



# Policy and Services Committee MINUTES

Special Meeting  
Wednesday, April 8, 2015

Chairperson Burt called the meeting to order at 7:03 P.M. in the Council Chambers, 250 Hamilton Avenue, Palo Alto, California.

Present: Berman, Burt (Chair) DuBois, Wolbach

Absent:

## Oral Communications

None

## Agenda Items

1. Referrals from January 31, 2015 City Council Retreat and February 17, 2015 City Council Meeting Regarding Procedural Matters, Including Updates to Procedures and Protocols Handbook.

Khashayar Alaee, Senior Management Analyst, reported Attachment A of the report was a list of items that the Council referred to the Policy and Services Committee (Committee). The information contained in the at-places memorandum was not included in the Staff Report, because it did not pertain to the Procedures and Protocols Handbook (Handbook).

James Keene, City Manager, noted the background information of the Staff Report summarized information discussed by the Council. The Committee could discuss other issues within those areas.

Chair Burt suggested the Committee's meeting would be informal. In past meetings to revise the Handbook, the Committee provided its input through consensus. The City Clerk captured the Committee's actions for a formal referral of items to the Council.

Beth Minor, Acting City Clerk, concurred. She would provide a draft for approval.

Chair Burt was struggling with a method to act on meeting management items if they were not part of procedures and protocols. He viewed meeting management as a major subsection of procedures and protocols. He questioned whether the Committee should discuss items referred to the

# MINUTES

Committee of a Whole in order to assist the future meeting of the Committee of a Whole. Topics contained in the at-places memorandum were not necessarily aspects of procedures or protocols. He suggested the Committee begin with comments regarding major areas. The Committee could then discuss items in the order they were listed in Attachment A. He wanted to review the Handbook for items not referred to the Committee, because many topics in the Handbook were not clear or did not reflect current practice.

Council Member DuBois preferred to review the Handbook page-by-page so that Committee Members did not repeat themselves.

Council Member Berman agreed with utilizing either format.

Council Member Wolbach suggested the Committee review the at-places memorandum and the Staff Report, followed by review of Handbook items that Committee Members identified as needing work.

Chair Burt indicated that was similar to the high level discussion he suggested. As the Committee reached consensus on topics, then it could review the Handbook page-by-page, discussing where items could be placed in the Handbook and identifying other items for discussion.

Mr. Keene did not believe the Committee had sufficient time to cover all topics it wished to discuss. If there was not a context problem, the Committee could make recommendations to the Council in groups. Staff could incorporate formal changes into the document and present that to the Committee for review, at which time the Committee could identify other topics from the Handbook for discussion.

Chair Burt historically construed procedures as similar to rules and protocols as similar to guidelines. Some Council Members did not agree with his interpretation. He requested the City Attorney comment on similarities and differences between procedures and protocols.

Molly Stump, City Attorney, explained that the document described itself as a handbook. Those terms did not suggest legally binding, detailed requirements. The first document tended to be more rule-based and specific. The second was issues of tone and expectation and more aspirational with respect to behavior.

Chair Burt indicated that was a description.

Mr. Keene questioned whether the evolution of the documents was linear. The order of policies and procedures was inverted.

# MINUTES

Chair Burt noted the first section was named procedures, and the second protocols. The Council had been interchanging the terms, when they were originally intended to have different meanings.

Ms. Stump advised that the Council making rules for conducting its business could be useful in terms of organizing expectations and communicating with the public. The Council was the supreme authority for governing the City of Palo Alto, and it was in charge of the way it conducted business. At any given point, the Council retained the authority to modify the policies, procedures, or protocols by a majority vote.

Mr. Keene added that the Council could make modifications on the spot.

Ms. Stump clarified that one exception was the involvement of third-party rights. Most of the rules pertained to the Council conducting its business and working with Staff.

Chair Burt did not believe the Council could modify its rules when the procedure was also contained within the Municipal Code.

Ms. Stump agreed that the Council did not have discretion to change its rules as a matter of Resolution or Motion.

Chair Burt suggested Committee Members consider modifications as a self-imposed rule or a guideline. He began the discussion with regards to telephone participation. He related his recollection of the reason for the Council implementing the policy for telephone participation. He questioned whether the rule was too restrictive and whether Committee Members wished to change it.

Council Member Wolbach requested the City Attorney frame the discussion in the context of the Brown Act.

Ms. Stump reported the series of bullet points at the top of Page 7 described legal requirements. The Council could not reduce those items. The Council had to be in an area accessible to the public; post notice of a meeting in advance; and allow admittance without a fee.

Council Member Berman believed a Council Member should be allowed to participate in meetings via telephone on a limited basis. Perhaps Council Members could be restricted to participating by telephone in only three meetings per year. The current wording of the policy did not allow a Council Member to fulfill the requirements of the policy and the Brown Act. The procedure allowed Council Members to participate by telephone only in cases of emergency; yet, the Brown Act required notice be posted 72 hours in

# MINUTES

advance. Emergencies typically were not known 72 hours prior to their occurrence.

Chair Burt read Procedure 2.4B.

Council Member Berman inquired about rules for telephone participation in other cities.

Council Member Wolbach emphasized a contradiction between Procedure 2.4B, participation only in the case of an emergency, and Approved Teleconference Guidelines for Council Members, participation with a week's notice. Again, emergencies typically were not known in advance. He suggested one of the statements be deleted.

Chair Burt suggested Committee Members determine the terms of any requirements for telephonic participation prior to determining the wording of any language.

Council Member DuBois concurred with allowing telephonic participation but limiting the number of times it could occur. He asked if posting a notice at the remote location 72 hours in advance was a requirement.

Ms. Stump believed it was, but she would confirm that.

Council Member DuBois suggested limiting telephonic participation to one time per quarter with notice as required. He understood another issue was whether the rule should be different for Closed and Open Sessions.

Ms. Stump did not believe the one week notice was required by the Brown Act. However, the City Clerk needed to ensure notice was properly sent to and posted at the remote location and that phones were available in both locations. The one week notice allowed Staff to support a Council Member's telephonic participation.

Council Member DuBois inquired about the use of Skype or other means of videoconference. Perhaps that section should clarify the technologies that could be utilized.

