

## POLICY AND SERVICES COMMITTEE

Special Meeting  
November 18, 2008

Chairperson Kishimoto called the meeting to order at 7:01 p.m. in the Council Conference Room, 250 Hamilton Avenue, Palo Alto, California.

Present: Barton, Drekmeier, Kishimoto (chair), Espinosa

Absent: None

### 1. Oral Communications

None.

### 2. Final Response to Auditor's 2008 Audit of Employee Ethics Policies.

Interim Deputy City Manager Kelly Morariu spoke regarding Staff's response to the Auditor's Ethics Audit, and noted that the Auditor's office initially presented the audit in January of 2008 to the Policy and Services Committee. The initial response from the City Manager's office at that time indicated that Staff would be returning to the Policy and Services Committee with follow-up actions. Staff has been working for the past nine months on the proposed responses to the audit findings. The responses and Action Plan will become part of the Auditor's annual report on outstanding audit recommendations. There are seven recommendations in the audit. The first was to add an ethics training component to the annual Conflict of Interest training that is typically conducted through the City Attorney's office. Second entails implementing supervisory review of the Fair Political Practices Commission Form 700 (Conflict of Interest form). Third, Staff will compile a list of Federal, State and City resources

on ethics to be posted on the City's intranet site for employee reference and include that as part of the new employee orientation. Fourth, the next six months, Staff will be engaging in a more comprehensive process to engage employees in the development of a values-based Code of Ethics, which will be a cross-departmental initiative to engage employees in a dialogue about ethics in our organization. Additionally, Staff will be looking at best practices to have employees acknowledge the Code of Ethics. Fifth, after the development of the Code of Ethics, the Manager's office will be working in collaboration with the Human Resources Department to implement a training policy and program around our Code of Ethics. Ethics training is just one component of the overall organizational training program for our employees. The sixth recommendation entails reviewing the Institute for Local Government's Ethical Culture Assessment Tool to further assess the ethical culture and climate in the organization. Finally, the City Manager's office will establish a policy and procedure for employees to report waste, fraud and abuse. Staff will be implementing a hotline for community members to call in and report issues around waste, fraud and abuse. One area that differed slightly from the initial Staff response was the recommendation to develop whistleblower policies and procedures. There are currently a variety of laws and City policies protecting employees who report issues and concerns about waste, fraud and abuse. Staff will be publicizing these protections and including links to them within the intranet site where they will be posting the other ethics resources.

Council Member Barton asked for clarification of what action Staff was seeking.

City Auditor Lynda Brouchoud stated that her office is incorporating all of this information in their annual report on the status of audit recommendations. That report would come to the Finance Committee on December 2, 2008.

Council Member Barton asked if that would then come to Council.

Ms. Morariu noted that this was the opportunity to have Council input, and then the recommendations would be incorporated in the full Auditor's report to return to Council.

Chair Kishimoto asked if that means that the final Code of Ethics does not return to the Council.

City Manager James Keene stated that Staff would do whatever the Council wanted.

Chair Kishimoto noted that it could be brought back as an Information Item.

Council Member Barton agreed, and that a vote would not be necessary to accept something that was within the City Manager's purview to manage.

Council Member Espinosa noted that he was interested in continuing to look at recommendation Number Five, the training policy. How the employee training program is established and implemented is very important. He then referenced recommendation Number Seven and how the reporting happens and how to institute a new and different kind of culture, one that is open and transparent.

Vice Mayor Drekmeier agreed, and asked about recommendation Number Seven, and if the hotline would be for employees or for the general public.

Ms. Morariu said that, initially, there was some confusion about whether it was for employees or the community, and by talking further with the Auditor's office, it would be primarily for community members.

Council Member Espinosa said that he read it as both.

Vice Mayor Drekmeier asked if there is a means for employees to report problems in a way that would not cause them more trouble and also were there any means for employees to make suggestions on how things could be done better, rather than just pointing out the problems.

Mr. Keene said that he has strong opinions about ethics and how to create a culture of ethics as opposed to a culture of compliance which is a very different thing. He is concerned about a whistle blower hotline being the first thing we would do, and to him, that is an indication of a breakdown in the culture and in an organization. A culture of respect and communication and having a dialogue on the mechanics and clarity of the issue was important. The danger with an anonymous hotline, which you can still have through the whistle blower law, is that sometimes this method can be misused and become an unethical vehicle to get back at a supervisor or a co-worker. Staff wanted to first do the outreach, start to do the training, look at a Code of Ethics, and then start to measure if these approaches are working. The thought was, if there was a hotline for the public, it doesn't

preclude any employee from using that hotline themselves, so that anyone could call in to report an issue, and in that sense, it would be open to employees.

