

Regular Meeting  
November 26, 2002

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Chairperson Kleinberg called the meeting to order at 7:00 p.m. in the Council Conference Room, 250 Hamilton Avenue, Palo Alto, California.

Present: Beecham, Freeman, Kleinberg, Mossar

**MOTION:** Vice Mayor Mossar moved, seconded by Beecham, that the Policy and Services (P&S) Committee move Item No. 4 forward ahead of Item No. 3.

**MOTION PASSED 4-0.**

1. Oral Communications

Herb Borock, P. O. Box 632, spoke about televising the Policy and Services (P&S) Committee meeting, the new contract for meetings being held simultaneously, and the decision to use one room over the other room depending on whether or not the meeting was being telecast.

2. Contract Scopes of Service of 2002-03 Consultant Agreements Greater than \$65,000 Selected for Review

Assistant to the City Manager Chris Mogensen said on September 10, 2002, the P&S Committee asked to review any consultant agreement not selected by the Finance Committee for review. Six agreements on the P&S Committee agenda were the projects not chosen by the Finance Committee. The current review policy had created delays with schedules and timelines for some of the projects. Staff recommended that consultant reviews be incorporated into the budget process, thus streamlining the entire process.

Chairperson Kleinberg asked how the consultant agreement review could be incorporated into the budget process if the budget did not come through the P&S Committee.

Mr. Mogensen said the review process would not be lost, but merely incorporated into the budget process.

Assistant City Manager Emily Harrison said staff had not worked out the details. The Finance Committee normally reviewed most of the projects. The P&S Committee review would probably need to occur during one of its meetings in the spring. Staff was already working on a new format for the Capital Improvement Program (CIP) projects, which incorporated a vast number of the consultant contracts. A committee review would include a full description of the project.

Council Member Freeman agreed with the recommendation to review consultant agreements during the budget process. The projects before the P&S Committee at the current meeting were individual and stood alone; however, she assumed some project would relate to other projects. When the dollar amount was presented by itself, it was difficult to see how the project fit into the entire budget. It might be helpful to see where the money came out of the budget and how much money was left if projects had to be rearranged. She recommended a format be returned to the committee indicating how much was available, how much was being spent, how much was left, and future projections for the funds.

Ms. Harrison said Council Member Freeman's comment was a good reason to have the review during the budget process.

Chairperson Kleinberg said the scopes of service, not the amount of money, was being examined. She asked whether the P&S Committee should be reviewing the amount of money for the projects.

Council Member Freeman suggested there might be decisions about a scope of services based on how much money was available in the budget at any particular time that the P&S Committee might consider doing at a later time or recommend for Council review. The City was in a tighter situation than it had ever been before.

Chairperson Kleinberg thought some clarification about the role of the P&S Committee was appropriate. She understood the P&S Committee did not consider the cost of the project. The dollars were considered in the Finance Committee.

Council Member Beecham said the budget process clearly set up what was spent on each CIP project and other major projects. The review of the scope of services was not consideration of the allocation of funds but of the contract itself. The P&S Committee should not confuse what was done in committee with what went into the budget and was handled by the Finance Committee.

Ms. Harrison said the P&S Committee would find it much easier to review the scope of services if it saw the entire scope of the project, of which the consultant service was one component. The description of the scope was then evident within the overall project.

Vice Mayor Mossar thought the P&S Committee was in agreement. Council Member Freeman made a good point. Some difficult financial decisions

would have to be made which would, in some way, reflect on the scopes of service. The missing piece was the actual process. Staff would return with the process. The recommendations in the staff report (CMR:437:02) were appropriate.

**MOTION:** Vice Mayor Mossar moved, seconded by Beecham, that the Policy and Services Committee approve the staff recommendations relevant to the consultant agreements identified in the staff report (CMR:437:02) falling under its purview.

Council Member Freeman asked whether consultant agreements were presented to the committees more than once a year.

Ms. Harrison said in the past, the information trickled out. In reality, staff knew the scopes of service before each fiscal year. Staff had merely waited until a certain point in the process. Handling all of the scopes of service during the budget process was much more efficient.

Council Member Freeman queried whether the P&S Committee would see an entire list of contract services projects.

Ms. Harrison said yes. Normally, the consultant agreements were reviewed during the first committee meeting after the budget passed. Instead, staff would provide a list during the budget process.

Chairperson Kleinberg said the agreements reviewed by Council committees were only projects at a total cost of over \$65,000, yet projects were being contracted out in much smaller amounts to different consultants. She queried the City policy of aggregating the projects in order to require a review.

Ms. Harrison said the \$65,000 limit was by consultant, not by project. A special request was made by a previous P&S Committee that the Zoning Ordinance Update, even though the dollar amounts would not normally justify review, be brought back because of the scope of the overall effort; however, the project was an anomaly.

Chairperson Kleinberg asked about the Lytton Traffic Calming Study.

Ms. Harrison said the same applied to the Lytton Traffic Calming Study. There was special interest in the projects which, although the project did not meet the criteria for consultant review, was included.

**MOTION PASSED:** 4-0.

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

City Manager Frank Benest said based on the last Policy and Services (P&S) Committee discussion, staff began preparing more comprehensive working drafts (CMR:461:02) for the P&S Committee for its continued discussion on protocols. The working draft reflected the initial discussions of the P&S Committee, best practices and protocols from other cities with a council/manager form of government, and issues and suggestions identified by the executive staff.

Council Member Freeman thought the P&S Committee also discussed having an annual review of the Brown Act. The staff report (CMR:461:02) only discussed annual Council protocol review. She asked that the annual Brown Act review be included.

Mr. Benest said the annual Brown Act review would be included.

Herb Borock, P. O. Box 632, spoke about the current City protocols, which were new to some members of the Council. The current protocols should have been the starting point for the discussions to determine whether the City really needed new rules or whether the Council was just not following the current rules. Staff referred to the Council as a team; however, the Council was a political body with different views. Referring to the Council as a team did not make sense. Reference to the pre-Council meeting seemed vague, and it was unclear whether the meetings were closed or not. The public was not notified of the pre-council meetings.

Joy Ogawa, 2305 Yale Street, spoke about the report from the outside counsel on the Brown Act, which pointed out a potential violation of the Brown Act when Council Members discuss an item with a Council-Appointed Officer (CAO). One of the bullet items in the protocols was that materials be made available to all Council Members so they could make decisions. She queried how it would work out if questions were asked by one Council Member, the staff member was required to disseminate information to all Council Members, yet staff members were not supposed to reveal any suggestions of the direction in which one Council Member was thinking. There was a fine line between providing all Council Members with the same information while not revealing the comments or thoughts of colleagues.

Winter Dellenbach, 859 La Para, spoke about the release of questions and answers to the public or other members of the Council. It seemed there were different kinds of questions. If the question were a technical question or clarification from staff, it would not involve the Brown Act and could be released. Pressure was sometimes put on Council Members to work faster. She was concerned about reigning in questioning if questions were only asked during Council meetings. If staff work that was requested by Council Members was limited to one hour, after which full Council had to be involved, it would be difficult to consider in terms of Council time. Instead of one hour, the limitation could be made for a one time in six months. The objective could be reached. Running things through the City Manager added an insular layer between the elected official and the public by having everything filtered through non-elected people. On the other hand, it might be an adequate way of reaching staff more efficiently, although it would be a burden on the City Manager. If pre-council meetings were merely designed for setting agendas and technical issues, there was no problem because the issues did not fall under the Brown Act. Limiting the meetings to four was unnecessary; meetings should not be limited, but Council Members should be reminded to stay within the confines of the non-Brown Act items.

Chairperson Kleinberg said an editorial in the *San Jose Mercury News* entitled "Etiquette or Else," addressed Mountain View City Council's adoption of rules for council conduct. Mountain View faced a difficult situation with a former council member, Mr. Umbra. The rules of etiquette would be considered his legacy. The article was a nice, quick look at the fact that there were different rules to make sure councils delivered honest, open, effective government and ran the council the way in which everyone could be proud. The editorial concluded by stating that Mountain View had indeed set the bar high. She was sure Palo Alto would not be under the bar. Some of the proposed protocols had already been discussed, since the P&S Committee had already held two meetings on the subject. She wanted to work through each section and asked her colleagues for concerns and questions. If there were no issue, no discussion would occur.

City Attorney Ariel Calonne said location of the rules was an issue about which vigorous discussions were held. The protocols were separate from the procedural rules, as mentioned by Mr. Borock. There was no significant overlap between the two. The City Manager suggested in 2001 that the protocols or guidelines be drawn. If procedural rule issues were raised, he would address it. The procedural rules were merely a supplement and provided as background information.

Chairperson Kleinberg asked for questions or concerns on the first section of the proposed protocols, "Protocols for All Council Members," which represented items on which all Council Members would agree.

