

From: Paul Filicetti <pfilicetti@ae.design>

Sent: Tuesday, July 30, 2019 7:23 AM

To: Emily Scherrer <ScherrerE@ci.missoula.mt.us>; 'Jolene Brink' <jolenembrink@gmail.com>

Subject: RE: Bylaws Updates

Emy,

My apologies for getting bylaw review comments back to you so late. Having reviewed them, my comments are:

B – I question the use of "Membership" in the sentence, we're an appointed committee

We use the term membership to keep it uniform with City Code, 20.90.030.

D - is "member" in the sentence referring to a "regular member" or "alternate member" or both? (Similar question in D.3); this distinction follows the entire document, i.e. can / does an alternate have all the abilities of a regular member? Can an alternate be elected to an office?

Yes, C. states, "An alternate member shall participate in the same capacity as a regular member," which does hold true for the entire document. "...in the same capacity" would include the ability to be elected to an office.

D.3 - are the qualifications outlined somewhere that one could refer to to ensure that is not an issue?

Yes, the qualifications are outlined in the City code, [Title 20 – Historic Preservation Commission chapter, under B. Membership.](#)

A.2 the statement about special meeting is under the heading of the Chairperson, can you explain why? Perhaps better definition here i.e as prescribed by city law, the chairperson may call for special meetings... not sure what the city law is or if other regular members (vs alternate members) may call for a special meeting, by vote

City code 20.90.030 states, "Special meetings may be called by the chairperson or by simple majority vote of the Historic Preservation Commission." I see what you're saying though, it would probably fall better under Article 7. Meetings, I'll switch that placement. Best practice is to direct the reader to city law, rather than quoting it verbatim.

7.A for clarification, if the chairperson knows in advance there is no quorum do they still have to proceed with the meeting if there is a request for review on the agenda? Or should the sentence suggest that if a quorum is not present at the regularly scheduled meeting the chairperson can cancel the meeting, regardless of the request for review, and schedule a special meeting to achieve a quorum?

Well, we say that a quorum has to be present for all meetings at which official action is taken in 7.E. To add clarification I can add to the end of 7.A., "...unless a quorum is not present."

7.B suitable meeting place - we discussed moving the meeting to other venues but due to MCAT / public access, that is not an option. Is it necessary to even suggest there's an optional meeting location when there is no option currently available?

I would like to keep this in case anything changes in the future.

7.G I mentioned at the last meeting being accosted (a really poor choice of words on my part for which I'm sorry) by a member of the public for an issue before the commission and we discussed how to bring that forward to the commission. This statement is specific - the commission may consult - not any one individual member / commissioner but clearly only the whole committee? If the commission has the option to consult then where / when does that action occur? Once the commission has heard the request for review or could it occur knowing the RFR is coming to a meeting, would it be a breach of bylaws to solicit a consultant to make a statement during the RFR?

I discussed this with the City Clark and Attorney. Since we already have a clause in City Code 20.85.085 – Historic Preservation Permit, which describes consultation during the demolition process, we should not repeat it in the Bylaws, and should thus be removed.

9.A I recall during our board orientation, that public comment should ideally occur before approval of the minutes in the event public comment is specific to an item in the minutes which could then change the way the commission views minutes.

We can switch this, most bylaws have approval of minutes first, including the sample bylaw given to us by the board orientation, but let's discuss with the Commission.

10.A I'm not sure the issue is resolved. I.e. a project may come forward that is an A&E project that engaged DCI engineers. Bruce who works at DCI is not aware of the project and votes, is that an issue?

Similarly, if a project comes forward from A&E that Jim or I are not familiar with, is it a conflict of interest for us to address the request? Or if a project were nominated for a preservation award and was work by A&E's other offices, can we vote on it? Perhaps that's what the "financial" part of this statement is attempting to define? The next statement (A.2) makes it possible for a member to vote / discuss a request given what seem like a personal relationship with the issue at hand vs working for the firm / company who is bringing the issue forward? The way the statements are made they discuss the individual member's rather relationship with the issue rather than a member and firm or company the member works work? I'm not sure.

I discussed this with the City Clerk and Attorney – it's important to remember that Bylaws are guidelines for Commissioners and are written to be short, sweet and general. The nature of Bylaws is intended to offer overall guidance for projects, not a case by case basis. As every project is different, it is highly encouraged to consult with the City Attorney as to whether a conflict of interest is taking place, that is part of their job, offering that counsel to HP Commissioners. As a government official, it is integral always to air on the side of caution, be transparent in all actions, ask for guidance from city staff per project, evaluate and make a judgement call on behalf of yourself and the fairness of a public hearing.

10.A the financial clause and A.2, representation of a professional retainer should provide guidance for a Commissioner to make that judgement call. Further, I added this language: A4. Feels that she or he should be disqualified for any reason not listed above.

10.B should this not read "existing or potential" rather than "potential or actual" where actual then should be included in the preceding statements?

I switched "existing" to "actual" to make it uniform.

10.C Does this statement assume the member with the conflict has reached out to the chairperson prior to the meeting? Or is it to suggest that members will be provided sufficient information in advance of meetings to determine conflicts and reach out to the chairperson?

Yes to the first question, based on 10.B. All Commission members will have sufficient information in advance of the vote as all members have at least 15 days and up to 60 days to review the application per city code.

11 and 7.G need clarification for me. They seem to suggest a contradiction of principal. If a member is aware of a pending RFR, knows a statement from someone outside of the commission could be important to the discussion – i.e. a consultant as suggested by 7.G they can reach out to that individual but by 11 it sounds as if they cannot. Please clarify.

From the City Attorney: "If potentially substantive and/or substantive inquiries or communications are made of city staff, city elected officials, consultants, it is preferable that the communications occur during a public meeting; but if they do not occur during a public meeting the substance of those communications should be entered into and disclosed in the public record, whether by providing any written communication or by a thorough summary of what was communicated." It is important to note that consultation and ex-parte are different things. Consultation is the formal process of seeking advice, usually through the HPO. Ex-parte is an informal discussion happening out of the public record, such as when you were accosted. If that discussion feels like it could sway your vote or provide important information to the board, it must be entered into the record.

12.A uses "majority vote by present quorum" how/why does that text differ from 7.F or 9.C or 15.D which are each phrased differently?

Not sure

13 capitalize "Commission"

Done.

13 uses the text "committees" and "subcommittees" interchangeably. Is there a distinction to be made or should all committees be subcommittees? Is "any meeting body" a subcommittee or is that another distinction that's being made?

I can see where this may be confusing, when it simply states committees, it is referring to both ad-hoc committees and subcommittees, as in B. and C. ie any committee, short term (ad-hoc) or long term (sub) must follow those clauses. **Could we delete 13.A?**

I hope this is clear, if you have any questions or would like to meet to discuss, please let me know!

Thank you so much,

Paul

PAUL FILICETTI