

Regular Meeting
June 18, 2002

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Chairperson Kleinberg called the meeting to order at 7:10 p.m. in the Council Conference Room, 250 Hamilton Avenue, Palo Alto, California.

Present: Beecham, Freeman, Kleinberg, Mossar

1. Oral Communications

None.

2. Timely Staff Reports

Assistant to the City Manager Chris Mogensen said a Council Colleagues Memo was generated by Vice Mayor Mossar, Council Members Beecham, Kleinberg and Kishimoto on timely staff reports and presented to the Council on February 14, 2002. As a result of the memo, the Council directed the Policy & Services (P&S) Committee to establish a new policy to move distribution of staff reports in the Council packet up one week. Currently, the packet was delivered on the Thursday preceding the Monday Council meeting. Staff agreed with the Council; delivery of the packet on the Thursday preceding the Monday meeting limited the Council and communities' ability to review the packet. It also left minimal time for the Council to discuss issues with interested parties, the community and staff. The new procedure would provide the Council and the public with a more appropriate amount of time for review of the packet and ask clarifying questions of staff. Staff intended to initiate the new procedure with the first Council meeting in September 2002, requiring distribution of the packet on August 29, 2002. Staff had identified a number of concerns. The first was the confusion of having two packets distributed preceding each Council meeting. Staff's solution was to color-code each packet with different colored paper.

City Clerk Donna Rogers clarified the entire packet, not just the agenda, would be color-coded.

Mr. Mogensen said on the evening of the Council meeting, the City Clerk would have one additional copy of the packet available.

Ms. Rogers said nine copies could be made available, but thought only one copy was more appropriate because of sustainability. She wanted the issue brought out on the table.

Mr. Mogensen said the other issue were letters from the public, which could be accepted until noon on the Wednesday preceding the Council meeting. Since

the letters would not be included in the Council packet, a large number of letters and documents from the public would appear each week at places.

Chairperson Kleinberg said if a letter came in on a Wednesday preceding the Council meeting, but the packet had been sent out the week previous, she queried whether the letters could be put into a supplemental envelope and sent along with the packet so the Council would have more up-to-date information.

Ms. Rogers said Chairperson Kleinberg's suggestion was possible.

Mr. Mogensen said later changes to the agenda could cause considerable confusion in house. Therefore, internal restrictions would be placed on agenda changes.

Council Member Mossar said in organizations where packets were distributed weeks in advance, agenda changes were confusing but as long as things were labeled and identified, it would be wrong to assume a change could never occur.

Ms. Rogers said the goal was to avoid habitual agenda changes.

Council Member Mossar thought changes should not be prohibited just because the packet was already out. The only reason for not making a change was if the 72-hour notice had elapsed.

Council Member Freeman was concerned about limiting agenda changes.

Mr. Mogensen said staff wanted to avoid habitual agenda changes. Staff would not be inflexible.

Ms. Rogers said the issue was one of staff discipline. If there were a deadline, she and her staff would not want to be making several revisions and publicizing the changes.

Chairperson Kleinberg said just because the Council received the packet a week earlier than usual, it did not mean the agenda had to be posted a week earlier.

Ms. Rogers wanted to publicize the agenda for the sake of the public.

Council Member Mossar thought a tentative agenda could be issued. The final agenda could be posted 72 hours before the meeting.

Chairperson Kleinberg agreed.

Council Member Beecham said the objective of the Council Colleagues Memo was to provide staff reports to the public sooner than three days before a meeting. He personally would not need the packet a whole week before. Having two packets out at the same time was admittedly more complicated and he suggested not issuing the packet any earlier than currently issued. However, staff reports should be made available to the public a week before the meeting.

Chairperson Kleinberg asked which portion of the packet was not going to the Council.

Council Member Beecham said the official distribution of the packet would be handled in the current manner on the Thursday preceding the Monday meeting. Staff reports, however, would be made available to the public and libraries earlier. The tentative agenda was already out two weeks ahead. The change would provide the information to the public without having two whole sets of documents.

Chairperson Kleinberg thought the objective was to give the Council opportunity to consult with staff, in addition to the public having input. Mostly, the Council did not have sufficient time to talk to staff.

Council Member Freeman thought Council meetings were often the place the public liked to see work accomplished. Sometimes questions answered at the meeting were good for the public to hear. Receiving the packets earlier would not eliminate every question at the meetings. The memo she and Council Member Kishimoto prepared about the communication at meetings addressed an issue raised by the residents who attended. The desire was to obtain the Council packets earlier in order to digest the information. The technology issue was the inability to put everything on the web, e.g., schematic drawings, attachments to staff reports, etc. She asked whether any other municipalities with weekly meetings issued packets earlier.

Chairperson Kleinberg asked Mr. Mogensen to finish his presentation and hear from the public before questions.

