

ORAL COMMUNICATIONS .....2

APPROVAL OF MINUTES .....2

1. Resolution 8279 entitled "Resolution of the Council of the City of Palo Alto Expressing Appreciation to Kenneth Russell for Outstanding Public Service as a Member of the Human Relations Commission" .....3

2. Resolution 8280 entitled "Resolution of the Council of the City of Palo Alto Approving and Adopting No Parking Zones on the 1500 and 1600 Blocks of El Camino Frontage Road" .....3

3. Amendment No. 1 to Lease Agreement Between the City of Palo Alto and McCandless Limited to Provide Additional Space for the Utility Engineering Staff at 1003 Elwell Court .....3

4. Policy and Services Committee Recommendation to Review and Approve Council Protocols .....3

COUNCIL COMMENTS, QUESTIONS, AND ANNOUNCEMENTS .....22

ADJOURNMENT: The meeting adjourned at 11:40 p.m. ....23

The City Council of the City of Palo Alto met on this date in the Council Chambers at 7:03 p.m.

PRESENT: Beecham, Burch, Freeman, Kishimoto, Kleinberg, Lytle, Morton, Ojakian

ABSENT: Mossar

#### ORAL COMMUNICATIONS

Stanley R. Smith, 610 Wildwood Lane, spoke regarding San Francisquito Creek Flooding.

Thomas Rindfleisch, 31 Tevis Place, spoke regarding San Francisquito Creek Flood Control.

Xenia Hammer, 861 Sharon Court, spoke regarding San Francisquito Creek Flood Control.

Karen Holman, 725 Homer Avenue, spoke regarding the Roth building.

Lynn Chiapella, 631 Colorado Avenue, spoke regarding the audit of code enforcement.

#### APPROVAL OF MINUTES

Vice Mayor Beecham noted that City Clerk Donna Rogers requested the January 27, 2003, City Council minutes be removed from the agenda.

**MOTION:** Council Member Morton moved, seconded by Burch, to approve the minutes of January 21, 2003, as corrected.

Vice Mayor Beecham said the word "manic" was added by one of his colleagues as a correction to the Council minutes of November 12, 2002. The colleague summarized the City Manager's comments as, "The City Manager found that the charges of Councilmanic interference or undue influence on staff were invalid." He found that the November 12, 2002, sense minutes were nearly identical to the transcription he did of the minutes. He would vote approval of the changes recommended by his colleague to be incorporated in the minutes but did not find that the City Manager used the word, "manic."

Council Member Lytle said the word was her characterization in the minutes.

Council Member Kleinberg clarified the two amendments to the minutes of January 21, 2003, were quotes from Council Member Lytle.

Vice Mayor Beecham said that was correct.

**MOTION PASSED** 8-0, Mossar absent.

CONSENT CALENDAR

**MOTION:** Council Member Morton moved, seconded by Burch, to approve Consent Calendar Item Nos. 1 – 3.

LEGISLATIVE

1. Resolution 8279 entitled "Resolution of the Council of the City of Palo Alto Expressing Appreciation to Kenneth Russell for Outstanding Public Service as a Member of the Human Relations Commission"
2. Resolution 8280 entitled "Resolution of the Council of the City of Palo Alto Approving and Adopting No Parking Zones on the 1500 and 1600 Blocks of El Camino Frontage Road"

ADMINISTRATIVE

3. Amendment No. 1 to Lease Agreement Between the City of Palo Alto and McCandless Limited to Provide Additional Space for the Utility Engineering Staff at 1003 Elwell Court  
  
Amendment No. 1 to Janitorial Contract No. C1129716 Between the City of Palo Alto and C-Way Custodian Services to Cover Additional Janitorial Services

Council Member Freeman registered a "no" vote on Item No. 3.

Council Member Lytle registered a "no" vote on Item No. 3.

**MOTION PASSED** 8-0 for Items Nos. 1 and 2, Mossar absent.

**MOTION PASSED** 6-2 for Item No. 3, Freeman and Lytle "no," Mossar absent.

REPORTS OF COMMITTEES AND COMMISSIONS

4. Policy and Services Committee Recommendation to Review and Approve Council Protocols

Council Member Kleinberg, former Chairperson of the Policy and Services Committee in 2002, said the Draft Council Protocols were arrived at through a yearlong process and not in response to any particular problems that

existed at the time the Policy and Services (P&S) Committee reviewed the matter. Between 50 and 65 percent of California cities had protocols. Problems that arose in other cities could happen in Palo Alto, which was noted when the Council decided to refer the matter to the P&S Committee. During the course of discussion, the P&S Committee reviewed protocols from many other cities. Two guidelines were set for the P&S Committee: 1) the P&S Committee agreed not to discuss current personalities or problems but rather to pose hypothetical cases and make constructive criticism and analyses; and 2) the P&S Committee agreed to adopt only those protocols that were complimentary to existing law, both municipal and state. The P&S Committee believed there was no need to recodify existing law such as confidentiality and privilege rules governed by the Brown Act and newer state legislation. The P&S Committee would take up additional matters, such as the ex-parte and email communications, which would be considered by the Council for addition to the current Protocols.

