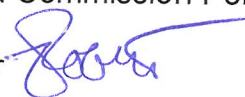




**CITY OF SUNNYVALE
OFFICE OF THE CITY MANAGER**

May 13, 2014

TO: Council Subcommittee on Board and Commission Policy

FROM: Robert Walker, Interim City Manager 

CC: Board and Commission Members
City Council
Executive Leadership Team
Deanna Santana

SUBJECT: Policy Issues for the Subcommittee's Consideration

Staff requests that the standing Council subcommittee charged with reviewing Council Policy regarding boards and commissions (Policy 7.2.19), consider the following issues at its next meeting. Please note that I have copied all the City's boards and commissions so that they are aware of staff's position on these issues. In particular, it is my hope that the perspective provided on the last item (Section J) will reduce at least some of the obvious misunderstandings currently attached to that issue:

Section D. Appointment

Council's current policy governing board and commission appointments is attached. It requires a formal Council vote be taken on every applicant. While this method provides every applicant an opportunity to receive an individual up-or-down vote, it can be time-consuming and inefficient. When a large number of applicants is considered (not an uncommon occurrence), the appointment process can be lengthy. The process of allowing each Councilmember to vote on multiple applicants for one seat often creates a tie between two or more applicants, necessitating a second vote to break the tie, and potentially a third procedure to break a continuing tie. Furthermore, the current voting procedure can be embarrassing to those receiving few or no affirmative votes.

Staff recommends streamlining the appointment process by making nominations according to Parliamentary Procedure. The Mayor would open nominations for a particular seat on a board or commission. After all nominations for the seat were made, the Mayor would close nominations for that seat, and a motion to appoint would be taken on each nominee in the order nominated. The first nominee for a seat to receive four affirmative votes would be appointed. Alternatively, if the number of nominees were fewer than or equal to the number of available and similar seats on a particular board or commission, a motion could be made to simply appoint some or all of the nominees. The slate of nominees would be appointed by motion adopted by at least four affirmative votes.

Section E. Oath of Office

Staff recommends that the statement “shall sign the City’s Code of Ethics” be revised to refer to the City’s “Model of Excellence,” which is actually an attachment to the City’s Code of Ethics.

Section G. (II) Chair’s Role and Responsibilities

Section (f) currently reads: “Board and commission chairs or a designated alternate must attend Council meetings to present the board or commission’s position to Council on any non-consent calendar item previously addressed by the board or commission when only action minutes from the board or commission meeting are available to Council. The chair or designated alternate shall report back to their board or commission on Council’s discussion and ultimate decision.”

Staff requests confirmation regarding Council’s related expectations, as there are some who have come to believe that Council expects board and commission chairs to also attend Council meetings whenever the board or commission recommendation differs from that of staff’s recommendation. Staff is not under this impression, and current policy does not support it.

Staff also recommends **either** elimination of sections (h) : “Meets with Council in a study session setting on a regular, quarterly or otherwise schedule,” and section G.III. (c) – Vice Chair’s Role and Responsibilities – **or** encouragement of full Council action to support this policy. It does not appear to be a policy the current Council cares to practice.

Section H. (III) Quorums

Section H.(III) currently reads: “Boards and commissions have a quorum present when a majority of their current membership is present. ‘Current membership’ is defined as the official membership, less any seats that are formally vacant through resignation, unfilled vacancy, or removal.”

This language is problematic as it applies to boards or commissions that grant entitlements, such as the Planning Commission or Heritage Preservation Commission, because of potential due process implications. We saw this recently when the Planning Commission was down to three members, due to three resignations and a death. Under the above stated rule, the “current membership” was three, so that only two members would need to be present to constitute a quorum for purposes of conducting a meeting and taking action. A use permit or other entitlement could have been granted on a two-person vote, or denied on a 1-1 vote. This is contrary to state laws that require a majority vote of the total membership of the Planning Commission (in other words, at least four votes) for certain actions. In the interest of keeping a uniform rule applicable to all boards and commissions, staff recommends the language be changed to read as follows:

“Boards and commissions have a quorum present when a majority of their total membership is present. ‘Total membership’ means the number of members provided for when the board or commission was created; i.e., the Planning Commission has a total membership of seven.”

Section J. Interaction with City Council, Public, Staff, and other Board and Commission Members

This last piece is intended simply to inform the Council subcommittee, rather than request any particular policy revision. It's clear to me – based on recent correspondence from staff, Councilmembers, and board and commission members – that there exists some misunderstanding as to the amount and type of operational information that staff shares with the boards and commissions, as well as the manner in which that information is shared. One of the best examples of this is a recent communication from a Bicycle and Pedestrian Commissioner wherein he expresses appreciation for the staff resuming its practice of sharing public correspondence with the BPAC, but also expresses some concern with the fact that a message he thought he had “sent to the Sustainability Commission on February 13, with reception confirmed by staff, was not forwarded to the (Sustainability Commission) members nor included in their agenda.” The BPAC member's concern is clearly rooted in his belief that the City has a procedure and practice in place for routinely forwarding Customer Relationship Management (CRM) communications from the public with the board or commission to which they best pertain.

