RECOMMENDATION
Staff recommends that the City Council confirm the current role of the Utilities Advisory Commission (UAC) in the Municipal Code for oversight of the Utilities Department, with the addition of reclaimed water.

BACKGROUND
Utilities Restructuring
As part of the City Manager’s restructuring of the Utilities Department, the Public Works Director joined what had previously been the Risk Oversight Committee, newly rechristened the Utilities Risk Oversight and Coordinating Committee (UROCCC). The plan at the time the change was made was to include oversight of both strategic and operational issues for the Refuse, Storm Drainage, and Waste Water Treatment/Regional Water Quality Control Plant utilities in the scope of the UROCC, along with oversight for Utilities Department enterprise funds. That role has been further evaluated and refined in the intervening period of time, as will be shown in the Discussion section of this report. The restructuring plan was reviewed with the Utilities Advisory Commission (UAC) prior to its presentation to the Council in study session and incorporated into the budget. Council subsequently referred to the Policy and Services Committee discussion of whether an extension of the UAC’s charge – to extend to the Public Works enterprise funds – would also be appropriate.

Current Utilities Advisory Commission Role
The historical role of the UAC, as defined by the Municipal Code, has been to provide recommendations to the City Council on policy and strategic issues for the City’s commodity-based utilities of gas, electric, and water services. This role was focused primarily on the long term ability of those utilities to provide adequate supply at reasonable prices, due to the dynamic and sometimes volatile markets in which they operate. Specifically, Municipal Code Section 2.23.050 states:
Purpose and duties. (a) The purpose of the Utilities Advisory Commission shall be to advise the city council on long-range planning and policy matters relating to the electric, gas and water utilities, excluding daily operations. (b) The utilities advisory commission shall have the following duties: (1) Advise the city council on planning and policy matters pertaining to: (A) Acquisition and development of electric, gas and water resources, (B) Joint action projects with other public or private entities which involve electric, gas or water resources, (C) Environmental implications of electric, gas or water utility projects, (D) Conservation and demand management; (2) Review and make recommendations to the city council on the consistency with adopted plans and policies of major electric, gas or water utility projects; (3) Formulate and review legislative proposals regarding electric, gas and water utilities; (4) Review the electric, gas, and water utility capital improvement programs, operating budgets, and rates, and thereafter forward any comments to the finance and public works committee or its successor; (5) Provide advice upon such other matters as the city council may from time to time assign.

The utilities advisory commission shall not have the power or authority to cause the expenditure of city funds or to bind the city to any written or implied contract.

**DISCUSSION**

The Policy and Services Committee has been asked by Council to make a recommendation as to whether the UAC should become involved with in the oversight of those utilities which are managed by the Public Works Department – namely, the Storm Drainage, Refuse, and Waste Water Treatment funds. While these activities do not have the same commodity-based issues of adequate supply and market volatility as the gas, electric, and water funds, these are nonetheless significant issues of policy development and public finance facing these utilities in the near to mid range future.

The newly-constituted UROCC reviewed this same issue at the time that the new Utilities Director began with the City. The UROCC concluded that the only value it could add in oversight of the Public Works utilities was the coordination of operational issues between the various enterprises in both departments. It was strongly felt that there was no benefit or productivity to be gained from the addition of strategic oversight of the Public Works utilities since they operate in a different and far more stable environment than do the commodity-based enterprises of the Utilities Department. Furthermore, there is serious concern that such change would weaken the primary role of the UROCC to manage risk in the commodity-based utilities.

The following is a discussion of the status of the three Public Works Department utilities and their current issues:

**Storm Drainage** - The Storm Drainage enterprise is responsible for the collection of storm water runoff and conveyance of that runoff to local creeks and San Francisco Bay. The enterprise is also charged with oversight of a program to protect storm water quality as mandated by the
Regional Water Quality Control Board. The enterprise’s capital assets include a network of storm drain inlets, pipelines, and pump stations located throughout the City. Revenue for the enterprise is generated by a monthly fee charged to all developed properties.

Similar to the RWQCP and Refuse Fund, the Storm Drainage enterprise is not a market-driven, commodity-based utility. The Storm Drainage fee is considered a property-related fee subject to the provisions of Proposition 218. As a result, there is limited flexibility in rate-setting policy for this enterprise fund. Proposition 218 requires that rate increases be approved by a vote of a majority of property owners subject to the fee after a ballot election is conducted. Palo Alto property owners approved an increase in the Storm Drainage fee in a special ballot proceeding conducted in 2005. As provided in the approved ballot measure, the City Council has the authority to increase the Storm Drainage fee each year by the rate of local inflation or 6%, whichever is less. The fee increase will sunset after 12 years, unless reauthorized by property owners in another ballot proceeding. Rates for individual properties are a fixed amount per month, based on the amount of impervious surface on the property, and only change as a result of physical changes to the improvements on a site. There is limited flexibility in the annual budget for the Storm Drainage enterprise, since a specific list of storm drain capital improvement projects and program expenditures was included in the ballot measure authorized by Council and approved by property owners. Staff has clear direction to complete a series of seven high-priority capital improvement projects over the 12-year life of the approved Storm Drainage fee increase.

