

ORAL COMMUNICATIONS3

APPROVAL OF MINUTES3

1. Ordinance 4839 entitled "Ordinance of the Council of the City of Palo Alto Amending Exhibit A-17 and Map to Exhibit A-17 to Section 22.08.210 of Chapter 22.08 of Title 2 of the Palo Alto Municipal Code Correcting the Boundaries of Rinconada Park and Adjoining City Property Adjacent to the Junior Museum and Zoo and Girl Scout Building" (*1st Reading 08/09/04 Passed 7-0, Freeman, Ojakian absent*)4

2. The Finance Committee Recommends the City Council Adopt the Resolution Approving a Request for Assignment of Palo Alto's Base Resource Percentage to Northern California Power Agency 04-SNR-00XXX with the United States Department of Energy, Western Area Power Administration4

3. Adoption of a Resolution to Change Utility Rate Schedule C-1 "Utility Service Calls" Effective 9/13/044

4. The Finance Committee Recommends to the City Council Approval of the Following Six Gas Utility Long-Term Plan (GULP) Recommendations:4

5. Agreement Between the City of Palo Alto and the City of Morgan Hill for Information Technology Services in the Amount of \$150,0005

6. Professional Services Agreement Between the City of Palo Alto and Geodesy in the Amount of \$130,000 for Development Support of New Computer Applications Linked to the Geographic Information System (GIS)5

8. Response to 2003-04 Santa Clara County Civil Grand Jury Report, Inquiry into the Board Structure and Financial Management of the Valley Transportation Authority5

9.	Cancellation of November 1, 2004 City Council Meeting	5
10A.	Appointment of Judith Wasserman as the City's Representative to the VTA Valley Transportation Plan Design Enhancement Committee	5
11.	Endorsement of the Blue Ribbon Storm Drain Committee's Recommendations for Storm Drain Funding and Direction to Pursue a Storm Drainage Fee Election in February/March 2005	5
12.	Request to Preliminarily Approve 2003-04 Reappropriation Requests....	12
13.	Colleagues Memo from Mayor Beecham and Council Member Mossar re	13
13A.	(Old Item No. 10) Three-Year Agreement Between the City of Palo Alto and the United States Geological Survey in the Amount of \$186,000 for San Francisco Bay Monitoring	16
13B.	(Old Item No. 7) Award of Option to Lease to JSRFIT, L.L.C., D.B.A. Form Fitness Health Center at Lot S/L Site Non-Parking Area, 445 Bryant Street	17
14.	Conference with City Attorney -- Potential/Anticipated Litigation.....	19
	FINAL ADJOURNMENT	20

The City Council of the City of Palo Alto met on this date in the Council Chambers at 7:01 p.m.

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

ORAL COMMUNICATIONS

Moose Wesler spoke on art studios at Cubberley.

Marquerite Fletcher thanked the Council for use of artists' studios at Cubberley.

Becky Swanson, teacher at the Junior Museum, spoke regarding recognition of hourly workers in Palo Alto.

Arlyn Sharpe, Library System, spoke regarding recognition for Palo Alto hourly workers.

Lynn Krug, Water Gas Wastewater Inspector, spoke regarding recognition for Palo Alto's temporary hourly employees.

Gail Sredanovic, Peninsula Chapter, Womens' International League for Peace and Freedom, spoke in support of hourly workers' recognition.

Monsignor Eugene Boyle, Santa Clara Interfaith Council of Religion, supported the rights of workers to organize and form unions.

Lois Salo, Womens' International League for Peace and Freedom, spoke regarding the SEIU organizing committee.

Wayne Swan, 240 Kellogg Avenue, spoke regarding his ten recommendations for Palo Alto projects.

APPROVAL OF MINUTES

Assistant City Clerk Deanna Riding requested the minutes of August 2, 2004, be removed from the agenda.

MOTION: Council Member Morton moved, seconded by Cordell, to approve the minutes of July 19 and August 9, 2004, as submitted.

MOTION PASSED 9-0 for the July 19, 2004 minutes.

MOTION PASSED 8-1 for the August 9, 2004 minutes, Freeman abstaining.

CONSENT CALENDAR

Council Member Ojakian moved, seconded by Kleinberg, to remove Agenda Item No. 7 to become Item No. 13A.

Council Member Freeman moved, seconded by Cordell to remove Agenda Item No. 10 to become Item No. 13B.

