



POLICY AND SERVICES COMMITTEE TRANSCRIPT

Special Meeting
October 27, 2015

Chairperson Burt called the meeting to order at 7:04 P.M. in the Community Meeting Room, 250 Hamilton Avenue, Palo Alto, California.

Present: Berman, Burt (Chair), DuBois, Wolbach

Absent:

Oral Communications

Chair Burt: At this time, we provide an opportunity for the public to speak on items that are not otherwise agendaized. I don't have any speaker cards, so we'll move onto the first item tonight.

Agenda Items

1. Discussion and Direction to Staff Regarding Palo Alto's "Revolving Door" Ordinance.

Chair Burt: A discussion and direction to Staff regarding Palo Alto's Revolving Door Ordinance. Good evening. Molly, are you taking the lead?

Molly Stump, City Attorney: Thank you, Chair Burt and Committee Members. I am taking the lead on this item. This is an item that comes from a comment that was made by a Council Member, Mayor Holman, at the Council's Retreat in January or February. In a way, it's kind of taken on a little bit of a life as its own. As I understood the initial comment, it was motivated by a concern about current City employees who may be considering employment or making arrangements to become employed by a private entity while they were City employees. She had a concern to make sure that those individuals, while they were still employed by the City, were acting with full loyalty to the public interests and in support of the Council and its priorities. I think there was a belief perhaps on her part that there was some kind of time limit on that type of activity as there are in many areas of public ethics law. As it turns out, there isn't a time limit on that. For example, if a City employee were to make an arrangement or a commitment with a future employer to work for them many years hence upon leaving City service in three or five years, no matter how far out that commitment is, that City official would have a conflict of interest with

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respect to that employer in any governmental decision that comes before the City. There's no limitation on the time. We did, though, start to process this question of whether there should be some amendment to the Council's local rule on revolving door, not focusing so much on that issue but on the post-employment restrictions. There is a State law that applies to all cities, counties and special districts that sets a floor. Local agencies are allowed to set higher restrictions, and Palo Alto does have a local ordinance that extends the restrictions in State law to a number of additional officials. There is a mistake in the Staff Report. I neglected to note that the restrictions under our local ordinance also apply to my position, the City Clerk and the City Auditor, because those are positions that are confirmed by Council or approved by Council. That's Palo Alto's local rule. It applies to all of the positions that the Council approves, and we did identify those in the report. We did some survey work and looked at some prominent local ordinances that do provide for greater restrictions. This is a pretty complicated area. There are a lot of different areas where local jurisdictions have chosen to regulate, primarily in response to particular issues or problems that have developed in those jurisdictions. We're not aware of any particular issues here. The Council may have some concerns, in which case I would suggest that we take a targeted approach aimed at those concerns. Maybe two areas where it might make sense, if Council does want a stricter local rule, would be to expand the number or the type of officials who are subject to these restrictions. A second area that might be of interest to the Council would be to extend the period of time that the revolving door restriction applies. State law is one year; that is also our local current rule, it could be extended to two years. We're happy to support whatever additional areas you may have concerns about or want to explore. The report does include descriptions of some additional areas. We can answer or describe them, however you wish to proceed, Chair Burt.

Chair Burt: You're not making any recommendations based on these other cities' policies?

Ms. Stump: My best recommendation based on what I have observed is that we file the report. We have this information, and we're prepared to respond if there is a particular concern. I'm not aware of one now, and I don't think there's a reason to adopt a regulation in the absence of a specific issue that you wish to address. If the Committee feels differently, of course we will move forward. We don't have a recommendation at this time.

Chair Burt: I seem to recall that there was a discussion. We currently have a one-year period. Whether to extend that to two years, I thought, was raised.

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Ms. Stump: Yes. I think we did have some general discussion. That's something that's relatively straightforward that Council could do.

Chair Burt: Thank you. Colleagues, discussion? Tom.

Council Member DuBois: I'm curious. In Palo Alto, it's positions approved by Council. In the way the management hierarchy works, are there peers some of which are approved by Council and some aren't, but they're at the same management level? There's inconsistency between positions?

Ms. Stump: Yes, there are. Our current Municipal Code is a little bit of a patchwork when you line it up with our current management structure. It may be that the Municipal Code was initially drafted to capture essentially the department heads and the CAOs. It does that imperfectly now. It leaves off some department heads.

Council Member DuBois: I'd be interested in exploring a consistent level of management, Council-appointed officers and, I guess it's one level down from that. Is that correct?

Ms. Stump: Perhaps it might make sense to have Council-appointed officers and City department heads.

Council Member DuBois: Yeah, I'd like it to be consistent so that people that are basically at the same management level. I don't know if there are places where we have a department head and somebody else in that department that has the same level of title. I'm not really sure how our job classifications work. I mean, would we have multiple directors where one's a department head and one's not?

Ms. Stump: No.

Council Member DuBois: Looking at comparisons to other cities, I'm not sure about the two years. I'm not sure how unattractive that makes working at Palo Alto, if you have to wait an extra year. I am interested in, I guess, who's covered and who's not covered. I thought San Jose was interesting in that it also covers former Commission Members. Again, I don't know all the history. (inaudible) was like 27 University, I don't know if that's an issue there.

Ms. Stump: Yes. Two comments. One is if there have been areas where these issues have been raised even in a peripheral way, it was probably in the planning area. That may suggest a look at those key Commissions that do that work. However, San Francisco and San Jose, where they are covering former Commissioners, those bodies do have final decision-making

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authority in some respects. In Palo Alto, we are structured so that all final decision-making authority is retained by the Council.

Council Member DuBois: Even though that's true, I think it is a little—I don't know. It has the appearance of not being transparent if a former Commissioner is presenting to the Board that they used to be on themselves. I think that's just something to think about. I think that's my comments. Thanks.

Chair Burt: Colleagues, Marc or Cory?

