



POLICY AND SERVICES COMMITTEE

Regular Meeting
July 12, 2011

Roll Call

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

Present: Burt, Klein, Holman, Price (Chair)

Absent:

Oral Communications

None

Agenda Items

1. Further review and discussion regarding possible charter amendments to (1) repeal binding interest arbitration provision in city charter for public safety; and (2) substantially modify binding interest arbitration provision in city charter for public safety.

City Attorney, Molly Stump reviewed the draft Resolution calling for a repeal of Binding Arbitration, the accompanying Ordinance which would require mandatory mediation, and the Interest Arbitration provision. She explained the changes that had occurred and requested the Committee's direction. She stated Staff worked on the "where as" portion of the draft Resolution per Council Member Holman's request. She noted the body of the Charter Amendment itself presented to the Committee previously was a complete strike through of article 5; which was the Binding Interest Arbitration provision. She stated Section 7 was a substantive area of change regarding the effective date for a Charter Amendment. State law required that an item approved by the voters was effective no sooner than the date the election was certified by the City Council and filed with the Secretary of State. The draft showed the earliest legal

implementation date for a straight repeal; that meant any matter which had not progressed into a binding resolution under the prior language, would then be under the new procedures; which would be no Interest Arbitration. She reiterated the procedure; once Arbitration had begun there was an Arbitration Board, there were proceedings, evidence was received, and each party at the close of the evidence submitted final offers. The Board would then issue a non-public decision to be transmitted to the parties remaining with them for ten days. This would provide both parties an opportunity to work with each other and consider whether they would agree to any modifications. At the end of the ten day period the decision would be binding and both parties would need to take necessary steps to implement the decision. Under the suggested effective date any matter which had gone to the ten day period would then become binding, was resolved under the prior procedure; however, if the matter had not gone the ten days the matter would fall under the new rule of no Interest Arbitration. Staff was asked to draft an Ordinance which required mediation. This meant all disputes between the City and all employee groups would use mandatory mediation with respect to certain impasses. Staff incorporated the two most significant restricting aspects of the types of impasses: 1) mandatory subjects, what was required to be bargained under State law and 2) items under negotiation as part of a Memorandum of Understanding (MOU). She noted the items which could be excluded from mediation under that type of a proceeding would be management rights that the City may for good labor relations want to discuss or items that may have come about during the terms of a Memorandum of Agreement (MOA). She clarified the basic time framework was parallel to the proceedings as the Binding Interest Arbitration modifications. The section stated that 180 days prior to the expiration of an MOA the City as a Union would chose a mediator and it was required if no agreement had been reached during the negotiation 30-days prior to the expiration of the MOA or whenever impasse had been declared the parties would start the mediation process. The parties were obligated to participate in the process for 14 calendar days after which they were no longer obligated to continue if the mediation had not been successful; although, the parties could continue if the decision was made upon mutual agreement to do so. The final section indicated the cost of mediation would be shared between the City and the employee group.

Council Member Klein stated he did not see a provision where the parties could opt out.

Ms. Stump stated that was correct, mediation would be mandatory.

Council Member Klein stated there should be a provision allowing parties to opt out of the mediation process if they so chose.

Ms. Stump stated Staff could add the provision to the draft.

City Manager, James Keene stated if both parties agreed to no mediation the provision would apply.

Council Member Klein stated currently there was the option to proceed with mediation; he requested there be an option to not proceed with mediation.

Ms. Stump clarified the suggestion was to set-up mediation as a requirement unless both parties agreed to opt out of the procedure.

Council Member Burt stated his agreement with adding the opt-out provision.

Council Member Holman shared her agreement to the provision and asked what the procedure would be if one party opted out thereby creating a hostile environment in mediation. If the provision required both parties to agree to opt out of mediation, both parties should need to agree to enter into mediation as well.

Council Member Burt stated he felt the purpose of the provision would be to obligate both parties to go through the mediation process and he noted there would always be a party that may not be enthusiastic about participating in the process.

Ms. Stump stated under the current procedure where there was no rule on mediation, both parties could agree to use mediation. The mediation process did not require the parties to reach an agreement but there was value in going through the process of having a neutral third party.

Chair Price stated the issue of requiring mediation was important. The City had been in situations recently where different sides at different times were willing to participate in the process. She felt it was useful to require both parties take steps to reach a solution. She asked whether the City had the right to impose mediation.

Ms. Stump stated if the two pieces brought before the Committee were adopted, in the coupling of the repeals Resolution and the Ordinance then yes that was correct. There was a State law which indicated that once the parties had gone through the contract negotiations, having reached impasse, and used any local in part procedure, in the case of Palo Alto would be mediation then the City would be able to implement its last offer.

Chair Price stated in the context described that could be the outcome of the current situation.

Ms. Stump stated that was correct.

Chair Price stated that was what had happened in the past.

Council Member Klein stated that was incorrect, in the recent past there was no mediation.

Senior Deputy City Attorney, Melissa Tronquet stated during the 2009 negotiations there was no mediation because local rules did not require it which was why the situation went straight to implementation.

Chair Price asked what items would be excluded from the mediation process.

Ms. Stump stated it was broader than what was expressed because during the MOU or MOA negotiations either party could open new topics which would be appropriate for inclusion in an MOA. If those topics became subject of the bargaining and there was an impasse there would then be a mandatory mediation.

