

July 16, 2018

CITY COUNCIL STUDY SESSION ITEM

SUBJECT

Proposed revision to the Rules of Procedure for Appeals before the City Council and repeal of Resolutions No. 5238 and 5097.

STAFF CONTACTS

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City Attorney's Office

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City Clerk's Office

POLICY ISSUES

Whether Council's Rules of Procedure for Appeals, currently contained in Resolutions 5238 and 5097 should be updated and consolidated into a single resolution and further amended to conform to changes in state law implementing the Growth Management Act and the City's Land Use Code Chapter 20.35 setting forth the processes for appealing certain decisions to City Council.

DIRECTION NEEDED FROM COUNCIL

ACTION



DIRECTION



INFORMATION ONLY



Staff have drafted proposed language amending the Council's Rules of Procedure for Appeals before the City Council which would update the procedures to be more consistent with current law and the City's land use code provisions relating to appeals of permitting and other land use decisions. Staff seeks Council direction on those proposed amendments and whether to bring forward new legislation for Council adoption at a later date.

BACKGROUND/ANALYSIS

The Council's Rules of Procedure for Appeals have not been amended since the early 1990s. Even then, those changes did not reflect the changes in state law enacting the Growth Management Act and regulatory reform. As a result, the Rules contain inconsistent and thereby confusing directions to the parties to closed record appeals before Council. The rules also do not reflect the reality that in the past several years parties have always been represented by attorneys in their appeals before Council. This means that lengthy briefs in support of the parties' cases are routinely submitted to the City Attorney's Office for review with less than 24 hours' time for a review to determine whether the pleadings contain evidence that was not part of the record made before the Hearing Examiner. That extra-record evidence must be stricken from the briefs, either by the parties or by the City Attorney prior to submission to Council for consideration. The current rules also do not require that the statements of fact in the briefs contain citations to the record made before the Hearing Examiner. This serves to make the City Attorney's efforts to check for extra-record evidence even more difficult, particularly where matters are complex, and the Hearing Examiner's record comprises several volumes as we have seen with the past two appeals—the 18th Avenue Puget Sound Energy CUP and the KDC helistop appeal. More

importantly, the Rules imply that the Council could take new testimony or evidence at the appeal hearing itself. This is inconsistent with the Growth Management Act and the requirement that the City hold no more than one open record hearing and one closed record appeal. Since appeals to Council constitute the closed record appeal, the reference in the Rules to testimony and additional information has led to confusion and requests for clarification from parties. Finally, Chapter 20.35 of the City's Land Use Code provides the appropriate standards for review and decisions on the matters that come to Council for quasi-judicial decisions. Because those provisions are tailored to the different types of permits and other actions involved, they are not uniform. Including them in the Rules of Procedure would be redundant of the specific code provisions and would unnecessarily complicate the text of the Rules.

The draft resolution included in the packet for Council discussion does the following:

- Consolidates the substantive provisions of Resolution No. 5097 with those of Resolution No. 5238;
- Makes clear that appeals to Council are closed record appeals and that no new evidence can be submitted by the parties or considered by Council;
- Updates and simplifies the manner in which an appellant can qualify for waiver of the cost of transcription of the hearing body's record;
- Requires earlier submittal of briefs by the parties to the appeal to provide the City Attorney with adequate time to review and ensure conformance to the record below; and
- Limits the length of briefs submitted to Council; and
- Provides reference to the City's Land Use Code for the appropriate standard of review and burden of proof depending upon the type of decision on appeal to Council.

An additional provision is also included in the draft resolution to address appeals that might be scheduled before Council within a short period of time after adoption of the resolution. Depending upon the timing of adoption, this provision may prove to be unnecessary, so would be stricken from the final version brought forward if no appeals to Council are scheduled within the window of time described in Section 8 of the draft.

OPTIONS

1. Direct staff to return with a resolution in a form acceptable to Council amending Council's Rules of Procedure for Appeals to conform to state law and BLUC.
2. Do not direct staff to return with a resolution amending Council's Rules of Procedure for Appeals. This will leave the Rules in their current form, inconsistent with certain GMA statutory provisions and the City's Land Use Code.

RECOMMENDATION

Option 1

ATTACHMENT(S)

A. Draft Resolution

AVAILABLE IN COUNCIL DOCUMENT LIBRARY

N/A