



CITY OF PALO ALTO CITY COUNCIL FINAL MINUTES

Special Meeting
September 28, 2020

The City Council of the City of Palo Alto met on this date in Virtual Teleconference at 5:04 P.M.

Participating Remotely: Cormack, DuBois, Filseth, Fine, Kniss, Kou, Tanaka

Absent:

Closed Session

1. CONFERENCE WITH CITY ATTORNEY-POTENTIAL LITIGATION Subject: Threatened Litigation by San Jose/Silicon Valley NAACP et al Regarding Non-Resident Access to Foothills Preserve
Authority: Potential Exposure to Litigation Under Government Code Section 54956.9(d)(2) and (e)(5)
One Potential Case, as Defendant.

Molly Stump, City Attorney announced a lawsuit had been filed and the correct title for Agenda Item Number 1 was "CONFERENCE WITH CITY ATTORNEY-EXISTING LITIGATION, Subject: Gasque v. City of Palo Alto, Santa Clara County Superior Court, Case No. 20CV370681, Authority: Government Code Section 54956.9(d)(1)."

MOTION: Council Member Kniss moved, seconded by Council Member Cormack to go into Closed Session.

MOTION PASSED: 7-0

Council went into Closed Session at 5:06 P.M.

Council returned from Closed Session at 7:24 P.M.

Mayor Fine announced that the Council would return to Closed Session at the end of the meeting.

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Study Session

2. Update on City of Palo Alto's Race and Equity Work and Discussion of Next Steps.

Ed Shikada, City Manager reported the Police Policy Manual, Data and Hiring Ad Hoc Committee, the Public Safety Alternative Models Ad Hoc Committee, the Police Accountability and Transparency Ad Hoc Committee and the Citywide Diversity and Inclusion Ad Hoc Committee continued to meet and advance work on racism and inclusion. Staff suggested the Council consider identifying gaps in policies and processes and changes to fill those gaps.

Chantal Cotton Gaines, Assistant to the City Manager presented a process through which the Ad Hoc Committees could address areas of concern and options for each policing and Citywide practice.

Michael Gennaco, OIR Police Auditor advised that OIR began working with the City in 2008 because of the City's interest in oversight of the Police Department. The Independent Police Auditor's (IPA) primary responsibility was to review complaints against the Police Department. The Police Department investigated complaints and forwarded reports to the IPA. The IPA reviewed the reports, interacted with the Police Department, prepared their own draft reports, reviewed the draft reports with the Police Department, the union and the City Attorney's Office and released final Reports to the public. The IPA's Report contained findings regarding the thoroughness and objectivity of the Police Department's investigation and the Police Department basing their dispositions on evidence and principles. The Report set out the IPA's agreement or disagreement with the Police Department's Report and comments regarding areas in which the Police Department was able to improve. The Council assigned special tasks to the IPA over the years.

Steve Connolly, OIR Police Auditor indicated he was involved in much of the IPA's direct interaction with the Police Department and appreciated the Police Department's openness, responsiveness, receptivity and professionalism.

Mr. Gennaco explained that in most jurisdictions, the IPA's review of use of force incidents was broader than the review in Palo Alto. Typically, the IPA sampled minor use of force incidents over the course of the auditing period or reviewed specific classes of use of force. In Palo Alto, the IPA reviewed use of force incidents only if they were officer-involved shootings, if they involved Taser use, and if an external complaint was filed. In other jurisdictions, he had conducted audits of hiring practices, background investigations, recruitment and promotion processes, employee evaluations, claims and lawsuits, and internal complaints.

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Winter Dellenbach remarked that the IPA was underutilized in Palo Alto. The IPA was able to review and recommend policies. The IPA rather than the Human Resources (HR) Department needed to handle harassment and race complaints.

Aram James inquired whether the IPA interviewed complainants and whether the City needed to review the use of tasers in light of evidence that they were more dangerous than originally thought.

