



Policy and Services Committee MINUTES

Special Meeting
April 10, 2012

ROLL CALL

Chairperson Holman called the meeting to order at 7:03 p.m. in the Council Conference Room, 250 Hamilton Avenue, Palo Alto, California.

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

Absent:

ORAL COMMUNICATIONS

A Palo Alto Free Press representative spoke regarding Police Practices. He stated that he had been a regular speaker since 2004 and was brought in time and again by April Chan Wagner. He felt that everyone should be extremely cautious of her and warned everyone not to speak to her on police investigative issues and to consult with an attorney.

Janet Gardiner stated that she had been a resident for 34 years. She came to speak about the proposed closure of Palo Alto Animal Services and asked that the Committee give more time for a discussion before a decision is reached. She felt that the action date of May 8, 2012 seemed too short of a time to her. She urged that the action date be rescheduled until at least during the summer and that the Committee discussion would happen later this month so that a good decision could be reached.

Amanda Materne thanked the Council for the response to her letter about the Palo Alto Animal Services closure. She believed the services at the Palo Alto Animal Services were very beneficial to the animals and the community. She was a resident of Redwood City and volunteered 2 to 3 times a week at the Palo Alto Animal Services. She said people from other cities brought their animals to the Palo Alto Animal Services and that it brought more business into the City of Palo Alto than was realized.

Luke Stankel stated that he was born and raised in Palo Alto, went to high school in Palo Alto and used to write for the Palo Alto Daily News. He asked to explore other alternatives to closing the Palo Alto Animal Services. He

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stated that there had been at least 300 signatures gathered and that a proposal was being worked on to be brought to the Committee soon.

Mary Donohue stated that she was there concerning the closing of the Palo Alto Animal Services Shelter. She felt that it was an extremely precious resource for the community because it was a no-kill shelter. She stated that she understood that there were many other services that could be offered to bring in more money to support it. The decision for this should be pushed out to the summer.

Leonor Delgado reinforced the fact that the people outside of the City of Palo Alto used the services at the Palo Alto Animal Shelter. She said that animal control officers educate the public about humane issues and help the less fortunate people with pets. Palo Alto Animal Services offers low cost vaccinations that people from outside of the City of Palo Alto used. She stated that she hoped that the decision would be pushed out and that they could all sit down and discuss a viable way to keep Palo Alto Animal Services running in the black.

Wendy Eilers wanted to lend her voice to the Palo Alto Animal Services. She asked to take the time to receive all of the feedback. She and her family had been residents of Los Altos since 1972 and the best cat that they ever had was from Palo Alto Animal Services. It was convenient to go to a place that was nearby to get the cat. She hoped that they would consider keeping it open longer.

Scottie Zimmerman requested not to close the animal shelter. She said dog licenses were another way to raise money. If they had 25,000 dogs a year at \$10 each that would be \$250,000. They were talking about connecting with Stanford. They thought that they might get them to consider being one of their clients. Silicon Valley Animal Control Authority will not accept owner surrendered animals. They will only take them in and euthanize them and that costs \$150.

Carole Hyde stated that she was the Director of the Palo Alto Humane Society. This Society was a non-profit organization that built and ran the shelter for 50 years, with the City, until 1972 when the present day animal services was created. She stated that she was asking to not close Palo Alto Animal Services and that many proposals were being written on this topic and she looked forward to talking with them.

AGENDA ITEMS

1. Review and Recommend Council Approval of Proposed Updated

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Massage Ordinance.

Sheila Tucker, Assistant to the City Manager, stated that the first item of this meeting was consideration of a Proposed Updated Massage Ordinance. The item was before the Committee in February and Staff had made some changes to address the Committee's feedback.

April Wagner, Field Services Officer, said that in the last meeting on February 14, 2012, Staff gave a full presentation on the proposed updated Massage Ordinance. She believed that they did have a full understanding and acceptance of the Proposal from this Committee but there were some questions that came up about the regulation of massage in general as well as some changes to the Ordinance. One question was about why it was necessary at all to make changes to the Ordinance. She said the current Ordinance was out of compliance with State law changes since 2008-2009. She said they had regulated massage in the City of Palo Alto since 1974, when many questionable establishments had opened up on El Comino Real. She stated that there were 43 states and the District of Columbia that regulated massage practice. The proposal did allow the Certified Massage Therapy Council (CAMTC) and non-certified therapists to continue working in Palo Alto, so Staff felt that is was a dual approach that was very business friendly. She stated that all of the cities around them had massage Ordinances and if Palo Alto did not have an Ordinance it would be a green light for illegitimate businesses. She said other professions such as cutting hair and applying makeup had many more education hours needed than massage therapists do under this voluntary state certification or that they are asking of them. She stated that some general issues that could occur with massage therapy were some possible criminal acts such as sexual battery, civil complaints such as being injured during the massage, having skin reactions to anything applied to the skin, as well as health and safety complaints of unclean tables and unclean business. There is no other business that touch all over one's body, clothes on or off, that are not regulated by the state. Although rare, massage could set the stage for certain types of criminal activity, such as sexual assault. She stated that she did a record search and they had over one hundred calls for service at their known massage establishments. There were about ten criminal reports in the last ten years for possible sexual misconduct. The Committee, in February, had also requested information about client contact records. She said most cities require client records. The Ordinance would request basic client information only. Staff understood the privacy of the public was important. They are looking for name, some type of contact number, and who worked with them at the establishment. The purpose for this and why so many cities have this requirement was to assist in getting to the truth of allegations. It had been very useful in criminal allegations before. She

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stated that it was important to note that they did take the extra step to add to their Ordinance, unlike other Ordinances, that they would only be getting this information with a court ordered subpoena or court order.

