

To: Terri Porter, Director, Planning & Transportation, P&T staff, and other interested staff

From: Steve Volan, Councilmember, District VI

Date: January 24, 2020

Re: Response to Porter's concerns over the LUC and the legislative process

Introduction

At an internal Council work session on Friday, Jan. 8 in the Hooker Room, Planning & Transportation Director Terri Porter shared a prepared statement expressing strong objections regarding Resolution 20-01. (The text of her statement, which she was kind enough to send me, which is appended to this memo.) While I do not recall everything she said that day, I'm taking her statement as a fair summary of her thoughtful consideration of the impact of this resolution on her department's dealings with Council.

Her critique is substantial. While some of her concerns are specific to Res. 20-01, some are an issue for the Council's legislative process as a whole, and some are critiques of Council's role in the planning process. The latter two transcend the question of standing committees; they go to how Council is organized and led. (It is also important to note that the LUC was the hardest standing committee to start with as a guinea pig. Legislation that comes from P&T is some of the most complicated and controversial that we are required to consider. None of the proposed committees will handle a workload as intense as that of the LUC.)

Director Porter's issues with the LUC

Director Porter decried standing committees based on her experience with the LUC, claiming the "format HAS NOT WORKED," and that there were "too many unanswered questions to be in such a hurry on this initiative" to establish new committees. She expressed particular concern over the expectation from Council that her staff be available for any meeting regarding a PUD or rezone, especially without consulting Planning & Transportation before such a meeting gets scheduled. Here is my understanding of her concerns:

1. Meeting lengths: Amount of time P&T staff is required to attend, and impact on them
2. Lengthened process: The unpredictability and greater length of the process when an item comes to Council, in its impact on P&T staff scheduling, in its cost to petitioners, and to our reputation as a difficult place to do business
3. Neutral votes: The lack of positive/negative recommendations made by the LUC

4. Role of Council in land use: That the LUC and Council, which ask staff to “start over from the beginning” when presenting, disempower P&T staff and Plan Commission
5. Other questions, such as who decides what committee a piece of legislation gets referred to, and who takes “robust minutes”

I try to address all of these concerns in this memo.

1. The total time of LUC hearings

Director Porter cites as a problem a figure of 14.35 hours spent in 9 LUC hearing since it was established in 2018. This is an average of 96 minutes per hearing.

The LUC’s first-ever meeting, regarding Loren Wood’s co-housing project, was scheduled for an hour, which we met because the project was straightforward, but we only barely met it. I remember thinking after it that even the least controversial PUD would need 75 minutes to ensure enough time for a presentation, questions, public comment, and a short comment from committee members. After that, I endeavored to limit the time for the LUC to consider any item to two hours.

With an average of 98 minutes, I consider the limiting of time to have been a success for the LUC’s first two years, prior to which no member of Council for several decades had ever had experience with a standing committee that wasn’t related to funding.

Only one item took more than two hours to deal with in any one hearing, and that was the Century Village PUD at 3rd and 446. That was the second-ever item the LUC had to consider, and it was very controversial, generating a lot of public input. Nevertheless, Director Porter complained that on the night of Oct. 24, 2018, the LUC meeting started “far too late” at 8:42 pm, and ran 2.5 hours despite my stated “goal of ending this meeting no later than 10:42.” I acknowledge this failure, and apologize for it.

Since then, I have implemented a timing device and have required everyone — staff, petitioner, public, committee members — to limit the time they may have the floor. The LUC has not taken more than two hours to consider an item in one sitting since. The meeting of Nov. 7, 2018 lasted 2.5 hours, but there were two items sent to us: the Meadowood expansion and Trinitas’ Chandler’s Glen. The former took 66 minutes and the latter 82. The projects since have all been considered in less than two hours.

2. The total number of days taken by the LUC/Council process

Director Porter observed that all projects reviewed by the LUC received “full Council review which added 1-2...additional meetings,” which “adds at a minimum an additional month to the review process — this costs the petitioners more money and reinforces our reputation as being a difficult place to do business.” This makes the LUC process “totally unpredictable” and gives her “no...reason to trust the process.”