Mr. Mogensen said the public bin that held the Council packet in the Council Chambers would have to be duplicated and each slot clearly identified for the public. The impact on the Public Works Department would be in the major project implementation schedules. Each step in the project review and approval process requiring Council action would require an additional week of lead time, adding four to six weeks to a project's life cycle. Due to the additional week of review time by the Council, and in order to streamline the workload, staff recommended the Council bring all questions to staff on the Wednesday

preceding the next Council meeting. Staff would then be able to resolve many of the issues and adjust presentations while minimizing the need to pull items from the Consent Calendar.

Chairperson Kleinberg said the result was that the Council would have one week rather than just three days.

Mr. Mogensen said the public would also have more time. Additional, unforeseen items might arise as a result; therefore, staff proposed implementing the new schedule on a six-month trial basis. At the end of six months, staff would return with an evaluation.

Council Member Mossar said the Council received the packet on Thursday night, one week early; however, the first time someone could be contacted was a Friday, unless it was a 9/80 week wherein Council had three days to present questions to staff by the Wednesday morning deadline.

Council Member Beecham asked for the background on the issue with Public Works project delays.

Mr. Mogensen said every project presented to the Council included a built-in schedule in its life cycle. Since the packet would be moved back one week, an extra week had to be built into the life cycle for each item that went to Council. For example, if approval for design services contracts or environmental clearances required Council action, an extra week would be required. At each point in the process, an additional week would be added to the process. Therefore, four to six weeks could be added to each project.

Ms. Rogers explained she had suggested to Public Works Director Glenn Roberts to keep an item on the agenda the previous week, but issue the staff report the following week.

Chairperson Kleinberg also spoke with Mr. Roberts who indicated the situation would only affect the occasional project. The change might require accelerating the process more than the two weeks.

Herb Borock, P.O. Box 632, thought releasing Council packets a week earlier would raise three issues: 1) obtaining information about complex issues earlier would provide sufficient time for review; 2) the problem of trying to contact staff on the Friday before the Council meeting when it was an off Friday would be addressed; and 3) the Council's personal time. People would have more time to comment resulting in longer lead-time for the Council.

Council Member Freeman proposed staff give greater consideration to posting the staff reports on the Internet earlier and possibly investigating what was required to post attachments. At least the problem of availability would be solved. The regular Council packet would still be issued the same as always. The impact would be on staff because reports would still have to be prepared earlier.

Council Member Mossar thought Mr. Borock addressed the issue; a whole packet would not have to be created, organized with all the attachments two weeks in advance. The packet could be sent out on the Thursday before the Monday meeting with everything included. The only items missing would be the staff reports that went out early. Each item would be marked to indicate which Council meeting applied.

Ms. Rogers questioned who would determine which items went out early.

Council Member Mossar said the rule would be for every staff report to be issued early. She was also willing to entertain the scenario presented by Council Member Freeman but was uncomfortable having a system to get information to the public and not having it for the Council.

Council Member Freeman was sure the Council would be able to obtain the information electronically.

Council Member Mossar said whatever was done should be the same for both the public and the Council.

Council Member Beecham read a portion of the Council Colleagues memorandum, "Recognizing the important nature of the work before this Council, we ask that our colleagues join us in establishing a new policy, which would support the distribution of City staff reports and supporting documents at least an additional week in advance." The intent was never to issue the whole packet a week early. The intent was to send important staff reports out early.

Chairperson Kleinberg said the Human Relations Commission (HRC) sent its materials in different colored folders. The folder was a different color for each meeting. Some of the staff reports could be sent in a colored envelope with the date printed on the outside. The paper inside would not have to be colored.

City Attorney Ariel Calonne explained some of the legal issues that might be useful in the discussion. The point of having the staff reports available to the public earlier was great. There was a legal policy concern about the idea of having reports early for the Council so the Council could work on them ahead of

time with the staff. The Brown Act was clear that as much of the Council's work should be done in public as possible. His main legal issue was that the early packet would facilitate more energy by the Council working behind the scenes among itself, staff and the public that would not be reflected during the Monday night meeting. The early energy would end up coming to bear on the City Manager or other staff to change or supplement or modify the reports. If a Council Member found an error in a staff report, the staff member would want to fix the error. The time for additional scrutiny and discussion should also take into consideration the time necessary for the staff to react to the changes. The change was great for the public but should not be viewed as an enhancement of how the Council conducted business. The idea of questions coming to staff early was a good one. The idea traditionally was to avoid surprise so that staff could answer effectively at the meeting. The point was not to suppress the question from happening in public. Over the years, the City had gone through varying periods of sensitivity about how long the meetings were taking, how long the public was being made to wait at meetings before being heard, or how scripted or improvisational Monday nights were. Council should never accept the idea that getting questions to staff in advance was because the Council would not have to take time during the Monday night meeting.

Chairperson Kleinberg thought the issue was being skewed beyond what she personally anticipated by the memorandum. She was not trying to suppress discussion or questions. The issue was one of clarification and background information, particularly for newer Council Members or veteran Council Members dealing with a new issue.