Chair Price asked whether there was Staff knowledge of other communities were they had mandatory mediation.

Ms. Tronquet stated what Staff was proposing was similar to what Stockton, San Francisco, and San Leandro had.

Ms. Stump stated Staff could retrieve further survey data if directed to do so.

Daryl Murray, IDEA, mentioned a number of the transit statutes in California had a provision that required the parties comply with mediation upon the request of either party after a certain period of negotiations.

Council Member Burt stated that there had been occasions in the private sector where both parties had been directed to go into mediation, and that even though one party entered with skepticism there was a resolution which otherwise would not have occurred.

Ms. Stump asked for clarification on whether the Committee wanted language to allow for this Ordinance to be adopted after the Council break and before an election.

Council Member Burt stated in moving forward with the Staff recommendation Council would have communicated clearly to the electorate what process would be in place after the election; but that would occur only if Council opted to put the repeal on ballot. He asked, if the Council opted to put the reform on ballot, what would be the point in adopting the Ordinance.

Ms. Stump stated it could be adopted thereby showing the processes, there would be mandatory mediation and then Arbitration.

Council Member Burt stated the Ordinance was initially envisioned to be coupled with the repeal rather than the reform. Under that assumption the Council would not want to adopt the Ordinance unless Council were placing the repeal on the ballot. He clarified he would support adopting the Ordinance if Council elected to put the repeal on ballot.

MOTION: Council Member Burt moved, seconded by Council Member Holman to recommend the City Council accept the proposed language that coupled the proposed Ordinance with a vote to repeal Binding Interest Arbitration.

Council Member Holman suggested adding a language into the Ordinance or a second Ordinance stating if neither party agreed to mediation it was not required.

INCORPORATED INTO THE MOTION WITH CONSENT OF THE MAKER AND SECONDER that language will be added to the ordinance, or a new ordinance will be created stating that if neither party agreed to mediation it would not be required.

Chair Price stated she did not support the Motion because the mediation language was in the context of the Charter repeal. For this language to be used in advance to the electorate making the decision was premature.

Council Member Holman stated her agreement with the logic behind the statement made by Council Members Price; although the Motion showed good faith as to what was intended. The language in the Motion was the Committee's agreement to mediate should Arbitration be thrown out.

Chair Price stated she felt there was ample time to address the language if there were sufficient votes to put it on the ballot. She approved of the concept as a process.

Council Member Klein stated his support as the Motion applied to all of the bargaining units and it would set-up a time system. He felt having such a system in place was beneficial sooner rather than later.

Herb Borock spoke on the general Item of a Ballot Measure. He stated in August 2010 the Council voted against placing a measure to appeal the Charter provision for Binding Arbitration and currently there were only four Council Members who wished to repeal. He felt there could be a compromise between the employee groups and the Council. He did not feel it was productive to for the Council to reconcile the two positions.

Fred Ingle stated he wished for a democratic government and at one point the citizens removed the authority from the Council by amending the City Charter. Now there was an issue with the budget being overrun and the citizens complain to the Council who feel unable to do anything because of the City Charter. He felt it should be returned to the citizens to decide whether to remove it from the Charter or not.

Bob Moss shared information regarding Clearwater Rhode Island, a small town about to go bankrupt. The State of Rhode Island had a law which required Police and Fire to engage in negotiations on all matters regarding income, payments, and policy regarding work. If the negotiations fail it was required Binding Arbitration; as a result, the Firefighters in Rhode Island were the highest paid in the entire country with their Police being the sixth highest paid. He noted Arbitration being allowed to go on unfettered could have serious impacts on City budgets and services.

Herb Borock spoke regarding mediation. He stated if the Committee proceeds with the mediation Ordinance it should be mandatory.

MOTION RESTATED: The Policy & Services Committee recommended the City approve an Ordinance that would require mandatory mediation and would be effective should Arbitration repeal be adopted by the voters and allowing for mediation to be bypassed if both parties agree to do so.

MOTION PASSED: 3-1, Price no

Chair Price asked when Staff would be prepared to move forward to the full Council.

Ms. Stump stated the additional language could be added to the draft promptly. She believed the schedule noticed to the public was for the item to return to the Committee on Thursday, July 14, 2011. Once the Committee approved the changed documentation it would be presented to the full Council on Monday, July 18, 2011.

Council Member Holman stated the requested changes were minor. She said the packet for the July 18th Council Meeting would be released the following day. Language could be included to indicate whether the Committee would be meeting on the day after packet was released.

Council Member Klein stated the earliest the information could be sent out would be the following Friday.

Council Member Holman agreed but added that information regarding the agenda should be released as quickly as possible.

Council Member Burt stated the Committee had been directed by the full Council to present both alternatives; a repeal and a reform.

MOTION: Council Member Burt moved, seconded by Council Member Holman that the draft Resolution attached to the Staff Report calling for an election to repeal Binding Interest Arbitration be referred to Council for action and consideration.

Council Member Holman stated the draft Resolution was accurate and contained the suggestions made by the Council; however, the second "where as" on the resolution did not appear to be a strong enough statement.

INCORPORATED INTO MOTION WITH CONSENT OF MAKER AND SECONDER to change the language on the proposed ordinance, the second "where as" from tools to means, or other language as recommended by City Attorney's office.

Chair Price stated her understanding was the request of the Council was to bring both options forward. She stated no matter what the personal opinions were with respect to either the repeal or reform it was not directly related to this particular Motion.