There is a great deal to break down in this criticism. First, the LUC does not add a month to the process. Council has been accustomed to defining a “legislative cycle” as the period between regular sessions. This is typically two weeks, but is often three due to the quirks of the calendar. A standing committee has until the second regular session after referral; the LUC adds at most one of these legislative cycles to the process that used to be handled by committee of the whole. I say “at most” because in several cases the LUC didn’t need the extra cycle, sending the petition back after one hearing.

Second, while the LUC might add a meeting, as noted above, no item gets more than two hours in that meeting, meaning a long night should not ensue for any staff member. Third, “full Council review” has always had the risk of going to a Third Reading in regular session, because sometimes projects are controversial; that’s what happened to the Lauchli project in 2016, which led to the LUC.

Fourth, to say that the process is “totally unpredictable” is inaccurate. Statute gives Council 90 days to consider changing an item certified to it by the Plan Commission. Even when Council wants to expedite a decision, it has month-long recesses and other responsibilities. If petitioners and P&T do not plan for up to 90 days, it is at their peril. If Council takes less time — which it almost always does — consider that a bonus. In practice, the LUC only adds one legislative cycle, typically two weeks, to a typical piece of legislation, a cycle it can waive if it sees fit.

Perhaps the most problematic assertion in this critique is the concern over the cost to petitioners and the reputation of our business environment. I take this up in the fourth item below, but let me just say here that Council has an obligation to consider all the laws and plans of the city — not just Title 20 and not just the Comprehensive Plan — when evaluating land-use legislation. I agree that predictability and business environment should get more attention. I disagree that those should be our default priority over everything else, rather than considered in balance with everything else.

3. Neutrality in LUC recommendations

Director Porter argues that after substantial consideration, the LUC gave neither positive nor negative recommendations to most petitions. She sees this as indecisiveness, and a flaw in the committee process.

I contend that this is a feature of the committee process, not a bug, as described in the Organizational Plan. Regardless of the number of abstentions, any petition that did not get at least three Yes votes should simply be seen as a rejection. If a petitioner can’t get three yes votes from the LUC, it’s an indication that the proposal is just not good enough to get Council approval without significant changes. But abstentions were generally a signal that a petition needed fixing at, not rejection from, the full Council.

I can see how these differing expectations of how a committee should operate could lead to ambiguity and a frustration from Planning. Director Porter’s problem with LUC votes, however, can be easily remedied: Council can simply make it practice to disallow

abstentions in committees. This reduces the potential outcomes, assuming all four members in attendance, to five: 4-0, 3-1, 2-2, 1-3, 0-4. Only one of these outcomes would be truly neutral. This will force members to take less indecisive stands. The bottom line, though, is that less than three Yes votes is tantamount to an expectation of a petition's failure at the full Council.

4. Repeating the presentation to Council

Director Porter's sharpest critique is that the LUC and Council ask staff to "start over from the beginning" when presenting proposals, "discussing issues that were already discussed and decided at the staff and PC level." She writes, "I've brought this to CM Volan's attention numerous times but I'm told it that 'PC isn't Council and that Council has a right to make their own decisions.' Then why have a Council rep on the PC?"

She also believes this requirement disempowers P&T staff and dilutes the Plan Commission's influence, as developers "target LUC and Council." If the Plan Commission rejects a project, she says, Council may still approve it; petitioners are thus less likely to heed the guidance of the Commission or Plan staff. In criticizing the habit of Council expecting full presentations from scratch, she expresses dismay at the apparent delay that Council deliberation takes: "We're trying to address our housing crises and increase employment opportunities."

These are criticisms that, as I've said, go beyond the question of standing committees, to the very role of Council in land-use decisions. Both Director Porter and the Mayor have asked the Council on more than one item of legislation to "simply vote up or down," and not amend it or even debate it.

