



Policy and Services Committee MINUTES

Special Meeting
June 12, 2012

Roll Call

Chairperson Holman called the meeting to order at 6:03 p.m. in the Council Conference Room, 250 Hamilton Avenue, Palo Alto, California.

Present: Espinosa, Holman (Chair), Klein, Schmid

Absent: None

ORAL COMMUNICATIONS

Mark Petersen-Perez spoke regarding Lieutenant April Wagner and his belief of her abilities as a law enforcement agent.

1. Policy for Administering the Employee Ethics Hotline

Jim Pelletier, City Auditor introduced the City Employee Fraud, Waste, or Abuse Hotline Administration Policy and asked the Policy and Services Committee to accept and recommend the policy to the full Council. He stated that the policy was developed to provide a framework for administering the hotline. The objective of the hotline is to add an anonymous route that employees can take to report problems within the City. Administration through a third party vendor will maintain anonymity. One of the key components is the establishment of the Hotline Review Committee (Committee) that is comprised of the City Auditor, the City Attorney, and the City Manager. The Committee will be responsible for reviewing every case that comes through the hotline. The vendor would provide a case management system to allow for real time monitoring and case tracking. The case escalation section described how immediate notification from the vendor would be possible in certain circumstances. Reporting should remain as limited as possible to support the integrity of the hotline by maintaining the anonymity and confidentiality to the extent required by law. The general type of reporting that would be disclosed in quarterly reports to Council include number of reports made, the type of reports received, any trends in the types of complaints, and type of corrective action taken. State law addressed whistleblower protection as discussed in section eight. The

MINUTES

recommended policy would be limited to fraud, waste, and abuse as defined by California law. Other types of calls outside these definitions may be received, reviewed by the Hotline Review Committee, and ultimately acted upon if necessary. Sections 10, 11, and 12 describe how Staff will maintain control of the information and documentation related to the hotline. The City would not tolerate malicious complaints and would investigate any such complaints.

Council Member Espinosa asked if the policy addressed concerns that were raised by the City Manager's Office during the preliminary discussions of how the hotline would function.

Jim Keene, City Manager said yes. He said the City Attorney's Office and City Auditor's Office worked with the City Manager's Office on the policy and the mechanics of it. No Staff had been added to manage this initiative. He said if any viable complaints were received through the hotline, then it would be successful. If Staff investigates many complaints with no merit then the process should be reviewed with Council.

Council Member Espinosa asked what would happen if the hotline received more complaints than the Committee could handle in four months.

Mr. Keene said the Committee would handle it. The Committee would work collaboratively to decide whether Council should be consulted for a resolution.

Council Member Klein referred to section one of the policy. He was concerned about encouraging employees to report fraud, waste, or abuse to the City Auditor's Office. He thought it would be out of the line of command.

Mr. Pelletier replied that the goal was to provide an alternative reporting route in case Staff did not want to go through their chain of command. Employees would be encouraged to come forth and talk to someone before a situation was escalated.

Council Member Klein said he would be troubled if there were many people that went to the City Auditor's Office instead of their supervisor or the City Manager's Office to report a complaint.

Mr. Pelletier agreed. He said some employees may not feel comfortable going through the chain of command, or some might even feel like their job is at risk if they take that approach.

MINUTES

Council Member Klein asked if there were other instances where the City Auditor's Office would be used as an option for employees to report complaints.

Mr. Pelletier replied yes. He did not have specific data relating to other cities available. The process was meant to be another route for reporting beyond the chain of command if employees did not feel comfortable.

Mr. Keene added that Staff worked hard to address concerns regarding roles.

Mr. Pelletier stated that he understood Council Member Klein's point. He said the intent as for Staff to go through the chain of command unless an employee did not feel comfortable with that route. At that point they could go to the City Auditor's Office as an alternative route – just like the hotline was intended as an alternative route. Ultimately everything went through the Hotline Review Committee for review and action.

Mr. Keene said the point of establishing the hotline related to legislation that allowed the City Auditor's Office to manage the hotline as well as maintain that independence from the rest of the organization.

