



## **POLICY AND SERVICES COMMITTEE**

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Adjourned Meeting from July 12, 2011  
July 14, 2011

### Roll Call

Chairperson Price called the meeting to order at 7:08 p.m. in the Council Conference Room, 250 Hamilton Avenue, Palo Alto, California.

Present: Klein, Holman, Price (Chair)

Absent: Burt

### Oral Communications

None

### Agenda Items

1. Continued Discussion and Recommendation for Approval of an Electronic Packets for Council

City Clerk, Donna Grider stated Staff had been directed to return to the Committee to discuss whether there needed to be a policy regarding personal usage of an electronic item purchased by the City and to research surrounding cities to see how they dealt with the personal usage of the electronic devices. She noted there was a subsequent request regarding the Council packets continuing to be delivered on the Wednesday prior to the Council meeting. She stated if the City purchased the device that changed the beak even cost from the first year to the third year. She stated if Council was to vote to direct that the City would purchase the electronic devices for the Council Members, it had been explained to her by the Director of Administrative Services, Lalo Perez that a Request for Proposal (RFP) process would need to be followed.

City Manager, James Keene stated it had been reported in the media that the City was only looking at iPad devices which was untrue, there were a number of electronic devices which could be used for this process. He noted Hewlett Packard, a Palo Alto based company made a tablet device and the technology used for distribution of the packet could be used across a range of platforms.

Senior Deputy City Attorney, Melissa Tronquet stated a City policy was not legally required regarding personal use on the device. The Council could go beyond the minimal threshold of policy requirements and make a policy decision to have a policy drawn up. The City Attorney's office had made recommendations regarding a policy if that was how the Council wished to proceed. She stated State law had limited allowances for personal use of devices purchased by a government entity.

Mr. Keene stated if the Committee wished for the City to provide the hardware it needed to be restricted for personal use. If Council wanted to use the device unrestricted Council Members would need to purchase the devices.

Council Member Klein stated if the City owned the hardware the Council Member's communications would be discoverable in litigation.

Ms. Tronquet stated the law was not settled on that point as of yet although there were arguments that communications on any format whether on City owned devices or not was subject to discovery.

Council Member Klein asked if the City Attorney's office was suggesting that a telephone call on a personal cellular line would be discoverable.

Ms. Tronquet stated the case had been brought about that City related communications on personal e-mail accounts and she reiterated the law had yet to be settled.

Council Member Klein was asked by an outside member of the public why there was a charge to rewire the dais within the Staff Report when in the City of Mountain View their Council began using electronic devices without special charge.

Ms. Grider clarified the charge to re-wire the dais was added to allow for the Council Members to charge their devices during the meeting.

Council Member Burt clarified the re-wire was for the ability to charge the battery of the device and not for granting access.

Council Member Klein asked what the estimated cost would be.

Ms. Grider stated the estimated cost received by Staff was \$6,500.

Council Member Klein stated it seemed to be a high fee for running an electrical line.

Ms. Grider stated the cost was presented by the City Facilities Department.

Mr. Keene stated the idea was to incorporate the wiring costs of the Chambers with the technological upgrades of high definition projection screens and monitors on the dais.

Herb Borock stated at the present time if there were to be a communication occurrence at the dais the public was able to decipher its existence but with an electronic device at the dais there could be silent communications unknown to the public which may or may not have to do with the agenda item being discussed. He suggested there be an electronic device at the dais which could only access the City public website with a thumb drive to grant the Council access to their annotated packet thereby avoiding any public concern.

Council Member Klein stated if the decision was for Council Members to purchase their own hardware he asked whether there would be a reason to have the City purchase the devices for the Council Members to ensure uniformity or a potential bulk savings.

Mr. Keene stated the uniformity issue pertained to the software side of the transition and as for the hardware, there would not be uniformity since all of the Council Members did not need to utilize the same device.

Council Member Klein asked for clarification that any hardware purchased would be compatible with the software.

Mr. Keene stated in the sense of using the packets for either accessing e-mail or in particular downloading the Council packet then yes, the software was applicable across different pieces of hardware.

