



POLICY AND SERVICES COMMITTEE TRANSCRIPT

Special Meeting
October 06, 2015

Chairperson Chair Burt: called the meeting to order at 7:00 P.M. in the Community Meeting Room, 250 Hamilton Avenue, Palo Alto, California.

Present: Burt (Chair), DuBois, Wolbach

Absent: Berman

Oral Communications

Chair Burt: Our first item is to allow oral communications from members of the public who wish to speak on items that are not on the agenda. We have no speaker cards, so we'll move on to Agendized Item Number 1.

Agenda Items

1. Auditor's Office Quarterly Report as of June 30, 2015.

Chair Burt: Welcome, Harriet.

Harriet Richardson, City Auditor: Good evening Mr. Chair, Members of the Committee. Harriet Richardson, City Auditor, presenting the Auditor's Quarterly Report for the fourth quarter of Fiscal Year '15 from April through June 2015. On page 2 of the report, I'll discuss a couple of the key highlights that we have there. The first one is that we completed the Fiscal Year 2014 Performance Report and presented it along with our Annual Citizen Centric Report and the results of the annual Citizens Survey. We demonstrated the survey results using an interactive web-based tool. The second that we published and presented the Animal Services Audit, which was well received by City management and regional animal support organizations. The key finding in that audit was that the City needs to pursue a new business model to be able to provide modern-day care to the animals while maintaining fiscal sustainability. We also completed the Audit of Utility Meter Procurement, Inventory and Retirement. Our key findings in that audit were that incomplete and inaccurate meter data files in SAP caused data errors and discrepancies that increased the risk of inaccurate customer billings and that using technology can transform raw data into useful information for good reporting and decision making. Moving to page

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3. We have five audits in progress. As of the end of the quarter, we had drafted a report for the first two objectives of the Cable Franchise Fee Audit. We're reviewing the results provided to us by a consultant who conducted the work to determine if the cable companies paid the appropriate amount of franchise and public education and government fees. We expect to present that report to the Policy and Services Committee in February. We've also drafted the report for the Parking Funds Audit which the City Attorney had for review by the end of the quarter. We expect to present that report to Policy and Services in December. During the quarter we started three new audits listed on page 4, the Fee Schedules Audit, the Disability Rates and Workers' Compensation Audit and the Utility Rate and Billing Accuracy Audit. We're in the planning phases for each of those audits and expect to publish them in late February. Also on page 4, you'll see two projects that we are not calling full audits, but they are analytic development and continuous monitoring projects. One of these will focus on accounts payable, and one will focus on overtime. The purpose of them is to develop scripts that can be run at regular intervals after we complete this work to monitor for things such as duplicate payments and unnecessary use of overtime. We expect to publish the results of those projects in January. On page 6, I already talked about the results of the Citizens Survey and everything that's on page 5. Moving on to page 6. We regularly monitor for misallocation of sales and use tax. In our final quarterly report for the year, we summarize the results for the entire year. During Fiscal Year '15, we received \$81,441 as the result of my Staff's inquiries to the State, and \$35,496 from the consultant's inquiries. We also have a development agreement with Stanford Medical Center which allows the City to receive the sales allocations directly from those contractors, rather than them going through the County pool which would mean we would only receive a fraction of the amount that we actually get. For Fiscal Year '15, we received \$568,755 as a result of that agreement. We continue to serve as an advisor in various roles, including on the Utilities Risk Oversight Committee, the Library Bond Oversight Committee, the IT Governance Review Board and the Information Security Steering Committee. I'm expecting that the Library Bond Oversight Committee will be winding down somewhere around the end of this year or beginning of next year since the projects are finished and they're just kind of wrapping up some final things before they declare that they've completed their role. The last on our report is the report of the fraud, waste and abuse hotline administration. We received two allegations in the first quarter of Fiscal Year '15, but have not received any since then. The chart in the report shows the status of complaints received each fiscal year. All the complaints received through Fiscal Year '15 have been closed. Seven received in Fiscal Year '13, three in Fiscal Year '14 and two in Fiscal Year '15. That completes my report, so I can now address any questions that you might have.

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Chair Burt: Thank you. Colleagues, who would like to begin?

Council Member DuBois: I can't remember if we pushed this off on the agenda. This is from June, right?

Ms. Richardson: Yes, yes. There wasn't a meeting in July, August, and then September's meeting it got pushed out. That's why. This was the first available meeting.

Council Member DuBois: We're going to see the previous quarter?

Ms. Richardson: In two weeks you'll September's.

Council Member DuBois: That's what I was just looking at and trying to figure out. We have four audits coming in February. Do you really think they're all going to complete in February or are you planning (crosstalk)?

Ms. Richardson: We're trying to get them done by then. Once we have the draft report out, sometimes there's issues that come out that are unexpected and it may push them out. As an example, on the Cable Franchise Fee and Parking Funds Audits, we were expecting to have those completed several months ago, but there were some issues that I've actually been working very closely with Molly on. Sorting through those issues has delayed them.

Council Member DuBois: It seems like if we could just stagger them so they don't fall all at once. I wasn't quite sure what you were saying about the Stanford money. Does that represent our portion?

Ms. Richardson: That is our portion. That \$568,000 is our portion. Normally what would happen; when a contractor doesn't have a physical presence in Palo Alto, their sales tax gets allocated to the County pool. The pool gets divided up based on the percentage of each jurisdiction's sales tax allocation within that pool, so we would get a fairly small percentage of that. I think it would be less than 10 percent of that amount if we didn't have that agreement. We've actually had some discussion with Tommy Fehrenbach and Joe Saccio about seeing other large construction projects where we might be able to enter in some development agreements to get that sales tax directly. They're watching for those types of things, but we haven't entered into another agreement. It's definitely a benefit to the City to do that.

Council Member DuBois: I thought you were saying we collected directly, but then we have to pay it out. We actually keep more of it?

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Ms. Richardson: We keep this. This is our portion to keep. This is City revenue.

Council Member DuBois: Is that with the Medical Center? Is that tax on physical things that they use?

Ms. Richardson: It's tax on equipment and construction materials.

Chair Burt: If I might. It's principally around the construction of the Medical Center.

Council Member DuBois: It's only construction; it's not ongoing?

Ms. Richardson: No, no. It's just the construction project.

Council Member DuBois: That's what I was—yeah, like, ongoing medical care, there's not portions of it that are taxed?

Ms. Richardson: No, no.

Chair Burt: I mean, it's not inconsequential.

Council Member DuBois: No, it's not. It's important to understand it's a one-time.

Chair Burt: This is—the big bump is from the construction.

Ms. Richardson: Yes, yes.

Chair Burt: I meant the ongoing is not inconsequential. I had just a couple of questions. In the Animal Services, we received that report. Is there a follow-up role of the Auditor's Department in that or have you pretty much concluded your portion and it's up to City Manager?

Ms. Richardson: You weren't on Policy and Services Committee last year, but when I presented an Ordinance change to them, they requested that we change the process. Normally we would follow up on audits once a year. At the end of the fiscal year, everyone would submit a report, and then we would present the report to Council after doing some verification. They changed the practice and have now asked departments to report directly every six months after an audit. I actually just sent out emails to everyone this week on all the open audits, and we're starting that new process now. I don't know if Ed wants to speak.

Ed Shikada, Assistant City Manager: Completed audits.

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Ms. Richardson: Yes, all completed audits. Then it's going to be a twice-a-year reporting, every six months. The first report will be due six months after Council accepts the audit, and then every six months thereafter.

Chair Burt: I don't know whether my concern intersects with specifically what the audit addressed, but it's really about we found that we were having a deteriorating condition over the last couple of years after we thought we had put some measures in place to reverse that. We really didn't capture that deterioration quickly enough. I'm not viewing it as principally the Auditor's Department's responsibility to catch those things unless there's a specific audit. There just happened to be this alignment here.

Ms. Richardson: We actually put it on the audit plan initially because I noticed that declining revenue, but then we got asked to move it up and do it quickly.

Chair Burt: Within the six-month report-backs on this—this may be more a question for the City Manager's Office—is there going to be this close scrutiny of whether things are getting better, worse, staying the same, while we are trying to figure out a long-term plan?

Mr. Shikada: I think what will be instructive as we try this new process will be the volume of reports that the Committee now sees. Previously it had been one annual consolidated report, we'll in principal see at least two reports during a year as a follow-up to any individual audit. As of this morning, we were speaking to potentially eight or so audits that have been completed but with open recommendations. That means 16 reports over the next year. There's some built-in incentive for the departments and City Manager's Office in reviewing the response that the departments put together in order to get those complete, closed and not have to continue to issue semi-annual reports thereafter. I do see some incentive there as well as clearly the Manager's Office will need to do ongoing review and ensure that the description of the follow-up that's happened is consistent with our expectations.

Chair Burt: I'm realizing that part of what I'm yearning to see is not necessarily what the follow-ups—there may be an overlap to what the follow-ups to the audit does, but it's really an ongoing scrutiny of something that's, I'll call it a volatile situation in terms of its ability to stay within its budget and not (inaudible).

Mr. Shikada: Sure. I understand. I think largely the phrasing of the recommendations from the audits have been built around sustainable recommendations.

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Chair Burt: I appreciate that. We'll see the Parking Funds Audit in November.

Ms. Richardson: Actually we ...

Chair Burt: I'm sorry. December.

Ms. Richardson: December.

Chair Burt: I think I heard you say that.

Ms. Richardson: Right. I have jury duty in November and can't guarantee that I'll be available.

Chair Burt: I don't know. I was just thinking about if I was a defense lawyer whether I'd want an auditor on the other side (crosstalk) jury.

Ms. Richardson: Auditors typically get rejected, but not always.

Council Member Wolbach: You can almost guarantee you'll be available.

Chair Burt: I guess—first, I'll say the reason I'm asking this is that we have a convergence of a number of parking-related issues. We have the RPP that's going in place. We're trying to figure out what is the net impact of that and how it is the Parking Assessment District and all of those operations intersect with that. Finally, something that came up under Council Member comments was a request last night to get an update on the infrastructure master plan, that basically we approved late last year and the voters sealed the deal with our Transient Occupancy Tax increase. One of the big components of that was a Downtown garage. We haven't heard anything, and so I'm just wanting to make sure that the information comes together at approximately times that the one will inform the other. This is a piece to that puzzle; it's not the puzzle itself. If you can't answer this, that's fine too. Are the results of that audit determining anything that's real substantive that will potentially affect our considerations or are they more on the margins in technical issues?

Ms. Richardson: I would say that there's some issues that you'll definitely want to be aware of as you make your decisions.

Chair Burt: Good, thanks. On the National Citizens Survey, you may have mentioned this when you made your presentation, but I couldn't recall. Have you determined whether there are any changes that you have in store for the 2015 survey to be reported in early 2016?

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Ms. Richardson: Actually the postcards went out last week or two weeks ago. The first wave of surveys went out last week. I am looking at—the reports that the National Research Centers gives us are, in my opinion, somewhat difficult to follow. There's many reports. We tried to pull some of them together, but it's not like you can see one question and get all of the information you want about that question. You have to look here; you have to look here; and you have to look here. I've actually talked to our representative there about restructuring and seeing what she can do for us. I would like some input from Council about what they would like to see and what they find helpful. Also, probably some discussion with the City Manager's Office. They will need some input from me fairly quickly. I've actually kind of been playing with some layouts to think about what I can possibly give them as something that will work better for us. They forced questions into this structure of three pillars and then eight facets within each pillar. That didn't seem to always fit. It just seemed forced in a lot of ways. I don't know that that's necessarily helpful for us. It doesn't align with the way the survey is laid out in many ways, so you can't look at the survey and then easily find how people responded to it. You have to really dig through. I'm thinking about asking them to do some restructuring.

Chair Burt: It sounds like the issues that you have with it are not so much the sorts of questions we ask our residents, but it's how we're able to make good use of the information that comes out of that survey.

Ms. Richardson: Correct. We did ask—we did include quite a number of custom questions this year. It's actually about two pages of custom questions, so there are a lot of issues talking with (inaudible), getting some response from Council Members about what interests them. We worked through and made sure the NRC knows what kind of questions work. Getting them in the right format to get the kind of information we need, we spent some time on that.

Chair Burt: Final question on the—actually two questions. On the sales and use tax, we have recoveries that included \$81,000 from your inquiries.

