



POLICY AND SERVICES COMMITTEE MINUTES

Special Meeting
June 17, 2014

Chairperson Price called the meeting to order at 6:05 P.M. in the Council Conference Room, 250 Hamilton Avenue, Palo Alto, California.

Present: Klein, Price (Chair), Scharff

Absent: Schmid

AGENDA ITEMS

1. Recommendations for Expansion of City Smoking Ban in the Downtown and California Ave Business Districts; Including Benchmarking Data and Policy Discussion to Possibly Include Additional Areas or Restrictions on Sales and Indoor Smoking.

Kirsten Struve, Manager of the Environmental Control Program, provided background on the benchmarking and jurisdiction ban of non-smoking. Staff recommended expanding the area of non-smoking designation beyond the Colleagues Memo. The Memo requested California Avenue and the Downtown areas but Staff wanted to include the Comprehensive Plan's Regional and Neighborhood Commercial areas. The surrounding cities' smoking ban prohibited outdoor dining areas which were recommended by Staff. Staff dealt with the Downtown Streets Team and it was determined there was smoking associated litter outside of the designated smoking areas. Palo Alto currently had a \$250 fine for smoking in a non-designated area while other jurisdictions had escalating fines for repeat offenders; a Staff recommendation to be considered. Future planning would include the restrictions of indoor multi-family housing, tobacco sales, and upgrading the City's Santa Clara County Public Health rating.

Trish Mulvey spoke of the damage cigarette butts cause to aquatic animals as they swallow them once the litter travels to the water sources. She recommended the survey be as broad as reasonable to allow Staff to return with the adequate information.

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Allison Chan supported the smoke-free ban in commercial and Downtown areas. In reviewing the litter maps the majority of litter was cigarette butts. The filter in the cigarette butt was toxic to the wild life and aquatic animals.

Council Member Klein asked why Staff was suggesting a public opinion outreach. Over the years with the many smoking bans implemented there was not survey work performed.

Ms. Struve confirmed the Colleagues Memo requested outreach and Staff felt survey work was a good way to reach a large percentage of the population.

Council Member Klein asked who wrote the Colleagues Memo.

Council Member Scharff stated he was the initiating author.

Council Member Klein asked if there was survey work requested in the Memo.

Council Member Scharff stated no and did not feel it was necessary.

James Keene, City Manager, believed the Colleagues Memo was more restrictive about expanding the outreach to the commercial areas. He understood the original intent to be a courtesy outreach to the business community.

Council Member Scharff felt intrigued by the possibility of expanding the ban to multi-family residential where there were shared walls and ventilation systems.

Council Member Klein asked how the number of 3 billion cigarette butts was derived. Palo Alto was 1 percent of the population which equated to 30 million.

Mr. Keene believed the source information was provided by Save the Bay.

Council Member Scharff agreed with Staff Recommendation 2; a) Increase the area covered to include "Regional/Commercial" areas (e.g.: Stanford Shopping Center), b) increase the area covered to include "Neighborhood Commercial" areas (e.g.: Alma Plaza), c) increase coverage to include all outdoor eating areas, d) include penalty escalation for repeat offenders, e) include e-cigarettes, and f) require cigarette butt receptacles and signage immediately adjacent and within areas covered by the ban. And Staff Recommendation 3; changes to the indoor smoking restrictions and restrictions on sale of tobacco products and e-cigarettes be considered: a)

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include e-cigarettes in current indoor restrictions, b) ban the sale of tobacco products and e-cigarettes at pharmacies and at any establishments adjacent to parks and schools. He asked how quickly Staff could return with a proposed Ordinance and could it return directly to Council.

Molly Stump, City Attorney, stated Staff Recommendation 3 was relatively straight forward but she would speak with Staff to determine the specific scope.

Ms. Struve said the vision was to move forward with Recommendation 2 at the present time. She believed e-cigarettes in pool vehicles and City facilities would be straight forward but restrictions on sales of tobacco may take time.

Mr. Keene noted Recommendation 3 did not include the more detailed restrictions on indoor smoking.

Council Member Scharff felt Staff Recommendations 2 and 3 could be moved forward now.

Khashayar Alaei, Senior Management Analyst, stated Recommendation 2 could return to Council in September or October with the Ordinance.

Mr. Keene wanted to be clear; the Staff recommendation on the front of the Staff Report was less detailed than the one on page 6 being referenced by the Committee.

Ms. Struve agreed but mentioned banning sales of tobacco products may be a more controversial manner. She noted CVS had already committed to stopping the sale of tobacco products in Palo Alto.

Council Member Scharff asked what outreach would be requested for Pharmacy's if Recommendations 2 and 3 were moved forward immediately. He asked what level of outreach Staff felt was appropriate.