Harold Justman, 828 Ramona Street, spoke to the protocol that said, "Never publicly criticize an individual employee, including Council-Appointed Officers." He said public criticism of staff was inappropriate; however, public criticism should be interpreted to mean, "disparaging personal criticism." Disagreeing with a staff opinion should not be an act of public criticism. Including disagreement with staff opinion under the label of "public criticism" stifled vigorous debate of City issues. He encouraged the Council to publicly criticize an opinion where it was appropriate without criticizing the employees.

Richard Alexander, 435 Santa Rita Avenue, said everyone in Palo Alto wanted honest, ethical, and responsible government as well as government that generated confidence through vigorous and open debate. The citizens of Palo Alto wanted to hear the arguments and wanted to hear exchanges taking place when the Council debated public policy. The proposed protocols fell short of providing protections to put an end to some of the mistakes in the Council's recent past. The Protocol should be called "Code of Ethics" which was the general term used by many cities throughout California. Adopting a standard that required participants to be above reproach was common in the legal profession and judiciary. The same was expected of political leaders. Statements made in governmental proceedings were privileged communications under the Civil Code. Section 47 of the Civil Code meant whatever the Council said at a meeting was not subject to the libel and slander laws of the State of California. A Code of Ethics should address how the Council dealt with each other in the Council Chambers. Each Council Member had a special obligation to assure that the ethical obligations were followed. The Council was encouraged to adopt a Code of Ethics that prohibited libelous and slanderous conduct. The failure to enunciate a standard created a defacto policy.

**MOTION:** Council Member Kleinberg, seconded by Burch, that the City Council approve the Proposed Council Protocols attached to CMR:188:03.

Council Member Kleinberg said the Council tried to provide a mutually agreeable set of Protocols in order to understand the parameters within which the Council was free to debate, disagree, agree, and perform roles as City Council Members. She was open to listening to differences of opinion over semantics but noted that the P&S Committee combed carefully through the Protocols. There were current laws that impacted the Council's behavior and roles. The City Attorney was prepared to let the Council know what the law was so it did not have to be recodified in the Protocols. Civility, boundaries, and role clarification were fundamental to good government, and insuring transparency and effective communication were the pillars of an open government.

Council Member Burch appreciated the work of the P&S Committee on the issue of civility.

Council Member Freeman had issues with some details of the proposed protocols. The staff report (CMR:188:03) indicated that she wanted to insure that voting "no" with regard to a particular bullet was highlighted. She referred to the first bullet on page 4: "All Council Members should have the same information with which to make decisions." The sentence started out with "Substantive materials," and she felt it was important to have definitions. "Substantive" needed to be clarified because it might mean documents such as Environmental Impact Reports (EIRs), plans or actual, physical documents or might include responses to questions that went to staff verbally, electronically or in meetings. She asked that a further definition of "Substantive materials" include both documents and responses to any agendaized questions that came to staff in any form. All questions should have equal protection and access, regardless of the format they came in.

**AMENDMENT:** Council Member Freeman, seconded by Lytle, to add under "Council Conduct with City Staff," first bullet on page 4, the definition of substantive materials should include, "All responses communicated, regardless of format, that provide information to the Council or Mayor from the staff should be e-mailed to the entire Council and public before the agendaized item is heard publicly.

Council Member Freeman said another issue was what was released to other Council Members was decided by staff. Staff needed to understand its responsibility to get the information out.

Council Member Lytle did not understand how the issue of sharing substantive information evolved. She understood staff was obligated to share equally substantive information among all Council Members. During her Council Member orientation, the protocol was that Council Members had the obligation to get questions answered prior to meetings. The prior Mayor put out new protocols about sharing information to questions that were asked prior to meetings. The concern was that questions, particularly email questions, were not shared among all Council Members. Council Members received advice from the City Attorney that sharing information prior to a meeting could potentially lead to Brown Act violations. The Protocols were ambiguous because one said Council Members should do preparation and get questions answered ahead of time and another said to share substantive information.

City Attorney Ariel Calonne said during the prior summer when the practice began of including questions and responses in a single mailing, he advised the Council that a potential Brown Act violation could occur. Staff had not come forward with the email protocols that were referred to the P&S Committee by the Mayor. The text of the *San Jose Mercury* and *Palo Alto Weekly* settlement indicated, "will distribute all agenda item email exchange prior to distribution of the agenda packet as part of the packet." The Council was free to include in the packet any messages or memos it wished. If those exchanges implicated a majority of the Council, the settlement called for the Council to prove a Brown Act violation. The language in the settlement did not say that staff's answers should be sent back to the entire Council. The Council had a problem with respect to agenda items that they could create Brown Act violations if staff acted as a conduit to relay questions to a majority. He suggested the Council distinguish requests related to agenda items from requests unrelated to agenda items. The Attorney General considered questions in advance of an actual decision as part of the broader deliberative decision-making process. The Attorney General believed the gathering of information that would inform the Council's decisions was part of the Brown Act protected collective concurrence. Taken literally, the Attorney General would say that any question of staff by a majority of the Council could lead to a Brown Act violation; therefore, if one Council Member asked a question, and staff forwarded that question along with a response to the majority of the Council, he was confident the Attorney General would say that was a Brown Act violation.