Ms. Richardson: Correct.

Chair Burt: When you do that audit, is yours comprehensive or is it a spot check?

Ms. Richardson: We aren't actually doing the audit. The State Board of Equalization does the audit. We monitor new businesses coming into the City, businesses leaving, where we might see a big change. We get a big report where we might see a big change in the sales tax, that might look like something was misallocated. Then we fill out what's called a short form

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which we submit to the State Board of Equalization. It says we think there's something not right here, and they actually do the audit. We don't have the authority to audit the businesses; they do.

Chair Burt: Out of that, do you look at whether there are patterns of misreporting by specific businesses?

Ms. Richardson: No, because usually once a misallocation has been caught, the State works with them to make sure they continue to report correctly.

Chair Burt: I see. Great. My final question. On the hotline, we've seen a decline—although, this year it's about the pace of last year, because we're a fraction of a year. Do you have any insights on how well it's working? I guess one question would be do you think that there is a comfort with employees using the hotline when they think that's the—a valuable—they have something to report and that'd be the right way to do it. I mean, not every report goes through anonymously, most do not. Second, out of the complaint patterns, are you seeing that it's resulting in either the employee getting a better understanding of what happened and why or a change in the operations in response to something that was legitimate that the employee brought forward?

Ms. Richardson: You will see some activity coming up in the next report. Most of the allegations that have come forward have not resulted in a change. They've mostly been unsubstantiated. I don't know what employees are thinking; we haven't asked them. I would guess that the decline represents somewhat their perception of what the hotline is. I'm not sure that they're clear on what the hotline is. I think that we need to—when we talked a few months back about revisiting the protocols, I've talked to some other audit shops that have hotlines. They handle theirs much differently than we do ours. It's definitely worth some discussion. I had a meeting with Molly, Jim and Suzanne about—were you in that meeting too?

Mr. Shikada: I was not.

Ms. Richardson: I didn't think so. About what, two weeks ago? Where we were talking about how we might readdress the protocols.

Chair Burt: One of the things that you said caught my ear which is we really don't know how the employees perceive it. I guess that would be in two buckets. The smaller one which are those who have used it, how do they feel about how it worked. The broader employee pool in general, where are they and how do they feel about it even if they didn't choose to use it.

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Ms. Richardson: I can't answer that. I don't know. Most of the complaints ...

Chair Burt: I'm just wondering if we should do a survey.

Ms. Richardson: Most of the complaints come in—I think all of the complaints that we've received so far have been anonymous, so we don't have a way to go back to those people and say ...

Chair Burt: Right.

Ms. Richardson: ... "what are your thoughts on that?"

Chair Burt: That leaves out that first group.

Council Member Wolbach: Is there anything—I'm sorry (crosstalk).

Chair Burt: Go ahead.

Council Member Wolbach: At the end of this call into the hotline, is there any "how was your service today" kind of question at the end to just get their immediate feedback before they end their anonymous call?

Ms. Richardson: We don't have that. They report—we use a third-party consultant that that's their specialty. The calls go in to a third party, and they have a database. They input the initial call, and then we get an email that says there's a new allegation, a new case. Then we go in and we review it and decide how it's going to be investigated. There is a section where the employee who called in can go back and see. They can only see parts of the case file; they can't see the entire case file. If they were to check, we could put a question in there, but getting an answer would be dependent on whether they chose to go back in and check the status or not. We don't have any way of knowing for sure that they even went back and looked. If they did look and chose not to answer the question, we wouldn't know.

Council Member Wolbach: There's no way to ask the consultant to add a question at the end, just checking how was your experience dealing with this service today?

Ms. Richardson: They could, but it would be basically just the service of receiving the call.

Chair Burt: That's not the main service.

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Ms. Richardson: The main service is the outcome of the call, right. The investigation process.

Chair Burt: Do we do employee surveys of any sort?

Ms. Richardson: I'm not aware of any.

Mr. Shikada: I don't think that's been our practice.

Khashayar Alaei, Senior Management Analyst: Yeah, it's generally not. It's not like an annual cycle. We have done surveys here and there.

Chair Burt: I wouldn't necessarily advocate that there's a need to initiate a survey for this purpose, but to put it on a list of, if we have a next survey, this might be a topic to ask a couple of questions about.

Mr. Shikada: As a matter of fact, we are kicking off a round of ethics training that would be used Citywide and should touch all employees. I made a note that we should be able to incorporate this into that, at a minimum as a way of ensuring awareness of the resource as well as potentially getting feedback.

Ms. Richardson: It is mentioned in the ethics policy.

Chair Burt: Good. Any other questions or comments?

Council Member Wolbach: Just going back to the Citizens Survey just to make sure I was clear. At this point, is it still possible to offer suggestions about questions or the questions have already been finalized and we're good to go for this coming year?

Ms. Richardson: The first round of surveys has already been out, so (crosstalk).

Council Member Wolbach: It wasn't just invitations, it was the actual surveys.

Ms. Richardson: Right. The notifications, the first round of surveys, the second round. They mail two copies. The second one goes out about two ...

Council Member Wolbach: There's still time to think about how we sort through and how we present it?

Ms. Richardson: Yes, but not the actual questions.

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Council Member Wolbach: If Council Members individually or Council as a whole or this Committee has recommendations or just suggestions about—either suggestions or direction about how it's presented, what would be the best way to share those with you?

Ms. Richardson: You can meet with me or you can email me, either way.

Council Member DuBois: Just one last question. I guess a lot of the value is being able to compare to prior years. I guess we'll see it when it comes, but when you're talking about reformatting the way the data is delivered, we're still going to have the series-type data to be able to compare?

Ms. Richardson: Yes. One of the questions I have, because we do get about ten years of comparison for ourselves. We also get about ten years of comparison of how we compared to—benchmarking comparisons. I'm wondering is it really useful to know how we compared with other jurisdictions ten years ago versus how we compare with ourselves ten years ago and how we compare with other jurisdictions just in most recent years. That would give me—if we reduced the number of years for the benchmark comparisons, that would give me some room with the layout on how to think about how we might ask for data to get more of it altogether in one place.

Council Member DuBois: I would generally say—I mean, you're using Tableau or something, right? The more data the better. It would be interesting to be able to see if we've improved or if the benchmarks ...

Ms. Richardson: We use Tableau for the interactive, but for the printed portion ...

Council Member DuBois: Oh, you're just trying to get data. I mean, we've got (crosstalk) data, you (crosstalk) ...

Ms. Richardson: That's the part that's harder to ...

Council Member DuBois: ... to put it on the page, right? That's what you're saying?

Ms. Richardson: We could get the data and put it in Tableau and have it printed differently.

Council Member Wolbach: Interesting. I would just add, just kind of playing devil's advocate, I'm not sure I would necessarily advocate one way or the other. One potential advantage to be able to track ourselves against other cities over time is, especially as we look through economic cycles and political cycles nationally, if changes in our citizens' opinions are changing,

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tracking similar lines as other cities versus divergently from other cities over the last decade. That could be interesting, but again I'm not really advocating one way or another.

Ms. Richardson: One of the things that they changed last year in the report was the way they calculated the comparisons. Previously they would compare us within a margin of error of +/- 2 percent. Last year they changed it to within +/- 10 percent. That changed our comparisons quite a bit. It made us look less favorable compared to other cities, so we had them put the two margins of error side by side so we could see. It actually means that if they continue with the 10 percent, that we can't really compare further back and have it be meaningful.

Chair Burt: I think that concludes the item. Thank you very much, and thank you to your Staff for a bunch of good audits.

Council Member Wolbach: I'm going to step out for a few minutes, so you don't have a quorum.

Chair Burt: Pardon me?

Council Member Wolbach: If I step out for a minute, (inaudible) quorum?

Chair Burt: Yes.

NO ACTION TAKEN

The Committee took a break from 7:28 P.M. to 7:31 P.M.

2. Discussion and Recommendation to Council Regarding City Council Procedural Matters, Including Updates to Procedures and Protocols Handbook.

Chair Burt: Our next item is the update to the policies and procedures protocol. It's a continuation of two prior discussions by the Committee. Did Staff have any opening comments or ...

Khashayar Alaei, Senior Management Analyst: Yeah, just some brief comments. Council Member Wolbach was out of the room, but we have an at-places memo at your table with an updated handbook. There were some glitches in the software as well as we made additional edits to the handbook. The at-places is also a color version, so it'll help with your navigation. Certainly, if you have made comments on the packet itself, those are—we can still go off that too. There aren't that many changes from the—on your at-places. With that, I think we can—if you want—just go through one page

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at a time. I was jokingly saying that we've got 48 pages, a minute per page. We'll be out of here in 48 minutes.

Chair Burt: We also will want to look at things that aren't specifically the edits here, that go beyond this.

Molly Stump, City Attorney: Does it also make sense—just to note that there is a section of the handbook, towards the end, that is the travel and reimbursement section. We have asked our ASD, David Ramberg Assistant Director, to take a look at that. We think it is due for a refresh because there have been some updates in the City's procedures. We didn't get that completed for tonight, but any updates we would recommend would be just to bring it into line with the current City practice. Depending on what happens tonight, if the Committee is ready to be done with this and move it forward, we would then incorporate those when it goes forward to the next step.

Chair Burt: Cory, you had a process question?

Council Member Wolbach: A process suggestion which was rather than go through every page, depending on how everyone else feels about it, I just have a couple of—I guess four specific pages I wanted to look at. I'm fine with just skipping to the pages where we had questions or where Staff thought there were changes worth highlighting, rather than going through every single page.

Chair Burt: I think we can do kind of a hybrid of that. By going sequentially through the pages and, if none of us have an issue, we'll move immediately to the next page.

Council Member Wolbach: Sounds good.

Council Member DuBois: Let's do it.

Mr. Alae: For starting on—again the screens are active, so you can see the changes as we make them if you want to make changes. The cover page, just the date change. The table of contents are all just formatting changes that have occurred. I think on page—I'm working off the handout that was given to you.

Council Member Wolbach: The one at places?

Mr. Alae: The one at places, if that works for you. On page 1, just minor changes were made. I don't know. Would you guys like me to read the changes that were made?

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Chair Burt: No. I think—we have things like a whole page of switching Council to Presiding Officer, etc. Where we get into substantive things, you can—either we can point them out or you can. I didn't see anything that went really into substance until—we have on 2.3 which is page 5 of the procedures, not the packet. That reflects just our whole new timing in getting packets out. Correct? Let's see.

Mr. Alae: This is 2.3 or 2.5?

Chair Burt: I was just looking at 2.3A.

Mr. Alae: Got it. Yes, yes, correct. Yes.

Chair Burt: I was just looking, there was—we're making one correction on obligations of Council Members to submit their questions. I just was looking for where that's captured.

Ms. Stump: I think much later in the rules.

Chair Burt: Later, okay.

Ms. Stump: I believe so, much later.

Chair Burt: I did have one question. Down toward—let's see. 2.4B and we ...

Council Member DuBois: (inaudible) Quick question on 2.4A.

Chair Burt: Sure.

Council Member Wolbach: Yeah, me too.

Council Member DuBois: This \$250 per meeting we're fining Council Members, have we ever done that?

Mr. Alae: To my recollection, we have never done that.

Council Member DuBois: There's not a fine of \$250 or whatever Council decides?

Mr. Alae: You've seen that under two ...

Council Member Wolbach: 2.4A, the last sentence.

Chair Burt: Does it go into a kitty?

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Ms. Stump: I think it would—it's hard to imagine a circumstance under which that would be invoked.

Chair Burt: I don't know. It's the only tool we have to draw attention to a problem.

Ms. Stump: That or censure, which occasionally city councils have called out one of their members with this sort of public counseling session.

Council Member Wolbach: I had another question actually about 2.4A. I'd recommend adding the word—on the line that's actually highlighted here, the Mayor will ensure that during each regular meeting there will be one five-minute break. I would suggest it be "at least one five-minute break." That doesn't mean that we're necessarily going to be ...

Mr. Alae: At least one.

Chair Burt: At least one break of five minutes or more. Are you meaning more than one five-minute break or a break longer than five minutes?

Council Member Wolbach: Just that there would be at least one five-minute break.

Chair Burt: My question on 2.4B. I think we discussed this last time, but I'm trying to recall the discussion. We struck Boards and Commissions having the telephonic attendance rules apply to them. Did we—was that—we had a discussion about that. Was it either a legal or just a policy discussion letting them determine their own?