Mr. Alaei said Staff would request to meet with each location to inform them of the proposed Ordinance.

Council Member Scharff did not feel limited outreach would take an extended amount of time.

Mr. Keene stated within Santa Clara County the only restricted sales was in the unincorporated areas.

Council Member Scharff asked how retailer licensing worked.

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Nicole Cox, Santa Clara County Public Health Department, clarified the County required each facility; who desired to sell tobacco products, obtain a local permit. The County had the Cities of San Jose, Campbell and Morgan Hill with retailer licenses which provided local control to the enforcement agency to enforce the sales to minor laws and other issues that were not enforced at the State level.

Council Member Scharff asked if the Council adopted Recommendations 2 and 3 would the City accomplish the smoke-free outdoor air and thus accomplish a higher American Lung Association score.

Ms. Struve stated Recommendations 2 and 3 would cover all outdoor dining but outdoor events would need to be added. Most outdoor events occurred in the Downtown area or parks which would be covered by another section of the Ordinance.

Council Member Scharff asked why the restrictions near parks and schools would not be included with the pharmacies. Without the pharmacy option cigarettes could be purchased at grocery stores, liquor stores and gas stations.

Ms. Struve explained if there was a pharmacy within the grocery store the store would be included in the ban.

Council Member Scharff was in favor of moving forward with the ban at facilities but was not ready to move forward with the residential ban without further input from the community.

Mr. Alae said a survey of the multi-family units should take 45-days to complete.

Council Member Scharff asked if the City accomplished the list of Recommendations 2 and 3 would the grade increase from a D to an A.

Ms. Cox said without having the American Lung Association criteria at hand she could not say for certain although she believed it was highly probable.

Ms. Struve explained there were two grading systems; the County and the American Lung Association. After reviewing the criterion she believed Palo Alto would accomplish an A grade.

Chair Price asked for clarification on the term multi-family units; were condominiums and townhouses included or was it primarily rental property.

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Ms. Struve clarified all variations of multi-family residents were considered.

Chair Price stated apartment associations and homeowner associations should be included in the outreach. She asked what effect the license permit would have on Mac's Smoke Shop and other outlets of tobacco distribution.

Ms. Struve clarified if Palo Alto acquired a Tobacco Retail License all shops able to sell tobacco products would be required to obtain a permit and follow the City's requirements.

Mr. Alae said the ban would not initially include outlets outside of pharmacies or grocery stores with pharmacies. The thought process was to nest the tobacco licensing requirements with the Business Registry.

Chair Price read in the Staff Report escalation of enforcement and the development of an enforcement plan. She did not recall seeing language on enforcement, escalation or an enforcement plan in Staff's recommendations. She asked whether that language needed to be included in the motion.

Ms. Struve stated the enforcement plan had not been developed as of yet. She said as an option the Police could randomly select days to seek out smoking offenders to show the community enforcement was being taken seriously.

Chair Price clarified Staff was seeking guidance from Council.

Ms. Struve stated yes and agreed to provide draft language on the fees, enforcement plan, and escalation when they return.

MOTION: Council Member Klein moved, seconded by Council Member Scharff to recommend to the City Council adoption of:

1. The changes to the outdoor smoking restriction to be considered: a) Increase the area covered to include "Regional/Commercial" areas (e.g.: Stanford Shopping Center), b) increase the area covered to include "Neighborhood Commercial" areas (e.g.: Alma Plaza), c) increase coverage to include all outdoor eating areas, d) include penalty escalation for repeat offenders, e) include e-cigarettes, and f) require cigarette butt receptacles and signage immediately adjacent and within areas covered by the ban; and
2. To the indoor smoking restrictions and restrictions on sale of tobacco products and e-cigarettes be considered: a) include e-cigarettes in

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current indoor restrictions, b) ban the sale of tobacco products and e-cigarettes at pharmacies and at any establishments adjacent to parks and schools.

Council Member Klein believed the American Lung Association ratings were exaggerated. Palo Alto had a small number of continued smokers and the community was susceptible to the change in a ban direction. He had concern with indoor residential smoking and did not feel the residents were as onboard. He believed there should be specific clarification on the distance between smoking and the adjacent area of parks and schools.

Mr. Keene clarified the distant would be 1,000 feet. The City considered Lytton Plaza a park and there were tobacco enthusiasts within the 1,000 feet of the area.

Council Member Klein accepted Lytton Plaza was a park area and agreed there was smoking. He cautioned the appearance of Palo Alto banning the sale of any tobacco products throughout the City limits. He was not certain that could be accomplished.

