



POLICY AND SERVICES COMMITTEE SUMMARY MINUTES

Regular Meeting
April 13, 2021

The Policy and Services Committee of the City of Palo Alto met on this date in virtual teleconference at 7:01 P.M.

Present: Kou, Stone, Tanaka arrived at 7:06 P.M.

Absent:

Oral Communications

Rebecca Eisenberg requested that the Policy and Services Committee (Committee) and City Council (Council) act on suggestions and recommendations that the public provides during public comment. She urged the Committee and Council to work harder on anti-discrimination initiatives and that each working group should contain a diverse set of members.

Winter Dellenbach reported that it has been at least a year and a half since the Committee has seen the Code Enforcement Audit. The audit is supposed to be presented to the Committee yearly.

Agenda Items

1. Discussion and Recommendation to the City Council to Accept the City Auditor's Quarterly Status Report (Q3 of Fiscal Year 2021); and Approve Additional Task Orders for Approved Audit Activities.

Kyle O'Rourke, City Auditor presented the item to the Policy and Service Committee (Committee). At the last Committee meeting, the Committee approved the Audit Plan as well as a series of task orders. The Quarterly Report covered the period of January through March of 2021. Auditor tasks that City Council (Council) has already approved are the Citywide risk assessment, preparation of the annual audit plan, financial audit tasks, execute the annual plan, preparation of the quarterly reports and annual status report, and provide evaluations and benchmarking. The Citywide Risk Assessment and the Audit Plan were approved by Council in March of 2021. An external auditor, MGO, conducted the Financial Audit. That audit was presented to the Finance Committee on April 6, 2021 and will be brought forward to Council in May of 2021. The contract between Palo Alto (City) and MGO has been approved and extend for 1-year. In terms of the Fraud, Waste and Abuse Hotline, one report was made during the quarter and was handled by Human Resources. Staff recommended that the Committee approve two new tasks, Building Permit and Inspection Process and Non-Profit Agreements

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Risk Management. These two task orders fall within Phase II Activities of the Auditor's Workplan and will be completed by next fiscal year (FY). For Building Permit and Inspection Process, the first step was to conduct a project-specific risk assessment which will identify categories of high risk, then evaluate efficiency and effectiveness, benchmark against similar organizations and provide recommendations. In terms of the Non-Profit Agreements Risk Management, the audit will review the controls and processes that are in place to manage nonprofit agreements, assess performance monitoring against best practices, and follow up on relevant audit findings from past audit work.

Council Member Stone asked if there is a past audit that pertains to nonprofit agreement risk management.

Mr. O'Rourke confirmed there is and part of the nonprofit agreement task is to confirm that all the recommendations in that audit were completed.

Council Member Stone indicated that he would like a copy of the past audit report. He asked what are the types of audits performed for the Non-Profit Agreement Risk Management.

Mr. O'Rourke shared that the task will include selection and onboarding of new non-profits, monitor performance programmatically and financially, and assess how performance is tracked throughout the life of the agreement.

Council Member Stone inquired if it is essential to have the auditor travel to the City to conduct in-person interviews.

Mr. O'Rourke noted that it is not imperative that the interviews be done in person and can be done virtually.

Council Member Stone questioned if the three anticipated travel trips are for both new tasks or if there is a total of three trips per task.

Mr. O'Rourke reported that it would be a total of six trips.

Council Member Tanaka commented that the City Manager is releasing a net promoter score survey. He asked if the auditor plans to incorporate that data.

Mr. O'Rourke articulated that if the data exists, it will be incorporated, but the auditors will not be helping with implementation of the net promoter score survey. The building permit project will gather data from customers through a survey conducted by the City auditor.

Council Member Tanaka appreciated that Staff is collecting first-hand experiences. He did not support Staff conducting focus groups for the building permit project and suggested having private conversations with individuals.

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Mr. O'Rourke agreed.

Council Member Tanaka requested what was the nature of the fraud, waste, and abuse complaint that was received.

Mr. O'Rourke disclosed it pertained to an employee's safety concern.

Council Member Tanaka agreed with Council Member Stone that any trips planned by the auditor should be done virtual if possible.

Mr. O'Rourke stated that the auditor's office is aware of the tight budgetary constraints the City is in and is prepared to help in any way possible.