Ms. Stump clarified the Committee had discretion on how they wished to handle the matter before them; although, ultimately the Council would make the determination which required a vote of five or more.

Council Member Klein stated the Policy & Services Committee had an obligation to return to the full Council with two documents for their consideration. He stated he would vote accordingly to support the Motion although his vote may vary during the Council meeting. He noted the repeal language was easier to draft and the document was basically completed although felt it should not move forward to the Council packet tomorrow before the work was complete with respect to the reform document.

INCORPORATED INTO THE MOTION WITH CONSENT OF THE MAKER AND SECONDER the item will not move forward to the full Council until both documents had been completed.

MOTION PASSED: 4-0

Ms. Stump reviewed the elements of Article V of the Charter. She stated there had been changes made where language was removed shown by a strikethrough and language added shown as underlined. Section I changes were reflective of the California State law stating that strikes by public safety employees were unlawful. Section II had a minor change in the wording; the word willfully had been inaccurately spelled and corrected. Section III had two changes; the first was a minor change

indicating there was a mutual obligation between the employee group and the City to negotiate and in the second change the following language was added “and endeavor to reach agreement on matters within the scope of representation under the Meyers-Millias-Brown Act prior to the City’s adoption of its final budget for the ensuing year.” This language was a provision in State law and therefore was incorporated. The changes to the latter part of the paragraph were setting up the proposed application of Interest Arbitration to a more limited set of impasses. Under these changes the Charter would specify there could not be unilateral changes with respect to matters which were subject to Interest Arbitration under the new reform Interest Arbitration provision. That would then move all other matters into the standard state and the process was to negotiate matters within the mandatory scope, impasse if it were reached, and then implementation. She explained the last sentence of the paragraph set-up the operative legal language which provided for two categories of impasses; those which were subject to Arbitration within the reformed article and the other impasses which were not subject to Arbitration which would be handled through the standard state processes. Section IV paragraph (a): set-up recovered items; the items that would be subject to the Interest Arbitrator’s jurisdiction, paragraph (b) specifically excluded items which were not included in paragraph (a) or called out to be sure that there was an understanding that they were not covered.

Council Member Klein asked what would be subject to the Arbitration as far as pension and medical. His understanding was the medical coverage would not be covered under Arbitration but the costs of the medical expenses were subject. For example if the current medical plan was \$10,000 per employee and the City changed the plan to a lower cost plan that would not be subject to Arbitration.

Ms. Stump stated as long as all of the procedures had been followed with respect to CalPERS and the appropriate negotiations process that was required then the change would not be subject to Arbitration.

Council Member Klein asked whether changes to the pension plan, assuming all of the CalPERS rules and regulations were followed, would be subject to Arbitration. For example if the City chose to change to a two or three tier plan.

Ms. Stump stated it would not be subject to mandatory Arbitration under the drafted language.

Council Member Klein stated the cost share portions of the plan change would be subject to the mandatory Arbitration.

Ms. Stump stated this was not a policy matter. Council could choose to place both items in a mandatory Arbitration setting or leave them both out of the mandatory

Arbitration setting and put them under the State law process.

Chair Price asked for clarification that the employee/employer share discussion would be a subject under this language.

Ms. Stump stated that was correct.

Chair Price asked for clarification with respect to overtime costs. For example the Staffing at Station 8 in the foothills and other past decisions by Council related to ambulance services. She stated there had been Council decisions related to the use of overtime which had impacted the budget. She noted often in discussions regarding costs for services that was not stated as a clarifying point. This had significant financial impacts on the overall costs of services. She understood some of that had been dictated by prior Council decisions. Her goal was to find a way in which the statement was clear that in the considerations of the overall costs there should be recognition of the point she was making.

Mr. Keene stated Staff would reflect how to communicate that point but he believed it would not be part of the draft language as it was written for two reasons; there was overtime in the Fire Department that was generated by City or Council policy that was not a matter of the contract or MOA between the Firefighters Union and the City. That would not be bound by Binding Interest Arbitration. However there were items such as minimum staffing which was a part of the contract and could generate additional overtime use that currently could be subject to Binding Interest Arbitration. He suggested this was the manner in which the City Attorney's office had drafted the reform language and removed from Binding Interest Arbitration all of the items relating to staffing levels, work rules and the like would no longer be subject to Binding Interest Arbitration. The City could choose during a negotiation to enter into agreements that could have conditions but would not be subject to Arbitration.

Chair Price stated due to the policies minimum staffing was exceeded at times.

Mr. Keene stated that was correct and he felt it was an additional impact on top of the existing minimum staffing requirements that were in the contract.

Ms. Stump stated Section V, paragraph (c) the additional language referenced to the 180 days prior to the expiration of the MOA and where the language began its referral of the Arbitration Board as a Mediation/Arbitrator which was the model the Committee requested Staff return with. Another change was that the neutral party would be an attorney, qualified as an Arbitrator, and a member of the National Academy of Arbitrators.

Council Member Klein stated his preference would be for the attorney to be licensed and practicing in the State of California.

