



POLICY AND SERVICES COMMITTEE

Special Meeting
November 30, 2009

Chairperson Espinosa called the meeting to order at 7:02 p.m. in the Council Conference Room, 250 Hamilton Avenue, Palo Alto, California.

Present: Espinosa (Chair), Barton, Kishimoto, Yeh

1. Oral Communications

John K. Abraham 736 Ellsworth Place, Palo Alto spoke regarding the Police Audit not mentioning racial profiling and the training that was supposed to take place. He was concerned about the apparent lack of action.

2. Status of Audit Recommendations

City Auditor Lynda Brouchoud presented the status report for all of the audit recommendations. She said Staff wanted to bring this to the Committee because two of the audit reports were originally heard by the Committee. One of those audits was the 2003 Audit of Code Enforcement, which had two outstanding audit recommendations at the time of the review. She reported that both had been resolved or implemented. The second audit was the 2008 Audit of Employee Ethics Policies. At the time of the review three out of the original seven audit recommendations had been implemented and one was in process. One of these recommendations was the Form 700 training which had been implemented by the City Attorneys Office and Human Resources. The supervisory review of Form 700s with reportable interests was still in process at the time of the report. Three of the recommendations had not been started, including the development of a City wide code of ethics, development of an ethics policy and training, and the implementation of a fraud waste and abuse hotline. Staff recommended a dialogue with the Policy and Services Committee regarding the hotline and how to implement it as it entails resources and specific State laws.

Council Member Yeh noted the savings that had been identified in the report. He asked what characteristics the Council should consider for the hotline or a 3-1-1 system.

Ms. Brouchoud said a 3-1-1 system would be primarily designed to handle non-emergency calls and take some of the burden from the emergency system. The audit recommendation was for a fraud waste and abuse hotline, which would be different. The hotline would need to maintain confidentiality and independence. A State law was enacted in 2008 which allows City Auditors to establish hotlines.

Council Member Yeh asked if Staff had researched other jurisdictions integrate the two, or if they were typically separate.

Ms. Brouchoud said they were typically separate. The only city she was aware of that combined the two was San Francisco, where they had a 3-1-1 system and the City Services Auditor handled all the fraud waste and abuse.

Council Member Yeh asked for specific information about the risks of fraud waste and abuse.

Ms. Brouchoud said a follow-up report could be created to detail the risks. The Association of Certified Fraud Examiners (ACFE) publishes a report called The Report to the Nation which covers among other things, statistics regarding hotlines. They estimated up to 7% of an organizations revenues were lost to fraud and reported that hotlines were an effective way to reduce that loss.

Senior Auditor Edwin Young said the ACFE study determined that fraud was often detected through hotline calls.

Ms. Brouchoud recalled that over half of the frauds were detected through hotline calls.

Council Member Yeh asked what type of impact this would have on resources.

Ms. Brouchoud said there would be two categories of costs. A contractor to run the hotline would cost between \$4,500 and \$6,500 a year. Staff time investigating complaints would be the biggest cost, and a difficult one to estimate without knowing how many complaints will come in.

City Manager James Keene added that the cost could be spread across the organization.

Chair Espinosa asked about the relationship between audits and the recommendations. The three recommendations that had not been done are listed as "to be determined" having been delayed due to other priorities. The Policy & Services Committee has asked repeatedly about them, and there was still no delivery date. He asked if Staff had an idea of when these items would

come back to the Committee and what the relationship between the Auditors Office and the completion of the audit recommendations was.

Mr. Keene said it was primarily the organizational capacity that dictated the ability to respond. Normally Kelly Morariu would support this program, but the City Managers office has been short staffed and there hasn't been time to manage these issues. The alternative would be to look at spending more money by outsourcing the work.

Chair Espinosa agreed with Mr. Keene's comments. He added there has been a long list of outstanding audit recommendations and it had been shrinking. There had been, for example, some ethics issues within the City and Council requested a response. The holdup has been the City Managers Office.

Council Member Barton agreed with Mr. Keene regarding the larger issue of institutional capacity to get work done. The economy has been a major factor as well. He also discussed the finite time that Staff has to accomplish many goals. He suggested with the new Council coming board, Staff should propose their goals and be upfront about the ability of the institution to get things done.