Council Member Klein said there were three alternatives: 1) leave the language as is and record the number of instances reported to the City Auditor, 2) eliminate the City Auditor's Office from the chain of command, or 3) change the language so it said "...or the Office of the City Auditor, but only in extraordinary circumstances

Mr. Keene responded that it would be clearer if to remove the language.

Molly Stump, City Attorney said the language provided another forum for employees to report complaints without anonymity. The language could be edited so that if employees would like to access the hotline process through the City Auditor's Office, but don't feel the need for anonymity, they could do so.

Council Member Klein said that would make for more significant re-writing of the policy.

Ms. Stump said the City Auditor could take direction from the Policy and Services Committee and handle that clerically.

MINUTES

Council Member Klein referred to the last paragraph of the policy. He asked how the Committee would be able to investigate a malicious complaint if the person remained anonymous.

Mr. Pelletier responded that in some cases they may not be able to.

Council Member Klein indicated that the very act of an investigation potentially harms whoever is being complained about. He asked how the City would handle a Staff Member who filed a malicious complaint if there is no way to find out who filed it. He said this language may even discourage someone from reporting a complaint.

Ms. Stump said at some point in a substantial investigation information would be revealed. Someone might come forward to divulge more pertinent information. This proposed language was a strong statement against malicious complaints.

Council Member Klein said another sentence should be added that addressed malicious complaints. The City would not break the wall of anonymity, but evidence could be developed from other sources as to who the complainant is.

Mr. Keene said he understood the intent, but it sounded as if the anonymity piece could not be full proof. The reaction was to think there were other ways to discover the identity of a complainant.

Ms. Stump said it would be a very rare circumstance where city leaders would feel it would be appropriate to launch an investigation as to who made a complaint.

Mr. Keene said there could be more meaningful conversation if malicious complaints were received. People's reputations could be easily damaged, and that must be respected.

Mr. Pelletier agreed. He stated that was a risk of having an anonymous hotline. The opposing risk was a fraudulent or abusive act that was untouched because an employee did not have an anonymous way to report a complaint. It was a matter of weighing those risks against one another and the larger risk was missing a potential fraud that could go unnoticed for years and snowball into something unmanageable.

Council Member Schmid asked about the timeline to start fielding complaints.

MINUTES

Mr. Pelletier responded that the hotline could be launched once the full Council approved this policy.

Council Member Schmid referred to section two. He asked if interviewers who field hotline complaints question other City Staff for more information.

Mr. Pelletier answered no. He said a caller would give a case number and asked to follow up a certain amount of days later. Follow up questions would be input into the case management system so when the caller called back, the interviewer could ask those questions.

Council Member Schmid confirmed the goal of the hotline was for the use of City Staff only. He asked how they would know if the person calling was in fact a city employee.

Mr. Pelletier replied that that was a limitation of an anonymous system. There would be no method to confirm that the caller was truly an employee.

Council Member Schmid confirmed that quarterly reports would be presented as Informational Items to the Council with a listing of each type of report during that period. He said, referring to a clause in section eight of the policy: "This Prohibition against Retaliation is a statement of City policy. It is not intended to and shall not create a private right of action..." He asked if "It" referred to City policy or Prohibition against Retaliation.

Ms. Stump responded that Prohibition against Retaliation was not intended to create a basis for suing the City. This language allowed the City to avoid that possibility.

Council Member Schmid referred to section nine. He asked what "Conversion" meant under Terms and Definitions.

Ms. Stump replied that the definition was taken directly from State law.

Council Member Schmid referring to section nine asked if being "Economically wasteful" was illegal.

Ms. Stump said California law defined fraud, waste, and abuse in exactly those terms. The idea was to give employees guidance as to what the program was intended to include and not include.

Council Member Schmid referred to section ten, bullet three. He asked if the confidentiality held in a criminal act.

MINUTES

Ms. Stump said if there was criminal prosecution involved, certain parts of the report could become public. There would be a variety of roles that govern the outcome.

Council Member Schmid referring to section ten, bullet five, asked if the report would become public through the Public Records Act.

