

Regular Meeting
November 6, 2002

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	<u>ADJOURNMENT</u> : Meeting adjourned at 9:55 p.m.	36

Chairperson Kleinberg called the meeting to order at 7:10 p.m. in the Council Conference Room, 250 Hamilton Avenue, Palo Alto, California.

Present: Freeman, Kleinberg, Mossar
Absent: Beecham

1. Oral Communications

None.

2. Report on the Status of Audit Recommendations

Assistant to the City Manager Chris Mogensen said the Policy and Services (P&S) Committee was asked to consider the audits related to building inspections and class registration.

City Auditor Sharon Erickson said the City Auditor's Office prepared one report for both committees rather than two separate reports. When the report was presented on October 1, 2002, the Finance Committee reviewed the portion of the report pertaining to its domain. The Palo Alto Municipal Code (PAMC) directed the City Auditor to prepare the report once a year.

Council Member Freeman thought the P&S Committee discussed which items the Finance Committee would review and which items the P&S Committee would review. The P&S Committee's solution was to review everything.

Mr. Mogensen said the P&S Committee's selection process addressed consultant agreements only.

Council Member Freeman asked how staff determined which Standing Committee would review which audit report.

Ms. Erickson said initially a brief discussion was held with the Audit Committee. The two audits fell into two categories, one item was related to finances and the other to policies. The Finance Committee reviewed items like purchase orders, travel expenses, overtime expenses, etc., which were clearly limited to financial matters. The first report, on building inspection practices, was conducted in 1997. From the report, two recommendations remained outstanding; both of which had been resolved. One was related to re-inspection fees and expired permits. The second report was an audit of class registrations. Two recommendations from the report had been implemented. The items were related to issuing the *Enjoy* catalogue in advance of registration and training staff in various systems to obtain

additional information from the computer and using the computer for reporting capabilities had both been implemented. Three recommendations were still outstanding from the audit of class registration, all of which were currently in process: 1) implementing on-line registration; 2) allowing residents to register for classes in advance; and 3) for the Community Services Department to come up with a method for determining the costs of various classes and a cost allocation methodology. The Finance Committee reviewed the rest of the report.

Vice Mayor Mossar recalled the old audits and was pleased to see the progress, particularly concerning the classes. She looked forward to the final product.

Chairperson Kleinberg asked about the cost of the classes.

Ms. Erickson said staff would conduct a cost-recovery analysis.

Chairperson Kleinberg asked if staff would determine whether the fee actually covered the cost of the class, or the extent to which the fee was covered by the true cost.

Ms. Erickson said yes.

Chairperson Kleinberg asked whether a pre-set standard of quality would be applied or if staff would simply come up with a number such as what staff would do with the results.

Ms. Erickson said the point of the recommendation, as she interpreted it, was to enable the department to obtain information to determine which classes were breaking even and which classes were costing the City money. The City's policy was to give residents a 10 percent discount on classes. The point was not to come up with a new policy but enable staff to have the information to know what to bring forward if policy choices had to be made.

Vice Mayor Mossar thought the original conversation addressed the realization that the City had been in a mode of seeking tradeoffs and where the City was spending money unproductively or not spending sufficient money where it should be spent. The direction was an attempt to gain a better understanding, for example, about whether it was a good idea for the City to offer Swahili painting classes on Friday afternoons. The data would be baseline information from which questions could be asked and the mix changed, if necessary.

MOTION: Vice Mayor Mossar moved, seconded by Freeman, that the Policy and Services Committee approve the status of audit recommendations from the audits of building inspection and class registration.

MOTION PASSED: 3-0, Beecham absent.

3. Continued Discussion on Council Protocols and Appropriate Council Interface with City Staff

Assistant to the City Manager Chris Mogensen said the larger packet had been provided to the Policy and Services (P&S) Committee on May 6, 2002, and included Council protocols from cities in surrounding jurisdictions. In addition, Council Member Mossar submitted a document from the San Francisco Bay Conservation and Development Commission (BCDC) on ex parte communications. Staff took the policy information from the City of Sunnyvale, kept some of the bullet points, for example, Council conduct with each other, staff, the public, and boards and commissions, and removed some of the narrative.

Chairperson Kleinberg thought the P&S Committee's prior discussions were unfocused. In order to have a more focused discussion, she suggested the P&S Committee start with what was commonly accepted. Sunnyvale's protocols were considered the finest in the area. Palo Alto was almost alone in not yet having adopted a protocol policy. The goal was to have some non-legal common policies and civil protocols upon which all Council Members could agree such as a code of ethics. The issue was not raised in response to a particular problem or incident. Her desire was for the P&S Committee to review Sunnyvale's protocol. At the next P&S Committee meeting on November 26, 2002, when all four members were present, more input could be gained. At places, was a letter from Council Member Morton regarding "Policies and procedures to foster more professionalism and enhance Council performance." The intention was for the P&S Committee to address some of the items being raised. However, the P&S Committee had not been given sufficient time to review the document. The subject matters also included the Brown Act, which was not an item on the Committee's agenda. Therefore, the item could not be addressed. Although the next subjects, Council/Staff Interactions and Council Member Interaction, appeared to relate to the agenda item, the P&S Committee had not been given an opportunity to read it. Whenever a Council Member raised concerns, respect should be given to the issue and addressed. Without having had an opportunity to peruse the document and because other colleagues were mentioned, it was unfair to discuss it at the current time. Rather than addressing, word-for-word and sentence-by-sentence, the

current meeting should go through what was presented to determine whether the recommendations might handle the colleague's concerns. If not, the P&S Committee would again address the issue and would have had sufficient time to read the document more carefully. Council Member Morton's five-page letter concluded with, "As to our interactions as Council Members, I recommend that we meet as a committee-of-the-whole to review the recommendations of the P&S Committee and, with the assistance of a professional facilitator, deal frankly, openly and I hope constructively with the issues outlined in this memorandum." The P&S Committee did not have the power to decide how the issues would be handled, which was up to the Council. The P&S Committee did have the power to make recommendations to the Council about the policies and procedures.

Council Member Freeman queried if one person was talking, the other committee members allow that person to finish before speaking. The Council, at her request, also received a book entitled, *Ethics for Elected Officials*. The P&S Committee already agreed to use the Sunnyvale document as a basis upon which further discussions would be made. Without having received legal advice on Council Member Morton's letter, she was uncomfortable discussing any of it because it contained information from a closed session of Council, which she was unsure should ever be publicly documented.

Chairperson Kleinberg said the document was already a public document because it had been presented to full Council, whether right or wrong.

Vice Mayor Mossar said Council Member Morton made specific recommendations, which did not ask the P&S Committee to consider the document.

Chairperson Kleinberg said aside from the content of Council Member Morton's letter, there were recommendations, which was why she said that if his recommendations were sufficiently addressed by the P&S Committee, that part of it would be handled. If not, the P&S Committee would hear from him.

Council Member Freeman wanted to make a motion that the P&S Committee not discuss the document until advice about its legality was obtained from the City Attorney's Office.

Chairperson Kleinberg thought a motion was unnecessary because as the Chair, she already indicated the document would not be discussed.

Council Member Freeman said the document was also not stamped, asking whether documents had to be stamped if it came from a colleague.

Deputy City Clerk Mary Jo Bucchino indicated any documents presented to the City Clerk's Office for the Council from the public were stamped but not from staff or the Council.

Chairperson Kleinberg clarified the document came through the City Clerk's Office and was put at places. She wanted the P&S Committee to begin with a review the "executive summary" of Sunnyvale's protocol to determine its appropriateness for Palo Alto.

