



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: Planning Commissioner Terms
and Quorum Requirements

DATE: 6/6/2006

RECOMMENDATION

That the City Council consider the following information pertaining to Planning Commissioner terms and Planning Commission quorum requirements in the Council's consideration of Planning Commissioner applicants for three (3) Planning Commissioner terms expiring on June 30, 2006 and for one (1) unexpired term ending on June 30, 2008.

OUTCOME

To inform a Council decision on the appointment of Planning Commissioners to fill expiring or vacant Planning Commissioner seats.

BACKGROUND

The terms of three (3) out of seven (7) Planning Commissioner seats will expire as of June 30, 2006 pursuant to the terms and provisions of Section 1000 of the San José City Charter. Additionally, one (1) Planning Commissioner seat became vacant earlier this year upon the resignation of the incumbent, which seat has an unexpired term that ends as of June 30, 2008.

Ten (10) applicants for these expiring and vacant Planning Commissioner seats have been scheduled for interviews before the City Council on June 13, 2006 during the afternoon session of the Council for possible appointment to the Planning Commission. Questions have arisen as to whether the Council may extend the terms of existing Planning Commissioners or otherwise appoint Planning Commissioners to terms of less than four (4) years. This memorandum has been prepared to address and inform the Council on those issues.

ANALYSIS

A. Term Extension

San José City Charter Section 1000, which Charter section establishes the Planning Commission, specifically provides that "the Council shall appoint commissioners for four-year terms commencing on the first day of July of each even-numbered year to fill the offices of those members whose terms expire as of the end of the 30th day of June of such year." The law is clear that where a term of office is fixed by a statutory provision or otherwise by law, the appointing body cannot change that term – only a change in the statute or the applicable law can change that term. This includes a change in the term to extend the term of that office.

Applying this legal principle to the case of Planning Commissioner terms of office, since Planning Commissioner terms of office are specifically established and set forth through the terms and provisions of the City Charter and no provisions of the City Charter allow the City Council to modify those terms of office, the City Council must adhere to and cannot extend or otherwise change Planning Commissioner terms of office. These terms of office can be modified only through a change to the applicable City Charter provisions.

B. Term of Vacated Planning Commissioner Seat

In connection with a seat that has become vacant on the Planning Commission, Section 1000 of the City Charter provides that "the Council shall appoint a qualified person to fill such vacancy for the remainder of the unexpired term of such member." In the present case before Council, there is one (1) vacant seat on the Planning Commission with a term that ends on June 30, 2008. Therefore, the Council appointment to fill this seat on the Planning Commission may hold this seat only until that date.

C. Appointments

While the City Council is not empowered under the City Charter to extend or otherwise modify any Planning Commissioner's term of office, the Charter itself does not mandate that the City Council finally make its Planning Commissioner appointments prior to the commencement of a term of office. So, if the City Council deems it necessary or in the public interest to continue its decision-making on final Planning Commissioner appointments to a later date, it appears that the Council may do so, but any final appointments made by the City Council to fill Planning Commissioner seats that expired on June 30, 2006 would be for the City Charter specified four (4) – year term of July 1, 2006 to June 30, 2010. Similarly, any final appointment by Council to fill the currently vacant seat would be for the unexpired term of that seat, until June 30, 2008.

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1. Quorum Issue

While the City Council may not be legally compelled to take all of its actions to finally appoint Commissioners to fill the expired Planning Commissioner seats prior to the expiration of those terms or to fill the vacant, unexpired Planning Commissioner seat within a certain, set period of time, it is important to note that the four (4) vacancies left on the Planning Commission through these expired and vacant seats will leave the Planning Commission with only three (3) Commissioners as of July 1, 2006 if no appointments are made to fill these vacancies prior to that date.

Section 5 of the existing Planning Commission By-Laws expressly provides that four (4) members of the Planning Commission constitute a quorum to do business, and Section 6 of these By-Laws provides that no action can be taken by the Commission unless four (4) or more members vote for that action (the only exception being that less than a quorum can adjourn a meeting). Therefore, unless at least one (1) Planning Commissioner is appointed on or before July 1, 2006, the Planning Commission will not be able to conduct business until at least one (1) additional Commissioner is appointed. That Commissioner could be a Commissioner to fill either an expired seat or the vacant seat with an unexpired term.

CONCLUSION

All of the foregoing information related to Planning Commissioner term issues and Planning Commission quorum requirements is provided to assist and inform the City Council as it considers Planning Commissioner applicants at its June 13, 2006 meeting.

ALTERNATIVES

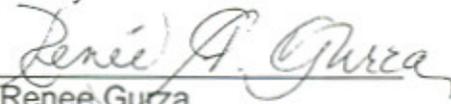
Not Applicable.

PUBLIC OUTREACH

Not applicable.

CEQA: Not a project.

RICHARD DOYLE
City Attorney

By 
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Sr. Deputy City Attorney

cc: Les White

For questions please contact Renee Gurza, Sr. Deputy City Attorney at (408) 535-1900.