Mr. Calonne said he understood the Council's reasons for wanting to make the change and only wanted to identify the fact that getting information out to the public earlier was the better of the rationales for driving the issue. It was difficult to explain to the world how difficult it was to assemble a packet. Staff had discussed the concerns about putting the packet together and the mechanics were overwhelming.

Council Member Beecham said many times the Council had questions about issues out of curiosity, many of which had no impact on the outcome. The Council might ask 20 questions, but still approve the staff report. He thought the best method was for the Council Member to say, "I called staff and here is what I was told. Is that correct?" without going through the process of asking the question.

Council Member Freeman said the City Clerk's question concerning who made the decision about what was issued early required an answer. If the change was going to be made it was her preference that staff reports be put on the

Internet a week early. On the occasion when a staff report did not make the deadline, it could be submitted in the regular packet. Former Council Member Simitian told her that if the Council did not know something, probably 70 percent of the public did not know either. It was important that newer Council Members voice questions because the public probably wanted to know the answer also. Another policy issue was the possibility of holding briefings on weightier issues. The issue about Council questions was really one of style. One person might want to ask the question in order to have staff supply the answer, while another might want to say they had asked staff a question and convey the answer.

Chairperson Kleinberg suggested the P&S Committee keep its conversation focused on timely reports without dealing with other policy issues. A number of public agencies were able to obtain information two to three weeks in advance of a meeting without being in conflict with the Brown Act. She asked about protocols of the organizations following Brown Act guides.

Mr. Calonne said the early packet was not the issue. The idea of selecting certain subjects was fine. The concern was the resultant interaction with staff once the early information was obtained. The Council would need to agree among itself not to put the City Manager in the position of having to modify staff recommendations. He had discussed the issue with the City Manager who was adamant that the staff would never change a recommendation in response to Council questions. The Council was asked by the public on a regular basis to fix problems. Council normally called the problem to the attention of staff to find out whether anything could be done. The pressure would be felt with the early staff reports.

Chairperson Kleinberg agreed. The Council had all received calls from the public before a staff report was issued asking the Council Member to intercede before information was placed in the staff report.

Council Member Freeman asked whether the goal of the P&S Committee was to come up with something to present to the Council.

Chairperson Kleinberg said the goal was to evaluate the staff recommendation for a six-month trial and pass on the recommendation to the Council with the input of staff about what would or would not work.

Council Member Freeman asked whether staff was willing to consider the Internet solution rather than the multi-colored paper solution.

Mr. Mogensen said a staff report was being prepared for September addressing the electronic packet, proposals and resource impacts.

Mr. Calonne said staff was not in disagreement, but the issue was just making it happen.

MOTION: Council Member Mossar moved, seconded by Freeman, that the Policy and Services Committee direct staff to return at the time it presented the electronic packet report and include in the report a discussion about making the automated packet available at least a week earlier than the present paper packet. The combination would then be a six-month trial to determine whether the needs were addressed. If there continued to be further needs, the P & S Committee could revisit the issue.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to change the trial to a three-month trial instead of a six-month trial.

Chairperson Kleinberg said the issues raised by Mr. Calonne about exploiting the opportunity to interfere with staff recommendations, and the public trying to get to staff meant an exposure of added time. Staff could be asked to include some "rules" into the trial to address these issues.

Council Member Mossar thought any "rules" would be part and parcel with the Council protocol issue.

Chairperson Kleinberg wanted to include in the motion a request of staff to make recommendations.

Mr. Mogenson said the working committee could address the issue.

Chairperson Kleinberg wanted some rules to maximize the success.

Council Member Freeman said the calendar already indicated which items would appear on the agenda. Without even receiving a staff report, Council and the public were able to see what was coming up in the future.

Council Member Beecham said perhaps the calendar could indicate which staff reports would be issued earlier. Although the motion encouraged the distribution of the packet via the Internet, the paper packet was still essential.

MOTION PASSED 4-0.

3. Process re City Positions on Ballot Measures

Assistant to the City Manager Chris Mogensen said staff had prepared a recommendation for a process of handling ballot measures.

MOTION: Council Member Beecham moved, seconded by Mossar, that the Policy and Services Committee recommend approval of a process to refer legislation to the Policy and Services Committee that would be forwarded on to the City Council. The propositions should be consistent with the City's interest, including but not limited to the following criteria:

1. Staff generates an informational report for the Policy and Services Committee summarizing the ballot measures that have been placed on the upcoming California State ballot. This report will indicate the League of California Cities' position on the particular measure.
2. The ballot measure item is agendaized for the Policy and Services Committee.
3. The Policy and Services Committee reviews and discusses ballot measures at the meeting.
4. Policy and Services Committee members should use the following principles to assist in evaluating the measures:
 - Protects local revenue sources (e.g. taxes, fees, etc. designated for use by local governments)
 - Protects/increases local government discretion
 - Protects/increases funding for specific programs or services (e.g. park bonds, etc.)
 - Supports key programmatic goals (e.g. expansion of recyclable materials, etc.)
 - Prevents unfunded mandates
 - Is consistent with existing City policy
 - Has a direct impact upon the City
5. Policy and Services Committee Members vote on the propositions, which the committee determines, are consistent with the City's interests.
6. The matter is forwarded to the Council as a consent calendar item as long as the vote was unanimous.
7. Item is referred without minutes due to the inherent timeliness issues related to this process.