Vice Mayor Mossar thought the summary was very good and felt it was unnecessary to discuss every line item. Making suggestions or additions was a more productive use of the committee's time.

Council Member Freeman wanted to go through the document in detail. It was a valuable document to discuss more than individually in the Committee. She was in favor of the initial suggestion to review section-by-section.

Chairperson Kleinberg agreed to be more methodical in going through the document. She was unsure the document she presented to the P&S Committee when the item was first addressed was in the packet.

Mr. Mogensen said the document had not been included.

Chairperson Kleinberg said the first section was entitled, "Council Conduct with One Another." The Sunnyvale document, although much larger, had been consolidated into the smaller document. She asked whether the first item of conduct, "use formal titles," meant Council Members could not call one another by their first name, but must preface it with "Council Member."

Council Member Freeman thought that was the meaning.

Mr. Mogensen agreed, based on the narrative of the entire document.

Chairperson Kleinberg asked whether Council wanted to be that formal.

Council Member Freeman thought, more often than not, Council tried to be formal when it was in a Council meeting. Occasionally, a slip would occur and a Council Member would use a first name. If a policy encouraged using titles, it might eliminate feelings of thinking a title was not being used for a

"hidden" reason when it was just a mistake. She thought using formal titles was a good goal, as long as everyone understood people were human and could make mistakes.

Chairperson Kleinberg thought one of the nicest things about Palo Alto was that it was not stuffy, but friendly, even in a disagreement. Using formal titles seemed stuffy to her. She questioned whether the same code would apply to committee meetings, since it was a public meeting. The point would be left in and the entire Council could decide.

Council Member Freeman understood Chairperson Kleinberg's concern about stuffiness, but still thought it was a good goal. On the East Coast, where she grew up, people were always addressed as "Mr." and "Mrs." That was considered a sign of respect, which might help the Council in other areas.

Chairperson Kleinberg said because Palo Alto was so informal, the use of a formal title sometimes intimidated disagreement.

Council Member Freeman thought the preamble was important, so she read it into the record. "Councils are composed of individuals with a wide variety of backgrounds, personalities, values, opinions, and goals. Despite this diversity, all have chosen to serve in public office in order to preserve and protect the present and the future of the community. In all cases, this common goal should be acknowledged even as Council may 'agree to disagree' on contentious issues."

Chairperson Kleinberg said the second item was "Practice civility and decorum in discussions and debate."

Council Member Freeman liked the item. Because Council Members were all different, each had different interpretations of civility and decorum. What one person thought was civil behavior might not be considered civil by another. Although the policy was of great global value, trying to actually put it into practice might involve gray areas. She was unsure how to implement the policy other than the fact it was a great goal.

Chairperson Kleinberg thought the Council, as adults and professional volunteers, understood what it meant to be civil and have good decorum. She believed the Council would be respectful of each other and not twist the Code of Conduct.

Council Member Freeman thought the current Council had been unable to practice civility and decorum continuously.

Chairperson Kleinberg hoped the P&S Committee would not discuss the item in reference to any particular person, incident, or Council because the goal was to come up with a policy that could be used for a long time.

Council Member Freeman asked how the policy about civility and decorum could be implemented.

Chairperson Kleinberg thought it was up to the Chairperson to ensure the meetings were run smoothly, debate constructive, and the public interest served. Others in the meeting could look to the chair to enforce and refer to the fact that all agree to be civil to one another.

Council Member Freeman said as a semi-new Council Member, it would not have occurred to her to say anything to the Chair.

Chairperson Kleinberg said Palo Alto had no policy upon which such action could be based. It was the responsibility of the Chair to ensure public meetings were conducted in accordance with practices and protocols.

Mr. Mogensen said the original document might be of assistance, since it contained further definitions.

Chairperson Kleinberg said if someone thought the Chair missed something offensive, a reminder could be made. She suggested a bullet be added clarifying the chair would enforce the policies and meetings would be conducted in accordance with the adopted policies.

City Attorney Ariel Calonne said the Council's procedural rules made it clear the Mayor was to enforce decorum at Council meetings.

Chairperson Kleinberg said any Council Member in any public meeting should be able to ask the Chair to enforce the policies and protocols. The next bullet item, "Honor the role of the Chair in maintaining order," should be changed to Palo Alto's language from "chair" to "presiding officer."

Council Member Freeman thought the item was broad. In a recent Council meeting, the City Attorney said the Mayor, Vice Mayor, or presiding officer had the right to change certain aspects of the meeting. If the presiding officer was changing the typical format of a meeting, it should be presented to the body as a whole.

Chairperson Kleinberg thought Council Member Freeman's comment more appropriately addressed the presiding officer's roles and responsibilities, which was not the conduct toward one another.

Council Member Freeman thought it was conduct. The Council should understand what the rules were going to be.

Chairperson Kleinberg asked the City Attorney whether the Council had procedural rules for Council meetings.

Mr. Calonne said yes. In the specific instance, when the rules did not speak to an item, the presiding officer could make a decision, subject to appeal to a majority of the Council. The issue was a "catch all" when there was no rule. It was not so general as to say the Mayor or Chair could readjust all of the procedures. The rules attempted to spell out the order of debate but did not lock in questions, staff questions, etc.

Chairperson Kleinberg clarified the rule went to the format of discussing staff presentation questions, motions, the order in which things were handled, etc.

Mr. Calonne said yes. The procedures also included issues regarding deliberation and debate.

Council Member Freeman said although the detail did not fall under Council conduct with one another, it was helpful and would avoid conduct that was not constructive if people knew what was happening right away.

Chairperson Kleinberg thought perhaps that the issue of the order of the meeting should be included in the handbook for Council procedures. She asked whether the handbook was adopted by the P&S Committee first and then passed along to the Council for adoption.

Mr. Calonne was unsure, although he was fairly sure the P&S Committee reviewed the document first.

Chairperson Kleinberg said there might be items that went directly to Council procedures.

Assistant City Manager Emily Harrison said Council Member Freeman's suggestion was a good one and should be incorporated into the handbook.

Chairperson Kleinberg was unsure whether the P&S Committee had the authority to do so. Suggestions for the handbook should, perhaps, be referred to the Council. The Council could direct the item back to the P&S Committee for review.

Mr. Calonne read the Council protocols and procedures to overlap between and betwixt. The procedures were intended to establish some formality and regularity so people knew precisely what to expect. When rules were applied against a particular point of view, it was not viewed as an effort to quash but as a fair application of the rules. When the present City Manager was hired, the Council went through a process of determining what made sense and what did not. The process was not completed. The Council not had the time to analyze and embrace all the rules of procedure. The Council had become a little ad hoc, and he believed the public would have more respect for what the Council was doing if the level of formality was increased in the proceedings. The trappings of formality were in place for a reason. While it might appear pretentious, the idea of having some choreographed regularity in meetings was helpful.

Chairperson Kleinberg questioned the agenda items for the P&S Committee's current meeting.

Mr. Calonne stated amending the handbook was not on the agenda; however, the protocols and procedures overlapped and should be addressed during the next meeting.

Chairperson Kleinberg clarified if the P&S Committee came up with ideas or suggestions, it would be best reflected in a change to the handbook.

Mr. Calonne said he would so advise.

Chairperson Kleinberg suggested asking the Council if it wanted to direct the P&S Committee to examine the handbook again. Mr. Calonne's comment about the overlapping of the items was appropriate and the issues needed to be addressed. The line was unclear.

Ms. Harrison said most of the documents before the P&S Committee included what staff called the handbook plus the protocols. Staff was lacking in not having the protocols included in the overall piece. Procedures were in place and could be changed. What was significantly lacking involved what the discussion by the P&S Committee that evening.