The City has clearly promoted this belief by establishing for each board and commission a website that includes a specific “contact us” link, leading people who use that link to believe they are communicating directly with a specific board or commission. However, clicking on that link leads one to the City's generic CRM page, which clearly states at the top of the page “Contact Us is a method to ask City staff a question, suggest an improvement or report a problem, and City staff will respond promptly to these inquiries.” Further confusing matters is the fact that the reporting party is provided a drop-down menu from which to choose a subject, and while that menu includes a few specific boards and commissions (Arts is listed twice), other commissions – such as the BPAC and the Library Board of Trustees – are not listed at all.

Yet another complicating wrinkle – when staff receives these CRM communications, they do not have any clue as to whether the reporting party accessed the system via a board or commission website believing they are communicating with a board or commission, or whether they accessed the system via the more general City Homepage site, and believe they are simply – as the website indicates – communicating with staff. In fact, there is no way for receiving staff to distinguish one from the other unless the salutation or “subject” heading is a board or commission, and I can assure you that staff typically assumes these communications are directed to them. It was not until I saw the BPAC member's correspondence above that I put two and two together and realized not everyone accessing the CRM system thinks they are communicating directly with staff.

So what does a staff person do with CRM correspondence? Standard protocol is for the staff person to respond directly to the reporting party within three days. If the nature of the question or concern deals with City policy, the staff response is copied to the City Council. If the question or concern deals with operations, the Council is not copied (unless the reporting party copied them on the original correspondence, in which case staff files a copy of its response for future reference by interested Councilmembers). Typically, boards and commissions are not copied on CRM correspondence unless some unusual circumstance dictates it (e.g., a particular board or commission is referenced in the CRM message, or

the query pertains to a policy issue on an upcoming board or commission agenda). Apparently, however, at some point in time the Department of Public Works began to provide the BPAC hard copies at its request of all CRM messages related to bicycle and pedestrian issues, regardless of whether they were related to policy or operations. They did this by including copies of the CRM in the BPAC's agenda packet as "Info Only."

I became aware of this practice only when a follow-up CRM was submitted by a party who took exception to the fact that her previous CRM regarding a bike/pedestrian issue had been made public (shared with the BPAC in a published agenda packet), along with her name and address. The City Attorney's Office advised DPW that if it was to continue this practice, it should redact the name and address of reporting parties, which DPW did. A short time later, however, I directed DPW to place a moratorium on the practice of sharing CRMs with the BPAC in order to allow me to explore issues related to board and commission policy, consistent levels of service (as far as I knew, this was the only board or commission provided this service), and legal concerns.

Prior to completing my review, DPW renewed the practice of sharing CRMs with the BPAC (due to miscommunications between staff), and I became aware of that only when the BPAC member sent his appreciation to staff for renewing its efforts. This was also the point at which it became clear to me that people using the board and commission Web pages to access the CRM believed they were communicating directly with a board or commission.

Suffice to say, there are a number of problems and/or challenges associated with continuing down the DPW path. They include:

- Most residents using the CRM do so via the City's Homepage. That page leads them to believe that they are communicating directly with staff. Therefore, they might reasonably expect that the communication ends there (i.e., they do not understand that their communication is being forwarded to any other party, such as a board or commission).
- Some residents are using the CRM under the belief that their message is going directly to a board or commission. Absent the DPW practice, however, there is no mechanism in place to forward their messages to any board or commission. As a result, most who believe they are communicating with a board or commission are mistaken.
- Some of those who believe they are writing to a board or commission also believe that the board or commission is in the best position to answer or resolve their concern, when most often they are not.
- Providing the BPAC with copies of all bike/pedestrian-related CRMs with names and addresses of the reporting parties redacted is a fairly time-intensive task; to do so for all the City's boards and commissions would require a much greater investment of staff resources.

Several options are being explored to address these issues, and in determining how to move forward, staff will be guided by the following principles:

- Adhere to the law and Council policy (two excerpts from the Council policy that most relate to this issue are: "Outside of official board or commission meetings, individual

board or commission members are not authorized to represent the City or their board or commission unless specifically designated by the Council or the board or commission to do so for a particular purpose”, and “Boards and commissions may serve as advisory bodies to staff regarding operational issues upon request by staff.”

- Treat all the City’s boards and commissions equitably
- Provide all boards and commissions the information needed to do their jobs
- Avoid misleading the public
- Utilize staff time efficiently and effectively

I just wanted you to know that staff is aware of related concerns, that this is not a simple issue, and that various options are being explored.

Attachment: Existing Council Policy 7.2.19