Council Person Freeman had had a discussion with the City Manager earlier in the week concerning a section called "Staff Conduct With City Council," which she thought should be included in the evening's discussion.

Chairperson Kleinberg was unsure the Council had the power to tell staff how to act toward Council Members.

Mr. Calonne said the Council had the authority to direct staff to treat Council Members in a particular manner.

Chairperson Kleinberg thought the City Manager was in charge of his staff.

Mr. Calonne said the line the protocols attempted to draw was between the employees who were approved or appointed by the Council, e.g., CAOs, department heads, Senior Assistant City Attorneys, the Assistant City Manager, and the Assistant City Clerk. The Council could appropriately indicate how it expected the staff to behave. Going further, Mr. Benest had set out expectations of his staff in the parts about dealing with Council Members.

Chairperson Kleinberg suggested taking up the issue at another time, since the P&S Committee had no examples.

Council Member Freeman asked whether Chairperson Kleinberg did not want to discuss the item because other colleagues had not considered the issue yet.

Chairperson Kleinberg said there were no protocols concerning staff except for what Mr. Calonne had just explained.

Council Member Mossar suggested discussing the issue when the P&S Committee discussed "Council Conduct With Staff."

Council Member Freeman wanted a category entitled "Staff Conduct With City Council" added to the protocols. She did not understand what Chairperson Kleinberg expected to have in front of her in order to discuss the suggestion.

Chairperson Kleinberg said the P&S Committee had no protocols dealing with staff conduct toward Council and would take up the matter at the next meeting.

Council Member Freeman wanted to suggest some possibilities for staff conduct with Council.

Mr. Benest said staff found it helpful to have an initial discussion about a subject from which a draft protocol could be drawn. Once the P&S Committee discussed the items in the proposed protocols, it could discuss a few concepts or issues from which something could be drafted and returned at the following meeting.

Chairperson Kleinberg asked whether Council Member Freeman was comfortable with Mr. Benest's suggestion.

Council Member Freeman said yes. She suggested a bullet point, "Participate in scheduled activities to increase team effectiveness and review Council procedures, such as these Council Protocols," add the Brown Act, conflicts of interest, and general ethics.

Chairperson Kleinberg asked what was meant by "general ethics."

Council Member Freeman said the Council was given a little white book from the League of California Cities (LCC) called "Elected Officials Guide to Ethics."

Chairperson Kleinberg said the wording should probably state the same thing, "Elected Officials Guide to Ethics."

Council Member Beecham thought the protocols and procedures were Palo Alto's and written by the Council. Issues such as the Brown Act were things over which the Council had no control, although the Council should be familiar with the rules thereof. The Council should be encouraged to be familiar with the rules, but considered the bullet point as relating to an interactive review for keeping the protocols up to date.

Council Member Freeman understood Council Member Beecham's perspective, but also understood from reading the staff report (CMR:461:02) staff's suggested for the new Mayor to immediately after election by the Council, review the Council protocols. At the same time, the Brown Act would be reviewed. "Review" meant setting norms so the Council was up to date and had the items fresh.



Chairperson Kleinberg did not recall talking about the Brown Act at the prior meeting.

Ms. Harrison suggested the end of the document include mention an annual review that would incorporate anything for which a refresher was good. A refresher course on the Brown Act was probably a good suggestion.

Chairperson Kleinberg agreed. Council Member Beecham's point was that the focus was on the protocols, refreshing and reviewing the protocols every year because they were not law. The others were laws. There were many laws for which the Council was responsible.

Vice Mayor Mossar thought everyone agreed with the need to stay up to date and current on the legal requirements. Ms. Harrison's suggestion about the procedural issue relating to the larger issues was a good one. Council review was appropriate, but there was a place later in the document to incorporate the suggestion.

Chairperson Kleinberg thought the bullet point was for the Council to commit to reviewing the protocols and procedures.

Council Member Freeman thought the review was important. What the Council had gone through over the last month highlighted the importance of Council making an effort to include the Brown Act, conflicts of interest, and the issue of ethics in an annual review.

Chairperson Kleinberg said if the Brown Act and conflicts of interest were not included in the protocols, the Council would still be required to observe them and were charged with knowing them.

Mr. Calonne said the Council was charged with knowing the rules; however, the issue was whether there was going to be a routine training. He agreed with Ms. Harrison. The issue fit in the last section of the protocols.

Council Member Beecham would not characterize it as a discussion of whether or not the Council should know or be familiar with or obey; that was not the issue.

Council Member Freeman wanted a definition of "participate in scheduled activities to increase team effectiveness," which she would not interpret as reviewing on one's own. The discussion seemed to not address review, meaning refresher training, etc. She wanted an understanding of what the

wording meant such as whether the Council Member participated in reviewing it independently as a scheduled activity.

Mr. Harrison said the focus was not on the protocols and procedures, but on team building. The examples probably distracted from the point, which was team effectiveness.

Chairperson Kleinberg suggested separating the two thoughts into two bullets.

Ms. Harrison thought separating the sentence into two bullets would not take away from the meaning.

Chairperson Kleinberg said the Council should be primed to understand all of the ethics, conflicts of interest, and Brown Act rules. The question was whether every member should review the protocols. When timing and other issues related to review could be included in the later item.

Ms. Harrison asked whether a new bullet was being added.

Chairperson Kleinberg said the one long sentence was being broken into two bullets.

Ms. Harrison asked whether anything was being added to the end of the second new bullet.

Chairperson Kleinberg said no.

Council Member Freeman asked about the bullet, "Be responsible for the highest standards of civility and honesty in ensuring the effective maintenance of intergovernmental relations." She would like to add the word "respect" to civility and honesty.

Chairperson Kleinberg suggested a change to the word "team" in bullet 6. The word seemed inappropriate; it would be more appropriate to say "Council effectiveness."

Vice Mayor Mossar agreed with the change from "team" to "Council" in bullet 6.

Chairperson Kleinberg suggested adding "annually" to the second half of bullet 6. Whether or not the Council agreed to review the protocols, etc., as a group, it would commit to reviewing the documents at least annually.

Vice Mayor Mossar agreed.

Chairperson Kleinberg suggested a new bullet, "Work for the common good, not personal interest."

Vice Mayor Mossar agreed.

Council Member Freeman asked for clarification.

Chairperson Kleinberg said when Council Members were operating in their official capacities, they should always work for the community's benefit, not their own personal benefit.

**MOTION:** Vice Mayor Mossar moved, seconded by Beecham, that the Policy and Services Committee tentatively approve the "All Council Members" section of the proposed Council protocols.

**MOTION PASSED 4-0.**

Chairperson Kleinberg asked for questions, comments or ideas on the section entitled "Council Conduct with One Another."

Council Member Freeman wanted to add to Bullet 2: "Be respectful of diverse opinions. No name calling or labeling."

Chairperson Kleinberg said the danger of actually listing as many of the unpleasant and disallowed behaviors was the tendency to become exclusive. For example, someone might think they could be sarcastic because sarcasm was not disallowed. The more words added, the clearer it became that some words were not.

Vice Mayor Mossar said civility was civility. It was impossible and inappropriate to list every action that was not civil. She appreciated the attempt to define civility, but in some cases, it was not even clear. The purpose of the protocols was for the Council to commit to be civil with one another.

Chairperson Kleinberg said the bullet was the operable protocol.

Council Member Freeman thought the addition of the words "such as" was appropriate. Giving examples of civility was extremely important. Even Palo Alto's Council had varying degrees of what was considered civil behavior. Some examples should be given but not be limited to those examples.

People needed to know what was and was not good in some other way than just the word "civility."

Ms. Harrison said staff could include wording to indicate the addition of those kinds of behavior.

Mr. Calonne said the Brown Act said a council could not enact rules to prohibit public criticism of the council or ideas. The front half of the section was trying to acknowledge that criticism was part of the process. The second part was an attempt to step away from the Brown Act language to say that although criticism was allowed, civility was necessary. The reality of enforcement was not pretty. Public censure was probably the only means of enforcing the protocols.

Chairperson Kleinberg thought a Council Member could say, "That's a stupid idea," but could not call another Council Member "stupid."

Mr. Benest said Council Members could say anything they wanted. The protocols represented a standard to which the Council was committing themselves.

Council Member Freeman said if someone said, "That is the height of stupidity," it would be impossible to determine if the comment was directed against an individual or directed toward a comment. The wording needed to be very clear.

Vice Mayor Mossar said in the early days of her personal experience as a Council Member, she thought writing rules and laws was a good thing to do. She discovered that the more laws and rules that were written, the more trouble it became. The P&S Committee might attempt to micro-manage the protocols, but it would become meaningless when "ground tested." What was really important was a commitment for civil behavior among Council Members. Each Council Member would deal with the protocols in a slightly different way. That did not mean a Council Member was not committed. It was not worth talking about the specific words on the page forever.