Vice Mayor Mossar said the item, "Honor the role of the chair in maintaining order," was a specific concept, i.e., maintaining order in the room to make sure the audience was respectful, etc., which was the role of the Chair. It was not an item about the order of proceedings.

Chairperson Kleinberg said the item addressed conduct at the meeting, whereas Council Member Freeman's suggestion regarded procedures.

Council Member Freeman also thought there was a blur in the conduct because conduct could degrade quickly if it was felt that a procedure was changed for some reason.

Chairperson Kleinberg discussed when she was first on the Council and had presented an item she wanted addressed. A swift motion was made to table the item. She felt she had been blind-sided and the procedure had been used to quash her. Procedural maneuverings could look not only political, but also personal. Council Member Freeman was correct to raise the issue. The point raised by Mr. Calonne was that the more Council understood, used and became accustomed to formality, the less it would seem that procedures were being used against each other, rather than just to maintain good conduct and good government. There were probably procedures in addition to the one mentioned by Council Member Freeman about discussion and format, and the use of certain parliamentary procedures. The suggestion about the use of procedures and order of format should be reexamined in the handbook. Regarding honoring the role of the presiding officer, the full text was read into the record, "Honor the role of the chair of the public meeting in maintaining order and equity. Respect the chair's efforts to focus discussion on current agenda items. Objections or disagreement about the agenda or the chair's actions should be voiced politely and with reason following parliamentary procedure." If the person being asked to run the meeting should be given respect to do so, even if it was not done the way everyone else would do so. Given the protocols, handbook rules, etc., the chair would hopefully get it right most of the time with a little flexibility for the fact that the person was in charge and was trying to serve many interests all at the same time. The issue was one of equity. The extra words added something and were not superfluous.

Council Member Freeman asked about Sunnyvale's wording.

Mr. Mogensen referred her to the Sunnyvale wording toward the front on page 6.

Chairperson Kleinberg said her paraphrase was similar but not exactly like Sunnyvale's wording.

Vice Mayor Mossar liked Chairperson Kleinberg's wording.

Chairperson Kleinberg said in many ways, the longer version was helpful because it satisfied concerns such as Council Member Freeman's. Without really flushing it out, questions could arise.

Vice Mayor Mossar thought the executive summary was just that, a summary of the wordier version.

Chairperson Kleinberg clarified the executive summary represented the topics but the P&S Committee could add words and clarification.

Council Member Freeman said the words "practice civility and decorum" included words that described civility and decorum.

Chairperson Kleinberg said when the P&S Committee finalized its vision, it might add words to clarify and be more specific about what the headings meant. The next bullet was, "Avoid personal comments that could offend other Council Members."

Ms. Harrison said there was a description of what a Council Member would do in the event an offensive comment was made. A choice could be made to include or not include it in the final document.

Chairperson Kleinberg said the Council Member could act during the meeting and not have to wait.

Council Member Freeman said the Council Member could "call for a point of personal privilege."

Chairperson Kleinberg said the last bullet under public meetings was "Demonstrate effective problem-solving approaches."

Council Member Freeman said the words that were described beneath were helpful. There was a leadership responsibility for people in the meeting, which somehow needed to be reminded. The actions tended to roll into the actions of the community. Clarity was needed to indicate leadership.

Ms. Harrison said the Sunnyvale document contained an excellent example, "All Council Members shall serve as a model of leadership and civility to the community."

Chairperson Kleinberg clarified the item was under the Council's dealings with the public. She suggested another line: "Be respectful of other people's time. Stay focused and act efficiently during public meetings but refrain from public criticism of colleagues who are less so." Her intention was to address times when a Council Member felt so passionately about an item that they went on too long, which was human nature. It was up to the Chair to ask the colleague to wrap it up.

Ms. Harrison asked whether Chairperson Kleinberg wanted an additional bullet.

Chairperson Kleinberg said yes.

Ms. Harrison said Sunnyvale's document included an overview of the roles and responsibilities, which had some suggestions for all Council Members on page 3 of 15. If the P&S Committee wanted to call out any or all of the items, it should do so.

Chairperson Kleinberg said the behaviors included items for the Mayor, Vice Mayor, and all Council Members.

Vice Mayor Mossar read Sunnyvale's Code of Conduct for Council Members, which included: "All members of the City Council, including those serving as Mayor and Vice Mayor, have equal votes. No Council Member has more power than any other Council Member, and all should be treated with equal respect. All Council Members should: 1) Fully participate in City Council meetings and other public forums while demonstrating respect, kindness, consideration, and courtesy to others 2) Prepare in advance of Council meetings and be familiar with issues on the agenda; 3) Represent the City at ceremonial functions at the request of the Mayor; 4) Place activities and events on the Council's weekly activities calendar that invite official participation of all Council Members. A list of the activities of individual Council Members may also be submitted for public record at the option of the Council Member; 5) Be respectful of other people's time. Stay focused and act efficiently during public meetings; 6) Serve as a model of leadership and civility to the community; 7) Inspire public confidence in City government; 8) provide contact information with the Council Executive Assistant in case an emergency or urgent situation arises while the Council Member is out of town; 9) Demonstrate honesty and integrity in every action

and statement; and 10) Participate in scheduled activities to increase team effectiveness and review Council procedures, such as the Code of Conduct.

Chairperson Kleinberg suggested two more additions: "Be responsible for the highest standards of civility and honesty ensuring the effective maintenance of intergovernmental relations," and "Respect the proper roles of elected officials and City staff in ensuring open and effective government."

Vice Mayor Mossar thought the second suggestion would come under Council's interaction with City staff.

Chairperson Kleinberg asked her colleagues whether anything in the Sunnyvale Code of Conduct should be addressed.

Council Member Freeman asked about the fourth item, given the information available to Council Members via email and postings on the Internet site.

Chairperson Kleinberg thought the item suggested listing events Council Members were attending with an invitation to colleagues if it was something others might be interested in attending.

Ms. Harrison said staff could work on some wording. The idea was to make colleagues aware of opportunities in the community.

Chairperson Kleinberg suggested removing the second sentence of item four: "A list of the activities of individual Council Members may also be submitted for public record at the option of the Council Member."

Ms. Harrison agreed, since listing activities as a public record was not a common practice in Palo Alto.

Vice Mayor Mossar said the fourth bullet seemed irrelevant; Sunnyvale operated differently.

Chairperson Kleinberg was unsure the first one was necessary. She suggested staff come up with new language.

Vice Mayor Mossar agreed with the first bullet. To "fully participate" meant attending meetings, being on time, etc.

Chairperson Kleinberg clarified she was speaking of the first part of the fourth bullet, not the first bullet.

Vice Mayor Mossar thought the entire fourth bullet seemed unnecessary.

Chairperson Kleinberg said if Ms. Harrison thought there was something the bullet could say such as "helpful for all Council Members to do," with respect to public events, then the item could be considered.

Ms. Harrison thought it was important to keep other Council Members apprised of significant events, particularly for the liaison to a committee or commission. It was important to keep colleagues aware of what Council Members were doing in the community or with other organizations.

Council Member Freeman said the Council calendar included events such as Council Member vacations. The City Clerk was advised and it was put on the calendar. If there was a big event, she did not see the need for a rule.

Ms. Harrison said it would apply, for example, if a Council Member wanted to invite colleagues to a Neighbors Abroad fundraising event or to another community related event.

Chairperson Kleinberg agreed. A public appearance by Council Members at civic events and activities was very appreciated by groups, not private meetings.

Ms. Harrison suggested providing contact information in the event of an emergency was probably not a Council protocol. It could be handled without calling it conduct between Council Members. The rest of the items were strong statements of values and ethics.