Council Member Espinosa said they were weighing the imposition that might be put on businesses, a whole industry within the City. The question was; were they searching for a problem and also was there really an issue that they were addressing considering how much of a burden this might be. He was wondering how those ten cases over the last ten years ended up. He asked if those led them to the conclusion that there was enough of a significant problem or a potential problem that it was worth this additional burden for this industry within the City.

Ms. Wagner understood that a person may quantify a crime of sexual assault once a year as not too much, but the victims feel that it is certainly more than enough. She pointed out recently there was a therapist charged with ten counts of misconduct from a Palo Alto case. Also, in a neighboring city, in one of the foot spa type of places, there was another allegation for sexual misconduct. She said that she did not want to focus so much on this as the only reason for this Ordinance. They also had the health and safety of the patrons in massage practice. Injury could occur with manipulation and excessive pressure. As a City she felt it was important they provided safe, trained, and background checked persons in this type of activity.

Council Member Espinosa asked if any of the ten counts led to anything.

Ms. Wagner said that she did not have that information because they were protected reports. She did not want to vilify the establishments in the town.

Charles Cullen, Deputy Director Technical Services, stated that one of the concerns they had were that most of the municipalities in the area regulated massage. They have not completely carried out the regulation over the last ten years. Their concern was in an unregulated environment, they would attract the type of establishments they do not want in the City. The establishments that they had there now do a great job and they did not want to cast them in a bad light and would like to keep it that way.

Ms. Wagner stated that if a person was convicted of a crime and they did not have an Ordinance, then they would never know that someone was coming into Palo Alto that may have a criminal past, coming in to work in a city that was unregulated and furthering the issue.

Council Member Schmid followed up on the keeping of records. He said Staff mentioned ten counts of misconduct in ten years which was one per year on

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average. He noted that if you look at the type two, class two crimes, they averaged 25 a year. He knew that the seriousness might differ, but it seemed to him that if you were looking at type two crimes, that local bars must average one hundred per year at single locations. Bars were not required to keep records of all patrons to help investigate crime. In the modern world with anonymous websites customers can say that they had a good experience or a bad one. It seemed to him that it added public openness and transparency to the process. He asked why they would want to keep a record of this type of activity.

Ms. Wagner said the purpose was to be able to come to the truth. Criminal allegations of a sexual nature were very serious for the person that was offended and also for the person that was accused. It is extremely important to corroborate stories and almost the only way, absent physical examination. Another way is to show that a person had one hundred other clients in the last six months with glowing recommendations verses calling a client (voluntary if the client wants to speak) and questioning about their service and they say I am really glad you called because I did feel that something weird was going on. They would get a statement that would be weighed in court with a judge and jury just like anything else. They had found many other victims with a process like that. This was probably information that was already kept by an establishment to give good service and have repeat clients. She said that they were just asking that the information be kept in some fashion for court order.

Council Member Klein discussed the exemption of foot massage certification. He asked if the Mountain View Ordinance influenced Staff's recommended language.

Ms. Wagner said that Staff had discussed this matter at length and felt that it was not in the best interest of the City, the customers, and the business owners to have untrained, but City permitted, persons performing something on a body that could injure someone. It did not seem a fair business practice to some people who have hours of education.

Council Member Klein asked if Staff had any information that there had been injuries of the sort that she described.

Ms. Wagner said there was documentation of people complaining about skin ailments, ligament injuries, and musculoskeletal pains that can occur with massage.

Council Member Klein asked if that would not be covered by ordinary tort law. He asked why the City would need to be involved in that.

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Ms. Wagner said that she was not saying that they would be involved; they were just assuring that people had a certain level of training, background check and education.

Mr. Cullen said that the pertinent point here was that were unregulated massage therapists working in unregulated business, who perhaps was fired from another establishment for doing something that they shouldn't have done. The customer would have no idea if that person was working in an unregulated establishment. His major concern was that they could do a background check on people and protect the public.

Council Member Klein asked if they had talked to the people in Mountain View and asked them if any of these problems had occurred since they adopted their Ordinance.

Ms. Wagner said Mountain View did have a criminal case with one of their therapists at such an establishment.

Heather Johnson, Code Enforcement Officer said that she spoke with Sergeant Oslinsky from the City of Mountain View, who was involved with that city's addition to the noncertified massage ordinance, to accommodate the foot massage businesses. It was a very extensive and difficult process for them. Within a month of permitting noncertified establishments, the City performed compliance checks and found they were completely out of compliance.

Council Member Klein requested Staff use more precise examples. He was not clear how many incidents were reported. Staff had not clearly defined how big of a problem this was. He asked if the problems Sergeant Oslinsky referred to were only with the people that would be considered noncertified massage practitioners.