Vice Mayor Beecham clarified if the process were to not forward the question but only the information, the issue would be taken care of.

Mr. Calonne said that was correct. He believed the Council, by virtue of the settlement agreement, said explicitly they waived any deliberative process

privilege as to agenda items. That meant the Council retained deliberative process privilege as to questions on other matters. In the policy development phase of Council doing its job as legislatures, the Council should be permitted to be candid, to think, to investigate, to meet with unpopular factions, and to meet within whomever they wanted without fear that the tracks would be disclosed. The rationale was if the processes were disclosed, they would not happen and the law making process would become stilted. The settlement spoke to how the Council handled agenda items and did not authorize Brown Act violations. The Council had to confront whether it wanted to force a sharing of the deliberative process information prior to agenda items coming up.

Vice Mayor Beecham said the proposed policy was "substantive materials and information supplied to a Council Member in response to a request will be made available to all members." The substantive response would be made available. The title indicated, "information with which to make decisions," which implied an agenda-type item.

Mr. Calonne said the Council needed to read the "one-hour" rule in conjunction. He was unsure what the context of "substantive" was, whether it meant substantive as in substantial and large or something other than trivia. He agreed definition was needed with regard to "substantive materials."

### **AMENDMENT WITHDRAWN BY MAKER AND SECONDER**

**AMENDMENT:** Council Member Freeman moved, seconded by Lytle, to refer the definition of "substantive materials" to the Policy and Services Committee to be crafted to fit situations that involve the Brown Act.

Council Member Kishimoto noted the City Attorney said one-way broadcast of Council questions did not constitute a Brown Act violation, but when staff formulated a response and fed it back to the entire Council, that became a Brown Act violation. She asked whether that occurred because there was an exchange of questions and answers.

Mr. Calonne said he spoke from the standpoint of what the Attorney General would do. The Attorney General would argue that sharing the information among a majority was part of collective concurrence. He did not agree with that.

Council Member Kishimoto clarified that, according to the Attorney General, sharing questions was a Brown Act violation.

Mr. Calonne responded that the Attorney General said that anything that went into the formulation of public debate and collective concurrence was part of the process that should happen in public.

Council Member Kishimoto clarified that was for technical or clarifying questions.

Mr. Calonne said that was correct, and the underlying basis for the Attorney General's stance was disbelief that people could only ask questions without implying an answer.

Council Member Kishimoto clarified there would not be a Brown Act violation if questions were limited to technical or clarifying.

Mr. Calonne said the settlement agreement included recognition that an Attorney General's opinion might need to be obtained with respect to implementation of the information exchange. A change in the law was necessary to do the type of electronic government anticipated by the newspapers.

Council Member Kishimoto said in addition to the method of sending a response to all Council Members by email, staff could share substantive information at Council meetings.

Mr. Calonne said the P&S Committee tried to limit the sharing to agenda items, as noted in the protocol, "This is especially important for items that have been agenda items for Council review or which could reasonably be expected to come before the Council for a vote."

Council Member Kishimoto suggested the wording "This is especially important" be changed to, "This is limited to."

Assistant City Manager Emily Harrison said staff would be comfortable limiting it to agenda items. She suggested removing "substantive."

Council Member Kleinberg disagreed with the City Attorney as to what was the P&S Committee's intent. The P&S Committee struggled with whether it would only have bullet lines and no explanations. The reason for explanations was the P&S Committee thought examples helped clarify what was talked about. She was not interested in finding out what questions were or who asked questions but was interested in staff providing all Council Members with the information that would make the Council as well prepared as possible. The Council needed to debate whether it shared information supplied by staff. The word "substantive" should be removed. Any information that came from staff to the Council should go to everyone. The



P&S Committee did not have a decision to limit agenda matters. The intent of the Council should be stated that all protocols must be interpreted in compliance with applicable law.

**SUBSTITUTE AMENDMENT:** Council Member Morton moved to eliminate the word "information" in the first bullet on page 4, and that the word "substantive" be removed from the section under the first bullet for data being distributed.

Council Member Morton said the Council was worried about data rather than questions. The data belonged in the public domain and was not the property of a single Council person.

Mr. Calonne said the issue about "substantive" came up because of the question raised by Council Member Freeman. He needed to understand what kinds of information he should report to the Council.

Council Member Morton said it was ridiculous that any response from a City staff member to a Council person had to be reported on. That burden seemed to be untenable. He asked whether the wording, "materials supplied to a Council Member" gave the City Attorney a clear idea of the intent of the P&S Committee.

