



POLICY AND SERVICES COMMITTEE

Regular Meeting
June 29, 2009

Chairperson Espinosa called the meeting to order at 7:07 p.m. in the Council Conference Room, 250 Hamilton Avenue, Palo Alto, California.

Present: Espinosa (Chair), Barton, Kishimoto

Absent: Yeh

1. Oral Communications

Lynn Krug, SEIU, spoke regarding the City contract with SEIU.

2. Policy and Services Committee Review and Request for Recommendation on Prevailing Wage Issues Related to City Capital Construction Projects.

Chair Espinosa thanked Ms. Krug and all the work done in the City by the SEIU workers. He stated that the Committee will be discussing and listening to the recommendations from Staff on prevailing wage issues in relation to Capital Improvement Projects.

City Manager James Keene said that Staff has brought this issue back at the Committee's request, due in part to the worsening economy. Staff was further directed to provide more specific quantitative data regarding benefits and impacts that the City could face by moving to a specific policy of paying prevailing wages on capital projects. Neil Struthers with the Building and Trades Council has shared data with Staff showing about 84 percent of the contracts the City awarded were to firms that already paid prevailing wage. In the process of taking a look at the City's proposed and adopted Capital Improvement Program over the next five years, while trying to compute the impact if using prevailing wage, Staff developed concerns about rising costs to the City. The recently adopted budget has a gap between the infrastructure needs of the City and the funds required to meet those needs. The infrastructure reserve fund is down to between \$1 and \$1.6 million for this budget cycle. Mr. Keene stated that he had been supportive of the earlier

recommendations to move to prevailing wage. However, he is now less confident that there is enough data to assure Council whether prevailing wage would or would not cost the City money. Staff met with Neil Struthers to review this issue. After those meetings, and given the current economic climate, prevailing wage should be put on hold for this year. Staff should design some test cases that will show comparisons using prospective bidding of City projects. Staff recommends the Committee put this on hold. Staff will report back to the Committee on a pilot test design by this winter so that by next spring Staff can report back with more data.

Assistant Public Works Director, Mike Sartor, stated the Staff report included an attachment that lists all projects that are considered maintenance, per the Committee's request, to support a potential exemption for maintenance projects. Attachments I and J show all General Fund and Enterprise Fund capital projects. This shows a 5-10 percent potential impact based on the application of prevailing wage requirements. A pilot study would help determine if that is a realistic number. Lastly, Staff held meetings with representatives of the Friends groups that have an interest in this issue. They presented letters that are included in the packet detailing their concerns. The resulting recommendation would be to exempt public private partnerships where the private partner would do more than 50 percent of the work and manage the job.

Mr. Keene added that his goal is to make a clear recommendation for or against a prevailing wage proposal. Staff has suggested that not having a mandatory prevailing wage provision incites competition among firms that provide prevailing wage. On the other side, Mr. Struthers suggested that not paying prevailing wage may result in drawing from a smaller pool of firms, causing less competitive prices. Hidden costs in performance could exist. There aren't many projects in the near future, but there will be some important ones that will assist in gathering data. He stated that Staff recommends deferment of action on this and for the Policy and Services Committee to direct Staff to undertake the recommended study.

Nicole Goehring, 4577 Las Positas Road, Livermore, requested that the Committee go forward with a pilot study and not change the existing policy regarding prevailing wage.

Council Member Kishimoto asked Ms. Goehring what her experience is regarding the impact on wages paid and bidding on projects.

Ms. Goehring said that the City is at an advantage as they would have 30 to 40 bidders on a project. It would have a 5-10 percent impact on the bidding.

Council Member Kishimoto asked if she had any sense of how many workers are affected.

Ms. Goehring said it would depend on how the contractor puts the bid together.

Molly McAuliffe, 1554 Cowper Street, thanked Staff and the Committee for hearing this issue and supported Staff's exemption for public/private entities. She also announced that the Friends of the Palo Alto Junior Museum and Zoo have raised \$350,000 to fund the next project.

Ben Lerner, 3482 Janice Way, spoke regarding prevailing wage as a resident not affiliated with any group. He hopes the Committee votes in favor of prevailing wage and hopes such an ordinance has no exemptions. It's in the best interest of all involved parties because it creates an improved quality of work, defers negative costs to society, and it's a good example for Palo Alto to set.