Before I can address the valid concern over the "extra" work Planning must do to get a Council decision, I must first address this concern over the role of Council.

a. The role of Council in land use decisions

For the sake of removing any ambiguity about Council: it has statutory authority to review planned unit developments, rezones, and text amendments to Title 20. It is only because statute requires it that the Plan Commission, which is otherwise appointed almost entirely by the administration, to have a seat on it for a councilmember. It's part of the division of powers. Councilmembers are not about to abandon their prerogative, or their responsibility to fulfill their statutory obligation. This critique should stop if we are to work together to make the process better.

Similarly, the role of Plan Commission is not superior to the Council. The only extra power it has is that a positive recommendation does not need to be endorsed by Council: it takes five CMs to *defeat* an approved project, not to approve it as with normal legislation. Statute clearly tells us that just because it was "decided at PC level" does not mean it is decided.

Long before the current administration and the existence of the LUC, Council has expected to see presentations from Planning whenever legislation was certified to us. Director Porter's "planning experts in Development Services who present cases did not hire on with notion that they would be required to set aside every Wednesday night for council and/or committee meetings," she says. I'm not sure why not; that has been the lot of their predecessors. Plan staff have endured many late nights before now, for the 16 years I have been on Council, especially back when regular sessions and committees of the whole did not start until 7:30 pm.

None of that invalidates the current concerns of Plan staff. The LUC appears to have become the entry point for all the pent-up frustrations about dealing with Council. I cannot speak for the way things have been done, but I have never served as Council president until now. I am doing my level best to reconsider and improve the Council's process now that I have the authority to ensure that any reform can be carried out properly. I believe standing committees are an essential tool for that improvement.

b. Re-presenting, and what we can do about it together

Having said all that, Director Porter's second criticism on this topic is easier to appreciate. It must indeed be tiresome to have to present all over again to the Council. Since the advent of the LUC, the full Council expects a second full presentation. This concern I appreciate, and want to do something about.

I can imagine a scenario in which the LUC could forego a full presentation. CMs should have read the packet. For the Curry PUD on Jan. 15, Jackie Scanlan requested questions in advance; all the members of the new LUC complied. Although this all happened last-minute, she said it helped. Since a budget glitch in 2014 caused CMs to submit their budget questions in writing, I have done so every year, and reduced almost to zero the number of questions that I ask during Budget Week. I see no reason why we can't reduce the LUC presentation to, say, five minutes, or even three, and go straight to addressing questions submitted the Friday before the first LUC hearing. We can then save the full presentation for the Council.

5. Other items

a. Who decides which standing committee to refer to?

As was noted in my initial work session on Jan. 3, and in the resolution and accompanying documents, the committee that would hear legislation would depend on the originating department. If the issue regards rental enforcement, it would go to the Housing committee; if the issue regards stormwater, it would go to Utilities & Sanitation.

It's been asked, what if the issue could fit into two committees? Wouldn't a JAG grant go to both Public Safety and Administration, since that's the committee that liaises with the Controller, and thus need two separate sets of committee hearings? The answer is: no. It goes to one committee. While there may be some debate over which, the president,

or a majority of members, will pick one or the other. (The answer to the JAG grant case is: since it's about police, so it goes to Public Safety. Many issues involve money, but no Budget or Finance committee has been proposed, because budgeting is one action that we plan to continue using the committee of the whole for.)

b. Who keeps “robust minutes”?

This language came from Stephen Lucas' memo on Res 20-01. He has said that the video record of a committee meeting can suffice as a record. Also, CATS is now uploading all videos to YouTube to take advantage of their transcription function. But if a brief written summary of a committee hearing were desirable, the Council would negotiate with the Clerk's office for the service. Departments continue to only be obligated to serve the various boards and commissions they already serve.

c. Meeting time windows

Director Porter expresses a strong concern about the potential for late starts to standing committee meetings, and the “work/life balance” of her staff who need to attend them. She also calls out the Council's prerogative to suspend the rules to continue debate well into the night. On Jan. 15, for example, the LUC meeting started at 8 and staff was given very little notice; Jackie Scanlan couldn't attend more than the first 30 minutes due to family care obligations.

