



Policy and Services City Council Committee

Special Meeting
Tuesday, June 7, 2011

Chairperson Price called the meeting to order at 6:04 p.m. in the Council Conference Room, 250 Hamilton Avenue, Palo Alto, California.

Present: Burt, Holman, Klein, Price arrived @ 6:27 p.m. (Chair)

Absent:

Oral Communications

None

Agenda Items

1. Changes to Council Procedures and Protocols.

Assistant City Attorney, Don Larkin, stated Staff had returned with changes in Council Procedures, paragraph 3, section II-5 based on directions from the previous meeting and review of the minutes. A sentence was added regarding materials received by Council Members from Applicants and Applicants Agents. Notification of the receipt of these materials must be directed to the City Clerk and the City Manager as soon as possible. This does not include correspondence from constituents.

Council Member Klein noted the language repeated itself in two different places but was not consistent.

Mr. Larkin believed this was in the section where they were changing the language.

Council Member Klein noted it was in yet another place besides this. He spoke to the need for consistency in the language. He also asked

how this covered a situation where an Applicant responded to suggestions or questions by a member of the public.

Mr. Larkin stated the Applicant had the right to respond to questions, but as long as there were no changes to the Application or Development Plan, these responses did not need to be passed on to the City Clerk or City Manager.

Council Member Klein asked if an Applicant responded in such a way that the materials had to be handed over to the City Clerk and the City Manager did this mean that the Item was held over because new materials had come forth.

Mr. Larkin stated it would only be held over if it were Staff's opinion that changes were being made to the project. A simple response to questions or additional comments would not cause an item to be held over.

Council Member Klein was still not sure the language was consistent and conveyed these terms exactly. He noted the importance of clarity and consistency in this before they passed it on to Council.

Mr. Larkin asked for the location of the second instance.

City Clerk, Donna Grider, noted under Protocols on page 6 there was a second bullet with reference to this same subject.

Council Member Holman stated they had discussed in the prior meeting and it was reflected in the minutes that this was not regarding all communications to Council, just those that affected a Planned Project Application. She asked if there was consideration of further language to clarify.

Mr. Larkin agreed this was a concern for the Committee when they last met, which was why they had clarified the language to reflect the communications from Applicants regarding projects rather than constituents' communications.

Council Member Holman stated it was well addressed in the last sentence, but wondered if it should be worded in the same way in the second instance where the subject reappeared.

Council Member Burt also spoke to the language in the Protocols section. This language should be consistent with the language in a preceding instance.

Mr. Larkin agreed.

Fred Balin submitted suggested changes to the Procedures Handbook, Section II, Council Meeting & Agenda Guidelines which includes the following italicized changes: 1) In the sentence beginning with "In order to allow for adequate Staff review, and other documents *from the applicant or agent of the applicant*", delete "or comment on" and 2) In the sentence "If a Council Member receives, add the wording "*planning application*" materials directly from a project applicant, add the wording "*or agent of the applicant*" he or she shall notify the City Clerk and the City Manager as soon as possible." He reiterated that this section pertains to the applicant or agent of the applicant submitting documents that support a planning application.

Council Member Burt spoke to Mr. Balin's handout. He asked if colleagues or staff had questions or comments on the handout.

Council Member Klein did not think it was necessary to define Applicant and Agent of Applicant since in legal terms they were one in the same; the Agent was the Applicant. The other changes they were discussing appeared, as Ms. Grider had pointed out, in the Protocols section and this language had not yet been dealt with.

Mr. Larkin agreed they had not looked at or made changes to this subject matter or language in the Protocols section but would address the changes to this language prior to moving things on to Council.

MOTION: Council Member Klein moved, seconded by Council Member Holman to: 1) approve Staff recommendation to recommend the City Council adopt the changes to the Procedures Handbook, regarding late submittal of correspondence and other information related to planning applications, 2) add the wording "planning application" after the word receives, to the sentence "If a Council Member receives(planning application) materials directly from a project applicant, and 3) forward the previously adopted changes to the Procedures and Protocols Handbook to the full Council for approval.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to modify to the Procedures Handbook,

regarding late submittal of correspondence and other information related to planning applications: 1) to add language "from the applicant supporting planning applications", and 2) to add "there is no restriction on the rights of applicant or others to comment on or respond to information contained within the staff report."