Neil Struthers, 2102 Almaden Road, San Jose, Head of the Building and Trades Council, thanked Staff for meeting with him last week and feels that progress is being made. The pilot study is a reasonable plan as Staff and Council need to be comfortable that they are doing the right thing. There are a lot of tangible benefits to having this policy in a city like Palo Alto; not having one sends a bad message. He understands that Staff looks at things conservatively, whereas he is less conservative, looking at the global impact. He is confident that, given the right criteria, this issue will be re-visited within a year and Staff will be confident in their support at that time. Mr. Struthers said he is experiencing 20-30 bidders on public works projects. Contractors must decide to do public works projects or go out of business as it is the only thing being financed. More competition is good typically but some contractors are submitting bids way over their head.

Council Member Kishimoto asked about a gap emerging on large projects, stating that there isn't usually much of a difference in prevailing wage versus non-prevailing wage. She asked if there is a difference in submitted bids, if they were dropping and if so, how rapidly.

Mr. Struthers wasn't sure if prevailing wage is lowering wages, but the contractors let go of less skilled workers when times are tough. So now contractors have more skilled workers and they are being paid prevailing wage based on their skills. We are seeing their bids come in lower than non union private and public. This will continue to be measured. Productivity isn't factored into most studies.

Council Member Barton stated that he will reluctantly support Staff's recommendation. This issue has been an important one that he has worked on for two years. He also expressed frustration over the concern for costs. The City should pay more for services just as we are asking our citizens to pay more for many projects. In addition, if there are so many conflicting studies regarding the impact of prevailing wage, it's probably a wash. His personal experience has taught him that preliminary pricing for private projects, including three bidders where one is union and two are not union, had bids that were close. He pointed out that even if there were a five percent surcharge for projects, prevailing wage is the right thing to do. The City is going to upgrade emergency water, and charge more for it, but it's the right thing to do. The Business License tax costs businesses more, but it's the right thing to do. The City can't have it both ways; we'll need to pay more too. He reiterated that he will reluctantly support Staff's recommendation in recognition of all the work that has been done and he hopes that, if he isn't on the Council when this issue is revisited, that someone else will take his stance.

MOTION: Council Member Barton moved, seconded by Council Member Kishimoto, that the Policy and Services Committee defer the prevailing wage Ordinance for one year and direct Staff to study the issue using pending projects to achieve constructive data.

Council Member Kishimoto asked for an update on the City of Vista Prevailing Wage Court Case

Senior Deputy City Attorney, Melissa Tronquet, stated that the city is waiting for resolution. Palo Alto has an Ordinance stating that, as a Charter City it is not required to pay prevailing wage. A group challenged the Charter City exemption in the City of Vista, as it should be a matter of state wide concern. They won at both the trial and appellate levels; both were appealed. Charter Cities may still opt in or out, and there will likely be another appeal.

Council Member Kishimoto asked for clarification on the type of data Staff will gather.

Mr. Sartor said Staff has not put together a plan on how to do the study yet. The thoughts are that Staff would want to evaluate engineer's estimates with bids that come in and compare to prevailing wage or not prevailing wage. Staff also thought of using Add Alternates to look at a way of gauging the cost difference. Staff will confer with experts such as Mr. Struthers and put together a plan that makes sense. Staff has gone as far as thinking of some specific projects to see if they can bid those with prevailing wage requirements to see how they might look.

Mr. Keene added that the City doesn't have an unlimited amount of time or projects. Anything will not be perfect, but it will be structured enough to give better results, and provide more confidence in decision making. An Add Alternate approach may or may not be the best way. Staff may decide to study two separate projects that are alike and see how they bid. It may be hard with out a short term project to do the quality assessment. Staff can look at prevailing wage union or not union with a prequalification, to control a bit for the capacity. Staff is not ready at this time to be definitive in the design. The intent is that this will be a collaborative design approach.

