

# AGENDA ITEM 2

TO: Planning Commission

FROM: Warren Frace, Community Development Director

SUBJECT: Study Session – Planning Commission Norms and Procedures

DATE: April 26, 2016

**Needs:** For the Planning Commission to review and discuss existing operating procedures and guidance documents and determine if and changes or supplemental documents are desired.

- Facts:**
1. At the March 8, 2016 Planning Commission, Chairperson Rollins requested that a discussion of Planning Commission procedures and the need for a “handbook” be agendized for discussion. By consensus, the Planning Commission agreed to agendize this issue for discussion
  2. The Planning Commission current operates under the September 15, 2015 Bylaws which provide limit direction on the Planning Commissioners role or conduct of meetings.
  3. There are a variety of resources available regarding Planning Commission best practices that could be utilized by the Commission.

## **Analysis and**

**Conclusion:** The Planning Commission currently operates under the limited rules and procedures provided by the Planning Commission Bylaws. The following information is attached to the staff report for additional consideration:

1. Office of Planning and Research – The Planning Commission’s Handbook
2. Institute of Local Government – Guide of Local Planning
3. City of San Mateo – San Mateo Planning Commission Handbook
4. City of Paso Robles – Council Policies and Procedures
5. City of Paso Robles – Planning Commission Bylaws
6. City of Atascadero – Planning Commission Norms
7. Judge Dave Rosenberg - Rosenberg’s Rule of Order

The Planning Commission may want to consider forming an Ad Hoc Committee that could evaluate and recommend best practices procedures for the Planning Commission to consider.

## **Policy**

**Reference:** 2015 Paso Robles Planning Commission Bylaws

**Fiscal Impact:** None.

**Options:** The Planning Commission may consider the following options:

- a) Direct staff to conduct additional research and/or analysis.
- b) Form a Planning Commission Ad Hoc Committee to develop a recommendation for additional Planning Commission procedures or guidance documents.
- c) Amend either of the forgoing options.
- d) Take no action.

#### **Attachments**

- 1. Office of Planning and Research – The Planning Commission’s Handbook
- 2. Institute of Local Government – Guide of Local Planning
- 3. City of San Mateo – San Mateo Planning Commission Handbook
- 4. City of Paso Robles – Council Policies and Procedures
- 5. City of Paso Robles – Planning Commission Bylaws
- 6. City of Atascadero – Planning Commission Norms
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Attachment 1: Planning Commission Bylaws

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Pete Wilson, *Governor*

# The Planning Commissioner's Book

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## Introduction

# The Planning Commissioner's Book



**W**elcome to the wonderful world of planning. If you are a new planning commissioner, you undoubtedly have lots of questions about the job. There's plenty to learn and this publication was prepared to help you get started.

Traditionally, the planning commission is made up of members of the public at large with little or no formal training in planning. They come to the commission with a public-spirited enthusiasm for community planning and a concern for the future of their community. Planning commission service often means late hours, little or no pay, and enough arguments to last a lifetime. Still, most commissioners wouldn't miss the experience for the world.

The Office of Planning and Research (OPR) receives numerous requests from local governments for instructional materials that can be used by planning commissioners to familiarize themselves with their jobs. We have written this book to meet that need. The Planning Commissioner's Book is designed to be both a training tool and a ready reference. It does not, however, cover everything that a commissioner must know. For one thing, there is a lot that can only be learned through experience. Instead, it focuses on the basics. For more detailed information about the subjects that are introduced here, please see the references listed in the back or ask your planning staff.

## Part One

# The Planning Commission



### Four Basic Questions

**1. What is the planning commission?** It is a permanent committee of 5 or more citizens who have been appointed by the city council (or the mayor in some cities) or county board of supervisors to review matters related to planning and development. A commission holds public hearings on a regular schedule (in some jurisdictions, as often as once a week) to consider land use matters. These include such things as the local general plan, specific plans, rezonings, use permits, and subdivisions. Commissioners serve at the pleasure of the council or supervisors, so commission membership changes in response to changes in those bodies.

The commission is the city council's or county board of supervisors' advisor on land use planning. The council or board may choose to follow the recommendations of the commission or not. Accordingly, they may reverse or modify commission actions or send proposals back to the commission for further review. In addition, commission decisions are subject to appeal to the council or board. The council and board have the final say in all city and county matters, respectively.

Because the commission focuses on planning issues, it is a valuable intermediary between the public and the city council or county board of supervisors. When matters run smoothly, the commission has a low profile. However, when there is a controversy, it is there, in the thick of things, doing its best to sort through the facts and make a good decision.

**2. Why have a planning commission?** The idea of appointing a group of laymen to make decisions and recommendations about land use planning originated at the turn of the century. Government reformers, seeking to take local government out of the hands of party "machines," reorganized administrative procedures in an attempt to reduce political influence on decisions. One solution was to create a planning commission, made up of appointed citizens, that would be responsible for setting the community's development direction.

California law does not require each city and county to have a planning commission. Nonetheless, almost all do. In those jurisdictions that don't, Kern County for example, the city council or county supervisors considers planning matters directly. On the other hand, some jurisdictions, such as Sacramento County, think that planning commissions are so useful they have two.

### 3. How does it relate to the planning department?

The city or county planning department is the commission's research staff. The planners can advise the commission on the general plan, specific plans, zoning ordinance, subdivision ordinance and other land use regulations. In addition, they provide background information and recommendations on the proposals that are under the commission's consideration, answer technical questions, and make sure that meetings have been properly advertised in advance. A planning department staff member will always be in attendance at commission meetings. Other attendees may include representatives of the city attorney's or county counsel's office and of the public works department.

**4. What does it do?** Cities and counties "plan" in order to identify important community issues (such as the direction of growth, housing needs, and environmental protection), project future demand for services (sewers, roads, fire protection, etc.), address potential problems (such as overloaded sewers or crowded roads), and establish goals and policies for directing and managing future development.

The city council or county supervisors may assign any or all of the following tasks to its planning commission (Government Code sections 65103, 65401, 65402):

- ▶ Assist in writing the general plan and community or specific plans and hold public hearings on such plans;
- ▶ Hold hearings and act upon proposed amendments to the general plan and community or specific plans;
- ▶ Hold hearings and act upon proposed changes to the zoning ordinance and zoning maps;
- ▶ Hold hearings and act on tentative subdivision maps;
- ▶ Annually review the jurisdiction's capital improvement program and the public works projects of other local agencies for consistency with the general plan;
- ▶ Promote public interest in the general plan;
- ▶ Consult with and advise public officials and agencies, utilities, organizations and citizens regarding implementation of the general plan;
- ▶ Coordinate local plans and programs with those of other public agencies;
- ▶ Report to the legislative body on the conformity of proposed public land acquisition or disposal with the adopted general plan; and,
- ▶ Undertake special planning studies as needed.

Commissioners can learn about their commission's particular responsibilities by asking the planning department and referring to their local zoning and subdivision ordinances.

## Meetings

The planning commission holds meetings – lots of them. State law requires public hearings before planning actions are taken. At its regularly scheduled hearings, the planning commission weighs planning proposals in light of state and local regulations and potential environmental effects and listens to testimony from interested parties. If necessary, the commission may continue a hearing to a later time to allow more information to be gathered or to take additional testimony. The commission usually considers several items at each hearing; considering each proposal separately and taking action before moving on to the next item on the agenda.

Depending upon local ordinance provisions, the commission's decision on a project may be: (1) referred to the city council or board of supervisors as a recommendation for action (this is common for general plan amendments and rezonings); or (2) considered a final action unless appealed to the council or board (this is common for subdivisions, variances, and use permits). The council or board will hold a noticed public hearing on the projects referred to it by the commission (or received on appeal).

Pursuant to the Ralph M. Brown Act (Government Code section 54950), all meetings, including study sessions and workshops, must be open and public. This means that a quorum of commissioners can only discuss commission business in a public meeting. Furthermore, meeting agendas must be posted at least 72 hours in advance and topics are limited to those on the agenda. For more information on the Brown Act see *California Land Use and Planning Law*, by Daniel J. Curtin, Jr., and *Open and Public: A Users Guide to the Ralph M. Brown Act*, published by the League of California Cities.

## Notice

In counties and general law cities, the planning commission must publish advance notice of general plan, specific plan, zone change, conditional use permit, variance, and subdivision public hearings in a newspaper of general circulation. Notice of proposed general plan and specific plan adoption or amendment must be mailed directly to the involved property owners. When a zone change, conditional use permit, variance or subdivision is involved, notice must also be mailed to the owners of property within 300 feet of the project boundaries. Charter cities may adopt different notification procedures than the above.

## The Chairperson

The commission chairperson is responsible for making sure that meetings proceed in a fashion conducive to rational decisionmaking. The chair must be familiar with the commission's procedures and with the agenda items to be discussed at each meeting. The chairperson sets the tone of the hearing, keeps the discussion on track, encourages fairness, moderates and contributes to discussions, and helps direct testimony to the issues at hand. The chairperson will usually:

### ► Open the meeting.

- Explain why the meeting is being held.
- Review the agenda and note any changes thereto.
- Review the procedures, rules and time limits to be in effect.

### ► Moderate discussion.

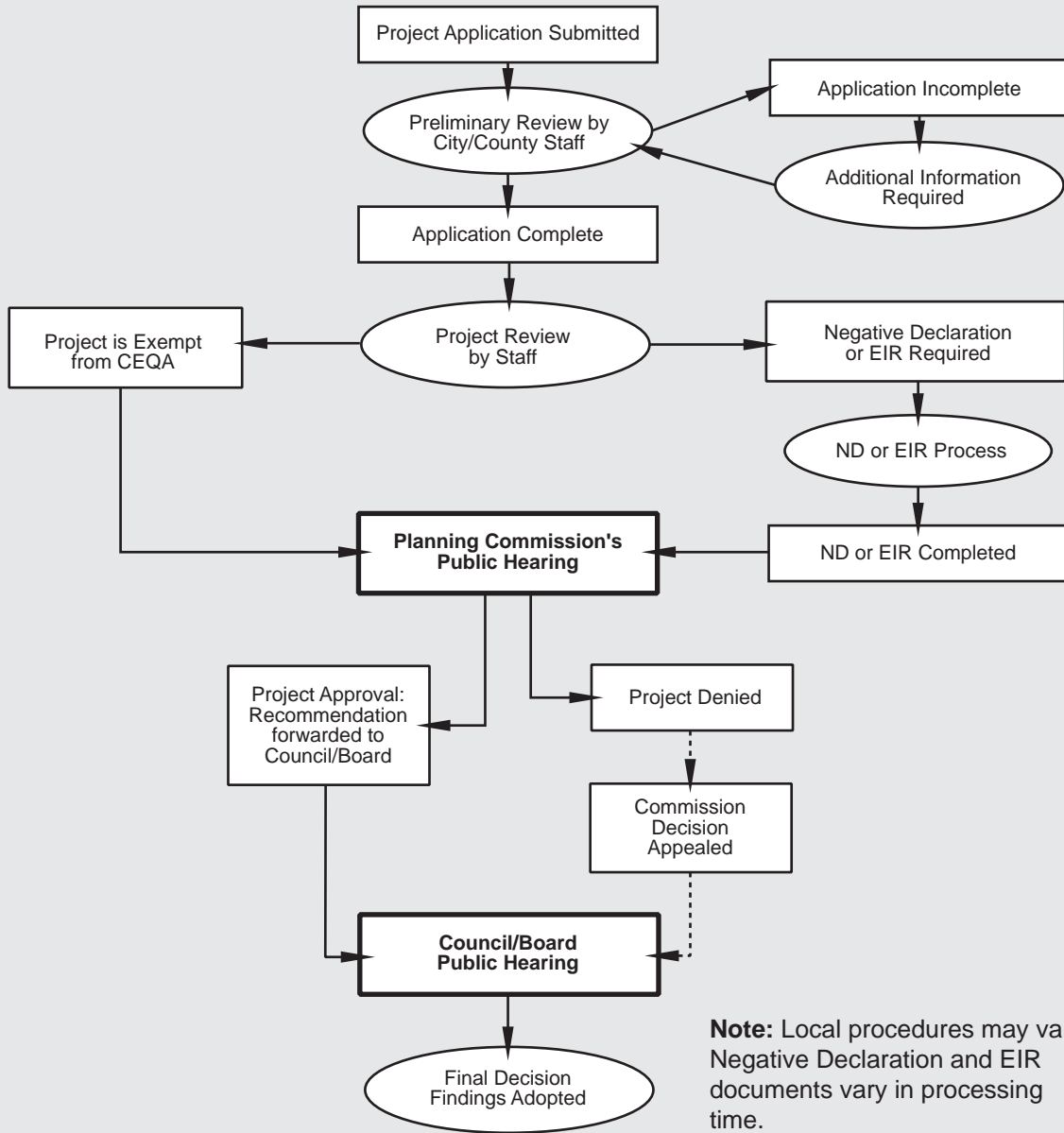
- Describe, or ask staff to describe, the item to be discussed.
- Ask that speakers identify themselves and take turns when giving testimony.
- Ask speakers to limit themselves to new testimony.
- Ask that commission members wait to be recognized prior to speaking.
- Intervene when necessary to prevent more than one speaker from talking at one time.
- Ask staff for information or clarification, as necessary.
- Intervene when speakers ramble or get away from the issues.
- Close the meeting to testimony prior to deliberations.

### ► Lead deliberations.

- Summarize the issues.
- Ask for input from the commission as a whole.
- Ask for more information from staff if necessary.
- When commissioners disagree, assist them in expressing their various concerns.
- When a motion is proposed, make sure that it is stated understandably and in full before a vote is taken.
- Encourage the commissioners to make timely decisions.
- Make sure that findings are adopted when required.



**Figure 1**  
**Development Project Flow Chart**



**An Important Lesson – “Be Prepared”**

Prior to every hearing, each of the commissioners should have reviewed the items on the meeting agenda. This means reading the staff report and environmental assessment document, looking at the general plan and zoning ordinance sections pertinent to the particular project, and asking questions of the planning staff when necessary.

At the hearing, commissioners should be able to both ask and answer questions about the project, its relationship to the general plan and to the zoning or subdivision ordinances, and its potential impacts on the community. If legal questions arise, don't be afraid to ask the city attorney or county counsel for his/her opinion. Don't take legal advice from anyone but the city's or county's own lawyer.

## Recipe for an Effective Planning Commission

Effective planning commissions share certain qualities. These include:

- ▶ Ability to focus on the subject under consideration. Focusing means not being distracted by personalities, groups or issues that do not have anything to do with the agenda item being discussed.
- ▶ A clear view of the big picture. A good commission has the aggregate ability to identify the main points of an issue and to concentrate on addressing those. Keeping the big picture in mind is important so that the commission doesn't bog down in excessive attention to minor detail.
- ▶ Established rules for conducting meetings. These needn't be as formal as Robert's Rules of Order, but they should define the responsibilities of the chairperson, the other commissioners, and the staff. They should also establish the rules for testimony, such as the length of time available, speaker identification, etc.
- ▶ Effective leadership. An effective chairperson assists the flow of ideas and helps keep the proceedings on track.
- ▶ Informed commissioners. Prior to the hearing, commissioners should have read the staff reports, reviewed the pertinent sections of the general plan, zoning ordinance or other codes, and looked through the environmental assessment pertinent to each agenda item.
- ▶ Attention to legal requirements. A commissioner must keep basic legal requirements in mind. Among them: Is the proposal consistent with the general plan? Does it meet all applicable zoning or subdivision ordinance requirements? Are the environmental impacts of the project, if any, being reduced or eliminated by the conditions of approval? Is the commission's decision supported by findings of fact based on substantial evidence in the record? When in doubt, ask the city attorney or county counsel for their advice.
- ▶ An open flow of ideas. The chairperson and the other commissioners share responsibility for seeing that there is a continuing flow of ideas and discussion among all parties, including applicants, staff, members of the public, and the commissioners themselves. Be objective and ask questions.
- ▶ A sense of pace. The chair should be able to recognize that point in time at which testimony must be closed off so the commission can deliberate. Commissioners should hold their motions until the discussion has reached its conclusion. Both the chair and the other commissioners should know whether to continue a hearing or to make a decision.

### The Commissioner's "Survival Kit"

Commissioners should bring the following to every meeting:

- The meeting agenda.
- Staff reports and environmental documents for each of the projects to be considered.
- A copy of the general plan.
- A copy of the zoning ordinance.
- If subdivisions are to be considered, a copy of the subdivision ordinance.
- A pad of paper and pencils.

## Part Two

# The Legal Side of Planning



Countless volumes have been written about the legal basis for planning and all the court decisions on the subject. This paper is too brief to go into more than just the bare outline of some of planning's legal side. Commissioners should rely upon the city attorney or county counsel for detailed legal opinions. In addition, several books in the reference section of this publication have good discussions of planning law.

### The Police Power

Planning and the regulation of land use are based upon local government's "police power." The courts have held that the police power may be used to regulate a wide and expanding variety of activities as long as it is exercised in a manner that is reasonably related to the protection of the public's health, safety, and welfare, is not preempted by federal or state law, and is within the framework of state statute. Community planning, zoning laws, subdivision regulations, rent controls, sign controls, community growth management regulations, and dedications of private land as a condition of development approval are some examples of the police power at work. Constitutional guarantees of equal protection, free speech, due process, and just compensation for the taking of private property define the boundaries of the police power. An illegal "taking" may occur as a result of either the public's acquisition of private property without just compensation or of excessively restrictive land use regulations that deprive a property owner of all uses of his/her land.

### Findings

Planning commission decisions must be based on a rational decision-making process. Often, the commission must adopt written "findings" explaining the factual reasons for its decision. A finding is a statement of fact relating the information that the commission has considered to the decision that it has made. If a decision is challenged in court, the findings will be used to trace the commission's reasoning and to determine whether its action was legally justified.

Findings must be supported by evidence in the hearing record (i.e., testimony, reports, environmental documents, etc.) and should not contain unsupported statements. Complete findings should be included in the commission's resolution of approval or denial. Keep in

mind that findings will not rescue a decision if the commission has failed to follow the other procedures required by law.

#### Some actions requiring findings:

**Zone change** – finding of consistency with the general plan and any specific plans.

**Subdivision** – finding of consistency with the general plan and any specific plans; findings supporting approval/denial per state and local codes.

**Specific plan adoption or amendment** – finding of consistency with the general plan.

**Conditional use permit** – locally required findings (if any), findings supporting approval and conditions.

**Variance** – specific findings required by state statute.

**Design review approval** – locally required findings (if any), findings supporting approval and conditions.

**General plan amendment limiting the number of newly constructed dwellings** – specific findings required by state statute.

**Adoption of a local ordinance affecting regional housing needs** – specific findings required by state statute.

**Approval of a housing project when density is lower than that which was allowed when application was accepted** – specific findings required by state statute.

**Projects involving an EIR** – findings of overriding consideration, findings of significant effect.

*For a complete list, see OPR's publication, **Bridging the Gap**.*

## Part Three

# A Short Primer on State Planning Law



The state delegates most local land use and development decisions to the cities and counties. State law requires that each of the 452 incorporated cities and 58 counties adopt “a comprehensive, long-term general plan for [its] physical development.” This general plan lays the groundwork for community decisions that will affect the future location of housing, business, industry, roads, parks, and other land uses, protect the public from noise and other environmental hazards, and conserve natural resources. Each city council and county board of supervisors, upon recommendation of their planning commission, carries out its general plan through its zoning, subdivision and other ordinances.

There is no requirement that adjoining cities or counties have identical, or even similar, plans and ordinances. Each city and each county adopts its own general plan and development regulations. In turn, each is solely responsible for the planning decisions made within its jurisdiction.

### The General Plan and Zoning Are Not the Same

A **general plan** is a set of long-term goals and policies that the community uses to guide development decisions. Although the plan establishes standards for population density, building intensity, and the distribution of land uses, it does not directly regulate land use.

**Zoning**, on the other hand, is regulatory. Under the zoning ordinance, development must comply with specific, enforceable standards such as minimum lot size, maximum building height, minimum building setback, and a list of allowable uses. Zoning applies lot-by-lot, whereas the general plan has a community-wide perspective.

Put another way, the general plan is a blueprint and zoning is a tool for making it a reality. The plan is the basis for programs such as the zoning and subdivision ordinances. In turn, zoning is a means of putting into action the plan’s long term goals.

## THE GENERAL PLAN

The general plan is a community’s blueprint for future development. It describes a community’s development goals and policies. It also forms the basis for land use decisions made by the planning commission and city council or board of supervisors.

### Contents

A general plan consists of at least two parts. There is a written text describing the community’s goals, objectives, and policies toward development. There is also a map (or maps) and diagrams illustrating the generalized distribution of land uses, the major road system, seismic and environmental hazard areas, the open space system, and other policy statements that can be illustrated (see Government Code Section 65302).

The general plan must contain at least seven components (called “elements”) addressing a set of basic planning issues (see Government Code section 65302). Each city and county determines the relative importance of these issues to their local circumstances and decides how they

are to be discussed in the local general plan. Jurisdictions may also adopt additional elements, at their option, covering subjects of local interest such as recreation, community design, or public facilities. See the General Plan Guidelines published by OPR for detailed information on plan contents.

State law does not require that a general plan have seven distinct and separate elements. It is quite common for a general plan to have only three or four “super-elements” which combine the essences of the seven elements. Along this same line, there is no requirement for the number of maps and diagrams that must be adopted as part of the plan. Each local government decides the specific format and organization of its general plan. Element Consolidation, by the Office of Planning and Research, gives examples of how elements may be merged and streamlined.

Although general plans are not required to follow a standard format, many contain similar features. Some of the things to look for in the written portion of your local plan are goals (abstract and general expressions of

## The Seven Required Elements:

- 1 **Land use element:** designates the general location and intensity of housing, business, industry, open space, public buildings and grounds, waste disposal facilities, and other land uses.
- 2 **Circulation element:** identifies the general location and extent of existing and proposed major roads, transportation routes, terminals, and public utilities and facilities. It must correlate with the land use element.
- 3 **Housing element:** assesses current and projected housing needs for all economic segments of the community and region. It identifies local housing policies and the programs that implement those policies.
- 4 **Conservation element:** addresses the conservation, development, and use of natural resources including water, forests, soils, rivers, and mineral deposits.
- 5 **Open-space element:** details plans and measures for preserving open-space for natural resources, the managed production of resources, outdoor recreation, public health and safety, and the identification of agricultural land.
- 6 **Noise element:** identifies and appraises noise problems within the community and forms the basis for distributing land uses.
- 7 **Safety element:** establishes policies to protect the community from seismic, geologic, flood, and wildfire hazards.

community values), objectives (specific intermediate steps in attaining a goal), policies (specific statements that guide decision making), and implementation programs (descriptions of how the goals, objectives, and policies are to be put into action). Many plans also contain background information about the community, such as population projections, traffic levels, seismic hazards, community history, and housing characteristics. Appendices to general plans often contain technical studies of seismic hazards, housing surveys, and traffic studies and forecasts.

General plans use maps and diagrams to identify the locations of proposed and existing land uses, flood hazard areas, open space lands, roads, and other features. The maps and diagrams must work together with the written portions of the plan to establish a clear view of the community's future.

## Consistency

The general plan is important because it is the basis for many local land use decisions. Zoning (except in most charter cities), subdivisions, and public works projects can only be approved when they are consistent with the general plan. An action, program or project is consistent with the general plan if, considering all its aspects, it will further the goals, objectives and policies of the plan and not obstruct their attainment.

Not only must governmental actions be consistent with the general plan, the plan itself must be internally consistent. Each part of the general plan, be it a goal, policy or map/diagram, must mesh with all of the other parts of the plan. For instance, the land use element must not contain statements or assertions that conflict with the housing element. Similarly, the maps and diagrams adopted as part of the plan must agree with one another. For example, the location of a major highway on the land use element diagram must match its location on the circulation element diagram as well.

## Approving and Amending the Plan

The process of adopting or amending a general plan encourages public participation. Cities and counties must hold public hearings for such proposals. Advance notice of the place and time of the hearing must be published in the newspaper (when there is no paper, notice must be posted in the vicinity of the project site) and also mailed directly to the involved property owners. Copies of the adopted or amended plans must be available for public purchase within two days of a final decision.

Each of the general plan's seven required elements can be amended only four times per calendar year. More than one change may be considered at each of these four opportunities. Optional elements, on the other hand, can be amended at any time.

The planning commission and the city council or county board of supervisors must each hold at least one public hearing prior to approving or amending the plan. The commission will hold its hearing first and make specific recommendations to the council or board. A recommendation for approval must be made by a majority of the total membership of the commission.

The council or board will take final action on the proposals at their hearing. Approvals must be made by a majority of the total membership of the council or board. If they make substantial changes to any planning commission recommendations, those items must be sent back to the commission for further study and recommendations before a final decision is made. The commission will have 40 days in which to make any further recommendations.

## Amendment Considerations

The general plan shouldn't be amended casually. In fact, state law requires that amendments only be made when "in the public interest." Commissioners should be able to answer all the following questions affirmatively when approving an amendment.

- ▶ Is the amendment in the public interest (i.e., it advances community goals, describes a community interest, etc.)?
- ▶ Is the amendment consistent with all other parts of the general plan (in other words, it doesn't conflict with any of the goals, objectives, policies maps or diagrams contained in any of the general plan's other elements)?
- ▶ If the amendment creates a "ripple effect," necessitating other changes to the plan, are those related changes being considered at the same time?
- ▶ Will the amendment necessitate changes in zoning or other ordinances and are those changes to be considered within a reasonable time?
- ▶ If a mitigated negative declaration or an EIR is adopted or certified for the amendment, have the mitigation measures been incorporated into the amendment?

## Community Plans

"Community plans" focus planning efforts on a smaller area or neighborhood. A community plan is part of the local general plan. It addresses issues pertinent to a particular area or community within the city or county and supplements the policies of the general plan. Accordingly, it must be consistent with the general plan in all respects.

## Specific Plans

A "specific plan" implements, but is not technically a part of, the local general plan. Specific plans describe allowable land uses, identify open space, and detail infrastructure availability and financing for a portion of the community. In some jurisdictions, specific plans also take the place of zoning. A specific plan must be consistent with the general plan. In turn, zoning, subdivision, and public works decisions must comply with the provisions of the specific plan. For a detailed discussion of specific plans and their contents, see OPR's *The Planner's Guide to Specific Plans* (see Part Five).

# ZONING

The zoning ordinance regulates land uses within the community. It assigns each piece of property to a "zone" which describes the rules under which that land may be used. These classifications, such as "R-1" for single-family residences or "C-1" for commercial uses, cover in specific terms the range of uses that is discussed broadly in the general plan.

A typical zoning ordinance may describe 10 or more zone classifications. Each of these zones identifies allowable uses and sets standards such as minimum lot size, maximum building height, and minimum front yard depth. In most local ordinances, development of allowable uses does not require a public hearing. Increasingly, however, communities are requiring a public review of the project's design before a building permit is issued.

The distribution of residential, commercial, industrial, and other zones must be based on the pattern of land uses established by the community's general plan. Zoning maps illustrate how zones have been distributed.

Zoning is adopted by ordinance and carries the weight of local law. Land may be put only to those uses listed in

the zone assigned to it. For example, if a commercial zone does not allow 5-story office buildings, then no such building could be built on land which has been assigned that zone.

In many communities, the planning commission is not the only body responsible for making zoning decisions. A board of zoning adjustment or a zoning administrator may be appointed to consider use permit and variance requests. Building design may be subject to approval by a design review or architectural review board. Public notice of zoning hearings must be given at least 10 days before the hearing by advertisement in a newspaper of general circulation and by direct mailing to the owners of property located within 300 feet of the proposal's boundaries.

## Rezoning

If a landowner proposes a use that is not allowed in that zone, then he/she must obtain a change of zone if that use is to occur. The local planning commission and the city council or county board of supervisors must hold

## Rezoning Considerations

Commissioners should be able to answer the following questions affirmatively when approving a rezoning.

- ▶ Is the proposed zone consistent with all component parts of the general plan (including text and maps)?
- ▶ Is the proposed zone and its allowable uses compatible with existing and planned uses in the area?
- ▶ If significant environmental effects have been identified as a result of the proposed rezoning, are actions being required or programs initiated to mitigate those effects?
- ▶ If the proposal is part of a larger project, has the entire project been addressed in the environmental analysis?

public hearings, before property may be rezoned. The council or board is not obligated to approve requests for rezoning and, except in charter cities, must deny such requests when the proposed zone conflicts with the general plan. Typically, zoning ordinances also provide for limited waivers to zoning regulations (variances), subject to a public hearing.

## Prezoning

Cities can “prezone” lands outside their corporate limits in the same way that they approve zoning. Prezoning is done before a city formally annexes a site in order to facilitate its transition into the city. Prezoning does not affect allowable uses, it is just a way for the city to show how the land will be zoned once it is annexed. County zoning regulations remain in effect until annexation is actually completed.

## Variances

A variance is a limited waiver of development standards. It may be granted, after a public hearing, in special cases where: (1) strict application of the zoning regulations would deprive property of the uses enjoyed by nearby lands in the same zone; and (2) restrictions have been imposed to ensure that the variance will not be a grant of special privilege. A variance must not be granted if it would permit a use that is not otherwise allowed in that zone (for example, a commercial use may not be approved in a residential zone by variance). In addition, economic

hardship alone is not sufficient justification for approval of a variance.

Typically, variances are considered when the physical characteristics of the property make it difficult to use. For instance, in a situation where the rear half of a lot is a steep slope, a variance might be approved to allow a house to be built closer to the street than usually allowed.

See OPR’s publication *The Variance* for more information.

## Conditional Use Permits (CUPs)

Some types of land uses are only allowed upon approval of a conditional use permit (also called a CUP or special use permit) after a public hearing. These uses might include community facilities (i.e., hospitals or schools), public buildings or grounds (i.e., fire stations or parks), temporary or hard-to-classify uses (i.e., Christmas tree sales), or uses with potentially significant environmental impacts (i.e., hazardous chemical storage or surface mining). The local zoning ordinance specifies the uses for which a conditional use permit is required, the zones they may be allowed in, and the public hearing procedure. When allowing a project, the CUP will impose special development requirements to insure that the use will not be detrimental to its surroundings. Requirements might include such things as additional landscaping, soundproofing, limited hours of operation, additional parking, or road improvements. A CUP does not rezone the land.

See OPR’s publication *The Conditional Use Permit* for more information.

## Variance Considerations

Commissioners should be able to answer the following questions affirmatively when approving a proposed variance.

- ▶ Are there special circumstances applicable to the proposal site (such as size, shape, topography, location or surroundings) whereby strict application of the zoning ordinance would deprive it of privileges enjoyed by nearby properties with the same zoning? Identify them specifically.
- ▶ Do the proposed conditions ensure that the approval will not be a grant of special privilege?
- ▶ Is the use for which the variance is being granted already allowed in that zone? (A variance cannot be approved if the use isn’t already allowed.)
- ▶ Are the proposed conditions reasonably related to the use proposed by the variance?

## Conditional Use Permit Considerations

Commissioners should be able to answer the following questions affirmatively when approving a conditional use permit.

- ▶ Is the site appropriate for the proposed use?
- ▶ Is the proposed use, as conditioned, compatible with its surroundings and with the uses of nearby lands?
- ▶ Is the project design, as conditioned, suited to the site?
- ▶ As conditioned, will adequate water (including fire flows), utilities, sewage disposal, drainage, roads, fire protection, and other services be provided to the project?
- ▶ If significant environmental effects have been identified as a result of the proposed CUP, have conditions been required (or the project redesigned) to mitigate those effects?

## SUBDIVISIONS

In general, land cannot be subdivided in California without local government approval. Dividing land for sale, lease or financing is regulated by local ordinances based on the state Subdivision Map Act (commencing at Government Code section 66410). The local general plan and the zoning, subdivision, and other ordinances govern the design of the subdivision, the size of its lots, and the types of improvements that will be required as conditions of approval.

### Subdivision Types

There are basically two kinds of subdivision: parcel maps, which are limited to divisions resulting in fewer than 5 lots (with certain exceptions), and final or tract map subdivisions, which create 5 or more lots. Local ordinances apply less stringent development standards to parcel maps than to tract maps.

### Processing

Tract maps and, where provided by local ordinance, parcel maps are approved in two stages.

- I Consideration of a “tentative map.” Upon receiving an application for a tentative subdivision map, the city or county staff will examine the design of the subdivision to ensure that it meets the requirements of the general plan and the subdivision ordinance. An environmental impact analysis must be done and an advertised public hearing held before a tentative map is considered for approval. If approved, the map will

be subject to conditions that the subdivider must meet within a specific time period. At this stage, while conditions remain to be met, no lots have been officially approved.

- 2 Approval of the “final map.” When all of the conditions set out in the approved tentative map have been satisfied, and compliance certified by city or county officials, the city council or county board of supervisors will approve a final map. Unlike a tentative map, which can be denied if it does not meet city or county standards, the final map must be approved (with some exceptions) if it substantially complies with the previously approved tentative map. The subdivider may now record the map at the County Recorder’s office.

Subdivision approval is conditioned upon the subdivider providing public improvements such as streets, drainage facilities, water supply or sewer lines to serve the subdivision. They may also be required to dedicate park land to the community. These improvements must be installed or secured by bond before the city or county will grant final map approval and allow the subdivision to be recorded in the county recorder’s office.

Lots within the subdivision cannot be sold and are not legal divisions of land until a final map has been recorded. The subdivider has at least two years (and with extensions, usually more) in which to comply with the improvement requirements, gain final administrative approval, and record the final map.



## Subdivision Considerations

Commissioners should be able to answer the following questions affirmatively when approving a subdivision map.

- ▶ Is the proposed map consistent with the general plan and any applicable specific plans?
- ▶ Is the proposed design or improvement of the subdivision consistent with the general plan and any applicable specific plans?
- ▶ Is the site physically suited to the proposed type and density of development?
- ▶ Is the design of the subdivision or type of improvements unlikely to cause serious public health problems?
- ▶ Is the design of the subdivision or the proposed improvements unlikely to cause either substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat?
- ▶ Have adequate conditions been applied to the approval (or the project redesigned) to mitigate the environmental effects identified in the environmental analysis done for the project?
- ▶ Are all dedications and impact fees reasonably related to the impacts resulting from the subdivision?
- ▶ If a mitigated negative declaration or EIR have been adopted or certified for the project, have the mitigation measures identified therein been made conditions of approval or otherwise required as part of the approval?

## THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The California Environmental Quality Act (commencing at Public Resources Code section 21000) requires local and state governments to consider the potential environmental effects of a project before making a decision on it. CEQA's purpose is to disclose the potential impacts of a project, suggest methods to minimize those impacts, and discuss project alternatives so that decision-makers will have full information upon which to base their decision. CEQA is a complex law and the following discussion is extremely general. Refer to the California Environmental Quality Act Guidelines or ask your planning staff for specific information. Information is also available online at the Resources Agency's website: <http://ceres.ca.gov/ceqa>.

The role of the planning commission in the environmental review process varies among jurisdictions depending upon local environmental review procedures. In some cities and counties, the commission conducts hearings on draft environmental impact reports (note: CEQA does not require public hearings during the preparation of an environmental impact report or negative declaration, however some jurisdictions choose to hold them). In others, the commission has no active role.

### Lead Agency

The agency with the principal responsibility for issuing permits to a project (or for carrying out the project) is called the "lead agency." As such, it is responsible for

determining whether or not a project will significantly impact the environment and, when necessary, for analyzing the project's possible environmental impacts (or contracting for this work to be done under its direction). The planning department is usually lead agency in local planning matters.

### Analysis

Analyzing a project's potential environmental effects is a multi-step process. Many minor projects, such as single-family homes, remodeling, and accessory structures are exempt from the CEQA requirements (for a complete list see the California Environmental Quality Act Guidelines). Exempt projects receive no environmental review.

When a project is subject to review, the lead agency prepares an "initial study" to assess the potential adverse environmental impacts. If the project will not cause a significant impact on the environment or if it has been redesigned to eliminate any impacts, a "negative declaration" is written. If significant environmental effects are identified, then an Environmental Impact Report (EIR) must be written before the project can be considered by decision makers. Upon approval of a project for which a negative declaration is adopted or an EIR certified, the city or county must also adopt a monitoring program to ensure that the mitigation measures will be completed as required.

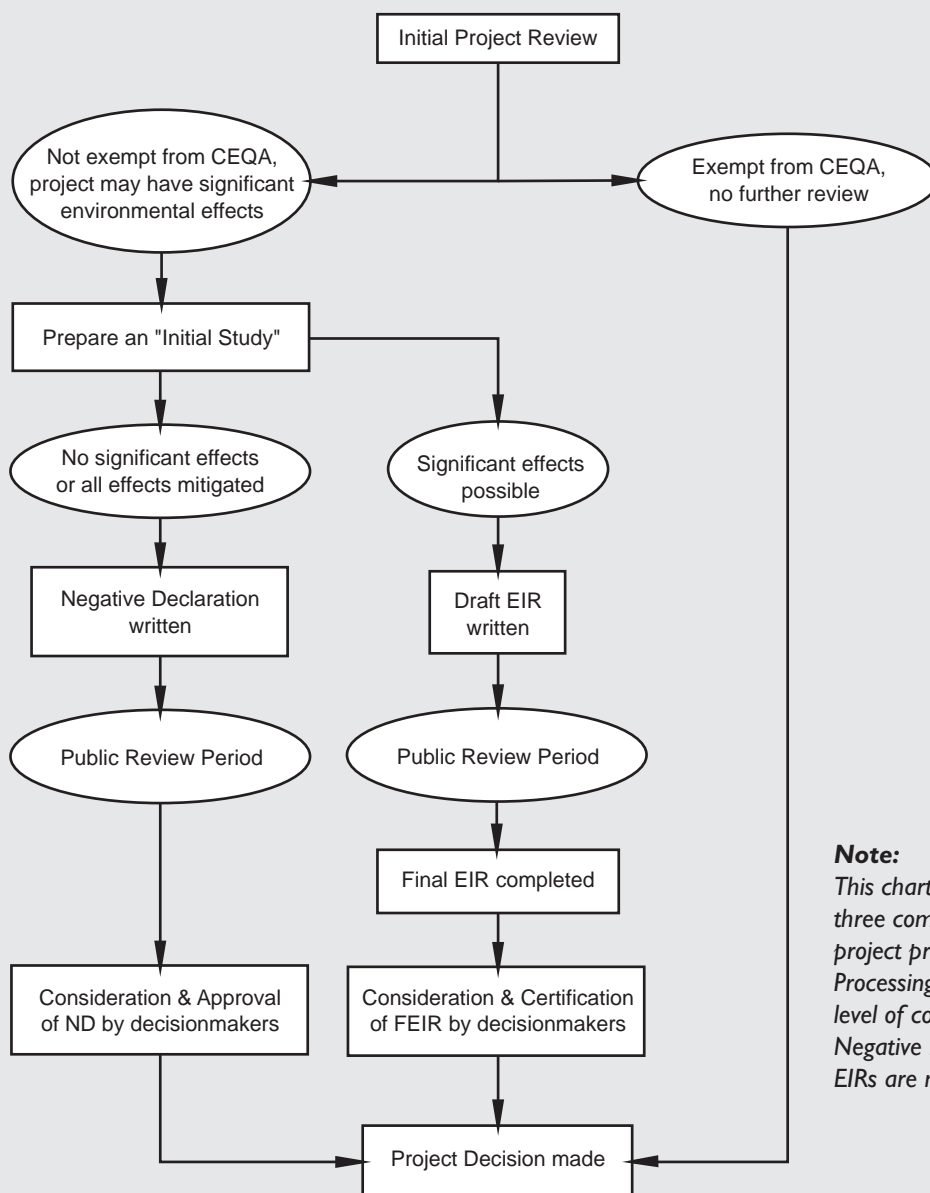
## Negative Declaration

A negative declaration describes why a project will not have a significant impact and may require that the project incorporate a number of "mitigation measures" to ensure that there will be no significant impacts resulting from the project. A negative declaration cannot be used when significant impacts are not totally eliminated. Also, when a project consists of several parts, a negative declaration cannot substitute for an EIR if the total project will cause environmental impacts.

