

# PLANNING COMMISSION HANDBOOK

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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.

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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.

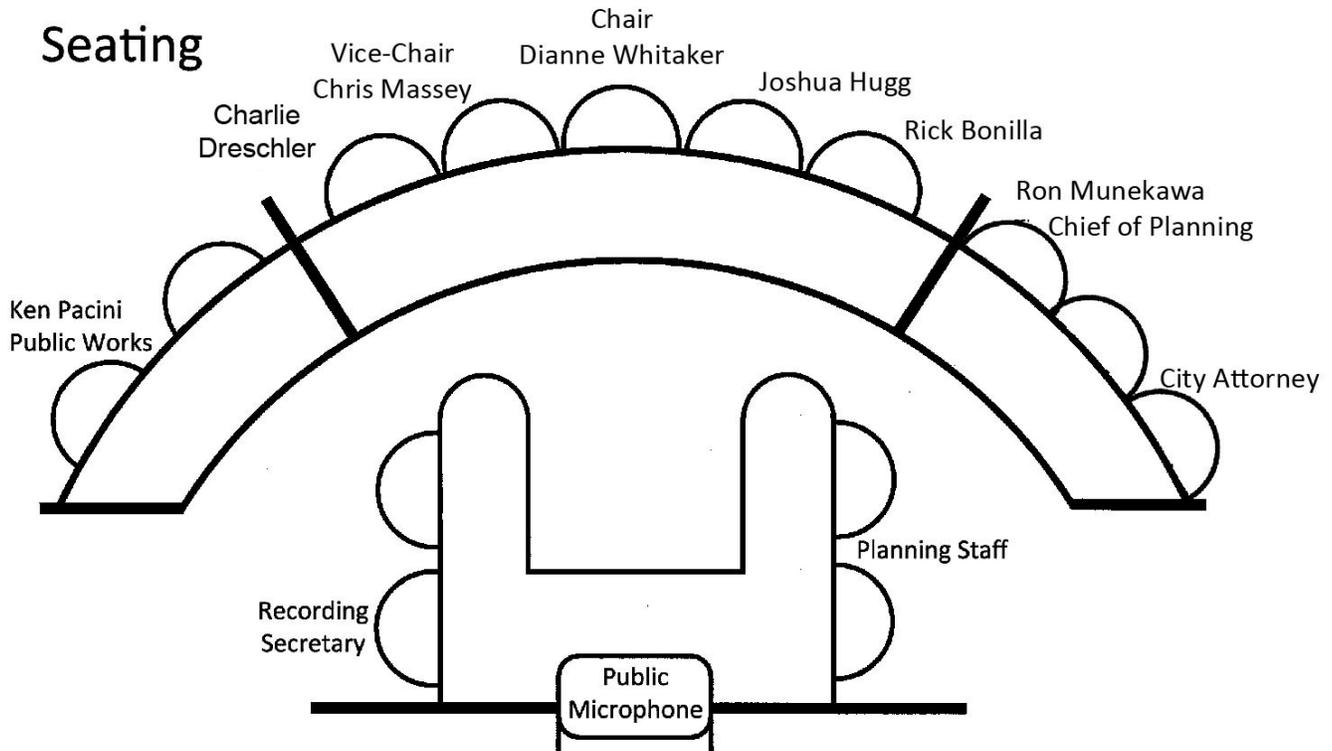
**WELCOME!**

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

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