



Agenda Report

DATE: SEPTEMBER 12, 2016

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: CITY CLERK
SUBJECT: REPORT ON THE CITY COUNCIL'S PUBLIC HEARING PROCESS

RECOMMENDATION:

The following report is for information only; no City Council action is required.

BACKGROUND:

On August 15, 2016, the City Council conducted a public hearing to consider the proposed Kimpton Hotel project located at the former YWCA Julia Morgan Building. During the public hearing and in the days that followed, the City received feedback from members of the public expressing concerns with the public hearing process. The focus of the complaints related to the length of time the public was required to wait for the public comment period of the hearing. It was suggested or perceived that the City may have purposefully conducted a protracted City staff presentation, which was further extended due to questions posed by the City Council. According to those dissatisfied by the process, a number of public speakers left the meeting prior to the portion of the hearing reserved for public comment. As a result, and in order to avoid such issues reoccurring in the future, those concerned with the process provided the following suggestions with a request that the City Council consider implementing changes:

1. Set time limits for the staff presentation so that the information is succinct and presented in a shortened time period;
2. Allow for the public comment period to immediately follow the shortened staff presentation, which would precede comments/questions by members of the City Council, as well as the presentation by the applicant; and
3. Ensure that the length of time utilized by City staff and the City Council does not appear to "delay the proceedings and to outlast the public who came to speak."

In response to these concerns, Mayor Tornek asked staff to review the YWCA/Kimpton public hearing process to identify potential changes that might address the equity issues raised by members of the public. This report examines the time spent during the public hearing and provides information for the City Council to consider for any future direction to staff and/or potential changes to the public hearing process.

Following is a general order of events for various public hearing items conducted by the City Council:

- A. City Clerk opens the public hearing, reports on the publication of the public hearing notice, and any correspondence received and distributed.
- B. City Council receives the staff presentation.
- C. City Council may ask clarifying questions regarding the presentation.
- D. The applicant is invited to present information to the City Council, followed by the appellant (if applicable when related to an appeal).
- E. Members of the public are invited to provide public comment on the item.
- F. Rebuttal period is provided when an applicant and/or appellant are present: Appellant rebuts first, followed by the applicant.
- G. City Council closes public hearing.
- H. City Council deliberates without further public testimony (though the Council may ask additional questions of staff) and can take action consistent with City Charter Section 506, which requires five affirmative votes of the City Council.

The City Council's public hearing process is consistent with that of other local jurisdictions (based on responses from the cities of Santa Monica, Glendale, Burbank, and Beverly Hills), and also generally mirrors the format of a court proceeding given the quasi-judicial nature of public hearings. All evidence is presented to the City Council prior to any action to approve, reject, or amend the staff recommendation.

Beyond public comment, the public has the opportunity to submit written correspondence prior to, as well as during, the public hearing for inclusion in the public record. Based on previous hearings, written correspondence often reflects very closely the statements made during the public comment portion of the meeting. As noted above in the general order of events, in certain public hearings the City Council often provides extended time to an applicant, appellant, and/or representatives, who are allowed to make opening statements and presentations, as well as provide rebuttal statements in response to public comment and/or evidence presented.

With regard to the August 15, 2016 public hearing, and consistent with the City's adopted meeting policies, the City Clerk and City Manager identified this as a "single-item" agenda with no other substantive discussion items included for City Council consideration. Based on the prior Planning Commission discussion regarding the YWCA project held on July 13, 2016, which took approximately 4.5 hours, staff was aware of and anticipated a lengthy discussion at the City Council level. Following is an abbreviated breakdown of the Planning Commission's consideration of the Kimpton/YWCA project:

Speaker	Topic	Length of Time
City Staff	Staff Presentation	1 hour and 20 mins
Planning Commissioners	Comments and Questions	50 mins
Public	Public Comments	1 hour and 26 mins
Planning Commissioners	Deliberation and Motion	1 hour

Open session for the August 15th City Council meeting started at 6:31 p.m. and the Kimpton/YWCA public hearing commenced at 7:22 p.m.:

