

October 24, 2005
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FINAL ADJOURNMENT: The meeting adjourned at 11:15 p.m. 21

The City Council of the City of Palo Alto met on this date in the Council Conference Room at 6:03 p.m.

PRESENT: Beecham, Burch, Cordell, Freeman (arrived at 7:05 p.m.),
Kishimoto, Kleinberg, Morton (arrived at 6:08 p.m.), Mossar,
Ojakian

STUDY SESSION

1. Joint Meeting with Assemblyman Ira Ruskin regarding State Legislative Matters of Local Concern

No action required.

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

SPECIAL ORDERS OF THE DAY

2. Resolution 8563 entitled "Resolution Expressing Appreciation to Bonnie Packer for Outstanding Public Service as a Member of the Planning and Transportation Commission"

MOTION: Council Member Morton moved, seconded by Beecham, to approve the Resolution.

MOTION PASSED 9-0.

Bonnie Packer thanked everyone for the opportunity of serving on the Planning and Transportation Commission (P&TC) and the ability to participate in land use decisions.

3. Resolution 8564 entitled "Resolution Expressing Appreciation to Michael Griffin for Outstanding Public Service as a Member of the Planning and Transportation Commission"

MOTION: Council Member Mossar moved, seconded by Morton, to approve the Resolution.

MOTION PASSED 9-0.

Michael Griffin expressed his appreciation for the opportunity of getting into

the inner-working of Palo Alto land use planning. He encouraged the Council to bring new people into the Commission from Neighborhood Associations.

Council Member Beecham thanked Ms. Packer and Mr. Griffin for their great work in making the City a better place.

Council Member Kishimoto expressed her thanks to both of the Commissioners for their work and service.

ORAL COMMUNICATIONS

Victor Frost, 3790 El Camino Real, #203, spoke regarding the Community Gardens.

Gary Schneider, 350 Grant Avenue, spoke regarding the Community Gardens.

Aram James spoke regarding conflicts.

Stephanie Munoz, 101 Alma Street, #701, spoke regarding caps on height of buildings and open space.

Beth Bunnenberg, 2351 Ramona Street, spoke regarding the Palo Alto Historical Association.

Norman Carroll, 425 High Street #120, spoke regarding vote pamphlets.

Robert Moss, 4010 Orme Street, spoke regarding City Council campaigns.

Danielle Martell spoke regarding public concerns.

Sanford Forte spoke on the offensive public comments regarding City staff.

Herb Borock, P.O. Box 632, spoke regarding former City Manager June Fleming.

APPROVAL OF MINUTES

MOTION: Council Member Mossar moved, seconded by Beecham, to approve the minutes of September 26, 2005, as submitted.

MOTION PASSED 8-0 Kleinberg abstaining.

Vice Mayor Kleinberg abstained from voting on the Approval of Minutes since she was not able to attend the meeting due to a medical procedure.

CONSENT CALENDAR

MOTION: Council Member Morton moved, seconded by Mossar, to approve Item Nos. 4-9 on the Consent Calendar.

Council Member Freeman moved that Item No. 5 be removed from the Consent Calendar. There was no second.

Council Member Freeman moved that Item No. 8 be removed from the Consent Calendar. There was no second.

Council Member Freeman asked regarding Item No. 6, why the 33-month extension on the maintenance agreement with MBA of California, Inc. for copiers did not go out for bid.

Director of Administrative Services Carl Yeats said staff decided to utilize the contract's provision for extension of service.

Council Member Freeman said it was not noted in the staff report (CMR 397:05) and needed clarification.

Mr. Yeats said he would verify.

Council Member Freeman stated she would be voting "no" on Item Nos. 5, 6 and 8.

LEGISLATIVE

4. Ordinance 4882 entitled "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" (1st Reading 7/11/05, Passed 8-0, Freeman absent)

ADMINISTRATIVE

5. Approval of Contract with Brown, Vence & Associates, Inc. in an amount not to exceed \$178,209 for Provision of Services for "Getting to Zero Waste"

6. Approval of Extension of 33 Months of the Current Lease Maintenance Agreement with MBA of California, Inc. in the Amount of \$17,800 Monthly for the Rental and Maintenance of Copiers
7. Approval of Enterprise Fund Contract to Extend the Technical Currency Agreement (TCA) with Indus Utility Systems Inc. (formerly SCT) for Annual Maintenance of the Utilities Customer Billing System under Existing Contract No. C3149377 in the Amount of \$179,340

COUNCIL COMMITTEE RECOMMENDATION

8. Finance Committee Recommendation to Preliminarily Approve 2004-05 Reappropriation Requests
9. Finance Committee Recommendation to Approve City Auditor's Fiscal Year 005-06 Work Plan

MOTION PASSED 9-0 for Item Nos. 4, 7, and 9.