Ms. Johnson said that was correct.

Council Member Klein asked if there had been one complaint or more than one complaint.

Ms. Johnson said this information came from the sergeant trying to get the noncertified massage into their Ordinance. Once they actually accommodated them, he did compliance checks within one month and they were not in compliance. He said he wished they had not gone through with it.

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Council Member Klein said if they did not comply then there were penalties in their Ordinance. He asked if these entities that qualified under Mountain Views process for noncertified massage practitioners had caused any problems to their customers.

Mr. Cullen said that it was a relatively new Ordinance in Mountain View. They were aware of one investigation that was going on for an assault at one establishment. They have not asked for full statistics of what had happened with those establishments. Mountain View is the only municipality that has this type of unregulated category.

Chair Holman asked if that was a private or common area and if they knew anything about how that practice operated.

Ms. Wagner said that she was not personally familiar with how they operated. She said that type of establishment required you to be in a common room without partitions. The individual receiving the massage remained fully clothed except below the knee.

Chair Holman said that the report focused on cities that had Ordinances. She asked what other cities were doing.

Ms. Wagner said they did their best to get a great deal of information from surrounding cities and this was what they came up with. They did not have statistics on every single city in the adjoining counties.

Chair Holman said Staff identified cities with Ordinances. She asked if this indicated that there were other cities that did not have ordinances currently like Menlo Park, Portola Valley, and Woodside.

Ms. Johnson said it was very rare to have a city without an Ordinance or regulation. It would a rural area that may not have an Ordinance or regulation. Woodside fell under San Mateo County and they require that therapists to be CAMTC in order to practice.

Ms. Wagner said the other questions that the Committee had were comparable to what other cities permitted. Staff wanted to understand what they could incorporate into the Ordinance. She said that out of all the Ordinances that they studied carefully, there was only one, Citrus Heights that had an exemption for reflexology. The rest of them did not mention reflexologists at all. She stated they decided, considering the interest of the community input, to define reflexology and have that standard definition as part of the new Ordinance. They added an exemption for reflexologists. If

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they were performing massage outside of that, then they would need to comply with the Ordinance, which would be to get a therapist permit.

Council Member Schmid said there was a business group called Happy Feet that said they dealt primarily with foot massages in open areas. He asked if they were included in the reflexology exemption.

Ms. Wagner said they do not only do reflexology, they also do full body massage with clothes on in an open room.

Council Member Schmid clarified that the business was treated as massage therapist because that was part of their business. He asked what would happen if they only work on feet.

Ms. Wagner said that they would then be exempt from the Ordinance if they were only doing reflexology in their business.

Council Member Schmid asked if exempt businesses would still need a permit.

Ms. Wagner said they would not need any special permitting from the City.

Susan Mix said she was the Vice President of the Reflexology Association of California. She was in Palo Alto in February, and provided a letter to the City Council Policy and Services Committee and the Police Department. The Reflexology Association of California reviewed the revised Ordinance text and supported the decision to include the reflexology exemption in the Ordinance. The American Reflexology Certification Board representatives also reviewed the proposed Ordinance and support its approval.

Palo Alto Free Press said the information delivered by April Chan Wagner was suspect. She was correct that obtaining a client list would require a warrant. That does not preclude her from going in and having consensual contact or discussion with anyone on the staff. During those conversations she was going to be very busy taking notes and using that information to create a criminal case. He encouraged the public to not talk to this individual. He reviewed a recent incident where a Palo Alto Police Officer taped and released private phone calls which could be considered a client list. He suspected the officer in question was April Wagner. This was a clear violation of policy regarding "unauthorized intentional release of designated confidential information, materials, data, forms or reports." Police Officers serve as a greater threat to the community than massage therapists.

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Tom Nolan had been a resident of Palo Alto for many years. He had been in practice in criminal defense for 38 years including the time when there were serious problems with prostitution in the community. He questioned Staff's claim that there had been 10 incidents in 10 years and the confidential nature of the cases. Any case that went to court would not be confidential. He wanted this Council to respect the citizens. In his opinion the Police Department did not respect the citizens. He said that He had successful experiences with walk-in foot massage businesses. He reminded the Committee that they were not discussing Happy Feet. He said the highly educated community of Palo Alto would not support an unclean or unsafe business.

David Bertelsen, owner of Happy Feet Foot Spa, said he was not aware of the exact date by which his employees needed to have their certification certificate. The day after he heard about the certification an officer showed up and gave him a \$1200 citation. Since then they had no problems. He said they never had a single customer complaint and everyone loved their facility. The one sexual assault that the Officers were happy to bring to your attention was at a foot spa massage establishment. They work on feet similarly to Happy Feet but they also have private rooms where the customers are completely disrobed and they have a full body massage experience and it was in that privacy setting that the sexual assault occurred. In his facility there was no disrobing. Not only do customers have all of their clothes on they are covered with a towel over their abdomen and back areas. He said the whole issue was about illicit sexual activity and the Ordinances were trying to control that activity. These types of problems took place in low-end massage parlors; there was no problem in Palo Alto. Massage was performed in chairs in supermarkets, malls, and airports and there was no sexual assault possibility there but under their definition, they would have to comply with all of these regulations. He felt that it seemed like there should be some flexibility. He added, speaking for Ping Bartelsen, that as long as Staff focused the conversation on sexual assault, they should also consider protection of the therapists. Over the last 15 years there had been no illegitimate massage businesses in Palo Alto, despite not being regulated that entire time. He discussed the 67 calls to the Fire and Police Departments made by these establishments. He felt that was potentially any number of issues that could be had at any business.