Vice Mayor Mossar had a similar reaction. However, it was important for Council Members to be found in the event of a catastrophic event.

Chairperson Kleinberg thought the items should not be viewed in terms of what was considered customary, but in terms of a worst-case scenario, for example, a Council Member in 2010 who wanted to go fishing and did not want to be contacted. The item might be necessary.

Council Member Freeman said Council Members were given a cell phone in which numbers were programmed for other Council Members, etc., which was helpful.

Mr. Calonne said development of Council protocol was culture development. Over the years, the Council had lost touch with the culture represented in the rules of procedure. It might have been the result of disdain for the idea

that there were rules governing public interactions; it might have been out of ignorance for the rules. The net result was there were no longer commonly held customs, which was the problem. A modest dose of regularity and procedure would be effective in contributing to the feeling of being treated fairly and in letting the public know the Council knew what it was doing and was business-like and professional. The PAMC forbade members of the public from approaching the dais. The practice was routinely ignored. The rule forbidding food and beverages in the Council Chambers was regularly broken. He thought it was unprofessional for staff to be drinking sodas during meetings. It was a little thing but was a statement of how the City saw itself and how it conducted itself in public. Although he would not want to be a "behavior cop," it was important to find what "glued" the City together. In the United States, the laws bound everyone together. The laws helped people of diverse backgrounds and origins to function as a nation. The Council rules gave the public five minutes to speak, but the time could be reduced if the number of public speakers was large. For the past two years, the public was routinely given three minutes. Although lawful, the rule actually stated the public could have five minutes. If the public was expected to have confidence, trust and respect for what the Council was doing, it had to live by the established standards, which needed to be articulated. While rules should not be handcuffs, rules provided glue, which was missing in Palo Alto. Much of the struggling the Council was experiencing with interpersonal behavior issues flowed out of uncertainty about the macro of how the meeting should be run. Procedures went toward avoiding the perception of unfairness and hurt feelings that were addressed by the interpersonal rules. He urged the Council not to be afraid of rules as evil handcuffs preventing informality. The rules were the glue that bound the City together.

Chairperson Kleinberg quoted, "freedom came from the rule of law." The P&S Committee was not working on protocols merely for the current Council, but for future generations of Councils and residents to ensure good government. The document was flexible and open to interpretation and revision. Any question about an item meant it should be left in for colleagues to remove, if so desired.

Ms. Harrison clarified staff would include the entire page of Sunnyvale's overview with a rewording of bullet 4.

Chairperson Kleinberg asked for comments on the bullets under Council Conduct with One Another in Private Encounters, the first being, "Continue respectful behavior in private." She had a problem with the word "continue," suggesting the word "observe" be substituted. The second bullet

was, "Be aware of the insecurity of written notes, voicemail messages, and e-mail." The admonition was for the Council not to do anything in private they did not want known about in public.

Council Member Freeman thought the second bullet referred more to person-to-person encounters to avoid misunderstandings including encounters, written notes, voicemail messages, and e-mail.

Ms. Harrison said Council Member Freeman's take was the sense of the Sunnyvale document.

Chairperson Kleinberg said Sunnyvale's annotation made the bullet clear.

Ms. Harrison suggested rewording the bullet, particularly the use of the word "insecurity."

Chairperson Kleinberg thought there were legal ramifications such as the City Attorney had warned the Council about inadvertent Brown Act violations possible via email.

Mr. Calonne said the tone of the bullet was awkward and seemed to indicate Council Members should not docket anything it would not want on the headline.

Ms. Harrison said Council Member Freeman was correct. Interactions were not just face-to-face but occurred through email and telephone. The Council Members needed to take the broader perspective.

Vice Mayor Mossar thought the sense of the first bullet was to "Observe respectful behavior" whether it was face-to-face, by email, etc.

Chairperson Kleinberg suggested the wording could be changed to "in communications, whether in private, in writing, etc."

Council Member Freeman interpreted private to mean not public, which was different from how private happened. There were two different points. Clarity was needed in how to behave when the public was not around.

Ms. Harrison said staff would attempt to come up with some new wording.

Chairperson Kleinberg agreed, as long as the point got across. The third bullet was, "Even private conversations can have a public presence." Elected officials were always on display. People around them monitored all

language, action, and mannerisms. Lunch table conversations could be eavesdropped upon. The three bullets could be lumped together somehow.

Council Member Freeman suggested, once the P&S Committee agreed on the protocol, a review session of the procedures and of a draft document be held with full Council, facilitated by the City Attorney or Assistant City Manager, to make everyone understand each point. Some periodic review or set time for reviewing the items would also be helpful; similar to what the City Attorney did with the Brown Act for new Council Members.

Chairperson Kleinberg said the Brown Act was a law. The protocol was not a law, but was supplementary to all the laws. Ignorance of the law was no defense.

Council Member Freeman had just given the Brown Act review as an example.

Chairperson Kleinberg said an attempt was being made to fill in the empty gap between the law and anarchy, for example, how Council Members could get along so the spirit of the law was met within the context of the culture and customs in Palo Alto. She preferred adopting a protocol and allowing questions to be posed to the Mayor or the City Attorney. The Council was supposed to be responsible for the body of knowledge. Obviously, conducting an orientation for new people was important. Changes would be obvious. However, as far as an annual refresher course, she was unsure.

Mr. Calonne envisioned the newly elected Mayor facilitating a workshop with the Council to go over procedures to reinforce or modify. Some consensus should be reached at the start of each legislative session. The presiding officer should take the time to learn the protocol and procedures and then test it with the Council each year to see what stuck.

Council Member Freeman agreed the tone would then be set at the start of each year.

Chairperson Kleinberg suggested the cover transmittal letter to the Council from the P&S Committee included the suggestion. She wanted to deputize each of the P&S Committee members to agree with respect to other cities' protocols. If something was important, either in the initial overall values and norms, or if there was something with respect to Council conduct with one another, she suggested the information be submitted to Mr. Mogensen before the next P&S Committee meeting. The next section was "Council Conduct with City Staff." The opening paragraph was read into the record:

"Governance of a City relies on the cooperative efforts of elected officials, who set policy, and City staff, who implement and administer the Council's policies. Therefore, every effort should be made to be cooperative and show mutual respect for the contributions made by each individual for the good of the community." The bullets were: 1) treat all staff as professionals; 2) limit contact to specific City staff; 3) do not disrupt City staff from their jobs; 4) never publicly criticize an individual employee; 5) do not get involved in administrative functions; 6) check with City staff on correspondence before taking action; 7) do not attend meetings with City staff unless requested by staff; 8) limit requests for staff support; 9) do not solicit political support from staff.

Mr. Calonne suggested changing bullet 6 from "taking action," to "responding."

Vice Mayor Mossar said staff had the obligation to draw a line around its work and Council had the obligation to respect the line. Council could ask for information, set up meetings, etc., but did not have the right to cross the line over what staff defined as its meeting, which was the intention of bullet 7.

Chairperson Kleinberg discussed bullet 2. The City's current City Manager had an open policy about contact between Council and City staff.

Vice Mayor Mossar said the contact between Council and City staff was included in the City's Charter which, although specific, was open to some interpretation. A copy of the Charter should be made available at the next P&S Committee meeting.

Chairperson Kleinberg said Palo Alto's Charter stated, "The office of the City Manager should be copied on any request except those to the City Attorney."

