



Memorandum

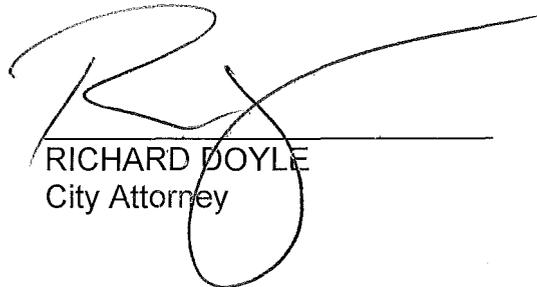
TO: RULES AND OPEN
GOVERNMENT COMMITTEE

FROM: RICHARD DOYLE
City Attorney

SUBJECT: Proposed Change to SJMC
Title 20 (The Zoning Code)

DATE: March 12, 2009

Attached is additional background information on the above-referenced item.



RICHARD DOYLE
City Attorney



Memorandum

TO: RULES AND OPEN GOVERNMENT FROM: COUNCILMEMBER WILLIAMS
COMMITTEE

SUBJECT: UPDATE OF TITLE 20 OF THE
SAN JOSE MUNICIPAL CODE

DATE: 4-24-08

Approved

Forrest Williams

Date

4/24/08

RECOMMENDATION

Update of Title 20 (Zoning) of the Municipal Code, Section 20.120.040.

BACKGROUND

Title 20 of the Municipal Code, Section 20.120.040 was previously updated by Ordinance 26248 which was adopted December 19, 2000.

A updated Ordinance Code Section 20.120.040 will improve the City's planning process, and improve the flexibility of the Planning Commission and Council when working with time sensitive issues; allowing both to work more efficiently together.

The referenced Municipal Code Section does not allow for timely, efficient responses for time sensitive issues. Currently, there is no flexibility under the Municipal Code Section 20.120.040 that allows for responsiveness to time sensitive issues. This change will allow for a more timely response.

CC: Lee Price, MMC, City Clerk



ALTERNATIVE: SHORTENING THE COMMISSION'S REVIEW PERIOD

20.120.040 Hearing - Planning Commission

- A. Whenever the Planning Commission is required to hold a Public Hearing, Notice of the Public Hearing shall be given pursuant to Section 20.120.060.
- B. If the Planning Commission fails to hold or complete a Public Hearing within the earlier of: (i) sixty (60) days after the date noticed for the Public Hearing, or (ii) **a date requested by the City Council that is a date not less than twenty-one (21) days from the date of the Council's request when a time sensitive issue has been identified by City Council, the Council may deem said failure to constitute a recommendation by the Commission that the proposed ordinance not be adopted**, and may then proceed to adopt the ordinance notwithstanding the failure of the Commission to hold or complete the Public Hearing or submit its report or recommendations to the Council.
- C. Upon completion of the Public Hearing, the Planning Commission shall submit its report or recommendations to the Council.



Memorandum

TO: PLANNING COMMISSION

FROM: Joseph Horwedel

**SUBJECT: PROPOSED TITLE 20 CHANGE
TO STREAMLINE THE HEARING
PROCESS**

DATE: September 3, 2008

Council District: Citywide
SNI: All

RECOMMENDATION

Planning staff recommends that the Planning Commission recommend that City Council initiate an ordinance to modify Title 20 of the Municipal Code (the Zoning Code) to provide for a more streamlined hearing process before the City Planning Commission under specified circumstances.

BACKGROUND

At their April 30, 2008 meeting, the Rules and Open Government Committee considered Councilmember Williams' request to amend Title 20 to "improve the City's planning process, and improve the flexibility of the Planning Commission and Council when working with time sensitive issues; allowing both to work more efficiently together" (see the Councilmember's memorandum at http://www.sanjoseca.gov/clerk/CommitteeAgenda/Rules/043008/Rules043008_g1.pdf).

The Committee passed a motion requesting the Planning Commission to comment on the proposal. With the Commission's input, the Committee would then decide whether or not to place the initiation of such an amendment on a future Council agenda for consideration.

ANALYSIS

Attached for the Commission's consideration is a draft resolution initiating the proposed ordinance as well as a draft of the proposed ordinance. The ordinance would apply only to zoning changes and amendments (e.g., the rezoning of property or modifications to Title 20, the Zoning Code). Under the Zoning Code, the Planning Commission is required to hold a public hearing on these matters and provide a recommendation to the City Council.

