

CITY OF YAKIMA

LEGAL

DEPARTMENT

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MEMORANDUM

May 21, 2020

TO: Honorable Mayor and Members of the City Council
Alex Meyerhoff, Interim City Manager

FROM: Sara Watkins, Senior Assistant City Attorney

SUBJECT: Reconvening of City of Yakima committees and commissions

At your May 19, 2020, City Council meeting you asked staff to return with information regarding reconvening City of Yakima committees and commissions, with a focus on the Planning Commission. This memo addresses that issue, first generally, and then with regards to the Planning Commission specifically.

1. Reconvening City Committees and Commissions

City committees and commissions are generally open to the public, and many allow for public input and comment during the meetings. On March 24, 2020, Governor Inslee issued Proclamation 20-28 which addressed open public meetings.¹ In that proclamation the Governor acknowledged that transparency is important, and that there are many other options available to allow the public to “attend” remotely. The Governor’s Proclamation (which has been approved by the Legislature as to the open public meeting requirements), includes the following language:

Any public agency, subject to RCW 42.30, is prohibited from conducting any meeting, subject to RCW 42.30 unless (a) the meeting is not conducted in-person and instead provides an option(s) for the public to attend the proceedings through, at minimum, telephonic access, and may also include other electronic, internet or other means of remote access, and (b) provides the ability for all persons attending the meeting to hear each other at the same time.

[A]gencies are further prohibited from taking “action,” as defined in RCW 42.30.020, unless those matters are necessary and routine matters or are matters necessary to respond to the COVID-19 outbreak and the current public health emergency, until such time as regular public participation under the Open Public Meetings Act is possible.

An “action” is defined as: “the transaction of the official business of a public agency by a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions. ‘Final action’ means a

¹ The relevant sections of the Proclamation have been extended to May 31st as of the date of this Memo.

collective positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance.” RCW 42.30.020(3).

“Governing body” is defined as “the multimember board, commission, committee, council, or other policy or rule-making body of a public agency, or any committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment.” RCW 42.30.020(2).

Public agencies include the City Council as well as “any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act, including but not limited to planning commissions, library or park boards, commissions, and agencies....” RCW 42.30.020(1).

Many of the council committees are created pursuant to ordinance, resolution or state statute.

Committees and commissions that are merely advisory and their advice is not necessary for the City Council to act, generally are not subject to the Open Public Meetings Act requirements of RCW 42.30. Committees and Commissions that require open public meetings are subject to the Act, such as the Community Integration Committee. See YMC 1.34.050(d).

Those committees and commissions that are merely advisory and their advice is not necessary for the Council to act may reconvene in a manner that complies with the Governor’s other proclamations. In other words, the members should be able to meet via telephone conference or video conferencing so that the members can also be in compliance with the Governor’s Stay Home Stay Healthy Order, Yakima Health District recommendations, and social distancing.

Committees or commissions that are more than advisory—the Planning Commission, Civil Service Commission, Board of Appeals, and CRB—as well as those that are required to hold open public meetings—the Community Integration Committee—can meet, but cannot violate the Governor’s limitation on subject matter listed above. This will be more specifically addressed in the following section on the Planning Commission.

The Governor’s Stay Home Stay Healthy Order also provides guidance for individuals—the members of these committees and commissions. In guidance associated with the phased reopening of Washington, individual guidance in all phases asks individuals to “engage in physical distancing, staying at least six feet away from other people” and “wear cloth face coverings in public places.” As such, committees and commissions should be allowed to meet in a way that complies with this guidance. Telephone attendance should be allowed, and masks should be provided to committee and commission members who are meeting at City Hall. It should be noted that City Hall is closed to the public, and is not set to reopen under the Governor’s phased plan until Phase 3. As such, if committee and commission meetings are reconvened, until City Hall is open to the public the members will need to be connecting by telephone or other electronic means. It will be important to determine if all members of the committee or commission have the capacity to attend the meetings remotely. If a member does

not, then the meetings should not be held. Once Phase 3 is in effect, meetings could resume at City Hall, with the proper precautions regarding distancing.

2. The Planning Commission

Because the Planning Commission is more than an advisory body to the Council, it is subject to the Open Public Meetings Act and the Governor's Proclamation regarding the OPMA. As such, the actions the Planning Commission would be allowed to take during the pendency of the Proclamation are limited to "necessary and routine matters" and "matters necessary to respond to COVID-19." It is not presently foreseeable that the Planning Commission would be addressing COVID-19 related matters.

The Planning Commission's role is to review comprehensive plan amendments, plats, hold open record hearings, and review changes to the zoning code (among other things). None of these matters are considered "necessary and routine" in my opinion. These matters involve site-specific applications regarding the development of property, reviews of ordinance language, and review of changes to the City's Comprehensive Plan. All of these matters generally involve multiple study sessions where the Planning Commission seeks public input, as well as input from experts, stakeholders, and interested parties. For example, when the Planning Commission was evaluating changes to the wireless facilities section of the zoning code, representatives from cellular companies attended the study sessions to answer questions and provide details as requested by Commission members during the course of their discussions. The Planning Commission also holds public hearings on certain land use applications, which obviously would not be allowed under the Proclamation, and won't be allowed until members of the public are allowed to attend meetings in person.

The Planning Commission would have little to do other than approve minutes, based on the items that are pending in front of it currently. The items that are currently pending all involve a process that must be open to the public for comment/testimony. Further, even if the Council were to provide a request to the Commission, the Commission has always welcomed public comment and thoughtful discourse on proposed ordinance changes before providing a recommendation back to Council. Even if the Planning Commission reconvened to discuss ordinance changes, no recommendation would be provided to the Council under the Proclamation due to the fact that the Planning Commission holds a public hearing before making its recommendations.