The Storm Drainage enterprise is currently monitored by a Council-appointed Storm Drain Oversight Committee. The Committee, consisting of five members, is charged with providing input to Council on whether the enterprise’s annual budget and expenditures are consistent with the provisions of the approved ballot measure. The Committee convenes for a series of meetings at least twice annually. One set of Committee meetings is dedicated to the review of staff’s proposed capital and operating budgets prior to submittal to the Finance Committee. The Committee also meets at the end of each fiscal year to review the past fiscal year’s expenditures. At the end of fiscal year 2005-06, there is a review of the fiscal year 2004-05 expenditures. The Committee presents its findings directly to Council each year.

Should the Council wish to involve the UAC in oversight of Storm Drain activities, the role of the UAC vs. the Storm Drain Oversight Committee would need to be evaluated. In particular, the ballot language requiring a Council appointed Committee would need to be reviewed. It is recommended that this issue be referred to the City Attorney’s office should the Council wish to pursue it.

Waste Water Treatment - The RWQCP is a unique facility and enterprise fund within the City of Palo Alto. While often loosely referred to as a "utility," it is very different than the commodity-based utilities - electric, gas and water. There is no purchase, distribution, or sale as with these more standard utilities. There are no equivalent contracts or purchase agreements for a commodity, resulting in fewer decisions and policy issues about the management of the facility. The RWQCP receives wastewater, treats it, and (currently) discharges almost all of that water to San Francisco Bay. The discharge is highly regulated by state and federal agencies, resulting in very proscriptive requirements for the equipment and treatment processes and the way the plant
must be operated. Relatively little flexibility exists. Likewise, the pollution prevention and industrial waste source control activities and requirements are also highly regulated by state and federal agencies. Practically every aspect of the sewer use ordinance is dictated by state or federal requirements, which Palo Alto and the partnering cities must also enforce.

While Palo Alto owns and operates the plant, it does so on behalf of the partners and is in fact a minority owner of the plant capacity at 35%. Policy decisions regard the plant’s programs and budget are made by consensus among the partners and then implemented by Palo Alto. No one partner has unilateral purview over these issues, and the partnership is crucial in maintaining effective programs to satisfy state and federal regulatory requirements.

An agreement with Los Altos and Mountain View (the two other major partners of the plant) dictates the financial arrangement and operation of the plant. As sewer lines are geographically fixed and largely gravity-driven, there is almost no likelihood that this agreement would be modified to include new partners or drop old ones. The situation is very, very stable. Changes to the agreement are very difficult to negotiate. The partners’ goal is to have their sewage treated adequately at the lowest possible price, and little else. This means very few major changes, almost all of which are driven by the need to replace aging equipment will be made. The decisions which are made, are made by agreement of the partners.

The one area where this picture is substantially different is with respect to recycled or reclaimed water. Here, Palo Alto could take action independently of its partners. Palo Alto could, for example, decide to build a new pipeline to carry recycled water to a portion of the city. It could regulate, even require, its use and market this commodity. It would then be operating in its water purveyor role through the water utility. This is an area where the UAC is already involved by virtue of the Water Utility, and staff believes that including reclaimed/recycled water as part of the UAC’s oversight role would be appropriate.

Refuse - The Refuse Fund has, in addition to its core responsibilities for the collection and processing of waste generated in Palo Alto activities that include landfill operations; hazardous waste management and waste diversion programs; the waste minimization programs; recycling; street sweeping. While the Refuse Fund is an enterprise fund, it is not commodity-based. There are typically single contracts for its services, specifically for the processing of waste, there is a long-term agreement until the year 2021 with the SMaRT Station in the City of Sunnyvale, which is the lead agency and has final say as to decisions related to that facility. There is another long-term agreement until the year 2021 for landfilling at Kirby Canyon, another facility owned and operated by Waste Management in the City of San Jose. Thus, there are no near term contract issues in those areas of the refuse fund.

Development of a Zero Waste Plan is already in the process and is being reviewed by the Zero Waste Task Force. The Zero Waste operational plan is scheduled to be reviewed by the Policy and Services Committee this winter. Putting another layer of review on this process not only diminishes the work of the task force, but it will delay the approval process to put a plan in place.

The current contract with PASCO/Waste Management for collection of the City’s refuse will expire in June 2009. Staff has been working for the past two years on a competitive process to
result in a new contract no later than June 2008, so as to allow a one-year transition period. This leaves approximately 18 months from the date of this discussion to develop and implement ongoing activities such as finalizing the Zero Waste Plan and issuing a new Request for Proposal for refuse collection services incorporating the Zero Waste activities.

With two years worth of work already completed and 18 months remaining, a change in policy oversight would not be conducive to staying on schedule and is not recommended.

**RESOURCE IMPACT**
Resource impacts could range from minor to significant depending upon what if any role the Council desires the UAC to take, and the resultant additional staff time and process that would be incurred.

**POLICY IMPLICATIONS**
The question at hand is whether the Council desires to maintain the UAC’s current focus solely on critical issues in the gas, electric, and water utilities such as future supply, rates, reliability, and inter-agency issues such as Hetch-Hetchy upgrades – or whether it is desirable to expand the UAC role to oversight of non-commodity based utilities. If such an expansion is desired, modifications to the Municipal Code would be required.

**TIMELINE**
None proposed at this time. UAC oversight of Public Works utilities could be phased in over a 6 to 18 month period.

**ENVIRONMENTAL REVIEW**
Not applicable.

**ATTACHMENTS**
None

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