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April 19, 2004

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The City Council of the City of Palo Alto met on this date in the Council Chambers at 6:04 p.m.

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

ABSENT: Morton, Mossar, Ojakian

CLOSED SESSION

Council Member Morton would not participate in the item due to a conflict of interest because of investment interest in AT&T.

Council Member Mossar stated she would not participate in the item due to a conflict of interest because of family investment interest in AT&T.

1. 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 met in Closed Session to discuss matters involving potential/litigation as described in Agenda Item No. 1.

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

ADJOURNMENT: The meeting adjourned at 6:40 p.m.

The City Council of the City of Palo Alto met on this date in the Council Chambers at 6:45 p.m.

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

ABSENT: Morton, Mossar

SPECIAL ORDERS OF THE DAY

1. Joint Community Relations Committee Report for the Palo Alto Airport

**No action required.**

Pria Graves, 2130 Yale Street, said the County Airport's Commission felt it was important for the airport's lease to be extended.

2. Proclamation Expressing Appreciation to Pat Roy for her Generous Donation to the City of Palo Alto for use at the Lucy Evans Baylands Nature Interpretive Center

**No action required.**

ADJOURNMENT: The meeting adjourned at 7:03 p.m.

The City Council of the City of Palo Alto met on this date in the Council Chambers at 7:04 p.m.

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

ABSENT: Morton, Mossar

STUDY SESSION

Council Member Morton would not participate in the item due to a conflict of interest because of investment interest in AT&T.

Council Member Mossar would not participate in the item due to a conflict of interest because of family investment interest in AT&T.

Council Member Ojakian would not participate in the item due to a conflict of interest because wife has a partnership stock in Comcast & SBC

1. Funding Options, Fiber to the Home

Council held a study session on April 19, 2004 to review and discuss various funding options for building a fiber to the home network.

Council directed staff to:

1. Prepare a presentation for the May 24, 2004 Council meeting.
2. Council direction given at the May 24, 2004 meeting should be incorporated into a report, along with the presentation, and be reviewed at the Utilities Advisory Commission meeting on July 7, 2004.
3. Comments and recommendations from the July 7 meeting should be incorporated into a new report for the August 2, 2004 Council meeting.

**No action required.**

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

The City Council of the City of Palo Alto met on this date in the Council Chambers at 8:03 p.m.

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

ABSENT: Mossar, Ojakian

ORAL COMMUNICATIONS

Victor Frost, Telephone Pole 1139, Page Mill Road, spoke regarding the day labor program.

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

CONSENT CALENDAR

Mayor Beecham moved, seconded by Kleinberg, to remove Item Nos. 2 and 9 from the Consent Calendar to become Item Nos. 12A and 12B.

Council Member Freeman asked when Item No. 10, 321 California Avenue, Antonio's Nut House, would come back to the Council with a date certain.

Assistant City Manager Emily Harrison replied she would work with the Planning and Transportation staff to set a definitive date.

John K. Abraham, 736 Ellsworth Place, asked for an independent review and a Director's hearing regarding Antonio's Nut House and The Edge.

Mayor Beecham announced Item No. 10 would be removed from the Consent Calendar to become Item No. 12C due to the large number of speakers.

Council Members Cordell and Freeman registered "no" votes on Item No. 5.

**MOTION:** Council Member Morton moved, seconded by Ojakian, to approve Consent Calendar Item Nos. 1 and 3-8.

LEGISLATIVE

1. Adoption of an Ordinance Amending Ordinance No. 4763, Relating to the Imposition and Collection of Certain Development Impact Fees on Residential Dwelling Units Smaller than or Equal to 900 Square Feet.