Council Member Freeman expressed concern with the statement at the end of staff proposal, "Item is referred without minutes due to the inherent timeliness issues related to this process." The items that would appear on the ballot were already known ahead of time. Issues could be discussed early enough that the minutes could be incorporated when presented to the Council. She personally depended upon committee minutes and wanted to hear what people said.

Chairperson Kleinberg had also been concerned about the minutes issue and had discussed it with Assistant City Manager Emily Harrison. Colleagues should not be asked to vote on ballot matters without an explanation. The Assistant City Manager had suggested that if no time issue existed, minutes would be prepared. If there were a timing issue, a one-page executive summary would be included, explaining the pros, cons, and why the item was either unanimously supported or not.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER that if a timeliness issue exists, the item will be referred without minutes, and a one page executive summary will be provided. If no timeliness issue exists, the item will be referred with minutes in the usual manner.

Chairperson Kleinberg said several of the criteria were vague. For example, under "principles used to evaluate the measures", the last bullet was that the measure have a "direct impact" on the City. She questioned what a "direct impact" was.

Council Member Beecham thought a direct impact was not something in Somalia or getting rid of the death penalty.

Chairperson Kleinberg said a good advocate could make a credible argument that almost anything had some impact on the City. She questioned the difference between a direct impact on the City versus a direct impact on residents. She wanted criteria by which consideration was given to the issues. There were also a number of situations where measures, legislation, or initiatives might have an impact on the health, welfare, and quality of life of the City's residents. For example, legislation having to do with metropolitan air quality would not interfere with City government but affected the health of residents. The Council might want to take a position on something promoted by the American Lung Association or that had to do with car emissions. Another example was the death penalty, which was on the far side of something not affecting the City.

Council Member Kleinberg suggested that another principle be added about the impact on the health, welfare, and quality of life on the residents of the City.

Council Member Mossar said the City was not separate from its citizens, but was the citizenry. Secondly, the reason for going through the process was to take the best thinking of the Council at the time in evaluating the issues to determine whether an issue had a direct impact. It was and should be a

judgment. There was nothing that could be done to spell out a set of criteria that would do anything other than requiring Council's judgment.

Chairperson Kleinberg said her experience over the past two and one-half years had shown her when an issue had an impact on the quality of life, health and welfare of the community, she was told that the Council would not take a position because the issue did not directly impact City policy.

Council Member Freeman suggested the word "principles" could be changed to "guidelines," and the list be considered as a framework. The P&S Committee might think the death penalty moratorium was something that should be considered.

Council Member Beecham asked whether Council Member Freeman's suggestion would take care of Chairperson Kleinberg's concern.

Chairperson Kleinberg said no. In her experience, the list would be used as an exclusive guideline.

Council Member Freeman suggested rewording the list.

Council Member Beecham thought "guidelines" was a better word than "principle."

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER that the word "principles" be changed to "guidelines" in Item No. 4.

Council Member Mossar said given Chairperson Kleinberg's concerns, the staff proposal was focused on ballot initiatives and the League of California Cities (LCC), which was one way to enter the process. She thought Chairperson Kleinberg was seeking another way to enter the process such as an individual Council Member who cared passionately about an issue enters the process to be evaluated by guidelines, reviewed by the P&S Committee and sent to the Council with a yea or nay.

Chairperson Kleinberg said matters came up within the process but were thrown out.

Council Member Mossar said the process that was being discussed created an opportunity for an individual Council Member to request that an item be heard. The P&S Committee could hear the argument and make a decision.

Council Member Freeman said another missing element was consideration of other kinds of legislation besides ballot measures.

Council Member Mossar questioned if one Council Member could create an agenda item.

Chairperson Kleinberg said the P&S Committee would review the item.

Council Member Beecham thought a majority of Council should not be necessary to send something to the committee for debate.

Council Member Mossar said the P&S Committee should not have to consider five different requests every time it met.

Council Member Freeman asked whether a commission could recommend an item. The Human Relations Commission (HRC), for which she was the Council liaison, often came up with ideas.

Mr. Calonne said the HRC was uniquely empowered to take positions on measures independent of the Council.

Mr. Calonne said caution was needed when considering who could make the Council answer questions. Council Member Mossar's point was that the list was focused solely on ballot measures. He read it to say every ballot measure would be evaluated.