Council Member Beecham agreed. The idea was for the Council to be civil. It was impossible to define all the variations by which one could violate civility. Even "slanderous" was difficult to define. With definitions, the application would be difficult; the standard was to be civil. Typically, a group would not agree on a particular behavior, but at least the idea was to be civil. He leaned toward a simpler definition rather than a more detailed definition.

Chairperson Kleinberg agreed. The wording could be changed to saying "such as," while pressing the fact that within the Council's free speech rights, without at all interfering with the role to be polite critics, but forceful critics, the Council would be civil and have decorum.

Ms. Harrison suggested moving the wording "be respectful of diverse opinions" to the first sentence because that was where it belonged. The specific actions would be turned into examples, perhaps adding a few, without trying to define the universe of civility.

Council Member Freeman suggested leaving the current wording and adding "such as." She also suggested "Listen attentively to colleagues. Do not use body language or noises to express displeasure or disgust."

Chairperson Kleinberg thought the suggested wording fit better under the section "Council Conduct with City Staff." She wanted to add language about verbal or physical disparagement. The suggestion for "Listen attentively..."

Ms. Harrison thought listening attentively was part of civility.

Chairperson Kleinberg agreed.

Council Member Freeman asked where to place the wording, "Do not use body language or noises to express displeasure or disgust." Staff could change the language.

Council Member Beecham suggested simplifying some of the language.

Ms. Harrison suggested the language become a new bullet.

Vice Mayor Mossar did not believe a Council Member was required to listen to everything everyone said at all times. A Council Member's job, while on the dais, was to obtain input, review commentary, get thoughts together, etc. She did not consider it disrespectful to be doing her job in the way she felt it should be done at that time. One could over-interpret the comment. She would not want to offend a Council Member because she was not hanging on his/her every word.

Chairperson Kleinberg suggested the wording be changed from "listen attentively," to "respect colleagues when they have the floor."

Vice Mayor Mossar said there were occasions when a Council Member might need to get up and ask a question during a meeting. Such behavior was not disrespectful, but meant the colleague was doing their job. Time was an element.

Chairperson Kleinberg thought every Council Member had encountered similar situations, needing to look up a document or asking a question on the side. She queried some wording that would avoid punishing someone for taking a few minutes.

Council Member Beecham thought the point of the comment was to show respect when someone was talking and not make jesters nor noises. Sometimes a Council Member might ask a question that was unimportant to everyone else. Requiring the attention of every Council Member was unnecessary for such a question. He understood not wanting side conversations going on or snide comments.

Council Member Freeman said Council Member Beecham was correct. The issue was one of protocol. When she went into a meeting, she wanted to listen to her colleagues. She did not have her mind made up and wanted to hear what the public had to say. Occasionally a Council Member was distracted. At the first possible moment, however, the Council Member needed to be back into the mode of listening to what was being said, which was part and parcel of every Council Member's decision making.

Chairperson Kleinberg thought the P&S Committee was crossing over a line between how Council Members treated each other and how Council Members did their jobs in terms of paying attention, listening to the public, reading the materials, putting thoughts together, not coming with a preconceived notion, etc. Although she agreed with Council Member Freeman's comments, it was not a relationship issue. The issue was covered in the civility language.

Council Member Freeman was just using it as an example of what she meant. The general idea was to listen when a colleague had the floor. Asking a question or writing something down should be the exception.

Council Member Beecham said, in general, Council Members should be listening to their colleagues, which was a valid point. He questioned the value of including it in the protocols. However, saying not to disrespect colleagues by not making noises was the kind of behavior that was to be avoided.

Chairperson Kleinberg questioned how a Council Member could be sure what another Council Member was doing when they were looking or writing something down. The intention was good.

Council Member Freeman said the protocols were not laws, but guidelines for appropriate behavior for Council Members. Listening to colleagues was appropriate behavior.

Vice Mayor Mossar thought no one disagreed with what Council Member Freeman was saying, but the bottom line was that each Council Member was an elected official. Each Council Member did their job the way they thought their jobs should be done. Either it worked or it did not. Either the Council Member was productive or not. Either something was delivered that the voters wanted or not. She had no doubt there were elected officials who were very successful and served 20 to 30 years yet never paid attention to their colleagues. Council Members were independent "contractors" who could structure their business any way they wanted but had to answer to the public every four years. The key issue was for Council Members to treat one another with civility. If one Council Member repeatedly did something that bothered another Council Member, as adults, the issue could be addressed in a private chat. The rule would never obviate the obligation to one another as adults and people to maintain a civil relationship. She was not opposed to a "such as" string of four or five examples, but would not want a longer string, which would be overbearing and inappropriate.

Council Member Beecham would not mind adding something into the bullet about not making disparaging noises, as long as it was simplified and made clearer.

Ms. Harrison suggested language such as, "Do not use body language or noise to express disagreement."

Council Member Freeman said the next bullet, "Honor the role of the presiding officer in maintaining order and equity," was discussed at the last meeting. She suggested wording: "The presiding officer must make any changes in customary protocol publicly known at the onset of the meeting."

Chairperson Kleinberg thought the wording being suggested by Council Member Freeman was already in the Council procedures.

Council Member Freeman saw no language in the procedures about the presiding officer making changes and being required to announce a change. A change from customary protocol in the middle of a meeting was inappropriate.

Chairperson Kleinberg asked whether the P&S Committee should be discussing items in the procedure manual or whether it should make a list of issues to be addressed later.

Mr. Calonne said to some extent an open approach would be useful to identify issues. Staff would benefit if the P&S Committee simply identified issues of concern without going into too much depth. The procedural rules were fairly loose about how the Mayor would run a meeting. Requiring the Mayor to announce changes presumed there was a base case. The rules stated the permission of the presiding officer was necessary in order to speak. The rules also stated there should be a motion on the floor before there was debate. Whether a Council Member had the right to ask questions, how long Council Members could speak, etc., were discretionary and up to the presiding officer. Having the P&S Committee address a routine process for deliberation and debate was a good idea, but was something that would not happen in one night. Putting such a procedure together would probably require a subcommittee. To the extent everyone was concerned with gaining the confidence of the public, having a routine instilled confidence because it impressed people that there was an abiding spirit of respect for the laws and the rules of the game and that everyone would get to play equally with the rules. It would be good at some point to draw attention to how meetings were being run. The procedural rules were not that detailed. The suggestion could be footnoted or emailed to him, and he would be happy to deal with the issue.

Vice Mayor Mossar said any given meeting was a complex interaction of players and information. It was one thing to describe a typical meeting. Having chaired many different kinds of committees, no meeting was exactly like another meeting. One of the primary functions of the presiding officer was to maintain order, not by following steps one to ten, but by making sure everyone was able to "play" and everyone was given the opportunity for input without having the meeting become confusing. The presiding officer needed some flexibility to use their best judgment under the circumstances to keep the meeting flowing. It was important for the presiding officer to maintain order and make sure everyone was allowed to play. General rules were appropriate. Sometimes getting the questions out of the way first helped and sometimes questions were unnecessary. The presiding officer could run the meeting however they wanted.

Chairperson Kleinberg suggested putting the item on a list of issues to be addressed later.



Council Member Freeman said one of the procedures in the handbook clearly stated that the rules would not be applied or used to take strategic advantage or create unjust results. Making a change in a consistent pattern could be construed as forcing the problem to occur.

Chairperson Kleinberg agreed. The item would be put on a list of matters with which the P&S Committee could address at another time.

Council Member Freeman said the bullet, "Demonstrate effective problem-solving approaches," raised the issue of the City Manager Reports (CMR). Perhaps a separate discussion could occur on CMRs so staff could provide a more balanced perspective. Currently, the CMRs provided the Council with a recommendation and the support of the recommendation. It would be reasonable to also say the Council had looked at other ideas. In order to demonstrate effective problem-solving skills, somehow along the line a side trip needed to be taken into what the CMRs actually provided the Council.

Chairperson Kleinberg agreed the item could be placed on a list for the P&S Committee to address later.

Mr. Calonne said there was an overlap in the area of personal privilege where the procedures overlapped the protocols. He would be a little concerned with bullet 4, "Avoid personal comments that could offend other Council Members." The procedural rules addressed the issue of raising a point of personal privilege when the integrity, character, or motives of the Council Member came into question or when the welfare of the Council was concerned. The procedure was very specific, giving the Mayor sole authority to allow the motion; for example, it was a motion that did not require a second. The point was not to challenge the other Council Member to justify or apologize, but to allow the Council Member whose motives or integrity had been impugned to clear their name. Allowing a live debate that would be refereed by the Mayor was a bad idea. The phrase "offend" should be changed to the wording in the procedural rules. He would attempt to modify and redraft the wording. The question of personal privilege was not intended to be a tool by which someone could be attacked.