## Environmental Impact Report (EIR)

An EIR discusses the proposed project, its environmental setting, its probable impacts, realistic means of reducing or eliminating those impacts, its cumulative effects in the context of other development, and realistic project alternatives. CEQA requires that Negative Declarations and draft EIRs be made available for review by the public and other agencies prior to consideration of the project. The review period (a minimum of 20 days for Negative Declarations and a minimum of 30 days for draft

**Figure 2**  
**Simplified CEQA Flowchart**



**Note:**  
This chart illustrates the three common paths for project processing. Processing times and the level of complexity of Negative Declarations and EIRs are not the same.

EIRs) allows concerned citizens and agencies to comment on the contents and adequacy of the environmental document prior to its completion. The final EIR must incorporate written responses to the comments submitted by reviewers.

In 1993, a master EIR was also included as a choice when completing an environmental assessment (AB 1888). Under this chapter, a master EIR may be prepared for a variety of projects to evaluate the cumulative impacts, growth inducing impacts, and irreversible significant effects on the environment. The review of each project is substantially reduced due to their impacts having been reviewed and mitigated in a certified master EIR.

When the city council or board of supervisors approves a project, it must certify the adequacy of the Negative Declaration or EIR. If its decision to approve a project will result in unavoidable significant impacts, as

identified in the EIR, the city council or board of supervisors must state, in writing, its overriding reasons for granting the approval. In addition, when mitigation measures are adopted as a result of a negative declaration or EIR, the council or board must enact a program for reporting on or monitoring the implementation of those measures.

Both negative declarations and EIRs are objective, informational documents. They neither approve nor deny a project. Environmental analysis must be done as early as possible in the process of considering a project and must address the entire project. The CEQA Guidelines describes the several different types of EIRs that may be prepared. Tracking CEQA Mitigation Measures Under AB 3180 (published by the Office of Planning and Research) can help design a mitigation reporting or monitoring program.

## THE PERMIT STREAMLINING ACT

This law sets time limits for governmental action on some types of projects (see Government Code sections 65920–65963.1). Failure to act within those time limits can mean automatic approval of a project. The act applies to discretionary projects (those which the local government has the power to deny or conditionally approve) which are “adjudicative” in nature. An adjudicative decision applies existing policies and regulations to a particular situation. Use permits, subdivisions, and variances are all actions subject to the Permit Streamlining Act. The Act does not apply to the adoption or amendment of a general plan or of a zoning ordinance.

Generally speaking, local government must take action on administrative projects within 180 days of the date upon which the project’s final EIR is certified. This period is 60 days when a negative declaration is adopted or the project is exempt from CEQA. A project may be automatically approved under the Act if the jurisdiction fails to make a decision within the time limit and the developer takes certain actions to provide public notice.

If you have questions about how the Permit Streamlining Act applies to a particular project, check with your planning staff or city attorney/county counsel.

## ANNEXATION AND INCORPORATION

The planning commission is not directly involved in the approval of annexations nor in the city incorporation process. However, these are subjects with which a planning commissioner should be generally familiar.

Annexation (the addition of territory to an existing city) and incorporation (creation of a new city) are controlled by the Local Agency Formation Commission (LAFCO) established in each county by state law. A LAFCO is made up of elected officials from the county, cities, and, in some cases, special districts. LAFCO duties include: establishing the “spheres of influence” that designate the ultimate service areas of cities and special districts; studying and approving requests for city annexations; and, studying and approving proposals for city incorporations. Following is a very general discussion of annexation and incorporation procedures. For detailed information on this complex subject, contact your county LAFCO.

### Annexation

When the LAFCO receives an annexation request, it will convene a hearing to determine the worthiness of the proposal. Annexations may be requested by affected landowners or by a city. In cases where the proposed annexation is being initiated by a city, its planning commission may be asked to study the proposal before a formal application is filed with the LAFCO.

The LAFCO will deny, approve or conditionally approve annexation proposals based on its policies and state law (for example, annexation cannot occur unless the LAFCO has adopted a sphere of influence for the city and the area proposed to be annexed is within the city’s sphere). The LAFCO delegates tentatively approved annexation requests to the affected city for hearings and, if necessary, an election. Annexations which have been passed by vote of the inhabitants or which have not been

defeated by protest (in those instances where no election was required) must be certified by the LAFCO and meet all its conditions before they become final. The LAFCO, not the city, has final responsibility for the annexation process.

### **The Sphere of Influence**

The sphere of influence is a plan for the probable ultimate physical boundaries and service area of a city or special district. The LAFCO is responsible for establishing a sphere for each city and special district in the county. The purpose of the sphere is to act as a benchmark for future annexation decisions.

Cities cannot establish their own sphere of influence. The LAFCO has sole responsibility for doing this. However, a city may request that the LAFCO amends its sphere.

Some cities use their sphere of influence as a convenient boundary for their general plan. These cities plan beyond their city limits although they usually have no

actual authority over land uses in county areas. This planning anticipates the eventual annexation of land into the city.

### **Incorporation**

When a new city is proposed to be formed, the LAFCO studies the financial feasibility of the proposed city, its financial impact on the county and special districts, and the provision of public services. If the proposal cannot be shown to be feasible, the LAFCO can terminate the proceedings. If the proposed city appears to be feasible, LAFCO will refer the proposal (and a set of conditions to be met upon incorporation) to the county board of supervisors for a public hearing to be held. Incorporation proceedings are terminated if the supervisors receive protests from a majority of the voters residing within the proposed city boundaries. If they do not receive a majority protest, an election will be held on the question of whether to create the city and to elect city officials.

## Part Four

# Glossary of Common Planning Terms



### **Accessory Use**

An activity or structure that is incidental to the main use of a site.

### **Building Envelope**

The space remaining on a site for structures after all building setback, height limit, and bulk requirements have been met.

### **Capital Improvement Program**

A timetable for the installation of permanent public structures, facilities, roads, and other improvements based upon budget projections.

### **CEQA**

The California Environmental Quality Act (see Public Resources Code section 21000). CEQA requires that private and public projects' potential adverse effects upon the environment be reviewed by decision-makers.

### **Charter City**

A city which has been incorporated under its own charter rather than under the general laws of the state. Charter cities have broader powers than do general law cities.

### **Cluster Development**

Development which is clustered in a portion of a site, leaving the remainder in open-space. The amount of development allowed equals the amount that would have otherwise been allowed on the entire site.

### **COG**

Council of Governments. California's 25 COGs are regional planning agencies concerned primarily with transportation planning and housing; they do not directly regulate land use. Elected officials from each of the cities and counties belonging to the COG make up its governing board.

### **Community Plan**

A portion of the local general plan that focuses on a particular area or community within the city or county. Community plans supplement the contents of the general plan.

### **Conditional Use Permit (CUP)**

A permit authorizing a use not routinely allowed on a particular site, subject to a public hearing. If approval is

granted, the developer must meet certain conditions to harmonize the project with its surroundings.

### **Dedication**

A grant of private land to a public agency for public use. Dedications are often used to obtain roads and parkland needed to serve a project.

### **Density Bonus**

An increase in the allowable number of residences granted by the city or county in return for the project's providing low- or moderate-income housing. (see Government Code section 65915)

### **Density Averaging (or Transfer)**

The density of development on a portion of a site is allowed to exceed usual limits provided that the overall density of the site does not do so. Density increases in one area are offset by a corresponding decrease in allowable density in another part of the site.

### **Design Review Committee**

A group appointed by the city council to consider the design and aesthetics of development within all or a portion of the community.

### **Development Agreement**

A binding contract between a developer and a city or county establishing the conditions under which a particular development may occur. The local government "freezes" the regulations applicable to the site for an agreed upon period of time. (see Government Code section 65864)

### **Development Fees**

Fees charged as a precondition to construction or development approval. The most common are: (1) impact fees (such as parkland acquisition fees, school facilities fees, or street construction fees) related to funding public improvements necessitated in part or in whole by the development; (2) connection fees (such as water fees) to cover the cost of installing public services to the development; (3) permit fees (such as building permits or grading permits) for the administrative costs of processing development plans; and, (4) application fees (rezoning, variance, etc.) for the administrative costs of reviewing and hearing development proposals.

**Downzone**

A change of zoning to a more restrictive zone (for example, from multi-family residential to single-family residential).

**EIR**

Environmental Impact Report. A detailed review of a proposed project, its potential adverse impacts upon the environment, measures that may avoid or reduce those impacts, and alternatives to the project.

**Easement**

The right to use property owned by another for a specific purpose. Power line easements are a common example.

**Eminent Domain**

The right of government to take private property for public use upon the payment of just compensation to the owner. This is also called condemnation (condemnation can also mean the closing of an unsafe structure by a public agency to protect the community safety).

**Exaction**

A fee or dedication required as a condition of development permit approval.

**Final Map Subdivision** (also, tract map or major subdivision)

Land divisions creating 5 or more lots. They are generally subject to stricter standards than parcel maps. Requirements may include road improvements, the construction of drainage and sewer facilities, park land dedications, and more.

**Findings**

The legal "footprints" which an agency must leave to bridge the analytical gap between the raw data considered by the agency and its ultimate decision. They expose its mode of analysis of facts, regulations, and policies.

**Floor Area Ratio (FAR)**

A measure of development intensity. FAR is the ratio of the floor area of a building to the area of its site. For instance, both a two-story building that covers an entire lot and a four-story building that covers 1/2 of a lot have FARs of 2.

**General Law City**

A city incorporated under and subject to the general laws of the state.

**General Plan**

A statement of policies, including text and diagrams, setting forth objectives, principles, standards, and plan proposals, for the future physical development of the city or county. (see Government Code section 65300)

**"Granny" Housing**

An accessory dwelling for one or more elderly persons that is attached to or separate from a main residence. Government Code section 65852.1 allows cities and counties to approve such units in single-family neighborhoods.

**Growth Management**

A local program limiting the rate of community growth. Growth management strategies vary, but they can include capping the annual number of building permits, relating allowable development intensity to certain levels of infrastructure service or limiting the location of new development.

**Impact Fees**

See Development Fees.

**Infrastructure**

A general term for public and quasi-public utilities and facilities such as roads, bridges, sewer plants, water lines, power lines, fire stations, etc.

**Initial Study**

An analysis of a project's potential environmental effects and their relative significance. An initial study is preliminary to deciding whether to prepare a negative declaration or an EIR.

**Initiative**

A ballot measure which has qualified for election as a result of voter petition. At the local level, initiatives usually focus on changes or additions to the general plan and zoning ordinance. The initiative power is reserved for the public by the California Constitution.

**Inverse Condemnation**

The illegal removal of property value through excessive government regulation. Legal advice should be sought before proceeding in cases of potential inverse condemnation.

**LAFCO**

The Cortese/Knox Act (see Government Code section 56000) establishes a Local Agency Formation Commission in each county. A LAFCO is made up of elected officials from the county, cities, and, in some cases, special districts. It administers the state law governing city incorporation and annexation proposals.

**Mitigation Measure**

The California Environmental Quality Act requires that when an environmental impact or potential impact will occur, measures must be proposed that will eliminate, avoid, rectify, compensate for or reduce that effect.

**Moratorium**

A halt to new development or the issuance of permits. Moratoria are often imposed while a new general plan or zoning ordinance is written or when sewer or water facilities are inadequate to serve additional development. (See Government Code section 65858)

**Negative Declaration**

A negative declaration is written when a project is subject to CEQA, but will not have a significant effect upon the environment. The negative declaration describes why the project will not have a significant effect and may propose measures that avoid all possible effects.

**Nonconforming Use**

A land use which does not meet current zoning requirements.

**Overlay Zone**

A zone which is superimposed upon other zoning. Overlay zones are used in areas which need special protection (as in a historic preservation district) or have special problems (such as steep slopes or flooding). Development of land subject to an overlay must comply with the regulations of both zones.

**Parcel Map**

A minor subdivision resulting in fewer than 5 lots.

**Planned Unit Development (PUD)**

Land use zoning which allows the adoption of a set of development standards that are specific to a particular project. PUD zones usually do not contain detailed development standards; those are established during the process of considering proposals and adopted by ordinance upon project approval.

**Referendum**

A voter challenge to legislative action taken by a city council or county board of supervisors. If enough voters' signatures are filed before the legislative action becomes final, the council or board must either rescind its decision or call an election on the issue. The California Constitution guarantees the public's power of referendum.

**School Impact Fees**

Fees imposed on new developments to offset their impacts on area schools.

**Setback**

The minimum distance required by zoning to be maintained between two structures or between a structure and a property line.

**Specific Plan**

A plan addressing land use distribution, open space availability, infrastructure, and infrastructure financing for a

portion of the community. Specific plans put the provisions of the local general plan into action (see Government Code section 65450).

**Sphere of Influence**

A plan for the "probable physical boundary and service area of a local agency" as approved by the LAFCO. It identifies the area available to a city for future annexation. However, unless another arrangement has been made, the city has no actual authority over land outside its city limits.

**Spot Zoning**

The zoning of an isolated parcel in a manner which is inconsistent or incompatible with surrounding zoning or land uses, particularly if done to favor a particular landowner. A conditional use permit is not a spot zone.

**Strip Development**

Commercial and high-density residential development located adjacent to major streets. This type of development is characterized by its shallow depth, street-oriented layout, lack of unified design theme, and numerous points of street access. It impedes smooth traffic flow.

**Tentative Map**

The map or drawing illustrating a subdivision proposal. The city or county will conditionally approve or deny the proposed subdivision based upon the design depicted on the tentative map.

**Tract Map**

See final map subdivision.

**Transportation Systems Management (TSM)**

A program coordinating many forms of transportation (car, bus, carpool, rapid transit, bicycle, etc.) in order to distribute the traffic impacts of new development. Instead of emphasizing road expansion or construction, TSM examines methods of increasing road efficiency.

**Variance**

A limited waiver from the requirements of the zoning ordinance. Variance requests are subject to public hearing and may only be granted under special circumstances.

**Zoning**

Local codes regulating the use and development of property. The zoning ordinance divides the city or county into land use districts or "zones", illustrated on zoning maps, and specifies the allowable uses within each such zone. It establishes development standards such as minimum lot size, maximum structure height, building setbacks, and yard size.

## Part Five

# For Further Reference



**Alternative Techniques for Controlling Land Use: A Guide to Small Cities and Rural Areas in California**, by Irving Schiffman (Institute of Government Affairs, University of California, Davis), 1982, 88 pp. *Explains techniques such as cluster development, planned unit development, and the specific plan.*

**Bridging the Gap: Using Findings in Local Land Use Decisions**, by Robert Cervantes (Governor's Office of Planning and Research, Sacramento, CA), 1988, 108 pp. *A guide to the requirements for making findings to support land use decisions.*

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**The Planner's Guide to Specific Plans**, by Gregg McKenzie, et al. (Governor's Office of Planning and Research, Sacramento, CA), 1998, 51 pp. *Everything you could want to know about specific plans.*



**Tracking CEQA Mitigation Measures Under AB 3180**, by Robert Cervantes, et al. (Governor's Office of Planning and Research, Sacramento, CA), 1996. *This provides basic information on the mitigation monitoring or reporting requirements established by AB 3180 (Chap. 1232, Stats. of 1988) and local government programs developed in response to that bill.*

**The Variance** (Governor's Office of Planning and Research, Sacramento, CA), November 1997, 8 pp. *Background and detailed discussion of the variance and its legal requirements.*

**"Why Plan: A Primer for the Concerned Citizen"** (Pappas Telecommunications, Fresno, CA), 1987, 30 minute videotape (available for purchase from the League of California Cities (916/444-5790)).

**Websites:**

**Cyburbia**

<http://www.arch.buffalo.edu/pairc/index.htm>  
*This site of the architecture school at the State University of New York, Buffalo, links to sites from Architecture to Planning and everything in between.*

**The Land Use Planning and Information Network (LUPIN)**

<http://ceres.ca.gov/planning>  
*A rich resource for information (including a free online source for most of OPR's planning publications). Links to many sites.*

**UNDERSTANDING THE BASICS OF**

# LAND USE AND PLANNING

**Guide to Local Planning**

The Institute is grateful to the following firms for their support for the Land Use and Environment program:



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Prepared by the Land Use and Environment Program, Steve Sanders, Director

*Remember to always consult a knowledgeable attorney when confronted by legal issues.*

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# About This Guide

County and city officials have many responsibilities. Among the most important is determining how the physical configuration of their communities will change, develop and adapt to meet the present and future needs of their residents.

Communities guide their physical growth and development through *local planning*. Planning covers a broad spectrum of activities, ranging from new development on vacant land, to adaptation of existing structures for new uses, to more sweeping redevelopment of individual parcels and whole neighborhoods with new buildings and facilities.

This guide is designed to provide a basic overview of the planning process for local elected and appointed officials and the general public. The

guide describes the typical participants in the planning process and the major plans and policies that comprise the framework of local planning. Following the description of the planning framework, the guide presents some of the emerging issues in local planning, and outlines important legal issues that local officials should consider when they make land use and planning decisions. The tab divider that accompanies the guide presents the “nuts and bolts” of the process of reviewing a typical application for development.

Resources to learn more about particular topics are highlighted throughout the guide. The endnotes include information on important legal citations and other references for those who wish to explore issues in more detail.

## Planning – a Process and Profession

Planning, at its most fundamental level, refers both to a process and a profession:

- Local officials and residents use a *collaborative process* to determine the location, character, level and intensity of development that will be permitted or encouraged throughout

their community, as well as the areas to be conserved and protected from development.

- Planning is also a *professional discipline*, whose practitioners possess technical information, analytical tools and problem-solving approaches informed by both research and practice.

### ▶ THE POWER TO PLAN

Local agencies derive their authority to shape their communities through planning and land use from the “police power.”<sup>1</sup> The source of this power is both the federal and California constitutions. The police power is broad and elastic and entitles cities and counties to take actions to protect the public’s general health, safety, and welfare. However, in most cases local regulations may not conflict with overriding state law.<sup>2</sup>

Local authority to regulate land use can expand to meet the changing conditions or priorities of society. Thus, actions that might not have been thought of as part of the general welfare a century ago (for example, curbing sprawl or promoting affordable housing) can fall within its purview today.<sup>3</sup>

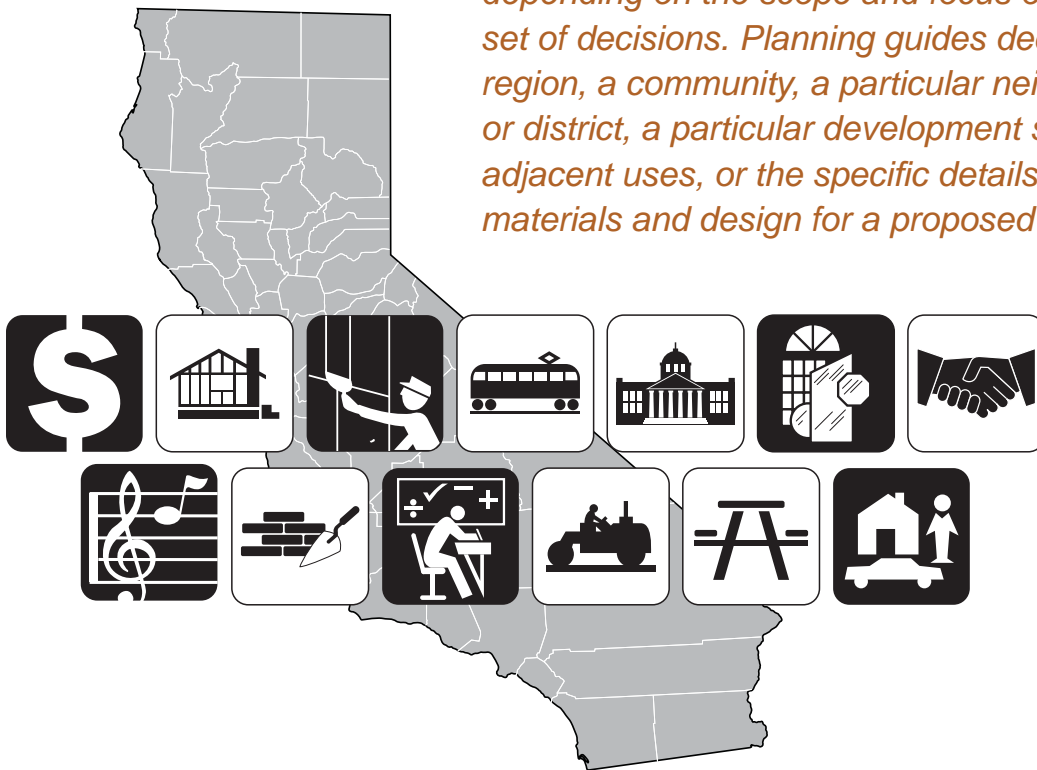
Courts have found that a wide variety of local concerns fall within this authority, including maintaining socio-economic balance, aesthetic values, property values, residential character, and growth management.<sup>4</sup>

# The Local Planning Framework

Cities and counties, when they plan, need to be able to consider a range of issues, from the big picture issues of how the community as a whole should grow and develop to the fine details of how particular buildings and facilities will fit in with other uses that share space on a neighborhood street.

Different planning tools have been developed to address the unique issues and considerations that occur at each of these levels. Taken together, these tools comprise a framework of local planning that officials can draw upon to manage the development and realize the collective vision for the future of their community and its residents.

*The planning framework works along a continuum depending on the scope and focus of a particular set of decisions. Planning guides decisions for a region, a community, a particular neighborhood or district, a particular development site and its adjacent uses, or the specific details of building materials and design for a proposed project.*







# Why Plan?

Planning establishes goals and policies for directing and managing the future growth and development of a community or region. For example, cities and counties use planning to address fundamental issues such as the location and rate of growth, the character of development, transportation and housing needs, economic vitality, sustainability and environmental protection.

Proper planning offers the opportunity to:

- **Save Money.** Good planning can save on infrastructure and essential service costs by avoiding duplication, sizing facilities properly, and promoting efficient and cost-effective investments.
- **Create a Sense of Place and Reinforce a Sense of Community.** Planning can ensure that architectural, environmental and aesthetic elements are incorporated into projects to connect people to their community and establish a sense of place – the features and characteristics that define the unique identity of the community.
- **Protect and Enhance Property Values.** Property values are enhanced when a community plans for parks, trails, playgrounds, transit, and other amenities. Planning also protects property and property values by separating conflicting land uses.
- **Safeguard Public Health.** The way places are built, rebuilt, and maintained affects people’s behavior and, as a result, their health. Good planning can provide opportunities for all residents to improve their health through greater physical activity and access to healthy foods and living situations, while reducing their exposure to air pollution and other health hazards.

- **Promote Public Safety.** Proper planning and design can make communities safer places to live, work and travel. Planning safe routes for bicycles, pedestrians and motorists can reduce accidents. Building codes and other regulations can reduce the risk of fire, flooding or collapse in the event of an earthquake. Buildings, parking lots, streets, and neighborhoods can all be designed to reduce opportunities for crimes to occur.
- **Increase Fairness and Opportunity.** Planning can help ensure that the burdens and benefits of development are fairly shared by all members of a community. Planning can also increase opportunities for all residents to attend quality schools, access good jobs, and participate in community life on an equal footing.
- **Provide Public Facilities and Infrastructure.** Planning helps communities prepare to meet future demands for public services and facilities, such as water and sewer systems, roads and transit lines, fire and police stations, schools, parks and libraries. Planning can ensure that transportation and other public facilities meet the needs of all members of the community and are safe, efficient, reliable and environmentally sound.
- **Improve Economic Development and Quality of Life.** Economic development and quality of life issues go hand in hand because businesses want to locate in communities where their employees want to live. Well-planned communities offer residents and businesses a range of convenient and affordable choices – for business locations, transportation, housing, schools, parks, open space and other services and amenities.

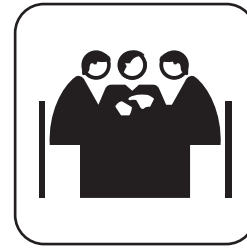
- **Protect the Environment and Conserve Resources.** Planning helps identify important natural and cultural resources and can direct development in a way that protects or enhances these resources. Planning can help communities reduce energy use, promote waste reduction and recycling, lower emissions of greenhouse gases that contribute to climate change, and otherwise conserve resources and protect the environment.
- **Provide a Forum for Resolving Conflicts and Reaching Agreement.** Planning processes provide a forum for developing a common vision, seeking community consensus and resolving disagreements about issues.
- **Set Clear Expectations.** Planning establishes the ground rules for decision-making regarding development. A comprehensive general plan, for example, sends a clear signal what standards and procedures will apply to development. Planning also signals which parties will be responsible for the various costs associated with development. This will not eliminate conflicts entirely, but does set expectations that can help minimize conflict – particularly when a jurisdiction has a practice of adhering to its plans.

### ▶ MORE RESOURCES ON PLANNING

As a supplement to this guide, the Institute has published a handy glossary of the sometimes complex terminology that is used in the planning process: *Understanding the Basics of Land Use and Planning: Glossary of Land Use and Planning Terms* (see [www.ca-ilg.org/planningterms](http://www.ca-ilg.org/planningterms)).

To assist local agencies in helping the public understand common planning decisions, the Institute has also developed a series of plain-language, one-page descriptions of common land use actions. These can be attached to public hearing notices, made available at planning counters and through agency websites. Copies are available in PDF and Word formats in both English and Spanish. (See [www.ca-ilg.org/onepaggers](http://www.ca-ilg.org/onepaggers))

# Participants in the Land Use Decision-Making Process



## The Role of Local Officials in Planning

Decisions regarding planning and land use are a shared responsibility among local decision-makers. While local elected officials typically have ultimate decision-making authority, planning is a very participatory process.

Other key participants include members of the planning commission and other advisory boards and commissions, agency professional staff and legal advisors, as well as officials from other public agencies who may be affected by a land use decision. Important stakeholders include property owners and project applicants, neighbors, business owners, and other members of the public.

Local officials play a number of roles in land use matters. Within their jurisdictions, local officials typically act in three capacities:

- **Legislative:** Adopting broad policies governing development, such as general plans, zoning ordinances, and fee schedules.
- **Quasi-adjudicatory:** Applying these policies and state law to specific projects.
- **Enforcement:** Taking steps to assure that projects, once approved, comply with the applicable laws and conditions of approval.

Local officials also play an important role in regional planning activities. A number of regional agencies have been established to make plans for transportation, housing, open space, and other issues that transcend local agency boundaries. Local officials are typically selected or appointed to serve on the governing boards of these regional agencies. In some cases the members of the governing board may be directly elected by voters.

## WHO DOES WHAT IN THE PLANNING PROCESS?

### City Council or County Board of Supervisors

- Evaluates staff analyses, recommendations and decisions by advisory bodies, and agency goals in making final decisions on land use plans and proposals
- May act as appellate body on entitlement decisions

### Planning Commission and Other Planning Advisory Bodies

- Considers staff analyses, including agency goals and policies, along with community input
- Makes recommendations and decisions based on findings of fact when applying general policies to specific situations such as use permits and tentative maps
- Makes recommendations to the governing body on policy matters such as the general plan, zoning ordinances, and development agreements
- May act as appellate body on entitlement decisions

### Planning Staff

- Acts as technical staff to the governing body, planning commission, or other planning advisory bodies
- Prepares and maintains local plans and ordinances
- Identifies relevant local regulations for plans and project applications
- Organizes hearings and meetings on plans and project proposals as authorized by local officials
- Works with applicants to ensure that a project complies with community policies and standards and state and federal law
- Coordinates with other professional departments and agencies to incorporate comments and technical recommendations into a proposed plan or project
- Ensures that all appropriate procedures are followed during the planning process
- Prepares a professional analysis and recommendation
- Monitors project implementation and compliance with planning policies and conditions of approval

### Agency Counsel (City Attorney or County Counsel)

- Advises officials on legal process requirements for decision-making (for example, public notice obligations)
- Answers questions about applicable law and how the law applies in particular situations
- Distinguishes between legal advice and policy advice, providing the latter only when asked
- Represents local government in legal issues and disputes

## City Council Members and County Supervisors

Primary responsibility for making land use and planning decisions rests with the individuals elected by the voters to serve on the governing boards of cities and counties. In the case of cities, the mayor and city council members make the decisions. The members of the county board of supervisors – five officials elected by district from throughout the county – make decisions for counties. While they may delegate some functions to staff or advisory bodies, final authority rests with the representatives elected by the public.

## The Planning Commission

The planning commission is a permanent committee made up of five or more individuals who have been appointed by the governing body (the city council or board of supervisors) to review and act on planning and development matters.<sup>5</sup>

While the governing body may choose to keep this function,<sup>6</sup> many cities and counties have chosen to establish separate planning commissions.

Commissions have authority to oversee the development and review of the local general plan and other plans, policies and ordinances related to land use. They also review (and sometimes decide) land use and development applications and proposals in the same manner as a board of zoning adjustments (described in the following section).<sup>7</sup>

Commissioners serve at the will of the city council or board of supervisors, so commission membership may change in response to changes in those bodies.<sup>8</sup> Planning commission actions can be appealed to the governing body, which can uphold the commission's decision, overturn it, modify it, or send it back for further study.



### ► THE ROLE OF THE PLANNING COMMISSION

1. Acts as an advisory board to the governing body on all planning and development issues.
2. Reviews development applications and makes factual findings on a case-by-case basis to assure consistency with the provisions of the general plan and other local plans, policies and ordinances.
3. Functions as the primary decision-making body for many proposals (subject to appeal to the governing body, which retains final authority).
4. Through public hearings and other means, provides a key venue for residents and other community stakeholders to learn about planning issues and project proposals and provide their views.

## Other Local Planning Bodies and Officials

Many cities and counties have established other advisory boards or commissions or assigned officials to assist the agency in making decisions on planning and land use issues. In larger jurisdictions, these bodies and appointees bring additional expertise into the decision-making process while allowing the planning commission and elected officials to focus on broad planning issues. They also provide an additional way to engage the public in planning and land use decisions, both through service as an appointee and through public meetings and hearings conducted by the body.

Some of these other advisory bodies and appointed officials include:

- **Board of Zoning Adjustment or Zoning Administrator.** A local body or hearing officer authorized to consider requests for variances to zoning requirements, created by ordinance and appointed by the governing body.<sup>9</sup>
- **Zoning Appeals Board.** An optional appointed body that hears and decides matters relating to the application of the zoning ordinance and considers appeals of the zoning administrator's decisions.<sup>10</sup>
- **Building Official.** An appointed agency official responsible for the administration and enforcement of building, housing, plumbing, electrical and related codes.
- **Design Review Commission or Architectural Review Board.** An optional commission appointed by the governing body to review development proposals to determine consistency with local adopted design goals, policies, guidelines, standards, and ordinances.<sup>11</sup>
- **Historic Preservation Commission or Architectural Heritage Commission.** An optional commission appointed by the governing body charged with determining consistency with local historic and cultural resource preservation goals, policies, standards and ordinances.<sup>12</sup>

## RESOURCES FOR FURTHER INFORMATION

*The Planning Commissioner's Book* is both a training tool for new planning commissioners as well as a handy general reference on planning. Originally published by the Governor's Office of Planning and Research, it is available on the ILG website at [www.ca-ilg.org/opr](http://www.ca-ilg.org/opr).

## The Role of the Public

There are many reasons to involve the public in planning and land use decision-making. Perhaps most importantly, participation enhances a sense of community. Individuals feel more connected when they are involved in the process of developing solutions to community problems.

Other benefits of public engagement in planning and land use decision-making can include:

- Better planning policies and documents that reflect issues flagged by a members of the public, particularly if a broad segment of the public participates in the decision-making process

- Enhanced community buy-in and support for policies ultimately adopted and less need to revisit the same planning issues repeatedly
- More knowledgeable residents that understand the trade-offs sometimes involved in planning and land use decisions

Public participation in local decision-making is fundamental to democracy. The public often evaluates the service of local officials based not only on the wisdom of their decisions, but also on their commitment to involving the public in decision making.



### ▶ ENGAGING THE PUBLIC IN PLANNING

The Institute for Local Government has developed a number of tools to help local officials foster greater public participation in land use and planning decisions. See [www.ca-ilg.org/cgipubs](http://www.ca-ilg.org/cgipubs).

For more information on these and other resources for involving the public, visit the Institute's website at [www.ca-ilg.org](http://www.ca-ilg.org).





# The General Plan

The general plan is the foundation for local land use planning. When an agency adopts a general plan, it creates a vision for the foreseeable planning horizon — usually 10 to 20 years — and translates the vision into objectives, goals, policies and implementation programs for the physical development of the community.

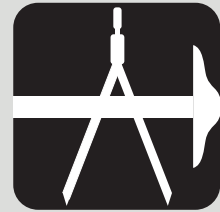
The general plan covers all of the land within the jurisdiction and any additional land that, in the agency’s judgment, bears a relationship to its planning.<sup>13</sup>

Cities and counties may also prepare one or more community plans as part of their general plan to provide more detailed attention to particular areas of the locality.

## COMPONENTS OF PLANNING

### ✓ The General Plan

- Zoning
- Subdivisions
- Design Review
- Environmental Review
- Development Agreements
- Dedications and Fees



All other land use ordinances and policies flow from the general plan and must be consistent with the general plan.<sup>14</sup> Projects will not be able to proceed unless they are found to be consistent with the general plan.<sup>15</sup>



## Mandatory Elements

General plans are usually a combination of goals, policies, programs, diagrams, and maps. Every general plan at a minimum must address seven mandatory elements:<sup>16</sup>

- **Land Use Element.** Designates and provides a diagram or map illustrating the general type, intensity, and distribution of various land uses.<sup>17</sup>
- **Circulation Element.** Describes and provides a circulation diagram or map illustrating the location and extent of existing and proposed transportation routes, terminals, and other local public utilities and facilities.<sup>18</sup>
- **Housing Element.** Identifies and analyzes the existing and projected housing needs for all economic segments of the community, consistent with the regional “fair share” allocation of housing needs established through a regional planning process.<sup>19</sup>
- **Conservation Element.** Provides for the conservation, development and use of natural resources.<sup>20</sup>
- **Open Space Element.** Details how open space, recreational areas and natural resources will be preserved and managed.<sup>21</sup>
- **Noise Element.** Establishes noise contours and standards, identifies and appraises noise sources and problems and includes implementation measures to address them.<sup>22</sup>
- **Safety Element.** Addresses protection from any unreasonable risks associated with hazards such as fire, flood, and earthquakes.<sup>23</sup>

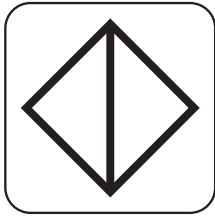
## Optional Elements

Any number of optional elements may also be included in a general plan if, in the judgment of the city or county, they relate to the physical development of the area.<sup>24</sup> Optional elements frequently incorporated in general plans include: public facilities, economic development, design, historic preservation, air quality, growth management, agriculture, recreation, and scenic highways. More recent additions to this list include climate change, energy, water, and health. Once adopted, mandatory and optional elements have equal legal status and must be consistent with each other.<sup>25</sup>

Local agencies can tailor general plans to fit community needs.<sup>26</sup> Individual elements may be combined so long as all legally required issues are addressed.

### RESOURCES FOR FURTHER INFORMATION

The Governor's Office of Planning and Research has produced many useful resources on planning. See [www.ca-ilg.org/opr](http://www.ca-ilg.org/opr).



## Consistency Requirements

Land use and planning decisions require a finding that a land use action is consistent with the general plan.<sup>27</sup>

Perfect conformity is not required, but the project must be found to be consistent with the general plan map and the general plan's objectives, goals, policies, and implementation programs.

The individual elements within a general plan must be integrated, internally consistent, and compatible.<sup>28</sup> In other words, the plan cannot contradict itself. This requirement is commonly referred to as "horizontal consistency" and has three primary components:<sup>29</sup>

### ■ Consistency among Elements.

All elements of the general plan must be consistent with one another. For example, if the land use element contains proposals that would increase population but the circulation element does not provide for ways to deal with traffic related to the population increase, the general plan would be inconsistent.<sup>30</sup>

### ■ Consistency within Each Element.

Each individual element must be consistent with itself. For example, if the circulation element presents data and analysis indicating insufficient road capacity while also stating that current roads and other transportation alternatives can handle increased development, the element would be inconsistent.<sup>31</sup>

### ■ Consistency between Language and Maps.

The text of the general plan must be consistent with accompanying maps and diagrams. For example, if the text of the general plan includes a policy of conserving prime farmland while at the same time a map designates all or most of existing prime farmland as an area for housing development, the plan would be internally inconsistent.<sup>32</sup>

In addition, all other plans, ordinances and policies must be consistent with the general plan. This is often called "vertical consistency." For example, subdivision and development approvals must be consistent with the general plan.<sup>33</sup> In counties and general law cities, zoning and specific plans must also be consistent with the general plan.<sup>34</sup> Charter cities can require consistency through their own charter or by ordinance, but otherwise are exempt from the consistency rule.<sup>35</sup>

## Relationship of the General Plan to Other Local Plans

**Community Plans.** A community plan is part of a general plan, focusing on a particular neighborhood or community within the larger jurisdiction

Community plans allow a city or county to concentrate on the most salient issues and develop planning strategies and actions best suited for particular communities without going through the time and expense involved in revising or updating the general plan as a whole.

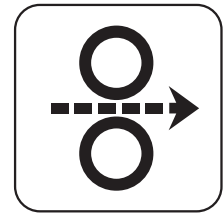
**Specific Plans.** Unlike general plans, specific plans are optional.<sup>36</sup> They are a flexible planning tool often used for larger areas, such as a downtown or a major transportation corridor, to encourage comprehensive planning.<sup>37</sup>

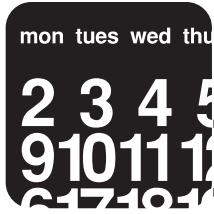
A specific plan may present broad policy concepts, focus on a particular planning or development issue, or provide detailed direction as to the type, location, intensity or design, financing, or infrastructure needed for development.