Council Member Kishimoto said she would prioritize the hotline since 7% of fraud being detected through hotlines was a compelling statistic.

Mr. Keene said that it would be unethical for him to make up a deadline if it can't be met. He said Staff was moving into a reality where priorities will need to be rethought. Every meeting a new project is added, but they are never taken off. Staff will need to work with new Council to make sure the priorities that are the most important to Council are what Staff will be working on. The ethics policy can be outsourced. The hotline should be discussed and defined.

Council Member Kishimoto said the public becomes frustrated when they call with questions and get bumped around.

Mr. Keene agreed, saying it was not a good use of customer or Staff time.

Council Member Kishimoto asked if there had been discussion about a central number for the public to call.

Mr. Keene said that there has been discussion about opening communications with public in a responsive manner.

Planning Director Curtis Williams said each department must understand who does what. Code Enforcement gets most calls, whether or not they have the authority to deal with the problem. The Code Enforcement Staff was very

knowledgeable, he said, and distributed the calls around the organization or external resources as needed.

Council Member Kishimoto asked if they were available on weekends.

Mr. Williams said they are on-call on weekends.

Council Member Kishimoto asked what would happen if a member of the public called the Police instead of Code Enforcement.

Mr. Williams said the Police will go out and talk with the public and can issue citations.

Council Member Kishimoto asked how the complaints are tracked.

Mr. Williams said he was not sure whether or not a specific case number was assigned and given to the public, but the complaints were tracked.

Council Member Kishimoto asked if there was enough cross training between departments.

Mr. Williams said it could probably be better, but the Code Enforcement Officers were knowledgeable.

Council Member Kishimoto asked if there could be a website that instructs the public where to call.

Mr. Williams said that would be possible, if it doesn't already exist.

Chair Espinosa asked who would look at that.

Mr. Williams said the Committee would be a good avenue to instruct Staff.

Chair Espinosa said that using search engines to help the public would be useful.

Mr. Keene added that a small number of Staff is testing some pilots on a customer based call system.

A member of the public, Emily Rensel said that her experience with the City was to be bounced around. She said Planning doesn't enforce their own site and design reviews.

Chair Espinosa suggested the Committee look into this.

Ms. Brouchoud stated that the audit contains recommended processes including for ethics and a hotline.

Mr. Young added that Phoenix, AZ was a model city for code of ethics and hotline issues.

Chair Espinosa said he understood the lack of resources. He said that if resources dictate that a project must be delayed, the Council needs to know that so they can adjust priorities if needed. He said he still doesn't know when these projects might be delivered.

Mr. Keene said Staff would send the Committee revised comments.

Assistant to the City Manager Kelly Morariu said the follow up report could come at the same time as the hotline report.

Council Member Yeh said he preferred an independent hotline. The employees and members of the public must be able to be anonymous. It falls on an auditor to audit the calls. Creating a culture that fraud waste and abuse will not be tolerated is important with the public.

Mr. Keene said that was helpful feedback.

Chair Espinosa confirmed that Staff would report back to the Committee.

MOTION: Council Member Barton moved, seconded by Council Member Yeh that the Policy and Services Committee accept the Report of the Status of Audit Recommendations.

Motion Passed: 4-0

3. Economic Development Strategy/Plan for the City of Palo Alto

City Manager James Keene said the report focuses on where the City is from an economic development point.

Planning Director Curtis Williams said there are three steps to creating an economic development strategy; 1) review of the City's economic approach for the last decade, 2) address the critical need to shift gears and become more aggressive, and 3) start the conversation regarding the future strategy. He stated that the Comprehensive Plan had general policies regarding economic development. Previous recommendations were attached to the Staff Report. He spoke about the deeply declining revenues, and the community's

understanding of revenues as they relate to City services. Staff would like to pursue the creation of a strategy for economic development. He spoke about the importance of all departments across the City being involved in the strategy. He said issues that would need to be discussed were; 1) how the City would attract new business, 2) what kind of business should be attracted, 3) how to support attractive businesses, and 4) how to educate the public about the link between attracting businesses and City services. Staff asked the Committee for suggestions so they could start creating an organizational plan.

