

Legal Briefs

News You Can Use from the City of Oakland Office of the City Attorney

Legal Briefs is a series of essays by City Attorney John Russo to update the community on key projects, major initiatives and important legal developments in the Office of the City Attorney.

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NEW MEETING RULES STIFLE THE SPIRIT OF OPEN GOVERNMENT

By John A. Russo, City Attorney, City of Oakland

Earlier this summer the Oakland Planning Commission amended the Policies and Procedures governing conduct of its meetings. These new rules—if used unwisely—will severely limit public comment and participation in Planning Commission business.

The role of the City Attorney's Office under Oakland's first elected City Attorney is not only to provide legal services for City staff, boards and commissions, but to serve as attorneys for the people of Oakland, who are the shareholders of this municipal corporation. It is in this role—as the people's attorney—that my staff and I strongly disagree with the recent actions taken by the Planning Commission.

Although these actions are legal under the Brown Act and the Sunshine Ordinance, they nevertheless violate the spirit of open government that we are trying to infuse into the workings of City Hall.

As someone who believes deeply in open government, I wanted to share my concerns with you. The following is the text of a letter I sent to the Chairperson of the Planning Commission, Kenneth Katzoff, detailing our concern that the new rules enacted by the Planning Commission serve to stifle public discourse and constrain public participation in the democratic process.

Dear Chairperson Katzoff:

As you are probably aware, throughout my tenure both on the City Council and in this office, I have been an advocate of open government. We in public service can be successful only if the people we serve both know what we do and actively participate with us as we do their business.

The Planning Commission plays a crucial and oftentimes key role in furthering the public's business. Few local regulations affect the public more than those that determine what can be done on private property; few public processes are more important than those that give effect to the policies the City Council has adopted in that regard.

I have reviewed the Policies and Procedures governing the conduct of Planning Commission meetings the Planning Commission has recently amended. Although

nothing in this letter should be construed to imply that it is my legal opinion that the time limits contained in the amended rules are illegal under either the Brown Act or the Sunshine Ordinance, the new time limits do leave me with the impression that they were adopted with the intention of severely limiting public comment on and involvement in the business of the Commission.

Historically, decisions of the Planning Commission have received strong support from both the community and the City Council: few Commission decisions are appealed to the City Council, and even fewer are challenged in court. Casual review of City Council minutes will reveal that the decisions of the Planning Commission are frequently and typically upheld by the City Council.

During my tenure on the City Council, on those occasions when I would support the actions of the Planning Commission, I would do so based in part on the knowledge that the Planning Commission had acted only after the community had been exhaustively heard from and all public comment considered.

The new policies of the Commission which restrict most speakers to a single minute of comment will tend to frustrate even the most eloquent speaker's ability to cogently and thoroughly express the speaker's concerns. Additionally, a one minute time limit suggests to most speakers that the Commission has little regard for the speaker's concerns, or put another way, has no regard for any concern that takes more than one minute to express.

These time limits force the public to trust that each Commissioner has the ability to discern the full range of public concern about a matter from the brief expressions of it allowed by the new policies; if that trust falters, which I fear it will, the community will be forced to appeal many more of the decisions of the Commission to a body which will be more respectful of those concerns.

In addition to the limits on public comment, the recent amendments make the order of the proceedings at any given meeting uncertain if not whimsical. Although no agenda guarantees the exact time when a matter will be heard, the public has grown to expect that meetings will proceed in a certain predictable order, allowing individuals to make an informed decision about when and whether to show up for item on an agenda. The apparent ability of the Chairman to randomly shuffle the order of the agenda provided for in the new procedures with the result that interested members of the public, misled by the order of an agenda, might not show up at a meeting until after an item has been placed ahead of other items and acted upon, further suggests that the Commission has little regard for the public's right to show up and address itself on an agenda item.

In furtherance of the public's trust in what we at City Hall do, I request that the Planning Commission revisit its recent amendments to its Policies and Procedures. I realize and understand that the old procedures may have in part resulted in long Planning Commission meetings. However, the historic long meetings of the Commission did not serve as an indicator of a broken process, but to the contrary, they were the result of strong public participation in and support for the prior process. The community's respect for the Planning Commission, indicated by the small number of matters that are appealed to the City Council, indicates that the old procedures were not broken. I believe that the Planning Commission should make every effort to maintain community support of its work, and respectfully suggest that returning to the old Policies and Procedures will go a long way in doing so.

Very truly yours,

*JOHN A. RUSSO
City Attorney*