Council Member Kishimoto wanted to look at the impact on the workers on that project, what wages they are getting paid and what their skill level is. She referred to an item on Monday's Council Agenda about DBEs, the Disadvantaged Business Enterprise program for minority and women owned businesses, which are only 6 percent in Santa Clara Valley. She asked if there is anything we are doing to encourage more women and minorities to enter these fields and to own these companies.

Mr. Keene said that Staff would treat that as another issue to focus on. As we deal with different types of data, we could look at it to see any patterns.

Chair Espinosa asked about the mention made to the most recent financial report and requested clarification.

Mr. Keene said that Staff was looking at what the infrastructure reserve would be at the end of this biannual budget, and it's down to \$1.6 million based on the budget that Council adopted. With reserves, pooled cash and investments, it may end up being closer to \$1 million.

Chair Espinosa asked if Staff has a sense of how many projects in next 12 months would qualify.

Mr. Sartor said the projects he spoke of earlier were General Fund projects that are coming up such as Greer Park and the Downtown Library, and then later in the year, Mitchell Park Library. There are a number of projects in the Utility & Enterprise Fund, such as storm drain rehabilitation.

Assistant Director of Utilities Engineering, Tomm Marshall, confirmed that they have a number of projects that would fit into the prevailing wage ordinance. He believes most of their projects already pay prevailing wage. There should be 5 or 6 projects annually that would be appropriate for a study.

Chair Espinosa asked for specifics regarding the timeline and how long it will be before Staff gets back to the Committee.

Mr. Keene said that taking into consideration the concerns expressed by the Committee, Staff would revisit this sooner rather than later. The goal would be to get back to the Policy and Services Committee some time in the next couple of months, and Council by the end of this fiscal year. He also said that to be fair, it could be a year from now.

Chair Espinosa confirmed that Staff would come back to the Committee with the study criteria within a couple of months and then within a year with final results. He hopes that when it does come back it will clearly address the concerns raised regarding price and quality of service, as well as the pay and for any sort of package that takes care of workers and how that's weighed.

MOTION PASSED 3-0 Yeh Absent

3. Review of Open City Hall Pilot Program and Recommendation to the City Council Regarding Continuation of the Program

Assistant to the City Manager, Kelly Morariu, said that Council approved a six month pilot of Open City Hall in 2008. The City launched the forum in 2009 with the first topic being composting. One to three topics for each agenda are posted each week and there have two on-going topics: High Speed Rail and Long Range Forecast. Each Thursday prior to a Council Meeting, staff posts a question and people are allowed to post comments until Monday at noon when the topic is closed. Comments are printed and left at places for Council on Monday. It's a small window of time for comments, but that is the way the agenda process is structured. The cost is fairly minimal. The City paid a \$5000 set up fee, and pays \$200 a month for ongoing maintenance, for unlimited topics. There is a 24 hour holding period where Peak Democracy staff review the comments, and no statements have been held so far. Regarding average usage, the site has had 137 visitors and an average of 24 statements per topic.

If compared to the 3 minutes of public commentary time at Council meetings, that equates to about 1.2 hours public commentary that has been transferred to the Open City Hall Program, and is equal to .4 statements per thousand residents. Each time a new user signed up, they were asked to complete a user survey. Eighty seven users like the forum and left a number of comments about why they liked it. A few complaints were about technical issues, most of which were resolved fairly quickly.

Robert Vogel, Peak Democracy, said that Open City Hall is an online forum that is both civil and free speech compliant. Palo Alto is getting an average of 24 statements per topic, which is equivalent to 1.2 hours of Public Comment orally presented but being in writing it's easier to review. He spoke regarding the usage of Open City Hall in context with the five other Cities that have used it in