Section 20.120.040 currently states that if the Planning Commission fails to hold or complete public hearing within 60 days after the date noticed for public hearing, then the Council may deem said failure to constitute a recommendation by the Planning Commission that the proposed ordinance not be adopted. The Council may then proceed to adopt the ordinance

PLANNING COMMISSION

SUBJECT: PROPOSED HEARING PROCESS STREAMLINING

September 3, 2008

Page 2

deem said failure to constitute a recommendation by the Planning Commission that the proposed ordinance not be adopted. The Council may then proceed to adopt the ordinance notwithstanding the failure of the Commission to hold or complete its public hearing, or submit its report or recommendations to the Council within that 60-day period.

The proposed ordinance would modify this section to add language to allow the City Council to identify certain items as time sensitive and request that the Commission complete its hearing and provide its report in a shorter time frame (but not less than a date that is 21 days from the date of the Council's request), in which case the Commission would then need to hold or complete its public hearing within that shorter time period.

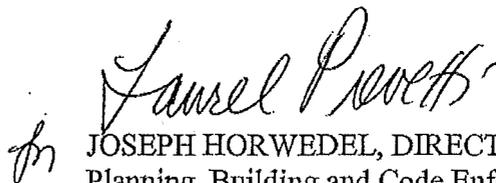
The proposed ordinance would provide an opportunity for the City Council to identify time sensitive items, and schedule the Planning Commission hearings on those items accordingly. The intent is to allow an opportunity to address the Council's July recess and the City's winter furlough when delays in zoning considerations could result in more significant time delays that could have financial implications to applicants.

PUBLIC OUTREACH

Should the Council initiate the proposed ordinance, public outreach would comply with City Council Policy 6-30: Public Outreach.

CEQA

Should the Council initiate the proposed ordinance, the appropriate environmental review would be conducted. The Commission's consideration of the initiation is not a project under CEQA.


JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

Attachments

RESOLUTION NO.

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE INITIATING, PURSUANT TO SECTION 20.120.010 OF CHAPTER 20.120 OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE, PROCEEDINGS TO AMEND SECTION 20.120.040 OF CHAPTER 20.120 OF TITLE 20 OF THE SAN JOSÉ MUNICIPAL CODE TO PROVIDE FOR A MORE STREAMLINED HEARING PROCESS BEFORE THE CITY PLANNING COMMISSION UNDER SPECIFIED CIRCUMSTANCES, SETTING A PUBLIC HEARING FOR SEPTEMBER _____, 2008 AT 7:00 P.M. IN CITY COUNCIL CHAMBERS, AND REFERRING SAID ORDINANCE TO THE PLANNING COMMISSION FOR ITS REVIEW AND RECOMMENDATION

BE IT RESOLVED by the Council of the City of San Jose as follows:

SECTION 1. Pursuant to provisions of Chapter 20.120 of Title 20 of the San Jose Municipal Code, the Council of the City of San Jose, on its own motion, does hereby initiate proceedings to adopt that certain proposed ordinance entitled, "AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTION 20.120.040 OF CHAPTER 20.120 OF TITLE 20 OF THE SAN JOSÉ MUNICIPAL CODE TO SET FORTH A MORE STREAMLINED PROCESS FOR CERTAIN PLANNING COMMISSION HEARINGS UNDER SPECIFIED CIRCUMSTANCES."

SECTION 2. The above-mentioned ordinance is hereby referred to the Planning Commission for its report, comment and recommendation pursuant to the provisions of Section 20.120.010 of Chapter 20.120 of Title 20 of the San José Municipal Code, and the City Clerk is hereby directed to send a copy of this resolution to said Planning Commission for this purpose.

*DRAFT – FOR REFERRAL TO PLANNING COMMISSION
FOR ITS COMMENT AND RECOMMENDATION*

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTION 20.120.040 OF CHAPTER 20.120 OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE REGARDING PLANNING COMMISSION HEARINGS TO SET FORTH A MORE STREAMLINED PROCESS FOR CERTAIN PLANNING COMMISSION HEARINGS UNDER SPECIFIED CIRCUMSTANCES

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

Section 20.120.040 of Chapter 20.120 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

20.120.040 Hearing - Planning Commission

- A. Whenever the Planning Commission is required to hold a Public Hearing, Notice of the Public Hearing shall be given pursuant to Section 20.120.060.
- B. If the Planning Commission fails to hold or complete a Public Hearing within *the earlier of: (i) sixty (60) days after the date noticed for the Public Hearing, or (ii) a date requested by the City Council that is a date not less than twenty-one (21) days from the date of the Council's request when a time sensitive issue has been identified by City Council*, the Council may deem said failure to constitute a recommendation by the Commission that the proposed ordinance not be adopted, and may then proceed to adopt the ordinance notwithstanding the failure of the Commission to hold or complete the Public Hearing or submit its report or recommendations to the Council.
- C. Upon completion of the Public Hearing, the Planning Commission shall submit its report or recommendations to the Council.