Chair Price felt it was appropriate for the City to purchase the devices for those Council Members who may be interested in using them. She stated if the devices were intended solely for City use it should be a City purchase. She noted at no point had there been a requirement placed on the use of the devices.

Ms. Grider stated that was correct. There would continue to be paper packets produced for the library system and if a Council Member chose, they could continue to receive paper packets as well.

Council Member Holman stated from a procedural point of view there were packet

items which were more utilitarian in paper format. She asked how would Council know when to request a paper version of a packet item due to its size or ease of use not being electronic.

Ms. Grider clarified the norm would be to continue to produce paper packets with respect to the Environmental Impact Reports (EIR) and maps although she was uncertain of the size of other documents until the day of the packet. She noted if a Council Member chose, after reviewing the electronic packet there was an item they wished to have in paper; Staff would find a way to handle the request.

Council Member Holman stated she was looking for a manner in which to handle the situation to not end up with a number of last minute requests. She asked if there was a way to alert the Council in advance of the packet being sent if a report or study was upwards of 120 pages therefore giving them the choice to request a paper copy of that document.

Mr. Keene stated given time, Staff would figure out a mechanism in which to comply with the request although at present it was unpredictable.

Council Member Holman asked if the City was purchasing the electronic devices, and a Council Member preferred to have a laptop over an iPad or an HP Tablet would there be an allowance provided to the Council Member to acquire the device they felt was appropriate.

Mr. Keene stated the type of device was within the Council purview.

Council Member Holman stated her understanding was the Boards and Commissions were going towards paperless as well although without a stipend or City purchased electronic device. She was not broaching a discussion but wanted to mention it.

Chair Price stated the option and Motion voted on previously was for City to purchase iPads for Council Members to receive, the City installed appropriate applications. Her understanding was the Motion passed 4-0. Procedurally if that Motion was passed, unless there were modifications, that would be the Motion moving forward to the City Council for discussion. At this point the discussions should be focused on the policy matters.

Council Member Burt stated his recollection was the Motion was passed but it was determined not to forward to the full Council pending the information brought to the Policy & Services Committee by Staff during the current meeting. Therefore the previous Motion was not final but pending the review of the current information.

Ms. Grider stated the previous Motion was within the report and had the incorporation of the City Attorney looking into the policy of personal useage.

Council Member Burt clarified in essence, there needed to be an affirmation or modification of the Motion prior to submission to the full Council.

Council Member Klein stated the memo from the City Attorney did cause him to rethink that Council should purchase their own devices. He noted in recognition of the history of cell phone usage it was unrealistic to not use a device for personal use. He stated there was a saving for the City as well, if most or all of the Council Member purchased their own devices.

Council Member Burt asked what the status was on the City policy of allowances for telephones.

Mr. Keene stated there had not been a final resolution.

Ms. Tronquet stated her understanding was the final decision was to not move forward with the allowance.

Council Member Burt stated the Staff response was not a clear answer.

Ms. Tronquet stated the Administrative Services Department (ASD) was highly involved in the decision making of the matter although she recalled there was a level of personal cellular lines used for both work and personal that made it not cost effective for ASD to administer stipends.

Council Member Burt stated it appeared the same issues being raised for Council Members applied to City Staff on use of the devices. Therefore there was a circumstance being created where the City Staff was required to have two computers, a City supplied and a personal one. He asked why the allowance was not the way to handle the situation, it made things simpler and made the device not City owned.

Mr. Keene stated to the extent of being able to use professional development funds for the purchase of a computer or cell phone, yes that was allowed.

Ms. Tronquet stated there could be an issue with having a separate stipend for Council Members to purchase their own devices because there were limits to Council Member compensations.

Council Member Klein stated that would need to be a Charter Amendment to change the compensation limit.

Council Member Burt stated if the constraints were in the Charter then he was satisfied with the outcome although if not then there was a legitimate discussion necessary.

Council Member Holman asked whether there could be an expense account created so Council Members could submit expenses for reimbursement which would not cause a Charter Amendment.

Council Member Burt stated there was an expense type of account for Council travel where they could submit for travel compensation per mile and that did not mean the City owned the vehicle.

Ms. Tronquet stated there was a law in use being referred to, AB1234 the Ethics Law which discussed expenses for travel.