Chair Espinosa inquired about the steps that would be required for Staff to come back to the Committee with a plan. He was concerned about when the plan would be implemented as it would impact the suggestions the Committee makes to Staff.

Mr. Keene said the policies and existing Comprehensive Plan were adequate, except for some questions; 1) does the City have defined implementation ideas, 2) is the City structured to deliver on those, and 3) how to address the paradox that the community wants to stay the way it is while adapting at the same time. The public expects the City to be very clear about these issues. He said that Staff needs policy guidance from the Council.

Chair Espinosa asked Mr. Keene what he will bring to the Council Retreat in 2010. He said that Staff said they would bring an overview of the plan.

Mr. Keene said the direct fiscal aspect is sales tax, which is important revenue and an important aspect to economic development, but it's not the only part of it. He said it was easier for Staff to discuss the fiscal impact than the value impact.

Council Member Kishimoto said that Staff should start with strategy. The challenge would be to have economic development and environmental protection at the same time. She stated that branding Palo Alto as business friendly is an important component to economic development. She said it's important to use existing assets such as location, and the existing businesses which are predominately business related services. Reducing the negative environmental impact compared to the GMP was important, she said. El Camino must be looked at. Downtown would have a competitive advantage if it were even more pedestrian friendly. Fiber to the home is important to attract the kinds of businesses needed. She said streamlining the permitting process through the website should be a priority. She added that if they were going toward a motion it should be to direct Staff to prepare an economic development strategy in coordination with the Comprehensive Plan update and the current Climate Plan implementation.

Chair Espinosa said they were not looking for a motion on this item. Staff was looking for a discussion.

Council Member Yeh asked what level of depth Staff would like the input to be at. He asked Staff to put together a snapshot of what adjacent cities are doing with respect to their economic development strategy. It would help to know why businesses choose Mountain View over Palo Alto, for example. He asked for a vacancy listing to help understand where and why gaps might exist. He suggested there is an opportunity to still move forward with the Business License Tax, but to start with a registry. He suggested a process map for new businesses.

Council Member Barton said the community needed to find some clarity regarding economic strategies. He said the Planning Commission was anti-development. The City Council was neutral about development. He stated that development was the biggest component to economic development. He said the development process was difficult in Palo Alto. The first step to creating an economic development strategy would be to have an open conversation, at the Council level, about what they want to do with development in this community.

If the community doesn't want development the City will have to cut services. He then suggested that re-development should be looked at. He listed a few areas that could be developed including the area between Hamilton Avenue and University Avenue, potentially including the area down to Forest Avenue. He said California Avenue was in need of updating. He said that the Fry's property had potential to be developed, the CCPI site was underutilized, and rezoning along El Camino should be discussed. The area near Orchard Supply Hardware could be better utilized and become Palo Alto's version of Fourth Street in Berkeley. He reiterated that until Palo Alto defines what they want to be with regard to development, nothing will happen.

Chair Espinosa said they should have a public conversation about economic development as it is a complex issue. He recommended an approach similar to the Green Task Force which opened up a large discussion that involved time lines and economic impact. Then it was all pulled back to create an action plan.

It was a long process, that was overwhelming at times, but eventually a plan was created and goals were set. If Palo Alto wants to be a thriving community they must increase revenue and concrete discussion must take place to determine the best way to accomplish that. He said it will be important, as they listen to everyone's ideas about programs to increase revenue, to have honest conversations about Staffing. Those programs all take people to run them.

Assistant to the City Manager Kelly Morariu added that the Green Task force also gave them a better understanding of how the community could partner with the City to accomplish these initiatives.

Chair Espinosa agreed and stated that the community was typically very responsive to these tasks.

Mr. Williams said that other areas that might not be economic development but still revenue generating, should be discussed as well.

Chair Espinosa said the plan itself will need to be defined at the retreat to determine if it's an economic development plan, or a revenue generating plan.

MOTION: Council Member XX moved, seconded by Council Member XX that the Policy and Services Committee recommend the Council directs Staff to perform a pilot study of potential prevailing wage impacts on selected Capital Improvement Projects to determine whether the prevailing wage requirement impacts the number of bids, project costs, change orders and other factors.

MOTION PASSED: 4-0

Mr. Keene spoke regarding the retreat. In the past it's been a half day session of identifying the Council Priorities. The Council will need to decide if that's the same format they will use in 2010.