Council Member Burt spoke to leaving the language in regarding the Agent of the Applicant. There was discussion about not every community member being a legal expert when it came to terminology.

Council Member Klein disagreed again noting it was redundant language.

Council Member Holman agreed with Council Member Burt on leaving this language in.

AMENDMENT: Council Member Burt moved, seconded by Council Member Holman to include the verbiage of "agent of the applicant" where it now refers to project applicant.

Council Member Klein stated if they pulled out these two sections specifically with their Amendment and the language regarding "applicants" and "agents" this would create problems elsewhere in the document as far as consistency.

Council Member Burt was receptive to clarification of these definitions elsewhere in the document in an over-riding fashion.

Council Member Holman agreed with Council Member Burt including definitions for further clarification.

Mr. Larkin stated they could add a foot notation at the first occurrence and a footnote then with the definition of terms.

Council Member Burt was comfortable with the change as was Council Member Holman.

AMENDMENT WITHDRAWN BY THE MAKER

AMENDMENT: Council Member Burt moved, seconded by Council Member Holman to include a footnote that for all purposes applicant also refers to applicant agent, at the first occurrence that we use the term applicant.

AMENDMENT PASSED: 3-0 Price absent

Chair Price arrived at 7:30 P.M.

Council Member Klein repeated his Motion.

Council Member Holman clarified that the agreed upon language would also be placed in the Protocols section.

MOTION PASSED: 3-0 Price abstaining

2. Further Review and Discussion Regarding Binding Interest Arbitration Provision in City Charter for Public Safety.

City Manager, James Keene, gave a follow up on the prior discussions on binding interest arbitration, its status and history in the City. He also discussed potential alternatives to the existing provisions. The Policy and Services Committee had directed Staff to return with some additional research, expert analysis, and a review of best practices from jurisdictions outside of California.

Acting Assistant Director of Human Resources, Marcie Scott, reviewed the information provided to the Committee and the public. The requested action was for the Committee to determine whether they would recommend to the full Council to take no action, modify the Charter, or eliminate the Charter provision. Timing was also discussed since there was an upcoming election in November. She noted there was a detailed handout provided by the City Clerk regarding these timeline issues. If the option chosen was elimination of the provision, Staff suggested moving this to Council for their opinion and consensus. If Council decided on modification instead of elimination, they could send it back to Policy & Services for modifications in language. She discussed the many elements involved in modification. She also discussed election data and information including election options and the details of cost, type and dates of elections. She discussed all-mail ballots, their dates and language deadlines.

Council Member Klein thanked Staff for the binder of information. He asked for clarification on the cost differences in the ballots listed.

City Clerk, Donna Grider, stated the November 2012, election costs included Council seats.

Council Member Klein stated the costs were still less than those of 2011.

Ms. Scott discussed arbitration formats, noting a summary of these formats was also included in the at-places materials.

Mr. Keene noted that the information in this binder had been assembled a week prior to the current meeting and that Staff likely would still be making commentary regarding the materials during the meeting. There had been Staff conversations prior to the completion of the binder which included information from experts in the field. He stressed that new information was always coming in regarding restructuring the process. He noted the Committee might wish to consider a session where they hear more information and testimony from experts.

Ms. Grider gave additional information on the election costs for November 2012. She stated the cost was spread out to include the cost of legal noticing.

Mr. Keene questioned whether these legal notices went out no matter the case.

Mr. Grider stated they did. She further noted that Council seats do not have arguments and was not as involved as other ballot measures.

Council Member Klein asked how the cost would change if there were other items on the November 12, 2011 ballot.

Ms. Grider noted the costs decreased each time a measure was added.

Chair Price appreciated Staff's work on the information provided. She noted this was a great deal of information to digest.