Council Member Burt asked whether the idea of reimbursement was different in-kind.

Ms. Tronquet stated yes. Those were travel expenses and AB1234 was specific to travel.

Council Member Holman stated registrations to conferences were not travel expenses but those expenses were reimbursable. She wanted to express it could be expensive to serve as a Council Member and she did not want to discourage people from running for office in the future.

Ms. Tronquet stated if there were a concern regarding expense the City should purchase the electronic devices thereby eliminating the expense by the Council although allowing them to perform their duty as an elected official.

Mr. Keene stated there was nothing to preclude the Council in having a policy which was elective. If the Council Member chose to purchase the device there would be no restrictions on its use, or the Council Member could choose to have the City purchase the device and be restricted to the City use.

Council Member Klein stated the effort of adding an expense account for the purpose of electronic devices added more effort of Staff than the reward. The City Manager had expressed there were choices for those Council Members who wished to not have the added expense.

Council Member Holman asked whether there was a practical or feasible way to limit access during a Council meeting to ensure the City Council was viewing what was pertained to the meeting at hand.

Mr. Keene stated he was unaware of the ability and noted that objective ran counter to the purpose of the technology.

Council Member Burt stated the ILG website showed documentation on page 3 referring to Understanding the Basics of Public Service Ethics: perk issues. He noted there was useful information regarding electronic meetings which may need to access information that was related to the issues in the packet but not attached to the packet itself.

Ms. Tronquet stated the City Council passed a Resolution in 2006, after AB1234 was passed, that outlined the types of expense reimbursements that would be covered. Essentially those types of expenses were travel related or expenses directly related to further your service.

Council Member Burt asked whether that was based on a Council Resolution or prescribed by AB1234.

Ms. Tronquet stated AB1234 set out the requirements for what could be reimbursed so most City Councils' in the State passed Resolutions.

Council Member Burt confirmed that the City of Palo Alto's Resolution was not more nor less than the AB1234's requirements.

Ms. Tronquet stated that was correct and it could not have reimbursed more than AB1234.

Chair Price clarified the issue was the items themselves that were reimbursable not the issue of cost to those items.

Ms. Tronquet stated that was correct. She stated public officials and employees jobs were to serve the public therefore they should be provided with the tools to perform those positions and not more. Items included but not limited to were cellular phones, vehicle expenses, and travel.

Mr. Keene recited page 11 from the website of the Institute for Local Government under section Understanding the Basics of Public Service Ethics: Perk Issues

## **Special Issues: Certain Kinds of Expenses**

### **Cell Phone and Internet Expenses**

Cell phone and Internet expenses can be reimbursed according to local agency policy with

documentation.<sup>74</sup> In terms of kinds of documentation; one agency requires that telephone bills be submitted and that the official identify which calls were made on agency business. For cellular calls when the official has a particular number of minutes included in the official's plan, then the agency asks the official to identify the percentage of calls made on public business. For Internet access, the official submits an estimate of the percentage of agency-related usage for the period in question and proof of the amount of bill for such access.

Council Member Burt stated because the information listed included cellular phones but not laptops or the portable devices currently available, it appeared the law was outdated, although it was what was in place.

Ms. Tronquet stated unfortunately a number of the laws did not recognize technology. To the extent that it could be determined the amount of personal use on the electronic device, documented and then quantified for reimbursement it seemed incredibly difficult.

Council Member Burt asked if Council Member Klein was persuaded by the report that stated some neighboring cities had opted to not purchase equipment for Council Members.

Council Member Klein stated no, there was not a large enough sampling of information to determine a direction. He clarified the City Attorneys' memo provided sufficient information to change his opinion.

Ms. Tronquet stated it was an accurate statement to say that the Council had less expectation of privacy in communication on a City owned device.

Council Member Klein asked for the City Clerk to reread Option B from the previous Staff Report.

Ms. Grider clarified Option B read: Council Members purchase and use their own electronic reading devices, the City would purchase any applications required to allow the Council Members to read the packet on their device. The City could choose to pay any applicable monthly fees incurred by the Council Member to receive the packet. These charges would fluctuate based upon the Council Members having either Wi-Fi or 3G access. Staff would support the accessibility of the electronic packet.

