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InterOffice Memo

Date: June 27, 2001
To: Mayor Paul Schell, City Councilmembers
From: P4 Panelists
Subject: P4 Final Status Report

Executive Summary

P4, the City's new public-private partnership review process, has been in effect since January 2000. The most visible aspect of the process is the P4 Panel, a group of 15 citizens who review the public benefits of certain public-private partnerships. The first ten Panelists were appointed in March 2000, in time for them to select a subgroup to commence review of the South Lake Union property redevelopment project. Those ten members appointed five more Panelists in April 2000, and a full slate of 15 Panelists convened for the first time in May 2000.

As part of the year-end review process, Panelists held both formal and informal discussions about their role and the mission of the P4 as a whole. This memo highlights the Panel's work to date, and summarizes comments made by the Panelists, Executive, and Councilmembers. The Panel's comments include concerns about the types of projects that they have been asked to review, the timing of their review, and uncertainty about who their client is. After three months of debate and discussion, the Panel has decided to take a hiatus from their work until either the Executive or City Council provides clear direction on these issues.

Introduction

P4 grew from a set of recommendations made by the Public-Private Partnership Task Force. The Task Force was a group of Seattle citizens first convened in November 1998 by Mayor Schell and then Council President Sue Donaldson, to propose a set of standards for public-private partnerships between the City of Seattle and private entities (including non-profit organizations). The Mayor and Council President asked that the Task Force focus their efforts on profit-making entities engaging with the City of Seattle, in which the product of the partnership was a physical structure rather than social services, and in which private profits were being generated as part of the project. In September 1999, the

Task Force presented its recommendations to the Mayor and City Council, in a report titled "Shaping Public-Private Partnerships in Seattle."

In November 1999, the City Council passed Resolution #30072, which incorporated the Task Force's recommendations into a process to be followed by the City when participating in certain public-private partnerships. The City began the new process, called P4, in January 2000, for a one-year trial period.

P4 consists of two main elements: the Protocol, a document, which asks more than 30 questions about the public benefit aspects of a specific project; and the P4 Panel. The P4 Panel assists City departments, the Council, and the public in evaluating the public benefits of a project. The Panel consists of a pool of 15 members – five selected by the Mayor; five by the Council; and five by those ten Panelists. For each partnership targeted for review, the Panel self-selects a minimum of five Panelists to serve on a project panel for review and comment.

Sara Levin, a Strategic Advisor with the City Budget Office, coordinates all aspects of P4. Sara served as the research assistant to the Task Force, and as a staff person in Council President Sue Donaldson's office helped to craft Resolution #30072.

Work to Date

Formation of Panel: Citywide coordination of P4 began in January 2000. Sara Levin met with City staff, Councilmembers, and representatives from the Mayor's office to initiate nominations for the Panel and to map out a process for review. The first ten members of the Panel were appointed (five by the Mayor and five by the Council) in March 2000, in time to commence review of the South Lake Union property redevelopment project. Those ten members appointed five more Panelists in April 2000, and a full slate of 15 Panelists convened for the first time in May 2000. At that time, Panelist Jan Hendrickson was selected by the other Panelists as Chair of the full-Panel.

General business meetings: From May 2000 through January 2001, the full Panel met approximately every six weeks for general business meetings. (See attachment for list of meetings and topics covered.) These meetings were held Friday mornings in the Municipal Building, and were open to the public. Announcements of meetings were circulated via City press releases and an e-mail list kept by Sara Levin. During this period, the Panel adopted "Guiding Principles" and bylaws. They also received briefings as a full group on two potential projects for review: the Olympic Sculpture Park (a partnership between the City and the Seattle Art Museum), and the Pacific Northwest Aquarium project (a partnership between the City and the Seattle Aquarium Society). In October 2000, the group began to discuss its mission and role, in preparation for submitting a draft report to the Mayor and Council at year end. A report was issued in early 2001, and members of the Panel subsequently briefed the City Council Legislative Department and Intergovernmental Affairs Committee on their initial conclusions.

