



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Planning Commission

**SUBJECT:** PLANNING COMMISSION  
COMPOSITION ORDINANCE  
AMENDMENT

**DATE:** June 1, 2020

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## **RECOMMENDATION**

The Planning Commission voted 4-2 (Commissioners Ballard and Allen opposed) to recommend that the City Council:

- a) Approve an ordinance amending Section 2.08.4000 of Chapter 2.08 of Title 2 of the San José Municipal Code to limit the number of members of the Planning Commission who reside in the same Council District to one, with a seven-member Commission; and
- b) Direct staff to focus recruitment efforts to members of other City commissions and boards, in addition to the general public.

## **OUTCOME**

The recommended action will facilitate geographic diversity of the Planning Commission by limiting the number of Commissioners residing in the same Council District.

## **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.

While Planning Staff and the City Clerk had developed a strategy to conduct outreach in early 2020, these plans were put on hold due to the COVID-19 pandemic. The Planning Commission did conduct a study session on the Planning Composition on February 26, 2020; however, the briefing to the Neighborhoods Commission and the three community meetings that were planned were not conducted because all public meetings except City Council, Planning Commission, Historic Landmarks Commission, and Planning Director's Hearings were cancelled during the initial stages of the health emergency.

To move forward on the Council's goal of having greater geographic diversity in the Planning Commission composition, staff proposes a phased approach. Amending Chapter 2.08, Title 2 of the Municipal Code is a concrete 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 presented the first step of the phased approach to the Planning Commission at its May 27, 2020 meeting. Staff shared the recommendation 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 of one on the number of members of the Planning Commission who reside in the same Council District; and
- d) Consider a provision allowing the Council to override the District limitation by a majority vote.

#### *Planning Commission Discussion*

Commissioner Oliverio expressed concern about a proposed Charter Amendment stating the large expense for getting an item on the ballot measure. The Commissioner added that staff's recommendation to limit two Commissioners from the same Council District does increase geographic diversity, however not as greatly as the alternative recommendation to limit one commissioner per Council District. Additionally, he stated he was unable to support staff's recommendation because of the second phase of implementation includes the proposed Charter Amendment. Staff clarified that the recommendation only includes the first phase items, amending the Municipal Code.

Commissioner Yesney stated extreme concern of the idea that a Planning Commissioner represents a particular area of the City. She shared that she has lived in various Council Districts

throughout the City and that it is the responsibility of every Commissioner to understand the issue of every application irrespective to the specific geography of the development.

Commissioner Bonilla described his concerns with the overall process for being appointed to the Planning Commission, especially around outreach and communication to prospective applicants. After asking the City Clerk about her budget and spending for outreach (\$100 for Planning Commission last year and another \$100 for other boards and commissions), he added that outreach is limited by the resources and prioritization of the outreach process; he recommended that the City invest in an outreach plan with the intent to find diverse candidates. The Commissioner expressed concern that staff's recommendation does not accomplish the objective of the original Rules Committee memorandum; however, he would support it as there is value in geographic diversity on the Planning Commission.

Chair Ballard stated that she did not support staff's recommendation and that the conversation on a diverse Commission should continue. She stressed that this issue is important, and a solution is needed but added that geographic diversity is not the primary diversity criterion that the Council direction aims to address. She echoed Commissioner Yesney's experience with living in various Council Districts and expressed concern that an applicant's current address should not be the only determining qualification. The Chair stated that Council has the ability to look at the composition of the Planning Commission and determine what perspectives are not represented. She stated that the existing structure and appointment process does not support the cultivation of a diverse Commission.

Commissioner Caballero stated that the recommendation does not go far enough to address the problem the Rules Committee direction attempts to resolve. The Commissioner referenced the February Study Session that included several ideas that should be considered, including Commission representation from those who are renters, live in mobile homes or represent commercial developments to provide a diversity of perspectives. Commissioner Caballero expanded on the topic of outreach and finding candidates, stating that outreach was insufficient, and the time dedication of a Commissioner was a deterrent. Finally, while the Commissioner didn't believe the recommendation is the correct approach, she would support it since it does accomplish part of the objective.