MOTION: Council Member Morton moved, seconded by Mossar, to approve Consent Calendar Item Nos. 1-6 and 8, 9 and 10A.

LEGISLATIVE

1. Ordinance 4839 entitled "Ordinance of the Council of the City of Palo Alto Amending Exhibit A-17 and Map to Exhibit A-17 to Section 22.08.210 of Chapter 22.08 of Title 2 of the Palo Alto Municipal Code Correcting the Boundaries of Rinconada Park and Adjoining City Property Adjacent to the Junior Museum and Zoo and Girl Scout Building" *(1st Reading 08/09/04 Passed 7-0, Freeman, Ojakian absent)*

2. The Finance Committee Recommends the City Council Adopt the Resolution Approving a Request for Assignment of Palo Alto's Base Resource Percentage to Northern California Power Agency 04-SNR-00XXX with the United States Department of Energy, Western Area Power Administration

Resolution 8456 entitled "Resolution of the Council of the City of Palo Alto Approving a Request for Assignment of Palo Alto's Base Resource Percentage to Northern California Power Agency 04-SNR-00XXX with the United States Department of Energy, Western Area Power Administration"

3. Adoption of a Resolution to Change Utility Rate Schedule C-1 "Utility Service Calls" Effective 9/13/04

Resolution 8457 entitled "Resolution of the Council of the City of Palo Alto Amending Utility Rate Schedule C-1 of the City of Palo Alto Utilities Rates and Charges Pertaining to Service Calls"

ADMINISTRATIVE

4. The Finance Committee Recommends to the City Council Approval of the Following Six Gas Utility Long-Term Plan (GULP) Recommendations:

1. Do not contract for natural gas storage capacity at this time.

2. Do not acquire additional natural gas pipeline capacity at this time.
 3. Approve staff undertaking initial steps related to gas reserve acquisition including:
 - a. Identifying and evaluating potential consortiums including joint action opportunities;
 - b. Entering into consortium agreement to scout properties;
 - c. Through the consortium, employing an investment bank and consultants to scout properties and spend up to \$65,000 in FY 04-05 related to this effort; and
 - d. Through the consortium, identifying attractive, feasible opportunities.
 4. Do not participate in a gas prepay deal at this time.
 5. Pursue any low-cost, high-value prospects to acquire supply-related resources that may arise from time to time.
 6. Develop comprehensive demand-side management goals and implementation plan by Fall 2004 in time for incorporation into FY05-06 and future ratemaking and budget decisions. In the interim, continue implementation of current and planned FY 04-05 demand-side management programs.
5. Agreement Between the City of Palo Alto and the City of Morgan Hill for Information Technology Services in the Amount of \$150,000
 6. Professional Services Agreement Between the City of Palo Alto and Geodesy in the Amount of \$130,000 for Development Support of New Computer Applications Linked to the Geographic Information System (GIS)
 8. Response to 2003-04 Santa Clara County Civil Grand Jury Report, Inquiry into the Board Structure and Financial Management of the Valley Transportation Authority
 9. Cancellation of November 1, 2004 City Council Meeting
 - 10A. Appointment of Judith Wasserman as the City's Representative to the VTA Valley Transportation Plan Design Enhancement Committee

MOTION PASSED 9-0.

REPORTS OF OFFICIALS

11. Endorsement of the Blue Ribbon Storm Drain Committee's Recommendations for Storm Drain Funding and Direction to Pursue a Storm Drainage Fee Election in February/March 2005

Director of Public Works Glenn Roberts said staff agreed with the recommendations from the Storm Drain Committee. The initial Capital Improvement Projects (CIPs) totaled 17 million dollars and were proposed to be implemented over a 12-year period. The program would increase the Storm Drainage fee by \$5.75 or \$10 per month per residence. Pictures of the locations of the CIPs and a map were shown. If the Council concurred, staff would return in December to request an ordinance for adoption authorizing an election process, which would be certified in April 2005.

Larry Klein, Blue Ribbon Storm Drain Committee, said because the City was paying its share of the Storm Drain fees upfront, more projects would be completed in the first few years.

Richard Alexander, 435 Santa Rita Avenue, asked why money had not been spent annually to maintain the storm drains. Taxpayers should not be asked to make contributions to an enterprise fund.