Council Member Wolbach: Yeah. The only couple of things that really stood out to me as worth discussion or at least were intriguing, the question of whether to go from one to two years. I think that's worth discussing. I see pros and cons and we just heard that hinted at. Maybe at some point cleanup on the language to—actually it was mentioned maybe cleanup on the language to make it more clear and concise rather than trying to identify each position. I guess you could argue that either way. On the Staff Report, page 5, the Staff Report identified at the top four bullet points talking about things prohibited in San Francisco. On one of those, I was not very clear on what all that might include. If Staff has any, maybe, expansion upon those comments. Also, the fourth bullet point, I think I might be open to that one but would want to think more about or hear others' thoughts on possible unintended consequences. That fourth bullet point seemed potentially appealing as a policy to consider. The third one, I guess I'd say maybe for paid work, but I definitely wouldn't want to prohibit it for—I wouldn't want to, say, prohibit a former Council Member from coming to speak to us, if they're doing so on a pro bono basis, just on the issue that was of importance to them. I actually really value hearing from former Council Members about policy matters if they don't have a financial interest in it. Those are ...

Ms. Stump: A couple of comments about those items in San Francisco. The San Francisco Code reaches way down into the organizational structure. Those bullet points, one and four, apply to all city employees. They're relatively narrow in their scope, but they're deep in their application. If you as a City employee, even at a low level, personally and substantially worked on a particular issue, you then are prohibited during the revolving door period, which I think is one year in San Francisco, from representing or doing any work on the matter for another entity. Also, you are prohibited from going to work for an entity that has a city contract where you worked on the contract. San Francisco is a very different jurisdiction, obviously, 25,000 employees, a complex, big city and also a county. Those are my comments on the way those features would work.

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Council Member Wolbach: Those are my comments for now. Those are the ones that I flagged as kind of worth consideration, but I'd also like to hear from colleagues and their thoughts about those.

Chair Burt: Marc.

Council Member Berman: Thank you. I think I'm kind of pretty similar with Tom in regards to I don't know that I see a reason to go from the current one year to two years. As the City Attorney mentioned, this isn't something where we have a problem or really had a problem. I think one year seems to be pretty good practice. I could be open to creating a little more kind of uniformity to who it applies to. It seems like it already applies to a lot of directors, correct? We'd just be adding on. There might be five or six that it doesn't apply to, that we'd just create a ...

Ms. Stump: Yes, there's just a small number of new departments that are not in that list.

Council Member Berman: I think that treating everyone the same makes sense. I don't really have a lot of other comments to make at this time.

Chair Burt: A couple of questions. First, on who our current ban applies to, at the top of packet page 3 it says—wait a minute. Did I get that right? That's our current, right?

Council Member Berman: The table.

Chair Burt: Sorry. Got it. I think that we may not have a large issue, but we have had at least one occasion recently where a senior official within a year was in a position that conflicted here. Whether that exhibits enough of—one, whether that is a problem and, two, whether it's enough of a problem to want to expand our policy are two different questions. I don't think it's merely hypothetical. As far as Commission Members, I think the most practical impact would probably be our Architectural Review Board. I think it's been rare that we've ever had someone from the Planning Commission who would be bringing a project forward, but it's probably happened over time or certainly there are scenarios where it could happen. On ARB, it could happen quite often. Most of our architects are practicing architects in town. If they do commercial work or multifamily work, then they could very possibly have something come forward. On the other hand, if almost any architect who would serve on the Board would have that potential conflict, I don't know whether we would have the consequence of limiting our potential candidate pool for ARB. I think it's something that we—one, that's where it would have an impact and where I think there's a pro and a con. I think that there is some potential concern there of kind of a

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revolving door from an ARB, and there is a potential that we would limit our candidate pool considerably with such a prohibition. I did have a question on the San Francisco one. This fourth bullet, where they prohibit employees from going to work for an entity that had a contract with the city in the preceding 12 months, where that former employee personally and substantially participated in the award of the contract. How would that be enforced? Are we saying that we would have some control over who they could subsequently work for or would we have the control over the contractor if there was an active contract? I'm not sure how that might work.

Ms. Stump: Chair Burt, you are almost eligible to be hired as an attorney for cities. I have a question about whether this is enforceable. These types of employment restrictions in the private sector, of course, are—sometimes companies try to do this and say you can't go to work for a competitor, and our courts have said that that is not in fact a lawful and enforceable contract. This reads a lot like that, so I'm not sure that this is anything more than aspirational or guidance or instructional as opposed to an actual enforceable ...

Chair Burt: Tom.

Council Member DuBois: There are non-recruitment clauses in private contracts, so maybe there's a clause in the contract that says you can't actively recruit employees.

Ms. Stump: I don't believe so. That's not typical in public contracts. I used to work with this 47-page professional services contract quite a bit and don't recall that there was a provision like that. Yeah, I'm not quite sure what San Francisco is doing, if anything, on enforcing this. It is in their Code.

Chair Burt: We've had a round. Tom.

Council Member DuBois: I missed one question. I had another comment. On the summary for Palo Alto, it says ban may not apply to a former official representing another without compensation. Is that "may or may not," "shall not"?

Ms. Stump: It does not. Where are you reading?

Council Member DuBois: Page 7.

Ms. Stump: Yes, our summary. It would be more clear to say it does not.

Chair Burt: Does not?

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Ms. Stump: It does not. Our local ban bars ...

Council Member DuBois: If a former ...

Ms. Stump: I'm sorry, Council Member DuBois. It bars ...

Council Member Berman: Compensation.

Ms. Stump: ... appointment, blah, blah, blah, shall not for compensation active as an agent or attorney.

Council Member DuBois: If you're doing it without compensation, it's okay?

Ms. Stump: Yes. If you're a volunteer or just an otherwise citizen.

Council Member DuBois: I just wanted to get clear; I thought it was okay. You can advocate for Avenidas or Buena Vista, that kind of stuff.

Ms. Stump: You can. You can as an unpaid advisor.

Council Member Berman: (inaudible)

Council Member DuBois: As a couple of examples. I think, again, on the Commissions, probably ARB and HRB, actually. There are some architects who work on historic preservation. If the clause is just that you cannot—I don't know. I think it's worth exploring, you can't present to your own Commission. Again, if there's a one-year ban, I'm not sure it'd have a big impact on recruiting necessarily. Again, we had kind of an uncomfortable situation where a Commissioner was actively on the Board and presented, which I don't think is good.