Ms. Stump replied that it would depend on the nature of the records, what records were being sought, and the status of the item.

Council Member Schmid referred to section twelve: "All requests for information concerning any Incident Report shall be directed to the City Auditor for a response." He asked for clarification on this statement.

Mr. Pelletier said ultimately all decisions would be made by the Hotline Review Committee. The City Auditor's Office held an administrative role in that regard.

Mr. Keene said this was designed to refer repeatedly so that it was clear that the manager of the hotline was the City Auditor.

Council Member Klein asked about harassment. He thought it was covered under the hotline but did not see anything mentioned in the policy.

Ms. Stump said harassment would fall under "gross misconduct".

Council Member Klein asked what the City's policy is regarding harassment.

Mr. Pelletier responded there could be no control over the type of calls that might come in. If the Hotline Review Committee decided not to review an item, they could forward it on to the appropriate department/person.

Council Member Klein said most harassment claims will not be anonymous. He asked if they thought it would be good to include language stating harassment was covered.

Ms. Stump replied the Hotline Review Committee would work that out over time. As items were reviewed they may recommend language changes to the policy.

Mr. Keene stated he did not like the anonymity issue. There was as much risk for mischief as there was for catching the embezzler. He said he also had concerns with the definitions of fraud, waste, and abuse. He said a complaint would be more powerful if it was not anonymous. If many

MINUTES

complaints were filed by people fearful of retaliation, an organizational/cultural issue would be apparent.

Chair Holman said she was glad this was moving forward. She asked if harassment and discrimination should be added to the policy. She said the purpose of this needed to be clear to the employee. She did not know if "gross misconduct" would be interpreted by everyone as harassment or discrimination.

Ms. Stump said one practice when managing a diverse group of employees regarding harassment and discrimination was to provide multiple avenues for people to come forward when they had a complaint. If there was an issue, the City wanted to know about it as soon as possible. Either way, it would sort its way out. The City had other policies to report cases like this.

Chair Holman stated the feeling of anonymity did not seem to apply to harassment or discrimination.

Mr. Keene said other channels existed for employees to remain anonymous aside from the hotline.

Mr. Pelletier said there was a limitation to the hotline. The law provided the authorization for the City Auditor's Office to have a hotline for fraud, waste, and abuse. The recommendation was to limit this policy to that definition of fraud, waste, and abuse.

Chair Holman referred to section one: "City employees who have specific information that other City employees have engaged in fraud, waste, or abuse are encouraged to report such information to their immediate supervisor, manager, department head, Human Resources, the City Manager's Office (CMO), or the Office of the City Auditor (OCA)." She asked if "obligation" or "responsibility" would be better language than "encouraged".

Mr. Pelletier said they could consider that change, but the reason anonymity was established was to give Staff who did not feel comfortable another mechanism to report complaints. He did not want to discourage that. The City should provide training to Staff encouraging them to follow the chain of command, but if all else fails, the hotline is there for employees to report complaints.

Chair Holman raised the possibility of people feeling pressured if "encouraged" was replaced with "obligation" or "responsibility". She asked about Staff training and launch information.

MINUTES

Mr. Pelletier responded that the Hotline Review Committee would determine these details.

Council Member Schmid asked if the script that the vendor would use would encourage Staff to attempt other means before contacting the hotline.

Mr. Pelletier said that was a great idea. He said the script was customizable and it could be written to encourage employees to follow the normal processes before making a complaint through the hotline.

Chair Holman asked about the Hotline Review Committee and whether complaints would be forwarded to the appropriate department or unit.

Mr. Pelletier said the purpose of the Hotline Review Committee was to determine who should follow up.

Ms. Stump added that should be the City Manager's decision.

Mr. Keene said instituting an anonymous hotline is one of a hundred streams of communication in an organization.

Ms. Stump said in terms of deciding where the best place to investigate it was, most of the investigative ability is in the City Manger's realm. Mr. Keene would consult with the other two members of the Hotline Review Committee, but ultimately would be his decision.

