



CITY OF KIRKLAND

Planning and Community Development Department

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MEMORANDUM

Date: September 5, 2012

To: Planning Commission

From: Paul Stewart, Deputy Planning Director

Subject: Rules of Procedure – Public Comments following a Public Hearing

Recommendation

Planning Commission review the Rules of Procedure regarding comments from the public after the Planning Commission has closed the public hearing and provide direction on any proposed revisions.

Background

The Planning Commission requested that the Rules of Procedure be reviewed regarding comments from the audience after the public hearing has been closed. The Section in question is Section 9 of the rules governing the procedure for public hearings (See Attached Rules of Procedure).

The issue is whether or not the Commission could take additional public comment on a legislative item under the "Comments From the Audience" portion of the Commission's agenda at a subsequent meeting after the Commission has closed the public comment portion of the hearing and prior to making a recommendation to the City Council.

In several cases, the Commission held the public hearing, closed it after all public comments and then at a future meeting deliberated and made a recommendation. The Planning Commission has not previously allowed additional public comment after the closing of the public hearing. The exception to this is when the Commission has, on occasion, established a limited time (usually 1-2 weeks) to submit written comments following the public hearing.

Section 9 of the adopted Rules of Procedure for Public Hearings addresses the protocol for public hearings and Section 9.B. discusses the public comment portion of the hearing (highlighted in yellow).

- Section 9. Rules of Procedure for Public Hearings:
- A. *Presentation at the Hearing.*

1. The Chair shall declare the Public Hearing open before the staff presentation is given. After the staff presentation and after everyone has had the opportunity to speak, the Chair shall announce that the hearing continues to remain open, but only for the benefit of the Planning Commission members who may seek further information during their deliberation. Reopening the hearing to give persons an opportunity to speak shall require a motion and a vote. If the hearing is reopened, the Commission may limit the topics to be addressed.
 2. Nature of Presentation:
 - a. Written Comments. Any person wishing to comment on an application may do so by submitting his/her written comments to the Department of Planning and Community Development before the hearing or the Chair during the hearing. These comments will become part of the official record and shall be considered by the Planning Commission in its action.
 - b. Oral Comments. The Chair shall permit any person to make a brief oral presentation at the hearing. Comments are limited to three minutes per speaker unless otherwise authorized by the Chair. The speaker shall first give his/her name and address.
 3. Questions from the Planning Commission. Members may question a speaker on any matter related to his/her comments.
 4. Questions from the Speaker. All comments and questions shall be directed to the chair.
- B. *Planning Commission Deliberation.* After all speakers have been heard, the Planning Commission shall close the public comment portion of the hearing, consider all the information and deliberate on the matter. This deliberation shall include:
1. The information submitted;
 2. The written comments received;
 3. Any presentation and discussion made at the hearing; and
 4. The staff report.
- C. *Planning Commission Recommendation.* After discussion and deliberation, the Commission shall make a recommendation to the City Council by a motion and approval of a majority of those

members present. Once a motion for recommendation has been passed, the Chair shall declare the public hearing closed.

- D. *Continuance.* The Planning Commission may continue the matter by an affirmative vote of a majority of the members present on a motion to continue to a specific date.

Zoning Code Section 160 outlines the process (Process IV) the City follows for legislative actions (code and plan amendments). Sections 160.70 to 160.80 are the sections that describe public comments and participation at the public hearing. The Rules of Procedure were based on these code provisions.

160.70 Public Comments and Participation at the Hearing

Any interested person may participate in the public hearing in either or both of the following ways:

1. By submitting written comments to the Planning Commission and, if applicable, the Houghton Community Council, either by delivering these comments to the Planning Department prior to the hearing or by giving them directly to the Planning Commission or Community Council at the hearing.
2. By appearing in person, or through a representative, at the hearing and making oral comments. The Planning Commission and the Houghton Community Council may reasonably limit the extent of the oral comments to facilitate the orderly and timely conduct of the hearing.

160.75 Continuation of the Hearing

The Planning Commission and Houghton Community Council may for any reason continue the hearing on the proposal. If, during the hearing, the Commission or Community Council announces the time and place of the next public hearing on the proposal, no further notice of that hearing need be given.

160.80 Planning Commission Action

1. General – Following the public hearing, the Planning Commission shall consider the proposal in light of all of the information submitted to it including the recommendation, if any, of the Houghton Community Council. The Planning Commission may modify the proposal in any way.
2. Modifications Requiring a Rehearing – If, following the public hearing, the Planning Commission fundamentally modifies the proposal, the Planning Commission shall hold a public hearing on the proposal as modified under the provisions of this chapter.

The purpose of the public hearing is the formal opportunity for anyone to state their opinions or provide information to the Commission. Public hearings require legal notice as to the time and place so that all interested parties have the opportunity to present their comments to the Commission. The notice must be sent out at least 14 calendar

days before the public hearing and the notice must contain a statement of "the right of any person to submit written comments to the Planning Commission and to appear at the public hearing before the Planning Commission to give comments orally" (Sec. 160.40.f KZC).

