



# CITY OF PALO ALTO OFFICE OF THE CITY ATTORNEY

October 29, 2018

The Honorable City Council  
Palo Alto, California

## **Adoption of an Ordinance Amending the Municipal Code and Adoption of Amendments to Council Procedures and Protocols to Conform to a Seven-Member Council; Discussion and Direction to Staff or Referral to Policy & Services of Additional Discretionary Changes to the Code and/or Council Procedures and Protocols**

### **Recommendation**

1. Amend the Municipal Code and Council Procedures and Protocols to conform to a seven-member Council:
  - a. Adopt on first reading an ordinance (Attachment A) amending Municipal Code section 2.04.190 to reduce number of Council Members on Finance and Policy & Services from four to three and section 12.10.060 to change the votes required to resolve a certain type of appeal from five to a majority; and
  - b. Amend the Council Procedures and Protocols to reduce four to three the number of Council Members who may sign a Colleagues' Memo and who may serve on an Ad Hoc Committee.
2. Discuss and Provide Direction to Staff or Refer to Policy & Services additional discretionary changes to the Municipal Code and/or Procedures and Protocols

### **Background and Discussion**

On November 4, 2014, Palo Alto voters amended the Palo Alto Charter to reduce the number of Council seats from nine to seven, effective January 1, 2019.

Many provisions of the Municipal Code and Procedures and Protocols Handbook provide for Council action by "a majority" of Council. When Council had nine members, a majority was five; when it has seven members, a majority will be four. This will occur seamlessly and requires no action to implement. In a few places, however, the Code and the Procedures and Protocols refer to a specific number of Council Members. In several situations, the number must be reduced to comply with state law. In others, Council has discretion to maintain or change the number specified.

First, the Municipal Code and Procedures and Protocols provide for four-member Council committees. This must be changed to comply with the Ralph M. Brown Act. The Brown Act, which sets procedural requirements local governmental bodies, states that subcommittees are limited to less than a majority of the primary body. When the number of seats on Council is reduced to seven, Council committees (both regular "standing" committees, and temporary "ad hoc" committees) will be limited to a maximum of three Council Members. The attached

changes to the Municipal Code and Procedures and Protocols adjust the size of standing and ad hoc committees to three Council Members.

In addition, and also to comply with the Brown Act, the Procedures and Protocols should be amended to provide that no more than three Council Members may participate in a Colleagues Memo.

Staff identified one additional section of the Municipal Code that should be changed to align with a seven-member Council. Section 2.10.060 states that five votes are required to resolve a type of permit appeal. In context, it is clear that section 2.10.060 intends to refer to a simple majority of Council. The attached ordinance updates the language to provide for a simple majority.

In addition to these changes, there are a number of changes that are not legally-mandated, but that Council may wish to consider. Staff recommends that Council refer these to Policy & Services for discussion and recommendation, or, in the alternative Council could provide direction to staff. These include:

1. Current procedure requires three votes to remove an item from Consent. (Procedures and Protocols, section 2.4(H).) Council could retain the three vote procedure or modify it.
2. The Zoning Code specifies the number of Council votes required to remove appeals from the Consent calendar. (For example, Municipal Code section 18.78.040(a)(2) provides that three votes are required to remove appeals from Consent.) Council could retain current requirements or modify them.
3. Various changes to the Procedures and Protocols were previously recommended by Policy & Services but have not been finally approved by Council. If the matter is referred to Policy & Services, staff will refresh those items with the Committee and forward the resulting recommendations to Council. In addition, Council Members may wish to propose additional modifications, as part of a regular review and updating process.

### **Environmental Review**

The proposed procedural changes to the Code and Procedures and Protocols are not a project for the purposes of the California Environmental Quality Act. Environmental review is not required.

### **ATTACHMENTS:**

- Attachment A: ORD Amending to Conform to 7 Member Council (10-12) (PDF)
- Amendment to Council Handbook (PDF)

Department Head: Molly Stump, City Attorney



\*NOT YET ADOPTED\*

Ordinance No. \_\_\_\_\_

Ordinance of the Council of the City of Palo Alto Amending Section 2.04.190 (Standing Committees – Special Committees) of Chapter 2.04 (Council Organization and Procedure) of Title 2 (Administrative Code); and Amending Section 12.10.060 (Coordination with City) of Chapter 12.10 (Street Cut Fees) of Title 12 (Public Works and Utilities) of the Palo Alto Municipal Code to Conform to a Seven-Member City Council.