Chair Espinosa said the Staff and City Manager may share what their priorities will be, but the forum was designed to give Staff the opportunity to hear from Council what their priorities will be.

Mr. Keene said that a forum for these strategic conversations should be established.

Council Member Kishimoto said the Comprehensive Plan, Economic Strategy Plan and Environmental Plan are all linked.

Mr. Keene asked Mr. Williams to update the committee

Mr. Williams said early next year Staff would like to meet with the Planning Commission and the Council in a joint session to discuss the vision statements in the Comprehensive Plan and their current relevance. The goal will be to get the Housing Element drafted by fall and the Comprehensive Plan the year after that. He said that the Economic Development Plan was fairly urgent and couldn't wait for the Comprehensive Plan in 2011.

Chair Espinosa said he agreed with Council Member Kishimoto that the three were linked and shouldn't be worked on in different time lines.

Mr. Williams said that the goal for the last year would be to work primarily on the Environmental aspect.

Chair Espinosa stated that Staff hadn't requested a motion, but Council Member Kishimoto discussed one.

MOTION: Council Member Kishimoto moved, seconded by Council Member Yeh, that the Committee direct Staff to develop an Economic Strategy in coordination with the Comprehensive Plan Update and implementation of the Climate Plan.

Chair Espinosa asked if she was requesting that the recommendation move through to the Council for adoption.

Council Member Kishimoto said Staff should come back with a strategy and timeline to integrate and coordinate those three plans. She said that it should go to Council then back to Policy and Services with a strategy.

Chair Espinosa suggested that the motion might be premature since Council hasn't acted on an Economic Development Strategy yet, He said it would be difficult to direct Staff to coordinate something that doesn't exist yet.

Council Member Kishimoto said that the Motion could be worded to direct Staff to develop a frame work to consider an Economic Development Strategy in coordination with the Comprehensive Plan Update and Climate Plan Implementation.

Council Member Yeh seconded the motion, agreeing with implementation strategy.

Chair Espinosa said the motion could be worded to say "if Council decides to move forward with an Economic Development Plan" then there was a consideration given for integration with the other two plans.

Council Member Kishimoto said that the motion was policy direction to develop a Strategic Plan for Palo Alto. All the other plans would be developed under that umbrella.

Chair Espinosa clarified that Council Member Kishimoto wants to see the Economic Development Plan move forward.

Council Member Kishimoto said the Motion could be to direct Staff to prepare a framework to integrate Palo Alto's Strategic Plan including Economic Development, the Comprehensive Plan and the Climate Plan.

Chair Espinosa said that the City doesn't have an Economic Development Plan.

Council Member Kishimoto said that there was an Economic Development Plan; it's just 10 years old. She agreed that the motion could integrate Economic Development whether or not there was a plan.

Council Member Yeh said economic development was covered in the existing Comprehensive Plan.

Economic Development/Redevelopment Manager Susan Barnes said there was a business and economic section in the Comprehensive Plan, and after that there was a Strategic Plan that was put into place. That Strategic Plan needed to be updated.

Council Member Yeh said it's an optional chapter.

Council Member Kishimoto reiterated that all the components need to be discussed simultaneously.

Mr. Keene asked if there was a preliminary step, for example a more extensive planning process to signal direction from the new Council. He asked if there was a vision or value statement the Council could adopt that would be explicit about this. That would provide Staff the opportunity to compare the work they are doing with the vision statement.

Council Member Kishimoto said the current plan has a contradiction that has to be fixed.

Chair Espinosa asked Mr. Keene if he felt the motion needed to be changed.

Mr. Keene said new Council and Staff could use some direction. The new Council definitely thinks Economic Development is important, but Staff needs a direction to work in.

Council Member Kishimoto said welcoming businesses and knowing where they should go and how they will work with the City's Comprehensive Plan was important.

Chair Espinosa asked if there were any suggested amendments to the motion.

Council Member Kishimoto suggested they could add the creation of a value statement.

Mr. Keene said some comprehensive direction would be helpful.

Council Member Kishimoto asked if they should have the Council identify certain locations for economical development.

Mr. Keene said that would not be part of a value statement.

