

COUNTY OF SAN MATEO
INTER-DEPARTMENTAL CORRESPONDENCE

DATE August 19, 1982

TO: ✓ Members, Board of Supervisors (routed)
Barbara Mouton, Henry Anthony, Bradford Stamper,
Gertrude Wilks, Victor James, David Nichols, Tom Casey

FROM: Supervisor John M. Ward

SUBJECT: Policies and Issues - East Palo Alto

Attached for your information is a transcript of the discussion held at last Tuesday's Board of Supervisors meeting on matters related to East Palo Alto. I wanted each of you to receive this, so that you would not have to rely solely on the press accounts.

JMW:mf
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East Palo Alto Municipal Council

Bacciocco - East Palo Alto. We had asked last time for people to come from East Palo Alto who were interested.

Nichols - Yes, you did, Mr. Chairman, and I haven't heard from them. Have you, Minerva?

Minerva - Victor James called yesterday afternoon, and he said each member of the Council has been notified three times and he has received conflicting responses. Stamper said he may or may not attend, Mrs. Wilks said she may or may not, Mr. Anthony said he would not attend. That's the way it stands as of this afternoon.

Bacciocco - We can take up where we left off last time.

Schumacher - I think the issue last time was whether or not they had an opportunity to reflect on it and whether or not they had a position.

Gregorio - They had considered and either acted or refused to act on the six items that were presented, and I think we have a very cryptic summary of that at the end of our packet.

Bacciocco - I wonder if I could interrupt just to take note of a note that Supervisor Speier sent me, which reminds me that Pete Bailey should be notified that Item 26 has been approved, so you don't have to wait around.

Gregorio - I believe that the only two items that the Municipal Council failed to agree on were the item dealing with conflict of interest and the item dealing with the number of votes necessary in order to take action. They felt we should not act to change the rules--Actually, it was a 2-2 vote, but those who opposed felt that we should not take action to change the existing state of rules as they applied to East Palo Alto Municipal Council. I think they also suggested an additional rather technical addition to our resolution which would provide for a Vice-Chairman. A succession to the Chair--that apparently was the reason why a recent meeting of the Council was unable to agree.

Nichols - I think they just wanted standard language--sort of--that would do what they wanted.

Gregorio - That minor issue, and then the only other issues appear to be the number of votes necessary and conflict of interest.

Bacciocco - Do you want to take this up, one by one, and dispose of them as we go along, atarting with the one you just mentioned?

Gregorio - Sure.

Bacciocco - Is there any recommended action on the quorum?

Schumacher - I think we discussed the quorum before, and there's really nothing more I can add to what was previously said.

Nichols - Very briefly, they're following Robert's Rules of Order so that if there are only three members there, an affirmative vote of two people should pass something.

Nichols (cont'd.) - My recommendation was that it required three votes, as is required by cities, counties, and school districts.

Bacciocco - Almost everyone agrees with you.

Schumacher - I'd make a motion, Mr. Chairman, that we would require that to pass a motion or resolution or to take action it would require three votes, in the affirmative.

Ward - Second.

Bacciocco - On the question? Well, I guess I may be the only dissent, for the same reason I mentioned last time, that I think an exception should be considered in this case, simply because too often, when the Council meets, there are too few people to live up to this rule and business is halted and there is more procrastination--and I think it does more harm than good. Anything else on the question?

Schumacher - Well, I think the people in East Palo Alto should check on the attendance of their representatives. ^{If} they have representatives who don't attend, I think they should get some who do attend.

Ward - Mr. Chairman

Bacciocco - Mr. Ward

Ward - Dave, are they being compensated by meeting or on a monthly basis?

Nichols - Hmmm--I think it's on a monthly basis.

Ward - I want to make a point on this, and I am absolutely appalled at the situation that occurred at the last regularly-scheduled meeting of the Municipal Council. We have County staff, at least four, who went down to that meeting, one member from Public Works, initially for a study session. Now, there were only two members present, so one of them decided he wasn't going to stay there, so he went outside and sat in the car. Then they have a regular meeting and they can't agree to the Vice Chairperson who was asked to be in that capacity and could appropriately sit as Chair in the absence of the current Chairwoman. So the meeting was cancelled.

Schumacher - Why don't you say how it was cancelled?