Mr. Alae: It was the latter. A policy discussion that you guys had.

Chair Burt: I'm trying to recall our rationale for not saying that they should follow the same guidelines we do. I thought part of it was simply that this didn't really—was a Council protocol and not a Board and Commission protocol. I thought it was more of that technical part than the substantive decision.

Ms. Stump: That makes sense. As you know from your service on PTC, many Boards and Commissions—I think actually most now—have their own bylaws. State law does allow telephonic participation as long as certain requirements are met, and they're essentially described here in your rules. Certainly no Board or Commission could go beyond the State law minimums, but they also could have a bylaw that didn't provide for it at all.

Chair Burt: I just put that down as one of my follow-ups on issues not specifically captured through these changes that are nevertheless within

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either Muni Code changes or other policies and procedures. I'll revisit that at the end, if that's all right.

Council Member DuBois: I brought this one up at the Council Retreat. Again, my understanding is this has kind of swung back and forth where you still allow telephone participation. I don't know that all these things make it much harder only in the case of emergency. My proposal was that we do allow and keep the wording here that it's discouraged and we allow it three times a year, but that we strike everything else after that, "extraordinary events such as medical emergencies." Rather than define the events, I think if somebody's traveling just for business and it's three times a year, that we should allow that. I would be interested in striking everything after "three times a year."

Chair Burt: We had a discussion on it. I'm not saying I'm not open to reconsidering it, but we went through that. I think we kind of went back and forth and ended up saying, "Let's slightly liberalize it," which is what we did here. We were debating whether to liberalize it more along the lines of Tom's recommendation. Is that your recollection of that discussion?

Council Member DuBois: I actually don't remember. I mean, there's kind of two thoughts ...

Chair Burt: (crosstalk) I'm remembering (crosstalk).

Council Member DuBois: There's two thoughts there. One is we had the situation, we had, I think, Council Member Kniss called in and did we want to, like, try to define whether it's an emergency or not or just say we can do it up to three times a year.

Council Member Wolbach: Did we add this "actively discourage" earlier in this discussion or was that already there?

Ms. Stump: No, that's the preexisting (crosstalk).

Council Member Wolbach: It was there.

Ms. Stump: The way this document is set up is the new language, it either shows striking or was underlined.

Council Member Wolbach: This goes back to the ...

Mr. Alae: This is the original document.

Council Member DuBois: Secondly, I'm actually in favor of being more liberal. It's the 21st century. I mean, it talks about telephonic. Another

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question I had is whether that would include Skype or video. If we wanted to do that, (inaudible) allow for it. I don't know. How do you guys feel?

Council Member Wolbach: I'm actually inclined to agree. It already says actively discouraged. I'm not sure if we need to identify the reasoning. I'd be fine with shortening that clause as Tom's recommending.

Mr. Alae: Update it on the screen, if you all would like to see it. I'll wipe that out, so it'll just be a period. It'll end right there.

Council Member Wolbach: Is that what you're recommending?

Council Member DuBois: Yeah.

Council Member Wolbach: I would be comfortable with that.

Mr. Alae: Not more than three times a year period.

Council Member Wolbach: We left in the fine (inaudible) in the previous clause. We left in the opportunity to fine people in the previous clause (inaudible). We don't care what your reasons are. Know that that stick is there, whether we use it or not.

Council Member DuBois: Are you okay with that, Pat?

Chair Burt: Yeah, I think so. With an understanding that we should necessarily revisit it a year after it's implemented so that we see did we go too far or was this just right. A Goldilocks change.

Mr. Alae: If you guys recall, the protocols handbook does come before the Council at every Retreat anyway for an update.

Chair Burt: Right. This is the sort of item that will stand out if it's not working well. The other thing that I did see. I think that the Clerk's Office will assist a Council Member in getting posting. Often what's the reality if someone is traveling or whatever, they don't arrive 72 hours early. It's all this advance preparation work. You're comfortable with that and you may see an increase in having to support that?

Beth Minor, City Clerk: I have no problem with that.

Council Member DuBois: I had a question about—it's the second bullet point. If the Council Member needs the assistance of the City Clerk, fax number and address ...

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Chair Burt: Wait a minute. On which page?

Council Member DuBois: Continue on in that section. It's at the end of page 7, beginning of page 8. There is a 72-hour notice period and a five-day notice period to the Clerk. I just wanted to make sure at the end of this paragraph, what's the right time period?

Ms. Stump: The 72 hours is a legal minimum for posting the agenda at the location of the remote participation.

Council Member Wolbach: We're saying that the Council Member has to give five days notice to the Clerk, so the Clerk has a couple of days to work out those logistics so it can be up 72 hours.

Council Member DuBois: Yeah. I just want to make sure it is correct. The second five days (crosstalk).

Chair Burt: I realize that's not clear. Is the five days, five days before the meeting or five days before the clerk has to post the notice?

Ms. Stump: I think it was intended to be five days before the meeting.

Chair Burt: If it is, we want to clarify that.

Ms. Stump: (inaudible)

Council Member Wolbach: We might want to go back to page 7, the last full paragraph.

Mr. Alae: Five days written notice must be given by Council Member to the City Clerk.

Ms. Stump: You can say "Written notice must be given by the Council Member to the City Clerk's Office no fewer than five days before the meeting."

Chair Burt: If it says five days before the meeting ...

Ms. Stump: No less than five days.

Chair Burt: ... that covers the subsequent one.

Mr. Alae: No fewer than five days before the meeting. Strike out the five days at the beginning?

Ms. Stump: Yeah, mm-hmm.

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Chair Burt: There was something also that just a little clarification. Page 7 preceding the five bullets, it says "if these two threshold requirements are met." That's referring to two thresholds explained in the paragraph above. At first I started assuming that it was threshold requirements that were in the bullets below. I go, "Wait a minute. That's five." I worked my way around and figured it out, but it took that process to get the clarity. It's all there if you read it carefully.

Council Member Wolbach: We could, just to make ...

Council Member DuBois: (crosstalk) one of the thresholds.

Council Member Wolbach: To make it clear, we could say "if the two threshold requirements above are met." That would ...

Council Member DuBois: Didn't we just delete one of the thresholds, the extraordinary event?

Ms. Stump: I think one would now be that you're within your three times. The second one is that a quorum of the Council must be present here in the chambers.

Chair Burt: Then previously there were three threshold requirements. Now we're down to two. Let's just add "above."

Council Member Wolbach: It would be "if the." Do you want to change "these" to "the" maybe?

Mr. Alae: If the two threshold requirements mentioned above ...

Chair Burt: Yeah.

Mr. Alae: ... are met?

Chair Burt: Something like that.

Council Member Wolbach: You don't need "mentioned," just "above." I don't have any more questions until page 10.

Chair Burt: Sorry. I did markups on the one we received, and I wanted to track the two.

Mr. Alae: No, it's fine. Take your time please.

Council Member DuBois: Also it was unclear in that new version if the ...

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Chair Burt: Pardon me?

Council Member DuBois: It's not clear if the lettering is correct now. I'm sure you'll catch that later on.

Mr. Alae: Yeah, we'll catch that.

Ms. Stump: Maybe a word on that. One of the things that the Committee had pointed out, that wasn't completely addressed in the first version which we tried to address in the updated version, is to more clearly, after the section that says agenda order, to have a series of sections that address each of the agenda types that need further discussion of the rules. The first one is the Consent Calendar, and there's the most to say about that. There's a new title there, Consent Calendar, and then all of the things that pertain to the Consent Calendar are indented a little bit. Then you move on to action. That's the reason for the formatting change. It's a little weird the way the software does the automatic lettering. It looks like it strikes out the letter, but it will be there in the final version.

Chair Burt: I had something on—it's "H" of page 10 under the new version. No, that captures the change I was—"whenever possible," that was the thing that I had wanted to make less rigid than what was there before. That's great.

Council Member Wolbach: I actually have a suggested change on page 10 of the at-places version. Very last sentence, fourth to last word is "Sunday;" I would actually change "Sunday" to "day" because our meetings aren't always on Mondays. Just to have it be consistent.

Mr. Alae: "No later than noon the day before the meeting."

Chair Burt: Yeah, that makes sense.

Ms. Stump: It does.

Mr. Alae: Take out the "sun."

Chair Burt: Let's see. "J," where's "J?"

Mr. Alae: "J" was on page 10, but it's now on 5.

Chair Burt: In the first sentence, we said it really has—for items that are administrative and noncontroversial. Second sentence—wait a minute. It changed from the (crosstalk).

Mr. Alae: Yeah, we striked that out.

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Ms. Stump: Yeah. We changed it because we don't honor this order. It doesn't seem to be very meaningful. Our current practice is ...

Chair Burt: I wasn't talking about the order. I was talking about kind of the preamble under "J."

Mr. Alae: Yeah, we amended that since the packet.

Chair Burt: It was trying to capture an issue that has come up a number of times in recent years, which is giving guidance to what should and what shouldn't be on Consent. This was language that, I think, came out of the Committee. Can you share why that got deleted? What was the thinking?

Ms. Stump: Which is the (crosstalk).

Chair Burt: This is the "Mayor and City Manager should be sensitive to high dollar value," and I ...

Ms. Stump: That got moved. (crosstalk) didn't delete it.

Mr. Alae: Yes, it got moved. If you're looking at the handout that we gave, it should be a crossed out "J," Number 5, Consent Calendar categories. Is that where we are? Is that where you are?

Chair Burt: Yeah, I think so.

Mr. Alae: If you scroll down, we're going to go on to page 11.

Ms. Stump: It's under contracts.

Chair Burt: Got it.

Mr. Alae: Correct. It's under contracts.

Chair Burt: Oh, under contracts.

Ms. Stump: I think that language pertained particularly to contracts. It may be that it doesn't completely capture what the Committee wanted, so let's (crosstalk).

Chair Burt: I think it does at it pertains to dollar amounts, but then we threw in "or substantial policy" under contracts. If that bullet ...

Council Member Wolbach: You think "substantial policy implications" should be in a separate bullet? Is that what you're ...

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Ms. Stump: It now says "contracts that are routine except where City Manager in consultation with the Mayor determine that a contract should be an action item, for example, due to significant financial impact or substantial policy implications."

Chair Burt: That's about a contract. There are other things that get put on Consent that aren't contractual, but we've had issues of saying, "That is a substantial policy issue." Sometimes it's what's referred from a Standing Committee like this. Our procedure is that it's unanimous. Now, we have elsewhere this prerogative, but what we're trying to do here is say when the agenda setting is going on, this is what we're conscious of. We ask ourselves is it not only a significant financial impact and, therefore, maybe it should be an action. It's also something that Council or the public is really going to want to wade in on, and it shouldn't be on Consent.

Council Member DuBois: It's in the right broad category, right? "B" is administrative matter, contracts, appointments, any other matter. It's in the right general area.

Chair Burt: Okay. Maybe just it's ...

Council Member Wolbach: There's also that last one at the very end. "Other similar matters as determined by the City Manager in consultation with the Mayor." We could add onto that, maybe move it down there.

Chair Burt: Yeah, that's probably the best place.

Council Member Wolbach: We could also say "particularly due to substantial policy implications."

Chair Burt: Or "community concern."

Ms. Stump: This is—it actually goes the other way. This "other similar matters" says things that can go onto the Consent. What you're concerned to do is to describe things that should go off Consent, onto action.

Council Member Wolbach: Right.

Chair Burt: I don't know. How about if we say that here's the content of what we want addressed, and you guys figure out a right place to put it? What we want to do is capture that in the agenda planning, there will be consideration of whether a matter should be on Consent if (a) they are of significant financial impact or (b) if they're a substantial policy concern to the Council or the community. Is that agreeable? That those are the things we want them to figure out where to put.

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Council Member Wolbach: We actually already added something. At the very beginning, Item 5, we added "this is for noncontroversial items." It already says that. Maybe that preamble is the right place (crosstalk).

Chair Burt: That's where we had it, and that's where it got taken from. I'm just saying here's the substance of what I'd like to see there. If the preamble's the right place, great. If you find a better place, great. I want to make sure it's in there.

Ms. Stump: We actually tried to think about what types of items this really comes to play in. It seemed like it was the two that you mentioned, Pat, which is the contracts and then the items coming out of Committees. We also included some specific language on the Committees. If the Committee has some concern that there might be some other types of items, we could certainly put the language in the preamble.