Council Member Kishimoto asked Mr. Keene if he was asking the Committee to develop a value statement immediately.

Mr. Keene said that would be a conversation for the Council.

Council Member Yeh suggested the Council retreat would be better timing. He suggested that Staff create a flow chart to help Council understand what they need.

Chair Espinosa said he would vote against the motion because before the retreat they will get the 2010 overview. The process will be more defined by then with the elements integrated. He said he had an issue having a motion that refers to a plan that isn't confirmed yet. He felt that Staff understood what was expected of them with out a motion in this case.

Council Member Yeh agreed and said it's important that these points remain on the table with or with out a motion.

MOTION WITHDRAWN BY MAKER

4. Referral from City Council to Review Implementation Practices for Independent Police Auditor Contract

Assistant to the City Manager Kelly Morariu said that on November 2, 2009 the City Council received the independent Police Auditor's Annual Report for 2008. Council had a concern about the timeline and wanted Staff to have a conversation with the Policy & Services Committee regarding the timeline and implementation practices for the Police Auditor's contract. She pointed out that the dates Staff recommended for the semi-annual reports were listed incorrectly in the Staff report. The period covering January 1, 2010 through June 30, 2010 would be reported to the City Manager by August 31, 2010. The period covering July 1, 2010 through December 3, 2010 would be reported to the City Manager by February 28, 2011. The City Manger would then forward the reports on to the City Council at the next available Council Meeting. The Police Auditor was delayed with the June 30, 2009 report and hopes to get that to Council in December. She also addressed Mr. Abraham's comments regarding racial profiling by saying that the follow up report was due to Council,

and that Staff would check on the status. The next semi-annual report would be due in February 2010.

Council Member Barton said the schedule was fine but that he was concerned that OIR and Gennaco have been slow and was concerned about the timing. Penalty components for not meeting the deadlines should be considered for the next contract revision.

Chair Espinosa agreed that the late reports were a consistent issue. He said that realistic expectations need to be set for the Council.

City Manager James Keene said Staff would get tests on this at the end of February. The second half of the fiscal year would be reported on in December and the first half would be done two months later. He said that if there was not the deadline performance on the first item in February, the City would be in a position to negotiate penalty components.

Council Member Barton asked if the meetings with the Police Chief and the Police Auditor have been taking place on a quarterly basis as scheduled.

Mr. Keene said they were not formalized but they would be.

MOTION: Council Member Barton moved, seconded by Chair Espinosa, to recommend to Council the proposed reporting period and request the City Manager work with the Contractor in order to fulfill both the obligations and the schedule of the contract.

Council Member Kishimoto said there was an inherent contradiction with the Police Auditor being hired by the City Council and reporting to the Chief. She thought the Police Auditor should report directly to the City Council and the Council would then report down to the City Manager and Police Chief.

Mr. Keene said there was not mechanism in place for the Council to manage the contract.

Council Member Kishimoto recommended the City Auditor manage the contract in order to avoid a perception of conflict.

Mr. Keene said he wanted to make sure that recommendation was allowed by the City Charter.

Council Member Kishimoto asked Mr. Keene to clarify if he thought it was against the City Charter for the City Auditor to manage the Police Auditor contract.

Mr. Keene said executive and legislative functions were invested in the Council. The City Manager's job was to carry out the Executive function of the Council as accountable to the Council. The City Manager function was to manage the contract but not the content of the Police Auditor's report, which would go straight to Council with no editing or filtering by the City Manager.

Council Member Kishimoto stated that the Police Chief reported to the City Manager.

Chair Espinosa said the issue was not just overseeing the implementation of the contract, but the point of the contract was to have an independent Auditor role, which was much more aligned with audit work.

Mr. Keene said it was similar to an out-of-house Auditor.

Council Member Kishimoto asked if the City Auditor managed other external Auditor contracts.

City Auditor Lynda Brouchoud said that, according to the City Charter, the City Auditor manages external financial audit contracts. She asked if the City Clerk's Office was supposed to manage the Police Auditor Contract.

Chair Espinosa stated it was a member of the public that made that suggestion.

Council Member Barton said that he thought a previous motion changed the Police Auditor's reporting structure. He said the job description in the Staff Report was not the current one.

