The assumption was if every process did not have to go through a multiple layer system, it would be more efficient and save staff time.

Council Member Ojakian clarified the Council would expect to see numbers when a report came back in 12 months. He asked whether the granting of variances and CUP's applied to everyone, not just developers.

Mr. Emslie said yes.

Council Member Freeman said the on-site posting seemed to be the most visible notice to neighbors of possible changes to the area; however, it was not listed on the flow chart. She asked whether it could be added.

Mr. Emslie said yes.

Council Member Freeman asked for a response to Annette Glanckopf's comments regarding the additional language in findings for variances and HIE's for substandard lots and homes in the flood plane.

Mr. Emslie said staff did take note of those comments. They were appropriately discussed as Zoning Standards, which would be included in the Zoning Ordinance Update (ZOU).

Council Member Freeman said substandard lots and homes in the flood plane differed from flag lot homes.

Ms. Furth said the difference was the special findings for flag lot homes had already been debated. They were previously determined standards. Substandard lots and homes in the flood plane were in need of being debated and recommended by the P&TC based on land use standards.

Mayor Beecham said the streamlining process has taken a long time. It began in February 2003, and was an appropriate step for Council in terms of having a clear understandable process, so everyone could determine his or her role or function. He expressed his support for the motion and looked forward to its implementation.

**MOTION RESTATED:** Council Member Morton moved, seconded by Kishimoto, to approve the staff recommendation to introduce for 1<sup>st</sup> Reading Ordinance streamlining planning procedures by modifying and consolidating regulations from Palo Alto Municipal Code, by Adding Chapters 2.21 (Architectural Review Board), 18.76 (Permits and Approvals), 18.77



(Procedures for Permits and Approvals), and 18.78 (Appeals), Deleting Chapters 16.48 (Architectural Review), 18.90 (Variances, Home Improvement Exceptions, and Conditional Use Permits), 18.91 (Design Enhancement Exceptions), 18.92 And 18.93 (Appeals), and 18.99 (Administrative Approval of Minor Changes in Projects), Adding Sections 18.88.200 and 18.88.210, and Modifying Cross-References in Various Other Code Sections.

Ordinance 1<sup>st</sup> Reading entitled "Ordinance of the Council of the City of Palo Alto Streamlining Planning Procedures by Adding Chapters 2.21 (Architectural Review Board), 18.76 (Permits and Approvals), 18.77 (Procedures for Permits and Approvals), and 18.78 (Appeals), Deleting Chapters 16.48 (Architectural Review), 18.90 (Variances, Home Improvement Exceptions, and Conditional Use Permits), 18.91 (Design Enhancement Exceptions), 18.92 And 18.93 (Appeals), and 18.99 (Administrative Approval of Minor Changes in Projects), Adding Sections 18.88.200 and 18.88.210, and Modifying Cross-References in Various Other Code Sections"

The following Ordinance modifications are also included: to add to Section 18.04.030 the definition of days (calendar days); to modify 18.77.080a to clarify that typographical or publishing errors shall not invalidate the notice or proceedings unless the error is prejudicial; to add to 18.77.060 a new section (b), which requires staff to send notice when application is complete, by mail to owners and residents of property within 600 feet of the property; by publication, by email, and by posting in a public place, and to reletter the original subsections (b) through (f); to reflect the amendment changing the number of individual votes required in order to call up a matter on the Council Consent Calendar from 4 to 3; and wherever the appeal period is set at 14 days to state "14 days or such longer period as the director shall determine at the time the project is approved."

**MOTION PASSED AS AMENDED** 9-0.

**MOTION:** Council Member Kishimoto moved, seconded by Cordell, to convey to staff that the sense of the Council is to encourage the use of electronic media to every extent possible in order to notice.

**MOTION PASSED** 7-1, Ojakian "no," Morton absent.

Council Member Kishimoto agreed with Council Member Freeman that on-site posting was more effective than a small ad in the newspaper. She suggested having staff evaluate on-site noticing as an alternative or additional notice and bring back recommendations to the Council at the time of the 12-month review.

