



CITY OF PALO ALTO OFFICE OF THE CITY AUDITOR

June 26, 2007

The Honorable City Council
ATTN: Policy and Services Committee
Palo Alto, California

Consideration of a Policy Concerning Communications with the City Council and City Council Candidates Concerning the Upcoming Bid for Refuse Hauling

RECOMMENDATION

- Recommend to the City Council that the City Council adopt a code of conduct
- requiring elected officials to disclose potential conflicts of interest regarding potential proposers for solid waste services;
 - discouraging and requiring disclosure by City Council candidates of contributions by potential proposers during and after the upcoming campaign cycle; and
 - discouraging and requiring disclosure of non-public meetings between elected officials and potential proposers during the solid waste solicitation process.

DISCUSSION AND ANALYSIS

On May 7, 2007, the City Council voted 5-3 to refer to the Policy and Services Committee consideration of a policy concerning Council and Council candidate conduct during the bidding of the upcoming refuse hauling contract. Attached is a copy of the colleagues memo and an excerpt from the City Council minutes of May 7, 2007. Also attached is a copy of the relevant finding and recommendation from the Audit of the PASCO Contract, and an excerpt from the Finance Committee minutes of April 10, 2007.

Such a policy is not uncommon. The recommendation in the audit report follows the example of guidelines adopted by the City of Campbell. The City of Sunnyvale also adopted communication guidelines during the SMaRT Station contractor selection process.

Regulation in this area must not infringe on First Amendment rights. Generally, policies discouraging private communication and requiring **disclosure** of such communication are preferable to outright **prohibitions** on contacts and/or campaign contributions. It should be noted that the issue of City Council campaign contribution limits is tentatively scheduled for the July 17th Policy and Service meeting.

Respectfully submitted,

Sharon W. Erickson
Sharon W. Erickson
City Auditor

Attachments

**MEMORANDUM
City of Palo Alto**

TO: City Council Colleagues

FROM: Council Members Cordell and Mossar

DATE: May 7, 2007

SUBJECT: REFERRAL TO THE POLICY AND SERVICES COMMITTEE OF A POLICY DISCUSSION OF CITY COUNCIL MEMBER EX-PARTE CONTACTS IN QUASI-JUDICIAL MATTERS AND CONSIDERATION OF A POLICY CONCERNING COMMUNICATIONS WITH THE CITY COUNCIL AND CITY COUNCIL CANDIDATES CONCERNING THE UPCOMING BID FOR REFUSE HAULING

The Council has a long-standing commitment to an open and fair public process. The Council has regularly disclosed ex-parte contacts about quasi-judicial hearings in open session. The Council, however, has not recently reviewed its policy and practice related to communications on quasi-judicial matters before the City Council.

In a recent study session with the Planning and Transportation Commission (PT&C), Commission members urged the City Council to consider adoption of a policy similar to that adopted by the PT&C, as follows:

Restrictions on Commission Communications Outside of Quasi-Judicial Hearings.

It is the policy of the Commission to discourage the gathering and submission of information outside of any required hearing when such information will impair the Commission's impartiality on a quasi-judicial decision or Planned Community Zoning Application. Direct conversations or correspondence with an applicant, an applicant's agent or other interested party about a pending application outside of a public meeting are strongly discouraged. The following procedural guidelines are intended to implement this policy, but shall not be construed to create any remedy or right of action.

Separately, Public Works staff is anticipating the end of the 10-year contract with Palo Alto Sanitation Company (PASCO) by initiating several actions. The department is hiring a consultant to help develop

a request for proposals, solicit bids, select a contractor, develop specific contract terms and award the contract.

In "Audit of the Palo Alto Sanitation Company Contract," April 2007, the City Auditor recommends that the City Council adopt the following policy to ensure an arms-length process, free from any undue influence or appearance of impropriety:

The City Council should adopt a code of conduct: a) requiring elected officials to disclose potential conflicts of interest regarding potential proposers for solid waste services; b) discouraging and requiring disclosure by City Council candidates of contributions by potential proposers during and after the upcoming campaign cycle; and c) discouraging and requiring disclosure of non-public meetings between elected officials and potential proposers during the review period.

Therefore, we ask our colleagues to join with us in referring the following two items to the Policy and Services Committee for review, public discussion and recommendation to the full Council for possible addition to existing Council policy:

1. Possible Council adoption of policy similar to the PT&C policy on quasi-judicial hearings, and separately,
2. The City Auditor recommendation concerning Council and Council candidate conduct during the bidding of the upcoming refuse hauling contract.

EXCERPT: City Council Minutes of May 7, 2007 (Item #24)

24. Colleagues Memo from Council Member Cordell and Mossar: Referral to The Policy and Services Committee of a Policy Discussion of City Council Member Ex-Parte Contacts in Quasi-Judicial Matters and Consideration of a Policy Concerning Communications with the City Council and City Council Candidates Concerning the Upcoming Bid for Refuse Hauling

Council Member Cordell asked that the Council refer to Policy and Services Committee (P&S) a policy concerning Council Ex-Parte Contacts in Quasi-Judicial Matters and to consider a policy with Ex-Parte Contacts for the upcoming bids for Refuse Hauling.

MOTION: Council Member Cordell moved, seconded by Mossar, to refer the following two items to the Policy and Services Committee for review, public discussion and recommendation to the full Council to possible addition to existing Council policies:

- Possible Council adoption of a policy similar to the PT&C policy on quasi-judicial hearings.
- The City Auditor recommendation concerning Council and Council candidate conduct during the bidding of the upcoming refuse hauling contract.

Council Member Mossar stated this was an important conversation to have.

Council Member Morton stated there was limited liability as Elected Officials and, since there was a disclosure requirement, he did not believe it should follow with a similar over-restricted policy. It prohibits Council from operating as representatives of the community including both sides of the issue and he would vote no.