RD:RG
8/19/08

DRAFT

PASSED FOR PUBLICATION OF TITLE this day of , 2008, by
the following vote:

AYES:

NOES:

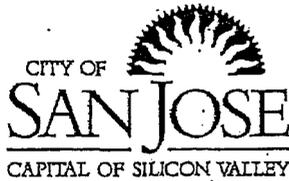
ABSENT:

DISQUALIFIED:

CHUCK REED, Mayor

ATTEST:

LEE PRICE, MMC
City Clerk



Memorandum

TO: RULES AND OPEN
GOVERNMENT COMMITTEE

FROM: Jim Zito

SUBJECT: PROPOSED CHANGE TO SJMC
TITLE 20 (THE ZONING CODE)
TO MODIFY THE HEARING
PROCESS FOR CERTAIN
REZONING AND CODE
AMENDMENT PROPOSALS

DATE: February 11, 2009

RECOMMENDATION

The Planning Commission recommends that City Council **not** initiate an ordinance, as proposed, to amend Title 20 of the San José Municipal Code (the Zoning Code) to provide for a modified hearing process before the City Planning Commission for certain rezoning and zoning code amendment proposals under specified circumstances. (Motion to recommend to City Council that the proposed ordinance not be initiated and forward the Commission's comments passed unanimously, 7-0-0).

BACKGROUND

At their April 30, 2008 meeting, the Rules and Open Government Committee considered Councilmember Williams' request to amend Title 20 of the San José Municipal Code (the Zoning Code) to "improve the City's planning process, and improve the flexibility of the Planning Commission and Council when working with time sensitive issues; allowing both to work more efficiently together" (see the Councilmember's memorandum at http://www.sanjoseca.gov/clerk/CommitteeAgenda/Rules/043008/Rules043008_g1.pdf).

The Committee passed a motion requesting the Planning Commission to comment on the proposal and provide that recommendation to the Rules and Open Government Committee. With the Commission's input, the Committee would then decide whether or not to place the initiation of the proposed Zoning Code amendment on a future Council agenda for consideration.

ANALYSIS

Proposed Ordinance

On September 10th, the Planning Commission discussed and considered a proposed ordinance to address the issues raised in Councilmember Williams' memorandum. The ordinance would apply only to zoning changes and amendments (e.g., the rezoning of property or modifications to Title 20; the Zoning Code). Under the Zoning Code, the Planning Commission is required to hold a public hearing on these matters and provide a recommendation to the City Council.

Section 20.120.040 currently states that if the Planning Commission fails to hold or complete public hearing within 60 days after the date noticed for public hearing, then the Council may deem said failure to constitute a recommendation by the Planning Commission that the proposed ordinance not be adopted. The Council may then proceed to adopt the ordinance notwithstanding the failure of the Commission to hold or complete its public hearing, or submit its report or recommendations to the Council.

The proposed ordinance would modify this section to add language providing that the failure of the Commission to hold or complete its public hearing would be the earlier of either the 60-day provision or a date requested by the City Council that is a date not less than 21 days from the date of the Council's request when a time sensitive issue has been identified by the Council.

The proposed ordinance would provide an opportunity for the City Council to identify time sensitive items, and schedule the Planning Commission hearings on those items accordingly. The primary intent is to address the potential for delays posed by the Council's July recess and the City's winter furlough when more prolonged delays in zoning considerations could have financial implications to applicants.

