



DATE: February 10, 2015

CATEGORY: New Business

DEPT.: City Attorney/City Clerk

TITLE: **Potential Amendments to Council Policy K-2 – Council Advisory Body Appointments**

RECOMMENDATION

The Council Procedures Committee recommends the Council approve amendments to Council Policy K-2 – Council Advisory Body Appointments (see Attachment 1 to the Council report).

BACKGROUND

On January 27, staff sought direction from the Council Procedures Committee (CPC) regarding potential clarification and modification of this policy regarding the application of the policy to members of the advisory bodies not required by the City Charter. The CPC discussed three specific items: the registered voter requirement, loyalty oath requirement, and appointment to more than one advisory body.

ANALYSIS

1. Registered Voter Requirement

Council Policy K-2 states the policy of the City Council is to appoint members to Council advisory bodies who are qualified electors (or registered voters) of the City. Section 900 of the City Charter requires the members of the Environmental Planning Commission (EPC), Library Board of Trustees, and Parks and Recreation Commission (PRC) to be qualified electors but does not specifically include the Human Relations Commission (HRC) or other committees created by the City Council (see Page 1 of Policy K-2, Attachment 1). The membership criteria for the non-Charter advisory bodies are set forth in the following table.

ADVISORY BODY	MEMBERSHIP CRITERIA
Human Relations Commission (HRC)	All seven members must be registered voters of Mountain View.
Bicycle/Pedestrian Advisory Committee (B/PAC)	Five members must live or work in the City.
Youth Advisory Committee (YAC)	Fifteen (15) middle school and high school students must be Mountain View residents.
Downtown Committee (DC)	Twelve (12) members, includes five members who must own property or a business in the downtown area and three business-at-large members, with one representative each from the Central Business Association, Chamber of Commerce, and a corporate or industry representative.
Performing Arts Committee (PAC)	Five members must possess a demonstrated special interest or training in the performing arts.
Visual Arts Committee (VAC)	The majority of the seven members must live in the City.
Senior Advisory Committee (SAC)	Seven members who are either senior residents or users of the Mountain View Senior Center, or professional senior program service providers.

The CPC considered whether Council Policy K-2 should be revised to clarify and distinguish Charter boards and commissions from the other advisory bodies for purposes of membership to retain the current membership requirements or the bylaws for the advisory bodies should be changed to require all advisory body members to be qualified electors.

The CPC recommends clarifying the policy to state a person is not required to be a registered voter in order to serve as a member of an advisory body not required by the City Charter, including the HRC. The CPC expressed interest in ensuring the non-Charter advisory bodies reflected the community as a whole, which includes noncitizens.

2. Oath Requirement

At the recent swearing-in ceremony, a newly appointed committee member who is not a U.S. citizen expressed concern regarding the oath routinely administrated to

all advisory body members. As stated in the policy, it has been the practice to administer a loyalty oath in the State Constitution to all advisory body members.

The California Constitution requires “all public officers and employees...except such inferior officer and employees as may be by law exempted” to take and subscribe to the following oath or affirmation before they enter upon the duties of their respective office. The California Constitution defines public officers and employees to include every officer and employee of the City, including any board or commission. The oath reads:

“I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.”

Government Code Section 1360 also requires all City officers to take and subscribe the constitutional oath prior to entry in the duties of office.

Council Policy K-2, specifically 1F in the Procedures Section, requires the City Clerk to administer and file an Oath of Office for each advisory body member before he or she assumes the role of an advisory body member (see Attachment 1). However, the policy does not address a situation where a person appointed to an advisory body is not a U.S. citizen.

The policy does outline the criteria for selection to serve on an advisory body:

“It is the policy of the City Council to appoint members to Council advisory bodies who are qualified electors (i.e., registered voters) of the City and who will provide, as nearly as possible, a representative balance of the broad population of the City. Appointees to Council advisory bodies serve at the pleasure of the City Council.

The overriding criteria for appointment, however, must be the Council’s belief that the person appointed can bring skill, integrity, knowledge, interest and especially an understanding of the basic

obligation to evaluate issues in the broad context of public interest.”

A question has arisen whether a member of an advisory body, other than those set forth in the Charter, should be required to take a loyalty oath in order to serve on a committee, particularly if that individual is not a United States citizen.

Under the California Constitution, cities can exempt certain officers and employees from taking the oath. An Attorney General opinion is on point and may offer some assistance. That opinion discussed whether members of various county commissions were considered officers or employees within the meaning of this constitutional provision. Committee members are not employees of the City. As to whether committee members would be considered officers, the Attorney General opined that if a board or commission does not exercise any sovereign power or governmental function and is merely advisory in nature, they do not constitute public officers.

The advisory bodies advise the Council on a number of community issues. The B/PAC reviews projects for grant programs, develops and reviews comprehensive bicycle/pedestrian facility plans and regulations, recommends operational improvements to existing facilities and capital improvements, and reviews development projects. The DC promotes the vitality of downtown Mountain View through recommendations to the City Council on programs, projects, and policies for economic development of a quality downtown environment and the maintenance and development of parking facilities. The PAC acts in an advisory capacity to the City Council in matters pertaining to the Center for the Performing Arts and accepts money or personal property donated to the City for performing arts purposes subject to the approval of the City Council. The SAC advises the City Council regarding matters pertaining to senior issues and the operation of the Mountain View Senior Center. The VAC is responsible for recommending to the City Council the acceptance, purchase, and placement of public art. The YAC makes recommendations to the City Council on policy matters affecting the youth of the community.

These non-Charter advisory bodies do not exercise any of the governmental powers or functions of the City Council and do not receive any compensation other than reimbursement for necessary and actual expenditures. They advise and make recommendations to the City Council. Consequently, the advisory body members could be exempted from the requirement to take the constitutional oath.

The CPC recommended Council Policy K-2 be revised to require non-Charter advisory body appointees to either take the constitutional loyalty oath, or if the person is not a U.S. citizen, to take an alternate oath tailored to the specific advisory body. A proposed oath is provided as Attachment B to Council Policy K-2 (see attachment).

3. Membership on More Than One Committee

The Council policy is silent on this issue. Traditionally, the City Council has appointed individuals to a single committee. However, in the recent past, two circumstances have arisen where an individual served for some period of time on two different committees. In one instance, a member of the HRC was selected by his neighborhood association to also serve as the association's representative on the DC. In another instance, a member of the DC was also selected to serve on the Library Board.

The CPC considered this item and recommends the policy be clarified to expressly state an individual can only be appointed to serve on one advisory body at a time. Someone serving on one committee would need to resign that committee before serving on another.

Summary of Amendments to the Council Policy Recommended by the CPC

1. Revise the policy to clarify and distinguish Charter boards and commissions from other advisory bodies to retain the current membership requirements and state they are not required to be registered voters.
2. Revise the policy to require advisory body members to either take the constitutional loyalty oath, or if the person is not a U.S. citizen, take the alternate oath as proposed in Attachment C to Council Policy K-2 (see attachment).
3. Revise the policy to state an individual appointed to more than one committee can only serve on one advisory body at a time.

FISCAL IMPACT – None.

ALTERNATIVES

1. Retain some or all of the existing policy language.
2. Provide other direction to staff.

PUBLIC NOTICING – Agenda posting.

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JLQ/KB/3/CAM
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Attachment: 1. Council Policy K-2 (strike-out version)