Council Member Beecham agreed. The proposal did not have a monitoring mechanism.

Chairperson Kleinberg asked whether the solution could be that staff felt it needed to go through the Council because it was a major policy issue or two Council Members requested an item together.

Mr. Mogensen thought the ballot measure process and the legislative platform were two separate issues. It was possible for staff to return with a recommendation for handling legislative objectives separate from the ballot measure, which was an issue that came from a Council referral to discuss the ballot measure process. The P&S Committee would present the measures that were being put on the upcoming California ballot in a report for evaluation. Separate from that, a report could be brought back on the legislative platform and how staff dealt with legislative issues.

Council Member Beecham suggested two Council Members could send, by Council Colleagues memo, ballot measures to the P&S Committee for consideration.

Chairperson Kleinberg said the issue arose because as a delegate to the LCC Legislative Action Committee for two years, LCC delegates would be voting on ballot measures, but she was unable to vote because the City had not taken a position.

Mr. Mogensen said Chairperson Kleinberg's comment raised the issue of the timeliness of minutes.

Council Member Freeman thought it would be rare that the minutes would not be done.

Mr. Calonne said the timing issue arose because the LCC conventions were held in October. Typically, information was being received regarding the LCC's position on issues during Council's vacation in August. It meant last minute items were taken up in September to get ready for the ballot measures and the LCC meeting in October. The practice was stopped because the City was never ready on time.

Chairperson Kleinberg said there was a ballot measure having to do with juvenile incarceration versus diversion programs. The measure would not impact the City, but would impact the community and the quality of life of the youth and law enforcement. The City would probably have a position on such a ballot measure, even though it wasn't municipal government law, nor land use law or utilities law. The Council had a responsibility to weigh in on important issues that affected residents.

Council Member Beecham suggested the juvenile incarceration bill was appropriate for discussion in the P&S Committee to determine whether it should be recommended to the Council.

Chairperson Kleinberg clarified two people could suggest to the P&S Committee that it discuss the item.

Council Member Beecham said there was no prohibition to forward anything along to the P&S Committee.

Chairperson Kleinberg said in terms of evaluating the measure, nothing addressed the health, welfare, and quality of life of the citizens.

Council Member Mossar suggested changing the word "City" to "community."

Chairperson Kleinberg said the issue was not with the word but rather that the health, welfare, and quality of life of the citizens were not being addressed.

Council Member Beecham thought something affecting the health and welfare of the community would be considered something that affected the City.

Chairperson Kleinberg asked about the reluctance to spell out health and welfare.

Council Member Mossar said "health and welfare" would become the criteria. Chairperson Kleinberg thought health and welfare would just become another guideline.

Council Member Beecham was willing to let the next P&S Committee make decisions about what did or did not affect the City.

Herb Borock, P.O. Box 632, said the Council once had a legislative committee for discussing items such as ballot measures. The task was now done by the Assistant to the City Manager. He suggested deleting the fourth item entirely. The people elected to the Council acted out the values of the community. In terms of procedure, the existing Council's procedural rules should still be followed. The Council made referrals to the committee, which were not staff initiated. The breakdown on the Consent Calendar used to be referral and action. As far as how broad the definition should be, one of the concerns was whether testimony at the Council meeting affected Council votes. One example was Dorie McFadden's video of the Council meeting on a State ballot measure for bilateral nuclear weapons freeze. Four Council Members favored the ballot measure at the beginning of the meeting. By the end of the meeting, the vote was 6-0 in favor of the item. A legal argument was unnecessary; the values of the community represented by the Council Members were necessary. The question was the extent to which the Council wanted to become involved in examining ballot measures. Currently, the Council adopted policies on a number of issues and staff used the list as a template to follow legislation.

Chairperson Kleinberg was told that one of the ballot measures on which she hoped the Council could take a position could not be entertained because there was no Council policy in existence on the issue.

Council Member Mossar agreed with Mr. Borock about the fourth item, which was unnecessary; i.e., the Council could evaluate and decide. The first item should be Council Members refer legislation and ballot measures to the P&S

Committee for review and staff, as appropriate, prepared informational reports.

Chairperson Kleinberg asked whether Council Member Mossar meant Council Members or the Council.

Council Member Mossar said Council Members.

Council Member Freeman said it could mean either.

Council Member Mossar said it was right that the Council should refer to the P&S Committee to begin the process.

Mr. Calonne clarified two colleagues send a memo to the Council and then the item is referred to P&S by the Council.

Council Member Mossar said yes. Then, as appropriate, staff generated the informational report. The fourth item could remain or be eliminated.

Council Member Beecham agreed with the summarization by Council Member Mossar.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER that two Council Members draft a Council Colleagues Memorandum to refer a ballot measure or legislative issue to the Policy and Services Committee for review.

