



# REPORT TO PLANNING COMMISSION City of Sacramento

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915 I Street, Sacramento, CA 95814-2671

STAFF REPORT  
August 21, 2008

## MEMORANDUM

**To:** Members of the Planning Commission

**From:** Eileen M. Teichert, City Attorney  
Robert D. Tokunaga, Supervising Deputy City Attorney  
**Sabina D. Gilbert, Senior Deputy City Attorney**

**Re:** **Planning Commission Administrative Policies and Procedures:  
Draft Revised Planning Commission Rules of Procedure**

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**Recommendation:** Review and Comment

**Contact:** Sabina D. Gilbert, Senior Deputy City Attorney 808-5346

## Background

The City Council adopted revised Council Rules of Procedure on May 15, 2007 to govern the order and conduct of its business. The new Council Rules direct City Council established boards and commissions to adopt their own rules for the conduct of their business that conform to the Council Rules to the extent possible (Council Rules of Procedure Chapter 1 §(A)(2)).

At its February 21, 2008 meeting, the Planning Commission discussed issues related to its Rules of Procedure in the context of a broader discussion on Administrative Policies and Procedures. At this meeting, the Planning Commission formed a committee to review and recommend changes to the Council Rules of Procedure to make them suitable for use by the Planning Commission, while also addressing the specific issues of interest to the Commission.

Commissioners Notestine, Samuels, and Yee were appointed to the committee and met with Deputy City Attorney Sabina Gilbert and Development Services Department Program Manager Wendy Klock-Johnson to review the Council Rules, discuss issues, and propose amendments. Based on the input of the Commissioners and Ms. Klock-Johnson, Ms. Gilbert has prepared a draft of revised Planning Commission Rules of Procedure which is presented to the Commission for its review and comment. Because of the more limited scope of the Planning Commission's authority and jurisdiction, some sections of the Council Rules have been deleted or modified. What remains, however, is substantially consistent with the Council Rules.

Below is a discussion of the draft revised Rules and the changes in Commission procedures needed to conform the Planning Commission Rules to those of the City Council.

**Discussion**

1. Organization and Format.

The draft Planning Commission Rules follow the general format of the Council Rules, and are divided into the following chapters:

- Chapter 1 Authority/Administration
- Chapter 2 Duties
- Chapter 3 Conduct of Commissioners
- Chapter 4 Conduct of City Staff
- Chapter 5 Conduct of the Public
- Chapter 6 Meeting Types and Schedules
- Chapter 7 Meeting Agendas
- Chapter 8 Conduct of Meeting
- Chapter 9 Planning Commission Requests
- Chapter 10 Facilities
- Chapter 11 City Planning Commission Ad Hoc Committees

The Council Rules also include chapters on the two City Council standing committees (the Law and Legislation Committee and the Personnel and Public Employees Committee), vacancies and appointments to City boards and commissions, and City Council vacancies. These chapters were not included in the draft Planning Commission Rules because the Planning Commission does not have standing committees (nor is it authorized to create them), it does not make or participate in the process for making appointments to other City boards and commissions, and it is not directly involved in declaring, or making an appointment to fill, a vacancy on the Planning Commission. Regarding Planning Commission vacancies, City Charter section 232 establishes a procedure for removal of City board and commission members for good cause, neglect of duty, or misconduct in office. The procedure requires charges to be served on the

board or commission member and a hearing before the City Council. City Code section 2.40.100 provides that failure to attend three consecutive regular meetings shall be deemed good cause for removal, but that “absence of any board or commission member on account of performance of his or her official duties shall not be deemed failure to attend a meeting.”

2. Authority/Administration (Chapter 1).

Chapter 1 section (F) clarifies that references to “Staff” include, as appropriate, both the Current Planning Division of the Development Services Department and the Planning Department, and references to “Planning Director” and “Commission Secretary” include, as appropriate, both the Development Services Department Current Planning Manager and the Director of Planning.