Mr. Keene stated that he wasn't sure if the contract that was executed actually aligned with Council direction.

Ms. Morariu said that the most recent contract did change the reporting relationship to reflect the Police Auditor reports to the City Council but that the contract was managed by the City Manager.

Mr. Keene reiterated that the Police Auditor reports to the City Council with the City Manager forwarding reports to the Council. The Police Chief has been removed from the process.

Council Member Kishimoto pointed out that the Staff Report states that the Police Chief and City Manager meet on a quarterly basis; it should be semi annual.

Ms. Morariu stated that had been changed in the contract.

Council Member Kishimoto said the report should also state the Police Auditor meets with the City Manager and Police Chief at least twice a year and formally meets with the City Council once a year.

Chair Espinosa clarified that they were reducing the number of formal meetings.

Council Member Kishimoto agreed Staff was trying to make it more realistic.

Council Member Barton said there wasn't much point in meeting quarterly with the City Manager if the report comes out twice a year.

Chair Espinosa thought the quarterly meetings were halfway in between reporting periods.

Mr. Keene said meetings have been happening, but wanted to know if a quarterly basis was needed.

Council Member Kishimoto said quarterly makes sense.

Mr. Keene said the updates were a way to ask the Police Auditor, separate from the report, if there were some trends or information the Council should be alerted to. He added that if there were a serious trend, the Police Auditor would not wait for the reporting date to notify Council.

Council Member Kishimoto reiterated they would meet at least twice a year, and restated her opinion that the City Auditor should manage the contract for the Police Auditor.

Chair Espinosa said the only subject that would need to be changed in the contract and with a motion would be if there was a change in reporting from the City Manager and City Council to the City Auditor.

Council Member Kishimoto said the City Auditor would only be managing the contract.

Council Member Barton clarified that Council Member Kishimoto was suggesting the Police Auditor still report to Council but that the contract should be managed by the City Auditor. He stated that he was not in favor of Council Member Kishimoto's suggestion and would not support it being incorporated into his motion. He stated that the City Managers office was set up to manage the contract and get Council the information in a way the City Auditor wasn't.

He said the potential for conflict of interest was so small; the shifting of the duties to another office was more trouble than it was worth.

SUBSTITUTE MOTION: Council Member Kishimoto moved, seconded by Council Member Yeh that the implementation practices for the Independent Police Auditor Contract be changed to have the Police Auditor report directly to Council, with the City Auditor's Office administering and managing the contract.

Council Member Kishimoto said she had full faith in the City Manager. Her motion was intended, she said, to address public perception. The City Auditor already managed other external audit contracts so it would not be difficult for the office to absorb.

Council Member Yeh asked if having City Manager responses attached to the performance audit was something Staff was planning to do.

Mr. Keene said the Council's direction was to give the reports immediately to them. He said that, if there were issues, Council could ask him to respond.

Council Member Yeh said that he seconded the motion because public perception was important, and that it was also important to hear management's response. He stated that it needs to be a constructive process. He suggested a conversation with the Police Auditor to determine the best way to integrate management comments into the report.

Mr. Keene agreed there was a perception issue. He then stated the basic form of Palo Alto's Government was for the Council to delegate issues to the City Manager. The City Manager was then held accountable to perform. He said it made sense for the Financial Audit to go to the City Auditor. But he warned that sending the Police Audit to the City Auditor would set precedence for other work to go to the City Auditor instead of the City Manager. He stated that his job description became unclear at that point. While the Police Auditor may be just one issue, it would raise questions about what work the Council wanted to maintain for themselves and what work they would delegate to the City Manager or any of the Council Appointed Officers. He stated that he would like to have more time for everyone to think through the implications of the suggested changes as they affect the form of government in Palo Alto.

Council Member Yeh asked if Ms. Brouchoud was familiar with the process in San Jose as they also have an independent Police Auditor.

Ms. Brouchoud said the Police Auditor in San Jose was a Council Appointed Officer, separate from the City Auditor. She stated the City Auditor's office was

flexible in considering taking on the Police Auditor contract management, though it may not follow the same rules as other audits do.

Chair Espinosa asked if it would be better to revisit this issue at the next meeting, giving Staff time to research the implications. He added that he tends to be in favor of the motion but has concerns about moving forward without any needed research.