Mr. Emslie said on-site posting would be included in staff's 12-month review and reported back to Council.

RECESS: 9:05 p.m. – 9:15 p.m.

#### REPORTS OF COMMITTEES AND COMMISSIONS

##### 6. Policy and Services Committee recommendation regarding New Recycling and Solid Waste Services

Council Member Kishimoto, Chairperson of the Policy and Services Committee, said the Policy and Services (P&S) Committee reviewed the item on March 9, 2004, and approved recommendations 2 through 4 as proposed by staff. The Single Stream Recycling Program had been implemented as a pilot program in Palo Alto, and was favored by the residents who used it. It was a program where all the recycling materials were placed in one large cart rather than separated by residents into four individual cartons. Members of the public expressed their views about the size of the containers, and how smaller homes and apartments could accommodate them. One benefit of the program was fewer trucks in the neighborhood. The drawback was the need to deliver the materials to Castroville or Oakland, rather than Palo Alto or Sunnyvale for processing. The cost was \$1.6 million for a one-time purchase of carts, new trucks, outreach, and an ongoing net annual difference in cost of approximately \$670,000.

Emily Renzel, 1056 Forest Avenue, urged the Council to delay the Single Stream Recycling decision until next year's budget cycle, by which time the Environmental Impact Report (EIR) on the Environmental Services Center (ESC) would be in hand, and the Council would know whether or not to support it. The Memorandum of Understanding (MOU) for the Sunnyvale SMaRT Station anticipated that all of Palo Alto's recycling would come to them in the separated form presently being used. The SMaRT Station had the capacity and capability to process residents source-separated materials; however, they could not process single stream. She objected to the budget being used as a policy-making document when it was supposed to be a policy-implementing document.

Council Member Mossar said the proposal specified specific carts to be used; one for recycling and one for composting. She asked whether it allowed for residents to add other containers should they have huge gardening projects.

Deputy Director of Public Works Michael Jackson said staff's preference was for residents to utilize the 96-gallon carts for the yard waste. During the program's implementation, an educational program would be conducted in order for people to utilize the carts efficiently.

Council Member Mossar asked what if a resident had more than 96 cubic yards.

Mr. Jackson said during the course of the program's implementation, staff would take their materials and leave an instructional guide.

Council Member Mossar said she noted both the composting and recycling bins remained on the streets. She expressed concern that many homes did not have places to keep the bins except on the curb, and the garbage men did not make special accommodations. She asked whether staff had considered the different housing patterns in various neighborhoods, and how the proposed program would work.

Director of Public Works Glenn Roberts said he agreed with the assessment of the existing condition, but from staff's perspective the problem would not change by virtue of the proposal. The problem would continue to exist because of the land use pattern, and the unique side-yard garbage service provided to residents. The proposed program would ease the problem by providing wheeled carts for the recyclables instead of having to carry the bins to the curb.

Council Member Mossar asked what was the best suggestion regarding storing the carts curbside.

Mr. Roberts said that was an issue residents should not be doing in either case. There were problems with containers blocking the sidewalks, and staff had worked with the Palo Alto Sanitation Company (PASCO) to make sure their drivers repositioned the bins properly and provided notices to residents to remove them from blocking sidewalks.

Council Member Mossar opined that was easier to do in some neighborhoods than others. She noted in the staff report (CMR:205:04) the issue related to certain recyclable materials, such as milk cartons and plastic bags, which could be taken to the Recycling Center at the landfill but were not allowed in the containers. She assumed the recycling carts would be filled with every conceivable thing that could be recycled. She hoped staff had looked at that as the most likely outcome of the program, and asked if there were any comments.

Mr. Roberts said staff's experience in the pilot program had shown the City's recycling went up by approximately 10 percent in terms of the net recoverables. It was largely due to the increased technology available at the point of sorting.

Council Member Mossar clarified staff was not too concerned if people put things that did not belong in the recycling bins.

