

CITY COMMISSION POLICY

Policy 9
November 12, 1996
Supersedes: March 4, 1986

Subject: Zoning and Other Planning Items, Consideration of

General Policy: The City Council's policy is to not hold a public hearing concerning any zoning or other planning items on which the Metropolitan Area Planning (MAPC) has already on official public hearing. Instead, the Council's consideration will be based on the written record of the MAPC hearings, the recommendations of MAPC and staff, information submitted to the MAPC before or during its hearing, and CPO Councils' comments, where applicable.

Applicability: This policy applies to zoning change requests, including Planned Unit Developments (PUDs), and cases involving Protective Overlay (P-O) zones, zoning text amendments, Comprehensive Plan amendments, original approvals of Community Unit Plans (CUPs), and appeals of MAPC decisions on Conditional Use (CUs) and on amendments to CUPs.

Policy Implementation Procedures:

1. Metropolitan Area Planning Commission (MAPC) Hearing
 - a. Prior to the public hearings by the MAPC, the Chair will announce the different procedures for considering such items, and advise all interested persons that if, after consideration of the case, they do not feel that they have had a complete hearing or if they should have additional new information to present, they must submit their statement in writing to the City Clerk.
2. After the Public Hearing
 - a. The referral sheet to the City Council will be accompanied by minutes of the MAPC hearing, along with the recommendations of the MAPC and staff, plus letters, informal petitions, and other information provided to the MAPC before or during the public hearing, plus comments from the CPO Council(s), where applicable. The case will be scheduled 26 days from the MAPC meeting unless otherwise directed by the Planning Commission or the City Manager's Office.
 - b. Should a more restrictive classification or a reduced area or other substantial change be proposed by either an applicant or the MAPC, this new information will be presented to the CPO Council, where applicable, so that the Council may reconsider its original recommendation within the 26 days prior to the case being scheduled before the City Council. If this time period is exceeded, it shall be interpreted that the CPO Council has no recommendation on the revision.
 - c. Appeals of MAPC decisions on Conditional Uses or amendments to Community Unit Plans must be appealed within the required time frame as stated in the zoning code. Valid protest petitions by opponents constitute an appeal. Introduction of

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new evidence or arguments about the completeness of the hearing shall be filed, in writing, in the office of the City Clerk by 5 p.m. on the Wednesday before the Tuesday City Council meeting.

Statements of new evidence must specify in detail the description of its nature and source and why it was unavailable at the MAPC public hearing (examples may be newly published material, i.e. theory, traffic counts not previously available, or expert witnesses). Statements repetitive of former arguments before the MAPC will not be considered. Statements of new evidence will be sent to the Planning Department and to the City Council. Statements as to the completeness of the public hearing will identify the issues of procedure involved. Procedural deficiencies, such as failure to allow applicants rebuttal time, are examples of an incomplete hearing. A decision unfavorable to the applicant is not an incomplete hearing.

3. City Council Procedure

- a. The City Council will base its decision on information contained in the MAPC Minutes and submitted to the MAPC, recommendations of the MAPC and staff, and comments of the CPO Council(s), where applicable.
- b. In the event new evidence has been filed, the City Council shall determine whether or not it is such to warrant returning the request to the MAPC for a rehearing or reconsideration.
- c. The Planning staff, and proponents and opponents, may be called upon by the City Council to clarify any items pertaining to the request.
- d. The City Council may reverse or modify the recommendation of the MAPC, or may return the application for its reconsideration, stating the reasons for the action.
- e. The City Council may concur in the recommendation of the MAPC by taking such action as suggested on the agenda.

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Glossary of Planning Items Appearing on City Council Agenda

Annexations: State law requires that the governing body hold public hearings on “unilateral” annexations (annexing properties touching the City’s boundaries whose owners have not requested, and may oppose, the action). However, annexations involving the request of the property owner(s) are not reviewed by MAPC before being scheduled for the City Council, and are generally handles as “consent” items on the Council’s Planning Agenda.