Council Member Klein stated that was the verbiage he elected for the Motion and added the Council would encourage its Members to purchase and not require.

**MOTION:** Council Member Klein moved, seconded by Council Member Burt that the Council policy would encourage but not require Council Members purchase and use their own electronic reading devices, the City would purchase any applications required



to allow the Council Members to read the packet on their device. The City could choose to pay any applicable monthly fees incurred by the Council Member to receive the packet. These charges would fluctuate based upon the Council Member having either Wi-Fi or 3G access. Staff would support the accessibility of the electronic packet.

Council Member Holman stated the Motion was to encourage Council Members to purchase their own device, she asked what happened if a Council Member opted to have the City purchase the device.

Council Member Klein stated his Motion was to not have the City purchase the devices.

Council Member Holman felt the option should be up to the Council Member as to who purchases the device.

Council Member Klein stated that was the opposite of his Motion.

Council Member Holman asked if the maker would accept the option for the City to purchase the devices as an Amendment.

Council Member Klein stated no. He stated if one Council Member took advantage of the program it affected all of the Council Members.

Chair Price stated that concern was connected to the point of discoverability.

Council Member Klein stated yes.

Chair Price stated there was a certain amount of common sense to be used. She stated the City e-mail she received were forwarded to her personal e-mail account and if there was a time when the information was discoverable she felt it would be part of the process. She stated she would not be supporting the Motion.

Council Member Klein stated the concept of discoverability was fraught with unclear law which was why he used terms as more likely. He noted it was less likely to have you personal account discoverable for use of City business than it would be if you were to use your City account for personal business.

Council Member Holman stated she appreciated the Motion and yet she felt it created two separate classes of Council Members. She stated her understanding as to why it may not be best to have everything discoverable however, what was there that was not meant to be discoverable.

Council Member Burt stated if the City supported the software if could be connected to

a variety of different devices, so a Council Member did not need to spend a large amount of funds on a device.

Council Member Holman asked about the discoverability.

Council Member Burt stated you own the device and therefore it was not discoverable.

Council Member Holman stated but if a Council Member wanted the City to purchase their device for personal reasons, there was not case law but where would there be a situation where discoverability was a real issue.

Ms. Tronquet stated the law was not a settled issue but any time any one made a request for electronic information it was a question of where the request fell in the range. If the device was a personal item it was more likely there was more protection and if it were a City owned device there were less protections.

Council Member Holman asked for an example of the type of materials would create challenges on a Council Members device that would promote a request for records.

Ms. Tronquet stated e-mails, and logs of internet usage.

Council Member Klein stated opposing Counsel can not determine whether an item should be considered discoverable until after he or she reads the entire information. It may not be desirable to have another party view all of your personal information even if it did not make it to court.

Council Member Holman stated she was torn on her decision.

Council Member Burt stated yes, there were trade offs to either decision.

Council Member Holman requested to add to the Motion that the City Council would revisit the policy in a year.

Council Member Klein stated Council had the ability to revisit any policy at any time, he did not see why there needed to be language added.

Council Member Holman stated if the language was in the Motion there was an automatic return for review.

Council Member Klein stated it would take a fairly dramatic change in the law; an act by the legislature or an act by the Supreme Court to set forth definitive rules.

Council Member Holman asked what would happen if a Council Member purchased an older device and it was incapable of keeping up with the current devices in terms of access and handling the required software.

Council Member Klein stated as the facts change in the future, the future Council Members had the ability to change the policy accordingly.

Council Member Burt stated there should be expectation whether the device was an iPad or PC, within a few years the operating system would be outdated.

**MOTION PASSED:** 3-1, Price no

Chair Price asked when Staff was anticipating bringing the item back to Council.

Ms. Grider stated August 1<sup>st</sup>.

