

Special Meeting
July 19, 2004

1. Council/Council Appointed Officers Committee Facilitator Interviews58

ADJOURNMENT: The meeting adjourned at 7:05 p.m.58

ORAL COMMUNICATIONS59

1. Presentation of Award from National Association of Local Government Auditors59

APPROVAL OF MINUTES59

2. Resolution 8445 entitled "Resolution of the Council of the City of Palo Alto Authorizing the Submittal of an Application to the Bay Area Air Quality Management District for Funds for the Purpose Of Offsetting the Incremental Cost of a New Compressed Natural Gas Fueled Street Sweeper and Authorizing the Implementation of Same if the Application is Approved by the Bay Area Air Quality Management District Board of Directors"60

3. Resolution 8446 entitled "Resolution of the Council of the City of Palo Alto Expressing Appreciation to Kathleen Ann McKenna Upon Her Retirement"60

4. Appointment of Patrick Burt and Karen Holman to the Planning and Transportation Commission for Terms Ending July 31, 2008.....60

5. Request For Council Opposition to a Proposed Sales Tax Increase by the County of Santa Clara60

6. 800 High Street [04-PM-02]: Request by Palo Alto High Street Partners for a Final Map for Property Located at 800 High Street for the Development of a 60 Unit Condominium Project *(Item continued from 7/12/04 City Council meeting at the request of staff)*60

7.	Opportunity Center of the Mid-Peninsula Project at 33, 39 and 45 Encina Avenue.....	60
8.	Contract Between the City of Palo Alto and C. F. Archibald Paving, Inc. in the Amount of \$2,047,009 for the 2004 Street Maintenance Phase 2 Capital Improvement Program Project PE-86070	61
9.	Public Hearing: The City Council will consider a report and assessment of Weed Abatement.....	61
10.	Public Hearing: The City Council will consider awarding an option to lease to Crimson Palate, Inc., (d.b.a. Saffron Club Restaurant) for the city-owned property located at 445 Bryant Street, Palo Alto, commonly known as the non-parking area on the Lot S/L site. Terms of the lease include a 10-year term and the requirement that the property be used for restaurant and/or office/retail use <i>(Item continued from July 12, 2004)</i>	62
10A.	(Old Item No. 12) Conference with City Attorney - Potential/Anticipated Litigation Subject: Significant Exposure to Litigation on One Matter Authority: Government Code section 54956.9(b)(1) &(b)(3)(A)	72
11.	Utilities Advisory Commission Recommendation Regarding Fiber to the Home Financing Options.	72
	COUNCIL COMMENTS, QUESTIONS AND ANNOUNCEMENTS	76
	FINAL ADJOURNMENT: The meeting adjourned at 11:40 p.m.	76

Special Meeting
July 19, 2004

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

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

ABSENT: Kleinberg

SPECIAL MEETING

1. Council/Council Appointed Officers Committee Facilitator Interviews

No action required.

ADJOURNMENT: The meeting adjourned at 7:05 p.m.

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

Sascha Eisner, SEIU Local 715, spoke regarding a recent request of a newspaper for salary information.

SPECIAL ORDERS OF THE DAY

1. Presentation of Award from National Association of Local Government Auditors

Mayor Beecham acknowledged Sharon Erickson and her staff, who assisted with the 2003 audit.

No action required.

APPROVAL OF MINUTES

MOTION: Council Member Morton moved, seconded by Burch, to approve the minutes of June 21, 2004, as submitted.

MOTION PASSED 8-0, Kishimoto abstaining.

CONSENT CALENDAR

Council Member Cordell stated she would not participate in Item No. 7 because she was on the Board of the Community Working Group, which created and oversees the Opportunity Center.

Council Member Freeman registered a no vote on Item No. 8.

Assistant City Manager Emily Harrison said the Director of Planning and Community Environment Steve Emslie served in a non-salaried position on the InVision Board of Directors, a non-profit corporation, and decided not to participate in negotiating agreements or forming the staff recommendations for Item No. 7.

MOTION: Council Member Morton moved, seconded by Burch, to approve Consent Calendar Item Nos. 2-8.