Chairperson Kleinberg clarified Mr. Calonne's concern was not with bullet 4, but the explanation referring to the point of personal privilege that was confusing and could lead into something not intended.

Mr. Calonne said yes. The procedural rules could be changed to allow a more wide-open personal privilege, but that would not be his recommendation.

Chairperson Kleinberg said the City Attorney could bring better language to the P&S Committee.

Council Member Beecham understood the protocol was to avoid personal comments, etc. The language in bullet 4 was more procedural, which was not quite accurate. The procedure did not need to be in the protocols.

Mr. Calonne said having the language in the protocols was a good reminder. The language of the two would be made consistent.

Chairperson Kleinberg suggested additional language "should be voiced in private prior to meeting, and if not, at the meeting politely and within reason" to come after the words "should be voiced." under bullet 3, "Honor the role of the presiding officer in maintaining order and equity," Council Members had received the agenda ahead of time.

Ms. Harrison queried whether individual Council Members discussing the agenda went against the government value. If an item was on the agenda where there was a lot of public attendance and someone wanted the item moved forward on the agenda, she questioned whether the point was to possibly discuss moving the item prior to the meeting.

Chairperson Kleinberg said yes. The Council Members would not have a substantive discussion, but the order of the agenda, timing of the agenda, etc., could be discussed as long as it was the procedural angle of the agenda.

Mr. Calonne said Palo Alto had seen a big shift in 2001 which, in his view, had worked well. The Mayor and City Manager were given the authority to adjust the agenda in advance of meetings and put the items of greatest public interest up front, so the public would not have to wait.

Chairperson Kleinberg said the Council also experimented with having public comments at the end of the meeting. She queried situations when something was not being kept from public debate or view, but handled before the meeting. If the agenda had to be handled during the meeting, it should be done so politely.

Council Member Beecham was unsure what the problem was with disagreements about the agenda. Moving an agenda item was already handled in the procedures and was not a protocol. He was unsure what other kind of objection was being considered.

Ms. Harrison said a good example was whether or not to keep the public hearing open or close it at the end of the evening. There were frequent discussions about the agenda during the meeting.

Chairperson Kleinberg thought the example was procedural. She asked whether the bullet was aimed at disagreements about whether there should or should not be a matter discussed on the agenda.

Ms. Harrison said no.

Vice Mayor Mossar found the section confusing because the point was to honor the role of the presiding officer in maintaining order and equity, which was a huge job. The Mayor needed everyone's respect and needed to be in charge.

Ms. Harrison thought an example had occurred at the current meeting. Chairperson Kleinberg, as the presiding officer, determined there were certain procedural issues that were not on the agenda and designated the items as issues to be addressed at a later meeting.

Vice Mayor Mossar said the bullet was about honoring the presiding officer, yet the body of the bullet seemed to address procedural items, and was not about honoring. If the Chair was bothering a Council Member, a procedure for dealing with it needed to be found. However, the bullet appeared to miss the point about honoring the presiding officer. It was important to have a bullet directing Council Members to honor the presiding officer, a job that was very hard work.

Chairperson Kleinberg said the first sentence, "Respect the Chair's efforts to focus discussion on current agenda items," was appropriate. The remainder of the wording had nothing to do with honoring. Perhaps the wording "Objections about the chair's action should be voiced politely," could remain, but remove reference to the agenda.

Vice Mayor Mossar agreed.

Chairperson Kleinberg asked whether "Observe the Golden Rule" was non-denominational.

Ms. Harrison said almost every city procedure staff reviewed included the words "Golden Rule." The underlined words could be changed to "Treat others as you would like to be treated."

Vice Mayor Mossar agreed.

**MOTION:** Vice Mayor Mossar moved, seconded by Beecham, that the Policy and Services Committee tentatively approve the "Council Conduct with One Another" section.

**MOTION PASSED** 4-0.

Chairperson Kleinberg asked for comments and questions on the Council Conduct With City Staff section.

Council Member Freeman said the preamble stated, "Therefore, every effort should be made to be cooperative and show mutual respect for the contributions made by each individual for the good of the community." She suggested adding language "To do so, the City staff must present balanced CMRs that show: 1) alternatives; 2) an executive summary; and 3) back-up data."

Chairperson Kleinberg questioned including CMRs in the protocol. The section dealt with the Council's conduct with City staff.

Council Member Beecham thought the issue of CMRs was a policy, not a protocol.

Vice Mayor Mossar thought CMRs was a subject unto itself and should be an agendized conversation and discussed by the Council or referred to the P&S Committee for discussion. She was not prepared to discuss CMRs at the current meeting.

Chairperson Kleinberg said although CMRs were important and was a valuable conversation item, the reports went to work product and performance by staff rather than Council conduct. The minutes could reflect that the issue of CMRs was raised and if the Council, in reading the minutes, considered it something to be referred back to the P&S Committee, it could do so. She questioned the wording under the first bullet, "Treat all staff as professionals," which included the language, "Poor behavior towards staff is not acceptable." She was unsure what "poor behavior" meant.

Vice Mayor Mossar suggested using some of the language used in the opening paragraphs such as "civil and professional."

Mr. Calonne corrected a typographical error in the bullet 2, after "City Clerk," the words "Assistant City Clerk" should be added.

Council Member Beecham asked whether bullet 2, "Channel communications through the appropriate senior City staff," meant questions in some form of hard copy or whether it included direction to electronically copy the City Manager.

Ms. Harrison said as a practical matter, as staff responded to questions or concerns, copies would be given to everyone.

Mr. Calonne said there was a legal issue related to the categorization of interactions with staff, particularly in relation to the difference between discussions about agenda items and interactions with staff on subjects not on an agenda. With respect to the Brown Act, more constraint was required on the depth of dialogue staff could have on agenda items with the Council than there was on the formative policy development setting before something was pending. Staff would be greatly assisted if the Council could begin thinking in terms of interactions around agenda items as qualitatively different than interactions around policy development, separate from the agenda. Staff would have a difficult time preparing written responses to questions to the entire Council without answering in a public document if questions related to meetings. Staff answers could lawfully be presented at the meeting. A legal distinction would be needed between questions centering around agenda items and discussions on policy.

Chairperson Kleinberg asked whether Mr. Calonne was suggesting some of the wording in the protocols was inappropriate for some situations.

Mr. Calonne suggested the process with staff would be more constrained around agenda items than around policy development. The idea of sharing the information was what prompted the issue.

Ms. Harrison said the point of bullet 2 was to make sure the senior staff was the conduit for requests for staff's time.

Mr. Calonne said the additional background information was whether or not the information related to an agenda.

Vice Mayor Mossar thought the issue was simple. For agenda items, all the Council and the public had access to the information and was part of what needed to be in the public realm. She questioned Mr. Calonne's reference to "policy development." She would not want another Council Member working with staff to get policies changed in a certain direction.

Mr. Calonne said staff had watched with great interest the discussion of how staff time was used by the Council. Staff instinctively wanted to avoid crossing any boundaries in terms of how much time was spent or how far one went in advocating a particular stance. If a Council Member came to staff with questions from a neighborhood about cars being parked in a yard, his response in searching the Palo Alto Municipal Code (PAMC) was a type of policy development. The Council Member might be interested in drafting a colleague's memo or talking with the City Manager about getting an ordinance on the agenda. Policy development meant identifying issues.

Mr. Benest would not term the action as policy development. The staff had ongoing discussions about issues that were coming up or involved staff work on an item. He shared views that might or might not reflect the ultimate role of the Council. Staff would continue to develop issues until the issue reached the appropriate committee or commission or the Council. Council Members were not sitting down with staff members directing them in policies. Intellectual discussions occurred about issues of interest to the public.

Mr. Calonne said the issue was one of being politically sensitive without being political. Council Members were trying to understand the objectives, which was a qualitatively different discussion than interrogation about an agenda item.

Vice Mayor Mossar thought there were two categories: agendized items and non-agendized items. Calling non-agendized items "policy development" made her uncomfortable.

Mr. Benest said non-agenda items could be categorized as "big picture discussions about stuff."

Council Member Beecham said the bullet addressed channeling communications. The Council was basically being directed to speak with top staff. He presumed the directive applied to everything. He saw no distinction between an agenda and policy.

Chairperson Kleinberg said the distinction was there was more constraint with agenda items.

Council Member Beecham asked about the other case that was not so constrained.

Mr. Benest thought the P&S Committee was getting caught up in a bigger discussion that would occur in another protocol. Bullet 2 said, "Channel communications through senior staff," period.

Ms. Harrison thought the removal of the words "for additional background information" might make more sense.

Chairperson Kleinberg said removing the wording would make the bullet much clearer. She assumed the words "The office of the City Manager should be copied on any request to department heads," meant questions of City staff needed to be in writing.