Ms. Stump stated she had not researched that specific question although believed that would run into a preemption issue.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to have the words "public events and worksite service areas" included in Item Number 2 of the Motion.

Council Member Scharff remarked seeing construction workers smoking just outside of the work area which he found to be bothersome. He had witnessed workers tossing their butts over into the neighbor's yard.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to replace "Considered" with "included in the Ordinance" in Item Number 2 of the Motion.

Chair Price asked if the Secunder was suggesting there not be additional outreach to the Chamber of Commerce.

Council Member Scharff did not have an issue with outreach. He asked whether there had been any outreach performed to date.

Mr. Alae stated yes, Mr. Fehrenbach had spoken to the business areas in town and had informal conversations. The entire outcome had been positive.

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If the Committee desired more commercial or business outreach that could be completed.

Council Member Scharff wanted to move forward with a banning smoking plan in multi-family housing.

Council Member Klein stated there was a distinction between rental property and condominiums or townhouses ownership.

Chair Price disagreed with the distinction of rental versus ownership; both types shared common walls and ventilation.

Council Member Scharff asked the Maker if they would agree, for the purposes of outreach, to include owned and rented property.

Council Member Klein agreed but noted a Homeowners Association could ban smoking on their own.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to have Staff perform outreach and determine where the community was on the banning smoking in multi-family rental housing.

Council Member Scharff wanted to include the tobacco retail license in the Motion.

Council Member Klein stated he did not feel the amount of retailers selling tobacco was great enough to induce another bureaucracy.

Council Member Scharff asked Staff for a brief explanation on the advantages of the license.

Mr. Keene clarified the main reason of the licensing would be to monitor and enforce the sale of tobacco to minors.

Council Member Scharff asked what the current process was if a retailer was caught selling tobacco to minors.

Ms. Cox stated there was a minimal fine charged to the establishment if there was no licensing in effect.

Council Member Scharff confirmed the licensing allowed the City to enforce stopping the sale of tobacco products.

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Ms. Cox stated that was correct.

Chair Price mentioned the issue of enforcement and the development of an enforcement plan had not been addressed.

Council Member Scharff stated in the Staff Report under Summary of Recommendation the enforcement issue was spelled out in Recommendation 2.

Chair Price asked if there would be information or a link on the website regarding smoking cessation programs.

Mr. Keene agreed the Staff could set-up a clearing house connection on the website.

MOTION RECAPPED: Council Member Klein moved, seconded by Council Member Scharff to recommend the City Council approve:

1. The changes to the outdoor smoking restriction to be considered: a) Increase the area covered to include "Regional/Commercial" areas (e.g.: Stanford Shopping Center), b) increase the area covered to include "Neighborhood Commercial" areas (e.g.: Alma Plaza), c) increase coverage to include all outdoor eating areas, d) include penalty escalation for repeat offenders, e) include e-cigarettes, and f) require cigarette butt receptacles and signage immediately adjacent and within areas covered by the ban; and
2. To the indoor smoking restrictions and restrictions on sale of tobacco products and e-cigarettes be included: a) include e-cigarettes in current indoor restrictions, b) ban the sale of tobacco products and e-cigarettes at pharmacies, public events, work sites and services areas; and
3. Direct Staff to conduct appropriate outreach with regard to potential bans on smoking in multi-family residential units.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to include licensing and delete all wording after "pharmacies" in Item Number 2 of the Motion.

Chair Price asked why the removal of restricting sales adjacent to parks and schools.

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Council Member Klein stated there were a number of restrictions and leaving in the “adjacent to parks and schools” would ban tobacco products from Mac’s Smoke Shop because of its proximity to Lytton Plaza.

MOTION AS AMENDED PASSED: 3-0 Schmid absent

Chair Price asked what the smoking restrictions were at Stanford University.

Ms. Struve stated they had a smoking restriction in place; 30-feet from any opening and there was no tobacco sold on campus.

Chair Price asked the Department of Public Health representative if there was information she could add.

Ms. Cox agreed with Ms. Struve and added the Stanford Medical Campus was completely smoke-free.

MOTION: Chair Price moved, seconded by Council Member Scharff to recommend to the City Council to not make the distinction on banning smoking, and to include multi-family, condominiums, townhouses, and multi-family rental housing; anything with attached housing where people were sharing ventilation systems and could potentially pollute one another.

MOTION PASSED: 2-1 Klein no, Schmid absent

MOTION: Council Member Scharff moved, seconded by XX to ask Stanford University to become a smoke-free campus and have the Palo Alto City Council pass a Resolution asking them to do so.

Council Member Klein said he would not participate in this Motion due to his wife being a member of the Stanford University faculty.