Ordinance 1<sup>st</sup> Reading entitled "Ordinance of the Council of the City of Palo Alto Amending Ordinance No. 4763, Relating to the Imposition and Collection of Certain Development Impact Fees on Residential Dwelling Units Smaller Than or Equal to 900 Square Feet"

ADMINISTRATIVE



3. Contract between the City of Palo Alto and J.W. Riley & Sons Incorporated in the Amount of \$291,135 for the 2004 Street Maintenance Capital Improvement Program Phase 1 Project PE-86070



4. Contract between the City of Palo Alto and B&B Landscape Contractors, Inc. for the Installation of an Irrigation System at Jordan Middle School

5. Restatement and Amendment of a Four Year Contract with Bay Span Inc. for Temporary Skilled Facilities Staff in the amount of \$82,000 for Fiscal Year 2003-04; and \$73,000 for Each of the Two Additional Year Terms



6. Request for Approval to Increase Contingency Authority to Kuehne Construction Contract C04100292 in the Amount of \$24,000 for the Baylands Interpretive Center Roof Replacement - Capital Improvement Project PF-00006

7. Recommendation of Staff to Deny Request for Hearing of Appeal by Andrew Chiang of the Director of Planning and Community Environment's Approval of the Individual Review Application (03-IR-69) for a New Two-Story Single Family Residence Owned by Filiberto Alvarez at 800 Sycamore Drive

8. Response to 2003-04 Santa Clara Civil Grand Jury Report, Inquiry into the City of Palo Alto's Code Enforcement Program

**MOTION PASSED** 7-0, for Item Nos. 1, 3, 4, and 6-8, Kleinberg, Mossar absent.

**MOTION PASSED** 5-2 for Item No. 5, Cordell, Freeman "no," Kleinberg, Mossar absent.

Council Member Freeman said the temporary services contract should be an annual renewal, not a four-year commitment.

Council Member Cordell said she voted "no" for the same reasons as Council Member Freeman.

## AGENDA CHANGES, ADDITIONS, AND DELETIONS

**MOTION:** Council Member Morton moved, seconded by Burch, to move the Closed Session Item No. 13 forward to become Item No. 10A.

**MOTION PASSED** 6-1, Freeman "no," Kleinberg, Mossar absent.

## CLOSED SESSION

The meeting adjourned at 8:20 p.m. to a Closed Session.

- 10a. (Old Item No. 13) Conference with City Attorney -- Existing Litigation  
Subject: In re Enron Corp., Debtor, U.S. Bankruptcy Court, Southern District of New York; Case No.: 01-16034(AJG)  
Authority: Government Code section 54956.9(a)

The City Council met in Closed Session to discuss matters involving existing litigation as described in Agenda Item No. 13.

The City Council meeting was reconvened at 8:30 p.m.

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

## REPORTS OF COMMITTEES AND COMMISSIONS

Council Member Morton stated he would not participate in the item due to a conflict of interest because of investment interest in AT&T.

Council Member Mossar would not participate in the item due to a conflict of interest because of family investment interest in AT&T.

Council Member Ojakian would not participate in the item due to a conflict of interest because of family investment interest in AT&T.

11. Utilities Advisory Commission Recommendation re Fiber To The Home (FTTH) Business Plan Phase 2 Final Report

Ms. Harrison reminded the Council to send Fiber to the Home questions to her for responses and posting on the web.

Director of Utilities John Ulrich said the City would allow and encourage competitive services to utilize the fiber. Staff would present to the Utility Advisory Committee the public testimony from the evening and return on May 24, 2004 for further discussion with Council.



Thomas Passell, 766 Bryant Street, said a level playing field would be established for telecommunications participants.

Geoff Thompson, 158 Paseo Court, Mountain View, said Palo Alto had an opportunity to provide ethernet to its residents.

Jeff Schwartz, 345 Sheridan Avenue, said he hoped the Council would have the courage and vision to move on quickly with the project.

Jeff Hoel, 731 Colorado Avenue said each house should get fiber and inter-operable equipment installed.

Carroll Harrington, 830 Melville Avenue, said she was a trial resident since its initiation and urged the Council to support the Staff recommendation.

Mike Liveright, 260 Byron Street, said FTTH would provide access to the world without limitations.

Glenn, Lisa and Carolyn Rennels, 1232 Harriet Street, said they were happy with their fiber internet and television access.

Jim Dinkey, 3380 Cork Oak Way, said the trial should be expanded beyond the original 60 homes.