Following the public hearing, the Commission can then consider all comments prior to deliberating and making a recommendation. The Zoning Code and the adopted Rules of Procedure seem to indicate that once the public hearing is closed, public comment would not be appropriate. If there is interest in additional public comment the Commission has the opportunity to continue the public hearing provided the time and place are announced.

If the Commission wanted to accept comments after the public hearing is closed, the Commission could have some discretion on this to allow public comment under "Comments From the Audience" but would need to clarify the rules of procedure. Legislative actions are not as prescriptive as quasi-judicial items that have specified legal procedures that need to be followed. The concern with this approach would be that interested parties would not be aware that additional comments are being accepted and would be unable to respond or that some parties would wait until after the public hearing is closed before weighing in just prior to the Commission making a recommendation.

Options

Staff has outlined three options for the Commission:

- No change to the Rules of Procedure
- Revise the Rules to clarify that once the public hearing is closed additional public comments would not be taken unless the public hearing is reopened and noticed.
- Revise the Rules to clarify that public comment can be accepted under the "Public Comments" item on the agenda.

**RULES OF PROCEDURE
OF THE KIRKLAND PLANNING COMMISSION
OF THE CITY OF KIRKLAND**

**A RESOLUTION OF THE KIRKLAND PLANNING COMMISSION SETTING FORTH THE
RULES OF PROCEDURE FOR THE CONDUCT OF PLANNING COMMISSION MEETINGS.**

Section 1. Meetings:

- A. Regular Meetings. The Planning Commission meets on the second and fourth Thursday of each month, in the Kirkland City Council Chamber, commencing at 7:00 p.m. unless otherwise noticed.
- B. Special Meetings. The Planning Commission shall meet for special meetings at the call of the Chair or a majority of the Planning Commission.
- C. Open Meeting Requirements and Notification:
 - 1. The open meeting provisions of state law (RCW Chapter 42.30) shall apply to Planning Commission meetings.
 - 2. Notification procedures shall follow the requirements of the Kirkland Zoning Ordinance, Subdivision Ordinance, State Environmental Policy Act, Shoreline Management Act, and other regulations, as applicable.
 - 3. All special meetings shall be noticed by:
 - a. Delivering written notice personally by mail, fax, or by electronic mail at least 24 hours in advance to Planning Commission members.
 - b. Delivering written notice personally by mail, fax, or by electronic mail at least 24 hours in advance to the newspaper officially designated by the City of Kirkland and to each media publication which has filed a written request with the City.
 - c. Specification of the time and place of the meeting and the business to be transacted.
- D. Record. A record will be made of all public hearing proceedings and all other meetings. This record will normally be an audio recording by means of electronic equipment.
- E. Minutes. The Department of Planning and Community Development staff will prepare minutes of each meeting that include all pertinent information, motions, decisions made, and actions and votes taken.

Section 2. Officers:

- A. Appointment. The Planning Commission has the following officers:
 - 1. The Chair;
 - 2. A Vice Chair; and

3. Any other officer that the Planning Commission, by a majority vote, approves and appoints.
- B. Temporary Chair. If both the Chair and Vice Chair are absent from a meeting, the Planning Commission shall, by a majority vote of those members present, elect a temporary Chair for that meeting.
- C. Duties of Officers. The duties and powers of the officers of the Planning Commission are as follows:
1. Chair:
 - a. To preside at all meetings of the Planning Commission;
 - b. To call meetings of the Planning Commission;
 - c. To sign documents of the Planning Commission;
 - d. To act as liaison between the Planning Commission and other City entities; and
 - e. To appoint Planning Commission members to serve on other city committees, advisory groups and task forces.
 2. Vice Chair: During the absence, disability, or disqualification of the Chair, or upon the request of the Chair, the Vice Chair shall exercise all the duties and be subject to all the responsibilities of the Chair. The Vice Chair shall also maintain any other responsibilities that are assigned to him/her by the Chair.

The Chair and Vice Chair and other officers shall be elected by a majority vote of the Planning Commission at the first regular meeting each May, and may be reelected.
 3. Chairing the Meetings

The person chairing the meeting shall make every effort to facilitate the orderly discussion of the Planning Commission and to guide the Commission in providing direction to staff and making recommendations to the City Council.

Section 3. Order of Business:

- A. Generally, the Planning Commission will follow the following order of business at all meetings:
1. Call to order / roll call.
 2. Announcement of agenda.
 3. Comments from the audience on any topic that is not the subject of public hearing - limited to 3 minutes per speaker.
(Note: The chair may limit the comments to no more than three speakers on any one topic. If both proponents and opponents wish to speak, then

up to three proponents and up to three opponents of the matter may address the chair.)

4. Hearings.
 5. Study Sessions.
 6. Unfinished Business.
 7. New Business.
 8. Reading and/or approval of minutes.
 9. Administrative reports and Planning Commission discussion.
 10. Comments from the audience – limited to 3 minutes per speaker.
(Note: The chair may limit the comments to no more than three speakers on any one subject. If both proponents and opponents wish to speak, then up to three proponents and up to three opponents of the matter may address the chair.)
 11. Adjournment.
- B. The order of business may be changed during the meeting by the Chair with the consent of a majority of the Planning Commission members present.

