

## M E M O R A N D U M

**To:** Honorable Mayor and Members of the City Council

**FROM:** Michele Beal Bagneris, City Attorney *MBB*

**DATE:** December 7, 2009

**RE:** City Council Agenda Item No. 7.B.2 - Consideration of Motion to Renew

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This memorandum addresses the process related to a Motion to Renew with respect to the Raymond Renaissance project that was considered by the City Council on November 2, 2009.

### **BACKGROUND**

At the City Council meeting on November 2, 2009, the City Council conducted a public hearing regarding the call for review of a decision by the Design Commission, Minor Changes to an Approved Project: Substitute Material/Finish on Cornice, 125 North Raymond Avenue (Raymond Renaissance Project). A motion was made to approve the City Manager's recommendation to, among other items, approve the applicant's request for changes to the previously approved design with the additional condition that, "As an alternate to recoating or cladding the roofline cornice, staff shall work with the applicant on aesthetic enhancements to the project." The motion failed with a vote of 4 ayes, 1 no, and 1 abstention; 2 council members were absent. Council member Robinson, who was absent, has requested consideration of a Motion to Renew the motion that did not pass.

### **EXECUTIVE SUMMARY**

A renewal motion is appropriate in a narrow set of circumstances and is much more the procedural exception than the rule. Under the authorities governing the conduct of City Council meetings, a Motion to Renew is procedurally appropriate with respect to the issue posed on the Raymond Renaissance Project. If and only if, such a Motion to Renew receives 5 or more affirmative votes tonight, can the Council then consider a motion which is the same as, or substantially similar to, the motion that failed at the November 2<sup>nd</sup> meeting. If the same or substantially similar motion is made and passes, that will be the decision of the City Council; if the motion fails, either by no vote, or by lack of sufficient votes to pass, the decision of the Design Commission would remain as the decision in the matter.

## DISCUSSION

Section 503 of the City Charter requires that rules for the conduct of City Council proceedings be established by ordinance. The relevant provision in the Pasadena Municipal Code is Article I (City Council and its Adjunct Responsibilities), Chapter 2.05 (City Council), Section 2.05.120 (Rules for the conduct of its meetings). That section sets forth general standards of conduct for meetings, penalties for violations of those standards, and requires that the Council adopt further rules as necessary for the conduct of its proceedings.

On December 7, 1987, the City Council passed Resolution No. 5893, A Resolution of the Board of Directors of the City of Pasadena Establishing Rules for the Conduct of its Meetings, Proceedings, and Business. The Rules govern how Council meetings shall be conducted, but do not address the narrow question of when a vote of Council on an agenda item is "final" and can no longer be acted upon. However, Rule 5 provides, "In all matters not otherwise provided for herein, the proceedings for the Board of Directors shall be governed under 'Robert's Rules of Order,' most current edition." Nothing in the Municipal Code or City Charter speaks to reconsideration or renewal of motions; hence, the proper guidance in determining the propriety of a renewal motion is found in Resolution No. 5893 and Robert's Rules of Order.

Under Robert's Rules, "renewal of a motion" means proposing substantially the same motion after it has been disposed of in some way without having been adopted. In other words, if a motion has been approved, it may not be the subject of a renewal motion. In addition, renewal of a motion is not permitted at the same session in which the motion is still under consideration, since there are other procedures more properly used in that situation (i.e., a motion for reconsideration). Further, a renewal motion that would undo a final decision that has been acted or relied upon would not be appropriate. Examples include the awarding of a contract where the contract has been executed and relied upon, permits that have been issued and are vested (except if a condition of the permit has been violated), and the like.

In the present circumstances, a letter has been sent to the applicants informing them of the result of the Council's November 2, 2009 vote. However, it does not appear that there has been reliance on a council decision or other action which would prevent consideration of a motion to renew. Also, while the applicant might arguably have a basis to object to the renewal motion on the basis of due process or fair procedure, it appears they have assented to the renewal motion.

A search of case law did not uncover any relevant case authority. This is not surprising as a renewal motion is appropriate only in a narrow set of circumstances and is much more the procedural exception than the rule. Accordingly, there is no case law guidance that would suggest a motion related to the Raymond Renaissance project is not appropriate procedurally.

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