Elliott Bolter, 286 Walter Hays Drive, asked the Council to address how the General Fund was distributed.

Herb Borock, P.O. Box 632, said residents would not vote for projects that did not benefit their neighborhood. Each neighborhood should pay for its own work.

Gary Lindgren, 585 Lincoln Avenue, asked whether the project to place a trunk line down Lincoln Avenue would include catch basins.

Joan Larrabee, 777 San Antonio Road, said the current storm drains were not a complete system and were in need of repair. The additional \$69 increase per year for the Storm Drain project was a small price to pay to avoid flooding.

Bob Moss, 4010 Orme Street, said the entire community should support any fee or tax that helped a specific neighborhood.

MOTION: Council Member Morton moved, seconded by Burch, to approve the staff recommendation to: 1) Endorse the recommendations of the Blue Ribbon Storm Drain Committee; and 2) Direct staff to pursue a property owner election in February/March 2005 for approval of an increase in the monthly Storm Drainage Fee to \$10.00 per Equivalent Residential Unit (ERU) to fund the proposed enhanced storm drain program.

Council Member Morton said the residences that benefited from the project should share the cost. He felt it was time to take an antiquated system and attempt to add enhancements.

Vice Mayor Burch said it was an excellent idea for the City to pay up front. The project would benefit the entire City.

Council Member Kishimoto asked staff how integral was the repair of damaged curbs and gutters to the solution of the problem. Damaged gutters were the most common source of resident complaints regarding poor drainage.

Mr. Roberts said it was decided the curb and gutter element would not be included in the first phase. There were other resources available in the street and sidewalk programs to repair curbs and gutters.

Council Member Kishimoto asked whether preventative work on curb and gutters could be made out of the \$2,000,000 street maintenance budget and still remain within the budget.

Mr. Roberts said he did not recommend a significant diversion of the street maintenance budget be removed and put into curb and gutter work.

Council Member Cordell asked why it was thought the electorate would vote in favor of the Storm Drain fee increase.

Mr. Roberts said the sunset clause addressed a major concern; there was a Citizens Oversight Review Committee to ensure the funds would be spent efficiently; there was the Blue Ribbon Task Force; and also the participation of interested members of the public.

Mayor Beecham said the initial proposal did not clearly define the projects, and the current proposal was more definitive.

Council Member Freeman said the cost was reduced because the public was borrowing funds from the City without interest or debt financing.

Council Member Cordell asked whether there had been a survey to determine the mindset of the electorate.

Mr. Roberts said no formal survey had been conducted.

Council Member Cordell said the Council should take a leadership role in an aggressive campaign to promote the Storm Drain Funding to the community.

City Attorney Gary Baum said there were limitations to what the City or the Council could do in an election. As individuals, Council Members could do what they wanted. The Council was limited to providing information to the public, as opposed to advocacy.

Council Member Ojakian said there were laws restricting the activity of the Council.

Mr. Baum said the law restricted advocacy by the City or the City Council.

Council Member Ojakian asked about the catch basins around Lincoln Avenue.

Mr. Roberts said all of the new storm drains and lines would include inlets, catch basins, and additional drainage capacity.

Council Member Ojakian said it would be difficult to pass the legislation.

Council Member Kleinberg asked about the General Fund's \$800,000 direct subsidy to the Storm Drainage Fund, which would be eliminated.

Director of Administrative Services Carl Yeats said the money would be returned to the General Fund. The \$800,000 was transferred out of operations in the General Fund each year to support the Storm Drain Fund. Therefore, the money would not transfer.

City Manager Frank Benest said the funds could be used for other needed operational or infrastructure capital improvements.

Council Member Kleinberg asked about the opportunity cost for prepayment.

Mr. Yeats said if there was a prepayment, an amount of money in interest would be lost if a loan were created for the Storm Drain Fund. The City would not pay the inflationary growth in the storm drain rate over the 12 years because there would be a lump sum payment. The General Fund's reserves would be drawn down, and the City would lose what would have been earned.

Council Member Kleinberg asked for the financial bottom line.

Mr. Yeats said the Budget Stabilization Reserve would be brought below the 18.5 percent level. Surplus funds from operations would go back into the Stabilization Reserve.

Council Member Kleinberg said it was time to move forward, make the environment safer, and protect community property.

Council Member Freeman said the fee charged would begin at \$10 and climb to \$14.26 over the 12 years. She asked about the sunset clause.

