

**ANNOTATED  
AGENDA  
CITY OF ANTIOCH PLANNING COMMISSION  
ANTIOCH COUNCIL CHAMBERS  
200 "H" STREET**

**WEDNESDAY, MAY 17, 2017**

**6:30 P.M.**

**NO PUBLIC HEARINGS WILL BEGIN AFTER 10:00 P.M.  
UNLESS THERE IS A VOTE OF THE PLANNING COMMISSION  
TO HEAR THE MATTER**

**APPEAL**

All items that can be appealed under 9-5.2509 of the Antioch Municipal Code must be appealed within five (5) working days of the date of the decision. The final appeal date of decisions made at this meeting is 5:00 p.m. on **WEDNESDAY, MAY 24, 2017**.

If you wish to speak, either during "public comments" or during an agenda item, fill out a Speaker Request Form and place in the Speaker Card Tray. This will enable us to call upon you to speak. Each speaker is limited to not more than 3 minutes. During public hearings, each side is entitled to one "main presenter" who may have not more than 10 minutes. These time limits may be modified depending on the number of speakers, number of items on the agenda or circumstances. No one may speak more than once on an agenda item or during "public comments". Groups who are here regarding an item may identify themselves by raising their hands at the appropriate time to show support for one of their speakers.

**ROLL CALL**

**6:30 P.M.**

Commissioners

Zacharatos, Chair  
Parsons, Vice Chair (**absent**)  
Motts  
Mason  
Turnage  
Husary  
Conley

**PLEDGE OF ALLEGIANCE**

**PUBLIC COMMENTS**

## **CONSENT CALENDAR**

All matters listed under Consent Calendar are considered routine and are recommended for approval by the staff. There will be one motion approving the items listed. There will be no separate discussion of these items unless members of the Commission, staff or the public request specific items to be removed from the Consent Calendar for separate action.

1. **APPROVAL OF MINUTES:** **April 5, 2017** **APPROVED**

\* \* \* END OF CONSENT CALENDAR \* \*

**STAFF REPORT**

## **CONTINUED PUBLIC HEARING**

2. **Z-17-01 – Tobacco Ordinance Amendment** – The City of Antioch is proposing text amendments to Chapter 16: Drug Paraphernalia, Section 6-8.14-Tobacco Retailer License, Section 9-5.203-Definitions and Section 9-5.3843 Tobacco and Paraphernalia Retailers of the Antioch Municipal Code. The amendments include, but are not limited to, changes to definitions related to tobacco and paraphernalia retailers, the display of tobacco paraphernalia, licenses required for retail tobacco sales, and the prohibition of tobacco and paraphernalia retailers. The proposed ordinance would be applicable city-wide. This project is exempt from the California Environmental Quality Act.

**RESOLUTION NO. 2017-11**

## **NEW ITEMS**

**STAFF REPORT**

3. **AR-16-15, AUP-16-26 - Tri-Delta** - Tri Delta Transit is requesting approval of an administrative use permit and design review for the design and construction of a new park and ride lot. The project is located at the northeast corner of Auto Center Drive and West Sixth Street (APN 074-130-081).

**STAFF REPORT**

**RESOLUTION NO. 2017-12**

4. **Planning Commission Rules, Bylaws, and Handbooks** – Staff will present options for developing rules for the Planning Commission, pursuant to Antioch Municipal Code Section 2-5.301.

**STAFF REPORT**

## **ORAL COMMUNICATIONS**

## **WRITTEN COMMUNICATIONS**

## **COMMITTEE REPORTS**

## **ADJOURNMENT (6:30 pm)**

### **Notice of Availability of Reports**

This agenda is a summary of the discussion items and actions proposed to be taken by the Planning Commission. For almost every agenda item, materials have been prepared by the City staff for the Planning Commission's consideration. These materials include staff reports which explain in detail the item before the Commission and the reason for the recommendation. The materials may also include resolutions or ordinances which are proposed to be adopted. Other materials, such as maps and diagrams, may also be included. All of these materials are available at the Community Development Department located on the 2<sup>nd</sup> floor of City Hall, 200 "H" Street, Antioch, California, 94509, between the hours of 8:00 a.m. and 11:30 a.m. or by appointment only between 1:00 p.m. and 5:00 p.m. Monday through Friday for inspection and copying (for a fee). Copies are also made available at the Antioch Public Library for inspection. Questions on these materials may be directed to the staff member who prepared them, or to the Community Development Department, who will refer you to the appropriate person.