Ms. Harrison said staff would write up the questions if the Council did not present them in written form.

Council Member Beecham said bullet 2 discussed questions of City staff. In the past, Council Members had been intensely interested in affecting staff reports, which were not necessarily questions of staff but affecting reports.

Mr. Benest said if Council Members were trying to affect staff reports, the City had a problem. He had instructed staff that Council Members were not to shape, develop, or suggest how staff reports should be written.

Chairperson Kleinberg thought Mr. Benest's direction to staff should be included in the protocols.

Ms. Harrison agreed that staff would write a protocol.

Chairperson Kleinberg said the direction not to be involved in administrative functions was already in the protocols.

Council Member Beecham said "administrative functions" did not specifically address CMRs.

Mr. Benest said if the P&S Committee wanted the issue addressed, a separate bullet should be crafted.

Council Member Freeman thought a protocol having to do with CMRs should be included on the CMR list. A statement was already made that anything having to do with CMRs should be added to the CMR list.

Vice Mayor Mossar said the issue was not the format of CMRs; the issue was policy development.

Council Member Freeman said the issue involved a CMR.

Council Member Beecham said the protocol involved the actions of a Council Member with staff relative to setting policy, making it Council protocol. Council should not be directing staff.

Council Member Freeman clarified the protocol did not necessarily mean CMR, so CMR could be removed from the discussion, and bullet 2 only addressed policy.

Council Member Beecham said yes. The protocol would involve affecting policy or recommendations to the Council as a whole.

Council Member Freeman asked whether a distinction was being made between agendized and pending issues. The Council received a list of pending items months before an item could potentially end up on an agenda. She queried whether the items were agenda items or pending items, and what the difference was between a discussion of an agendized item if it was a pending item.

Mr. Calonne said the Brown Act would say that communications to a majority of the Council on agendized, or probably the pending list as well, were public record.

Chairperson Kleinberg said something such as that reasonably could come before the Council.

Mr. Calonne said the wording was consistent with the spirit of the law, although not the same words.

Council Member Freeman said because the wording was not clear for the P&S Committee, the document should be explicit about what was meant by a current agenda or any agenda where there was the potential for coming before the Council.

Council Member Beecham said a number of Council Members were liaisons for different organizations. As liaisons, there was a different level of interaction.

Mr. Benest said the Council would direct a particular Council Member to be its representative to a particular organization. The Council Member would go into detail about that organization. Staff handled liaison issues, not a specific agenda item coming before the whole Council, in a much broader



way. When a question about an agenda item came from the Council, staff would answer the agenda item to the whole Council.

Council Member Freeman was the liaison for an organization and worked with a staff member on the same committee. The staff member was not a department head, but she had to work with the staff member on issues that could potentially be agendaized. She thought it was responsible conduct to copy the department head and the City Manager on any discussions she had with that staff member. All of the lineage above that person should be made available to colleagues and should be included in the category.

Chairperson Kleinberg thought the redundancy was good and not burdensome.

Ms. Harrison said staff suggested a limit on the amount of time that staff would work on a single Council Member's request, which would also come up in the context of the work of the liaison.

Mr. Benest asked whether staff should acknowledge the issue of the Council liaison role.

Ms. Harrison said yes.

Mr. Benest said staff would acknowledge the special role of Council appointments to liaison.

Vice Mayor Mossar said each liaison was different, so it would be difficult for staff to write a specific rule. For example, the Creek Joint Powers Agency (JPA) had its own staff and executive director. As the organization matured, her information would come through the JPA staff and less and less from City staff.

Ms. Harrison said none of the protocols should hamper the role of the Council liaison.

Vice Mayor Mossar said each one was slightly different.

Ms. Harrison said flexibility would be built into the protocol.

Council Member Freeman said even though liaison roles differed, noting the lineage of communications was reasonable and kept everything clean throughout.

Chairperson Kleinberg said no one had objected to her suggestion. The last bullet was "All Council Members should have the same information with which to make decisions." The item was one the P&S Committee had spent a lot of time discussing during its last meeting.

Council Member Freeman said although the P&S Committee had an extensive discussion, it had not come to any conclusion. She wanted a better definition of "materials and information supplied to a Council Member in response to a request," for example, whether it was written or verbal information, and whether the request was written or verbal. She agreed with Vice Mayor Mossar that each Council Member had a different style of communicating and asking questions; some had a written style and used email. Some people called on the telephone. Some people had lunch. If all Council Members were to have equal access to information, all of the methods of communication somehow needed to be documented and presented to every Council Member.

Ms. Harrison said Council Member Freeman raised some excellent points. It would become incumbent upon staff when contacts were made to clarify the questions and responses in written form. If the request were verbal or telephonic, the staff member would describe what information was provided to the Council Member.

Chairperson Kleinberg asked whether information such as a request for old minutes or an old document that could not be found would also be documented.

Ms. Harrison said no. A Council Member might ask for every document relative to an upcoming discussion on the Community Center, which was about 27 pounds of paper. The rest of the Council Members could be informed about the request and advised if they wanted the same documents, a copy could be made for them.

Council Member Freeman asked about pre-Council meetings.

Mr. Benest said staff considered pre-Council meetings as meetings only dealing with the agenda and how the agenda was handled. Substantial discussions about agenda items should not occur in pre-Council meetings.

Ms. Harrison said the issue of pre-Council meetings was handled under a different bullet.

Council Member Freeman asked about private or confidential questions.

Ms. Harrison thought staff was saying there were no private or confidential questions. In staff discussions, staff realized it worked for the Council and, by extension, the community or the public. The information that was provided by staff was not considered private or confidential.

Mr. Calonne said during Council Member orientation, he explained how the corporate entity was his client. He was bound to report and be responsive to the highest body charged with a particular decision. On a day-to-day basis, that person was usually the City Manager but was often the Council as well. Individual Council Members in the course of conflict of interest advice were not engaging in an attorney-client privileged communication. In many cities, conflict of interest advice was copied to the entire council. The distinction he drew with the Council was the difference between being discrete and being confidential. The issue of dangerous practice brought up a good point. Attempting to poll or share information with Council Members about what a Council Member was thinking was not only a Brown Act problem but also a deliberative process problem. Each Council Member was entitled to some sphere of operation and a degree of confidentiality in the operation. However, it was not an ethical confidentiality issue, but a matter of staff being discrete.

Chairperson Kleinberg asked Mr. Calonne to speak to two parts of his comments. One was the issue about sharing with the rest of the Council or a majority of the Council what another Council Member or group of Council Members was thinking. Bullet 3 dealt with an answer to a Council Member's question, which was different from telling other Council Members about what another Council Member was deliberating on.

Mr. Calonne would prefer to have an adjective to describe what "materials and information" meant because of the problem with the communication medium and a simple request. For example, a simple request for the prior week's minutes was time consuming for staff to have to copy the entire Council. On the other hand, if he received a request for a three-foot stack of Sand Hill documents, the rest of the Council should know he was producing the documents for one of the Council Members.

Mr. Benest said part of the City Managers' Code of Ethics addressed treating Council Members equally, particularly when it came to sharing information. Classic "City Management 101" meant the information provided to one Council Member about a particular upcoming agenda item should be provided to the rest of the Council.

Chairperson Kleinberg asked why the equal sharing of information was in the City Managers' Code of Ethics.

Mr. Benest said if a decision was going to be made by a Council that was in the public's interest, each Council Member needed to have the same information on which to base their decision. Giving information to only some of the Council Members and not others was bad form. The issue also went back to the central element of the code, which was to treat all Council Members the same, particularly in terms of resources and information.

Mr. Calonne said Council would no longer trust staff if it thought staff was conspiring with certain Council Members to give a strategic advantage. The problem was self-correcting for any experienced public official. Staff would not want to be drawn into strategic conflicts or be exposed to criticism for facilitating a strategic advantage.

Council Member Freeman said the issue begged the question about who decided what was minor, for example, minutes, and the gray line between the deliberative process and information.

Ms. Harrison said ultimately the City Manager made the decision, since everything was copied to the City Manager. Department heads would also be able to make judgment calls. If the department head made a bad call, the Council could indicate the judgment was bad.

Chairperson Kleinberg asked Council Member Freeman to clarify her concerns.

Council Member Freeman said the number of questions and information that was requested about a staff report would be considerably less if the staff reports were balanced and showed a perspective that was representative of the entire Council instead of representative of perhaps what the staff thought was the direction Council was going.

Mr. Benest said CMRs were not written in response to the perspective of Council Members or staff's knowledge of Council Members. Staff tried to create CMRs that represented its best professional judgment.

Council Member Freeman queried whether the CMRs were prepared without any alternatives associated.

Mr. Benest said the issue of providing alternatives in CMRs was another issue. Just to be clear, the information provided in staff reports was a very

important point in professional city management. Staff would not write a report oriented toward some perspective about what the Council would or would not support. Staff would write its best professional judgment. The Council could agree, disagree, modify, etc. Whether staff should provide options was another issue.

