

Memorandum

To: Ashley Hefner, Senior Planner, Culver City

From: Chris Elmendorf, UC Davis; Kevin Esterling, UC Riverside; Clayton Nall, UC Santa Barbara

Re: Proposal for Culver City / Prytaneum Event

Date: June 22, 2021

This memo explains our current thinking about how best to integrate a Prytaneum forum into Culver City's development of an Environmental Justice Element of the General Plan.

I. Procedural Equity, Not Specific Land-Use Policies

We initially thought that the most productive forum would focus on discrete policy choices or priorities, e.g., options for mitigation of air pollution, heat islands, and housing insecurity, as well as budgetary tradeoffs. However, we recognize that Culver City is still in the early stages of thinking about policy options, and that the city might not want to make commitments in the plan that would constrain the city council down the road.

We now think the forum would be more productive if it focused on process: How do residents of Culver City in general, and members of disadvantaged communities in particular, think the city should solicit input and honor the concerns of disadvantaged communities with respect to land-use decision-making?

We think this process-oriented model has clear advantages for Culver City, and for us. For Culver City, the advantages are:

- 1) The outcomes / findings of the Prytaneum event would not need to be an input into any specific element of the general plan. This means that the timing of the event wouldn't be controlled by a plan-update schedule, and the event wouldn't have to be coordinated with the consultant who is preparing a specific element of the plan.
- 2) The city could nonetheless refer to and claim credit for the Prytaneum event in both the Environmental Justice Element and the Housing Element. The event would be evidence of the city's ongoing commitment to what the Existing Conditions Report for the EJ Element calls "procedural equity" (p. 12). For the Housing Element, the event could be a way of showing the city's commitment to "fair housing outreach," as well as a way of addressing the "community opposition" as a barrier to projects that would reduce

socioeconomic or racial isolation within neighborhoods (HCD, [Affirmatively Furthering Fair Housing Guidance](#), Apr. 2021 Update, pp. 10-11, 68-69).

For us, the main benefit of a focus on process is that the issues will be of general interest to many cities, rather than unique to Culver City. This will give the findings added weight, and, in time, it may be possible to combine data from several cities.

II. Proposal

Our vision for the event is to introduce two basic models of land-use decision-making, and to explore ways of augmenting each model so as to provide better information to decision-makers about the concerns of disadvantaged communities. In surveys conducted before and after the event, we would ask participants to express their preferences regarding these models, both in “basic” forms and with equity supplements.

In this section, we describe the basic models and four potential equity supplements. We would of course be happy to work with Culver City on the design of these or other supplements.

A. The Basic Models: “Shape the City” vs “Plan the Project”

A central issue in land-use policy-making is whether to make general plans and broadly applicable zoning codes the main locus of public participation and political discretion, or whether to treat individual development proposals as the main event. Simplifying a bit, we’ll call these the “shape the city” and the “plan the project” model, respectively.

Under the shape-the-city model, public participation occurs and political judgment is exercised in connection with the general plan and broad zoning updates, whereas individual projects are reviewed ministerially and approved without conditions if they conform to the code. Under the shape-the-project model, by contrast, the zoning code is just an invitation to propose projects, not a legally binding statement of what will be allowed. Individual projects receive public hearings and discretionary review by the planning commission and, if requested, the city council. While the public may also weigh in on general plan and zoning updates under the shape-the-project model, there’s less of an incentive to do so because neither the plan nor the zoning code substantially determines what the city will allow on a site.

In California, the two models also have different implications for environmental review. The California Environmental Quality Act (CEQA), requires thorough analysis and mitigation of the potential environmental impacts of discretionary decisions by local governments. General plan and zoning updates are always discretionary, at least in part, and so are subject to CEQA

review. However, under the “shape the city” model, the approval of individual projects that conform the plan and zoning code is nondiscretionary, and thus exempt from CEQA.

The trend over the last several decades has been in the direction of more project-level participation, analysis, and discretion. However, the Legislature and the Department of Housing and Community Development are now pushing in the other direction: SB 35 and the ADU laws require certain projects to be reviewed “ministerially,” without public hearings or discretionary conditions of approval; similarly, HCD’s draft [Prohousing Designation Regulations](#) would award the maximum number of points to cities that establish “ministerial approval processes for a variety of housing types, including single-family and multifamily housing” (25 CCR § 6606(b)(2)(A) [proposed]).

New academic research also shows that affluent homeowners tend to be overrepresented in public meetings about land-use matters (Einstein, Glick, and Palmer 2019; Yoder 2020). Some advocates are concerned that efforts to rezone affluent neighborhoods to allow denser housing may be derailed on the back end by project-level opposition and discretionary review.

Each basic model has benefits and costs. Project-level participation gives voice to neighbors, who may better understand (and care a lot more about) specific development proposals than the abstractions of the zoning code or plan. It also lets the planning commission and city council fix site-specific problems they may not have anticipated when they wrote the plan and zoning code. And it empowers the city council – and anyone else with the resources to file a lawsuit – to negotiate “community benefits” as a condition of project approval.

On the other hand, project-level participation and discretion makes development more costly, because the developer has to pay for environmental studies and incur larger holding costs, and because the outcome of the development-review process is less predictable. This generally translates into less housing, as well as a diminished margin for securing benefits from developers in the form of affordable units, infrastructure fees, and the like. (Under the “shape the city” model, these community benefits may be obtained with a fixed schedule of fees and affordable housing requirements; they’re not subject to negotiation on a case by case basis.) Finally, project-level discretionary review reduces the impact and thus the value of public participation at the plan / rezoning level, because the plan and zoning do much less under this model to determine the outcome of project-level review.