Planning Commission Discussion and Recommendation

Below are the highlights of the Commission's discussion regarding the proposed ordinance:

- The Commission was unclear about the specific problem that the ordinance is trying to address. *(Staff responded by providing an example of a proposed North San Jose rezoning proposal that came to Planning Commission in June of 2007 that was deferred by the Commission in a manner that precluded the Council's ability to consider the item prior to the Council's July hiatus. Staff also explained that the purpose of the ordinance was to provide clarity of procedure to avoid timing conflicts between Planning Commission and City Council hearings in the future.)*
- How would the Council define time sensitive items? *(Staff responded that this definition could be clarified during the ordinance development process, if Council initiates the ordinance.)*

RULES AND OPEN GOVERNMENT COMMITTEE
SUBJECT: PROPOSED HEARING PROCESS MODIFICATION
February 11, 2009
Page 3

- Instead of an ordinance, applicants and staff need to identify time sensitive items and each need to be responsible to perform in a timely manner to get the items to a prompt hearing.
- How does the proposed ordinance reconcile with the Council's objectives for public outreach and "fair public hearings" for development proposals? (*Staff responded that the outreach issue would need to be evaluated during the ordinance development process, if Council initiates the ordinance.*)
- The purpose of Commission hearings is to disclose, "sunshine," and discuss issues. The Commission is concerned that they may not be able to provide thoughtful consideration, including the possible need for continuance, for time sensitive items.
- The Commission has dramatically reduced the number of deferrals since the concern was identified to them, and therefore, there is no longer a need for an ordinance. As evident from the attachment, 61% of the deferrals are listed on the agenda in advance of the meeting, 23% are requested by staff or the applicant at the meeting, and 16% are requested by the Planning Commission at the meeting.

A motion to oppose the proposed ordinance and forward the Commission's comments passed unanimously, 7-0-0.

PUBLIC OUTREACH

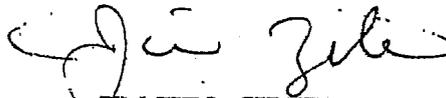
There were no speakers on this item at the Planning Commission meeting. Should the Council initiate the proposed ordinance, public outreach would comply with City Council Policy 6-30: Public Outreach.

COORDINATION

The preparation of this memorandum was coordinated with the City Attorney's Office.

CEQA

Should the Council initiate the proposed ordinance, the appropriate environmental review would be conducted. The Commission's consideration of the initiation is not a project under CEQA.


JIM ZITO, CHAIR
Planning Commission

Attachments

Planning Commission Actions on Deferrals

August 2007 - October 2008

Date	Deferrals			Deferred by Staff or Applicant at meeting	Percentage of all deferrals by Staff or Applicant	Deferred by Planning Commission	Percentage of all deferrals by PC
	Total Deferrals	showing on agenda	Deferrals at meeting				
Oct 22, 08	2	2	0	0	100%	0	0%
Oct 8, 08	2	1	1	1	100%	0	0%
Sep 24, 08	2	2	0	0	100%	0	0%
Sep 10, 08	2	1	1	1	100%	0	0%
Aug 20, 08	2	1	1	0	0%	1	100%
Aug 6, 08	1	1	0	0	0%	0	0%
Jul 16, 08	1	1	0	0	0%	0	0%
Jun 25, 08	0	0	0	0	0%	0	0%
Jun 11, 08	3	3	0	0	0%	0	0%
May 28, 08	3	3	0	0	0%	0	0%
May 14, 08	2	0	2	2	100%	0	0%
May 7, 08	4	4	0	0	0%	0	0%
Apr 21, 08	5	1	4	1	25%	3	75%
Apr 9, 08	3	1	2	2	100%	0	0%
Mar 26, 08	5	2	3	2	67%	1	33%
Mar 12, 08	1	0	1	1	100%	0	0%
Feb 27, 08	1	1	0	0	0%	0	0%
Feb 13, 08	1	1	0	0	0%	0	0%
Jan 30, 08	2	0	2	2	100%	0	0%
Jan 16, 08	3	2	1	1	100%	0	0%
Dec 10, 07	1	1	0	0	0%	0	0%
Dec 5, 07	1	0	1	0	0%	1	100%
Nov 28, 07	3	0	3	2	67%	1	33%
Nov 14, 07	0	0	0	0	0%	0	0%
Nov 7, 07	2	1	1	0	0%	1	100%
Oct 24, 07	1	1	0	0	0%	0	0%
Oct 10, 07	0	0	0	0	0%	0	0%
Sep 26, 07	5	3	2	1	50%	1	50%
Sep 12, 07	5	3	2	1	50%	1	50%
Aug 22, 07	8	6	2	0	0%	2	100%
Aug 8, 07	3	3	0	0	0%	0	0%
TOTAL	74	45	29	17	23%	12	16%

Note: The typical Planning Commission meeting includes 10 to 15 land use items.