MOTION PASSED 8-1 for Item Nos. 5, 6 and 8, Freeman no.

Council Member Freeman stated her reasons for voting "no" on Item No. 5: 1) the contract allowed the contractor to provide information on space for a recycling facility. The identification of the facility had not been vetted fully and needed a policy prior to spending the money; 2) the \$15,534 meeting listed in Exhibit "C", Budget Schedule, Task 4, needed discussion, 3) the \$23,245 for Additional Services needed clarification; and 4) the relationship between contractors and sub-contractors needed clarification.

Council Member Freeman stated regarding Item No. 6, non-professional agreements needed to go out for bid to attain lower prices.

Council Member Freeman stated regarding Item 8, the Finance Committee's \$70,000 recommended reappropriation of fees and completion of Downtown North needed clarification.

REPORTS OF OFFICIALS

10. Request for Council Direction on Legal, Financial, Operational, and Other Issues Regarding Issuance of a Fiber to the Home Request for Proposals.

Council Member Morton stated he would not participate in the item due to a conflict of interest because of family holdings in SBC and Comcast. His office was within the boundaries of Utility District 39.

Council Member Mossar stated she would not participate in the item due to a conflict of interest because of family holdings in SBC, AT&T and Comcast.

Vice Mayor Kleinberg stated she would not participate in the item due to her employment with Joint Venture and their work with technology. She owned stock in Google, which was under the specified conflict amount, but she voluntarily conflicted herself to make sure no one believed she was biased.

Council Member Ojakian stated he would not participate in the item due to a conflict of interest because of family holdings in SBC, AT&T and Comcast.

Mayor Burch announced that speaker cards would be taken until 8:15 p.m.

Deputy Director of Administrative Services Joe Saccio gave a presentation as outlined in the staff report CMR:398:05 that included legal, financial, and operational issues regarding Fiber to the Home (FTTH). He said staff requested the Council's guidance on the following; 1) whether to proceed with a Request for Proposal (RFP); 2) determining acceptable risk to the General Fund; 3) choosing a business model or relationship with a provider in either a private-public partnership or to have the project be built and owned by a private entity; and 4) whether to use wireless technology.

Mayor Burch asked the City Attorney to clarify what could or could not be decided at the meeting.

City Attorney Gary Baum explained the Charter required five Council votes to award a contract. The Council could provide direction to staff to proceed or not to proceed with a Request for Proposal (RFP). Since there were only five Council Members participating, the vote needed to be unanimous to approve the RFP. Budget Amendment Ordinances (BAO) or expenditure of funds required six votes.

Jeff Hoel, 731 Colorado Avenue, spoke regarding the City of Loma Linda installing a similar FTTH system. He requested that staff investigate how Loma Linda was able to install the system.

Hilda Weisberg, 1051 Channing Avenue, spoke regarding whether the FTTH

system would be operational by October 2006.

Wayne Martin, 3637 Bryant Street, spoke of the problems Palo Alto would encounter in obtaining the FTTH system; Palo Alto was too small of a service area.

Michael Eager, 1960 Park Boulevard, said the community wanted a high-speed data infrastructure and not a television company.

Robert Moss, 4010 Orme Street, said the RFP wireless broadband should be included in the RFP until high-speed capability was accessible.

Gerald Fisher, 1491 Greenwood Avenue, said the Community Center neighborhood renamed its FTTH system to Community Center FTTH System (CCFTTH). If the City instituted the system, the City should integrate the on-going CCFTTH. The Community Center neighborhood had formed the Palo Alto Fiber to the Home, Inc. (PAFTTH) a non-profit corporation. The Community Center residents would raise monies to lease the facilities from the City and contract a third party to operate and maintain the system.