Darrell Murray, City of Palo Alto Chief Negotiator, IEDA, spoke regarding the contents of the binder. He noted they were talking about format and not the entire arbitration system, specifically the form of the offers and the latitude or lack of latitude regarding these offers. He discussed the various forms of arbitration available.

Council Member Burt asked if it was correct that out of all Santa Clara County cities, only three still have binding arbitration.

Mr. Keene stated that was correct. Palo Alto, Gilroy and San Jose still had binding arbitration, though San Jose had amended its use.

Council Member Burt asked how other cities handled things without binding arbitration, not only how they do it, but how well it functions.

Mr. Keene gave an overview of general law cities and charter cities in California and discussed those with binding interest arbitration.

City Attorney, Molly Stump, discussed the baseline requirements set by State Law regarding labor and management bargaining discussions. She noted that how well these processes work was dependent on the policies, skills and effort of those involved.

Chair Price asked for clarification on the use of binding arbitration processes in the area, which had been cited as being used 13 times.

Mr. Keene noted there was evidence that there were jurisdictions that have binding arbitration and do not use it. He did not have specifics on this but was speaking to an article he had read on the issue.

Council Member Burt clarified that it was the number of cities that had used this process, not the number of times it was used, thereby 13 jurisdictions made use of this process for any number of times.

Mr. Keene noted this was correct. He stated it was also used by 23 cities in the state, but that Charter Cities had the ability to create binding interest arbitration. It was 23 out of 482 cities, all-total.

Mr. Murray said going to arbitration is very expensive for a union. The smaller jurisdictions avoid the process for this reason.

Chair Price asked if the costs were split between both parties.

Mr. Murray stated the fees were split between both parties.

Ms. Scott discussed the various arbitrator selection approaches. Staff felt the better route was to hire a professional, credentialed arbitrator. She reviewed the timelines for arbitration in various city charters. Public access and transparency were also discussed, as well as the standards of judicial review. She pointed out two additional articles in the at-places materials, which included further information.

Chair Price discussed the timelines. She asked whether the City and County of San Francisco had these timelines built into their language.

Ms. Stump stated the City and County of San Francisco was a unitary jurisdiction. She noted the City of San Diego used a timeline system as well as some other jurisdictions.

Chair Price asked if they had time to look at the pros and cons of this approach in terms of refining their own process with timelines being part of the language.

Ms. Stump stated the Staff Report included some of these pros and cons of the process. She noted Staff resources should be a consideration. Both labor and management would be able to focus on current financial data and align labor negotiations with the budget process. This allowed for a predictable labor negotiation season.

Council Member Burt asked whether the timelines applied to circumstances where arbitration existed or if timelines could be built into a city's bargaining provision.

Ms. Stump stated San Diego used a system that had timelines and was not dependent on impasse resolution procedures.

Council Member Burt noted they could have a separate discussion on the broader bargaining issues. He asked when Staff compared Palo Alto and the other cities if the staffing levels were factored.

Ms. Stump stated there was a background document which surveyed the staffing issue.

Council Member Burt asked if they had reached any bottom-line conclusion on the staffing levels for those cities that still had binding arbitration.

Mr. Keene stated that the City of Gilroy had what appeared to be both, apparatus and unit wide minimum staffing requirements even though they were a smaller jurisdiction than Palo Alto. The City of San Jose had minimum staffing per engine but not per shift or unit wide. The only other jurisdiction within the County that had binding interest arbitration and unit wide minimum staffing was Gilroy.

Frank Ingle spoke regarding the various formats of arbitration and not eliminating arbitration. He discussed what this meant for the citizens and voters.

Bob Moss gave his interpretation of what the citizens expected of the City and the various aspects of what occurred during binding arbitration processes. He also discussed what should appear on the November ballot.

Council Member Burt was concerned about the complexity of the modifications for both the Council Members and the citizens. He inquired about the number of Fire Department applications that came in for the open positions.

Mr. Keene stated they had received between 1000-1500 applications.