Vice Mayor Beecham asked staff what type of definition would be useful to define something that was trivial or important.

City Manager Frank Benest said there was an important distinction in terms of staff time. The distinction was upcoming agenda items. If staff provided information to one Council Member, staff would provide it to all. If he had a discussion about all kinds of topics, it would be hard to report that to a full Council. Paper or electronic information could be provided to the Council.

### **SUBSTITUTE AMENDMENT DIED FOR LACK OF A SECOND**

Council Member Burch said "substantive" needed to be defined.

Council Member Morton appealed the Council to vote on the matter at the current meeting.

Council Member Freeman said the P&S Committee did a lot of work on the current issues previous to the settlement with the two newspapers. The P&S Committee did not have the City Attorney's advice. She agreed the Council should move forward and let a smaller group discuss the issue.

Council Member Ojakian agreed with the Vice Mayor to send the issue back to the P&S Committee.

Council Member Lytle said it was important for the Council to share information with everyone. The Council should have equal access to information. Her concern was how that was done logistically. Reaching agreement on issues was important.

**SUBSTITUTE AMENDMENT:** Council Member Morton moved, seconded by Burch, to leave the first bullet on page 4 in place and refer the language explaining the bullet back to the Policy and Services Committee.

**SUBSTITUTE AMENDMENT PASSED** 5-3, Beecham, Freeman, Ojakian "no," Mossar absent.

**AMENDMENT:** Council Member Freeman moved, seconded by Kishimoto, to add wording at the end of the section under the second bullet on page 4, "Criticism is differentiated from questioning facts or opinions of staff. "

Council Member Freeman said she wanted clarification of the word "criticism.

Council Member Kishimoto said the job of the Council was to set policy and, when policy makers disagreed with recommendations of staff, that should not be construed as criticism of staff.

Council Member Lytle asked that the Chair of the P&S Committee and staff respond to what they considered criticism to be constituted of. Her assumption was critically evaluating answers from staff was the right of Council as long as it was done in respectful terms. She hoped the Council did not consider criticism to be implied or read between the lines. The Council could use respectful language, such as "I don't mean this to be criticism."

Council Member Kleinberg said Council Member Freeman's added sentence continued to confirm the prior sentences. The basis of the second bullet on page 4 was not to disrespect the Council or staff.

Council Member Morton did not see the point of adding one more sentence.

**AMENDMENT PASSED** 6-2, Burch, Morton "no," Mossar absent.

Council Member Freeman referred to the last bullet on page 8, "The Mayor and Vice Mayor should work with staff to plan the Council meetings." She suggested item 2 be changed to read "for staff to identify any pending issues or questions." She was unclear how the Mayor and Vice Mayor would know

what questions came from the entire Council unless there was a Brown Act issue.

Mr. Benest said the Mayor and Vice Mayor often heard from constituents about issues and then requested staff to deal with those issues.

Council Member Kleinberg clarified the pre-Council planning meetings were team meetings and not policy setting.

Mr. Benest responded that the Mayor and Vice Mayor made sure that staff understood the order of agenda items. Staff might bring up an item or find out that one item might create a lot of public interest, and that item would be moved forward on the agenda. Staff did not get involved with discussing the merits of staff recommendations.

Council Member Ojakian said the purpose of pre-Council planning meetings was to determine who would present agenda items, what was the order of agenda items, and what issues came up. The wording in the bullet did not preclude other Council Members from attending the planning meetings.

Council Member Kleinberg said the wording in the bullet seemed to imply there was one-way communication between Council and staff rather than a collaborative. She suggested a change in the wording, "to identify any issues or questions that need greater preparation for the meeting."

Vice Mayor Beecham suggested, "to identify any issues or questions that staff should be prepared to respond to at the meeting."

Council Member Freeman suggested, "to identify any pending issues and questions."

Council Member Morton suggested, "to identify any pending issues or questions that may arise at the meeting."

**AMENDMENT:** Council Member Kleinberg moved, seconded by Freeman, to change the wording under "Other Procedural Issues," last bullet on page 8, 2) to identify ~~for staff~~ any issues ~~and~~ **or** questions that ~~they should be prepared to respond to at the~~ may need greater staff preparation for the meeting.

Council Member Lytle said prior Mayors encouraged Council Members to attend planning meetings if there were issues of interest to certain Council Members.

Council Member Kishimoto said when she became a Council Member, she was told that she was welcome to attend pre-Council meetings. She asked if there was a Brown Act violation if the senior staff, Mayor, and Vice Mayor shared questions.

Mr. Calonne said he generally refused to discuss Council questions at pre-Council meetings. The rules would change in order that he could freely discuss Council questions. Staff did not want to be perceived as political strategists for any faction of the Council. The Mayor and Vice Mayor were viewed as the Council's representatives who helped staff identify priority issues for each agenda. Staff did not take direction or disregard other questions.

Council Member Kishimoto perceived two types of questions she was asked to submit prior to pre-Council meetings. One was clarifying questions on agenda items. The second type was a "heads up" type of question to give staff extra time to prepare.