Chair Burt: I'm not having examples readily to mind, but I believe that there are ones that don't necessarily come out of Committee but would fall in this category of this is the screen through which the agenda setter should be looking at it.

Ms. Stump: Just to note and not to push back too hard, but there are some very large dollar contracts that are very routine that are consistent with Council policy and they're really—I don't think Council would expect that anybody would need to engage in a discussion over them. I do think that the Staff is expected to place those on Consent. We'll try to craft language that recognizes that.

Chair Burt: Yeah, yeah, good. Then maybe something that's significant financial impact that is not routine or something to that effect. I agree.

Council Member Wolbach: Also maybe that "substantial policy implications" should be moved up or replicated in the preamble on Consent. Starting that second line would be "noncontroversial items without substantial policy implications shall be presented."

Ms. Stump: Yeah, good. All right. I think we got it. We'll get it in there.

Chair Burt: On "K," I just had a question. I hadn't recalled that we—what we apparently did do which is we require three Council Members for a Colleagues Memo. Did we go through that discussion and have some ...

Council Member DuBois: Actually before you get there, a question on ...

Chair Burt: I'm sorry. It's now "M," the new "K."

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Council Member Wolbach: Actually (inaudible) all across that. Tom had a question before that on "E" above that one.

Chair Burt: Yeah. I think it's "M."

Council Member DuBois: I was wondering—I can't tell if it's "4" and "5" or "D" and "E."

Council Member Wolbach: That's "E." Page 12, "E."

Mr. Alae: What page?

Council Member Wolbach: Twelve.

Council Member DuBois: Twelve.

Chair Burt: Okay. Up toward the top.

Mr. Alae: Twelve.

Council Member DuBois: For a Council Committee, we're saying if it's unanimous it would go on Consent unless ... Then we have a bunch of people that could say maybe this should go on Consent. Do we want to mirror that language in "5?" For a Council-appointed Board or Commission, do we want to say if it's unanimous it goes on Consent unless otherwise recommended by the Mayor, City Manager or City Attorney? It seems like a difference there.

Chair Burt: That's a good question. Right now, we're saying that the Board or Commission can determine whether something goes onto Consent.

Council Member DuBois: Is it the way it is now? I thought generally (crosstalk).

Chair Burt: It says recommended for approval and/or placement on the Consent by any Council-appointed Board or Commission. The Board or Commission basically—a literal reading of this unless there's something else that modifies it, I read that that they can determine what goes on Consent.

Ms. Stump: We don't actually do it that way.

Chair Burt: I didn't think so. I would hope not, but that's what we're putting in our ...

Ms. Stump: I think we need at a minimum ...

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Council Member DuBois: (crosstalk) We do it like "4," right? Doesn't "4" capture kind of what we do?

Ms. Stump: Yes, I think that's right. Quite frequently the significant items coming from Boards and Commissions, they come onto the action agenda, because they're items for discussion.

Council Member DuBois: Yeah. This can mirror that language (crosstalk).

Chair Burt: They often are unanimous.

Ms. Stump: That's a good catch.

Chair Burt: Under "D," we're saying that the Board or Commission can elect to recommend something or that the Mayor or the Committee or the City Manager or City Attorney can all recommend that it goes to agenda item. The default is the unanimous item would go onto Consent. If we mirrored, that would be same thing on a Board or Commission, that it would by default go to Consent unless there was an action taken by either the Board or the Mayor or the City Manager.

Council Member DuBois: I was suggesting the Mayor or the City Manager or City Attorney.

Chair Burt: I mean, I'm kind of asking whether it should be that they have to take a deliberate action to remove it from Consent or the default should be that it's not on Consent or what.

Council Member DuBois: It could be a lot of things that are on Consent.

Council Member Wolbach: Actually what it says here under "E" is that we still have to have a public hearing, if you read the rest of the sentence. Unless I'm misreading it.

Chair Burt: Consents are public hearings, right?

Ms. Stump: No, not quite. This says that even if the—it's intended to say that if the Commission wanted the item to go onto Consent and it was unanimous, we would not place it on Consent if there was a public hearing required because we actually have to affirmatively call for speakers.

Chair Burt: That's another carve-out.

Ms. Stump: That's a narrow exception.

Chair Burt: Other than the discretionary ones, there's an automatic one.

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Ms. Stump: Yeah. I do think that we need this language—thank you for pointing it out—about the discretionary not putting it on. I think you can rely on your City Manager and other CAOs. I mean, you won't have us in place very long if we try to put significant policy items on your Consent Calendar.

Mr. Alae: Does it sound okay? "Items unanimously recommended for approval by any Council-appointed Boards and Commissions unless public hearing is required or otherwise recommended by the Mayor, City Manager or City Attorney." Does that get (crosstalk)?

Chair Burt: Does for me.

Council Member Wolbach: This is quite different from what's there right now.

Council Member DuBois: You can leave the Committee in there too.

Council Member Wolbach: What this says right now is—that's not a full sentence. That's a bullet point; whereas, this is a full sentence saying items recommended for approval and for placement on the Consent Calendar by any Council-appointed Boards and Commissions—actually no. No, my mistake, sorry.

Ms. Stump: I don't think it works from that (inaudible).

Council Member Wolbach: My mistake.

Ms. Stump: It's long.

Mr. Alae: It would read "the items unanimously ...

Council Member Wolbach: I missed the "unless."

Mr. Alae: ... recommended for approval by any Council-appointed Board and Commission unless a public hearing is required or otherwise recommended by the Committee, Mayor or City Manager or City Attorney.

Council Member Wolbach: I like that.

Mr. Alae: That's good?

Chair Burt: Good.

Council Member Wolbach: I want bring up the Colleagues Memo numbers. Do you want to do that? You'd (crosstalk).

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Chair Burt: No, go ahead.

Council Member Wolbach: I can't remember if we had a discussion about changing the number of colleagues required for a Colleagues Memo from two to three. I would ...

Chair Burt: Do you—let's pause and ask. Because our recollections don't seem good, do you have better ones?

Mr. Alae: I think our recollections don't match. I recall we did and we did the three.

Ms. Stump: I was a blank slate on it, but Khash thought that was the Committee's direction. You can certainly—you may (crosstalk).

Chair Burt: That's right. I just wanted to start with the baseline. Is this there because we discussed it?

Council Member DuBois: I recall we said let's make everything three for consistency.

Mr. Alae: Yeah, I kind of remember that.

Council Member Wolbach: What I remember was making three for consistency on pulling something from Consent when we were talking different types of things, like individual review versus other items coming from Consent. I don't remember us saying that specifically about writing a Colleagues Memo. Let me articulate why I'm concerned about it. We're going to be doing down to seven pretty soon, which means Brown Act compliant is three, which means if you talk to one person about it and you get into discussion and they say, "I don't want to do it," then you can't do a Colleagues Memo.

Chair Burt: Cory, on that one, I may agree with you on reducing it for Colleagues Memos, but I wouldn't be trying to do these procedures based upon a seven member Council. We have a whole series of things will be reconsidered, not necessarily changed, but reconsidered, all these threes. We're saying three of nine, would we still want three of seven? I don't know.

Mr. Alae: That's a whole work plan (crosstalk).

Chair Burt: Let's just set that (crosstalk).

Mr. Alae: (crosstalk) across the City that has to change. Why don't we do that?

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Ms. Stump: We have a few years.

Council Member Wolbach: A couple.

Chair Burt: Not my problem.

Ms. Stump: You'll be (crosstalk) work well.

Chair Burt: Let's just hold the discussion about whether we want two or three.

Council Member Wolbach: Even with that, we currently have a status quo of two. I guess I didn't hear the case for increasing it to three. I'd be open to it, but I don't think it's been a huge problem to have two. We haven't had a ton of two-person Colleagues Memos coming through anyway. It seems like a solution without a problem.

Chair Burt: This is a way that we formally initiate action that is akin to legislation. Introducing a bill is what's it's really like. I don't see a need that—we often will have three or four, but I don't see a necessity. If there's a couple of members want to argue something to the Council, then the Council that night decides whether they move it along or ...

Council Member DuBois: Kill it.

Chair Burt: Kill it, yeah. I'm fine with the two also.

Council Member DuBois: I don't have a strong opinion either way.

Chair Burt: Let's do two.

Ms. Stump: Sounds like two it is.

Council Member Wolbach: On page 13 ...

Chair Burt: Go ahead.

Council Member Wolbach: On page 13, I can't tell what it is because it looks like the numbers are crossed out. Where it says Council Member questions, comments and announcements, there is some missing text. Of blank nature.

Mr. Alae: Yeah.

Council Member Wolbach: What's going there?

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Ms. Stump: The Staff's full language was "Council will confer with Staff before raising matters under this agenda item." I think Khash had thought there was some discussion about adding some qualifiers there.

Mr. Alae: Yes. Honestly I don't remember what it was. I went back and listened to tapes and stuff. I was editing this document as I was listening to the tape. It may be incorrect, but we've highlighted it. If you guys recall if there's ...

Chair Burt: Let me offer what I—as I look at it, it's sort of refreshing my recollection. The current language, I think, we viewed as problematic. Saying that the Council will confer with Staff before they can raise matters under Council Member questions, comments and announcements, and we said, "Why do we have to do that?" There might have been a discussion there's sometimes where we don't want you to—I'm not sure what that qualifier might have been, but I thought it might have been the Staff saying, "There are certain circumstances where we think this is appropriate." Instead of a blanket, I think this was—maybe you guys were going to figure out what those circumstances were.

Ms. Stump: When I read this language, it seems to be that whoever drafted this back in the day was responding to a concern where perhaps Council Members were raising very substantial items or surprising the City Manager or key Staff with concerns that hadn't been raised before. Frankly, we don't have this problem. The Council handles this agenda item in a very responsible way and makes routine announcements and brief statements. I don't think we have a problem to solve here. If the Committee is not comfortable with the sentence, I would suggest just deleting it.

Council Member Wolbach: The one thing—what is occurring to me, if we don't decide to delete, what might go in that blank would be something like—actually I would replace it with something like "matters relating to." I would actually say put it before "matters" and we could say "Council will confer with Staff before raising potential legal negotiation or other sensitive matters" or something like that. Essentially things that might be best left for Closed Session.

Ms. Stump: You could. It's sort of like saying ...

Council Member Wolbach: Don't (inaudible).

Ms. Stump: Yes. You don't necessarily—I mean, I think Council Members are generally responsible. I don't see it as ...

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Council Member Wolbach: Yeah. I'm not sure I'm not okay. I'm just trying to make the best sense of what that sentence, that blank there right now could be filled with if we decide to retain it. I'm agnostic about whether we keep this sentence or not.

Chair Burt: I guess we are fine with Staff recommending any exceptions to this if Staff thinks that there are some that should be there. That's, I think, why that additional portion was in there. If you don't think there's any need for it, then I think from a Council standpoint we're not—I think this was in response to a Staff concern, not a Council concern.

Mr. Alae: Delete the sentence?

Ms. Stump: Ed, are you comfortable deleting it?

Ed Shikada, Assistant City Manager: Yeah.

Chair Burt: I had a couple of other questions related to it. One is that sentence starts with "Council will confer ...

Mr. Alae: Where are you?

Council Member Wolbach: We're scratching that sentence.

Chair Burt: That same ...

Mr. Alae: The Council Member comments, questions ...

Chair Burt: Okay. I guess this applies elsewhere. If there was something that you came back and said—I just have a problem with—I don't know if this is the correct way to describe it. It means that Council Members are being directed to do something, which is fine. It's almost a statement of a fact that they will.

Mr. Alae: Where are you?

Ms. Stump: Still in that same sentence.

Chair Burt: I'm in that same sentence, but it applies elsewhere.

Mr. Alae: Okay. I'll put it in our—I have a little parking lot here.

Chair Burt: Just that kind of—I don't know if absolute is the right way to say it. The other thing is that it may be elsewhere, but I thought there was an ability under this agenda item for Council Members to request that an item

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be reported back to the Council, and it was like the next agenda. Is there somewhere else?

Ms. Stump: That topic is raised elsewhere in the rules with respect to ad hoc committees. That's a very special type of committee that's not created by the Council. The rules allow the Mayor to create an ad hoc committee. The Council can request that a committee report be made.