Many local agencies find specific plans to be a powerful and flexible planning tool. They often function as a macro-scale planning document similar to a community plan, but with the added power of a zoning ordinance coupled with a capital improvement program.

While not technically a part of the general plan as are community plans, specific plans must be consistent with the general plan.<sup>38</sup> All zoning, subdivisions, public works projects, and future development agreements within an area covered by a specific plan must be consistent with the plan once it is adopted.<sup>39</sup> A specific plan may be amended as often as necessary.<sup>40</sup>

**Redevelopment Plans.** Cities and counties may create a redevelopment agency to act as a catalyst for the revitalization of “blighted” areas.<sup>41</sup> Often the city council or board of supervisors acts as the governing board of the redevelopment agency,<sup>42</sup> although some redevelopment agencies have a separate governing board.<sup>43</sup> Redevelopment agencies create a redevelopment plan outlining the programs and strategies the agency will employ to redevelop the area included in the agency’s purview.<sup>44</sup> Redevelopment plans must be consistent with the general plan.<sup>45</sup>





## Amending the General Plan

The general plan is a living document, meaning that it should change as conditions in the community change.<sup>46</sup> At the same time, it is also meant to provide some certainty for local planning. “General law” cities and counties (those operating under state law without a voter-approved local charter) may amend mandatory elements of the general plan up to four times per year.<sup>47</sup> Charter cities and counties may amend the general plan as often as necessary.<sup>48</sup> Many local agencies regulate how often they will consider general plan amendments to ensure that specific amendments are considered in the larger context of other proposed amendments and the general plan as a whole.

Amendments are adopted by resolution after a public hearing.<sup>49</sup> Optional elements can be amended as often as the local agency chooses. Project proponents may propose general plan amendments to fit the needs of a proposed development.

## Updating the General Plan

While there are no hard-and-fast rules as to when a community should update its general plan, frequent piecemeal amendments can indicate that the general plan is dated or out of step with current conditions.<sup>50</sup> In such cases, an overhaul of the general plan may be needed to ensure that it remains an adequate basis for land use decision-making.

Periodic updates ensure that the long-term vision presented in the plan reflects the current needs or goals of the community. A general plan update can be quite expensive — often exceeding several hundred thousand dollars in mid- to large-size communities. A well thought-out plan update with broad public involvement and support usually pays dividends by reflecting current economic and development trends and reducing conflict over land use decisions.

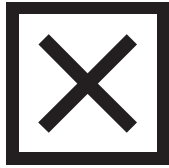
The general plan does not have to be completed or updated on a fixed schedule (although new cities must adopt a plan within 30 months of their formation).<sup>51</sup> The main exception to this rule is the housing element, which must be updated every eight years, to coincide with the schedule for regional planning for transportation mandated by SB 375.<sup>52</sup>

## Implementation and Follow-Through

The adoption of a general plan by itself does not guarantee orderly development. An agency can adopt a very good general plan only to find the original vision distorted by frequent amendments. City council members or county supervisors play a critical role in seeing that the plan's vision materializes, assisted by the planning commission and other advisory bodies.

State law provides for an annual reporting process on general plan implementation. These reports must be shared with a number of state agencies.<sup>53</sup> The reports enable the local agency to correlate recent land use decisions with the overall goals in the general plan, to assess how the plan is being implemented, and to identify modifications that will improve implementation.





## Effects of a Deficient General Plan

In order to proceed, a development project must be found to be consistent with the general plan.<sup>54</sup> This is a difficult finding to make when the general plan is internally inconsistent, invalid, or insufficient (for example, because it fails to address a statutorily required issue). A court can invalidate any land use action if it determines that a plan is deficient in any of these respects.<sup>55</sup> Typically courts will limit such actions to instances where the specific general plan deficiency is related to the nature or circumstances of the project – for example, a residential subdivision proposed in a jurisdiction with a housing element that has been found to be deficient.<sup>56</sup>

### RESOURCES FOR FURTHER INFORMATION

#### Institute for Local Government

*Land Use One-Pager: About Specific Plans* (2007) ([www.ca-ilg.org/onepagers](http://www.ca-ilg.org/onepagers))

*Land Use One-Pager: About General Plan Amendments* (2007) ([www.ca-ilg.org/onepagers](http://www.ca-ilg.org/onepagers))

#### Governor's Office of Planning and Research

The Governor's Office of Planning and Research has produced many useful resources on planning. See [www.ca-ilg.org/opr](http://www.ca-ilg.org/opr).

*California Planning Guide: An Introduction to Planning in California* (December 2005)

*General Plan Guidelines* (October 2003)

*The Planner's Guide to Specific Plans* (January 2001)

#### Other Resources

Government Code Section 65350 and following (accessible from [www.leginfo.ca.gov/calaw.html](http://www.leginfo.ca.gov/calaw.html))

Government Code Section 65450 and following (accessible from [www.leginfo.ca.gov/calaw.html](http://www.leginfo.ca.gov/calaw.html))

# Zoning

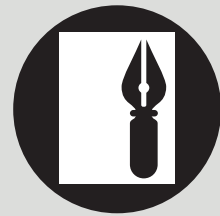
Historically, zoning is the separation of a community into districts, or “zones,” that regulate land uses and the intensity of development.<sup>57</sup> A zoning designation is assigned to every legally defined parcel within a zone in the community. An accompanying map shows officials and the public 1) the boundaries between zones, 2) which uses are permitted, and 3) the standards that apply to that use.

The goal of zoning is to assure that neighboring land uses are compatible.<sup>58</sup>

Residential uses, for example, are generally incompatible with heavy industrial uses. Most agencies have multiple zones in which similar uses are permitted but with differing development standards. For example, a minimum residential density might be 12 units to the acre in one zone and 16 units to the acre in another.

## COMPONENTS OF PLANNING

- The General Plan
- ✓ Zoning
- Subdivisions
- Design Review
- Environmental Review
- Development Agreements
- Dedications and Fees



Before approving or denying a project, a local agency must determine whether the project complies with the provisions of local ordinances regulating development. Examples include the zoning ordinance, requirements for a conditional use permit, or an historic preservation ordinance.

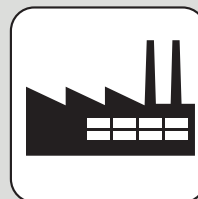
## Zoning Ordinances

A traditional zoning ordinance will list land uses that are allowed “by right” for each zone. The term “by right” does not mean that the zoning ordinance confers an unconditional right to develop for a particular use.<sup>59</sup> Zoning is merely a legislative planning designation.<sup>60</sup> As such, zones are always subject to change and do not confer an entitlement. Instead, the term “by right” means that the permit is not subject to the discretionary review that is typical of the conditional use permit process.<sup>61</sup>

Form-based zoning codes have recently emerged as an alternative to traditional zoning. Under this type of zoning, the form of a development project (like height, footprint, materials or relationship to other buildings) is regulated rather than the specific uses (such as residential or commercial). The idea is to use zoning to ensure compatibility while allowing a greater mix of uses than traditional zoning affords.

### WHAT TRADITIONAL ZONING ORDINANCES DO

- Divide a jurisdiction into various land use categories, such as heavy and light industrial, commercial, residential, open space, agricultural, recreational, scenic corridor, natural resource, and other purposes.
- List permitted uses within each category and provide for conditional and accessory uses.
- Regulate the intensity of use (for example, 18 residential units per acre).
- Establish development standards, such as building height and bulk, setbacks, lot coverage, parking, signage, and landscaping.
- Provide for administrative procedures for variances, conditional use permits, design review, and zone changes.



Cluster zoning is another variation on traditional zoning, allowing applicants to cluster uses on a portion of a site in order to preserve open space and natural areas or reduce infrastructure costs.

Zoning ordinances must be consistent with the general plan and, except in some charter cities, are invalid if inconsistent.<sup>62</sup> Typically the planning commission is responsible for making zoning decisions on discretionary applications under the zoning ordinance.<sup>63</sup> Some agencies have appointed a board of zoning adjustment or a zoning administrator to consider requests for use permits and variances from zoning conditions.<sup>64</sup> Building design may also be subject to approval by a design review board or architectural review board.<sup>65</sup>

## **RESOURCES FOR FURTHER INFORMATION**

### **Institute for Local Government**

*Land Use One-Pager: About Zone Changes (Rezoning)* (2007) ([www.ca-ilg.org/onepagere](http://www.ca-ilg.org/onepagere))

### **Governor's Office of Planning and Research**

*Planning, Zoning, and Development Laws* (February 2009), available at [www.ca-ilg.org/opr](http://www.ca-ilg.org/opr)

### **Other Resources**

Form-Based Codes Institute,  
[www.formbasedcodes.org](http://www.formbasedcodes.org)

Government Code Section 65800 and following (accessible from [www.leginfo.ca.gov/calaw.html](http://www.leginfo.ca.gov/calaw.html))



## Conditional Use Permits

Conditional uses are land uses that may be approved under the zoning code but only upon meeting specific conditions.<sup>66</sup> The conditional use permit (also called a “special use permit”) allows a local agency to more closely review individual projects that could negatively affect neighboring land uses. Staff and the planning commission (or other review body) can then develop a set of conditions to minimize the impact before authorizing the development.

Common conditions on approval include limited hours of operation, road improvements, soundproofing, additional landscaping, and additional parking. The permit is granted on the land, not to the property owner, and will remain valid even if the property changes owners.<sup>67</sup> The original permit may provide that the agency can modify the permit terms in the future, subject to providing notice and a hearing.<sup>68</sup> A conditional use permit may be revoked for noncompliance or other reasons cited in the permit, subject to notice and a hearing.<sup>69</sup>

## Variances

A variance is a limited waiver of zoning standards for a use that is already permitted within a zone.<sup>70</sup> Variances are considered only in extraordinary circumstances when the physical characteristics of a property, (such as size, shape, topography, location, or surroundings) or its use pose a unique hardship to the property owner.<sup>71</sup> A variance can only be granted in special cases where the strict application of zoning regulations deprives the owner of a use enjoyed by other property owners in the same zone.<sup>72</sup>

Economic hardship alone is an insufficient justification to approve a variance. A variance may not be used to permit a land use that is not otherwise allowed in a zone, such as a heavy industrial use within a residential zone. This would require a zoning change.

## Floating and Overlay Zones

A zoning ordinance may include regulations for a type of zone that is not tied to any piece of property on the zoning map. This is referred to as a floating zone. The zone “floats” until such time that a property owner requests to have it applied to his or her land through rezoning. A common example is a mixed-use district. The zoning conditions associated with mixed-use development “attach” as soon as the proposal is approved.

An overlay zone, on the other hand, places additional regulations on existing zones within areas of special concern. Their boundaries are fixed and usually encompass all or part of multiple zones. Overlay zones are often used in floodplains, hillsides, near fault lines, around airports, and in other areas where additional regulations are necessary to ensure public safety. Overlay zones are also commonly applied to downtowns and historic districts to ensure a certain aesthetic character.

## Planned Unit Developments

A planned unit development (“PUD”) is both a zoning classification and a type of development. Also sometimes referred to as “planned communities,” planned unit developments normally consist of individually owned lots with common areas for open space, recreation and street improvements. Conventional zoning standards are often set aside to permit a more imaginative use of undeveloped property, such as clustering residential uses or integrating compatible commercial and industrial uses. Any substantial alteration in the physical characteristics of the development usually requires that rezoning procedures be followed.<sup>73</sup>

## Nonconforming Uses

There are two types of nonconforming uses: illegal and legal. Legal nonconforming uses — sometimes called grandfathered uses — are lawful uses that were in place prior to the adoption of the current zoning ordinance.<sup>74</sup> Such uses are generally permitted for as long as they operate lawfully.<sup>75</sup> However, the use typically is not allowed to expand or be replaced if voluntarily abandoned or accidentally destroyed.<sup>76</sup> The idea is to strike a balance between the notion of fairness (the use was lawful at the time of development) and the changed circumstances of the community (the use is no longer compatible with the character of the area).

A local agency may require that a legal nonconforming use terminate after a reasonable period of time (for example, after the investment has been amortized).<sup>77</sup> This allows the owner enough time to recoup the value of the investment in developing the property while also addressing the needs of the community.

On the other hand, *illegal* nonconforming uses are those that were built or started in violation of an existing zoning ordinance. Such uses are not allowed. Local agencies have the right to require that such uses be terminated immediately, regardless of the property owner's investment. Illegal nonconforming uses are usually addressed through code enforcement.

### RESOURCES FOR FURTHER INFORMATION

#### Institute for Local Government

*Land Use One-Pager: About Conditional Use Permits* (2007) ([www.ca-ilg.org/onepagers](http://www.ca-ilg.org/onepagers))

*Land Use One-Pager: About Variances* (2007) ([www.ca-ilg.org/onepagers](http://www.ca-ilg.org/onepagers))

#### Governor's Office of Planning and Research

*The Conditional Use Permit* (August 1997), available at [www.ca-ilg.org/opr](http://www.ca-ilg.org/opr)

*The Variance* (July 1997), available at [www.ca-ilg.org/opr](http://www.ca-ilg.org/opr)

#### Other Resources

Government Code Section 65901 (accessible from [www.leginfo.ca.gov/calaw.html](http://www.leginfo.ca.gov/calaw.html))

Government Code Section 65906 (accessible from [www.leginfo.ca.gov/calaw.html](http://www.leginfo.ca.gov/calaw.html))

# Subdivisions

A subdivision is any division of contiguous land into separate parcels for sale, lease, or financing.<sup>78</sup> Any land transaction that legally separates property into distinct ownership units in which long-term ownership rights can be vested is a subdivision. California’s Subdivision Map Act<sup>79</sup> governs how local agencies oversee the subdivision of land. The process encourages orderly development and also protects against fraud by assuring that all subdivisions are recorded with the county recorder.<sup>80</sup>

Each city, charter city, and county must adopt an ordinance that designates a local process for subdivision approval.<sup>81</sup> Local ordinances can be more restrictive than the Map Act so long as they are consistent with its provisions.

The Map Act contains two procedures to process subdivision applications based on project size. “Major subdivisions” — those with five or more parcels — require more formal procedures that involve filing both a tentative map and a final map for approval.<sup>82</sup> On the other hand, “minor subdivisions” — those that involve four or fewer parcels — require only a single parcel map (unless the local ordinance specifies that tentative

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maps be filed for minor subdivisions as well).<sup>83</sup> The reasoning for this distinction is that minor subdivisions are less likely to raise complex issues, such as traffic and infrastructure needs.

A tentative map depicts the design and improvement of the proposed subdivision and the existing conditions that surround it.<sup>84</sup> The local agency reviews the tentative map to see if it meets local subdivision and zoning requirements. The local agency may impose conditions of approval to ensure that the development of the project is consistent with the general plan, zoning, public works and building standards, and any environmental mitigation measures adopted for the project.<sup>85</sup>



Once the tentative map is approved, the applicant will then prepare a final map that is more technically correct and incorporates any conditions imposed by the local agency. All conditions must either be performed or guaranteed — by agreement, bond, letter of credit, or other financial security — before the final map can be approved.<sup>86</sup> An engineer usually reviews the final map.<sup>87</sup>

Approval of the final map is a ministerial act — meaning there is no discretion to reject the final map if all the conditions are met.<sup>88</sup> The approved final map is then recorded with the county and the applicant can proceed with the development.<sup>89</sup>

## **RESOURCES FOR FURTHER INFORMATION**

### **Institute for Local Government**

*Land Use One-Pager: About Subdivisions (2007)* ([www.ca-ilg.org/onepaggers](http://www.ca-ilg.org/onepaggers))

### **Other Resources**

Government Code Section 66411 and following (accessible from [www.leginfo.ca.gov/calaw.html](http://www.leginfo.ca.gov/calaw.html))

## **TYPES OF SUBDIVISION MAPS<sup>90</sup>**

### **Parcel Maps**

Procedures and approvals for parcel maps are left to local ordinance.<sup>91</sup> The primary difference between parcel maps and tentative maps is the number of conditions that can be applied. With a parcel map, a city or county can only impose requirements for the dedication of rights-of-way, easements, and the construction of reasonable off-site and on-site improvements for the parcels that are being created.<sup>92</sup>

### **Tentative Maps**

Tentative maps typically illustrate the proposed design of the lots, public streets, sidewalks, parks, utilities, and other improvements. After a public hearing, the local agency may approve, conditionally approve, or deny the map. The agency may impose additional conditions that are consistent with the general plan and the zoning ordinance when approving a tentative map.<sup>93</sup>

### **Vesting Tentative Maps**

Some tentative maps are filed as “vesting tentative maps.”<sup>94</sup> This type of map confers a vested right to proceed with the development in accordance with the local ordinances, policies, and standards in effect when the local agency deemed the map application complete. Vesting tentative maps must be processed just like a standard tentative map. However, local agencies may impose additional application requirements and almost all do, which is why developers do not always use vesting tentative maps.

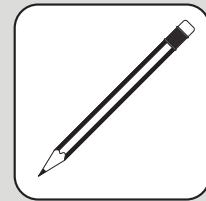
# Design Review

Design review is often used to ensure that new development is compatible with the aesthetic character of a community or individual neighborhood. Whereas the zoning code usually focuses on the type and intensity of a use, design review focuses on aesthetic and architectural standards.<sup>95</sup> Design review procedures usually rely on deeply held values and beliefs about what is beautiful and what is ordinary.

In many communities, the planning commission functions as the design review board. In some communities, particularly larger communities or those with a concentration of architecturally significant structures or neighborhoods, the local agency may appoint a separate “design review board” or an “architectural review committee” to conduct design review.

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Local design review ordinances are usually integrated into the zoning process. The amount of information included in a design review application will vary. An application for a small addition, for example, will probably not have as much information as an application for a large subdivision.

Design review can make it more difficult for the landowner or developer to determine whether the proposed project will be acceptable. Accordingly, the more specific the design standards are, the greater the certainty will be from the perspective of both the developer and neighborhood residents.

Design review can also breed monotony (or even mediocrity) to the extent that all buildings must conform to a narrow set of guidelines. The challenge is to develop design guidelines that leave enough room for creativity. Finally, in some instances, the design review process may be abused by those who are looking for an opportunity to stop a development.

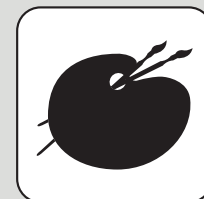
## RESOURCES FOR FURTHER INFORMATION

*Land Use One-Pager: About Design Review*, Institute for Local Government (2007) ([www.ca-ilg.org/onepagers](http://www.ca-ilg.org/onepagers))

*Curtin's California Land Use and Planning Law* addresses design review issues, available from Solano Press, ([www.solano.com](http://www.solano.com))

### TYPICAL INFORMATION FOR DESIGN REVIEW

- Color boards showing the site plan, including the shape and size of the buildings, their relationship to the site, landscaping, and parking.
- Conceptual color elevations of each wall, especially those seen by the public or from off-site.
- Models showing building mass, form, relationship to the landscape, and effects caused by grading. These can range from simple hand-built models to sophisticated computer-generated analyses.
- Design details, such as plazas, pavement design, window treatments (sills, awnings, etc.), entry gateways, building top and base treatment, screening details, pedestrian walkways, and lighting.
- Colored landscape plans illustrating how landscaping will be used to soften the building's impact on its environment.
- Controls to ensure that signage will fit in with the rest of the development.
- Summary data, including facts on adjacent properties and sight lines.



# Environmental Review

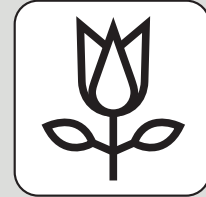
Requiring measures to protect the long-term health of the state’s environment has become an integral element of land use planning and project approvals. The environmental protection law most frequently applied to land use decisions is the California Environmental Quality Act (CEQA).

The California Environmental Quality Act is a complex law with a simple purpose: to assure that decision-makers understand and account for the environmental consequences of a project.<sup>96</sup> A key purpose of the California Environmental Quality Act is informational, since it gives decision-makers information on what the environmental impacts of a project will be and how to minimize those impacts.

What gives the environmental review process its “teeth” is a prohibition against approving projects as proposed if there are feasible alternatives or mitigation measures that would substantially lessen significant environmental effects.<sup>97</sup> In other words,

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- Design Review
- ✓ **Environmental Review**
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agencies are not required to eliminate all potential harm to the environment, but they must reduce the risk of harm whenever they determine it is feasible to do so. Thus, a project with significant environmental impacts may be approved if the local agency finds that all alternatives or mitigation measures are infeasible and discloses the reasons for its findings, or adopts a “statement of overriding considerations” that particular social or economic factors override the environmental concerns.<sup>98</sup>



## Determining the Level of Review

The environmental review process involves three possible levels of analysis:

- Negative declaration,
- Mitigated negative declaration, and
- Environmental impact report (often known by the acronym EIR).

In addition, some projects are exempt from review.<sup>99</sup> Other projects may be subject to more limited environmental

review because they are consistent with standards that were previously subjected to environmental review.<sup>100</sup>

An example is a 2008 law designed to promote reductions in greenhouse gas emissions from vehicle trips. The law allows projects that are consistent with an adopted regional sustainable communities strategy or alternative planning strategy to undergo less rigorous environmental review than other projects.<sup>101</sup>

### WHAT TYPE OF REVIEW IS APPROPRIATE?

- **Is the Action a “Project?”** Only “projects” are subject to environmental review. A project is any discretionary governmental action that could directly or indirectly result in a physical change in the environment, such as a general plan amendment, rezoning, public works project or development permit.
- **Does an Exemption Apply?** A project may be exempt from the California Environmental Quality Act under state law or regulations.
- **Initial Study.** For projects that are not exempt, an initial study is completed to determine whether the project may have a significant effect on the environment.
- **Negative Declaration.** If the initial study shows that the project will not have a significant effect on the environment, a negative declaration is prepared that describes why the project will not have a significant effect.
- **Mitigated Negative Declaration.** If the initial study shows that the project may cause significant environmental effects, a mitigated negative declaration may be prepared. A mitigated negative declaration is appropriate if revisions can be made to the project that would clearly avoid or mitigate the significant effects.
- **Environmental Impact Report.** If the initial study identifies potential significant environmental effects that cannot be eliminated through redesign or other mitigation measures, then an environmental impact report must be prepared.<sup>102</sup>

## The Environmental Impact Report

For projects not exempt from environmental review, the general rule is that an environmental impact report must be prepared if substantial evidence shows that there is a fair argument that a project may have a significant environmental effect.<sup>103</sup> This is the case even when there is an equal amount of evidence suggesting that an environmental impact report may not be necessary. This is called the “fair argument” standard.<sup>104</sup>

After determining that an environmental impact report is required, the agency with primary authority to approve the project (known as the “lead agency”) must solicit the views of other agencies with some level of authority over the project (called “responsible agencies”) regarding the scope of the environmental analysis.<sup>105</sup> The lead agency should also consult with individuals and organizations that have an interest in the project.<sup>106</sup> This early consultation is called scoping.

The lead agency then directs the drafting of an environmental impact report based on this information and other data it has collected. When the draft environmental impact report is completed, the lead agency files a notice of completion with the appropriate state agency.<sup>107</sup>

The draft environmental impact report is then made available for public review and comment for a minimum period of 30 to 45 days.<sup>108</sup> The lead agency must evaluate and respond in writing to all comments it receives during the review period.<sup>109</sup> If significant new information is added to the draft environmental impact report after it has been released for public review, the agency must re-circulate the report for additional public review and comment.<sup>110</sup>

Once the public review period ends, the lead agency prepares a final environmental impact report, usually consisting of the draft report together with responses to public comments received during the review period.<sup>111</sup> The lead agency then reviews the project in light of the environmental impact report and other applicable standards and policies.

A key goal of the California Environmental Quality Act is to ensure that the decisions made by local officials regarding environmental impacts are as well informed as possible. The environmental impact report must provide enough information to allow decision-makers to analyze the environmental consequences of a project. Thus, the adequacy of an environmental impact report is usually not judged on perfection or correct conclusions, rather on completeness and whether the level of analysis is reasonable and done in good faith.<sup>112</sup>

## BASIC ELEMENTS OF AN ENVIRONMENTAL IMPACT REPORT

**Table of Contents and Summary.** Required elements that assist in making environmental impact reports—which are sometimes hundreds of pages long—more accessible to the public.

**Project Description.** An accurate description of the project, including any reasonably foreseeable future phases of the project.

**Environmental Setting.** A description of the environment on the project site and in the vicinity of the project.

**Evaluation of Impacts.** An identification and analysis of each significant impact expected to result from the project. Any potential significant effect—such as incompatible land uses, air pollution, water quality, or traffic congestion—will have its own discussion.

**Mitigation Measures.** A detailed description of all feasible measures that could minimize significant adverse impacts. Any potential environmental consequences of the mitigation measures must also be addressed.

**Cumulative Impacts.** An evaluation of the incremental effects of the proposed project in connection with other past, current, and probable future projects.

**Alternatives.** A proposed range of reasonable project alternatives that could reduce or avoid significant impacts, including a “no project” alternative. This often involves reviewing the location or the intensity of the development, or both. The alternatives need not be exhaustive and should not be speculative.

**Growth-Inducing Impacts.** A description of the relationship of the project to the region’s growth and whether the project removes obstacles to growth.

**Organizations and Persons Consulted.** A list of groups and individuals contacted during the process, including during the scoping and public hearing phases.

**Inconsistencies.** A discussion of any inconsistencies between the proposed project and applicable general plans and regional plans.



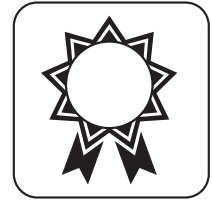
## Certifying the Environmental Document

The first step in making a final determination on a project that has undergone environmental review is for the city council or board of supervisors to approve the negative declaration<sup>113</sup> or certify the environmental impact report.<sup>114</sup>

The environmental review adds to the information decision-makers have about the pros and cons of a project. Just because a project has no significant unmitigated environmental effects does not mean the agency must approve the project. The local agency retains the discretion to reject the project or approve it in a manner that acknowledges any environmental consequences. The local

agency may also change the project, select an alternative project, impose conditions or fees, or take other actions (called “mitigation measures”) to avoid or minimize the environmental impacts of the project.<sup>115</sup> When an agency adopts mitigation measures it must also adopt a program to monitor the implementation of the measures.<sup>116</sup>

In some cases, the environmental impacts of a project cannot be avoided. If decision-makers decide to approve a project with unavoidable significant adverse environmental effects, they must adopt a “statement of overriding considerations” explaining the specific social or economic factors that the agency considered in deciding to approve the project in spite of the environmental concerns.<sup>117</sup>



### ► UNDERSTANDING THE SCOPE AND APPLICATION OF ENVIRONMENTAL LAWS

For California Environmental Quality Act purposes, the term “environment” includes natural and man-made conditions that will be directly or indirectly affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, and objects of historic or aesthetic significance.<sup>118</sup>

Note that other state and federal environmental laws may also apply to a given project. Examples include the Endangered Species Act,<sup>119</sup> the Clean Water Act,<sup>120</sup> the Clean Air Act<sup>121</sup> and those pertaining to surface mining, timber harvesting and other natural resource issues.



## Findings

Before the local agency can approve a project for which an environmental impact report or other environmental document has been prepared, it must certify the legal adequacy of the document and its review process.<sup>122</sup>

The findings must explain whether the project as approved would have significant impacts on the environment, whether mitigation measures are feasible, why other alternatives were rejected, and in some instances why the project's benefits outweigh its consequences (the statement of overriding considerations).<sup>123</sup> The public is entitled to comment on the adequacy of the final environmental impact report before it is certified by the governing body.<sup>124</sup>

## RESOURCES FOR FURTHER INFORMATION

### Institute for Local Government

Land Use One-Pagers (2007)  
([www.ca-ilg.org/onepagers](http://www.ca-ilg.org/onepagers)):

*About the Environmental Review Process*

*About Environmental Impact Reports*

*About Negative Declarations*

### Other Resources

State of California website on California Environmental Quality Act:  
<http://ceres.ca.gov/ceqa/>

California Public Resources Code Sections 21000 and following  
(accessible from  
[www.leginfo.ca.gov/calaw.html](http://www.leginfo.ca.gov/calaw.html))

Solano Press ([www.solano.com](http://www.solano.com)) has a number of land use-related publications, including the *Guide to CEQA*, available for purchase.

## PUBLIC INPUT INTO THE ENVIRONMENTAL REVIEW PROCESS

Even though the environmental review process draws on scientific information and policy analysis, the process also encourages the public to provide input into the analysis.<sup>125</sup>

Public agencies must also explain their reasoning (typically through findings) when they make a decision on a project.<sup>126</sup>



# Development Agreements

In California, a project that is in the approval process or has been approved but not yet built may be subject to new regulations and fees as they are adopted. Landowners or developers generally do not have an assured (or “vested”) right to develop until they obtain a building permit and have performed substantial work in reliance on that permit.<sup>127</sup> Until then, there is no guarantee that the local land use policies and regulations will remain the same.

To offset this risk, developers sometimes propose that their project be approved through a development agreement — a detailed contract between a developer and a local agency that spells out the rules for a particular project in very specific terms.<sup>128</sup> Development agreements are typically reserved for projects that are likely to be developed in several phases over a number of years.

## ▶ COMPONENTS OF PLANNING

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For developers, the advantage is that they can “lock in” their entitlements and the local regulations that are in effect at the time the agreement is approved, allowing them to obtain financing and get the project underway.<sup>129</sup> For local agencies, the advantage is that the agency and developer may agree to additional conditions — such as extra park land, school facilities, affordable housing, and other public improvements — that go beyond what the agency could require through the normal development process.<sup>130</sup>

A development agreement must describe the project's land uses, density, design features, and provisions for reserving or dedicating land for public purposes.<sup>131</sup> It also must specify the duration of the agreement.<sup>132</sup> However, most agreements go well beyond these minimums and will include construction and phasing elements, terms for financing public facilities, a description of the scope of subsequent discretionary approvals, and a number of other items.

The development agreement constitutes a negotiated — and thus voluntary — deal. The development agreement is adopted by ordinance, considered “quasi-legislative” in nature, and is subject to referendum.<sup>133</sup>

Once approved, the agreement works like any contract. The developer therefore cannot come back later and challenge the conditions as being excessive. On the other hand, the local agency is also bound to the terms of the deal. If the agency wants to make changes, the developer will likely seek certain concessions if he or she agrees to modify the agreement at all.

#### **RESOURCES FOR FURTHER INFORMATION**

##### **Institute for Local Government**

*Land Use One-Pager: About Development Agreements (2007)*  
([www.ca-ilg.org/onepaggers](http://www.ca-ilg.org/onepaggers))

##### **Other Resources**

Government Code Section 65864 and following (accessible from [www.leginfo.ca.gov/calaw.html](http://www.leginfo.ca.gov/calaw.html))

# Dedications and Fees

Dedications of land and development fees are often imposed as conditions on projects to offset new demands on public services and facilities.<sup>134</sup> Dedications and fees are sometimes called “exactions.”

New development usually requires the extension of infrastructure, such as roads, water and sewer lines, parks, pathways, libraries, and schools. Cities and counties use dedications and fees to ensure that new development pays its way.

A dedication occurs when ownership of an interest in real property is transferred to a local agency.<sup>135</sup> Development fees are often imposed in lieu of dedications when the type of infrastructure does not lend itself easily to individual dedications of property, such as with sewers, water systems, affordable housing, libraries, and open space.

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The basic rule when imposing dedications and fees is that they must be reasonably related in purpose and roughly proportional in amount to the impacts caused by the development.<sup>136</sup> This means dedication and fee requirements may be used to fund improvements necessary to address the effects of the project. Thus, a small development that will only generate light traffic cannot be required to cover the cost of an entire freeway interchange.

The legal basis for a dedication or fee is often established in the general plan,<sup>137</sup> but can also be established by a capital improvements plan,<sup>138</sup> the Subdivision Map Act,<sup>139</sup> or the California Environmental Quality Act.<sup>140</sup> When an agency imposes a development fee, it must make several specific findings.<sup>141</sup> The findings are typically based on a detailed fee or “nexus” study.

Once development fees are collected, local agencies must also comply with detailed accounting requirements to ensure that the funds are used appropriately. Agencies must deposit the funds in a separate capital facilities account, and the beginning and ending balances, interest, other income, and expenditures from these accounts must be made public.

#### **RESOURCES FOR FURTHER INFORMATION**

##### **Institute for Local Government**

*Land Use One-Pager: About Development Fees* (2007) ([www.ca-ilg.org/onepaggers](http://www.ca-ilg.org/onepaggers))

Development fees and dedications page at [www.ca-ilg.org/fees](http://www.ca-ilg.org/fees)

##### **Other Resources**

Government Code Section 66000 and following (accessible from [www.leginfo.ca.gov/calaw.html](http://www.leginfo.ca.gov/calaw.html))

# Emerging Topics in Local Planning

Land use planning is a dynamic field. As new issues arise in importance, they are integrated over time into local agency plans and policies. For example, as public concern regarding conservation and pollution heightened over the last several decades, planning policies, tools and approaches evolved to address these concerns.

Two topics in particular have emerged as the focus of advances in the practice of planning, especially in California. Planning is evolving to integrate issues related to the links between health and the built environment, and the role that land use plays in climate change and the generation of greenhouse gases.

Planning is at the forefront of these issues in part because well-planned communities with a balance of housing, jobs, shopping, schools and recreation give people the option of walking, biking, or using transit rather than driving. This results in lower greenhouse gas emissions and also promotes physical activity and more vibrant, healthy and sustainable communities.





## Health and the Built Environment

Because land use decisions affect the physical development of communities, they can have profound impacts on the health of people who live there. Obesity, diabetes, heart disease, asthma and other health conditions are linked to a long-term decline in both healthy eating habits and physical activity.<sup>142</sup> These, in turn, are related to development practices and patterns of land use.<sup>143</sup>

The design and layout of communities can discourage physical activity, restrict access to healthy foods, and disproportionately expose some communities and individuals to environmental pollutants that exacerbate health conditions such as asthma.

With the links between land use and public health established, attention has turned to developing planning policies and strategies to reverse the negative trends related to physical inactivity, unhealthy eating, and environmental hazards. Efforts to educate policymakers, the media, and the public on the problems and potential solutions have begun to take root, as well as efforts to bridge the professional and institutional barriers between the public health and planning and design professions.

### WHAT MAKES FOR A HEALTHY NEIGHBORHOOD?

- Places where walking and bicycling are safe and convenient and where residents of all ages and abilities have the opportunity to be physically active.
- Nutritious, fresh, culturally appropriate food – grown locally whenever possible – is affordable and accessible, promoting health and boosting the local economy.
- Residents aren't exposed to environmental hazards or pollutants that endanger their present or future health or well-being.

Communities are pioneering a range of land use and planning approaches to create physical environments that promote health. Some examples of promising strategies include:

- Adding a health element to the local general plan to articulate policies and actions to improve community health, or incorporating health-related policies throughout the various elements of the general plan when it is updated or revised.
- Planning and developing facilities to accommodate pedestrian and bicycle travel, such as a network of safe bike routes, new and improved sidewalks, and traffic calming measures to reduce conflicts between pedestrians, cyclists and motor vehicles.
- Revising zoning regulations so that neighborhoods can accommodate farmers' markets that support local farmers and community gardens that can provide fresh food for local residents.
- Clustering a mix of new and existing development in areas with a range of good transportation choices, including walking, biking and transit.
- Partnering with schools, recreation districts and others to jointly develop and operate parks, playgrounds, sports fields, swimming pools and other facilities for physical activity.
- Providing incentives for corner stores to provide fresh fruits and vegetables and for full service grocery stores to locate in underserved neighborhoods.
- Adopting zoning policies that restrict fast food establishments near schools and playgrounds and limit the density of fast food outlets in residential communities.
- Preserving and enhancing open space and trails, urban forests and farms, community gardens, paths, and greenways. These amenities provide attractive destinations and recreation spaces that enhance residents' physical activity opportunities.
- Reducing the density of alcohol outlets coupled with incentives to increase healthy food retail at local markets can increase neighborhood safety, reduce violence, and reduce exposure to poor-quality food.
- Promoting "eyes on the street." The way that buildings, sidewalks and parking lots are designed and sited can make it easier for neighbors and passers-by to keep potentially unsafe areas in view, thereby discouraging crime.
- Providing safe routes to school for students to walk and bike. Local agencies can retrofit roadways with sidewalks, curb ramps and features that slow traffic, and strictly control the operation of motor vehicles on and near school sites, at bus stops and along school routes, making it easier and safer to walk.



**RESOURCES FOR  
FURTHER INFORMATION  
Institute for Local Government**

Healthy Neighborhoods Online  
Resource Center at [www.ca-ilg.org/  
healthyneighborhoods](http://www.ca-ilg.org/healthyneighborhoods)

**Other Resources**

*General Plans and Zoning:  
A Toolkit on Land Use and Health*

*Healthy Planning Policies:  
A Compendium from California  
General Plans*

Both publications and other resources  
available from Planning for Healthy

Places at Public Health Law and Policy  
[www.phlpnet.org](http://www.phlpnet.org) and  
[www.healthyplanning.org](http://www.healthyplanning.org)

Center for Civic Partnerships  
[www.civicpartnerships.org](http://www.civicpartnerships.org)

Cities, Counties and Schools Partnership  
[www.ccspartnership.org](http://www.ccspartnership.org)

HEAL Cities Campaign  
[www.healcitiescampaign.org](http://www.healcitiescampaign.org)

Healthy Eating Active Communities  
[www.healthyeatingactivecommunities.org](http://www.healthyeatingactivecommunities.org)

Leadership for Healthy Communities  
[www.leadershipforhealthycommunities.org](http://www.leadershipforhealthycommunities.org)

**HEALTHY NEIGHBORHOODS RESOURCE CENTER**

The Institute for Local Government's **Healthy Neighborhoods Project** provides resources local officials can use to protect and improve community health through planning, land use and other decisions. The Healthy Neighborhoods Resource Center includes information on a variety of topics, including:

- Economic Development and Redevelopment
- Housing
- Community Services
- Planning and Community Design
- Public Safety
- Transportation and Mobility
- Workplaces

See [www.ca-ilg.org/healthyneighborhoods](http://www.ca-ilg.org/healthyneighborhoods).

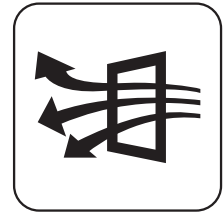
## Land Use and Climate Change

California has embarked on an ambitious course to halt and then reverse the growth in emissions of greenhouse gases that trap infrared radiation, causing average global temperatures to rise and changing the climate.

