

Memorandum

TO: PLANNING COMMISSION

FROM: Toni Taber
Rosalynn Hughey

**SUBJECT: PLANNING COMMISSION
COMPOSITION ORDINANCE
AMENDMENT**

DATE: May 15, 2020

Approved

Date

RECOMMENDATION

Recommend that the City Council approve an ordinance amending Chapter 2.08, Title 2 of the San José Municipal Code to:

- a) Limit the number of members of the Planning Commission who reside in the same Council District to two;
- b) Adopt a two-term limit for Commission membership;
- c) Consider an alternative limit on the number of members of the Planning Commission who reside in the same Council District to one; and
- d) Consider a provision allowing the Council to override the District limitation by a majority vote.

BACKGROUND

On April 24, 2019 Mayor Liccardo, Vice Mayor Jones, Councilmember Esparza, and Councilmember Carrasco submitted a memorandum (Attachment A) to the Joint Meeting for the Rules and Open Government Committee regarding the Planning Commission. The Rules Committee voted unanimously directing staff to return to the full City Council implementing the direction in the memorandum.

The memorandum directed staff to prepare a proposed Charter amendment to expand the Planning Commission to 11 members and ensure representation from all 10 Council Districts with one Commissioner serving at-large. The memorandum also directed staff to limit the number of Commissioners residing in the same Council District to no more than two and only allow one reappointment for Commissioners, establishing a two-term limit.

The Planning Commission held a Study Session regarding the topic on February 26, 2020. The City Clerk and Planning staff provided an overview of the Council recommendation and answered questions from the Commissioners. The following is a summary of the discussion among the Commissioners:

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- Commissioner Bonilla posed questions on item 3 of the Council memorandum pertaining to the direction to amend the Lobbyist Ordinance (Chapter 12.12) and sought clarification on why lobbyists were targeted and not other professions such as non-profits. He shared support for items 2 and 5 from the memorandum.
- Commissioner Allen indicated support for the Council recommendation. He inquired about timing for the municipal code changes that were mentioned in item 1 of the memorandum and shared that the municipal code update should be applied after the Charter amendment takes effect.
- Commissioner Griswold expressed concerns about how restrictive the appointment process would be for the Planning Commission with the 11-member structure. She recommended maintaining the same number of Commissioners but to divide the City into three or four larger districts to ensure geographic diversity. She also expressed concerns about the inability to reappoint more than once, noting that Commissioners with more terms bring a deeper level of knowledge and experience.
- Chair Ballard expressed concern that the Council recommendation does not solve the problem the memorandum attempts to solve. She shared several problems with the Planning Commission appointment process including: the politicization of the Commission; lack of consideration by Council regarding racial background during the appointment process; the pipeline for Commission recruitment is weak; and the appointment process lacks clarity.
- Commissioner Yesney indicated support for the objectives of the memorandum but identified that recruitment and onboarding are ongoing challenges. Yesney recommended looking to other City commissions for possible applicants who can use their knowledge from their former appointments.
- Commissioner Caballero requested clarification on the process and when the new rules would take effect. She shared that onboarding was a challenge for reaching a broader pool of applicants.

Comments from the public were supportive of greater diversity on the Planning Commission.

Individuals shared that seats should also be designated for those who are renters and/or live in mobile homes or subsidized housing. One commenter shared that attention should be given to the wording of the ballot measure so that voters can easily understand.

As part of its original outreach strategy, staff planned to present at the March 11th Neighborhoods Commission meeting, the April 17th Developers and Construction Roundtable, as well as conduct three community meetings in April. However, these meetings were cancelled due to the COVID-19 County Health Order banning large gatherings.

ANALYSIS

Given the COVID-19 pandemic, staff is unable to conduct the necessary outreach and engagement to propose a ballot measure for the November 2020 election. However, to move forward on the Council's goal of having greater geographical diversity in the Planning Commission composition, staff recommends a phased approach. Amending Chapter 2.08, Title 2 of the Municipal Code is a concrete step and practical next step, given the COVID-19 pandemic. This would allow some components of the Council recommendation to be implemented in the near term, while other components are paused until meaningful outreach can be conducted that could lead to a potential Charter amendment in June 2022.

Staff recommends undertaking the following items from the April 18, 2019 memorandum:

1. *Amend Chapter 2 of the Municipal Code to:*
 - a. *Prohibit any new or renewing applicants for Planning Commission where two sitting commissioners come from the same Council District.*
 - i. *Specify that if a sitting Commissioner moves into a Council district with two members then that Commissioner must notify the City Clerk, but may complete their current term.*
 - b. *Provide that Commissioners may be reappointed no more than once.*

Limiting the number of Commissioners from a single Council District partially achieves the objective to establish a more geographically diverse Planning Commission. The limit ensures representation from at least four Council Districts while also providing flexibility in selecting candidates and maintaining a quorum, which may prove to be challenging as the COVID-19 pandemic continues.

Establishing a two-term limit similarly ensures the opportunity for new Commissioners to bring fresh perspectives and expertise on land use, sustainable development, and community aspirations.

At the end of June, there will be five vacancies on the Commission: four commissioners reaching the end of their term in addition to the one existing vacancy. At least two commissioners will need to be appointed to ensure the four-member quorum for all Planning Commission items, with general plan amendments requiring a unanimous vote in that scenario.

Staff is scheduled to present its recommendation to Council at the June 2, 2020 meeting. It is anticipated that the second reading of the Ordinance would occur on June 9, 2020. It is recommended that the ordinance apply retroactively to all Commission appointments on or after June 2, 2020 to ensure the selected candidates are appointed under the amended ordinance.

POLICY ALTERNATIVES

As an alternative, the Council could consider that no more than one Commissioner reside in the same Council District. This could achieve even greater geographic diversity on the Commission. However, this approach could also result in an inability to fill vacant seats if there are not sufficient applicants from enough Council Districts.

In addition, whether the Council elects to amend Chapter 2.08 to limit the number of Commissioners from each Council District to one or two, Council should also consider adding a provision allowing the Council to override the limitation by a majority vote. This would provide greater flexibility in instances where there are limited applicants.

COORDINATION

Preparation of this memorandum has been coordinated with the City Attorney's Office.

CEQA

Not a Project, File No. PP17-008. General Procedure & Policy Making resulting in no changes to the physical environment.

/s/
TONI TABER, CMC
City Clerk

/s/
ROSALYNN HUGHEY, Director
Planning, Building, and Code Enforcement

For questions, please contact Alex Powell, Chief of Staff, at alex.powell@sanjoseca.gov.

Attachments:

- A. April 24, 2019 Memorandum to Rules and Open Government Committee re: Planning Commission
- B. Recommended Ordinance – Title 2, Chapter 2.08 Section 2.08.4000