Mr. Roberts said \$14.26 was an estimate based on the potential inflationary increases of 3 percent per year. The sunset clause was structured to return to the current \$4.25 per residence per month at the end of 12 years.

Council Member Freeman said there was approximately \$883,000 per year in maintenance in the plan, and \$500,000 per year would be spent on storm drain infrastructure repair.

Mr. Roberts said maintenance was the cleaning of the lines, which included removal of sediment, debris and leaves. Repairs were refurbishing deterioration of the lines.

Council Member Freeman asked whether the two values were higher than what was currently budgeted.

Mr. Roberts said it was approximately \$100,000 per year increase in maintenance and \$500,000 per year increase in repairs.

Council Member Freeman asked whether there were Proposition 218 issues when fees were collected in areas where there were no direct benefits.

Mr. Baum said it was consistent with Proposition 218. There was a concept of Citywide benefits.

Council Member Freeman said she had concerns that the Rate Stabilization Reserve had been removed and suggested it be included in the solution.

Mr. Roberts said it would take an increase of another dollar to include a Rate Stabilization Fund.

Mr. Yeats said in order to establish a Rate Stabilization Reserve, a policy would need to state the low and high parameters.

Council Member Freeman said there was a General Fund distribution issue. It was important to have a reserve.

AMENDMENT: Council Member Freeman moved, seconded by Kishimoto, to increase the proposed rate increase by \$1 for the specific purpose of establishing a Reserve Fund.

Council Member Morton asked whether the fee could be adjusted in the future.

Mr. Roberts said a formal action would need to return on December 6, 2004, for Council's approval to set parameters of the election.

City Manager Frank Benest said staff would return with more information, and the Council would have another opportunity to make changes.

Council Member Morton said before an election, the City should be clear to identify what was considered information. The information should not be considered advocacy because it was positive.

AMENDMENT WITHDRAWN BY MAKER AND SECONDER

Mr. Baum said he would provide a memorandum to the Council and to staff. There was a distinction between advocacy and providing information. There were no prohibitions to providing information via the City and the City Council. As individuals, a Council Member could, with their own campaign committee, be for or against.

Assistant City Manager Emily Harrison said in order to have an election in February or March, the Committee would need a solid proposal in a timely manner.

Council Member Morton said he would decline adding to the fee.

AMENDMENT: Council Member Morton moved, seconded by Freeman, to consider a second measure to request additional monies for gutters and curbs.

Council Member Freeman asked whether there was a cost difference to have one item versus two items on the ballot.

Ms. Harrison said she did not believe there would be a cost difference.

Council Member Mossar said storm drains meant property, transportation, and natural resource protection. Upgrades were needed for clean water, the bay, and creeks.

Mayor Beecham said his goal was to invest in infrastructure. The current proposal had a defined timeframe, projects, and contribution. He felt, as individuals, the Council Members needed to campaign for storm drains and to explain the necessity for them.

Council Member Cordell said it was still unknown what residents' thoughts were on the subject. She queried whether the timeframe to adjust the proposal was until December.

Ms. Harrison confirmed.

Council Member Cordell asked whether there should be focus groups for awareness of the public sentiments.

Ms. Harrison suggested using the web to engage the public on the storm drain issue.

Council Member Morton believed a second measure on the ballot would lower the chance of passage.

AMENDMENT WITHDRAWN BY MAKER AND SECONDER

City Manager Frank Benest said political consultants suggested keeping the measures clean and clear.

Vice Mayor Burch suggested the current \$10 fee proposal remain as it was.

MOTION PASSED 9-0.

MOTION: Council Member Freeman moved, Cordell seconded, to do a web-based survey to assess the level of public support.

Council Member Freeman said there should be the ability to maintain and upgrade storm drains in the future.

Council Member Cordell said the web-based survey should include whether residents would be willing to pay \$12 versus \$10.

Vice Mayor Burch felt it would be difficult to provide adequate information on a web-based survey.

Council Member Mossar said it was important to be decisive and clear when putting an item on the ballot.

MOTION PASSED 6-3, Beecham, Burch, Mossar voting no.

Council Member Morton suggested the neighborhood groups be the initial focus groups to advise the public of the web-based survey.

Ms. Harrison said the first task would be to work with the Storm Drain Committee, and the neighborhood groups would be a place to start the education process.