Chair Holman said other people will be involved in the investigative review process. However, she did not see anywhere in the policy where confidentiality applied to the others that will be involved in the process.

Ms. Stump that goes to a level not described in this policy regarding what makes good investigative practice. It is already an established item within Human Resources and management. There are limits to promising people confidentiality and that is not a good practice to do so sometimes. It is important not to mislead people about that.

Mr. Pelletier said Chair Holman's concern was covered in section ten, bullet two: "Incident Reports and associated case numbers shall only be provided to individuals who are responsible and essential for conducting the investigation or reviewing of the Incident Report. These individuals are required to hold such information in confidence, to the extent allowed by law."

MINUTES

Chair Holman said she is concerned with people verbally disclosing information.

Mr. Keene said this is one piece of an entire organization. We have many mechanisms for reporting.

Chair Holman said she understood that, but she wanted to be as clear as possible. She asked what could be added to the policy that might help a department head investigate a matter that had to do with a Human Resources issue for example.

Mr. Keene said this is a policy to administer and receive complaints. It is not a set up for discipline and investigative procedures.

Mr. Pelletier agreed and added Staff wanted to make sure to draw the line between the policy approved by Council versus general policies and procedures.

Chair Holman said it would make her feel comfortable if the Human Resources policy was referenced.

MOTION: Council Member Klein moved, seconded by Council Member Espinosa that the Policy and Services Committee accept and recommend the policy to the full Council, with the change to the language in section one stating that employees can approach the City Auditor directly with any non-anonymous complaints.

Council Member Klein said he was more concerned. If this was to work properly, it should be used very rarely. He would be very disappointed if the City had even a handful of complaints over the course of a year. He is reasonably satisfied with the language.

Council Member Espinosa clarified that Mr. Pelletier should reword section one to clarify chain of command issues. He also confirmed that the Hotline Review Committee will consider clarification of malicious complaints, harassment, and discrimination. This would become a policy, not an addition to the Motion.

Council Member Schmid said he supported the Motion. He said it was clear that the City Auditor, City Attorney, and City Manager had given this much consideration and he had confidence in the Hotline Review Committee. He recognized the heavy responsibility that fell upon the Committee Members.

MINUTES

Chair Holman said she is glad this is coming together with everyone on the same page. She agreed that this tool should be rarely used if handled properly.

MOTION PASSED 4-0.

2. Review and Recommend Approval of Massage Ordinance

April Wagner, Police Lieutenant informed the Policy & Services Committee (Committee) their recommended changes to the Ordinance 1) eliminated the logbook requirement for establishments, 2) added the therapist classification of non-certified therapist (exempt from the education requirement), and 3) added the establishment classification of non-certified establishment (exempts employees of establishment from education requirement) had been made and Staff included lesser restrictions to the Ordinance.

David Bertelsen appreciated the Committee recognizing the massage business models being different from other models. He suggested the modification of the fee structure for various reasons; he felt their particular establishment did not charge as high of a fee for the same services as other massage establishments; his staff was paid \$10 on a per client basis plus any gratuity. He was asking the fee schedule to be equitable for the business conducted and not based on the type of business.

PaloAltoFreePress spoke of Senate Bill 731 and believed it was an intrusion on small businesses because it belonged under the jurisdiction of the Health Department and not that of the Police Department.

Babs Mitchel said in 2011 representatives from the massage community met with the Police Department and the City Attorney's office to discuss suggested changes to the Ordinance. She did not have a clear understanding of Definition 4.54.020 item number 4 and she had concerns with Definition 4.54.030.

Ms. Wagner noted the updated Ordinance the Committee Members received at their places before the meeting contained 2 corrections 1) CMTC meant all of the persons at the establishment had state certification and 2) the owners were not required to be certified.

Council Member Espinosa said his understanding was Staff had made the recommended changes but there was an area where the Committee could make additional changes either with education levels, decreasing or eliminating the liability insurance, and the non-certified for clothed massage

MINUTES

in an open area. He believed the exemption itself addressed the non-certified clothed massage in an open area.