Ms. Stump stated there were two manners in which to address the timeline issue; Council could add language to clearly state the parties needed to make reasonable efforts or it could be a requirement that the parties schedule the arbitration hearings to allow them to be completed prior to the adoption of the budget. The changes to paragraph (d) added a phrase that denotes there were other procedures which needed to be complied with or governed over the California Arbitration Act. The changes to paragraph (e) referred to technical issues that made it clear that the voters were requiring that all of the procedures be followed which was connected to the ability to make judicial challenge in the event that did not occur. The second change in paragraph (e) was the mediation piece of the Mediation / Arbitration model that the Committee asked for which allowed the neutral party to ask as both, the mediator and the arbitrator and to be flexible and work back and forth between those two roles and also to adopt other reasonable procedure which would lead to an agreement or reduce the cost of the process. The changes to paragraph (g) were based around two factors which had been discussed between Staff and the Committee. The factors were procedural items and the others were more purely factor items so the items were broken out into list numbers 1 through 3.

Council Member Klein requested the City Attorney discuss the differences between the preponderance of clear and convincing standards.

Ms. Stump stated the general evidentiary standard that governs this situation was the preponderance standard. She said if the evidence was close it would not meet the standard written in the draft Resolution. In paragraph 2 under (g) the arbitrator had two main tasks 1) to identify the City's costs for all of the City's services based on the City's officially adopted financial documentation and 2) use the officially adopted financial documentation to identify where the City's revenues were in terms of growth, lack of growth, and long range financial projections. The third procedural item was the arbitrator needed to review the items submitted to Arbitration in light of the full or total compensation cost of the contract including the cost of ongoing items and new items. The changes to paragraph (h) prioritized the direction and determination of the arbitrator. The changes to paragraph (i) set-up a list of things in no event the arbitrator may do.

Council Member Klein asked for a clearer explanation of paragraph (h) item 2. He understood retroactive increases in compensation although it also stated if the City did not get the contract completed on time, the existing compensation remained in tact. He asked what the remedy would be for that situation.

Mr. Keene stated that situation applied if there was not an increase pursued but rather a decrease in compensation.

Council Member Klein agreed but said he was concerned if for example six months after the end of a contract an agreement was reached that included a 5% reduction in compensation. Would there then be a 10 percent reduction for the remaining six months of the year to make up for the total five percent reduction overall.

Ms. Stump stated the language only prohibited retroactive increases the language could be changed to prohibit retroactive decreases.

Council Member Klein stated no, he did not want to prohibit the decrease. His question concerned what would ensure the agreement was in place to complete the negotiations within the timeline.

Ms. Stump stated in the draft Resolution at the top of page 3 the parties were required to have a schedule where the Arbitration hearings would be completed prior to the adoption of the budget. Most cities completed their contracts at the same point at which the prior agreement expiring.

Council Member Klein stated there was a history of not completing the contracts prior to their renewal. He asked how to reach the desired five percent reductions per year when the year was half over. He asked whether there could be an imposed 10 percent reduction for six months with a five percent reduction beginning the second year. Or, could the arbitrator do the same thing considering this would be an arbitration matter.

Ms. Stump stated under the current draft Resolution compensation items went to the Interest Arbitrator. If a reduction in salary of five percent was the goal, than that could not be imposed under the current draft; it would need to go to arbitration. She noted if the contract had expired and the parties were in Interest Arbitration that was a matter for the City to make its offer settlement to reflect the structure the City desired.

Council Member Klein asked what would happen if the parties were just under the time line. He wanted to know if the City would be within their rights to impose a ten percent reduction for the remainder of the year to reach the desired factors.

Ms. Stump stated assuming the City had bargained in good faith and reached impasse that would be something the City would have the ultimate authority to do.

Chair Price stated the Mediation / Arbitration which appeared to be a blended approach made a lot of sense since it did provide additional flexibility. If anything, it encouraged that the resolution be achieved through mediation rather than move into Arbitration.

She stated given the complexity of the negotiations and the other items before them it made more sense to have a single person involved. She asked whether the language on the top of page 3, the last sentence in paragraph (c) was the exact language as San Francisco's Mediation / Arbitration process.

Ms. Stump stated she would research the question and return with a response. She did recall the draft language was clearer than San Francisco's.

Chair Price asked Staff if they felt the language captured one of the Committee's earlier concerns that the decisions be made prior to the adoption of the budget.

Ms. Stump stated the current draft Resolution had a number of elements which were not present in the current procedure and she was confident the matter would be resolved in the time frame. In an environment where there were increases available on compensation the draft clearly stated it did not allow for retroactive implementation.

Chair Price stated the issue of not being retroactive was a catalyst for all parties to seek a resolution.

Ms. Stump stated the language in the draft would perform the function of a timely resolution although in the past several years where the City had been in a reduction environment it would not necessarily have had that practical effect.

Chair Price stated under paragraph (g), number 1, clear and convincing evidence; she asked who had authority to make the determination about what was clear and convincing.

Ms. Stump stated the arbitrator had the authority.

Chair Price stated the arbitrator would review the facts, figures, and findings presented by each party and with that information the arbitrator would make the determination whether it was clear and convincing evidence to make a decision. She stated they were required to review both parties documentation.

Ms. Stump stated that was correct in the first incident, although in the City's opinion there was sufficient evidence to show that the amount of evidentiary burden had not been met or that the arbitrator did not follow the standard there was an opportunity for the City to go to court and request a judges' ruling.

Chair Price asked if the arbitrator's judgment was challengeable in the process.

Ms. Stump clarified the question by asking if the employee group felt they had provided

sufficient evidence to show that the City's financial documents were in error on a point and the arbitrator were not to find that error, under the draft either party had the ability to go to court.

