



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: COMMISSION APPOINTMENT
PROCESS

DATE: January 23, 2014

SUPPLEMENTAL MEMO

RECOMMENDATION

(a) (1) Approve appointments to the Housing and Community Development Commission;

OR, in the alternative

(2) Approve an ordinance amending Section 2.08.090 and Part 28 of Chapter 2.08 of Title 2 of the San Jose Municipal Code to modify the appointment process for the Housing and Community Development Commission and to make modifications to the quorum requirements for all boards and commissions.

(b) Approve an ordinance amending Part 32 of Chapter 2.08 of Title 2 of the San Jose Municipal Code adding the appointment process for the Library and Early Education Commission.

BACKGROUND

In May 2013, after several months of discussion and outreach, the City Council adopted the Boards and Commissions Consolidation ordinance.

At the January 8, 2014 Rules and Open Government Committee meeting, the Committee deferred from the January 14, 2014 Council Agenda the appointment of Commissioners to the Housing and Community Development Commission (HCDC) in order to accommodate Councilmember Constant's request to have the Rules Committee discuss the nomination process utilized for the current eight (8) vacancies. Specifically, the issue has been raised regarding the difference between the direction in January 2013 and the adopted ordinance in May 2013. The City Clerk and City Attorney were also directed to bring back options for nominating the Commissioners in timely manner in order to comply with the federal funding deadline.

The attached memorandum from the City Attorney's Office, dated January 13, 2014 was issued in response to that direction.

At the January 15, 2014 Rules and Open Government Committee, staff was directed to bring to Council for discussion a draft ordinance modifying Chapter 2.08 of the San Jose Municipal Code to do the following:

1. Increase the number of members of the Housing and Community Development Commission from eleven (11) to thirteen (13).
2. Modify the appointment process to the HCDC, so that eleven (11) members are appointed through the Council nomination process set forth in SJMC 2.08.180.
3. Revise the general quorum requirements for commissions to revert to the majority of all seats filled and unfilled, rather than a majority of filled seats.

When reviewing the May 2013 Boards and Commissions Consolidation Ordinance to draft the above changes, it was discovered that the appointment provisions for the Library and Early Education Commission were inadvertently omitted.

ANALYSIS

1. Changes to HCDC Appointment Process. The draft ordinance contains the modifications to Chapter 2.08 for discussion by the City Council. It also provides that the recommendation for each of two mobile home park related representative seats will only go through the Council Appointment Advisory Committee in the event that there are multiple recommendations for either seat. Otherwise, a recommended applicant will go directly to Council for consideration.

The Council has the following options with regard to the appointment process for the HCDC:

- a. Make the appointments as nominated by the Council Appointment Advisory Commission ("CAAC").
- b. Approve the modified HCDC Appointment Process and direct the City Clerk to commence a new recruitment process.
- c. A third alternative would be to make some appointments from the nominations put forth by the CAAC and use the proposed new appointment process for the remaining seats.

2. Quorum Requirements. Prior to the adoption of the Boards and Commissions Consolidation Ordinance, SJMC Section 2.08.090 provided:

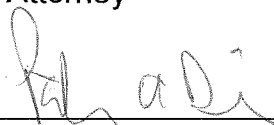
“Unless otherwise specifically provided in this Chapter, **a majority of the total number of member seats, whether filled or vacant**, shall be necessary to constitute a quorum for a board or commission to take action, although a lesser number may adjourn from time to time.

This requirement was changed to a majority of filled seats based on the Administration’s recommendation intended to prevent the inability to take action due to a lack of quorum. Historically, some of the boards and commissions have had a difficult time filling all of the seats and this may prevent a commission from taking action.

3. Library and Early Education Commission. In the process of drafting the ordinance proposed to make the above modification, it was discovered that the appointment process for the Library and Early Education Commission was inadvertently omitted. The process as directed by Council in January 2013 consists of eleven (11) members selected by Council nomination and the four (4) additional members required to have special knowledge in early education nominated by the CAAC. In order to correct this omission, we recommend that this provision be adopted regardless of whether the Council decides to make the HCDC and quorum modifications.

CEQA: Not a Project; File No. PP10-068(b), Municipal Code or Policy.

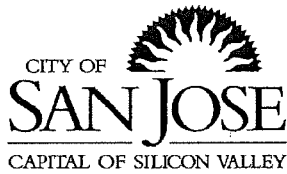
RICHARD DOYLE
City Attorney

By 

PATRICIA A. DEIGNAN
Chief Deputy City Attorney

cc: Ed Shikada

For questions please contact PATRICIA A. DEIGNAN, Chief Deputy City Attorney, at
(408) 535-1201



Memorandum

**TO: RULES AND OPEN
GOVERNMENT COMMITTEE**

**FROM: Richard Doyle
City Attorney**

**SUBJECT: HOUSING AND COMMUNITY
DEVELOPMENT COMMISSION
MEMBERS AND APPOINTMENT
PROCESS**

DATE: January 13, 2014

RECOMMENDATION

Discussion and provide direction regarding the members and appointment process of the Housing and Community Development Commission (HCDC).