LEGISLATIVE

2. Resolution 8445 entitled "Resolution of the Council of the City of Palo Alto Authorizing the Submittal of an Application to the Bay Area Air Quality Management District for Funds for the Purpose Of Offsetting the Incremental Cost of a New Compressed Natural Gas Fueled Street Sweeper and Authorizing the Implementation of Same if the Application is Approved by the Bay Area Air Quality Management District Board of Directors"
3. Resolution 8446 entitled "Resolution of the Council of the City of Palo Alto Expressing Appreciation to Kathleen Ann McKenna Upon Her Retirement"

ADMINISTRATIVE

4. Appointment of Patrick Burt and Karen Holman to the Planning and Transportation Commission for Terms Ending July 31, 2008
5. Request For Council Opposition to a Proposed Sales Tax Increase by the County of Santa Clara
6. 800 High Street [04-PM-02]: Request by Palo Alto High Street Partners for a Final Map for Property Located at 800 High Street for the Development of a 60 Unit Condominium Project *(Item continued from 7/12/04 City Council meeting at the request of staff)*



7. Opportunity Center of the Mid-Peninsula Project at 33, 39 and 45 Encina Avenue:
 1. Authorization for the Mayor to sign the following:
 - a. Loan Agreement for Opportunity Center Apartments, in the amount of \$750,000, with attached form of Note and Deed of Trust; and
 - b. Regulatory Agreement and Declaration of Restrictive Covenants for Opportunity Center Apartments; and
 - c. Loan and Regulatory Agreement and Declaration of Restrictive Covenants for Opportunity Center of the Mid-Peninsula - a Service Center in the amount of \$1,280,000, with attached form Note and Deed of Trust.
 2. Authorization for the City Manager to sign other necessary documents to implement the Loan and Regulatory Agreements for the Opportunity Center.

3. Approval of a new activity in the FY 2004-05 Community Development Block Grant (CDBG) annual action plan allocating of up to \$81,000 in CDBG funds for the City's cost of relocating high voltage electric lines from the project's frontage.



8. Contract Between the City of Palo Alto and C. F. Archibald Paving, Inc. in the Amount of \$2,047,009 for the 2004 Street Maintenance Phase 2 Capital Improvement Program Project PE-86070

MOTION PASSED 9-0, for Item Nos. 2-6.

MOTION PASSED 8-0, for Item No. 7, Cordell not participating.

MOTION PASSED 8-0, for Item No. 8, Freeman no.

Council Member Freeman explained regarding Item No. 8, she encouraged the investigation and report of findings by the Public Works Department of the use of appropriate permeable surfaces.

AGENDA CHANGES, ADDITIONS, AND DELETIONS

MOTION: Council Member Ojakian moved, seconded by Burch, to move the Closed Session forward ahead of Item No. 11 to become Item No. 10A.

MOTION PASSED 9-0.

PUBLIC HEARINGS

9. Public Hearing: The City Council will consider a report and assessment of Weed Abatement

Mayor Beecham said weed abatement notices had been provided according to the Palo Alto Municipal Code. He asked the City Clerk whether there was record of objections.

City Clerk Donna Rogers said there had not been objections.

MOTION: Council Member Ojakian moved, seconded by Morton, to approve the assessments for weed abatement.

Resolution 8447 entitled "Resolution of the Council of the City of Palo Alto Confirming Weed Abatement Report and Ordering Cost of Abatement to be a Special Assessment of the Respective Properties Herein Described"

MOTION PASSED 9-0.

07/19/04

98-61

UNFINISHED BUSINESS

10. Public Hearing: The City Council will consider awarding an option to lease to Crimson Palate, Inc., (d.b.a. Saffron Club Restaurant) for the city-owned property located at 445 Bryant Street, Palo Alto, commonly known as the non-parking area on the Lot S/L site. Terms of the lease include a 10-year term and the requirement that the property be used for restaurant and/or office/retail use *(Item continued from July 12, 2004)*

Manager Real Property Bill Fellman said direction from Council to staff was to find a tenant that would increase foot traffic on Lytton Avenue, would meet the permitted ground floor combination district uses, generate income to pay off the annual Certificates of Participation (COP) indebtedness, and would finance teen programs and parking assessment for the Barker Hotel. Staff felt the Saffron Club had submitted the best offer and would generate tax revenue.

Mayor Beecham declared the Public Hearing open at 7:23 p.m.

Sassan Golafshan, 203 Forest Avenue, said Form Fitness, one of the bidders for the property, offered programs for individuals of all ages and skill sets. Form Fitness had outgrown their current space and was looking for a larger facility to increase capacity.