### **Notice of Opportunity to Address the Planning Commission**

The public has the opportunity to address the Planning Commission on each agenda item. You may be requested to complete a yellow Speaker Request form. Comments regarding matters not on this Agenda may be addressed during the "Public Comment" section on the agenda.

### **Accessibility**

The meetings are accessible to those with disabilities. Auxiliary aids will be made available for persons with hearing or vision disabilities upon request in advance at (925) 779-7009 or TDD (925) 779-7081.

**CITY OF ANTIOCH  
PLANNING COMMISSION**

**Regular Meeting  
6:30 p.m.**

**April 5, 2017  
City Council Chambers**

Vice Chair Zacharatos called the meeting to order at 6:30 P.M. on Wednesday, April 5, 2017 in the City Council Chambers. She stated that all items that can be appealed under 9-5.2509 of the Antioch Municipal Code must be appealed within five (5) working days of the date of the decision. The final appeal date of decisions made at this meeting is 5:00 P.M. on Wednesday, April 12, 2017.

**ROLL CALL**

Present: Commissioners Parsons, Mason, Turnage, Conley, Vice Chair Zacharatos  
Absent: Chair Motts, Commissioner Husary  
Staff: Planning Manager Morris, Alexis Morris  
Associate Planner, Kevin Scudero  
City Attorney, Michael Vigilia  
Minutes Clerk, Kitty Eiden

**PLEDGE OF ALLEGIANCE**

**PUBLIC COMMENTS**

None.

**CONSENT CALENDAR**

1. **Approval of Minutes**      None

**CONTINUED PUBLIC HEARING**

2. **Z-17-01 – Tobacco Ordinance Amendment** – The City of Antioch is proposing text amendments to Chapter 16: Drug Paraphernalia, Section 6-8.14-Tobacco Retailer License, Section 9-5.203-Definitions and Section 9-5.3843 Tobacco and Paraphernalia Retailers of the Antioch Municipal Code. The amendments include, but are not limited to, changes to definitions related to tobacco and paraphernalia retailers, the display of tobacco paraphernalia, licenses required for retail tobacco sales, and the prohibition of tobacco and paraphernalia retailers. The proposed ordinance would be applicable city-wide. This project is exempt from the California Environmental Quality Act.

Vice Chair Zacharatos announced staff recommended that this item be continued to May 17, 2017.

**On motion by Commissioner Parsons, seconded by Commissioner Conley, the Planning Commission members present unanimously continued Z-17-01 – Tobacco Ordinance Amendment to May 17, 2017. The motion carried the following vote:**

**AYES:** *Parsons, Zacharatos, Mason, Turnage Conley*  
**NOES:** *None*  
**ABSTAIN:** *None*  
**ABSENT:** *Husary, Motts*

- 3. UP-16-15, AR-16-09 Verizon Wireless Telecommunications Facility** – Verizon Wireless requests approval of a Use Permit to construct a new unmanned telecommunications facility consisting of a 62-foot tall “monopine” containing nine panel antennas and a fenced equipment enclosure at the base of the structure. The project site is located at the corner of Contra Loma Boulevard and Putnam Street (APN 076-550-002).

Trip May, Technical and Legal Consultant, gave a brief overview of Telecom law applicable to this project.

Associate Planner Scudero presented the staff report dated March 31, 2017 recommending the Planning Commission deny the application for a use permit and design review for a wireless telecommunication facility in accordance with the findings for denial contained in the staff report’s attached resolution.