Chair Kou noticed that the balance remaining in the Master Agreement contract is the same for the Building Permit and Inspection Process task, and Non-Profit Agreements Risk Management.

Mr. O'Rourke explained that the amount is the same on each task order and equals the total Master Contract amount minus what has been billed to-date.

Chair Kou inquired why is it necessary for the auditor teams to come to Palo Alto.

Mr. O'Rourke articulated that reporting to Council is part of the travel. For the Building Permit and Inspection Process, Staff likes to do a walk-through of the physical site and gain the customer experience but Staff has found ways to see the site without having to be there physically. For Non-Profit Agreements Risk Management, Staff likes to do a review of documentation on site but again, most of that work can be done remotely.

Chair Kou recommended that when travel does resume, that travel only happen when it is imperative.

Mr. O'Rourke mentioned that some travel costs are embedded within projects.

MOTION: Council Member Tanaka moved, seconded by Council Member Stone for the Policy and Services Committee to take the following actions and forward the corresponding report to City Council on the consent calendar:

- A. Accept the Office of the City Auditor's Quarterly Status Report covering January – March 2021; and
- B. Approve the following Task Orders, identified in the Audit Plan Report:
 - i. Building Permitting Process Review; and

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- ii. Non-Profit Agreement Risk Review.

MOTION PASSED: 3-0

2. City Council Referral to the Policy and Services Committee: Consideration of Rent Forgiveness for City Tenants in an Amount Not-to-Exceed the City Council COVID-19 Reserve.

Jeff Weaver, Senior Management Analyst for Administrative Services presented the item for consideration of rent forgiveness for Palo Alto (City) tenants to the Policy and Service Committee (Committee). At the March 2021 meeting, City Council (Council) approved rent forgiveness for active and non-operational non-profit tenants that had an impact cost up to \$203,000. Staff was recommending new rent forgiveness options that were based on the not-to-exceed balance of the COVID-19 Council Reserve and Staff expected the impact of rent forgiveness to be up to \$541,000. Excluded from the project were tenants not impacted by closures related to the Public Health Order. Based on public comment, Staff removed the \$2.5 million gross revenue restriction but added a requirement that the businesses applying must have an active Business Registry Certificate. Staff presented three options to the Committee to consideration. Option One provided rent forgiveness for up to 3-months that would not exceed \$50,000 per tenant. The amount was to be determined through a pro-rata approach. Option two provided rent forgiveness for up to 3-months, would not exceed \$50,000 per tenant, and would include reviewing the financial statements of the business for the entire year instead of 6-months. Tenants would be required to demonstrate a 50 percent loss in revenue between the years of 2019 and 2020. Option Three was to provide no rent forgiveness to tenants who do not qualify under the first program. By delaying the rent forgiveness program until the Santa Clara County Eviction Moratorium has expired, Staff may receive assistance or guidance from the State of California or other agencies to help tenants. Staff recommended that the Committee recommend that Council consider creating a rent forgiveness program for City tenants who did not receive rent forgiveness by the Council on March 1, 2021, and rent be forgiven up to 3-months but not to exceed \$50,000 per tenant.

Chair Kou called for public comments.

Rebecca Eisenberg did not believe that it is accurate to say that the public wanted the lifting of the \$2.5 billion revenue threshold. She articulated that she was logged off during the Quarterly Audit Report item and she disclosed that folks cannot find the Fraud, Waste, and Abuse Hotline number. She urged the Committee to pursue code enforcement and emphasized that it can be a revenue-generating program.

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Lee Pfab represented Palo Alto Community Childcare (PACC) and announced that they appreciate all the support the City has provided to small businesses throughout the year. The pandemic has impacted the revenue stream that PACC relied upon to fund operating costs. PACC has liquidated all its reserves and cannot balance its operating budget for the coming year. PACC urged the Committee to support the economic recovery of all non-profits by providing rental forgiveness.

Council Member Tanaka wanted to know where the money comes from to fund rent forgiveness.

Kiely Nose, Administrative Services Director mentioned that Council had set aside funds in the Council COVID-19 Reserve in the 2021 Adopted Budget and that reserve will be used to cover the cost.

Council Member Tanaka asked what is the total amount left in the Council COVID-19 Reserve.