Chair Price asked for clarification on paragraph (i), item 3 regarding the classification/compensation system.

Ms. Stump stated compaction with respect to other classes or units worked in two ways. There were both rank and file and a management group in the same public safety organization.

Chair Price stated for clarification that statement referred to the safety unit and not other bargaining units.

Ms. Stump stated that was correct. And the other potential issue for salaries to be in the City's view to be out of order with the other public safety entities was covered by the language under compensation.

Mr. Keene clarified if an award for Police Sergeants could be so significant that they could impact the salary level between a Sergeant and a Lieutenant technically a Sergeant would be receiving a higher salary than a Lieutenant.

Ms. Stump stated the changes to paragraph (j) added a requirement that the arbitrator had to submit written findings procedural and substantive factors. The reason for the addition was it allowed the parties to understand how the arbitrator had completed the job and reached their conclusion. The second addition was either party had the authority to judicially challenge the decision of the Arbitration Board. The change to paragraph (k) simply added the work Mediation to Arbitration to show the new model. There were four new procedural sections added; section 5 covered the transparency, section 6 covered the RIT of mandate, section 7 covered the filing with the Secretary of State, and section 8 covered the voters' intent.

Council Member Klein asked for clarification on the terms of the Arbitration Hearing being open to public. He stated the hearings should be open as a court room is open to the public, but not open as a Council meeting is. He suggested language be added to specify the understanding the public did not have the ability to speak during the hearing.

Chair Price suggested the term be: to observe only.

Council Member Klein stated he agreed with the suggested term.

Ms. Tronquet stated she would add the verbiage: shall be open for observation by the public.

Council Member Burt asked for clarification on section 7. He asked for the City Attorney to run through from a practical standpoint if the City was in the midst of a negotiation under the repeal and reform what might happen.

Ms. Stump stated if the parties had gone through the Arbitration proceedings and all of the proceedings had been completed, the evidence was in, and both parties had submitted their final offers. Under the old rules of repeal; once the effective date occurs, Interest Arbitration proceeding would no longer be in existence and you would be under State law in terms of determining and establishing the new contracts. Under the draft reform implementation; that process would continue and the arbitrator would retain jurisdiction, make a decision and that decision would be binding.

Council Member Burt stated in the current situation with the draft it was possible under reform the new rules would not impact the outcome and under repeal the new rules would impact it.

Ms. Stump stated without reference to a specific proceeding it was difficult to respond accurately. The manner in which the effective date was drafted for reform it would be said that if the arbitrator had the matter for decision or in the ten days after the decision had been issued, the prior proceeding would not be disturbed. Under the repeal effective date that would only happen if it got to the point under the prior procedure where it was binding. She reiterated this was a policy decision for the Committee and the Council so it could be drafted differently. The dates could be pushed out further.

Council Member Burt asked whether the dates could be brought in closer.

Ms. Stump stated with respect to the repeal it was at the earliest possible implementation date. With respect to the reform, until it was binding under the existing procedure it was not binding and the voters could make a change.

Chair Price asked for clarification, if the proceedings were in the middle of the ten-day period, a decision had been made and if the repeal issue was to take effect, how would that impact the situation.

Ms. Stump stated the impact would be when the end of the ten-day period was reached the language would no longer be in the Charter saying that that decision was binding and all parties had an administrative duty to implement it, it would be under the State law procedure. She noted that would give the City the option to implement but not

require the City to implement the decision because it did not become binding before the voters removed the procedure.

Herb Borock stated the frequent use of the term clear and convincing evidence was not in the draft language under paragraph (h) but rather by a preponderance of the evidence. He stated it made it unclear as to what was being referenced.

Mr. Keene stated the language clear and convincing evidence was in paragraph (g) item 1.

Mr. Borock stated in section 6 the language a failure to comply with the provisions described in this article shall also constitute an act in excess of jurisdiction. He noted there was not a clear understanding of the meaning. He stated under section 8 the objective of the new section was to replace the existing language on compulsory arbitration. Normally if something had been declared invalid by the court the existing provision remained in tact. He mentioned the effective dates were in concert with the adoption of the budget yet the budget was in a two-year cycle where the second year was in concept.

Bob Moss stated his concern for some of the items under the exclusionary clause under paragraph (b) item 10 and in paragraph (c) he asked why the process would wait until there was a dispute to select a certified arbitrator rather than begin the process with one. He stated it was not clear why the certified arbitrator needed to be an attorney.

Ms. Stump clarified the manner in which the language was drafted allowed for both the City and the Union to choose someone who was not certified, that would require both parties agreement. She clarified the reason behind all three members of the Arbitration Panel meet the qualifications; the structure was dissimilar to the court of appeals where there were three judges who were all attorneys who were appointed by the Governor, they hear a matter equally and then vote. The three parties were all impartial, that was not what was intended with the Arbitration Board structure. The intention was there was one neutral party and with each party was able to select someone who was an advocate to sit on the panel. The three member Arbitration Board was made up of a single neutral body who had the authority to make the decision and two other bodies who were selected to advocate for each side.

Council Member Klein stated in response to Mr. Moss's concern the reform measure was being revised and in many ways narrowing the subject which led to mandatory Arbitration.

Council Member Burt asked whether the legal counsel or City Staff had reviewed the ramifications that Mr. Borock brought to the discussion with respect to the Stanford

contract and how this provision might affect it.