Karen Mathon, 61 Lane Place, said Form Fitness was unique and a benefit to the community.

Fiona Nesbitt read a letter from Ken Brenner, which addressed the risks of opening a new restaurant.

Jeff Ramona said a high-end fitness center would benefit the community.

Kurt Atherton, 1960 Emory Street, San Jose, said the location was ideal for a fitness club site. The potential of 1,500 memberships could generate 500 users per day, which would produce foot traffic that would boost the economy.

Bahram Seyedin-Noor, 650 Page Mill Road, said the cost of the site being used as a restaurant versus a gym needed to be considered.

Mark Gagner said the Form Fitness proposal was more attractive financially for the City.

Roxy Rapp, P.O. Box 1672, said a fitness center would bring customers for the retailers.

Shahram Seyedin-Noor, 3000 El Camino Real, said the Form Fitness proposal would bring in more money for the City.

Paula Gooden, Casa Alta, said Form Fitness encouraged individuals of all ages to participate.

Hanh Vo, Santa Clara, said Form Fitness would be able to provide childcare to its members at the new location.

Scott Saslow, 152 Melville Avenue, said another restaurant was not needed in Palo Alto.

Herb Borock, P.O. Box 632, said a change in the economy could bring increased rent.

Allyssa, 10 Hawk View, Portola Valley, said Form Fitness was a place of support for teens and adults.

Martin Bernstein, P.O. Box 1739, said it was important to rent to the tenant that provided the least risk.

Tony Carasco, 4216 Darlington Court, said at the end of the ten-year lease, the Saffron Club would have invested a large sum of money into the infrastructure of the building.

Sal Giovanoto said the City should hire a realtor to handle the rental of the property.

Jan Kapoor, 5470 Mohuivy Side Road, San Jose, said the Saffron Club would become a destination Indian restaurant.

Jaime Arndt, 3442 Middlefield Road, said Form Fitness provided much more than an exercise club. There was warm-hearted interaction and concern for the well being of the members.

John McNellis, 310 Waverley Street, said a first class gym was needed Downtown.

Stephanie, 461 Fairfax Avenue, San Mateo, said teens were tolerated rather than welcomed at other gyms. Form Fitness encouraged everyone to participate.

Mike King, 225 University Avenue, said too many spaces had already been rented to restaurants. A fitness center was needed.

Peter Ziblatt said the City should behave like a landlord, maximize rents, and minimize upfront tenant improvement costs and on-going maintenance responsibilities.

Neeraj Bharadwaj said the failure rate was the same for retail businesses and fitness clubs.

Deepa Kapoor said she doubted the cost for membership at Form Fitness would be lower than Reach Fitness.

Sush Vij, 811 Channing Avenue, read the names of individuals who supported the staff recommendation and the Saffron Club.

Mark Gold, 1890 Guinda Street, said as a member of Form Fitness, he had never had so much fun.

Avni Shah said the community needed more places that improved our souls, bodies, and minds.

Norman Carroll, Emerson and University Avenues, said the decision should be based on what would most benefit the public.

City Employee Corey Preheim said she learned more about the culture and diversity of the Downtown area at the gym.

Sabena Puri, Chief Executive Officer of the Saffron Club, 786 W. Greenwich Place, said the vision was to redefine the food of south Asia and for the Saffron Club to become a destination restaurant.

Owen Byrd, 350 Hawthorne Avenue, said the Crimson Palate's proposal offered to pay the highest rent, had confirmed stable financials, would generate sales tax, and had succeeded in winning staff's recommendation.

Mayor Beecham declared the Public Hearing closed at 8:45 p.m.

Council Member Mossar asked staff about the financials provided by the Form Fitness advocates.

Director of Administrative Services Carl Yeats said the goal was to cover the General Fund portion of the expense for the Certificates of Participation (COP) for the lease space.

Council Member Mossar asked about the tenant improvements issue.

Mr. Fellman said the Saffron Club's improvements were more expensive, but benefited the building.

Council Member Mossar asked staff about the downtown parking problems for restaurant employees who were not provided permits and retailers who needed space for their clients.

Mr. Fellman said there had not been a discussion whether the tenant would provide parking for their employees.

Council Member Mossar said there was a large problem for service workers parking Downtown. The City would be a landlord, but also had responsibilities to the neighborhoods, to the mix of businesses, and to provide adequate parking in all economic times.