Assembly Bill 32, California's Global Warming Solutions Act of 2006, gives the California Air Resources Board broad authority to regulate sources of greenhouse gas emissions.<sup>144</sup>

Transportation accounts for 40 percent of greenhouse gas emissions, with cars

and light trucks accounting for almost three-quarters of those emissions (30 percent overall).<sup>145</sup> With that in mind, another state law (SB 375 (Steinberg), adopted in 2008),<sup>146</sup> aims to reduce greenhouse gas emissions from cars and trucks through changes in regional and local planning for land use and transportation. That law directs the California Air Resources Board to set regional targets for reducing greenhouse gases for each of the eighteen metropolitan planning organizations (MPOs) that plan transportation investments in the larger urbanized regions of the state.



### ► LAND USE AND COMMUNITY DESIGN STRATEGIES TO REDUCE GREENHOUSE GAS EMISSIONS

- Create communities and neighborhoods that are safe and convenient for walkers and bicyclists
- Orient new development to capitalize on transit system investments and services
- Adopt policies that promote compact and efficient development in new and existing communities
- Incorporate greenhouse gas emissions considerations into the general plan and environmental review process
- Establish minimum levels of energy efficiency and green building standards for local agency buildings and facilities
- Establish and implement minimum levels of energy efficiency and green building standards for new and renovated commercial and residential buildings
- Implement sustainable landscaping
- Decrease the carbon footprint of the community's waste and recycling collection system
- Reduce energy use for traffic signals and street lights

Source: Institute for Local Government's California Climate Action Network Best Practices, [www.ca-ilg.org/ClimatePractices](http://www.ca-ilg.org/ClimatePractices)

Because the existing regional transportation planning and housing allocation processes are overseen by local elected officials selected by their peers to serve on regional agency boards, SB 375 is intended to ensure that cities and counties are closely involved in developing an effective plan for the region to achieve the targets.

The new law establishes a collaborative process between regional and state agencies to set regional greenhouse gas reduction targets, and provides CEQA incentives for development projects that are consistent with a regional plan that meets those targets.

Housing and transportation decisions are coordinated through three planning processes. Regional agencies prepare the regional transportation plan and the regional housing needs assessment. Cities and counties are responsible for updating the housing element of the general plan.

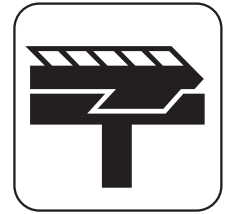
To increase public participation and local government input, the law strengthens several existing requirements for public involvement in regional planning.

#### **SB 375 HAS THREE MAJOR COMPONENTS:**

- Using the regional transportation planning process to achieve reductions in greenhouse gas emissions consistent with California's climate action goals.
- Coordinating the regional housing needs allocation process with the regional transportation process while maintaining local authority over land use decisions.
- Offering California Environmental Quality Act incentives to encourage projects that are consistent with a regional sustainable communities strategy that achieves greenhouse emission reductions.

**The Regional Transportation Plan (RTP).** An RTP is a plan that outlines transportation investments for a region. It is drafted by a Metropolitan Planning Organization (MPO) or Regional Transportation Planning Agency (RTPA) every four years (five years in regions that have attained federal air quality standards) and includes a 20-year outlook for likely growth in the region.

The RTP is the basis for state funding of transportation projects. Projects that are not in the RTP cannot be “programmed” for state or federal funding. The provisions of SB 375 apply only to the metropolitan planning organizations in the more urbanized regions of the state, and not to non-metropolitan regional transportation planning agencies typically found in more rural counties.



### ▶ **HOW DOES SB 375 AFFECT THE REGIONAL TRANSPORTATION PLAN?**

Under SB 375, the regional transportation plan must incorporate a sustainable communities strategy (SCS), a regional growth strategy that provides the basis for transportation investments in the region. The goal of the SCS is to reduce greenhouse gas emissions from transportation in the region.

To do this, the SCS identifies the “general location of uses, residential densities, and building intensities” within the region, including areas sufficient to house all economic segments of the projected regional population, while meeting the greenhouse gas targets set by the Air Resources Board. SB 375 requires that transportation funding decisions in the regional transportation plan be consistent with the sustainable communities strategy.

If the SCS falls short of meeting the targets, the region must prepare an “alternative planning strategy” (APS) that, if implemented, would meet the targets through a combination of alternative development patterns, infrastructure investments, or additional transportation measures or policies.





**The Regional Housing Needs Assessment (RHNA).** The regional housing needs assessment is a forecast of future household growth prepared by the council of governments (COG) for each region, based on population projections provided by the California Department of Housing and Community Development (HCD).

The RHNA is used to allocate the number of housing units needed to serve all income categories to each individual city and county within the region. The jurisdictions in turn use their regional housing needs allocation to periodically update the housing element of their local general plan.

**The Housing Element of the General Plan.** The housing element is one of seven elements required to be included in a city or county general plan, which governs land use and development within the community.

In general, the jurisdictions within a region where SB 375 applies must update their housing element every eight years (rather than every five years as required prior to SB 375). The updated element must demonstrate how the jurisdiction plans to accommodate its allocation of the regional housing need.

## ▶ HOW DOES SB 375 AFFECT THE REGIONAL HOUSING NEEDS ASSESSMENT AND THE LOCAL HOUSING ELEMENT?

SB 375 affects local planning for housing in two key ways. First, it synchronizes the schedule for the regional transportation plan, the regional housing needs allocation, and the update of the local housing element into a new eight-year planning cycle for each region. Secondly, SB 375 uses the SCS to serve as a common set of land use assumptions for both the regional transportation plan and the RHNA allocation.

The SCS influences RHNA and housing elements through what is essentially a four step process:

1. The California Department of Housing and Community Development (HCD) provides population growth projections to each region every eight years.
2. The MPOs for each region develop an SCS that accommodates that projection and strives to meet the regional greenhouse gas reduction target set by the Air Resources Board.
3. The council of governments for the region then allocates portions of the growth projections to the cities and counties in the region. SB 375 requires the allocation to be “consistent with the development pattern included in the sustainable communities strategy.”
4. The cities and counties then develop their housing elements to accommodate their housing allocation.

In the coming years, local planning efforts to address the causes and impacts of climate change are expected to increase dramatically in number, complexity and cost. By starting now, local communities can get ahead of the curve and guide land use and

development in ways that help reduce greenhouse gases, adapt to the changing climate, and avoid placing people, building, and critical infrastructure in harm’s way.

**RESOURCES FOR  
FURTHER INFORMATION**

**Institute for Local Government**

California Climate Action Network  
website, [www.ca-ilg.org/ClimateChange](http://www.ca-ilg.org/ClimateChange)

SB 375 Web Resource Center,  
[www.ca-ilg.org/SB375](http://www.ca-ilg.org/SB375)

*Understanding the Basics of SB375*,  
a series of publications available at  
[www.ca-ilg.org/SB375](http://www.ca-ilg.org/SB375)

*Balancing Local and Regional Interests  
when You're Asked to Serve Both*,  
at [www.ca-ilg.org/ethicsbalance](http://www.ca-ilg.org/ethicsbalance)

**Other Resources**

The following resources, among others,  
are available through the ILG SB 375  
Resource Center at [www.ca-ilg.org/SB375](http://www.ca-ilg.org/SB375):

*CAPCOA Model Policies for  
Greenhouse Gases in General Plans*  
(2009), California Air Pollution Control  
Officers Association

*CALCOG Guide to Regional Planning  
as Revised by SB 375* (2009), California  
Association of Councils of Government

# Managing the Risk of Land Use Litigation



Land use decision-making can be contentious: developers want entitlements, environmentalists want growth management, and neighborhood organizations want a say in the approval process. Other groups may also take issue with any given decision.

Land use decision-making can therefore become a “Catch-22” for local agencies: the applicant may sue if the project is denied and opposition groups may sue if the project is approved.

Often the best way to avoid litigation is to understand the legal underpinnings of land use regulation and implement good decision-making processes. Just as “walking the beat” prevents more crime than a perfectly executed search warrant, properly managing project review and designing inclusive hearing procedures are better risk management tools than merely assuring the public three minutes of testimony.



## Fair Process

Certain standards relating to fair process apply when an agency acts on a general plan amendment, specific plan,<sup>147</sup> zoning ordinance,<sup>148</sup> or subdivision approval.<sup>149</sup>

The standards vary according to whether decision-makers are acting in a

legislative or quasi-judicial capacity.<sup>150</sup>

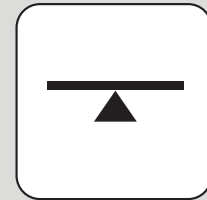
But the essence is the same: affected parties must receive adequate notice of all hearings (written in a way that can be reasonably understood) and have a fair opportunity to air concerns or rebut evidence presented.<sup>151</sup>

### LEGAL ISSUE: EQUAL PROTECTION

The Equal Protection Clause of the federal constitution requires that similarly situated persons be treated in an equal manner.<sup>152</sup> Because land use regulation is a system of classifying property requiring “line drawing,” nearly every regulation will make distinctions and affect different properties differently.<sup>153</sup> Doing so does not offend these protections. Generally, only when a regulation makes an *arbitrary* or *discriminatory* classification that affects a fundamental right will constitutional Equal Protection guarantees be implicated.<sup>154</sup> If it is “fairly debatable” that a regulation is reasonably related to a conceivable legitimate government purpose, it will generally be upheld.<sup>155</sup>

Courts apply a *strict scrutiny* standard when a regulation abridges a fundamental individual right or applies only to a suspect class.<sup>156</sup> Suspect classes include race, national origin, and personal decisions relating to marriage, procreation, family relationships, and child-rearing. In these cases, the government must show that there is a “compelling interest” for the classification.<sup>157</sup>

For example, a regulation that prohibited landlords from renting units to non-traditional couples would be more likely to be judged under the strict scrutiny standard.<sup>158</sup>



## LEGAL ISSUE: FREEDOM OF SPEECH

When analyzing free speech rights, courts first classify the type of speech or expression being regulated. Courts have drawn a distinction between *political* speech (expressing one's views or engaging in some expressive activities) and *commercial* speech (providing information about goods and services).<sup>159</sup> Regulations that affect political speech will be more strictly scrutinized.<sup>160</sup>



Most zoning regulations, however, affect commercial speech rather than political expression. Sign ordinances are a common example.<sup>161</sup> Zoning regulations (such as licensing requirements for adult businesses) that control the time, place, and manner of speech without prohibiting the speech or activity outright will generally be upheld.<sup>162</sup> To pass legal muster, the restrictions must be content neutral and there must be an alternative location where the speech or activity may take place.<sup>163</sup>

In California, a number of laws require greater notice and public involvement. For example, open meeting law requirements (the Brown Act),<sup>164</sup> the notice and publishing requirements in the Planning and Zoning Law,<sup>165</sup> and the review and comment process in the California Environmental Quality Act<sup>166</sup> (as well as the National Environmental Policy Act<sup>167</sup>) all assure specific notice and participation rights.

Courts accord a degree of deference to local agency decision-makers—particularly when decision-makers are acting legislatively.<sup>168</sup> However, courts increasingly require decisions to be supported by sound data and reasoning.<sup>169</sup> Providing such support reduces local agencies' exposure to liability and the costs of litigation.

## Takings

The Takings Clause of the U.S. Constitution limits the police power, not by prohibiting certain actions but by requiring compensation when those actions impinge too far on private property rights.<sup>170</sup> For example, if a local agency acquires private property for a public road, the local agency must pay the owner the fair market value of the land acquired. This process is known as eminent domain.<sup>171</sup>

Regulations, including land use regulations, can also impinge too far on private property rights. This is known as a regulatory taking.<sup>172</sup> An example would be a regulation that zoned an individual's entire parcel for use only as a public park. The regulation would have the same effect as a taking because it would prevent the owner from excluding others and putting the land to economic use.

There is a great deal of misunderstanding about the relationship between property rights and planning regulations. The Takings Clause is sometimes misunderstood to be a prohibition against any regulation that decreases property value or prevents the owner from "doing what they want with their land." In reality, compensation is required only in a limited set of circumstances. The Constitution permits property to be extensively regulated to protect public health and safety and promote the public's welfare; the courts have recognized that land use ordinances are just as likely to add value to property as to decrease it.<sup>173</sup>

Nevertheless, some regulations may rise to the level of a compensable taking. For example, regulations that wipe out all or almost all of a property's economic value or all the uses of a property may be deemed a taking.<sup>174</sup>

## A Starting Point for Fairness and Predictability

Fair decision-making processes promote better governance and reduce the risk of litigation. Given the emotional and financial stakes often associated with land use decisions, it is understandable that people may act out of fear or anger when the process is perceived as unfair. Constitutional and statutory procedures and criteria are minimum requirements. In this context, it is helpful to think of the overarching goals of what land use decision-making processes are trying to achieve:

- **Well-Defined General Plan.** The general plan is the cornerstone for a community's physical development. It assures that there will be sufficient housing, jobs, open space, and infrastructure. But it is also the foundation for setting expectations about how land can be developed.

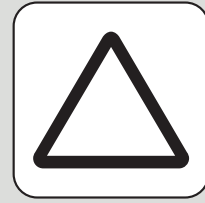
As such, a well-defined vision in the general plan serves as the baseline for a land use risk-management strategy.

- **Inclusive and Informed Decision-Making.** If a decision is only as good as the evidence supporting it, the information-gathering process is important to well-reasoned decisions. Inviting the public to weigh in on proposals helps decision-makers identify issues and limit the risk associated with unintended consequences. Such information can also identify measures that will address issues and unintended consequences. The information may also be used to craft findings that better support the final decision.
- **Predictability.** Interested parties should be able to reasonably predict what types of projects will be approved or denied. Failure to define or prioritize criteria results in inconsistent decisions that are more likely to be interpreted as arbitrary by courts.



## GENERAL PREVENTATIVE RISK MANAGEMENT STRATEGIES

- **Regularly Review Land Use Controls.** Agency staff should regularly review zoning and subdivision ordinances to assure they are up-to-date. Areas to watch include environmental, sign, adult entertainment, telecommunications, and affordable housing requirements. Also, the agency should assure that the language in current regulations is consistent with past staff and council interpretations of policy.
- **Provide Strong Staff Support.** Provide support for all decision-makers, including elected officials, planning commissioners, design review board members, and even zoning administrators. Full staff support helps the process move more quickly and predictably. It also assures that all relevant information will be analyzed in the staff report and that adequate findings will be drafted in support of the decision.
- **Develop Written Hearing Procedures.** A written set of procedures to follow at each public hearing will help reduce contentiousness. Both the applicant and the public will know what to expect. Ideally, the procedures should include a description of the process, the time limits in which the hearing will be held, how testimony will be heard, and overall meeting decorum.
- **Act As An Unbiased Fact Finder.** Many land use matters involve a quasi-judicial hearing where the decision-maker evaluates standards and applies them to a given set of facts. Here, the decision-maker is playing a role similar to that of a judge and must retain a degree of neutrality. Decision-makers should refrain from talking with applicants (except at meetings) and avoid the appearance of favoritism.
- **Get Training.** Everyone involved in land use decision-making—from the new planning commissioner to the most seasoned staff—should have regular training opportunities to better understand each other's role, stay abreast of recent developments, and develop new ideas.



■ **Balance Benefits and Burdens.**

Predictability does not mean that the same decision must be made for each application. Each parcel is unique. Land use regulation is built on the premise that the sum of an agency's plans, ordinances, and policies will balance the benefits and burdens of regulation. This assures that different areas are set aside for housing, commercial activities, schools, and open space.

■ **Specificity, in Plain Language.**

Policies, final decisions, and even comments from decision-makers should be easy to understand. Avoid acronyms and definitions that can confuse those who do not work in the field professionally.

The decision-making process should always be objective and consistent. People do not generally fare well with uncertainty and predictability. With good planning, much of the contentiousness surrounding the land use decision-making process can be resolved.

**RESOURCES FOR FURTHER INFORMATION**

**Institute for Local Government**

*Regulatory Takings and Land Use Regulation: A Primer for Public Agency Staff* (July 2006) ([www.ca-ilg.org/takings](http://www.ca-ilg.org/takings))

*An Ounce of Prevention: Best Practices for Making Informed Land Use Decisions* (2006) ([www.ca-ilg.org/ounce](http://www.ca-ilg.org/ounce))

*Understanding the Basics of Public Service Ethics: Transparency Laws* (see [www.ca-ilg.org/transparency](http://www.ca-ilg.org/transparency))

**Other Resources**

*Open and Public IV: A Guide to the Ralph M. Brown Act* (2007). Available on the League of California Cities website at [www.cacities.org/openandpublic](http://www.cacities.org/openandpublic), in hardcopy form by visiting [www.cacities.org/publications](http://www.cacities.org/publications), or by calling (916) 658-8257.

*The Brown Act: Open Meetings for Local Legislative Bodies* (2003). Available on the California Attorney General's website at <http://ag.ca.gov/> (select "Programs A-Z," click on "Publications," then click on "Open Meetings") or by going to. <http://ag.ca.gov/publications/brownAct2003.pdf>.



# Endnotes

- 1 See Cal. Const. art. XI, § 7, *DeVita v. County of Napa*, 9 Cal. 4th 763, 38 Cal. Rptr. 2d 699 (1995).
- 2 Cal. Const. art. XI, § 7; See *Sequoia Park Associates v. County of Sonoma*, 176 Cal. App. 4th 1270, 98 Cal. Rptr. 3d 669 (2009).
- 3 *Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926); See *Big Creek Lumber Co. v. County of Santa Cruz*, 38 Cal. 4th 1139, 45 Cal. Rptr. 3d 21 (2006).
- 4 See *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490 (1981); *Citizens for Jobs and the Economy v. County of Orange*, 94 Cal. App. 4th 1311, 115 Cal. Rptr. 2d 90 (2002), *DeVita v. County of Napa*, 9 Cal. 4th 763, 38 Cal. Rptr. 2d 699 (1995).
- 5 Cal. Gov't Code § 65100.
- 6 Cal. Gov't Code § 65101.
- 7 Cal. Gov't Code §§ 65900 – 65902.
- 8 Cal. Gov't Code §§ 36506, 65100.
- 9 Cal. Gov't Code §§ 65900 – 65901.
- 10 Cal. Gov't Code §§ 65900, 65903.
- 11 See *Members of City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789 (1984), *Friends of Davis v. City of Davis*, 83 Cal. App. 4th 1004, 100 Cal. Rptr. 2d 413 (2000).
- 12 See *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978).
- 13 Cal. Gov't Code § 65300.
- 14 Cal. Gov't Code §§ 66473.5, 65860.
- 15 See *Sierra Club v. Napa County (Beringer Wine Estates)*, 121 Cal. App. 4th 1490, 19 Cal. Rptr. 3d 1 (2004).
- 16 Cal. Gov't Code § 65302.
- 17 Cal. Gov't Code § 65302(a).
- 18 Cal. Gov't Code § 65302(b).
- 19 See Cal. Gov't Code §§ 65583 and following; *Black Property Owners Association v. City of Berkeley*, 22 Cal. App. 4th 974, 981-82, 28 Cal. Rptr. 2d 305 (1994).
- 20 Cal. Gov't Code § 65302(d).
- 21 Cal. Gov't Code § 65302(e).
- 22 Cal. Gov't Code § 65302(f); see also Cal. Gov't Code § 65302.3.



- 23 Cal. Gov't Code § 65302(g).
- 24 Cal. Gov't Code § 65303.
- 25 *See Pala Band of Mission Indians v. Board of Supervisors*, 54 Cal. App. 4th 565, 63 Cal. Rptr. 2d 148 (1997).
- 26 Cal. Gov't Code §§ 65301-65302.
- 27 *See, for example*, Cal. Gov't Code §§ 66473.5 and 66474 (subdivision map approvals); Cal. Gov't Code §§ 65359 and 65454 (specific plan or other development plan and amendments); Cal. Gov't Code § 65867.5 (development agreements); Cal. Gov't Code §§ 65401 and 65402 (public works projects, acquisition or disposition of public property and construction of public buildings); Cal. Gov't Code § 65403 (capital improvement programs by joint powers agencies); Cal. Health & Safety Code §§ 33331 and 33367 (redevelopment projects); and Cal. Health & Safety Code § 34326 (housing authority projects).
- 28 Cal. Gov't Code § 65300.5.
- 29 Governor's Office of Planning and Research, State of California, *General Plan Guidelines* (2003).
- 30 *See Federation of Hillside and Canyon Associations v. City of Los Angeles*, 126 Cal. App. 4th 1180, 24 Cal. Rptr. 3d 543 (2004).
- 31 *See Shea Homes Ltd. Partnership v. County of Alameda*, 110 Cal. App. 4th 1246, 2 Cal. Rptr. 3d 739 (2003), *Cadiz Land Co., Inc. v. Rail Cycle, L.P.*, 83 Cal. App. 4th 74, 99 Cal. Rptr. 2d 378 (2000).
- 32 Governor's Office of Planning and Research, State of California, *General Plan Guidelines* (2003).
- 33 Cal. Gov't Code §§ 66473.5 and 66474.
- 34 Cal. Gov't Code §§ 65359, 65454 and 65860. *Endangered Habitats League, Inc. v. County of Orange*, 131 Cal. App. 4th 777, 32 Cal. Rptr. 3d 177 (2005), *Mira Development Corp. v. City of San Diego*, 205 Cal. App. 3d 1201, 252 Cal. Rptr. 825 (1988).
- 35 Cal. Gov't Code § 65803.
- 36 Cal. Gov't Code § 65450.
- 37 Cal. Gov't Code §§ 65450 and following.
- 38 Cal. Gov't Code §§ 65359, 65454; *see Endangered Habitats League v. Orange County (Rutter Development)*, 131 Cal. App. 4th 777, 32 Cal. Rptr. 3d 177 (2005), *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors*, 91 Cal. App. 4th 342, 110 Cal. Rptr. 2d 579 (2001).
- 39 *Sierra Club v. Napa County (Beringer Wine Estates)*, 121 Cal. App. 4th 1490, 19 Cal. Rptr. 3d 1 (2004).
- 40 Cal. Gov't Code § 65453(a).

- 41 Cal. Health & Safety Code §§ 33000 and following. *See also* Cal. Health & Safety Code §§ 33030, 33031 (defining blight).
- 42 Cal. Health & Safety Code § 33200.
- 43 Cal. Health & Safety Code § 33110.
- 44 *See* Cal. Health & Safety Code §§ 33010, 33020, 33021.
- 45 Cal. Health & Safety Code § 33331.
- 46 *City of Poway v. City of San Diego*, 229 Cal. App. 3d 847, 280 Cal. Rptr. 368 (1991).
- 47 Cal. Gov't Code § 65358.
- 48 Cal. Gov't Code § 65700(a).
- 49 Cal. Gov't Code §§ 65355, 65356.
- 50 *See DeVita v. County of Napa*, 9 Cal. 4th 763, 38 Cal. Rptr. 2d 699 (1995).
- 51 Cal. Gov't Code § 65360.
- 52 *See* Cal. Gov't Code § 65588(b) and (e)(7).
- 53 Cal. Gov't Code § 65400.
- 54 Cal. Gov't Code §§ 66473.5 and 66474.
- 55 *Endangered Habitats League v. Orange County (Rutter Development)*, 131 Cal. App. 4th 777, 32 Cal. Rptr. 3d 177 (2005).
- 56 *Sierra Club v. Board of Supervisors*, 126 Cal. App. 3d 698, 179 Cal. Rptr. 261 (1981).
- 57 *Suter v. City of Lafayette*, 57 Cal. App. 4th 1109, 67 Cal. Rptr. 2d 420 (1997).
- 58 *See Village of Euclid v. Ambler Realty Company*, 272 U.S. 365 (1926).
- 59 *See Martin v. City and County of San Francisco*, 135 Cal. App. 4th 392, 37 Cal. Rptr. 3d 470 (2005).
- 60 *Pala Band of Mission Indians v. Board of Supervisors*, 54 Cal. App. 4th 565, 63 Cal. Rptr. 2d 148 (1997).
- 61 *Gonzalez v. County of Tulare*, 65 Cal. App. 4th 777, 76 Cal. Rptr. 2d 707 (1998).
- 62 Cal. Gov't Code § 65860; *Building Industry Association of San Diego v. City of Oceanside*, 27 Cal. App. 4th 744, 33 Cal. Rptr. 2d 137 (1994). *See also* Cal. Gov't Code § 65860(a) (defining consistency). All ordinances enacted by a charter city having a population of at least 2 million must be consistent with its general plan. Cal. Gov't Code § 65860(d).
- 63 *See* Cal. Gov't Code § 65902.
- 64 Cal. Gov't Code §§ 65900 – 65901.

- 65 *See Members of City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789 (1984), *Friends of Davis v. City of Davis*, 83 Cal. App. 4th 1004, 100 Cal. Rptr. 2d 413 (2000).
- 66 *Gonzalez v. County of Tulare*, 65 Cal. App. 4th 777, 76 Cal. Rptr. 2d 707 (1998).
- 67 *Malibu Mountains Recreation v. Los Angeles County*, 67 Cal. 4th 359, 79 Cal. Rptr. 2d 25 (1995).
- 68 *Garavatti v. Fairfax Planning Comm.*, 22 Cal. App. 3d 145, 99 Cal. Rptr. 260 (1971); *Community Development Comm. v. City of Fort Bragg*, 204 Cal. App. 3d 1124, 251 Cal. Rptr. 709 (1988).
- 69 *Bauer v. City of San Diego*, 75 Cal. App. 4th 1281, 89 Cal. Rptr. 2d 795 (1999); *Korean American Legal Advocacy Foundation v. City of Los Angeles* 23 Cal. App. 4th 376, 28 Cal. Rptr. 2d 530 (1994).
- 70 Cal. Gov't Code § 65906.
- 71 *Id.*
- 72 *Id.*; *Craik v. County of Santa Cruz*, 81 Cal. App. 4th 880, 96 Cal. Rptr. 2d 538 (2000).
- 73 *Millbrae Association. for Residential Survival v City of Millbrae*, 262 Cal. App. 2d 222, 69 Cal. Rptr. 251 (1968).
- 74 *Bauer v. City of San Diego*, 75 Cal. App. 4th 1281, 89 Cal. Rptr. 2d 795 (1999).
- 75 *Id.*
- 76 *Hansen Brothers Enterprises, Inc. v. Board of Supervisors*, 12 Cal. 4th 533, 48 Cal. Rptr. 2d 778 (1996).
- 77 *Id.*
- 78 Cal. Gov't Code § 66424.
- 79 Cal. Gov't Code §§ 66410 and following.
- 80 Cal. Gov't Code § 66464.
- 81 Cal. Gov't Code § 66411.
- 82 Cal. Gov't Code § 66426.
- 83 Cal. Gov't Code § 66426(a)-(e).
- 84 Cal. Gov't Code § 66424.5.
- 85 Cal. Gov't Code §§ 66411, 66418-66419.
- 86 Cal. Gov't Code § 66464.
- 87 Cal. Gov't Code § 66434.
- 88 Cal. Gov't Code § 66458.
- 89 Cal. Gov't Code § 66429.
- 90 Cal. Gov't Code § 66426.

- 91 Cal. Gov't Code § 66463.
- 92 Cal. Gov't Code § 66411.1(a).
- 93 Cal. Gov't Code §§ 66411, 66418-66419.
- 94 Cal. Gov't Code § 66498.1.
- 95 *See Members of City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789 (1984), *Friends of Davis v. City of Davis*, 83 Cal. App. 4th 1004, 100 Cal. Rptr. 2d 413 (2000).
- 96 Cal. Pub. Res. Code §§ 21000 and following.
- 97 14 Cal. Code Regs. § 15063.
- 98 Cal. Pub. Res. Code § 21081; 14 Cal. Code Regs. § 15093.
- 99 *See* Cal. Pub. Res. Code §§ 21080 - 21080.33.
- 100 *See* Cal. Pub. Res. Code §§ 21083.3, 21090, 21093, 21094, 21156 - 21159.4; 14 Cal. Code Regs. §§ 15152, 15165 - 15179.5, 15183.
- 101 Cal. Gov't Code § 65080(b)(2)(I).
- 102 *See Mejia v. City of Los Angeles*, 130 Cal. App. 4th 322, 29 Cal. Rptr. 3d 788 (2005); *Citizens for Responsible and Open Government v. City of Grand Terrace*, 160 Cal. App. 4th 1323, 73 Cal. Rptr. 3d 202 (2008); *Ocean View Estates Homeowners Association, Inc. v. Montecito Water Dist.*, 116 Cal. App. 4th 396, 10 Cal. Rptr. 3d 451 (2004). *See generally* Cal. Pub. Res. Code §§ 21080(d), 21082.2(d); 14 Cal. Code Regs. § 15064(f).
- 103 *See* 14 Cal. Code Regs. § 15382.
- 104 *See Moss v. County of Humboldt*, 162 Cal. App. 4th 1041, 76 Cal. Rptr. 3d 428 (2008).
- 105 Cal. Pub. Res. Code § 21067; 14 Cal. Code Regs. § 15367.
- 106 Cal. Pub. Res. Code § 21083.9.
- 107 This has been the responsibility of the Governor's Office of Planning and Research. *See* Cal. Gov't Code §§ 65040 - 65040.6. The status of this agency is uncertain as this publication goes to press.
- 108 Cal. Pub. Res. Code § 21091(a); 14 Cal. Code Regs. § 15105.
- 109 Cal. Pub. Res. Code § 21091(d); 14 Cal. Code Regs. § 15088.
- 110 Cal. Pub. Res. Code § 21092.1; 14 Cal. Code Regs. § 15088.5.
- 111 14 Cal. Code Regs. § 15132.
- 112 14 Cal. Code Regs. §§ 15003(i), 15151. *See generally Laurel Heights Improvement Association v. Regents of University of California*, 47 Cal. 3d 376, 390-93, 253 Cal. Rptr. 426, 429-32 (1988) (for a concise summary of CEQA principles applicable to an EIR).
- 113 14 Cal. Code Regs. § 15074.

- 114 Cal. Pub. Res. Code § 21081; 14 Cal. Code Regs. § 15091; *City of Marina v. Board of Trustees of the California State University*, 39 Cal. 4th 341, 46 Cal. Rptr. 3d 355 (2006).
- 115 Cal. Pub. Res. Code § 21080(f); 14 Cal. Code Regs. § 15074.1.
- 116 Cal. Pub. Res. Code § 21081.6; 14 Cal. Code Regs. § 15097.
- 117 Cal. Pub. Res. Code § 21081; 14 Cal. Code Regs. § 15093.
- 118 Cal. Pub. Res. Code § 21060.5.
- 119 16 U.S.C. §§ 1531-1544.
- 120 33 U.S.C. §§ 1251 and following.
- 121 42 U.S.C. §§ 7401 and following.
- 122 14 Cal. Code Regs. § 15090.
- 123 Cal. Pub. Res. Code § 21081; 14 Cal. Code Regs. § 15093.
- 124 14 Cal. Code Regs. § 15105.
- 125 Cal. Pub. Res. Code §§ 21080.4, 21091, 21092.3.
- 126 Cal. Pub. Res. Code § 21081.6(a)(2); 14 Cal. Code Regs. §§ 15074(c), 15091(e).
- 127 *See Cotta v. City and County of San Francisco*, 157 Cal. App. 4th 1550, 69 Cal. Rptr. 3d 612 (2007).
- 128 *See* Cal. Gov't Code §§ 65864 and following.
- 129 Cal. Gov't Code § 65866. *See Stephens v. City of Vista*, 994 F.2d 650 (9th Cir. 1993).
- 130 *See* Cal. Gov't Code §§ 65864 and following; *National Parks & Conservation Assn. v. County of Riverside*, 42 Cal. App. 4th 1505, 50 Cal. Rptr. 2d 339 (1996).
- 131 Cal. Gov't Code § 65865.2.
- 132 *Id.*
- 133 Cal. Gov't Code § 65867.5.
- 134 Cal. Gov't Code § 66000(b).
- 135 *See Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992).
- 136 Cal. Gov't Code § 66001. *See Dolan v. City of Tigard*, 512 U.S. 374 (1994).
- 137 59 Cal. Op. Att'y Gen. 129 (1976).
- 138 Cal. Gov't Code § 66002.
- 139 *See, for example* Cal. Gov't Code §§ 66475-66475.3.
- 140 14 Cal. Code Regs. § 15126.4.
- 141 Cal. Gov't Code §§ 66000-66025.

- 142 Ali H. Mokdad; Mary K. Serdula; William H. Dietz; Barbara A. Bowman; James S. Marks; Jeffrey P. Koplan, *The Spread of the Obesity Epidemic in the United States, 1991-1998*, Journal of the American Medical Association, 199;282:1523-29.
- 143 See Lawrence D. Frank, Peter O. Engelke, and Thomas L. Schmid, *Health and Community Design* (Island Press, 2003).
- 144 See Cal. Health & Safety Code §§ 38500 and following.
- 145 California State Association of Counties, *Addressing Greenhouse Gas Emissions from the Transportation Sector Via Regional Transportation Plans* (October 21, 2008).
- 146 SB 375 (Steinberg, Chapter 728, Statutes of 2008).
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- 148 *County Sanitation Dist. No. 2 of Los Angeles County v. County of Kern*, 127 Cal. App. 4th 1544, 27 Cal. Rptr. 3d (2005).
- 149 *McPherson v. City of Manhattan Beach*, 78 Cal. App. 4th 1252, 93 Cal. Rptr. 2d 725 (2000).
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- 151 *Harris v. County of Riverside*, 904 F.2d 497 (9th Cir. 1990), *Clark v. City of Hermosa Beach*, 48 Cal. App. 4th 1152, 56 Cal. Rptr. 2d 223 (1996).
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- 153 *Ewing v. City of Carmel-By-The-Sea*, 234 Cal. App. 3d 1579, 286 Cal. Rptr. 382 (1991).
- 154 *Stubblefield Construction Co. v. City of San Bernardino*, 32 Cal. App. 4th 687, 714, 38 Cal. Rptr. 2d 413 (1995), *cert. denied*, 516 U.S. 913 (1995).
- 155 *Christensen v. Yolo County Board of Supervisors*, 995 F.2d 161 (9th Cir. 1993); *County Sanitation District No. 2 v. Kern County*, 127 Cal. App. 4th 1544, 27 Cal. Rptr. 3d 28 (2005).
- 156 *Nelson v. City of Selma*, 881 F.2d 836 (9th Cir. 1989).
- 157 Cf. *Moore v. City of East Cleveland*, 431 U.S. 494 (1977) (applying strict scrutiny to a regulation that prevented a grandmother from living with her grandson).
- 158 *Id.*
- 159 *Central Hudson Gas & Elec. Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1980), *Kasky v. Nike, Inc.*, 27 Cal. 4th 939, 119 Cal. Rptr. 2d 296 (2002).
- 160 *Boos v. Barry*, 485 U.S. 312 (1988).
- 161 *Desert Outdoor Advertising, Inc. v. City of Moreno Valley*, 103 F.3d 814 (9th Cir. 1996), *cert. denied*, 522 U.S. 912 (1997).
- 162 *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *City of National City v. Wiener*, 3 Cal. 4th 832, 12 Cal. Rptr. 2d 701 (1992), *cert. denied*, 510 U.S. 824 (1993); see also *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002) (upholding an ordinance prohibiting the concentration of more than one adult business in a single structure).

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- 164 Cal. Gov't Code §§ 54950 and following.
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- 166 Cal. Pub. Res. Code § 21091.
- 167 40 C.F.R § 1506.6.
- 168 *Small v. Superior Court*, 148 Cal. App. 4th 222, 55 Cal. Rptr. 3d 410 (2007).
- 169 *Committee to Save Hollywoodland Specific Plan v. City of Los Angeles*, 161 Cal. App. 4th 1168, 74 Cal. Rptr. 3d (2008).
- 170 U.S. Const. amend. V. To the same effect is Article 1, Section 19 of the California Constitution: "Private property may be taken or damaged for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner."
- 171 *See Palazzolo v. Rhode Island*, 533 U.S. 606, 617 (2001).
- 172 *See Lingle v. Chevron U.S.A.*, 544 U.S. 528 (2005).
- 173 *Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency*, 535 U.S. 302 (2002).
- 174 *Long Beach Equities, Inc. v. County of Ventura*, 231 Cal. App. 3d 1016, 282 Cal. Rptr. 877 (1991).

# Resources for Further Information

## General Websites

### **California Land Use Planning Information Network**

<http://ceres.ca.gov/planning/>

### **Institute for Local Government**

[www.ca-ilg.org](http://www.ca-ilg.org)

## Publications

### **Land Use and Planning**

#### **Governor's Office of Planning and Research**

The Governor's Office of Planning and Research has produced many useful resources on planning. See [www.ca-ilg.org/opr](http://www.ca-ilg.org/opr).

#### **Institute for Local Government**

*An Ounce of Prevention: Best Practices for Making Informed Land Use Decisions* (2006) ([www.ca-ilg.org/ounce](http://www.ca-ilg.org/ounce))

*Glossary of Land Use and Planning Terms* (2010) ([www.ca-ilg.org/planningterms](http://www.ca-ilg.org/planningterms))

*Land Use One-Pagers* (2007) ([www.ca-ilg.org/onepaggers](http://www.ca-ilg.org/onepaggers))

*Regulatory Takings and Land Use Regulation: A Primer for Public Agency Staff* (July 2006) ([www.ca-ilg.org/takings](http://www.ca-ilg.org/takings))

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# PLANNING COMMISSION HANDBOOK

City of San Mateo, 330 West 20<sup>th</sup> Avenue, San Mateo, CA 94403  
www.cityofsanmateo.org Planning Commission@cityofsanmateo.org

November 2002 (Rev 01/06/14)  
(650) 522-7202

Citizens should be thanked for taking on the job of a Planning Commissioner. The long hours and hard work may cause a person to wonder whether it's all worth it. **IT IS.** Planning Commissioners help to set directions for the community and make decisions that affect its residents and its future. The special role of the Planning Commission is confirmed by the authority given in state law and by local ordinance.

The job of the Planning Commissioner, in its larger sense, includes the responsibility of balancing individual rights with the public welfare; the challenge of making decisions that affect the future of the community; and the ability to analyze problems and resolve difficult situations. These may not characterize every Planning Commission meeting, but they show the scope of responsibility of a Planning Commission, and indicate the seriousness of the work that the Planning Commission undertakes.

Planning Commissions decide on land-use and development issues important to the future and well-being of the community. Planning Commissioners often are appointed without any prior training in planning or in their role as members of a public body. They must "learn the ropes" as best they can. While most Planning Commissioners learn how to do their jobs this way, and some excel, training and education can help Planning Commissioners with their job. **This Planning Commission Handbook** will help Planning Commissioners by providing information on planning and guidance on the conduct of the Planning Commission's activities. This handbook is not a formally adopted City of San Mateo document, nor does it set forth official City policy. Instead, it is intended to be a practical guide to some of the issues faced by Planning Commissioners.