RECESS: 9: 00 p.m. to 9:05 p.m.

REPORTS OF COMMITTEES AND COMMISSIONS

12. Request to Preliminarily Approve 2003-04 Reappropriation Requests

Mayor Beecham stated he would not participate in the item due to a conflict of interest because his residence was within 500 feet in proximity.

Vice Mayor Burch recommended dividing the agenda item into two motions.

MOTION: Council Member Kleinberg moved, seconded by Cordell, to approve the 2003-2004 reappropriation requests that do not include the Downtown North and Lytton traffic calming expenditures and the Parking District Educational Brochure.

Council Member Kleinberg said staff and the Finance Committee evaluated the items carried forward.

MOTION PASSED 9-0.

Chop Keenan, 700 Emerson Street, asked for the second half of the color brochure funding in order to print it.

Barbara Gross, 122 Hamilton Avenue, read a letter from John Barton, Chairman of the Board of the Palo Alto Chamber of Commerce, encouraging the Council to fully fund the brochure.

Roxy Rapp, 261 Lytton Avenue, said property owners and leaders of the Parking Committee authorized the money to be spent to educate the community and out of town visitors.

Council Member Kleinberg said the Finance Committee did not feel the brochure was ready to be reprinted if there were outstanding Downtown improvements.

Director of Administrative Services Carl Yeats said it would be difficult to correlate direct sales tax revenue to street parking.

Council Member Kleinberg said the Finance Committee had concerns about enhancing the opportunities for individuals to shop Downtown for an extra hour.

MOTION: Council Member Kleinberg moved, seconded by Morton, to approve the reappropriation of \$43,000 for the Parking District Educational Brochure.

Council Member Kleinberg said there was a willingness of the business community to review and improve the signage for color zones.

Council Member Morton recommended the two-hour parking be extended to three-hour parking.

Council Member Kishimoto said Council received a comprehensive informational report about Downtown parking and asked whether there would be follow-up to the ideas suggested in the report.

Assistant City Manager Emily Harrison said staff would continue dialogue with the Chamber Parking Committee and the Council.

Council Member Kishimoto said she supported the idea of parking permit machines to allow individuals the flexibility to pay for an extra hour of parking.

Council Member Freeman asked whether there would be any changes and if Council would have further input. She noted there had been consistent comments about the color zones.

Ms. Harrison said the comments and concerns had been discussed with the Chamber Parking Committee. Staff supported their recommendation that the parking brochure be printed.

Council Member Mossar said there was interest in looking for new and better ways to manage Downtown parking.

Council Member Kleinberg said the brochure would continue to alert individuals to the current parking conditions.

MOTION PASSED 9-0.

MOTION: Council Member Kleinberg moved, seconded by Morton, to approve the reappropriation of \$86,600 for Downtown North and Lytton neighborhood traffic calming expenditures to only be used for devices already authorized by City Council.

MOTION PASSED 8-1, Beecham not participating.

COUNCIL MATTERS

13. Colleagues Memo from Mayor Beecham and Council Member Mossar re Proposed Public/Private Partnership for Renovation of Lytton Plaza

Council Member Mossar asked Council to join her and Mayor Beecham in asking staff to work with private proponents to determine whether there was an opportunity for a public/private partnership to renovate Lytton Plaza.

Norman Carroll, Emerson Street and University Avenue, said he did not agree with dedicating \$250,000 to enhance Lytton Plaza when it could be upgraded for less.

Herb Borock, P.O. Box 632, said the proposal violated the Charter provisions for use of dedicated parkland.

Elaine Meyer, 609 Kingsley Avenue, said the design of Lytton Plaza made it a functional public plaza where individuals of all ages congregated.

MOTION: Vice Mayor Burch moved, seconded by Morton, to direct staff to review the proposal for Lytton Plaza and to bring a recommendation back to the Council. Specifically, for staff to return with:

- ~~Verification of~~ Established cost estimates
- Recommendation on potential funding options
- Possible implementation timeline, including staff and board and commission review process

Vice Mayor Burch said the cost of the renovation needed to be defined.

Council Member Morton said he had concerns about an open fountain in the plaza.

Council Member Ojakian said he would like feedback on the project from the individuals who were part of the Downtown Urban Design Improvement Plan. The Park and Recreation Commission (PARC) should review the current proposal.