In response to Commissioner Turnage, Mr. May explained that both alternatives would be non-compliant; however, staff believed the Somerset alternative was preferable because of opportunities to conceal the facility. He noted that according to the applicant, the site was technically feasible and potentially available.

Vice Chair Zacharatos opened the public hearing.

Michelle Ellis, Complete Wireless Consulting, on behalf of Verizon Wireless, requested the Planning Commission provide feedback on the project design and location details. She stated that the two samples provided this evening were the product colors available. She reported the Somerset location was in a residential zone and there was an interested landlord. She provided photo simulations of the facility on that parcel and noted the area offered was in front of the windows of several of the residences. She reported the proposed facility was designed to look like their previously approved project at Hillcrest Avenue and Wildflower Drive except for the landscaping around the base which if requested by the Planning Commission, could be added. She stated if the Planning Commission was in support of this location, they would request a continuance to fully develop the administrative record.

In response to Commissioner Parsons, Ms. Ellis explained the landlord of the commercial parcel was only willing to provide space on the undeveloped parcel so they located the facility as close to the trees as possible. She noted they would be willing to add additional trees around the base of the fence, if directed by the Commission.

Commissioner Mason responded that he felt adding trees was not a viable alternative as it would take several years for them to be any size of consequence.

Ms. Ellis explained trees at the base of the facility would give it context. She noted the commercial site was more advantageous for radio frequency and had no adjacent residential zoning.

In response to Commissioner Conley, Ms. Ellis explained that they had investigated PG&E tower locations; however, they were unable to obtain an easement or the landlords were not willing to lease the space. She commented that they had been developing the site since 2014 and part of the reason it had taken so long was because of how thorough they vetted the search ring.

Commissioner Turnage stated he felt the commercial location would be in compliance.

Ms. Ellis agreed that the commercial location seemed more appropriate as the Somerset parcel had multiple residences on the property.

In response to Commissioner Parsons, Ms. Ellis explained that the commercial property owner was unwilling to allow them to place their facility on the back parcel. She clarified to adequately address the coverage gap, the antenna would be a maximum of 55 feet with an additionally 7 feet for the crown because anything less would begin to interfere with ground clutter.

Pablo Sanchez Jr., Radio Frequency (RF) Design Engineer representing Verizon, reported coverage was stretched to the limit when he evaluated the project on the 50 foot level. He noted their main objective was to focus on the network performance along Contra Loma Blvd and Highway 4 and this specific location addressed that issue and the gap in coverage for the area. He stated if the tower was lowered, they would need to come back to request an additional site.

Commissioner Conley expressed concern that the applicant had not provided all the information requested by staff.

Ms. Ellis responded that she provided the consultant with details explaining that they did not provide towers below 40 feet because the coverage map software does not address ground clutter. She noted that issue would need to be evaluated by the RF Engineer who was in attendance this evening to speak to those issues. Additionally, she noted that they had not provided the personal contact information for landlords because they did not have permission to disseminate the information. She explained it was not their

practice to do the low level coverage maps solo as they were not feasible and raised safety concerns.

Mr. Sanchez added that predictions of realistic service at 35 feet were not accurate.

In response to the Commission, Ms Ellis responded that the Somerset building appeared structurally sound and they could make the facility stealth on the rooftop; however, the issue was gaining permission from a landlord who had previously denied permission. She added if there was interest from the Commission, she would request a tolling agreement for 3 months to reach out to the landlord to confirm their interest.

Commissioner Turnage confirmed with the applicant that they had not provided information for a tower below 40 feet because they would not build one at that height and they had not provided information from the landlords because it was private and they did not have permission. In addition, the map did not realistically reflect coverage.

Michael Smith, Antioch resident, stated he represented homeowners in the area who were concerned regarding the visual, safety and noise impacts of the proposed project. He reported he had provided photographs for the record and a detailed list of concerns.