Project Panels – West Seattle Garage and South Lake Union: During this time, Project Panels convened for review of two projects: the South Lake Union property redevelopment, and the West Seattle (Admiral) Garage project. The Admiral Garage was reviewed in one meeting in June 2000, shortly before a vote on the project was taken by City Council. The Panel (Bill Rex, Chair, Rafael Stone, Scott Surdyke, Josephine

Tamayo Murray, and Dinah Thoreson) recommended that the City move forward with the project, based on the fact that it was a neighborhood-driven proposal, and despite the fact that there were no conceivable economic benefits to the City. The Council ultimately defeated the Executive's proposal (in a 5-4 vote). Dissatisfied with the process for reviewing this project, members of the Panel wrote a letter to the Executive with suggestions for better review in the future. Suggestions included a request to be briefed earlier in the process, and to have more than one opportunity for comments and feedback.

The South Lake Union project Panel met four times for briefings and comments on the project. In March 2000, Panelists (Maria Barrientos, Jan Hendrickson, Bob Mahon, Jackson Schmidt, and Greg Sundberg) were given an overview of the project and an opportunity to ask questions of City staff. In September 2000, the Panelists were given an update on the City's proposed approach to negotiating the property sales with City Investors. In May 2001, the Panel met twice to review the Purchase and Sale Agreement, and to form a draft recommendation. At this point, Project Panel Chair Maria Barrientos had developed a conflict of interest and had to step down. Bob Mahon replaced her as Chair, and Dinah Thoreson joined the project Panel. The Panel's recommendation was issued on June 13th (sent to the Council, Executive and public), and Bob Mahon presented the report at the Finance, Budget and Economic Development Committee's June 20th public hearing on the project.

Overall, the Panel concluded that the City did a good job negotiating the purchase price for the South Lake Union properties and adequately addressed the public benefit objectives of the sale. Concerns included failure by the City to quantify the value or cost of the additional commitments (housing, cultural space, etc.), and the fact that the appraisal did not consider the real estate excise tax benefit that results from the fact that the properties are owned by the City rather than a private party.

Panelist Areas of Concern

Beginning with the October 2000 full-Panel meeting and continuing through January 2001, the Panel had a series of discussions on their role and effectiveness. Resolution #30072 requests that the new process be reviewed after being in existence for one year. Panelists concerns and comments relate to the following four areas: types of projects selected for review; timing of Panel involvement; clarity of who the Panel's "client" is; and use of executive session for access to confidential materials. All of these concerns are discussed separately below, but it is important to note that all are inter-related, and all need to be clarified in order for the Panel to function effectively.

Types of Projects: Resolution #30072 identifies projects targeted for P4 review as those which: "are directed toward the development of physical space; are between the City and a private entity, including non-profit organizations; involve \$5 million or more in City investment; in which both the City and its partner have a financial interest; in which the City is seeking benefits for the public that would not otherwise be provided by the private entity". Public-private partnerships which don't meet these requirements may be subject to P4 review at the direction of the Mayor or City Council.

To date, the following projects have been targeted by the Mayor or Council for review: South Lake Union property redevelopment; West Seattle Garage; Olympic Sculpture

Park; Pacific Northwest Aquarium; Maritime Heritage Foundation agreement (South Lake Union). Also discussed as possible projects for review (but not automatically targeted, or officially identified by either the Mayor or Council) were the transfer of governance at the Woodland Park Zoo, and the Museum of History and Industry agreement with the City of Seattle. All of these projects involve very different levels of City investment, different structures, and different public benefit goals. None of these projects is similar in nature to the Pacific Place Garage deal, the original trigger for the City's review of public-private partnerships, and the project on which the Protocol and Resolution 30072 were based. The City's Chief Financial Officer has stated that the City has no projects of a similar nature planned for the near future.

Panelists agree that the types of projects selected for their review have not met the original intent of the process as they understand it. Elements of two projects, the West Seattle Garage and Aquarium may be closer in nature than others (the West Seattle Garage being a partnership between a private developer and the City of Seattle, and the Aquarium meeting the dollar target, but Panelists agree that both projects were too far along in development for effective review.

Draft language revising the Panel's bylaws to allow the group to refuse to accept a project which they see as inappropriate for their review was proposed by one Panelist, but ultimately rescinded at the December 2000 meeting. However, Panelists' concerns on this topic were clear throughout the October, December and January discussions.

Given that there are likely no projects on the horizon which meet the exact intent of the public-private partnership review process, Panelists suggested a few types of projects which might be appropriate for their review. These would include some of the potential transit oriented development projects (likely on hold due to delays with Sound Transit), mixed use public-private partnerships at Northgate, and a project like the Pacific Northwest Aquarium, if review were initiated early in the project's development.