Ms. Wagner said if the City wanted to establish CMTC level establishments it would eliminate the need for oversight of the massage therapists because the CMTC had their own regulation board. If that option was chosen by the Committee they could add the special exemption for non-certified therapists.

Don Larkin, Assistant City Attorney noted the draft Ordinance included the exemption for the non-certified therapists where the massage was performed in an open room with a fully clothed client.

Council Member Espinosa asked what the compelling reasons for elimination or reduction of liability insurance would be.

Ms. Wagner noted the education level for certification was an increase of 100 hours. Staff's view of the process was to gauge industry standards and see what was recommended, required, and reasonable. Palo Alto had a low requirement where the CMTC required a certification of 250 or 500 hours. Staff felt to equalize all areas their suggestion was to raise the required level of education to 200 hours. Liability insurance was an industry standard for protection of the clients and therapists. She explained if the Council chose not to implement that as a restriction it would be acceptable.

Chair Holman pointed out there was a typographical error on under Definition 4.454.020 item number 4; "Massage establishment" means any establishment with more than one massage technician having a fixed place of business where any firm, association, partnership, corporation, joint venture or combination of individuals engages in, conducts, carries on or permits to be engaged in, conducted or carried on massages, baths or health treatments involving massage or baths, where massage is part of primary function of the business, the comma after any in the second line should be removed.

MOTION: Council Member Klein moved, seconded by Council Member Schmid that the Policy and Services Committee recommend to the City Council approval of the Massage Ordinance as recommended by Staff with the typographical changes corrected as indicated.

Council Member Klein felt Staff had accomplished the desired regulations requested by the Committee and it was ready to go before the full Council.

Council Member Espinosa agreed the regulations being recommended were beneficial for the patrons and the therapists and he believed if there was an

MINUTES

issue to arise at a later date there would be no disputes returning to make adjustments to the regulations to correct the matter. The safety of the citizens was paramount.

Council Member Schmid appreciated Staff's responsiveness to the Committee's recommendations.

MOTION PASSED: 4-0

FUTURE MEETINGS AND AGENDAS

Chair Holman said there was only 1 topic for the July 10th meeting and noted there may be additional items added at a later date.

Council Member Schmid mentioned economic development was a critical issue and he recalled there were 4 meetings on the topic in 2011 but in 2012 the matter has been deferred. He asked Staff for an explanation of where the matter is and why it had been postponed.

Sheila Tucker, Assistant to the City Manager noted after the last discussion on the subject Staff had sent out the discussed information to the Committee Member with a request to provide comments or feedback to the Thomas Fehrenbach, the Economic Development Manager. To her knowledge he had not received comments from the Committee.

Council Member Schmid acknowledged his misunderstanding of the requested feedback. He believed the Mr. Fehrenbach would provide feedback to the Committee on their discussion.

Ms. Tucker said if there were comments or concerns from the Committee with respect to the economic development of the City once Staff received them they would agendize the subject.

Council Member Espinosa recommended the City Manager be in attendance of the meeting during the discussion for his input. Economic Development had different meaning to each of the Council Members and given the information provided last year the City Manager and the Mr. Fehrenbach were able to gather a sufficient amount of material to work on.

Council Member Schmid asked if the suggestion was for a preliminary discussion.

Council Member Espinosa felt not all of Council has had the opportunity to provide their input.

MINUTES

Ms. Tucker knew there had been discussions and with the creation of the Economic Development Manager there was an opportunity to define the role. There was a Business and Economic element to the Comprehensive Plan which could be an entirely separate area where the Economic Development Plan could reside opposed to being a completely standalone document.

Council Member Klein did not feel it would be accurate to have a preliminary discussion since the Plan had been through several drafts but he would appreciate having Mr. Fehrenbach in attendance during an upcoming meeting to hear where the Plan was.

Chair Holman agreed it would be beneficial to have the discussion moved forward because there was work being done. She noted there was room on the July 10th agenda to add the item.

Ms. Tucker asked for a September date to allow Mr. Fehrenbach time to prepare a staff report.

ADJOURNMENT: Meeting adjourned at 7:47 pm.