Deputy Director of Administrative Services Joe Saccio said the square footage had been taken into account in the overall assessment district.

Council Member Mossar said the problem was that service employees parked on the streets in front of retailers, which used customer parking spaces.

Mayor Beecham asked about the amount of sales tax revenue from a restaurant versus a health club.

Mr. Fellman said a restaurant would provide \$14,000 to \$18,000 per year. Service oriented contracts would not generate sales tax.

Mayor Beecham asked how much new sales tax would be generated by the restaurant versus the sales tax lost from the other restaurants.

Mr. Fellman said it was not known.

MOTION: Vice Mayor Burch moved, seconded by Ojakian, to approve the staff recommendation to authorize the Mayor to execute the option to lease with Crimson Palate, Inc., d.b.a. Saffron Club Restaurant, for the 7,410 square foot office/retail space in the non-parking area of the Lot S/L site, 445 Bryant Street.

Vice Mayor Burch noted the City issued a Request for Proposal (RFP) and the higher bid was accepted.

Council Member Ojakian agreed with Vice Mayor Burch. Monies generated by the leasing of the space could be re-invested into teen programs.

Council Member Kishimoto asked whether the timing of the initial rent payment was taken into consideration.

Mr. Fellman said the Saffron Club anticipated opening in December and would pay rent when they opened their doors.

Council Member Kishimoto said there was a potential difference of \$320,000.

Mr. Fellman said there was no difference if their doors opened in December.

Council Member Kishimoto asked whether that was the assumption.

Mr. Fellman confirmed.

Council Member Kishimoto asked about the criteria for selection and whether it was included in the RFP.

Mr. Fellman said the Council had set up the zoning, which allowed for eating and drinking, personal services, retail services, and travel agencies. Financial service providers were excluded.

Council Member Kishimoto asked whether the RFP explicitly stated the criteria for selection.

Mr. Fellman said it had.

Mr. Yeats said the criterion was for the City to meet the obligation of the bond financing. The tenant proposals rejected were financial services.

Council Member Kishimoto said economically the two proposals were not that different.

Mr. Fellman said they were not that different over the ten-year period. In the first years, there was a significant difference. The obligation to pay the bond was \$320,000 per year.

Council Member Kishimoto asked whether the staff's intention to broadcast only the financial criteria would exclude her ability as a Council Member to consider other factors.

Mr. Yeats said as a Council Member she could approve staff's recommendation or reject all bidders and go through the process again.

Mayor Beecham asked for clarification of Mr. Yeat's response to Council Member Kishimoto.

Mr. Yeats said the City had gone through the process and selected the best proposal based on the criteria given to staff from the Council when the process began.

Council Member Kleinberg asked the City Attorney to clarify the Council's two choices: 1) to accept the staff proposal; or 2) reject everything and start over again. Her suggestion would be to pick one of the other bidders based on the staff's criteria. She asked whether there was a possibility of litigation if one of the two options were not chosen.

City Attorney Baum said he did not believe there would be the possibility of litigation.

Council Member Kleinberg asked whether the bid process excluded the Council from accepting less than the top financial bid.

Mr. Baum said the Council could direct staff to return to negotiate a lease based on the terms presented by the other bidder. He noted the Council would then be moving away from the approved process.

Council Member Morton stated Mr. Yeats said he had only focused on the cash flow for paying the bond. He added there was also a cash-out flow in the initial period for improvements.

Mr. Yeats said there was \$99,000 difference over a ten-year period, and there were no major cash flow differences in the first year. The tenant improvements would come out of the bond proceeds and would not be part of the calculation of what the cash flow would be on an annual basis to meet the debt payments. The Saffron Club had the better proposal.

Council Member Morton said the bids were close and were being amortized over the entire bond period. There was the original cost and the interest.

Mr. Yeats confirmed.

Council Member Kishimoto asked if the Council was obligated by the process to accept the top bid and why was it brought to Council.

Mr. Yeats said Council was the body that approved the lease agreement.

City Manager Frank Benest said for clarification, Council established the criteria and authorized staff to go through the process. An RFP was issued based on the Council approved criteria.

Council Member Kishimoto said she would accept the staff recommendation.

Council Member Freeman asked whether the option of not paying six-months rent was an industry standard.