Mr. Keene noted the Teleconference Guidelines precluded the use of cellular telephones.

Ms. Stump advised that the use of cellular telephones was lawful; however, the cellular telephones had to provide a speaker function. The Brown Act required public access to and public comment at the Council meeting and the remote location.

# MINUTES

Chair Burt referred to the Brown Act requirement to post a notice at the remote location 72 hours in advance, and inquired about the length of time the City Clerk would need to accommodate telephonic participation.

Ms. Minor would need one to two days to post notice on the website and to provide notice to the remote location.

Chair Burt calculated the notice would need to be posted Thursday for a Monday meeting in order to meet the Brown Act requirement.

Mr. Keene clarified notice would have to be posted Friday evening for a Monday meeting.

Chair Burt asked if five calendar days would allow the City Clerk sufficient time.

Ms. Minor answered yes. She would have to prepare and notice a revised Agenda for telephonic participation.

Mr. Keene suggested the City Clerk could include information in the packet released on Thursday if she received notice on Wednesday.

Chair Burt suggested Committee Members consider the different aspects of Closed and Open Sessions. Telephonic participation was less disruptive in a Closed Session. He questioned whether the rule should allow a Council Member to participate telephonically only in a matter of critical importance to the Council Member.

Council Member DuBois referred to Skype's chat function whereby a Council Member could signal the City Clerk that he wished to speak. That ability could be less disruptive for Open Sessions.

Chair Burt asked if Council Member DuBois was referring to the audio only function of Skype.

Council Member DuBois indicated either the audio or the video function of Skype. The chat function would allow the Council Member to indicate his wish to speak.

Chair Burt felt the video would be more disruptive; whereas, the chat function could be less disruptive. That would not have to be addressed in protocols.

Council Member DuBois concurred.

# MINUTES

Council Member Wolbach clarified that the chat function provided a text notification rather than a verbal notification. He asked if the City Clerk was legally required to fax or mail notification to the remote location.

Ms. Stump replied no. Notice had to be provided to and posted at the location.

Council Member Wolbach suggested Committee Members also consider telephonic participation and notification thereof for Council Committee meetings and Special Meetings.

Council Member Berman requested Staff review and update all policies and procedures for the ability to use new technologies.

Mr. Keene remarked that allowing Council Members to participate by phone three times a year would result in 27 absences. Potentially the full Council would not be present for two meetings per month. Telephonic participation was disruptive. The Committee could consider the role or outcome for which the Committee would allow telephonic participation. One, a Council Member could want to vote on a particular issue. Two, a Council Member could want to speak on and influence a particular issue. Third, a Council Member wished to ensure his comments were made in the meeting. Currently, a Council Member could provide his comments in writing to the Council for public information. The Committee could determine the objective in order to structure other limitations. Perhaps the Committee wished to restrict the number of Council Members who could participate telephonically in a meeting.

Chair Burt felt the number of Council Members wishing to participate telephonically in order to influence outcomes through their vote would escalate. That would quickly become problematic. He cautioned against loosening restrictions too much. He inquired whether Committee Members agreed to a Council Member providing notice of telephonic participation five calendar days in advance of the meeting. He inquired whether Committee Members wished to consider more liberal language allowing telephonic participation in Closed Sessions.

Council Member DuBois advised that the remote location would need to be closed and private for participation in a Closed Session.

Chair Burt indicated the language could state that requirement.

Council Member DuBois did not see a need to distinguish between Closed and Open Sessions.

# MINUTES

Council Member Wolbach asked if the 72-hour notice required by the Brown Act applied to a Closed Session.

Ms. Stump explained that the remote location would have to convene in the open, allow public attendance and comment, and then move to a Closed Session. The remote location would then need to be secure and private, as required by law.

Council Member DuBois inquired whether the remote location would have to convene with the Council in open session for the vote to move to a closed session and then move to a closed session.

Ms. Stump responded yes. A Closed Session for the remote location would be handled in the same manner as the Council meeting.

Council Member Wolbach suggested any language for telephonic participation in a Closed Session require and enforce security of a remote location.

Chair Burt stated the Handbook was not an enforcement tool. He inquired whether the Committee wanted the same or different guidelines for Closed and Open Sessions.

Council Member Berman preferred to determine guidelines for telephonic participation in an Open Session first. Telephonic participation in Closed Sessions should not be unlimited.

Council Member DuBois suggested retaining language to discourage Council Members from participating telephonically. Procedure 2.4B could be revised to "emergencies once every three months."

Council Member Wolbach wanted to allow a Council Member who was cogent but hospitalized for an extended period to participate telephonically, even if the Council Member exceeded a limit of once every three months. He asked if the Committee could discourage without prohibiting actions.

Chair Burt suggested the Committee could weaken or retain "actively discourage." "Shall only" was prescriptive. "Extraordinary events" without "emergency" would mean events that were not routine.

Council Member DuBois wanted to allow one telephonic appearance per quarter even though the circumstances were not extraordinary.

Chair Burt understood the question then became whether infrequent remote participation should be based upon the circumstance or the frequency.



# MINUTES

Council Member Wolbach offered language of "once a quarter except in extraordinary events such as medical, family, or emergencies requiring an absence." If a Council Member was out of the City for good reason, he could participate telephonically.

Chair Burt asked if the Committee would agree to language of "not more than once a quarter except in these extraordinary circumstances."

Council Member DuBois wished to retain the requirement for the presence of a quorum in the Council Chambers.

Chair Burt agreed.

Council Member DuBois was concerned that Chair Burt did not discuss the first sentence.

Chair Burt attempted to frame a high-level question of whether the Committee would agree to a proposal of "not more than once a quarter except in these extraordinary family or medical emergencies."

Council Member Berman accepted that language.

Council Member Wolbach concurred as well. He reiterated his concern of actively discouraging without prohibiting telephonic participation.

Chair Burt advised the Committee could retain the language of "actively discourage."

Council Member Wolbach was attempting to imagine ways to implement that. Discouraging an action without prohibiting it was tricky.

Chair Burt stated that applied to almost all Council policies and procedures. The procedures were largely self-enforced with the Mayor having lead responsibility to inquire about significant breaches of procedures and protocols.