Mr. Roberts said the Public Works Department would have an extensive education outreach program to minimize that situation. If the occurrence were minimal, staff would be able to deal with it.

Council Member Mossar said she understood if the City did not like the way the vendor had handled the proposed recycling program, the contract could be cancelled. She asked whether that was a realistic alternative.

Mr. Roberts said the Council had the right to cancel or not extend the contract for non-performance on the part of the contractor, and require it to be put out for new bids.

Council Member Mossar asked whether the Council should be concerned the City would lose \$760,000 per year.

Mr. Roberts said the first question was the one-time \$1.2 million expenditure. Staff was facing a major capital expenditure to replace all the worn-out recycling bins. The trucks also needed to be replaced. Those two expenditures would occur regardless of whether the City used single stream, split cart, or the existing system for the recycling and solid waste services. Staff opined it was the optimal time to make a change because the expenditure would occur in any case. On the operational side, staff presented the maximum cost, worse case scenario of \$760,000 per year, which would assume there was no net change in the recovery rate of recyclables when in fact the pilot program showed a 10 percent increase in recyclables and a 13 percent decrease in the amount of refuse going to landfill areas. Staff anticipated a substantial cost savings and reduction in the amount of money spent to landfill those materials when the Citywide program was implemented. Those savings could amount to approximately \$600,000 to \$700,000 a year in savings.

Council Member Morton stated at the Policy and Services (P&S) Committee meeting he disclosed that his family held investment interest in Waste Management. He understood the discussion that evening was about a policy and did not impact, or was not about, a contract with Waste Management.

Interim City Attorney Furth said the test of whether to participate or not depended upon the reasonably foreseeable impact of the decision on Waste Management. She was not in the position to comment on what the likely financial implications of that decision would be.

Mr. Roberts said he believed the net impact of the action on Waste Management was as a corporate entity. Waste Management USA would be inconsequential.

Council Member Morton expressed his support for the proposed project. He said he was persuaded by the fact that people were in the pilot program who were not recycling enthusiasts and because the landfill residue would be decreased. He was concerned about the size of the bins and asked whether the residents could still use the smaller compost bins for yard trimmings.

Mr. Jackson said three different sizes of recycling carts would be offered. As for yard trimmings, the 32, 65 and 96 gallon carts would be offered.

**MOTION:** Council Member Morton moved, seconded by Beecham, that the Policy and Services Committee recommends approval of the following to the City Council regarding New Recycling and Solid Waste Services:

1. Implement a single stream, recycling program.
2. Change the collection of yard trimmings to cart service.
3. Supply optional curbside cart service for garbage.
4. Approve compressed natural gas as an alternative fuel for the collector's recycling collection vehicles.

Mayor Beecham said a decision needed to be made to replace the existing equipment and on the recycling and solid waste service. He believed the single stream would increase recycling, decrease material going to the landfill, and was the right thing to do environmentally.

Council Member Freeman asked whether the SMaRT Station took single stream recycling, and did the MOU extend to the Year 2012.

Mr. Roberts said the MOU extended through the Year 2021. It was important to understand the SMaRT Station did not take single stream recycling. The cities of Sunnyvale and Mountain View currently used split cart recycling, while Palo Alto's recyclables went to the landfill operation in the City and were sorted and processed there. If the Council wanted to retain the present system, the landfill would need to remain at the Byxbee Park Baylands landfill location. Staff had proposed to create a system independent of the City's landfill, the SMaRT Station, and the present system.

Council Member Freeman said she had observed large containers at the Byxbee Park landfill location, and asked whether large single stream containers had already been purchased.

Mr. Jackson said the containers at Byxbee Park were purchased for the pilot program, which began in October 2002.

Council Member Freeman said there seemed to be an unusually large number of containers not being used, and suggested re-evaluating the costs.

Mr. Roberts said there were presently 2,500 homes in the pilot program and it would soon expand to 20,000 homes, which would require a larger number of containers.