Council Member Freeman said the volume of questions and the information that was requested returned to the level of the CMR that was presented. She said once Council received an e-mail from the Mayor suggesting every question that was going to be asked would be massaged and presented back to the full Council without anyone's name attached so that all of the information would be presented to the full Council. She had made a personal request of the City Attorney to find out whether the request was reasonable as well as legal. The action was determined not to be.

Chairperson Kleinberg asked Council Member Freeman to be careful about making allegations about the Mayor's illegal conduct.

Council Member Freeman thought Mr. Calonne could use the proper terminology for the response. However, it happened one time and never happened again. To her knowledge, there were two things that happened. A particular question that she asked was restated in a way that made it easier to answer other Council Member's questions in the one statement. As a result, the statement was not exactly what she asked. Therefore, she did not get an answer to her question. She was concerned about answering questions directly. From her perspective, if the Council had email, she did not see the problem about getting information back to people individually who asked a question in email. The particular list of questions on that particular trial, she was not sure how many questions came from how many different Council Members. She was under the impression that it was a limited number of Council Members. Her concern related to how Council Members could get information from all Council Members who were asking questions without creating a huge bureaucracy of taking notes and sending out emails from each person's question. She would not want staff spending time doing that. When the Council had an opportunity to ask questions, it was equal. Everyone could ask questions and everyone could send email. Everyone had the same opportunity to ask questions. She did not understand what was wrong with the process.

Chairperson Kleinberg asked whether the concern, if a question was asked, was whether the answer should only be sent to the requester. Council Member Freeman appeared to want to avoid administratively burdening staff.

Council Member Freeman said not burdening staff was just one issue. Another issue was about deliberative process; who made the determination of what was deliberative process, and what was not deliberative process.

Vice Mayor Mossar asked what Council Member Freeman meant by "deliberative process."

Council Member Freeman said a deliberative process meant a Council Member could ask a question in a way that implied what the Council Member was thinking and the path the Council Member meant to take. She thought that deliberative process was protected.

Chairperson Kleinberg said the bullet addressed was not what was being shared, but the material and information being provided in response to a question.

Council Member Freeman said it could be inferred.

Council Member Beecham thought part of Council Member Freeman's point, although he might not agree with it, was that every Council Member had a chance to ask questions. He agreed that if the City spent any resources in coming up with information, he wanted the information to be shared. Even if he had not thought of the question, he wanted to be able to make a decision based on the same information as his colleagues. He was concerned about a complex system and preferred a simple system. He wanted to think there was a way to do things with some common sense. Gathering old minutes was not of concern. Gathering up a special packet of information on a particular issue was different. He did not want something complex. It was not good for the City and not necessarily helpful to the Council and the community. Council Members did not need to see the questions that were asked of other Council Members. He was unsure he would even care if there were some hidden answer in the answers.

Vice Mayor Mossar did not understand the administrative burden. If something was on the agenda, for example, and each Council Member had questions about the materials that were provided, the questions could be emailed, copied to all the Council and the City Manager, and a response sent to the Council. It was clear. Alternatively, the answers could be presented in public the night of the hearing. There was nothing in her mind that was mysterious.

Council Member Freeman said the mysterious part was a Council Member might be having lunch with the City Manager and ask a question of the City

Manager about an agenda item. It was the City Manager's responsibility to document the responses he gave the Council Member during that lunch and present the information to all other Council Members. The same was true of emails. A telephone call request for information also had to be shared with all other Council Members. If an agenda item were discussed in passing, the question would have to be documented and sent to all the Council. The process could become burdensome.

Vice Mayor Mossar said sitting down with the City Manager and discussing agenda items was not part of her world.

Council Member Beecham said the P&S Committee could simply ask staff how much of a burden sending the answers to all Council Members would be.

Ms. Harrison thought the request was not excessive. If relaying the information became a problem for staff, it could ask for a discussion about the issue rather than trying to respond to many memos back and forth. Copying everyone would not be a problem with email because email was a helpful tool.

Mr. Calonne encouraged the P&S Committee not to let the difficulty become discouraging. The complication came from mixing many threads together, which should be sorted. Historically, the reason the Council was allowed to ask questions in advance of meetings was so staff could prepare answers to the questions for presentation during the meetings. E-mail allowed written materials to be sent back and forth quickly. Staff wanted to be sufficiently prepared to facilitate Council's debate and deliberation in public during the meeting. The fact that email allowed writing quickly meant there was a trail, a record of a conversation, contrary to public policy about having a substantial body of the Council's deliberative process happen secretly. The Brown Act wanted the Council to "show off its skills in public," so it could be evaluated, allow for debate and the refinement of ideas. The distinction was between allowing staff a heads up so it would not appear stupid and had the answers at the Council meeting versus trying to move some of Council's debate off the books. The Council had been rightfully concerned about making sure Council meetings were beneficial and useful to the public. A lot of time was spent over the past two years thinking about how the time would be perceived by the public. The Council did not want people sitting for hours on an item. During the current year, there was clear consternation that the volume of questions during the meetings was belaboring things. A shift was made to seek questions in advance of meetings so staff could prepare answers. From that shift, the email process was instigated. In

reference to Council Member Freeman's comment about the legality issues, when he became aware of the process, he recommended to the full Council that the typical City practice of sharing information with every member of Council be adopted as a matter of policy, which the Council had not adopted. At least twice in his tenure he had asked the Council specifically about sharing staff responses to Council questions with the entire Council, which was routine at the city from which he came. He had specifically asked the Council if the policy was something it wanted. The City Manager shared that in standard textbook city management practice, equal information access was important, as distinguished from moving Council meetings off the books into email. E-mail was a difficult discussion. There was no clean legal answer about the Brown Act and emails. The goal was for Palo Alto to set a pace it hoped the State Legislature would follow. The point of questions was not to move discussions off books but to let staff sufficiently prepare answers to questions for the public without the element of surprise, strategic advantage, and the concern about how meetings were run. The perception had mutated among Council Members. The purposes for seeking questions in advance were lost. The P&S Committee was urged to hold onto the difficulty of the discussion and keep pushing at it.

Chairperson Kleinberg was not troubled about the need to be respectful of concerns colleagues might have about their thought processes being kept confidential. However, she wanted to come down on the side of more openness and sharing. If the Council was going to err, it should err on the side of revealing information and materials to the full Council without revealing who asked, for example, "a Council Member asked for the minutes from the meeting of x." The goal was to promote good open governance. Earlier Ms. Harrison mentioned staff worked for the corporate entity. From her point of view, staff worked for the corporate entity technically, but politically and ideally worked for the public.

Mr. Harrison thought her comment was that staff worked for the Council and, by extension, the community.

Mr. Calonne clarified he was the one who mentioned "corporate entity."

Chairperson Kleinberg said there was a fundamental principal about how the Council wanted to conduct itself, what the public expected, and what was offered to the public. The issue was related to more than just the current nine Council Members; the issue concerned any Council in the future. The P&S Committee was proposing rules for good governance. The question was what a tax-paying member of the community expected when staff responded to individual Council Members or even three or four Council



Members. The public had a right to know everything was being done equitably and information was being shared. When Council Members came to meetings, they came with their cards on the table and prepared to have an honest, open discussion, which the public could observe and evaluate. There would always be disagreements or different styles. Council Members were elected to represent themselves not be copies of each other but representing different points of view and different styles. If the public felt their tax dollars were being spent on staff time to inform certain Council Members and not others, they would be disappointed. Council had a responsibility to be as sharing as possible. For example, in courts of law, both sides were supposed to engage in a period called "discovery," before going to trial, in which both sides sought to find out everything they could about the other side's case, including deposing witnesses, looking at evidence, etc. If, at the time of trial, one side had an advantage over the other by having information the other party did not have, it was grounds for a mistrial because in a court of law, to be fair, everyone had to come in with the same information. The spirit of the Brown Act was aiming in the same direction, i.e., for Council to err on the side of the public, so the public could see public debates. If the public debate was more informed, more sophisticated and more effective because every Council Member had additional information resulting from a question asked by a colleague, great. She would be disappointed if the Council erred on the side of protecting individual Council Members than protecting the public's right to know and have effective, open, good debate at Council meetings.

Council Member Beecham thought the proposed protocol was right such as having all relative information available to the Council and the public was in the public's interest. Staff tried to put the information in the staff reports. Members of the Council might have questions. In some Council Member's opinion, the information was relevant to the decision they had to make; the information should be available to the public. The proposed language worked, except he would add, "*substantive* materials and information supplied," thus releasing staff from having to make trivial requests known.

Chairperson Kleinberg asked how "substantive" would be defined.

Council Member Beecham was willing to believe in common sense.

