

Special Meeting  
November 12, 2003

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- ADJOURNMENT: The meeting adjourned at 6:30 p.m. .... 7

Chairperson Burch called the meeting to order at 5:30 p.m. in the Council Conference Room, 250 Hamilton Avenue, Palo Alto, California.

Present: Burch, Ojakian, Mossar

Absent: Kleinberg, Lytle

In order to meet quorum requirements, Mayor Mossar was in attendance as a Committee member.

1. Oral Communications

None.

2. Clarification of Election Procedures

City Clerk Donna Rogers said the role of the City Clerk was not to advise individual candidates or proponents or opponents on ballot measures. The City Clerk's office provided information to individuals about the rules applicable to Palo Alto elections. A number of procedural questions arose in the past election. One of the procedures stated, "It is customary for the city council to specify, in the resolutions calling each election, whether board or commission members may use their official titles when signing ballot arguments." She and the Interim City Attorney recommended that the Council either abandon the practice or codify it, rather than applying it on a case-by-case basis.

Dorothy Bender, 591 Military Way, said opponents of Measure C exercised due diligence in their efforts to comply with City guidelines regarding local election procedures. Two issues were raised which caused confusion. Some of the forms supplied by the Clerk's Office were out of date. One example was on the forms that were given to complete the ballot arguments. The County Clerk informed her the form was out of date. The more important thing had to do with guidelines on who could sign. Ballot arguments were due by both sides on August 13, 2003, and rebuttals were due one week later. On the morning of August 11, 2003, the City Clerk informed her campaign committee, citing instructions from City Attorney Ariel Calonne that ballot argument signers were required to meet the same qualifications as ballot argument filers, which caused her campaign committee to insure that all five people who signed the ballot argument fulfilled the required criteria. Rules for who signed the ballot arguments were different than the rules of who could sign the rebuttal, which were different from the rules set forth in the written guidelines provided by the City Clerk. The appearance was given that the City Attorney's Office and the City Clerk's office used discretion to create inconsistent instructions, which

disqualified opposition signers during the ballot argument phase and were then relaxed to qualify equivalent proponent signers during the rebuttal phase. Forms given citizens should be up to date. Consultation with the election division coordinator and the City Clerk should have been done in a timely manner. Guidelines should not have different requirements for signers of ballot arguments and signers of rebuttal arguments. Members of boards and commissions should be able to sign using their title as a board member or commissioner.

Tom Jordon, 474 Churchill Avenue, said the referendum pamphlet had an effective date last revised on April 15, 2002. The law changed since that time. The law required the inclusion of three lines in bold on the face of each page. The mistake cost him \$4,500 and was avoidable. When an ordinance was referended under a fairly recent case, *Mervyns vs. Hayward* said drawings had to be attached. That was not in any of the material he received. It was a case as distinguished from statute. When he filed his papers, the City Attorney noted he had seen the *Mervyns vs. Hayward* case. If the City Attorney knew of a case, and reached a conclusion, that should be in the materials.

Ms. Rogers said the forms were prepared by the City Clerk's Office when the Elections Code was delivered to the Clerk's Office. The material provided to filers clearly stated, "This material is not intended to be a complete statement of law governing referendum or initiative elections, and before proceeding, proponents are advised to review the attached material with an attorney." There was confusion with the argument forms on both sides of the measure.

Interim City Attorney Wynne Furth said she was not satisfied with the way things went in the last election. The City Attorney's Office shared the concerns of the public that there was confusion and frustration and would address the concerns. The Elections Code and elections were not simple. Similar questions arose in other local jurisdictions due to changes in highly technical parts of the Code or changes in common law. Addressing the charge that staff was biased or sought to advance one case or the other was difficult.

**MOTION:** Council Member Ojakian moved, seconded by Mossar, to accept the changes provided in the City Attorney's Report dated November 6, 2003.

Council Member Ojakian said the City Attorney told him the City Attorney represented the corporation. He asked whether forms were updated regularly.

Ms. Rogers said the forms were updated regularly. The argument form provided was outdated.

Ms. Furth said the City was different than the County because Palo Alto had a quirky set of rules.

Council Member Ojakian agreed with the comment about not letting boards and commission members use their titles.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to adopt an ordinance to make it a standing policy that Board Members and Commission Members should not use their titles or positions for the purpose of signing ballot measures.

Ms. Furth said the Council could not be prevented from using its titles. The question was whether the Council should adopt an ordinance which said sitting board and commission members shall not use their titles in ballot arguments.

Mayor Mossar said individuals were associated with the names of a board or commission on which they sat in campaign advertising. She wanted to be sure that any policy that was adopted was clear that no one was to represent an opinion as being that of a board or commission.

Ms. Furth said the issue had not been litigated, and the Council was free to adopt the rule.

Council Member Ojakian was not clear about keeping nomination petitions confidential.

Ms. Furth said that should be clearer because nomination papers were public records.