Mr. Benest said pre-Council meetings started at 8 a.m., and he did not have time to read emails prior to that meeting. If a Council Member or staff member raised an issue, the determination was made at the meeting as to who would answer the question.

Mr. Calonne said unless he was told otherwise, things he told the Council were confidential.

Mr. Benest said there was a distinct difference in the role between City Attorneys and City Managers. The City Attorney was the Chief Legal Counsel and had confidential discussions with the Council. The City Manager was the Chief Executive Officer and prepared staff to deal with questions raised in a Council meeting.

Council Member Kishimoto said she was interested in attending pre-Council meetings to hear what was to be discussed at future meetings. She wanted to see the issue of prioritizing agenda items go to the Council more often than once a year.

Ms. Harrison said information on the Tentative Agenda, which was included in each Council packet, contained the same information that was discussed at the pre-Council meetings.

Council Member Freeman said the Council had to live with and abide the Protocol items even though they were not legally enforceable. She appreciated the patience of other Council Members and presiding officers when others were talking because that was part of the Protocol.

Council Member Burch noted the fourth bullet on page 8, "The Mayor and Vice Mayor should work with staff to plan the Council meetings," was clear. Pre-Council meetings were where staff and elected members did their preparatory work.

**AMENDMENT PASSED** 8-0, Mossar absent.

**AMENDMENT:** Council Member Freeman moved, seconded by Lytle, to add under "Council Conduct with City Staff, third bullet on page 2, "The presiding officer will be respectful and evenhanded with diverse positions and should not use authority or process to further any individual's personal agenda."

Council Member Freeman referred to the third bullet on page 2, "Honor the role of the presiding officer shall in maintaining order and equity." She suggested adding wording about the presiding officer's behavior toward colleagues: "The presiding officer be respectful and evenhanded with diverse positions, not using authority or process to further any individual's personal agenda." The Council had a discussion about the subject matter with the City Attorney. The City Attorney thoughtfully presented an opinion about types of changes in procedures, for example, if the presiding officer generally allowed motions at the beginning of an issue and then said only questions would be addressed. Changes in procedure in meetings could be perceived as furthering one's own agenda or another individual's agenda. She wanted to be clear that part of the stature of being a presiding officer was to ensure evenhandedness and fairness among colleagues.

Council Member Lytle did not support the wording, "should not." The motion should state the positive.

**AMENDMENT RESTATED BY MAKER AND SECONDER** to modify the third bullet on page 2 to read, "Honor the role of the presiding officer," and change the first sentence to read, "Respect the chair's responsibility to guide discussion in an orderly, predictable, and equitable way."

Council Member Lytle suggested, "presiding officer will be fair and evenhanded with procedures and diverse positions."

Council Member Freeman was concerned there could be blatant misuse of process, which she did not want to see continued. The presiding officer should be held at a high level and needed to ensure there was evenhandedness in the process.

Council Member Kishimoto suggested, "Honor the role of the presiding officer. Respect the chair's responsibility to guide the Council discussion in orderly predictable and equitable way."

Council Member Freeman said presiding officers included committee chairs.

Council Member Kleinberg said the point of the bullet was to acknowledge the role of the person who tried to run the meeting. Changing the words, "respect the chair's efforts" to " respect the chair's responsibility" changed the intent. The intent was to give the chair the benefit of the doubt. Asking for "responsibility to guide" the discussion was a proactive responsibility.

Vice Mayor Beecham interpreted "predictable" as keeping the same procedures over time so that people knew what would happen.

**AMENDMENT AS RESTATED FAILED** 4-4, Beecham, Freeman, Kishimoto, Lytle "yes," Mossar absent.

Council Member Ojakian referred to the ninth bullet on page 1, "Represent the City at ceremonial functions at the request of the Mayor." He mentioned that Council Members individually were invited to functions, and he did not want the wording to preclude Council Members from going to those individual functions.

Council Member Burch said there was a difference when the Mayor asked a Council Member to attend a function and "represent the City."

Council Member Ojakian referred to the bullet point on page 2, "Use formal titles" and hoped there was some latitude depending on the type of meeting, for instance, during interviewing of candidates. For the comfort of candidates, he preferred to use first names.

Council Member Kleinberg said she had trouble with enforced formality because it did not enhance collegiality. She suggested saying, "During Council meetings."

**AMENDMENT:** Council Member Ojakian moved, seconded by Morton, under "Council Conduct with One Another," section under first bullet on page 2, to change the wording to read, "The Council should refer to one another formally during public **Council** meetings as..."

**AMENDMENT PASSED** 8-0, Mossar absent.

Council Member Morton said open communication was absolutely fundamental to good government. He proposed an addition to bullet 3 on page 4, "Do not get involved in administrative functions." Communication by staff to the Council without any influence from an individual Council Member was important.

**AMENDMENT:** Council Member Morton moved, seconded by Burch, under "Council Conduct with City Staff," to add wording to the last sentence of the section under the third bullet on page 4, "or on communications to the full Council."