Mr. Fellman said it was not.

Council Member Freeman said if it was not an industry standard, would there legally be an option to return and re-evaluate the next highest bidder.

Mr. Baum said the highest bidder had put in a formal bid with certain proposals and terms, which could not be changed. The Council could only accept or reject the bid.

Council Member Freeman said she would make a separate motion directing staff to investigate funds for teen and youth services not currently being funded. She asked whether the financial analysis that showed the difference of the \$26,000 over ten years or \$300,000, included the taxes, tenant improvements, or the five to six months of no rent.

Mr. Yeats said it did not.

Council Member Freeman asked what the difference would be if the items were included.

Mr. Yeats said the annual potential sales tax could be \$15,000 to \$20,000 per year.

Council Member Freeman said the increase in value of the property made by improvements would need to be included.

Mr. Yeats said the next user would utilize any improvements made such as air conditioning, elevator, and the space.

Council Member Freeman asked the ratio of what the Saffron Club would pay and what the City would pay. She noted the Saffron Club was partially paying for the improvements. If there were a change of tenants or ownership, the City would benefit from the improvements.

Mr. Fellman confirmed. The City was paying for \$40 dollars per square foot and the Saffron Club estimated the cost would be \$120-\$150 per square foot.

Council Member Kleinberg asked for clarification of the 2001 Council's approval of the criteria. She questioned whether the Council approved the eligibility categories.

Mr. Fellman confirmed the Council had approved the eligibility categories.

Council Member Kleinberg said the eligibility categories had been approved in 2001, not the criteria. She asked whether there was prohibition against sub-leasing.

Mr. Fellman said there was no prohibition.

Council Member Kleinberg asked whether either proposal planned to sub-lease.

Mr. Fellman said the Saffron Club planned to sub-lease.

Council Member Kleinberg asked how much they planned to sub-lease. She also asked whether the City staff took into account who the sub-lessees were and how much of the rent would be contingent on financially competence and sustainable sub-leases.

Mr. Fellman said the Saffron Club had assumed all the rent responsibilities.

Council Member Kleinberg asked whether the associated sub-lease numbers had been reviewed by City staff.

Mr. Fellman said the sub-lease numbers would be looked at when the sub-tenants were approved.

Council Member Kleinberg said the numbers were based on an assumption that the main lessee would be sub-leasing to substantial sub-lessees to meet the financial goals.

Mr. Fellman said it was based on the Saffron Club paying the rent for the entire facility.

Council Member Kleinberg said legally it was known who was responsible, but economically and financially it was not known where the money would come from.

Mr. Fellman said it was known. He noted those who proposed for partial leasing of the facility would have been approved on an individual basis. The names had been given to the Saffron Club.

Council Member Kleinberg asked whether the Saffron Club knew in advance they would not be able to support the entire lease amount.

Mr. Fellman said the Saffron Club would support the entire rental. Names had been given to them of individuals who would be interested in a portion of the facility.

Council Member Kleinberg asked whether the Saffron Club had indicated in the bid process they were not going to use the entire space.

Mr. Fellman said they had indicated they would not use the entire space.

Council Member Kleinberg noted the two proposals had pros and cons. She felt a restaurant was a risky enterprise as there were a large number of restaurants that had opened and closed in the downtown area. She said the fitness club would fill a community need and would benefit youth with their services.

Council Member Morton said the bids of the two candidates who desired the same space owned by the City should be reassessed. The decision was what would be best for the City in the long term.

SUBSTITUTE MOTION: Council Member Morton moved, seconded by Mossar, to reject staff's recommendation and direct staff to return with a lease for the Form Fitness Club.

Council Member Mossar said as a landlord, the City should not add another restaurant Downtown.

Council Member Cordell said it was important that income be generated. There was an obligation to those who live and work in the City and said she supported the substitute motion.

Mayor Beecham said both options presented risks to the City. Staff had been told the primary criterion was cash flow to help fund the Teen Club. The better offer for the City, would be the Form Fitness Club, and he would support the substitute motion.

Council Member Freeman asked about the funding for the teen programs. She asked if the \$77,000 was for the Saffron Club or for either.

Mr. Fellman said it would be for the Saffron Club.

Council Member Freeman asked what it would be for Form Fitness.

Mr. Fellman said it would be less. Form Fitness would not break even until the seventh year.

Council Member Freeman asked when the Saffron Club would break even.