Chair Burt: That applies to essentially a current Commissioner, and we don't have a rule there. I guess that begs one other question that we didn't address here, Molly. As it applies to Board and Commission Members, we had a recent issue where we had a current Board Member who left the dais to advocate before the Commission he was a member of. I guess one thing we'd want to consider is do we want to create that ban at least. Even if we don't have it apply to a year out, would we want to say that acting Board and Commission Members? We didn't have that alternative presented, right?

Ms. Stump: That conduct is the subject of a specific State law exemption that is available only for architects, engineers and designers, I believe, appearing before their own body. The reason that the State law was crafted is because many of these types of design review boards, you face this difficulty where this is the professional work that people do, you want their

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expertise on behalf of the city, and yet folks aren't willing to do that public service unless they also can ply their trade and work, essentially. There is a narrow exception; it's very narrow and it limits also a lot of other types of conduct that can occur behind the scenes. It's quite constraining. It's fine for the City to make it stricter, but I'd simply note that the State Legislature has reached the conclusion that it does make sense to allow that narrow exception in that particular area, because it can be difficult to get qualified, locally invested folks to serve on those boards.

Chair Burt: We are permitted to be more restrictive?

Ms. Stump: You are.

Chair Burt: Thanks. Cory.

Council Member Wolbach: Just a couple of things. One, I think heard 27 University mentioned earlier. My understanding was that the former—correct me if I'm mistaken. I understand that the former Planning Commission Member who was involved in that project was hired by the City, not by some outside private interest to present to the City. Was that correct?

Chair Burt: Yeah. I didn't hear anybody mention that one tonight.

Council Member DuBois: I did. I said I wasn't clear on (crosstalk).

Chair Burt: I see.

Council Member Wolbach: I just wanted to make sure we're all on the same page on that one. Thanks for confirming that. Also, on this question about concurrent conflicts. For those positions or those people who are currently covered by our ordinance, I look at at least the State ban goes into effect for the one year after they've left. Does that or does our local ordinance apply while they're currently working for the City or does it just start after they leave? Is that clear?

Ms. Stump: Yes. Silence is me thinking. The question's clear. The revolving door restriction applies when you leave city service. There are other restrictions however that apply during city service. That's why the sitting ARB Member actually needed an exception in the State Code in order to even be engaging in that conduct.

Council Member Wolbach: Also, in that recent case with the ARB, if I remember correctly, that only was allowable for that person to—who subsequently resigned—it was only allowable because, I think, they were a

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sole proprietor or something like that where there was nobody else on their team who could do the presentation. They couldn't hand it off to a partner or something. Was that correct?

Ms. Stump: There are a number of factors. That's one of them. Another factor is that they can only interact with City Staff to ask informational questions and answer questions about their drawings. There can't be any Staff-level advocacy. This is what people often find limits their effectiveness in a kind of holistic role that they might wish to play. There is an exception for sitting Council Members and Board Members to appear in front of City bodies as an individual on behalf of themselves or their family. Otherwise, it would not generally be allowable for a sitting City official to appear for compensation on behalf of another entity. We don't need a rule on that; we already have that restriction in the law.

Chair Burt: Marc.

Council Member Berman: I mean, these are good questions and a good conversation. It is tough, especially when it comes to issues like the ARB. I don't know where this conversation is going, but my concerns would really be what Pat was talking about earlier which is making sure that we don't disqualify every currently practicing architect in the City from being able to serve. Not to say that that would happen, but it could come close. As that ARB Member who ended up choosing to resign mentioned either in his letter of resignation or it might have been in a conversation to me separately, he said, "I have to put food on the table. I have to have a career." If there are things maybe that we can do just to make sure that there is more transparency and these types of things, that could be one thing. I'd be very hesitant of creating more onerous rules that would create a consequence of really narrowing the applicant pool to just retired architects, for instance. Then you're really not getting the best review that you possibly could.

Council Member DuBois: Or outside.

Council Member Berman: What's that?

Council Member DuBois: Or outside of Palo Alto.

Council Member Berman: Yes. It would have to be people who don't practice in Palo Alto. It wouldn't be just non-Palo Alto residents; it would have to be people who have no intention of having anything happen in Palo Alto. This is just a difficult thing.

Chair Burt: On this question of active Board Members, I actually think that I favor adding a restriction there. As I think through the potential impact on

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folks who would serve. First, architects are not required to be residents. Residents who are architects may not have their firms here in Palo Alto. Both of those allow some degree of latitude that if you're a nonresident but practicing as an architect here, that could be restrictive if you have projects that go before the ARB. Most architects in our town are doing single-family homes. If you look at the proportion, that's the bulk of the architectural work. There's only a few that do commercial. Out of the ones that do quite a bit of commercial that I'm familiar with, they're not necessarily Palo Alto architects. I think one who's done the most recently is a Redwood City architect. I can think of another one who's a Menlo Park architect. This is not predominantly architects who—the bulk of our architects on our ARB are not doing much work in Palo Alto on projects that appear before the ARB. Now, it's not that it wouldn't have any impact. We would need to be cognizant of that. I do think it's problematic. By the nature of it, it's not necessarily the fault of the architects who serve but, by the nature of it, it is as close to certainly an appearance of a conflict or revolving door as we have with some degree of frequency. I know in recent years when there were members of the community who raised this concern, we actually had members of the Architectural Review Board who said, "We haven't had any of our members appear before us in the last several years." It's also important to remember if it's not a sole proprietorship, this would not restrict a colleague from appearing. I'm trying to think through all of the subsets that it would either apply to or not apply to. I don't think it would have a great impact on the membership of our body. Tom.

Council Member DuBois: I'm thinking about this, and I still wonder if we just want to say anybody on any Commission should not be representing a project to that Commission. I'm thinking about, like, the 1 Percent for Art Program. Do we get into an issue (crosstalk).