Again, all I can say is, I haven't had a chance to change that habit yet. I abhor committee nights when we cram regular or special sessions in. That plan was set before I could control it. It will always be my preference to schedule LUC meetings as early as possible on committee nights, and to not also have full Council sessions on those nights. Despite one meeting with a controversial topic running half an hour long, in two years all other items were heard for no more than two hours under my gavel, thanks to timers and a strict adherence to them.

d. Consideration of, and coordination with, city staff

Director Porter found “no reference to expectations of city staff” in the resolution, “which are rigid and significant. No coordination with our schedules which are heavy”; they are “not Maytag repair people.”

While staff was not explicitly mentioned in the “Purpose of Committees,” the phrase “Provide more predictability for all interested parties in meeting scheduling and duration” includes staff. I cannot guarantee that this plan will reduce the hours staff must devote to dealing with Council, but I am most confident that it will not increase those hours, and that it will make those hours more predictable.

e. Century Village is a poor example of LUC problems

Director Porter takes issue with the Third and 446 project, otherwise known as Century Village, as an example of the failure of the LUC. There were a lot of reasons why I reject this case as typical.

She said we had to meet four times over it. One of those times was the regular Friday noon internal work session; that doesn't count. The second meeting was a special one because the project was huge and controversial, the developer was from out of town, and the LUC was brand new and had only handled one other case; that meeting was held in lieu of a pre-filing meeting between developer and neighborhood, which the LUC hadn't been around to arrange.

She points out that on Oct. 24, 2018, the LUC started 42 minutes after its 8 pm start time, and went 2.5 hours despite me saying at the outset that I had the "goal of ending this meeting no later than 10:42". For that, I apologize. But the Council overrode my recommendation that the LUC be scheduled *before* the committee of the whole that night. CM Sturbaum, who gavelled the COW open at 5:45 pm, made no effort to restrict time, which is one reason why it ended at 8:35 pm. This is not an inherent drawback to the LUC; it's a problem of leadership respecting time limits and respecting Plan staff.

She again notes that Council on Nov. 14, 2018 "met another 7 hours before voting no at 1:30 am." That was a regular session; as she notes, only the last 3 hours 10 minutes were devoted to the project. The LUC had no control over the schedule of a regular session, or the many members of the public who came to object, or control of the gavel or time limits. None of that was the LUC's fault, but Director Porter ascribes all that time as a flaw in the nature of committees, when it's really a critique of the Council in regular session. I believe that we can address this problem through an intentional change in the practice of how Council conducts its meetings.

Conclusion

While I authored the Land Use Committee (LUC), it was approved by Council, and I never had control over its scheduling. Again, I have never had the privilege of leading Council before 2020, so many of Director Porter's concerns devolve to past leadership to answer to. Council indeed needs to rethink every aspect of the way it does business.

I have long said that process is important, and I have made good on my statement by publishing the Organizational Plan that was included with Res. 20-01. **Using standing committees is part of a sincere, well-balanced plan, which includes time limits, as well as a rethinking of every other habit Council has been accustomed to. We must address any blind spots that make it unnecessarily difficult for the administration, petitioners, and the public to interact with Council.** I strongly urge everyone to read the Org Plan more closely, as well as the memos I have authored which clarify it, for many of their concerns are answered within these documents.

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attached: Terri Porter memo of 1/10/20

MEMO FROM TERRI PORTER, DIRECTOR, PLANNING & TRANSPORTATION

January 10, 2020

Project	Type	Number of Meetings	Recommendation/Final Vote
Co-Housing	PUD Amend	1	No Recommendation (2-0-1)
3rd & 446	PUD	4*	No Recommendation (2-0-2)
Trinitas @17th	PUD Amend	1	No Recommendation (1-2-1)
Meadowwood	PUD Amend	1	No Recommendation (1-0-3)
Motel 6	PUD	2	No Recommendation (0-1-3)
Lauchli	PUD Amend	1	Recommend Approval (3-0)

*LUC members met with applicant's representative before Plan Commission and with applicant on a Friday before first Wednesday LUC.