Chair Burt: That's interesting, but it wasn't what I was thinking about. I thought ...

Council Member DuBois: it's more like a verbal Colleagues Memo, right?

Chair Burt: Yeah, I thought we had, but I don't see it struck out here. I thought that there was ...

Council Member DuBois: I thought a Council Member could make a request to agendize something if they got a second.

Ms. Stump: As a practice, we have very occasionally done that. I think what the Council has found is it's probably not advisable to codify that out of concern for a proliferation of items that maybe aren't clear or are very substantial. The Colleagues Memo process, I think, has served the Council well because it does require a certain amount of reflection and gathering of just some very brief initial background. That, I think, has helped Council Members focus on items that are really worthy of moving forward.

Council Member DuBois: I thought we had this as a kind of emergency Colleagues Memo. I didn't think it was being abused.

Chair Burt: My understanding is the same as yours, but I can't find the language that has been removed or exists.

Council Member Wolbach: Maybe it wasn't there and (crosstalk).

Mr. Alae: I don't think it ever existed. (crosstalk) it.

Council Member Wolbach: It just wasn't forbidden.

Chair Burt: Then that begs the question should we have any language that attempts to describe that. If we're saying, "We sort of loosely allow this, but it's not in our rules."

Council Member Wolbach: It's discouraged except in emergencies.

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Chair Burt: Yeah. I'd rather try to have language that captures that intent than to say that it's not within the rules. If Tom brings it up, we'll overrule him and say it's out of order. If I bring it up, it'll get carried. I just think we should have better guidelines than that.

Council Member Wolbach: The best that I can come up with off the top of my head would be something like "for emergency matters ..."

Chair Burt: I would say "urgency" rather than "emergency."

Council Member Wolbach: For urgency matters—for this we might want to have three. "For urgency matters, two or more Council Members may request an item be agendaized but this is actively discouraged."

Council Member DuBois: There's something about the scope too.

Chair Burt: Or routine matters.

Council Member DuBois: I think it needs to be routine or minor. Otherwise, it requires a written memo back to the (crosstalk).

Council Member Wolbach: Yeah, but it would be actively discouraged for routine, minor or non-urgent matters.

Council Member DuBois: No, no, no. I'm saying we can do it if it's minor.

Chair Burt: He's saying that if it's minor ...

Council Member DuBois: If it's minor, you can do kind of this verbal ...

Chair Burt: It's really a question of do we ...

Council Member DuBois: It's more substantial.

Chair Burt: ... have to go through a Colleagues Memo to get a little update on something. A lot of these are necessarily new policies. It's saying, "This thing was supposed to come back on the agenda six months ago. Can we get it on an upcoming meeting?"

Ms. Stump: In my observation, how that's generally happened is Council Members have said that, and the City Manager has said, "Yes, we're coming back" or "Yes, we will come back on the next feasible agenda." It has worked.

Chair Burt: Yes. It is a question of whether—that reminds me. I just need to make a note here for something later. Whether we want Council

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Members to have this right to do it whether a City Manager wants to or not. It's within the authority of the Council. We don't have that problem with our current City Manager. I think these problems, sorts of things—there were more tensions in the past on some things like that. You can certainly see that in a Council and a City Manager relationship, in theory you could have factions—you could have a City Manager who in some ways is aligned with a majority of a Council. Our City Manager tries to be like Switzerland as much as he can. I know these kinds of things can go on, so you have a minority of the Council and they can't even get a thing discussed in public. I think we certainly don't want to encourage something that goes overboard here. That's not our intent, but I think what we want to do is capture what has been permitted. We basically had, what I heard were two categories. One, if it's urgent and we don't have time for a Colleagues Memo. It might be substantive, but we don't want to go through that sort of process. Two, if it's just not a policy change, but essentially an update report or something like that. What you were describing was kind of minor. You had a list.

Council Member DuBois: I used it this year when I requested we agendize the single-story overlay discussion.

Chair Burt: That's a more substantive one. That is probably a third category of is that how we should do it. It was ...

Council Member DuBois: It was a little bit urgent in that we had several neighborhood groups.

Council Member Wolbach: I actually kind of—it might have been the same night that Council Member Scharff and I did something similar. Looking back on this experience where we proposed that we have a discussion about accessory to all units in higher density multifamily housing, realized that actually the way to do that would be to write proper Colleagues Memos which ...

Chair Burt: Right. That's where we're trying to draw the line.

Council Member Wolbach: We weren't (crosstalk) from that. It wasn't urgent, and it wasn't minor. In that case, it's best to just do it in writing.

Chair Burt: Yours could fall under the urgency because we're starting to get a rash of these. We need to move quickly. How about if we try to say that you're permitted to do it if there are two Council Members. It's generally discouraged. I don't like this actively discouraged. I'm not even sure what that means.

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Council Member Wolbach: There's language that we'd used earlier. That's (crosstalk).

Chair Burt: I know, but I don't like it either way. I don't know quite what it means.

Council Member Wolbach: I was just trying to be consistent. Strongly discouraged.

Chair Burt: It's a little stronger. Generally discouraged, except in occasions of urgent matters or reports that are not either substantive—not tied to major policy issues nor major Staff work. Are those the kinds of things we're trying to get? I mean, let's talk it through a little more. I'm just talking out there.

Council Member Wolbach: I think it could be tied to a major issue. To some person, it ...

Chair Burt: This is the report. The first and the urgent one is not limited in terms of whether it's major or not. The second one is just about things that are not urgent, do we want to circumscribe what that is?

Mr. Alae: Just real quick. Does the language up there help? Like, for an urgent matter—I can delete this—or, as you were saying, a special report or policy and two or more Council Members.

Council Member Wolbach: I would actually suggest—what do you guys think about maybe splitting these into two? For urgent matters, making it three Council Members. For the reports, making it two.

Mr. Alae: For urgent matters, three or more.

Council Member DuBois: (crosstalk) keep it the same. I think we've discussed it enough. Maybe you guys could wordsmith it.

Ms. Stump: Yeah. I think we'd more (crosstalk) then.

Council Member DuBois: We should keep it (crosstalk).

Council Member Wolbach: I actually don't have any more questions after that. That was it for me.

Council Member DuBois: I had a question on the next one which is rescheduling items. We got rid of continued items.

Mr. Alae: What page are we on?

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Council Member DuBois: Just scroll down. Rescheduled agenda items (inaudible) a lot and which makes me a little sad because I studied that in high school. We got rid of the continued item category. Is there a reason for that?

Ms. Stump: What we did here was try to reflect Council's current practice. The rules, the old language reflected the Brown Act which talks about a whole meeting being continued. That's not the practice of our Council. Our Council's very specific as to this particular item. We're going to reschedule to this particular date. This other item, we'll reschedule to a date uncertain. We tried to reflect what it is that the Council actually does.

Council Member DuBois: We'd never continue an item to the next meeting; we'd just leave it open?

Ms. Stump: We've never in my five years here continued a meeting which is what the current language talked about, just actually adjourning the entire meeting and just picking up in exactly the same order the next time. We always have a full calendar, so we're integrating the unfinished things in with the existing business that we'd already planned. It would be difficult here to continue from one Monday to the next because we have, with the 11-day packet, a full packet already published to the public.

Chair Burt: Everything else looks copacetic. My next one was under "S," well the old "S," Closed Sessions. Let's see, where's Closed Sessions?

Council Member Wolbach: Page 15.

Chair Burt: New "V," page 15, toward the top. In the beginning of the blue there, it says "special Closed Sessions will be scheduled before or after meetings." What is a non-special Closed Session?

Ms. Stump: I have no idea what that means.

Chair Burt: I think it was actually—they're not regular Council meetings. Aren't they all special meetings, Closed Sessions? Is that correct?

Ms. Stump: Not necessarily. The prior rules did contemplate that they were actually a different type of meeting. You could do that. You could have a meeting that consisted only of a Closed Session, but it can also be a part of a regular meeting. That's more typical for how we do business.

Mr. Alae: Would you guys like me to strike non-special?

Chair Burt: I think so.

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Council Member Wolbach: (crosstalk)

Chair Burt: I was just trying to make sure that—that was my first response, but I didn't know if I was missing something.

Council Member Wolbach: The next sentence is a little more clear, where it says "Closed Sessions may be scheduled during a regular or special Council meeting."

Ms. Stump: Right. What's intended by the word "during" is "in the middle of." The previous sentence says we try to put them at the beginning or the end. We probably should ...

Mr. Alae: Put it another way?

Ms. Stump: Yes. It's not the best technical language, but we could be more ...

Mr. Alae: I'll highlight it.

Ms. Stump: ... clear.

Chair Burt: I didn't have anything for the next several pages. You guys will need to speak up if you have any.

Council Member Wolbach: I actually had no more for the rest of the packet.

Chair Burt: Let me just find where I had the next. It's so much easier to follow it—relook at the colored track. It's nice we captured all the Committee as a Whole. I have to figure out how they correlate. I'm on the old page 31, 2.3 ...

Council Member DuBois: I had a question on 28 or (crosstalk).

Chair Burt: You have what?

Council Member DuBois: A question on page 28. It mentions election of the Mayor. It kind of seemed to abruptly end.

Mr. Alae: Page 28, under what? The election of ...

Council Member DuBois: Section 2.5.

Ms. Stump: The text is at the top of the next page, Tom.

Council Member DuBois: Yeah, I know. I just ...

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Council Member Wolbach: Formatting?

Council Member DuBois: I mean, it doesn't mention the Vice Mayor, and I just wondered about the structure of it.

Ms. Stump: That's true. It just refers to the Municipal Code which has a little more detail in it, but not much actually. Yeah, it probably should say election of Mayor and Vice Mayor.

Chair Burt: 2.3, let's see. In the—which reminds me. This first section, everything we've just gone through is procedures. We talked about defining the ...

Mr. Alae: We did. Correct. I did that at the beginning. (crosstalk)

Chair Burt: I missed it.

Mr. Alae: ... follow that to ...

Council Member Wolbach: Procedures.

Chair Burt: What the heck is a procedure versus a protocol?

Council Member Wolbach: What about policy?

Mr. Alae: If you turn back to page—I want to say ...

Council Member Wolbach: Oh, 2, page 2.

Mr. Alae: ... 1, Page 1 in the handout I gave you. It says—I added in introductions and contents I added "and is a directional guide." That, I think, was the language, Chair Burt, you had mentioned. Then I updated where it says the handbook, deleted handbook and wrote "the City Council procedures is organized in two sections." That helps people understand that section. That's it. That's what I recall.

Chair Burt: That is helpful. It still doesn't tell us—that's a procedure. We have—this next section that is called the ...

Mr. Alae: (crosstalk) protocols.

Council Member Wolbach: Protocols.

Chair Burt: ... protocols.

Council Member Wolbach: Page 29.

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Chair Burt: Do we define a protocol?

Mr. Alae: I think I should have done that. I put on where it says City Council protocols, I wrote "this handbook is organized into eight sections to serve as guidelines," because I think that's what you had mentioned.

Chair Burt: Good. That captures it. Great.

Council Member Wolbach: it's like direction versus guideline.

Mr. Alae: Correct.

Council Member Wolbach: That's the kind of distinction.

Mr. Alae: That was the distinction.

Chair Burt: Thank you. Under 2.3 which is—I'm trying to figure out what page that's on. I lost this.

Council Member Wolbach: 32.

Chair Burt: 32, okay.

Council Member Wolbach: Council conduct with City Staff?

Mr. Alae: 2.3 (inaudible).

Chair Burt: Under "C," let me see.

Mr. Alae: You're looking at the "in order to facilitate open government"?

Chair Burt: Yeah. Making sure that the same information goes to everybody. We've had a number of occasions where sometimes it's individual Council Members, more often the Mayor or the Vice Mayor, who were in a meeting just kind of ad hoc as we're in the middle of a discussion say, "We actually discussed this in the pre-Council meeting, and here's some additional insights to it." If that hadn't kind of been prompted, it didn't sound on those occasions—and sometimes by us individual Council Members. We might have had a discussion and we realize after the fact, "I want to share this with my colleagues." It's innocent, but it's something that we're not reminding ourselves, "I'm not supposed to go into a Council meeting with information that the other colleagues don't have that could be the basis for a decision." I'd say more often it's this slippery slope in pre-Council meetings. We have language, but I think we still need to figure out how we can be more adherent to probably the language we already have. Sometimes it's being repetitive in the protocols and being real clear. Don't

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forget this basically is the intent here. In protocols that's—once again it's a guideline.