BACKGROUND

At the January 8, 2014 Rules and Open Government Committee meeting, the Committee deferred from the January 14, 2014 Council Agenda the appointment of Commissioners to the HCDC in order to accommodate Councilmember Constant's request to have the Rules Committee discuss the nomination process utilized for the current eight (8) vacancies. Specifically, the issue has been raised regarding the difference between the direction in January 2013 and the adopted ordinance in May 2013. The City Clerk and City Attorney were also directed to bring back options for nominating the Commissioners in timely manner in order to comply with the federal funding deadline.

ANALYSIS

A. Council Nominated Commission

On January 29, 2013, the City Council approved the Boards and Commissions Structural Improvement Workplan proposed by the City Clerk and adopted the memo from Councilmembers Campos and Constant which provided for certain amendments to the Board and Commission Structural Improvement Workplan. The memo included the following modification pertaining to the Housing Commission:

Housing Commission: Advisory Commission on Rents, Housing and Community Development, Mobilehome Advisory Commission (11 members appointment by District in addition to the Housing Department to consider membership distribution based on Federal requirements.)

In drafting the ordinance to amend Title 2 of the San Jose Municipal Code (SJMC) to implement the Workplan and the direction provided by Council relating to the consolidation of boards, bureaus and commissions, it became apparent that the above direction with regard to the HCDC was not feasible.

The amendments to Title 2 included SJMC 2.08.180 providing for a new process for certain commissions ("Council Nominated Commissions") whereby each councilmember and the Mayor nominates one commissioner to be appointed by the Council. The following commissions are Council Nominated Commissions: Arts; Council Appointment Advisory Commission; Human Services Commission; Parks and Recreation Commission, Senior Citizens Commission; and the Youth Commission. All of these Commissions have 11 members except for the Human Services Commission which has 13 members. This is because the Human Services Commission has two members with special eligibility requirements who are nominated by the CAAC. The balance of the Commission is nominated by individual Council members, including the Mayor.

Similarly, the HCDC is a new Commission which is a consolidation of three former Commissions, the special eligibility requirements of the former Commissions had to be retained. Therefore, of the eleven (11) members of the HCDC, two (2) members are subject to special eligibility requirements pursuant to the City's former Mobilehome Advisory Commission. These two requirements are that one (1) member shall be a person recommended by an organization of owners of San Jose mobilehome parks and one (1) member shall be a person recommended by an organization of residents of San Jose mobilehome parks. The remaining nine (9) members are subject to the special eligibility considerations that members appointed are low-income with experience related to development, lending, community development, homeless services, or federal funding.

If the total number of members of the new Commission were to remain at eleven (11), there were not enough seats remaining to be for this Commission to be a Council Nominated Commission. Therefore, it was proposed that the HCDC would not be a Council Nominated Commission, and that the appointments to the remaining nine (9) seats be reviewed by the CAAC for nominations of commission applicants for appointment by the Mayor and Council.

As such, the memo submitted to Council on May 21, 2013, with the proposed Ordinance included the following information relating to the HCDC:

Housing and Community Development Commission: Of the 11 members appointed by Mayor and Council, one member shall be a person recommended by an organization of owners of San José mobilehome parks and one member shall be a person recommended by an organization of residents of San José mobilehome parks. The remaining nine members shall be appointed by Mayor

and Council and the following characteristics shall be under consideration: Consistent with the goals of the citizen participation plan, the commission should include low-income members. The commission should also include members with experience related to development, lending, community development, homelessness, or federal funding. To facilitate this appointment process, the Council Appointment Advisory Commission shall review the applications for the Housing and Community Development Commission and nominate qualified applicants to the Mayor and Councilmembers for appointment.

There are currently eight (8) vacancies on the HCDC. The eight (8) vacancies are seats that fall within the special eligibility consideration that members appointed are low-income with experience related to development, lending, community development, homeless services, or federal funding.

A council nominated process whereby each councilmember including the mayor nominate a commissioner while also taking into consideration membership distribution based on Federal requirements would not be feasible given the eleven member total.

B. Options:

The Council may consider either of the following options:

1. Conduct the appointment process as set forth in SJMC 2.08.2820 Special eligibility requirements and SJMC 2.08.2830 Appointment process.
2. Amend the SJMC to increase the number of members to the commission to allow the Mayor and each Councilmember to nominate and appoint by District as set forth in SJMC 2.08.180 Council nominated commissions in addition to the special eligibility requirement members of the commission as set forth in SJMC 2.08.2820.

C. Timing of Appointment Process

The appointment of the CAAC nominated applicants for the eight (8) positions was placed on City Council Agenda on January 14, 2014 in anticipation of a quorum issue when the HCDC meets at its regularly scheduled January 2014 to act on time sensitive duties related to the City's federal funding that must be performed in January. However, pursuant to SJMC 2.08.090, the three (3) current seated members of the

HONORABLE MAYOR AND CITY COUNCIL

January 13, 2014

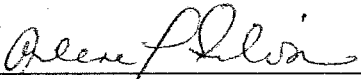
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HCDC, assuming 2 of the 3 are present, may constitute a quorum for the commission to take action on the time sensitive task relating to the City's federal funding. Therefore, HCDC may meet in January prior to the Council making appointments.

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City Attorney

By 
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