April 20, 2011

The Honorable City Council
Palo Alto, California

Follow Up Issues re: Council Protocols & Procedures

At the last Policy and Services Committee meeting, we were asked to return with additional language for inclusion in the revised Procedures Handbook. The following are our recommendations for amendments to the handbook based on comments at the last meeting and additional comments provided by Council Member Holman.

Purpose Statement for Study Sessions:

At the April P&S meeting, committee members inquired about a purpose statement for Study Sessions. The current Procedures Handbook, at Section II A(2) includes a purpose statement. For consistency with other proposed changes, we are recommending amending the statement as follows:

Study Sessions are meetings during which the Council receives information about City business in an informal setting. The informal study session setting is intended to encourage in-depth presentations by City staff, and detailed questioning and brainstorming by Council on issues of significant interest, including City policy matters, zoning applications and major public works projects. The Council may discuss the material freely without following formal rules of parliamentary procedure. Staff may be directed to bring matters back for Council consideration at future Council consideration meetings, but as no action can be taken at a study session. During regular study sessions, public comments are Public comments on study session items may be received at the end of the immediately following the session or may be heard during discussion of the item as determined by the Mayor. During special study sessions, public comments will be heard at the end of any Council discussion, but oral communications will be consolidated with the oral communications section of the regular meeting, if one follows the study session. The Decorum rules still apply to the behavior of the Council and public.

Study Session Language:

Council Member Holman had some concerns about the previously proposed changes to Section II(B)(3) of the Procedures handbook, and provided her own edits at the meeting. The following is based on the language suggested by Council Member Holman, with minor edits for clarity:
Study Sessions. Study sessions are meetings during which the Council receives information about City business in an informal setting.

a) Time. Special study sessions will be held as needed.

a) Oral Communications and Public Comments. Oral communications and public comments will be listed together on the agenda and heard at the end of the study session. If a meeting follows the study session, public comments will be heard at the end of any Council discussion, but oral communications will be consolidated with the oral communications section of the following meeting.

b) No Formal Rules. Study sessions are intended to be conducive to in-depth factual presentations by City staff and detailed questioning and brainstorming by Council. The Council may discuss the material freely without following formal rules of parliamentary procedure, and the Mayor shall have discretion to determine the appropriate process for conducting the study session, including when public comment and oral communications will be heard. Examples of potential formats for conducting a study session include, but are not limited to:

- Town hall-style or round table style meetings (these may be particularly appropriate for applicant and community dialogue with the Council related to specific development projects)
- Staff or other city-sponsored informational presentations
- Council question and answer

c) Public Participation. However, the general rules of decorum apply in study sessions. The public shall be given the opportunity to comment on all study session items.

d) No (Final) Action. Staff may be directed to bring matters back for Council consideration at future meetings, but as no final action can be taken at study sessions. Comments provided by Council Members at a study session or during a preliminary review process is should not be relied upon as direction and shall not be binding on future hearings of the Council or any city board or commission.
(1) Follow up meetings regarding development projects. Council may direct staff to bring study session matters back for Council consideration at a future meeting, prior to formal review of the project. If Council wishes to provide guidance or direction to an applicant at a follow up meeting, such guidance should address policy issues, including such as land use and appropriateness of location, but should not address project specifics (such as number of units, square footage, density, etc.) prior to environmental analysis and Board and Commission review. Any guidance provided by the Council prior to formal review should not be relied upon as a final decision nor shall it be binding on future hearings of the Council or any Board or Commission.

Definition of Project:

In order to further clarify what is intended in the provisions discouraging ex parte communications, committee members suggested providing a definition to define when an item becomes subject to the rules for quasi-judicial hearings. We have proposed the following additional language, which would go at the end of section IV(B)(1):

For purposes of this Section IV, a development project subject to these rules is a plan, whether formal or conceptual, to go forward with a particular project or development.

Council Member Holman has suggested removing the words “to go forward” from the definition, which would expand the definition to encompass projects that are in an earlier, more exploratory, stage. If the Council intends to include such projects, Council Member Holman’s suggestion would be appropriate.

I will be available at the meeting to answer any questions about these proposed changes.

ATTACHMENTS:

• -a: Policy and Services Minutes Excerpt 3/8/11 (DOC)

Department Head: Donald Larkin, Interim City Attorney
Council Member Holman said that she was directed to work with Staff on some language and that was not completed. She distributed copies of a draft for the Committee, Staff, and the Public.