CIP (Capital Improvement Program) Review: State law requires that local planning commission’s review proposed capital improvements for conformance to the Comprehensive Plan before the improvement can be constructed. The City Council holds public hearings on its capital and operating budgets separate from the MAPC review.

Conditional Use: These are the permits for individual uses which are now approved by the MAPC unless appealed to the governing body. Formerly, most Conditional Uses were either handled by the Board of Zoning Appeals, as “use exceptions”, or by the governing body as “special permits”. The special permits were treated in practice the same as zoning change requests, as regards to Policy 9. However, the new Zoning Code now allows Conditional Use requests to stop after MAPC action unless the applicant or some other qualified party appeals that action. The new code provides that the governing body shall consider such appeals and may, at its discretion, hold a public hearing.

Comprehensive Plan Amendments: By informal practice over the years, the City Council has allowed public testimony on approvals of and amendments to CUPs. Perhaps this was due to the large-scale nature of the projects, or perhaps there were other considerations. Under the new Zoning Code, the amendments to CUPs are handled the same way as Conditional Uses: the MAPC action is final unless the decision is appealed to the governing body. The governing body may, at its discretion, hold a public hearing on such an appeal.

Dedications: This is the acceptance of instruments by which easements and rights-of-way are dedicated in the processing of lot splits or other administrative approvals.

P-O (Protective Overlay): This is a special overlay that may accompany a zone change request that restricts the use of the property otherwise allowed by the underlying zoning classification, in order to ensure development that is more compatible with neighboring properties. The overlay may be established at the applicant’s request, or it may be imposed by the MAPC or governing body. The conditions may resemble those in a Conditional Use request, or may look something like a simplified CUP. P-Os are also “change of zoning” under the Zoning Code, and so cases involving P-Os fall under the current edition of City Council Policy 9.

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Glossary of Planning Items Appearing on City Council Agenda (Continued)

PUD (Planned Unit Development): This is a new type of zoning classification available under the new zoning code. Under the current edition of City Council Policy 9, these are “changes of zoning” and the Council policy is to not open changes of zoning to public testimony. However, PUDs resemble CUPs, which have been traditionally opened up to public input.

Subdivision (Plats): There are no public hearing requirements for these items. By state law, the MAPC must approve subdivisions, and the role of the governing body is somewhat limited. The governing body can determine whether or not to accept the dedication of rights-of-way and easements associated with subdivisions approved by MAPC, and can decide whether or not to accept petitions for financing public improvements with special assessments. The Subdivision regulations also charge the governing body with final authority for waiving the requirements of the sidewalk ordinance and waiving any other improvement requirements in those regulations.

Urban Renewal Plan Amendments and TIF (Tax Increment Financing) Redevelopment Plans: State law requires MAPC review of these items, prior to City Council consideration, for conformance to the Comprehensive Plan. In both of these cases, the City Council is required by state law to hold public hearings.

Vacations: Vacations involve the reduction or elimination of public rights-of-way or easements, or of platting requirements such as setbacks or access controls. State law is clear that the governing body must hold a public hearing on these items. However, in the future, this law may change so that the MAPC may hold public hearings on these items like it does on zoning change requests.

Zone Change Requests: These are changes to the district classification proposed for an individual property or a number of properties. They are generally requested by property owner(s), but a hearing on any property to determine the appropriate classification may be initiated by the MAPC or governing body. The MAPC makes its recommendation to the governing body after a public hearing, as required by state law, and submits that recommendation to the governing body for a final decision. According to the current edition of City Council Policy 9, the Council does not hold its own hearings on these items. The voting requirements follow the requirements for amending the Comprehensive Plan.

Zoning and Subdivision Text Amendments: These are amendments to the regulations adopted by the governing body that apply to all properties in the jurisdiction. The statutory requirements for hearing and adoption of amendments to these regulations follow the requirements for amending the Comprehensive Plan.