3. General Conduct (Chapters 3, 4, and 5).

Chapters 3, 4, and 5 address the general conduct of Commissioners, staff, and the public primarily during, but also to a more limited extent outside of, Planning Commission meetings. These provisions are taken with very few changes from the Council Rules. Changes recommended by the Commission’s committee include the following in Chapter 3: section (A)(1)(f) (not digressing from the item under consideration), section (C)(1)(d) (refrain from giving direction to Staff on behalf of the Commission without having received the express authority of the Commission to do so), section (D)(1)(b) (refrain from directing or criticizing the public), and (D)(1)(f) (refrain from making comments to the public on behalf of the Commission without having received the express authority of the Commission to do so).

4. Meeting Types and Schedules (Continuances) (Chapter 6)

Chapter 6 section (D) addresses public hearing continuances. It is adapted from the Council Rules with very few changes. The procedure recognizes the interests of the applicant/appellant, the public, and the Planning Commission in managing and conducting its business in an orderly and fair manner.

- An applicant or appellant may obtain one continuance by right, for a period of time not exceeding the second regular meeting after the originally scheduled hearing date, by submitting a written request for a continuance to the Commission Secretary no later than noon on the day prior to the scheduled hearing.
- If the applicant or appellant wishes to obtain a continuance for a longer period of time, or missed the noon deadline, the applicant or appellant must appear before the Commission at the time the original hearing was scheduled and request the continuance. Under these circumstances, the continuance is not a matter of right. The Commission may grant the

- An applicant or appellant may request a second continuance only by appearing before the Commission at the time of the scheduled hearing and demonstrating that extraordinary circumstances justify the second continuance.
- A third continuance may be requested only by appearing before the Commission at the time of the scheduled hearing and demonstrating that a miscarriage of justice would result from a refusal to grant a continuance.
- City staff may request as many continuances as needed to complete and ready a project or an appeal for hearing. Staff may not request a continuance on behalf of an applicant or appellant.
- A neighborhood association or other organized group may contact the Commission Secretary and request a continuance as needed to complete and ready their presentation for the hearing process, and the Planning Commission may grant the request for good cause.

5. Meeting Agendas (Chapter 7).

This chapter addresses existing procedures relating to meeting agendas to ensure compliance with the Brown Act, including preparation of staff reports, written communications to the Planning Commission from staff and the public, preparation of agenda packets, “purple” sheets for supplemental or other material delivered separately, distribution of the agenda packet, posting of the agenda, and types of agenda items. Section (E)(2)(a) repeats the Council Rules statement that “No item shall be considered by the City Planning Commission if the applicable written material is not delivered to the Planning Commission before the meeting and made available to the public.”

6. Conduct of Meetings (Chapter 8).

A. Quorum (Chapter 8 §(B)).

Section 30 of the City Charter establishes the quorum of the City Council as a majority of the members then in office. This is also the common law rule. Neither the City Charter nor the City Code establishes the quorum of the Planning Commission. Currently the quorum is established by the Commission’s Rules of Procedures at five. To be consistent with the Council Rules, the draft Commission Rules establish the quorum as a majority of the members of the Planning Commission in office. (NB: Because vacant seats are not counted for purposes of establishing a quorum, the number constituting a quorum would be

reduced if there are vacancies. City Code section 2.60.030 provides that the term of office of members of the planning commission shall be four years *and until their successors are appointed*. Therefore, commissioners whose term has expired but whose replacement has not yet been appointed remain in office, and no vacancy is created.)

B. Order of Discussion – General (Chapter 8 §(C)).

Chapter 8 section (C) sets out the normal order for items to be listed on the agenda. Section (C)(1) allows the Chair to reorder items, unless Commissioners object. Commissioners may request items be reordered by motion.

C. Order of Discussion – Public Hearings (Chapter 8 §(C)(3)).

The Council Rules distinguish between hearings that require *de novo* review and those that do not. When a hearing is an appeal and is *de novo*, the hearing is conducted as if it were the first hearing on the matter. Following staff presentation, the applicant speaks and has the right of rebuttal. If the hearing is not *de novo*, the appellant speaks after the staff presentation and has the right of rebuttal. All Planning Commission hearings are *de novo*, so there is no need to distinguish between the two types of hearings. The public hearing procedure in the draft Commission Rules calls for the applicant to speak after the staff presentation, followed by the appellant, if any, followed by the public, followed by applicant rebuttal.