Babs Mitchell said she was a Palo Alto home owner, Stanford graduate, CAMTC certified massage therapist with well over 500 hours of education, and had given over 15,000 professional massages in 17 years. Staff made many changes that were requested by the community. She said there had been ten incidents in ten years at the three major establishments. She

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worked at one of the establishments. The establishment had 80 clients a day. One complaint was horrible. That was just one of the establishments and not all three, so that was even a lower ratio. The client log was insulting. She felt very strongly that no other business was asked to record the gender of a client. She had brought this up in meetings with the Police Department and attorneys and the California credit card law says that if you pay for something by credit card you cannot require other identification.

Beverly May, Director of Governmental Affairs for the California Massage Therapy Council, had been a massage therapist for 38 years. She said the reason the Legislature passed the State law to regulate massage was for public protection. There was a great standard needed to assure the Legislature there was a danger to the public and that regulation would protect the public. She said the zoning was so strict in Palo Alto it hindered more businesses. It would have been difficult, illicit or not, to have a business here, especially an illicit business, without bringing attention to it. She said the trend across California was for cities to regulate massage. San Gabriel had started regulating reflexology and the full body reflexology businesses. San Gabriel and San Francisco have had problems with injury and sexual assault in the full body reflexology businesses. It is really difficult to get convictions on those cases and that was one of the reasons having regulation has been beneficial. She said the CAMTC did not have an opinion on the client records issue. The State law allowed for cities to have one under Health and Safety Authority. It would be unusual to not require client records.

Charlene Gibson said that she had a number of things to talk about but they were covered by everyone else, so she passed on speaking.

Barry Katz said he did not believe there was a problem and the ordinance was not necessary. As a long-time Ventura neighborhood resident, he knew it was difficult to sustain a decent responsible business such as Happy Feet. This Ordinance would make it difficult for this business to continue operations that everyone appreciated. He actively worked against sexually oriented businesses on El Camino. As a long-distance marathon runner he said he needed the services of places such as Happy Feet and did not wish to his name registered as if he had done something wrong. He thought the Ordinance was thoughtful and well-intentioned but it was a solution to a problem that did not exist and he hoped that the Council would set it aside.

Mr. Cullen said there were a couple of different options and maybe the easiest thing would have been to go with CAMTC certification. It would have cut down on Staff time enforcing an Ordinance that was out of date. He said they tried to come up with a second track that allowed existing massage

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practitioners to practice without having to go through the full CAMTC process but still have some kind of certification process in the City. He said the information regarding acts of sexual assaults was brought up in response to questions. If the Council opted to create an unregulated environment, they would have to repeal the existing Ordinance which was not in compliance with State law.

Council Member Schmid said the Ordinance that would be voted on had a passage that defined reflexology as use of hand, thumbs, or fingers on hands and feet. Then the exemption discussed reflexologists performing reflexology. It had a capital R in it. He asked if that meant they were exempting only someone who signed up and qualified as a "Reflexologist" or anyone who did foot massages only.

Don Larkin, Assistant City Attorney said the idea was to exempt people that were trained in reflexology from having to get a massage permit. If someone was trained in reflexology and they were performing reflexology on the hands, feet, and ears then they would be exempt from the Ordinance.

Council Member Schmid asked if reflexology was a generic term or was it a specific term requiring certification. He also asked if it was a generic term for someone who was trained in foot massage.

Mr. Larkin said that the intention was that it be defined as somebody who had the training in reflexology. It was not certified by the City but somebody who was trained as a reflexologist. The City would not be in the business of testing people to determine if they were qualified as reflexologists.

Council Member Klein said that he was very tempted to not have any Ordinance at all, but had come down saying that there should be one so that they were not the hole in the donut which might be attractive to people for the wrong reasons. The City should have an Ordinance but it should be much lighter. He said some of the remarks made by the public regarding Staff were uncalled for. He may disagree with the conclusions of Staff, and he did in this regard, but he had no doubt at all as to the professionalism, honesty and integrity of the people who serve in the Police Department and the Staff. He did not want anyone to think in any way the members of the Council agreed with those remarks. He saluted the integrity and professionalism of Staff. The industry that was being talked about should be assumed innocent and not guilty and he thought many of these provisions assumed that they were guilty. He said he wanted to reverse that and make the Ordinance as light as possible. The Happy Feet organization or anybody like them should be viewed as exempt and he wanted to see a provision like

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Mountain View's added. He also said that he thought that keeping records of customers was inappropriate because many members of the public mentioned that they could not think of any other business where they were required to do that. He did find it to be demeaning and it seemed to him that if there ever was a need for the Police to find out who talked to other customers, they would have other means of finding that out. If there was ever a problem like back in the 1970's then the law could be changed. He thought they should start out assuming that these are all good upstanding citizens and not treat them otherwise.