Mr. Keene understood the Committee wished to allow Council Members one telephonic appearance per quarter or four per year. The Committee was attempting to craft language that provided extraordinary situations under which Council Members could exceed four telephonic appearances per year. The Committee was attempting to accommodate the Council and continue Council cohesion. The Committee could suggest a provision that allowed a Council Member facing an extraordinary family situation to petition the Council for an exception to the policy. If the family situation was extraordinary, it would be unusual for a Council Member to consider attending a Council meeting as more important than being with the family



# MINUTES

member. If a Council Member was hospitalized for an extended period, the Council could allow an exception.

Chair Burt advised that Council Members could participate telephonically 36 times per year plus an unspecified number of times for emergency situations in that scenario. That could be quite a few telephonic appearances per year. The Committee should consider the ramifications of any proposed language.

Council Member Berman would support allowing one telephonic appearance every six months along with appearances under extraordinary circumstances.

Chair Burt felt that would be a cautious change.

Council Member Wolbach was not opposed to remote attendance at meetings through a teleconferencing service, provided the participant utilized a chat function to request an opportunity to speak. He would support telephonic participation either two or four times per year.

Council Member DuBois preferred an allowance of one telephone appearance per quarter with an exception for an emergency situation. He did not believe Council Members would utilize the maximum number of telephonic appearances given the language of "actively discourage."

Chair Burt noted the proposals were one telephonic appearance per quarter plus emergency situations; one telephonic appearance per quarter with Council Members petitioning for telephonic appearance in emergency situations; and one telephonic appearance every six months with Council Members petitioning for telephonic appearance in emergency situations. He recommended a modest rather than significant liberalization of the provision.

Council Member DuBois suggested liberalizing telephone appearances for the Council before doing the same for Boards and Commissions.

Chair Burt agreed. The Committee had not requested input from Boards and Commissions. He did not believe the Committee had reached consensus. He recalled that Council Members had participated telephonically, but not according to Procedure 2.4B. He did not recall Council Members appearing telephonically due to a family health emergency. He did not believe Council Members would utilize Procedure 2.4B often. He would agree to either two or four telephonic appearances per year for situations other than an emergency; an allowance for emergency situations; and a provision to ensure Council Members did not breach the exception for emergency situations. He did not wish to exclude a Council Member who was physically incapacitated and unable to sit on the dais.

# MINUTES

Council Member DuBois asked if the hospitalized Council Member would need to move to a public place to hold the teleconference.

Chair Burt reported the hospitalized Council Member would need to have the door open. He inquired whether the Committee would agree to whatever number of occurrences in non-emergency situations and retain the emergency provision.

Council Member Wolbach suggested striking "similar" from "a medical, family or similar emergency."

Chair Burt wanted to retain "similar" as it provided some latitude.

Mr. Keene inquired whether the Committee wished to strike "emergency" as it conflicted with the five-day rule. Perhaps the language could be "similar event."

Chair Burt concurred with "similar event" rather than "similar emergency". He asked if the Committee wished to retain the remainder of the sentence.

Council Member Wolbach replied yes.

Chair Burt requested preferences for two or four telephonic appearances per year.

Council Member Wolbach suggested three per year.

Council Member Berman agreed.

Council Member DuBois asked if three telephonic appearances meant three times per year or one time every four months.

Chair Burt responded three times per year at the Council Members discretion.

Council Member DuBois asked if the City Attorney would review the five Brown Act clauses.

Chair Burt advised that the City Attorney would review appropriate legal questions. He asked if the Committee wished to treat Open and Closed Sessions differently.

Council Member Berman felt the provision for three telephonic appearances should pertain to both Open and Closed Sessions.

# MINUTES

Chair Burt agreed. The provision did not allow three telephonic appearances for Closed Sessions and three more for Open Sessions. He inquired about an existing policy for telephonic appearances by Boards and Commissions.

Ms. Stump reported most City Boards and Commissions had internal guidelines or rules. She did not know if those guidelines addressed telephonic participation, but they could.

Council Member DuBois suggested the language for telephonic participation three times per year apply to Council Members only such that the remaining language would be retained.

Council Member Wolbach concurred.

Chair Burt reiterated that all provisions, except three telephonic appearances, would apply to Boards and Commissions.

Mr. Keene asked if the Committee wished to revise the language regarding cellular telephones to allow use of cellular telephones in speaker mode only.

Council Member Burt responded yes.

Council Member Wolbach reiterated the request for Staff to recommend revisions to include modern technologies as well as legal questions.

Chair Burt noted a number of possible changes to the Consent Calendar. Some of those changes individually had some merit. In the aggregate, they could compound issues of meeting management.

Council Member Wolbach believed removal of Individual Review (IR) items required four votes as stated in Ordinances. Procedure 2.4H lacked clarity.

Chair Burt would add those topics to the list for discussion.

Council Member DuBois suggested two items were essentially duplicates. Perhaps the Committee could choose one as the highest priority and discuss it first.

Chair Burt inquired whether Consent Calendar procedures could be found elsewhere in the Handbook.

Ms. Stump felt the rules could be better organized. She would review the Handbook for other references to the Consent Calendar.

Chair Burt suggested the Committee organize topics in the Handbook at a future time. He requested comments regarding Consent Calendar items prior to consideration of the impact on meeting management. The existing

# MINUTES

policy allowed Council Members to speak briefly to no votes only. Council Members could not ask clarifying questions. The alternative was the Council debating each item placed on the Consent Calendar, which defeated the purpose of placing items on the Consent Calendar.

Council Member Berman would not support allowing Council Members to address Consent Calendar items orally. Council Members could ask questions, receive responses, and submit comments in writing prior to the meeting.

Council Member DuBois agreed. Council Members could ask questions regarding Consent Calendar items prior to the meeting.

Council Member Wolbach felt Council Members should be allowed to address items briefly. At times, Council Members voted no or abstained simply to address items. He suggested the language include "actively discourage."

Chair Burt noticed Council Members recently had taken to voting no in order to address an item on the Consent Calendar. The "actively discourage" language could be included. He suggested delaying further discussion of Consent Calendar items.