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## Chapter 1 - Welcome to the Planning Commission

### Introduction

A person's life is almost certain to become more interesting when asked to serve on the Planning Commission. He/She attends regular meetings, special meetings, and work sessions, evaluates projects and proposals, and makes tough decisions about community development projects and policies. New terms and concepts are encountered; more knowledge is gained about activities happening around town; and a greater understanding about government and public decision-making begins to develop.

A good Planning Commission must take the future seriously. To be a good Planning Commissioner requires commitment to ensuring a promising future of the community coupled with hard work, the patience to listen, and the willingness and ability to make decisions.

A good Planning Commissioner must have some understanding of the basic topics:

- What Planning is;
- Zoning and Subdivision law;
- The California Environmental Quality Act (CEQA);
- Planning Commission procedures;
- The authority and duties of the Planning Commission;
- Legal aspects of Planning Commission conduct; and
- Standards for Planning Commission decision-making.

The purpose of this handbook is to provide this information. Although being a Planning Commissioner will always be challenging, reading this handbook will make the challenge easier and more understandable.

### What is a Planning Commission?

As used in this handbook, a Planning Commission refers to a body of citizens that serve local government. The Planning Commission is an advisory group to the City Council on issues and policies related to planning and land use regulation and community development in general, although in many (most) cases, the Planning Commission has the ability to make a final decision, pending appeal to the City Council.

California Planning and Zoning Law allows cities and counties to establish Planning Commissions and provide for planning, subdivision and land use regulation. A City Council or Board of Supervisors choosing not to establish a Planning Commission would serve as the Planning Commission instead (this is a rare occurrence.)

Each city or county establishing a Planning Commission passes an ordinance that defines its duties and scope, and which may identify the number of members, their qualifications, how vacancies are filled, the frequency of regular meetings, who serves as their staff, and general operating procedures.

### Planning Commission Duties

Duties usually assumed by the Planning Commission include, but are not limited to:

- Holding public hearings and meetings;
- Reviewing the General Plan;
- Reviewing and recommending zoning code regulations;
- Recommending the reclassifications of a property’s zoning;
- Reviewing subdivision maps;
- Acting on variances, special use permits, site plan and architectural reviews, and other types of planning applications;
- Reviewing and recommending special studies.

The role of the Planning Commission in shaping the future of a community is extremely important. The City Council is often engaged in the issues of the day and unable to spend sufficient time studying current or planned development activities. The Planning Commission can play a key role by taking the lead in reviewing and evaluation land-use and development issues in both the short-term **and** the long-term.

### Some Rules of Thumb

After a person has been on the Planning Commission for a while, they will begin to recognize “pointers”, or “rules of thumb”, about how the Planning Commission should conduct its business. Listed below are some “pointers” that should help to provide some guidance. They are taken from the experience of other Planning Commissions, from Planning Commission materials prepared in other states, and from other training publications.

- Develop and adopt bylaws and procedures, and stick to them.
- Have the staff develop and make available accurate and reliable information, including data and maps.
- Prepare and maintain an adequate General Plan, refer to it, and make decisions that are consistent with its policies. Also, implement the Plan and its policies.
- Annually re-examine what the Planning Commission is doing, how well it is doing it, and how to do it better.

- Meet periodically with the City Council to exchange ideas and to assess mutual objectives (normally done in joint study sessions.)
- Tell staff what is wanted and how material should be presented to the Planning Commission. Don't wait for the experts to tell the Planning Commission what to do next.
- If possible, attend some short courses on planning techniques or the latest in land-use law and expect the staff to do the same.
- Find out what other communities are doing. Sometimes it's surprising to find out how far ahead your community is in comparison.
- Lobby for good planning. If the Planning Commission doesn't, who will?
- Take time to orient new Planning Commissioners to the job. Remember how tough it is to get the hang of being new?
- Have the staff keep organized and complete files. There is no substitute for a complete record of Planning Commission action.
- Be consistent in decision-making.



## Chapter 2 - Role and Activities of the Planning Commission

### Introduction

Planning Commissioners put in long hours of hard work resolving complex, sometimes difficult, issues. Why would citizens want to subject themselves to long hours and hard work for little compensation and little public recognition? Probably because they are people who take an active interest in the welfare of their community and are willing to put that civic-mindedness to work. While the job can be difficult, it is also rewarding to participate in decisions and formulate ideas that will help shape the physical, social, and economic future of the community.

### Purpose of the Planning Commission

The Planning Commission acts on behalf of the City Council in deciding on and recommending land-use activities and related matters. The City Council does not have time to do their job and the job of the Planning Commission as well. This is not only because their workload may be too large, but also because the job of planning is too important to leave unattended. The Planning Commission has the authority and the responsibility to play a central role in making decisions and advising the City Council in land-use concerns and development issues.

### The Authority of the Planning Commission

The Planning Commission derives its authority and duties through California Government Code Section 65101 and Section 6.04 of the Charter of the City of San Mateo. That authority is further detailed in the Municipal Code Chapter 2.24 defining the composition and duties of the Planning Commission.

### Duties of the Planning Commission

The duties of the Planning Commission will vary from community to community depending on factors such as support for planning on the City Council, the community's rate of growth, responsibilities prescribed by ordinance, and community attitudes about planning. The following list of duties shows the range of activities with which a Planning Commission may become involved.

**Assist in the preparation of a General Plan.** The General Plan, which is discussed in more detail in the next chapter, contains policy statements about community development and a map displaying intended land-use in the community. The General Plan can be the most important document the Planning Commission will prepare, since, if properly prepared and followed, it will be the blueprint for decision-making on land-use and development.

**Review and Recommend Zoning Code Regulations.** Zoning code regulations (as well as other means) are used to implement the General Plan. The Planning Commission is closely involved in the preparation and amendment of zoning code regulations and provides recommendations to the City Council.

**Review and Recommend the Reclassification of Property.** The Planning Commission reviews proposed zoning reclassifications and makes a recommendation to the City Council whether a zoning change should be granted. The City Council has the final decision, since reclassifications are approved by ordinance.

**Act on Planning Applications (PA's).** The Planning Commission has the authority to approve or deny planning applications which include variances, special use permits, and subdivision maps. Included with these PA's are environmental documents such as Environmental Impact Reports (EIR's) and Negative Declarations.

**Hear Appeals of Zoning Administrator Decisions.** The Planning Commission hears appeals of Zoning Administrator decisions. In addition, in some instances the Zoning Administrator may refer items up to the Planning Commission for review or Planning Commissioners may call up Zoning Administrator decisions for review.

**Hold Public Meetings and Hearings.** This may seem too obvious to mention, however, it's perhaps the most important activity the Planning Commission undertakes. Public meetings and hearings provide an opportunity for direct interaction between the Planning Commission and local residents. This gives local residents an opportunity to see the Planning Commission "in action", and gives the Planning Commission members the chance to hear first-hand about residents' concerns.

### Characteristics of the ideal Planning Commission

Having the right kind of members on the Planning Commission can be critical to its success as a productive and respected group. A Planning Commission interested in its work, with a collective sense of its mission and responsibilities will fare much better than one which is disorganized and lacks a clear grasp of its public duties. A dedicated individual who understands the community and is willing to work for its well-being is the best kind of Planning Commissioner.

The ideal Planning Commission should reflect the following:

- **Balance.** Membership on the Planning Commission should attempt to reflect the diversity of the community while at the same time consisting of people who are known to be level-headed, practical, and willing to work together. The Planning Commission should not be composed of people who think alike. Nor should a Planning Commission be appointed that has individual members so opinionated that they cannot reach consensus.
- **Skills.** A Planning Commission should not be made up of just architects and engineers or business owners or builders. A range of skills is needed to provide depth and perspective in the Planning Commission's deliberations.
- **Understanding of Community.** A Planning Commissioner should have some understanding of the forces that are shaping events in the community. This would include understanding attitudes and issues about growth and development, knowing how the local economy works, and having some knowledge of community land-use and development trends.

- **Understanding the Public Process.** Planning Commissioners represent and work on behalf of the public. The interests of the public must be kept in mind in both the way that business is conducted (procedural) and in the decisions that are made (substantive). Planning Commissioners should understand that working in a public process can be frustrating and time-consuming. This is because everyone's interests – the interests of the community at large – must be heeded, and not just those of particular advocacy groups or individuals.
- **Commitment to Planning.** Planning Commissioners will not always agree on what constitutes good planning but they should all agree that planning is important.
- **Conflict of Interest.** A Planning Commissioner who frequently has to declare a conflict of interest and refrain from voting is not a fully participating member of the body. While it is more difficult in smaller towns, the City Council should try to select Planning Commissioners with little or no conflict of interest.
- **Special Interests.** A Planning Commission which is seen as being too cozy with special interest groups will lose credibility with the public and could find its decisions constantly under scrutiny or even being challenged in the courts. Public loss of confidence in the Planning Commission could result in qualified people declining to apply and a gradual deterioration in the Planning Commission's ability to do the public's work.
- **Objectivity.** This important trait is basically the ability to distinguish between fact and opinion. Planning Commissioners should be able to support decisions based on the facts, even if it disagrees with their personal opinion.
- **Sufficient Free Time.** A Planning Commissioner should have the time to, not only attend meetings and work sessions, but also to prepare for the meetings beforehand. No community is well served by a Planning Commissioner who is unprepared and tries to "wing it" at public hearings. Planning Commissioners should also have time to attend training sessions during the year.

## The Planning Commission's Relationship with Staff and Elected Officials

**Relationship to the City Council.** The most important aspect of the relationship between the Planning Commission and the City Council is the Planning Commission's advisory role for certain types of approvals, such as General Plan amendments, zoning reclassifications, zoning code amendments, and planned developments. Advisory means that the Planning Commission makes recommendations to the City Council and the City Council has the final say.

For example, the Planning Commission might recommend a change in the zoning code but it is the City Council that takes final action on the recommendation. The City Council has the authority to make changes from the Planning Commission's recommendation. A Planning Commission that has a good working relationship with the City Council can play a key role in keeping the City Council informed and

educated about planning issues. If the Planning Commission can give the City Council good, solid reasons for the positions it takes, the changes are improved that its positions will be accepted.

**Relationship with City Staff.** The Planning Director or planning staff person may work for the Planning Commission but is not hired by the Planning Commission. The Planning Commission needs to understand that even though the planner may serve as its staff by preparing findings and reports, the position is accountable to the Community Development Director, who is, in turn, accountable to the City Manager. It is within the Planning Commission's authority to seek information from the planner, to ask for recommendations on actions before the Planning Commission and to rely on the planner's ability to provide technical assistance and expert knowledge.

It is not within the Planning Commission's authority, however, to tell the planner to prepare a new General Plan or rewrite the zoning code. These kinds of major undertakings must be approved by the City Council, although the Planning Commission may recommend that the City Council direct staff to undertake a particular study.

## Chapter 3 - Introduction to Planning

### Introduction

Community planning at the local government level is an effort to shape the community's future through decisions made today regarding land-use, capital improvements, community design, city finances and so on. Planning and land use regulations are a necessary activity of a community wants to shape its future. With the direction and guidance that planning can provide, the community can grow in a more orderly, cost effective manner.

It is important to remember that planning is an ongoing process. It is a continuing activity, as ideas, values, and policies change to reflect the community's changing conditions. Planning can involve differing, even opposite points of view, and disagreements may arise that may be difficult to resolve. Yet the effort can be a rewarding one if the community finds common ground and faces the future together.

### What is Planning?

Everyone plans. Planning is an activity that touches just about every aspect of life. Individuals plan their daily schedule as well as more long-range activities such as trips and vacations. Friends plan trips, or may organize their efforts to engage in other types of group activities. Families plan for major purchases such as a home or new car. Businesses plan their purchasing, inventory, pricing and marketing. The common thread that runs through these seemingly different activities is the time, effort and expense that is saved in the future by thinking ahead and plotting a course of action today. City planning may involve more people and be more complex than planning a three-day vacation, but it shares that common thread of organizing the future.

### Why Plan?

Communities can realize tangible benefits from planning:

**Planning Saves Money.** A community can achieve efficiencies in operating government as the result of good planning decisions. For example, zoning that permits construction of a residential subdivision at a long distance from services will prove costly. Residents of the development may request water and sewer, fire, police, road maintenance, and the other services already provided in developed areas of the community and place unanticipated demands on the budget. The same development located adjacent or near to existing services would create a lower long-term demand on the budget through reduction in utility extension costs, maintenance, and related manpower requirements.

**Planning Establishes the Ground Rules.** Planning establishes ground rules and standards for developers and residents alike and sets the pattern for the community's design and development. A community that has a general plan and land-use regulations will give a clear signal that accepted standards and procedures apply to community development. Developers know the ground rules and know what to expect when a proposal is submitted for the Planning Commission's consideration and

the public knows the standards which will apply during the evaluation of a proposal. Having ground rules will not eliminate conflicts; however, it should help limit the possibility for conflict by having everyone involved or interested in a development activity "reading from the same page."

**Planning Can Promote Economic Development.** The planning process allows residents and decision-makers to examine alternatives and choose courses of action that can promote employment and economic well-being.

**Planning Provides a Forum for Community Consensus.** Achieving consensus is a vital aspect of community planning. A planning effort should involve as broad a segment of the community as possible to assure that the community's opinions are well expressed. This also gives a sense of "ownership" in the planning process and the comprehensive plan to as wide a range of people as possible. Community-wide consensus has not been reached if a plan is drawn up by a small group of people who basically agree with each other. It is only when differing viewpoints and values are brought together and the forces of negotiation, persuasion and compromise are at work, that true consensus takes place. Consensus in this context means the formulation of goals to which a majority (or more) of the community will agree.

**Planning Can Promote Community Design.** Community design is the deliberate process of building the community on the basis of agreed to architectural, aesthetic, and other objectives. It represents an effort to create a proportional balance between the man-made and the natural environments. For example, locating a multi-story steel office tower among two and three story historic buildings would create a significant design problem. Likewise, a development that ignores natural features to create a standard, checkerboard layout has failed to fit in well with the environment, and can damage or destroy natural features and functions.

**Planning Can Protect Property and Property Values.** Planning can protect property and property values by separating a potentially harmful or disagreeable land use from surrounding residential and commercial uses. Planning also helps to protect stable neighborhoods and their homes to retain their values. Property values can also be enhanced when the community plans for parks, trails, playgrounds and other amenities. Maintaining property values helps support revenues brought into the City through property tax revenue.

**Planning Can Reduce Environmental Damage and Conserve Resources.** Planning can help a community identify areas where development may be inadvisable because of environmental conditions. These conditions may include avalanche or landslide hazards, areas vulnerable to earthquake damage, eroding stream banks, or other conditions which could threaten development with damage or destruction. Planning can also classify areas which have important habitat or wildlife values.

## A Short History of Planning

Community planning in the United States is not a new concept. Colonial Philadelphia, Williamsburg and the new capital of Washington D.C. were "planned" towns where the streets and public buildings were

designed before development began. These cities were following the model established by European cities that incorporated an overall design in their development. Boulevards were arranged in relation to monumental public buildings and extensive parks to enhance the visual impression of the city. These designs were the work of architects who worked much in the same way as a painter designs a canvas.

This concept of community design continued in the United States until the early 1900's. Later on, the technique of zoning gained acceptance and legal validity as a tool to guide overall city development. Zoning was a natural reaction to the situation where original town designs were being outstripped by the rate of expansion of communities. The separation of certain uses and buildings through zoning protected property values and avoided unsafe mixtures of residential and industrial districts.

Community planning took place in earnest in the 1930's and 1940's, as federal expenditures helped fund numerous planning studies. With the passage of Section 701 of the Federal Housing Act in 1954, local planning activity increased dramatically. Many communities used the "701" monies to create community plans to meet both the federal funding requirements as well as deal with local issues. The program was discontinued in 1981.

Passage of the Housing Act was followed closely by federal programs like the Urban Redevelopment Administration and the Overall Economic Development Program in the 1960's, the Coastal Zone Management Act in the early 1970's, and other federal legislation that offered money or encouragement for community and regional planning.

Today, California communities are planning for a variety of reasons, including the State's legal requirements to have a general plan to provide a long term vision for the community. All zoning and land use approval must be consistent with the general plan.

## Authority for Local Planning in California

The following state and City laws outline the basic legal framework for local planning:

- Establishment of local planning agencies, Planning Commissions and departments. Government Code Section 65100 *et. seq.*
- General plan and specific plans. Government Code Section 65300 *et. seq.*
- Zoning regulations. Government Code Section 65800 *et. seq.*
- Subdivision Map Act. Government Code Section 66410 *et. seq.*
- Development Agreements. Government Code Section 65864 *et. seq.*
- California Environmental Quality Act. Public Resources Code Section 21000 *et. seq.*; California Code Regulations title 14, Sections 15000-15387 (Also known as the CEQA Guidelines).
- Ralph M. Brown Act, Government Code Section 54950 *et. seq.* (also known as Open meeting Act, or simply the Brown Act).

- Permit Streamlining Act. Government Code Section 65920 *et. seq.*
- City of San Mateo Charter and Municipal Code

## What Is a General Plan?

The general plan provides the framework for all zoning and land use decisions within a community. State planning law requires that the general plan include a comprehensive, long-term plan for a city or county's physical development. The general plan shall consist of a "statement of development policies" and must include diagrams and text setting forth "objectives, principles, standards, and plan proposals". The general plan consists of seven mandatory elements and any optional element a city chooses to adopt.

The seven mandatory elements of the general plan are as follows:

- **Land Use Element** – The land use element of a general plan identifies the proposed general distribution and intensity of uses of land for housing, business, industry, open space, natural resources, public facilities and other categories of public and private uses. This element serves at the central framework for the general plan and is intended to correlate all land use issues into a set of coherent development policies.
- **Circulation Element** – The circulation element identifies the general location and extent of existing and proposed major roadways, transit routes, terminals and other local public transportation utilities and facilities. Generally, this element also includes standards (intersection level of service) policies and improvement plans. Any proposed transportation improvements must correlate to other elements of the plan, including the land use element.
- **Housing Element** – The housing element identifies and analyzes existing and project housing needs and includes a statement of goals, policies, quantified objectives, and scheduled programs for the preservation, improvement and development of housing. The Housing Element is the only general plan element for which state law sets forth specific content and schedule requirements. All housing element revisions must be reviewed and certified by the State of California Housing and Community Development (HCD) Department in order for the housing element to be in compliance with state law.
- **Conservation Element/Open Space Element** – These are combined in the City of San Mateo General Plan. The conservation element deals with the identification, conservation, development and use of natural resources while the open space element is the plan for the comprehensive and long-range preservation of open space land.
- **Noise Element** – This element identifies and analyzes noise issues in the community. Current and projected noise levels are indicated, and policies dealing with compatibility of land uses with specific noise levels are also detailed.



- **Safety Element** – The safety element establishes policies and programs to protect the community from risks associated with seismic, geologic, flood and wildlife hazards.

Since 1971, State law has required all cities and counties to have a legally adequate general plan with all of the mandatory elements.

In sum, the preparation, adoption and implementation of a general plan serves to :

- Identify a community's land use, circulation, housing, environmental, economic and social goals and policies as they relate to land use and development;
- Provide a basis for local government decision making, including decisions on development approvals;
- Provide citizens with opportunities to participate in the planning and decision making processes of their community; and
- Inform citizens, developers, and decision makers of the ground rules that guide development within the community.

The general plan bridges the gap between community values, visions and objectives, and physical decisions such as planning application approvals for development projects.

### What Planning Cannot Do

While a planning effort and a general plan can produce benefits, it's a mistake to believe that planning has all the answers and is a "cure-all" for whatever ails the community. Planning can produce positive results if it is understood and supported by the Planning Commission, the governing body and local residents. The following limitations, however, should be noted:

- Planning cannot produce miracles, and cannot be expected to suddenly cure all of a community's ills. It is not a short-term proposition, but a medium to long-term undertaking.
- Planning cannot be used to exclude newcomers to the community nor can it be used to prevent change or to keep everything in the community just the way it is.
- Planning cannot be a device for problem-solving or a means of avoiding mistakes unless it has credibility among residents and is supported by elected and appointed public officials.
- Planning cannot succeed without implementing the policies contained in the planning document. Planning needs some sort of action program to carry out its objectives.
- Planning cannot turn a community around and restore economic health and vitality overnight. To do so requires patience, commitment, and vision.
- Planning cannot succeed if it fails to balance competing points of view in the community. A successful planning effort brings all of the players to the table.

- Planning cannot work to the benefit of your community unless you want it to.

## Chapter 4 - PLAN IMPLEMENTATION

### The Importance of Implementation

The completion of a general plan is a big step, one which represents a substantial expenditure of time and effort, but it does not represent the completion of a planning program. The program will not be complete until ordinances are adopted that implement the plan's goals and policies. Zoning and subdivision ordinances are the most recognized and widely used means of implementation. The Planning Commission and governing body use other means of implementation too, such as the capital improvements plan, and even the more day-to-day decisions that they and the city administration make.

The zoning and subdivision codes must be kept up-to-date and consistent with the general plan. This is because the plan is essentially an advisory document, while the zoning and subdivision regulations are laws that are enforceable. Since the plan will undergo periodic updating to remain accurate, the regulations must be updated too, to assure consistency with the general plan. A revised and updated general plan will be of little use to the community if the zoning and subdivision regulations lag behind and represent outdated policies and land use designations.

Implementing ordinances will be more precise and specific than the terms contained in a general plan. For instance, a plan may contain a policy promoting adequate standards for new single family dwelling development. A provision in a zoning ordinance adopted to implement the plan might contain language that each new home must be constructed on a six thousand square foot lot, and be set back ten feet from its side property line.

### Zoning Regulations

Zoning is the classification of land according to use, such as single-family residential, commercial or industrial, and the establishment of standards governing each use within its zone. Uses may be permitted outright, permitted with conditions, permitted as an accessory use to the main use, or prohibited.

A city's zoning code consists of two parts: the map and the text. The map shows the location of different land use classification, while the text contains standards for each classification, such as, but not limited to: minimum lot size, setbacks, maximum building size, and listings of permitted, accessory, conditional and prohibited uses.

### Authority for Zoning

State Government Code Section 65800 provides for the adoption and administration of zoning in California:

"65800. It is the purpose of this chapter to provide for the adoption and administration of zoning laws, ordinances, rules and regulations by counties and cities, as well as to implement such general plan as may be in effect in any such county or city...the Legislature declares that in enacting this chapter it is its intention to provide only a minimum of limitation in order that counties and cities may exercise the maximum degree of control over local zoning matters."

San Mateo has adopted its own zoning code pursuant to this state enabling legislation. The pertinent sections of the zoning code are referred to in any matters brought before the Planning Commission.

### The History of Legal Basis for Zoning

Zoning began in the United States in the early part of the 20th century as an attempt to promote public health and fire safety and separate incompatible uses. In New York, for example, zoning began in an attempt to stop the spread of the garment district up 5th Avenue and to improve the safety and living conditions in tenements. Many lower courts had upheld zoning in the 1920's. It was not until 1926, however, that the United States Supreme Court ruled in the landmark case of *the Village of Euclid v. Ambler Realty*, that zoning was a constitutional use of the police power. Justice Sutherland stated in the majority opinion that:

*"each community has the right and responsibility to determine its own character and as long as that determination [does] not disturb the orderly growth of the region and the nation it is a valid use of the police power."*

After this decision, zoning spread rapidly throughout the country and became the most widely accepted means of regulating land-use activities. By the 1950's, zoning had become closely associated with comprehensive planning, to the extent that the terms were often used interchangeably. In subsequent years, however, the general plan has become recognized as a policy document and the zoning ordinance as a regulatory document. In fact, state law requires that zoning must be consistent with the general plan.

The police power is basically the government's right to place controls over individual behavior and the use of private property to promote the health, safety and welfare of the community at large. The controls, such as a litter ordinance or zoning code, must have a reasonable basis, avoid constitutional pitfalls and serve a public purpose. Unlike the power of eminent domain, where just compensation must be paid for property which is taken for a public purpose, no compensation is required when zoning is used as a valid exercise of the police power. Zoning has been recognized as a legitimate use of the police power since the *Euclid v. Ambler* case. Times and conditions continually change, however, and zoning and land-use regulation is regularly under review and interpretation by the courts.

### Subdivision Regulations

Subdivision is a largely technical activity that is fundamentally different than zoning, despite its common use in implementing the general plan. Subdivision does not address the use of land for residential, commercial and other activities. Instead, it establishes standards for subdividing land and

places certain requirements on those divisions. Its purpose is not to determine which land-use goes where, but to assure that lots are created in accordance with community standards and are properly surveyed and recorded.

### Authority for Subdivisions

The Subdivision Map Act, Government Code Section 66411 gives cities and counties the ability to regulate and control the design and improvement of subdivision within its boundaries.

The Subdivision Map Act’s primary goals are to:

- To encourage orderly community development by providing for the regulation and control of the design and improvement of the subdivision, with a proper consideration of its relation to adjoining areas;
- To ensure that the areas within the subdivision that are dedicated for public purpose will be properly improved by the subdivider that they will not become an undue burden on the community; and
- To protect the public and individual transferees from fraud and exploitation.

San Mateo has adopted its own Subdivision Code, consistent with the Subdivision Map Act. The most typical type of subdivision in San Mateo is a condominium, which is a division of air space with the actual building and land being held in common (usually through a homeowners association). New subdivisions of land are relatively infrequent, as San Mateo is an already developed community and has been subdivided.

### Other Types of Planning Approvals

There are a number of other types of planning approvals which will come before the Planning Commission. As noted above, state zoning law indicates that “cities may exercise the maximum degree of control over local zoning matters.”

Section 27.08.010 of the San Mateo Zoning Code lists the types of planning approvals that are included as part of a planning application. Some of these items, such as a “code amendment regarding land use regulation” have been described above:

**“27.08.010 PLANNING APPLICATION SUBMITTAL.** (a) A planning application (PA) shall be submitted for any project requiring a:

- (1) Site plan and architectural review;
- (2) Special use permit;
- (3) Temporary use permit;
- (4) Variance;

- (5) Site development permit;
- (6) Subdivisions;
- (7) Reclassification;
- (8) Planned development;
- (9) General Plan amendment;
- (10) Specific plan amendment; or
- (11) Code amendments regarding land use regulation.
- (12) Downtown Economic Development Permit.
- (13) Planned signing districts and freestanding signs over eight feet in commercial districts.
- (14) R1 Design Review (SFDDR)."

### Other Means of Implementation

Zoning and subdivision are not the only means of implementing the general plan, though they are the most common. The Planning Commission can also use other measures to further the goals and objectives of the plan. These other measures can include, but are not limited to, such things as:

**Capital improvements** that are consistent with general plan goals and objectives, such as paving or the construction of public facilities.

**Design Guidelines** to regulate the appearance of buildings, including signs, color, lighting, landscaping, and parking.

**Economic development strategies** designated to enhance the City's commercial base and provide more jobs or job opportunities in the community.

**Redevelopment Plans** for specific areas to improve the physical appearance and economic and environmental condition of these areas.

**Specific Plans** for selected areas of the City, such as the downtown.

**Affordable housing strategies** to enhance housing opportunities for low and moderate-income households.

**Local budget decisions** that commit the city's fiscal resources to the operation of government and the achievement of community goals and objectives.

## Chapter 5 - THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

### Overview

The California Environmental Quality Act (CEQA), Public Resources Code 21000 *et. seq.*, requires governmental agencies to consider the environmental consequences of their action before approving plans or projects. In enacting CEQA, the Legislature explained that the CEQA process is intended to:

1. inform governmental decision makers and the public about the potential environmental effects of proposed activities;
2. identify the ways that environmental damage can be avoided or significantly reduced;
3. prevent significant, avoidable environmental damage by requiring changes in projects, either by the adoption of alternatives or imposition of mitigation measures; and
4. disclose to the public why a project was approved if that project would have significant environmental effects.

To assist in implementing CEQA, a set of guidelines, called "The CEQA Guidelines" have been adopted by the Secretary of Resources and incorporated into the California Code of Regulations, title 14, Section 15000 *et. seq.*

### The CEQA Process

The following is a very simplified, brief explanation of the CEQA process. For a more complete understanding, there are many textbooks available for reading as well as workshops which address both general and specific CEQA topics.

### Is It A Project?

Not all city actions or actions approved by the city are considered projects which are subject to CEQA. An action is considered a project subject to CEQA if it is discretionary, that is, the city is required to exercise judgment in deciding whether to approve or deny a project, as opposed to situations in which the City merely has to determine whether there has been conformity with the objective standards adopted in the applicable code.

For example, planning applications, many of which come before the Planning Commission for review are considered discretionary actions which are subject to CEQA. The Planning Commission exercises judgment as to whether the project complies with the city's general plan, zoning code, design guidelines and any other applicable standards. However, a simple building permit, for a one-story code conforming addition to a single-family dwelling, does not require discretion (a planning application) and is ministerial only; if the codes are met, the permit is issued and no CEQA review is required.

## Determining if the Project is Exempt from CEQA

If an action is determined to be a “project”, it may nevertheless be exempt from the provisions of CEQA. The actual law includes statutory exemptions for certain types of projects, many of which involve projects that are consistent with a previously adopted general plan, community plan, specific plan or zoning ordinance.

The CEQA Guidelines also include a list of “categorical exemptions” which are classes of projects that the Secretary of Resources has found do not have a significant effect on the environment. These types of categorical exemptions include new construction of small structures, minor roadway improvements, minor alterations of land use limitations, and many other types of small, minor projects.

## Preparing an Initial Study

If a project is not exempt from CEQA, an initial study will be prepared. This initial study includes a checklist of environmental issues, a standard checklist is provided in the CEQA Guidelines. In addition to the checklist, a written narrative must be provided to indicate why specific impacts were deemed to be potentially significant down to a rating of less than significant. In many instances, the initial study will incorporate the data and findings of special studies, such as a traffic study.

## Negative Declaration

If the initial study concludes that the project will not create a significant effect on the environment, a Negative Declaration can be prepared. A Negative Declaration is a written statement that an Environmental Impact Report (EIR) is not required because a project will not have a significant adverse impact on the environment.

A Negative Declaration may include conditions which mitigate potentially significant environmental impacts to a less than significant level. Such a negative declaration is often referred to as a “mitigated negative declaration”. A mitigated negative declaration states that revisions made to the project or conditions agreed to by the applicant would avoid the potentially significant adverse impacts, and that there is no substantial evidence that the project, as revised and conditioned, will have a significant effect on the environment.

As a general rule, an agency may not adopt a negative declaration, and must prepare an EIR, if it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact. Substantial evidence means enough relevant factual information exists so that a fair argument can be made to support this conclusion even though other conclusions may be reached. However, argument, speculation, inaccurate information or unsubstantiated opinion does not constitute substantial evidence. Similarly, the existence of public controversy over the environmental effects of a project does not, in of itself, require preparation of an environmental impact report if there is no substantial evidence before the city that the project may have a significant effect on the environment.



## Environmental Impact Report

If the project is determined to have the potential for generating significant environmental impacts, an environmental impact report (EIR) must be prepared. There are a number of required sections in an EIR:

- Table of contents or index
- Summary of proposed actions and its consequences
- Project description
- Environmental setting
- Evaluation of environmental impacts
  - Significant environmental effects of the proposed project
  - Significant environmental effects that cannot be avoided if the proposal is implemented
  - Any significant irreversible environmental changes that would be involved if the proposed action should it be implemented.
- A discussion of the growth-inducing impacts
- Cumulative impacts
- Effects not found to be significant
- Mitigation measures: measures proposed to avoid or minimize the significant effects
- Alternatives to the proposed action
- Inconsistencies with applicable plan
- Organizations and persons consulted

Given the nature of the projects analyzed and the requirements of an EIR, an EIR is normally a much longer document than a Negative Declaration and takes longer to process.

## Use of Environmental Documents

Both Negative Declarations and EIR's are forwarded to the Planning Commission as part of a project's packet material. The information contained in these documents should be used as a basis for a rendering a decision in conjunction with considerations related to the general plan, zoning code and other city documents as outlined in this handbook.

The Negative Declaration or EIR must be certified as adequately identifying a project's environmental effects before the project can be approved by the Planning Commission.

## Chapter 6 - PLANNING COMMISSION CONDUCT

### The Public Interest

Planning Commissioners, like others who are charged with conducting the public's business, must do so in the "public interest." Unlike a special interest, where a limited number of people would stand to benefit or profit, the public interest represents the maximum number of benefits flowing to society at large and not to selected individuals or groups within society. It is by nature more basic and more fundamental than special interest or individual interest or than the sum of special interests or individual interests.

Planning Commissioners have to determine what constitutes the public interest as decisions are made on variances, conditional use permits, rezones and other matters. The following pointers may help in keeping the public interest foremost in the decision-making process:

1. Remember who the client is. It is not the applicant but the public at large and the interest which that public represents. It is not just the people in the meeting room, but all those who are at home, too. It is everyone that lives in the community, and abides by the Planning Commission's decisions.
2. The question of who benefits from the decision should be asked. Does the applicant benefit at the expense of the public? Does the public benefit? Both?
3. The public interest includes the interests of all members of the community not just the interests of selected members.
4. When citing the public interest as the reason for a particular action, be sure that the public at large (i.e., the whole community) will benefit and not just certain individuals or groups.
5. Decisions made in the public interest should consider, to the extent possible, future as well as current generations.

### Legal Aspects of Planning Commission Conduct

Planning Commissioners, like the members of all other public bodies in California, must comply with state laws regarding financial disclosure and public meetings. These laws, the Conflict of Interest Law and the Open Meetings Act, set legal standards for the conduct of public officials. Planning Commissioners must also be aware of two other aspects of their conduct: ex parte contact (actually related to open meetings) and due process. Ex parte contact is basically the attempt to influence a Planning Commissioner outside the public forum. Due process is the procedural fairness that the Planning Commission must show to all parties.

## Conflict of Interest

The goal of conflict of interest laws is to require public officials to make decisions without being influenced by personal financial interests. Toward this goal, the laws require disclosure of certain private financial interests and disqualification from decision-making under certain circumstances.

Conflict of interest laws balance two competing interests. On one hand, decisions must be made to benefit the public, not private financial interests. At the same time, conflict of interest laws are not designed to insulate officials from making difficult decisions. Making difficult decisions is, after all, one of the primary duties of a public official.

### What is a Conflict of Interest?

There are a number of laws which define conflict of interest standards. The Political Reform Act (Government Code section 81000 *et. seq.*) is the most comprehensive. It says:

“No public official at any level of state or local government shall make, participate in making, or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.”

The Political Reform Act requires public officials to disqualify themselves on a particular issue if they have conflict of interest. A public official or employee has a conflict of interest when all of the following occur:

- The official makes, participates in, or uses his official position to influence a governmental decision;
- It is foreseeable the decision will affect a financial interest of the official;
- The effect of the decision on the official’s financial interests will be material; and
- The effect of the decision on the official’s financial interest will be distinguishable from its effect on the public generally.

### When in Doubt

The Political Reform Act is quite complex. In practical terms, when officials have an interest in a business, a piece of real property, as source of income related to a matter coming before the Planning Commission, they should consult with the City Attorney prior to the meeting. Also, if a Planning Commissioner lives within 500 feet of a project location coming before the Planning Commission, a conflict of interest is presumed to exist, and the Planning Commissioner should disqualify himself or herself.

## Effect of Disqualification

When an official has a conflict, the official must not only disqualify himself from voting, but must also refrain from participating in any debate on the matter. The disqualification must be made on the record.

## Disclosure of Conflict

It is not "bad" to have a conflict of interest. It is illegal to fail to declare a substantial conflict of interest or to participate in discussions on issues or decisions where such conflict exists. It is in a Planning Commissioner's and the Planning Commission's best interests to avoid public challenges on conflict of interest charges by heading them off in advance.

## Open Meeting Act

All meetings and deliberations of the Planning Commission must be open and public as required by the Ralph M. Brown Act, Government Code Section 54950 *et. seq.* This law is also known as the Open Meeting Act, or simply "the Brown Act".

The courts have consistently interpreted the Brown Act broadly to ensure open deliberation and open decision making so the public can be fully informed and maintain contact with their governmental representatives.

## Meetings

The following are defined as meeting and subject to the Brown Act requirements:

- Any congregation of a majority of members of the Planning Commission in the same time and place to hear, discuss or deliberate on any matter within the Planning Commission's jurisdiction.
- Use of direct communications, personnel intermediaries, or technological devices (telephone, fax, e-mail) by a majority of the Planning Commissioners to develop a collective concurrence on action to be taken.
- In addition, a series of individual meetings or conversations which involve less than a quorum, but which taken as a whole involve a majority of the Planning Commission members is also considered a meeting for the purposes of the Brown Act.

## What is Not a Meeting

Attendance by a majority of Planning Commissioners at a conference, such as the League of California Cities, or at an open and publicized meeting organized to address a topic of local community concern such as a Chamber of Commerce forum on housing is not considered a meeting, provided that a majority of Planning Commissioners do not discuss among themselves, specific business within the Planning Commission's jurisdiction. Similarly, attendance of a majority of the Planning Commission at

a social event or ceremonial event is not considered a meeting, again provided that a majority of Planning Commissioners do not discuss among themselves, specific business within the Planning Commission's jurisdiction.

## Brown Act Requirements

In general, the Brown Act requires:

- Posting of the time and place of meetings. (There are also other more notice requirements for planning applications as specified by state law and local ordinance).
- Public comment period. All meetings must allow the public to speak on any item of public interest within the Planning Commission's jurisdiction. In San Mateo, this occurs at the beginning of the Planning Commission meeting.
- Material distributed to the Planning Commission. Any material, either sent out in the packets, given the Planning Commission at the meeting, or otherwise distributed to the Planning Commission becomes part of the "public record" and must be made available to the public.

Also, the Brown Act allows for the removal of disruptive individuals who are willfully preventing the meeting from taking place.

## Ex Parte Contact

Ex parte is a Latin term that means, "from or on one side only." It is related to the Brown Act in that it deals with Planning Commissioners being influenced outside the public forum without the benefit of hearing all sides of an issue.

## What is Ex Parte Contact?

Contacts which occur away from the hearing are known as ex parte and can include telephone calls, informal meetings, lunches or even a casual encounter on a street corner. The essential element of ex parte contact is that someone with a direct interest in a decision before the Planning Commission - an applicant, a representative of an applicant or an opponent of the applicant - is attempting to influence or secure a vote outside the public forum before a Planning Commissioner has had an opportunity to hear all sides of an issue.

Such contacts may be a source of pertinent information not otherwise available to the staff or Planning Commission members but they should not be permitted to influence a member's decision-making before deliberations begin.

## Examples of Ex Parte Contact

Ex parte contact is common for Planning Commissioners because of their visibility in the community and the nature of their work. Discussions with Planning Commission members outside the public forum can be a beneficial way to exchange information and help keep Planning Commissioners informed of

residents' attitudes. A distinction must be drawn, however, between contact on general or legislative matters, and contact on questions that involve specific parcels of land or the rights of certain individuals. The following examples show this:

1. A paid representative for a developer takes a Planning Commissioner out to lunch in order to persuade him/her to vote for a re-zone. The representative urges the Planning Commissioner commit to a "yes" vote three days before the meeting and before all sides of the question have been heard. What should the Planning Commissioner do?