Council Member Freeman said there had been a process of Council Members being able to ask questions in Palo Alto for many years without having to provide information to the entire Council.

Ms. Harrison had been with the City for 16 years. Mr. Calonne accurately portrayed the change in the questions that came in the past to prepare staff to answer questions on the night of a Council meeting. The change was a recent one in an attempt to answer questions before Council meetings to streamline meetings.

Vice Mayor Mossar said the change had come during her term of office. As a Council Member, she liked the prior process. Questions came before motions. There was a period when questions were asked. Council Members were obligated to sift through and find the real pertinent questions so information was in the public realm and part of the evidence that shaped the decision-making. The Council Member might have 20 pages of questions before the meeting started, but after going through the presentation and hearing the public input, the Council Member would know which of the questions were key. After questions were asked, it was time for deliberations, motions, debate, and compromises to reach a solution. She liked it.

Council Member Freeman thought the scenario described by Council Member Mossar sounded more reasonable because the current process did not include getting information to the public. If the public was to obtain the information, it needed to get out to the public, not just to Council Members. She wanted to know how information could be given to the public.

Mr. Benest said in terms of the shift, which he had advocated, Vice Mayor Mossar was discussing the big issues of the day to public hearings such as land use decisions, which was where there was debate, where the community came to meetings, etc., and was Palo Alto at its best. To focus the attention and give enough time so staff did not have to return the next night or hold an item over, he had advocated raising questions early about consent items, particularly, get the item over with so a third of the meeting was not spent on "slam-dunk" issues. If the Council had questions, he advocated taking care of them early and focusing on the big issues at the meetings. Since implementing the new procedure, staff had discussed the fact that internal questions that could be answered with a technical answer should be answered. If the question was about policy, it should be kept for the Council meeting. Staff was not trying to answer or take away from the discourse about the big issues of the day, but was trying to get rid of the less important stuff.

Council Member Freeman said deciding what was less important was a call. She was still not comfortable with who made the call. The other issue, other than the need to make information available to the public not just Council,

involved sidebar conversations that occurred during meetings. A Council Member might have a question for the Director of Planning or the City Attorney. She queried how that information could be shared.

Chairperson Kleinberg asked Council Member Freeman to ask one question at a time.

Council Member Freeman thought Mr. Benest answered the first question.

Chairperson Kleinberg said the question was how the public would be given the answers before the Council meeting.

Council Member Freeman thought the whole premise of Chairperson Kleinberg's argument was for the taxpayers to know what was being shared and understand the information.

Chairperson Kleinberg said her comments were intended to help Council Member Freeman understand what the public expected of all nine Council Members, for example, to come to meetings as informed as possible, to have an informed, open discussion and debate. She did not mean to say that staff was in the business of informing the public so it could come to meetings completely informed and have a chance to debate. Council Members were the elected officials, whose job it was to come informed, debate, and vote. Council represented the public; otherwise there would be town hall meetings. Council Members were the representatives and were the ones who needed to be informed in order to make an informed vote in addition to listening to the public. Council Members needed to come to meetings informed, remain open to public comments, and listen to each other debate.

Council Member Beecham thought the crux of the concern was that an individual Council Member could ask a question and Council Member Freeman wanted the answer to remain private to that Council Member.

Council Member Freeman clarified it was a scenario.

Council Member Beecham said as Council Member Freeman talked about why it was not good to make the answers available to the entire Council, the issue then became how to make the information available to the entire public. It was difficult, especially when dealing with time. Getting the information to the public efficiently should not prevent making information available to the Council so every Council Member had the same basic set of information. She did not see any advantage to the community for questions

and answers to be prevented from going to the entire Council. He did not see how that was a benefit to the community. The policy as presented was the right one for the community.

Chairperson Kleinberg said Palo Alto was not the first, nor would it be the last, to grapple with the issue. Other cities had come up with all types of rules. The little "non-substantive" answers would be all right. Some cities had a "ten-minute rule," for example, if it took longer than ten minutes for a staff member to answer a question, it became more instructive than informative. In that regard, the answer would be made available to all Council Members. The Council needed to trust staff to know the difference between an involved question versus something that was just for clarification. The staff member should know that if an answer was really instructive, the information should be shared with the entire Council.

**MOTION:** Council Member Beecham moved, seconded by Mossar, that the Policy and Services Committee tentatively approve bullet 3 of the "Council Conduct with City Staff" section, changing it to include the word "substantive."

Council Member Freeman asked whether there was an assumption that there were some Council Members who had more information and asked more questions than other Council Members such as what the impetus was for the rule.

Ms. Harrison said the impetus was that all information be shared equally.

Council Member Freeman said apparently some Council Members received more information than others.

Chairperson Kleinberg said the P&S Committee agreed, when it took up the protocols, that it would not take them up as a method to deal with any current Council Members. If Council Member Freeman could ask her question in a more neutral way, that did not ask staff to comment on the behavior of colleagues specifically, the question would be more constructive.

Council Member Freeman asked whether there had been a time in the past, future, or present when staff was uncomfortable that some Council Members obtained more information than other Council Members.

Ms. Harrison said staff's aim was to ensure all Council Members were given the same information.

Council Member Freeman asked whether staff thought all Council Members were not being given the same information.

Council Member Beecham asked whether Council Member Freeman was asking if there was a problem.

Council Member Freeman said yes.

Mr. Calonne said when Council Members were newly elected, he had to provide a higher level of information and instructional issues to bring people up to speed. An orientation was standard because people needed to be trained, which was not inordinate. He had told a number of Council Members that he sensed the issue was not whether there had been inordinate burdens placed on staff. Council Members should be able to rely upon his judgment.

Chairperson Kleinberg wanted to keep the focus of the discussion on whether there could be a problem, without the rule, with some members having more information than others.

Mr. Harrison thought there could be a problem.

Mr. Calonne said some Council Members worked full time and others did not. He was not sure how to answer the question. He did not believe any particular Council Member had influenced him.

**MOTION PASSED** 3-1, Freeman "no."

Council Member Freeman was not opposed to the idea or ideology of sharing of information, which was probably a good thing. All Council Members could obtain more information if it was shared. She was, however, opposed to the less than tight verbiage in bullet 3 and did not understand how compliance could be ensured or how deliberative process could be protected. She was unsure the City had a mechanism to ensure fairness and equitability in the sharing of all information from all Council Members. She was opposed to a lack of parameters and methodology in the one sentence.

Chairperson Kleinberg clarified Council Member Freeman was addressing the need to protect the deliberative process.

Council Member Freeman said her comments referred to everything she mentioned. The deliberative process issue was just one of the points she made.

Chairperson Kleinberg asked for comments on the next bullet, "Never publicly criticize an individual employee." The way it read, the bullet applied to all employees; however, it failed to include CAOs.

Vice Mayor Mossar suggested changing the wording to "individual employee, including CAOs."

Chairperson Kleinberg said the bullet also indicated, "Council should never express concerns," to which she would change to, "Council should never *mock, degrade or express concerns in public.*"

Vice Mayor Mossar agreed.

Chairperson Kleinberg said another city had a rule for their council to "Never display put-downs, verbal or physical, of the employee's statements."

Vice Mayor Mossar suggested using the same language relative to treatment of colleagues and employees, either using Chairperson Kleinberg's suggested verbiage or Council Member Freeman's language.

Chairperson Kleinberg pointed out a typographical error in bullet 5, "influence City staff *in* the making."

Council Member Freeman wanted to know where staff's checks and balances were. For example, the desire was for the Blue Ribbon Storm Drain Committee (SDC) to have equal representation of pro and anti-stormdrain proponents. She did not understand where the checks and balances for the selections were.

Mr. Benest said in the case of the Blue Ribbon SDC, he recommended a City Manager committee, with him making the appointments. He did it in a public session so if there were suggestions, those could be made publicly. City managers were smart enough to know it was best to do it in some particular way. Ultimately, a city manager was hired and if the Council did not like the judgments made by the city manager, the city manager was changed.

Vice Mayor Mossar said Palo Alto had a system in its Charter. Four people worked for the Council. No one else worked for the Council.

Mr. Calonne said the Charter was referring to the making of appointments in reference to hiring people, not to advisory bodies, although the language could be read that way.

Council Member Beecham said the appointments of the Blue Ribbon SDC were discussed by the Council and was a task clearly assigned to the City Manager for specific purposes.

Council Member Freeman clarified the normal process was to ask the City Manager to report back to the Council as to who was on the committee and their orientation as the check and balance. As long as it was understood there was some check and balance. It did not have to be in the protocols.

Mr. Benest said if the Council created a policy, it was his/her job to administer the policy and carry it out. If the Council found that the carrying out of an administrative function was undercutting its policies, it was perfectly within the Charter to determine there was something wrong with the way staff was carrying out the function. It was incumbent upon the City Manager to fix it.