Vice Chair Zacharatos closed the public hearing.

Mr. May requested the Planning Commission express the values they were upholding when making their decision on this item.

In response to Commissioner Mason, Planning Manager Morris stated towers had been located in residential neighborhoods. She clarified the antennas were considered utilities which were permitted citywide regardless of the zoning designations thus site specific issues and context were considerations.

Commissioner Parsons stated she would like the Somerset location revisited because she was concerned with the facility being located on the commercial parcel.

In response to Vice Chair Zacharatos, Mr. May explained that staff had been unable to verify the availability of space beneath PG&E towers and in order to rule them out, technical feasibility and a willing landlord needed to be taken into consideration.

Vice Chair Zacharatos stated she was not in support of the Contra Loma Blvd./Putman Street locations.

In response to Commissioner Conley, Planning Manager Morris stated there had been vandalism and theft issues at other wireless locations.

Ms. Ellis added that the facility was maintained and surrounded by a locked security fence which was remotely monitored.

Vice Chair Zacharatos reopened the Public Hearing.

Mr. Sanchez reported they monitored sites 24/7 and there were a variety of alarms. He noted there was also a dedicated cell technician for the area.

Vice Chair Zacharatos closed and reopened the Public Hearing.

Theresa Pedras, Antioch resident, reported her home was directly across the street from the proposed project and she expressed concern regarding vandalism, noise and the impact the project would have on her property values. She suggested the applicant consider an alternative location.

Vice Chair Zacharatos closed the Public Hearing.

In response to Commissioner Parsons, Mr. May stated the evidence had not found that the towers had a significant impact on property values; however, they had not been around long enough to gather adequate data for an analysis.

Commissioner Mason expressed concern regarding the visual impact of the project. He stated he felt the PG&E locations would be the least intrusive and they had not been fully vetted.

Vice Chair Zacharatos re-opened the Public Hearing.

In response to Commissioner Turnage, Ms. Ellis explained the main issue on the PG&E locations was landlord interest. She stated she would like to provide written confirmation from the various property owners; however, there was an issue of being able to get in contact with them, getting them to sign documentation, and obtaining permission to share the information.

Mr. May reported the LDS church location should be eliminated as an option because he had never seen them allow the lease of their property. He noted staff could attempt to get verification from the other PG&E locations. He stated the best use of the three month extension may be to run a drive test that would take into account ground clutter and terrain.

Ms. Ellis stated she may be able to retrieve confirmation that they were unable to obtain easements from PG&E.

In response to Commissioner Mason, Ms. Ellis explained the proposed facility was near the center of the search ring.

Mr. Sanchez added that the driver of the site was what needed to be done to address customer complaints during peak hours.



Commissioner Mason suggested consideration of a rooftop facility at Macy's/Somersville Towne Center.

Mr. Sanchez responded that their target was Contra Loma Blvd. and Route 4.

Vice Chair Zacharatos closed the Public Hearing.

Commissioner Parsons stated she supported Verizon's efforts to improve service; however, she did not like the proposed locations. She noted she may reconsider after she was provided information regarding how the facility would look on the site.

Vice Chair Zacharatos re-opened the Public Hearing.

In response to Commissioner Turnage, Mr. May stated that more information regarding the alternatives would be beneficial to the analysis. He confirmed that the best option would be to give the applicant their list of the Planning Commission's ideas to vet out.

A motion was made by Commissioner Turnage and seconded by Commissioner Parsons, to approve a three month extension and directing staff to provide a list of potential locations to vet out.

The Planning Commission provided the following direction to the applicant and staff:

- Applicant to vet heights starting at 35 feet minimum using a drive test
- Applicant to vet potential rooftop site at Somerset apartments and Macy's
- Further Investigation by staff into the PG&E alternatives with the exception of the LDS Church site

Vice Chair Zacharatos reopened the public hearing.

Ms. Ellis stated that given the number of alternatives and difficulty of arranging the drive test, she was requesting more time. She confirmed that they would agree to a tolling agreement for a period of six months.

