

Regular Meeting
September 13, 2005

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Chair Freeman called the meeting to order at 7:04 p.m. in the Council Conference Room, 250 Hamilton Avenue, Palo Alto, California.

Present: Beecham, Cordell, Freeman, Kleinberg

1. Oral Communications

None.

2. Report on the Status of Audit Recommendation

City Auditor Sharon Erickson said the Palo Alto Municipal Code (PAMC) required the Auditor's Office to prepare a status report on open audit recommendations. The report summarized the status of 134 recommendations from 13 different audit reports and reviews and included 85 recommendations adopted since the last status report. The report was compiled based on interviews with appropriate City staff. Since the prior report, City staff completed 37 recommendations and partly completed another 80 recommendations. Seventeen recommendations had not been started. The Audit of Code Enforcement was issued in March 2003. The objective was to assess the program's timeliness, responsiveness, and consistency of enforcement. There were 17 original recommendations and six were completed, ten were in process, and one was not started. Personnel changes delayed full implementation of some of the 17 original recommendations. Progress was seen during the prior year with the activation of the ACCELA computer system, and significant improvements were made to the Code Enforcement website.

Council Member Freeman said the Auditor's Office made recommendations, but the impetus to fulfill the recommendations was left up to the Department. Many recommendations in Code Enforcement were two or more years in the making. Staff was asked whether there were other ways for recommendations to move along quicker.

Ms. Erickson said following up on the recommendations was a tremendous burden for the Auditor's Office and a burden for staff to have outstanding recommendations. Discussion with Executive staff resulted in the potential to do a mid-year check in. A series of mid-year meetings forced staff to review the status of a report and discuss the plan for improvement.

Council Member Freeman said one issue was the cost savings of some recommendations that were not realized. The idea of a mid-year check was beneficial in moving things forward.

Council Member Beecham said there were many issues that had not been taken care of. Taking care of all the recommendations was not the responsibility of the Auditor's Office.

Council Member Freeman asked whether there was anything the Council could do to assist in the process.

Vice Mayor Kleinberg said recommendations with resident interaction, such as code enforcement, needed priority.

Council Member Freeman said accountability was important and asked about the impact of a recommendation that was not attained.

Ms. Erickson said that in addition to pointing out problems, the goal was to point out solutions and come to consensus about how to move forward.

Norman Carroll, 425 High Street, spoke regarding the San Francisco audit of the Office of Emergency Services (OES) and recommended Palo Alto examine its own OES.

Vice Mayor Kleinberg said Santa Clara County's Office of Emergency Services had not done an audit but was busy trying to upgrade its systems. The amount of Homeland Security money was allocated based on decisions made by Fire Marshals and Police Officers. The biggest issue was that more could be done if the City had more money. An audit might point out where spending could be prioritized, but the professionals knew what to do if they had more money.

Mr. Carroll said it was good for the public to have an idea of where they would like to ask the City to spend the money.

Vice Mayor Kleinberg said spending, by law, was done at the County level.

Ms. Erickson said the Audit of the Development Review Process was issued in November 2003, and the objective was to determine whether development review processes were effective and efficient, whether or not actions were timely, responsive, and consistent, and to discover whether processes could be improved. Of the 34 recommendations, 19 were completed or previously resolved, 12 were completed or resolved during the current year, two were partly implemented, and one was in process. Since the prior update, performance standards were established. The Planning Department did significant work, including focusing on getting recommendations implemented. The Auditor's Office was satisfied with the progress.

Vice Mayor Kleinberg said one of the recommendations mentioned problems with errors and asked whether the errors were human or software errors.

Senior Auditor Edwin Young said many of the errors were with data not being input appropriately. Under the new Accela programs, efforts were made to keep data current.

Council Member Freeman said during a prior review, the discussion concerned the verbiage used by different departments to indicate status, such as "partially implemented" versus "in process." A glossary defining "partially implemented" and "in process" was suggested.

Ms. Erickson said her staff had the same response, questioning why recommendations were "partly implemented" or "partly completed." The Auditor's staff tried to explain the status of each audit recommendation in the report verbiage. In some cases, work was in process but there might not be a lot of progress in completion. In other cases, incremental progress was seen. The Auditor's staff would work on standardizing the language.

Council Member Cordell referred to items 33 and 34 on pages 28 and 29 of the Report on the Status of Audit Recommendations, and asked what was in place to show whether the training was working with regard to customer satisfaction.