Vice Mayor DuBois indicated the Council may want to consider increasing the IPA's scope of work for use of force incidents. In the past, the IPA had presented their reports to the Council and worked with the Human Relations Commission (HRC). The Ad Hoc Committee discussed the timeliness of IPA Reports. He inquired about the extent of OIR's work on internal complaints.

Mr. Gennaco explained that OIR often reviewed a sample of investigations into internal complaints for large jurisdictions. In jurisdictions the size of Palo Alto, OIR reviewed all investigations. The IPA reviewed all HR complaints that resulted in an investigation.

Vice Mayor DuBois expressed interest in the IPA conducting an annual audit of various aspects of Police Department performance.

Council Member Kou requested the method Staff anticipated using to bring the Mission Statement to fruition.

Mr. Shikada explained that the Mission Statement set an aspirational expectation for the end product. The Council was in the initial phase of building a work plan for change.

Council Member Kou noted the County of Santa Clara (County) developed an equity framework called the Government Alliance on Race and Equity (GARE) and suggested the Council utilize that framework.

Mr. Shikada advised that the City of Palo Alto was a member of GARE, and Staff was exploring ways to operationalize the principles contained in the framework and whether it was the right framework for the City.

Council Member Kou indicated the Council may want a presentation of GARE. GARE addressed budgeting as well as policymaking. Perhaps the IPA needed to analyze the applicability of *8 Can't Wait* initiatives to City policies.

Mr. Shikada recalled that the Council had referred *8 Can't Wait* to Staff, and Staff was drafting policy changes to comply with the Council's directions.

Council Member Kou asked if the OIR audited union contracts.

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Mr. Gennaco stated that OIR audited contracts with respect to their impacts on reform and accountability.

Council Member Cormack asked if the recommendations from the IPA's June 2020 Report had been implemented.

Mr. Shikada clarified that following Police Department, City Attorney Office and bargaining unit review, the Audit Reports were provided to the City Clerk for distribution to the Council. The City Manager's Office did not have an approval role in the process.

Robert Jonsen, Police Chief reported the Police Department almost immediately implemented the IPA's recommendations, which were often worked out prior to the Report being finalized.

Council Member Cormack inquired regarding the status of School Resource Officers (SRO).

Mr. Jonsen advised that the Palo Alto Unified School District (PAUSD) Board of Education terminated the contract for SROs.

Council Member Cormack wanted to understand the scope of work and process for the IPA's work in other cities prior to considering changes to the IPA's scope of work for Palo Alto.

Council Member Kniss inquired about the Council's role in IPA Reports.

Mr. Shikada clarified that the IPA's Report to the Council was informational.

Council Member Kniss inquired about the Council having an active role in the review process and about ways Council Members were able to actively observe and interact with Police Officers without interfering in their work.

Mr. Jonsen noted many Council Members participated in ride-alongs with Police Officers over the past few months.

Mayor Fine concurred with expanding the IPA's scope of work for an Annual Performance Audit and requested the types of expanded oversight utilized in other cities.

Mr. Gennaco reported the City of Davis had a Police Accountability Commission, and the City of Anaheim had a Police Review Board. Previously, the IPA reported regularly to the Palo Alto HRC and Council.

Mr. Jonsen hoped reforms were well thought out, and review bodies were coordinated.

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Mr. Connolly added that a hybrid model of oversight allowed community involvement.

Council Member Tanaka requested an update regarding the Stanford open data project.

Mr. Shikada advised that the initial big data project was complete. The Police Department was talking with Stanford University about participating in a secondary or follow-up project. The Police Department was implementing data collection required by new State law.

Ms. Cotton Gaines added that Staff was talking with the Stanford Spark Program about participating in its work.

Council Member Cormack listed the problems the Council was attempting to solve and proposed Inclusion Training for City Staff, Council and Boards and Commissions, accelerated implementation of the State's Racial and Identity Profiling Act, an employee survey, and the use of social workers for welfare checks. She referred the public to Pages 6 and 7 of the August 26, 2020 Report for good information.