Ms. Brouchoud said that as a City Manager, Mr. Keene's job is to build that ethical culture, and their job is to point out the procedures and the process they have in place. They had a good dialogue on their different roles. They do support the formation of a hotline, it is an audit recommendation, but there did seem to be some confusion. They did follow-up on whether they were talking about employees, community members, and her experience is that there is value to have a public hotline where no one is precluded from calling. She is hopeful that the City Manager's office, the City Auditor's office and the City Attorney's office use a triage approach, so that the Manager's office could handle personnel issues and the Auditor's office could handle issues where an independent investigation is needed. Currently, her office does get calls from the public that they investigate.

Vice Mayor Drekmeier asked whether the hotline was a place where someone could leave a recording or actually get a human voice.

Ms. Brouchoud stated that what they have been talking about is using an independent provider and those are typically staffed twenty-four hours per day through an organization that handles all the calls. The provider takes the calls in, categorizes them, and then passes them on to the appropriate parties in the City.

Vice Mayor Drekmeier asked if they were reporting waste, for instance water waste, or more financial waste.

Ms. Brouchoud said that the hotline would primarily focus on waste of resources.

Vice Mayor Drekmeier asked if it could be a one-stop, to report any problem. For example, we don't have an ordinance about leaving doors open in stores when the air conditioning is on inside. If people had concerns of that nature, is there a number they could call.

Ms. Brouchoud said that it was her understanding that the independent third party logs all the calls and the nature of the calls and then forwards them to the City. It would then be up to the City to determine what they would do with the nature of that call and how they refer it on.

Mr. Keene said that, with the hotline, anyone could call with any concern they have, but we would want to describe it for the most part as focused on what you would see as misuse of public resources. The problem with ethics is that it's not a clear line.

Chairperson Kishimoto asked if there be follow-up to the callers.

Mr. Keene said he didn't think so.

Chairperson Kishimoto asked about confidentiality issues, and would they have to leave their name.

Ms. Brouchoud said no, they would not.

Mr. Keene said that on the employee side they would not want to encourage a culture of anonymity in the organization. Staff would want to have a culture where people could point out an issue or problem without fear of recrimination. There is also a sense of responsibility when you notice something.

Ms. Brouchoud said that many cities have implemented these hotlines. She wanted to acknowledge that Mr. Keene's concern of recrimination is a real concern, but also temper that concern with saying that these hotlines are a very common vehicle and the use of this as a vehicle is increasing.

Mr. Keene agreed, and said that it is a very easy thing to do, and that the harder thing to do is to build a culture based around dialogue and participation, accountability, and management. Most people because of scale or difficulty don't want to do that.

Council Member Espinosa disagreed with the approach. He thinks the hotlines are good and it is good to have the anonymous opportunity, but wanted to be clear that we have an audit recommendation that we create a hotline for employees, and we are not going to do that.

Mr. Keene said that what they didn't want to have happen was that we had an audit about ethics in the organization and the first wave of things we do are things like establish this as opposed to starting some dialogue and training. He said he thought it is important to engage the employees so that they begin to have a shared responsibility for ethics.

Ms. Brouchoud read that "the City Manager will work with the City Auditor

and City Attorney to implement a hotline.” She took it that we are going forward with a public hotline, and the public hotline can accept both community and employee calls.

Council Member Espinosa said that the question then is are they telling employees that there is a hotline you can use or not. Is it something that employees see as a resource or is it not painted in that light.

Council Member Barton stated that it was an interesting report in that it’s clear that everything that was in the Auditor’s report has been addressed but it’s often been addressed in a very different way. He wanted to understand where both the City Manager and City Auditor are on this topic, because he could read this one of two ways. One is that they had a really great meeting and they came up with an approach or they did not agree on this.

Ms. Brouchoud said that she felt that this was a well developed response to the audit. What she saw was a thoughtful response on what training the City Manager’s office was hoping to put in place, a sincere effort in trying to consolidate the resources on websites and trying to make it clear to employees what resources are available. She thought the two areas that still need to be figured out is the development of this whistleblower policy and there was some confusion about whether we were talking about an employee hotline or an overall public hotline. What she has seen in other cities is that you have a hotline where anyone can call in, and that’s what’s advertised. It should be welcoming so that whether we have a customer, a resident or an employee who has a concern they feel that they can call in. It’s really incumbent upon the people who handle those calls to have a process in place on what you do with those calls so you know how to sort through them and handle them appropriately.