Ms. Erickson said recommendations were specific and often the Auditor's Office recommended putting in place a way to monitor the success. Concerns had been elevated for staff. Customer service training needed to be continuous. Planning Staff was encouraged to continue the trainings and hold staff accountable for the standards.

Council Member Cordell said she wanted to make sure the public felt the recommendations were implemented.

Council Member Freeman clarified the Service Enhancements and Accomplishments (SEA) Report included something about customer satisfaction in the permitting process.

Mr. Young said the virtual development center and a satisfaction survey on the City's website helped improve customer satisfaction.

Assistant City Manager Emily Harrison said the information from the website went to the Assistant City Manager who forwarded the surveys to the Planning Department. Approximately two surveys per month were received, as opposed to six or seven per week during the prior year.

Vice Mayor Kleinberg said she understood the Finance Committee would review the overtime and part time sections of the Report. Concern was expressed because many of the recommendations had not been started or were in process. The public wanted to know how every tax dollar was spent and wanted fair pay for fair time spent. That was an area that could be exploited.

Council Member Freeman said the agenda did not include the items referenced by Vice Mayor Kleinberg.

Vice Mayor Kleinberg said she asked for a policy discussion.

Ms. Erickson clarified Vice Mayor Kleinberg asked for a general statement.

Vice Mayor Kleinberg said that was correct.

Ms. Harrison said staff went through a tumultuous period when the Director of Human Resources retired. During that time, the City had the unionization of the hourly employees, consideration of layoffs, and a Utilities investigation. All the resources of the small Human Resources Department were focused on trying to deal with those major challenges. The Human Resources Department did not focus on the current audit and its implementation.

Council Member Freeman said she did not see anything that focused only on Finance and asked why the Audit of Restructuring Efforts and Management Span of Control was delegated to the Finance Committee rather than the Policy and Services (P&S) Committee for review.

Ms. Erickson said when the Auditor's Office went to a Council Committee the Finance Committee was the default, which tended to be the Committee that heard the recommended reports. The Auditor's goal was to divide the work so that both committees did not have to hear the same status report.

Vice Mayor Kleinberg said the Council's agenda did not limit what could be asked. The agenda said the Council could ask about audit recommendations.

City Attorney Gary Baum said agendas were created under the Brown Act, but the Council had a purview of what would be considered by its committees. The way the item was agendized was broad, which allowed for discussion.

Council Member Cordell concurred with Council Member Freeman with regard to the Management Span of Control, which was a better fit for the P&S Committee rather than the Finance Committee. For future reference, the Span of Control should come back to the P&S Committee.

Ms. Erickson said she would discuss the Span of Control with the Finance Committee at its meeting the following week.

Vice Mayor Kleinberg said the Auditor's Office had an institutional, professional judgment for suggesting the Finance Committee review the Span of Control.

Council Member Freeman asked whether the P&S Committee could review the Span of Control audit at another meeting.

Ms. Harrison said that was possible. When both committees expressed an interest in an item, staff agendized the item for the Council.

Council Member Beecham said Span of Control came out of the budget, was about money and staff, and should be a Finance Committee issue.

Council Member Freeman said there were 17 recommendations, with two completed and 15 in process. The Council should discuss the issue.

Ms. Harrison said the P&S Committee needed to recommend to the Council that the item be agendized.

Council Member Beecham suggested the P&S Committee bring the issue back for discussion.

Ms. Harrison said staff would reagendize the item.

Vice Mayor Kleinberg suggested the item include target dates when it went to the Finance or P&S Committee.

Ms. Harrison suggested each committee indicate to staff the reports they were interested in seeing.

Ms. Erickson said the Span of Control review went to Finance Committee in the beginning because it was driven by the budget. The Finance Committee has the thorough discussion of the report. There was reluctance to have both committees spend considerable time looking at the status of audit recommendations, in particular in cases where there was not much progress to report.

Vice Mayor Kleinberg said review by some of the Council was important. There were policies that the Finance Committee might not think about.

Council Member Freeman said some issues might overlap.

Council Member Beecham said he believed in delegation of duties and segregation of responsibilities and had faith that the Finance Committee would look at the Span of Control in every respect.

Vice Mayor Kleinberg agreed the issue should stay with the Finance Committee but encouraged discussion at the Council level.

Ms. Harrison said the item would not go back to the Council. The item was a status report on audit recommendations, and recommendations were not made for Council review.

Ms. Erickson said she promoted working through committees because that provided a better forum to discuss problems uncovered in the audit and potential solutions. The committees accepted the reports, and the reports did not move forward to the Council Consent Calendar.