Chairperson Kleinberg suggested that when the staff report on the item was presented to the Council, she wanted to know what prior Council and City policy was, if any, for evaluating the ballot measure. If relevant City policy were established, she would want to know.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER that the report will include an analysis of City policy as it relates to the item, if applicable.

Council Member Freeman agreed to keep item four because it presented ideas upon which to ponder in decision making.

Chairperson Kleinberg suggested wording indicating the list "including but was not limited to."

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER add wording “including but not limited” to the first sentence in Item No. 4.

Council Member Mossar thought there should not be two policies, one for ballot measures and one for legislation. The policy should cover all legislation, ballot measures, etc. The entrée was that Council, through its referral process, sent the item to the P&S Committee for consideration and staff provided informational support.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER that the wording “or legislative issue” be added to the process.

Chairperson Kleinberg said there was also a workload issue for staff so the Council was not forced to evaluate every social cause.

Council Member Mossar said the current procedure would remain in place. The policy would address issues such as the one presented by someone at the Council Meeting the evening before that the City comment on the ABAG/MTC merger. Several Council Members had opinions, but there was no mechanism by which to have the Council address the issue. With the new policy in place, a letter of referral could have been presented to the Council asking colleagues to place the item on the P&S Committee’s agenda.

Council Member Freeman clarified the Council Member would have to send a joint letter with one other Council Member.

Council Member Beecham thought the Council Member could ask the Council to send it.

Mr. Mogensen suggested language be included that empowered the Mayor to sign legislative advocacy letters that had been analyzed by the City Manager or his designee and found to be consistent with the principles stated in item four, which was the policy that was adopted by the Council in 1999.

Council Member Mossar agreed. The Mayor had to be given the power to do so.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER that the Mayor is empowered to take legislative action and sign legislative advocacy letters that have been analyzed by the City Manager’s staff and found to be consistent with the guidelines in Item No. 4.

MOTION PASSED 4-0.

4. Continued Discussion on Council Protocols and Appropriate Council Interface with City Staff

Chairperson Kleinberg said Council Member Mossar distributed a memo for facilitating *ex parte* communications discussion.

Council Member Mossar had been on a subcommittee of the Bay Conservation and Development Commission (BCDC) to develop a regulation for the BCDC that governed quasi-judicial matters. She took a draft of the regulation, changed wording from commissioner to Council Member, etc. Although incomplete, questions were raised about implementation procedures and definitions. The policy would hopefully apply to Planned Community (PC) applications, primarily because the City made huge land use decisions in the PC process. There were also questions about who made determinations if the rules were broken and if, after the close of public comment, some substantive action was taken that was not disclosed and required reopening the hearing. Another question involved what would occur if a Council Member violated the regulation or protocol. In the Coastal Commission, fines and removal of commissioners from office resulted. The purpose statement summarized what she considered important, i.e., public confidence and the openness and fairness of government. The City would do well to have a minimum policy that clearly delineated the expectations of a Council Member concerning quasi-judicial matters and *ex parte* communications.

Council Member Freeman said during the Council's deliberations over Hanover, City Attorney Ariel Calonne reminded the Council via email about the public hearing and what the Council could and could not do. She wanted to add such a procedure under H, stating that the Attorney would remind the Council via email of its responsibilities.

Council Member Beecham agreed. However, rather than a reminder, the Council should be told when it was entering a period of *ex parte* communications.

Mr. Calonne said the start time was an issue. The agenda was supposed to identify which matters were quasi-judicial.

Council Member Beecham said matters came up far in advance.

Council Member Mossar agreed noting item F regarding the period of applicability.

Council Member Beecham wanted to be told and be able to rely on a specific start time.

Council Member Freeman was uneasy because she was unsure about the start time.

Council Member Mossar said there was no clear point that could be identified as a start point. The policy said that if, in hindsight, a Council Member had a conversation that qualified as *ex parte*, the conversation should be disclosed.

Mr. Calonne said when he received the completed PC applications list from Planning he would notify the Council. The start date was then used for the administrative enforcement.

Council Member Beecham would not mind language of that nature; however, he would not want to have to rely on his own memory to recall discussing a subject.

Chairperson Kleinberg said if a Council Member was deeply involved in a project prior to the completion of an application, he would know.

Council Member Beecham agreed with the qualifier "deeply;" however, nothing in the draft mentioned the word "deeply," but rather indicated "any."

Council Member Mossar said Mr. Calonne was right. One could say that administratively the clock started ticking when the application was complete. There could be times when a Council Member participated closely in activities that had bearing on the ultimate application. The law needed to acknowledge such a possibility. It would not be considered wrong to become involved but it would be wrong not to disclose the activity. If a Council Member were really involved, the involvement would not be easily forgotten.

Council Member Freeman said "closely" was the gray area and the definition of "closely" could differ from one project to another.