Vice Chair Zacharatos closed the public hearing.

***Following discussion the previous motion was amended as follows:***

***On motion by Commissioner Turnage, seconded by Commissioner Parsons, the Planning Commission members present unanimously approved a six month extension and provided the following direction:***

- ***Conduct a drive test for a height starting at 35 feet***
- ***Vet rooftop sites at the Somerset Apartments and Somersville Towne Center/Macy's***

- ***Further Investigation by staff into the PG&E alternatives with the exception of the LDS Church site***

***The motion carried the following vote:***

**AYES:** *Parsons, Zacharatos, Mason, Turnage Conley*  
**NOES:** *None*  
**ABSTAIN:** *None*  
**ABSENT:** *Husary, Motts*

#### **NEW PUBLIC HEARING**

- 4. PD-06-04, UP-06-21, AR-06-17** – Ted Liu of Bedrock Ventures, Inc. requests an amendment to condition of approval number 3 from Resolution 2008/29. The amendment would extend the expiration date of the approvals for the Final Planned Development, Use Permit, and design review to March 11, 2019. The project consists of retail and offices, located at Hillcrest Avenue and East Tregallas Road (APN: 052-100-069 and -068).

Associate Planner Scudero presented the staff report dated March 29, 2017, recommending the Planning Commission approve an amendment to City Council resolution 2008/29 to extend the approvals of the final development plan, use permit and design review to March 11, 2019.

Vice Chair Zacharatos questioned if the extension would set precedence.

In response to Vice Chair Zacharatos, Planning Manager Morris explained it was not typical to have several extensions for a commercial development; however, it was not problematic unless there were issues with some of the underlining assumptions the approval was based upon. She noted if not constructed within the next two years, a review of the baseline analysis for the project may be necessary.

In response to Commissioner Conley, Planning Manager Morris stated the requirements for commercial development had not significantly changed in the last 10 years and the conditions of approval would be very similar if the project were brought in today.

In response to Commissioner Mason, Planning Manager Morris explained the use permit goes with the land and could be sold to another entity to build the project, as approved.

In response to Commissioner Parsons, City Attorney Vigilia stated it was up to the Planning Commission's discretion as to whether they wanted to prohibit future extensions.

Vice Chair Zacharatos opened the Public Hearing.

The applicant clarified that due to the change in economics they had not moved forward with the project. He noted they were very interested in building the project or selling it to someone willing to build it out.

Commissioner Mason thanked Mr. Lee for making the investment in Antioch.

Commissioner Mason stated if the extension was granted and the project was not constructed within 2 years, the Planning Commission would still have the opportunity to review the feasibility of granting another extension.

The applicant stated that when they discussed this project with staff, they had indicated they did not want to see a vacant building constructed. He noted his interest is to see the project through and make sure the traffic and interest that eBART brings, will facilitate the project moving forward. He noted he had made a significant financial investment in the project and his hope was that there would be no sunset on the extension.

Commissioner Parsons thanked the applicant for his interest in Antioch.

Vice Chair Zacharatos closed the Public Hearing.

#### ***RESOLUTION NO. 2017-06***

***On motion by Commissioner Mason, seconded by Commissioner Parsons, the Planning Commission members present unanimously approved an amendment to City Council resolution 2008/29 to extend the approvals of the final development plan, use permit and design review to March 11, 2019. The motion carried the following vote:***

<b><i>AYES:</i></b>	<b><i>Parsons, Zacharatos, Mason, Turnage and Conley</i></b>
<b><i>NOES:</i></b>	<b><i>None</i></b>
<b><i>ABSTAIN:</i></b>	<b><i>None</i></b>
<b><i>ABSENT:</i></b>	<b><i>Husary, Motts</i></b>

- 5. UP-16-09, AR-16-05, V-16-02 – 4 Star Auto Repair –** Kalsoom Bibi Ghafoor is requesting approval of a use permit, design review, and variance application to construct an Auto Repair Shop consisting of four service bays for minor auto repair. The project site is located at 3420 E. 18th Street (APN 051-200-060).