Herb Borock, P.O. Box 632, felt a broadband universal system should be developed for the community. The RFP should be for a wholesale system.

Sanford Forte, 280 College Avenue, felt the City should go forward in obtaining a point-to-point data network in order for content coming over cable to come through the data network

David Harris, 455 Margarita Avenue, spoke regarding fee assessments to districts not benefiting from the service. The Council could exclude the territories unless a property owner wanted to join and be assessed at the time of participation.

Andy Poggio, 2708 Gasper Court, said wireless was not an alternative to the FTTH system. Wireless was a shared media and a technology for devices that were mobile such as cell phones, laptop computers, and palm pilots.

Peter Broadwell, 2325 Cornell Street, was in favor of moving forward with the FTTH.

Norman Carroll, 425 High Street #120, said by the time the system was completed throughout Palo Alto, wireless technology and the FTTH would be outdated in five to ten years.

Council Member Beecham raised concern of moving forward with the RFP with a majority of five Council Members. He was not comfortable directing staff to spend up to \$150,000 with the uncertainty of five Council Members in January 2006 continuing the effort.

Council Member Freeman asked if the project were to continue to January 2006, would Council Member Beecham's proposal continue beyond the end date until a decision was made.

Council Member Beecham said the issue to continue the trial depended on whether or not the Motorola equipment could be passed on to the trial membership and whether the City could contract with Motorola.

Mayor Burch said the trial should be linked with the decision by the new Council in January 2006.

Council Member Beecham asked about the status on revenues and the projected increase of \$500,000.

Assistant City Manager Harrison said in the past 12 months, contracts were signed representing approximately \$500,000 in revenues. The permanent revenue loss was a poor representation when staff was trying to express the expectation of making another \$540,000 while putting the RFP together. With only one of the three staff members in the telecom area working on the RFP, it was overstating to believe that all revenue would be lost from the telecom activity in the 12-month period. Loss of revenue and time spent working on the RFP, which was \$39,000 or 500 hours, were misstated. It would be more beneficial for the Utilities Department to work on the RFP and less potential of losing revenue. Staff could backfill and minimize revenue lost.

Council Member Beecham said it was poor allocation of resources to lose \$500,000 in revenue based on the lack of 500 hours of manpower. He felt by going forward there would be little to no permanent loss of revenue if staff could backfill to the degree for payback on manpower or to contract out.

Ms. Harrison concurred with Council Member Beecham and said that was staff's attempt.

Council Member Beecham said if a RFP was approved, he wanted to know

the process used to prevent loss of revenues. If the Dark Fiber Ring was contracted out he wanted an update on its capacity and how much remained available.

Utilities Telecommunications Manager Blake Heitzman said there was a large capacity remaining. The Downtown area had the highest impact with 30 percent capacity and as low as a 5 percent capacity in outlying areas.

Council Member Beecham asked whether there were any large operational obstructions in moving forward with the RFP.

Ms. Harrison said there were challenges but no fatal flaws.

Senior Assistant City Attorney Grant Kolling said there were no legal obstructions.

Administrative Services Director Carl Yeats said staff needed to know the level of risk to the General Fund the Council was willing to accept to move forward. He had concerns in not co-mingling the Enterprise Fund with the General Fund.

Council Member Beecham said companies with new projects requiring financing for a number of years with finance sole requirements increasing, would structure exit ramps to limit ongoing risks or would return to the sources of funds, justify their status and ask for a new decision to continue. He asked staff whether such a process was reasonable to fund in \$5 million increments, review the \$5 million investment when it was reached, and request an additional \$5 million to continue the project.

City Manager Benest said the General Fund was at risk and the Council would need to establish the minimum reserve policy for the fund. It would be a gamble to go below the minimum.

Council Member Beecham referred to the challenge the City was facing on the revenue side with key sales tax sources threatening to leave. He asked whether there were specific threats or a continuing competition issue.

Mr. Saccio said the City faced real threats such as, the departure of Hyatt Rickey's and auto dealerships due to severe competition in the retail and hotel sectors.

Council Member Beecham asked if the City were to enter into a public-

private partnership with financing or asset assistance, would it be possible to have the third party market and operate the system and have the City control the access to the splice points because of security reasons.

Acting Assistant Director of Utilities Tomm Marshall said the splice points could be maintained by the City.