Donna Grider City Clerk reviewed the items that were before the Committee. One item was the structure of Study Sessions which the Interim City Attorney would review later. Submittal of materials directly to Council was also agendized. The City Attorney reviewed the item and determined it would not need to be included in the Procedures and Protocols because it is covered under Late Submittal of Correspondence which states that items delivered to Council Members homes should be brought to the attention of the City Clerk. The City Attorney had drafted some language covering the Policy and Services Committee Role, Purpose, and Work Planning which would also be covered later in the evening. Staff had included in the report a copy of the applicable Municipal Code sections as requested by the Committee.

Don Larkin Interim City Attorney spoke regarding Study Sessions. He said the intent was to create some flexibility in the way Study Sessions were conducted. Currently the rules were constraining and did not allow full public or project applicant participation. Implementing some Council flexibility for conducting Study Sessions was discussed. Staff attempted to provide some alternate rules that would not dictate so stringently how the Study Sessions would be held. The proposed language reiterated that Council would not utilize formal procedures during a Study Session. Instead of describing exactly how that would work the proposed language stated that some Study Sessions may be held in a town hall format, or a brown bag format with questions and answers. Staff did not want to prescribe a specific format as it may not be appropriate for every Study Session. He spoke on the roles and
responsibilities of the Committee, saying he would prefer to answer questions rather than present ideas. He spoke regarding ex-parte communications stating that it wasn’t in the report, but he recommended adding a definition of what type of projects would be covered. He suggested the definition could be “A plan, formal or conceptual, to go forward with a particular project or development.”

Council Member Holman said that she submitted draft language to Staff regarding how to manage the different types of Study Sessions. She said the Staff Report was open ended and did not provide guidance. She said Council had understood that they were not allowed to provide direction in a Study Session. The Staff Report stated that they could offer general guidance, which seemed the same as giving direction. She suggested the following verbiage in the Procedures Handbook, section B General Requirements, subsection 3, after item c on pages II-11 and II-12:

d) Public Participation. The general rules of decorum apply in Study Sessions. The public will be given an opportunity to comment on all Study Session items. And comment may be consolidated with oral communications.

d) e) No Final Action. Staff may be directed to bring matters back for Council consideration and/or action at future meetings, but no final action can be taken. Input Comments provided by the Council members at a Study Session or during a preliminary review process is only general guidance; it—should not be relied upon as direction, as the Council cannot take action at such meetings.

1) Follow up meetings regarding development projects. As indicated above, no action can be taken at Study Sessions or preliminary reviews. If Council wishes to provide guidance or direction to an applicant at a follow up meeting, it should generally address policy issues such as land use and appropriateness of location and avoid giving direction in project specifics such as number of units, square footage, density, etc so not to prescribe a project prior to environmental analysis and Board and Commission review. General guidance should not be relied upon as a final decision nor shall it be binding on future hearings of the Council or any board or Commission.
Council Member Holman stated that the intent with the verbiage change was to provide access to the process and improve the process without circumventing environmental reports or other criteria.

Chair Price asked about the timing of the issue. She said that by the time Council participated in a Study Session, the project typically had already been through other Committees.

Mr. Larkin said that on a Planned Community (PC) application or a development agreement Council had the opportunity to have a Study Session before or after the project went to the Planning and Transportation Commission (PTC) or the Architectural Review Board (ARB). The reason for a Study Session beforehand was to give the developer general guidance in the beginning of a project.

Council Member Holman said that at the last meeting they discussed scheduling an action item immediately after the Study Session. She said they were trying to avoid giving guidance at a Study Session as there could not be a motion.

Mr. Larkin said it would be more appropriate to make sure the applicant and public were clear about the purpose of the Study Session. Council could not take a final action without the environmental reports.

Council Member Burt said this section was supposed to be about presentation. He asked if there was a purpose statement anywhere in the book regarding Study Sessions.

Mr. Keene read a statement from the Protocols and Procedures that referred to Study Sessions being a means for Council to receive information regarding a project.

Fred Balin spoke regarding submittal of materials directly to Council. He said it needed to be clarified and included in its own section so it could also relate to the submittal of materials to Staff. He said the Committee had already approved language regarding the late submittal of materials to Staff. He said that the submittals would impact the Staff Reports and that is what was being referenced. The discussion this evening referred to the same types of materials going directly to Council that had to deal with policy change or planning submission changes. All changes should go
through Staff and be submitted to the Planning Director. It should remain in Protocols, not Procedures. He said the language should be changed to “If a Council Member receives correspondence or other info related to planning materials he or she will notify the Planning Director and the City Clerk.”

