

Special Meeting
March 30, 2004

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Chairperson Burch called the meeting to order at 7:05 p.m. in the Council Conference Room, 250 Hamilton Avenue, Palo Alto, California.

PRESENT: Burch, Cordell, Kishimoto. Morton (arrived late)

1. Oral Communications

None.

2. Request for Approval of a Construction and Demolition Debris and Recycling Ordinance

Deputy Director of Public Works Operations Michael Jackson said Construction and Demolition (C&D) waste represented a significant volume of material that went to landfills. Staff prepared a C&D ordinance and requested the Policy and Services (P&S) Committee recommend the ordinance to Council for approval. The California Integrated Waste Management Act of 1989, known as AB 939, required each jurisdiction to annually report progress in diverting solid waste from disposal and required a minimum 50 percent diversion. Senate Bill 1374, chaptered into law in September 2002, required that AB 939 annual reporting specifically include progress in the diversion of C&D waste. The reporting scope included programs and ordinances implemented and quantitative data. Senate Bill 1374 also required the California Integrated Waste Management Board create a model ordinance as a tool to assist communities. The State approved diversion rate for the City of Palo Alto for the 2002 Calendar Year was 55 percent. The C&D debris program, implemented in conjunction with the proposed C&D ordinance, was anticipated to potentially increase the diversion rate by 6.6 percent. C&D waste was material produced in the process of construction, renovation, or demolition of structures. It was estimated that 20,000 tons, or 25 percent of Palo Alto's waste stream, was C&D. Many items could be removed from a building prior to demolition. Salvage and deconstruction was the process of selectively and carefully removing materials from a structure for reuse. Salvageable building materials might include, but were not limited to, air conditioning and heating systems, appliances, architectural details, bricks, rocks, stones, cabinetry doors, hardware, flooring, lighting and plumbing fixtures, metal, plate glass, and wood. C&D recyclable debris consisted of asphalt, concrete, bricks, carpet, cardboard, dirt, gypsum, wallboard, glass, land clearing debris such as, trees, brush and vegetation, metals, roofing material, and wood. Projects covered under the ordinance included those that required a demolition permit and all projects with project value greater than or equal to \$75,000. Staff estimated that approximately 500 projects annually were covered under the proposed ordinance. The waste diversion requirements were that 90 percent of earth material and 50 percent of remaining C&D debris from projects be reused or

recycled. The means used to divert C&D debris included PASCO C&D debris box service, select self-haul, or use of an independent recycler for source separated loads only. The applicant had to use City-approved processing facilities. The applicant needed to estimate the total weight of C&D debris generated by the project and provide means for diverting the debris. The applicant needed to designate the facility to receive material for use and recycling. A number of steps were taken to minimize the impact to the applicants. A full-time staff employee at the Development Center was recommended to provide education, technical assistance, and ordinance administration. A penalty-based system was developed versus a deposit-based system. Ordinance administration was integrated into the current permit process at the Development Center. The C&D ordinance contained a salvage clause and was enforcement based. On or before July 1, 2004, an administrative fee would be added to the Municipal Fee Schedule, administrative penalties for violations of the C&D ordinance would be added, additional expenses for the full time employee, materials, and supplies would be budgeted for, and C&D debris box rates were added to the Utility schedule. On or before August 1, 2004, there would be a City-approved C&D reuse and recycling facilities listing, a C&D debris generation formula and education brochures. On or before September 1, 2004, workspace at the Development Center would be set up and a new staff person would be hired. The program would begin in October 2004.

Walter Hays, Chairman, Sustainability Partnership, 355 Parkside Drive, said the City did an excellent job trying to get input from affected parties. Palo Alto came up with an ordinance that did everything it could to minimize the burdens on the construction industry. The C&D ordinance was needed. The Comprehensive Plan (Comp Plan) included at least six different passages that urged maximum recycling. The State required a yearly progress report on each city's recycling efforts.

Council Member Morton asked when penalties were assessed and how enforcement occurred.

Senior Assistant City Attorney Lance Bayer said three areas were set up where violations could occur: (1) Where the applicant did not meet the requirements, which occurred at the time the tags were submitted; (2) Where a company willfully failed to comply with provisions of the chapter; and (3) Where the applicant provided false or misleading information.

Mr. Jackson said the Planning Department was responsible for administering the position at the Development Center. The staff person at the Development Center would be authorized to issue citations, working closely with the City Attorney's Office. Administrative penalties were issued based on the ordinance.

If construction were observed where no diversion took place, citations could be issued. Proactive measures could be taken by having the staff person inspect large construction jobs.

Council Member Cordell stated because approximately 500 construction projects were anticipated each year, the lack of enforcement or problems with people getting permits was a concern. The question was asked as to who would observe the construction projects.

Mr. Bayer responded the majority of projects would be noticed when projects went to the Development Center for debris management plan approval. Citations were issued if the debris management plan was not completed.

Solid Waste Manager Russ Reiserer said the Building Division would be aware of large projects, would perform the inspections of projects, and would be aware of violation potentials.

