

October 17 2005  
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ADJOURNMENT: The meeting adjourned at 9:50 p.m. .... 416

The City Council of the City of Palo Alto met on this date in the Council Conference Room at 6:02 p.m.

CITY COUNCIL

PRESENT: Beecham, Burch, Cordell, Freeman (arrived at 6:10 p.m.), Kishimoto, Kleinberg, Morton (arrived at 6:05 p.m.), Mossar, Ojakian

PARKS AND RECREATION COMMISSION

PRESENT: Cribbs, Keating, Marquess, Steiner

ABSENT: Losch, Hagan, Giamousis

STUDY SESSION

1. Joint Meeting with City Council and Parks and Recreation Commission

**No action required.**

**RECESS: 6:55 p.m., with meeting reconvening in the Council Chambers at 7:10 p.m.**

ORAL COMMUNICATIONS

Rita Morgin, 600 Channing Avenue, spoke regarding community garden fees.

Victor Frost, 3790 El Camino Real, spoke regarding the election process.

Alex Ji, 2237 Waverley Street, and Jonathan Cheung, 127 La Cuesta Drive, spoke regarding the Bridge of Caring Carnival.

Dennis "galen" Mitrzyk, Maclane Street, spoke regarding corruption.

Barbara Kerchkhoff, 3259 Stockton Place, spoke regarding the community garden.

Genny Boice, 129 Hawthorne Avenue, spoke regarding the community garden fee increase.

Emily Rosen, 3722 Cass Way, spoke regarding the community garden fee increase.

Henry Lew, M.D., 1470 Dana Avenue, spoke regarding the community garden.

Don Kenyon, 197 Walter Hays Drive, spoke regarding the community garden.

Al Keicher, 1465 Dana Avenue, spoke regarding the community garden.

#### APPROVAL OF MINUTES

**MOTION:** Vice Mayor Kleinberg moved, seconded by Morton, to approve the minutes of September 19, 2005, as submitted.

**MOTION PASSED 9-0.**

#### CONSENT CALENDAR

City Attorney Gary Baum commented the Statements of Interest (SOI) process referred to in Item No. 4 was different than a bid process, which was strictly based on the time of receipt. There was no competitive advantage to the two bidders who submitted their bids five and ten minutes late. He urged the Council to waive that minor irregularity and consider the two proposals. It was not precedent setting and would not affect future SOIs.

Council Member Freeman moved, seconded by Kishimoto, to remove Item No. 4 to become item No. 9A.

Council Member Cordell asked whether there was a competitive advantage given to the SOIs, which were submitted after the deadline.

Mr. Baum said no additional SOIs had been submitted.

Council Member Morton asked whether the 3 p.m. deadline was standard.

Mr. Baum said it was standard.

**MOTION:** Council Member Morton moved, seconded by Mossar, to approve Item Nos. 3 and 5 on the Consent Calendar.

#### LEGISLATIVE

- ~~2. 2<sup>nd</sup> Reading — Ordinance Amending Section 12.16.020 of Chapter 12.16 of Title 12 of the Palo Alto Municipal Code by Establishing Underground Utility District No. 41 (staff requests item be moved to 10/24/05)~~

**Item continued to October 24, 2005**

#### ADMINISTRATIVE

3. Approval of Amended Citizen Participation Plan for the City Of Palo Alto Community Development Block Grant (CDBG) Program  
COUNCIL COMMITTEE RECOMMENDATION

5. Policy and Services Committee Recommendation for the Adoption of a Resolution Adopting the Ahwahnee Water Principles for Resource Efficient Land Use (as modified for local use)

Resolution 8560 entitled "Resolution of the Council of the City of Palo Alto Adopting Ahwahnee Water Principles for Resource Efficient Land Use (as modified for use)"

**MOTION PASSED** 9-0 for Item Nos. 3 and 5.

Council Member Mossar said she was pleased staff had determined how the Ahwahnee Water Principles could be brought forward.

#### PUBLIC HEARINGS

6. Public Hearing – The City Council will consider the filing of comments to the scoping phase of the environmental review of the San Francisco Public Utilities Commission's (SFPUC) Water System Improvement Program (WISP), described as "a program to implement the service goals and system performance objectives established by the SFPUC for the regional water system in the areas of water quality, seismic reliability, delivery reliability, and water supply through the year 2030," and for which WISP a program environmental impact report is being prepared to address its potentially significant environmental effects

Assistant Director of Utilities Resources Management Girish Balachandran said written comments needed to be filed by October 24, 2005.