Ms. Nose stated that the total reserve was \$744,000, Council has already approved rent forgiveness for non-profit tenants up to \$203,000 and the remaining \$541,000 is recommended to be allocated for further rent forgiveness.

Council Member Tanaka inquired if all non-profits are eligible.

Mr. Weaver confirmed that is correct.

Council Member Tanaka asked if there is a way to find out how many local residents are being served by the non-profits.

Mr. Weaver reported that it is difficult to determine how to weigh small businesses against larger businesses. He stated that it would be hard to validate the data but it is something that can be asked during the application process.

Council Member Stone inquired what operations not restricted means.

Mr. Weaver mentioned that any business that was determined not impacted by the Public Health Orders is not eligible for the program. With the new program, Staff is recommending that the City help impacted businesses that gross more than \$2.5 million.

Ms. Nose added that the Committee can recommend that rent forgiveness be provided to all City tenants.

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Council Member Stone supported the parameters of the program that Staff has provided. He wanted to understand why Staff is recommending Option Two.

Mr. Weaver clarified that the fastest option is Option One. Option Two is a more thorough process.

Council Member Stone noted that Option Two is the fairest and he supported it.

Chair Kou wanted to know if more money will be coming to the City after Santa Clara County lifts its eviction moratorium.

Mr. Weaver explained that once the eviction moratorium expires, tenants have 6-months to pay 50 percent of the rent that's owed and they will have a full year from the expiration to pay the entire amount. Staff has observed that the expiration date for the moratorium has been extended multiple times and there may be future funding opportunities if the City waits.

Chair Kou asked if the City can grant rent forgiveness now and still apply for any future grants.

Mr. Weaver believed so.

Chair Kou inquired how Santa Clara County defines small businesses.

Mr. Weaver shared that the cap of \$2.5 million is Santa Clara County's qualification for their loan program.

Chantal Cotton Gaines, Deputy City Manager noted that renter assistant programs require businesses to apply directly to the State of California, not through the City.

Chair Kou supported Option Two.

MOTION: Chair Kou moved, seconded by Council Member Stone for the Policy and Services Committee to recommend the City Council consider the creation of a rent forgiveness program (Option 2) using a COVID-19 impact approach for City tenants who were not forgiven three months of rent by City Council on March 1, 2021, for up to three months and not to exceed \$50,000 per tenant.

Council Member Tanaka wanted to know if the percentage of local residents who have received services should be factored into Option Two.

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Chair Kou asked if Council Member Tanaka was proposing it be ranked or collected.

Council Member Tanaka answered that the information should be collected and should be used as one of the factors in terms of looking at the COVID-19 community impact.

Ms. Nose inquired what that information would do to change the allocation of the funds.

Council Member Tanaka summarized that non-profits who provide services to more local residents would receive more funding.

Mr. Weaver rephrased for how long.

Council Member Tanaka suggested using Option Two's timeframe but prioritize the dollar amounts.

Chair Kou was concerned that some non-profits do not ask their customers that information.

Ms. Nose shared that the allocations in Option One and Two would provide funding for all tenants. She mentioned that it would take longer to implement the program if Staff must collect the data and return to the Committee.

Council Member Tanaka wanted to know how many tenants would benefit from the program now.

Mr. Weaver reported 38 tenants but it could be more depending on who does not qualify for other programs.

Council Member Tanaka recommended that the Committee move Option Two but that Staff provide the information to Council. So, then Council can decide.

Chair Kou agreed that collecting the information from businesses that can provide it is important.

Ms. Nose disclosed that the process would be that the Committee would make the recommendation and the recommendation would move to Council. Council would then have to direct Staff to gather the information before administering the program. Once the information is gathered, it would need to be presented to Council and then distribute the funds.

Chair Kou noted that there is a degree of urgency from tenants who are struggling. She asked if the program can move forward while the information is being collected.

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Ms. Nose confirmed it could be implemented that way as long as the information is not used as an eligibility criterion for receipt of the funds.

Council Member Stone was not comfortable using the information as a criterion and that it is unfair to collect the information if not all businesses within the City are participating.

MOTION PASSED: 3-0

3. Discussion and Recommendation to Council on Referring Investigations of Discrimination, Harassment, and Retaliation by Police Officers to the Independent Police Auditor.