Chair Burt: I wasn't meaning to restrict it to one body.

Council Member DuBois: I thought we were talking about just ARB.

Chair Burt: I was just saying that that's where we have the bulk of our potential conflicts.

Council Member DuBois: It might be better to make it more general. There may be other things that we aren't thinking about. I could see the Historic Resources Board, the PTC, the Art Commission.

Chair Burt: I was just pointing out the ARB, because that's probably the greatest potential issue.

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Council Member DuBois: Then, I guess, the question is, is it just active or should there be a one-year revolving policy.

Chair Burt: My thought on that would be since we don't have any policy at this time or any restriction, I'd feel better about going at this incrementally and not go too far too fast.

Council Member DuBois: Can I try a motion?

Chair Burt: Sure.

Council Member DuBois: I'd move that we add consistently to all department heads and that active Commission and Board Members cannot pitch to their own Board. I'd leave it to the City Attorney to wordsmith that.

Ms. Stump: Council Member DuBois, just to clarify. It would be active Board or Commission Members should not make an appearance in front of their own Board for compensation?

Council Member DuBois: I kind of think with or without compensation.

Ms. Stump: We can certainly draft it that way.

Chair Burt: I'll second that.

MOTION: Council Member DuBois moved, seconded by Chair Burt to recommend the City Council approve adding the following language to the Revolving Door Ordinance:

- A. Add all Department Heads; and
- B. Add active Board and Commission Members be restricted to appear in front of their own Board or Commission as a representative of their firm.

Council Member Wolbach: We had a couple of things in there. The first, the expansion to the department heads, clean-up the language or updating that, I certainly support that. I'd kind of like to separate that out maybe into a separate motion.

Chair Burt: We can split the motion. We'll put it into two parts.

SUBSTITUTE MOTION: Council Member DuBois moved, seconded by Chair Burt to recommend City Council approve the changes to the language of the Revolving Door Ordinance to include all Department Heads.

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Council Member Wolbach: I'd like to deal with that one maybe first, and then come back to the other which I think is more complex and I have more mixed feelings about.

Chair Burt: The sequence doesn't really matter.

Council Member Wolbach: Should I speak to the second part now or should we break it up first, vote on one and then come back? That's why I mention that. I'll let you decide on the procedure.

Chair Burt: Go ahead and speak to the department head issue first. We'll address that one first.

Council Member Wolbach: I think we've said enough about that one. I think that makes sense.

Council Member Berman: I'm sorry. This is just saying it expands to all department heads?

Chair Burt: We've split the motion, and the first part is the one that pertains to expanding it to all department heads.

Council Member Berman: Got you. Got nothing to say to that.

Chair Burt: All in favor. That passes unanimously.

SUBSTITUTE MOTION PASSED: 4-0

Chair Burt: Let's go on to the second part which is prohibition of active Board or Commission Members from appearing before their own bodies.

Council Member Wolbach: Before I make my comments about that, actually just a question. Are we talking about concurrently or for one year after or both?

Chair Burt: No, just while they are active Board Members. Not former Board Members, but active Board Members.

Council Member Wolbach: I think I'd be open to that. I'm not prepared to support that tonight. I'd kind of like to maybe do a survey of some of our current and former Board Members and also maybe even some of our applicants who have applied recently and who maybe weren't selected. Just do a survey, would this have dissuaded you from applying. This is really the core question, right? Does that substantially and negatively reduce our applicant pool? That's my number one concern. I would like to get some input from our applicant community on that. That's my thought right now,

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but I'd certainly be open to exploring it once we have a little bit more info and input.

Council Member Berman: Yeah, I agree 100 percent. I appreciate the conversation that we've had about it here, but I'd be worried that there are just things that I'm not thinking of or that none of us are thinking of, in terms of how it might apply. I'm just not comfortable at this stage with definitely moving forward on that. I'd also want to know what—I don't think this is represented in the Staff Report that we received. Are there any other cities that take that extra step above and beyond what the current State law says? What's that?

Council Member DuBois: (inaudible)

Council Member Berman: Yeah.

Ms. Stump: We didn't look particularly at the issue of currently sitting Board Members. We focused on post-employment restrictions.

Council Member Berman: Yeah, this was more meant for once they're off. I just don't have enough information in front of me to make a decision on this issue tonight.

Chair Burt: Two things. One, if we were to seek that information, we have to see whether the City Clerk could readily do that. I guess I would also say that if we got responses back that there were some limited number of Board or Commission Members who might say it was a conflict, that wouldn't necessarily dissuade me. I might still think that the fact that they would only serve if they could advocate before their own Board or Commission, I might find is problematic. We don't have it occurring much, so I don't expect to—if we do a survey, I don't think we're going to see a very strong response. In practice, we don't have it. Whether people might not be doing it in practice but might not want to give up the prerogative to do so, maybe we'd see a few more hands get raised on that. I guess a question would be—maybe we can have Beth get back to us just an informational item at our upcoming Policy and Services Committee meeting to see whether this would be a relatively simple thing to do or whether this is asking the Clerk to go through a more extensive process. Does that seem fair?

Council Member DuBois: Yeah. For me, I think it's really the appearance of conflict. I think it doesn't matter what the survey says to me either. Again, I just think it'd be very odd to be on a lot of these Commissions and Boards, and then get up and pitch to colleagues you've been working with while you're actively on that Board. I don't think it's something we'd want to have happening.

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Council Member Berman: I think it could be very valid. It was an issue that was presented 20 minutes ago, and I'm not prepared to approve it tonight. That's something that needs a little more thought on my end.

Chair Burt: What we would be doing is only making a recommendation to the Council.

Council Member Berman: Of course.

Chair Burt: We have by appearances probably two of us who would be okay with going ahead with this recommendation to Council. Molly, given that—I'm not saying which way I'd go on this—we kind of had a broad topic here, if it was something that was a necessary pass-through through the Policy and Services Committee and say it was a split vote, it would still go to the Council with that split recommendation. On something that wasn't an explicit directive, does that still apply? Would two members be able to forward this as a split recommendation to the Council or no?