Council Member Cordell asked whether a design already existed for the Plaza and asked about the 1997 proposed design improvements.

Mayor Beecham said there was a preliminary sketch.

Council Member Cordell asked whether the City had generated the designs.

Mayor Beecham said it was currently a concept. The concept would be sent to the appropriate boards and commissions for input, it would be sent on to staff, then back to the Council for a final decision.

Council Member Cordell asked whether the Council would see the sketch prior to making a recommendation.

Council Member Mossar said a concept existed.

Council Member Cordell asked whether the concept was in Council Member Mossar's memo, which indicated improvements of water, greenery, and seating.

Council Member Mossar confirmed that was the concept. She said preliminary studies did not provide detailed plans.

Council Member Cordell said Lytton Plaza was not one of the Top 5 priorities for the City and there were many other projects where the monies could be dedicated.

Council Member Morton suggested a change of words from "verification" to "establish" cost estimates.

Council Member Kishimoto said she had questions about the sketch from the previous study. She asked the meaning of a public/private partnership and an explanation for the distinction between a partnership and a donation of \$250,000.

Ms. Harrison said the Council policy referred to private or non-profit organizations that went forward with a proposal to improve City-owned property.

Council Member Kishimoto asked whether the private partner was the initiator of the first design.

Ms. Harrison said the policy contemplated it either way; however, the private sector usually approached the City.

Council Member Kishimoto asked whether the public had access to the Plaza 24 hours a day.

Ms. Harrison said the focus would be on the Plaza as dedicated parkland.

Council Member Kishimoto said when the proposal went to the PARC, it should go with no restraints, and she asked whether it would be the concept of the private partner or from the earlier concept.

Ms. Harrison said she would ask staff to review both concepts.

Council Member Kishimoto asked whether operating and maintenance costs would be examined.

Council Member Freeman said she was conflicted about the acceptance of funds from the private party.

Council Member Kleinberg said the Council's priorities did not support the proposal.

Council Member Morton said the vote was for allowing staff to review the offer of \$250,000 of private funds to upgrade the Lytton Plaza.

MOTION PASSED 6-3, Cordell, Freeman, Kleinberg no.

13A. (Old Item No. 10) Three-Year Agreement Between the City of Palo Alto and the United States Geological Survey in the Amount of \$186,000 for San Francisco Bay Monitoring

Council Member Freeman said she requested the item be removed because it was a sole source contract, which should have been put out to bid.

Council Member Morton said staff indicated the City had benefited from the intellectual effort of a world-renowned affiliate. There had been a long-term relationship between the United States Geological Survey (USGS) and the City.

Council Member Mossar said in a competitive bidding process, USGS would win as the City was paying an incremental cost.

MOTION: Council Member Morton moved, seconded by Mossar, to authorize the Mayor to execute the agreement with the USGS in the amount of \$186,000 to monitor pollutants in clam tissue and sediments and to monitor ecosystem diversity in the Palo Alto Baylands area of San Francisco Bay during calendar years 2004-2006.

Mayor Beecham asked whether it was legally permitted.

City Attorney Gary Baum said there were no legal limitations to the award to the USGS.

SUBSTITUTE MOTION: Council Member Freeman moved to offer the agreement out to bid and obtain the best solution for the contract.

SUBSTITUTE MOTION FAILED DUE TO LACK OF A SECOND

Council Member Kishimoto asked whether the work was lab work, and how to determine whether the subcontracting was lab work directed by the City or were they Research and Development partners.

Director of Public Works Glenn Roberts said the City was achieving a significant cost savings by partnering with the USGS. They were partnered with the City in the regulatory environment.

Council Member Kishimoto said clarification wording should have been included in the agreement.

MOTION PASSED 8-1, Freeman no.

13B. (Old Item No. 7) Award of Option to Lease to JSRFIT, L.L.C., D.B.A. Form Fitness Health Center at Lot S/L Site Non-Parking Area, 445 Bryant Street

Council Member Ojakian requested a reissue of the Request for Proposal (RFP) after receipt of a letter from Byron Mellberg, representing Heptagon Individual Fitness, who placed a higher bid.

Byron Mellberg, 1717 Embarcadero Road, Ritchey Fisher Whitman and Klein, representing Jason White and Heptagon Individual Fitness, urged the Council to reopen the leasing process and consider Heptagon's offer and any other offers submitted.