B. Equity Supplements

In principle, either of the basic models could be supplemented with further procedural requirements to increase decisionmakers’ awareness of and attention to the concerns of traditionally disadvantaged communities. Here, we describe four possible supplements.

1. Equity Impact Statements

Some racial justice advocates want state and local governments to enact “equity impact statement” requirements, modeled on environmental review. A number of states are already using these statements in connection with their criminal justice systems (London 2011). In California, the interagency Workgroup to Eliminate Disparities and Disproportionality has produced a [model tool and user guide](#) for Racial Impact Analysis. King County, Washington has adopted an [equity impact analysis](#) requirement at the county level.

A city could, through its general plan, commit itself to an equity impact statement requirement. By analogy to CEQA, the city would agree to prepare an Equity Impact Report whenever there is a “fair argument” that a discretionary decision of the city “may” have a “significant impact” on any aspect of socioeconomic or racial equity. Also by analogy to CEQA, the city would commit to mitigating any adverse equity impacts to the extent feasible, and would allow any interested person to sue in court and block a decision on the ground that the equity statement or mitigation of equity impacts was not adequate.

Under the “shape the city” model as supplemented by equity impact analysis, the reports would be prepared for general plan updates and rezonings, but not for individual projects that comply with the zoning code and plan. Under the “plan the project” model, the reports would be prepared for individual projects too, and paid for by the project applicant. Again, this tracks CEQA, which only applies to discretionary governmental decisions, and hence not to zoning-compliant projects that are reviewed ministerially.

2. Demographic Disclosure (Mandatory or Opt-In)

In lieu of equity impact statements, a city could require or invite people who speak at public meetings on land use matters, or who submit written comments, to provide basic demographic information about themselves, such as race / ethnicity, gender, owner / renter status, and household income (within bands).¹ This would help decision-makers better understand whether comments are representative of the entire community, and also whether the city’s outreach efforts to traditionally underrepresented communities are paying off.

Relative to equity impact statements, demographic-disclosure requirements have the advantage of not increasing the cost of plan and zoning updates, and, under the “plan the project” model, of not increasing the cost / uncertainty of individual project reviews. There is probably also less risk of litigation and delay, since the disclosure requirements would be relatively clear-cut, whereas determining the adequacy of an equity impact statement is more subjective. On the other hand, the demographic-disclosure supplement encourages (opt-in version) or requires

¹ The nearest precedent is campaign finance law. Contributors above a modest disclosure threshold generally must disclose their name, address, occupation. The thresholds and exact disclosure requirements vary across states and levels of government.

(mandatory version) members of the public to disclose information that they may not feel comfortable disclosing. This may deter some people from participating in public hearings or submitting comments. Whether that deterrent effect would be good or bad for equity is unknown.

3. Citizen Juries with Demographic Quotas

A city that opts for this equity supplement would create citizen panels, much like a jury, to advise city officials on general plan and zoning updates (under the shape-the-city model) and / or individual projects (under the shape-the-project model). The citizen jury could provide its input through Prytaneum-like forums with the decision-makers, and by voting on proposed rezonings (shape-the-city model) or projects (shape-the-project model).

To increase the likelihood that traditionally underrepresented voices get heard, the city would reserve some seats on the panel for, e.g., tenants, residents of disadvantaged neighborhoods, and people without college degrees. As well, the city would invite a random sample of residents to apply for membership on the panel. Members of the panel would be chosen by lot from the applicants who meet the demographic qualifications for a seat.

This equity supplement is probably more feasible in connection with the shape-the-city model than the shape-the-project model, because the costs of recruiting and running a panel for every individual project could be quite high, and because a permanent or rotating panel would be costly for the participants.

The demographic quotas would not include racial or ethnic quotas, which are not presently allowed by the state or federal constitution.

4. Planning Commissions with Demographic Quotas

Instead of creating a new, advisory review body (such as the citizen jury), this equity supplement would adjust the composition of the existing boards and commissions that have authority to regulate land use and approve projects. For example, a city with a 5-member planning commission could require that at least one member of the commission be a renter, and at least one member be a resident of a disadvantaged community.

This is a logistically easy and low-cost reform to implement, relative to citizen juries, but it wouldn't give as many voices a place at the table, and it may result in some strong candidates for membership on the planning commission being passed over because they do not satisfy the demographic qualifications for an open seat.

C. The Prytaneum Event

The Prytaneum event would bring in a diverse group of constituents from Culver City, offering them the opportunity to learn about and comment on city planning. The event will feature moderated remarks by scholars of political science and planning concerned with the “shape the city” vs “plan the project” approaches to equity, along with the opportunity for citizens to engage with these experts through questions and discussion. On the side of “shape the city,” we have identified a list of professors who have identified problems with highly localized responses to equity concerns. On the side of “plan the project,” scholars of planning, sociology, and environmental studies concerned with gentrification, displacement, and localized environmental justice issues would be available to defend project-specific review.

The experts would each be given several minutes to lay out their position, followed by a discussion on the Prytaneum platform moderated by a California-based journalist. We will seed discussion with a few questions posed by the moderator. We expect that this initially seeded discussion will stimulate audience participation. The moderator will then field questions from the public using Prytaneum’s inclusionary algorithm.

We will conduct surveys both before and after the event to assess participants’ support for the two models of public participation and the equity supplements. All invited participants will be invited to take a survey and read briefing materials at the baseline period. After the event, they will be asked to complete a substantively similar survey to assess the effect of the Prytaneum discussion on their views about public participation in land-use policymaking.

Bibliography

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