Ms. Stump: We're on a topic that's certainly closely related to what the Committee was referred and to the agenda item, but it is somewhat on the edges, because we didn't specifically explore this in the Staff Report or notice that there would be that kind of a regulation under discussion tonight. As a general matter, 2-2 votes out of committee have indeed gone forward to the Council with that information, that there was a 2-2 or two with two abstentions or something of that nature. I don't think it's suitable though, of course, for a consent item. I wonder whether that's an efficient process, to take kind of a complex item that hasn't been fully explored to Council on its action agenda. Maybe it makes more sense if the Committee wants more information to bring it back to Committee.

Chair Burt: Okay. Tom.

Council Member DuBois: Again, when I read the packet, that was one of the things that interested me. Page 15 is the text of San Jose's ordinance. Again, I was interested in kind of a revolving door, so even a year after you were on a Commission. I think as kind of a compromise, Council Member Burt was saying let's not even go that far, to make it active only. I actually saw that as kind of less restrictive than this San Jose ordinance. It seemed to be entirely, I guess, within the scope of this report.

Chair Burt: I think I'm fine with asking the Clerk to come back and let us know whether this is a relatively straightforward thing to do, create a little survey of Board and Commission Members.

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Ms. Stump: Would the Committee want to wait on the other item to decide if you were going to address this second item before it goes forward to Council or would the Committee want that clean-up to add all the department heads to go forward on the Council's consent agenda?

Chair Burt: Cory.

Council Member Wolbach: On the City Attorney's question, for me that would really depend on guidance from Staff on what it means for workload. If it's more efficient to do a survey of Board and Commission Members, come back to us, let's have that discussion, and then decide all of our recommendations on this general topic and have that go together to Council; if that's more efficient for Staff, I'd prefer that. If it's ...

Chair Burt: I understand.

Council Member Wolbach: ... equal for Staff, then I have no difference of opinion. Just by the way, on this second part of the motion, I would ask actually for that part of the motion to be withdrawn or change the language to be direction to Staff to do that survey. Again, I'd be very open to considering that at a future time once we have more information. I want to make sure that it's clear that although I wouldn't support moving it to full Council tonight, I'm very interested in continuing that conversation.

Council Member DuBois: I have a question. If we do the survey, would the survey results change you guys' position or should we just direct that—it's a 2-2 vote—the result of the survey along with the department heads just go straight to Council, not even come back to us?

Chair Burt: I think Molly's answer to Cory's question first might influence that.

Ms. Stump: Generally, it's more efficient to package things together. I think in this case, these two are somewhat different. The first one is really in the nature of a technical clean-up. It's kind of a no-brainer. It would be very simple to write. I would recommend just moving forward with that. The second item really is a more substantial policy question. I think it almost needs to be treated separately. That would be my recommendation.

Chair Burt: I think that we wouldn't be having the report back. I think we'd want to hear from Beth how much work we're, as a Committee, assigning her to do. We should be circumspect on requests for Staff work that are at the Committee initiative.

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Council Member DuBois: Just so I'm clear. We're suggesting there'd be at least two other Policy and Services discussions on this topic?

Chair Burt: I don't know that we have to have a big discussion. We're just going to hear back from her if it's easy, and we say go ahead with it. I don't expect that to be a big discussion. Cory.

Council Member Wolbach: Actually let me make it more formal. I'd suggest a friendly amendment to this motion, that we ask City Clerk and City Attorney to get back to us with their thoughts on what a survey of Board and Commission Members would entail for Staff time.

Chair Burt: Wait a minute. You just expanded it to the City Attorney. I didn't think we were asking her to do anything.

Ms. Stump: I probably will draft the question that the Clerk will ask. I can do that quickly and pass that off, and then she'll let you know what ...

Chair Burt: It's that much.

Council Member Wolbach: That's my friendly amendment suggestion.

Chair Burt: It's really a substitute; it's not amending the direction. We'll just take that as a substitute, and that's fine. I'll second it.

Council Member DuBois: I'm just curious. If Beth comes back and says no problem, should we just have her go ahead and do it? Leave it up to her ...

Council Member Wolbach: I'd be fine with that.

Council Member DuBois: ... if she wants to just go ahead or if she wants to come back and tell us no, it's going to be a lot of work.

Council Member Wolbach: I'd be fine with that.

Council Member Berman: When is our next meeting? I'd be fine with it also. We've got a ...

Tabatha Boatwright, Administrative Associate III: (inaudible)

Council Member Berman: Okay. I don't have a problem with it, if the Chair doesn't see a possible concern.

Chair Burt: I'd be fine that if—we should change the motion then that says that if the Clerk determines that it's a minimal effort or low effort to do this,

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then to authorize her to go forward. If it's more than that, to return to the Committee for consideration.

Council Member Wolbach: I'd accept that amendment.

MOTION: Council Member Berman moved, seconded by Council Member Wolbach to direct the City Clerk to:

- A. Return to the Policy and Services Committee with an Informational Report entailing the difficulty of performing a survey of past, present and non-appointed Board and Commission Applicants if a prohibition of them presenting a project to the Board or Commission they applied would prevent them from applying; or
- B. If the City Clerk feels the survey workload is minimal, to direct the City Clerk to conduct the survey.

Chair Burt: Any other discussion? All in favor. That passes unanimously.

MOTION PASSED: 4-0

Chair Burt: Onward to our next item.

2. Staff Recommendation that the Policy and Services Committee Recommend That the City Council (1) Accept the Description of the Status of the SAP Security and Employee Ethics Policy Audits; and (2) Establish Schedule for Future Audit Recommendation Status Updates.

Chair Burt: Staff recommendation that Policy and Services Committee recommend that the City Council, one, accept the description of the status of the SAP security and employee ethics policy audits and, two, establish a schedule for future audit recommendation status updates.