Council Member Mossar urged the P&S Committee to be practical. The issue was an open issue. As an elected official, she took personal responsibility for being open and above-board with the public. Each Council Member would do so in their own way. Mr. Calonne made a good suggestion for dealing with the issue.

Herb Borock, P.O. 632, spoke on current rules on quasi-judicial procedures for the Council, which were not being followed. The intent at the Council meetings

was to disclose the substance of contacts that had influenced preliminary views so people would have a chance to rebut. Instead, people merely indicated a visit to a site. The idea of discouraging *ex parte* contacts might make sense for a regional commission like BCDC but in local government the kinds of quasi-judicial agenda items typically involved visiting the site often with the applicant or an interested neighbor to get the views. Council Members could not have meetings without it appearing in the newspaper. If a Council Member was deeply involved on a project with someone, and it became an application, there was a bias in terms of what was knowable and enforceable toward public organizations, as opposed to contacts with people. He was unsure the Council could go beyond its existing policies and procedures.

Council Member Freeman often went to Mr. Calonne for counsel before doing something such as asking whether some action was okay. She questioned whether it was something that should be stated or was just done.

Chairperson Kleinberg thought Council Member Freeman's suggestion was a great idea and could be included in the suggested norms. However, to enforce such action would be impossible. Any contact between the City Attorney and a Council Member was a confidential matter, so there was no way of enforcing such contact. The suggested norms could indicate that Council Members contact the City Attorney whenever there was a question regarding legalities and ethics. She sought to find something in the other cities' protocols on *ex parte* issues. However, the examples from other cities primarily dealt with norms and protocols and not something that was a legal matter like an *ex parte* contact. The information from BCDC was a good starting point.

Council Member Beecham expressed concerns about the strictness of the information presented by Council Member Mossar. His memory was not great and he might forget to disclose certain meetings, which made him nervous. Council Members often spoke with people on the street and he questioned whether a Council Member would know whether or not the person was a representative and the discussion was reportable.

Council Member Mossar said in her experience there had been times when Council Members were too involved too early in the process. The public knew or sensed it. The draft was a set of ideas and not intended as the final document. However, the issues were clearly spelled out. It was important for the Council to determine whether the behavior she just referenced was okay.

Council Member Beecham said the norm was to avoid *ex parte* communications and, if *ex parte* communications occurred, he wanted to see them disclosed. However, that was not what was in the draft.

Council Member Mossar disagreed. She wanted to be able to take exactly what Council Member Beecham said and ask Mr. Calonne to return with suggestions for a policy.

Council Member Beecham thought that actions that occurred of an *ex parte* nature after a public hearing should be addressed. Things came up after the fact. His concern was that the draft, strictly interpreted, could cause huge delays in many issues where there had been a public hearing proposed such as letters to the editors, dropping things off at Council Member's houses, etc.

Council Member Mossar said a developer could legally say the decision was null and void and could do whatever he desired. Council Member Beecham might not like the remedies. The draft was just a laundry basket of remedies and not intended as the final document. However, it was not legal. Council Member Beecham asked what was not legal.

Council Member Mossar said *ex parte* communications after the close of public hearing were not legal. Mr. Calonne could be asked to suggest language that would be meaningful and applicable to the Palo Alto community.

Council Member Beecham said part of his concern was manipulation of the process. If someone wanted to delay something, they could find a way to present information to any of the Council Members, and then use it as a reason to reopen the public hearing.

Chairperson Kleinberg thought the City Attorney would be able to handle the concern.

Council Member Freeman read from the *Local Official's Guide to Ethics Laws*, which indicated in Chapter One, "Although the law should not be the sole ethical reference point for elected officials, legal requirements impose minimum ethical standards." Whenever any of the subjects were discussed, she wanted to know what the law was for *ex parte* communications. If the Council felt the standards should be higher, discussions should start at that point.

Mr. Calonne said the existing rules were not that different in substance from what Council Member Mossar presented in the draft. The difference was in the perspective of articulating succinctly and directly in the BCDC model versus the more delicate and politically influenced approach that he had taken. Council Member Beecham's comment about no contact after hearings was the existing rule. He was sending out a reminder about the rule. He sent out reminders because he knew it was hard to live up to the reality of an elected local government. Where the current policy differed from BCDC was in allowing a

judgment about how substantial or influential the contact was. The absurd case was an email that the subject line was Hyatt Ricky's and the text was a quote from something totally unrelated. Obviously, no one paid attention to something like that. Contacts would be tracked, so the administrative burden already existed. Secondly, Council Members would disclose any contacts that significantly influenced them. The law allowed some exercise of judgment about where the Council was influenced. The policy was worth examining and worth redrafting in a little tighter form. When he drafted the policy in 1994, the range of ex parte contact policies ran the gambit from the City of San Diego, that forbid not only any contacts but forbid council contacts with staff, to places that ignored the issue altogether. Although proud of what Palo Alto had, he wanted to be direct in encouraging Council Member Mossar to pursue the issue because it was an educational process for both the community and the Council. In his role, he processed the various concerns about trust and whether staff was doing its job well, which reflected the need to show that the City was living to a higher standard than people thought. It was a good time to show the extra effort to maintain the public trust. He was all for making the policy more succinct, crisp and direct. The existing policy already discouraged contacts. Part of the problem, from a personal and psychological perspective, was that the barriers were put up to keep people from pressuring the Council. Where it was difficult was a situation where an elected official had to tell an otherwise unaware constituent that they could not talk with them. He wanted to find terms wherein people would respect the behavior as doing a better job as a politician rather than turning their back on the public.