Chairperson Kleinberg asked whether the conversation would be held in public at the Council level.

Mr. Benest said yes.

Council Member Freeman thought bringing up the subject in a Council meeting could prove embarrassing or interpreted as criticizing.

Mr. Benest said there had to be room for judgment and common sense. If the issue was minor and a Council Member raised an issue, they could take care of it. He had no problem with Council Members talking about how administrative functions were undercutting the goals of the Council.

Council Member Freeman said the example she gave was the Blue Ribbon SDC, because she had not had much more experience than that. She would not know to say to the City Manager that something was not working because she did not know that half of the people were pro-stormdrain and half were not, or whatever the balance was that was requested. Perhaps the question was inappropriate for the current protocols and might need to be answered elsewhere.

Vice Mayor Mossar thought there was a point in the conversation that was important. An individual would not set policy or direct the City Manager to do something a certain way; it was the whole Council. Discussions about whether something was working or not belonged to all nine Council Members.

Council Member Freeman agreed.

Chairperson Kleinberg thought Council Member Freeman wanted to know how such an issue could be politely raised at a Council meeting to maintain a polite and constructive dialogue.

Mr. Benest said conversations occurred almost every other week about how something was being administered in a way that undercut Council's desire to do something. As far as he was concerned, such discussions were fair game.

Chairperson Kleinberg said other Council Members would have an opportunity to voice their opinion that they were comfortable with the function. The next bullet, "Check with City staff on correspondence before taking action," said, "Before sending correspondence, Council Members should check with City staff to see if an official City response has already been sent or is in progress."

Ms. Harrison said the bullet was related to legislative issues. Staff would do a better job of wording the bullet.

Chairperson Kleinberg said correspondence should state clearly whether City policy was involved. Every Council Member had the power to write letters to constituents, but the correspondence needed to clarify if a statement was personal opinion. Council would not want individual members speaking for the whole.

Council Member Beecham agreed.

Chairperson Kleinberg said Council Members were free to talk but unless reporting a vote, the correspondence should say, "this is my individual opinion." A typographical error appeared in bullet 7; "hampers" should be changed to "hamper."

Council Member Freeman wanted the title of bullet 8 changed to "Requests for staff support should be made through the City Manager" rather than "Limit requests for staff support." The City Manager could be asked but if the response went for more than an hour, it had to go to Council.

Vice Mayor Mossar thought bullet 2 addressed Council Member Freeman's concern. The purpose of bullet 8 was to measure what each Council Member had the power to demand of staff and which had to be taken to the full Council. The title, "Limit requests for staff support," was the subject.



Council Member Freeman preferred the bullet be "Requests for staff support should be made through the City Manager," remove what was said below, and say the "City Manager is responsible for allocating resources."

Chairperson Kleinberg said the question was whether the Council was willing to put some voluntary restraints on its use of staff time, similar to what other cities had done such as use some judgment and not overwhelm staff. She had heard from staff members, who might not be willing to speak up publicly, about spending hours and hours of time responding to Council requests. The problem happened in other cities, which was why cities had a protocol asking for some self-restraint. She would not want to limit the Council's role or limit free speech or fulfilling duties to become fully informed. However, the issue was something with which the Council needed to grapple. Either it would be swept under the rug or not. Some understanding was necessary.

Council Member Freeman thought sweeping the issue under the rug was an exaggeration. The bullet clearly said in the body that if more than one hour of staff time was necessary to conduct research on a problem or prepare a response, it would need the approval of the full Council. Staff should not have to tell a Council Member to limit its request because the rule would limit the Council Member. The rule meant requests had to go through the City Manager and that anything that took longer than an hour to prepare had to be approved by the Council.

Vice Mayor Mossar thought the bullet referred to the size of the request, not to whom the request was being made. Perhaps a third title was necessary.

Chairperson Kleinberg thought Council Member Freeman's point was there should not be any onerous or restraint on the Council Member, but that it was up to the staff, which should be CAOs or the City Manager to decide if it was going to take more than an hour to prepare a response.

Vice Mayor Mossar agreed.

Ms. Harrison suggested the title be changed to, "CAOs are responsible to ensure staff resources are allocated in accordance with Council priorities."

Vice Mayor Mossar agreed.

Chairperson Kleinberg was unsure. The title did not tell the Council what to do. The protocols were directed toward Council conduct with staff.

Ms. Harrison suggested, "The Council will respect the limits on use of staff resources."

Council Member Beecham thought the title did not matter if the body of the bullet reflected the Council's direction.

Ms. Harrison suggested the title remain unchanged.

Chairperson Kleinberg said the title worked for her.

Council Member Freeman said the title did not work for her. She suggested alternate language, "Requests for staff support must be made through the CAOs." The body of the bullet could speak to the limitations.

Ms. Harrison asked how the language differed from "Channel communications through senior City staff."

Chairperson Kleinberg thought the language was the same. Ultimately, something that took more than an hour went to the Council.

Ms. Harrison said the Council should decide whether to limit staff resources to an hour.

Chairperson Kleinberg emphasized the protocols governed Council's behavior, not staff's.

Mr. Benest said one issue addressed the need to obtain Council approval for anything over an hour. The second issue was whether Council Members should use some discretion when asking for staff projects and staff time, given the Council's focus.

Vice Mayor Mossar thought the two issues were related. The one-hour limitation was an attempt to measure and moderate. A Council Member might ask a question for which it thought there was an easy answer; however, the answer could take ten hours of staff's time. A Council Member might have every intention of being moderate and asking something simple. The section was about using the hour as the marker. It was the CAO's job to determine whether the response was going to take longer than an hour.

Mr. Calonne said Vice Mayor Mossar's scenario was exactly how it happened. If staff were spending so much time answering individual requests that it could not get its job done, a price would be paid. The bullet was self-regulating in that he had told Council Members that in order to obtain a

response to a question, they would need to obtain five votes. He appreciated the one-hour guideline because it communicated a standard to Council. The practical reality was the need to get a job done.

Vice Mayor Mossar thought the protocol was not given for the current staff, who was great at making the determination.

Mr. Calonne said staff had to do it.

Vice Mayor Mossar said the protocol was being written for all Councils, all future Councils, and all future CAOs. It was the operating guideline. It was not intended to dealing with current situation.

Mr. Calonne did not like the implication, if there was one, that staff had been spending more time than it should on behalf of individual Council Members, which was not the reality. He would not want the protocol to appear to be correcting a problem.

Chairperson Kleinberg said she had endeavored since beginning the process to keep discussions not an exercise in solving a current problem or dealing with current colleagues or staff, but seeking a foundation for better government.

Council Member Freeman suggested the title read, "One-Hour staff support limit."

Ms. Harrison was going to suggest, "Respect the One-Hour Rule for Staff Report."

Chairperson Kleinberg announced the continued discussion on protocols and the discussion on the anti-discrimination ordinance would be handled at the next P&S Committee meeting.

3. Anti-Discrimination Ordinance: Possible Addition of Weight and Physical Appearance as Protected Group

#### **ITEM CONTINUED.**

5. Discussion for Future Meeting Schedules and Agendas

Council Member Kleinberg asked that the next Policy and Services (P&S) Committee meeting address the Anti-Discrimination Ordinance: Possible Addition of Weight and Physical Appearance as Protected Group.

Ms. Harrison said staff's concern was the heavy December agenda already scheduled for the P&S Committee's next meeting, which included the Athletic Fields and the Policy for Handling Continuances by Applicants.

Chairperson Kleinberg asked whether there was a time issue for the continuances, which could be put over to the following year.

Vice Mayor Mossar thought there was no time constraint for the Anti-Discrimination Ordinance either.

Council Member Freeman felt instrumental in discussing and bringing the Anti-Discrimination Ordinance to the forefront. Although she had full confidence in her colleagues for January, she would appreciate the opportunity to wrap up the anti-discrimination ordinance, if possible.

Chairperson Kleinberg respected the request and would feel bad if she was unable to finish it up. However, the P&S Committee had been asked by its colleagues and the Mayor to complete the protocols as soon as possible. The athletic fields also had some urgency. She queried putting the anti-discrimination issue as a third item and if the P&S Committee controlled its discussion, it could get to it in the December meeting.

Mr. Benest thought there should not be much work left on the protocols.

Council Member Freeman said thing was the reverse of "Staff Conduct with City Council." Chairperson Kleinberg was interested in having something written, which was another section.

Mr. Benest asked the P&S Committee its concerns.

Vice Mayor Mossar would not want one committee member determining a section if she was not even interested in having.

Mr. Benest said the information would be sent to all committee members.

Council Member Freeman clarified nothing in the protocols had been approved.

Chairperson Kleinberg said the next meeting would be held on December 10, 2002.

ADJOURNMENT: Meeting adjourned at 10:05 p.m.

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