Suzanne Mason, Assistant City Manager: Chair Burt, Council Members, Suzanne Mason, Assistant City Manager. I apologize for Ed; he would have liked to have been here tonight, but he is out ill today. You wore him out last night. We are here—I have been working with Harriett Richardson, our City Auditor, in developing a schedule to bring the open audits to you in an attempt to get those closed and before your body. You have a pretty full agenda. What we have before you and at your places is a schedule that shows how we're planning on, over the next few months, to bring to you open audits. Tonight, we have the first two of those scheduled open audits to present to you. As the report summarizes, this is for the SAP security audit and the employee ethics policies audits. What you have attached is the summary that shows that all audit recommendations have been completed at this point. Staff is here and prepared. If you would request a

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summary, I can speak to the ethics policy, and we have Staff from IT here, Jasmine Frost and Raj—I'm forgetting Raj's last ...

Raj Patel, Manager of Information Technology Security: Raj Patel.

Ms. Mason: Raj Patel. They can answer any questions you might have on the SAP security audit. I did want to share one thing. I understand there was a question at last meeting. I apologize. I wasn't here; I wasn't feeling well last time. I do want to assure the Committee that the ethics policy, which is found on the intranet site, which includes the Code of Ethics that was recommended by the auditor, also includes the hotline number in the policy. Staff have begun the training sessions on the policy. There are 26 training sessions planned between October 13, is when they were begun, and May 2016. Every City employee will go through a two-hour training on our ethics policy, will get situational questions. One of the Executive Leadership Team members will be kicking off each session with the trainers. It's a very thorough training. It includes this policy and related policies distribution as also recommended by the City Auditor in the audit. Also, all options will be outlined as they are in the policy, but in the training they will go over and specifically call out the hotline as well. Thereafter, every new employee right now is getting a copy of the policy as well. We will schedule future trainings quarterly to make sure that all new employees continue to be trained on the policy. It's a very thorough policy. I just wanted to provide that, because I know the question came up at last meeting. With that, Staff's prepared to answer any questions you might have.

Chair Burt: Questions, anyone? Tom, anything?

Council Member DuBois: I have questions, but I always go first. I actually had some questions about the PCI audit and security audit. On the middle column, it says status open. On the October 2015 update, it says many risk items have been addressed, but the remainder have been prioritized on roadmaps. It doesn't sound like it's really all completed, but we're saying it's completed. I just wanted to understand what's still on the roadmap, what hasn't been done.

Mr. Patel: My name is Raj Patel; I am the Information Security Manager for the City of Palo Alto. As indicated in these, there was two component to this assessment. One is PCI compliance and also the other one is information security risk assessment. The PCI, which is payment card industry, security compliance was conducted 1 1/2 years ago. All the findings were addressed successfully to close all the gaps. The second component is information security assessment. In 2014, June 2014, City of Palo Alto has engaged a company called CoalFire to conduct information security risk assessment. In

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June 2015, the company has concluded the information security assessment, and most of the findings were closed. There are some remainder portion of the findings which we are in the process of addressing.

Council Member DuBois: Again, it's kind of a question that we're saying it's completed, but it sounds like there's still some work to be done.

Ms. Mason: I just wanted to point this out. I had talked to Jonathan before he left. The recommendation here is that we should implement a formal risk assessment process that meets minimum standards as called out on the left-hand column. What I understood is that the risk assessment is completed, and it's now a real-time monitoring, ongoing.

Council Member DuBois: It'll be ongoing.

Ms. Mason: The assessment and monitoring is ongoing. They're still making some of the improvements that resulted from the assessment. That's, I think, the distinction. That question was asked. The monitoring is real time, ongoing.

Council Member DuBois: Thank you. That makes total sense. I did have a question too about kind of this idea of minimum security standards and whether we're—again, if we're going to do this ongoing monitoring, are we going beyond that? Also, I wasn't sure when the audit was done. It sounds like a year and a half ago.

Ms. Mason: In 2011, October.

Council Member DuBois: Has the security situation changed in four years where we actually need to go beyond what the audit said in 2011?

Mr. Patel: Yes, that is absolutely correct. The cyber security situation and landscape has been changed in the last four years. We have implemented ISO 27000 framework and also PCI-DSS Standard 3.1 compliance framework at the City to ensure that the City's ready to not only fight the upcoming cyber security threat, but in real time determining any threats and vulnerabilities using our (inaudible) intrusion detects and intrusion protects and (inaudible) devices which we have implemented. We are ready and in compliance and also engaged with the tools and technologies in this world to ensure that the City's protected from any cyber security threats.

Council Member DuBois: Good. I'm familiar with PCI. What does NIST cover? What kind of data?

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Mr. Patel: PCI is a threat (inaudible) information is being protected. Those are the (inaudible) information.

Council Member DuBois: I said I know what PCI is. What's the other one?

Ms. Mason: The DSS?

Mr. Patel: The PCI-DSS is the data security standard. The other one was—I think you are referring to ISO 27001?

Council Member DuBois: It says NIST SP 800-53.

Mr. Patel: NIST, NIST SP 800-53, it's an industry standard for information security risk management and information security compliance. The NIST 800-53 is also similar to ISO 27001 which is ISMS, information security management system, which is comparative standard which we have implemented at the City during the last three years.

Council Member DuBois: It's basically protecting all data that's beyond credit card information?

Mr. Patel: Yes, yes, yes. Sorry, I got your question now. It's including but not limited to PCI. The ISO 27001 goes way beyond. It has 17 different types of standards, PCI standards, firewall standards, application standards, and so on and so forth. We have implemented those all.

Council Member DuBois: Again, I just came on Council this year. On the ethics side, I was just curious about these dates. The audit was completed in 2008?

Ms. Mason: I will say that I was not here obviously and can't speak for what was going on. I do have to say this is probably the most thorough policy I have ever seen in a public agency. I just want to say that if you look at the policy. I have heard there's been a lot of discussion with the Executive Leadership Team on what should be included in the policy and what should not be included. I asked a question about one word, and they said that was a whole set of meetings. I do think the policy took quite a while to finish. The training has been under design with ILG for quite a while. It's a very high quality training. I would invite you to come view it and participate. It's really tremendous. There's a booklet. There are multiple handouts and resources being provided. ILG is going to use it as a sample for their future work. I would say it's a very thorough product that is resulting, but I really can't speak to what really went on in that time.