Council Member Burt noted that arbitration distorted the market between a willing employee and a willing employer. He noted the differences between the Police and Fire Departments regarding this. He stated a year ago, the City Council voted to put this on the ballot last November and other colleagues expressed an interest in addressing the issue but wanted more time, while still others were hesitant. A year later, he was hearing again they needed more time, but he felt it was time to present this to the voters for a decision.

Council Member Holman stated this was an issue of accountability and responsibility. She stressed it was a union issue and not a management issue. She noted arbitrators were not accountable to the public, but the Council was. Union negotiators were also not accountable to the public, though Council was, both legally and ethically. She noted Staff members were strong members of the community and their work with their fellow community members was very important. She spoke to eliminating binding interest arbitration.

Chair Price noted it was appropriate that they, as a community, look at modifications of the Charter language to capture some of the practices used in other communities. She stated it was worth the time to continue working on it. She felt it was possible to set up a workable timeframe for this. She stated it was inappropriate to take it to a ballot measure to repeal it in the Charter. It was more responsible to modify the language, to include timeframes that would align with the budget cycles. Examples from communities were helpful regarding limiting the scope of the process. She noted it was also not appropriate to wordsmith it at the current meeting but in a study

session later. She also stressed that Palo Alto has not entered into the binding arbitration more than four times in the recent past, which was in no way an abuse of the process. She stressed the importance of introducing mediation into the process, which helped to keep communication open and prevent the occurrence of binding arbitration.

Council Member Klein stated there were two interests before them. Number one, all other employees were able to strike, but not Public Safety employees. There remained, then, the problem of how to protect their interests beyond this process. He noted they should learn from San Jose's procedures, have something ready by November 2012, but to make sure to do it right. He agreed bargaining should be on a timeframe, moving forward with the type of procedures they saw in San Francisco and San Diego. He stated the job before the Committee was to make a recommendation to Council of repeal or substantial revisions and then wait to hear suggestions from Council to move forward.

MOTION: Council Member Klein moved, seconded by Council Member Holman to forward this to the City Council for a policy decision whether to: 1) put this on the ballot to repeal or to put on the ballot to substantially modify it, 2) refer it back to Policy & Services Committee if it is to modify, and 3) provide guidance as to when this would go on a ballot.

Council Member Holman agreed it was important to move this on to full Council for direction on how to proceed, though this did not change any of her previously stated opinions.

Council Member Burt looked forward to the discussion with full Council as well.

Chair Price thought before it went to full Council a focused study session was appropriate. From there, she felt they could move on to a more thoughtful discussion at the Council level.

Mr. Keene noted she was suggesting a Study Session at the Council level. He suggested they could have a Study Session with language allowing the Council to take action. No matter what occurred, any changes, reforms or eliminations required a vote. Council would need a chance to decide on whether this should be on the November 2011 ballot, which argued for getting the issue to Council sooner rather than later.

Council Member Holman agreed that Council needed full and additional information. She stated the Staff Report was very informative and organized. She did not agree it should go to the Council as a Study Session but as an Action Item at a regular Council meeting for the conveyance of all the same information. As their Motion stated they were looking for direction from Council.

Council Member Klein agreed a Study Session was not necessary and that everyone involved had the ability to read through and digest the very organized and informative binder of information.

Council Member Holman asked what the timeframe was for getting the completed binder to Council prior to their meeting.

Mr. Keene stated they had distributed the binder to all Council Members already, except for the at-place item from the current meeting. This information would be forwarded onto Council as well. He thought, judging by the meeting calendar, that the latest this item would reach Council was June 20th.

MOTION PASSED: 4-0

3. Discussion of the Santa Clara County Public Health Department Tobacco Prevention Initiative Grant and Recommendation to Direct Staff to Apply for a Program Grant to Develop a More Comprehensive Tobacco Prevention Policy for the City of Palo Alto.

Acting Assistant Police Chief, Mark Venable, gave a presentation on the Tobacco Prevention Institute Council Grant Initiative. He noted the various positives to this initiative. He stated Palo Alto has been in the forefront when it came to these issues, but by scorecard was now falling behind. He stated this was a great way for the City to realign with other agencies in the County as well as update their current smoking Ordinance to reflect State codes.

