

REPORT



FROM CITY ATTORNEY

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March 12, 2007

THE HONORABLE CITY COUNCIL
Palo Alto, California

SUBJECT: RECOMMENDATION TO ADOPT AMENDMENT TO COUNCIL
PROCEDURES REGARDING MULTIPLE APPELLANTS AT CITY
COUNCIL HEARINGS

RECOMMENDATION

The City Attorney recommends that the City Council review and adopt the attached amendment to section I of the Council Procedures, which provides a process for the City Council when multiple appellants appeal the same decision.

BACKGROUND

There has been some confusion in the past on how to handle multiple appellants challenging the same land use item before the City Council. In most cases, only one party appeals a land use decision. Existing Council Procedures allow applicants and appellants ten minutes for opening presentations and three minutes for rebuttal before the public hearing is closed. When multiple parties appeal the same decision for different reasons, the Procedures do not provide guidelines for timing of appellant presentations. Even though there is a need for additional time when multiple parties appeal the same land use decision, the existing Procedures do not provide guidelines for reasonable amounts of time in those appeals.

DISCUSSION

The recommended revision to section I(b)(2) of the Council Procedures adds time limits to presentations and rebuttals by multiple appellants. For cases involving two to four appellants, the new provisions allow twenty minutes for presentation and six minutes for rebuttal to be divided amongst the appealing parties. In cases involving more than four appellants, due process requirements limit the City's ability to reduce presentation time below a floor of five minutes for presentation and three minutes for rebuttal for each appealing party. However, these requirements would only apply if each appeal was on a different aspect or issue concerning a project; the Council could impose additional limitations if the parties were appealing on the same grounds. These time limits provide a balance between expeditious hearings and minimal due process requirements.

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Finally, the existing provision in the Procedures that allows applicants or appellants to request, and the Council to grant, additional time when that need is clearly established remains unchanged, to allow some flexibility in the event that the Procedures do not cover all contingencies.

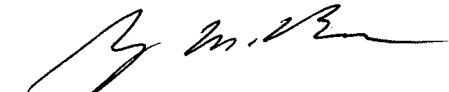
POLICY IMPLICATIONS

This change will clarify existing guidelines for appeals to the City Council.

ATTACHMENT

Attachment A: Redline version of Council Procedures, Section 1

Respectfully submitted,



GARY M. BAUM
City Attorney

GMB/cjs

cc: Frank Benest, City Manager
Emily Harrison, Assistant City Manager
Donna Rogers, City Clerk
Steve Emslie, Director of Planning and Community Environment



I. Public Participation in Council Meetings

A. Policy. It is the policy of the City Council to assure that members of the public have the opportunity to speak to any regular or special meeting agenda item before final action. These rules establish the rights and obligations of persons who wish to speak during City Council meetings.

(1) Purpose. These rules are intended to enhance public participation and Council debate so that the best possible decisions can be made for Palo Alto. Palo Alto has a long and proud tradition of open government and civil, intelligent public discourse. *Open* government meetings must allow everyone to be heard without fear of cheers or jeers. For these reasons, the City Council takes these rules seriously. Disruptive or unruly behavior in violation of the law can result in removal from the Council meeting and/or arrest and prosecution.

(2) Summary of Rules. Every regular City Council agenda has two different kinds of opportunities for the public to speak. The first is during **Oral Communications**. This part of the meeting is provided so that the public can speak to anything that is in the City's jurisdiction, even if there is no action listed on the agenda. The Council allows three minutes per speaker, but limits the total time to 30 minutes per meeting. State law does not permit the Council to respond to oral communications, but City staff may be asked to follow up on any concerns that are raised.

The second opportunity to speak is during the public comment or public hearing portion of **Each Agenda Item**. Public comments or testimony must be related to the matter under consideration. The Council allows five minutes per speaker for most matters. During "*quasi-judicial*" hearings (where the City Council is legally required to take evidence and make impartial decisions based upon that evidence), the applicant or appellant may have up to ten minutes at the outset and three minutes for rebuttal at the end. These hearings are specially marked on the Council agenda.

A person who wants to speak to the Council must fill out a speaker card and hand it in to the City Clerk. The Clerk will give the cards to the Mayor or Vice Mayor so that the speakers can be identified and organized in an orderly way.