Council Member Freeman asked how the Council's decision on single stream recycling would affect the decision on the ESC.

Mr. Roberts said there was no linkage between those two decisions. They were independent actions. The one before the Council would be made for the short-term implementation. The other decision would be made on a 10-year horizon; regarding ESC and the future contract renewal with the Sunnyvale SMaRT Station.

Council Member Freeman asked whether she was correct in remembering the ESC accepted single stream recycling and was designed to do the sorting.

Mr. Roberts said it could do that, as well as any other form of recycling, collection, and processing that the present or any future Council would choose to implement. The concept was to provide a facility with those capabilities on the ESC site.

Council Member Freeman said she believed it had been proposed. It would require additional staffing, which included salary, overtime and benefits. She asked whether the difference was between sorting at one's home and going through a single stream.

Mr. Roberts said it was just the opposite. Single stream recycling was an automated process, which required less staff time. By going to single stream now, it would enable PASCO to eliminate three or four positions presently working at the recycling center. Should the Council decide not to build an ESC, single stream recycling could still be implemented after 2021, by the same way it would be done for the next 10 years; sending it to Watsonville or Oakland for processing. An ESC was not required to serve single stream recycling.

Council Member Freeman clarified the City still had an MOU through the Year 2021 with the SMaRT Station, which did not take single stream.

Mr. Roberts said that was correct.

Council Member Ojakian asked what happened to the recycling materials

after they were picked up by PASCO and taken to the Baylands Center.

Mr. Jackson said it was then bundled, marketed, and sold by PASCO.

Council Member Ojakian clarified the materials were bundled and sold from the Baylands Center.

Mr. Jackson said that was correct.

Council Member Ojakian asked what the difference would be in the single stream process.

Mr. Jackson said PASCO would transport the materials to a San Jose transfer station; it would then be transferred to the Castroville processing facility where they would bundle and market the materials.

Council Member Ojakian asked whether staff had pursued discussions with PASCO to study the Los Altos Treatment Plant (LATP) site and work out an arrangement where they would help purchase that property for Palo Alto, and allow them to continue the types of services they wanted.

Mr. Roberts said not in that context; however, looking at the LATP site would be one of the project alternatives to be considered in the upcoming EIR. On the downside, the LATP site was not large enough to accommodate all the required functions. The site could accommodate the recycling center, but it could not accommodate the household hazardous waste program, the composting program, and the recycling center together.

Council Member Ojakian said he believed the City still owed money on that piece of property, and asked whether the issue had been resolved.

Mr. Benest said no.

Council Member Ojakian said he understood the Single Stream program did not handle plastic bags and various cartons. He asked what happened to those materials.

Mr. Jackson said currently they were being collected at the recycling center. As the markets improved or as they were available, the materials were bundled and bagged. As for the single stream processing in Castroville, the bags got caught up in the sorting equipment. He understood there was a market for bags in North Korea, but that market was shaky and it was not known whether those materials were being recycled. Therefore, staff did not recommend that plastic bags and milk or juice cartons be implemented in the initial stages of the program.

Council Member Ojakian said his assumption was people would still include those items in their recycling bins.

Mr. Jackson said PASCO would continue to collect it at the recycling center.

Council Member Ojakian said it would be helpful to see what services the LATP site could handle.

Mr. Roberts said the total ESC proposal was for an 18-acre site, of which 10 acres was for composting, and 8 acres would accommodate the other activities. The net useable space on the LATP site was approximately 6.5 acres, which could fit a fairly good number of those programs.

**SUBSTITUTE MOTION:** Council Member Kishimoto moved, seconded by Freeman, to adopt Recommendations 2, 3, and 4, and to postpone Recommendation 1 until Council reviews and makes a decision on the Environmental Services Center (ESC).