Timing of Review: Another area of debate and concern centered on the appropriate timing for P4 review of a project. Panelists asserted that all of the projects designated for their review were too far along in development for effective input or influence. An extreme example is the review of the West Seattle Garage. The Project Panel was brought into the process and given an extensive set of materials to review only one week before meeting to receive a briefing on the project from City staff and to provide comment. This meeting was held less than two weeks before the Finance, Budget and Economic Development Committee was scheduled to vote on the project. Project Panelists felt that they did not have enough time to adequately read, assess, and ask questions about the materials they received, nor did they feel that their recommendation would have influenced the structure of the deal.

Other Panelists agreed that the best time to begin review of the Aquarium project would have been before the Memorandum of Agreement (MOA) between the City and SEAS was signed. At the point at which they were brought in, an outline of the City's financial commitment to SEAS was already in place (through the MOA). Although the MOA is non-binding, Panelists felt that their influence in the structure of the deal would have been limited. With the South Lake Union property sales, some Panelists felt that their input could have been used in development of the RFQ.

While Panelists did not concur on the exact time for initiating review of a project, they all agreed that the earlier in the life of a project review is initiated, the better. Projects given to the Panel for review should not already be “done deals”, but could benefit from the diverse Panelist expertise. One Panelist characterized the ideal stage for initial review as the “bones of the project” – early enough to influence the structure of the deal, but not so early that there are no “bones” to evaluate. In addition, the Panel needs to be involved and able to comment on a project at key points during negotiations.

P4 Client: Panelists are also concerned about a lack of clarity as to whom their “client” is, or whom exactly they are serving. Is the client the City Council? The Executive? The citizens of Seattle? A combination of all three?

The intent behind the Public-Private Partnership Task Force recommendation to establish a Panel was that it would assist City departments, the Council, and the citizens of Seattle in evaluating public-private partnerships. In practice, the Panel has not been able to effectively assist any of the three clients in their work, and their relationship has been with some part of each of the three. Resolution 30072 houses the public-private partnership review process in the City Budget Office, which is on the Executive side of the City. All information that the Panel has received on a specific project comes from the sponsoring department’s staff, who are proponents of the project. The Panel has thus far directed feedback to department staff, but has then (in the case of the West Seattle Garage and South Lake Union) presented their recommendations to the Council. Members of the public have been present at P4 meetings (both Project Panel and general business meetings), and receive frequent updates on the Panel’s work via the website, email, or press releases. However, this information has been most used by a small number of interested citizens, and not well used by the public at large.

Informal feedback from the Executive shows a mixed reaction to the establishment of the Panel. Some see it as an “extra step” in the life of a project, while others have expressed that comments and direction from outside experts would be helpful at the right stage of the project. There is also some concern on the part of the Executive to provide the Panel with confidential information, without a sense that the Panel would use an Executive Session to discuss the material and that sharing of the information would not jeopardize the City’s negotiation strategy. (See Executive Session, below.)

The Council has also expressed interest in the Panel’s work, but with no consensus on how the Panel’s expertise could best be used by Councilmembers or Central Staff. With both bodies unsure as to how best to use the Panel, and neither certain who should be the main contact or sponsor of the Panel, effective review of a project becomes impossible.

Council President Pageler, at the January 2001 briefing of the Legislative Department Committee, proposed a possible solution to the client question. She suggested that, for each individual project, the Panel, Council staff, and other related parties (including department staff) negotiate what questions the Panel should focus on during review, and what the appropriate timeline for review should be. This process would allow both the Executive and the Council to tell the Panel how they could best be used for the particular project, and would clearly establish the questions and timeline at the outset.

Executive Session: Finally, it is important to mention the ongoing discussion that Panelists, the Executive, and others have had around use of Executive Session. Panelists’

intent has always been to have meetings open and accessible to the public. However, in the interest of being able to provide the most effective and useful review and comment, Panelists want to have access to certain information about negotiations, and materials which may be deemed confidential by City staff. In July 2000, in response to questions from Panel members, Sara Levin requested clarification from the City Attorney's office as to whether or not the Panel was bound to the Open Public Meetings Act, and consequently under what parameters they could go into Executive Session. The short answer from the City Attorney was that "[t]he Open Public Meetings Act most likely is inapplicable to many, if not all, meetings of the panel. The only situations in which one might argue the Act applies are meetings at which the panel conducts hearings or takes public testimony or comment."