Vice Mayor Kleinberg said the full Council and constituents did not know the result of the recommendations.

Council Member Freeman recalled two separate occasions where the City Manager mentioned the Management Span of Control would go back to the Council in the fall. That was heard during the budget time period.

Ms. Harrison said she did not have knowledge of the item going back to the Council. Changes could not be made to the structure without going to the Council for approval.

Vice Mayor Kleinberg referred to page 42 of the Report on the Status of Audit Recommendations, which indicated, "The City Manager should establish guidelines, goals and targets for reducing the layers of management." There were no target dates.

Council Member Cordell referred to item #3 on page 41 of the Report on the Status of Audit Recommendations, which indicated, "The City Manager should set clear definitions, guidelines, goals and targets that result in expanding the supervisory span of control and decreasing the ratio of supervisors to line staff." No target dates were shown.

Council Member Freeman referred to item #4 on page 6 of the Report on the Status of Audit Recommendations, which indicated, "The City Manager should assign responsibility for maintaining and updated organizational charts." There were no target dates.

Vice Mayor Kleinberg said there were opportunities for more transparency and better governance.

Ms. Erickson said there had not been much action on some of the recommendations. Much of the responsibility would have fallen on the Human Resources Department, which was in the throes of other issues. The Auditor's Office needed to stress to the rest of the staff that the Auditor's Office was accountable for audits and it was staff that would implement the recommendations in the audits.

Council Member Cordell said she wanted the Span of Control to go back to the Council. The Span of Control was a major issue.

Ms. Harrison suggested the P&S Committee make a recommendation to the Council to agendaize further discussion of the Span of Control audit.

Council Member Beecham asked when the Span of Control was scheduled to go to the Finance Committee.

Ms. Erickson said the Span of Control was scheduled to go to the Finance Committee the next week.

Vice Mayor Kleinberg said she did not want to wait for the next two-year budget to find out what was going on. The Council tried to bring transparency to what staff spent its time on. The public needed to have a sense of confidence that things were happening. The Council was accountable to the public perceptions, perspectives, and statement.

MOTION: Council Member Cordell moved, Beecham seconded, that the Policy & Services Committee direct staff to come back to the full council prior to the 2006 budget process with Restructuring Efforts and Management Span of Control, Items 2, 3 and 5.

MOTION PASSED: 4-0.

Vice Mayor Kleinberg said there might be points or guideline discussion where the City Manager would provide updates.

Ms. Harrison said since April 2004, the restructuring was to decrease General Fund staff by 10 percent. As vacancies occurred, duties were reorganized and reallocated.

3. Code Enforcement Strategy

City Attorney Gary Baum said the report was multipurpose, which responded to the Audit Recommendations and was based on his work plan approved by the Council. The report was also an overall strategy worked on between the City Manager and himself, who met with the departments to provide code enforcement services. The report was consistent with the complaint based system in effect for many years. The report reviewed what each department did and what the Attorney's office would do. The City Attorney envisioned a process where staff aimed for compliance based on the unique nature of Palo Alto and the City's philosophy of working with the public, providing customer services, and responding directly to complaints. Code violations were met with personal contact, a follow up letter, or an administrative citation in the event compliance was not achieved. Administrative citations were handled with an Administrative Hearing officer. The majority of violations did not involve the City Attorney's office, and less than one percent ended up as a criminal or civil matter handled by the City Attorney's office. The Attorney's office staffed the weekly Code Enforcement Meeting.

Assistant City Manager Emily Harrison said there was a partnership between the City Manager's staff and the City Attorney's staff. Staff recognized a resource needed to be targeted to get maximum compliance and worked carefully with the Auditor's to do that.

Council Member Freeman said she did not notice noise listed in the report.

Mr. Baum said noise was part of the whole matter. Noise was one of the most difficult matters to enforce, which was true in all jurisdictions. Noise was a subjective matter, difficult to measure, and difficult to enforce.

Herb Borock, P.O. Box 635, spoke regarding three items: 1) the chair was thanked for bringing up the absence of the issue of noise enforcement including specifically leaf blowers; 2) an e-mail from former Vice Mayor Ellen Fletcher where the complainant's name was disclosed, and it had been the consistent policy of code enforcement in the Planning Department to protect the privacy of the complainant and should be consistent and included in the written document when adopted by the Council; and 3) a suggestion for the Planning Department language on page one of the staff report (CMR: 355:05) that the major reasons cities were incorporated was to deal with land use, and language should be explicit.