Council Member Kou suggested the City advocate for reintroduction of Senate Bill (SB) 731 and SB 776 and expand the IPA's scope of work to the previous level.

Vice Mayor DuBois inquired regarding the Council's ability to amend the IPA's scope of work.

Molly Stump, City Attorney understood the IPA was open to amending their contract with the City. At the Council's direction, Staff was able to initiate negotiations.

Council Member Kou inquired about the IPA's work with community engagement.

Mr. Gennaco indicated on behalf of the County, the IPA facilitated two 90-minute listening sessions for the community, which 500 people had attended.

Council Member Kniss asked if residents could participate in Police Department ride-alongs.

Mr. Jonsen reported ride-alongs were part of the Citizens Academy, but the program was put on hold during the pandemic.

Council Member Kniss wanted the community to feel as comfortable with police officers as with firefighters.

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Mr. Shikada related that an updated version of the Police Policy Manual was available to the public.

Agenda Changes, Additions and Deletions

Mayor Fine noted the Closed Session would continue following completion of Action Items.

Oral Communications

James Hindery believed the City was being sued because the Council chose to impose conditions on access to Foothills Park.

Minutes Approval

3. Approval of Action Minutes for the September 14, 2020 City Council Meeting.

MOTION: Mayor Fine moved, seconded by Council Member Cormack, to approve the Action Minutes for the September 14, 2020 City Council Meeting.

MOTION PASSED: 7-0

Consent Calendar

Council Member Tanaka registered a no vote on Agenda Item Number 6.

MOTION: Council Member Kniss moved, seconded by Council Member Cormack to approve Agenda Item Numbers 4-9.

4. Approval of Contract Number C21177400 With BKF Engineers for a Maximum Not-to-Exceed Amount of \$329,689 for Design and Construction Support Services Related to Churchill Avenue and Alma Street Railroad Crossing Safety Improvements, Capital Improvement Project (PL-20000).
5. Resolution 9916 entitled "Resolution of the Council of the City of Palo Alto Approving and Attesting to the Veracity of the City's 2019 Annual Power Source Disclosure and Power Content Label Reports".
6. Approval of Amendment Number 2 to Contract Number S20178094 With Management Partners, Inc., to Extend the Term Through March 31, 2021 and Increase Compensation by \$85,000 for Procurement Advising Services for a new Not-to-Exceed Amount of \$170,000.

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7. Designation of the Voting Delegate for the League of California Cities Annual 2020 Conference, to be Held Virtually October 7-9, 2020; and Approval of Staff's Recommendation to abstain on the League Resolution.
8. Authorization to Amend the Existing Agreement for Litigation Defense Services With the Law Firm of Jarvis Fay & Gibson (Contract S17168652) to Increase the Contract Amount by an Additional \$15,000 for a Total Not-to-Exceed Amount of \$130,000.
9. Interim Ordinance 5505 Entitled, "Ordinance of the Council of the City of Palo Alto Amending Chapters 18.28 (Special Purpose PF, OS and AC Districts) and 18.42 (Standards for Special Uses) of Title 18 (Zoning) of the Palo Alto Municipal Code (PAMC) to Adopt Temporary Regulations Relating to Safe Parking in PF Districts (FIRST READING: September 14, 2020 PASSED 7-0).

MOTION PASSED FOR AGENDA ITEM NUMBER 6: 6-1 Tanaka no

MOTION PASSED FOR AGENDA ITEM NUMBERS 4-5, 7-9: 7-0

Council Member Tanaka opposed the contract in Agenda Item Number 6 because he did not see the schedule of rates.

Beth Minor, City Clerk explained that the schedule of rates was attached to the original contract, which was not distributed in the Packet.

Ed Shikada, City Manager clarified that the schedule of rates was part of the original contract. The item before the Council was a contract amendment that did not change the schedule of rates.