Mr. Bayer said staff would concentrate on educating applicants, giving them the approved recycling facilities and information on how to succeed.

Council Member Cordell asked how the decision on criminal prosecution abatement would be made.

Mr. Jackson explained the City Attorney ultimately would handle the prosecution function. City staff would work in conjunction with the City Attorney's office in looking at the various options. Code enforcement staff might be trained to issue administrative citations or compliance orders or to refer the matter to the City Attorney's Office.

Council Member Cordell asked whether there would be a negligent standard for violations where applicants did not meet requirements.

Mr. Reiserer said staff ensured people would make attempts to comply. Citations were issued if attempts were not made.

Council Member Cordell asked whether the standard was a strict liability.

Mr. Bayer explained the City of San Jose implemented the deposit-based system and, in two years, had one violator.

Council Member Cordell said the second area where violations occurred indicated, "the applicant willfully failed to comply," which implied willful intent. The other two areas needed to be clarified.

Mr. Bayer said the wording was drafted because there were so many ways in which an applicant could meet the diversion requirements. The requirements were met by compliance or by demonstrating to the Director of Public Works that compliance was not going to be successful for various reasons. Meeting the requirements meant the applicant submitted plans and had a reasonable explanation for not meeting the requirements.

Council Member Cordell suggested clarity would be necessary. The City Attorney might look at the wording for clarity.

Mr. Bayer said he would review the wording and make whatever changes were appropriate.

Vice Mayor Burch asked whether PASCO would identify the boxes for C&D.

Mr. Jackson said the boxes had specially-made signs indicating they were for C&D debris.

Vice Mayor Burch asked about the possibility of proactively encouraging recycling, such as a sign on the site that indicated the property was recycling construction and demolition materials.

Chairperson Kishimoto clarified C&D was approximately 25 percent of potential landfill.

Mr. Reiserer said a characterization study of the waste by material types in Palo Alto was done, which was the 25 percent potential to recover C&D materials.

Chairperson Kishimoto clarified the new State ordinance did not set a standard for what percentage of C&D the City wanted to collect.

Mr. Reiserer said there would be no specific percent. The City had to describe what it did with the C&D program annually.

Mr. Jackson said part of the Development Center's challenge would be to provide educational information to the applicants in order for them to be aware of the options and make an effort to reuse the salvageable materials.

Council Member Morton referred to page 11 of the staff report (CMR:166:04) regarding the projection of the resource impact. The question was asked why fees would not be increased after the first year to cover costs.

Mr. Jackson said the fee would be set at \$200 with the belief that would cover all the administrative fees. Staff thought the amount was low but wanted to leave the \$200 threshold so it would not be burdensome.

Council Member Morton suggested the fee could be increased to \$225 and questioned why the City subsidized something the homeowner should cover.

Assistant to the City Manager Chris Mogensen said the fee was managed out of the Refuse Fund.

Council Member Morton clarified if the Refuse Fund was negative, it would be covered out of the General Fund.

MOTION: Council Member Morton moved, seconded by Cordell, that the Policy and Services Committee recommends to the City Council approval of the Construction and Demolition (C&D) Debris Reuse and Recycling Ordinance.

Council Member Cordell wanted to see an explanation of violations and additional information on enforcement in a staff report from the Manager.

Mr. Mogensen asked whether the Finance Committee's intent was to make full cost recovery or raise the fee to \$225.

Council Member Morton saw no reason to go negative.

MOTION PASSED 4-0.

Vice Mayor Burch stated the item could go on the Consent Calendar.

3. Nominations and Election Process for Mayor and Vice-Mayor

Chairperson Kishimoto said the item was a referral from the Council. With term limits and nine Council members, there was no automatic selection process for Mayor and Vice Mayor. The Charter specified the election took place at the first meeting in January.

Council Member Morton said he was unclear why the subject was an issue. The Charter clearly specified a rational and open process. The Council was capable of serving as its own nominating committee, and the Council decided whom it would present. There was room for alternative nominations. The Council chose who it wanted to be Mayor for the year. The process was in place in Palo Alto for 20-35 years and was an admirable process.

Council Member Cordell said concern was raised in at least one year. Something explicit needed to be in place. The Municipal Court selected its Presiding Judge in a competitive process. The Superior Court selected its Presiding Judge on a seniority system. The seniority system worked the best; the competitive system created problems.

Council Member Morton recalled Palo Alto always had a public discussion about who would be Mayor. The Council, as a whole, needed to have input into the decision. The Charter provided a method, and that method worked every year with the exception of one year.

Vice Mayor Burch agreed that competition be avoided.

Council Member Cordell asked whether there was an implicit understanding in the past that the Mayor was selected based on seniority.

Vice Mayor Burch said that was pretty much what happened. When Bern Beecham became Mayor, there was discussion about who would be Vice Mayor. The obvious choices were Council Member Kleinberg and himself. Council Member Kleinberg received the most votes in the election for her four-year term. His term was only two years, so it made sense that he should be the Vice Mayor.