Citizens have a right to contact their elected and appointed representatives and express their viewpoints. Public officials, on the other hand, have a responsibility to uphold the integrity of their office and maintain it as free of influence as possible. The Planning Commissioner should not make any promises or commitments to the developer's representative. This position should be taken whenever specific parcels of property or the rights of specific individuals are under consideration. Given the fact that the re-zone will be coming before the Planning Commission, a meeting of the sort described above should be avoided.

2. The Planning Commission is scheduled to review the municipality's Capital Improvements Projects list at its next meeting and make recommendations to the City Council. A Planning Commissioner is contacted by a resident who wants changes in the list.

The Planning Commissioner should feel free to ask why the resident believes the list should be changed and to explain his/her own position on the priority ranking of projects. The same position can be taken on other general matters that affect the welfare of the public at large, such as the adoption of a comprehensive plan or recommending amendments to the zoning code.

### How to Deal with Ex Parte Contact

The following guidelines should be considered in dealing with ex parte contacts.

- If someone contacts a Planning Commissioner to discuss an issue involving the rights of specific individuals or particular parcels of land, the Planning Commissioner should refrain from stating his/her position and invite the person to present their testimony before the whole Planning Commission.
- If someone persists in offering information but is unwilling to testify before the whole Planning Commission, tell the person to put the information on the record, preferably by sending a letter to City staff. If the person is unwilling to have the information placed on the record.
- Written information on a pending Planning Commission action should be sent to staff for review and/or inclusion in the Planning Commission packets.
- If you make a site visit with or without the applicant, disclose that fact on the record before the meeting begins.

- If you do have ex parte contact with a member of the public, applicant or interested party, disclose that fact on the record before the meeting begins.

Above all, use common sense and good judgment when dealing with applicants and other interested parties outside a public forum.

## Chapter 7 – THE PLANNING COMMISSION MEETING

### Due Process

According to the courts, local planning decisions do not have to be wise, but they do have to be fair. The Planning Commission must respect equally the rights of all parties who appear before it. **The important elements of due process are:**

- adequate, advance notice of meetings;
- availability of staff reports and other information needed by the public to more fully understand issues;
- the opportunity to be heard at public hearings;
- full disclosure or the chance to hear, see, or review all the information available to the Planning Commission in its deliberations; and,
- findings of fact backed up by substantial evidence on the record to support the Planning Commission's decisions.

The Planning Commission has a responsibility to assure that its decisions are fair, impartial and objective, unbiased by even the appearance of having been privately influenced. Excerpts from a Washington State Supreme Court case illustrate the importance of due process and the appearance of fairness. Although not a California case, it clearly illustrates the fairness and impartiality the courts will expect of Planning Commission deliberations.

"Members of Planning Commissions with the role of conducting fair and impartial fact-finding hearings must, as far as practicable, be open-minded, objective, impartial, free of entangling influences and capable of hearing the weak voices as well as the strong." *Buell v. City of Bellingham* (1972)."

### Conducting a Planning Commission Meeting

The Planning Commission will conduct basically three types of meetings: regular meetings, special meetings and study sessions. Since no decision can be made in a study session, they are less formal and occur in a more relaxed setting than regular or special meetings. The Planning Commission is not required to accept testimony at a study session nor are any formal actions taken. Study sessions are held to gain a clearer understanding of complex or important issues, to establish a Planning Commission workload, or for some other reason not related to the actual conduct of Planning Commission business.



The Planning Commission has more contact with the public at meetings than at any other time. Thus, the Planning Commission's credibility and effectiveness can be directly affected by the way the public's business is conducted. A Planning Commission that conducts a fair, well-run meeting will preserve the public's confidence and be able to do productive work. A well-run meeting has the added benefit of being less tiring and less frustrating for Planning Commissioners. This permits the Planning Commission to pay more attention to the business at hand.

These meetings require adequate public notice, a published agenda, minutes of the meeting. All public notice is either mailed and or published in accordance with State law and local codes. Minutes are prepared at each meeting and are then forwarded to the Planning Commission for review and approval at their next meeting.

### Chairing the Planning Commission

The attitude and abilities of the chair are critical to the successful operation of a Planning Commission. A capable chair understands the issues, understands his or her fellow members, can maintain order, and is able to bring the Planning Commission to a decision even on complicated or controversial issues. A person should be named as chair for his or her leadership abilities in addition to having other qualities such as integrity and fairness.

### Responsibilities of the Chair

A chair has two types of responsibilities: those contained in the Planning Commission's rules of procedure and those that are more related to his or her leadership abilities.

Procedural responsibilities include, but are not limited to, the following:

- preside over the meetings of the Planning Commission;
- work with staff in setting and reviewing the agenda; and
- call or schedule special meetings of the Planning Commission.

Other types of responsibilities rest more with the chair's personal abilities, and are not determined by bylaws or other rules of procedure. These include:

**Running a meeting.** It is the chair's responsibility to run an orderly meeting and conduct the Planning Commission's business in a fair and timely manner. Other Planning Commissioners, the staff and the public will look to the chair for leadership.

**Maintaining order.** Do not allow members of the public to clap, cheer, whistle, and so on, either for or against testimony that is being presented or in response to comments by Planning Commission members during their deliberations. The chair should "gavel down" this kind of behavior and run an orderly meeting. Neither should the chair permit members of the Planning Commission to accuse or overtly challenge one another, members of the public, or persons testifying.

**Keeping the business moving.** The Planning Commission should not endlessly mull over matters, continually request new information, and otherwise delay making a decision when the information needed for doing so has been presented. The chair should move the meeting along by summarizing the facts and the positions presented by Planning Commission members, and bringing matters to a vote. Failure to do so is unfair to the City Council, which may be relying on the Planning Commission's recommendation, and to the applicant, whose proposal may be unfairly delayed by indecision.

**Managing public testimony.** Testimony from witnesses should be held to a reasonable length of time, particularly if a large number of people want to address the Planning Commission. Testimony should be pertinent to the matter under deliberation. The chair should also discourage successive speakers from repeating the same testimony over and over again. While there is a need to keep the testimony moving, the Planning Commission also needs to show an interest in what the witnesses have to say. Once the public hearing is closed no one, other than Planning Commission or staff, is permitted to speak! On occasion, the Planning Commission may wish to recall the applicant to clarify remarks for the Planning Commission. However, this does not re-open the public hearing, and no further public testimony is allowed. There may be legal issues if the Planning Commission appears to base a decision on statements made by the public after the public hearing is closed.

**Preventing arguments.** The chair should prevent sharp exchanges from occurring between Planning Commission members and persons testifying, and between Planning Commission members themselves. He or she should limit the dialogue between Planning Commission members and persons testifying to fact gathering which will contribute to the Planning Commission's decision-making ability. This is important to prevent a loss of the Planning Commission's objectivity and credibility.

**Understanding parliamentary procedure.** The chair must understand making motions, amendments to motions, the order in which business is conducted, what is or is not debatable, and so on.

**Tying things together.** This is the ability to take into account public testimony, Planning Commission deliberations, and an understanding of the issue at hand, in guiding the Planning Commission toward a decision. It is based on the chair's ability to discern a position that a majority of the Planning Commission can support and that is fair to the public.

## Qualities of a Good Chair

The ability of the chair to run a meeting is important if the Planning Commission is to get its work done. The qualities of composition for the Planning Commission in general apply equally well to the qualities needed in a chair except Planning Commission members will expect the chair to display leadership skills and run well-organized and purposeful meetings.

The following attributes of a good chair should be considered:

**Tact** - The chair must show tact with other members and the public. A rude or insulting chair will reflect poorly on the whole Planning Commission and will alienate other Planning Commissioners and members of the community.

**Quick Thinking** - The chair may have to think and act quickly in overseeing the conduct of the Planning Commission's business. This may include summarizing positions, clarifying motions and giving direction to staff based on the differing views of Planning Commission members.

**Respect** – A chair whose judgment has been tested and found to be good, whose opinion is sought out, or who has support from diverse elements of the community has earned the respect of his or her peers. This can only help in conducting the Planning Commission's business and enhancing its role in community decision-making.

**Speaking Ability** - As the spokesperson, the chair must be able to articulate the Planning Commission's position to the City Council, the public and the media. This includes the ability to explain complex or controversial matters which may be either poorly understood or disputed in the community.

**Understanding the Issues** - Of all members, the chair must be able to understand the business before the Planning Commission. Failure to understand an item which the Planning Commission is to act on can lead to confusion and result in poor decision-making. The chair needs to put extra effort into studying the agenda and preparing for the meeting.

### Practical Tips for the Planning Commissioner

1. **Become Familiar with the General Plan and Zoning Code** – These documents provide the basis for many of the decisions you will make. Be aware of their contents.
2. **Read Your Packet** – A staff presentation will be made for each item on the Planning Commission's agenda. However, the full details of a project or study can only be ascertained by a review of the packet material.
3. **Visit Project Sites** - Frequently, visiting a project site can give you a much better understanding about a variance, conditional use permit or other requests before the Planning Commission, than merely reading about it in the packet. Become familiar with the project, then visit the site.
4. **Know All Sides of an Issue Before Forming An Opinion** – Review all staff material, related correspondence and consider all testimony given the night of the meeting before forming an opinion.
5. **Rely on Facts, NOT Opinions** - This can be hard, but it is very important. For example, if someone tells you the Smith rezone is unwise, that is not a good reason to oppose it. If, however, staff recommendations or public testimony show it would be spot zoning, or violate the general plan, then you have a factual basis for a decision.

6. **Use the Chair to Keep the Meeting Orderly** - Avoid extended one on one conversations with the applicant or public; instead, use the chair to direct questions and comments as appropriate. A simple question, such as "Is the color of the building blue?" with a response from the applicant "Yes." is fine. However, extended dialogue and debate between a Planning Commissioner and an individual member of the public (or applicant) make it difficult for the chair and Planning Commission to have an orderly meeting. In addition, it may reduce other Planning Commissioners to being spectators instead of participants.
7. **Take Part in Debate** - As a rule, the quality of the Planning Commission's decision-making is improved when all members contribute to the discussion. Also, taking part in discussion lets other Planning Commissioners know a person's analytical and problem-solving strengths (and weaknesses!).
8. **Ask Questions** - You've heard the expression, "there's no such thing as a dumb question." Well, it's true. If you don't ask, who will? If you don't know, how else will you find out? Don't leave your education on an issue up to chance; take the initiative and find out.
9. **Seek Solutions** - Be a problem-solver. Contribute to debate in a way that will lead to solutions, and not merely add to the difficulty or complexity of a situation.
10. **Focus on Issues, Not Details** - Details are important, but don't get lost in them while trying to resolve an issue. Sometimes it's more comfortable to deal with details when an issue is particularly thorny or difficult, but doing so will not produce answers. You should always strive to understand the essence or substance of the matter you are addressing.
11. **Respect Your Peers** - There is no rule that says Planning Commissioners have to be friends (although that many times occurs), but relationships should be courteous and professional.
12. **Use the Staff** - Staff provides technical assistance. Don't ask staff to make a decision for you; instead, get from them the facts and other information you need to make the best decision you can.
13. **Dealing with Staff** - Don't surprise staff members at a meeting with critical comments. For example, if you have problems with a staff report that appears biased or wrong, contact the staff member beforehand and work out the problem. It is important to maintain a good working relationship with staff.
14. **Being a Planning Commissioner Takes Lots of Time** - The time you actually spend at meetings is only a small part of the time it takes to be a good Planning Commissioner. Be prepared to spend a considerable amount of time remaining informed, active and engaged as a Planning Commissioner.

## Planning Application Continuance vs. Denial

In some cases, the Planning Commission offers specific direction to the applicant, with the understanding that the project will be revised consistent with that direction and return to the Planning Commission for approval. In order to allow the project revisions to be made and reviewed by staff, a continuance "to a date uncertain" is the normal motion.

This approach is useful when the applicant is willing to make project revisions. However, if the applicant is unwilling to make any substantial revisions, the continuance will require additional staff work to prepare another administrative report, complete the required public noticing and present the project to the Planning Commission, yet result in the same outcome which would have taken place at the initial Planning Commission hearing - a denial due to the applicant's reluctance to make project revisions which would allow the Planning Commission to make the necessary findings for approval. This decision, of course, can be appealed to the City Council.

The decision to continue or deny is solely a Planning Commission decision. Consent from the applicant is not required. However, the Planning Commission may wish to consider the likelihood that the applicant will actually make project revisions when deciding whether to continue an item. In some instances, the applicant is unwilling to make any revisions; in other instances, major revisions may result which will respond to Planning Commission direction and allow for a motion to approve.

## Chapter 8 – MAKING A DECISION AND THE NEED FOR FINDINGS

Planning Commissioners must rely on legal standards and other guidelines in making decisions. These standards may be quite broad, such as constitutional guarantees of equal protection and due process, or they may be much more specific, such as the language contained within the municipality's code of ordinances. This chapter will discuss the importance of building a record, or findings of fact, to justify the Planning Commission's decisions.

### Two Kinds of Planning Commission Decisions

Planning Commission decisions can be either legislative or adjudicative in nature.

**Legislative Decisions.** - For the Planning Commission, legislative decisions are decisions that make or interpret policy. These include general plan amendments, zoning reclassifications and zoning code amendments. The key element of legislative decisions is that they apply equally (or are meant to apply equally) to everyone in the community, not just to specific groups or individuals.

**Administrative or Adjudicative (quasi-judicial) Decisions.** - Generally, administrative decisions involve those that have a direct effect on the rights and liabilities of an individual or a small group of identified persons. Adjudication deals with a more limited set of facts such as those involved with individual planning applications which may involve variances, special use permits, planned developments and any accompanying environmental documents.

### The Need for Findings

Findings are not needed for legislative decisions, although there are some exceptions that require findings. For example, state law requires specific findings should a city adopt a growth management plan that limits the number of newly constructed housing units.

Findings are required for adjudicative decisions, which involve over 95% of all the planning applications that the Planning Commission reviews.

### Legal Adequacy of Findings

The California Supreme Court has laid down distinct, definitive principles of law detailing the need for adequate findings when a city approves or denies a project while acting in a quasi-judicial, administrative role. In *Topanga Ass'n for a Scenic Community v. County of Los Angeles*, 11 Cal. 3d 506 (1974) the court interpreted Code of Civil Procedure section 1094.5 to require that a city's decision be supported by findings, and the findings be supported by evidence. The court defined findings, explained their purposes, and showed when they are required.

## Purpose of Findings

The Topanga court outlined five purposes for making findings, three relate to the decision making process, two relate to judicial (court) functions:

1. To provide a framework for making principled decisions, thereby enhancing the integrity of the administrative process
2. To facilitate orderly analysis and reduce the likelihood the agency will leap randomly from evidence to conclusions
3. To serve a public relations function by helping to persuade parties that administrative decision-making is careful, reasoned, and equitable.
4. To enable parties to determine whether and on what basis they should ask for judicial review and remedies.
5. To apprise the reviewing court of the basis of the agency's decisions.

## Evidence in the Record to Support Findings

There must be evidence in the record to support the findings. Evidence may consist of staff reports, written and oral testimony, the EIR, exhibits and the like.

Boilerplate findings or findings that do not recite specific facts upon which the findings are based are not acceptable. Similarly, in *Honey Springs Homeowners Ass'n v. Board of Supervisors*, 157 Cal. App. 3d 1122, 1151 (1984) a finding that is made "perfunctorily" and "without discussion or deliberation and thus does not show the ...analytical route from evidence to finding will be struck down".

In summary, there is no presumption that a city's rulings rest upon the necessary findings and that such findings are supported by substantial evidence. Rather, cities must expressly state their findings and must set forth the relevant facts supporting them.

## Findings in the Administrative Report

Findings are referred and attached to the Administrative Report of all public hearing items (see also Chapter 11 The Administrative Report). These include findings for the environmental document or exemption, consistent with the as requirements by the California Environmental Quality Act. The other findings are related to the San Mateo Municipal Code and the findings required for certain types of planning approvals: Site Plan and Architectural Review, Site Development Permit, Special Use Permit, etc.

In some cases (this is rare), alternative findings are provided should you wish to take an action different than that recommended by staff. Alternative findings are usually provided for projects which involve substantial public controversy and/or have a relatively equal potential of being approved or denied.

If alternative findings are not provided as part of the Administrative Report, staff can normally craft findings for an action different than that recommended by staff, based on statements made by the Planning Commission. However, these statements must relate to the specific findings for the requested applications.



## Chapter 9 – CONDITIONS OF APPROVAL

### Legal Authority to Impose Conditions of Approval

Conditions of approval (“conditions”) are required of most planning applications (PA’s). These conditions are made part of the Administrative Report (AR) that staff sends to the Planning Commission on every item scheduled for hearing. The authority to impose conditions is derived from several different sources:

**State and local requirements** – For example, conditions of approval that require automatic irrigation of landscape areas are based on sections of the zoning code that require this type of irrigation. These types of requirements would be mandatory, whether they are listed as a condition or not, since they are required by the San Mateo Municipal Code (of which the Zoning Code is a part). These requirements are listed as conditions of approval to insure that the Planning Commission, applicant, public and City staff know what will be required should the project be approved.

**Mitigation measures** – These types of conditions are based on mitigation measures included in an environmental document prepared in compliance with the California Environmental Quality Act (CEQA).

**Authority granted by state and local ordinance** – For example, the City’s zoning code does not have standardized hours of operation for car washes, although they do require a Special Use Permit to be reviewed and approval by the Planning Commission. However, the zoning code does require a finding that the proposed special use “will not cause injury or disturbance of adjacent property”. As a result, the Planning Commission could limit the hours of operation if the Planning Commission found that the reduction in hours “would prevent injury or disturbance of adjacent property” by reducing noise impacts late at night and subsequently impose a condition to that effect.

**Design guidelines** - There are a number of design guidelines that the City of San Mateo has adopted by resolution. These guidelines may provide the basis for conditions of approval related to design. For example, a single family dwelling second story addition may have a condition added requiring a reduction in the roof pitch, if the Planning Commission finds that such a requirement is necessary to conform with the City’s R1 design guidelines.

### Timing of Conditions

The timing of conditions varies. Some conditions may need to be shown on the building permit plans and subsequently verified in the field. Other conditions may relate to the construction phase of the project. There are also use related conditions which are required to be adhered to for the entire life of the project.

The timing of all conditions is included in the conditions list attached to the AR. For example, a number of conditions would be grouped under the following heading:

“The following conditions shall be addressed on the construction plans submitted for any BUILDING PERMIT and/or SITE DEVELOPMENT PERMIT and/or shall be met prior to the issuance of said permit(s).”

This heading indicates that conditions need to be shown on the building permit drawings. The condition would subsequently be verified during field inspection. The Planning Division standard condition regarding “true divided light” would fit under this heading.

Another example of condition timing would be those conditions related to construction activities:

“The following conditions shall be complied with AT ALL TIMES DURING THE CONSTRUCTION PHASE OF THE PROJECT.”

This heading includes conditions related to construction, such as the need to provide construction worker parking, designation of truck haul routes, and indicating permitted hours of construction.

The above two examples illustrate the range of timing used to check adherence with conditions of approval. There are a number of such headings; you can check the conditions of approval attached to each AR to find out what the timing for implementation of each condition.

### Who is Responsible for Implementing Conditions?

Each condition of approval will include a City department or division responsible for implementation of the condition. The responsible City department or division is noted in (parenthesis) at the end of the condition. A couple of examples:

SEWER CLEAN-OUT - The applicant shall install a standard sewer lateral clean-out in accordance with City Standard Drawing No. 3-1-101. (PUBLIC WORKS)

FIRE ALARM SYSTEM – This structure will be required to be provided with a Fire Alarm System in accordance with the California Fire Code Section 1007. Separate application and permits are required to be obtained by a contractor licensed to perform such work. (FIRE)

In these two instances, the Public Works Department and Fire Department, respectively, are responsible for implementation of the condition of approval.

### Mitigation Measures as Conditions

As noted in Chapter 6, The California Environmental Quality Act, mitigation measures identified in environmental documents may allow a Negative Declaration to be prepared instead on an Environmental Impact Report (EIR), and are also used as a basis for findings when approving an EIR that identifies mitigation measures.

As a result, those conditions which are derived as mitigation measures cannot be changed without first examining whether it affects the validity of the environmental document. For example, if a mitigated Negative Declaration is prepared, contingent upon a mitigation measure requiring signalization of a poorly performing intersection, eliminating the condition which requires this signalization would likely result in a significant, unmitigated impact, and would require an EIR to then be prepared.

All mitigation measures included as conditions are marked with an asterisk\*. Additionally, the following language is provided at the end of the conditions list:

\* **MITIGATION MEASURE** - This measure mitigates adverse environmental effects identified in the environmental document. A change in the condition may affect the validity of the current environmental document, and a new or amended environmental document may be required.

### Legal Considerations in Imposing Conditions

The City must have a legal authority to impose any conditions of approval, as noted above (see “Legal Authority to Impose Conditions of Approval” at the beginning of this chapter).

Conditions of approval requiring payment of a fee, dedication of land, or funding of a public improvement are often referred to as “exactions”. Both the California Supreme Court and the United States Supreme Court have long held that the regulation of land use, including requirements for exactions and imposition of conditions, does not constitute a “taking” of property if the regulation substantially advances a legitimate governmental interest and does not deny the property owner economically viable use of the land.

For conditions imposed pursuant to City Standards of uniform applicability, courts have also held that cities may impose conditions on development so long as the conditions are reasonable and there exists a sufficient legal nexus (connection) between the condition as imposed and the burden the proposed development will place on the community.

For ad hoc conditions, courts will consider both whether there is a “reasonable relationship” and whether the exaction is roughly proportional” to the impacts of the proposed project.

There is no single, precise rule that is applied by the courts to determine whether or not a dedication or fee condition is reasonable and thus valid. Rather, the courts use an ad hoc analysis and look at the facts of each individual case.

Two court cases help to illustrate the concepts of “nexus” and “rough proportionality.”

### Nollan v California Coastal Planning Commission (1987) – “Reasonable Relationship”

In this case, the California Coastal Planning Commission approved the construction of a two-story beach house, subject to the condition that the owners dedicate a public access easement across a portion of their property along the beach. The easement purportedly was required to assist the public in viewing the beach and in overcoming a perceived “psychological barrier” to using the beach.

The owner challenged the easement, claiming that the condition violated the Fifth and Fourteenth Amendments' prohibition against taking private property for public use without just compensation.

The Court held that, although protection of the public's ability to see the beach was a legitimate governmental interest, no nexus or connection existed between the identified impact of the project (obstruction of the ocean view) and the easement condition (physical access across a beach). Therefore, the exaction constituted a taking of private property without just compensation. The Court did, however, state that requiring the dedication of a viewing spot on the *Nollan* property might have been legal since there would be a nexus.

The *Nollan* Court stressed the importance of a nexus or connection between the dedication condition and the burden being imposed by the new development. Since the Court found that no such nexus or connection existed, the decision to impose a condition requiring a public access easement was not a proper land use decision, and therefore amounted to an unconstitutional taking of property.

### **Dolan v City of Tigard (1994) – “Rough Proportionality”**

Florence Dolan owned a store located in the business district of Tigard, Oregon along Fanno Creek, which flows along a boundary of the property. Her proposed plans called for nearly doubling the size of the store and paving a 39-space parking lot.

The Planning Commission granted Dolan's permit application with a condition that she dedicate the portion of her property lying within the 100-year flood plain for improvement of a storm drainage system along Fanno Creek, and that she dedicate an additional 15-foot strip of land adjacent to the flood plain as a pedestrian/bicycle pathway. The Planning Commission made a series of findings concerning the relationship between the dedicated conditions and the projected impacts on the Dolan property.

After appeals to the Tigard Land Use Board of Appeals, court hearings with the Oregon Court of Appeals and the Oregon Supreme Court, the case reached the United States Supreme Court.

In a 5-4 decision, the United States Supreme Court held for the first time that, in making an adjudicative decision, a city must demonstrate “rough proportionality” between the conditions to be imposed on a development permit and the development's impact.

The Court reviewed the two required dedications and found that the city had not met its burden. After analyzing the findings upon which the city relied, the Court stated that the city had not shown the “required reasonable relationship” and “rough proportionality” between the floodplain easement and petitioner's proposed new building.

Noting that the Dolan's project would have increase the amount of imperious surface, which in turn would increase storm water runoff, the Court determined that the City could have required that Dolan simply keep the area open rather than requiring complete dedication.

Also, the court said “on the record before us, the city has not met its burden of demonstrating that the additional number of vehicle and vehicle trips generated by the petitioner’s development reasonably relate to the city’s requirement for dedication of pedestrian/bicycle easement.”

### Planning Commission Considerations

City staff reviews all conditions of approval as well as all enabling resolutions and ordinances to insure that all constitutional tests are being met; this involves coordination with the City Attorney’s office on a continual basis. All conditions forwarded to the Planning Commission are those which City staff find fully meet all constitutional requirements and reflect recent case law, including *Nollan* and *Dolan* as well as many others.

Should questions regarding conditions arise at a Planning Commission meeting, they should be directed to staff for an appropriate response.

## Chapter 10 – THE ADMINISTRATIVE REPORT


An Administrative Report (AR) is provided to the Planning Commission for virtually every public hearing or study session item on the agenda. The AR's for upcoming Planning Commission meetings are hand delivered to the Planning Commission on the Thursday before the Tuesday meeting. For example, the AR's for items on the August 12, 2003 Planning Commission agenda will be delivered on Thursday, August 7.

This chapter will describe the basics of an AR, and its use by the Planning Commission.

### Administrative Report Contents

Typical Administrative Reports include the following:

**Title Block** - At the top of the first page you'll find the date of the meeting, the agenda item number and the name and address of the planning application (PA). In addition, email address and telephone number of the project planner is listed; you can contact that person (or the Chief of Planning) directly should you have any questions about the AR. The title block looks like this:

	Item No: 1 Meeting Date: 12/10/2013
	
<b>To:</b>	Planning Commission
<b>Date:</b>	12/3/2013
<b>Authorized By:</b>	Ron Munekawa Chief of Planning
<b>By:</b>	Julia Klein, Associate Planner (650) 522-7216 / Fax: (650) 522-7201 <a href="mailto:jklein@cityofsanmateo.org">jklein@cityofsanmateo.org</a>
<b>Subject:</b>	PA 13-058 CLASSICS AT SAN MATEO PRE-APPLICATION;
<hr style="border: 1px solid blue;"/>	
106, 110 & 120 Tilton Ave, San Mateo, CA; APNs: 032-311-120, & -130	

**Recommendation** – The planning staff’s recommendation will be included in this section. Should you wish to follow the recommendation, you can read the italicized portions of the recommendation verbatim:

**Recommendation:**

That the Planning Commission approve the proposed project by making the following motions:

1. Approve the Revised Mitigated Negative Declaration assessing environmental impacts based upon the Findings contained in Exhibit A.
2. Approve the Site Plan and Architectural Review for the construction of a new five story mixed-use development; the Tentative Map for the merger of 8 lots and the delineation of 54 condominium units; and the Special Use Permit to allow 13,100 square feet of ground floor office space within the C1 zone, based upon the Findings and Conditions in Exhibits A and B.

**Background** – This section will describe the project site: square footage, zoning, location, unique features etc. It will also generally describe the surrounding area. A project description will also be provided: how many buildings, what size, how tall, proposed land use, number of parking spaces, landscaping proposed, etc.

**Issues** – This portion of the AR will address all the significant issues related to the project. This section could include discussions of: parking, building design, traffic, tree removal, hours of operation, etc. These issues vary from project to project, depending upon its type, size and location.

**Exhibits** – These are referenced at the end of the AR and are usually stapled or paper clipped to the AR. These exhibits almost always consist of the following:

**Findings.** These are usually attached as Exhibit A. This exhibit includes findings for the environmental document or exemption, consistent with the requirements of the California Environmental Quality Act. The other findings are related to the San Mateo Municipal Code findings required for certain types of planning approvals: Site Plan and Architectural Review, Site Development Permit, Special Use Permit, etc.

**Conditions.** These are usually included as Exhibit B. These conditions may include mitigation measures implemented pursuant to CEQA; these mitigation measures are marked with an asterisk\*.

In some cases (this is rare), alternative findings are provided should you wish to take an action different than that recommended by staff.

**Attachments** - These items provide background information for making a decision. Some of the common attachments include:

- Project plans (reduced size). Full size plans are also forwarded to the Planning Commission.
- Vicinity map.
- Factual data sheet.
- Environmental document (this may include special studies, such as a traffic study).
- Other consultant reports.
- Letters from the public.

### Items Not Included as Part of the Administrative Report

Items submitted after the packets are delivered are faxed and also left at your places the night of the meeting. These items are usually letters from the public. In some cases they may include a memo from staff correcting or clarifying information in the previously distributed Administrative Report.

### More About the Planning Staff Recommendation

In the vast majority of instances, staff is recommending approval of projects brought before the Planning Commission. This is the result of planning staff working with the applicant to insure that all city codes, policies, regulations and guidelines are met. In addition, some cases require that staff insure all previously identified public and Planning Commission issues have been addressed. This sometimes involves the staff facilitating and mediating discussions between the applicant and neighboring property owners. Some applications are in a form that allow staff to recommend approval of the initial submittal, while others may require meetings with the applicant and plan revisions in order to allow staff to make the mandatory findings required for project approval.

Denial is sometimes, although very infrequently, recommended. However, in some cases, alternative findings for approval, as well as conditions of approval are also forwarded as part of the Administrative Report. These items are included because staff finds that a case can be made for project approval, albeit not as compelling a case as can be made for the staff recommendation.

In rare instances, denial is recommended and no alternative findings and no conditions of approval are included. This is the case when staff has met with the applicant to discuss plan revisions, and the resulting plans clearly do not meet the applicable city codes, policies, regulations and guidelines. This is unusual; this approach is only used when the applicant is has repeatedly been unwilling to make project revisions which would allow staff to make the mandatory findings for approval, even as an alternative motion (as mentioned above).

Should the Planning Commission wish to approve such a project, which is entirely within the Planning Commission's authority, staff will take comments made by the Planning Commission and prepare



alternative approval findings and conditions of approval, normally for adoption at a subsequent meeting.

### Sources:

*1997 Planning, Zoning and Development Laws*, Governor's Office of Planning and Research, 1997

*Alaska Planning Commission Handbook*, Department of Community and Economic Development Municipal and Regional Assistance Division, Pat Poland, Director, Project Manager: Peter Freer, Local Government Specialist V

*Curtin's California Land Use and Planning Law 2002* (Twenty Second) Edition, Daniel J. Curtin Jr., Cecily T. Talbert, 2002

*The Planning Commissioner's Handbook*, League of California Cities, 1995

*CEQA – California Environmental Quality Act, Statutes and Guidelines*, Governor's Office of Planning and Research, 1997

## APPENDICES

### Chapter 2.24 PLANNING COMMISSION

#### Sections:

2.24.010 Organization.

2.24.020 Duties.

**2.24.010 ORGANIZATION.** The Planning Commission heretofore appointed constitutes the Planning Commission of this city. It shall consist of five voting members and one ex officio member.

The five voting members shall be selected by the City Council and shall hold office for a term of four years, or until their respective successors shall have qualified. Each such member shall have one vote in the deliberations of the Planning Commission. The ex officio member shall also be a member of the City Council, shall be chosen by it, and shall hold office until his successor has qualified, but shall not be entitled to vote in the deliberations of the Planning Commission. (Ord. 1989-18 § 20, 1989; prior code § 10.74).

**2.24.020 DUTIES.** The duties of the Planning Commission shall consist of the following:

(1) It may adopt, establish and amend official master plans and portions thereof and compositions thereof;

(2) It may prepare, adopt and record precise street plans; it may control the construction of buildings within lines of streets shown on such precise street plans;

(3) Such other duties as are now or may hereafter be designated by state statutes, city ordinances, or this code. (Prior code § 10.75).

## CHARTER OF THE CITY OF SAN MATEO, CALIFORNIA

Adopted by vote of the People: November 3, 1970

Ratified by Legislature – Resolution Chapter 10 – Statutes of 1971

Filed with Secretary of State – January 19, 1971

Amended – June 4, 1974 (Sec. 7.01)

Amended – November 5, 1974 (Sec. 2.01, 2.18)

Amended – November 4, 1980 (Sec. 2.03, 5.05, 5.07)

Amended – April 5, 1983 (Sec. 2.01, 2.09, 7.01, 8.06)

Amended – June 7, 1988 (Article X, Sec. 10.01, 10.02)

Revised – November 4, 2002 (Charter Chapter 66 - 2002 Statutes)

## ARTICLE VI - BOARDS AND PLANNING COMMISSIONS

### Section No.

- 6.01 Library Board of Trustees. Powers and Duties
- 6.02 Library Fund
- 6.03 Library Board of Trustees. Appointment, Removal, Terms
- 6.04 Planning Commission. Other Boards and Planning Commissions**
- 6.05 Composition. Qualifications. Terms and Limits of Terms
- 6.06 Payment of Expenses. Prohibition of Compensation
- 6.07 Appropriations for Boards and Planning Commissions
- 6.08 Removal from Office. Vacancies
- 6.09 Special Committees. Limitations
- 6.10 Ex Officio Members
- 6.11 Power of Subpoena. Limitations
- 6.12 Declaration of Policy. Citizen Participation

Section 6.04. PLANNING COMMISSION. OTHER BOARDS AND PLANNING COMMISSIONS.

In addition to the library board of trustees there shall be a Planning Commission which shall have the powers and duties from time to time provided by law or by ordinance.

There shall also be such other boards and Planning Commissions as may from time to time be established by ordinance adopted by the City Council or approved by the people. Except as may otherwise be provided by this Charter, or ordinance of the City Council or ordinance approved by the people, all such other boards and Planning Commissions now or hereafter established shall be for advisory purposes only to the City Council, the city manager, or to departments within the city. A board or Planning Commission shall be considered to be advisory even if it is authorized to take final action subject to appeal to the City Council.

**CITY OF SAN MATEO PLANNING COMMISSION  
BYLAWS AND RULES OF PROCEDURE**

**BYLAWS AND RULES OF PROCEDURE  
Of the  
CITY OF SAN MATEO  
PLANNING COMMISSION**

**Adopted November 12, 1968**

**Amended January 17, 1978**

**Amended February 22, 1982**

**Amended June 24, 1985**

**Amended December 9, 1986**

**Amended November 13, 2001**

**CHAPTER 1**

**RULES OF THE PLANNING COMMISSION**

**A. MEETINGS**

1. Regular public hearing meetings of the Planning Commission shall be held on the second and fourth Tuesdays of each month in the San Mateo City Council Chambers at 7:30 p.m. Meetings may be held at such other locations and times as may be determined, so long as the meeting agenda is properly posted as listed in Section D. All meetings shall be open to the public. Study meetings may be held at other times at the discretion of the Planning Commission.
2. Items for public hearing may be considered at other meetings provided adequate notice has been given as required by law or ordinance.
3. A quorum for conducting the business of the Planning Commission shall be three of the voting members of the Planning Commission, and official actions may be taken by a

majority of the voting members present at any meeting unless a larger number if required by law, ordinance, or other provisions of these bylaws.

4. The Chair of the Planning Commission, with the consent of the Planning Commission, shall be responsible for the procedure and conduct of all meetings, and may for special problems in procedure follow the rules of parliamentary practice as set forth in Robert's Rules of Order.

B. ELECTION AND TERMS OF OFFICE

1. The Planning Commission shall, at the first meeting of June of each year, elect from among its members, a Chair and a Vice-Chair. Election shall be held provided that not less than four Planning Commission members are present.
2. The officers shall hold office for one year, commencing in June or until their successors are elected.
3. In case of any vacancy in office, the vacancy shall be filled by an election held at the first regular meeting after the occurrence of such vacancy. Persons so elected shall serve the balance of the term. Election shall be held provided not less than four Planning Commission members are present.
4. Election shall be open ballot, with ballots cast separately for each office. Balloting for Vice-Chair shall follow election of the Chair. In each case, the Planning Commission member with the highest number of votes shall be declared elected.
5. In the case of the absence of, or the inability to act of the Chair and the Vice-Chair, the members present at any meeting shall, by an order entered in their minutes, select one of their number as Chair pro-tem to serve for that meeting.

C. DUTIES OF OFFICERS AND STAFF

1. Chair: The chair shall preside at all meetings of the Planning Commission. The Chair may call a special meeting of the Planning Commission when the Chair deems appropriate. The Chair shall, with the consent of the Planning Commission, have the power to represent the Planning Commission, establish practices for the conduct of Planning Commission business, appoint committees or do such other things as are necessary to accomplish the purpose of the Planning Commission and carry forward its responsibilities to the City Council and citizens of the City of San Mateo.
2. Vice-Chair: In the event of the absence of the Chair or of his inability to act, the Vice-Chair shall perform the duties of the Chair.
3. Director of Community Development: The Director of Community Development or designee shall be the Administrative Secretary of the Planning Commission and shall

maintain minutes of the meetings and records of hearings and official actions and read correspondence received from interested citizens. The Administrative Secretary shall:

- a. On all official actions for which a specific number of votes is required by local or state legislation, show the vote of each member, absences, and abstentions.
- b. Certify all official documents and resolutions of the Planning Commissions.
- c. Report to the Planning Commission on procedural matters pertaining to items before the Planning Commission.
- d. Examine incoming mail for proper referral and answer correspondence for the Planning Commission.
- e. Maintain official records.
- f. Perform such other duties as may be assigned by the City Manager or by the Planning Commission with the concurrence of the City Manager.

#### D. MEETING AGENDA

1. At least 72 hours before each Planning Commission meeting, the Administrative Secretary or designee shall post an agenda with a brief general description of each item of business to be transacted or discussed at the meeting together with the time and location of the meeting. The agenda shall be posted in a location that is freely accessible to the public, to be determined by the Administrative Secretary. The Administrative Secretary or designee shall sign a declaration at the time and place of posting.
2. At least 24 hours before each Planning Commission meeting, a notice specifying the time and place of the special meeting and business to be transacted shall be posted in a location that is freely accessible to the public and shall be delivered personally or by mail to each member of the Planning Commission and to any other local newspaper of general circulation, radio, or television station requesting notice in writing. In the event notice is given less than 48 hours in advance of the meeting, it shall be delivered personally and not mailed. The Administrative Secretary or designed shall sign a declaration of the time and place of posting and delivery.
3. The order of business for regular meetings of the Planning Commission shall be as follows:
  - a. Pledge of Allegiance
  - b. Roll Call
  - c. Approval of Minutes
  - d. Public Comment
  - e. Public Hearing Items

- f. Study Items
- g. Communications / Announcements
- h. Other Business of the Planning Commission

The Chair of the Planning Commission shall have the discretion to change the order of items on the Planning Commission’s agenda.