Ms. Stump stated this provision would state which services the City of Palo Alto would need and the number of persons necessary to accomplish those needs. The City Council and the City Manager retain control over the needs of the City and those decisions were not subject to Arbitration.

Council Member Burt clarified there would still be negotiations between a third party and the City as was done currently.

Ms. Stump stated yes, the City needed to meet their legal obligations.

Council Member Burt asked the number of different elements which could be appealed to a judge.

Ms. Stump stated all of the elements could be appealed to a judge. The procedures are not mandatory.

Mr. Keene stated the items were clear regarding the arbitrator's jurisdiction and which items could be appealed. If the arbitrator ruled in the City's favor on an item which was excluded, the public safety unit could not appeal that decision to the court.

Ms. Stump agreed. Although on an item not subject to arbitration the City would refuse the issue to the arbitrator and therefore if the arbitrator touched the issue in any manner to fight it, the City would go to court and plead the arbitrator had exceeded their jurisdiction.

Council Member Burt stated for clarification the areas the arbitrator had authority to rule on were all appealable to a judge. The areas it appears the arbitrator did not have the right to rule on the City could appeal.

Ms. Stump stated the draft allowed access to court if the procedures were not followed.

Council Member Burt asked under what circumstances could a party appeal the arbitrator's decision.

Ms. Stump stated it was not sufficient to say we did not win so therefore we choose to appeal. When reasonable counsel for either party was looking at an award you would take a RIT if there was a substantial problem.

Council Member Klein stated the idea of Arbitration was to promote economy and its resources. For that reason, judges did not favor overturning an arbitrator decision.

They were available to primarily ensure the arbitrator followed the rule book.

Chair Price stated her agreement that an arbitrator's rulings were not generally challenged.

MOTION: Council Member Klein moved, seconded by Chair Price that the Policy & Services Committee forward the draft Resolution to the full Council as written with the Amendments as follows: Paragraph C the attorney should be licensed and practicing in the State of California, Paragraph H delete item 2, Section 5 to add the verbiage shall be open for observation by the public.

Chair Price requested Staff return with a response regarding the overtime issues in terms of the pre-existing policies.

Ms. Stump stated in the draft Resolution the overtime payments were under the item of compensation which could be considered. The various factors did not call for the arbitrator to specifically consider overtime costs; they discuss total compensation in terms of the standard employee benefits which were based on classification.

MOTION PASSED: 4-0

Council Member Holman stated she wished to reconsider the Impartial Mediation Ordinance. She did not believe it was necessary for a Motion. She stated in Section 5 in the revision mentioned the Arbitration Hearings being open to the public. She asked if there was a reason why they should not add the same language to the mediation provision.

Ms. Stump stated there was a reason why it should not be added. Mediation by nature was out of the public view; it was difficult to mediate successfully while members of the public or the other party were in an audience type setting.

Council Member Klein stated the observation only rule applied to Arbitration not Mediation.

Ms. Stump clarified that was the reason the transparency provision was drafted in Section 5 for the Arbitration reform to exclude the Mediation portion.

Council Member Klein stated the objective of the mediation session was for the involved party to be in an environment where they could speak freely without concern of reprisal.

Chair Price suggested a short break at 9:18 p.m.

The Committee reconvened at 9:23 p.m.

MOTION: Council Member Holman moved, seconded by Council Member Klein, to continue Agenda Items Two, Three and Four to the July 14, 2011 meeting.

Council Member Holman expressed support for the Motion, stating that the Items deserved the due diligence of the Committee Members.

Council Member Burt stated that he thought that the meeting scheduled for July 14, 2011 was contingent upon whether the Committee decided to continue Item Number 1. He commented that he would rather attempt to get through the rest of the Agenda, than to reconvene at a later date. He also noted that there were members of the public in attendance who had waited several hours to participate in the Items, and suggested that the Committee consider moving forward with at least one of the Items for which people had been waiting.

Council Member Klein stated that he would be willing to consider one additional item before adjourning, but stated that the previous night's Council Meeting had gone into the early morning and that he wished to adjourn at a reasonable time.

Council Member Burt suggested that the Committee consider one more item before their customary 10:00 p.m. check-in.

Council Member Klein agreed, but stated that at 10:00 p.m. he would vote to adjourn.

Council Member Holman voiced concern that none of the Items could be completed by 10:00 p.m.

Council Member Burt disagreed.

Mr. Keene stated that there were people in the audience who had been waiting for two and a half hours to hear two separate issues, and that the Committee would need to decide which to consider.

Council Member Klein suggested that the Committee consider Item Number Three prior to adjournment.

Council Member Holman agreed.

3. Capital Projects Percent for Art Policy Exemption and Planning Procedures

Management Specialist for the Community Services Department and Staff Liaison to

the Public Art Commission (PAC), Elise DeMarzo stated that Staff would like to tighten up the City's Percent for Art policy, applicable only to municipal projects, to make it more difficult for projects to be self-exempted. She stated that this proposal would encourage more cohesive and successful public arts projects by setting in place procedures to allow qualifying projects to be identified sooner and artists to be brought in earlier in the process. Ms. DeMarzo explained that the second part of the proposal, which states that the PAC must be notified when an art project is initiated at a location at which there is an existing piece of public art, would allow the PAC the opportunity to ensure the safety of the existing art work.