Council Member Freeman said the question had been raised about whom Council Members should contact for information. The City Manager indicated comments should be directed to the City Manager. Occasionally, it was appropriate for a Council Member to contact the department heads, with a copy to the City Manager or Assistant City Manager. She always copied the City Manager. If there were questions about the agenda, the City Manager directed the question to the Assistant City Manager who parceled out the question to whomever it should go.

Chairperson Kleinberg agreed.

City Auditor Sharon Erickson suggested the wording include "or other Council-Appointed Officers," (CAOs) not as a requirement but as advisable. The Council could then communicate directly with the CAOs.

Mr. Calonne wanted to be copied on anything that went to the City Manager unless it involved something about which he should not be privy. The more time he had to adapt and advise, the better. He would not object to having material that went to him go to the City Manager also. If the question was related to conflict of interest, sometimes there was sensitivity; however, he was unsure about the dividing line.

Chairperson Kleinberg said if there was an attorney-client privilege, the law stated the information would not be given elsewhere.

Mr. Calonne said the Council approved the Assistant City Manager, department heads, and Senior Assistant City. He interpreted that to mean they were entitled to have a direct relationship with the Council. The department heads, Assistant City Manager, Senior Assistant City Attorneys was a logical line since the Council had to approve the appointments.

Chairperson Kleinberg asked how far down the bureaucratic ladder the Council could go if it were dealing with a Planning matter.

Vice Mayor Mossar was uncomfortable having the discussion without having a copy of the Charter present. The specific discussion should be deferred until the P&S Committee had a copy of the Charter.

Chairperson Kleinberg agreed. The Charter then stated, "Requests of staff should be made only through the City Manager or the City Attorney. When in doubt about what staff contact was appropriate, Council Members should ask the City Manager. Materials supplied to a Council Member in response to a request will be made available to all members of the Council so that all have equal access to information."

Ms. Harrison thought the City already did the first two, but was unsure about the last one.

Council Member Freeman said the last issue had recently come up in a discussion regarding when Council Members had questions regarding agenda items. Occasionally, a discussion arose as to whether or not the questions a particular Council Member asked should be provided to the entire Council. It bore some discussion at the current meeting. There were pros and cons. The pro included the fact that everyone had the information. The con was

that often the political positioning and presentation of a perspective might require information that would have a more powerful impact on the point. For example, one Council Member might not want the question publicized because it would reveal the direction they were going.

Vice Mayor Mossar said information that was garnered for decision-making purposes was public record and should be made public. City staff worked for the public and the Council. If the City staff was asked to spend time and hence money-generating information, she could not conceive any scenario where that would not be considered public record. She guessed the press could ask for copies of the questions and answers asked at a particular meeting and would be open to the public records.

Mr. Calonne said in the absence of some rule by the Council, the individual Council Member's request for information from any staff person would be considered privileged under the deliberative process privilege. The law stated the Council Members, as individual legislators, did not have to be exposed to interrogation about thought processes in reaching points of view. Many, if not most, cities adopted by rule of process where information was shared because staff should not be used to gain strategic advantage or element of surprise over the rest of the Council. It put staff in an untenable position. There had been countless Mondays when he had held conversations with Council Members over the weekend and, although he would not share the identity of the person, would state that he expected an issue to be raised. He asked years ago during a Council retreat whether the Council wanted information shared among all colleagues. The Council had indicated it was not a problem. It was an issue that was ripe for discussion. His concern was that Council not set up a procedure whereby staff could be used to gain strategic advantage or an element of surprise.

Council Member Freeman said the methodology that a particular Council Member used to obtain information was also an issue. If one Council Member called and spoke with the City Auditor about something and the City Auditor gave the Council Member information on the telephone, the information would have to be documented and passed out to the rest of the Council. If a meeting was held between the City Manager and a Council Member, and information was exchanged and questions answered, the information would need to be documented and sent out. It also did not distinguish between private meetings versus public meetings. At the pre-Council meeting, when issues were raised, the information would have to be documented and made public. The issue was larger than merely asking questions and getting responses via email.

Chairperson Kleinberg said the language stated, "Materials supplied to a Council Member in response to a request will be made available to all members so they have equal access to information." Materials could be interpreted to mean information, clarification, background, etc., not just a physical report. The philosophy of the policy was questioned. The Council needed to decide whether it wanted to enhance the public dialogue in the open for the public so all Council Members came to the table with equal information but different views. In the alternative, the Council should decide if it wanted to allow individual members to develop a more political or strategic approach to the Council meetings. The point was not just dialogue but the information or guidance brought to the meeting, which other Council Members did not have. In a court setting, information was already known to everyone through discovery, so there was a sense of equity; no one was blindsided. In Council meetings, people seemed to want a debate, wanted to work out differences of opinion in public, not the preparation behind it. Everyone should come prepared and bring their points of view. All of the preparation, however, should be equitable. Staff was paid with public dollars. No one wanted to believe public dollars were serving one point of view over another. The only way to guarantee equity was for staff time to be spent impartially in constructive and effective dialogue in a public meeting. Council Member Freeman raised a good point about how far the rule should go such as a telephone call or a casual conversation between a Council Member and the City Manager. Staff members might need to answer a particular Council Member's question with extra research. The information should not just benefit one Council Member, but benefit the entire Council. Mountain View, Santa Clara and Menlo Park had a two-minute rule, for example, if staff took longer than five or ten minutes to prepare and respond to a question or a phone call, the information had to be shared with everyone. If the response only took two minutes, the information would not have to be shared.

Mr. Calonne said the Attorney General would advise the Council that a staff response to the entire Council was a Brown Act violation. The Attorney General took the position, which was not shared by his colleagues, that unilateral communication by staff to the whole Council on a matter related to an agenda item was a Brown Act violation because it in effect foreclosed debate and discussion that would otherwise happen in public. The Attorney General viewed the process of decision making as encompassing information gathering. The idea of answering questions in advance of a meeting as opposed to alerting staff to questions was where Palo Alto had gotten off track. The Council could always present staff with questions ahead of a meeting so staff could prepare a response for delivery in public. The idea of

having staff respond in advance to questions was where potential Brown Act problems arose.

Chairperson Kleinberg asked whether other cities observed it.

Mr. Calonne said the official League of California Cities (LCC) written position was that the Brown Act did not bar unilateral communications to councils. The Attorney General did not agree.

Chairperson Kleinberg asked whether the issue had ever been litigated.

Mr. Calonne said no.

Vice Mayor Mossar said if a Council Member asked a question and staff answered the question or prepared an answer for presentation to the Council Member, the full Council, and the public, all at the same time. The Brown Act problem would be solved.

Mr. Calonne said the process of the question being asked and answered outside of the meeting was the issue with the Attorney General.

Vice Mayor Mossar clarified if it was lawful for a Council Member to present a list of questions to staff and ask staff to be prepared to answer them during the meeting...

Mr. Calonne said presenting questions was clearly lawful. Staff was hearing questions expressly for the purpose of streamlining discussions in public.

Chairperson Kleinberg said often presenting questions to the staff ahead of meetings did not work. For example, she asked for a question, received an answer and, during the meeting, wanted the public to hear what she had heard, so she repeated it.

Mr. Calonne said his personal experience with the process led him to believe that answering questions prior to the meeting that would otherwise be answered in public tended to deprive the public of information about the nature of the debate. Where the questions were procedural or technical, answers could be given and did not present a problem. However, fundamental policy questions were much more difficult.

Mr. Calonne said the issue was multi-faceted, and there were many problems associated with it. Another aspect involved a Council Member's need to work with staff to formulate motions or actions they might want to

take at a meeting. He appreciated receiving a call in advance to ask how to properly handle a particular action. Such conversations should happen, and he did not feel it was necessary or appropriate to alert the rest of the Council, which to him then became a Brown Act problem.