Council Member Morton said the most important thing for a local government was that staff communicate directly and openly to the full Council without any undue influence. No individual Council Member should attempt to influence the content or type of communication that a staff or senior staff wished to make to the full Council.

Council Member Kleinberg wanted to see the wording changed so it was less about what the Council should not be doing and more about what the proper roles were.

Council Member Freeman said she was under the impression that the City Manager encouraged opinions from Council Members not directing the staff or in any way influencing the staff.

Mr. Benest said opinions were great. Staff needed to know value statements and perspectives. The key was not to influence staff policy recommendations.

**AMENDMENT RESTATED:** Change the second sentence in the section under the third bullet on page 4 to read, "Council Members ~~must not attempt to influence~~ **should refrain from influencing** City staff ~~on~~ **in** the making of appointments, awarding of contracts, selecting of consultants, processing of development applications, granting of City licenses and permits, **or on the nature of their communications with the full Council.**"

Council Member Kishimoto clarified the role of the Council was to set policy. There was a gray zone in front of the actual vote in terms of developing alternatives or the nebulous trail of identifying issues, projects, ideas, etc.

Mr. Benest said there was no clear line from a Council person expressing a value or policy perspective and then trying to influence the actual recommendation from staff.

Council Member Kishimoto suggested changing wording from "must refrain from influencing" to "must refrain from giving direction."

Mr. Benest said staff did not want to have individual Council people or small groups of Council people trying to influence the formulation of professional recommendations to go to the City Council. He was comfortable recognizing

there would be policy discussions with the proposed language about refraining from influencing policy recommendations.

Council Member Kishimoto wanted to keep her prerogative to lobby.

**INCORPORATED INTO RESTATED AMENDMENT WITH THE CONSENT OF THE MAKER AND SECONDER** that the word "should" be changed back to "must."

Mr. Calonne said he was interested in what individual Council Members had to say in policy development and was disinterested in an attempt to modify a recommendation that was formulated. Coercive behavior should not be used by the Council to get what it wanted from staff.

Council Member Lytle had no difficulty with staff making an independent recommendation because she did not necessarily accept staff recommendations. Staff had a responsibility to prepare accurate and balanced reports that provided a full spectrum of policy options reflected on the Council and in the community.

Mr. Calonne said the Charter indicated, "No member of the Council shall in any manner directly or indirectly, by suggestion or otherwise, attempt to influence or coerce the manager in making any appointment or removal, or in the purchase of supplies." The language, with respect to contracting and appointments meant the Council did not have the conversation.

Council Member Kleinberg said in developing the protocols, there were matters that were discussed with the City Manager in which he assured the P&S Committee that he had rules and protocols that he followed. The proposed Protocols were what the Council did toward staff to ensure the proper delineation of roles and boundaries. The third bullet on page 4, "Do not get involved in administrative functions" had two separate applications. The first had to do with policy development and staff recommendations. The other had to do with Charter matters. Her understanding was that Council was not to lobby staff.

Council Member Burch supported Council Member Lytle's suggestion to try to state protocols in a positive manner.

Council Member Kishimoto suggested adding wording that differentiated between big picture issue identification which included joint responsibility of council and staff, development of staff recommendations, and the contracts and appointments that Council does not discuss.



Vice Mayor Beecham said there was a problem when the Council mixed things that were prohibitive in the Charter with things from which the Council should refrain. The Charter prohibited the Council from influencing some items.

**SUBSTITUTE AMENDMENT:** Vice Mayor Beecham moved, seconded by Ojakian, to change the second sentence in the section under the third bullet on page 4 to read "Council Members shall refrain from coercing staff in making recommendations to the Council as a whole."

Council Member Kleinberg said the original sentence was included because in a neighboring city, one of the Council Members was removed from office for violating the policy on getting involved in administrative functions. The P&S Committee felt the wording was necessary even though it was included in the Charter.

Council Member Morton agreed with including wording from the Charter in the Protocol.

Council Member Kishimoto suggested the first sentence should clarify the Charter forbid Council interference in contracts and other topics as indicated by the City Attorney. She suggested removing the wording, "policy development" in the first sentence.

Vice Mayor Beecham said policy development should remain because that was a staff recommendation on policy.

Council Member Kleinberg clarified the P&S Committee affirmatively decided to make a stricter rule in the protocols.

Mr. Calonne said strict prohibition was on attempting to influence a purchase of goods, the appointment or removal of employees, and tempting to exact promises for candidates for City Manager.

Council Member Kleinberg clarified that was narrower language than what was in the proposed protocol.

Mr. Calonne said the language about contracts was broader than the Charter's statement about goods.

Council Member Lytle agreed with the notion that the Council needed to reaffirm compliance with laws. She suggested the Council consider a Code of Ethics at a later time. "policy development" was confusing because it was the role of the Council; to have it listed as an administrative function was

inconsistent with her concept of the roles of the Council versus the administration.