Mr. Keene added that he was convinced this was form over function and reiterated that with the current process he was only relaying a report from the Police Auditor to the Council. If it needed to be rerouted, it would be problematic for the role of the City Manager and the structure of the government. There were many ways to organize this type of contract, but there should not be a situation where over time the Council has a large number of Contracts they were administering all over the organization with the City Auditor managing the contracts. He asked what accountability the City Manager would have in that scenario. The Charter states that the City Manager was responsible for the day-to-day operations, which included contract administration. He said a larger discussion may be called for. A member of the public suggested a fifth CAO, which was what this was close to being.

Council Member Barton stated that he agreed with Mr. Keene. The City Manager manages contracts for union negotiations even if there was a conflict with the people he supervises that may be affected by those negotiations; they get a raise, and he gets a raise. He in effect manages the other CAO contracts through Human Resources. Perhaps a fifth party was needed to handle those contracts to make sure there was no conflict. He stated that the change was unwarranted and set a bad precedent.

Chair Espinosa said he was not convinced Council Member Barton's argument was accurate as the issue was about contracts not negotiations. But that it was form over substance. The perception was there. He asked if the City Manager would be able to look into this prior to the next Policy & Services meeting or would it have to be the January meeting.

Ms. Morariu said there was typically no January meeting so it would be February.

Chair Espinosa asked about the December 17, 2009 meeting.

Ms. Morariu said there were four items on December 17, 2009 already.

Chair Espinosa said that was a packed agenda, but it's more important to determine if Staff would be able to come back with feedback and a report by then.

Ms. Brouchoud stated she would like to know more about the history of the Police Auditor Contract and how it was structured.

Ms. Morariu said it may not need to be a written report.

Mr. Keene said the substitute motion as stated may conflict with the Charter.

Council Member Barton asked if there was any time where there was a reason to question, in the three years since there has been a Police Auditor, if the City Manager's Office has played a biased role in relation to the Police Auditor.

Council Member Kishimoto said that in the last ten years there has been reason to question it.

Council Member Barton stated that there has only been a Police Auditor for three years.

Mr. Keene reminded the Committee that Palo Alto's structure was defined by the Charter.

Council Member Kishimoto asked if Mr. Keene thought the contract as it existed might be illegal.

Mr. Keene said he didn't think the contract was illegal, because the Police Auditor was not technically a CAO. If the Committee had suggested the City Auditor become the Police Auditor, he would have supported that. It's the contract administration movement that he doesn't support as it redirects the divisional responsibilities as defined in the City Charter.

Chair Espinosa asked Council Member Kishimoto if she wanted to retract her motion.

Council Member Kishimoto said she didn't expect this to be an issue and was trying to respect the emotional nature of the police issues. Perception was an important component to earning the public's trust. She reiterated that she had complete trust in the current City Manager, but was still concerned about perception.

Mr. Keene said that another way to look at it was that they were not asking the City Auditor to perform an audit. They would be asking her to manage a

contract on behalf of Council. This was similar to the independent Financial Audit as it already existed. He asked the City Auditor how that process was developed.

Ms. Brouchoud said it was called out in the Charter.

Mr. Keene said the Charter defines these roles.

Council Member Kishimoto said that this was a Police Auditor issue and asked if Mr. Keene thought this should be in the Charter.

Mr. Keene said that for now his argument was that the Charter defines the City Manager's role in this. If the Council decided to move purchasing functions to the City Auditor, it would be an issue.

Council Member Kishimoto pointed out that she was discussing an Auditor function moving to the City Auditor.

Mr. Keene said that it was called an Auditor, but it was really contract management.

Council Member Yeh reiterated that this was an internal control issue, not a comment on anyone's abilities. Auditors look at risk and identify potential abuses. If, for example, the current reporting delay had been an intentional eight month delay, the Council would have no way of understanding this was happening. It's more to highlight that there were risks inherent with this operational plan. He said that whether this Police Auditor report was flowing through the correct channels must be examined. Because of the independent nature of the City Auditor's office, it makes sense for the Police Audit or contract management to be there. He agreed with the City Manager about contract management, but said this was different because it has an added level of sensitivity.