MOTION: Council Member Klein moved, seconded by Council Member Espinosa, that the Policy and Services Committee refer the Massage Ordinance back to Staff to revise a) eliminate records requirement, b) include exemption for non-certified massage practitioners, and c) review the remaining language to draft as light of an ordinance as possible.

Council Member Espinosa said part of public service was public scrutiny. He said it was good that we lived in a country where people felt safe and able to voice their opinions about those in Government. He spoke about the fact that personally he was very pleased and proud of the work that Officer Wagner did as an individual and for the department in general. He was very proud of the service, the professionalism, the thoughtfulness, and the honesty that she brought to the role, the department, into to the City, and to this community.

Council Member Schmid started with a clarification. He said they were excepting something similar to Mountain View had which was "noncertified massage establishments". He asked if this was open, that anyone could declare that they were not to be certified. He asked if there were a process that they had to go through.

Mr. Larkin clarified the Mountain Views Ordinance indicated if the massage was conducted in an open room with the patrons fully clothed then the business needed a permit but the practitioners would not need to have the education and health and safety requirements required for massage practitioners.

Council Member Schmid said there were specific guidelines.

Mr. Larkin said it was a narrow exemption for specific types of massage.

Council Member Schmid said it did permit massage.

Mr. Larkin said it did permit full body massage but with clothing on.

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Council Member Schmid's feedback on the proposal was that a good case was made. It was important for Palo Alto to have a process of Ordinance on this. He was in favor of the education requirement, was in favor of the liability insurance, City permit option, reflexology language, and was in favor of including the type of activities in the Happy Feet environment. He supported dropping the maintenance of client records. The case had not been made effectively. He believed that this was an important step forward in the community. He agreed that they outlined a good and important Ordinance to move forward but suggested a little lighter touch on the application.

Chair Holman said over many years she had known of several individuals through friends or whatever, who had home massage practices, so it was not an office or studio inside a commercial district. She wanted to make sure that they were not criminalizing those people. There was a provision that anybody's certification should be posted so that would apply to anyone with a home studio. She asked if any Staff had a comment about that.

Ms. Wagner said that the current Ordinance did not allow any outcalls or having a home studio. If you are CAMTC certified you are exempt from that requirement. Currently the Ordinance does not allow them to have a home studio.

Mr. Larkin said that the City was not proposing to regulate and actually was not allowed to regulate the practice of massage by practitioners with State certification for limited areas. The thought behind that provision was the City did not have the resources to regulate massage that was conducted inside the home or outside of a massage establishment but that it would be allowed by people with State certification.

Chair Holman supported the direction this was going and appreciated all of the work that Staff had put into it. She appreciated (the comments by the Staff recognizing the importance that even one incident was more than unfortunate. One speaker said that this was a highly educated community so this just was not likely to happen but an education had nothing to do with whether someone is vulnerable or susceptible to the kind of violations they were speaking about. She supported the Motion as stated.

Ms. Tucker said she was looking forward in the Committee's agenda and work plan, given the direction was fairly straight forward with the exception of evaluating other areas where they might reduce the requirements, one alternative could be to consider directing Staff to make these changes and go straight to Council.

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Chair Holman said she appreciated the comment and knew that the Council packets were also very large and the agendas were very full.

MOTION PASSED 4-0.

2. Discussion and Recommendation of Council Priority Setting Process

Sheila Tucker, Assistant to the City Manager discussed the various range of approaches this process of setting Council Priorities has taken in the past.

Council Member Klein said the system of selecting priorities was in need of improvement. The public attended the priority setting meetings with increasing regularity. It seemed frustrating for them when their item of concern was not selected to become a priority. He noted that 80 percent of the Department workloads in City Hall were not attached to a priority. Even items that were not priorities were given much attention by City Staff and Council. He suggested a set of protocols should be created to guide how priorities were assigned. He supported the suggestion that a priority should not be a priority for more than three years, and there should be a rotation of priorities. The standard items such as Budget or Land Use should not be priorities unless some extraordinary event caused them to become a priority. He said preparation of suggested priorities prior to the annual Retreat should be implemented to allow for less impromptu selections of priorities.

Council Member Espinosa said that some priorities such as City Finances, as listed as a priority, did not have much meaning. City Finances were always going to be a priority. The process of determining priorities had become so broad it lost meaning. He said he would like to see them return with a conversation about how to delineate priorities. Part of the annual process should be to devise specific priorities to focus on.

Council Member Schmid said there were two different types of priorities. Some are large general issues such as City Finances and Land Use were different than items such as Emergency Preparedness and Youth Well-Being. The latter two were delineated items that were successfully completed. City Finances did have a unique situation where the Long Term Financial Forecast showed deficits over the next ten years. There was a specific goal to get that structure under control. He suggested that instead of having City Finances as a priority, eliminating that deficit could be the priority. The process did not allow for planning for the priority setting process. He suggested a process should be implemented where someone had

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responsibility to poll Council Members, gather information, and prepare a report for the annual Retreat in advance.

