



CITY COUNCIL SPECIAL MEETING AGENDA REPORT

Meeting Date: January 4, 2024

From: Interim City Manager Clay Holstine

Subject: City Council Protocol for Development and/or Zoning Applications

Background

This year will be a busy year for the City, and particularly the Community Development Department, as staff continues its review of the pending applications to develop the Baylands site and the former quarry property. The respective environmental impact statements for each will be issued by the City in the coming months, and the applicants for each are already expressing interest in beginning to negotiate development agreements assuming their project's EIR is approved.

Purpose and Context

As we move into perhaps the busiest phases of the reviews of each project, I have been asked to share any insights with the City Council about practices followed by prior Councils to help make the process as efficient as possible for all involved. Below I outline practices of this nature that this Council may itself want to consider and follow.

Before I do so, however, I want to underscore that the City Council is the ultimate arbiter of what, if any, informal practices it wishes to adopt to help it ensure that each project is reviewed efficiently and fairly. City staff will support the Council's decisions in this regard, including ensuring that the Council's decisions, and any practices it may follow to get to the decisions, are consistent with the Council's and City's legal responsibilities.

Past Practices

I have reviewed the practices that different City Councils developed and adhered to in the past when reviewing complex development projects. Four informal practices have emerged that may be of interest to this Council for possible adherence or avoidance.

1. Negotiations Are Directed by the Full City Council and Conducted by the City Manager

Prior Councils have uniformly followed a process where they exclusively provide final direction to the City Manager about what they believe must be addressed in discussions with an applicant or in a development agreement. In each instance, the City Manager was vested with exclusive authority to negotiate with the applicant but within the parameters established by the full Council. This approach has been popular because it ensures each Council Member has an equal voice in the process while preventing any third party from being able to sow confusion and even mistrust between Council Members.

2. Meetings

The most common practice followed by prior City Councils was to ensure that if a Council member was to take part in a meeting with an applicant, its consultants and/or counsel, that a member(s) of City staff should also attend. Prior Council's believed this approach helped ensure that both the applicant and City would have the most knowledgeable people in meetings based on the topic and/or agenda for each meeting. There was also a view that this would also help surface any misunderstandings or misconceptions between the applicant and the City as early as possible in the City's formal review process.

One thing Councils have not done in the past is provide a regular public update on meetings with the applicants. If the Council desires, an agenda item under Mayor & Council Matters could address meetings, development application status, etc. This would have the value of adding another layer of transparency to the process.

Adopting this approach would not prevent Council Members from working on a development agreement for the project if a subcommittee process is established (discussed below), it would simply ensure that appropriate City staff is also joining the meeting. Similarly, it would not prevent a subcommittee of the Council from meeting with an applicant because City staff would already be present for such a meeting.

3. The Subcommittee Process

This and other Councils have used a subcommittee process successfully in understanding and responding to major issues. The Council may choose to do that here. If so, the most common example is that a Council subcommittee reviews the projects and identifies issues for discussion with the full Council. On one occasion in the past, a subcommittee of the Council and of the Planning Commission met jointly to review issues presented by a proposed development and jointly made recommendations to the full Council. Alternatively, the Council can continue to sit as a "committee of the whole" when reviewing the projects with staff and outside experts so that direction to the City Manager comes from the full body. While the subcommittee process has worked well on many issues, given that we are at the point in the process where applications have been submitted and environmental review is nearly complete (for the purposes of draft environmental impact reports) the subcommittee process may not be how the City Council wishes to proceed.

4. The Timing of Meetings

Over time various individual Council Members have declined to accept or convene meetings directly with an applicant once their land use development application or application for zoning amendment is on file. As you would imagine there are those who praise this approach as

ensuring that the Council is only involved in the final decision-making and therefore avoids any appearance of conflicts of interest, etc. And, there are others who criticize it for too broadly removing the people's elected representatives from the process.

The one observation I can offer is that if the Council or individual Council Members were to abide by the proposed process under Item 2 above, any such concerns would be moot.

5. Planning Commission

Prior Councils have directed members of the Planning Commission and other City committees and commissions not meet or confer, directly or indirectly, with an applicant or any representative of a project for which an application is pending unless it is doing so via a Commission subcommittee. This approach has helped ensure that negotiations between the City and the applicant are directed by the Council alone.

Other Considerations for Knowledge/Awareness

1. It is to be expected and entirely appropriate that Council Members may be engaged by their constituents about development issues in the City. You are their representatives, and they have every right to ask you to listen to their concerns and to give them due consideration. Similarly, you have every right to decline to attend such meetings. If you do hold any such meetings, the most important caution is to be mindful of and ensure your actions are compliant with the Brown Act and related responsibilities.

2. Each of you is elected individually and it is entirely appropriate that one or more of you may decide individually to accept meetings with the applicant, the proponents and opponents of their project, third party advocacy groups, etc., notwithstanding the benefits of the proposed practices discussed above because you have made a genuinely good faith determination that taking these types of meetings are in the City's best interests and so long as you comport yourself in such meetings in full compliance with your legal responsibilities.

3. There are common concerns with meetings taken outside of Council-agreed practices that each of you should be mindful of whether you are meeting with a constituent or an advocacy group.

- Your good faith judgement as to whom to meet and about what with respect to the projects is subject to scrutiny by enforcement bodies like the FPPC and the Attorney General's

Office, so consider seeking advice from the City Attorney as to factors you should be considering in making such a judgement.

- Experience confirms that it is individual meetings or even rumors of individual meetings that are often the basis for the damaging misconceptions of the independence of past Councils' decisions (e.g., the Council's subcommittee process has rarely led to misunderstandings).
- One potential way to address this is for Council Members to share meetings they may have under the Mayor & Council Members section of the agenda. That also allows for more transparency. The Council could exclude conversations and meetings with non-affiliated constituents but include constituents representing or potentially representing an interest group.