The Council of the City of Palo Alto does ORDAIN as follows:

SECTION 1: The Council of the City of Palo Alto finds and declares as follows:

A. In November, 2014, the Charter of the City of Palo Alto was amended by the electorate to reduce the City Council to seven members (from the current nine member council) effective January 1, 2019.

B. In order to prevent conflicts with the California Brown Act, relevant sections of the Palo Alto Municipal Code must also be amended to reflect the seven-member Council.

SECTION 2. Section 2.04.190 of the Palo Alto Municipal Code is hereby amended as follows (deleted text is in ~~striketrough~~, new text is underlined):

**2.04.190 Standing committees - Special committees.**

(a) Not later than the second regular council meeting in January, the mayor shall appoint two standing committees, consisting of ~~four~~ three members each from the members of the council. The mayor shall appoint each council member to only one standing committee and shall appoint the chairperson of each committee. The mayor, or the vice-mayor at the request of the mayor, may act as an ex officio, voting member of each committee when one or more regular committee members are absent.

(b) The standing committees shall be designated, respectively, committee on finance and committee on policy and services, and shall meet at 7:00 p.m. in the city hall on the day established by Section 2.04.200.

(c) Council members may attend meetings of committees of which they are not members, without participating in any manner, but only committee members or ex officio committee members shall vote in committee in accordance with subsection (a) of this section.

(d) Council members who submit matters to the council which are referred to a standing committee may appear before the standing committee to which the referral has been made in order to speak as proponents of the matter. Standing committee meetings during which such referrals may be considered shall be noticed as council meetings for the purpose of enabling the standing committee to discuss and consider the matter with a quorum of the council present.

\*NOT YET ADOPTED\*

(e) In addition to standing committees the mayor may, subject to approval of the council, appoint such other special committees of council members, private citizens or both as deemed desirable and necessary to assist and advise the council in its work.

SECTION 3. Section 12.10.060 of the Palo Alto Municipal Code is hereby amended as follows (deleted text is in ~~striketrough~~, new text is underlined):

**12.10.060 Coordination with city.**

(a) Before a person, utility or public utility applies for an "Application and Permit for Construction in the Public Street" to construct in the public rights-of-way or any street, alley, sidewalk or other public place, the applicant shall notify the director of public works-city engineer, and the city engineer, or designee, shall review on behalf of the applicant the utility master plans and the city's five-year repaving plan on file with the department of public works. The applicant shall coordinate, to the fullest extent practicable, with the utility and street work shown on such plans to minimize damage to, and avoid undue disruption and interference with the public use of such public rights-of-way, streets, alleys, sidewalks or other public places. Such coordination shall include:

(1) Whenever two or more parties have concurrently proposed a major excavation in the same block during a five-year period, they shall meet and confer with the director of utilities, or designee, regarding whether it is feasible to conduct a joint operation. If the director, or designee, determines that it is feasible to conduct a joint operation, a single contractor shall be selected and a single application fee charged.

(2) Any person, utility or public utility aggrieved by the director's decision to require a joint operation may, within thirty days of receipt of the director's written notice, file an appeal with the city manager in written form in a manner prescribed by the director. Within thirty days of the filing of a timely appeal from the director's determination, the city manager shall review the appeal and issue a recommendation to the council to uphold or overturn the action or determination of the director. The recommendation of the city manager shall be placed on the consent calendar of the council within thirty days of the filing of the appeal. In determining such appeal, the council shall consider the impact of the proposed excavation on the neighborhood, the applicant's need to provide services to a property or area, facilitating the deployment of new technology as directed pursuant to official city policy, and the public health, safety, welfare and convenience. The council may adopt the recommendation of the city manager, or remove the appeal from the consent calendar, which shall require ~~five votes a~~ majority vote, and take action to uphold or overturn the recommendation of the city manager. The decision of the council is final.