D. Oral Communications from the Audience (Chapter 8 §(D)).

This section clarifies the right of the public to address the Planning Commission on any item on the agenda, including the Consent Calendar, as well as items not on the agenda but within the subjectmatter jurisdiction of the Commission. Speakers are limited to three minutes, with the exception of applicants and appellants addressing the Commission during a public hearing. In addition, the Chair may modify (increase or decrease) the time allowed as circumstances will accommodate, as long as the modification is fairly applied.

E. Motions (Chapter 8 §(G)).

The Council Rules address the following motions: to adjourn, to table, to call for the question, to postpone, to substitute, and to reconsider. The Commission Rules include only the following three without substantial change:

(i) Motion to Call for the Question (Close Debate).

This motion is currently used by the Commission, except under the Council's Rules, only the Commissioner *moving for adoption* of a motion has the

privilege of moving to close debate and take a vote on the motion. The motion requires a second but is not debatable or amendable.

(ii) Motion to Continue.

To conform to current Commission practice, this is the Council's Motion to Postpone under a new name, and includes motions to continue to both a date certain and a date to be determined (which would require re-noticing).

(iii) Motion to Substitute.

This motion is currently used by the Commission and is unchanged from the Council's Rules.

The motion to reconsider has not been included in the draft Commission Rules for the following reasons. When the Commission takes action on a project, whether it be to approve, deny, or recommend to the City Council, the action is final and no longer within the jurisdiction of the Commission. The Commission would not have the authority to bring the project back before it to "reconsider" at a later meeting. An exception is when the Commission adopts an "intent" motion to take a particular action on a project at a later meeting upon preparation of required findings, and then, at the later meeting, changes its mind and decides to reverse itself or reopen the hearing to take additional evidence and a new motion on the project. To accomplish this, a motion to "reconsider" the "intent" motion is made and, if the motion is successful, a different motion is made or the project is continued to a new hearing date with new noticing. An alternative, and less confusing approach would be to not make an "intent" motion on the project. Instead, a motion can be made to direct staff to prepare findings consistent with a proposed action on the project and then continue the hearing to a future date. This approach would avoid the need to "reconsider" a prior motion and help emphasize that final action has not been taken on the project.

The proposed Commission Rules direct the Chair to state the motion before it is debated. This is consistent with Council practice and will help ensure that Commissioners, staff, and the public understand the motion.

F. Voting (Chapter 8 §(H)(1)).

Section 30 of the City Charter requires five affirmative votes for the Council to act, regardless of the number of councilmembers that constitute a quorum. Neither the Charter nor the City Code establishes minimum vote requirements for the Planning Commission. The Planning Commission Rules of Procedure currently establish different vote requirements for different types of entitlements. This is not required by State law or City Code. To be consistent with Council Rules, the draft Commission Rules adopt the five affirmative vote requirement (unless provided otherwise).

G. Voting – Recusals (Chapter 8 §(H)(2)).

The draft Commission Rules address recusals (withdrawing from a position of judging so as to avoid any semblance of partiality or bias) for financial conflicts of interest or bias. Commissioners must announce the recusal when the item is called and immediately leave the dais and the hearing room (except when the item is on the Consent Calendar). If the recusal is for a financial conflict of interest, the Commissioner must publicly identify the financial interest in enough detail to be understood by the public. Recusal for any other conflicts may be accompanied by a disclosure.

7. Ad Hoc Committees (Chapter 11).

The draft Commission Rules expressly address the creation of temporary ad hoc committees to address special purposes for a limited duration. An ad hoc committee has only informative and recommendatory powers.

**Conclusion**

In addition to the Commission's ideas and comments on the draft Commission Rules, the scheduled Commission discussion on other administrative policies and procedures topics may lead to other changes or additions to the Commission Rules, including voting options (abstentions), requesting names and addresses of speakers, meeting minutes, and management of written ex parte communications received by Planning Commissioners.

Attachment: Draft Revised City Planning Commission Rules of Procedure (08/08/08)