Chairperson Kishimoto asked about recommendation Number Two, where instead of reviewing each employee’s form, the department head reviews the Form 700 only if an employee has a reportable interest or upon receipt of complaint. Is it up to each employee to say I have one hundred shares of Hewlett Packard? Who does that person go to with a question?

Ms. Brouchoud said that in filling out the Form 700, the employee is the source of information for what they have as discloseable. If there is something Staff is disclosing, a supervisor should review the form to make sure there is no conflict.

Chairperson Kishimoto asked if it was a conflict or just a report.

Ms. Brouchoud corrected and said that it was a reportable interest, and then they review with the supervisor so the supervisor can ascertain the situation and see if there is a conflict of interest.

Mr. Keene said that the supervisor's responsibility is not to determine if the form has been filled out correctly. Their responsibility is to say that based on how the employee has filled out their form where is the nexus with any issues in the organization.

Council Member Barton stated that employee hotlines have symbolic value and some value in improving the organization.

Chairperson Kishimoto asked for clarification when the employee fills out a conflict form is it clear who they can call with questions.

Ms. Morariu said her understanding was that there were resources in the City Clerk's office, as well as the City Attorney's office.

Mr. Keene said that we ought to be sure that the link to the Fair Political Practices Commission (FPPC) is listed for Staff.

**MOTION:** Council Member Barton moved, seconded by Council Member Espinosa to accept Staff recommendation to review and accept the final responses to the Auditor's 2008 Audit of Employee Ethics Policies.

**MOTION PASSED:** 4-0

3. City Oversight of the Palo Alto Airport: Biannual Progress Report on Negotiations with Santa Clara County and Other Steps Including Consideration of Recommendations to Council on: Approval of Airport Mission Statement; Acceptance of the Proposal from R.A. Wiedemann & Assoc. for Airport Business Plan and Airport/Community Value Analysis; Authorization of a \$105,000 Contract Based on the Proposal; and Approval of a Budget Amendment Ordinance to transfer \$80,000 from the City Council Contingency account to the Capital Project Fund to provide funding for the Business Plan & Airport/Community Value Analysis (CIP Project AS-09000, City of Palo Alto Municipal Airport Transition Project).

Bill Fellman, Real Property Manager with the Administrative Services Department noted that the report is basically the second bi-annual report for the Palo Alto Airport and it also contains a mission statement which is why they are before the Policy and Services Committee. Staff is also looking for additional funding for the business plan. He gave a brief history: In 1967, the City entered into a fifty cent per year lease with the County to manage the Palo Alto Airport along with the County's two other airports. In 1987, the City and the County created the Palo Alto Joint Community Relations Committee which was set up to deal with a noise issue, and the committee has broadened its scope to where it covers just about everything that happens at the airport. He introduced David Cremer, current chair of the Palo Alto Joint Community Relations Committee. In November 2005, the County airport plan was proposed to raise tie-down rates and fuel fees at the Palo Alto Airport to pay for an outstanding advance, and the rates would be higher than the other two county airports. This is what spurred the City's interest in what was going on. In June 2006, the City Auditor reviewed the Palo Alto Airport financial situation and declared that the County was unable to document the outstanding advance and a fee increase was not warranted. In December 2006, the County Board of Supervisors adopted the County Staff recommendations to: not manage the airport beyond 2017; offer the City the opportunity to take back the airport prior to 2017; not spend any money at the Palo Alto Airport on repairs or improvements that were not safety related or do not increase revenue; and increase tie-down and fuel fees to pay back the outstanding advance. In December 2006, the City Council appointed the Palo Alto Airport Working Group (PAAWG), and Chuck Byer and Ralph Britton are here and they are the co-authors of that report. In 2007, the City retained the services of R. Austin Wiswell as an advisor to Staff on airport matters. In November 2007, Council accepted the PAAWG report declaring the Palo Alto Airport as an important economic asset and Council directed Staff to begin negotiations to terminate the lease with the County prior to 2017 and report back to Council on a bi-annual basis. In June 2008 the first bi-annual report and budget for 2009 established a CIP of \$50k to hire contractors to prepare a business plan and a hazardous materials investigation.