Council Member Kishimoto said although she did not want to stand in the way of progress, especially if technology was allowing recycling to become more convenient; however, she was not totally convinced. She said the 12-month trial seemed meaningless. So much money had been spent on converting to the Single Stream program that it would be expensive to switch back. It would also be difficult for people to go back to the four-stream method. She believed it worked against local control over the long term. If the materials were carted to the Waste Management centers, the City would be dependent on specialized processing centers when they were accustomed to bundling it themselves. It also worked against the regional agreement with the SMaRT Station.

Council Member Freeman said she wanted to see a larger percentage of people recycling. She expressed her concern that Palo Alto would be further removed from the SMaRT Station MOU.

Vice Mayor Burch asked where the garbage would go after 2011.

Mr. Roberts said the garbage would continue to go to the SMaRT Station and Kirby Canyon.

Vice Mayor Burch asked where the yard waste would go.

Mr. Roberts said the yard waste would continue to go to the landfill and be processed for composting until 2011. After 2011, it was still to be determined.



Vice Mayor Burch asked whether or not yard waste would continue to be picked up.

Mr. Roberts said yard waste would be picked up; however, it was still undetermined where it would go. The landfill would close in 2011, and alternative provisions for the processing of yard waste would need to be made. Whether it involved providing a site to continue the City's composting program or sending it to the SMaRT Station in Sunnyvale, where it was chipped and shipped offsite and processed to partial composting in Gilroy.

Vice Mayor Burch asked if Palo Alto went to single stream containers was there a possibility the SMaRT Station would convert to making an investment to accept single stream.

Mr. Roberts said he did not believe so.

Council Member Mossar clarified a resident could take their recycling materials to the landfill or some other recycling center.

Mr. Roberts said yes. They could be brought to the drop-off center at the landfill until 2011 or taken to the SMaRT Station in Sunnyvale.

Council Member Mossar questioned if the recycling materials at the landfill would be separated or mixed.

Mr. Roberts said they would be separated.

Council Member Mossar said she regularly put five or more 32-gallon containers at curbside, frequently filled with Magnolia leaves from the City street trees. She understood the City would not allow her to remove the City trees, sweep the leaves into the street and reliably expect the street sweeper to pick them up, nor could she take composting materials to the landfill without paying commercial rates.

Mr. Roberts said the street sweepers were not able to pick up pile of leaves at the curb, but a leaf truck that processed them would pick them up. In addition, a Palo Alto resident could take their truck load of composting materials to the landfill and pay residential rates by showing their drivers license and identification with residential address.

Council Member Mossar said she had never seen a leaf truck, and asked whom she should contact.

Mr. Roberts said the leaf truck did not come on demand, but picked up piles of leaves on a regularly scheduled basis.

Council Member Mossar said the program was designed to increase recycling and perhaps it would. There were significant restrictions to the program, which would make it problematic.

Council Member Morton clarified a resident could have up to three containers, but not all of them had to be 96 gallons.

Mr. Jackson said that was correct.

Council Member Morton said a resident could have up to three 32-gallon containers if that was the size that worked for them.

Mr. Jackson said that was correct. The only caveat was the resident would have to show they used that number of containers on an ongoing basis and not just a one-time cleanup.

Council Member Morton said he wanted to reassure his colleagues he had seen the leaf trucks in his neighborhood and for most residents with Magnolia trees three of the smaller containers worked well.

Mr. Jackson said one 96-gallon container was equivalent to three of the smaller containers.

Council Member Morton expressed his support for the motion.

Council Member Kleinberg asked why the \$760,000 loss of revenue on an annual basis was not anything to worry about.

Mr. Roberts said it was a worse case scenario that looked at the gross operating costs per year of the program. However, staff believed virtually all of that cost would be offset by other factors. First, there would be a minor increase in revenues by virtue of the additional recoverable recyclables of approximately 13 percent, which would generate about \$50,000 per year in additional revenue.

Council Member Kleinberg asked whether that 13 percent was over and above the 10 percent that should not be recycled, such as plastics and cartons.