Ward - They just simply walked out. Therefore, they didn't have a quorum. And we had at least four staff--two department heads--of the four present, who went down there and wasted time--their time-- for this meeting. And this is not an isolated case, so-- I was going to send a memo, but the fact that they didn't show up today, that would be very clear. Publicly, no memo--oral. We've been playing too many games with this Council. We have a 2-on-2 meeting in the morning with our staff, and then at night they can't get their act together--same day. And they've got a split Council, and it's just a lot of games, and it's expensive, and they're getting paid by the month. That bothers me.

Bacciocco - Is it within our power, Mr. District Attorney, to change that?

Casey - Yes, it is within your power to change anything having to do with East Palo Alto.

Bacciocco - Should that not be considered, either now or at some future meeting?

Ward - I'd like to have it calendared.

Casey - Yes, I think that's the best way.

Ward - I'm suggesting that the issue of compensation be brought back to the Board.

Gregorio - Just generally--

Ward - Yes.

Speier - What is the stipend that members of the Municipal Council receive?

(Can't hear response from audience.)

Speier - Well, they're getting paid like a City Councilman.

Bacciocco - Would you like to set this for a specific time now?

Ward - It goes beyond that. We have staff that goes down there, and are chastised publicly by this advisory council, ^{because} they didn't particularly like the message. It just goes on and on.

Speier - Mr. Chairman, I think that the comments of Supervisor Ward are something that should be communicated to the members of the Municipal Council, and not just to the ~~MEMBERS OF THE MUNICIPAL COUNCIL~~ people who are in the audience and are not members of the Municipal Council today. Maybe we can re-convene the 2-on-2 to discuss that particular concern. It appears that we get City Council members to attend 2-on-2s, but for whatever reasons they're not able to make the Board meetings when there are agenda items scheduled.

Schumacher - Do you have a motion before the Chair?

Minerva - Yes.

Schumacher - We ought to vote on Mr. Ward's issue.

Bacciocco - You're right.

Gregorio - I'd like to just observe that this is really not a quorum requirement. This is a requirement for the number of votes necessary in order to pass action. In any case, at least three members must be present, or nothing can be done, so it's not a question of how many people need to be present. We know that three people have to be present or no action can be taken, and we also know that any time three or more members are present there can be disagreement.

Schumacher - The motion was in the affirmative for three to pass a motion.

Bacciocco - Anything else on the question? All those in favor say "aye"

(Ayes) Opposed? One "no". The next one?

Nichols - Well, actually, the next two are rather moot, now, because they came up thinking perhaps that the election of the incorporation would be held in November, and since that's not the case, my recommendation is that there not be a change in the term of office of the incumbents, and that the four-year terms continue and that the elections take place at the same time they have in the past. So, really, there's no change there, and I don't think the point that caused it to come up is

(Nichols, cont'd.) - relevant any longer.

Bacciocco - Are there any other comments or suggestions?

Nichols - Number 4--I think that does need to be specifically changed, that the appointment of the Administrative Officer of the Municipal Council should be made by the Board of Supervisors after consulting with the Municipal Council.

Gregorio - I'll so move.

Ward - Second

Schumacher - On the question, is that in the Civil Service system, that position?

Casey - No, it's an unclassified position. Each Board and Commission is entitled to one unclassified position, and that's how that position occurs.

Schumacher - So then that position is at the will of the Board of Supervisors?

Casey - Yes.

Bacciocco - Anything else on the question? All those in favor say "aye". Opposed?

The "ayes" have it unanimously.

Nichols - The fifth one is a question of any elected member of the Municipal Council holding an additional elected office with a different public agency and, based on the opinion of the District Attorney's office, I am recommending that that not be allowed.

Bacciocco - Is there concurrence by the Board on the recommendation?

Schumacher - You're recommending that we affirmatively rule that you can't hold two elected positions at the same time. That is the correct state of the law, but that's--

Gregorio - You're not sure?

Schumacher - Yes...

Casey - Would you like me to comment?

Schumacher - Yes.