the last six months. Palo Alto is the only City using it exclusively for Council Agenda items. Decatur GA, State College PA, and Lake Oswego OR, are using it for Council agenda items, as well as some more general items. Montgomery OH is using it exclusively for more general items. He stressed that he wanted to share these examples to give a sense of what they are doing to bring people to the forum and to publicize it. If the City wants to increase the number of users there are opportunities to do so. To identify them, he did a comparison of the type of usage from all five cities. Palo Alto has .4 statements per topic per 1000 residents; other cities are seeing a broad range of participation from .3 to 2.1. That range of participation rates is easily understood when you look at how other cities are publicizing their forum. Decatur and Lake Oswego are announcing each new topic via email using City email lists. Montgomery announces their topics in a monthly newsletter that goes to every household. Palo Alto and State College have no similar program and are only seeing a participation rate about 20 – 30 percent of the others. Another opportunity to increase participation is related to a development recently put into the software. Open City Hall can now run clones on other websites. The City can add it to the City of Palo Alto website. Sacramento is using the Open Town Hall program where the Mayor chooses issues and updates them in a form that he controls, and the form is embedded in the Sacramento Bee as well as in Capital Public Radio Website. Media outlets carry the forum to be consistent to their mission and to bring readers to their website. The City can invite the local newspapers to embed a copy of the forum on their websites, as well as embed it on the City's website, at no extra charge.

Ms. Morariu said that Staff recommends continuing the Open City Hall program at the same \$200 a month service fee. Staff's time to manage the forum is 1-3 hours a week when there are topics. Staff has been exploring ways to increase participation. The City can work with the local media outlets to get it on their websites, as well as putting it on the City's website. The pilot was on the Open City Hall website to insure the public recognizes the program's independence from the City, but at this point adding it to the City website would give it some legitimacy. Staff also wants to reach out to the neighborhood associations, in lieu of a comprehensive email list like Decatur and Lake Oswego has. Staff also wants to look at how to incorporate the Open City Hall logo on the printed agendas to identify the topics that are on the forum. Lastly, staff is looking at increasing the number of issues on the forum, as a response from various Boards and Commissions as well as other Council Committees.

City Manager James Keene concurred with Ms. Morariu and added that he doesn't think that the pilot really hit it out of the park, but it did get participation and civil commentary with a high level of discourse taking place.

Staff is working on the area of social networking, such as establishing the City's own Facebook page and Twitter Account. Tweet notices can be sent in the absence of email list.

Chair Espinosa shared three points that Council Member Yeh shared with him earlier: 1) Peak Democracy should continue, 2) Distributing it At Places doesn't work because there isn't enough time to influence decision making, which ties into the bigger issue of Council not getting the staff reports early enough, and 3) the need for more publicity is paramount to the success of the program.

Council Member Kishimoto recognized that Peak Democracy first contacted her two years ago, so it is nice to see it going. She agreed with Council Member Yeh's comment regarding the timeliness of the reports, agreeing that At Places isn't useful. She asked Staff if the Council can get the comments real time.

Ms. Morariu said that it would be possible for Council Members to view comments on the forum as often as they would like or Staff could distribute comments via email on Monday at noon instead of waiting until the end of day.

Council Member Kishimoto said that those options would be better than the current process of putting the comments At Places. She agreed that the value of this program is uneven. She was disappointed that there is no longer a one page view containing one line from all the comments. It is less dynamic now. She would like the City to take advantage of the knowledge and analysis our residents have and do, getting them to add their hard earned information to Peak Democracy is her goal.

Mr. Vogel explained that the previous look of the website that Council Member Kishimoto was referring to was a prototype that was much more labor intensive. The one line comments were hand selected and edited. It would require work to do it.

Council Member Kishimoto suggested showing just the first one or two lines from the most recent comments. Only seeing the numbers of yes and no's is not as compelling for the public to read further and add their own comments. She asked if there is a way for people to sign up for email notifications.

Mr. Vogel said that the original press release attracted 200 or so people to sign up and receive additional announcements as topics are added. This is less than the several thousand subscribers other cities have, but they started with a mass email distribution, Palo Alto did not.

Ms. Morariu added that if it were embedded in the City website, staff would be able to use the Gov Delivery service so that people can subscribe through that.

Council Member Kishimoto asked if High Speed Rail is a perpetual topic.

Mr. Keene said it might be best to put the comments on the City's website so we can keep a rolling history of commentary and perhaps even a database. High Speed Rail has a set of deepening, evolving opinions, data and grass roots strategies. Then it would start to become part of a body of work and it might be more compelling to participants.

Mr. Vogel agreed with Mr. Keene about having some editorial process to have the most relevant topics at the top.