Mr. Benest said the General Fund would need to purchase the asset. The City could not provide the asset as part of the financing unless it was a General Fund asset.

Council Member Kishimoto said FTTH was a long-term investment, a number one economic development tool, and a quality of life tool Palo Alto could adopt as well as a long-term sustainable budget issue. In getting a better gauge of the five votes required for the contract, she asked to postpone the decision until January 2006.

Ms. Harrison suggested the City Attorney might want to summarize his staff memo dated, October 24, 2005, regarding the fiber trial.

Mr. Baum said the memo was written by staff based on items for the City Attorney's office.

MOTION: Council Member Beecham moved to continue the discussion on the RFP until January 2006.

MOTION DIED FOR LACK OF SECOND

MOTION: Mayor Burch moved, seconded by Freeman, to continue the discussion on the RFP until January 2006 and to extend the trial with the soonest date of when the item returned to Council or when the equipment is no longer serviceable.

Council Member Cordell asked how many votes were required on the substitute motion.

Mr. Baum said three votes were required as it was not a contract or a Budget Amendment Ordinance (BAO).

Council Member Freeman asked whether there were legal issues in extending the trial from December 14, 2005 until it returned to Council or when the equipment was no longer serviceable

Mr. Baum said the contracts would expire on December 14, 2005. Five votes were required to extend the contracts.

Mr. Heitzman said the Internet Service Provider contract (ISP) and the Customer Service Provider contract would expire in December.

Council Member Freeman asked whether it would cost staff time and effort to extend through January 2006.

Mr. Heitzman said staff could extend month-to-month, but did not know whether there were legally ramifications.

Ms. Harrison said there was a legal concern but no administrative issues for continuance.

Council Member Freeman asked what the legal issue was.

Senior Assistant City Attorney Grant Kolling said the City could not make a unilateral decision. The City needed to return to Motorola and the ISP for permission to extend.

Council Member Freeman asked if it could be investigated.

Mr. Kolling said yes.

Council Member Cordell asked whether the Council's vote was needed to authorize negotiation to extend the contracts and how many votes were required.

Mr. Baum said he was unfamiliar with the contract. According to the City Charter, five votes were required to extend a contract. He understood Motorola had issues and wanted to terminate the contract.

Council Member Freeman asked if the staff working on the project was sufficiently trained to take on the RFP process or should it have been contracted out to professionals.

Mr. Yeats said based on the type of service level, staff would be comfortable in getting a data service network but needed assistance in completing a full RFP or a mix of services. Staff was familiar with cable issues but needed assistance in the area of wireless systems.

Mr. Benest clarified staff could return with the issue in January 2006, but currently the five votes were required now to continue the contracts.

Council Member Cordell stated the discussion should be focused on the process. She asked whether it was possible to continue the item to return before the contract expired in December. It would allow contacting Motorola regarding the feasibility of an extension. She was in favor of FTTH but raised concern about timing and the proposal. She addressed five pages in staff report CMR:398:05 dealing with the legal and fiscal risks in going forward with an RFP. It would be a breach of the Council's responsibilities to not pay attention to the risks, to trivialize the risks or adopt a cavalier attitude about probable litigation. She suggested to continue the matter to a date before the contract expired and to discuss options at the next Council meeting for extending the contract.

Mayor Burch asked when the next Council meeting would be held.

Ms. Harrison said a Council meeting was scheduled for November 14 and 21, but not for November 28, 2005. The issue could be scheduled for discussion before December 14, 2005.

Council Member Beecham said he was not in favor extending the trial.

Ms. Harrison needed clarification on whether the suggestion was to have a motion for a discussion about the overall RFP in January and to bring back the contracts separately to Council before they expired.

Mayor Burch clarified the possibility for staff to explore and return in two or three weeks to extend the contracts to provide more time in considering the fact that a new Council would consider issuing the RFP or to terminate the contracts in January 2006.

Ms. Harrison asked whether two motions would be made at that evening's meeting.

Mayor Burch said yes.

Mr. Benest said if the Council did not have the five votes, he suggested not allocating staff resources in going to two or three contractors.

Council Member Cordell concurred with Mr. Benest.

Council Member Freeman urged Council to support the motion and to view the FTTH as revenue to the City.

Mayor Burch said a motion was required.