Nicole Sandkulla, Bay Area Water Supply and Conservation Agency (BAWSCA), said the Water Improvement System Program (WISP) was developed to protect public health, safety and economic well-being. The WISP contained projects designed to address the needs of the regional system. San Francisco's City Planning Department felt an Environmental Impact Report (EIR) program needed to be accomplished. San Francisco could not guarantee they would provide more water than the current contractual obligations to BAWSCA. She encouraged Palo Alto to comment on issues specific to Palo Alto. San Francisco indicated they would respond to all comments received.

**MOTION:** Council Member Morton moved to approve the staff recommendation to submit comments on the scoping phase of the Program Environmental Impact Report (PEIR) for the proposed improvements to the San Francisco Regional Water System to improve the system's water quality, seismic reliability, delivery reliability, and water supply through the year 10/17/05

2030. Further, to support comments being submitted by the Bay Area Water Supply and Conservation Agency (BAWSCA).

**MOTION DIED FOR LACK OF SECOND**

Mr. Balachandran said staff outlined potential comments the City could make. He suggested the City should support the statements made by BAWSCA.

Council Member Mossar said the Council should direct staff to develop comments and bring them back for Council discussion.

Assistant City Manager Emily Harrison said time constraints would make it difficult.

Mayor Burch said there would be other opportunities to comment after October 24, 2005 on the PEIR and the Draft PEIR when released.

Council Member Mossar requested staff prepare comments to be delivered to the SFPUC to include comments from their staff report.

**MOTION:** Council Member Mossar moved, seconded by Beecham, to approve the staff recommendation to submit comments on the scoping phase of the Program Environmental Impact Report (PEIR) for the proposed improvements to the San Francisco Regional Water System to improve the system's water quality, seismic reliability, delivery reliability, and water supply through the year 2030. Further, to support comments from staff in the staff report to be submitted by the Bay Area Water Supply and Conservation Agency (BAWSCA) and including asking SFPUC to evaluate the reliability benefits to the regional system of an additional intertie between the SFPUC's system and the treated water system owned and operated by the Santa Clara Valley Water District (SCVWD).

Council Member Freeman asked why the Modesto and Turlock Irrigation Districts were selected. She inquired about the Tuolumne River's water source.

Ms. Sandkulla said the Tuolumne River originated in Yosemite National Park in the Sierra Nevadas. The drainage into the Hetch Hetchy Reservoir was snowmelt, which came out of a granite basin. The Modesto and Turlock Irrigation Districts utilized the Tuolumne River as a water supply and the same river corridor as San Francisco. The Don Pedro Reservoir on the Tuolumne River stored their water rights for irrigation purposes and to meet residential needs.

Council Member Freeman noted the irrigation districts had become water brokers.

Ms. Sandkulla said the Modesto and Turlock Irrigation Districts did not purchase water from the State of California; they were not part of the Central Valley project of the Bureau of Reclamation and had private developments that predated California's water laws.

Vice Mayor Kleinberg wanted to ensure that the motion incorporated the comments from staff about Palo Alto's authority over its own water supply. She commented there was a movement to convert the Hetch Hetchy back into a valley. She asked about a contingency plan.

Ms. Sandkulla said the proposals to drain the Hetch Hetchy reservoir addressed the reservoirs in the Sierras from the Sunol Valley, the East Bay, and eastward. The majority of the WISP expenses and projects were located within the greater Bay Area. The improvements needed to be implemented irregardless of the resolution of draining the Hetch Hetchy Reservoir.

Council Member Cordell asked for staff comments to be sent to the Council Members via email to enable Council to comment or make suggestions prior to submission.

Council Member Mossar said there was not enough time for a forum prior to the October 24<sup>th</sup> deadline.

Ms. Harrison said as the Council made editing suggestions staff would not need the Council's consensus on the edits.

City Manager Frank Benest said staff encouraged the Council to submit comments to them; staff continued to be involved in the process.

Council Member Mossar asked if staff should submit comments on the issue and return to Council when they were not constrained by a deadline.

Council Member Beecham said the comments that evening were not regarding the EIR assessment, but the notice of preparation of an EIR.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to add that Council be allowed an additional opportunity at a future meeting to discuss the project, not bound by a deadline.

Council Member Kishimoto felt a wide range of alternatives were provided. She asked about the fourth pipeline and its maintenance purpose.

Ms. Sandkulla said the San Joaquin Pipeline enabled portions of the other pipelines to be removed from service for necessary maintenance.

Council Member Kishimoto said the general plans assumed the availability of low cost, high quality water. She asked whether the water budget would be reviewed.

Ms. Sandkulla said the projections were based on adopted general plans and a completed local level EIR. The numbers reflected a small rate of growth in the residential population and a higher rate of growth in employment. The increase in demand was related to the employment projections.

**MOTION PASSED 9-0.**

#### REPORTS OF OFFICIALS

#### 7. Adoption of a Zero Waste Resolution, Approval of the Zero Waste Strategic Plan and Direction to Prepare Zero Waste Operations Plan

Director of Public Works Glenn Roberts said on November 15, 2004, Council had directed staff to develop a Zero Waste policy. If the Council gave direction, staff would develop a zero waste operational plan detailing how to achieve the set goals.