Council Member Barton agreed that the trial wasn't perfect but believes it should be continued. It's not expensive enough for the financing to be prohibitive. The timing of when Council gets the comments doesn't work. What does work is the way Staff sends out the answers to Council Member's questions that come out around 2:00 -3:00. If Open City Hall came out at that time he stated that he would have time to read it. He is concerned about the idea of editing the comments; the City shouldn't be making the decision about what's best. The point is to have something to engage people. He would like to see it embedded with randomly selected comments that come up and change frequently. The current structure is to put the most recent comments on top, unedited.

Mr. Vogel said that it is important to make sure the users can't edit their comments in order to have them move back to the top. Open City Hall is set up so that it is sorted by creation date, not updated date. It is also critical that if the City does edit or filter comments, that there is no political agenda behind it.

Council Member Barton said that because Palo Alto's daytime population is so much bigger than the night time population, there is value to a passive communication system. An email communication would miss a lot of the daytime residents, even though they do have a stake in the decisions made by the Council, such as with business license taxes. He also said that he likes the agenda pages the way they are currently posted on the website. Users are able to click on a link that leads them to a PDF of the agenda item. It would be helpful if we could put an Open City Hall logo next to that link, so that users can click on it and get to the Open City Hall page. He then asked if there is a way to find out where the users came from.

Mr. Vogel said that they do know where the users are coming from and they do have the ability to share that information with the City.

Council Member Barton said the Media Center partnering would be interesting because they could reflect the item back to their video post back to the discussion and there might be some value. He asked if it can be embedded in Facebook.

Mr. Vogel said Open City Hall can be embedded in sites like Facebook, and asked if the City has a presence on Facebook.

Mr. Keene said that the Staff is currently working on it.

Council Member Barton reiterated that Facebook is another opportunity to get Open City Hall some passive exposure. He also stated that embedding it in the City website makes sense. Overall, he found the program valuable. He tries to reflect on the public comments, but it is difficult to do right before the Council meetings. There has been occasion where he has seen that the tally on Open City Hall is different than what he hears from other sources. It gives him a fresh perspective. It is consistently on topic. Palo Alto Online is an intriguing idea but it is too scattered and unpleasant to be useful to him as a policy maker.

Mr. Vogel said if we embed it in a local newspaper the format will be exactly the same as it is now on Open City Hall. There should be no change in the quality of comments, and this was indeed the outcome of the experience in Sacramento.

Council Member Barton asked how Open City Hall fits in to the FPPC fairness rules. If a newspaper hosts a Mayor's page during elections, it would be an endorsement. He then asked if they would be able to host similar pages for other candidates.

Mr. Vogel said that the forum is open to all elected officials now, and when an election comes up, it would open to all candidates.

Chair Espinosa asked Staff to speak to the cost impacts of the program and whether adding additional items from Committee Members or Boards and Commissions, increasing outreach, email communications or increasing the number of items discussed increase the cost of the program.

Ms. Morariu said that, originally, there was a per-item cost, but was changed during the pilot. The City pays a \$200 per month flat fee for an unlimited amount of topics. Having the Boards and Commissions add items would not increase the cost. She stated that there might be an increased Staff cost, due to a possible increased need for coordination. Increasing the public's

participation, managing email lists and embedding in the website would be a Staff resource issue more than a cost issue.

Chair Espinosa asked if Staff worked with the Website Committee on this.

Ms. Morariu said that at this early stage they did not.

Mr. Keene added that there has been some general discussion, but not on a detailed level.

Chair Espinosa asked if Staff would state the value added beyond the email packets they get.

Mr. Vogel said that if people come to Council meetings and spoke alone with Council, and then when they are done the next person comes in there is no transparency, like there is if everyone comes in at the same time. That's the difference between a forum and a sequence of emails. If the emails are published unedited, you have to be careful of content as some may be inappropriate. Open City Hall deals with that for the City. It allows for civil statements while still being a process that does not violate freedom of speech.

Chair Espinosa stated his appreciation for any business that is involved with transparency and civil discourse. He did vote against it the first time. He still believes that this is a waste of money. The information is received too late. The number of comments per topic is absurd at 24 to 60,000. He believes the feature could be added to the City Website in a much more immediate and transparent form. The cost may be minimal but we are not adding any value to the decision making process at all. He reiterated that he respects the efforts and agrees with the spirit of the project, and he applauds the companies that do this type of work. He will continue to discourage the use of Open City Hall.