Mr. Roberts said yes. It was a net increase in recoverables. The biggest single factor was the reduction of those same materials going into the landfill. The City spent a total of \$77 per ton for every ton of material that was land filled in Palo Alto; the City of Sunnyvale charged \$32 per ton for processing it, and \$45 per ton to landfill it at Kirby Canyon. If the City achieved the 10 percent reduction (approximately 8,000 tons) in the amount

of land filled material, it would amount to over \$600,000 per year in cost savings.

Council Member Kleinberg asked whether it would extend the life of the City's landfill beyond its projection.

Mr. Roberts said most of the materials were currently going to Kirby Canyon. Council Member Kleinberg clarified the curbside cart for garbage was a 32-gallon sized cart with a liner inside, which reduced the contents to 20 gallons.

Mr. Jackson said that was correct.

Council Member Kleinberg asked what reasoning was used for doing it that way.

Mr. Jackson said to encourage people to reduce and use less waste.

Mr. Roberts said it also helped to standardize and minimize the number of carts. The industry standard was a 32-gallon cart.

Council Member Kleinberg asked whether accommodations or flexibility had been built into the program to deal with neighbors who had a problem with the plan or neighborhoods with significant restrictions.

Mr. Roberts said yes. The current contract with PASCO provided every residential property in the City a "once a year" clean up day for extra collection. Additionally, there was a rate schedule for extra pickups. Both programs would not change, as they were fundamental contract provisions. Palo Alto was trailing the industry with its current program, and to maintain that would require maintaining its own facility. Maintaining the current system of separate bins was an argument for having an ESC, and it was not what staff had recommended.

Council Member Kleinberg asked whether the idea of offering wheeled garbage carts would be required rather than optional.

Mr. Roberts said no. It was not staff's intent. The provision for side yard pickup of garbage was a fundamental contract tenet, which the City had with PASCO for the past 40 years. It was also in the recently renewed contract with PASCO and Waste Management. If the Council wanted to try and lower residential rates by providing automated pickup at the curbside, the contract could be renegotiated.

Council Member Kleinberg said she was part of the single stream pilot

program and was able to reduce the waste in her home by approximately 90 percent. She worked with staff on the Americans with Disabilities Act (ADA) issue in trying to get the bins placed on sidewalks in such a way that people who walk, use strollers, have trouble walking or use wheelchairs could pass by. She was sensitive the bins might not fit in someone's side setback, and hoped there could be a way to work with the residents. She expressed her support for the motion.

**SUBSTITUTE MOTION FAILED** 5-4, Cordell, Freeman, Kishimoto, Ojakian, "yes."

**MOTION PASSED** 5-4, Freeman, Kishimoto, Mossar, Ojakian "no."

7. Policy and Services Committee recommendation re Comprehensive Feasibility Study on Local Electric Power Generation Alternatives

Council Member Kishimoto said the Policy and Services Committee unanimously approved staff's recommendation to conduct a comprehensive feasibility study on local electric power generation alternatives. Staff committed to report back to the Council at the end of Phase I to see if it wished to continue to Phase II. The P&S Committee unanimously agreed that dedicated parkland would not be used for the electric power generation facilities.

Director of Utilities John Ulrich said the Utilities Advisory Commission (UAC) supported the study process. The City had come to the end of its long 40-year contract with the Federal government and should now consider alternatives that could be relied on for the long term. Part of staff's directive from Council was to look for low-cost, highly reliable energy to provide to the residents and businesses of Palo Alto. Instead of concluding that a power plant facility in Palo Alto was warranted or one that was close by, staff believed it was important to embark on a study and divide it into two phases. Local generation was worth evaluating because of economic reliability and sustainability. In the Long-Term Electric Acquisition Plan (LEAP), staff had already committed 20 percent to long-term renewables, but there was a need for a more sustained base resource that might not have the encumbrances and the costs associated with the transmission to bring power into the City. It also provided local control of energy costs and reliability.

Utilities Advisory Commissioner John Melton said the UAC focused on two main issues. First, there were a wide variety of alternatives out there for filling the City's energy needs, including bulk contracts and buying into an existing generation facility. Secondly, the focus was on the nature of the

study and whether there were any suitable sites in the City for a power plant.

