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May 19, 2008

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The City Council of the City of Palo Alto met on this date in the Council Conference Room at 6:05 p.m.

Present: Barton, Burt, Drekmeier, Espinosa, Kishimoto, Klein, Morton, Schmid, Yeh

STUDY SESSION

1. Joint Meeting with Youth Council Regarding Palo Alto Youth Issues

No action required

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2. Library/Community Center and Public Safety Building Cost Estimate Update and Review of Comments from Peer Review Committee

Assistant Public Works Director, Mike Sartor presented a project cost update for the Public Safety Building, Mitchell, Main and Downtown Libraries, and Mitchell Park Community Center projects. The work of the Council directed cost Peer Review Committee was presented. With the Committee's review Staff had identified potential project cost savings of about \$1 million for the Public Safety Building and about \$3 million for the Libraries/Community Center. The City received a Letter of Intent from the owners of an adjacent parcel of land where the city plans to construct the new Public Safety Building which will allow for a more efficient and cost effective project. He mentioned that the Committee will continue to be consulted throughout the design of the projects to provide input that may lead to additional project cost savings.

SPECIAL ORDERS OF THE DAY

3. Proclamation for Foster Care Appreciation Month

MOTION: Mayor Klein moved, seconded by Vice Mayor Drekmeier to bring forward Council Comments to follow Oral Communications.

Mayor Klein stated that the Council had not commented while the police investigation of the Children's Theatre was being conducted on advice of counsel. The investigation having been concluded Council Members wish to speak and the public wants to hear these comments.

Council Member Barton stated his opposition for this Motion. He stated his concerns were based on the Brown Act, ethics, and the notion that it could possibly be prejudicial for the Council to conduct a discussion on this matter at this time.

Mayor Klein stated he had discussion with the City Attorney on this subject.

City Attorney Gary Baum stated that there is a Brown Act provision that requires the Council's discussion to be agendized. He stated that the parties involved are City employees and the Council cannot give any direction regarding any disciplinary actions.

Mayor Klein stated he was clear on the restrictions and that Council Comments does allow for the Council to make comments.

Mr. Baum stated that the Council Comments section was designed for limited Council comments on general issues and to request issues be brought back at a future time. He stated that it does not provide for the Council to take action or have detailed discussion.

Mayor Klein asked if that was different than the information Mr. Baum provided earlier.

Mr. Baum stated he was not changing his position but to clarify he indicated that in his experience there had not ever been a discussion by the Council during Council Comments. It had been limited to quickly responding to a matter and giving direction to Staff.

Mayor Klein stated he understood and asked Mr. Baum to reaffirm that he had no objection.

Mr. Baum restated his caution to the Council.

Council Member Morton asked for confirmation that it would not violate the Brown Act to ask Staff to bring a matter on the agenda back or explain the request.

Mr. Baum stated that was correct.

Council Member Morton asked if the Council could still request Staff bring the issue back with more information about the decision by the District Attorney and the Police Chief not to pursue further action.

Mr. Baum stated that if there was an action for the Council to take on that information then the answer would be yes.

Mayor Klein read into the record the agenda section Council Comments, Announcements, and Reports from Conferences. The purpose of this agenda item is to allow Council to question Staff briefly on matters upon which the Council has taken action or given direction, make general comments as a reference to Staff on factual matters of community concern, or make brief

announcements in a manner consistent with Government Code. He stated that the Council would be making general comments.

Council Member Burt stated Mayor Klein's clarification helped address his concerns and clarified that Council Members can ask questions of Staff but cannot discuss the item or make comments regarding personnel matters.

Mr. Baum stated the primary issue is not violating the Brown Act and the secondary issue is the Council cannot act outside of its legal role of policy setting.

Council Member Burt asked for confirmation that the Council can ask questions of Staff provided they are not prejudicial to potential personnel actions.

Mr. Baum stated the Council can direct questions to Staff.

Council Member Burt asked for confirmation that the Council can make comments provided there is no discussion among the Council Members.

Mr. Baum stated his confirmation of that statement with the caution that the comments should be made in the context of future direction of action to be brought back to Council.

Council Member Burt asked specifically if the Council Members were permitted to make comments that do not constitute discussion among Council Members on an item that was not agendized.

Mr. Baum stated the Council Members were permitted to make comments as long as there was no discussion of an item that has not been listed on the agenda.

Council Member Espinosa stated he will be opposing the Motion. He stated that this is a very sensitive topic and that this was not the way to approach the discussion. He stated his preference for agendizing the item as a Public Hearing.