**SUBSTITUTE AMENDMENT PASSED** 5-3, Burch, Kleinberg, Morton “no,” Mossar absent.

Council Member Burch referred to the first bullet on page 5, “Depend upon the staff to respond to citizen concerns and complaints.” He said when the Council received a complaint by email, he was unclear who forwarded that information to staff.

Mr. Benest said his office received copies of all emails to Council. The standing policy was that emails were automatically sent to the appropriate department, staff responded, and the full Council was copied. The letters were included in the Council packets.

Ms. Harrison said responses to emails were not always immediate in terms of being able to resolve a complaint. The complainer was told within five days that the complaint was received and referred to the appropriate staff person. Council Members who received individual emails, needed to forward that information to the City Manager’s office for review and referral.

Council Member Freeman asked how the constituent knew that the Council had acted on a complaint.

Mr. Benest said Deputy Public Communications Officer P.A. Moore, who responded to complaints, indicated to the email writer that she was following up on an email to the Council.

Council Member Freeman said the City had a policy for complaints. She asked how concerns were handled.

Ms. Harrison responded that concerns and complaints were followed up on right away.

Mr. Calonne said he made priority judgments based on what a majority of the Council directed him to do.

Council Member Freeman was concerned about issues where a member of the public needed an answer and staff unilaterally decided not to answer.

Council Member Kleinberg said the issue of discussing a response at the current time or a later time was fundamental. The Council set policy and assigned priorities, and staff was left to order their time and do their jobs.

Council Member Lytle said it was important to change stylistically some of the language in the document. She referred to the second bullet on page 2 and suggested a change to the last sentence, "Show your colleagues that you are open-minded through active listening conduct, avoid side conversations, make eye contact, use expressions open to another opinion, and avoid using body language or other forms of disagreement during another colleagues' time to speak." The protocol document needed to achieve a level of civility that was an example of the type of conduct the Council wanted to see throughout the year.

**AMENDMENT:** Council Member Lytle moved, seconded by Freeman, under "Council Conduct with One Another," to change the second sentence in the section under the second bullet on page 2 to read: "~~Do not~~ Use body language ~~or~~ **and** other non-verbal methods of **messages for** expressing disagreement or disgust **openness and willingness to hear the diverse opinions of your colleagues, avoid side conversations, expressions of disagreement either verbally or nonverbally.**

#### **AMENDMENT WITHDRAWN BY MAKER AND SECONDER**

Council Member Freeman said it was important that Council Members had the opportunity to state their opinions. Council Member Lytle suggested the document go back to the P&S Committee to be wordsmithed in a positive way.

Vice Mayor Beecham reiterated Council Member Freeman's recommendation to have Council provide direction to staff to rework negative language and return to Council.

**AMENDMENT:** Council Member Lytle moved, seconded by Freeman, to direct staff to find negative statements in the Protocol document, express them in positive expressions, and forward the recommended language to the Council for formal adoption.

Council Member Freeman said the Assistant City Manager attended all the P&S Committee meetings and was able to interpret the Protocols in a positive way without changing the meaning.

Council Member Kleinberg said the P&S Committee spent over one year on the protocol and chose words carefully. Negative words were for impact and clarity rather than for the sake of being negative. Staff was busy working on other things, and she was willing to listen to Council Member Lytle's affirmative modifications.

Council Member Morton strongly encouraged his colleagues not to refer the Protocols back to staff.

Council Member Burch said he only found two instances, on page 2, second bullet and on page 4, second bullet, where less than positive statements were expressed. The Council should leave the stylistic wording for staff to make.

Vice Mayor Beecham did not support sending the Protocols back to staff because that might result in the same type of discussion by the Council.

**AMENDMENT FAILED** 3-5, Burch, Freeman, Lytle "yes," Mossar absent.

**AMENDMENT:** Council Member Lytle moved that the third line in the section under the second bullet on page 2 should read, "**Council should** use body language and other non-verbal messages for expressing openness and willingness to ~~hear the diverse opinions of your colleagues~~ **listen to colleagues who have differing opinions** during their speaking time. Change the last sentence to read, "~~Other forms of non-civil Disagreement could include~~ **should be civil and avoid using** personal, disparaging, **or** angry comments name-calling or labeling."

**AMENDMENT DIED FOR LACK OF A SECOND**

**AMENDMENT:** Council Member Lytle moved, seconded by Morton, under "Council Conduct with City Staff," in the section under the second bullet on page 4, delete the first sentence and change the next sentence to read, "**All** comments about staff performance of City employees should only be made to the City Manager by private correspondence or conversation. Comments about staff in the offices of the City Attorney, City Auditor or City Clerk should be made directly to these CAO's **by private correspondence or conversation.**"

Council Member Morton concurred with Council Member Lytle. He said the proposed wording in the motion made the point that Council was not to criticize staff in public. He did not like the words, "mock and degrade."

Council Member Lytle agreed that "mock and degrade" was not language the Council wanted to see in any text. She wanted the first proposed sentence deleted.