Emily Renzel, 1056 Forest Avenue, said she did not object to looking at a 20-megawatt plant; however, she expressed concern about the Baylands as a possible site and appreciated that the P&S Committee's amended motion not include dedicated parkland. She suggested staff include photovoltaic as an option to natural gas. Natural gas was a diminishing resource and to make a capital improvement with a lifespan of approximately 40 years might not be wise.

Mayor Beecham said there was an aggressive newer renewables program including wind as well as other reliable sources of energy such as substantial hydro.

**MOTION:** Council Member Ojakian moved, seconded by Kishimoto, that the Policy and Services Committee recommends to the City Council to direct staff to undertake a Comprehensive Study, as part of the Long-Term Electric Acquisition Plan (LEAP), and to explore the feasibility of constructing electric generation facilities capable of serving a portion of Palo Alto's total electric load. Further, that dedicated parkland was not to be used for electric power generation facilities.

Council Member Kleinberg said the issue had been raised of possibly locating the power plant in a neighboring community such as East Palo Alto. She asked for reassurance the City would not exploit or take advantage of disadvantaged neighboring communities.

Mr. Ulrich said staff had not limited its research to just inside Palo Alto, but did want to take a comprehensive look at neighboring communities.

Council Member Kleinberg asked whether staff would be working with other communities as it evaluated those areas.

Mr. Ulrich said the real value of Phase I was the outreach and the communication aspect.

Council Member Morton said he understood staff would look at neighbors such as Stanford that had cogeneration issues and long-term energy.

Mr. Ulrich said staff would look at partnerships, various pieces of property, and not limit themselves anymore than necessary.

Vice Mayor Burch expressed his support for the motion, but wished the City would look at photovoltaic and solar alternatives. He believed it was shortsighted not to look further than a gas-fired plant.

Council Member Kishimoto clarified the staff recommendation said nothing about natural gas. It talked about exploring the feasibility of constructing electric generation facilities.

Mayor Beecham said the presumption was if a plant were built in Palo Alto, it would be a natural gas power plant. The other alternatives were not feasible within the city limits.

Mr. Ulrich said staff was recommending diversity with a large component of renewables with the LEAP program. It would be a base load plant of natural gas.

Council Member Freeman asked whether there was a huge cost differential between looking at photovoltaic and natural gas options.

Mr. Ulrich said yes. A storage facility would be required because the sun does not shine all the time. Staff had looked at renewables for wind and biomass, which were renewables that could be purchased at a reasonable price.

**MOTION PASSED** 8-1, Mossar "no."

#### COUNCIL COMMENTS, QUESTIONS, AND ANNOUNCEMENTS

Council Member Morton requested more information on the fee reduction program regarding community services when independent contractors are providing the service. There should be limitations where there were substantial outside costs.

Vice Mayor Burch said he recently visited Wildlife Rescue and was very impressed with the activities. He was advised they always needed young volunteers to feed the birds and squirrels.

Council Member Mossar advised she and Council Member Kleinberg received a letter from Peninsula Open Space Trust (POST) in thanks for helping to raise the public and private funds necessary for the City to purchase the Arastradero Preserve. POST also expressed appreciation to Greg Betts for the considerable time and effort expended by him in that regard. Roger Smith and Anne Cribbs were co-chairs of the private fundraising campaign to raise the remaining funds by October 2005.

Council Member Freeman requested that staff present an executive overview of agenda items when reports were voluminous and detailed, such as in the case of Item No. 5 that evening. She had questions regarding the Business Improvement District (BID), which she hoped would be considered for cost saving purposes. She would be with Council Member Kishimoto at Alma Plaza on Sunday, May 16, 2004 from 9 a.m. to noon for Sidewalk Hours.

ADJOURNMENT: The meeting adjourned at 10:55 p.m.

ATTEST:

APPROVED:

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City Clerk

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Mayor

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