Chair Price asked if this potential \$51,000 in staff reimbursements was an every year reimbursement or a one-time reimbursement.

Mr. Venable stated this was a one-time grant amount meant to jumpstart or restart existing programs.

Assistant City Attorney, Don Larkin if they did the regulatory functions, this would be a self-sustaining practice with licensing fees to sustain ongoing operations.

Chair Price stated this was a Federal based grant and asked what the window was for this opportunity and grant fund availability.

Mr. Venable stated the County had already received nearly \$7 million to fund the Grant Initiative. Several counties had already moved forward. Money was available currently if Palo Alto was interested in joining the Grant Initiative. He noted the funding window for reimbursement efforts had to be completed by March of 2012 in order to qualify for reimbursement.

Council Member Holman noted it was difficult to tell which tobacco retailers sold solely tobacco and which were mixed retail establishments. She did not want to see a mixed-use establishment having to take on a huge cost burden for their tobacco licensing in this regard.

Mr. Venable stated 39 establishments within the City were licensed to sell tobacco, some of which included pharmacies, liquor stores and other retail places in the mix.

Council Member Holman asked how burdensome this kind of licensing program was. If it was a burden, she asked if there was a way to regulate the program in such away to lessen this burden.

Mr. Venable stated they implemented these programs with varying degrees of regulations. If it was an added burden, there was actually a fee in the County of \$350-\$450 annually to underwrite inspections. In these inspections, the establishments complied with respect to signage, location and other licensing parameters.

Council Member Holman asked if they could limit the number of licenses available in the City in order to address such issues as no two tobacco licensed agencies could be located within 500 feet of each other.

Mr. Larkin stated he would have to look into this further. At first glance, he noted it would be easier to cap it where it was rather than lowering the number.

Council Member Holman asked if they could include further language in the Ordinance wherein certain establishments were not allowed to sell tobacco, perhaps grocery stores or pharmacies, for example.

Mr. Larkin stated there were several cities with such Ordinances and definitions, some of which were challenged and some of which had stayed in effect.

Council Member Burt asked how Palo Alto's licensing fees compared to others in the area.

Mr. Venable stated they had not, yet, established the fee. It was regulated by the State and this was the information they had at this time.

Council Member Burt asked then, if compared to the other cities in the county, was this actually an incentive to set up shop selling tobacco in Palo Alto.

Mr. Venable stated he did not know the numbers of tobacco retailers in other jurisdictions, but would get this information. He stated that Palo Alto's current number of 39 establishments was high.

Council Member Burt stated 20 years ago Palo Alto had put a restriction on tobacco sales, but had now fallen to the low standards level in California's Labor Code. He was not clear how they went from being frontrunners to falling behind.

Mr. Larkin noted periodic review of all Municipal Codes to be consistent with State Law was important. It was incumbent upon the City Attorney's Office to keep up on State Law and whether the City's Municipal Code required proactive changes.

Council Member Burt was glad to see the issue moving forward. He wished to see a follow up on how to keep the codes consistent at a future Policy & Services meeting.

Chair Price stated it was stunning that Palo Alto prided itself on being a healthy and forward-thinking community, but they fell behind now in tobacco licensing ordinances. She asked if the Tobacco Licensing Program was common or uncommon in area communities.

Mr. Venable stated it was more on the uncommon side but was picking up speed.

Chair Price asked if it made sense to introduce the Tobacco Licensing Ordinance in stages. She asked if they had complete control of the fee structure.

Mr. Larkin stated a phase-in was possible. He stated there was no set State fee, but they must consider Proposition 26 in that a regulatory fee cannot exceed the cost of the regulation. They could start with registration to begin with, later inspections and fee increases if necessary.

Chair Price asked what the \$300 amount was that had been tossed out.

Mr. Venable noted this was a fee range from varying counties.