Vice Mayor Mossar said her focus was about information content on items agendaized or that Council expected to have. A lot of time had been spent discussing equity and fairness and making sure one Council Member was not obtaining information other Council Members were not. Staff educated Council Members on upcoming projects. When a Council Member went beyond what was provided to everyone else, she became concerned. The public should not be deprived of information necessary to help them understand the decision making process through which Council had gone. She liked what Mr. Calonne said about reserving the answers for the public. The streamlining issue was being dealt with in various ways. Many times, it was not an issue of right or wrong. The best interest of the public was served when all of the same information was on the table. Information might change someone's mind. She wanted the Council to move in the direction of having the questions answered in public.

Council Member Freeman thought there was a gray line or boundary between information and guidance. She was uncomfortable about who made the determination and who decided what was supposed to be public and what was not. She had even seen guidance occur during a break in a Council meeting between a Council Appointed Officer (CAO) and a Council Member, which could not in any way be presented to the public. People had various levels of knowledge. Newer Council Members had less knowledge about certain areas. She might have a tremendous amount of information about the environment, which she learned in school. Council Members might feel uncomfortable asking their questions for fear the question seemed too elementary or micromanaging. Council needed to be careful about stopping some questions. Council Members had various methods of questioning. One person's method of questioning might differ from another person's method. Regarding conduct for public meetings, she tended to have many questions. In the early stages of sitting at the dais, she was told she was asking too many questions. A public statement was made that she should be prepared for the meeting before she came with her questions. A balance needed to be struck where questions could be answered without taking an enormous amount of time during the course of a meeting.

Chairperson Kleinberg said the policy under discussion was not about the questions or the questioner; the policy was about the manner in which answers or information was obtained. The issue of who asked which

question or whether someone was dominating staff more than someone else, could be handled. Secondly, the P&S Committee was not trying to write a policy in stone or handle every incident. The goal was to come up with some guidelines. Grades would not be given to Council Members for either observing or not observing the protocol. Any of the items needed interpretation, flexibility, and tolerance with a range of uses and applications. The point was to come up with a guide, context, or standard toward which Council Members could strive. Thirdly, if there were occasional question and answer situations, no one would try to stifle free speech, even of an elected official. No one was trying to stifle constructive, helpful communication between staff and an elected official. The issue was to find a policy that would make all Council Members feel equally well served by staff and equally prepared for a constructive, civil debate that would give the public the best possible outcome as a team. The various differences of opinion and perspective were supposed to be at the table and in public. Meetings were designed as a time for hashing out issues and should not be based on special preparation received by one Council Member from publicly paid staff. The question was what would deliver the best result for the public. The best result for the public was for all Council Members to be equally well prepared and have equal information, unless confidential attorney-client privileged materials. She often thought the Attorney General was wrong, a belief which was supported based on the Mr. Calonne's observation that most thinking city attorneys disagreed with the Attorney General, there had never been a lawsuit, other cities did not observe the Attorney General's direction, and other cities had come up with compromises. Palo Alto needed to have a policy that went to the spirit of the goal. Everyone knew that when a Council Member asked a question of staff or directed staff in a particular direction, the action was wrong. However, not every interaction could be policed. The goal was to find a basic conduct of values and protocols. If something was blatantly disruptive or interfered with good government, the issue could politely be brought to the attention of the chair. The goal was for the Council to follow the guidelines to the best of their ability. The rules were not strict, but were guidelines created to serve the public's interest to deliver the best results possible through fully informed public debate.

Council Member Freeman said another difficult issue was the degrees of preparedness individual Council Members went through before a meeting. The differences could cause additional issues. She had been told that certain colleagues wrote a number of questions all the time, while other colleagues never or rarely posed questions. She was concerned about the methodology people used to do their work.

Chairperson Kleinberg asked Council Member Freeman to explain her concern.

Council Member Freeman said not all Council Members asked the depth of questions or the number of questions or any questions. Certain other Council Members presented many questions.

Chairperson Kleinberg did not understand the problem. If, for example, an agenda item involved Utilities or a technical issue, she might not have the background to see the questions. Another colleague, who was well versed on the issue, would know the permutations. If someone thought of a question that no one else thought of, the answer of which reconfirmed for everyone else exactly what the situation was, that question should be considered was helpful to all colleagues. Not every Council Member could be totally prepared for every item on the agenda.

Mr. Calonne said sometimes people become so familiar with the face in the mirror, they missed the obvious. The obvious in Palo Alto's case was that the Council was almost twice as large as typical city councils. There were just as many hours in a day in Palo Alto; there were no more city managers, city auditors, or city attorneys. Yet, Palo Alto's Council was almost twice as large as the norm. Therefore, during public meetings and in terms of one-to-one interaction with staff, there were bound to be times when every need could not possibly be met. It had nothing to do with how individual members were conducting themselves but with sheer numbers. He appreciated the theme of depersonalizing the protocol. Monday nights would never be long enough to accommodate nine people. Unfortunately, in larger more sophisticated agencies, meetings tended to take longer. Palo Alto was trying to compress into a few hours on Monday night work that might rationally take many more hours to complete. No one was at fault. The Council would come up against the finite reality of trying to do too much in too little time and the finite ability of staff to produce. He and the City Manager felt an obligation to tell the Council when taking on more work would impair their ability to do something that was of higher priority. The Council needed to face the problem of dealing with a large group of people in a fixed time.

Chairperson Kleinberg said Mr. Calonne's point could also apply to the issue of whether every question could be asked and answered at every Council meeting or whether some advance preparation should be included.

Mr. Calonne said the issue went to how civility, decorum, respectful behavior, etc. were defined. Knowing when to and when not to speak were components of learning to conduct oneself in a large family.

Vice Mayor Mossar said pertinent to the conversation was the desire to avoid disrupting City staff from their jobs, limiting requests for staff reports, being respectful of time, and the fact that staff time cost money. Public process and access to information was important. Also, each Council Member had a particular style and had the same agenda as every other Council Member. Each Council Member came with certain knowledge and other areas requiring additional information. Council should not expect staff to be educators in a broad-based way to bring each Council Member up to some level defined by the Council Member. Each Council Member had an obligation to learn what he/she needed to learn in order to represent the public and make difficult choices. Each staff report represented staff's work product created to provide the information documenting the staff recommendation. Staff would have already done an enormous amount of work to provide the background in each staff report. Out of respect for time and staff's professional expertise, the Council should accept the staff report as an important document. Council Members might have questions about issues not included in the staff report because staff considered the answer as not germane to the issue. Staff were professionals and worked very hard to put out the reports. The Council's responsibility was to respect the work product and staff's time. At the same time, Council had an obligation to the public to have an open and public review process. The Council also had an obligation to the public to do its job well. It was a complex matrix. The issue of staff time and spending City dollars was a key piece.

Council Member Freeman agreed with Chairperson Kleinberg's statement about the issue being complex. Clearly, the staff report was an important document upon which discussions were based; however, the staff report bred questions. Something in the staff report might raise issues for a Council Member or there might also be administrative questions. The staff report was important and was used as a basis for Council discussions, including hearing and receiving letters from the public. Council Members also needed to listen to colleagues discuss the issue. The question was where Council Members could obtain information about City-related issues if questions could not be asked of staff. The place to obtain answers to questions having to do with the staff report on the agenda was staff. Part of the responsibility of staff was to answer questions raised by Council Members. If the issue was time, then the issue was not merely gathering information.