Council Member DuBois: Are you looking at page 37?

Chair Burt: No, I'm not.

Council Member DuBois: It's about the pre-meeting.

Mr. Alae: That's 3.7?

Ms. Stump: Yes, it does state here at the beginning of the second paragraph, "the purpose of the meeting is not to work on policy issues." Khash added language that the Mayor and Vice Mayor's role is to represent the interests of the entire Council.

Chair Burt: Those are related topics.

Council Member Wolbach: Are you looking to add a line like the Mayor and Vice Mayor should ...

Chair Burt: What if we said something to the effect that there should be deliberate—on any additional information that is disclosed to the Mayor and Vice Mayor in the pre-Council meeting will necessarily be shared with the entire Council at the ...

Council Member Wolbach: Should be shared.

Chair Burt: Something to that effect.

Ms. Stump: We should try to avoid that, but if it happens, then we should ...

Chair Burt: The better thing is it isn't talked about, but you can't put it back in the bottle if it is.

Council Member Wolbach: Putting it here under protocols means it's advised. I think that's ...

Chair Burt: Do the right thing.

Council Member Wolbach: I think that's fair.

Chair Burt: We've described what the right thing is. The next thing I had was on—actually that same 3.7. Let me see what ... Around the agenda setting. One thing is that this says it's really the Mayor and the Vice Mayor

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who work with the Staff to plan the Council meetings. I'm trying to think of whether it's in the Muni Code that—it's not the Mayor and the Vice Mayor; it's the Mayor. I thought.

Ms. Stump: I don't know that we get that specific in the Muni Code. I think the only thing, if I'm recalling, we say about the Vice Mayor is that the Vice Mayor is there to preside or do the ceremonial duties in the absence of the Mayor.

Council Member Wolbach: It actually says that in the last paragraph.

Ms. Stump: I will double check.

Council Member Wolbach: Part of that. It says normally only the Mayor—actually no, I misread.

Chair Burt: That's attendance. Years ago we had Council Members dropping into the pre-Council meeting.

Council Member DuBois: We want to make it clear the Mayor is the lead here.

Ms. Stump: That is in practice the way that it works. In my time here, the Vice Mayor is more in an observing role and kind of apprenticing for that Chair position.

Chair Burt: Yeah, but that's not how are language ...

Council Member Wolbach: We could add a line.

Ms. Stump: Would you prefer that we delete the Vice Mayor then?

Chair Burt: We can reference what you described about—that the ...

Council Member Wolbach: The intent to observe.

Chair Burt: Yeah. That the Vice Mayor attends the meeting, but it is essentially co-chaired by the Mayor and the City Manager. Is that correct?

Ms. Stump: Yes.

Chair Burt: Then a more substantive thing that I think would be helpful to—once again these are guidelines—helpful to remind and emphasize, because this is one of the things that people can slip and forget if they're just not being reflective and thinking about am I doing such-and-such. We can probably—there's a better way to say this in the affirmative than the way I

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had it here. What I was trying to capture is agenda setting is not to be used to advance or limit specific policy objectives or the timing of decision making. This would apply to the City Manager and to the Council leadership. I think it's important to have that reminder, that the Mayor and the City Manager are expected to be neutral on using the agenda as it applies to how agenda setting could impact policy. I can say that this is at different times over the years and decades, this comes and goes as an issue. Sometimes it's completely a non-issue. Other times it starts being more of an issue. Having it as a guideline doesn't eliminate any of this, but it's a reminder for everybody that we're supposed to be as impartial as possible when we do that. You guys okay with that?

Ms. Stump: Yes.

Council Member DuBois: Yeah, I think so.

Council Member Wolbach: You said you're okay with Staff maybe working with the concept to come up with language rather than us taking it on right now?

Chair Burt: Mm-hmm.

Ms. Stump: Okay.

Council Member Wolbach: Fine with me. I know I'm always running short on time.

Chair Burt: The other question is in trying to set agendas, we have this collaboration between the Mayor and the City Manager. We don't offer any guidance if there's ever any disagreement, what happens. If the City Manager thinks one thing and the Mayor thinks another and they're co-chairing, do they arm wrestle?

Council Member Wolbach: Maybe let the Vice Mayor weigh in at that point and be the tie-breaker.

Chair Burt: The City Manager might say the Assistant City Manager or the City Attorney weigh in. I don't know about stacking the deck.

Ms. Stump: That never happens.

Chair Burt: I was struggling with that. I didn't have a solution. One was I was asking myself, "If they're having a discussion on whether something should be on the next agenda or not, do we say you can add but you can't veto it?"

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Council Member DuBois: Do we really need to specify here? I mean, I don't know.

Chair Burt: Might not, no.

Council Member DuBois: I mean, the City Clerk reports to the Council, so the Mayor can just tell the Clerk to put it on the agenda.

Chair Burt: That's a question. Does the Mayor have that authority? We don't clarify that. That's not clear.

Council Member DuBois: I just think there's a lot of situations. It's kind of like—if you see an issue that we're trying to fix ...

Mr. Alae: Wouldn't the Colleagues Memos take care of that? I mean, if there was really a significant difference?

Mr. Shikada: That's another option.

Ms. Stump: Yeah, it can. I think in practice we have managed to persuade each other even when there have been strongly held diverse views. That is an option. I think if two Council Members (crosstalk).

Chair Burt: We don't necessarily know what's going on between say a Mayor and a City Manager.

Council Member Wolbach: Although the Mayor could potentially raise it during Council comments.

Chair Burt: Mayor could, but ...

Council Member Wolbach: Might be reluctant.

Chair Burt: It could be the other way.

Council Member DuBois: Again, do you see this as a problem that needs fixed or ...

Chair Burt: I think it's something that should be addressed, especially in this context. Yeah.

Council Member Wolbach: Is it something you were seeing in years past or heard about?

Chair Burt: Mm-hmm.

Council Member Wolbach: Okay. There is some precedent for it.

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Chair Burt: I don't want to put—these are guidelines too. I mean, we're not putting it in the procedures, so it's trying to offer—is there some resolution? I don't have a ready one. Even if we may say it would be nice to have some way to solve this, if we don't have good language then we may have to punt on it.

Council Member Wolbach: Do you want to put it in the parking lot for the discussion next year?

Chair Burt: Sure.

Council Member DuBois: Again, I see the Mayor as one of nine. Calling out a disagreement between the City Manager and the Mayor, is that kind of elevating the position of the Mayor in a way it's not intended?

Chair Burt: I think that's part of the issue. That is part of what I want to—I wasn't finding the place here. I had it in my additional bucket. It's about how do we assure that—if not assure, how do we help try to keep that position in the boundaries of what the Charter and the Municipal Code describe, what the policies and procedures describe and what—in different times depending on who is the Mayor, we morph into a different role somewhat.

Council Member DuBois: It seems like the issue is disagreements between the City Manager and the Council. If you have something specific about the disagreement between the City Manager and the Mayor, you're in effect elevating the role of the Mayor.

Chair Burt: It is. The reality is this goes on. You haven't participated in a year of pre-Council meetings or two years and see that ebb and flow. Sometimes where it goes real smoothly and other times where it doesn't. It depends in part on whether a Mayor wants to push the boundaries of the role of the Mayor. It seems like this may be an appropriate place to try to give some guidance. Once again, it's not a procedure. It's the Council saying—I mean, we could always add things to the Charter or to the procedures and tighten it up even more. Maybe that's a place where it belongs, but since these aren't sharp lines, I'm not sure quite how you'd do that. I think addressing it would be helpful. I think it helps give guidance and a reminder. We have this spectrum, but I—Joe Huber, who's Judge Joe Huber now. When he was Mayor here—he was from Iowa, from a small town where they would do civic activities. Like, they'd do a barn raising. This was kind of his upbringing. His notion of the Mayor—this is a guy who's a really insightful, smart guy, and he believed that his role was to run meetings and to represent the City where requested. He did a dang good job of it. He did not interject his policy agenda into being a Mayor. He was

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kind of that end of the spectrum. I always kind of—when either I or others start going into this other end of the spectrum, I think about Joe Huber and pulling me back and centering me. Yes, I've got probably more of a historic context and even recent history context that there are these issues. When they do come up, I can tell you that any City Manager is going to be reluctant to raise those concerns with the Council and to raise them publicly. They go on, when they occur, maybe biting teeth and counting the months. I've tried to say that, yeah, there are issues. I'd like to deal with it, if we do, outside of any ...

Council Member DuBois: Maybe we can discuss that. I want to be sensitive. I don't know if Molly needs to leave or not; it's past her time.

Council Member Wolbach: Can we come back to that one then?

Chair Burt: Yeah.

Council Member Wolbach: See if there's any other ...

Mr. Alae: We've highlighted it. Why don't we maybe try to do something? If we can't, we'll note it and we can bring it up at the Retreat or as we look at changes. Certainly, I think, noodle around, talk to Jim, see what he thinks.

Chair Burt: Great. He might have language. Molly, you've got to take off?

Ms. Stump: I do.

Chair Burt: That's good enough.

Ms. Stump: (inaudible) last minute? I think you ...

Ms. Alae: We'll take notes and follow up. If you guys are—unless we've got to go back, we are almost at the end of the document anyway. It's only 48 pages, and we're on page 37.

Council Member DuBois: I don't have anything until page 43.

Chair Burt: I have something on 6.1B.

Mr. Alae: Which is page 69.

Chair Burt: That's on 39?

Council Member Wolbach: Yep.

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Mr. Alae: Page 39.

Chair Burt: We've had—Molly, I'll give you the short version. This is something I've questioned you about. I saw just this Monday kind of as pronounced of a problem as—the protocols always spoke about us asking questions. I can tell you when this was put in here, there was a lot of Council discussion about the nature of the questions. It was only about questions that were permitted to be asked of Staff through the pre-Council—I mean, through the written questions in advance of a Council meeting. It's morphed, and I realize part of why it's morphed. We have new people come onto the Council and they read this literally. It says what to do on questions; it doesn't prohibit arguments or using this as a tool for advancing a position. Because we didn't address it, it's implied because it talks about what to do with questions, but it doesn't say you can't do the other. I can tell you when this was written it was intended to say it's only questions that are permitted, but we don't address it well enough.

Ms. Stump: I thought there was some language in there. I thought it was illuminating, because you and I had had this discussion several times. When I actually read through all the paragraphs, I got a better understanding of the history of this. Anything can be framed as a question. What's really intended here is factual background or technical matters, not a policy debate.

Chair Burt: And not a rhetorical question either that says here's my long argument, my question is how am I wrong.

Council Member Wolbach: We could pretty easily add—do we want to suggest adding like a "C" here? "Statements, arguments and rhetorical questions are discouraged."

Chair Burt: I would go—that's up the alley. I would go further. It's not just discourage. This opportunity is only for—we'd say what's allowed along the lines of what—you put two halves of it. Molly described what is permitted; it's factual questions. Then we also say what isn't, and between those two you get a pretty clear picture of what we're intending.

Mr. Alae: What did you say? Statements, rhetorical questions and ...

Council Member Wolbach: Statements, arguments and rhetorical questions.

Chair Burt: Since this is a protocol rather than a procedure, do we have to say strongly discouraged?

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Council Member Wolbach: Do we want to go back to the previous portion of the document?

Mr. Alae: Are strongly encouraged—discouraged.

Chair Burt: I feel more strongly than that, so that kind of—but I want to have language that is appropriate for a protocol. I just realized something about the title. Now that you've helped define it, we start with procedures. Second, we have protocols. In the title we call it protocols and procedures. A little confusing just—I wonder if we just ought to say procedures and protocols just to ebb and flow.

Council Member Wolbach: As the title for the document? Yeah, that makes sense.

Chair Burt: I think it would be good to frame both—there's three issues here. Framing what is allowed; framing what is not allowed; and then how firmly we say it. Is it a strongly discouraged or—is that strong enough? I guess that's—strongly discouraged is ...

Council Member DuBois: The purpose is ask factual questions on technical matters. Statements, arguments, rhetorical questions ...

Chair Burt: Why don't we say "are not permitted"?

Council Member DuBois: Yeah, sure.

