

Special Meeting
July 15, 2003

1.	Oral Communications.....	2
2.	Protocols for Council Meeting Consent Calendar	2
3.	E-Mail Communication.	14
4.	Ex-Parte Communication Policy	14
5.	Proposed Addendum to Council Protocols: Code of Ethics	14
6.	Discussion for Future Meeting Schedules and Agendas	14

Chairperson Burch called the meeting to order at 7:08 p.m. in the Council Chambers, 250 Hamilton Avenue, Palo Alto, California.

PRESENT: Burch, Kleinberg, Lytle, Ojakian

1. Oral Communications

None.

2. Protocols for Council Meeting Consent Calendar

Assistant City Manager Emily Harrison said the document was a joint effort and had been reviewed by all of the Council Appointed Officers.

City Attorney Ariel Calonne said the key was to find categories everyone would agree to and felt comfortable with so they would not pull items off the Consent Calendar.

Council Member Kleinberg noted the third bullet on page 3 of the "Protocols for Council Meeting Consent Calendar" was incomplete.

Ms. Harrison responded that the sentence should read "Contracts for which the scope of work or subject has been previously reviewed and approved by the Council."

Council Member Kleinberg questioned the wording "where there is no previous direction" in the second bullet on page 3 of the Protocols. She asked whether the intent of excluding the language, "previous Council direction," was that the action was merely the administrative execution of a Council standing committee direction where there was no previous Council direction.

Mr. Calonne explained the second bullet attempted to say there were many times the Council Appointed Officers (CAOs) did something under their own authority that was suggested by a Standing Committee, which was done to facilitate getting the standing committee's work done. At times, the direction appeared to be from the standing committee. The intent was that something could be put on the Consent Calendar that was previously discussed by the standing committee, but only if it were something independently recommended by the City Manager or CAO.

Council Member Kleinberg clarified the second bullet applied to circumstances where there had not been previous Council direction.

Ms. Harrison said the intent was not to exclude Council direction.

Council Member Kleinberg suggested wording, "When the action is merely the administrative execution of a previous Council direction or a Council standing committee direction. "

Ms. Harrison responded there was intent in the first bullet on page 3 to address previous Council direction only.

Chairperson Burch read the third paragraph under "BACKGROUND" on page 1 of the Protocols and agreed with the wording.

Council Member Lytle said the Council struggled with the part that read, "reached consensus." That usually meant the Council reached agreement among the Council. What was often found was that items pulled were a split decision where the Council had not reached consensus.

Chairperson Burch said a good rule was that only those who voted in the majority could pull from the Consent Calendar.

Council Member Lytle agreed that was an understanding of the Council about second readings.

Chairperson Burch said no one would pull an item off the Consent Calendar to vote "yes" because the item had already been passed.

Council Member Lytle talked about the notion of consensus when there was a Council that often voted in divided votes. The Council had a list of items to put on the agenda, but the definition for Consent Calendar was for items where the Council had consensus.

Mr. Calonne said the consensus portion did not have to do with each item because it was not possible to know in advance in many instances how the vote would come out. The consensus had to do with categories of the kind of items that should be on the Consent Calendar.

Council Member Lytle referred to the wording "items where the decision-making body has reached consensus that they do not need discussion or scrutiny" and said if the Council had a split policy decision on an item, that was something the Council wanted discussed.

Mr. Calonne said the intent was there was consensus that second readings of ordinances in general should be on Consent.

Council Member Lytle said the third bullet on page 2 of the Protocols read, "Ordinances and resolutions that implement a prior policy direction in a manner contemplated by Council. Policy direction is provided by the Council's previous actions in the budget (including the Capital Improvement Program)." A theoretical Capital Improvement Program (CIP) that was the topic of a split Council would likely be pulled from the Consent Calendar.

Mr. Calonne said the Council needed to be satisfied that one debate was enough, and that follow-up actions were not always an opportunity to re-debate the same issue.