Tom Jordon discussed late submittals of materials. He said an important piece of the language was “Staff Determines” and Staff could not determine anything that was not before them. If materials go straight to Council Staff had no way to act on it. Complete end runs around the regular channels were not wanted and should be put back into the regular channel of information.

Council Member Burt discussed late submittal of materials for discussion of protocols. It was not good practice. He addressed Council Member Holman’s language stating there was no purpose statement for Study Sessions. Council Member Holman’s language discussed that Study Sessions should not be relied upon for direction, action or guidance, with those three terms being interchanged throughout the proposed language. He stated that they were different concepts that should not be confused. Direction and action were close, but guidance was different. There had been times in the past where action and direction were perceived to be given in Study Sessions.

Chair Price suggested that given the late information provided by Council Member Holman, the Committee defer the Study Session discussion to another date.

Mr. Keene suggested the Committee could come back with a Study Session purpose statement draft as well. He added that Study Sessions were used for a range of issues beyond development issues.

Ms. Grider said there was a definition in the Procedures about Study Sessions. She read from the Procedures handbook on page II-1, section II-A: “Study Sessions are meetings during which the Council receives information about City business in an informal setting. The informal Study Session setting is intended to encourage in-depth presentations by City staff, and detailed questioning and brainstorming by Council. The Council may discuss the material freely without following formal rules of parliamentary procedure. Staff may be directed to bring matters back for Council consideration at future meetings, but no action can be taken. During regular
Study Sessions, public comments are typically received together with oral communications at the end of the session or at another appropriate time at the discretion of the chair. During special Study Sessions, public comments will be heard at the end of any Council discussion, but oral communications will be consolidated with the oral communications section of the regular meeting, if one follows the Study Session. The Decorum rules still apply to the behavior of the Council and public.”

Council Member Burt asked if the verbiage suggested by Council Member Holman was meant to be inclusive of the language the City Clerk read.

Ms. Grider said perhaps they should refer to the language she read from page II-1 in Council Member Holman’s verbiage suggestion which would be inserted in a different section.

Mr. Larkin said neither section defined a purpose to Study Sessions. He said that Staff would return with recommendations for a purpose statement.

Mr. Keene said Study Sessions were either Staff and Council or Staff, Council, and a third party.

Mr. Larkin said the vast majority of applicants were the City.

Council Member Holman said the language she was suggesting focused on Study Sessions for development as the other types of Study Sessions did not typically have the same issues. She also stated the Committee could discuss changes that would address public comment.

Council Member Burt asked for confirmation that Council Member Holman’s verbiage was intended only for development projects.

Council Member Holman said that sections c, d, and e were for any type of Study Session, section e-1 was development project specific (Procedures Handbook, section B General Requirements, sub-section 3, item c, d, and e on pages II-11 and II-12).

  c) Town hall-style or round table style meetings for development projects

  Staff or other city-sponsored informational presentations for
non-development Study Sessions.

Council question and answer

d) Public Participation. The general rules of decorum apply in Study Sessions. The public will be given an opportunity to comment on all Study Session items, and comment may be consolidated with oral communications.

d) e) No Final Action. Staff may be directed to bring matters back for Council consideration and/or action at future meetings, but no final action can be taken. Input Comments provided by the Council members at a Study Session or during a preliminary review process is only general guidance; it should not be relied upon as direction, as the Council cannot take action at such meetings.

1) Follow up meetings regarding development projects. As indicated above, no action can be taken at Study Sessions or preliminary reviews. If Council wishes to provide guidance or direction to an applicant at a follow up meeting, it should generally address policy issues such as land use and appropriateness of location and avoid giving direction in project specifics such as number of units, square footage, density, etc so not to prescribe a project prior to environmental analysis and Board and Commission review. General guidance should not be relied upon as a final decision nor shall it be binding on future hearings of the Council or any board or Commission.

Council Member Burt said that under c the first bullet is for development projects.

Council Member Holman agreed.

Council Member Burt said the intent was important.

Council Member Holman said she would email the verbiage to Staff.

Council Member Price suggested Staff return for further discussion of Study Sessions at the next Policy and Services meeting,
currently scheduled for April 12, 2011.