Casey - The problem with this is, obviously, the East Palo Alto Municipal Council is an advisory body to the Board. The Board can do anything it wants to with it in terms of setting up its powers and authority. Because it is advisory, in theory and in practice, we had previously indicated that it was not legallyⁱⁿ compatible to hold a separate ~~legal~~^{elected} office, because the East Palo Alto Municipal Council position was only advisory, but when that issue was raised again recently, I guess at the time of the allegations regarding the residency change, it was our advice to the Board that the Board deal with that issue to make a policy decision as to whether or not you wanted to allow someone to hold two such elective offices at the same time or not, since the Board establishes the Council by a resolution and sets forth what its responsibilities are, what its duties are--that the Board should act on that issue, also, because basically we have a vacuum right now where we can't really tell what the results should be, and it's something that the Board clearly has the power to decide, and should address--and should just make a decision.

Bacciocco - Any suggestions?

Speier - Mr. Chairman--If I understand you correctly, Tom, and if we consider the Municipal Council an advisory body like every other advisory body to the Board, we have already taken a position in terms of having some individuals who are elected to other public-agency positions; i.e., City Council members, to serve on the Regional Planning Committee and ALUC, and the like. That is compatible with our procedure. If we're placing the Municipal Council in a different category, then we need to address it separately.

Casey - That's correct. The only real difference that we see is the fact that the Municipal Council members are elected to those positions, which places them in a slightly different position than all the other advisory bodies which are not so elected.

Ward - From a practical standpoint, the issue would never have come up if you hadn't had the situation of Mr. Anthony being elected to the Ravenswood Park District, and then he also--well, you get these issues, for example, where we're entertaining a contract to renovate the gym at the rec center and we're sending it to the Municipal Council for input, and then Mr. Anthony's looking at it from that standpoint--and then he looks at it from the standpoint of being on the Ravenswood Park District. You know, it just gets awkward. I don't know how clear a conflict of interest can be carried. I think that it's going to go away, isn't it? I understand he hasn't filed for...

Gregorio - He did not file for the Park & Rec...

Ward - The lady, you know, if we took action now, would he have to get off of one before the term's up?

Casey - In theory, yes.

Ward - Why don't we just let it go...

Gregorio - I agree.

Ward - We've let it go this long--why don't we just let it ride? I don't see the problem for another three months.

Bacciocco - Do you have a comment to meake?

Cenedella - Yes, I'm Arn Cenedella, 130 Misson Drive. I would think the Board should make some determination on it, because if you don't, then at the point you do make a determination the accusations that it's politically motivated can be made. If you had a set policy, either you can hold another office or you can't, and set that out clear for everybody, then this "ify" situation cannot be viewed as perhaps a political attempt to further incorporation or an attempt to hinder incorporation. So I think the Board should make a determination. Is it a public office, can you hold another office, and be on Municipal Council. If you don't, I think you're going to leave yourself open to charges from either side when you act on a specific case. The fact that it's moot now with Henry Anthony I don't think should really make a difference. The problem's been raised and I think you should solve it.

Bacciocco - Can we ask the District Attorney the rule with regard to City Councils? Is it "yes" or "no" with regard to serving in another elected capacity? Because the whole idea is to treat the Municipal Council as much like a City Council as possible. Casey - The rule is that elected officials cannot hold two incompatible offices at the same time. For instance, a City Councilman cannot be elected to the Board of Supervisors and hold both offices. A City Councilman cannot be elected to a School Board and hold both offices, because there are issues that come before both bodies that would divide the allegiances. That is the legal theory upon which the incompatibility is based.

Bacciocco - Then why shouldn't we adopt that same rule?

Ward - I don't have any problem with what Mr. Cenedella has pointed out. I just believe that an issue that can be taken up at the end of the year and not get into the situation of taking it now--does that remove Mr. Anthony from one of the two bodies? I just don't think that--

Bacciocco - Probably would..

Schumacher - You know, there are City Council members that hold, or have held, elected positions on a partisan-party Central Committee and then on a City Council, and they're both elected offices. And that's not the...

Casey - They're not incompatible, because the two agencies don't deal with the same...

Schumacher - They're elected...

Casey - It's the compatibility in the decision-making on the same issues.

Schumacher - Well, then, in other words, the proposal is that you can't hold two elected offices.

Gregorio - Two incompatible offices.

Bacciocco - The same rules as the City Council.

Schumacher - But I thought it was broader than that.

Gregorio - No.