Council Member Berman suggested limiting the number of items Council Members could address and the length of Council Member comments. Council Members could speak for 30 or 60 seconds.

Mr. Keene wanted to provide potential implications when the discussion of Consent Calendar items continued. Perhaps the Committee wished to state explicitly the problem it was attempting to solve or the improvement it hoped to achieve.

Chair Burt recommended the Committee contemplate whether allowing an occasional comment of limited duration would result in fewer items removed from the Consent Calendar.

Mr. Keene commented that brief comments could be advantageous or disadvantageous.

Chair Burt noted the previous Council policy required only two votes to remove an item from the Consent Calendar, which was recently changed to three votes.

Council Member DuBois referred to the five categories of Consent Calendar items, which did not contain appeals. The Committee could consider whether to allow a hearing of appeals. He asked under which category an appeal would fall.

# MINUTES

Ms. Stump reported the rules could be found in different sections of the Zoning Code depending upon the type of appeal. The Committee could consider changes to those procedures; however, some of those changes might require Ordinances.

Council Member DuBois suggested the Committee consider applying changes to certain categories of Consent Calendar items.

Chair Burt requested initial comments regarding requiring two votes to remove an item from the Consent Calendar.

Council Member Berman would possibly support two votes for certain categories. Overall, he preferred to retain three votes. Currently three Council Members could discuss items outside a meeting without violating the Brown Act in order to obtain a sense of the support for removing an item.

Council Member Wolbach was inclined to require three votes universally. No item should require more than three votes for removal. There was no need to reduce the number votes to two, if the Council allowed brief comments from Council Members.

Chair Burt inquired whether an IR would fall under Category 4.

Ms. Stump answered yes. To the best of her recollection, it was the only Consent Calendar item that required four votes for removal. An IR was adopted as part of the carefully calibrated system that allowed some outlet for IR but set a high threshold for small projects of single family homes. Any change would follow the process for adoption of an Ordinance.

Chair Burt advised that a Committee recommendation to change the vote for IR would need to be handled separately from policies and procedures. He requested comments regarding changing the threshold vote to three.

Council Member Berman needed to understand reasons for initially setting the vote at four prior to discussing changing the number.

Council Member DuBois referred to the concept of reducing the threshold to three if the appellant demonstrated a certain amount of support from people other than co-appellants.

Council Member Wolbach felt the combination of requiring four votes and notification to the City Manager encouraged Council Members to communicate. Requiring four votes increased the chance of Council Members violating the Brown Act. He would support changing the notification process, allowing Council Member comment, changing the vote threshold, or a combination of those.

# MINUTES

Chair Burt noted the Committee would discuss changes to the notification provided to the City Manager. Changing the notification to the City Manager had a broader impact than just the IR.

Council Member DuBois would support changing the vote threshold to three; however, he had no strong feelings either way.

Chair Burt advised the Committee would review a draft of changes at a future meeting, and suggested the vote threshold for an IR be continued to that meeting.

Council Member Berman asked if the Committee reached consensus on lowering the removal threshold from three to two votes.

Chair Burt answered no. He wanted one round of comment to gauge the Committee's consensus. Next, he would review the topics in aggregate. Currently the procedures allowed Council Members to comment after a no vote on a Consent Calendar item, but not before the vote. Council Members were given three minutes to comment on a no vote. He asked if the Committee wanted to allow comments before a vote or retain the current procedure.

Mr. Keene explained that the current procedure allowed Council Members to clarify their no vote. If Council Members commented beforehand, they could influence the vote.

Council Member Berman wanted to retain the current procedure.

Mr. Keene believed the reason for the Consent Calendar was to allow the Council to read information and to vote on items quickly. If Council Members expressed concern about an Item, then they could remove an item from the Consent Calendar rather than influencing other Council Members prior to voting. Allowing a Council Member to comment prior to the vote was a de facto removal of the item.

Chair Burt could be influenced by the Committee's response to Item 1, Section B Sub-section V: Consider what items are appropriate for the Consent calendar. For example, should they be non-controversial items, items that are of no greater than x dollars. He suggested setting aside Council Member comments before or after a vote to discuss items to be placed on the Consent Calendar. He seemed to recall additional information about the types of items to be placed on the Consent Calendar. Some items were removed from the Consent Calendar, because the City Manager or the Mayor recognized that those items were contentious. If a Council Committee vote was unanimous, the Council Committee's recommendation was placed on the Consent Calendar to aid the efficiency of Council

# MINUTES

meetings. In a recent Finance Committee meeting, one Council Member advocated strongly for a unanimous vote in order to avoid a Council discussion. The Committee could consider language regarding unanimous votes from Council Committees being placed on the Consent Calendar but not for political purposes.

Council Member Berman asked if the intent was to place items on the Consent Calendar or the motivation to place items on the Consent Calendar.

Chair Burt stated it was the motivation to place an item on the Consent Calendar in order to achieve a political purpose.

Council Member Berman felt that was appropriate. In 2014, the Finance Committee recommended an item with a unanimous vote be placed on the Action Agenda in order to obtain Council input.

Chair Burt indicated that was the appropriate deference to the Council.

Council Member DuBois noted that each member of a Council Committee should realize the purpose and not vote for political reasons.

Chair Burt advised that the lack of a protocol prevented a Council Member from protesting. He inquired whether the Committee could agree to include that language.

Council Member Wolbach replied yes. He suggested placing the language at the end.

Council Member DuBois was interested in the concept of a dollar amount threshold for Consent Calendar items. He asked if the Council had a fiduciary responsibility to discuss an item involving funding over a specific amount.

Ms. Stump responded not currently. Many very large items were routine.

Council Member DuBois remarked that the public could become upset when the Council did not discuss large funding amounts such that the item became controversial.

Chair Burt explained that some large amounts did not involve discretionary decisions, while some smaller amounts reflected discretionary or value decisions. That was the distinction for utilizing a threshold dollar amount. The dollar amount was not an effective trigger.



# MINUTES

Council Member Berman agreed. Perhaps some trigger other than a dollar amount would be appropriate. Using a dollar amount would capture too many items that were not appropriate for Council discussion.

Council Member Wolbach advised that placing an item on the Consent Calendar did not avoid public scrutiny or disclosure. Removing an item from the Consent Calendar was more important. He did not believe there was a need to restrict items placed on the Consent Calendar.