Chair Burt: Why don't we just say—and Staff can say, "Sorry. It's got to fall in these." It used to be. I can tell you, Staff used to—occasionally if they got something that wasn't a factual question, they'd say, "Oh, no. That's out of line." Nobody disputed it. It kept us all in line.

Council Member DuBois: They didn't say, "Can you restate your statement in the form of a question?"

Council Member Wolbach: Let me ask a question. Are we talking only about written questions? I can imagine a situation where Council Members talking to a member of senior Staff ...

Chair Burt: These are the written questions, yeah. Now, if you want to address something other than that ...

Council Member Wolbach: It doesn't stipulate written. I want to make sure that ...

Chair Burt: Then we should add that if that's not clear.

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Council Member Wolbach: ... we can still have a (crosstalk) conversation.

Mr. Shikada: It does reflect through email.

Council Member DuBois: It says (inaudible) email.

Council Member Wolbach: Yeah, you're right.

Chair Burt: We do have audio emails these days.

Mr. Alae: I added "C," "statements, arguments and rhetorical questions are not permitted."

Chair Burt: Is that okay?

Council Member Wolbach: Does that belong in this document or does it belong in the previous half of this? If we're under guidelines, not direction.

Council Member DuBois: I think it's fine.

Chair Burt: We have something under here that says procedure and policy. Now I'm confused on that. On this page ...

Mr. Alae: I see that.

Chair Burt: What is that?

Council Member Wolbach: Procedure goes through the details of here's how you do it.

Chair Burt: It's not procedure in the same sense that we use it in the previous section. I see.

Council Member Wolbach: Actually it is, because it's prescriptive directions about how to do something. That's what procedures are.

Chair Burt: All right. If we put this down under 6.2 ...

Council Member Wolbach: There you go.

Chair Burt: ... then it's firmer.

Mr. Alae: Okay.

Council Member DuBois: It mentions the dialogs here.

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Council Member Wolbach: Actually it can go under 6.1, because it is part of the policy. It's not how you do it; it's the general sense of what's happening or what's not happening. I would say if (crosstalk).

Chair Burt: If we say it's not permitted, that's firm enough.

Council Member Wolbach: Yeah. I'd say the (inaudible) is fine. I'm good.

Chair Burt: I'm seeing 6.2B—I'm sorry. I won't move on unless we're—are we done with that? 6.2B is—here's another case where it says will. Council Members will submit questions on agenda items no later than 5:00 p.m. on Wednesday.

Ms. Minor: Should?

Chair Burt: Yeah, should. That does change the intent. I mean, "will" really is meaning "are required to." I just hate this, saying that you will always follow a law. We're required to. If we break a law, we break it.

Mr. Alae: Would you (crosstalk).

Chair Burt: Do we mean that that strongly? That's the question.

Council Member Wolbach: I think change "will" to "should" and Council Members should submit questions. I'm fine with the rest, I think.

Male: I am too.

Council Member DuBois: To continue on, you said the expense stuff is going to be updated (crosstalk).

Mr. Alae: Correct. We'll update all that.

Council Member DuBois: A question about—a curiosity question. Page 43, 7.3D, Council Members can be reimbursed for the use of a private bicycle. Do you know why that is there?

Mr. Alae: We have to check. I have no idea.

Council Member DuBois: I think it was just to see if people are paying attention.

Chair Burt: I'm sorry. That's on what (crosstalk).

Council Member Wolbach: Page 43, 43. Seven—page 43 of the at-places, Section 7.3, Item D, a third of the way down the page, right before 7.4.

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Mr. Alae: We need to find the City (inaudible) the Procedure 2.9. I'll let you know when we find that.

Chair Burt: Tom, are you thinking of riding more?

Council Member DuBois: It probably used to be automobile; somebody did a global replace at some point.

Council Member Wolbach: Are we changing it? Are we leaving it? What do we do with that?

Mr. Alae: This whole section we're going to ..

Council Member Wolbach: All right.

Chair Burt: I don't want to say that we can rent a taxi and not rent a bike. I think that covers everything I had in the handbook. We have kind of the revisiting open issues that weren't in procedures and protocols.

Council Member DuBois: It seems like we covered almost everything from the Retreat.

Council Member Wolbach: Was there more?

Mr. Alae: We did. This was the only item on the Council's agenda. There's no other. Everything's closed out. There were—as a separate item, I don't know if we can technically talk about it. There were some items referred to the Committee as a Whole, but there's no Committee as a Whole that's been scheduled yet. I think we're working on that. Really the plan will be to, if you unanimously approve this, we would take it directly to Council and put it on Consent.

Mr. Shikada: We do have one other item. I'm not sure if it came directly through this same channel. This is the post-government employment regulations. That will be on your next agenda.

Council Member DuBois: What is that?

Mr. Shikada: It's the ...

Chair Burt: Revolving door. Resolve the revolving.

Council Member DuBois: Is that a large item? We have two things together.

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Chair Burt: I had three other things that I'm trying to think through the right way for us to consider them. I'm not sure whether this is the right agenda item or not, but it's core values which ...

Mr. Alae: That's on the plate to go to the Committee as a Whole.

Chair Burt: That's going to be when?

Mr. Alae: I think Jim and Mayor have to figure that out, going back to that.

Chair Burt: Board and Commission roles and responsibilities.

Mr. Alae: That will be a brand new item. That was not brought up at the Retreat under this item.

Chair Burt: It was not?

Mr. Alae: It was not.

Chair Burt: Can we simply refer it to the Committee as a Whole? Is that the right place? I mean it's about—the Committee as a Whole is going to relook at any kinds of broader policy-type and procedure-type issues.

Council Member Wolbach: I guess the question is can this Committee ...

Mr. Alae: I have to defer on that. I don't know if you all can come up with direction to Staff. I don't think technically you can give us direction at this step. I think when you're at the Committee as a Whole, you can certainly identify further issues that need to be discussed, and then we can discuss that. Now, I would just throw it out there ...

Chair Burt: I'm just thinking about the broader mandate that we're operating under tonight, which is our annual review of procedures and policies. Is it just—I'm trying to remember. Does it just describe the manual? Is that ...

Mr. Alae: Yes, correct.

Chair Burt: We had a couple of places where it alluded to Board and—we have a section on Board and Commission interactions in here.

Council Member Wolbach: Actually you're right.

Chair Burt: I don't whether what I have in mind would fall within that clearly.

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Council Member DuBois: It's on, like, page 34. I was looking at it. It's kind of Council's conduct with Board and Commissions and stuff (crosstalk) the other way around.

Chair Burt: Right.

Mr. Alae: What are you—what would you like to do? What's the ...

Chair Burt: I wanted to get it on the next time that the Council looks at kind of stepping back on it. It's really a Committee of the Whole-type of item. We had this—it arose recently with the Planning Commission. It was really about—it wasn't clear enough in the Muni Code, and we don't have another document that provides good enough guidance whether it's to them or other Boards and Commissions. It was around if the Council provides a policy direction and has voted on it, what is the obligation of that Board or Commission to advise the Council within the policy that has been adopted officially.

Mr. Alae: A question for the City Clerk. Didn't we just revise the Commission handbook? Isn't there a Commission handbook?

Ms. Minor: No, there's not.

Mr. Alae: There's not a Commission handbook.

Ms. Minor: No Commission handbook.

Mr. Alae: But the Commissions have bylaws?

Ms. Minor: They have their own—each Commission has their own bylaws.

Chair Burt: That's what they say of themselves. It's not—we appoint them and then there's very little about what their obligations are to the Council as a result of them serving on that Board and Commission. It's kind of something that's—I can tell you—like when I was on the Planning Commission, we had that understanding, that we were obliged to advise within the policy framework or the Council actions that had been taken, and we had a prerogative to offer advice beyond that. But not the latter instead of the former.

Council Member Wolbach: Actually ...

Chair Burt: What've you got?

Council Member Wolbach: ... page 34—let me know when you're there—Item C. Halfway through or partway—it's actually—Item C, line 5, after the

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word "and," it says "it is the responsibility of Boards and Commissions to follow policy established by the Council."

Chair Burt: I'm sorry. What page are you on?

Council Member Wolbach: Page 34. Right here in the middle ...

Ms. Minor: Number C or Letter C.

Council Member Wolbach: Yep. It's already there. I'm not sure if we need to add more. You can if you want, but that's pretty clear.

Chair Burt: Here lies the next problem. It is here, sort of buried. You say it couldn't be more clear. We have ...

Council Member Wolbach: I didn't say it couldn't be more clear. I think it's pretty clear, but if we want to add more, that's fine.

Chair Burt: We had three Council Members and several Staff members who had read this thing back and forth and didn't know it was here. I think that answers the question on whether it stands out well enough.

Council Member Wolbach: it's clear but not prominent.

Chair Burt: Here's the other thing. This is not policy and procedure for the Board and Commission; it's for us. Buried within our guidelines to ourselves is what we want them to do. I think we really—this kind of goes to a problem with ...

Mr. Alae: The whole structure.

Chair Burt: ... this structure. We don't have any portion of it that is provided to the Boards and Commissions.

Council Member DuBois: Can we just make a motion that it be added to the Committee as a Whole discussion?

Chair Burt: Yes, I think so.

Council Member Wolbach: We might not—procedurally ...

Mr. Alae: You could do that. When this goes to the Council, your motion will go to Council and the Council will then refer it to the ...

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Chair Burt: Since it's been identified that it is related to procedures and protocols, but we're saying really it's something that's in it that needs to be outside of it.

Council Member Wolbach: So it's referred?

Chair Burt: I'll move that refer to the Council as a Whole the topic of responsibilities to the Council of Boards and Commissions and how that should be codified and communicated.

Council Member Wolbach: Council's (inaudible) committee will ...

Chair Burt: Committee as a Whole, the same thing.

Council Member Wolbach: I'll second ...

Council Member DuBois: Go ahead.

Council Member Wolbach: I'll second it.

MOTION: Chair Burt moved, seconded by Council Member Wolbach to recommend the topic of the Boards and Commissions responsibilities be added to the Committee of the Whole Agenda for discussion.

Chair Burt: Any other discussion? All in favor?

Council Member DuBois: Aye.

Chair Burt: Aye.

Council Member Wolbach: Do we want to see the text first?

Chair Burt: No, I trust him.

Council Member Wolbach: Aye.

MOTION PASSED: 3-0 Berman absent

Council Member DuBois: When we start upcoming agendas ...

Chair Burt: I had one other thing which goes to—Cory, maybe you're going to spot a line in here that covers it. It has to do with—we have this section—I didn't dwell on it—about Council, Staff interactions. That's really more—it describes conduct. The one that I am struggling with is really a need to capture and have some kind of reporting mechanism. There are a lot of times where Staff commits to following up to the Council, and it gets lost. We have some Council Members who, as a result of that, say

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everything needs to be in the motion. I'm not somebody who leans in that direction. Lo and behold, important stuff gets lost. When I brought it up, it hasn't been deliberate, but we don't have a good system for it. On the one hand, that may be an internal City Manager, Staff obligation. We have these things that go on at a Council meeting, and then we have our Minutes. We have both action and verbatim minutes. When we vote on something, that's an action. When Staff says, in the course of a meeting, "We commit to follow up to the Council within this timeframe on this and that." It doesn't show up in the motion, and we trust it, and they intend to do it, but we don't have any bucket that it goes in that everybody says—that Staff themselves is reminded, "Wait a minute. We made this commitment. We said we're going to do it in three months, and it's two months and thirty days. We better get going on it." Or that Council is remembering what the commitment—we often go, "I thought they told us they were going to get back to us on such-and-such." We don't have that way to reference it. I don't know whether there is an ability when you're doing Minutes to capture those. There aren't that many; there's like maybe one or two a meeting. Is that probably right? But they're not rare either.

Mr. Shikada: That's probably true.

Chair Burt: I'm just searching for ideas on how we might go about capturing it. I'll say that this is also an important substantive issue.

Council Member DuBois: I think if it's important, that it be something that the entire Council agreed to ...

Council Member Wolbach: Refer this one also?

Council Member DuBois: ... it almost seems like it belongs in the description of the meeting. It's somewhere less than a motion though.

Chair Burt: I think it's real easy for Staff to say, "Yeah, we'll get back." The problem is we don't have a mechanism.

Council Member DuBois: Yeah. My concern is if one Council Member says, "Can you do this?" They say, "Yeah." Are we going to track all those things or is it something that's generally kind of a majority of the Council?