4. During the “Public Comment” period, members of the public shall be given an opportunity to speak on all items within the Planning Commission’s jurisdiction, including non-public hearing agenda items. The Chair shall determine whether the matter is within the Planning Commission’s jurisdiction. Public testimony on public hearing items will be taken during the public hearing and not during the public comment period. Each member of the public may speak for a maximum of three minutes, with a maximum of fifteen (15) minutes of the entire Public Comment period. If no member of the public wishes to speak, then no time shall be reserved for public comment. If more members of the public wish to speak than can be accommodated with the fifteen minutes period, an additional public comment period, not to exceed fifteen (15) minutes, may be scheduled after all other Planning Commission business has been completed.
5. At a special meeting, the Planning Commission may consider only that business shown on the notice of the special meeting.
6. At a regular meeting, the Planning Commission may take action only on items shown on the posted agenda, unless the Planning Commission takes one of the following actions:
  - a. Determination by a majority vote of the Planning Commission that an emergency situation exists, including work stoppage or crippling disaster which severely impairs public health, safety, or both.
  - b. Determination by a two-thirds (2/3’s) vote of the Planning Commission, or by a unanimous vote if less than two-thirds (2/3’s) of Planning Commission members are present, that the need to take action arose after the agenda was posted.
  - c. Determination by a majority vote that the matter was included on a properly posted agenda for a Planning Commission meeting occurring not more than five calendar days before, and at the prior meeting the item was continued to this meeting.
7. The Planning Commission shall not act or discuss any matters raised during the public comment period which are not on the agenda, but shall refer such matters to staff for review and/or place such matters on a future agenda.

E. PUBLIC HEARINGS

The public is permitted to speak on public hearing items subject to the following conditions:

1. The Chair may limit the amount of time allotted to speakers.



2. Members of the public may only speak when recognized by the Chair.
3. Questions from the public, an applicant, or an appellant will be answered by staff at the direction of and through the Chair and not directly to the questioner.
4. Applicants, appellants, and members of the public who wish to speak on an item shall fill out a card showing their name and address and deliver it to the staff.
  - a. The following order shall be followed in the conduct of public hearings:
    - 1) Staff presentation
    - 2) Planning Commission questions of staff
    - 3) Presentation by applicant
    - 4) Planning Commission questions of applicant
    - 5) Presentation by appellant, if applicable
    - 6) Planning Commission questions of appellant, if applicable
    - 7) Open public hearing for comments
    - 8) Final comments by applicant and/or appellant
    - 9) Further Planning Commission questions of staff, public, appellant, or applicant
    - 10) Closing of public hearing
    - 11) Planning Commission discussion and decision

F. DEADLINE FOR PLANNING COMMISSION CONSIDERATION

Consistent with City Council policy, no new items shall be introduced after midnight.

G. CANCELLATION OF MEETING

Where there is no business to be transacted at a regular meeting, the meeting may be cancelled by the Chair or by vote of the Planning Commission taken at a regular meeting of the Planning Commission. Before determining that there is no business, the Chair shall attempt to contact each Planning Commissioner to determine if they have any business for the meeting.

H. ADOPTION

Upon adoption of these bylaws by a majority vote of the Planning Commission of the City of San Mateo, they shall become effective.

I. AMENDMENTS

These bylaws may be amended by the Planning Commission at any regular meeting by a majority vote provided not less than four Planning Commission members are present.

**BOARDS AND PLANNING COMMISSIONS: RULES AND PROCEDURES**

**Resolution No. 106 (1982)**

PURPOSE

To better assure the continuity of various practices relating to the City's miscellaneous boards and Planning Commissions.

POLICY

1. APPOINTMENTS AND INTERVIEWS:

Information as to vacancies on Boards and Planning Commissions shall be given broad dissemination and applications shall be accepted for vacant positions for a three-week period following the announcement of the vacancy.

Interviews of qualified applicants shall be held by the City Council prior to appointment. It is possible that the City Council may not interview all qualified applicants.

2. ADVICE AND REPORTS TO THE CITY COUNCIL:

The primary purpose of Boards and Planning Commissions is to provide advice to the City Council to aid it on its decision-making process. It is therefore inappropriate for a Board or Planning Commission, or members thereof, to criticize or attempt to change a City Council decision reached after due consideration of the matter.

Boards and Planning Commissions shall submit their recommendations in writing accompanied by the reasons for the recommendations.

Boards and Planning Commissions shall provide quarterly reports to the City Council on matters of interest considered by the Board or Planning Commission during the previous quarter.

3. ACTION TAKEN BY BOARDS AND PLANNING COMMISSIONS:

Although there are a number of items that come before the Boards and Planning Commissions that do not necessitate any formal motion and approval of that motion, when the Board or Planning Commission is developing a recommendation for City Council consideration, it should be formalized by passing a motion. This will help to ensure that the City Council clearly understands the recommendation or decision provided by the Board or Planning Commission.

4. REVIEWING TAPES OF MEETINGS; ABSENT PLANNING COMMISSIONERS:

In those cases where items have been discussed at meetings and will be coming back to the Board or Planning Commission for further action in the future, any Planning Commissioner who was unable to attend the meeting should arrange to listen to the tape recording of the meeting that they missed. In

those cases where the Planning Commissioner is unable to listen to the meeting tape in advance of the need to take action at a subsequent meeting, they should abstain from discussion and voting on that particular item. Failure to review the information that had been presented at an earlier meeting handicaps the ability of a Planning Commissioner in trying to make a decision based on only a portion of information available at a subsequent meeting.

5. REQUEST FOR ADDITIONAL INFORMATION -MAKE IN ADVANCE:

In those cases where a Planning Commissioner receives information on agenda items and feels there is a need for additional information, he or she should make that request of Staff in advance of the meeting. Requesting information in advance of the meeting provides Staff with time to attempt to develop the requested information, and include it in their Staff presentation to the Planning Commission.

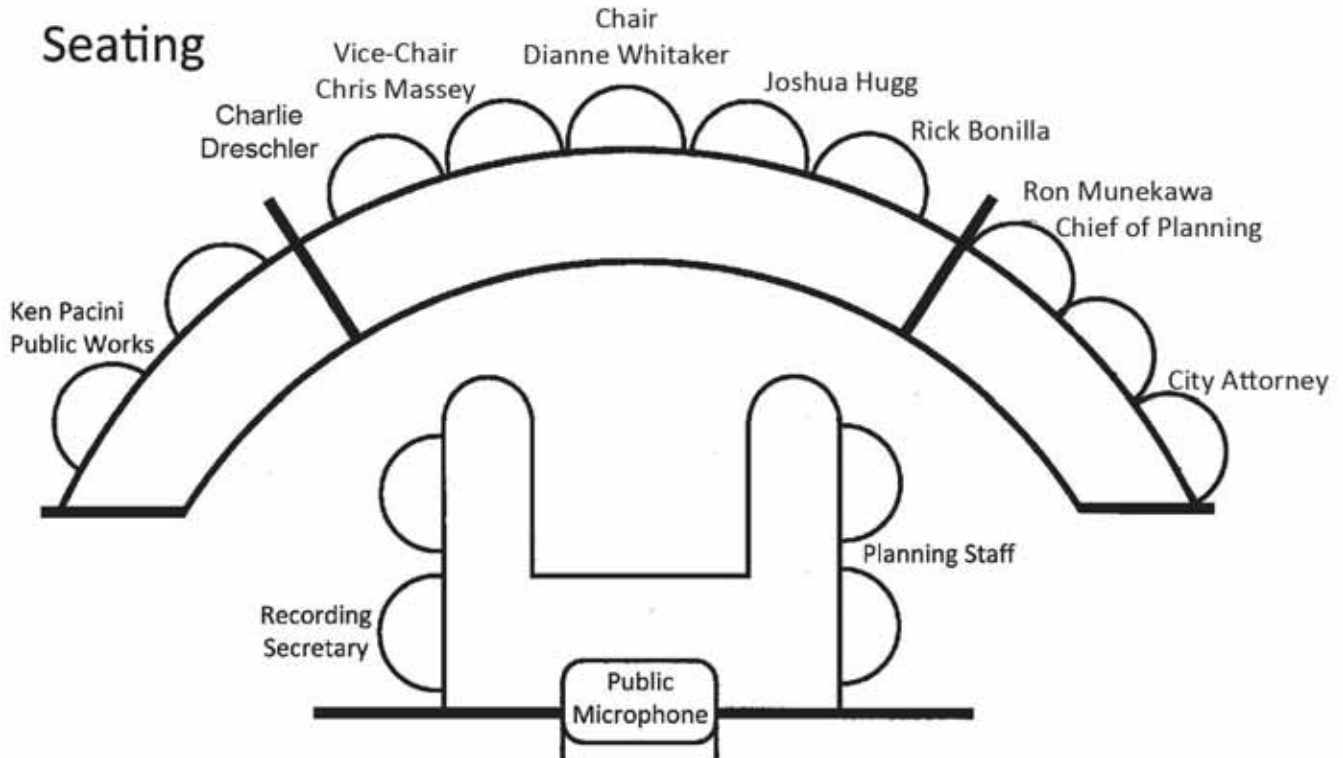
## WELCOME!

For those members of the general public who are attending their first Planning Commission meeting, the following general information is offered.

Planning Commissioners are appointed by the City Council and serve, without pay, for a four-year term. The Planning Commission acts under the policies and ordinances of the City Council. Your presence and participation are important toward furthering an informed and responsible government

## HEARINGS

Meetings are held on the 2<sup>nd</sup> and 4<sup>th</sup> **Tuesdays** of each month. The public hearings begin at 7:30 p.m. in the City Council Chambers. (Note: Special meetings are occasionally scheduled and the public is invited to these meetings). Anyone wishing to address the Planning Commission is asked to give their name and address, in writing, to the Recording Secretary. Forms for this purpose are available at the public microphone and from the Recording Secretary. Agendas for each meeting are available in the lobby and on the city website.



## PLANNING COMMISSION MEETINGS

Prior to hearing the first agenda item, the Planning Commission will hold a Public Comment Period for persons wishing to speak on any subject **not** on the agenda.

After the Public Comment Period, the Planning Commission will hear the first item listed on the agenda. All items head by the Planning Commission follow the procedure below:

1. **The Planning Commission Chair** announces the item to be heard.
2. **Staff presentation.** City staff makes a presentation. After the presentation, Planning Commissioners may ask questions of staff.
3. **Applicant presentation.** Project applicant makes a presentation. After the presentation, Planning Commissioners may ask questions of the project applicant.
4. **Public Hearing:** The Planning Commission Chair opens the public hearing.
  - a. **Speakers.** If you wish to speak, please fill out a "Request to Speak" form available in the front of the City Council Chambers. Give it to the Recording Secretary. Your name will be called in the order received. Please use the microphone at the front of the City Council Chambers and state your name and address for the public record.
  - b. **Number of Speakers:** If you agree with the points made by the previous speaker, you may so elect to have a spokesperson for your group.
  - c. **Previously submitted materials.** The Planning Commission reviews all letters, emails and correspondence from the public. All of these items are part of the public record. The Planning Commission is interested in hearing your comments, but it is not necessary to read your correspondence, verbatim, into the record. You may choose to summarize your major points.
  - d. **Courtesy.** Please do not clap, cheer, interrupt, whistle, etc., neither for or against testimony that is being presented, as the Planning Commission wishes to extend courtesy to all speakers. Please also set cell phones & pagers to vibrate before the meeting begins.
5. **Public Hearing Closed.** After all members of the public have had an opportunity to speak, the Planning Commission Chair will close the public hearing. AT that time, testimony is limited to the Planning Commission and City Staff. However, on occasion, the Planning Commission may recall the applicant to answer questions.
6. **Planning Commissioner Comments.** After all Planning Commission questions have been answered, the Planning Commission will deliberated and render a decision. Some decisions are final with the Planning Commission unless appealed to the City Council, other decisions are recommendations to the City Council for their consideration at a future City Council hearing. The Chair will announce the type of decision after the vote is taken. Please note: "study

session" items are for discussion purposes only, **no** vote is taken; instead comments are given back for consideration and subsequent plan revision before the project comes back repeating comments. You may also elect to have a spokesperson for your group.

The Planning Commission conducts the meeting according to the By-Laws adopted by the Planning Commission. Planning Commission Agendas and materials can be downloaded from the website at: [www.cityofsanmateo.org/index.asp?NID=1927](http://www.cityofsanmateo.org/index.asp?NID=1927).

### INFORMATION ON PLANNING COMMISSION VOTES – Feb 2009

Here are the instances in which being short one PC member will affect PC actions:

- 1) As you probably remember, if there is a 2-2 split on a vote, it will constitute "no action" which equates to denial of the application.
- 2) For Housing Element and General Plan recommendations to the City Council, there will need to be an affirmative vote of not less than a majority of the PC's total membership (e.g., three "yes" votes will be required to make the recommendation). (Gov. Code sections 65354, 65356.)

Let me know if you have any follow-up questions. Thanks

Gabrielle Whelan  
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San Mateo, CA 94403  
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(650) 522-7021 (FAX)  
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# CITY OF EL PASO DE ROBLES

## **Council Policies & Procedures**

ADOPTED DECEMBER 18, 2001

REVISION NO. 1 – 03/2003

REVISION NO. 2 - 02/2007

REVISION NO. 3 - 08/2010

REVISION NO. 4 - 01/2015

1000 Spring Street, Paso Robles, California 93446

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## COUNCIL POLICIES & PROCEDURES REVISION INDEX

Revision No. 1 – May 20, 2003	Change to Section 3.2.2, residency requirements
Revision No. 2 – February 2007	Change to Chapter 6.1.6, Compensation See Ordinance No. 921, adopted July 2006
Revision No. 3 – August 3, 2010	Change to Section 3.2.2, residency requirements
Revision No. 4 – January 20, 2015	Removed references to the Redevelopment Agency (dissolved) in Sect. 1.1.6, 3.1.2, and 6.1.6. Removed 6.1.5 and renumbered accordingly.

## CHAPTER 1 - COUNCIL POWERS & RESPONSIBILITIES

### 1.1 CITY COUNCIL GENERALLY

- 1.1.1 The Council shall have the power, in the name of the City, to do and perform all acts and things appropriate to a municipal corporation and the general welfare of its inhabitants, which are not specifically prohibited by the Constitution and laws of the State of California.
- 1.1.2 The Council acts as a body. Policy is established by majority vote. A decision of the majority binds the Council to a course of action.
- 1.1.3 No Councilmember has any extraordinary powers beyond those of other members (except as may otherwise be provided in this Chapter or in State law). All members, including the Mayor, have equal votes.
- 1.1.4 The Council may authorize the Mayor to make appointments to Council commissions, boards, and advisory committees.
- 1.1.5 No Councilmember may serve as a voting member of any other City commission, board, or committee composed solely of citizen volunteers, city employees, or a combination of both as commissioned pursuant to Chapter 3 of these policies.
- 1.1.6 Councilmembers may serve as members of the Paso Robles Successor Agency as provided in State law.

### 1.2 MAYOR – POWER & DUTIES

- 1.2.1 The Mayor shall preside at all meetings of the Council and perform such other duties consistent with the office as may be required by the Council or by vote of the people. The Mayor does not possess any power of veto.
- 1.2.2 The Mayor may make or second any motion, and present and discuss any matter, as a member of the Council.
- 1.2.3 The Mayor, with approval of the Council, may make appointments to Council commissions, boards, and advisory committees.
- 1.2.4 The Mayor shall be recognized as the official head of the City for all ceremonial purposes.
- 1.2.5 The Mayor shall serve as Chair of the Disaster Council convened in accordance with the City's Emergency Operations Plan (pursuant to Municipal Code Section 2.24.030-040).
- 1.2.6 The Mayor, or Council designee, may consult and coordinate with the City Manager in the development of agendas for meetings of the City Council.

### 1.3 MAYOR PRO TEMPORE – APPOINTMENT & POWERS

- 1.3.1 The appointment of the Mayor Pro Tempore is by majority vote of the Council every two years subsequent to each regularly scheduled general election.
- 1.3.2 The Mayor Pro Tempore shall perform the duties of the Mayor during the Mayor's absence or disability.

### 1.4 COUNCIL ACTIONS

- 1.4.1 Action by the City Council shall be taken by means of ordinance, resolution, or oral motion duly made and passed by the majority (unless otherwise provided in State law).
- 1.4.2 Public actions of the Council shall be recorded in the minutes of any meeting of the Council. Resolutions shall also be recorded separately, serially numbered, and filed sequentially in the office of the City Clerk. Likewise, ordinances shall also be separately recorded, codified in the Municipal Code, and so remain until amended or voided.
- 1.4.3 Actions of the Council concerning confidential property, personnel, and legal affairs of the City shall be reported in a manner consistent with State law.

### 1.5 ESTABLISHMENT OF COMMISSIONS, BOARDS, & ADVISORY COMMITTEES<sup>1</sup>

- 1.5.1 The Council may establish commissions, boards, and advisory committees to aid in gathering public input.
- 1.5.2 The Council may adopt criteria for membership on its commissions, boards and committees provided the criteria do not discriminate based on sex, race, religion, creed, color, national or ethnic origin, or any other classification prohibited by law.
- 1.5.3 The Council may adopt reasonable methods for selecting members of its commissions, boards and committees.
- 1.5.4 The Council may disband any commission, board, or advisory body provided State law does not prohibit such action.

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<sup>1</sup> : See Chapter 3 & 4.5 for more on Boards & Commissions.

## CHAPTER 2 - CODE OF ETHICS

### 2.1 PREAMBLE

The residents and businesses of Paso Robles are entitled to have fair, ethical and accountable local government. Such a government requires that:

- ▶ Public officials comply with both the letter and spirit of the laws and policies affecting operations of the government;
- ▶ Public officials be independent, impartial and fair in their judgment and actions;
- ▶ Public office be used for the public good, not for personal gain; and
- ▶ Public deliberations and processes be conducted openly, unless legally confidential, in an atmosphere of respect and civility.

To this end, the Paso Robles City Council has adopted this Code of Ethics to encourage public confidence in the integrity of local government and its operation.

### 2.2 PUBLIC INTEREST

- 2.2.1 Councilmembers will work for the common good of the people of Paso Robles and not for any private or personal interest, and they will endeavor to treat all persons, claims and transactions in a fair and equitable manner.
- 2.2.2 Councilmembers shall comply with the laws of the nation, the State of California, and the City in the performance of their public duties.

### 2.3 CONDUCT

- 2.3.1 Councilmembers shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of others.
- 2.3.2 Councilmembers shall perform their duties in accordance with the processes and rules of order established by the City Council.
- 2.3.3 Councilmembers shall inform themselves on public issues; listen attentively to public discussions before the body; and focus on the business at hand.
- 2.3.4 Councilmembers shall base their decisions on the merits and substance of the matter at hand.
- 2.3.5 Councilmembers shall publicly share substantive information that is relevant to a matter under consideration that they may have received from sources outside of the public decision-making process.

## 2.4 CONFLICT OF INTEREST<sup>2</sup>

- 2.4.1 Councilmembers shall not use their official positions to influence government decisions in which they have a financial interest, or where they have an organizational responsibility or personal relationship that would present a conflict of interest under applicable State law.
- 2.4.2 In accordance with the law, members shall file written disclosures of their economic interests and, if they have a conflict of interest regarding a particular decision, refrain from participating in that decision, unless otherwise permitted by law.
- 2.4.3 Councilmembers shall not take advantage of services or opportunities for personal gain, by virtue of their public office that are not available to the public in general. They shall refrain from accepting gifts, favors or promises of future benefits that might compromise their independence of judgment or action or give the appearance of being compromised.
- 2.4.4 Councilmembers shall respect and preserve the confidentiality of information provided to them concerning the confidential matters of the City. They shall neither disclose confidential information without proper legal authorization, nor use such information to advance their personal, financial or other private interests.
- 2.4.5 Councilmembers shall not use public resources not available to the public for private gain or personal purposes.
- 2.4.6 Councilmembers shall not appear on behalf of the private interests of third parties before the City Council or any board, commission, committee or proceeding of the City.
- 2.4.7 Councilmembers shall represent the official policies and positions of the City Council to the best of their ability. When presenting their personal opinions and positions, members shall explicitly state they do not represent the Council or the City.
- 2.4.8 Councilmembers shall refrain from using their position to unduly influence the deliberations or decisions of City commissions, boards or committees.

## 2.5 POLICY ROLE

- 2.5.1 Councilmembers shall respect and adhere to the Council-Manager structure of Paso Robles City government as provided in State law and the Municipal Code.
- 2.5.2 Councilmembers shall support the maintenance of a positive and constructive environment for residents, businesses, and City employees.

## 2.6 COMPLIANCE & ENFORCEMENT

- 2.6.1 Councilmembers themselves are primarily responsible for assuring they understand and meet the ethical standards set forth herein.

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<sup>2</sup> State laws governing conflicts of interest are written to ensure that actions are taken in the public interest. These laws are very complex. Councilmembers should consult with the City Attorney or the Fair Political Practices Commission for guidance in advance.

## CHAPTER 3 - COMMISSIONS, BOARDS, & ADVISORY COMMITTEES<sup>3</sup>

### 3.1 COMMITTEES GENERALLY

- 3.1.1 The City Council may establish standing or ad hoc Commissions, Boards, and Advisory Committees (referred to collectively herein as “committees”) as a means of gathering community input.
- 3.1.2 Citizens who are appointed to Council committees serve in an advisory capacity to the City Council (except that the Planning Commission and Library Board may be vested with additional responsibilities as prescribed in State law).

### 3.2 COMMITTEE ORGANIZATION & CONDUCT

- 3.2.1 Standing committees are established by resolution of the City Council and are organized under Council adopted by-laws specific to each.
- 3.2.2 Appointees shall be residents of the City. Exceptions: (a) membership on the Planning Commission may include persons having a vested interest in the City; (b) membership on the Housing Authority Board of Commissioners may include residents of the Housing Authority’s “area of operations” as defined by State Law; (c) other exceptions as may be warranted, provided that the reasons for exceptions shall be so stated in that committee’s by-laws.
- 3.2.3 Standing committees and standing committee members shall comply with all applicable open meeting and conflict of interest laws of the State.
- 3.2.4 Committee members are expected to adhere to the Council’s Code of Ethics.

### 3.3 COMMITTEE APPOINTMENTS

- 3.3.1 The City Clerk shall maintain a list of all committee appointive terms.
- 3.3.2 The City Clerk shall solicit applications for vacancies in accordance with State law or City procedures, whichever is applicable.
- 3.3.3 The Council shall determine a selection methodology as needed or desired.
- 3.3.4 No person shall be eligible for appointment to one standing committee for more than three full consecutive terms, exclusive of prior appointment to fill an unexpired term.
- 3.3.5 Persons who have served three full consecutive terms may be reappointed following a one-term absence.
- 3.3.6 Appointees shall serve on only one standing committee at a time.

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<sup>3</sup> NOTE See Chapter 1.5 & 4.5 for more regarding Boards & Commissions.

## CHAPTER 4 COMMUNICATIONS

### 4.1 COMMUNICATION GENERALLY

A fundamental role of a Councilmember is communication – communication with the public to assess community opinions and needs – communication with staff to gain an understanding of policy alternative implications and provide policy direction – communication with other public agencies to represent the community's interests – and, communication with the media to inform the public about the functions of government.

Because the City Council functions as a body, i.e., acting on a majority vote, it is important that members represent the City's official position, or if expressing personal views, the public is so advised. To ensure that accurate City communications reach the public in a timely manner, the following shall apply.

### 4.2 CORRESPONDENCE

- 4.2.1 Once the City Council has taken a position on an issue, official correspondence shall reflect that position.
- 4.2.2 Typically, the Mayor will transmit the City's adopted position on policy matters to outside agencies on behalf of the City Council.
- 4.2.3 City stationery shall be used when corresponding on matters relating to such official City business.
- 4.2.4 Councilmembers who disagree with a position may prepare correspondence on such issues as private citizens on personal stationery.
- 4.2.5 Councilmembers may transmit correspondence on issues that the Council has yet to take a position so long as the letters indicate that the author is not speaking for the Council. City stationery may be used for these purposes.
- 4.2.6 Councilmembers may prepare letters for constituents in response to inquiries or to provide requested information.
- 4.2.7 City stationery and staff support shall not be used for personal or campaign purposes.

### 4.3 SPEAKING ENGAGEMENTS

- 4.3.1 Councilmembers may accept public speaking invitations.
- 4.3.2 Presentations shall clearly articulate the Council's adopted policy position.
- 4.3.3 A Councilmember may indicate that their individual position differs from that which was adopted.

### 4.4 MEDIA RELATIONS

- 4.4.1 Typically, the Mayor is the designated representative of the Council to speak on official City positions.
- 4.4.2 Individual Councilmembers may comment to the media but should be clear about whether their

comments represent the official City position or a personal viewpoint.

- 4.4.3 Generally, press releases shall be prepared and routed to the City Manager for approval before release to the media.
- 4.4.4 Police and Fire responses to, and/or press releases regarding, emergencies may be reported directly to the media by the designated department spokesperson.

#### 4.5 COMMITTEE RELATIONS<sup>4</sup>

- 4.5.1 The City has established several commissions, boards and committees as a means of gathering community input. These bodies follow policy established by the Council majority.
- 4.5.2 Councilmembers may attend any public commission, board or committee meeting so long as their attendance does not violate the provisions of State law.
- 4.5.3 Councilmembers may be assigned to serve as liaison to these bodies. As such, they do not serve as ex-officio members, rather as a conduit to facilitate interaction between the body and the Council.
- 4.5.4 In interacting with these bodies, Councilmembers are to reflect the views of the Council majority.
- 4.5.5 Councilmembers shall not engage in any *ex parte* communication with any member of a commission, board or committee regarding any quasi-judicial matter pending, or reasonably expected to come, before such a body.

*Ex Parte Communication – any oral or written communication, which is intended, or is reasonably calculated, to influence decisions.*

*Quasi-Judicial Matter – the appeal of any employee discipline or grievance, or a proceeding to approve or revoke any license, permit or project.*

- 4.5.6 Any Councilmember may appeal a decision of the Planning Commission, but shall provide written justification, or reasons for the appeal, within the prescribed time period.

#### 4.6 STAFF RELATIONS

- 4.6.1 The Council shall recognize that the primary functions of City staff are to execute Council policy, and to keep the Council informed.
- 4.6.2 Councilmembers may make routine requests for information through the appropriate department head. Complex or comprehensive requests shall be made through the City Manager.
- 4.6.3 Councilmembers may make requests for work to be done through the City Manager.
- 4.6.4 Councilmembers shall not attempt to pressure or influence staff decisions, recommendations, workloads, schedules or department priorities absent the approval of the Council majority.

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<sup>4</sup> See Chapters 1.5 & 3 for more regarding Boards & Commissions



#### 4.7 REMOTE ACCESS TO COMMUNICATIONS/INFORMATION<sup>5</sup>

- 4.7.1 The City will provide Councilmembers with direct access to the City telephone and computer systems from their homes.
- 4.7.2 The City will provide Councilmembers with cellular phones for remote access as needed.
- 4.7.3 The City will provide Councilmembers with computer workstations or portables for their home-based or remote use while in Office, as needed.
- 4.7.4 Councilmember use of the City telephone and computer systems is subject to all City guidelines concerning use of such systems.

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<sup>5</sup> See Chapter 6.3.3 for more regarding reimbursement of remote access expenses

## CHAPTER 5 CITY COUNCIL MEETINGS

### 5.1 COUNCIL MEETING DEFINED

A City Council meeting is any publicly noticed congregation of a majority of the members of the City Council at the same time and place to hear, discuss, deliberate, vote upon, and/or otherwise transact the public business that is within the subject matter jurisdiction of the City Council.

The presiding officer may limit public comment/testimony to those matters that are on the meeting agenda or are within the subject matter jurisdiction of the City Council.

### 5.2 MEETING SCHEDULE

- 5.2.1 The Council shall provide by resolution the time and place for regular meetings.
- 5.2.2 Closed sessions may be scheduled before or after regular meetings, and/or as a special or adjourned meeting.
- 5.2.3 Adjourned regular meetings, study sessions and workshops may be called by a majority of the Council at a time and place convenient, within the City limits, and advantageous for public participation.
- 5.2.4 Special meetings may be called by the Mayor or by three members of the City Council with a minimum 24 hours public notice.
- 5.2.5 Generally, meeting business, other than closed session items, should be completed by 11:30 pm. If at that time the Council has not concluded its business, it will review the balance of scheduled business to determine by majority vote whether to extend the meeting or continue consideration of the remaining items to another meeting.

### 5.3 PUBLIC PARTICIPATION

- 5.3.1 It is the policy of the City Council that members of the public shall have the opportunity to speak to any meeting agenda item before final action.
- 5.3.2 Any person desiring to address the Council should first submit a speaker's card and secure the permission of the presiding officer.
- 5.3.3 Public remarks shall generally be limited to three minutes unless the presiding officer grants additional time. Those persons whose interests are the subject of the matter before the Council may be provided ten minutes with an additional five minutes for rebuttal.
- 5.3.4 When a group of persons wishes to address the Council on the same subject, the presiding officer may request that a spokesperson be chosen to speak for the group.
- 5.3.5 The public may request an item be placed on a future agenda, and upon majority action of the Council, the item will be placed on the agenda of a future meeting.
- 5.3.6 The presiding officer may rule a speaker out-of-order who is speaking too long, being unduly

repetitious, or extending discussion of irrelevancies.

- 5.3.7 The presiding officer may rule a speaker out-of-order who is disrupting a meeting with personal, impertinent, slanderous or profane remarks.
- 5.3.8 Any Councilmember may request the presiding officer to enforce these rules. The presiding officer, or the Council by majority vote, may exclude or expel all persons from a meeting where a disturbance has been created which will not allow the meeting to continue unimpeded.

#### 5.4 MEETING DISCUSSION RULES

- 5.4.1 To obtain the floor, a Councilmember shall first address the presiding officer to gain recognition.
- 5.4.2 Comments and questions should be limited to the issue before the Council.
- 5.4.3 When present, all Councilmembers shall vote, unless they declare a conflict of interest and do not participate in the discussion.
- 5.4.4 A vote may be changed by a Councilmember only immediately after the vote announcement and prior to the introduction of the next agenda item.
- 5.4.5 A Councilmember is not obligated to state reasons for dissent.
- 5.4.6 Roll call voting is the preferred method for recording Council votes.

#### 5.5 MEETING AGENDAS <sup>6</sup>

- 5.5.1 Agenda format is determined by majority action of the Council.
- 5.5.2 The order of specific public hearing and business items is determined by the City Manager based upon anticipated public interest, participation of paid consultants, implementation urgency/time sensitivity, and other related considerations.
- 5.5.3 Any Councilmember may request an item be placed on a future agenda. If the request is to reconsider a Council action effected within the preceding 12 months, authorization for placement will require majority action of the Council.
- 5.5.4 Council Commission, Board and Committee recommendations shall be placed on the agenda in a timely manner once a staff report can be prepared.
- 5.5.5 The City Council cannot take action on items not included on the posted agenda except as provided for emergency or urgent items (as provided in the Brown Act).
- 5.5.6 Meeting agendas are posted and distributed 72 hours in advance of any Council meeting, except for special meetings.

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<sup>6</sup> The public may request items to be placed on an agenda – see Chapter 5.2.5.

## CHAPTER 6 COUNCIL FINANCIAL MATTERS

### 6.1 COMPENSATION

- 6.1.1 The California Government Code controls the “salary” of Councilmembers. The Code permits the Council to establish by ordinance a “salary” up to a ceiling determined by a City’s population.
- 6.1.2 A “salary” established by council action may be increased but the amount of the increase may not exceed an amount equal to five percent for each calendar year from the operative date of the last adjustment.
- 6.1.3 The electorate may separately approve a higher “salary.”
- 6.1.4 The directly elected Mayor may receive additional compensation with the consent of the electorate or by ordinance of the Council.
- 6.1.5 Councilmembers receive \$600/month), the Mayor receives \$800/month.<sup>7</sup>

### 6.2 BENEFITS

- 6.2.1 The California Government Code provides that Councilmembers may receive health and welfare benefits.
- 6.2.2 City-funded medical, dental, vision, and employee assistance insurance plan benefits are provided.

### 6.3 EXPENSES<sup>9</sup>

- 6.3.1 Councilmembers may be reimbursed for actual and necessary expenses incurred in the performance of official duties.
- 6.3.2 Eligible expenses include travel expenses (including meals), mileage reimbursement, attendance at conferences and educational seminars, purchase of government business related publications and annual subscriptions, and membership in professional associations.
- 6.3.3 Councilmembers may be reimbursed for the expense of cellular phone service and charges, internet connection and use charges, and the like, incurred as a result of the performance of their public duties.
- 6.3.4 Expense reimbursement is subject to the City’s adopted travel and expense reimbursement policy.
- 6.3.5 The expenses of spouses accompanying Councilmembers in the conduct of their public duties are not reimbursable.

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<sup>7</sup> Updated by Ordinance No. 920 N.S. adopted July 5, 2006, effective December 2006. See §2.40.030 of Municipal Code.

<sup>9</sup> Certain communication and computer resources are also provided – see Chapter 4.7.

## CHAPTER 7 COUNCIL POLICIES & PROCEDURES

### 7.1 REVIEW OF POLICIES & PROCEDURES

The policies and procedures contained herein shall be reviewed whenever at least one member of the Council commences a new term pursuant to any General Election.

### 7.2 RESTRICTIONS ON POLICIES & PROCEDURES

The policies and procedures contained herein shall govern the City Council in all cases to which they are applicable, and in which they are consistent with State or Federal law.

**Amendment 1 - 2015**

**ARTICLE I - THE COMMITTEE**

Section 1: Name of Committee

The name of the Committee shall be the PLANNING COMMISSION Committee. (hereinafter referred to as the PC).

Section 2: Purpose

The PC serves at the pleasure of the City Council as a means to aid the City Council in gathering public input by providing a forum through which private citizens may advise the City Council of the City of Paso Robles (“Agency”) on matters relating to in the City of Paso Robles. In order to accomplish that purpose, the Advisory Body may consult with and advise the Agency on those matters which deal with:

- a.
- b.
- c.
- d.

The PC shall be and remain established following the adoption of these Bylaws unless otherwise abolished by an affirmative vote of the majority of the City Council.

Section 3: Membership

**a. Membership Categories and Qualifications.**

To be eligible for membership on the PC, a person must be either a:

- (1) Resident: To qualify under this category, the person must either own or occupy a residential dwelling located within the City.
- (2) Business Owner: To qualify under this category, the person or the legal entity, which the person represents, must present satisfactory evidence of ownership and operation of a business within the City.
- (3) Representative of Existing Community Organization: To qualify under this category, the person must be appointed to serve as a representative member by an existing nonprofit corporation or association of persons and/or entities which has its headquarters or a site office within the City or has a substantial number of constituents who are persons and/or entities who reside or conduct business in the City formed for the purpose of

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serving the community and generally recognized by persons within the City as a Paso Robles community organization.

- (4) Other: Non-residents may be considered/appointed so long as a majority of the Advisory Body are residents as provided in Section 3.a.1-3 above.

**b.** Open Membership

Criteria and selection for membership shall not discriminate based upon sex, race, religion, creed, color, national or ethnic origin, or any other classification protected by law.

**c.** Total Membership & Term Of Appointment.

The total membership of the PC shall be seven (7). A member's regular term of appointment shall be 3 years.

- (1) No person shall be eligible for appointment for more than three consecutive terms, exclusive of prior appointment to fill an unexpired term of office.
- (2) Persons who have served three full consecutive terms may be reappointed following a one-term absence.
- (3) Appointees shall serve on only one Council Advisory Body/Commission at a time.

**d.** Member Code of Ethics

Committee members shall adhere to the City Council's Code of Ethics (Appendix).

Section 4: Conflict of Interest

- a.** No member shall participate in any decision which directly or indirectly affects his or her property or economic interests in a manner which is distinguishable from the effect on the City as a whole or his or her interests in common with others similarly situated.
- b.** Committee members shall not engage in any *ex parte*<sup>1</sup> communication with any member of the City Council, commission, board or committee regarding any quasi-judicial<sup>2</sup> matter pending, or reasonably expected to come, before such a body.

Section 5: Termination of Membership.

Membership in the PC shall terminate in the event that:

- a.** The member is no longer a Resident, Paso Robles Business Owner, or a representative of an existing Paso Robles Community Organization; or

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<sup>1</sup> *Ex parte* communication is any oral or written communication that is intended, or is reasonably calculated, to influence decisions.

<sup>2</sup> *Quasi-judicial* matter is the appeal of any employee discipline or grievance, or a proceeding to approve or revoke any license, permit or project..

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- b. The member shall not be, or shall no longer be, a member of that membership category from and for which he or she was elected or appointed; or
- c. The member shall have acted in violation of Section 9 of Article III of these Bylaws.
- d. The member shall have served three consecutive full terms.

Section 6: Removal of Members.

A member may be removed by an affirmative vote of a majority of the City Council, if, after a hearing, it is found and determined that any one of the grounds for termination specified in Section 5 of this Article I exists.

Section 7: Resignation

Any PC member may resign at any time by giving written notice to the Chairperson, who shall forward such notice to all members of the Advisory Body and the Agency. Any such resignation will take effect upon receipt or upon any date specified therein. The acceptance of such resignation shall not be necessary to make it effective.

Section 8: Filling of Vacancies

In the event of a vacancy on the PC, the City Council shall select an individual to fill such vacancy as soon as reasonably practicable. New members must meet the qualifications set forth in Section 3 of Article I.

Section 9: Remuneration

Members shall serve without pay except for reimbursement for travel expenses to meetings outside of the City.

**ARTICLE II - OFFICERS**

Section 1: Officers

The officers of the PC shall consist of a Chairperson and a Vice Chairperson, who shall be elected in the manner set forth in this Article II.

Section 2: Chairperson

The Chairperson shall preside at all meetings of the PC, and may submit such agenda, recommendations and information at such meetings as are reasonable and proper for the conduct of the business affairs and policies of the Advisory Body. The Chairperson may sign documents necessary to carry out the business of the PC.



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Section 3: Vice-Chairperson

The Vice Chairperson shall perform the duties of the Chairperson in the absence or incapacity of the Chairperson. In the event of the death, resignation or removal of the Chairperson, the Vice Chairperson shall assume the Chairperson's duties until such time as the PC shall elect a new Chairperson.

Section 4: Additional Duties

The officers of the PC shall perform such other duties and functions as may from time to time be required by the Advisory Body, these Bylaws, or other rules and regulations, or which duties and functions are incidental to the office held by such officers.