Chairperson Kleinberg said not only the Council but also the public needed to be constantly reminded of the rules because they were not intuitive. In addition to the City Attorney's reminders to the Council, it would be helpful if at the close of a quasi-judicial hearing there were a statement made by the Mayor as a reminder.

Mr. Calonne said it used to be common practice in all Planning Commission meetings to have a script that was read by the chairperson delineating the rules of the hearing. The Council liked the practice sometimes and he sometimes forced the procedure when there was a lot of risk. Then it became an issue of slowing down the meeting and keeping the Council from the public. The pendulum swung away from making the "off-putting admonition" at the beginning of the meeting.

Council Member Mossar thought there was a chilling effect by doing it at the beginning of the meeting, but it would be helpful to remind people that there were protocols and limitations on communications.

Mr. Calonne was in favor of a revision.

Council Member Freeman thought Mayor Ojakian did a good job when oral communications were open that the Council could not respond to the speakers. People who did not attend every week would then know that the Council was not trying to be obnoxious.

Mr. Calonne said Council Member Mossar had a point when she addressed the PC zoning. It was brutally hard to explain to anyone why PC zoning was legislative and not quasi-judicial. He had a court of appeal decision that stated it was legislative. He had advised confidentially on the contours of it. The Council might want to consider whether the PC zoning process would be better served by acting as if it was quasi-judicial because currently it was a free-for-all and the Council was the victim.

Chairperson Kleinberg thought it would be helpful if Mr. Calonne brought back to the P&S Committee an explanation that there was a court precedent for PC zoning that it was legislative but Palo Alto for the reasons indicated could set the bar higher.

Council Member Beecham thought it would be a matter of protocol.

Council Member Freeman said it went back to the beginning of the chapter.

Chairperson Kleinberg agreed there was a minimum and hopefully the City would build on the minimum.

Council Member Freeman said if the P&S Committee knew what was going to be discussed at the next meeting regarding protocol, it would be nice to have the legal bottom line.

Council Member Beecham said before Mr. Calonne had mentioned a significant conversation that affected a judgment. As far as definitions in ex parte communication, "any" should be modified to something that reflected a conversation with some substance.

Mr. Calonne said that while there was an ideal of how the world ought to be, he would not want to make rules that would leave the City vulnerable.

Council Member Mossar said Mr. Calonne's concern was the very reason BCDC formed its own task force of commissioners because the council for BCDC did not want to do it. It had taken the task force of BCDC commissioners to hash through the issues. A specific incident started the conversation because the

Governor appointed a chair of the commission who had very close ties to the San Francisco Airport. The commissioners became so concerned that they formed the task force. The entire process would help the Council and the public to better understand the rules and understand the procedures. It would also show the public that the Council took the government very seriously.

Council Member Beecham understood BCDC had a bad experience. His experience with the County was not to catch every single infraction but make it realistic.

Council Member Mossar said the draft was a laundry list and not intended to be the final document.

NO ACTION TAKEN.

5. Discussion for Future Meeting Schedules and Agendas

Chairperson Kleinberg said a change had occurred in the order. The memorandum from Mr. Mogensen that the P&S Committee would be taking up the Sea Scout Building on July 9, 2002 was now going to be put over until after the Council vacation. The referral was from the Human Relations Commission of the Anti-Discrimination Ordinance and Convention to End Discrimination Against Women (CEDAW).

Council Member Beecham thought he would be out of town on July 9, 2002.

Chairperson Kleinberg asked whether the P&S Committee would have a quorum that night.

Council Members Mossar and Freeman would be in attendance.

Chairperson Kleinberg explained that CEDAW had been adopted by many nations and states. The P&S Committee would learn what, if any, implications there were for the community. More of the protocols could be taken up.

Council Member Mossar thought a number of individuals from the public would be present and the P&S Committee should only address the two items.

Mr. Mogensen said a request might also appear on the agenda to review a scope of services on the July 9, 2002 date for the SOFA Park design.

Council Member Mossar said an article appeared in the LCC magazine about the relationship between councils and commissions that was very good. She asked staff to provide copies to her colleagues.

Mr. Mogensen said the previously requested *Mayor and Council Members Leadership Guide* was in the Council Member's boxes.

ADJOURNMENT: Meeting adjourned at 9:15 p.m.

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