Chair Holman said there should be an overarching statement for context. She suggested a general statement regarding the basic responsibilities of running a city. That could be followed with a statement such as "the definition of a priority is an issue or topic which will receive particular, unusual, and significant attention during the year." She felt there should not be more than three priorities a year, although she said she could also suggest "focus on three with no more than five." Pre-preparation would benefit the process of selecting priorities. She said the life span of a priority should not be a hard rule. Most often two years is adequate, but some priorities would take longer. She said that establishing goals under each priority, to be regularly refreshed, was an important component to the process. She suggested items such as Budget and Land Use were too broad for priorities, but there could be goals under them that could help make them priorities.

MOTION: Council Member Klein moved, seconded by Council Member Schmid to place a context statement prior to the definition of a priority, to define a priority as an issue or topic which will receive particular, unusual, and significant attention during the year. The only items to be considered for priorities shall be those proposed in writing by Staff a week prior to the annual Council Retreat, or by one Council Member in time for inclusion in the packet for the annual Council Retreat and to have a three year time limit on priorities.

Council Member Klein said he agreed with some of his colleagues statements. For example, land-use should not be a priority, but completing the Comprehensive Plan by 2014 might be a priority.

Ms. Tucker suggested that priorities should be measurable.

Council Member Klein agreed. He said in the definition of a priority, focusing on the word unusual made sense. It differentiates projects such as the budget (usual) from projects such as eliminating the structural deficit (unusual).

Council Member Schmid suggested there should be a point person with responsibility for the process. He suggested the Policy and Services Committee should be the body to do this. They would get Council participation, generate ideas months prior to the Annual Retreat, and plan for what type of materials should be prepared.

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Council Member Espinosa suggested they were providing guidance to Staff for processes that would come back to the Committee. He asked for clarification on why the Committee would need further involvement.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER the Policy and Services Committee will be the focus of establishing the process of integrating input from all Council Members on an equal basis and will start the process three months before the January session.

Council Member Klein said his Motion was two-step process; 1) Staff would make a proposal of priorities, 2) Council would review the proposed priorities, and perhaps add their own to consider at the meeting. He felt like the amendment gave the Policy and Services Committee a final authority they have not had before.

Council Member Schmid said he was not trying to give them final authority. The act of setting Council Priorities was a Council process, not a Staff responsibility. He was not suggesting the Policy and Services Committee develop priorities, but rather develop a process for nominating priorities to the Council.

Council Member Klein confirmed he would be comfortable with that amendment as long as other Council Members would still be able to nominate their own suggestions for priorities and Staff would have input to the process at the Policy and Services Committee level.

Council Member Schmid agreed.

Chair Holman agreed it is the Council Priorities not the Staff Priorities. She questioned how to keep it full-Council focused. Starting three months ahead of the Annual Retreat will be difficult when there may be new Council Members in January. There would likely be new Policy and Services Committee Members prior to the Retreat.

Council Member Klein said the Policy and Services Committee would finish their work by December 15th.

Chair Holman confirmed the focus would be process not establishing priorities.

Council Member Schmid said individual Council Members could nominate priorities then the Council would determine in January which ones to select.

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Ms. Tucker asked if the distinction was to establish a process now or just prior to the Retreat. She said Staff could capture all of this in a proposed process to be discussed prior to the retreat.

Council Member Schmid clarified this would be approved by the full Council prior to the Committee beginning work in October.

Chair Holman reiterated the process would go to full Council for approval.

Molly Stump, City Attorney reminded the Committee Members that they would need to hold these process meetings in a public manner as they are soliciting input from other Council Members. She suggested in October the Committee could transmit that they were beginning the process and would like feedback from all Council Members to be discussed at a noticed meeting.

Council Member Espinosa confirmed Staff would take direction given by the Committee, write a proposed policy, and return to the Policy and Services Committee.

Chair Holman said it would return to the Policy and Services Committee. She said she had some reservation about not allowing more than three priorities. She asked for comments regarding this limitation.

Council Member Espinosa said he preferred something that said "with the goal of no more than three." As opposed to a strict "no more than three."

Chair Holman said she would second an amendment to that point.

AMENDMENT TO MOTION: Council Member Espinosa moved, seconded by Chair Holman to include a goal of no more than three priorities in a year.

Council Member Schmid said he thought three years was a good goal, longer could dilute the priority.

Council Member Klein said he would prefer to say "no more than three."

AMENDMENT PASSED: 3-1, Klein no

Ms. Tucker asked for clarification regarding when the new process would begin.

Council Member Espinosa said the process would begin with the planning for the next retreat at the end of the calendar year.

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MOTION RESTATED: Council Member Klein moved, seconded by Council Member Schmid to place a context statement prior to the definition of a priority, to define a priority as an issue or topic which will receive particular, unusual, and significant attention during the year. There should be no more than three priorities in a year. The Policy and Services Committee would be the focus of establishing the process of integrating input from all Council Members on an equal basis and will start the process three months before the January Retreat. There will be a fixed list of topics to consider at the Retreat. There will be a goal of no more than three priorities per year, and to have a three year time limit on priorities. Staff will prepare this procedure and return to the Committee prior to returning to the Council.