MOTION FAILED DUE TO LACK OF A QUORUM

Mr. Keene clarified the Committee provided explicit direction with respect to outreach on 1) apartments and condominiums with shared ventilation and 2) appropriate and courteous outreach to effected businesses and Stanford Shopping Center. He believed initiating the outreach prior to Council review would benefit the Council’s decision. He asked Staff the probable return date to Council.

Mr. Alae stated October.

Mr. Keene asked why it needed to be so far out.

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Mr. Alae stated after review of the Council Calendar it appeared the best option.

Mr. Keene stated that was too long, all that was needed was the outreach portion.

Council Member Scharff stated the City Manager and the Mayor should determine the date. The question was when Staff could have the information ready.

Council Member Klein believed the outreach was a courtesy and he noted the industry did not have veto power over the decision.

2. Discussion and Recommendation to Council Regarding Potential Ordinance Making Changes to Council Compensation.

Molly Stump, City Attorney, stated the current Council was compensated consistent with the General Law at \$600 per month. The General Law allowed room for compensation levels to be increased by way of an Ordinance approved by the majority of Council or the Council could place the matter before the voters. She noted any change to Council compensation would go into effect with the beginning of new Council terms; for Palo Alto that would be January 2015.

Council Member Scharff asked if the 2014 voting Council Members who were not up for re-election could vote and have the increase if applicable applied to their compensation in January of 2015.

Ms. Stump replied yes.

Council Member Scharff believed any vote could not apply to oneself.

Ms. Stump stated at least one member of the body had to have stood for election in order for the new compensation level to apply to the entire body.

Meggan Casas, Senior Human Resources Administrator, reviewed the benchmark data on surrounding cities in Santa Clara and San Mateo Counties for a total of 26 cities. The highest monthly Council salary was the City of San Jose at \$6,750. The average monthly salary throughout the remaining cities was \$759.40. The City of Santa Clara received an annual Consumer Price Index (CPI) increase of 5 percent. The City of Mountain View has a proposed measure for November 2014 to increase compensation from \$600 to \$1,000 monthly.

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Council Member Scharff asked for the average salary.

Ms. Casas stated \$759.40.

Council Member Scharff asked if the average was based on all of the cities even though some were paid \$0 and San Jose was \$80,000 annually.

Ms. Casas said yes. San Jose Council Members were full time employees but they were Council Members so their salary was included.

Council Member Scharff did not feel the average was helpful because the monthly amounts were all over the chart.

James Keene, City Manager, wished to speak to the average but in contrast the City was in the median at \$600.

Chair Price acknowledged different cities paid different amounts but she felt the issue should be based on the amount of work performed not the numbers. She asked what the parameters were per the Ordinance that could be used to make annual salary adjustments.

Ms. Stump stated the General Law allowed the Council to add 5 percent each year since the last date of increase which was 2001. She noted the 5 percent could not be compounding.

Chair Price said the Staff Report calculated the amount to just under \$1,000.

Mr. Keene agreed and stated there could be a perspective 5 percent increase moving forward.

Ms. Stump clarified if the Committee was interested in the maximum amount of increase Staff would need to review the calendar and count days from the last increase in 2001 to January 1, 2105.

Herb Borock read portions of the General Law where the 5 percent was indeterminate based on the benefits received. Some cities did not provide medical benefits to their Council. He felt the only benefit the City Council should receive was salary and not medical benefits because the position was not employment but volunteer.

Council Member Scharff recalled in 2010 there was a Motion to reduce Council salary which failed by a 5 to 4 vote. Historically when financial times were low cities did not provide salary increases but when the economy rose

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salaries increased and long-term projects were taken on. He believed Council needed to take a leadership role and just because the economy was good Council should not be the first in line to benefit. Palo Alto Council salaries were in the median and he was satisfied with that.

MOTION: Council Member Klein moved, seconded by Chair Price to recommend to the City Council that salaries be increased to \$1,000 per month effective January 1, 2017.

Council Member Klein felt the reason for an increased salary was it had been 13 years since the last increase. There was a decline in Council candidates in their middle years and although you were not on the Council to become wealthy there was an increase in workload and time away from family. He chose the effective date as not to benefit seated Council Members.

Chair Price mentioned the current seated Council came from a variety of economic status. There were Council Members who used personal choice to not accept any monthly pay and some chose not to accept health benefits. Those options were a personal choice and providing an increase in salary was not meant to discourage or encourage candidates.

MOTION PASSED: 2-1 Scharff no, Schmid absent

Chair Price asked when Staff would bring the item forward to the full Council.

Ms. Stump stated Staff would work toward an August return.

ADJOURNMENT: Meeting adjourned at 7:38 P.M.