Section 5: Election

The Chairperson and Vice Chairperson shall initially be elected from among the members of the PC at the Advisory Body's first regular meeting. Thereafter, the Chairperson and Vice Chairperson shall be elected from among the members of the Advisory Body annually. Such officers shall hold office for one year following their election and until their successors are elected and in office. Any such officer shall not be prohibited from succeeding him or herself, but no person shall be elected as an officer for more than three consecutive terms.

Section 6: Removal of Officers

Upon an affirmative vote by a majority of the members present at a regular or special meeting of the PC at which a quorum is present any officer may be removed from office, and a successor elected pursuant to Section 7 of this Article II.

Section 7: Vacancies

Should the offices of the Chairperson or Vice Chairperson become vacant, the members shall elect a successor from among the PC members at the next regular or special meeting, and such office shall be held for the unexpired term of said office.

**ARTICLE III - MEETINGS**

Section 1: Regular Meetings

The PC shall meet regularly on the 2nd and 4th Tuesday of each month, at the hour of 6:30 PM (effective October 27, 2015), at Conference Center, 1000 Spring Street, Paso Robles, CA. In the event that the regular meeting date shall be a legal holiday, then any such regular meeting shall be held on the next business day thereafter ensuing that is not a legal holiday. A notice, agenda and other necessary documents shall be delivered to the members, personally or by mail, at least seventy-two (72) hours prior to the meeting.

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Section 2: Special Meetings

Special meetings may be held upon call of the Chairperson, or an affirmative vote by a majority of the members present at a regular or special meeting of the PC at which a quorum is present, for the purpose of transacting any business designated in the call, after notification of all members by written notice personally delivered or by mail at least twenty-four (24) hours before the time specified notice for a special meeting. At such special meeting, no business other than that designated in the call shall be considered.

Section 3: Adjourned Meetings

Any meeting may be adjourned to an adjourned meeting without the need for notice requirements of a special meeting, provided the adjournment indicates the date, time and place of the adjourned meeting. PC members absent from the meeting at which the adjournment decision is made shall be notified by the Chairperson of the adjourned meeting.

Section 4: All Meetings to be Open and Public

All meetings of the PC shall be open and public to the extent required by law. All persons shall be permitted to attend except as otherwise provided by law.

Section 5: Posting Agendas/Notices

The City Staff member assigned to the PC or his or her authorized representative, shall post an agenda for each regular meeting or a notice for each special meeting containing a brief description of each item of business to be transacted or discussed at the meeting together with the time and location of the meeting. Agendas/notices shall be posted at the Paso Robles City Library and Police Department at least seventy-two hours in advance of each regular meeting and at least twenty-four (24) hours in advance of each special meeting. The Staff Member shall maintain a record of such posting.

Section 6: Right of Public to Appear and Speak

At every regular meeting, members of the public shall have an opportunity to address the PC on matters within the Advisory Body's subject matter jurisdiction. Public input and comment on matters on the agenda, as well as public input and comment on matters not otherwise on the agenda, shall be made during the time set aside for public comment; provided, however, that the Chairperson may direct that public input and comment on matters on the agenda be heard when the matter regularly comes up on the agenda. The Chairperson may limit the total amount of time allocated for public discussion on particular issues and/or the time allocated for each individual speaker.

Section 7: Non-Agenda Items

Matters brought before the PC at a regular meeting which were not placed on the agenda of the meeting shall not be acted upon by at that meeting unless action on such matters is

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permissible pursuant to the Ralph M. Brown Act (Gov. Code §54950 et seq.). Those non-agenda items brought before the Advisory Body that the PC determines will require consideration and action, and where action at that meeting is not so authorized, shall be placed on the agenda for a future meeting once a City staff report concerning the matter is prepared.

Section 8: Quorum

The powers of the PC shall be vested in the members thereof in office from time to time. Four of the PC members then in office shall constitute a quorum for the purpose of conducting the Committee's business, exercising its powers and for all other purposes, but less than that number may adjourn the meeting from time to time until a quorum is obtained. An affirmative vote by a majority of the members present at a regular or special meeting at which a quorum is present shall be required for approval of any questions brought before the PC.

Section 9: Unexcused Absences

If a member shall be absent without the consent of the Advisory body from three (3) meetings, whether regular or special, within six (6) consecutive calendar months, such absence shall result in the termination of the membership of the absenting member. A member's absence shall be excused if, prior to the meeting from which said member will be absent, said member notifies the Chairperson of his or her intent to be absent and the reasons therefore; provided, however, that a member shall be entitled to only two (2) excused absences within twelve (12) consecutive calendar months. At each meeting, after the roll has been called, the Chairperson shall report to the Advisory Body the name of any member who has so notified him or her of his or her intent to be absent and the reason for such absence.

Section 10: Order of Business

All business and matters before the PC shall be transacted in conformance with the City Council's established practice.

Section 11: Minutes (Action)

Minutes of the PC shall be prepared in writing by the City staff member assigned to the Advisory Body. Copies of the minutes of each meeting shall be made available to each member and the Agency. Approved minutes shall be filed in the official book of minutes of the PC and forwarded to the City Council for information.

Section 12: Recommendations to City Council.

Recommendations of the PC to the City Council shall be prepared in writing by the City staff member assigned to the Advisory Body. Recommendations may be presented to the City Council during a public meeting once the assigned staff prepares a staff report

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summarizing key facts, analysis, cost/benefit consideration, fiscal impact, and policy implications and options, and the report has been reviewed by the City Manager. The official minutes of the PC documenting recommendation(s) shall be attached to the staff report.

**ARTICLE IV - REPRESENTATION BEFORE PUBLIC BODIES**

The Chairperson, the Vice-Chairperson in the Chairperson's absence or a member of the PC, may make official representations on behalf of the Committee before the Agency and/or the City Council if so specifically designated by the Advisory Body. The PC may present information to other public bodies with the affirmative vote of a majority of the City Council.

**ARTICLE V - COMMITTEES**

The PC may establish any standing and/or special committees it deems necessary consistent with, and to fulfill, its stated purpose as established in Section 2 of these Bylaws.

**ARTICLE VI - AMENDMENTS**

These Bylaws may be amended upon an affirmative vote by a majority of the City Council.

**APPENDIX**

**CODE OF ETHICS**

PREAMBLE

The residents and businesses of Paso Robles are entitled to have fair, ethical and accountable local government. Such a government requires that:

- ▶ Public officials comply with both the letter and spirit of the laws and policies affecting operations of the government;
- ▶ Public officials be independent, impartial and fair in their judgment and actions;
- ▶ Public office be used for the public good, not for personal gain; and
- ▶ Public deliberations and processes be conducted openly, unless legally confidential, in an atmosphere of respect and civility.

To this end, the Paso Robles City Council has adopted this Code of Ethics to encourage public confidence in the integrity of local government and its operation.

PUBLIC INTEREST

Advisory Body Members will work for the common good of the people of Paso Robles and not for any private or personal interest, and they will endeavor to treat all persons, claims and transactions in a fair and equitable manner.

Advisory Body Members shall comply with the laws of the nation, the State of California, and the City in the performance of their public duties.

CONDUCT

Advisory Body Members shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of others.

Advisory Body Members shall perform their duties in accordance with the processes and rules of order established by the City Council.

Advisory Body Members shall inform themselves on public issues; listen attentively to public discussions before the body; and focus on the business at hand.

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Advisory Body Members shall base their decisions on the merits and substance of the matter at hand.

Advisory Body Members shall publicly share substantive information that is relevant to a matter under consideration that they may have received from sources outside of the public decision-making process.

CONFLICT OF INTEREST<sup>3</sup>

Advisory Body Members shall not use their official positions to influence government decisions in which they have a financial interest, or where they have an organizational responsibility or personal relationship that would present a conflict of interest under applicable State law.

In accordance with the law, members shall file written disclosures of their economic interests and, if they have a conflict of interest regarding a particular decision, refrain from participating in that decision, unless otherwise permitted by law.

Advisory Body Members shall not take advantage of services or opportunities for personal gain, by virtue of their public office that are not available to the public in general. They shall refrain from accepting gifts, favors or promises of future benefits that might compromise their independence of judgment or action or give the appearance of being compromised.

Advisory Body Members shall respect and preserve the confidentiality of information provided to them concerning the confidential matters of the City. They shall neither disclose confidential information without proper legal authorization, nor use such information to advance their personal, financial or other private interests.

Advisory Body Members shall not use public resources not available to the public for private gain or personal purposes.

Advisory Body Members shall not appear on behalf of the private interests of third parties before the City Council or any board, commission, committee or proceeding of the City.

Advisory Body Members shall represent the official policies and positions of the City Council to the best of their ability. When presenting their personal opinions and positions, members shall explicitly state they do not

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<sup>3</sup> State laws governing conflicts of interest are written to ensure that actions are taken in the public interest. These laws are very complex. Councilmembers should consult with the City Attorney or the Fair Political Practices Commission for guidance in advance.

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represent the Council or the City.

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Advisory Body Members shall refrain from using their position to unduly influence the deliberations or decisions of City commissions, boards or committees.

POLICY ROLE

Advisory Body Members shall respect and adhere to the Council-Manager structure of Paso Robles City government as provided in State law and the Municipal Code.

Advisory Body Members shall support the maintenance of a positive and constructive environment for residents, businesses, and City employees.

COMPLIANCE & ENFORCEMENT

Advisory Body Members themselves are primarily responsible for assuring they understand and meet the ethical standards set forth herein.



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## CITY OF ATASCADERO

### COMMISSION NORMS AND PROCEDURES (2007)

#### GENERAL

- All Commission Members receive the same information concerning upcoming issues, training opportunities, etc.
- Return unwanted reports and documents to staff for distributing to the public or for recycling.
- Commission chairs and vice-chairs meet quarterly with the Mayor and Mayor Pro Tem to exchange feedback and be kept informed. The Council will receive information and provide direction.
- Commission needs:
  - All Commissioners should receive annual training.
  - To know Council vision, community vision, and General Plan 2025
  - Understanding of their roles and authority.
  - To be knowledgeable of annual prioritized goals of the City Council.
- Criteria for commissioner for re-appointment (and in extreme cases, removal) shall include:
  - Attendance (Absence from 3 consecutive meetings, or from 4 meetings during a calendar year without formal consent of the Council).
  - Support of General Plan.
  - Treat staff and public with respect.
  - Working for the greater good of the community versus personal purposes.

## **COMMISSION VALUES**

- The Commission values active participation and open mindedness.
- Commission Members will have respect for each other as individuals.
- Commission Members have a responsibility to do what is in the public's best interest.
- Commission Members will subordinate political considerations to the good of the entire community, while being straightforward about the philosophy behind their decisions.
- The Commission Members value humor.
- Traditions are respected, but not binding.

## **COMMISSION INTERACTION AND COMMUNICATION**

- Commission Members are responsible for initiating the resolution of problems as they arise.
- Commission Members will not direct personal attacks at each other during public meetings or in the press. Difference of opinion should be about issues and not personalities.
- Relationships should be professional and courteous [beware of impact on, and perception of, public].
- Substantive Commission / Department Director items are to receive advance notice and public notification.
- Commissioners that are the Complainant on an issue before the Commission must declare their involvement in the issue before the item is reviewed by the Commission.

## **COMMISSION INTERACTION AND COMMUNICATION WITH STAFF**

### **Department Director**

- Staff will provide essential information to all Commission Members. Staff will support the Commission to make the best decision or recommendation possible.

### **Staff in General**

- Whenever possible, if there is a significant issue or question a Commission Member has on an agenda item, then the member should contact staff prior to the meeting so staff can be adequately prepared to address such issues during the public meeting.

### **COMMISSION OPTIONS FOR KEEPING INFORMED**

- Read Council Minutes in order to keep up to date on current issues facing the City. (Available on City website)
- Commission Members will do their homework by reading the agenda packets prior to meetings and making site visits when possible.

### **CHAIR AND VICE-CHAIR SELECTION**

- Each Commission shall elect a Chair and Vice-Chair to serve a one-year term at its first meeting in February.

### **CHAIRPERSON'S ROLE**

- Each Chairperson is unique; the role is defined by the person, based on that person's style.
- The Chairperson is the spokesperson for the Commission on actions approved by the Commission as a whole. The Chairperson shall not share his or her personal views while representing the Commission.
- The Chairperson shall ensure fairness, and strive to expedite the meetings in an efficient and professional manner.
- The Commission Chairs, as representatives of the Commission, communicate with the Mayor at quarterly meetings and at other times as necessary.

### **PUBLIC MEETINGS**

- Department Director sets the Agenda for regular Commission meetings, with direction from the City Manager.
- Public comment shall be received on all action items.

- Any Commission Member can request an item be placed on a future agenda under Commission Announcements and Reports. No action will be taken on the item unless it is placed on a future agenda by a majority of the Commission.
- Commission Members will treat everyone equally with respect and courtesy.
- Corrections to minutes are passed to the Commission Secretary before the meeting.
- Each Commission Member may share his/her views about the issue and the reasons for his/her vote.
- Consent Calendar
  - The Consent Calendar should be used for minutes, routine Commission business, and items already approved in the budget.
  - If a Commission Member has a personal question on a Consent Calendar, they are to ask staff ahead of time, rather than having it pulled off for discussion during the meeting.
  - Staff is prepared to report on every agenda item.
- Public Comment
  - Hearing items will be organized as follows:
    1. Staff Report
    2. Questions from Commission
    3. Open public comment
    4. Applicant's report (may exceed 5 minutes)
    5. Public comment (limited to 5 minutes)
    6. Close public comment
    7. Staff response
    8. Commission deliberations
    9. Motion and vote
  - Once public comment is closed, further public input will not be allowed unless re-opened by Chair.
  - Applicant's comments shall be limited to a reasonable time.
  - Public comments shall be limited to 5 minutes per speaker; per Municipal Code.
  - It is acceptable to ask questions of a speaker for clarification.

- Each speaker will be thanked.
- Commission will not respond until all public comment has been received.
- Chair allows other members to speak first and then gives his/her views and summarizes.
- Voting
  - Each Commissioner has an opportunity to speak before a motion.
  - Attempts will be made to get consensus on significant issues.
  - Commission Member discussions should not be redundant.



# Rosenberg's Rules of Order

REVISED 2011

*Simple Rules of Parliamentary Procedure for the 21st Century*

*By Judge Dave Rosenberg*



## MISSION AND CORE BELIEFS

To expand and protect local control for cities through education and advocacy to enhance the quality of life for all Californians.

## VISION

To be recognized and respected as the leading advocate for the common interests of California's cities.

### **About the League of California Cities**

Established in 1898, the League of California Cities is a member organization that represents California's incorporated cities. The League strives to protect the local authority and autonomy of city government and help California's cities effectively serve their residents. In addition to advocating on cities' behalf at the state capitol, the League provides its members with professional development programs and information resources, conducts education conferences and research, and publishes Western City magazine.

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### **ABOUT THE AUTHOR**

Dave Rosenberg is a Superior Court Judge in Yolo County. He has served as presiding judge of his court, and as presiding judge of the Superior Court Appellate Division. He also has served as chair of the Trial Court Presiding Judges Advisory Committee (the committee composed of all 58 California presiding judges) and as an advisory member of the California Judicial Council. Prior to his appointment to the bench, Rosenberg was member of the Yolo County Board of Supervisors, where he served two terms as chair. Rosenberg also served on the Davis City Council, including two terms as mayor. He has served on the senior staff of two governors, and worked for 19 years in private law practice. Rosenberg has served as a member and chair of numerous state, regional and local boards. Rosenberg chaired the California State Lottery Commission, the California Victim Compensation and Government Claims Board, the Yolo-Solano Air Quality Management District, the Yolo County Economic Development Commission, and the Yolo County Criminal Justice Cabinet. For many years, he has taught classes on parliamentary procedure and has served as parliamentarian for large and small bodies.





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## INTRODUCTION

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The rules of procedure at meetings should be simple enough for most people to understand. Unfortunately, that has not always been the case. Virtually all clubs, associations, boards, councils and bodies follow a set of rules — *Robert's Rules of Order* — which are embodied in a small, but complex, book. Virtually no one I know has actually read this book cover to cover. Worse yet, the book was written for another time and for another purpose. If one is chairing or running a parliament, then *Robert's Rules of Order* is a dandy and quite useful handbook for procedure in that complex setting. On the other hand, if one is running a meeting of say, a five-member body with a few members of the public in attendance, a simplified version of the rules of parliamentary procedure is in order.

Hence, the birth of *Rosenberg's Rules of Order*.

What follows is my version of the rules of parliamentary procedure, based on my decades of experience chairing meetings in state and local government. These rules have been simplified for the smaller bodies we chair or in which we participate, slimmed down for the 21st Century, yet retaining the basic tenets of order to which we have grown accustomed. Interestingly enough, *Rosenberg's Rules* has found a welcoming audience. Hundreds of cities, counties, special districts, committees, boards, commissions, neighborhood associations and private corporations and companies have adopted *Rosenberg's Rules* in lieu of *Robert's Rules* because they have found them practical, logical, simple, easy to learn and user friendly.

This treatise on modern parliamentary procedure is built on a foundation supported by the following four pillars:

- 1. Rules should establish order.** The first purpose of rules of parliamentary procedure is to establish a framework for the orderly conduct of meetings.
- 2. Rules should be clear.** Simple rules lead to wider understanding and participation. Complex rules create two classes: those who understand and participate; and those who do not fully understand and do not fully participate.
- 3. Rules should be user friendly.** That is, the rules must be simple enough that the public is invited into the body and feels that it has participated in the process.
- 4. Rules should enforce the will of the majority while protecting the rights of the minority.** The ultimate purpose of rules of procedure is to encourage discussion and to facilitate decision making by the body. In a democracy, majority rules. The rules must enable the majority to express itself and fashion a result, while permitting the minority to also express itself, but not dominate, while fully participating in the process.

### Establishing a Quorum

The starting point for a meeting is the establishment of a quorum. A quorum is defined as the minimum number of members of the body who must be present at a meeting for business to be legally transacted. The default rule is that a quorum is one more than half the body. For example, in a five-member body a quorum is three. When the body has three members present, it can legally transact business. If the body has less than a quorum of members present, it cannot legally transact business. And even if the body has a quorum to begin the meeting, the body can lose the quorum during the meeting when a member departs (or even when a member leaves the dais). When that occurs the body loses its ability to transact business until and unless a quorum is reestablished.

The default rule, identified above, however, gives way to a specific rule of the body that establishes a quorum. For example, the rules of a particular five-member body may indicate that a quorum is four members for that particular body. The body must follow the rules it has established for its quorum. In the absence of such a specific rule, the quorum is one more than half the members of the body.

### The Role of the Chair

While all members of the body should know and understand the rules of parliamentary procedure, it is the chair of the body who is charged with applying the rules of conduct of the meeting. The chair should be well versed in those rules. For all intents and purposes, the chair makes the final ruling on the rules every time the chair states an action. In fact, all decisions by the chair are final unless overruled by the body itself.

Since the chair runs the conduct of the meeting, it is usual courtesy for the chair to play a less active role in the debate and discussion than other members of the body. This does not mean that the chair should not participate in the debate or discussion. To the contrary, as a member of the body, the chair has the full right to participate in the debate, discussion and decision-making of the body. What the chair should do, however, is strive to be the last to speak at the discussion and debate stage. The chair should not make or second a motion unless the chair is convinced that no other member of the body will do so at that point in time.

### The Basic Format for an Agenda Item Discussion

Formal meetings normally have a written, often published agenda. Informal meetings may have only an oral or understood agenda. In either case, the meeting is governed by the agenda and the agenda constitutes the body's agreed-upon roadmap for the meeting. Each agenda item can be handled by the chair in the following basic format:

**First**, the chair should clearly announce the agenda item number and should clearly state what the agenda item subject is. The chair should then announce the format (which follows) that will be followed in considering the agenda item.

**Second**, following that agenda format, the chair should invite the appropriate person or persons to report on the item, including any recommendation that they might have. The appropriate person or persons may be the chair, a member of the body, a staff person, or a committee chair charged with providing input on the agenda item.

**Third**, the chair should ask members of the body if they have any technical questions of clarification. At this point, members of the body may ask clarifying questions to the person or persons who reported on the item, and that person or persons should be given time to respond.

**Fourth**, the chair should invite public comments, or if appropriate at a formal meeting, should open the public meeting for public input. If numerous members of the public indicate a desire to speak to the subject, the chair may limit the time of public speakers. At the conclusion of the public comments, the chair should announce that public input has concluded (or the public hearing, as the case may be, is closed).

**Fifth**, the chair should invite a motion. The chair should announce the name of the member of the body who makes the motion.

**Sixth**, the chair should determine if any member of the body wishes to second the motion. The chair should announce the name of the member of the body who seconds the motion. It is normally good practice for a motion to require a second before proceeding to ensure that it is not just one member of the body who is interested in a particular approach. However, a second is not an absolute requirement, and the chair can proceed with consideration and vote on a motion even when there is no second. This is a matter left to the discretion of the chair.

**Seventh**, if the motion is made and seconded, the chair should make sure everyone understands the motion.

This is done in one of three ways:

1. The chair can ask the maker of the motion to repeat it;
2. The chair can repeat the motion; or
3. The chair can ask the secretary or the clerk of the body to repeat the motion.

**Eighth**, the chair should now invite discussion of the motion by the body. If there is no desired discussion, or after the discussion has ended, the chair should announce that the body will vote on the motion. If there has been no discussion or very brief discussion, then the vote on the motion should proceed immediately and there is no need to repeat the motion. If there has been substantial discussion, then it is normally best to make sure everyone understands the motion by repeating it.

**Ninth**, the chair takes a vote. Simply asking for the “ayes” and then asking for the “nays” normally does this. If members of the body do not vote, then they “abstain.” Unless the rules of the body provide otherwise (or unless a super majority is required as delineated later in these rules), then a simple majority (as defined in law or the rules of the body as delineated later in these rules) determines whether the motion passes or is defeated.

**Tenth**, the chair should announce the result of the vote and what action (if any) the body has taken. In announcing the result, the chair should indicate the names of the members of the body, if any, who voted in the minority on the motion. This announcement might take the following form: “The motion passes by a vote of 3-2, with Smith and Jones dissenting. We have passed the motion requiring a 10-day notice for all future meetings of this body.”

## Motions in General

Motions are the vehicles for decision making by a body. It is usually best to have a motion before the body prior to commencing discussion of an agenda item. This helps the body focus.

Motions are made in a simple two-step process. First, the chair should recognize the member of the body. Second, the member of the body makes a motion by preceding the member’s desired approach with the words “I move . . .”

A typical motion might be: “I move that we give a 10-day notice in the future for all our meetings.”


The chair usually initiates the motion in one of three ways:

1. **Inviting the members of the body to make a motion**, for example, “A motion at this time would be in order.”
2. **Suggesting a motion to the members of the body**, “A motion would be in order that we give a 10-day notice in the future for all our meetings.”
3. **Making the motion**. As noted, the chair has every right as a member of the body to make a motion, but should normally do so only if the chair wishes to make a motion on an item but is convinced that no other member of the body is willing to step forward to do so at a particular time.

## The Three Basic Motions

There are three motions that are the most common and recur often at meetings:

**The basic motion**. The basic motion is the one that puts forward a decision for the body’s consideration. A basic motion might be: “I move that we create a five-member committee to plan and put on our annual fundraiser.”



**The motion to amend.** If a member wants to change a basic motion that is before the body, they would move to amend it. A motion to amend might be: “I move that we amend the motion to have a 10-member committee.” A motion to amend takes the basic motion that is before the body and seeks to change it in some way.

**The substitute motion.** If a member wants to completely do away with the basic motion that is before the body, and put a new motion before the body, they would move a substitute motion. A substitute motion might be: “I move a substitute motion that we cancel the annual fundraiser this year.”

“Motions to amend” and “substitute motions” are often confused, but they are quite different, and their effect (if passed) is quite different. A motion to amend seeks to retain the basic motion on the floor, but modify it in some way. A substitute motion seeks to throw out the basic motion on the floor, and substitute a new and different motion for it. The decision as to whether a motion is really a “motion to amend” or a “substitute motion” is left to the chair. So if a member makes what that member calls a “motion to amend,” but the chair determines that it is really a “substitute motion,” then the chair’s designation governs.

A “friendly amendment” is a practical parliamentary tool that is simple, informal, saves time and avoids bogging a meeting down with numerous formal motions. It works in the following way: In the discussion on a pending motion, it may appear that a change to the motion is desirable or may win support for the motion from some members. When that happens, a member who has the floor may simply say, “I want to suggest a friendly amendment to the motion.” The member suggests the friendly amendment, and if the maker and the person who seconded the motion pending on the floor accepts the friendly amendment, that now becomes the pending motion on the floor. If either the maker or the person who seconded rejects the proposed friendly amendment, then the proposer can formally move to amend.

### Multiple Motions Before the Body

There can be up to three motions on the floor at the same time. The chair can reject a fourth motion until the chair has dealt with the three that are on the floor and has resolved them. This rule has practical value. More than three motions on the floor at any given time is confusing and unwieldy for almost everyone, including the chair.

When there are two or three motions on the floor (after motions and seconds) at the same time, the vote should proceed *first* on the *last* motion that is made. For example, assume the first motion is a basic “motion to have a five-member committee to plan and put on our annual fundraiser.” During the discussion of this motion, a member might make a second motion to “amend the main motion to have a 10-member committee, not a five-member committee to plan and put on our annual fundraiser.” And perhaps, during that discussion, a member makes yet a third motion as a “substitute motion that we not have an annual fundraiser this year.” The proper procedure would be as follows:

**First**, the chair would deal with the *third* (the last) motion on the floor, the substitute motion. After discussion and debate, a vote would be taken first on the third motion. If the substitute motion *passed*, it would be a substitute for the basic motion and would eliminate it. The first motion would be moot, as would the second motion (which sought to amend the first motion), and the action on the agenda item would be completed on the passage by the body of the third motion (the substitute motion). No vote would be taken on the first or second motions.

**Second**, if the substitute motion *failed*, the chair would then deal with the second (now the last) motion on the floor, the motion to amend. The discussion and debate would focus strictly on the amendment (should the committee be five or 10 members). If the motion to amend *passed*, the chair would then move to consider the main motion (the first motion) as *amended*. If the motion to amend *failed*, the chair would then move to consider the main motion (the first motion) in its original format, not amended.

**Third**, the chair would now deal with the first motion that was placed on the floor. The original motion would either be in its original format (five-member committee), or if *amended*, would be in its amended format (10-member committee). The question on the floor for discussion and decision would be whether a committee should plan and put on the annual fundraiser.

### To Debate or Not to Debate

The basic rule of motions is that they are subject to discussion and debate. Accordingly, basic motions, motions to amend, and substitute motions are all eligible, each in their turn, for full discussion before and by the body. The debate can continue as long as members of the body wish to discuss an item, subject to the decision of the chair that it is time to move on and take action.

There are exceptions to the general rule of free and open debate on motions. The exceptions all apply when there is a desire of the body to move on. The following motions are not debatable (that is, when the following motions are made and seconded, the chair must immediately call for a vote of the body without debate on the motion):

**Motion to adjourn.** This motion, if passed, requires the body to immediately adjourn to its next regularly scheduled meeting. It requires a simple majority vote.

**Motion to recess.** This motion, if passed, requires the body to immediately take a recess. Normally, the chair determines the length of the recess which may be a few minutes or an hour. It requires a simple majority vote.

**Motion to fix the time to adjourn.** This motion, if passed, requires the body to adjourn the meeting at the specific time set in the motion. For example, the motion might be: “I move we adjourn this meeting at midnight.” It requires a simple majority vote.

**Motion to table.** This motion, if passed, requires discussion of the agenda item to be halted and the agenda item to be placed on “hold.” The motion can contain a specific time in which the item can come back to the body. “I move we table this item until our regular meeting in October.” Or the motion can contain no specific time for the return of the item, in which case a motion to take the item off the table and bring it back to the body will have to be taken at a future meeting. A motion to table an item (or to bring it back to the body) requires a simple majority vote.

**Motion to limit debate.** The most common form of this motion is to say, “I move the previous question” or “I move the question” or “I call the question” or sometimes someone simply shouts out “question.” As a practical matter, when a member calls out one of these phrases, the chair can expedite matters by treating it as a “request” rather than as a formal motion. The chair can simply inquire of the body, “any further discussion?” If no one wishes to have further discussion, then the chair can go right to the pending motion that is on the floor. However, if even one person wishes to discuss the pending motion further, then at that point, the chair should treat the call for the “question” as a formal motion, and proceed to it.

When a member of the body makes such a motion (“I move the previous question”), the member is really saying: “I’ve had enough debate. Let’s get on with the vote.” When such a motion is made, the chair should ask for a second, stop debate, and vote on the motion to limit debate. The motion to limit debate requires a two-thirds vote of the body.

**NOTE:** A motion to limit debate could include a time limit. For example: “I move we limit debate on this agenda item to 15 minutes.” Even in this format, the motion to limit debate requires a two-thirds vote of the body. A similar motion is a *motion to object to consideration of an item*. This motion is not debatable, and if passed, precludes the body from even considering an item on the agenda. It also requires a two-thirds vote.

### Majority and Super Majority Votes

In a democracy, a simple majority vote determines a question. A tie vote means the motion fails. So in a seven-member body, a vote of 4-3 passes the motion. A vote of 3-3 with one abstention means the motion fails. If one member is absent and the vote is 3-3, the motion still fails.

All motions require a simple majority, but there are a few exceptions. The exceptions come up when the body is taking an action which effectively cuts off the ability of a minority of the body to take an action or discuss an item. These extraordinary motions require a two-thirds majority (a super majority) to pass:

**Motion to limit debate.** Whether a member says, “I move the previous question,” or “I move the question,” or “I call the question,” or “I move to limit debate,” it all amounts to an attempt to cut off the ability of the minority to discuss an item, and it requires a two-thirds vote to pass.

**Motion to close nominations.** When choosing officers of the body (such as the chair), nominations are in order either from a nominating committee or from the floor of the body. A motion to close nominations effectively cuts off the right of the minority to nominate officers and it requires a two-thirds vote to pass.

**Motion to object to the consideration of a question.** Normally, such a motion is unnecessary since the objectionable item can be tabled or defeated straight up. However, when members of a body do not even want an item on the agenda to be considered, then such a motion is in order. It is not debatable, and it requires a two-thirds vote to pass.

**Motion to suspend the rules.** This motion is debatable, but requires a two-thirds vote to pass. If the body has its own rules of order, conduct or procedure, this motion allows the body to suspend the rules for a particular purpose. For example, the body (a private club) might have a rule prohibiting the attendance at meetings by non-club members. A motion to suspend the rules would be in order to allow a non-club member to attend a meeting of the club on a particular date or on a particular agenda item.

### Counting Votes

The matter of counting votes starts simple, but can become complicated.

Usually, it’s pretty easy to determine whether a particular motion passed or whether it was defeated. If a simple majority vote is needed to pass a motion, then one vote more than 50 percent of the body is required. For example, in a five-member body, if the vote is three in favor and two opposed, the motion passes. If it is two in favor and three opposed, the motion is defeated.

If a two-thirds majority vote is needed to pass a motion, then how many affirmative votes are required? The simple rule of thumb is to count the “no” votes and double that count to determine how many “yes” votes are needed to pass a particular motion. For example, in a seven-member body, if two members vote “no” then the “yes” vote of at least four members is required to achieve a two-thirds majority vote to pass the motion.

What about tie votes? In the event of a tie, the motion always fails since an affirmative vote is required to pass any motion. For example, in a five-member body, if the vote is two in favor and two opposed, with one member absent, the motion is defeated.

Vote counting starts to become complicated when members vote “abstain” or in the case of a written ballot, cast a blank (or unreadable) ballot. Do these votes count, and if so, how does one count them? The starting point is always to check the statutes.

In California, for example, for an action of a board of supervisors to be valid and binding, the action must be approved by a majority of the board. (California Government Code Section 25005.) Typically, this means three of the five members of the board must vote affirmatively in favor of the action. A vote of 2-1 would not be sufficient. A vote of 3-0 with two abstentions would be sufficient. In general law cities in

California, as another example, resolutions or orders for the payment of money and all ordinances require a recorded vote of the total members of the city council. (California Government Code Section 36936.) Cities with charters may prescribe their own vote requirements. Local elected officials are always well-advised to consult with their local agency counsel on how state law may affect the vote count.

After consulting state statutes, step number two is to check the rules of the body. If the rules of the body say that you count votes of “those present” then you treat abstentions one way. However, if the rules of the body say that you count the votes of those “present and voting,” then you treat abstentions a different way. And if the rules of the body are silent on the subject, then the general rule of thumb (and default rule) is that you count all votes that are “present and voting.”

Accordingly, under the “present and voting” system, you would **NOT** count abstention votes on the motion. Members who abstain are counted for purposes of determining quorum (they are “present”), but you treat the abstention votes on the motion as if they did not exist (they are not “voting”). On the other hand, if the rules of the body specifically say that you count votes of those “present” then you **DO** count abstention votes both in establishing the quorum and on the motion. In this event, the abstention votes act just like “no” votes.

*How does this work in practice?*

*Here are a few examples.*

Assume that a five-member city council is voting on a motion that requires a simple majority vote to pass, and assume further that the body has no specific rule on counting votes. Accordingly, the default rule kicks in and we count all votes of members that are “present and voting.” If the vote on the motion is 3-2, the motion passes. If the motion is 2-2 with one abstention, the motion fails.

Assume a five-member city council voting on a motion that requires a two-thirds majority vote to pass, and further assume that the body has no specific rule on counting votes. Again, the default rule applies. If the vote is 3-2, the motion fails for lack of a two-thirds majority. If the vote is 4-1, the motion passes with a clear two-thirds majority. A vote of three “yes,” one “no” and one “abstain” also results in passage of the motion. Once again, the abstention is counted only for the purpose of determining quorum, but on the actual vote on the motion, it is as if the abstention vote never existed — so an effective 3-1 vote is clearly a two-thirds majority vote.

Now, change the scenario slightly. Assume the same five-member city council voting on a motion that requires a two-thirds majority vote to pass, but now assume that the body **DOES** have a specific rule requiring a two-thirds vote of members “present.” Under this specific rule, we must count the members present not only for quorum but also for the motion. In this scenario, any abstention has the same force and effect as if it were a “no” vote. Accordingly, if the votes were three “yes,” one “no” and one “abstain,” then the motion fails. The abstention in this case is treated like a “no” vote and effective vote of 3-2 is not enough to pass two-thirds majority muster.

Now, exactly how does a member cast an “abstention” vote?

Any time a member votes “abstain” or says, “I abstain,” that is an abstention. However, if a member votes “present” that is also treated as an abstention (the member is essentially saying, “Count me for purposes of a quorum, but my vote on the issue is abstain.”) In fact, any manifestation of intention not to vote either “yes” or “no” on the pending motion may be treated by the chair as an abstention. If written ballots are cast, a blank or unreadable ballot is counted as an abstention as well.

Can a member vote “absent” or “count me as absent?” Interesting question. The ruling on this is up to the chair. The better approach is for the chair to count this as if the member had left his/her chair and is actually “absent.” That, of course, affects the quorum. However, the chair may also treat this as a vote to abstain, particularly if the person does not actually leave the dais.

## The Motion to Reconsider

There is a special and unique motion that requires a bit of explanation all by itself; the motion to reconsider. A tenet of parliamentary procedure is finality. After vigorous discussion, debate and a vote, there must be some closure to the issue. And so, after a vote is taken, the matter is deemed closed, subject only to reopening if a proper motion to consider is made and passed.

A motion to reconsider requires a majority vote to pass like other garden-variety motions, but there are two special rules that apply only to the motion to reconsider.

First, is the matter of timing. A motion to reconsider must be made at the meeting where the item was first voted upon. A motion to reconsider made at a later time is untimely. (The body, however, can always vote to suspend the rules and, by a two-thirds majority, allow a motion to reconsider to be made at another time.)

Second, a motion to reconsider may be made only by certain members of the body. Accordingly, a motion to reconsider may be made only by a member who voted in the majority on the original motion. If such a member has a change of heart, he or she may make the motion to reconsider (any other member of the body — including a member who voted in the minority on the original motion — may second the motion). If a member who voted in the minority seeks to make the motion to reconsider, it must be ruled out of order. The purpose of this rule is finality. If a member of minority could make a motion to reconsider, then the item could be brought back to the body again and again, which would defeat the purpose of finality.

If the motion to reconsider passes, then the original matter is back before the body, and a new original motion is in order. The matter may be discussed and debated as if it were on the floor for the first time.

## Courtesy and Decorum

The rules of order are meant to create an atmosphere where the members of the body and the members of the public can attend to business efficiently, fairly and with full participation. At the same time, it is up to the chair and the members of the body to maintain common courtesy and decorum. Unless the setting is very informal, it is always best for only one person at a time to have the floor, and it is always best for every speaker to be first recognized by the chair before proceeding to speak.

The chair should always ensure that debate and discussion of an agenda item focuses on the item and the policy in question, not the personalities of the members of the body. Debate on policy is healthy, debate on personalities is not. The chair has the right to cut off discussion that is too personal, is too loud, or is too crude.

Debate and discussion should be focused, but free and open. In the interest of time, the chair may, however, limit the time allotted to speakers, including members of the body.

Can a member of the body interrupt the speaker? The general rule is “no.” There are, however, exceptions. A speaker may be interrupted for the following reasons:

**Privilege.** The proper interruption would be, “point of privilege.” The chair would then ask the interrupter to “state your point.” Appropriate points of privilege relate to anything that would interfere with the normal comfort of the meeting. For example, the room may be too hot or too cold, or a blowing fan might interfere with a person’s ability to hear.

**Order.** The proper interruption would be, “point of order.” Again, the chair would ask the interrupter to “state your point.” Appropriate points of order relate to anything that would not be considered appropriate conduct of the meeting. For example, if the chair moved on to a vote on a motion that permits debate without allowing that discussion or debate.

**Appeal.** If the chair makes a ruling that a member of the body disagrees with, that member may appeal the ruling of the chair. If the motion is seconded, and after debate, if it passes by a simple majority vote, then the ruling of the chair is deemed reversed.

**Call for orders of the day.** This is simply another way of saying, “return to the agenda.” If a member believes that the body has drifted from the agreed-upon agenda, such a call may be made. It does not require a vote, and when the chair discovers that the agenda has not been followed, the chair simply reminds the body to return to the agenda item properly before them. If the chair fails to do so, the chair’s determination may be appealed.

**Withdraw a motion.** During debate and discussion of a motion, the maker of the motion on the floor, at any time, may interrupt a speaker to withdraw his or her motion from the floor. The motion is immediately deemed withdrawn, although the chair may ask the person who seconded the motion if he or she wishes to make the motion, and any other member may make the motion if properly recognized.

## Special Notes About Public Input

The rules outlined above will help make meetings very public-friendly. But in addition, and particularly for the chair, it is wise to remember three special rules that apply to each agenda item:

**Rule One:** Tell the public what the body will be doing.

**Rule Two:** Keep the public informed while the body is doing it.

**Rule Three:** When the body has acted, tell the public what the body did.



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