Wayne S. Martin, 3687 Bryant Street, said the present FTTH system did not have a power backup. Power outages could cause interruption of telephone service to hundreds of subscribers.

Nancy Crewdson, 984 Harriet Street, said she was a trial participant and enjoyed the speed and the reasonable cost of the system.

Bob Harrington, 1802 Fulton Street, said his home had been part of the trial since October 2001. Palo Alto utility users saved more money per year than neighboring communities.

Bob Smith, 2291 Greer Road, said the business plan glossed over problems, failed to capitalize on opportunities, and did not present a realistic budget.

John Aragon, Vice President of Comcast's Government Affairs, said Comcast's capabilities regarding services and technology had been included in a letter he wrote to the Council.

Sanford Forte, 280 College Avenue, said the plan needed to be modified before placing it on a ballot for a vote. Time was needed for the technical deployment and the working strategic vision of the plan.

Terry Andre, 598 Vista Avenue, said there should be sensitivity to individuals who were unable to financially afford or did not want the service.

Bob Moss, 4010 Orme Street, said the advantages of fiber would be beneficial to industries and businesses in Palo Alto.

Ron Wolf, 745 San Carlos Court, said he had concerns about the process. The City had a full agenda and should not address connectivity issues; the free market system should address the issue.

Todd Stangel, 3722 Grove Avenue, said having a broadband internet connection provided him with educational benefits.

Tedi Vriheas, San Mateo County External Affairs Representative for SBC Communications, said the business plan should not be accepted as presented.

David Harris, 455 Margarita Avenue, said private firms had taken advantage of the residents. There would be increased demand in the future for high-speed continuous high-volume data.

Harry Stangel, 3722 Grove Avenue, said his business utilities would cost 45 percent less than what had been paid to Pacific Gas & Electric (PG&E) with higher reliability.

Hilda Weisberg, 1051 Channing Avenue, requested the potential business for the City be given a Top Five priority for 2004.

Andy Poggio, 2708 Gasper Court, said risks were associated with new endeavors and encouraged the City Council to move ahead.

Herb Borock, P.O. Box 632, said there needed to be a financing method created to ensure individuals were not charged for a service they did not receive. The amount of fee imposed should not exceed the proportional cost of the service attributed to a parcel.

Michael Eager, 1960 Park Boulevard, said FTTH had many benefits. The business plan should be firm on the future data issues.

Rajiv Parikh, 3910 Duncan Place, said FTTH would attract hi-tech companies and individuals to thrive and grow in Palo Alto.

Alex Tesler, 3731 Middlefield Road, said if the benefits outweighed the risks, venture capitalists would invest in Palo Alto.

Dave Tschang, 2253 University Avenue, East Palo Alto, said there was an opportunity to upgrade the community with FTTH.

Richard Geiger said there was lack of information regarding the profit or loss figures of the 66 homes that were in the trial of FTTH.

Norman Carroll, University Avenue & Emerson Street, said the City should manage the system in the most effective manner for the residents.

Arthur Keller, 3881 Corina Way, said investment in the infrastructure should be made immediately.

Dan Eakins, 1150 Parkinson Avenue, said his experience as a trial participant had been positive and wanted to see FTTH continue forward.

RECESS: 10:00 p.m. to 10:05 p.m.

Mayor Beecham said the item would be brought back for a decision by Council on May 24, 2004.

#### UNFINISHED BUSINESS

12. Public Hearing: The Palo Alto City Council will consider a request by Peter Baltay of TOPOS Architects, on behalf of Jeff and Mary Thomas, for a Site and Design application for the construction of a new 5,008 square-foot, two-story single-family residence on a 10-acre parcel (435,000 square feet) within the Open Space zoning district of which the total impervious surface area would be 11,350 square feet including a 6,851 square-foot asphalt driveway located at 3849 Page Mill Road. Approval of a Mitigated Negative Declaration is requested in accordance with California Environmental Quality Act (CEQA) Guidelines. *(To be continued to 05/03/04 at the request of staff)*

**MOTION:** Vice Mayor Burch moved, seconded by Kishimoto, to continue the item at the request of staff to the regular May 3, 2004, City Council meeting.