Ms. Harrison said one aspect had not been discussed, which was an important part of the issue under discussion. It was possible that staff members could interpret a question as being influence because of the way the question was posed, because of the follow-up to the question, etc. A greater possibility was its occurrence if not all Council Members were privy to discussions. It was a natural tendency. A self-policing process occurred when questions were part of the entire dialogue so the influence would not occur. Although she was not pointing out any particular Council Member, since the current Council was careful, but there was the possibility of it occurring.

Chairperson Kleinberg asked for the source at the back of the materials dated May 6, 2002, entitled "Council Protocols—Input from the Palo Alto Policy and Services Committee," pages 1 through 5.

Ms. Harrison said when the protocol discussion first began the P&S Committee Chairperson asked the committee to put down some ideas. Staff had not tried to clean up the document but wanted to bring the ideas to the discussion.

Chairperson Kleinberg thought everything on the list represented almost exactly what the P&S Committee had been discussing during the current meeting. The list was put together well. Reference should be made to that document, since it represented input from all four committee members, including Council Member Beecham. In reviewing protocols from other communities and from speaking to colleagues in other jurisdictions, she realized there was a fundamental issue about contact with staff that the P&S Committee might be unable to solve. Each P&S Committee member had a different philosophy and perspective. Each one was interested in being "personally effective and successful," and each advocated a different cause. No one wanted to steal anyone else's thunder. On the other hand, if the Council was going to err on any side, it should err on the side of openness. In order to move the meeting along, she suggested noting all of the pros and cons to the issue, for example, a con might be the fact that unshared communications between a Council Member and a staff member created the possibility of potential misuses of communication. A misguided Council Member could interfere with staff and not have the action discovered until damage was done, which was what happened in Mountain View. Since the issue was a difficult one, she wanted her colleagues to list some of the pros and cons, think about them, and then discuss them at the next meeting. If agreement could not be reached within the context of the P&S Committee, the issue could be passed along to the Council.

Ms. Harrison said Mountain View solved the problem by creating the following policy: "If more than one hour of staff time was required to complete a task or project, the item would be agendaized to ask the full council if time should be spent. Staff responses prepared to council inquiries shall be distributed to all city council members."

Chairperson Kleinberg clarified non-agendaized items that took more than an hour to prepare. The Palo Alto Charter required questions to go through the City Manager.

Mr. Calonne was prepared to answer questions on the Charter and the Palo Alto Municipal Code.

Council Member Freeman asked whether the inquiry could be verbal or written.

Ms. Harrison said the heading was "Requests for Staff Resources."

Council Member Freeman said if a meeting was held, the materials discussed would be documented and sent out.

Chairperson Kleinberg thought the policy was not related to information that was instructional, but responses to inquiries for information and research. Asking a staff member for information about waterpower was different from asking for information about what other states were doing about water.

Vice Mayor Mossar thought the conversations were not meant to go to the extreme. She agreed, the P&S Committee needed to examine the pros and cons, but it also needed to work toward finding a definition about which work products were sensitive to the issue. Not every question was sensitive to the issue.

Chairperson Kleinberg said one example would be if she had called the City Manager and asked whether the City had received an application for development on a particular block and the City Manager replied he would get back to her.

Ms. Harrison thought the significant word was "prepared," which meant going beyond answering a question off the top of the head that required work.

Council Member Freeman thought the result would be more telephone conversations or conversations not requiring preparation of a document. The exact scenario given by Chairperson Kleinberg about asking the City

Attorney to help draft a motion on a particular subject was a perfect example of a gray area. Mr. Calonne might be required to give back information on the topic.

Chairperson Kleinberg said obtaining assistance in forming a motion was merely instructional, not research information.

Council Member Freeman disagreed.

Chairperson Kleinberg said the P&S Committee, although it disagreed about the issue at hand, eventually had to agree on a basic and fundamental policy. The question had to do with what the Council was trying to achieve. The goal should not be to achieve special information for an individual Council Member, but to obtain the best possible public dialogue, with the most constructive, efficient use of public time in public for the public for the best outcome. The goal was to get Council Members to the table well enough prepared to have an effective, efficient, and time-sensitive conversation. If only a few Council Members had information and others did not, the conversation would become bogged down.

Vice Mayor Mossar wanted to see whether the P&S Committee could agree on a goal statement. If the goal statement were part of what went back to the P&S Committee with the pros and cons and different ways of handling it, greater focused discussions would result.

Chairperson Kleinberg said the goal was not about individual Council Members having specific information, but about each member preparing themselves sufficiently for an effective, constructive, public conversation, however disagreeing Council might be, in public, for the public, to deliver the best possible outcome in the most efficient and equitable way. Every Council Member should want to be as prepared as possible, regardless of differing opinions. If someone was not prepared, the same outcome could not be achieved. The Council should not worry about interactions with staff that were clarifications and quick answers to simple questions or were attorney-client privileged information. The City should err on the side of everyone being fairly well prepared. Mountain View just went through a very bad situation, which Palo Alto did not want to experience to force a rule. Palo Alto wanted to come up with a rule before a bad situation occurred. The bad situation in Mountain View was the exact issue under discussion, about the proper contact between Council Members and staff, contact that kept staff neutral, not manipulated, not caught between sides.

Council Member Freeman said there were questions on agenda items from a staff report that went to staff that needed to be answered. It had nothing to do with Mountain View. In Mountain View, a council member was trying to persuade or work staff in a particular direction. She thought the issue was about questions for clarification or additional information regarding the staff report.

Chairperson Kleinberg said questions for clarifications did not need to be shared with the full Council. Questions for additional information, not already in the staff report should be shared. The issue raised by Council Member Freeman about Council Members who did not ask questions, was a Brown Act issue. Council Members did not ask colleagues such questions. When Vice Mayor Mossar first came on the Council, there were seasoned Council Members who did not have to ask questions because they had been through it a few times. Sometimes Council Members would not ask questions of staff but asked a prior Council Member who was an expert or went to an expert at Stanford University. Such questions were not the issue. The issue was the use of staff time. If she wanted to ask her father for information, she would not share that information. If she asked Ms. Harrison, she was using public dollars and staff time for which there were potential problems if not shared. The debate, for which Council prepared itself, used information that was provided by staff.

Vice Mayor Mossar agreed with Chairperson Kleinberg's definition, which addressed the basis on which the Council needed to agree.

Council Member Freeman agreed in concept, but Chairperson Kleinberg's definition of what should be known and what should be made public might differ from her own definition or staff's definition, which was the crux of the problem. The issue was not that people should not have information but how the decision could be made when the gray area was so wide.

Chairperson Kleinberg said the P&S Committee needed to draw up a list of the pros and cons. Each one would have the opportunity to examine the pros and cons and clarify concerns about the limitations and application of the "Sunshine Policy." As much as she liked the executive summary, she liked the P&S Committee's list, although there were redundancies. She asked whether any other items on the Sunnyvale executive summary needed to be discussed.

Council Member Freeman mentioned "Never publicly criticize an individual employee." The long version said, "Council should never express concerns about the performance of a city employee in public to the employee directly

or to the employee's manager. Comments about staff performance should only be made to the city manager through private correspondence or conversation. Comments about staff and the office of the city attorney should be made directly to the city attorney."

Chairperson Kleinberg said some of the wording was specifically included because of laws having to do with employees, which could not be changed by the Council.

Council Member Freeman asked why a similar statement was not included in protocols involving Council's conduct with one another.

Chairperson Kleinberg said the language was not included because Council Members were not employees.

Chairperson Kleinberg thought the item indicating Council Members should treat one another with respect.

Vice Mayor Mossar agreed. The item included treating one another with civility and all of the things.

Council Member Freeman said the language was very different.