Walt Hays, 355 Parkside Drive, suggested a resource/recovery park that would provide a location for businesses and non-profits to obtain items for reuse.

Bud Mission, Director of Facilities for Roche Palo Alto, said waste reduction was in the best interest of the community. The City needed to rethink the manner in which things were accomplished.

Suzanne Wight, 1990 Byers Drive, Menlo Park, Reart Center for Creative Reuse said her business addressed two local challenges: 1) to provide affordable hands-on creative experiences for children; and 2) to reach the zero waste goals of the community. Reart took clean, non-hazardous waste from local businesses and made it accessible to the community.

Michael Classon, 354 Poe Street, felt the challenge was education and engagement of the community to support Zero Waste initiatives. Individuals needed to go beyond recycling and give thought to all resource uses.

Karen Holman, 725 Homer Avenue, said the focus should be on designing waste out of the system and setting an example for future generations.

Emily Renzel, 1056 Forest Avenue, said to achieve zero waste, regional cooperation would be needed.

Bob Wenzlau, 1409 Dana Avenue, said the resolution should address community involvement as well as governance.



**MOTION:** Mayor Burch moved, seconded by Morton, to: 1) adopt a Resolution Setting Waste Reduction and Zero Waste Goals and approving the Zero Waste Strategic Plan (Attachment A of CMR:382:05); 2) approve the Zero Waste Strategic Plan (ZWSP) (Attachment B) to provide City staff with guidance in the planning and decision-making process to achieve the City's Zero Waste goal; and 3) direct staff to develop a Zero Waste Operational Plan describing action plans, programs, and measures that can be implemented to achieve the Zero Waste goal.

Resolution 8561 entitled "Resolution of the Council of the City of Palo Alto Setting Waste Reduction and Zero Waste Goals and Approving the Zero Waste Strategic Plan"

Council Member Morton said the intent was the elimination of waste as a priority, which included redesigning so it could be removed from the system.

Council Member Freeman said the Palo Alto Unified School District (PAUSD) did a good job of educating students about recycling. She wanted to clarify that Zero Waste was a separate issue from the Environmental Service Center (ESC).

Council Member Kishimoto said a Zero Waste Conference had brought about the consciousness and education regarding the issues of toxicity as well as Zero Waste issues.

**MOTION PASSED 9-0.**

#### 8. Opposition of Proposition 76 - State Spending and School Funding Limits

Vice Mayor Kleinberg said California State Representatives were accountable to the citizens for how tax dollars were spent. Governor Arnold Schwarzenegger should not have the power to change the funding to the schools and cities.

**MOTION:** Vice Mayor Kleinberg moved, seconded by Morton, to accept the staff recommendation to approve a Resolution of Opposition for Proposition 76 – State Spending and School Funding Limits

Resolution 8562 entitled "Resolution of the Council of the City of Palo Alto Opposing Proposition 76 – State Spending and School Funding Limits"

Erwin Morton, 1491 Kings Lane, said the community had passed Measure A by vote. Proposition 76 would take away most of the funding authorized in Measure A.

Council Member Kishimoto said it was disturbing that a fiscal emergency was defined as the general fund revenue falling by at least 1.5 percent below estimates.

**MOTION PASSED 9-0.**

**COUNCIL MATTERS**

9. Colleagues Memo from Vice Mayor Kleinberg and Council Members Beecham and Mossar re Enhancing Palo Alto's Economy by Improving Visitor Outreach

**MOTION:** Council Member Mossar moved, seconded by Kleinberg, to direct staff to agendize a Council discussion of an effort being made to access the numbers of annual visitors, their destination, interests or the possibility of enhancing Palo Alto's economy by marketing services and products to these individuals and the possible formation of an ad hoc committee to explore opportunities for benefits from local "tourism."

Council Member Mossar said Palo Alto did not have the information needed to ascertain how the City could pursue visitor outreach.

Vice Mayor Kleinberg agreed with the maker of the motion.

Council Member Freeman said at some point after a committee studied the topic, it could be turned over to the Chamber of Commerce to sustain.

John King, 724 Barron Avenue, read a letter included in the packet which indicated the Chamber of Commerce wanted to support the formation of an ad hoc committee to explore the opportunities to benefit from local tourism.

**MOTION PASSED 9-0.**

- 9A. (Old Item No. 4) Authorization to Accept Two Late Submittals in Response to the Request for Statements of Interest (SOI) and Qualifications for the Development of a Turn-Key Police Building Project

Council Member Freeman said the issue of fairness and the potential for future litigation was the reason the item was removed. She asked whether the wording "no late submittals would be accepted" and "would be returned unopened" was language approved by Council or language used for Request for Proposals (RFPs) and invitations for bids.