Section 4. Quorum:

A majority of the appointed members of the Planning Commission constitutes a quorum. A quorum must be in attendance or participating via a conference call or other electronic media before business can be transacted. Every motion by the Planning Commission requires approval of a majority of the Planning Commission members present to pass.

Section 5. Disqualification:

No member of the Planning Commission should participate in any Planning Commission discussion or vote on any matter in which the member has a personal or financial interest potentially sufficient to create a conflict between the interest in serving the public good and the other interest. The other interest may be private gain, financial or personal, and it may benefit the member, a relative, a friend, or an employer. Any disqualified member must leave the room when the matter is presented. The minutes shall show that the member left the room.

Section 6. Voting:

- A. Each member present at a meeting shall cast one vote on each motion. Voting may be by voice call or by roll call.
- B. Although it is the duty of every member to vote, a member may abstain. An abstention has the same effect as a negative vote.

Section 7. Vacancies:

Should any vacancy occur among the membership of the Planning Commission by reason of death, resignation, disability, or otherwise, the City Clerk shall be immediately notified. If a member resigns, the member shall tender his or her resignation in writing to the Department of Planning and Community Development and City Clerk. The Chair of the Planning Commission shall request that the Mayor and City Council consider an appointment to the vacancy on the Planning Commission at the earliest possible time.

Section 8. Conduct of Meetings:

- A. *General.* The Chair has broad authority over all matters regarding the conduct of meetings. He/she shall exercise this authority to promote the fullest possible presentation of information and discussion of matters before the Planning Commission while permitting the orderly and timely completion of Planning Commission business.

As a general protocol, the Chair of the meeting should introduce the agenda topic, provide for a staff presentation and questions from the Commission, and call for discussion among the Commission members.

The Chair should generally provide for each Commission member to offer a comment prior to weighing in on an issue. The Chair should ensure that all members have an opportunity to speak. The Chair should also expedite the discussion in a timely manner and summarize the recommendation or direction from the Commission as appropriate.

- B. *Use of Roberts Rules of Order.* The Planning Commission may refer to the applicable provision of Roberts Rules of Order for guidance for items not addressed by these Rules and Procedures.
- C. On specific agenda items, other than public hearings which are discussed in Section 9, the Chair may allow comments from the audience as appropriate. This usually occurs following a staff presentation and/or the completion of discussion by the Commission on the agenda item. Comments may be subject to the limitations noted in Section 3.A.

Section 9. Rules of Procedure for Public Hearings:

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Section 10. Planning Commission Conduct and Operations

- A. *Planning Work Program.* The Planning Commission shall review the proposed annual planning work program and make a recommendation to the City Council
- B. *Planning Commission Recommendations.* The Planning Commission may make recommendations to the City Council, City Manager's Office, City staff and other City boards and commissions as appropriate. Unless otherwise determined, the Chair is authorized to review and approve the Planning Commission's transmittal

memorandum. The Chair shall determine who will present the Commission's recommendation to the City Council.

- C. *Representing the Commission.* The Planning Commission shall act as a body. A member, when representing the Commission may speak or act for the Commission in accordance with the recommendation or direction taken by the Commission. The Chair or Chair's designee shall serve as the official spokesperson of the Commission.

Individual Commission members may speak as an individual, clearly specifying they are speaking as an individual articulating their own views and concerns (e.g. I am speaking as an individual, not representing the Planning Commission.)

- D. *Majority and Minority Opinions.* As determined by the Commission, a minority report may accompany a voted decision or recommendation. An additional spokesperson may be designated to present the minority report.
- E. *Duties and Responsibilities.* Commission members shall exercise their duties and responsibilities with integrity, collegiality and care. Members should establish a high priority to attend all meetings and to come prepared to contribute to the discussion of issues and business to be addressed. Members should respect the opinions of other members of the Commission and be receptive to diverse viewpoints in Commission discussions. Members should represent the Commission and the City in a positive and supportive manner through appearance, conduct and attitude.

Section 11. Amending the Rules of Procedure:

The rules of procedure may be amended at any regular meeting of the Planning Commission by a majority vote of the appointed members.

Section 12. Validity:

If any part of parts of these rules of procedure are found to be invalid, that part or parts will not invalidate the remainder of the rules.

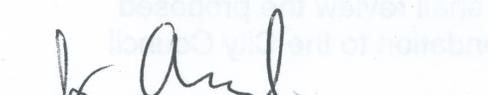
PASSED by the Planning Commission on the 11th day of March, 2010.



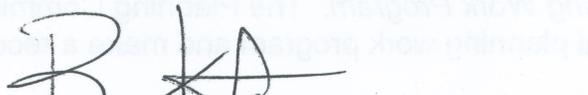
Andrew Held, Chair



C. Ray Allshouse, Vice-Chair



Jay Arnold



Byron Katsuyama

Carolyn Hayek

Carolyn Hayek

Patti Sutter

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