City Manager Comments

Ed Shikada, City Manager reported the County Public Health Officer had provided guidance for Halloween activities. Staff was developing a webpage of resources and were going to hold a virtual neighborhood resource meeting on September 30, 2020. Fire personnel were deployed to the Glass Fire and returned from the North Complex Fire. The Community Respite Center at Mitchell Park Community Center was open during the week. Staff was working with the City of Menlo Park and the San Francisco International Airport (SFO) to identify a site for a temporary airplane noise monitor. Enforcement of time restrictions in Residential Preferential Parking Permit (RPP) districts were going to resume on October 15, 2020. October was National Cybersecurity Month.

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Council Member Kniss requested Staff discuss the coverage area of Fire Station Number 8.

Mr. Shikada advised that Station 8 was staffed on red-flag warning days.

Council Member Kniss asked if in past years Fire Station 8 had been staffed during the fire season regardless of red-flag warnings.

Mr. Shikada noted staffing for Station Number 8 was reduced.

Council Member Kou requested Staff respond to community complaints that obtaining permits for RPPs was not easy.

Council Member Tanaka inquired regarding a date for Council discussion of the RPP Program for the Old Palo Alto neighborhood.

Mayor Fine indicated the Council would review the RPP prior to October 31, 2020 when it was set to expire.

Council took a break at 9:01 P.M. and returned at 9:08 P.M.

Action Items

10. Status Report and Direction Regarding Continued Participation in the San Mateo County Tourism Business Improvement District (TBID) or Adoption of Resolution 9917 to Withdraw Participation entitled, "Resolution of the Council of the City of Palo Alto to Withdraw the City of Palo Alto from the Boundaries of the San Mateo County Tourism Business Improvement District."

Kara Apple, Police Lieutenant reported in 2010, the Council adopted a Resolution that began the City's participation in the San Mateo County Tourism Business Improvement District (TBID). In December 2019, Palo Alto stakeholders requested the City withdraw from TBID. At that time, the Council directed Staff to obtain feedback from stakeholders and to conduct a survey of hotels. Staff surveyed 26 of 27 hotels and found 20 supported withdrawal from TBID. The 27 hotels provided 2,112 rooms and paid the TBID assessment, which totaled slightly less than \$310,000. If the City withdrew from TBID, they were not going to be represented in the regional travel and tourism market and the Palo Alto Chamber of Commerce were to lose approximately \$32,000 in funding.

David Dworkin, One Stop Integration advised that Palo Alto hotels had contributed almost \$1.8 million to TBID over six years, which allegedly generated 4,460 room nights for Palo Alto hotels. At a room rate of \$225 per night, the rate of return was about 56 percent, when hotels expected a 600

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percent rate of return. Hotels needed to rent rooms from Thursday to Sunday, but TBID generated leads for weeknight rentals. Of the 27 hotels, 21 supported withdrawal from TBID, 2 opposed withdrawal, and 4 abstained. The largest contributors/benefactors of TBID supported withdrawal. Only one motel opposed withdrawal. Motels did not received any leads or room nights from TBID. Over the past year, the Convention and Visitors Bureau attempted to improve the situation for Palo Alto hotels. Approximately 50 percent of Palo Alto hotels chose not to pass the TBID assessment to customers in order to remain competitive with Mountain View and Sunnyvale hotels. The purpose of TBID was to generate room nights. Hotels were losing money because of the pandemic.

John Hutar, San Mateo County/Silicon Valley Convention and Visitors Bureau (CVB) indicated the CVB invested in local advertising, created a landing page on their website, and restructured their sales team to focus on Palo Alto hotels. In response to the pandemic, the CVB's Board of Directors reduced Assessment Fees by 50 percent. The CVB advocated on behalf of hotels with elected officials, facilitated the development and training of new safety and sanitation protocols, eliminated 50 percent of their staff and reduced expenses. The CVB modified their business model to attract leisure visitors, to intensify use of social media, and to partner with State tourism agencies. Since 2015, the CVB generated \$2.7 million in economic impact for Palo Alto.

