

Council Policy #CP-22
Adopted 10/10/11 by Resolution 2011-46
Amended ____ by Resolution ____

SUBJECT: Procedure for ~~conduct of~~ quasi-judicial ~~public~~ hearings (*Also refer to #CP-20.*)

POLICY STATEMENT: The conduct of quasi-judicial public hearings by the City Council shall be accomplished in a legal manner that is fair to all *members of the public*~~citizens~~. In this regard, the City Council intends that each quasi-judicial public hearing shall be conducted in an open and impartial manner that recognizes the concerns of all *members of the public*~~citizens~~ having a legitimate interest in the proceeding and allows an opportunity for the City Council to give fair consideration to all issues presented at the public hearing.

- A. Public Hearing Definition. *"Public hearing", for the purposes of ~~within the meaning of~~ this Council Policy only, shall be that type of proceeding required by law to be conducted by the City Council as a "quasi-judicial proceeding," including without limitation any hearing held pursuant to the Land Development Code". Hearings on annexations and metropolitan districts generally shall follow this procedure. The City conducts other types of hearings to gather public input on issues or pending ordinances or resolutions, some of which are required by City Code or City Charter. This Policy does not concern such hearings.*
- B. Registration by Participants. All persons desiring to speak before Council at a public hearing shall be required to register with the City Clerk, providing their names and addresses. *Registration may be made orally at the time of speaking.*
- C. Mayor to Chair Hearing. The public hearing shall be chaired by the Mayor or, in the absence of the Mayor, by the Mayor Pro-Tem and, in the absence of both the Mayor and the Mayor Pro-Tem, by a councilmember duly appointed by the City Council. (All reference in this policy to the Mayor shall include anyone acting in place of the Mayor.)
- D. Testimony. The public hearing shall be conducted so as to elicit relevant and competent evidence for the public hearing in a manner that provides a reasonable opportunity for all interested parties to express themselves as long as the testimony or evidence presented is reasonably related to the purpose of the public hearing and is not redundant. The Mayor has the authority to limit testimony to a reasonable length of time to maintain reasonable equality of time for all positions on an issue.
- E. Parliamentarian. The City Attorney shall serve as parliamentarian for the public hearing and shall advise the Mayor as to the admissibility of any evidence submitted for consideration at the public hearing.
- F. Oath of Witnesses. Upon request of any councilmember or person in interest, the witnesses shall be sworn under oath by the City Attorney. The credibility of evidence submitted by all witnesses shall be determined by the City Council and considered in

reaching a decision at the conclusion of the public hearing.

- G. Authority to Ask Questions. Any person speaking may be questioned by a member of the City Council, the City Attorney, by members of City staff or by any person in interest. The Mayor shall determine whether or not a person qualifies in the public hearing as a person in interest.

~~H. Time Limit. When the number of persons wishing to speak may unduly prolong the public hearing, the Mayor may establish a time limit for each speaker.~~

~~I.~~H. Advice to Witnesses. The Mayor at the outset of the public hearing may wish to advise the public as follows:

1. "We welcome your comments and input. To ensure an efficient hearing, all persons are required to observe the following:
 - a. Each person desiring to speak must register with the City Clerk and give your name and address. When you are recognized to speak, please approach the podium and state your name.
 - b. All comments and testimony shall be made from the podium and no comments or testimony shall be presented from the audience. Comments and testimony are to be directed to the Mayor and City Council. Dialogue and inquiries from the person at the podium to members of staff or the seated audience is not permitted. Inquiries that require staff response will be referred to staff by the Mayor.
 - c. It is our desire to hear all relevant testimony on this topic in a timely manner and within an atmosphere of respect. Our procedures are designed to ensure that occurs. Thank you for your cooperation and we look forward to hearing your comments."

~~J.~~I. Testimony Directed Through the Mayor. All testimony in support or opposition or questions should be directed through the Mayor who will direct the appropriate person to respond.

~~K.~~J. Evidence for the Record. The record of proceedings shall include (i) a copy of the public notice; (ii) all application documents for the proposed project and (iii) copies of any other information and documents that are an appropriate part of the public hearing including staff reports and minutes from any committee or commission making recommendations to the City Council. *Presentations, written submissions, and documentary evidence will be included in the record unless an objection is made.*

~~L.~~K. Public Hearings Should Generally Proceed as Follows:

1. A staff presentation or introduction of the issues as applicable.

- a. Description and analysis.
 - b. Recommendation, if applicable.
 - c. Questions by Council and persons having an interest.
2. Applicant or petitioner presentation.
 - a. Questions by Council.
 - b. Questions by persons in interest.
3. Public Presentation.
 - a. Questions by Council.
 - b. Questions by persons in interest.
4. Applicant or petitioner rebuttal, if requested.
5. Discussion by applicant and public.
6. Hearing closed.
7. Council discussion.
8. Council decision.

M.L. Absence by Councilmember. If a member of the Council is absent for a public hearing, he/she shall not be eligible to vote on the case unless he/she has listened to and reviewed the entire record of the hearing. It is not the purpose or intent of this provision to postpone or unduly delay a decision by Council because of the absence of a councilmember to enable him/her substantial time to review the record.

M. Voting. At the conclusion of the public hearing, the City Council may continue its decision to a fixed time and date or render an immediate decision. *Voting shall be in accordance with the City Charter.*

- a. With the exception of a decision on a zoning issue, an ordinance may be passed on first reading by the affirmative vote of a majority of the members of the City Council present at the meeting at which the ordinance is introduced~~;~~ *and* ~~With the exception of a zoning ordinance,~~ an ordinance may be passed on second and final reading by the affirmative vote of not less than a majority of the members of the Council in office at the time the vote is taken.
- b. In the case of a zoning issue, *pursuant to the City Charter, Section 10.11(b)(5);*:
 - i. ~~A~~ vote of not less than a majority of the members of the Council in office at the time the vote is taken shall be required to overrule the recommendations of the Planning Commission.
 - ~~i.~~ii. In the event the Planning Commission makes no recommendation on a zoning issue, the issue may be approved by Council only upon the affirmative vote of not less than a majority of the members of the Council in office at the time the vote is taken.

N. Ex-Parte Discussion and Contacts. When a governmental function requires a member of City Council to act in a quasi-judicial capacity, the member of City Council shall take reasonable precautions to avoid and prevent improper ex-parte communication with any party in interest or with their representative and refrain from any activity which could give the perception of an improper ex-parte communication with a party in interest or with the representative of any party in interest. Any member of City Council may seek an advisory opinion from the City Attorney concerning any ex-parte communication received pertaining to a matter the subject of which is or may become the subject of a quasi-judicial proceeding in which the officer may perform a governmental function. If any member of City Council receives ex-parte communications regarding a matter which is before the Council for quasi-judicial action the Councilmember shall disclose the communication ~~as~~ *before the hearing begins or as soon thereafter as the Councilmember is able* ~~part of the hearing~~ *and shall indicate, for the record, whether he or she is able to participate in unbiased manner and rely solely on the evidence presented at the hearing.* After disclosure, the Councilmember may participate in the hearing and vote on any action unless the Council concludes that the communication may prevent him or her from participating and voting thereon in an unbiased manner. If the member of Council concludes that the ex-parte communication may prevent him or her from voting in an unbiased manner, ~~he or she shall excuse himself or herself and~~ shall not participate in the discussion or vote in the proceeding *and shall remove himself or herself from the Council chamber during the proceeding.*