Herb Borock, P. O. Box 632, said he viewed the issue as part of a larger issue that had gone on for the prior three years, which were the efforts of the City Manager for streamlining. Some items suggested as a protocol for the Consent Calendar were things that were initiated by the City Manager and tacitly approved by the Council without discussion. The division under the procedural rules for the Consent Calendar consisted of Referral and Action items. Under the current City Manager, the agendas came forward with three divisions: Legislative, Administrative, and something else. The current proposal suggested four divisions. Before the current City Manager, the Council referred routine items to its standing committees. The standing committees were the Council's standing committees, and the Council had the right to bring something out of committee that was referred by the Council. The Council was asked to approve something that was already done by staff initiation. Eight years prior, former Mayor Simitian pointed out that removing something from the Consent Calendar solely to let members of the public speak to the item was not necessary. The Council might want to address the fact that there was not a gentlemen's agreement among the Council of when something was brought off the Consent Calendar. The Council set a policy on second readings. Once the policy was set, it was not implemented in the way it was set.

Chairperson Burch said there was a consensus of the Policy and Services (P&S) Committee to agree and make a recommendation to the Council regarding how the Consent Calendar should be treated. There might be occasions when further discussion was appropriate.

Council Member Lytle was unsure the Committee reached consensus about what the sentence about consensus meant. Putting items on Consent was difficult where there was strong disagreement.

Chairperson Burch clarified the P&S Committee reached consensus that certain action items did not need discussion or close scrutiny.

Council Member Kleinberg noted that the Protocols memorandum, dated July 15, 2003, indicated that "the entire Consent Calendar section of the Council's procedural guidelines is attached," but that was not the case. Knowing what was already adopted would have been helpful to have at the current meeting. The Council's existing rules provided that any CAO may place items upon the Consent Calendar "whenever, in such officer's judgment, such items are expected to be routinely approved without discussion or debate," which she felt was vague. The Protocols memorandum also indicated that "the purpose of the Consent Calendar is to expeditiously handle routine business," which she wanted to see a definition. With regard to the statement, "A Consent Calendar works when a decision-making body has reached consensus that certain actions items do not need discussion or close scrutiny," she hoped the scrutiny was at a Commission level or by a Blue Ribbon Committee or staff. Everything in government needed close scrutiny. The Protocols memorandum also indicated, "matters can be trusted to professional staff" without the Council looking at it. Her understanding was the Consent Calendar needed close scrutiny, which it got from close staff review and a Board or Commission's unanimous review. The Council was trying to create a presumption that there was close scrutiny and professional staff input.

Chairperson Burch said some items on the Consent Calendar needed further scrutiny, and other items were procedural matters to be voted on.

Council Member Lytle suggested going through the list for routine items. If an item were so routine that it needed no scrutiny, the Council should delegate the authority to staff so the Council did not waste time on Consent Calendar. She suggested changing the law to delegate the authority rather than continuing to make-work for the Council.

Mr. Harrison said an example where the Council could not delegate would be an application for certain state and federal grants where a resolution supporting the grant application needed Council approval. Council would not spend time on the resolution in a Council Meeting unless there was something unusual about the item, in which case staff would not put the

item on the Consent Calendar. Something needed to be done because the Council was the authority for the City of Palo Alto.

Council Member Lytle said if the Council had a grant initiative that was a staff initiative, and the Council felt the staff was not focused enough on the item, the Council might want the ability to say it wanted to debate the new initiative.

Ms. Harrison said staff agreed. The Council could not assume it could delegate away authority for any item. Certain cases were policy issues.

Council Member Lytle suggested the Council review the list and narrow where there was consensus.

Chairperson Burch noted the Protocols, under Legislative Matters, indicated, "we would recommend that Legislative Matters appear on Consent only in limited circumstances."

Council Member Lytle said the purpose of the second reading was in case there were misgivings between the first and second reading.

Council Member Ojakian agreed with what was proposed under (Legislative Matters). His understanding of a second reading was the Council wanted a period of time to pass in the event new information came before the Council that might alter a Council Member's original thought.