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Council Member DuBois: I'm glad we're there now. I just hope we don't take seven years on other things. Hopefully we can do them quicker. I'm glad we're there. Thank you.

Chair Burt: Cory.

Council Member Wolbach: (inaudible)

Council Member Berman: I'm also happy to see the ethics policy come in. When I joined Council, it was something I was surprised when I saw we didn't have one. It has been a bit of a convoluted process. It sounds like from hiring a consultant and having that not work out and making the decision to have Staff do it themselves because of cost concerns, it might have yielded a better result in the end. That's good. I was also encouraged to hear the thoroughness of the training. What good is an ethics policy if Staff doesn't know anything about it? I'm glad that that's being taken seriously. Definitely, I'd encourage you to let us know as the dates are getting locked in. Given the interest that some of us have taken in it and some of us recently joined Council, the importance that it merits, it would be interesting to kind of sit in on one of the trainings and learn more about it. I'm glad that we are where we are now. It's great to hear that the ELT is taking it very seriously. I think it's an important good governance aspect that any municipality should have. I think it's important for employee morale also to see that the City takes it seriously. I'm glad we're closing out this audit.

Ms. Mason: There's two trainings in November, and then the balance are January through April, concluding in May. I'll get you the dates.

Council Member Wolbach: First, just a quick question. You said this does include training around our hotline for employees reporting issues, correct?

Ms. Mason: Yes.

Council Member Wolbach: I just want to emphasize how important I think that is. I hope that Staff will continue to consider ways to make sure that the hotline is fully effective, understood and utilized to the greatest capacity possible. That includes making sure that Staff is confident in the confidentiality and effectiveness of the hotline, rather than any concerns among Staff that things reported to the hotline might not be acted upon or might result in any potential retribution. Not to say that that is a problem, but there might be a perception of that among Staff. I want to make sure it continues to receive close focus from the City management.

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Chair Burt: We should take this one—our action would be a motion to accept the status report and forward it to Council. Is that—yeah.

Council Member Berman: Second.

Chair Burt: What was it? Did you move?

Council Member Berman: So moved. I move that Policy and Services Committee recommend that the City Council accept the attached description of the status of audit recommendations for SAP security and employee ethics policies audits. Moving the Staff recommendation.

Chair Burt: Do we have a second?

Council Member Wolbach: Second.

MOTION: Council Member Berman moved, seconded by Council Member Wolbach to recommend the City Council accept the description of the Status of Audit Recommendations for SAP Security and Employee Ethics Policies Audits.

Chair Burt: Any further discussion? All in favor. That passes unanimously.

MOTION PASSED: 4-0

Chair Burt: Our next is to establish a schedule for future audit recommendation status updates. We have before us this schedule. Do we have the Auditor's Office to discuss it with us or how does this proceed?

Ms. Mason: Houman's here. Harriett and I have been working together to develop a strategy to close out the open audits and whatever few remaining items remain in these audits. We've committed and I've committed to a very structured approach. I know Harriett was—she knew she was going to have to miss tonight, but we talked in advance. What I suggested, and she was supportive of, but we wanted to make sure you are, is that we bring back to you at your regular meetings two to three audits over the next two meetings that are from the past. The two that are scheduled for February were completed this year. Thereafter, if there are open audit recommendations, we will schedule those very specifically. I am targeting them for six-month increments from the date that your recommendation goes to the Council. I have a very detailed spreadsheet that I shared at the Executive Leadership Team today. Basically each department would get their update on the audit to us a month before it's due to you. We would make sure we're all in agreement and the Auditor's in agreement or we agree to disagree and share that as well. We will have a very targeted

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schedule, and these will come back to you on a regular basis, and hopefully be closed out and responded to.

Chair Burt: Questions anyone? Tom.

Council Member DuBois: On that kind of schedule, six months, is the intention that you would close everything in six months or is it likely things would remain open?

Ms. Mason: It will really depend. I have to be honest. Working with the departments on these has been pretty eye-opening. Some of them require quite a bit of work and resources and Staff time. Balancing the recommended improvements with the day-to-day operations has proven very challenging. That's why we're really trying to get these things closed. Even today I was talking with ASD Staff on the cash handling one. Getting out to every work site where cash is handled, making sure the training has been completed, and making sure the review has been completed has been a real struggle for them given balancing the day-to-day work. I think our goal would be to respond and on simple changes and implementation, that we do those right away within six months. It was my understanding your body wanted an update every six months.

Council Member DuBois: I think, again, an update without pressure to say things are closed even if they're not quite closed is better, even if it stays open and shows up again six months later.

Ms. Mason: Right.

Chair Burt: Do you have something?

Council Member Berman: I think Tom's absolutely right. This new policy will create a system where it won't take seven years to do an ethics policy. It's something that doesn't come out of the Auditor's Office and get approved by Council and then go on a shelf and get dusty and ignored. I think that's a good—I'm glad you're doing it.

Council Member Wolbach: Is there an action (inaudible)?

Chair Burt: I don't—now that I think about, there's no action on this, right?

Ms. Mason: No. I just wanted to make sure that with your agenda that you're in agreement with this schedule.

Chair Burt: That's just the Committee's schedule. Thank you. That concludes Item Number 2.

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Future Meetings and Agendas

Chair Burt: We have before us a summary of upcoming meetings. We just wanted to ...

Council Member DuBois: I just have a question here.

Chair Burt: Pardon me?

Council Member DuBois: I have a question.

Chair Burt: Go ahead.

Council Member DuBois: I know November 10th is looking pretty beefy. I kind of felt like the Healthy Cities discussion last night was a pretty small item. I'm just wondering if we could add it onto that November 10th, if you guys think we could dispatch it pretty quickly.

Council Member Berman: I'll defer to the Chair.

Council Member Wolbach: Same, no pressure.

Chair Burt: I'm just looking over the other items there.