Chairperson Kishimoto asked what is being asked of Council for action.

Mr. Fellman stated to approve and adopt the mission statement and a recommendation for approval to the full Council on the Budget Amendment Ordinance.

Council Member Espinosa asked what the timeline over the next year would be for this process.

Mr. Fellman said that if Council approved the budget for the report, it would take 6-7 months to prepare. Staff would probably be back November 2009 with recommendations on the report.

Council Member Espinosa asked whether Staff recommendations would be whether the business model made sense for Palo Alto.

Mr. Fellman said the report would include a lot of things, and that's where they ran into trouble and underestimated what the cost of the report would be. The scope changed to include recommendations on whether it should be run by City Staff or by a third party to look into the County's claim about the outstanding balance, make a recommendation on that, to compare Palo Alto Airport with airports in general. The person who responded to the bid, Weidemann, was just dead-on with everything they were looking for. He's done forty of these reports, and this will be an outstanding report that we can use not just to decide whether we want to take the airport on now or in 2017, but also to guide us beyond that and to make recommendations on ways the airport may be able to generate more income.

Lalo Perez, Director of Administrative Services said the other concern was that in that timeline, there is activity that is going to cease or slow down in terms of maintenance for work. The hope is that we get some information back that alerts us to what potential areas we need to be concerned about that the County may not address, that we will take on as a liability once we take possession.

Council Member Espinosa said that what he read was that by next year the City needs to make these tough decisions. We need to make sure we have all the information needed to make these decisions and it's going to cost us more to get that information.

Mr. Fellman said yes.

Council Member Barton said that he has no idea why we would want to operate the airport, or have anything to do with it. He has left his mind open and that is why he voted to send out the Request for Proposal (RFP). He said he would support a Motion to do this, because we need to see the business plan, and he could be proven wrong. He didn't think anything the Council has done has locked them into doing anything. If this business plan

comes back and it says the margin is too narrow and there is potential risk to the general fund, we still have the ability to do something else.

Vice Mayor Drekmeier said that he is also torn. He has tremendous admiration for Ralph Britton. He said he is a big believer in local self reliance and one of our challenges is money and the other even bigger challenge is land. When he thinks of what we can do with these 104 acres for zero waste, with resource recovery and composting all of our food waste, and still have land for generating renewable energy locally and revenue generation, it seemed to him from the report we would be looking at a million dollars profit annually.

Mr. Fellman said that was approximately what the County is generating now.

Vice Mayor Drekmeier said there are people who feel very passionately about it and the arguments about the importance of it for the Stanford Hospital and other things. He feels that if we want to give future generations a fighting chance, we have to be the role model in Palo Alto and it may mean making some tough decisions, and he didn't see the airport as being the best use of the land.

Council Member Barton said this is going to give us some numbers to have that discussion. It's a reasonable amount of money, and he thinks it is worth doing. He thinks that going ahead with this makes a lot of sense and encouraged Council to support a Motion.

Chairperson Kishimoto said that one thing it does not do is compare it with alternatives to an airport.

Council Member Espinosa said that is correct. The question here is an important part of Palo Alto in terms of a resource, and it is very visible and will garner a lot of attention. What they are really talking about is getting the Council to a point where a study can be done so they are able to get all the information they need on the table.

Council Member Barton said the report would tell them a lot, from a business point of view of an airport. It's not fair to ask Staff to also say, compare that to flight fields or compare that to composting at this point. The Council's direction as much as he might disagree with it, is that this is going to be an airport, and to figure out the best way to keep it an airport. If the business plan comes back and the majority of the Council is

convinced that this isn't a good use of this land, then we should have that conversation about what else it should be.

Chairperson Kishimoto stated that Council did adopt a policy to move in this direction.

Mr. Fellman confirmed that direction from Council was to start negotiations to take back the airport before 2017.

Mr. Perez stated that was why they didn't present any alternatives, because they were going based on that policy direction.

Vice Mayor Drekmeier said the direction was to take control of the airport and that could be interpreted that we want to run it ourselves or maybe we want to use it for something else.

Chairperson Kishimoto said that if Council would get the report by November and there are a serious number of people on the Council who are interested in alternatives, that would set Staff back another six months on this project.

Mr. Fellman said that from a Staff level they tentatively talked about June, 2011 as the transfer time, so in his opinion, there is still plenty of time once the report gets back to do whatever Council wants to do.