Mr. Fellman said the Saffron Club would break even in the sixth year.

Council Member Morton said the choice was for a tenant that would be best for the community.

Council Member Kishimoto said she would support the substitute motion because the overall impact on the Downtown community needed to be taken into consideration.

Council Member Ojakian asked Mr. Baum whether it would be possible in a lease agreement to place a quota on the type of users that would use the facility, such as teens.

Mr. Baum said the lease was based on terms already in place. There could be voluntary agreements or conditions reached. He added the applicant could make a commitment to the City and to the Council on the issue.

Council Member Ojakian said Council Member Morton spoke strongly about the matter and said he would support asking staff to work with the applicant.

AMENDMENT: Council Member Ojakian moved, seconded by Freeman, to direct staff to work with the applicant to create an arrangement for up to one-third membership to be designated for teens and younger.

Council Member Freeman said she would be open to flexibility in the one-third-membership number.

Council Member Morton said a portion of the usage should not be segregated.

Council Member Kleinberg said the amendment created a classification and the business plan should not be changed.

Council Member Ojakian said it was a mistake for the Council to politicize a bid process, and he would not support the motion.

Council Member Kishimoto said Council Member Ojakian's motion was to ask staff during the option period to negotiate as many community benefits as possible. She would support Form Fitness because of the verbal commitment made to serving the youth.

Vice Mayor Burch cautioned his colleagues that changing the bid process would set precedence.

AMENDMENT FAILED 3-6, Freeman, Kishimoto, Ojakian yes.

SUBSTITUTE MOTION PASSED 6-3, Burch, Freeman, Ojakian no.

CLOSED SESSION

The meeting adjourned at 10:07 p.m. to a Closed Session.

10A. (Old Item No. 12) Conference with City Attorney - Potential/Anticipated Litigation Subject: Significant Exposure to Litigation on One Matter Authority: Government Code section 54956.9(b)(1) &(b)(3)(A)

The City Council reconvened at 10:27 p.m. to the regular meeting.

The City Council met in Closed Session to discuss matters concerning potential/anticipated litigation as described in Agenda Item No. 10A.

Mayor Beecham announced there was no reportable action.

UNFINISHED BUSINESS

11. Utilities Advisory Commission Recommendation Regarding Fiber to the Home Financing Options.

Council Member Mossar stated she would not participate in Item No. 11 due to family holdings of telecommunications stock.

Council Member Ojakian stated he would not participate in Item No. 11 due to family holdings of telecommunications stock.

Council Member Morton stated he would not participate in Item No. 11 due to family holdings of telecommunications stock.

Director of Utilities John Ulrich said the recommendation was to stop the consideration of the financing options discussed. Financing methods of other California jurisdictions would be monitored until another viable financing method emerged. He felt the Fiber to the Home (FTTH) trial should continue for one year.

Deputy Director of Administrative Services Joe Saccio spoke about the financing options for FTTH: a) a utility revenue bond; b) a private placement bond; c) certificates of participation; d) an enterprise fund with a special

tax; and e) a property related fee. The Utility Advisory Commission (UAC) requested staff to research other municipal jurisdiction's financing options and how they were approached. The UAC recommended an advisory vote not be placed on the November 2004 ballot. Consideration of further FTTH action should be stopped until a viable financing option emerged. Guidance should be sought from the investment banking community on possible financing options. The FTTH trial should continue.

Council Member Cordell asked how much it would cost to continue the trial for a year.

Manager of Utilities Telecommunications Blake Heitzman said the trial cost was \$36,000 per year and the revenue from the trial was \$60,000 per year.

Council Member Cordell asked for the dollar amount it would cost the City.

Mr. Heitzman said the City would break even or better.

Bob Evans, 812 Gailen Avenue, said he hoped the FTTH trial project would not be canceled.

Wayne Martin, 3687 Bryant Street, said the FTTH trial project should end. The SBC system was reliable and cost-effective. The City would not be able to compete with the larger broadband providers.

Herb Borock, P.O. Box 632, said the recommendations of the UAC and staff should be rejected. Staff should be directed to seek public money at the state and federal level and report back to a date certain.

Sanford Forte said he supported the trial. Local goals for communication use need to be researched.

Bob Smith, 2291 Greer Road, said the technology marketplace was fast moving and dynamic. The effort to expand a new business needed to be stopped if the City did not have a sense of value of the enterprise.