MOTION AS AMENDED PASSED: 4-0

3. Discussion on Policy and Services Committee Workplan Prioritization and Process for Handling New Business

Chair Holman she had spoken to the City Attorney about this ahead of time to see how it might be noticed. She said it was a discussion on Policy and Services Committee Workplan Prioritization and Process for Handling New Business. The purpose was to get Committee members input on how they might have a standing agenda item such that a topic of discussion or recommendation could be brought back to the Committee for discussion. Currently Staff or the full Council could refer items to the Committee level. There was not an informal process for items that are minor that need to be addressed She said that she thought this could be a more collegial approach to agendize topics.

Council Member Espinosa asked her to please provide a couple of examples.

Chair Holman Council Member Burt had been interested in the topic of establishing policies for liaison participation at Board and Commission meetings. They would not do a colleague's memo on that. It was probably not that time intensive and it would be good to have a policy surrounding it. Another example was that she had become increasingly aware the Board and Commission applications forms were ancient in terms of what they asked for. They have a Public Arts Commission and Architectural Review Board but do not even ask for a visual representation of what their values might bring, yet they are helping to define our City. She suggested they look at some things that could be added to those application forms.

Council Member Espinosa said in his opinion those were perfectly appropriate for colleague's memos. The process of the colleague's memo helps us as a

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Council to agree how we would use Committee and Staff time and that those could end up being larger. He did not see how this list of things was making them not worthy of a colleague's memo and referral at that level.

Chair Holman said she was sympathetic to Staff workload. If they could initiate some of this at Policy and Services Committee, it would be much less work for Staff. If they did a colleague's memo and Staff had input, then it would go to Council and agendized, and then it would come back. She said there were things they could initiate and write up to see if they wanted to pursue them or not. It seemed like a simpler process for some of the lower hanging fruit.

Council Member Klein did not see how she was getting around the agenda problem under the Brown Act.

Chair Holman said this was only to agendize a topic and not to make any decisions. She said she spoke to the City Attorney about what was done in other communities.

Council Member Klein said he did not regard colleague's memos as onerous as she did. Staff did not have to put in hardly any time if they did not want to. They did not have any veto power over a colleague's memo. You could put in a colleagues memo that was only two lines long, so all the Staff work would be the City Clerk's office putting it on the agenda.

Chair Holman said that she wanted to hear what the City Attorney had to say in terms of how other communities had this kind of less formal process.

Molly Stump, City Attorney, asked if the question was how they could, in compliance with the Brown Act, include a new business item at the end of an agenda.

Chair Holman she said yes and that they were not violating the Brown Act and not making any decisions, they were just talking about agendas and prioritizations.

Ms. Stump she said if she understood the idea, it would be to have a standing item on the agenda that allowed oral suggestions from the Committee Members of items that should be agendized at a subsequent meeting. There would not be any workup, discussion, or consideration of an item. It would be identified for the Committee to take up at a subsequent meeting.

Chair Holman said that was correct.

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Council Member Klein said they do that already at Council meetings. If two colleagues said during the comments section at the end of a meeting that they wanted to consider something, then they would put it on the next Council agenda and it would get referred out. He asked if she was suggesting that she would like to have the same process at the Committee as well as the Council. He said he did not have a problem with that. He said what they had told themselves at the Council meetings was that it was the equivalent of writing a Colleague's Memo.

Chair Holman said yes that she was looking for something similar to that. She thought there were some things that did not rise to the level of having to involve the full Council. It seemed like an easy way to manage data. For example, the Planning Commissioner used to keep a parking lot list of topics that they wanted to have discussed at later meetings and they just put those on a parking lot and would get to them. They would try to prioritize them in terms of what they thought were the most urgent. They would forward that list to the Council for consideration of what they would like the Policy and Services Committee to undertake. It seemed like an easy and expeditious way to address some of those other issues.

Council Member Schmid said that it was a little tricky at the Committee level. He did not think of colleagues memos for Committee agendas. The goal of Policy and Services was to facilitate decision making at the Council level. He thought having a comment section at the end of each meeting may be an appropriate way of sharing ideas amongst ourselves.

Chair Holman said those topics could and should be shared with the Council to say they were considering taking them up. They could do a colleague's memo for each topic but it would not address how they had a list of things that needed to be prioritized and for Committee and Council consideration.

Council Member Espinosa said that he understood the spirit of it and did not disagree with process being they have it at Council meetings. He thought he could see something like that at the Committee level. What he liked about the colleague's memos were colleagues can just write their memo and run it past the City Manager to get some feedback if they wanted it, but essentially could say they would like Policy and Services to consider the issues. They could list just a couple of things and then the Council would consider it. He worried they would start putting things on the agenda that Council was not aware of. He thought it was important they were helping to decide what those considerations should be. It helped the whole Council to be aware as well, of what was being asked of Staff to work on for each of the Committees. He said it was not that he disagreed with the goal and the

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intent, he just thought it could be done without arduous Staff work through a process that already existed, which helped them keep everybody informed and on the same page.

Chair Holman said the one thing that was missing from colleague's memos was not always having a way to prioritize; a separate colleague's memo had to be done for each topic. Then they would roll up to Council. Council should see exactly what they were doing, what they were proposing, and weigh in on the prioritization.

Council Member Espinosa said they prioritized when it came to the Committee through the Chair working with Staff. It happened once the colleague's memo became something the Committee would take up. There was a prioritization process they went through to determine what they would review and when.