Council Member DuBois: I think three will be quick. I'm not sure about the Pine Street garage.

Chair Burt: You think three will be?

Council Member DuBois: Three of them, three of the items. The first item and the—there's four items.

Molly Stump, City Attorney: I would just note, Chair Burt, that the agenda materials for the 10th get published to the public this Thursday. I do think the City Manager was wanting to do a little bit of work on that.

Council Member DuBois: Maybe on December 8th, if we want to try to get it done quickly.

Council Member Berman: We talked about doing a special meeting. Pat brought that up. (crosstalk).

Chair Burt: I'm just looking at the scale of the December 8th items. The prep for the priority setting, I'm trying to think about how much work that's been as a Committee in the past.

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Ms. Stump: Every year when this rolls around, I can't quite remember the process. We have to dust off the cobwebs. Is this where the Committee is receiving back the input from Council Members and kind of collecting it into buckets?

Chair Burt: Yeah. I think there could be a moderate amount of work on that. Suzanne.

Suzanne Mason, Assistant City Manager: Also, the public. We're soliciting the public right now on the website for input.

Chair Burt: We might want to go ahead and schedule another meeting. Even the December 8th looks pretty full. Given that we have Thanksgiving week, first, how do you feel about scheduling one other meeting? Pardon me. Great, thank you.

Council Member DuBois: I guess as an alternative, would starting earlier on the 8th and having a longer meeting be an alternative?

Chair Burt: Yeah.

Council Member DuBois: I mean, I'm open to either.

Council Member Berman: I can do that. My only question would be from a timing standpoint, could we—folks last night had expressed a desire to get it approved by Council by the end of the year. Do we leave enough time in terms of noticing and all that kind of stuff to still do that? If it's pretty straightforward and ready to go, then December 10th would be for the 14th. Do we have a meeting on the 21st?

Tabatha Boatwright, Administrative Associate III: Of December?

Council Member Berman: Of December.

Ms. Boatwright: (inaudible)

Council Member Berman: I doubt we'd have one after that.

Chair Burt: It's actually listed as the start of the Council break. I think it's tentatively planned to not have one.

Council Member Berman: I'd hate to have a full Council meeting just to approve this.

Chair Burt: That's a good point.

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Council Member DuBois: I don't think there was any real time pressure. It was just a desire to do it this year, right?

Council Member Wolbach: Yeah, the motion did not include any time scale but certainly a desire to do it this year or very early the next year.

Chair Burt: Actually what we committed to was to attempt to do it this year and back to Council.

Council Member Berman: If not explicitly, then implicitly.

Council Member Wolbach: Correct.

Chair Burt: How do we feel about then an extra meeting? Are people looking at their schedules, is that what's going on here?

Council Member DuBois: Also, what would be in that extra meeting? Would we start on the Council Priorities?

Chair Burt: I think we would want to have the Healthy Cities item for sure. That's a good point.

Council Member DuBois: Dewatering maybe.

Chair Burt: I was thinking that the Council Priorities, that is one that might even break up into two different meetings where we have a cut at it and then some feedback possibly. We could move it forward and then, if it needs a follow-up, it could have it on the 8th. That would actually require though that Staff would get out those surveys and get them back from Council Members by that time. That's a little challenging.

Council Member Wolbach: When would that special meeting be?

Ms. Mason: It's on the agenda right—it's on the tentative agenda for December 8th right now. We're talking about ...

Chair Burt: We're talking about if we have a special meeting of P&S principally for Healthy Cities, what else would go on that special meeting. This was one of the items that we were considering moving forward. As I was thinking out loud on it, I'm not sure that we'd get the responses in time from Council Members. Maybe that's not ...

Ms. Mason: For a meeting earlier than this? Is that what you're ...

Chair Burt: Yeah.

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Council Member Wolbach: Were you thinking like December 1st or when? For me, I think the timing. If we have a special meeting, I think figuring out the timing might be the first thing, when we could have one. Then we can figure out what we might be able to have ready for it.

Council Member Berman: That's a good point. The two Tuesday opportunities would be November 17th or December 1st. We could do the 24th. I could; I don't know about other colleagues, if they're leaving for the ...

Chair Burt: I think it's best to pass on that week.

Council Member Wolbach: For Staff too.

Council Member Berman: That's a good point. November 17th and then December 1st seem to be the two Tuesdays. We could look at other Tuesdays, but there are other complications to that.

Council Member Wolbach: There's a lot going on on the 17th. You've got Citizens Advisory Committee meeting. You have Finance Committee meeting and Parks and Rec.

Chair Burt: I have a possibility of traveling then. Let's look at December 1st.

Council Member Wolbach: There's a Finance Committee meeting listed.

Chair Burt: That's not an issue for us.

Council Member Wolbach: I just want to make sure it's also not an issue for Staff. If we're just doing the Healthy Cities thing, it probably won't be.

Council Member Berman: Staff can juggle that to see what can fit and what can't.

Council Member DuBois: (inaudible)

Chair Burt: How does December 1st look, folks? Are you available for December 1st?

Council Member DuBois: Yes.

Council Member Berman: Yes.

Council Member Wolbach: Yes.

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Chair Burt: Then let's do December 1st.

Council Member Wolbach: I just wanted to double check. Does everybody agree that doing a special meeting on the 1st is more efficient than doing a longer meeting on the 8th?

Council Member Berman: I'm sorry?

Council Member Wolbach: We really have a couple of options that were mentioned earlier. I wasn't sure if we had a clear decision about that, whether we wanted to have a special meeting or to just lengthen the meeting on the 8th. I'd be open to either.

Council Member Berman: I think in terms of trying—if the goal is to get this back to Council, then the 8th does work. By the end of the year, then the 8th doesn't work.

Chair Burt: For that reason, let's do December 1st.

Council Member Berman: We'll make sure our colleagues appreciate it.

Chair Burt: We should look at what other items could be pulled forward on the 1st. Maybe one of the items from the 8th. Let Staff make that call. Unless we have anything else, that concludes our meeting.

ADJOURNMENT: Meeting adjourned at 8:18 P.M.