Council Member Beecham said there was a motion on the table. He was willing to give his reasons why he would not vote for extending the trial.

Mayor Burch said there was a motion on the table seconded by Council Member Freeman.

MOTION WITHDRAWN BY MAKER

Council Member Beecham said staff had stated in their response to Council Member Kishimoto's memo that "it is likely that Motorola will not donate current equipment to the City if it knew that a donation to a third party was intended." He asked for the basis of that statement.

Mr. Heitzman said Motorola had the City sign a non-disclosure agreement to not allow the City to transfer the setup to a third party.

Mr. Kolling clarified the non-disclosure provision in the contract stated the design or setup for the FTTH trial was deemed confidential and proprietary information and would continue for a period of 10 years after termination of the contract. It meant the City could not transfer until it received a Waive and Release from Motorola that the City was no longer bound by the non-disclosure provision.

Council Member Beecham asked what Motorola's attitude was currently.

Mr. Heitzman said he had not received any information regarding Motorola's current standpoint.

Council Member Beecham said in transferring benefits or subsidies to a non-profit group, he asked Mr. Kolling to provide more background on whether or not full services had to be charged and how it compared to the existing ongoing cost.

Mr. Kolling explained under the doctrine of "gift of public funds" it stated the City could give away equipment and services if it was for the general public benefit. The larger the group receiving the equipment and services, the

more likely the court would consider it as a public benefit. If the gift was given to PAFTTH, Inc., the City could grant a donation if the City could not use the equipment. A provision under the public Policy and Procedure Policy 1-18 as well as the Municipal Code allowed the City Manager and Administrative Services Director to agree to donate the equipment to the PAFTTH, Inc. In order for PAFTTH, Inc. to secure various services, the City would be required to enter into a Dark Fiber license agreement and would need to pay the fees.

Council Member Beecham asked the amount of those charges.

Mr. Heitzman said it was approximately \$55,000 per year based on using Motorola's equipment and configuration. The cost breakdown would be \$27,000 in annual fees and using their own ISP. Relocation of the equipment to their neighborhood would be \$28,000. PAFTTH, Inc would have access to the City's plant that was built for \$430,000 which could be a public fund issue.

Mayor Burch said although the public hearing was closed, he asked the City Attorney whether he could call upon Marvin Lee for information to assist Council with their deliberation.

Mr. Baum said the Presiding Officer had the control unless a majority of the colleagues opposed.

Marvin Lee said they had contacted Motorola and asked to purchase the equipment. Motorola's response was their Board had decided to transfer the equipment to the City of Palo Alto and they were willing for PAFTTH, Inc. to negotiate with the City to have the equipment. Motorola thought they could conclude their operation by transferring it to the City. He said PAFTTH, Inc., was not approached by the City in preparing the RFP.

Council Member Freeman asked whether there were any cost implications in moving the trial forward and requested to make a motion.

MOTION: Council Member Freeman moved, to bring the issue back to Council well before the termination date of December 14, 2005 with the answers to questions with legal ramifications and cost issues for extending the trial to a date certain.

MOTION RESTATED: Council Member Freeman clarified the motion was to come back to the Council well before the December 14, 2005 with all the

information on the legal and cost issues of extending the trial from December 14, 2005 until a date certain when the notion of the RFP could come before a new Council in January 2006.

Council Member Cordell said Council Member Beecham indicated he would not vote in favor of continuing the trial. She wanted to know whether his stance had changed since five votes were required to continue.

Council Member Beecham said the cost the City charged would be untenable. His concern was finding a way to bring FTTH to the City, but he did not want to cause any distraction to staff and did not want to spend the resources on anything other than specific objective.

MOTION DIED FOR LACK OF SECOND

MOTION: Council Member Beecham moved, seconded by Cordell, to carry the decision on the RFP until January 2006.

MOTION PASSED 5-0, Kleinberg, Morton, Mossar, Ojakian not participating.

Mayor Burch said in January the RFP for FTTH would return to be discussed by the new Council. The FTTH trial would terminate on December 14, 2005.

COUNCIL MATTERS

11. Colleagues Memo from Vice Mayor Kleinberg and Council Members Cordell and Mossar re Referral to the Parks and Recreation Commission.