2. Discussion and Recommendation on the Proposed Implementation Plan for the Employee Hotline

Interim City Auditor, Michael Edmonds, recommended the Policy and Services Committee discussed this item and recommended to the City Council to approve the proposed implementation of an employee hotline. In 2008, the City Auditor's Office (Office) issued an audit of employee ethics policies. The audit recommended the City adopt an employee Code of Ethics, formalize a formal ethics program and form a working group to establish a hotline to review complaints involving fraud, waste and abuse of City resources. In 2009, the Committee requested the Office return at a later date with a follow up discussion on the proposal to implement a hotline. In 2010, the Office proposed various options and the Policy and Services Committee recommended a 12-18 month pilot program for the employee hotline. He said that in accordance with that direction, the City Auditor's Office is proposing a hotline run as a pilot program from January 1, 2012 through June 30, 2013. He stated that complaints would deal with fraud, waste and abuse. The hotline would not investigate labor, harassment or discrimination complaints. Human Resources or the City Manager's Staff would be responsible for these types of complaints. The plan would be to contract with an outside vendor where complaints would be fielded either through a toll free number or a web site. He said if the proposal is passed by Council, the next step would be to send out a Request for Proposal (RFP). The City Manager's Office, City Attorney's Office, and City Auditor's Office would then form a complaint-review committee to oversee the process. He stated that the City Auditor's Office would provide an update regarding complaints fielded through the employee hotline on the quarterly reports to Council. At the end of the pilot program, the City Auditor's Office will generate a report summarizing the program to the Policy and Services Committee. He outlined two

primary costs of the program: 1) cost of the vendor, which would range from approximately \$3,000 to \$6,000 for the pilot program, and 2) the cost of reviewing complaints in the form of Staff resources.

Council Member Holman asked Mr. Edmonds to explain the last bullet point under "types of complaints" on page 2 of the report ("Gross disregard of policy and procedural controls").

Mr. Edmonds responded with a hypothetical example of a situation: Purchasing is required to get bids for a purchase, but instead selects a vendor without following normal protocol.

Council Member Holman asked if this type of complaint includes a situation where a Staff Member didn't follow the procedures of a process for a specific project.

Mr. Edmonds answered yes. He said some criteria would need to be developed as far as what types of complaints should be investigated. If a complaint involved fraud, waste or abuse it would be investigated.

City Manager, James Keene stated this hotline would not change any procedures the City already followed. The examples in this report were designed to be illustrative and not meant to be inclusive. Even now without the hotline Staff receives complaints and grievances all the time and we have to assess their merits and agree on what action needs to be taken.

Council Member Holman asked if the hotline would include customer service complaints since this would be an employee-only hotline.

Mr. Edmonds responded by saying most customer service complaints would come externally, but the point was to clarify things we would not take into consideration.

Mr. Keene said the only difference between the two is the process with a hotline and the current process is the hotline is an anonymous phone call.

Council Member Burt asked if the complaint review committee (page 2 of the report) was different from current practice.

Mr. Keene answered that it would be different in that the current process was informal.

Council Member Burt clarified the difference would be a defined group rather than an ad hoc committee.

Council Member Holman said the quarterly report of the hotline should be presented to the Policy and Services Committee, rather than the Finance Committee.

Mr. Edmonds said the City Auditor's Office was seeking policy direction from the Policy and Services Committee. Once the hotline becomes operational, the quarterly report would go to the Finance Committee as all other audit reports.

Council Member Holman established that the check-ins would concern this committee and not the Finance Committee. This was not a financial issue – it was a policy issue.

Council Member Burt questioned if; 1) these types of complaints would go to the Finance Committee for any specific reason, and 2) audit reports were both financial and non-financial based. He questioned whether each audit report should be reviewed individually to determine if they should go to the Finance Committee or the Policy and Services Committee.

Mr. Edmonds said audit reports have gone to both Committees in the past.

Council Member Burt clarified that maybe the Policy and Services Committee should decide whether each audit report should go to one committee or the other.

Mr. Keene agreed that they should not be presented to both committees.

Council Member Klein questioned if there was a real need for this hotline. He asked if the City really had a problem.

Mr. Edmonds said that he could not answer that, but stated fraud and abuse occur and hotlines have proven to be effective in preventing and deterring fraud. He said organizations establish hotlines because employees find comfort in the anonymity. Despite this, there was no known hesitation amongst current employees to report complaints.

Mr. Keene said the City Manager's Office currently fields anonymous complaints. This hotline would formalize this process.