Associate Planner Scudero presented the staff report dated March 29, 2017, recommending the Planning Commission approve the use permit, design review and variance application subject to the conditions contained in the staff report's attached resolution.

In response to Commissioner Mason, Associate Planner Scudero stated per the conditions of approval, staff was requiring all auto repairs to be conducted inside the buildings and prohibited storage of vehicles in disrepair outside.

Commissioner Parsons voiced her support for the project as presented.

Commissioner Turnage thanked Associate Planner Kevin Scudero for the comprehensive report.

Vice Chair Zacharatos opened the Public Hearing.

In response to Commissioner Conley, the applicant stated they would be performing minor auto repairs.

Carolyn Schwalbeck, Antioch resident, reported she rented the property adjacent to the business and was concerned that they were currently operating the business outside the guidelines. She questioned how the City would guarantee compliance with the conditions of approval. She noted the property was currently blighted and she felt the site was insufficient for a 4 bay repair shop. Additionally, she expressed concern for inadequate parking on site and the tenant's dog coming onto her property. She stated there was also concern that the applicant had not been forthcoming in paying for use of the well and she urged the Planning Commission to deny approval.

Vice Chair Zacharatos closed the Public Hearing.

Vice Chair Zacharatos re-opened the Public Hearing.

Eric Magno, stated he was the current owner who had cleaned up the property and he had never been made aware of his dog leaving the property. He noted they would be installing a new fence to block the view from the neighbors. He clarified that he had never received any complaints from his neighbors.

Sylvie Ly, landlord of the adjacent parcel, agreed with Ms. Schwalbeck. She noted the parking issue had improved although she felt it remained dangerous and would increase with the additional use on site. She reported three parcels shared the well; however, the owner of the subject property had not paid his portion. She noted the tenant was later contacted and paid for their portion.

Vice Chair Zacharatos closed the Public Hearing.

Commissioner Turnage stated he was sorry to hear there was contention among the neighbors; however, with this approval, there would be requirements for the business. He noted if there were problems in the future, they could be reported to Code Enforcement. He further noted the project was in compliance with current zoning and met all requirements.

In response to Commissioner Parsons, Planning Manager Morris clarified there was currently one bathroom on site served by the well. She noted the new building would not have any water or restrooms.

Commissioner Mason stated that after reviewing the aerial photo of the property, he understood the neighbor's complaints regarding the excessive amount of vehicles on the property and noted the proposed privacy fence would improve the current conditions. He suggested that all vehicles in disrepair and unregistered be removed from the site prior to approval of the Use Permit.

Associate Planner Kevin Scudero responded that based on his most recent inspection there were no more vehicles in disrepair parked outside and he had made it clear to applicant that that activity could no longer continue. He went on to further explain that this hearing had been postponed because staff had conveyed to the applicant that they would not bring the project forward until the site was cleaned up.

Vice Chair Zacharatos reopened the Public Hearing.

The applicant stated they would follow the rules set forth by the City.

Vice Chair Zacharatos closed the Public Hearing.

In response to Commissioner Conley, Planning Manager Morris stated the building department had not indicated if the square footage would require fire sprinklers but they would review that issue at building permit submittal.

Associate Planner Kevin Scudero added that the project had been routed to Contra Costa Fire for review and they had not required fire sprinklers.

Planning Manager Morris stated the project was conditioned that if they required any new utility connections for this building they would be required to connect to City water.

In response to Vice Chair Zacharatos, Associate Planner Kevin Scudero explained if approved the project would go through the building permit stage and before they receive a certificate of occupancy, staff will conduct a site inspection. He noted once they receive the certificate of occupancy, compliance with the conditions of approval becomes a code enforcement action.