MOTION: Council Member Cordell moved, seconded by Mossar, to direct staff to refer this matter about Foothill Park to the Parks and Recreation Commission and, further, that the Commission give this issue a full public hearing and consider the following: 1) Possible changes to limits on the number of people in the Park at a given time; 2) Possible natural resource protection strategies; 3) Possible changes in maintenance and staffing requirements; and 4) Possible funding mechanisms to address any increased costs, including entry fees.

Council Member Cordell said she was making a motion for the Council to adopt the request made in the Colleagues Memo dated October 24, 2005. She said Foothills Park was a treasure of nature that belonged exclusively to Palo Alto because it was purchased by the citizens of Palo Alto. Although

it was purchased by the citizens it was not created by the citizens and felt the matter should be discussed. She and her two colleagues recognized there was not unanimity in the community over lifting the entry restrictions to the Park. They asked the Council to authorize the Parks and Recreation Commission (PARC) to convene a community-wide discussion and return to the Council with their recommendations.

Council Member Mossar said the Park was purchased 40 years prior and decisions surrounding the Park had not been discussed since its purchase. She felt having a community-wide discussion could bring about solutions that would be beneficial to the entire community. The memo referred to a 1969 adoption of a cap of 2000 users per day. Subsequent to writing the memo, it was her understanding the policy was changed to 1000 users per day.

City Attorney Gary Baum clarified that in 1992 the number was dropped to 1000 by a Council Ordinance and codified.

Mary Carlstead, 149 Walter Hays Drive, said the Council had made a promise to the citizens that if they voted to purchase the property for the new Park, it would be reserved for the residents of Palo Alto. It was a promise and a covenant with the residents. If the Council made a promise to gain a vote and a future Council cancels the promise, it would be difficult to place trust in a Council again. She was against having the Park opened to non-Palo Altans.

Robert Roth, 2015 Middlefield Road, read an excerpt from the City Councils' mission statement for Foothill Park, June 19, 1965. The citizens of a land community should preserve and protect Foothills Park. Overuse of the Park could drive out the wildlife and destroy the beauty of the Park.

Frances Nitsberg, 1990 Tasso Street, wanted to convey to the PARC that the Park was a nature preserve.

Mark Tomalomis, 1181 Forest Avenue, said Foothills Park was special because it was quiet, not overused, and a unique local wildlife sanctuary. In order to preserve its distinctiveness he asked the Park not be opened to non-residents.

Aram James felt the talent pool in Palo Alto could develop ways to welcome neighbors into the Park, as well as keeping the Park pure and secure.

Wayne Martin, 3687 Bryant Street, said he was not in favor of a discussion. He suggested weaving a sunset into the discussion to assure if the Park was opened, it could be closed in the future.

Doug Cox, 45 El Dorado Avenue, asked for the option of giving the Park to the Open Space District to protect it as a nature Preserve.

Danielle Martell requested the Park be opened to everyone.

Jeff Reese, 565 Newell Road, said Foothill Park was a benefit of living in Palo Alto and added to the quality of life and should be preserved.

Doug McKenzie, 3378 Vernon Terrace, said the Park provided solitude and sense of community; he was not in favor of opening the Park to non-residents.

Jean Olmsted, 240 W. Charleston Road, felt that if the Park was to maintain its value it needed to be controlled. Non-residents were allowed to visit the Park as guests, for paid events, and with hiking and school groups.

Bob Moss, 4010 Orme Street, was not in favor of opening the Park to non-residents. Non-residents could have access and enjoy the Park as a guest. Retaining the Park for residents only was not bigoted and racist.

Herb Borock, P.O. Box 632, said the agenda item violated the Brown Act, because it did not state the reason for referral. In March 2005, an Ordinance was adopted Amending Section 2.04.150 of the Municipal Code to allow access to Foothills Park if entering from the Arastradero Preserve. It implemented the Council's action on February 22, 2005, to accept the County's money in exchange for opening all Foothills Park trails to non-residents. He felt a discussion would be a waste of time.

Ellie Gioumousis, 992 Loma Verde Avenue, expressed the importance of keeping the Park a nature preserve.

Stephanie Munoz, 101 Alma Street, she said a control of people into the Park could be achieved by implementing a parking fee or parking permit to non-residents.

Mark Nanevicz, 228 Beverly Street, said he understood the reason for an open discussion but found it offensive to base the discussion on the idea that Palo Alto residents were racist and elitist.