Chantal Cotton Gaines, Deputy City Manager stated that the direction provided by City Council (Council) in November of 2020 was to expand the scope of the Independent Police Auditor (IPA) to include supervisory inquiry investigations (IIR) and use of force resulting in injury requiring medical attention. Also, the IPA will publish two reports per year on a set schedule, the IPA will report to Council two times a year, and the IPA will provide performance reviews on specific topic areas. Staff is actively working on the contract amendments and Staff anticipates the Council will see the contract before the summer 2021 break. The new scope will be implemented in the next IPA report which is scheduled for after the summer 2021 break. Council recommended that the Policy and Service Committee consider IPA review of City investigations of employee harassment, discrimination, and retaliation. Staff provided three options for the Committee to consider to address that direction. Option One was to direct Staff to research reporting options and return to the Committee. Option Two was to recommend Council add scope to the IPA contract using existing reporting practices. Option Three was a recommendation that Council defer additional new scope implementation.

Chair Kou was surprised that Staff was recommending that the item be deferred to a future meeting so that Staff can collect information. She was frustrated that the IPA was not in attendance.

Ed Shikada, City Manager restated that the Committee can take action, or direct Staff to conduct a further review, or gather additional information.

Chair Kou rephrased that Staff's recommendation is different than the title of the agenda item. She was expecting to see recommendations on what to take to Council, not to bring the item back to the Committee.

Council Member Stone concurred with Chair Kou's comments.

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Council Member Tanaka encouraged the Chair to continue the item to a future meeting if she believed Staff is not ready.

Chair Kou stated that the Committee will review what Staff has presented in the Staff report but is disappointed.

Aram James agreed with Chair Kou's comments. He mentioned that at the November 2021 meeting with the Police Chief, the Chief mentioned that it is not necessary to report every time a firearm is pulled. He mentioned that the IPA disagreed with the Police Chief's remark. He wanted the scope to be expanded to include internal complaints. He concluded that the IPA should be present for these meetings.

Jason Miles announced he is a volunteer Sheriff over the American Civil Liberties Union (ACLU) of Mid-Peninsula. He summarized that while many members of the community appreciated the expansion of the IPA's scope at the November 2020 meeting. The community is disheartened that the expansion was not installed to begin with. He expressed that the community is skeptical of outsourcing policy suggestions to a firm that may not have Staff with relative experiences working on the issues. He agreed with Chair Kou's remarks as well as Mr. James.

Rebecca Eisenberg appreciated and agreed with all the previous speaker's comments. She urged the Committee to move the item forward. She strongly supported an IPA for the Police Department.

Winter Dellenbach agreed that the item should be brought back so that the IPA can be involved in the discussion. She strongly supported the expansion of the scope of work for the IPA.

Council Member Stone asked if there are any examples of the IPA being unable to maintain confidentiality.

Molly Stump, City Attorney shared that there have been situations when the Police Officer Association raised confidentiality concerns. The IPA is very aware of the state law requirements and the IPA would never identify an officer by name. The concern disclosed in the Staff report involved the dynamic that is created when a small department has individual assignments for folks and detailed reporting can lead to the ability of identifying who was involved in the assignment.

Council Member Stone inquired if Staff has some examples or if more research is needed.

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Ms. Stump mentioned that Staff has done informal research for approximately 18-months and at that time Council decided not to move forward with the scope. The IPA does have examples on its website from other jurisdictions. Staff can do a more systematic review to supplement available information.

Council Member Stone expressed concern about those types of complaints and the potential chilling effect. He wanted to know if there is a mechanism that can be used that can provide discretion for the reporting party.

Mr. Shikada acknowledged that is a valid concern. He mentioned from a supervisor's perspective, claims can have a chilling effect on supervision as well. He suggested that a follow-up discussion happen where Staff provides different ways of reporting to the Committee.

Council Member Stone supported expanding the IPA's role but wanted Staff to research best practices to find a balance. He stated that he appreciated the clear language of the City's Anti-Harassment Policy but that the police department's policy was not as clear.

Ms. Stump noted that both policies apply to uniformed officers.

Council Member Stone inquired if the City's policy is prioritized over the police departments.

Ms. Stump answered yes.

Rumi Portillo, Human Resources Director confirmed Ms. Stump's statement that both policies apply to all employees and violations are evaluated against both policies.

Council Member Stone requested if police officers are required to be knowledgeable of both policies.