Council Member Burt commented on the community's scorecard and the validity of the scorecard. He stated Palo Alto, for instance, was lower in teen smokers than area communities, but still scored low. However, he noted many of their previous practices and things they had set up had lent to these low numbers, so in that way the City was not lacking in their approach to the problem. He suggested they move forward with stronger programs but the County should continue to work on the validity of the scorekeeping numbers.

Council Member Klein agreed with Council Member Burt on the scorecard system used by the County. He said one of the reasons their efforts may have seemed to have lessened was the fact that their past efforts have cut down on the tobacco issues in their municipality.

Council Member Burt stated there was a modest level of teen smoking going on at the City, particularly at the high school level. He noted it was on the downward trend, but 5% of high school students still smoked on a somewhat regular basis, so it does remain an issue.

Chair Price asked if it was routine to update the Municipal Code to bring it in line with State Labor Codes.

Mr. Larkin stated they were seeking guidance from the Committee on whether they wanted small cleanups in the language and whether the Committee wished to explore the grant opportunities.

MOTION: Council Member Price moved, seconded by Council Member Burt to direct Staff to provide additional analysis regarding the implementation of a Tobacco Retail Establishment Licensing Program.

Council Member Burt felt strongly that Staff should come back with the recommendations and not merely an exploration. He offered an amendment in that they ask Staff to come back with the recommendations on the Tobacco Licensing Program.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER for Staff to return to the Policy and Services Committee with a specific recommendation on a licensing program.

Council Member Burt asked if their acceptance of the grant logistics needed to be in a separate Motion.

Mr. Venable stated the Grant Initiative required Council approval, so they should explore the issues first.

Mr. Larkin noted moving forward on exploration would indicate they were interested in the grant options as well.

Council Member Burt wished to be clear that they were not recommending, however, that Council accept the grant in their request to have Staff look deeper into the Ordinance recommendations.

Mr. Larkin stated was not essential to make a decision on the grant at the current meeting.

Council Member Klein stated the report seemed to suggest that they include this in the Motion.

Mr. Larkin stated the original question was whether it needed to be a separate Motion or incorporated into the standing Motion.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to enter into a grant agreement with the County of Santa Clara whereby the City of Palo Alto could be eligible to receive \$51,724.62 to reimburse staff time and other directly related expenses implementing the Tobacco Prevention Initiative program.

Council Member Holman stated there would be recommendations coming back for each one of the provisions. She asked if the Motion also included other recommendations that Staff may have such as smoking restrictions in parks and near play lots.

Mr. Larkin stated that it would be a separate Motion or an Amendment to the Motion. Staff's No. 1 recommendation was to strengthen the existing Smoking and Tobacco Regulations. There were elements of this that the County would ask them to do in association with the grant, which they will highlight, as well as options.

Council Member Burt stated the Motion would need to include this item as listed in Staff's recommendations.

Council Member Holman felt it better separated out for clarity.

Council Member Burt stated unless there was a disagreement, the simple approach was to build on Staff's recommendations.

Council Member Holman asked if strengthening the recommendations included making sure they complied with the California Labor Code.

Mr. Larkin stated they would return with, on the minimum, recommendations that reflected State Labor Codes as well as grant parameters.

Council Member suggested they withdraw the Motion and restate it.

MOTION: Council Member Price moved, seconded by Council Member Burt to approve the Staff Recommendation.

Council Member Burt requested the Palo Alto Municipal Code be brought up to the minimum of the California Labor Code.

Council Member Holman stated since they were on the topic of health, she wondered if there were state regulations or Ordinances to address spitting as a health issue.

Council Member Burt noted the issue was out of order and best discussed at another time.

Mr. Larkin stated he would be open to discussions on this at a later time.

MOTION PASSED: 4-0

Council Member Holman asked that they also provide a list of existing tobacco retailers.

Mr. Venable agreed on this inclusion.

4. Future Meetings

June 14th

- iPad's for City Council use (CLK)
- Economic Development strategic plan update (MGR)
- Emerging Technologies Pilot and Demonstration Partnerships (MGR)
- Percent for Art Policy and Procedure (CSD)

5. ADJOURNMENT: The meeting adjourned at 8:22 p.m.