**INCORPORATED INTO THE AMENDMENT WITH THE CONSENT OF THE MAKER AND SECONDER** under the second bullet on page 4, add the word "critical" between "All" and "comments" at the beginning of the second sentence.

**AMENDMENT PASSED** 8-0, Mossar absent.

Council Member Kishimoto asked whether there were any legal issues the Council should be aware of about libel and slander.

Mr. Calonne understood Mr. Alexander to say it was important that the Council spoke politely to one another. Senior staff did not enjoy any type of First Amendment protection while in the Council employ.

Council Member Kishimoto questioned whether the words, "do not libel or slander" should be added.

Mr. Calonne did not agree. The rules were for the Council, and the perspective was what would make the Council function better.

**MOTION:** Council Member Kishimoto moved, seconded by Kleinberg, to refer to the Policy and Services Committee to clarify the procedure for compliance and enforcement of these Protocols.

**MOTION PASSED** 8-0, Mossar absent.

**MOTION:** Council Member Morton moved, seconded by Burch, to limit debate to 11:25 p.m. and at that time to call for the question.

**MOTION FAILED** 2-6, Burch, Morton "yes, " Mossar absent.

Council Member Lytle felt it was important that the codes contained the input of everyone affected.

Vice Mayor Beecham felt the sense of the Council was to not close the debate on the Protocols.

Council Member Freeman recommended trying to get through as much of the Protocol discussion as possible at the current meeting.

Ms. Harrison said the Council would not be able to continue the discussion of Protocols until mid-May, due to scheduled Council Appointed Officers (CAO) evaluations.

Vice Mayor Beecham suggested staff consider an alternate day, other than a Monday, to find a date to continue the discussion.

Ms. Harrison said staff would review agendas to try to find another hour for Council discussion.

Council Member Lytle said the League of Cities advised that cities adopt a Code of Ethics to provide context and framework for Protocols and Conduct Codes. A Code of Ethics addressed several issues that were brought up at the P&S Committee meeting, including charges or personal allegations against each other.

Vice Mayor Beecham suggested Council Member Lytle raise the issue during Council Comments.

Council Member Lytle believed a Code of Ethics was a necessary part of a Protocol discussion. She said she would bring up the Code of Ethics issue when the Protocols were brought back to the Council for further discussion.

Ms. Harrison said the Protocol discussion would be added to the April 14, 2003, agenda as Unfinished Business.

**MOTION:** Council Member Kishimoto moved, seconded by Lytle, to continue the discussion to the April 14, 2003, regular City Council meeting.

**MOTION PASSED** 7-1, Freeman "no," Mossar absent.

Council Member Kleinberg asked whether the amended version of the Protocols would be available prior to the April 14, 2003, meeting.

Ms. Harrison said yes.

#### COUNCIL COMMENTS, QUESTIONS, AND ANNOUNCEMENTS

Council Member Lytle stated her concerns regarding the scheduling of a study session on San Francisquito Creek.

Council Member Kleinberg said she had contacted the Mayor, Vice Mayor, and City Manager asking for a study session on the San Francisquito flood issue and storm drain repair in mitigating floods and was promised it would be considered.

City Manager Frank Benest replied it would be reviewed at the pre-Council meeting to set a date.

Council Member Kleinberg requested that the Council discuss the San Francisco Creek issue in a session where the public was allowed to have a dialogue with the Council.

Vice Mayor Beecham said staff would work with the Mayor and Vice Mayor to agendize the issue.

Council Member Burch spoke regarding his concerns with misinformation in a neighborhood newsletter on 800 High Street regarding Below Market Rate (BMR) units. He stated his concerns about anyone blaming the City regarding the new laws not included in the referendum information, and the document stated it was the duty of the referendum proponents to seek the advice of an attorney. He also stated his concerns regarding the lack of time given for recycling of a demolished home at 300 Santa Rita Avenue.

Council Member Ojakian noted that Parks and Recreation Commissioner Rick Beckwith had passed away. He noted the service for Mr. Beckwith would be held at 3 p.m. on Sunday, March 16, 2003, at the Children's Theatre.

Council Member Freeman noted she understood an appeal had been filed by the Department of the Interior regarding the Trinity River. The previous Council motion stated the item would return to Council if it were appealed. She requested further information as soon as possible. She referred to the semi-annual report on demographics of police profiling in the packet, and recommended the Council continue to have a quarterly report with analysis.

Mr. Calonne said he would report back to Council have communicating with the General Counsel at Northern California Power Agency (NCPA).

Council Member Freeman mentioned that the Council received the semi-annual report on police profiling in the Council packet and recommended the Council continue to receive a quarterly report rather than semi-annual report.

Mr. Benest replied the Finance Committee would consider the item regarding demographics while dealing with the budget.

Council Member Freeman noted the artwork in the City Hall lobby was donated to the City by Scott and Peter Carey.

ADJOURNMENT: The meeting adjourned at 11:40 p.m.

ATTEST:

APPROVED:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

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