City Manager, James Keene stated that the proposed changes were logical and that their resource impact was limited to extending oversight to the PAC for issues that were previously resolved at a Staff level.

Council Member Price asked whether the proposal was a reaction to problems that Staff had experienced in the past.

Ms. DeMarzo replied that it was.

Council Member Klein inquired as to how the proposed increase in the number of Percent for Art projects and in the amount available for public art would be achieved.

Ms. DeMarzo explained that a number of projects had been deemed exempt by the project managers, and as such were not reviewed by the PAC. She stated that under the proposed changes, the PAC would have the opportunity to review all projects to determine whether a Percent for Art element is warranted.

Council Member Klein inquired as to the current procedure for self-exemption.

Ms. DeMarzo replied that there had been a number of projects in the past which, although they represented a significant visual impact, went rather far along in the process without PAC participation. She stated that the Commissioners had expressed concern as to why these projects were not presented for review.

Council Member Klein stated that there weren't many projects that would qualify for the Percent for Art program, and inquired as to which projects would qualify.

Mr. Keene replied that the Art Center was the project that prompted the proposed policy change.

Council Member Klein inquired as to the details of the Art Center project.

Ms. DeMarzo stated that the Art Center project had been adjusted to include a Percent for Art.

Mr. Keene explained that at some point during the review and design process the Project Manager for the Art Center Project had decided not to place a piece of art at the site.

Director of the Community Services Department, Greg Betts explained that the Project Manager had determined that the Project constituted a minor improvement to an existing building and did not thoroughly consider either the extent or the dollar amount of the improvements. Mr. Betts explained that the project classification was determined without consultation with the PAC. He stated that the current policy of allowing individual Project Managers to determine whether their projects represent a visual impact had resulted in inconsistencies in the application of the Percent for Art program, and that the proposal to amend that policy had received support from both the Utilities Department and the Public Works Department.

Council Member Klein inquired as to the criteria for determining whether a particular project would qualify for the Percent for Art program. He stated that he was concerned that it would be in the best interest of the PAC to favor participation in the Program.

Ms. DeMarzo replied that only projects with a significant visual impact would qualify, and that projects such as irrigation installation, replacement in kind, re-roofing or any work conducted below ground would not qualify.

Council Member Klein asked what procedures could be put in place to prevent the PAC from being inundated with requests and the Council from being overwhelmed with appeals.

Ms. DeMarzo stated that a very small percentage of projects warrant Percent for Art participation.

Council Member Holman stated that the current criteria listed in the Percent for Art Exemption and Planning Procedures is extremely contradictory. She expressed concern regarding the fact that the document does not recognize architectural design as an artistic element and noted the difficulty in adding art to small buildings such as pump houses.

Ms. DeMarzo stated that in her experience the architects who are artistically inclined are very willing to work with artists to incorporate artwork into their designs. For instance, she explained that the architect for the Mitchell Park Library and Community Center has been very open to working with artists.

Council Member Holman replied that she is more concerned about the smaller projects, where there is a much smaller opportunity for collaboration between the architect and artist.

Ms. DeMarzo stated that in those instances, the PAC may determine that there is no need for artistic intervention.

Council Member Holman stated, as an example, that it may be preferable to densely landscape medians rather than to add artwork to them.

Ms. DeMarzo agreed. She explained that the PAC could decide that a single piece of artwork on one strategically located median may be sufficient or that artwork would be a traffic hazard, but emphasized that the PAC needs to have the opportunity to consider all scenarios.

Council Member Holman asked Ms. DeMarzo if she had any suggestions on how to resolve the conflict in the criteria language. She stated that in one place the language clearly defines visual impact as "any project that significantly changes or alters a site with the addition of a substantial new construction or reconstruction," but notes that in another section "new restrooms and small structures" are used as examples of qualifying projects. Council Member Holman asserted that in her opinion new restrooms and small structures do not qualify as substantial new construction.

Chair Price stated that small structures could be interpreted in a variety of ways, and that she was satisfied with the language as written.

Council Member Holman stated that her interpretation of "significant changes" and "substantial construction" would be a project like the Art Center or a new parking garage.

Chair Price stated that she did not want to see the language become too rigid or prescriptive.

Council Member Holman agreed that the language should not become too prescriptive, but stated that she would like to see the conflicting sections revised.

Chair Price stated that the language allows for a certain amount of interpretation, but asserted that the inclusion of both sections would offer the PAC and Staff greater flexibility.

Mr. Betts stated that he understood Council Member Holman's concerns, and assured

the Committee that the potential conflict had never presented problems for the PAC in determining participation in the Percent for Art program.

Council Member Holman added that she would like to see the community embrace artistic paving treatments.

Chair Price asked whether Council Member Holman would like to suggest that the Committee add paving treatments to the list of qualifying projects.

Council Member Holman stated that she did not want to propose a language amendment, but that she would like the PAC to consider different alternatives for increasing artistic value such as paving and concrete treatments.

Ms. DeMarzo stated that such treatments could be considered in the design of a larger project that included paving or concrete elements.

Council Member Holman replied that smaller projects could benefit also.

Ms. DeMarzo thanked Council Member Holman for her suggestion.

Council Member Burt agreed with Council Member Holman's identification of contradictory language. He suggested that in the case of smaller structures, perhaps the City should consider architecture as an art element and advocate for more artistic designs. He remarked that he would like to see the document specifically reference architectural design.