MOTION PASSED: 7-2, Barton, Espinosa voting no

ORAL COMMUNICATIONS

Barbara Slone, 2002 Barbara Drive, spoke regarding Burma.

Saw Mittun, 19400 Sorenson Avenue, Apartment 142, Cupertino, spoke regarding Burma.

Ms. Yasmin Vanya, 3265 Tenley Drive, San Jose, spoke regarding Burma.

Andy Hayes, Cupertino spoke regarding the Palo Alto Children's Theatre.

Barbara Burgelin, Menlo Park, spoke regarding the Palo Alto Children's Theatre.

Jeremy Erman, Cowper Street, spoke regarding the Palo Alto Children's Theatre.

Katharine Saunders, 3289 Maddux Drive, spoke regarding the Palo Alto Children's Theatre.

Paula Collins, spoke regarding the Palo Alto Children's Theatre.

Carl Gillespie, Jr., 4142 Armarante Court, spoke regarding the Palo Alto Children's Theatre.

Annette Ashton, 2747 Bryant Street, spoke regarding commendation for Sheryl Contois, the Technical Services Coordinator, who was retiring.

Sheri Furman, 3094 Greer, spoke regarding commendation for Sheryl Contois.

Mayor Klein stated his appreciation for Ms. Contois and her excellent work as well as the Palo Alto Neighborhoods organization for recognizing her service. He stated the only reason there was no official City of Palo Alto retirement party was that is reserved for individuals with 20 years of service and Ms. Contois is leaving after only eight years.

Nancy Ginsburg Stern, 30 Tevis Place, spoke regarding the Palo Alto Children's Theatre.

Dan Dykwel, 480 Gary Court, spoke regarding invitation to PTA event.

Donald Remsen, 20 Kirby Place, spoke regarding the Palo Alto Children's Theatre.

Cy Ashley Web, 2454 West Bay Street, spoke regarding the Palo Alto Children's Theatre.

Rick Saal, Bryant Street, spoke regarding the Palo Alto Children's Theatre.

Suzan Stewart, 1550 Middlefield Road, spoke regarding the Palo Alto Children's Theatre.

Bryan Minor, 4350 Miller Avenue, spoke regarding the Palo Alto Children's Theatre.

Dan Conway, 541 Hilber Lane, spoke regarding the City Manager.

Ralph King, spoke regarding Palo Alto Children's Theatre.

Robert Moss, 4010 Orme Street, spoke regarding the Palo Alto Children's Theatre.

COUNCIL COMMENTS, ANNOUNCEMENTS, AND REPORTS FROM CONFERENCES

Council Member Barton advised that he would excuse himself from the discussion of the Children's Theatre as he is very concerned about the discussion that may take place. He advised he is concerned and deeply interested in the Children's Theatre investigation, he feels that this needs to be done in a time, place, and manner consistent with the law, ethical behavior and the rights of those involved. He stated he believes that the discussion they will have tonight may be prejudicial to those being investigated in one form or another. He advised he would step down from the dais for the remainder of this discussion.

Council Member Barton left the Council meeting at 8:50 p.m.

Council Member Morton asked to have the following questions answered:

- 1) Did the police disregard the explanation of former Arts and Culture Director Leon Kaplan regarding costume sales.
- 2) How did a burglary turn into the investigation of Staff and why did that burglary seem to have lost the interest of the police department that it was the Palo Alto Weekly who identified the location of the suspect who recently confessed to the crime.
- 3) Did the police unnecessarily extend the investigation by failing to enlist the assistance of the City Auditor's Staff. Did an issue that was more properly a question of accounting and documentation become unnecessarily a lengthy police investigation.
- 4) Did the police fail to resolve the investigation because they failed to discuss with Friends of the Children's Theatre their claim that there were over 150 incidents of duplicate reimbursements.
- 5) Was the decision to restrict Staff's access to their place of work and to prohibit them from speaking out in their own defense and to each other really necessary to the conduct of the investigation.
- 6) Did this investigation continue for 11 months in some part because of the police department's refusal to question their presumption of guilt and their refusal to entertain the possibility that their might be other

explanation other than criminal intent, for what might have at first raised questions of appropriateness of transactions.

- 7) How do we undo the damage that might have been done by this investigation, and the pain that it has caused to generations of participants in the theatre, volunteers in the community, and to the theatre Staff.

Council Member Morton went on to speak regarding the healing process that will need to take place and how it will come from the people in the audience who will have to pick up the pieces and put the theatre program back together.

Council Member Burt asked the City Attorney what the process or circumstances are to have the Police Auditor review the police investigation of the Children's Theatre.