Jason White, 131 Lytton Avenue, said he was informed the rent at 445 Bryant Street would be between \$3 and \$3.50 per square foot and, therefore, he did not submit a bid proposal.

Herb Borock, P.O. Box 632, suggested the staff and Council follow the policy.

Norman Carroll, Emerson Street and University Avenue, said the City should not subsidize a volatile business.

Sassan Golafsham, 203 Forest Avenue, said he was ready to fulfill the obligation as a tenant of 445 Bryant Street. He asked that Form Fitness be granted the space.

Jeff Manashe, 948 Cowper Street, said there had been a competitive process and six parties had participated.

Frank Small, 285 Hamilton Avenue, said the late proposal from Heptagon raised legal issues.

Shahram Seyedin-Noor, 3000 El Camino Real, said it did not appear there was a decisive reason to reopen the process.

Jeff Ramona said he was surprised at the last minute request from Heptagon

Individual Fitness.

Mayor Beecham asked the City Attorney what options were available to the Council that evening.

City Attorney Gary Baum said the Council could either approve or reject the lease with Form Fitness. Another Request for Proposal (RFP) could commence with new terms established.

MOTION: Council Member Ojakian moved, seconded by Burch, to reject the option to lease with JSRFIT, L.L.C. d.b.a. Form Fitness Health Center and to reopen the leasing process.

Council Member Ojakian said there were individuals who misunderstood the application process for the lease. The Council would have the opportunity to delineate the criteria to apply to the space.

SUBSTITUTE MOTION: Council Member Cordell moved, seconded by Morton, to approve the staff recommendation to authorize the Mayor to execute the option to lease with JSRFIT, L.L.C. d.b.a. Form Fitness Health Center, for a 7,410 square foot space in the non-parking portion of the Lot S/L site, 445 Bryant Street.

Council Member Cordell said the Council had voted and made a decision, and she asked the Council to go forward.

Council Member Morton said the Council needed to stand by their decision.

Council Member Mossar felt it would be unscrupulous of the Council to look at a new proposal at that point.

Council Member Ojakian said \$400,000 would be lost on the lease to Form Fitness. There would be \$500,000 lost in the first five years of the lease. There could be other potential applicants interested in the property.

Council Member Kishimoto asked staff about the \$400,000 loss.

Director of Administrative Services Carl Yeats said staff's position had not changed. The \$400,000 was the difference between the cash flows of the rent payments and would change over time. Mr. Yeats said 240 real estate agents and brokers in the Bay Area had received flyers about the space. A public hearing had been held and the top two proposals had been brought to the Council.

Council Member Kishimoto said there were lessons learned from the process,

and she would support the substitute motion.

Council Member Freeman asked whether the \$400,000 loss on the lease would come from the General Fund.

Mr. Yeats said during the ten-year proposed lease, the current proposed debt service was approximately \$320,000 per year. Over the life of the lease, Form Fitness had proposed to pay approximately \$2.8 million in rent payments, which would graduate over time.

Council Member Freeman said the City was leasing the property with the knowledge it would be losing money.

Mr. Yeats confirmed.

Council Member Freeman said although she did not believe it was a good arrangement for the City, the Council had made a decision.

Vice Mayor Burch said the original commitment was to use lease income for teen programs since their space had been removed.

Council Member Kleinberg said although the process had not been perfect, the Council should move forward with the lease to Form Fitness.

Council Member Morton said there was a capital investment differential up front, which offset the rent differential between the restaurant and Form Fitness.

Mayor Beecham said an honest effort was made to get the best bid.

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

CLOSED SESSION

The meeting adjourned at 11:15 p.m. to a Closed Session.

14. Conference with City Attorney -- Potential/Anticipated Litigation
Subject: Significant Exposure to Litigation on One Matter (Claim of Jameel Douglas)
Authority: Government Code Section 54956.9 (b)(1) & (b)(3)(C)

Andrew Pierce, 2465 E. Bayshore Road, Attorney for Jameel Douglas, said witnesses saw Officer Kilpatrick shake Jameel Douglas, lift him, and push him to the ground. The use of force was unjustified.

The City Council met in Closed Session to discuss matters of potential/anticipated litigation and labor negotiations, as described in Agenda Item No. 14.

Mayor Beecham announced there was no reportable action taken.

FINAL ADJOURNMENT: The meeting adjourned at 12:02 a.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.