Robert Moss, 4010 Orme Street, said the FTTH trial should be continued and expanded. He urged the City to find a way to finance the system.

Michael Eager, 1960 Park Boulevard, encouraged the Council to continue the FTTH trial. Other options for financing needed to be considered.

Marvin Lee, 1241 Harker Avenue, said there was an effort to acquire pledges of \$1,200 for hookups of FTTH.

Arthur Keller, 3881 Corina Way, said community members should be surveyed to find out who would consider hooking up FTTH for \$1,200.

Hilda Weisberg, 1051 Channing Avenue, said she was actively working in the community to determine if individuals would be supportive of investing \$1,200 for FTTH.

Utilities Advisory Commissioner George Bechtel said proposals of financing should be solicited. The FTTH trial should continue to show potential investors there was an operating system.

Vice Mayor Burch asked the Utilities Advisory Commission (UAC) whether they had a position regarding additional subscribers being encouraged in the FTTH trial.

Mr. Bechtel said that had not been discussed.

MOTION: Council Member Kishimoto moved, seconded by Freeman, to approve the Utilities Advisory Commission's recommendation to: 1) Not place an advisory vote on the November 2004 ballot; and 2) Continue with the FTTH trial for one year with an evaluation on whether to continue the trial at that time. Further, to direct staff to return in six to nine months with three points of instruction: reduce financial exposure to the City; investigate a collaborative and proactive approach to addressing legislative regulatory and financial matters with other interested municipalities; and look into possible new strategies and recommendations.

Council Member Kishimoto said long-term financing would be difficult to acquire and alternative technologies should be investigated to save the cash flow. The financial risk needed to be reduced to a reasonable level. A modified fiber-plus proposal would allow the City to stay economically competitive. The risk of investment into the next utility needed to be carefully managed.

Council Member Freeman said there were many different options available. Financial exposure could be reduced by requesting staff to return to Council with options that included associated risk analyses.

Vice Mayor Burch said he supported the motion.

Council Member Cordell asked whether the City should undertake FTTH as an enterprise. Future financing options should be explored if they arise. There were many other priorities that needed to be focused on.

SUBSTITUTE MOTION: Council Member Cordell moved, seconded by Kleinberg, to support the staff recommendation to: 1) Halt consideration of

the financing options discussed to date and, instead, monitor the financing methods and results of other California jurisdictions until such time as a viable financing option emerges; and 2) Continue the FTTH trial for one year with an evaluation on whether to continue the trial at that time. Further, to add a condition that it would not cost the City any money.

Mayor Beecham said staff had researched all options to date. He would support the substitute motion.

Council Member Kishimoto said in a developing market it was essential to explore partnerships to for a favorable regulatory and legal environment.

Council Member Freeman said she agreed with Council Member Cordell that there were current issues. FTTH was a forward thinking, revenue generating option. The direction for staff to return in six to nine months was reasonable.

SUBSTITUTE MOTION PASSED 4-2, Freeman, Kishimoto no, Morton, Mossar, Ojakian not participating.

Council Member Freeman asked whether specific information could be extrapolated from the public polls.

Mr. Heitzman said that information was not available.

MOTION: Council Member Freeman moved, seconded by Kishimoto, to conduct a web based survey to determine local goals for communications, find information on price sensitivity of the public to pay for multiple fiber services, and willingness to pay for the last mile of FTTH.

Council Member Freeman said there was no scientific information available to the Council of the propensity of the public to accept FTTH. A web-based survey could provide the needed financing information.

Council Member Kishimoto asked the cost of a web-based survey.

Council Member Freeman said the cost of a recent on-line survey was approximately \$5,000.

Council Member Kleinberg asked for the cost of staff's hours required for the follow-up on the motion.

Mr. Ulrich said it would not be a small item to complete.

Council Member Kleinberg noted it would take longer than an hour to complete.

MOTION FAILED 2-4, Freeman, Kishimoto yes, Morton, Mossar, Ojakian not participating.

COUNCIL COMMENTS, QUESTIONS AND ANNOUNCEMENTS

Council Member Freeman mentioned she would like staff to look into using goats for weed abatement.

FINAL ADJOURNMENT: The meeting adjourned at 11:40 p.m.

ATTEST:

APPROVED:

City Clerk

Mayor

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