Speaker	Topic	Length of Time
Mayor and City Clerk	Introduction, opening of public hearing, and reporting on notice and correspondence	1 minute
City Manager	Introductory comments and presentation	12 minutes
Kevin Johnson	Project Overview Section	7 minutes (no questions)
Kevin Johnson	EIR Process, Analysis	16 minutes
CM Wilson	Questions on EIR	2 minutes
CM McAustin	Questions on EIR	1 minute
Kevin Johnson	Required Approvals	29 minutes
Staff Presentation	98 total slides reviewed	1 hour and 8 minutes total time needed to cover the presentation
CM Wilson	Questions/staff responses	14 minutes
CM Masuda	Questions/staff responses	3 minutes
CM Madison	Questions including Park space with McAustin and Wilson commenting/asking clarifying questions/staff responses	15 minutes
CM McAustin	Questions/staff responses	12 minutes
CM Kennedy	Questions/staff responses	15 minutes
CM Hampton	Questions/staff responses	7 minutes
City Council	Clarifying information on staff presentation and project	1 hour and 6 minutes of questions and staff responses
Applicant	Richard McDonald, et al	5 minutes
City Council	Developers commitment to local hire, future sale of property, activating backside of building facing City Hall (Hampton, Kennedy, Madison, Wilson)	15 minutes responding to City Council questions
Amy Minter, representing opposition	Provided summary of groups opposition to the project	6 minutes
Public Comment	Comments in opposition and support of project	1 hour and 17 minutes
Applicant Rebuttal	Richard McDonald	8 minutes
Total Public Comment	Applicant, Opposition, Public Speakers	1 hour and 51 minutes

City Council Deliberation	Questions, comments, statements of position, motion and vote	39 minutes
TOTAL	PUBLIC HEARING	4 hours and 44 minutes

In terms of percentages, the breakdown of the hearing is as follows:

Total length of public hearing	4 hours and 44 minutes (+/- 6 min)	Percentage of Public Hearing Time
Total staff presentation	1 hour and 8 minutes	24%
Total City Council Questions	1 hour and 6 minutes	23%
Public Comment	1 hour and 51 minutes	39%
City Council Deliberation	39 minutes	14%
Total public	1 hour and 51	39%
Total City	2 hours and 53 minutes	61%

Potential actions for City Council consideration (Options Nos. 1 or 2 preferred by staff):

1. Maintain status quo.
2. Make minor adjustments to the time allotment for City Council comments and questions after the staff presentation, and endeavor to reduce the City staff presentation and City Council inquiry period as much as possible.
3. Allow public comment to immediately follow the staff presentation. City Council questions regarding the staff's presentation would occur after public comment. **Analysis:** The public comment session is not interactive, and staff does not respond to directly to questions raised by the public. Also, if the City Council asks questions that the public did consider prior to speaking, then the public may want a second opportunity to make statements in reaction to City Council comments or questions. Ideally, all the information (staff's presentation and Council questions) would be presented prior to public comment.
4. Implement time restrictions on City staff presentations and City Council comments/questions prior to public comments. For example, restrict staff presentations to 30 minutes, and allow no more than 30 minutes for City Council questions. **Analysis:** This may be difficult to manage and is not conducive to best practices for public discussion and decision-making. Depending on the complexity of the topic/project, staff may need additional time to present all relevant issues. If information is omitted or missed, there may be unintended consequences, such as confusion, faulty projects, and perceived lack of transparency. Allowing for a robust presentation, question period, and discussion, generally leads to better outcomes and decisions for the City.

CONCLUSION:

Given the complexity of the Kimpton Hotel Project, the amount of time spent by staff to present information to City Council and respond to Council questions appears to be reasonable and appropriate. Utilizing the Planning Commission meeting as a benchmark, both decision-making bodies spent nearly the identical amount of time to review and thoroughly vet the issues surrounding the Kimpton Hotel project before coming to a decision and taking action on the staff recommendation.

Therefore, staff's suggestion is to either maintain the status quo or make minor adjustments in terms of time-management. However, staff is concerned that rearranging the order of the public hearing process or setting strict time-limits will have unintended consequences, as was explained above (See Options Nos. 3 & 4). Certainly, an economized presentation and question period, whenever possible, will support and promote an efficient discussion and consideration of public hearing matters, as well as encourage public participation. It is staff's opinion, however, that a full vetting and public discussion of the issues should remain the City's priority, and will ultimately lead to the best outcomes for public hearing matters. The status quo or minor adjustment options provide for such a full vetting and discussion.

Respectfully submitted,



Mark Jomsky, CMC
City Clerk

Concurrence,



Steve Mermell
City Manager