Chair Burt suggested the Committee might want to review guidance for noncontroversial Consent Calendar items.

Mr. Keene reported the largest expenditures often were the simplest. Smaller expenditures could have policy implications. Items were placed on the Consent Calendar, because other drivers determined they should be placed there. Other tests were utilized to manage Consent Calendar Items. More often than not, the largest expenditures occurred in Capital Improvement Program (CIP) projects that had been vetted and approved. Staff could better articulate that items had been subjected to different levels of Council review. Matters that signified policy change or the need for policy change were difficult to administer.

Chair Burt referred to the requirement to notify the City Manager of interest in removing an item from the Consent Calendar.

Council Member Wolbach noted the requirement was contained in Procedure 2.4H.

Mr. Keene advised that Procedure 2.4H was the existing language. In practice, Staff requested Council Members notify the City Manager the Sunday evening prior to a Monday meeting.

Chair Burt indicated the practice was good and should be followed whenever possible. Use of "should" was strong language. At times, public comment during the meeting raised legitimate reasons for removing an item. Other times, Council Members did not appreciate the need to remove an item in advance of the meeting. He preferred the language be revised to "Council Members would provide advance notice whenever possible."

Mr. Keene would support language that clearly signaled the intention without being prescriptive. If items were removed without prior notice, then he would have to reschedule the item to a future meeting because Staff would not be present. Removal of Consent Calendar items that were time-sensitive were relatively rare.

# MINUTES

Chair Burt suggested adding language to provide notice to the City Manager as early as possible. He felt Procedure 2.4G was ambiguous. He had forgotten that the Mayor as Chair could remove an item from the Consent Calendar.

Ms. Stump did not believe the procedure meant the Mayor could remove an item. The sentence was confusing. In practice, it could mean many things. It was not logical to take public comment regarding removal of an item after a vote approving the Consent Calendar had occurred. The Committee should clarify the two types of relevant public comment.

Chair Burt inquired about the intent of the other clause.

Ms. Stump would not read that to authorize the Mayor on his/her own initiative to remove an item from the Consent Calendar. Rather if a sufficient number of Council Members had indicated a desire to remove an item, then the Mayor could allow public comment when the Consent Calendar was called or defer public comment to the time the Council heard the item.

Chair Burt indicated that was consistent with Council practice. He inquired whether the Committee could agree to authorize Staff to provide language reflecting the City Attorney's explanation.

Council Member Wolbach requested Ms. Stump repeat her explanation.

Ms. Stump advised that Staff and Council favored a generous interpretation of the rules. The Council allowed the public to comment on removal of an item. If the Council voted to remove an item, the Council allowed additional public comment when the item was rescheduled before the Council. If the item was heard the same night it was removed, then Staff would discourage additional public comment. The public had the opportunity to address the Council on the removal itself. Staff could provide language.

Council Member DuBois suggested allowing an appellant who had paid the required fee be allowed to speak for ten minutes regarding the Consent Calendar item before the vote. If an item was not removed from the Consent Calendar, then the appellant was not allowed to address the item.

Chair Burt reported the appellant could speak for three minutes under public comment regarding the Consent Calendar. Perhaps the appellant could have additional time to speak.

Council Member Berman would support that; however, he preferred the appellant be given ten minutes to speak on behalf of a group of people, as was the current practice.

# MINUTES

Chair Burt agreed with allowing the appellant to speak, but felt ten minutes was too much time. The appellant would address the issue of removal rather than the merits of the case. The Committee would revisit the issue slightly later in the discussion. The Committee did not revise the requirement for three votes to remove routine items from the Consent Calendar; did not institute a dollar amount for Consent Calendar items; and did not prescribe items to be placed on the Consent Calendar. He returned to the topic of allowing Council Member comments prior to the vote on the Consent Calendar.

Council Member Wolbach remarked that Council Members should be allowed to express their wish to remove an item prior to the vote. Before the vote was the correct time for such comments. Restricting comments to 30 or 60 seconds and to one item was appropriate.

Chair Burt reiterated that undecided topics could be discussed when Staff returned with proposed Handbook revisions. He wished to consider Council Member Wolbach's proposal further.

Council Member DuBois felt some of the topics were interrelated. He could support the proposal. He asked if Council Members could speak only prior to the vote.

Chair Burt replied yes.

Council Member DuBois would support requiring four votes to remove an appeal from the Consent Calendar if the appellant was allowed additional time to speak.

Ms. Stump reported Staff would write a clear rule that complied with current practice for public comment. A member of the public would be allowed to speak for three minutes regarding the Consent Calendar, unless the Mayor reduced the time allowed for public comment.

Council Member DuBois wished to allow the appellant additional time to speak.

Chair Burt added if the appellant had paid for the appeal.

Mr. Keene reiterated that revisions to the Handbook would be presented to the Committee for discussion. The IR and appeal questions had other aspects of change that were under consideration in various ways. The Committee's recommendation should be when the Council discussed the issue of amendments or changes to the process, then the Committee recommended thus and such, unless the Committee felt it could be done out of context.

# MINUTES

Chair Burt felt the number of minutes provided an appellant could be out of context.

Mr. Keene meant that the process was different to amend the Zoning Ordinance.

Ms. Stump advised the Committee could not change the Zoning Ordinance by adopting a Resolution changing the procedures, if the Zoning Ordinance required four votes.

Chair Burt concurred. The Committee was discussing the length of time an appellant could speak if he had paid the appeal fee and the appeal was on the Consent Calendar.

Ms. Stump was almost certain the Zoning Ordinance did not specify speaking time limits.

Council Member Wolbach asked if an appeal being placed on the Consent Calendar meant the Planning Director had found against the appellant and in favor of the applicant.

Ms. Stump explained that the Planning Director made a decision on a recommendation, and the decision was final unless an appeal was filed. The Planning Director did not make a decision on the appeal.

Council Member Wolbach suggested the Committee recommend additional time for the applicant to speak if the appellant was granted additional time.

Chair Burt disagreed in that the proposal was to allow the appellant additional time to speak for removal of an appeal from the Consent Calendar.