Ms. DeMarzo stated that the PAC is very interested in pursuing functional art projects.

Council Member Holman expressed disappointment with the minimal, utilitarian design of some of the bridges over local creeks. She stated that she would like to see the PAC become more proactive in pursuing projects with that type of art application.

Ms. DeMarzo stated that the PAC has already identified several similar areas which they believe could benefit from artistic treatments. She explained that Staff's proposal would be a way to ensure the inclusion of artistic elements in all applicable future projects.

Mr. Betts suggested several areas of the document that could be amended to include the addition of architectural enhancements.

Council Member Holman stated that she was happy with the additions.

Council Member Klein directed the Committee to page 38, Item D, of the document and

suggested that the language be amended to omit "all projects that include the General Fund." He stated that the language was unnecessary, as all projects other than utility projects affect the General Fund to some degree. He also suggested that the language include a dollar amount past which all projects are assumed to be eligible for the program, unless granted exemption by the City Manager.

Mr. Betts agreed with Council Member Klein's suggestion of setting a monetary threshold, and stated that \$100,000.00 is currently used as a threshold for determining whether projects are subject to the Percent for Art program.

Council Member Burt observed that under the current program the \$100,000 threshold would produce \$1,000 for art, which he stated could easily be expended throughout the course of the process. Council Member Burt suggested that perhaps the threshold was too low, and that with a higher threshold there would be a greater likelihood that the art revenue would overshadow the process costs.

Council Member Klein agreed and suggested that perhaps \$250,000 would be a more adequate threshold.

Chair Price stated that less costly artistic elements could be added, while still increasing the artistic value of a project. She commented that there was an inherent difficulty in assigning monetary values to architectural elements. She stated that she would oppose raising the monetary threshold due to the fact that artists often have creative and cost effective ways of adding art.

Council Member Burt stated that the issue is not whether \$1,000 can provide for some type of art, but whether the City would spend an additional \$1,000 in process.

Chair Price stated that it would be stunning if it truly cost \$1,000 in Staff time to accomplish that objective.

Council Member Holman stated that she had recently discovered that the artists who maintain art studios at the Cubberly Artists Studio are required to donate a piece of art to the City. She asked whether the PAC had considered utilizing their art in smaller scale projects.

Ms. DeMarzo replied that the most likely scenario in which that would occur would be a situation in which one of the artists led a student mural project to adorn the side of a smaller facility. She stated that there could be opportunities to pursue such a project in the future with one of the Cubberly artists.

Council Member Holman inquired as to whether the PAC had previously considered that

type of project.

Ms. DeMarzo replied that the PAC had not recently had many of those types of opportunities, but that there has been a great deal of discussion about increasing youth participation in collaborative and mural projects.

Council Member Holman stated that while she appreciates murals, something as simple as painting a quote on a wall in one of the City's many alleyways could add significant artistic value.

Council Member Klein expressed concern that this Item would provide the PAC the authority to increase the budget of the City's projects by 1%, an authority not granted to any other PAC. He stated that due to the volume of concerns regarding this issue, he would like to see the Item continued.

MOTION: Council Member Klein moved, seconded by Council Member Holman, to continue the Item.

Council Member Klein commented that he would like to further discuss the appropriate financial threshold for municipal projects to qualify for the Percent for Art program and that he would also like to see the City Manager granted authority over the process.

Council Member Holman stated that if it would be reasonable to incorporate some of the opportunities previously discussed into the procedures, she would like to see that done. She observed that, similar to the way that many streets have come to be known as "collector streets," California Avenue has become a "collector art gallery," and asked whether that was a conscious effort.

Council Member Burt replied that he believed that a long time ago a specific plan had been created for California Avenue.

Council Member Holman stated that California Avenue is a particularly good example of what kind of impact an accumulation of art can have on an area.

Council Member Klein stated that he did not want to see the scope of the conversation move from the issue at hand to all projects undertaken by the PAC.

Council Member Holman explained that the abundance of art located on California Avenue related to the issue of PAC approval of art projects, and what person or organization was best suited to hold approval authority.

Chair Price asked Council Member Holman whether she would like to see the

Committee direct Staff to provide some recommendations as the delegation of approval authority relative to PAC projects.

Council Member Holman replied that she would.

Mr. Keene stated that there are currently price authority thresholds in place, and that any project over \$80,000 comes before the Council for final approval. He stated that there did not appear to be a need to amend the price authority thresholds, but that there may be policy thresholds that could use revising.

Chair Price asked Ms. DeMarzo whether the Committee's directions had been clear enough.

Ms. DeMarzo responded that they had.

Chair Price asked whether Staff would be able to return with the requested recommendations in two days on July 14, 2011.

Ms. DeMarzo stated that she could.

Council Member Holman suggested that two days would likely not allow enough time for Staff to draft thoughtful responses to the Committee's concerns.

Chair Price stated that the next meeting date would be September 13, 2011.

Mr. Betts reiterated that they had been consulting with other departments regarding this matter, and stated that the extended deadline would allow the opportunity for consultation with those departments regarding the proposed modifications.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER: Continue the Item to September 13, 2011 to allow Staff time to compile a list of recommendations in response to the Committee's previously stated concerns.

MOTION PASSED 4-0.

II. Future Meetings and Agendas

III. Adjournment

ADJOURNMENT: Meeting adjourned at 10:03 p.m.