Andrew Binder, Assistant Police Chief confirmed yes, recruits are trained on both policies.

Council Member Stone mentioned that the police department's discrimination harassment policy, the language regarding sexual harassment is confusing.

Ms. Stump disclosed that the language regarding sexual harassment mirrors Title 7 and the Fair Employment and Housing Act. The language lists what is required to prove civil liability in court. She stated the better practice for employers is what is reflected in the City's policy.

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Council Member Stone articulated that folks will focus on their department's policy and he was confused why there are two separate policies in the first place.

Ms. Stump explained that the police department has a baseline set of activities with Lexipol who drafts generic policies for small police departments.

Mr. Binder confirmed that Lexipol does draft the policies but the police department strongly implements the City's policies.

Council Member Stone mentioned that right now complaints can be filed only with the City Manager. He wanted to know why it is not open to all supervisors within the City.

Ms. Stump clarified that a police officer can report to any manager within the City.

Council Member Stone stated that there are areas that can be cleaned up between the two policies and that it should be made clear that the City's policy overrides the police department's policy.

Chair Kou inquired how the line gets drawn between jokes and harassment.

Ms. Portillo responded that training is based on the City's policies is done with the workforce. The training is from the perspective of the receiver who is accepting the information. The Human Resource Department has consultations available to employees who are unsure if harassment has happened or not.

Chair Kou asked when a harassment, discrimination, retaliation, or hostile work environment complaints is file, do those complaints go to the City Manager or a supervisor at the police department.

Ms. Portillo stated that employees are not restricted to one path and per the policy, the employee is not required to follow the chain of command.

Chair Kou wanted to know when an outside investigator is hired to investigate a complaint.

Ms. Portillo disclosed that it is on a case-by-case basis. The City frequently uses outside investigators.

Chair Kou summarized that there is no set bar when a case is sent to an outside investigator.

Ms. Portillo restated that it is on a case-by-case basis.

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Chair Kou wanted to know if the alternative reporting methods add a layer of difficulty for employees to file a complaint.

Ms. Portillo noted that external cases are not frequent but that is not because of it being an onerous process.

Chair Kou acknowledged that investigations and collection of information must take place, but the process is too long.

MOTION: Council Member Stone moved, seconded by Chair Kou for the Policy and Services Committee to recommend the City Council direct Staff and IPA to include harassment, retaliation and discrimination claims within the IPA scope; and research best practices to balance the needs of transparency and public oversight while preserving the anonymity of complainants, witnesses, and the subject.

Ms. Stump proposed two options, that the Motion move to Council and Staff will bring additional information to the Council at that time, or return to the Committee with additional information before it moves to Council.

Council Member Stone emphasized that currently, public mistrust of law enforcement is at a high point and it is important that transparency is of the highest priority. He acknowledged that there needs to be a balance between oversight with procedures that do not create a chilling effect on subjected parties.

Chair Kou inquired if the police department's harassment policy should be changed to mirror the City's policy.

Ms. Stump announced that that recommendation is outside the agenda topic but suggested that Staff incorporate that suggestion in other race and equity policy work.

Ms. Gaines agreed.

Mr. Shikada reminded the Committee that there is an existing referral to do an IPA contract amendment that will be going directly to Council soon. He found it more efficient to bring that referral back to the Council at the same time as this item.

Chair Kou declared she is comfortable with that suggestion.

Council Member Stone agreed.

Council Member Tanaka also agreed.

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Mr. Shikada stated that it will be an action item at Council.

MOTION PASSED: 3-0

Future Meetings and Agendas

Chantal Cotton Gaines, Deputy City Manager reviewed the tentative schedule for May 2021 which included proposed amendments to the Tree Protection Ordinance, American Disabilities Act (ADA) regulations, a legislative update, and an update on Town Halls. She shared that an update will be provided on the Town Hall planning at a future meeting. Staff is finalizing a series of engagement efforts which included two Town Halls on the budget process as well as several small community meetings.

Chair Kou asked if Council Members will be involved in the community meetings.

Ms. Gaines believed that Council Members will be involved.

Chair Kou encouraged Council Members to be involved.

Ed Shikada, City Manager agreed.

Chair Kou requested that Staff investigate the Code Enforcement Audit.

Adjournment: The meeting was adjourned at 9:23 P.M.