Vice Mayor Kleinberg referred to the second paragraph on page 5 of the staff report (CMR:355:05), "Compliance is always the first objective with code enforcement. However, the cost to the City of delays in compliance can be high. Therefore, the City Attorney will seek full recovery for enforcement costs

whenever possible." Staff was asked to amplify the issue of "the cost of delay," and how the cost was gauged.

Mr. Baum said the impact of the delay upon the public was high, and the City should have a penalty. If there were an imminent threat to health, safety, or welfare, staff would obtain an injunction. There were enormous costs for enforcement, both legal and code enforcement-related, as well as impact upon the neighborhood. Staff did not feel the taxpayers of Palo Alto should pay for the effect of one individual.

Vice Mayor Kleinberg asked whether the cost of correcting code violations was always the right thing to do. There might be mitigating circumstances where the City does not make a huge issue over something that should be a minor issue. The expectations of the public for a 100 percent compliance policy were a concern. Such a policy did not allow for any discretion.

Mr. Baum said the process was that compliance or acceptable noncompliance was the 95 percent. Only one percent went to the Attorney's Office. The City had neither the resources nor was it a good use of resources to think that it would achieve 100 percent compliance.

Vice Mayor Kleinberg asked whether the wording could be changed. There were mediation methodologies that that could be brought to bear with the citizen complaint system.

Mr. Baum said the staff program was initiated by a former City Attorney. The City Attorney's Office focused on Council-generated issues. Community based mediation was used and could be described. A reasonable solution was not necessarily 100 percent compliance of everything.

Ms. Harrison said in a complaint based system, staff found itself involved in neighbor to neighbor concerns and mediation helped.

Council Member Freeman said if the code were not enforced, was egregious, or involved a safety issue, the code was weakened or set the City up for a situation where a person could say the judgment on the City was against someone personally.

Council Member Cordell said there seemed to be a new way of thinking about the issue. Everyone seemed to be on the same page.

Council Member Freeman said things that departments were responsible for were itemized, and there was a problem if something was missing from the list.

Mr. Baum said conditions of approval should be added.

Council Member Freeman said since she had been on the Council, noise was one of the most contentious issues. There were codes relating to noise, and it was the responsibility of the City to enforce the code.

Ms. Harrison said there was no intent to indicate a policy proposal on the part of staff that noise would not be included.

Council Member Freeman said the noise issue had not been adequately addressed since she had been on the Council. The issue needed to be addressed at some point.

Vice Mayor Kleinberg said during her six years on the Council, there were a small number of people who consistently complained about noise. As cities became urbanized, there was a certain trade off to be in an urbanized environment that involved noise. The City hoped that people who moved into a dense living situation understood there had to be more tolerance. The noise ordinance should be enforced but the problem was not growing.

Council Member Freeman said many people who complained were not moving into an urban environment, but the environment moved around them. There was a difference between kids making noise and the 10 decibel level that people complained about. The code enforcement policy of citizen complaints against gardeners with gas leaf blowers was a concern.

Mr. Baum said people called the city when they saw violations.

Council Member Freeman said she could not call every time she saw a violation.

Ms. Harrison said staff did not want to devote one person to the effort. Staff had to allocate resources as best it could to enforce the leaf blower ordinance. Staff was aware it was unable to make leaf blower violations a priority over other health and safety issues.

Council Member Freeman said the issue for the future was whether or not it was in the best interest of neighbors to try to help enforce a code the City established.

Vice Mayor Kleinberg said working out a complaint based system with a neighbor was encouraged.

MOTION: Council Member Cordell moved, seconded by Kleinberg, that the Policy and Services Committee recommends to the City Council that it confirm

the City Manager's staff approach to the prioritization of staff resources devoted to code enforcement; and the City Attorney's strategy for addressing violations of the City's Municipal Code. This report also responds to the City Auditor's recommendations regarding the City Attorney's role in the code enforcement process.

MOTION PASSED 3-0, Beecham absent.

4. Adoption of the Ahwahnee Water Principles for Resource Efficient Land Use

MOTION: Vice Mayor Kleinberg moved, seconded by Cordell, the Policy and Services Committee recommend to the City Council to approve a resolution adopting the Ahwahnee Water Principles, as modified for implementation in the City of Palo Alto.

MOTION PASSED: 3-0, Beecham absent.

5. Discussion for Future Meeting Schedules and Agendas

Assistant to City Manager Chris Mogensen said the next meeting was October 12, 2005, with the issue of the Emergency Standby Council.

ADJOURNMENT: Meeting adjourned at 8:55 p.m.

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