Vice Mayor Klein stated he agreed with Council Member Morton and the recommendations from the City Auditor were unnecessary or unclear and he opposed the referral.

Council Member Barton stated he agreed with the previous two speakers and there was a disclosure point. The nuance cannot be captured in a ten-minute presentation and a five-minute rebuttal.

Council Member Cordell stated we are Public Officials and when the Council decides on Quasi-Judicial Matters it would be done in a public forum: 1) because it is required; and 2) it should be instilled in the public to have trust in what the Council is doing.

Council Member Mossar stated an RFP would be going out for a re-bid for the waste hauling contract. This would be a chance for the Council to discuss any ethical issues that may need to be addressed beforehand.

Tom Jordan, 474 Churchill Avenue, stated this was not meant to be a distinction between an appointed group and an elected group. This is a different way to resolve issues. He was in favor of the Colleague's Memo.

Mayor Kishimoto stated there was value to bringing this to the P&S and she supported the motion.

Council Member Morton stated to restrict the community's ability to contact its Elected Officials because a matter is quasi-judicial seemed to be completely inappropriate in a representative democracy.

Council Member Mossar stated the statement made by Council Member Morton misrepresented the Colleagues' Memo. She stated this was not a vote on policy; it was a vote on a referral.

Council Member Morton stated the language implied this was not a reasonable policy for the community.

Council Member Beecham stated he thought there were restraints on quasi-judicial issues and he would not vote for the motion

Mayor Kishimoto stated the motion would be split into two parts.

MOTION: Council Member Cordell moved, seconded by Mossar, to refer the following item to the Policy and Services Committee for review, public discussion and recommendation to the full Council for possible addition to existing Council policies:

- Possible Council adoption of a policy similar to the PT&C policy on quasi-judicial hearings.

MOTION FAILED 4-4 Cordell, Mossar, Kishimoto, Drekmeier yes, Kleinberg absent.

MOTION: Council Member Cordell moved, seconded by Mossar, to refer the following item to the Policy and Services Committee for review, public discussion and recommendation to the full Council to possible addition to existing Council policies:

- The City Auditor recommendation concerning Council and Council candidate conduct during the bidding of the upcoming refuse hauling contract.

MOTION PASSED 5-3 Beecham, Klein, Morton no, Kleinberg absent.

**EXCERPT: Audit of the Palo Alto Sanitation Company Contract,
Office of the City Auditor, April 2007**

Arms length transaction

The recent controversy in San Jose over alleged secret promises made in the award of contracts for hauling solid waste resulted in the indictment of the mayor and others involved with the contract.

In 2005, to ensure a professional RFP process, free from any undue influence or appearance of impropriety, the City of Campbell adopted a code of conduct for the procurement process. It provided that:

- Each elected official shall disclose any potential conflicts of interest regarding potential proposers for solid waste services. Any new conflicts shall be reported within 10 days of learning of the potential conflict.
- No elected official shall accept any contributions from potential proposers during and after the current campaign cycle. All past contributions from potential proposers shall be disclosed.
- No elected official shall have non-public meetings or conversations with potential proposers during the review period.

We recommend the Palo Alto City Council adopt a similar code of conduct.

<p>RECOMMENDATION #19: The City Council should adopt a code of conduct</p> <ul style="list-style-type: none">a) requiring elected officials to disclose potential conflicts of interest regarding potential proposers for solid waste services;b) discouraging and requiring disclosure by elected officials <u>City Council candidates</u> of contributions by potential proposers during and after the upcoming campaign cycle; andc) discouraging and requiring disclosure of non-public meetings between elected officials and potential proposers during the review period.
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ATTACHMENT 4

EXCERPT: Finance Committee Minutes of April 10, 2007 (item #2)

2. Audit of the Palo Alto Sanitation Company contract

... Ms. Erickson stated the final issue in the report related to a proposed code of conduct. She noted there have been issues in some neighboring cities regarding refuse contracts, and that some cities have adopted requirements that elected officials disclose potential conflicts of interests regarding potential proposers for solid waste services. Policies prohibited elected officials from accepting contributions from proposers and prohibited elected officials from non-public meetings or conversations with potential proposers. She recommended that City Council adopt a similar kind of a code with the modification that the City cannot prohibit contacts with refuse haulers but could require disclosure of those contacts. The auditors reviewed Fair Political Practices Commission Forms 700 and 460 for the last campaign and, to our knowledge, garbage haulers had not donated to political campaigns. She recommended that the Finance Committee forward Recommendation No. 19 to City Council with the recommendation to direct the City Attorney to draft an Ordinance for consideration by the Policy & Services Committee.

Vice Mayor Klein proposed the Committee accept the Auditors Report, and if there is anything to pass on to the Council that it be reviewed as a separate item....

MOTION: Council Member Morton moved, seconded by Mossar, that the Finance Committee recommend to the City Council to approve the Audit of the Palo Alto Sanitation Company Contract except for Item No. 19.

Council Member Klein questioned No. 19 and Form 700, which requires officials to disclose potential conflict of interests and the proposers disclosing doing business in Palo Alto. He thought that was already a requirement and wondered if there were further requirements.

Ms. Erickson said this would include potential proposers. The requirements on the Form 700 do not require disclosure of an interest in any company that isn't currently doing business with the City of Palo Alto.

Council Member Morton asked when the RFP would go out.

Mr. Roberts replied it will go out in February 2008 and the contract would come to Council for award probably in July 2008.

Council Member Morton asked if staff knew who would be bidding when the RFP goes out in the spring of 2008. If this is a policy, then it should go to Policy & Services Committee.

MOTION PASSED 4-0.