**MOTION PASSED** 6-0, Morton, Mossar, Ojakian "not participating."

- 12A. (Old Item No. 2) 4010 Page Mill Road - Record of Land Use Action (ROLUA) of the City Council denying an application by Cartmell/Tam Architects on behalf of David Ditzel for a Site and Design Review to allow a 1,677 square-foot addition to an existing 3,433 single-family residence and construction of a new swimming pool, including a request for a variance to exceed the maximum impervious area allowed, and a variance for extensions into the side yard and front

yard setbacks. Zone District: Open Space (OS). Environmental Assessment: a Negative Declaration has been prepared for public review and comment.

Interim City Attorney Wynne Furth said the item was a quasi-judicial matter and the City Clerk would need to be advertised again as a Public Hearing.

Mayor Beecham said he requested the item be removed and proposed to have the City Clerk readvertise.

**MOTION:** Mayor Beecham moved, seconded by Burch, to have the City Clerk re-advertise the item for a public hearing.

Council Member Kishimoto said she supported her colleague's interest in reopening the hearing.

Council Member Freeman said staff had not made procedural errors.

Mayor Beecham said he made an error by not allowing the applicants a rebuttal.

**MOTION PASSED** 6-0, Morton, Mossar, Ojakian absent.

12B. (Old Item No. 9) Finance Committee Recommendation Regarding Use Of Downtown Parking Structure Surplus Construction Funds

Assistant City Manager Emily Harrison said staff would like to have the opportunity for an additional meeting with some of the major downtown property owners.

Mayor Beecham asked if the action would be to continue the item to a date uncertain.

Ms. Harrison confirmed and said if a different recommendation were made, it would be brought back to the Finance Committee.

**MOTION:** Vice Mayor Burch moved, seconded by Kleinberg, to continue the item to a date uncertain.

**MOTION PASSED** 6-0, Morton, Mossar, Ojakian absent.

12C. (Old Item No. 10) From Planning and Transportation Commission: 321 California Avenue (*Request to Continue to a Date Uncertain*)

Gregory Kerber, Birch Court Condominium Complex, said the only issue that should be considered that evening was the Planning and Community Environment Director's recommendations and appeal of July 2003.

Lisa Habbeshaw, 2504 Birch Street, said the property had been issued a permit in June 1973. No modifications or review had been made in over 30 years.

**MOTION:** Vice Mayor Burch moved, seconded by Beecham, to continue the application for a Conditional Use Permit (CUP) and an Appeal of an Existing Use Permit to a date uncertain.

Council Member Freeman asked if a municipal code or any City procedures had been violated during the process.

Interim City Attorney Wynne Furth said she did not know of any violations. The City granted a Conditional Use Permit (CUP) and the applicant had appealed. The Planning and Transportation Commission (PTC) and Planning Department determined the most effective manner to arrive at an agreeable solution would be to outline a new CUP.

Council Member Freeman said no violations had been made during the process.

Ms. Furth confirmed.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** that the motion include a request that the Assistant City Manager return with a date certain for the hearing at the May 3, 2004, City Council meeting.

Council Member Cordell said she would like to have an indepth conversation with someone in the Planning Department for clarification.

Council Member Kishimoto said the staff report (CMR:233:04) was confusing.

Council Member Freeman said there was an opportunity for a partnership to emerge.

**MOTION PASSED** 6-0, Morton, Mossar, Ojakian absent.

COUNCIL COMMENTS, QUESTIONS, AND ANNOUNCEMENTS

Vice Mayor Burch noted that Transit Management Systems Coordinator Amanda Jones conducted transit tours that were appreciated by the senior citizens of Palo Alto and the City Council.

Council Member Freeman noted she and Council Member Kishimoto held sidewalk office hours at Piazza's and talked to several Palo Alto citizens.

Council Member Kleinberg requested the meeting be adjourned in memory of over six million people who died in the Holocaust and many others who had died due to xenophobia.

FINAL ADJOURNMENT: The meeting adjourned at 10:32 p.m. in memory of over six million people who died in the Holocaust and many others who had died due to xenophobia.

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.