City Attorney Gary Baum stated the Council can direct the Police Auditor to investigate the Police Department's handling of the investigation. This cannot be done if the investigation is ongoing. The Police Auditor would evaluate what has already been completed by the Police Department and would not conduct their own investigation. This would be completed by Council directing Staff to bring this back as a future item.

Council Member Burt stated that due to the degradation of trust and concern in the community, it is very important to have as much transparency as possible. The public needs to understand more fully what has happened and we need to provide as much information as possible to them. He asked if there is any intention by Staff to release the police report to the public.

Mr. Baum advised if there is a public records request it would be released, with the redaction of privacy information for some of those involved.

Council Member Schmid stated he was pleased that the criminal investigation had resulted in no criminal charges being filed against anyone. He stated the Council has responsibility for policy and there are a number of critical Council issues that need to be addressed.

MOTION: Council Member Kishimoto moved, seconded by Council Member Morton to agendaize an item to refer the criminal investigation of the Children's Theatre to either the Police Auditor or City Auditor.

MOTION PASSED: 8-0, Barton absent

Vice Mayor Drekmeier stated that the San Francisquito JPA has published a job announcement for a new Executive Director, and that it will be on the JPA website, and he would like everyone to spread the word.

Mayor Klein extended his appreciation to Steve Lowney of the District Attorney's (DA) office with regards to the Children's Theatre investigation.

Mayor Klein has several questions, which he would like addressed by Staff:

- 1) A reconciliation between the comments made by the Police Chief and the DA's office.
- 2) He wants to know when Mr. Lowney informed the Police Department of the problems with the case.
- 3) If Mr. Lowney advised the Police Department months ago that there was no case, why wasn't the case closed then.
- 4) When did the police learn about the statute of limitations problem.
- 5) When did the police learn that the no receipts only occurred between 2000-2004.
- 6) Why did no one from the city ask for receipts for the years 2000-2004.
- 7) Was the Children's Theatre authorized to make transfers of used costumes to the Friend of the Children's Theatre by the city Staff.
- 8) Was the depreciation cost of the costumes taken into account
- 9) Why was it necessary to close the Children's Theatre in January 2008.
- 10) How could the City Manager's office review the press release issued by the Police Chief and what authority did the Police Chief have to say that the administrative investigation would continue in another press release.

Council Member Burt stated he wants to understand what assurance the City Council has of the independence between the police criminal investigation and the City Manager's administrative investigation. He also spoke regarding the California Avenue fountain and the potential options to either repair it or replace it with something else.

Council Member Kishimoto would like a brief update on the California Avenue Development Association (CADA) streetscape.

Council Member Yeh asked about the latest CPI spill that had occurred this morning.

Acting City Manager Kelly Morariu stated there was a non-emergency spill of a liquid that went into the storm drain and it is being followed up by Staff.

The Council took a break from 9:30 p.m. to 9:35 p.m.

APPROVAL OF MINUTES

MOTION: Council Member Barton moved, seconded by Vice Mayor Drekmeier to approve the minutes of March 24, 2008 as submitted.

MOTION PASSED: 9-0

CONSENT CALENDAR

Council Member Morton advised he would not be participating in Agenda Item Number 7 as he owns property on the periphery of this district.

MOTION: Council Member Barton moved, seconded by Council Member Espinosa to approve Consent Calendar Item Nos. 4-7.

4. Approval of Memorandum of Agreement with the Bay Area Recycled Water Coalition Regarding Federal Legislative Efforts.
- 4 5. Approval of Contract with Sherry L. Lund Associates in an Amount Not to Exceed \$26,500 for Facilitation of the Council Appointed Officer Evaluations.
6. Request for Referral of Regional Transportation Issues to the Policy and Services Committee.
7. Ordinance 5003 stating, "Ordinance of the Council of the City of Palo Alto Establishing Underground Utility District Number 45 (Palo Alto Avenue, Alma Street, High Street, Lytton Avenue and Cambridge Avenue) by Amending Section 12.16.020 of Chapter 12.16 of Title 12 of the Palo Alto Municipal Code".

MOTION PASSED for Items 4-6: 9-0

MOTION PASSED for Item 7: 8-0, Morton not participating

PUBLIC HEARINGS

8. Policy and Services Committee Recommendation to Adopt an Ordinance Amending Chapter 21.50 (Park Land Dedication or Fees In-Lieu Thereof) of Title 21 (Subdivisions and Other Divisions of Land) of the Palo Alto Municipal Code to Set the Park Land Dedication Requirement to Five Acres Per Thousand Residents.

Council Member Kishimoto stated that the Policy and Services Committee voted two to one to make this recommendation to the Council. She stated that based on two years of experience working with the Quimby Act, Staff has returned with this recommendation.