(b) To avoid future excavations and to reduce the number of street excavations, any person, utility or public utility providing utility or communications service shall be requested, when practicable, to install sufficient conduit to accommodate the reasonably foreseeable future business growth needs of that person, utility or public utility.

\*NOT YET ADOPTED\*

SECTION 4. Severability. If any provision, clause, sentence or paragraph of this ordinance, or the application to any person or circumstances, shall be held invalid, such invalidity shall not affect the other provisions of this ordinance which can be given effect without the invalid provision or application and, to this end, the provisions of this ordinance are hereby declared to be severable.

SECTION 5. CEQA. The City Council finds and determines that this Ordinance is not a “project” within the meaning of section 15378 of the California Environmental Quality Act (CEQA) Guidelines because it has no potential for resulting in physical change in the environment, either directly or ultimately.

SECTION 6. Effective Date. This ordinance shall be effective on the thirty-first date after the date of its adoption.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

ATTEST:

APPROVED:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Deputy City Attorney

In November, 2014, the Charter of the City of Palo Alto was amended by the electorate to reduce the City Council to seven members (from the current nine member council) effective January 1, 2019.

In order to prevent conflicts with the California Brown Act, relevant sections of the Palo Alto City Council Procedures and Protocols Handbook must also be amended to reflect the seven-member Council.

Subsection (K) (Council Matters) of Subsection 2.4 (General Requirements) of Section 2 (Council Meeting & Agenda Guidelines) of the City Council Procedures and Protocols Handbook is hereby amended as follows (deleted text is in ~~striketrough~~, new text is underlined):

#### K. Council Matters

Any two Council Members may bring forward a colleague memo on any topic to be considered by the entire Council. Two Council Members are required to place such a memo on the agenda, reflective of the Council procedure requiring a motion and a second for consideration of a motion by the Council. Up to ~~four~~ three Council Members may sign a colleague memo. The City Attorney recommends that the colleague memo be limited to ~~three~~ two Council Members in order to avoid the potential of a Brown Act issue. Prior to preparing a colleague memo, Council Members will consult with the City Manager to determine whether he/she is or is willing and able to address the issues as part of his/her operational authority and within current budgeted resources. Colleague's memos should have a section that identifies any potential staffing or fiscal impacts of the contemplated action. This section will be drafted by the City Manager. Council Members shall provide a copy of the proposed memo with the City Manager or appropriate senior staff prior to finalization. Completed Council colleagues memos shall be provided to the City Clerk's staff by noon on the Tuesday prior to the Council meeting that the memo is intended to be agendized, to provide time for the City Clerk to process for the Council packet.

The City Council will not take action on the night that a colleague memo is introduced if it has any implications for staff resources or current work priorities which are not addressed in the memo. The Council will discuss the colleague memo and then direct the City Manager to agendize the matter for Council action within two meetings, allowing City staff time to prepare a summary of staffing and resource impacts. Action may be taken immediately by the Council on colleague memos where there are no resource or staffing implications or where these are fully outlined in the colleagues memo. The Brown Act requires that the public be fully informed of the potential action by the Council via the

Agenda 72 hours before a scheduled Council meeting. In order to satisfy the Brown Act requirements, the Council should consult with the City Attorney to ensure that the proposed title to the colleague memo contains all actions that the Council Members want completed on the night of the Council review.

Subsection (3) (Appointment) of Subsection (Y) (Ad Hoc Committees) of Subsection 2.4 (General Requirements) of Section 2 (Council Meeting & Agenda Guidelines) of the City Council Procedures and Protocols Handbook is hereby amended as follows (deleted text is in ~~strike~~through, new text is underlined):

### 3) Appointment

The Mayor or the City Council may appoint ~~four~~ three or less members of the Council to serve on an Ad Hoc Committee. In contrast, only the Council and not the Mayor alone can create a Standing Committee. The Mayor will publicly announce any Ad Hoc Committee created by him or her, its membership and stated purpose and posted on the City Council website. The City Manager shall prepare a report to Council about the anticipated time commitment required for staff to assist the Ad Hoc Committee.