Panelists crafted Guiding Principle #7, which states that they "recognize that it is City policy to have all P4 proceedings (meetings, hearings, briefings) open to the public. In some cases, in which sensitive materials or subjects are being reviewed or discussed, Panelists reserve the option to close the meeting or that portion of the meeting to the public."

Concerns remain, however, about whether City staff will be comfortable providing confidential materials for review, and whether the Panel will actually be willing to do a portion of their work out of the public light. One Panelist stated that, by working behind closed doors, the Panel could "become part of the problem", especially given the intent behind having a review panel to increase public awareness of the City's role in public-private partnerships.

Citizen Comments

Throughout the Panel's self-assessment period, members of the public were also asked to provide comment on the group's work. Feedback varied, and was provided for the most part by citizens who had been following the group's work since its inception. Some comments mirrored the Panelists' own concerns, including the need for early involvement in review of a project (especially the Aquarium and South Lake Union properties). In the case of South Lake Union, the Panel could have been involved in the decision about whether to sell or lease the properties, and in development of the RFQ.

One citizen asked for review to extend beyond the completion of a project – to a stage at which the Panel could confirm that the stated public benefits were actually being achieved.

Several citizens urged the Panel to be more assertive, and to ask probing, informed questions of the City staff. The Design and Planning Commissions were brought up as good examples of advisory bodies which ask tough questions of project proponents.

The Panel was also urged to be more vocal and proactive in their communication with the public. Detailed press releases, with Panelist comments rather than simple notices of meeting times, would better inform the public on the Panel's opinions and work.

Other comments included a need for a Panel which is entirely free of conflict of interest, and a suggestion that the Panelists take a more independent role in developing materials

for review. Another citizen asked that critics of a project be invited to speak to the Panel along with the project proponents.

Conclusions

Panelists are concerned that at this point they are not adding value to either the City's creation or the public's perception of public-private partnerships. Part of this concern lies in the timing of Panel review of a project, which has, to this point, come too late in the process for the group to feel like they can effectively comment. Panelists also question the appropriateness of the types of projects that they have been asked to review. P4 was initiated in response to the public outcry over the Pacific Place Garage project. Projects targeted for review to date are disparate – ranging from a straight real estate transaction (South Lake Union) to the Aquarium redevelopment, a transfer of governance from the City to a nonprofit institution. To date, there are no projects similar to Pacific Place in the City's capital plan. Finally, uncertainty about whom the Panel's client is, and to whom they could be most useful, adds to the confusion around the other issues. An additional concern lies in the Panel's potential use of Executive Session to review certain information without jeopardizing the City's negotiating strategy.

At the October meeting of the full Panel, one member suggested that the group disband. While the rest of the Panel did not immediately support this suggestion, there was consensus that the group needs clarity around its mission, a better understanding of who the Panel's "client" is and the types of projects they should be reviewing, and clarity regarding the Panel's role in reviewing financial impacts and public benefits. The discussion at the January 2001 meeting, which resulted in the group taking a temporary hiatus, is a message to the Council and Executive that the Panel cannot go on without a better understanding of the work they are being asked to do.

If the Panel is to stay in existence, they need clear direction from the Council and/or Executive on all of these questions. The types of projects and timing of review should be such that the Panel can effectively comment and influence the structure of the deal. One or both bodies should take "ownership" of P4. Panelists are all very willing to volunteer their time to serve, but want to ensure that they are adding value and doing work that will provide benefit to the citizens of Seattle.

Next Steps

Panelists plan to stay on hiatus until they receive clear direction from either the Council or Executive. Panel Chair Jan Hendrickson, whose term expired in May, is willing to continue in her position until the review is concluded. Both Jan and Sara Levin, P4 Coordinator in the City Budget Office are willing to continue to work with either or both bodies to assess their interest in keeping the Panel alive, and to establish some sort of "sponsorship" over the group.

The Panel requests a response from the Executive and Council by September 1st, 2001. Once a direction has been determined, Sara and designated Panelists will work to more clearly structure the review process, clarify timing of review and types of projects reviewed, and change the enabling resolution (#30072) to reflect a more refined process.

There are many forms that this work could take, including the suggestion made by Council President Pageler, and no matter who has “ownership” over the group, the other body as well as the public will be consistently engaged and asked for input.

Please contact Sara Levin (4-8691) if you would like to set up meetings with any of the Panelists, or if you would like any further information on the work of the Panel.

CC: Dwight Dively, Executive Services Department

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Attachments: List of Panelists

Resolution #30072 and Attachment A

Work to date