Department of Planning and Community Environment Administrator Jon Abendschein stated the original ordinance was adopted in 2006. He stated Staff is also recommending an increase of the in-lieu fees.

Council Member Morton asked how the new requirement will impact parkland that needs improvement and the use of Quimby fees for that purpose.

Mr. Abendschein stated the option of fee or land would still be available to the City.

Council Member Morton asked if projects that contain internal green space not accessible to the community qualified for the Quimby requirements.

Mr. Abendschein stated the park would have to be acceptable to the City as a park. He stated that if it did not meet City standards for a public park, then the City would not be required to accept it.

Council Member Schmid asked for qualification of the housing numbers used in this report.

Mr. Abendschein asked if Council Member Schmid was referring to the large multiple family developments proposed over the last few years, which show a substantial increase in housing.

Council Member Schmid stated that the housing trend from 2000 to 2006 was three to four times more than is represented in this report.

Mr. Abendschein stated that the projected revenue of \$1.5 to \$2.0 million would not be consistent from year to year. He stated that some years there will be substantially more development than others.

Council Member Schmid asked what the housing projection is over the next five years.

Mr. Abendschein stated that two projections were used. He stated that one was developed by the Advance Planning Division and the other was based on the trend over the previous five years. He stated that he used a range rather than specific numbers.

Council Member Schmid asked for clarification of the "proposed fees per unit" as listed in Table 2 and Table 3.

Mr. Abendschein stated that this is per constructed housing unit.

Council Member Schmid stated as the list of fees to be paid by developers has expanded there seemed to be a financial incentive for developers to build less than 30 units per acre, which is contrary to the City's housing goals.

Mr. Abendschein stated that while the developer may save on fees, their profit will decrease with fewer units.

Council Member Schmid stated that recently projects have reduced their densities so this raises questions about the current housing policy. He stated that a review of the Comprehensive Plan housing policies may be necessary. He asked if Staff has agendaized the housing policies to be discussed by the Council prior to November.

Deputy City Manager Steve Emslie stated that Staff is trying to schedule a Joint Meeting for the Council and the Planning Commission before the summer break to begin work on the Comprehensive Plan and the Housing Element.

Council Member Burt asked if there are developments being discussed with over 50 units.

Mr. Abendschein stated there are none at this time.

Council Member Burt asked how it would be handled if a developer segmented his project so as to avoid the parkland requirement.

Mr. Abendschein stated his understanding was the development would be considered in its totality.

Council Member Burt asked for clarification of the events of the Elk's Lodge site development that came forward in several different stages.

Mr. Emslie stated that Map was on file before the ordinance was enacted so this project was not subject to these requirements. He stated that they did dedicate equivalent land for the total number of units on the site.

Mr. Baum stated that if it can be determined that a project is part of a larger development then Staff will set the requirement accordingly. He stated that there is a provision in the Quimby Act regarding new commercial development being converted to residential within four years being subject to the parkland requirements.

Public Hearing opened at 9:55 p.m.

Robert Moss, 4010 Orme Street, stated his agreement with the recommendation to move to the five-acre requirement. He stated the Silicon Valley Association of Realtors reported that there are 63 acres of parkland per 1,000 based on the 2000 Census and about 59.8 acres is either in the Baylands or the foothills and is not a neighborhood park. He stated that school athletic fields are counted as three-fourths of an acre of public

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parkland per 1,000 and does not agree with that characterization. He stated that rather than collecting fees and expanding facilities in existing parks, it would be more beneficial to create more small neighborhood parks.

Tom Jordan, 474 Churchill, stated he is in favor of the recommendation. He stated there is reference in the Comprehensive Plan, Policy C-24, calling for four acres of neighborhood and district parkland per 1,000. He stated that the ordinance requiring only three acres per 1,000 exacerbated the deficit as it called for less than the Comprehensive Plan required. He stated the concern over housing price increases due to this ordinance is small compared to other current activities.

Public Hearing closed at 10:02 p.m.

Mayor Klein stated the Council received letters from Emily Renzel supporting the recommendation and from the Silicon Valley Association of Realtors opposing the proposed ordinance.

MOTION: Council Member Kishimoto moved, seconded by Council Member Schmid to approve Staff and the Policy and Services Committee recommendations to adopt an Ordinance amending Chapter 21.50 (Park Land Dedication or Fees in-Lieu Thereof) of Title 21 (Subdivisions and other Divisions of Land) of the Palo Alto Municipal Code to Set the Park Land Dedication Requirement to Five Acres Per Thousand Residents.

Council Member Kishimoto stated this recommendation reflects the policies in the Community Services chapter of the Comprehensive Plan.