Council Member Kleinberg asked for explicit wording that whether an item was unanimous or a majority vote, the item went on the Consent Calendar based on the affirmative decision of the decision-making body to place the item on the Consent Calendar. The majority voter could pull the item if that person changed his or her mind. Part of changing one's mind was that perhaps if a minority person brought new information that might persuade the vote, and the Council could be asked to pull the item.

Ms. Harrison said committee consent was addressed at the top of page 4 of the Protocols. The question was brought up under, "Removal of Consent items for discussion," whether the motion could only come from a member of the majority.

Council Member Kleinberg said that was what was suggested.

Ms. Harrison said the language did not indicate a member of the original majority had to be the one who removed the item. The language specified the majority of those present and voting OK to pull the item off consent.

Council Member Kleinberg clarified the proposal was that an item could be pulled by a member of the voting majority at the first reading.

Ms. Harrison said second readings were where there was the issue of majority/minority vote. The thought was to incorporate into the Consent Calendar second readings that removals of a second reading would only come from a member of the original majority.

Council Member Lytle said she was unable to agree with not allowing a Council Member to speak again on a law prior to adoption. Cities kept the ability for lawmakers to be able to pull and speak about legislation at second reading up to the moment of adoption; to take that away by majority vote, was not giving credit to minority opinion and democracy to be able to eventually create reform.

Council Member Kleinberg suggested a personal privilege for rare circumstances where there was last minute information that was critical to the perceived outcome of the second vote. The third bullet on page 2, under (Legislative Matters) was suggested to read, "...contemplated by the Council majority when the direction was given."

Chairperson Burch said the assumption was the Council majority voted.

Ms. Harrison said on occasion Council Members were frustrated because they made comments during a discussion and felt they provided direction to staff when, in fact, the staff responded to the actual vote.

Council Member Lytle said statements the Council received in the Capital CIP were often very general. When the ordinances and resolutions that implemented the CIP returned to the Council, they were very specific and did not sound like what the Council might have originally envisioned.

Council Member Ojakian suggested an addition regarding items passed from the Planning and Transportation Commission (P&TC) to the Council, such as tentative subdivision maps. The Council showed it's intent on items it did not want to dwell on.

Mr. Calonne said most items, such as tentative subdivision maps, had hearings required by law, which did not allow those items to be placed on the Consent Calendar.

Ms. Harrison said the bullet on the top of page 3 of the Protocols should have read, "When the action is merely the administrative execution of a previous Council direction. Council direction and vote will be quoted in the staff report accompanying the item."

Council Member Kleinberg asked whether there were ever situations where the scope of work did not get to the Council level.

Ms. Harrison said staff would bring all scopes of work to the Council during the budget process for all the CIPs.

Council Member Kleinberg clarified if in the budget process the Finance Committee approved the scope of work, the full Council would see the scope of work.

Ms. Harrison said that was correct.

Council Member Lytle said the second bullet on page 3 of the Protocols gave the CAO and the standing committee the ability to put items on Consent.

Council Member Ojakian said, as an example, if the standing committee voted on at item 4-0, the City Manager might disagree.

Council Member Kleinberg asked whether the second bullet on page 3 of the Protocols meant direction or a vote and whether it should be a majority or unanimous vote.

Council Member Lytle said she had no objection as long as any Council Member could pull an item. With regard to historic building issues, she was unclear who would define policy ramifications. There would be no problem as long as a single Council Member could pull the item. On contracts and agreements implementing routine department matters, she wanted to know what a "routine department matter" was. Contract approval of \$250,000 was a concern.

Council Member Kleinberg clarified Council Member Lytle was concerned about major monetary departmental implementations of an approved budget.

Council Member Lytle said the Council had not caught up in practice with what the Council's desired outcome would be. As part of the budget, the Council would get scopes of service.

Ms. Harrison said staff took special care in the scopes of services, and the scopes of services would go out in the Request for Proposal (RFP) documents. In prior years, the descriptions were abbreviated. During the current year, the Council received what went into the RFP documents.