Concerns – New committees propose to be based on LUC format and LUC format HAS NOT WORKED

Since creation in 2018 – 6 petitions with a total of 10 meetings staff had to attend. Only one petition was sent to Council with a recommendation. 1-6 record is not good. The others all sent to full Council with no recommendation. All 6 projects received full council review which added 1-2 (3 in the case of Motel 6) additional meetings.

3rd and 446 example - LUC met 4 times and could not send a recommendation to Council. Council took it up at their 11/14/18 meeting which devoted another 7 hours, before voting no at 1:30 am.

- LUC process is totally unpredictable, No record or reason to “trust the process”
- Adds at a minimum an additional month to the review process – this costs the petitioners more money and reinforces our reputation as being a difficult place to do business. This is a big deal! We’re trying to address our housing crises and increase employment opportunities. Adding time and unpredictability to the process doesn’t help.
- The LUC takes an inordinate amount of staff time and requires significant late night work – There are three planning experts in Development Services who present cases. They did not hire on with the notion that they would be required to set aside every Wednesday night for council and/or committee meetings. **No reference whatsoever about**

expectations of city staff in Res 20.01, but, trust me, they are **rigid and significant**. Work/life balance is a benefit I'm supposed to be able to offer staff in exchange for the higher salaries they could earn working in the private sector. Example – Jan 15 & 29 are the firm dates that LUC will take up the Curry project on Pete Ellis Drive. Why are you so certain a subject matter expert will be available on either of those dates? No coordination with our schedules – which are heavy! We're not Maytag repair people waiting around for the phone to ring!

- Resolution 20-01 does not come without increased demands on limited resources even though, technically, it may not increase a line item in the budget.
- **Disempowers staff and dilutes PC** as developers target LUC and Council. If they get through PC with a minimum of a null recommendation, it still gives them a shot at being approved, making them less likely to heed staff and/or PC guidance.
 - This is due to the broader issue that LUC and Council start the review process all over again from the beginning – discussing issues that were already discussed and decided at the staff and PC level. I've brought this to CM Volan's attention numerous times but I'm told it that "PC isn't Council and that Council has a right to make their own decisions." Then why have a Council rep on the PC?
 - The idea of committees could possibly work if they only dealt with the few issues that may remain after staff and PC reviews – but LUC and Council start all over again and rehash everything that's already been discussed. Totally unproductive.
- **Too many unanswered questions to be in such a hurry on this initiative to create 7 new committees** – who decides which standing committee is "best suited" for the matter? Example- Housing Committee – HAND, if it's a housing project, are you sure it would just be HAND?
- Who's responsibility is it to keep "robust minutes"?
- Meeting start time window – **does not stop meetings from beginning at 9pm and council suspending the rules to continue.**

LUC Meeting Lengths

6/20/18 - Loren Woods (Co-Housing), 1 hour

9/21/18 – 3rd & 446, 1 hour (part of Council work session)

9/28/18 – 3rd & 446, 1 hour

10/3/18 – 3rd & 446, 2 hours

10/24/18 – 3rd & 446, 2.5 hours (Meeting started at 8:42 pm with “goal of ending this meeting no later than 10:42”) **Far too late**

(Council meeting after 4 LUC meetings for 3rd & 446: 11/14/18 – 3rd & 446 City Council, Pt 1, 4 hours, Pt 2 – 3:10 minutes)

11/7/18 – Meadowwood, & Trinitas 2.25 hours and CATS coverage was delayed so it actually went longer

8/7/19 – Motel 6, 1.75 hours

8/28/19 – Motel 6, 1.75 hours

11/6/19 – Lauchli, 1:10 hours

(14.35 hours of LUC meetings) (with only 1 recommendation to Council)

Purpose of Committees (per 20.10):

- Meant to allow council members to better manage time and workload
- Provide more predictability for all interested parties in meeting scheduling and duration
- Provide councilmembers the ability to specialize in topics and triage issues
NOTHING IN HERE ABOUT STAFF!