Bacciocco - Supervisor Speier --

Speier - The question of incompatibility, if we separate it from advisory vs. City Council, by virtue of sitting on BCDC and also on the Board of Supervisors, I have found myself on three or four occasions of being in the position of having to abstain when the Board took action, so that I could take action when it came before BCDC, so to that extent we have incompatibility already in terms of serving on various bodies. Maybe I'm missing some point. If it were not for the fact that Henry Anthony was serving in two positions this issue would not be raised. I haven't seen the detrimental element of it in terms of East Palo Alto, and that's what we're focused on. Sure, we're trying to provide as much City-Council-like authority as possible. The

Speier (cont'd.) - fact of the matter is that the Council is still advisory to the Board, and as such we have the ability to make a determination. And I haven't been persuaded that there's some detrimental element by having someone serve on Ravenswood or any other special district and also on the Municipal Council.

Bacciocco - I think you're speaking reasonably, and I think the trouble comes from the fact that the situation in East Palo Alto is unreasonable. There's a lot of political and personal ferment going on there, and consequently any action that we take is--I think Mr. Cenedella is correct regardless of his position on this issue--is apt to be construed, magnified, and distorted to the advantage of one side or the others. And that's why I think it is just best for us to go along with the City rule. I think it's the lesser of two evils, in this case, and it's still...the following issue still remains to be decided, whether or not to take action in Mr. Anthony's case. We can pass the rule, and it would still take another action whether or not...what? You mean, ipso facto his position would involve some conflict of interest?

Casey - Because of the Board's authority over the formation and functioning of the Council, you could make any rule effective at any point you wanted. In other words, you could make the incompatibility rule effective January 1.

Speier - I guess my comment is I'd like to be persuaded by one or two or three of my colleagues of the detriment that we are encountering by continuing to allow the situation--or the County Manager for that matter--what is the detriment that we encounter by allowing someone who serves on an advisory body to the Board and the Municipal Board also serving on an elected body somewhere else in the community.

Bacciocco - Well, I tried to give you one, but I guess I wasn't specific enough...If we don't adopt the action of the Cities, then it looks as though we were in Henry Anthony's camp and, ergo, we are somehow magically taking his side on the issue of East Palo Alto incorporation.

Speier - No, I'm separating the Henry Anthony situation. I'm talking purely on the theory level.

Nichols - Let me try--aside from the Henry Anthony issue--it seems to me that although it is true that the Municipal Council is advisory, it in fact has a stronger role than typical advisory boards. I think that the Board of Supervisors really defers to the judgment of the Council on some key issues, such as the Public Works project that we've reviewed with them, and they decided priorities and came back, and those were the ones that were adopted. Land-use issues--those sorts of things. It seems to me they have a strong role, one that, although advisory through tradition, is followed very closely by the Board. And it seems to me that when there are other districts involved in the same kinds of issues, such as the Recreation District, there could be conflicts in the judgments made by those two boards, and, to me, it's just cleaner

Nichols (cont'd.) - to have that kind of potential if you avoid it.

Speier - We had that problem with BCDC, too, as I mentioned. I'm just not...

Nichols - Well, it doesn't seem to me that it's the same thing. I don't know...

I don't think it's similar to the other kinds of advisory boards that the County has, for example. The Mental Health Advisory Board--I just don't see it having the same kind of clout, and therefore the same type of conflicts.

Ward - Mr. Chairman, I would like to just like to reiterate my position that I fifteen minutes ago suggested that we do--establish a policy, but because of the potential problem it would create on the implementation, as far as East Palo Alto's situation is concerned, that we not make it effective until the close of the term of office that he holds.

Bacciocco - Do you move on that?

Ward - Yes.

Bacciocco - Is there a second?

Gregorio - Yes.

Schumacher - Well, it should be a little more definite which office you are referring to. Could you just put a date on your motion?

Ward - Yes, I would say, bring it back, you know, in December. Make it effective January 1--that's all right. I don't have any problem with that.

(Clerk reads motion)

Ward - That's right--consistent with the guidelines outlined by the District Attorney.

Bacciocco - Any comments on the motion? All those in favor say "aye". Opposed?

Speier - No.

Nichols - And then the last one is that Vice-Chairman thing. I think, just refer that and approve the concept of a Vice-Chairman replacing the Chairman when required, and have the District Attorney draw up the proper language.

Gregorio - So Move.

Ward - Second.

Bacciocco - All those in favor say "aye" (All "ayes") Ayes have it--so ordered.