Chairperson Kleinberg said the longer version in the P&S Committee's list said, "Respect all opinions. Respect means to be open minded, to listen actively and to never display put-downs, verbally or physically, of anyone's ideas." She had seen councils in other cities where members had to be separated or where one council member would laugh or snicker at another council member's comments. There were ways to be disrespectful. The protocol indicated, "Respect differences in style. Don't try to change people in certain styles unless there is evidence of lack of respect," which went to what Council Member Freeman was saying. The words regarding employees when a concern needed to be lodged about an employee had to do with employment law and personnel matters.

Council Member Freeman had no problem with the one under Council Conduct with City Staff, but thought similar wording should be included to the words under Council Conduct with One Another.

Chairperson Kleinberg suggested wording under Council Conduct with One Another, "Council Members should not criticize the ideas, suggestions, or statements of other Council Members."

Council Member Freeman suggested simplifying the language further to, "Never publicly criticize another Council Member."

Chairperson Kleinberg thought Council Member Freeman was going into an area where the language already indicated Council Members had to respect other people's points of view. If Council Members were being civil and respectful and had good decorum, but wanted to disagree with someone, she queried how far a Council Member could go without criticizing when public debate was occurring. She did not mean criticizing the Council Member as a person, but what they said.

Council Member Freeman wanted the language to specifically address criticizing another Council Member as a person.

Chairperson Kleinberg suggested the wording indicate Council Members should not be "personal;" however, she thought the language, "Don't talk about the person, talk about the ideas," covered that concern. Council Members should be open to criticizing the other Council Members' ideas because that was what debate was all about.

Council Member Freeman agreed. The language was merely implied in the Council-to-Council conduct and very clear in the Council to City staff language. She felt the language should be equally clear.

Ms. Harrison asked whether Council Member Freeman wanted something more global.

Council Member Freeman said no. She was referring to public meetings.

Chairperson Kleinberg said the goal was for Council Members to be respectful of each other. Criticisms should be about ideas and not colleagues. However, if the colleague did something not in keeping with the protocols, a Council Member could make a point of personal privilege and ask the Chair to remind all Council Members to follow the protocols.

Vice Mayor Mossar understood the concern about no personal attacks on each other. She was comfortable with the language about being respectful and civil. The concepts were clear to her. She sat on a number of boards, not just Council. She watched the rough and tumble of politics played in many different settings with many different people, some with no experience and some with years of experience. One person could say something and another person would take offense. It happened all the time. Politics was not personal. Politics was a process that was used in the United States to

resolve problems. If someone took a comment personally, it was not some document's job to take care of the person. The document's job was to set a standard of behavior for civility, respectfulness, not personal, etc. The document's job was not to protect each and every elected official from any speech that could be taken as personal criticism because then the document would no longer be functional. Politics was a rough and tumble life. Palo Alto's Council was incredibly civil compared to the standard in many other places. That was not to say there was not room for improvement or things that did not need to be solidified. No one could come into public service with the intent of personally attacking colleagues and have a successful career. Civil, not personal, not respectful, were key words when talking about Council contacts.

Chairperson Kleinberg suggested the P&S Committee revisit the item in a few weeks and make sure the spirit of what everyone agreed upon was a good guideline for a standard of behavior, for example, not make it personal, criticize ideas and not people, use respectful language, not use physical or verbal disrespectful cues, mannerisms, or gestures. The protocols were standards or guidelines, not rules with laws and penalties. A few more of the bullets addressed the same situation the P&S Committee just discussed such as the right boundaries between Council and staff. It was not just information gathering, but allowing staff its professional zone while giving Council guidance and information. For example, limit requests for staff support. Every city had some rule about limiting requests. The last one, "Don't solicit political support from staff," was an easy one about which there probably would not need to be any discussion.

Council Member Freeman said occasionally something came up, like the Comprehensive Annual Financial Report (CAFR), when Council Members might need to break the protocol, "Do not attend meetings with City staff unless requested by staff."

Chairperson Kleinberg thought the language should be changed to read, "Do not attend staff meetings unless requested by staff."

Ms. Harrison said staff clearly knew the difference and would come up with better language. She had experienced it many times. Council Members were very understanding when staff explained attendance was not appropriate.

Council Member Freeman asked about the item, "Check with City staff on correspondence before taking action."

Chairperson Kleinberg read the longer version, "Before sending correspondence, Council Members should check with City staff to see if an official City response has already been sent or is in progress."

Mr. Calonne said former Council Member Fazzino previously hand-wrote responses to everybody, send letters, and did not try to solve problems.

Ms. Harrison said the issue of legislation was also important. The Council needed to know if staff was already working on an issue. The issue was only if Council Members were purporting to represent the City. The language was unclear.

Council Member Freeman thought the issue went to e-mails also.

Vice Mayor Mossar said there was a school of thought that said when someone contacted a Council Member about an issue, the appropriate Council response was some form of "thank you for your input." It was input but not the whole process. For a Council Member to tell people what they thought, it was information or a decision in advance of the full public process.

Ms. Harrison said staff was put in an awkward position when a response went back to a request for immediate information. Staff was unable to provide background information or tell what was going on.

Mr. Calonne said when a Council Member received something from the public and it came to him, he preferred Council Members pass along the information and allow him to respond to the member of the public. He could then say, "Council Member so-and-so brought this to my attention." He did not like to give the answer to the Council Member and have the Council Member address the member of the public. It felt demeaning and somewhat like turning about staff's role. The Council Member had an interest in following through with a constituent, but he would prefer to be the agent to follow through rather than responding back to the Council Member.

Ms. Harrison thought Mr. Calonne's comment was a philosophical difference because staff was not sensitive to that.

Vice Mayor Mossar would prefer having staff respond.

Chairperson Kleinberg said particularly when there was a lack of understanding. There was a larger issue than checking with City staff on correspondence. When someone contacted Council, it was not just

correspondence. It could be a telephone call, an email, or a conversation at the market. When Council Members were contacted by the public or people asked whether the City took a position on "xyz", she might have a position, but the City might have already have taken a position. It was helpful for the definition of correspondence to be expanded. She thanked her colleagues and staff for having such a successful conversation on the subject of protocols.

Ms. Harrison suggested to the extent the items overlapped in the P&S Committee suggested list, staff would merge the two documents. She said staff would try to defer to the P&S Committee's list.

Chairperson Kleinberg wanted to start the next discussion of protocols with the undecided issues under Council Conduct with Staff and Council Conduct with the Public and Boards and Commissions. It would be great if it were possible to have some preliminary recommendations to move forward to the Council.

Vice Mayor Mossar said the ex parte document was important, but did not need to be dealt with right away. The BCDC had been revising the document and getting it simpler and less legal. As soon as she received a copy of the most recent version, she would bring it back to the P&S Committee.

NO ACTION TAKEN

4. Discussion for Future Meeting Schedules and Agendas

Assistant to the City Manager Chris Mogensen said the next Policy and Services (P&S) Committee meeting would include the subjects of the Scope of Services for consultant agreements over \$65,000 and the City Attorney would return with the Anti-Discrimination Ordinance.

Chairperson Kleinberg said the protocol discussion would also be included, which would not take so long. The next two P&S Committee meetings would be held on November 26 and December 10, 2002.

ADJOURNMENT: Meeting adjourned at 9:55 p.m.

NOTE: Sense minutes (synopsis) are prepared in accordance with Palo Alto Municipal Code Sections 2.04.180(a) and (b). The City Council and Standing Committee meeting tapes are made solely for the purpose of facilitating the

preparation of the minutes of the meetings. City Council and Standing Committee meeting tapes are recycled 90 days from the date of the meeting. The tapes are available for members of the public to listen to during regular office hours.