Council Member Wolbach withdrew his suggestion.

Chair Burt asked if Committee Members agreed to allow the appellant to speak for five minutes regarding a Consent Calendar item. He noted the remaining topic for the Consent Calendar was allowing Council Members to speak briefly to a single item prior to voting on the Consent Calendar. Council Members would not be allowed to speak both before and after the vote.

Council Member Wolbach suggested continuing the topic to the next meeting.

Chair Burt would continue to the topic if the Committee could not reach consensus.

# MINUTES

Council Member DuBois favored Council Members speaking to one item for 60 seconds.

Council Member Berman could support a trial period for the proposal.

Chair Burt requested additional time to consider the topic and suggested the topic be continued.

Ms. Stump requested clarification that for all land use appeals the appellant would be allowed five minutes to speak while the applicant would be allowed the customary three minutes. She asked if the Committee wished to revisit the voting threshold for removing an IR.

Chair Burt advised the voting threshold for an IR was continued. The topic of Council Members addressing Consent Calendar items prior to the vote was continued.

Council Member DuBois inquired about the Committee's recommendation for noncontroversial items being placed on the Consent Calendar.

Chair Burt asked if the Committee wanted language reflecting that Consent Calendar items not have significant controversy.

Mr. Keene offered language of "every attempt should be made not to place controversial items on the Consent Calendar."

Chair Burt added that the Mayor and City Manager at their discretion should attempt not to place controversial items on the Consent Calendar."

Council Member DuBois asked if the language should be qualified with the idea that it was related to policy.

Chair Burt believed that language was a bit narrow.

Council Member DuBois noted the Committee had not considered agenda setting.

Chair Burt asked if the guidance for agenda setting could be found in the Municipal Code or in the Handbook.

Ms. Stump would check.

Council Member Berman indicated guidance could be found in Protocol 3.7.

Ms. Stump explained that Protocol 3.7 did not pertain to placement of items on the agenda, but the order of items.

# MINUTES

Chair Burt noted Protocol 3.7 provided three purposes of the pre-Council meeting. He construed future meetings to mean future agendas. In his experience, the City Manager would determine agenda items that would accomplish efficient working of the government or fulfill prior Council direction. The Mayor or Vice Mayor would occasionally offer input or recommendations or request an item be scheduled at a certain time.

Ms. Stump reported the City Manager's role was slightly broader than described by Chair Burt. The City Manager was responsible for presenting agenda items to which the operations of the City called the Council's attention.

Chair Burt clarified that he referred to the operations in the first category.

Ms. Stump added the operations were slightly broader than routine. The City Manager identified items that warranted and called for the Council's guidance. Most agenda items were initiated by the City Manager through his Staff.

Mr. Keene advised that many items had other proscriptions from the Council or in the City Charter. He did not have discretion for bringing forward many operation items. He presented items to the Council that the Council may not have known about, but he believed they were important or a policy decision was needed.

Chair Burt heard a description of how the City functioned and the dynamic of the Council running the City's business. He did not hear a question of whether change was needed, but whether the Council wanted language that more clearly described the reality.

Council Member Wolbach was interested in hearing the Vice Mayor's role in the process.

Chair Burt was surprised that the Protocol did not distinguish the role of the Mayor and Vice Mayor. The Council gave the Mayor authorities. The Vice Mayor was present in case the Mayor was not. A second question was whether the Protocol adequately described the dynamic between the City Manager and the Council's representative(s) and correctly described the roles of the Mayor and Vice Mayor.

Mr. Keene believed that, in practice, the Mayor was clearly the lead. The Vice Mayor did not and should not share the Mayor's role of making decisions. The Protocol adequately described the purposes. The Mayor was a single member of the Council. Other procedures indicated Staff did not take individual direction from an individual Council Member. The Protocol should be reconciled with current practice.

# MINUTES

Chair Burt asked if the Committee wanted to clarify the Mayor's obligation to reflect the interests of the Council as a whole in the agenda setting. That language was broad and discretionary, but it provided a context for the expectation.

Council Member Berman indicated the Mayor's role was similar to a Council liaison role.

Mr. Keene suggested language that referenced the fact that Staff worked on behalf of the full Council, not on behalf of the City Manager.

Chair Burt offered language clarifying the fact that the Mayor represented the Council and the Vice Mayor could confer but did not have the Mayor's authority. Second, the Mayor should make his/her best efforts to reflect the interests of the Council as a whole.

Council Member Wolbach asked what would happen if the City Manager felt an item needed to be on the agenda soon and the Mayor and Vice Mayor disagreed. That was the type of clarification the Committee was considering.

Mr. Keene advised that many issues required conversation. Specific language made it easier for the City Manager to insist on setting an item on the agenda.

Chair Burt added that Council Members could agendize items.

Council Member Wolbach suggested clarifying the roles such as "either the City Manager or the Mayor had the power to place an item on the agenda. The role of the Vice Mayor was advisory."

Chair Burt inquired whether that language would be problematic.

Mr. Keene believed the language did not coincide with the City Charter. The Mayor as a single Council Member could not place items directly on the agenda. In practice, the Mayor attempted to influence the City Manager to place items on the agenda.

Council Member Wolbach asked if the Mayor guided while the Vice Mayor advised.

Chair Burt recalled that two Council Members could agendize items through Council Comments and a Colleague's Memorandum. The current City Manager worked to respect and accommodate the interests of the Council as reflected through the Mayor.

Council Member DuBois requested clarification of the Vice Mayor's role.



# MINUTES

Ms. Stump reported the Vice Mayor's role, according to the City Charter, was to attend meetings in the absence of the Mayor. The Vice Mayor attended the pre-Council meeting as training.

Council Member DuBois asked if any Vice Mayor had dominated the pre-Council meeting.

Mr. Keene responded no. Vice Mayors usually deferred to the Mayor.

Ms. Stump remarked that the Mayor often requested the Vice Mayor's assistance with tasks during the pre-Council meeting.

Chair Burt stated Protocol 3.7 did not reflect that activity.

Mr. Keene did not recall an overt disagreement between the Mayor and the Vice Mayor at a pre-Council meeting.

Chair Burt restated the three questions before the Committee. He did not believe additional language was needed to clarify the relationship between the Mayor and City Manager.