Palo Alto Free Press said he did not think that there were any checks and balances that dealt with discrimination. In particular it was Palo Alto City Ordinance 4795. The title of that Ordinance was Policy Arbitrary Discrimination. He had sent this policy to Don Larkin on many occasions and had not received a response from him other than the fact that he communicated with him on the issue saying it was a useless attachment. He said he had a Federal Taxpayer Identification and the Federal Government recognized Palo Alto Free Press as a news reporting blog agency. The Superior Court of Palo Alto recognized them as a news reporting agency. The City of Palo Alto did not recognize them as a business and he believed that the City of Palo Alto was in violation of their own policy dealing with discrimination. It says it is the policy of the City of Palo Alto to affirm, support, and protects the human rights of every person within its jurisdiction. These rights include but are not limited to equal, economic, political, and educational opportunities. Paloaltofreepress.com was defined as a blog and yet cannot receive Police press releases. He wanted someone to at least address his issues and concerns in this matter and have a dialogue.

Chair Holman said that what she wanted to accomplish was more expeditious and more collegial as opposed to Council Member specific. The Chair worked with the Staff to set agendas currently. She was looking for a way that they could have a more inclusive way of prioritizing the topics that the Committee might forward to Council in a prioritized and inclusive fashion. She asked if they should try at the next meeting to have this placeholder agenda item and see where we went from there.

Council Member Schmid asked if it would be good to state it in the same way as the Council comments reports.

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Ms. Stump said they have discretion and how it was stated would bind what they could do under the item. She thought that the Council's file agenda item was Council Comments and Reports and it was for brief statements. It certainly worked for the purposes that the Council used them for.

Council Member Schmid said that he had to admit that when he read number three, he did not quite know what to do. Maybe if it was in the same format of the Council then it would be easy to treat it the same way.

Chair Holman said the one difference might be to clarify that at Council when an item was handled there was not any discussion about that item, which was appropriate. With this situation there could be some back and forth but it was only focused on prioritization, it was not about the topic itself. Not about the content of a discussion item.

Council Member Schmid said it seemed as though once they got into dialogue of prioritization then they would get into the substance. If they left it at Council comments then it automatically could be agendized because it was the same as a Colleague's Memo.

Council Member Klein said that it needed to be put in writing because he was not clear as to how this would work. The comparison on what was done with Council comments breaks down. One Council Member could not dominate the Committees agenda by submitting many Colleague's Memos. When that item came back, the full Council had the right to say that it was not worth Staff time and the Council would vote and send it off to oblivion. That would act as a restraint on two colleagues who were trying to dominate the agenda. He thought that what was being suggested enabled three people on the Committee to give direction to Staff to put in time into something that the majority of the Council did not agree with. On many occasions, what Council thought would be small issues were of great concern to the community, so it would be difficult to know what might fit.

Chair Holman said that was very true and to not overlook the fact that she said these should role up to Council for their comments. It was not to keep it only at Committee.

Ms. Tucker said from a Staff perspective they were welcome to facilitate any type of prioritization process that was recommended. Important steps they saw in the process were an opportunity to understand what the issue was that was being advanced. What analysis needed to be done and what the Staff impact was. Having an agenda item at the end of a meeting may not give them the opportunity to have those discussions and understanding of

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whether or not to agendize it. They would hope that whatever process went forward, that there was an opportunity to have those discussions and understand the Staff impacts.

Chair Holman said that getting Staff input would be a part of the process.

Council Member Espinosa said another way to approach this was that a process be set up. Perhaps they could establish the kind of conversation that presumably would happen in the beginning of the year when the Committee started, with a formalized process that was publicly noticed in a different way, where people could anticipate a conversation. The Committee would come together with a list of additional items they would like to work on with Staff over the next time period. He had an issue with this being standard and agendized for many meetings. If they came up with a more regularized conversation that happened here, that is more brainstorming, to put things on Council consideration as a Committee, and then he could imagine that.

Chair Holman said she would work with Staff to come up with something that accomplished and incorporated the comments, concerns, and suggestions of colleagues and see what they could come up with.

Ms. Stump said the issue and prioritization discussions could be helpful when a multimember body had a number of items that were in the queue. The prioritization idea was linked to the concept that there would be a number of items in the queue. The Committee had many ideas of how to accomplish that and perhaps the current one was the one that should be used.

FUTURE MEETINGS AND AGENDAS

Chair Holman said the May 8, 2012 Agenda was more than full. They were trying to find an additional date in May but were not successful to get all colleagues. She requested Staff work to find a second date.

Ms. Tucker said she would work with City Clerk's office to poll for another May meeting date.

Chair Holman said they would also try to get better management of the several topics, some of them large, on the May 8, 2012 Agenda.

Council Member Espinosa said that the June Agenda looked really empty. He asked that maybe something from May could be moved to June considering the list in May was long and June was not.

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Chair Holman said agreed.

Ms. Tucker thought that some items could move, like the Auditor's Office Quarterly Report and possibly the Economic Development Strategic Plan, and there was some interest in moving the Employee Ethics Hotline, Animal Services, and Infrastructure Funding forward.

ADJOURNMENT: Meeting adjourned at 9:43 p.m.