Chair Espinosa asked if Council Member Kishimoto would be willing to let Staff look into this issue. He said he could see both sides.

Mr. Keene said that they would if they can.

Chair Espinosa said they would need a substitute motion and then they would come back to the original motion.

Council Member Barton it shouldn't be a substitute. It was an amendment.

Council Member Kishimoto asked if the small language changes from the Staff Report should be added to the motion.

Ms. Morariu said it's the discretion of the Committee whether or not to change the timing of the reports.

Chair Espinosa said they need to know the actual language in the contract first.

Council Member Kishimoto said they should adopt a schedule now.

Ms. Morariu said the Scope of Services stated they would meet with the Manager and Police Chief on a quarterly basis, produce two semi annual reports and hold meetings with the Council to discuss those reports.

AMENDMENT TO SUBSTITUTE MOTION: Council Member Kishimoto moved, seconded by Council Member Yeh, to direct Staff to research the pros and cons of changing contract administration from the City Manager to the City Auditor and report results to the Committee by December 17th or as soon thereafter as possible.

SUBSTITUTE MOTION PASSED: 3-1, Barton no

Chair Espinosa asked what the process was regarding HRC and public discussion.

Mr. Keene said it's a contract for the Council so they would direct it to go to the HRC or where they chose.

Chair Espinosa asked if Mr. Abraham met with the Police Auditor as a private citizen because he has a wealth of knowledge and research history that could be integrated into the Committee's learning's.

Ms. Morariu said it was not coordinated through the City Manager's Office.

Council Member Kishimoto asked where the racial profiling statistics report was.

Ms. Morariu said Staff was going to research that and report back to the Committee and Council.

Council Member Kishimoto asked if it was part of the Police Auditor's job description to work on the racial profiling.

Mr. Keene said that was part of the response from the racial profiling incident in the fall of 2008.

Council Member Kishimoto clarified that, for that one incident, the Police Auditor was involved, but otherwise that's not part of the job description. She said that it should be something they would look at.

Mr. Keene said Staff would report back.

Council Member Kishimoto said it shouldn't even need to be called out and it may not be called out to make a specific report about racial profiling.

Council Member Barton said the main component Police Auditor's job description was to review citizen complaints. He suggested that could be added at some point, but currently that report was the focus.

Ms. Morariu recalled that Council direction was not about the data itself, but more directed toward the policies and procedures related to racial profiling.

Mr. Keene said that the current Police Auditor may not have the capacity for this level of detailed analysis regarding racial profiling data.

Chair Espinosa said that the specific language was complaint driven data rather than analyzing general trends.

Council Member Kishimoto said that it does call out analyzing trends in the current scope.

Chair Espinosa said it calls out analyzing trends of complaints not broader statistical data.

Council Member Kishimoto said she assumed that the Police Auditor looked at that. She asked if language should be added to include racial profiling data.

Chair Espinosa said it was a substantial change in the content of the contract.

Council Member Kishimoto said she wasn't expecting a detailed report, but the information should be understood and it's part of why a Police Auditor was needed.

Mr. Keene said that if the committee would like to direct Staff to report on the Scope of Services for the Police Auditor, they will. If amendments were needed, Staff would be happy to do that.

Chair Espinosa said that additional work would cost more, and he wanted to make sure the conversation wasn't dropped. It was important to know what they were doing and what they were not doing.

MOTION RESTATED: Council Member Barton moved, seconded by Chair Espinosa, to recommend to Council that the reporting period, as outlined in the Staff Report was accepted and to request the City Manager work with the Police Auditor to understand timelines and implications of the contract.

Motion passed: 4-0

5. Discussion of Upcoming Meetings and Topics

Ms. Morariu said there is a Special Meeting on Thursday, December 17, 2009 at 7:00 pm. The agenda includes Prevailing Wage, the Social Networking Policy, the Legislative Program, and priority setting.

Chair Espinosa mentioned that each of those topics will be time consuming.

Council Member Kishimoto asked if Staff was bringing back the structure of the Prevailing Wage Study.

Ms. Morariu said that was correct as well as sharing the results of some outreach.

Chair Espinosa suggested the meeting on December 17th, 2009 start at 6:00.

ADJOURNMENT: Meeting adjourned at 9:47 p.m.