Council Member Wolbach felt the purposes of the Handbook were public facing and education for new Council Members.

Chair Burt asked if Council Member Wolbach wished to propose language.

Council Member Wolbach suggested Staff prepare draft language for the roles of City Manager, Mayor, and Vice Mayor during agenda setting. Language could be similar to "the City Manager made decisions with the advice and guidance of the Mayor and additional input from the Vice Mayor with all three considering the needs of the City and the full Council."

Chair Burt understood the Committee wanted language that reflected the respective roles of the City Manager and the Mayor, and the limited role of the Vice Mayor clarified in the agenda setting process. The Mayor's role was to reflect the interests of the full Council. He noted the Council had begun providing the City Clerk with Motions via electronic means, but he did not want the language to be prescriptive. He recommended "encouraging to the extent feasible" Council Members to provide Motions via electronic means. The language presumed the Council Member had drafted language in advance of the meeting or early in the meeting.

Council Member DuBois suggested new technologies could transmit proposed Motions more quickly.

# MINUTES

Chair Burt noted some people were more comfortable verbalizing language rather than writing it.

Mr. Keene felt the mechanics of providing Motions was worthy of discussion. Dumb terminals were provided on the dais in order to manage the concern and public perception regarding Council Member communications that was not part of the public record. If Council Members were typing during the meeting, the public could question whether Council Members were communicating privately.

Chair Burt did not believe Council policies prohibited electronic and handwritten communications.

Ms. Stump reported many cities did have such a prohibition. It was not illegal to have substantive communications addressing the item and policy, except if the communication created a Brown Act violation within the meeting. Many, many people felt private communications during a meeting were fundamentally inappropriate. Many cities adopted rules that banned the practice.

Chair Burt remarked that no language would circumvent the public perception that use of electronic devices implied private communications; however, the City Attorney just stated that was legal. He inquired whether the Committee wanted to draft a guideline prohibiting electronic communications amongst Council Members during a meeting.

Council Member Berman suggested the Committee continue the topic to the next meeting.

Council Member Wolbach understood Council Members' use of electronic devices during a meeting was subject to a public records request.

Ms. Stump reported a case on that issue was before the California Supreme Court. The Superior Court ruled those communications were public records; however, the Court of Appeal disagreed. That issue was broader than simply conduct during a Council meeting. The case arose from Council Members communicating with the public during a meeting.

Chair Burt took up the topic of Staff Reports providing options along with a recommendation. This was a policy question that had arisen a number of times. He requested Staff comment regarding alternatives being presented in Staff Reports and compliance with the Comprehensive Plan.

Ms. Stump distinguished between legislative matters, where the Council could draft any procedure, and land use items, where the Municipal Code required a decision. In the latter case, existing laws directed Staff to apply

# MINUTES

those laws to an application. The Staff Report provided Staff's actions and methods to comply with laws.

Council Member DuBois asked if Staff could offer options once an appeal of a decision had been filed and placed on an agenda as an Action Item.

Ms. Stump answered yes. Staff could assist the Council in the ways it needed. Whether Staff did that through confidential legal advice or proscribing the content of Staff Reports required careful thought.

Mr. Keene recognized that Staff had a professional responsibility to make recommendations in reports. The City Charter anticipated that the City Manager had the right and responsibility to participate in Council discussions but not to vote; therefore, a recommendation was acceptable. To the extent that Staff built a rationale to support a conclusion, people questioned the lack of alternatives. Within the body of the work, the Committee should recognize conflicts and the need to adequately represent those conflicts. Drafting alternatives to the Staff recommendation asked Staff to put themselves in the perspectives of other people. More language was needed to clarify that Staff would do its best to identify and present the range of issues.

Chair Burt felt codifying the language would allow the public to see that Staff was following Council direction. He questioned where that language could be placed as it was not a Council procedure.

Ms. Stump advised that a set of policies and procedures was issued at the manager level. Perhaps that would be the appropriate place to describe generally Staff Reports.

Chair Burt suggested the Handbook refer to the Manager level policies and process.

Council Member Wolbach suggested the language be placed in Protocol 2.5, Staff Conduct with City Council, especially if the language referred to other documents.

Chair Burt believed the title for Protocol 2.5 would need to be changed or a section added to it.

Council Member Berman asked if the requirement for Council packets to be issued five days in advance of the meeting was contained in a document.

Mr. Keene was not sure if that provision was contained in the Handbook. The Handbook had not been amended to reflect the new timeframe for Council packets.

# MINUTES

Council Member Wolbach requested Staff update the Handbook to include changes made in the past few years.

Chair Burt advised that that was part of his suggestion for the Committee to review the Handbook page-by-page.

Council Member DuBois was interested in continuing the topic to the next meeting in order to review meeting management items.

Chair Burt requested Staff provide draft language for Staff Report content. He did not believe Item 2c of Attachment A should be contained in the Handbook. Guidance to Mayors could reflect information on the topic. It was helpful to have common sense written down in a non-prescriptive manner.

Council Member DuBois agreed Item 2c was common sense. However, including every possible topic would make the Handbook too lengthy.

Chair Burt suggested Item 2c be included in the section for the Mayor conducting the meeting.

Council Member Wolbach emphasized the need to inform the public if an item on the agenda would not be heard.

Chair Burt agreed. "Making every effort to keep us on schedule" did not add value to the procedures.

Council Member Wolbach advised that hearing the public during the noticed timeframe was the same as keeping on schedule.

Chair Burt felt it was more nuanced. The timeframes for agenda items was an informal notice.

Ms. Stump reported language was placed at the top of each agenda to inform the public that the timeframes were guidelines.

Chair Burt believed the language should be "make an effort to allow the public to speak within the timeframe that was contained in the guidelines."

Ms. Stump offered language of "inform the public of the progress of the night's agenda and whether items were anticipated to be removed or continued."

Council Member Berman wanted to remove "commit to."

# MINUTES

Council Member DuBois interpreted that clause as the Council would commit to hearing public comment even if the item was not taken up until much later in the meeting.

Chair Burt concurred. "Commit to" should be softened such that it was an effort rather than an obligation.