Public Works Director Glenn Roberts said the language was not approved by Council, but extracted from the standard language used for bid openings. It was not created specifically for a Request for Statements of Interest (SOI).

Council Member Freeman asked why a newspaper's request of the SOIs through a Public Records Act triggered staff to open the sealed bids.

City Attorney Gary Baum said one of the SOIs arrived at approximately 3:05 p.m. and one arrived at approximately 3:10 p.m. They were not opened. The analysis was not started on the two opened, on-time SOIs. A Public Records Request was received a day or two later for the documents. Government Code Section 6254 does not include any specific exemptions for responses to SOIs. Code Section 6253 stated a response was required promptly. The late SOIs were opened to determine whether they were marked "confidential". When they were not so marked they were provided to the press. Open government was the policy of the City and the Council. There are virtually no laws for SOIs.

Council Member Freeman asked whether the law regarding SOIs allowed deadlines to be pushed back.

Mr. Baum said there was no law to answer the question. By analogy, it was available in other arenas. The Council was permitted to waive requirements. Staff felt it was appropriate to bring the issue to the Council so a decision could be made as to how to proceed. The purpose was to determine whether or not the Council could receive another proposal.

Council Member Freeman asked whether the Public Records Act trumped the concept that the SOIs would not be opened and returned to the originator.

Mr. Baum said her statement was correct, however, it should be noted that staff did not analyze the SOIs. The SOIs were opened for the sole purpose of disclosure, not for internal analysis.

Council Member Freeman asked whether there was a legal issue.

Mr. Baum said aside from staff and Council's time, there was no legal issue to reopening the process.

**MOTION:** Council Member Freeman moved, seconded by Kishimoto, to close the process and reopen the process with a specific due date.

Council Member Freeman said there is an opportunity to receive bids again and perhaps get more bids, which would possibly result in a better and less expensive solution.

Council Member Kishimoto said she understood the staff recommendation and concurred that a resubmittal would be the best method to handle the situation.

**SUBSTITUTE MOTION:** Vice Mayor Kleinberg moved, seconded by Beecham, to authorize the City Manager to accept the two SOI responses submitted five and ten minutes past the deadline.

Vice Mayor Kleinberg said the standards for a SOI process did not have the same level of rigidity as other processes. She was satisfied the two late submissions were not given any advantage and the process had been adhered to.

Council Member Beecham said the City Attorney indicated there was no legal risk. It was in the public interest to accept the two additional bids, which came in shortly after the deadline.

Council Member Cordell said there was disagreement with the process by which the two SOIs should be considered. She did not feel it was improper to allow the late SOIs.

Assistant City Manager Emily Harrison said another company had contacted the Purchasing Department and herself wanting to submit a SOI. She informed the individual the City did not have the discretion to receive the submittal. She had not seen a submittal and did not believe the company had provided one.

Council Member Cordell said she did not believe there was a litigation issue.

**SUBSTITUTE MOTION PASSED** 8-1, Freeman no.

#### COUNCIL COMMENTS, QUESTIONS, AND ANNOUNCEMENTS

Council Member Freeman noted her concern with the Keep Our Region Energized (KORE) candidate forum, and questioned the legality of excluding candidates from forums in the future.

City Attorney Gary Baum noted that candidates' forums were unfortunately outside the City's jurisdiction.

Council Member Morton noted with the Zero Waste approval, the Mayor should draft an accommodation to the Zero Waste Task Force.

Vice Mayor Kleinberg noted her concerns regarding the community garden costs and requested additional information from staff.

City Manager Frank Benest said there was information sent to Council earlier in the day regarding the community garden increased fee. There was a senior discount and fee reduction program.

Council Member Mossar noted the entire City now had the recycle bin system. In the older neighborhoods, there were alleys where the garbage

was picked up and the recycle bins had to be put on the streets. She wondered if alleys could be used for recycle bins also.

Council Member Kishimoto spoke regarding the Fiber to the Home Trial (FTTH) and the equipment that Motorola would not pick up and asked if the item would return to the Council.

Mr. Benest noted staff would look into the issue and the exact date the trial would end.

Council Member Kishimoto noted the Valley Transportation Authority (VTA) scenarios were to be voted on by the VTA Board on Thursday, October 20, 2005. Recent numbers increased the BART to San Jose costs by \$450 million, which did not show equal sacrifice between projects.

Council Member Cordell noted her frustrations and concern regarding the community garden fee increases.

Mayor Burch announced Council Member Kishimoto's appointment as Santa Clara County Cities Association's representative to the Bay Area Air Quality Management District.

ADJOURNMENT: The meeting adjourned at 9:50 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.