Council Member Lytle said she had not seen the scope stay consistent. Another issue was whether there was a shift in election at mid-year, and issues would be questioned.

Council Member Kleinberg said if everything were based on the fact that the next Council might overturn issues, the Council would be bogged down forever. There had to be finality to passing law.

Chairperson Burch suggested adding a dollar amount to the bullet, "Contracts or agreements implementing routine departmental matters that are part of a department's approved budget."

Council Member Lytle agreed with setting a limit on the contract amount.

Ms. Harrison said a routine departmental matter for the Public Works or Utilities Department had a different dollar amount than a routine matter for the Human Resources Department. Setting a dollar amount on the contracts was difficult.

Council Member Lytle suggested having draft definitions to give the Council some sense of what it talked about.

Ms. Harrison clarified the second bullet was deleted and changes were made to the first and third bullets.

Chairperson Burch said that was correct.

Council Member Kleinberg suggested putting the bullet about contracts where it was reviewed and approved by the Council and a separate bullet where the contracts were part of an approved budget. Also an annotation where examples in italics would explain what was meant.

Council Member Burch asked whether there were changes to Category 3: Referrals to Council Standing Committee, Board, Commission or CAO.

Council Member Kleinberg asked about the situation where the Council referred items to the committees.

Ms. Harrison responded that referrals from Council usually came as part of the discussion of another item or under "Council Comments" at the end of the agenda.

Council Member Lytle questioned "routine referrals." Staff had the right to make routine referrals, which she assumed meant items the Council referred to committee. When the Council wanted to make a referral to committee, the Council did not put the item on Consent, but when the CAO wanted to make a referral, it went on Consent.

Ms. Harrison said the Council made referrals through the Colleagues Memo. The Council was as free as staff to refer items to committee.

Mr. Calonne said the Streamlining Rule changes of 2000 gave the City Manager authority to send items to committees. Adding a Consent Calendar requirement added more than what there currently was. The current rules did not require the City Manager to have the Council's consent to refer items. The existing rules were the four categories listed in the Protocols Memorandum. The examples were added to make the rules more real.

Ms. Harrison said the wording was intended to allow a referral directly to a committee by the City Manager. Staff was not precluded from making routine referrals.

Council Member Ojakian said there might be a situation where the Council majority might say it did not want an issue going to a standing committee.

Ms. Harrison said the City Manager used the standing committees in the case where the Council had a full agenda, and the standing committee had the full dialogue to talk an issue out in order for the record to return to a Council expeditiously without having full discussion at a Council meeting.

Council Member Kleinberg suggested the wording in Category 3, Referrals to Council Standing Committee, Board, Commission or CAO, could be better explained.

Council Member Ojakian said Category 4, Council Committee, Board and Commission Recommendations, matched the Council's prior actions.

Council Member Kleinberg said Category 4 missed the piece about a majority vote at the committee level. Category 4 specified "by a unanimous vote."

Ms. Harrison said the intent was the committee was comfortable.

Council Member Kleinberg suggested, "unanimous vote or majority vote in which an item has been approved for placement."

Chairperson Burch suggested adding, "removal of an item on second reading requires a motion by a Council Member who was in the majority when the item was first approved."

Council Member Ojakian asked whether the Council had a practice at one time to add Council comments at the end of the Consent Calendar.

Ms. Harrison said that was correct.

Council Member Ojakian was concerned about doing things immediate to the issue, but doing them succinctly.

Chairperson Burch suggested adding a time limit.

Council Member Lytle said the Council's problem was more in the time taken than the fact that each Council Member was given the courtesy of making comments.

Ms. Harrison clarified the suggestion was that the Council might explain their "no" votes with a three minute time limit at the end of the Consent Calendar.

Chairperson Burch said that was correct.

Council Member Kleinberg specified it was the Council Members who voted "no" on a Consent item.