MOTION: Council Member Kishimoto moved, seconded by Council Member Barton, that the Policy and Services Committee recommend to the City Council to continue utilizing the Open City Hall online discussion forum at the cost of \$200 a month, and direct Staff to ensure a more timely delivery of comments, expand outreach, include occasional long term projects, embed Open City Hall onto the City's website, expand use to Boards and Commissions, and include Social Networking sites.

Ms. Morariu asked if Council Member Kishimoto only intends to open it up to the Planning and Transportation Commission.

Council Member Kishimoto said she would be open to including all Boards and Commissions. She also expressed her appreciation at Chair Espinosa's honest

comments about the program. She feels that expanding the outreach will address a lot of his concerns. She also hopes to attract more in-depth comments. Palo Alto residents do a lot of research on the topics that affect the City; it's great to have a forum for them to share all of that. However, three days isn't enough time for them to do all that work, and then to respond with in-depth answers, so longer term topics would be useful. It is also valuable to see real time data.

Council Member Barton agreed in part with Chair Espinosa's comments, but believes the start up money has been spent and should now be leveraged. He added that if this conversation is still happening in a year or two, then it might be time to stop the project.

Chair Espinosa said that if the City must continue to use the program, it should include other Boards and Commissions as they deal with some hot topics that should be included.

Council Member Kishimoto agreed to include Planning and Transportation Commission and other Boards and Commissions as Staff sees fit.

MOTION PASSED 2-1 Espinosa no, Yeh absent

3. Discussion for Future Meeting Schedules and Agendas

Assistant to the City Manager Kelly Morariu said that the next regular scheduled meeting is July 14th. The currently scheduled agenda is the Legislative Program. The Committee had asked Staff to bring an expert in to discuss this. Dan Carrigg from the League of CA Cities is willing to come speak, but won't be able to come until September. While no expert will be there, Staff and the Committee can still have a more general discussion.

City Manager James Keene added that he wanted to have a general conversation with the Committee regarding their scope of work, and how Staff identifies the stream of issues that is coming to the Policy and Services Committee.

Chair Espinosa said that he had raised that issue as well. He felt this is a good time to discuss the Committee's role and make sure the agenda is broad and comprehensive. He then asked what would be involved with a general conversation regarding the legislative program.

Ms. Morariu said that a general conversation might include the City Manager speaking about effectiveness of the lobbying efforts and ways to incorporate the

Council into the lobbying process as well as discussion about Sacramento lobbyists and Federal lobbyists.

Chair Espinosa said that he is concerned about the lobby effort and opportunities that may be missed if we push out the agenda.

Ms. Morariu said that Council has already adopted the legislative program for this year. This was about more of a general structure for moving forward.

Mr. Keene said that he would like to have a discussion on the routine process for working with our local officials, and how the process is working for Council.

Chair Espinosa agreed that we must discuss the process. There are also more specific issues such as High Speed Rail, and figuring out how to track this on a more useful basis is critical. He again expressed concern that this is being pushed out to the fall. He stated that High Speed Rail is coming fast and the Committee needs to get back to Council with specific requests.

Council Member Kishimoto said that most of the bills are turning into two year bills, so the urgency is not as strong as it was. She also suggested that the July meeting move to July 7th or 21st.

Chair Espinosa reiterated that the Committee and Staff can discuss this without the lobbyists.

Mr. Keene said it would be a good chance for Staff to gauge what the Committee wants to see, rather than waiting until the fall.

Chair Espinosa agreed that such a conversation would be helpful. He said he can not attend a meeting on July 7th.

Ms. Morariu reminded the Committee that the Finance Committee has meetings on both June 7th and June 21st.

Council Member Kishimoto asked if that would create a conflict with Staff.

Mr. Keene said he may have conflict on June 21st.

Council Member Kishimoto asked if June 15th might work better for everyone.

Chair Espinosa tentatively agreed to June 15th.

Ms. Morariu said that the Attorney's Office wanted to add the Ad Hoc Committee Policy as the third item.

ADJOURNMENT: Meeting adjourned at 8:52 p.m.