Mayor Fine requested the deadline for the Council to take action.

Ms. Apple explained that a Resolution to withdraw needed to be submitted to the City of Burlingame for a first reading on October 19, 2020 and a second reading on November 2, 2020. On November 2, 2020, the City of Burlingame were going to set the assessment for 2021.

Charlie Weidanz commented on the mutual support between the Palo Alto Chamber of Commerce and the CVB and requested the Council direct Staff to identify a source of funding to replace what was lost by the Chamber of Commerce.

1 650 ***287 Hotel Parmani remarked that the hoteliers were in the best position to determine the value of TBID and hoped the Council planned on withdrawing from TBID.

Stephanie Wansek, Cardinal Hotel noted support for withdrawing from TBID increased 10 percent since 2019.

Barbara Gross hoped the Council would respect the wishes of the hoteliers and suggested the City and the Chamber of Commerce discuss City funding for a convention and Visitors Bureau within the Chamber of Commerce.

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Mayor Fine believed the Council's direction to staff in 2019 resulted from an inability to read the data about hotels' wishes. The current data clearly indicated 75 percent of hotels, hotel rooms and revenues supported withdrawal from TBID.

Council Member Kniss proposed the Council consider funding for the Chamber of Commerce.

Ed Shikada, City Manager recommended the Council consider such funding when they received a Budget update in mid-October 2020.

MOTION: Council Member Tanaka moved, seconded by Council Member Filseth to Adopt the Resolution and direct Staff to transmit the Resolution to the City of Burlingame with a request to take all steps necessary to implement withdrawal from the San Mateo County Tourism Business Improvement District effective January 2021; and to Authorize the City Manager to negotiate and pay necessary and reasonable administrative costs of the City of Burlingame to effectuate the request.

Council Member Tanaka believed hotels would support TBID if they felt it was beneficial. Compelling hotel participation when hotels were receiving little benefit was not appropriate, especially with the pandemic causing financial losses.

Council Member Filseth felt the City's role in TBID was operational. He thought the Council should not oppose the will of the hotels.

Council Member Cormack noted many aspects of business, travel and the economy changed since the City joined TBID in 2010.

Council Member Kou inquired about reasonable costs for the City of Burlingame.

Ms. Apple reported the City of Burlingame charged a fee for their City Attorney's Office to draft an Ordinance and submit it to Burlingame's City Council.

Council Member Kou suggested hotels and the Chamber of Commerce discuss funding a convention and Visitors Bureau, but she was amenable to a Council discussion.

MOTION PASSED: 7-0

11. Approval of a Contract With Baker Tilly US, LLP for Internal Auditor Services in an Amount Not-to-Exceed \$1,300,000 for a Term Commencing October 1, 2020 through June 30, 2022, Including

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Approval of Four Initial Task Orders; Resolution 9918 entitled, "Resolution of the City Council of the City of Palo Alto Appointing Kyle O'Rourke, Senior Consulting Manager with Baker Tilly US, LLP, as the Palo Alto City Auditor"; and Amendment of the Table of Organization to Eliminate 4.0 Positions in Various Funds.