Council Member Cordell suggested the implication was that Council Member Kleinberg would follow Vice Mayor Burch as Vice Mayor.

Vice Mayor Burch said he had mentioned on previous occasions he was not interested in being Vice Mayor, but then made the decision he would like to be Vice Mayor.

Council Member Cordell asked whether Vice Mayor Burch believed Council Member Kleinberg would be the next Vice Mayor.

Vice Mayor Burch said that was correct. If he became Mayor, Council Member Kleinberg would become Vice Mayor.

Council Member Cordell asked whether the seniority system was implicit during the prior years.

Council Member Morton said there were a number of long term Council Members who did not serve as Mayor.

Council Member Cordell clarified if Council Members did not serve as Mayor because that was their choice or colleagues did not want them as Mayor.

Vice Mayor Burch said one colleague might have told another colleague not to try for Vice Mayor because that colleague did not have the votes. He and Council Member Kleinberg did not want to put their colleagues in the position of having to choose between them.

Council Member Cordell asked who had more seniority between Vice Mayor Burch and Council Member Kleinberg.

Vice Mayor Burch said they ran at the same time, but his term was only for two years.

Council Member Cordell asked why there was a problem with the seniority system.

Council Member Morton asked why would a system that worked change.

Council Member Cordell said if there were a system with predictability, based on what had been done, that was the way it should be done.

Vice Mayor Burch said colleagues normally spoke with other colleagues to get support and a vote was still necessary.

Council Member Morton asked why seniority took preference over the nine Council Members who served.

Council Member Cordell clarified the Council had always done the selection by seniority.

Council Member Morton said that had not occurred. The Council was allowed to nominate its choice.

Council Member Morton left the meeting at 7:55 p.m.

Vice Mayor Burch said in the past, the meeting in January was similar to a coronation. The assumption was the Council took a vote on something that was already decided. The new Mayor's family attended the meeting in anticipation of that individual being selected Mayor. The question was whether the action taken was a vote, a democracy, or something already approved. He said there might be a way to vote at one meeting and install at the next meeting.

Chairperson Kishimoto said the Charter might have to be changed, which required a vote of the people.

Council Member Cordell noted the statute specified the election was at the first meeting in January.

Chairperson Kishimoto said in most cases, the Vice Mayor was expected to move up to Mayor. There needed to be an opportunity for people to present themselves for Vice Mayor.

Vice Mayor Burch said any Council Member could nominate another Council Member for Vice Mayor. If three Council Members with the same seniority were interested in Vice Mayor, the thought was the one who had received the most votes in the Municipal Election would be the logical candidate. He said the assumption might be the Council Member who wanted to be Vice Mayor would be selected.

Council Member Cordell clarified the person who received the most votes in the election had the seniority. That person's name was put in for nomination and the Council would vote in favor or against.

Vice Mayor Burch said if a procedure were established, the Council was locked into the procedure.

Chairperson Kishimoto said the ceremonial process should be separate from the voting of Mayor and Vice Mayor in order for Council Members to state their case.

Vice Mayor Burch asked whether a new tradition might be started of having a closed session in December to talk about Mayor and Vice Mayor.

Council Member Cordell said that would not be allowed under the Brown Act.

Chairperson Kishimoto said nominations could be put out at the last meeting in December.

Assistant to City Manager Chris Mogensen said there would be a problem in an election year, because the new Council Members were seated at the meeting in January.

Vice Mayor Burch said the system flowed naturally in Palo Alto and other local cities.

Council Member Cordell said Council Members should voice interest in the Mayor and Vice Mayor positions. Policies and procedures might be changed to encourage discussion among one another.

Vice Mayor Burch said with two term limits and nine members on the Council, not everyone would have the opportunity to be Mayor.

Council Member Cordell said respect should be shown for those who put in years of service. Council Members should develop experience prior to becoming Mayor. The number of years of service and interest should be taken into consideration.

Vice Mayor Burch suggested Council Member Cordell put her thoughts in writing.

Council Member Cordell said she would draft language for what she envisioned as the process and forward it to the P&S Committee members.

Mr. Mogensen said the Committee needed to review the draft first and make a recommendation prior to sending it to Council.

Council Member Cordell suggested the draft be accompanied by a Colleague's Memo.

MOTION: Vice Mayor Burch moved, seconded by Cordell, to continue the item.

MOTION PASSED 3-0, Morton absent.

4. Discussion for Future Meeting Schedules and Agendas

Assistant to the City Manager Chris Mogensen said the next meeting was Tuesday, April 13, 2004. Council Member Morton was unavailable and Mayor Beecham would fill in. The main items on the agenda were a confirmation of the local generation alternatives feasibility study and the "at will" status for new department heads.

Council Member Cordell asked that her written comments relating to the nomination and election process not be included on the agenda for April 13, 2004.

ADJOURNMENT: Meeting adjourned at 8:20 p.m.

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