Ms. Harrison believed the wording was that Council members might also explain their "no" votes. The following wording was added, "Second readings, motion for removal must come from a member of the original majority vote as a matter of personal privilege and as a rare exception a Council Member in the minority may pull an item."

Council Member Ojakian said the first item under Removal of Consent Items for Discussion should allow a motion and a second to take something off consent rather than requiring four people to remove an item.

Council Member Kleinberg clarified the motion would be made by a majority person followed by a second by any Council Member.

Ms. Harrison said there was not a majority/minority needed.

Council Member Ojakian said anyone with a second could remove an item for discussion.

Council Member Kleinberg said Item 1 required a motion, second and four votes.

Mr. Calonne said the total was four votes.

Council Member Lytle said she did not know of any city that required four votes to remove an item from Consent.

Chairperson Burch agreed that the removal should be by motion and second only.

Council Member Kleinberg questioned the second item, which required a written request prior to the meeting.

Council Member Ojakian said notifying staff in advance would allow the appropriate staff to be prepared at the meeting.

Ms. Harrison wanted to preserve the ability to not hear the item although notification was received.

Council Member Lytle wanted to preserve flexibility to handle the issue during the meeting.

Ms. Harrison said staff would try to hear the item when it was convenient to the public.

Council Member Kleinberg said Item 3 needed to be changed to reflect there would be staff discretion over when the item was heard.

Council Member Ojakian said he would like flexibility for situations where items were pulled from Consent and many people waited to speak to the item.

Ms. Harrison suggested wording, "Removed items shall be agendized either the same night or on another night at the discretion of the Council." Flexibility needed to be retained.

Council Member Kleinberg registered that designations of historic buildings should not be on the Consent Calendar.

Ms. Harrison said staff tended to be sympathetic to property owners who had to wait long periods of time for Council agendas.

Council Member Kleinberg suggested tightening up the wording, "if there are no unusual policy ramifications" in terms of its descriptive language, for example, "not involving TRS."

Ms. Harrison responded that staff would look at the wording.

Council Member Kleinberg noted that at the prior evenings meeting, the Council spent a great deal of time listening to an appeal, and the appealing party was not present. She felt it was a waste of the Council's time and asked whether the protocols would take care of that situation.

Council Member Lytle disagreed, commenting that the discussion the prior evening was valuable and an important use of the Council's time.

Council Member Ojakian said a motion and a second were necessary to pull an item.

Council Member Kleinberg criticized the situation where an item was pulled, and the Council did not listen to the person who was the moving party.

Council Member Lytle said one reason for pulling the item at the prior evening's meeting was to illustrate the faultiness of the appeal process.

Council Member Kleinberg did not believe the Council should consider an item if the appellant was not at the meeting.

Council Member Lytle said people appealed matters and then did not show up, but the Council had to hear the item and make a decision.

Council Member Ojakian suggested if a Council Member thought an item needed to be vetted, that Council Member should bring a Colleague's Memo to the full Council.

Council Member Lytle said it was useful to use specific examples as illustrations of what did not work.

MOTION: Council Member Kleinberg moved, seconded by Lytle, that the Policy and Services Committee recommend to the City Council approval of Protocols for Council Meeting Consent Calendar in Memorandum dated July 15, 2003, as modified.

Council Member Ojakian suggested wording should be added regarding people turning in speaker cards on Consent Calendar items.

Ms. Harrison said there were times when there were numerous public speakers and, in order to not do a disservice to those people, the item might have been moved to another meeting or the end of the meetings.

Council Member Ojakian suggested adding wording that laid out clear rules for everyone.

MOTION PASSED 4-0.

MOTION: Council Member Kleinberg moved, seconded by Burch, that Item Nos. 3, 4, and 5 were continued to a date uncertain.

MOTION PASSED 4-0

3. E-Mail Communication
4. Ex-Parte Communication Policy
5. Proposed Addendum to Council Protocols: Code of Ethics
6. Discussion for Future Meeting Schedules and Agendas

ADJOURNMENT: Meeting adjourned at 9:00 p.m.

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