



**CITY COUNCIL AGENDA ITEM NO. G.2  
10/24/2023**

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**SUBJECT:** Planning Commission Request to Amend Rules and Procedures Regarding Public Comments of Items on the Agenda

**DEPARTMENT:** City Manager

**STAFF:** Darin Gale, Assistant City Manager

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### **TITLE/RECOMMENDATION**

Staff does not recommend the City spend staff time and resources to amend the City's Meeting Rules and Procedures (Council Administrative Policy No. 110-1) as requested by the Planning Commission.

### **FISCAL IMPACT**

There is no fiscal impact associated with this recommendation.

### **BACKGROUND**

At the June 6, 2023 Planning Commission meeting, Commissioner Flohr requested and the Planning Commission approved a future agenda item request for City Council consideration on a 4-1 vote. The request, which was made before the City Council revised procedures for general public comments, concerns a change to the Meeting Rules and Procedures that govern the City Council and all City commissions.

As most recently revised by minute action of the City Council, the Meeting Rules and Procedures specify that the general public comment period, for City Council and all Commission meetings, is limited to comments on items *not* on the public hearings or business items portions of the agenda, and for requests for future agenda items. (Emphasis in original.) As a result, members of the public who wish to comment on public hearing items or business items are required to do so when each of those items is each called.

Commissioner Flohr's future agenda item was to consider amending the Meeting Rules and Procedures to allow the Planning Commission to accept public comments on items that are on the agenda (i.e., public hearings and business items) during the general public comment period at the start of the Commission's meetings and to ensure a person does not speak for more than the allowed time.



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Staff does not recommend this request and has not spent significant time or resources beyond preparing this report. Listed below are the primary reasons that staff does not support this request.

1. **Uniformity for the Public.** As noted above, the Meeting Rules and Procedures govern the City Council and all Commissions. Implementing the requested change would necessitate either (a) carving out special procedures for the Planning Commission in this regard, or (b) changing the process for all covered bodies in order to continue to ensure that the process is the same across all committees and commissions. If the City Council were to pursue changing this procedure, staff would recommend that the procedure be amended for the City Council and all City commissions, in order to ensure uniformity for the public. However, for the reasons listed below, staff does not believe that the City Council or the remaining City commissions would be well-served by this change.
2. **Creating a Clear Record.** A number of the actions taken by both the Planning Commission and City Council are required by law to be taken in the context of a public hearing, which is officially opened so that public testimony can be taken and later closed so the decision-makers can begin their deliberations. Among other things, this creates a clear record of the proceedings. Examples of such actions run the gamut from consideration of a conditional use permit to amendment of the General Plan, as well as non-land use related items, such as adoption of the capital improvements plan (CIP), establishment of new landscape and lighting assessment districts (LLAD's), changes to development impact fees, and so on.

Moving portions of public comment applicable to a given public hearing item to another segment of the meeting would not assist in creating this clear record, which is crucial in the event a given action is subject to legal challenge.

3. **Orderly Conduct of the Meeting.** In addition to the reasons listed above, moving public comments outside of that process is not recommended because it would disrupt the orderly conduct of the meeting. For example:
  - a. Following Council direction given October 10<sup>th</sup>, members of the public using Zoom may speak on business items or public hearings via Zoom, but not on general public comment matters. In order to implement this direction, the City Clerk and Commission secretaries will not accept Zoom comments during the general public comment portion of the meeting. Enacting the



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change proposed by the Planning Commission would result in the City Clerk and/or Commission secretaries once again accepting these calls and questioning the caller as to whether their comment concerned a public hearing item or business item (and would thus be allowed) or concerned another portion of the agenda (which would not).

- b.** Accepting public comment on agendized items at the top of the meeting, and then remembering to apply those comments to items that may be heard many hours later, with multiple intervening items, may be difficult for decision-makers, the public, and applicants.
- c.** In addition, at its meeting of October 10<sup>th</sup>, the City Council made it clear that it wished to explore ways in which to “interact” with those offering public comment (within the confines of the Brown Act). Accepting public comment outside of the agendized period for a given item, coupled with Council interaction with the speaker, may quickly, if unintentionally, morph into consideration of the item before it has actually been called, leading to potential Brown Act issues.
- d.** The City Council establishes time limits on public comment. Changing the meeting rules and procedures could allow a participant to speak twice on the same agenda item, which is currently not allowed. As presently structured, members of the public who wish to speak on a public hearing or business item wait until each individual item is called.

If public comments on public hearing and business items were to be accepted at the start of the meeting, staff and the meeting chair or Mayor would be in a position of having to monitor who had provided comments on specific items at the start of the meeting in order to ensure that the same speakers did not take the podium again once the item was called. This would be necessary to ensure that all members of the public were equally provided with a single opportunity to speak on each item.

- e.** The City frequently engages consultants and other outside assistance in processing and presenting materials to the City Council and Commissions. These individuals typically participate in only that portion of the meetings when their individual item is called. The Mayor and/or Commission chair often calls upon these subject matter experts to respond to questions posed by members of the public. If comments (and questions) from the public on agendized items were to be accepted during the general public comment



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period, this would necessitate having these individuals either respond to such questions at that time (which is not recommended) or saving those questions until the item was actually called.

4. **Due Process.** For quasi-judicial public hearings (where the decision makers are applying a fixed rule, standard, or law to a specific circumstance, such as a request for a conditional use permit, variance, design review, or subdivision map), the project applicant is required by law to be afforded due process. Typically this is accomplished by, among other steps, allowing the applicant to be the first to speak on the item and giving them 10 minutes to make a presentation. The applicant may choose to reserve some of this time to address public comments received after their initial presentation. Changing the Meeting Rules and Procedures in the manner suggested could be argued to deprive a project applicant of their due process rights and a meaningful opportunity to be heard.
  
5. **Alternative Communications Channels Available.** Participants can provide written comments in advance of the meeting if they are unable to attend or do not wish to remain at a meeting until the item on which they desire to comment is called. Written comments are shared with the Planning Commission, posted to the City's website, and are also included as part of the public record.

**CITY COUNCIL STRATEGIC INITIATIVE**

Not applicable.

**PREVIOUS ACTION**

No previous City Council action.

**ENVIRONMENTAL DETERMINATION**

Not applicable.

**ATTACHMENT(S)**

1. Meeting Rules and Procedures