Mr. Larkin said he did not have an issue adding late submittal language back in. Staff intentionally crafted the language to be general. He thought it was redundant because several questions had come in regarding the language. Information needed to be submitted to Staff with the appropriate amount of time for review and report preparation. At the minimum state rules regarding information delivery to Council needed to be followed.

Mr. Keene suggested the following verbiage change in the Procedures Handbook; section B General Requirements, item c on page II-3:

“If any correspondence or other information is submitted after this deadline to Council Members or Staff, and Staff determines additional review is needed Staff will reschedule the item for a future Council meeting. “If Council receives materials related to planning applications they will notify the City Clerk and the City Manager as soon as possible.””

Chair Price said that verbiage seemed reasonable, but it was not just the City Clerk that needed to be notified.

Mr. Keene said it was not appropriate for the Planning Director to be notified. Materials should be submitted to the City Managers Office and be routed from there.

Mr. Larkin agreed.

Council Member Holman agreed with the City Managers verbiage, but suggested the sentence before it (Procedures Handbook; section B General Requirements, item c on page II-3) should include the words “to Staff” so that it reads:

“In order to allow for adequate Staff review and analysis, and to ensure public access to information, all plans, correspondence, and other documents supporting or commenting on planning applications being heard by the City Council must be submitted to Staff not later than noon five working days prior to the release of the Council Agenda Packet.

Council Member Burt asked if a parenthetical last sentence in the
City Managers suggestion should have the section above it bolded. If so the last sentence should read “if a Council Member” not “if Council”. He stated that for purposes of clarity the statement should indicate if the material is received outside of normal channels.

“If any correspondence or other information is submitted after this deadline to Council Members or Staff, and Staff determines additional review is needed Staff will reschedule the item for a future Council meeting. “If a Council Member receives materials related to planning applications they will notify the City Clerk and the City Manager as soon as possible.””

Mr. Larkin agreed and said that Staff would refine the language but it should state “Except from Staff”. He stated that there was enough direction to create a motion.

Council Member Holman asked about if a Council Member receives an email from a non-applicant that does not affect a planning item. She wanted to know if Council still had to submit the material to Staff.

Mr. Keene said the conversation was referring to late submittals related to planning applications.

Council Member Burt said adding “related to planning applications” would provide good clarity.

Council Member Holman said these questions had been raised in the past.

Mr. Larkin said “related to” was overly broad and suggested “correspondence or other information material that influences the project itself”.

Council Member Burt said the only way a project may be modified was by the applicant. He asked if the verbiage was addressing applicant changes.

Mr. Larkin said it was also a California Environmental Quality Act (CEQA) issue.

Council Member Burt said items by an applicant would be different
than material submitted by a member of the public. This would put the Council Member in a position of subjectively determining what is “material” and what is not “material”.

Mr. Larkin said Council should share everything with Staff.

Council Member Burt said that meant Council would submit everything that was not submitted to them through normal channels. He asked if that just meant anything in writing, and what Council should do with an oral communication.

Mr. Larkin said “normal channels” would need definition. He agreed that it was subjective.

**MOTION:** Council Member Burt moved, seconded by Council Member Holman to request that the City Council approve changes to the verbiage in the Procedures Handbook; section B General Requirements, item c on page II-3, as follows, and to request that Staff return to the Policy and Services Committee with further discussion on what constitutes correspondence related to planning applications:

“If any correspondence or other information is submitted after this deadline to Council Members or Staff, and Staff determines additional review is needed, Staff will reschedule the item for a future Council meeting. “If a Council Member receives materials outside of normal channels they will notify the City Clerk and the City Manager as soon as possible.””

**AMENDMENT TO MOTION:** change the verbiage “outside of normal channels” to state “other than Staff”.

Council Member Burt accepted the intent of Council Member Holman’s amendment and asked Staff to refine the language.

Council Member Holman asked if her suggested change to the Procedures Handbook; section B General Requirements, item c on page II-3), adding the words “to Staff” was also part of the motion:

“In order to allow for adequate Staff review and analysis, and to ensure public access to information, all plans, correspondence, and other documents supporting or commenting on planning applications being heard by the City Council must be submitted to Staff not later than noon five
working days prior to the release of the Council Agenda Packet.

**MOTION PASSED:** 3-0, Klein absent

Council Member Price discussed the Policy and Services Committee Role, Purpose and Work Planning.

Council Member Burt asked about the need to revise the Municipal Code to accommodate the proposed language indicating the Committee would be able to self-initiate matters.

Mr. Larkin said it would be a Municipal Code revision.