Ms. Stump recalled that the Council had contemplated that in the past and had declined to do it, because it was disruptive and created inefficiencies.

Chair Burt offered language of "make efforts to hear the public who have come to speak to an item."

Ms. Stump would provide language.

Council Member DuBois advised that the Mayor in another city polled the audience regarding a point made in public comment and requested public speakers not make the same point.

Chair Burt noted that related to Item 2.j.ii of Attachment A.

Council Member DuBois felt the Mayor's style would determine whether that management technique was feasible.

Chair Burt suggested a trial period.

Council Member DuBois added that the public should still be allowed to speak.

Chair Burt suggested the language be "encourage" or "suggest" rather than "ask that only new points be made." He did not want to place it in the Handbook.

Council Member DuBois felt the Council needed a friendly method to shorten public comment.

Council Member DuBois disagreed with setting a hard ending time for Council meetings.

Chair Burt noted the Council had rules for taking up new items. He suggested the Committee review rules from other jurisdictions. The tradeoff was creating a new debate on whether to continue debate.

Council Member DuBois asked if the Council policy was not to take up a new item after 10:30 P.M.

# MINUTES

Chair Burt replied yes. The question was whether that procedure was sufficient or whether additional procedures were needed.

Ms. Stump clarified that the rule did not ban the Council from taking up a new item after 10:30 P.M.

Chair Burt suggested the Committee consider that topic further at the next meeting.

Council Member Wolbach suggested the Council vote on taking up items after 10:30 P.M. or extending the meeting beyond 11:00 P.M. or 11:30 P.M.

Chair Burt asked if the Committee concurred with continuing further discussion of meeting management.

Council Member Berman answered yes.

## Future Meetings and Agendas

Chair Burt reported a draft schedule was provided to the Policy and Services Committee. Staff listed a series of different topics. He requested the Committee discuss priority and sequence of topics along with the capacity to cover topics in a meeting. The Committee could consider holding three meetings in a month. For the next meeting, he expected the Auditor's Quarterly Report to move quickly. The work plan could require a deep discussion. The minimum wage topic could draw a great deal of public comment as well as a deep discussion. Agenda items for the following meeting would likely move more quickly. He asked if the substantive agenda items for the following two meetings were appropriate or if other items were more urgent.

Council Member DuBois inquired about a date for completing discussion of protocols and procedures.

Chair Burt asked about the urgency of the Smoking Ordinance.

Khashayar Alaei, Senior Management Analyst, advised Staff was on track to complete it.

James Keene, City Manager, advised that Staff was rolling out the first part of the ban and would be working through enforcement issues. Those issues could inform a discussion of the Smoking Ordinance. He preferred the Committee complete protocols and procedures prior to the Smoking Ordinance.

# MINUTES

Chair Burt noted the Council referred several items to a future Committee of the Whole meeting. A number of those items could be referred to the Committee. He did not find Colleague's Memorandums listed in the draft schedule.

Mr. Alaei did not have a list of Colleague's Memorandums. The Colleague's Memorandum regarding neighborhoods was removed from the agenda.

Chair Burt reported Mayor Holman was drafting a Colleague's Memorandum regarding the Architectural Review Board (ARB). He inquired about Colleague's Memorandums that had been presented to the Council.

Mr. Keene would review those with the City Clerk.

Chair Burt asked if there were Colleague's Memorandums other than the Minimum Wage Ordinance.

Mr. Keene advised the Smoking Ordinance was originally a Colleague's Memorandum.

Council Member Berman suggested the Minimum Wage Ordinance and the City's legislative program be scheduled for April 28, 2015; the City Auditor's reports be scheduled for May 12, 2015; and the Smoking Ordinance and policies and protocols be scheduled for the following meeting.

Chair Burt wanted to maintain the momentum to accomplish as many items as possible. A number of other items would be referred to the Committee. He inquired about a possible date for the Committee as a Whole meeting.

Beth Minor, Acting City Clerk, indicated a date had not been set.

Chair Burt suggested the Committee hold a special meeting in April.

Molly Stump, City Attorney, noted the Tall Tree Award Ceremony was scheduled for April 21, 2015.

Chair Burt suggested a special meeting on May 5, 19, or 26.

Mr. Keene noted the Finance Committee was holding budget meetings throughout May. Staff could better support a Committee meeting on May 26.

Council Member Berman was available May 26.

Council Member DuBois indicated a Council meeting was scheduled for May 27.



# MINUTES

Chair Burt asked if the City Clerk had confirmed a Council meeting on May 27.

Ms. Minor requested Council Members hold May 6 and May 27 for Council meetings.

Mr. Keene was not sure the Council meeting on May 6 would be held.

Ms. Minor advised that Board and Commission Study Sessions were scheduled for May 6.

Council Member DuBois could attend Committee meetings on May 26 or 19.

Council Member Berman was available on both dates.

Chair Burt would schedule a Committee meeting on May 26.

Council Member Wolbach was available on May 26.

Council Member DuBois asked if any aspect of the Residential Parking Permit (RPP) Program would be presented to the Committee.

Mr. Keene did not believe the first phase would be presented to the Committee.

Council Member DuBois inquired about aircraft noise.

Mr. Alae indicated the Committee referred air traffic noise to the Council.

Mr. Keene reported if the historical data study and analysis was below the threshold, then it would proceed to the Council.

Council Member Berman inquired about the overall timing and implementation of topics.

Chair Burt did not believe any of the revisions to policies and procedures were urgent. The continued discussion could fill a meeting on its own. Perhaps the Committee could tentatively schedule an item for a portion of an upcoming meeting. The Minimum Wage Ordinance and work plan would fill one meeting. The earliest possible date was May 12, 2015. He suggested procedures and protocols be added to the May 12 Agenda with the understanding that it could be continued to May 26.

Mr. Alae advised that the Auditor's Quarterly Report, work plan, and the Minimum Wage Ordinance would be on the Agenda for April 28.

# MINUTES

Council Member Wolbach recalled a concern regarding scheduling the Minimum Wage Ordinance and the work plan in the same meeting.

Chair Burt indicated the Committee might not complete discussion of the work plan and could continue it to a subsequent date.

Adjournment: The meeting adjourned at 10:05 P.M.