Chair Burt: I would think any time that Staff says they're going to do it, whether it's to an individual or a majority, they've made that commitment. We might want to distinguish whether it's—but I don't know how we'd quite do that.

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Council Member DuBois: We had the one-hour rule for individual versus (crosstalk).

Chair Burt: Yeah. If the Staff says in the course of a public meeting, "You don't need to put that in the motion, but we will get back to you on that within three months," ...

Council Member Wolbach: And then they don't, what's the enforcement? Not enforcement ...

Chair Burt: it's not just enforcement.

Council Member Wolbach: ... the nudge to (crosstalk).

Chair Burt: Very often—sometimes if they haven't forgotten about it, they may come back and say, "I need another month or two. We're booked up." That's reasonable. What we've got is times where it just—they don't even remember it. I just went through this on an important issue and raised to the City Manager something that had gone sideways, I thought. I went back and looked at the Council meeting. Lo and behold, there was a clear commitment by the department director and the City Manager to bring something back to the Council, and it never happened. It went another course that basically now, if we want to bring it back, it's going to delay implementation and all those things. It was substantial. We talked about the infrastructure plan the other night. That had just fallen off the radar, and I think if we go back to when we wrapped up the Infrastructure Committee—we spent a year of diligent work, and then it was consummated by sending to the voters the TOT tax. We got the tax, and we've never seen the plan again.

Mr. Shikada: If I could perhaps speak to that specific issue, and then maybe more broadly.

Chair Burt: I was meaning it as an example (crosstalk) go ahead.

Mr. Shikada: At the same time, I think it's a great example. The reality is it has not fallen off the radar screen by any means. We are on an ongoing basis among Staff working on the follow-up there. I think perhaps if anything the area that needs to be strengthened is the ongoing communication of status back to the Committee or to the Council as a whole.

Chair Burt: I would imagine that's often the case.

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Mr. Shikada: Exactly, exactly. At the same time, there are situations in which the ball gets dropped. Ultimately, easy for me to say, it's the—ultimately it leads back to the accountability for the City Manager. In turn, from the City Manager to his/her direct reports. The question ultimately, I think, comes back to one of structuring a system versus the extent to which Staff can and does have the bandwidth to follow up on the fly. It's a delicate balance. I know it's one that this organization has struggled with to a certain extent, and one that every organization does. You can create a big system that can fall on its own weight, because you spend more time tracking the follow-up than actually doing the follow-up. That's the delicate balance that we try to strike. In this particular case, I do believe that the organization drops relatively few balls. When they do happen, I think it's clearly one that bears a revisit of whether the system's at the right balancing point or not. We've talked about and in fact have been tightening up on the follow-up mechanisms such that my note to myself earlier on committing to ensuring that we're covering the awareness of the whistleblower hotline ability in our ethics training is perhaps a good example of that. Again, as you say, on an ongoing basis we have probably a few of those every Council meeting. I think that we may—I'll talk to the City Manager about this—want to put together kind of a running list of those, so that those can be kept outside necessarily the motions, the formal motions themselves. That can be an ongoing to-do list for us.

Chair Burt: The question would be would that list be transparent to the Council too? If there were commitments that were made to the Council, do we get to see that ongoing list, whether it's available through the Clerk or whatever would be the best method?

Mr. Shikada: Maybe the threshold question of is that tracking system now a good one or to a certain extent would the Manager be better advised to say, "Maybe you ought to put that in a motion." That's a good question. Absolutely, I think we would want that to be transparent for the Council. At a minimum, we'll need to discuss that with Jim and identify the best way for us to follow up.

Chair Burt: The tracking of that with this Committee ...

Mr. Shikada: That's another one. Yes, that's right. Just added one.

Chair Burt: ... how would this come back up? Under what agenda item? It could be the Committee as a Whole it's reported out, because it's sort of within that context of the sort of things. I'd be fine with that.

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Council Member DuBois: It could be in the procedures, kind of other procedural issues. It just may be a mention. I hear you say we don't want to overly complicate it.

Mr. Shikada: Over structure it. At the same time, for the purpose here, why don't we put that as a part of the follow-up on the procedures. As it comes back, either it be incorporated into the procedures handbook or that we identify the informal manner in which we'll provide that tracking.

Council Member DuBois: Something like 3.8 in Section 3.

Council Member Wolbach: Actually, I have one really minor, minor, minor suggestion. In Section 2 that starts on page 31, there are a few sections—actually particularly starting on page 32. You have Council contact with Staff, contact with Palo Alto Boards and Commissions. Then there's Staff contact with City Council. The really minor thing is just make it consistent. 2.4 should have the same language, style as 2.3. I would say just add the word "Council" at the start of 2.4 as the title. It would be "Council conduct with Palo Alto Boards and Commissions." Also, just something maybe—whether we want—I don't know necessarily if we need to talk about it tonight. You have those first two sections which are about how Council interacts with Staff and Boards and Commissions respectively. The next section is how Staff deals with City Council, but there is no parallel section to how Boards and Commissions deal with City Council. Going back to this question about how those bodies interact with the Council and respond to Council.

Chair Burt: Maybe we do look at whether we add it here, but it wouldn't do much good. The problem is if it's our procedure and they never see it and it's not directed toward them, it doesn't help.

Council Member Wolbach: You can stipulate this will be shared with Boards and Commissions during their training.

Chair Burt: I think ultimately we're pointing in the direction that we want to have some guidelines for Boards and Commissions. Maybe if they have—maybe this is the way it would be structured. If they have their own internal procedures, we add a section which is the boilerplate of what all Boards and Commissions are expected—that comes from the Council as opposed to what they generated about how they conduct themselves. That would be just maybe an overlay page or two or whatever.

Council Member Wolbach: I guess what I would actually suggest is that since we do have—I'm not saying that we should work it all right now, but maybe over the course of the next year as we put this together in our next

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iteration. We do have this Section 2.5 on Staff conduct with Council. I would suggest eventually we add a 2.6. Maybe after we talk about it with the Committee as a Whole, we would add a 2.6 which is Board and Commission conduct with Council, and that that section also be copied into the bylaws of each of the Boards and Commissions.

Chair Burt: It is valuable for the Council to know how they're supposed to be acting, but it's more important for them to know. Both matter. That concludes Item Number 2, and we just have ...

Mr. Alae: Before we wrap up, do we want to make a formal motion unanimous to forward this handbook to Council?

Chair Burt: Yeah. We had within our discussion tonight some things that we deferred to Staff to come up with final language.

Mr. Alae: Do you want me to summarize that for you or ...

Chair Burt: Yeah, and I'm also thinking about when it goes to Council, if it could—the color tracking is really valuable. The other I struggled with (inaudible) color is easy. If we had a different color for things that are post this meeting from the track changes that went into it. Those of us on the Committee can look and say, "I'm good with this. We don't have to have any further discussion." We'll want to look at those particular things to say, "yeah" or "no, that's not quite what we meant" or what.

Ms. Minor: I understand.

Mr. Alae: We just might have to do a special upload to the agenda, because MinuteTraj takes—the software system takes out the color, but we can find a way around that.

Ms. Minor: It's just printing. That's all it is; it's just printing. We can print them a color copy.

Mr. Alae: Okay. Got it.

Chair Burt: Yeah, just separate. Just like when we get a planning document.

Ms. Minor: Exactly. We can make it color.

Council Member Wolbach: I also just want to be clear that we're talking about as far as ending that, on page—was it 34 or whatever it was—I wasn't suggesting that we necessarily do that for this iteration.

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Mr. Alae: Correct. It's for the complete (inaudible) Committee as a Whole. These are just kind of my notes.

Council Member Wolbach: Do we need to put that in a motion?

Mr. Alae: No. I would say the motion would be to just accept the changes to the ...

Chair Burt: Let's go ahead and add that refer to the Committee as a Whole discussion of the Board and Commission ...

Council Member Wolbach: Conduct with Council.

Chair Burt: ...conduct with Council. Conduct is not quite where I ...

Council Member Wolbach: We can wordsmith it later.

Chair Burt: Yeah, interactions or something. I think conduct is ...

Council Member Wolbach: It's just the language that's there now.

Chair Burt: I know, and it's maybe not the ...

Council Member Wolbach: We can always change the (crosstalk).

Chair Burt: I mean, if we're saying that we want them to speak to us respectfully or whatever, that's conduct. If we're saying that we want them to have their actions fall within a policy, that's other actions.

Council Member Wolbach: Do we need a motion on that?

Chair Burt: Yeah. I'll move that we refer the Board and Commission interaction with the Council to the Committee as a Whole.

Council Member Wolbach: Second.

Chair Burt: All in favor?

Council Member Wolbach: Aye.

Chair Burt: Aye.

Chair Burt: We need a motion to refer the procedures and protocols. Notice I flipped that around. Oh, no.

Mr. Shikada: It's been used differently in different spots in the (crosstalk).

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Chair Burt: I see. The front title says procedures first then protocols. Elsewhere ...

Mr. Shikada: The header (crosstalk) the change.

Chair Burt: The header changes; that's very easy. The procedures and protocols with the changes captured in the—screen capture from the Staff be forwarded to the Council for approval.

Council Member Wolbach: Second.

MOTION: Chair Burt moved, seconded by Council Member Wolbach to refer the Procedures and Protocols with the changes captured by Staff be forwarded to the Council for approval.

Chair Burt: Any further discussion? All in favor.

Council Member Wolbach: Aye.

Council Member DuBois: Aye.

MOTION PASSED: 3-0 Berman absent

Chair Burt: We finished a big topic.

Future Meetings and Agendas

Council Member DuBois: I had a thing on the agenda I wanted to talk about quickly.

Ed Shikada, Assistant City Manager: Future agendas?

Council Member DuBois: Basement dewatering, we're hearing a lot about it in the press. Is there any way we could move it up from that December 8th, even potentially the October 20th meeting.

Chair Burt: October 20th, I had neglected to raise this issue. I am absent that week. It's on our calendar, but I didn't bring it up here. Can we talk about whether we can reschedule a meeting date? Whether that would be possible.

Mr. Shikada: On that topic of the dewatering, I'll do a quick check but I believe the season for dewatering ends—it's either the 15th or the 30th of October. We expected we'd have a window for addressing the procedures and policy issue.

Council Member DuBois: Are people prohibited or ...

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Mr. Shikada: Yes.

Council Member DuBois: ... is that because we expect it to rain?

Mr. Shikada: For that reason, there's a prohibition against dewatering.

Chair Burt: That was just a few years ago. That was the one tightening we did on dewatering.

Council Member DuBois: It's not time critical is what you're telling me.

Mr. Shikada: Just within that window. It will be come spring, but certainly want to get that resolved by that time.

Chair Burt: We can—let's go through whether we have enough meetings. First, can I ask whether perhaps the 27th of October might work for people instead of the 20th?

Council Member DuBois: I think I can do the 27th.

Chair Burt: Cannot?

Council Member DuBois: Can.

Chair Burt: You can, you say?

Council Member DuBois: Yeah.

Council Member Wolbach: Give me just one second. I had my phone turned off, so I'm just getting it working again. You want to do the 27th instead of the 20th?

Chair Burt: If that is acceptable to you guys.

Council Member Wolbach: That would be fine with me.

Chair Burt: Is that okay with you guys?

Mr. Shikada: That works for me.

Chair Burt: All right, good. Then we have the next question of are the agendas too full for three meetings between now and the end of the year.

Council Member DuBois: I mean, the next meeting seems like the lightest.

Chair Burt: Yeah. A question of can any item be ready to move from November or even December into the 27th.

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Mr. Shikada: I can talk to Staff about both the dewatering as well as the electric vehicle charging station which has been added. I know in both cases there has been substantial work done. I think it'll be a bit of a push to try and get them ready in this timeframe, but let's see what we can do.

Council Member DuBois: We already heard about the smoking one. That might be smaller, I'm not sure.

Council Member Wolbach: That might be the easiest one to move up.

Mr. Shikada: It's Possible. I'll have to check on all three.

Chair Burt: You'll look at whether ...

Council Member Wolbach: (inaudible)

Chair Burt: Yeah. If that's the case then, yeah, with the 27th being light, then maybe three meetings is going to cover it.

Council Member Wolbach: Looks okay to me.

Chair Burt: On that note, unless anybody else has anything, meeting's adjourned.

ADJOURNMENT: Meeting adjourned at 9:17 P.M.