Council Member Burt asked about concurrently updating the other Municipal Code elements for the Finance Committee and the PTC.

Rob Braulik Assistant Director of Administrative Services said the Committee had requested the Municipal Code language to assist them in drafting the Policy and Services language, not to change the other committee’s roles.

Council Member Burt stated that he recalled a discussion at the last Policy and Services Committee meeting regarding if they were able to bring items to the full Council, the Finance Committee should have the same authority.

Mr. Larkin said that they were similarly restricted.

Council Member Price thought the goal was to allow them to have the opportunity to make recommendations to Council and that option should be afforded to both committees.

Mr. Larkin said that change would be reciprocal in the Finance Committee.

Council Member Holman asked for clarification between the Role, Purpose, and Work Planning, and the Purpose Statement. She wanted to know where the Purpose Statement was placed and why it was bolded on the Staff Report.

Ms. Grider said it was bolded in an effort to clarify that it had been discussed, but not yet approved, at a previous Policy and Services Committee meeting.
Council Member Holman clarified that meant it was not placed within the Procedures or Policies books yet.

Ms. Grider said the language was in draft form and had not yet been approved.

Council Member Holman asked for clarity on the issue with ensuring good public policy and best practices.

Mr. Braulik said the issue had to do with policy should be set at the Committee level versus the Staff level.

Mr. Keene said there was a conversation about committee roles versus Staff roles. He suggested removing the word “regularly” and the words “and best practices” from the proposed Purpose Statement, as follows:

Purpose Statement: The purpose of the Policy & Services Committee is to review and identify important community issues and City policies and practices with a focus on ensuring good public policy and best practices. A particular focus of the Committee is to ensure that the City organization is responsive, effective and aligned with community values and City Council priorities.

Council Member Holman asked where the Purpose Statement would be incorporated with the Role and Responsibilities.

Mr. Larkin said it would be with the existing responsibilities as a defined purpose.

Council Member Burt suggested the verbiage on page seven of the Protocols Handbook, under the section titled Policy & Services Committee – Role, Purpose, & Work Planning, acted as a purpose statement. He suggested adding the first line of the verbiage suggested by the City Manager to that existing statement. He further suggested adding the word “empowerment”, so the statement would read as follows:

“...consider and make recommendations on matters referred to it by the council relating to parliamentary and administrative procedures and policy matters pertaining to intergovernmental relations, personnel policies, planning and
Mr. Keene said the existing language was antiquated and limited.

Council Member Holman suggested adding “to ensure good public policy” to the proposed Purpose Statement, and deleting the remainder of the statement. She also suggested adding “The Committee shall”, “to Council”, and “such as those” to the existing verbiage page seven of the Protocols Handbook, under the section titled Policy & Services Committee – Role, Purpose, & Work Planning while deleting “referred to it by the Council”.

Purpose Statement: The purpose of the Policy & Services Committee is to review and identify important community issues and City policies and practices to ensure good public policy. A particular focus of the Committee is to ensure that the City organization is responsive, effective and aligned with community values and City Council priorities.

The Committee shall consider and make recommendations to Council on matters referred to it by the council relating to parliamentary and administrative procedures and policy matters such as those pertaining to intergovernmental relations, personnel policies, planning and zoning, traffic and parking, public work, and community and human services. (§2.04.220) The Committee is empowered to review and identify important community issues and City policies and practices with a focus on ensuring good public policy.

Council Member Burt suggested removing the words “referred to it by the council” and adding “relating to parliamentary, administrative procedures and policy matters” instead.

The Committee shall consider and make recommendations to Council on matters referred to it by the council relating to parliamentary and administrative procedures and policy matters such as those pertaining to intergovernmental relations, personnel policies, planning and zoning, traffic and
The Committee is empowered to review and identify important community issues and City policies and practices with a focus on ensuring good public policy.

Mr. Larkin said that Staff would bring revised language back to the Committee.

**MOTION:** Council Member Holman moved, seconded by Council Member Burt to revise verbiage on page seven of the Protocols Handbook, under the section titled Policy & Services Committee – Role, Purpose, & Work Planning as follows:

The purpose of the Policy & Services Committee is to review and identify important community issues and City policies and practices to ensure good public policy.

The Committee shall consider and make recommendations to Council on matters relating to parliamentary and administrative procedures, and policy matters.

Mr. Larkin said Staff would revise the language as needed.

**Motion passed:** 3-0, Klein absent