B. General Requirements.

1. Accessibility. Palo Alto makes every reasonable effort to accommodate the needs of the disabled. Any provision of these rules may be modified if needed to provide reasonable accommodation. Persons needing assistance



should contact: ~~Fred Herman~~ Larry Perlin, ADA Director, City of Palo Alto, 650/329-2496 (voice) or 650/328-1199 (TDD).

2. Presiding Officer's Permission Required. The presiding officer at Council meetings (usually the Mayor or Vice-Mayor) is legally required to "preserve strict order and decorum."¹ This is important in order to assure a fair opportunity for everyone to participate in an open and civil setting.

- a) Any person desiring to address the Council must first get the permission of the presiding officer by completing a speaker card and handing the card to the City Clerk.
- b) The presiding officer shall recognize any person who has given a completed card to the City Clerk.
- c) No person, other than a Council Member and the person having the floor, shall be permitted to enter into any discussion without the permission of the presiding officer.

3. Recording and Identification. Persons wishing to address the Council shall comply with the following:

- a) Use the microphone provided for the public and speak in a recordable tone, either personally or with assistance, if necessary.
- b) State their name and address if presenting evidence in a hearing required by law.
- c) Other speakers should state their name and address, but cannot be compelled to register their name or other information as a condition to attendance at the meeting.

4. Specific Requirements and Time Limits.

- a) Oral Communications. Oral communications shall be limited to three minutes per speaker and will be limited to a total of thirty minutes for all speakers combined.
 - 1) Oral communications may be used only to address items that are within the Council's subject matter jurisdiction, but not listed on the agenda.



2) Oral communications may not be used to address matters where the receipt of new information would threaten the due process rights of any person.

3) All remarks shall be addressed to the Council as a body and not to any *individual* member.

4) Council members shall not enter into debate or discussion with speakers during oral communications.

5) The presiding officer may direct that the City Manager will respond to the person speaking and/or the Council at a later date.

b) Other Agenda Items. Public comments or testimony on agenda items other than Oral Communications shall be limited to a maximum of five minutes per speaker unless additional time is granted by the presiding officer. The presiding officer may reduce the allowed time to less than five minutes if necessary to accommodate a larger number of speakers.

1) Spokesperson for a Group. When any group of people wishes to address the Council on the same subject matter, the presiding officer will request that a spokesperson be chosen by the group to address the Council. Spokespersons who are representing a group of five or more people who are present in the Council chambers will be allowed ten minutes and will to the extent practical be called upon ahead of individual speakers.

2) Quasi-Judicial Hearings. In the case of a quasi-judicial hearing, single applicants and appellants shall be given ten minutes for their opening presentation and three minutes for rebuttal before the hearing is closed. In the case of a quasi-judicial hearing for which there are two or more appellants, the time allowed for presentation and rebuttal shall be divided among all appellants, and the total time allowed for all appellants shall be a total of twenty minutes for the opening presentation and six minutes for rebuttal before the hearing is closed; however, under no circumstances shall an individual appellant be given less than five minutes for presentation and three minutes for rebuttal. In the event a request is made and the need for additional time is clearly



established, the presiding officer shall independently, or may upon advice of the city attorney, grant sufficient additional time to allow an adequate presentation by the applicant or appellant in a hearing required by law.

3) Addressing the Council after a Motion. Following the time for public input and once the matter is returned to the Council no person shall address the Council without first securing the permission of the Council so to do, subject to approval of the City Attorney with respect to any hearing required by law.

c) Decorum. The Palo Alto Municipal Code makes it unlawful for any person to:

- 1) Disrupt the conduct of a meeting;
- 2) Make threats against any person or against public order and security while in the Council chamber.
- 3) Use the Council Chambers during meetings for any purpose other than participation in or observation of City Council Meetings.

Any Council Member may appeal the presiding officer's decision on a decorum violation to the full Council. Decorum violations are punishable as a misdemeanor and may lead to a person being removed from the Council meeting.ⁱⁱ

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ⁱ Palo Alto Municipal Code, § 2.04.080(b).

ⁱⁱ Palo Alto Municipal Code, § 2.04.120(c); 2.04.150(b).