Council Member Schmid stated he supported the public comments.

Council Member Barton stated his concern about the competing interests of parks versus affordable housing needs. He stated that the program requires the newest Palo Alto residents to shoulder the majority of the expense and questioned that practice. He stated his preference for supporting the affordability of housing. He stated that the wonderful open spaces cited by public speakers should not be discounted and for all these reasons he will not support the Motion.

Vice Mayor Drekmeier stated he voted for this recommendation in Policy and Services Committee and will support the Motion. He stated with the upcoming housing requirements being imposed on Palo Alto that this change is needed to address some of the impacts on resources going forward.

Council Member Burt stated his view of the value of the open space districts. He stated his disagreement with the notion that the newest Palo Alto

residents shoulder this cost. He stated that the increase in population brings the demand for more parks. He stated his support for the Motion.

Council Member Morton stated his support for this Motion. He stated his differing view from Council Member Barton regarding the cost impacts of parks on housing.

Council Member Yeh expressed his view of the value of parks.

MOTION PASSED: 8-1, Barton voting no

COUNCIL MATTERS

4

9. Colleague's Memo from Mayor Klein and Council Members Burt, Barton and Kishimoto Requesting Support for a Pilot Program Involving "Open City Hall" On-line Civic Engagement Initiative.

Mayor Klein stated it might have been more appropriate to request this matter be referred to the Policy and Services Committee.

Council Member Kishimoto stated this is a request to refer the item to Policy and Services Committee. She stated this is a step towards "egovernment." She stated that this doesn't replace existing procedures, it is an additional resource to assist the public in participating in decision-making.

MOTION: Council Member Kishimoto moved, seconded by Council Member Barton to direct Staff to bring this item to the Policy and Services Committee to identify and clarify any policy or implementation issues to include: 1) working with City Clerk and City Attorney's office to ensure adherence to Brown Act and other legal requirements; 2) who has responsibility for framing and posting the questions for public feedback; 3) the initial budget for the pilot program and funding source.

Council Member Barton stated there may be some misunderstanding in the community about this program. He stated this does not replace any existing methods available to the community to communicate with the Council.

Jeff Hoel, 731 Colorado Avenue, stated his dissatisfaction with continuing in this direction and suggested working with members of the public instead to create a new proposal.

Council Member Schmid stated there have been ongoing concerns in the community about how the website operates. He stated his view that it would be useful for the Policy and Services Committee to consider this

program in the larger context of the worldwide web. He stated he was concerned about the use of questions with only yes and no answer options.

Council Member Espinosa stated his concern that this service will not address the issue of civic engagement. He stated that he has seen other egovernment services that were preferable, so he would rather have Staff research the subject and bring back alternatives. He stated that he would align himself with the public speaker as well as the notions contained in the emails received on this subject. He stated that as a member of the Policy and Services Committee, he will be interested in reviewing this and will support the Motion.

Council Member Morton stated that this is a waste of time in various ways. He stated that in his view it was not necessary to setup a parallel option to Palo Alto Online. He stated that this would be a time consuming and costly endeavor and the budget has not been identified for it. He stated his opinion that now is not the time to undertake this program.

Council Member Burt stated the Kitchen Democracy members, Staff, and the ad-hoc committee created to review this asked many of the same questions. He stated that there were a lot of questions and some skepticism but the responses received were satisfying. He stated that IT Staff was required for this project and the contract can be cancelled or modified at any time.

Vice Mayor Drekmeier stated his skepticism and concerns including the yes/no only option and the anonymity allowed. He stated his intention to vote against the Motion.

Council Member Yeh stated his appreciation to the Council Members who signed the Colleague's Memo. He stated that he had questions but would vote for the Motion to refer this to Committee. He stated that possibly filling the open IT Manager position discussed in the budget would allow more opportunity for technical improvements.

Mayor Klein stated his estimate of the cost for a full year of operation would be \$10,000 and that should be available in the budget. He stated his view that this would be an experimental solution that would further the Civic Engagement goal. He stated his interest in providing an alternative to the negativity appearing on Palo Alto Online and believes this is an approach worth investigating. He stated that he would be open to other approaches or services as this is investigated but sees this as a good first step.

Council Member Morton stated he sees this as a polling program and will take time, money, and effort. He stated his view that this is not the best way to engage the community or to get a clear picture of the community preferences. He further stated that is not truly civic engagement.

MOTION PASSED: 7-2, Drekmeier, Morton voting no

ADJOURNMENT: The meeting was adjourned at 10:38 p.m.

ATTEST:

APPROVED:

City Clerk

Mayor

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