Council Member Morton said there was not a great demand from the general public to challenge the restriction. More than 90 percent was against forwarding the issue because it would result into a community war. The issue had been discussed every 10 years since the commitment was made to the community to preserve the Park for Palo Alto residents and put into law. Removing the restrictions was not an issue of political correctness but a prescription for environmental degradation. When the people voted on keeping the Park as a nature Preserve, they were preserving it for a special purpose. He was not in favor of forwarding the issue to the PARC.

Council Member Ojakian asked the City Attorney if the change would require changing the Ordinance and could be subject to a referendum.

Mr. Baum said yes.

Council Member Ojakian said in 1965, 1973 and 1991 the item was discussed. It had been vetted over a period of time and he found no compelling reason to forward it for discussion. The message from the community was to keep the restrictions. He felt by pursuing the matter it would end up on the ballot and lead to a contentious campaign. He urged his colleagues to vote against the motion and to leave the Park in status quo in terms of how it was handled.

Council Member Kishimoto concurred with Mr. Borock's comment regarding noticing the item and how it lacked a reason for referral. She questioned its legality.

Mr. Baum said it was legal. The Brown Act required up to 20 words in describing an issue, but did not require a great deal of specificity. He felt the title could have been more detailed.

Council Member Kishimoto opposed the motion and said Foothills Park was a misnomer and should be renamed as Foothills Preserve. She acknowledged the Friends of Foothills Park and its volunteer program in their role of preserving native plants in the Park.

Council Member Cordell said the Colleagues Memo resulted from a joint meeting with the Council and the PARC. It was a PARC Commissioner who raised the issue and felt strongly about having the discussion. Council Member Cordell spoke on the issue of racism and elitism. She said perceptions were sometimes as important as reality. The Park issues were

clearly outlined in the memo and did not contain racism and elitism. She urged the Council to move forward on the discussion.

Vice Mayor Kleinberg referred to a 1991 memorandum from the City Attorney to the Council to clarify facts addressed at the meeting. She stated the Park was opened and dedicated in 1965 with limitations of use to Palo Alto residents only for the first 5 years of its development and subject to review after that time. A cap of 2000 users per day was codified in 1969 and in 1976 reduced to 1600 user per day and reduced to 1000 in 1992. The purpose of the Colleagues Memo was to refer the matter to the PARC for further discussion.

Council Member Freeman said the closing of Jasper Ridge and the deterioration of the "dish" on Stanford property were examples for the need to protect open space. The PARC discussion should not be limited to the four points in the memo, but to investigate what the Preserve meant. She felt the issue was more than gaining access to the Park, it was about ecological preservation.

Mayor Burch stated he would vote against the motion because he felt the issue would ultimately end up on the ballot. Setting restrictions to the Park was not an issue of racism or bigotry but a desire to keep a Preserve open. He asked the City Clerk for the cost to place the item on the ballot.

Ms. Rogers said it would cost approximately \$200,000 to \$300,000 to place an item on the ballot during an off-election year.

Council Member Mossar clarified Jasper Ridge was on private property and privately funded and different from Foothill Park which was publicly funded. The intent of bringing the matter forward was as follows: 1) the PARC asked to have a discussion; and 2) the importance for the community to challenge itself on that issue.

Council Member Morton did not support the motion.

MOTION FAILED 5-4, Cordell, Freeman, Kleinberg, Mossar yes.

COUNCIL COMMENTS, QUESTIONS, AND ANNOUNCEMENTS

Mayor Burch publicly supported Chief of Police Lynne Johnson and Assistant City Manager Emily Harrison in their jobs with the City of Palo Alto.

CLOSED SESSION

The meeting adjourned at 10:43 p.m. to a Closed Session.

- 12. CONFERENCE WITH CITY ATTORNEY -- EXISTING LITIGATION
Subject: The Embarcadero Publishing Company, dba The Palo Alto Weekly v. The City of Palo Alto, SCC #1-05-CV-049362
Authority: Government Code section 54956.9(a)

The City Council met in Closed Session to discuss matters regarding existing litigation as described in Agenda Item No. 12.

Mayor Burch announced there was no reportable action taken.

FINAL ADJOURNMENT: The meeting adjourned at 11:15 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.