Council Member Filseth reported the term of the agreement with Baker Tilly US, LLP was 21 months in order to align the contract with the City's fiscal year. The Council was able to terminate the agreement with ten days' written notice and were then able to extend the contract with Baker Tilly's agreement. The contract amount was \$750,000 per year with a prorated amount for the first year. Baker Tilly was then to bill the City for time and materials, and the total amount for 21 months was not to exceed \$1.3 million. Baker Tilly was to provide the full array of internal auditing services and was expected to provide six audits per year and handle several smaller projects. The number of audits and projects was slightly higher than the number provided in recent years with a slight decrease in cost. The Policy and Services Committee was to supervise auditor operations, and the Council was to oversee the Auditor. The Auditor was going to report to the Council quarterly and annually. Kyle O'Rourke of Baker Tilly was to be appointed as the onsite representative, and the Council Appointed Officers Committee (CAO) was to conduct an annual Performance Review of Mr. O'Rourke. The CAO recommended the Table of Organization reflect the elimination of four positions due to the outsourcing of the City Auditor's Office. The CAO prepared and issued a Request for Proposals (RFP) and received six qualified proposals, which were narrowed to two candidates. The Council had interviewed both candidates twice and selected Baker Tilly. Baker Tilly had extensive experience in government audits, deep knowledge of fraud, waste, construction, and purchasing, and particularly deep knowledge of utilities and cybersecurity. Baker Tilly's and Mr. O'Rourke's references were outstanding. After execution of the contract, the Auditor was to conduct a comprehensive Citywide Risk Assessment, prepare an Annual Audit Work Plan, oversee the Independent Financial Auditor, and manage the Fraud and Waste Hotline.

Sharon Erickson recommended the Council reject the CAO's recommendation and direct Staff to hire an individual to fill the position of City Auditor. This was not the time to reduce City accountability and transparency.

Council Member Kniss noted the extensive vetting of Baker Tilly and Mr. O'Rourke.

Vice Mayor DuBois requested Mr. O'Rourke introduce himself and his team.

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Kyle O'Rourke, Baker Tilly US introduced team members and highlighted their experience.

Vice Mayor DuBois asked if the Auditor was expected to participate in Policy and Services Committee meetings.

Council Member Filseth indicated he would when audits were the topic of Agenda Items.

Mr. O'Rourke added that the quarterly and annual meetings were formal status updates. The Auditor was to attend key weekly and monthly meetings.

Mayor Fine remarked that Mr. O'Rourke impressed the Council with his experience in local government auditing and familiarity with the Palo Alto community.

Council Member Cormack concurred with prior comments.

Council Member Kou asked if Mr. O'Rourke was required to be a member of the Association of Local Government Auditors and inquired about the purpose of the group.

Mr. O'Rourke advised that Baker Tilly was a member of the Association of Local Government Auditors. To comply with the requirement for peer review, the City of Palo Alto was able to be the relevant party or the City was able to engage an independent third party for peer review.

MOTION: Council Member Kniss moved, seconded by Council Member Cormack to:

- A. Approve and authorize the Mayor or his/her designee to execute the attached professional services contract with Baker Tilly US, LLP for internal auditing services in an amount not to exceed \$1,300,000 for a term commencing October 1, 2020 through June 30, 2022, including approval of four initial task orders detailing initial work commencing on October 1, 2020;
- B. Adopt a resolution appointing Kyle O'Rourke of Baker Tilly US, LLP, Certified Internal Auditor (CIA), as Palo Alto's City Auditor; and
- C. Amend the Table of Organization to Eliminate 4.0 positions, 1.0 City Auditor position in the General Fund, and 3.0 Senior Performance Auditor positions (2.0 from the General Fund and 1.0 from the Utilities' Enterprise Funds).

MOTION PASSED: 7-0

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Mr. O'Rourke appreciated the Council's support, the in-depth selection process and the warm welcome. He summarized his experience, engagement in the auditing industry, and passion for public service.

Council Member Filseth noted the excellent assistance of Management Partners.

Council Member Questions, Comments and Announcements

Mayor Fine noted the death of Pat Robinson, who taught kindergarten in Palo Alto for 35 years.

Council Member Kou announced September 15 to October 15, 2020 was National Hispanic Heritage Month.

Closed Session

1. CONFERENCE WITH CITY ATTORNEY-POTENTIAL LITIGATION; Subject: Threatened Litigation by San Jose/Silicon Valley NAACP et al Regarding Non-resident Access to Foothills Preserve; Authority: Potential Exposure to Litigation Under Government Code Section 54956.9(d)(2) and (e)(5); One Potential Case, as Defendant.)

Council went into Closed Session at 10:22 P.M.

Adjournment: The meeting was adjourned from the Closed Session at 11:36 P.M.