Mayor Mossar said as the designated filer on one of the measures, she went through a great deal of angst and did not know until the last minutes who did what. The Council regretted that anyone had to struggle. The City Attorney and City Clerk were thanked for preparing the proposals to clarify areas in which everyone struggled. The City Clerk's and City Attorney's Offices did not have to provide legal advice to people for political actions. It was necessary to give information to interested people.

Ms. Furth said she and the City Clerk were educated by the process and educated by the people who brought measures forward.

Chairperson Burch recommended the phrase about the City Attorney be noted in bold in order for people to see it as a warning.

Ms. Rogers said she would not use the County's forms in the future because they caused confusion.

Mr. Jordon said the information that was handed out needed to be up to date.

Mayor Mossar clarified there was a memorandum that specified who could sign the rebuttal arguments. The signatures referenced were legal according to the memorandum. She assumed all parties for any of the initiatives received the same memorandum.

Ms. Furth responded that answers needed to get out in formal, written form so that everyone received the same answer.

**MOTION PASSED** 3-0, Kleinberg, Lytle absent.

Ms. Furth said staff would prepare an ordinance for the Council.

Ms. Bender said there was confusion about ballot arguments versus rebuttals and suggested staff be clear on those points.

### 3. Off-site Telephone Participation in Council Meetings

City Clerk Donna Rogers noted that in the past there were difficulties with offsite telephone participation at Council meetings. Staff felt clear procedures were necessary to lessen concerns of adherence to the Brown Act.

Mayor Mossar said there was confusion over the process Council Members needed to follow and who was responsible.

**MOTION:** Mayor Mossar moved, seconded by Ojakian, that the Policy and Services Committee recommend that the City Council adopt guidelines 1 through 4 in CMR:496:03 for off-site telephone participation in Council meetings.

Herb Borock, P. O. Box 632, said he believed the Council Member who teleconferenced should pay the expense for the call. He was surprised there had not been any accounting of where the money came from in the past. The need for the 72-hour posting requirement at the remote location was questioned. The 72-hour law had to deal with the official posting place rather than where the meeting occurred.

Interim City Attorney Wynne Furth said hotels were familiar with the process and posted agendas on their downstairs notice boards.

Ms. Rogers said she needed Council Members to confirm that notices were posted.

Council Member Ojakian asked how a Council Member would confirm the agenda was posted if the Council Member was not at the hotel 72 hours prior to the meeting.

Ms. Furth said the law was clear about what was envisioned as teleconferencing centers. The notion was that a Council Member and members of the community were meeting in a corner of the city.

Mayor Mossar said if a Council Member were out of town on official City Council business and needed to participate in the meeting, the City should pay for the teleconferencing. The Council set its own vacation schedule. Expecting Council Members on vacation who wanted to participate in a Council meeting to pay for the call was reasonable.

Council Member Ojakian suggested other ways to reduce the cost of teleconferencing such as limiting teleconferencing to the United States, avoiding use of cell phones, and honing down to important items for teleconferencing during the meeting. The practice of teleconferencing should be continued.

Chairperson Burch suggested the Council Member who was unable to attend a meeting could provide a written statement for another Council Member to read during a meeting.

Mayor Mossar said the public elected nine members and had reasonable expectation that nine members participated in meetings. The Council struggled for a policy that said teleconferencing was important but did not want to see it happen often. Council Member Ojakian's suggestions were good. Specifying "contiguous United States" made sense.

Council Member Ojakian noted that one Council Member teleconferenced from South Africa. Tracking costs was important.

Mayor Mossar suggested tracking specific costs and quarterly reports from the City Clerk be submitted to the Council.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to note who is teleconferencing, track specific costs, discourage use of cell phones, and ask the City Clerk to report quarterly.

Chairperson Burch said he did not feel there was ever a vote that was extremely critical for him to participate in when he was away.

Mayor Mossar said she viewed teleconferencing more of an emergency measure than standard practice.

Chairperson Burch noted there was a tremendous amount of work necessary for the Clerk's Office to make teleconferencing possible.

Assistant to the City Manager Chris Mogensen said staff time from both the City Clerk's Office and Information Technology was necessary.

Chairperson Burch said items on the agenda could sometimes be moved to a date when a Council Member interested in that item was able to attend a meeting.

**MOTION PASSED** 3-0, Kleinberg, Lytle absent.

Chairperson Burch clarified the item would be brought back on the Consent Calendar.

Mr. Mogensen said that was correct.

#### 4. Discussion for Future Meeting Schedules and Agendas

Assistant to the City Manager Mogensen said the next meeting was Tuesday, December 9, 2003.

ADJOURNMENT: The meeting adjourned at 6:30 p.m.

NOTE: Sense minutes (synopsis) are prepared in accordance with Palo Alto Municipal Code Sections 2.04.180(a) and (b). The City Council and Standing Committee meeting tapes are made solely for the purpose of facilitating the preparation of the minutes of the meetings. City Council and Standing Committee meeting tapes are recycled 90 days from the date of the meeting. The tapes are available for members of the public to listen to during regular office hours.