Commissioner Yesney added that the Council should look at the totality of the individual applying for the Commission. She stated that an applicant to the Commission brings a broader perspective to their role than where they currently live and the Council should consider the entirety of their perspective. She stated that the Council could appoint a diverse Planning Commission, but a limit of one commissioner from each district would not result in a diverse Planning Commission. Chair Ballard echoed this perspective that a commissioner can have a broader perspective than the current District in which they reside. As an example, she shared how she has lived and worked in different areas of San José over the course of many years.

Commissioner Oliverio asked a question about what criteria is allowed to be used to select commissioners. The City Clerk responded that protected categories such as gender, race, and

sexual orientation where unable to be used in the selection of commissioners. Commissioner Oliverio stated that since these categories are protected, that diversity in Council District representation could be used as a limited proxy for these protected categories. However, the Commissioner added that the geographic representation was not a guarantee for other forms of diversity. The Commissioner added that recruitment should focus on other City commissions. Commissioner Yesney added her support recruiting from other commissions.

Commissioner Oliverio made a motion to recommend to the City Council the adoption of an ordinance requiring no more than one person be appointed to the Planning Commission from the same Council District and that the City focus recruitment efforts to members of other City commissions. Commissioner Bonilla seconded the motion.

Commissioner Allen stated that he would oppose any form of staff recommendation as it is a solution that does not solve the problem it is intended to. The Commissioner submitted a letter dated May 27, 2020 to provide his complete comments; the letter is attached to this memorandum (Attachment B). Commissioner Ballard agreed that she would not support the staff recommendation because it is a solution that does not solve the problem.

The Planning Commission did not discuss the staff recommendation and Rules Committee direction to adopt a two-term limit for Commission membership; this was not included in the Planning Commission motion.

No members of the public spoke on the item. A vote was taken on Commissioner Oliverio's motion; the motion passed 4-2 (Allen and Ballard opposed).

### **ANALYSIS**

A complete analysis of the Planning Commission composition is included in the attached Planning Commission memorandum.

### **CONCLUSION**

The Planning Commission's motion to recommend that the City Council approve an ordinance amending Section 2.08.4000 of Chapter 2.08 of Title 2 of the San José Municipal Code to limit the number of members of the Planning Commission who reside in the same Council District to one, with a seven-member Commission; and direct staff to focus recruitment efforts to members of other City commissions and boards, in addition to the general public, was approved (4-2; Commissioners Ballard and Allen opposed).

## **EVALUATION AND FOLLOW-UP**

Should Council approve the recommended Ordinance, the second reading of the Ordinance will take place on June 9, 2020. The Ordinance will apply retroactively to all appointments to the Planning Commission on or after June 2, 2020 to ensure the upcoming appointments to the imminent vacancies will be consistent with the recommended Ordinance amendment.

There will be five vacancies on the Planning Commission effective June 30, 2020. As such, the City Council will need to appoint at least two commissioners to ensure a quorum for the Planning Commission to conduct business.

## **CLIMATE SMART SAN JOSE**

The recommendation in this memorandum has no effect on Climate Smart San José energy, water, or mobility goals.

## **POLICY ALTERNATIVES**

***Alternative 1: Limit the number of members of the Planning Commission who reside in the same Council District to two.***

This alternative aligns with the April 24, 2019 Rules Committee memorandum, Item 1(a).

***Alternative 2: Adopt a two-term limit for Commission membership.***

This alternative aligns with the April 24, 2019 Rules memorandum, Item 1(b).

***Alternative 3: Consider a provision allowing the Council to override the District limitation by a majority vote.***

This alternative provides the Council the option of overriding the District limitation should no applications be received from individuals residing in any number of Council Districts. This would ensure that vacant seats could be filled, so that quorums could be reached to conduct Planning Commission business.

## **PUBLIC OUTREACH**

A public hearing notice including the Planning Commission and City Council hearing dates was published in the San José Post-Record and emailed to a list of interested groups and individuals.

## **COORDINATION**

This memorandum has been coordinated with the City Attorney's Office.

HONORABLE MAYOR AND CITY COUNCIL

June 1, 2020

**Subject: Planning Commission Composition Ordinance Amendment**

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**CEQA**

Not a Project, File No. PP17-010, City Organization & Administrative Activities resulting in no change 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 (408) 535-1258.

Attachments:

- Attachment A: April 24, 2019 Memorandum to the Rules and Open Government Committee
- Attachment B: Planning Commissioner Allen Letter Regarding Proposed Ordinance Amendment
- Attachment C: Planning Commission Memorandum
- Attachment D: Proposed Ordinance