Council Member Klein asked if the City Manager's Office had data regarding the number of complaints currently received. That data could be used as a baseline.

Mr. Keene said he did not have the specific quantity, but it was a small number.

Mr. Edmonds stated the City of San Jose's hotline helped improve reporting on the number of complaints received.

Chair Price said she likes the idea of a baseline. She asked if it could be identifiable.

Mr. Keene said he hopes the hotline would generate only a minority percentage of the complaints the City fields. Anonymous complaints have side-effects in an organization.

Council Member Klein asked if the City Auditor's Office ran a surplus in their budget since the cost of the program would be absorbed by the City Auditor's Office.

Mr. Edmonds responded that there was a slim surplus. In Year One of the program, would be half of the \$3,000 to \$6,000. He indicated that the real cost was not with the vendor chosen, but the time spent from the Council Appointed Officers and Staff.

Council Member Klein indicated his hope that the City will track time spent on this project.

Council Member Klein said that when the possibility of this hotline first arose, City Manager Keene was opposed to the idea. He asked if the City Manager was comfortable with the proposition currently.

Mr. Keene said his main concern previously was that the hotline would be managed completely by the City Auditor's Office, whereas now it was a collaborative effort. He voiced his concern with the vagueness that applies to the reporting of "waste".

Chair Price said there would be an issue of trust and distrust. She questioned whether employees would use this frivolously or take it seriously. She stated that the hotline should provide a visible structure (another vehicle) for transparency. She also asked if Staff could determine how effective this hotline would be from other cities.

Mr. Edmonds said the overall sentiment from organizations that have implemented hotlines was that it was a worthwhile investment. Hotlines provide a means for employees to report on issues and this model lent itself to cooperation.

Chair Price asked if there was an issue of maintaining confidentiality.

Mr. Edmonds asserted that state law mandates the City Auditor's Office maintain confidentiality.

Council Member Holman questioned whether there was a requirement that the City needed to maintain a hotline to receive federal funding.

Mr. Edmonds said he has heard that as well and did some review of the Recovery Act, but he had not found any evidence of there being a specific requirement.

Council Member Holman said currently, when a grievance is filed, Staff time is spent. She asked if the time taken would be different once we implement a hotline.

Mr. Keene responded not necessarily, but there would be an issue if we receive a grievance and a hotline complaint on the same issue simultaneously.

Council Member Holman voiced concern about maintaining anonymity through the entire process. More details would be needed.

Mr. Edmonds said if any complaint yields a criminal investigation, anonymity could be lost.

Council Member Burt stated that if there was a complaint about a procedure and Staff was able to independently verify it, then there was no need to release the identity of the complainant. He realized that there was no means of identifying the person because the system was intended to be anonymous.

Mr. Keene said policies and procedures should be in place for all types of situations.

Mr. Edmonds stated the complaints would come through a third party and they had processes to protect the complainant and maintain anonymity.

**MOTION:** Council Member Holman moved, seconded by Chair Price to recommend the City Council implement the employee-only waste, fraud, and abuse hotline with quarterly reports being provided to the Policy and Services Committee.

Council Member Holman stated the Interim City Auditor's comment that other organizations maintained hotlines was evidence that they were effective. She hoped this hotline would provide an avenue for healthier access to dialogue.

Mr. Keene questioned how this hotline would change the culture of the organization. A downside was people can be inaccurate or mistaken leading to someone being falsely accused.

Council Member Holman said people can have different perspectives. This would be why the oversight committee and quarterly reports will be established.

Chair Price said there was an issue with the fact that the City had no control over an individual's behavior. There was always a possibility of a misunderstanding.

Council Member Klein stated that if a grudge case ever arises, he hoped the accused person wouldn't have anything placed in their employee file.

Mr. Keene confirmed that such a situation would not occur. These were the kinds of policies that needed to be in place.

Council Member Holman asked what the Committee should anticipate in the quarterly reports.

Mr. Edmonds said he envisioned the reports would provide a status report on complaints received and processed, as well as any issues that arise.

**MOTION PASSED 4-0.**

3. Future Meetings and Agendas

ADJOURNMENT: Meeting adjourned at 8:54 p.m.