Council Member Barton said they need to be respectful of the Council's approach, in that this being an airport, they were going to cover all the bases, and it would be unwise of them to change that without going back to the full Council.

Chairperson Kishimoto asked that in looking at the revenue side of the equation, would they also look at costs.

Mr. Perez said they would have to review the existing agreements that are in place between the County and the Fixed Base Operators (FBOs), and that is part of the analysis.

Chairperson Kishimoto said that she was talking about the potential rents.

Mr. Perez said that the people we would charge rent to would be the FBOs and because they have an existing contract with the County, we would have to take a look at the contract wording.

Chairperson Kishimoto asked about going to a third party manager of the airport.

Mr. Perez stated that, post 2017, when the contracts expire it would all be fair game. Staff would be able to put in place any agreement or rent that Council approved.

Chairperson Kishimoto said she had a suggestion on adopting a mission to add some wording about compatibility with the mission of the Baylands Master Plan (BMP).

Council Member Espinosa asked what they thought that does, and what did they think was in the BMP that might run afoul of the airport plan.

Chairperson Kishimoto said that, for instance, the BMP talks about no new runway, no increase in the intensity of the lighting, and it's really telling those who are on our airport advisory groups that they should read the BMP and be aware of the sensitive environment they operate within.

Vice Mayor Drekmeier agreed that it should be compatible and not conflict with the BMP. He asked if that was the understanding going into the study, because obviously densifying the airport could bring in more revenue. In a way we want to increase revenue, but we really don't want to change anything.

Mr. Fellman said the simple way to increase revenue is to provide hangar space, and that would actually cut down on the number of planes that can be stored at the airport, because a hanger takes up more space than using a tie-down.

Vice Mayor Drekmeier asked if the BMP restricted hangars.

Mr. Fellman said it didn't restrict hangars, but where they got into issues with the County was the development of the eight acres, the vacant spot on Embarcadero. There are things that can be done that can create more hangar space without developing the eight acres.

Council Member Barton said he had no problem with the mission statement and appreciated Chairperson Kishimoto's addition to it, and asked why we need the mission statement now.

Mr. Fellman said it could be modified later on, but by adopting the mission statement early on is setting the goal of what we think the airport should be and how it should be run.

Council Member Barton said that it was if they were putting bounds or limits on this economic study.

Council Member Espinosa noted that he feels strongly about the BMP. In doing research about business modeling and revenue generation, he just wanted to make sure we are allowing for creativity and getting all options on the table. The intention is to ensure the airport is conforming to the framework of a plan that values the Baylands.

Mr. Perez said that it was Staff's obligation to report that to Council if that's the findings in the business plan.

Mr. Fellman said that the scope of the business plan also counts for the inconsistencies between the current master plan and the current County airport plan.

Mr. Keene said that a concern that he wanted to put on the table was an honest assessment of Staff's ability to absorb the running of an airport is really important. We have so many things on our plate, so many commitments we have already made in areas we are hard pressed to fulfill. Staff needs to be realistic on the impact of this on all the other initiatives and obligations we have as an organization.

Chairperson Kishimoto referenced Page eight of ten, and the County keeping the excess funds every year rather than using it for local matching, and were we able to do anything about that.

Mr. Fellman said that we can't do anything now, but that it would be part of the negotiations with the County.

**MOTION:** Council Member Barton moved, seconded by Council Member Espinosa to accept Staff recommendation that the Council 1) review and approve the Airport mission statement proposed by the Palo Alto Airport Joint Community Relations Committee (PAAJCRC); 2) accept the attached proposal from R. A. Wiedemann & Associates for preparation of a Palo Alto Airport Business Plan and Community Value Analysis (Airport Business Plan); 3) direct Staff to negotiate and authorize the City Manager or designee to execute a \$105,000 contract with R. A. Wiedemann based on

its proposal; and 4) adopt the attached Budget Amendment Ordinance (BAO) in the amount of \$80,000 transferring funds from the City Council contingency to the capital project for increased funding for the preparation for the Airport Business Plan.

**MOTION PASSED:** 3-1 Drekmeier no.

3. Discussion of Upcoming Meeting Dates and Topics

December 9<sup>th</sup>-Prevailing Wage

ADJOURNMENT: Meeting adjourned at 8:10 p.m.

**In compliance with the Americans with Disabilities Act of 1990, listening assistive devices are available in the Council Chambers and Council Conference Room. Sign language interpreters will be provided upon request with 72 hours advance notice.**