#### ***RESOLUTION NO. 2017-07***

***On motion by Commissioner Turnage, seconded by Commissioner Parsons, the Planning Commission members present unanimously approved the use permit, design review and variance application subject to the conditions contained in the staff report's attached resolution. The motion carried the following vote:***

**AYES:** *Parsons, Zacharatos, Mason, Turnage and Conley*  
**NOES:** *None*  
**ABSTAIN:** *None*  
**ABSENT:** *Husary, Motts*

### **ORAL COMMUNICATIONS**

Commissioner Parsons reported she had contacted Commissioner Husary who informed her that her absence was due to her recent hospitalization.

### **WRITTEN COMMUNICATIONS**

None.

### **COMMITTEE REPORTS**

None.

### **ADJOURNMENT**

*Vice Chair Zacharatos adjourned the Planning Commission at 8:37 P.M. to the next regularly scheduled meeting to be held on April 19, 2017.*

Respectfully Submitted,  
Kitty Eiden

**STAFF REPORT TO THE PLANNING COMMISSION  
FOR CONSIDERATION AT THE MAY 17, 2017 MEETING**

**Prepared by:** Forrest Ebbs, Community Development Director



**Date:** May 12, 2017

**Subject:** Ordinance Amending Tobacco and Paraphernalia Retailer Regulations by Repealing Antioch City Code Sections 5-16.01 and 6-8.14, and Repealing and Replacing Sections 9-5.203 and 9-5.3843.

**RECOMMENDATION**

It is recommended that the Planning Commission approve the attached resolution recommending that the City Council adopt the ordinance amending City regulations regarding tobacco and paraphernalia retailers by prohibiting new tobacco and paraphernalia retailer businesses, subject to certain exceptions, and establishing legal non-conforming use procedures for established Tobacco and Paraphernalia Retailer businesses.

**BACKGROUND**

The Antioch Municipal Code ("AMC") establishes zoning regulations for Tobacco and Paraphernalia Retailers within the City (See AMC § 9-5.3843). Under current regulations, Tobacco and Paraphernalia Retailers are permitted only in the City's Regional Commercial Zone (C-3) and must possess a use permit (AMC § 9-5.3843(A)). Tobacco and Paraphernalia Retailers must comply with AMC sections 5-16.01 (drug paraphernalia) and 6-8.14 (tobacco retailer's license) as well as the City's Tobacco Free Youth Ordinance (AMC § 9-5.3843(B)).

**PROPOSED ORDINANCE**

The proposed ordinance (attached as an exhibit to the resolution) would create new definitions in AMC section 9-5.3843 (Tobacco and Paraphernalia Retailers) for the following terms: "Drug Paraphernalia", "Drug Paraphernalia Retailer," "Person," "Sold or Transferred," "Tobacco Product," and "Tobacco Retailer."

In addition, the ordinance would make the following substantive changes to existing regulations:

Current City regulations codify the State laws regarding display and sales of drug paraphernalia (see AMC § 5-16.01; Cal. Health and Safety Code § 11364.5) including State regulations limiting the display of drug paraphernalia to separate rooms in which persons under the age of 18 not accompanied by a parent or guardian are excluded.

- AMC Title 5, Chapter 16, which codifies State laws regarding drug paraphernalia retailers, would be repealed so that the Municipal Code relies entirely on the State laws as they may be amended.
- AMC section Title 6, Chapter 8, section 6-8.14, which requires tobacco retailers to possess tobacco retailer licenses, would be repealed and replaced by a use permit requirement in AMC section 9-5.3843(E)(2).
- AMC section 9-5.3843 would set forth the City's regulations for tobacco and paraphernalia retailers. The new regulations would do the following:
  - Completely prohibit the creation and operation of any new tobacco and/or paraphernalia retailer businesses subject to certain exceptions described below.
  - The prohibition on tobacco and paraphernalia retailers would not apply to the following businesses:
    - Pharmacists, physicians, dentists, podiatrists, or veterinarians who furnish or prescribe drug paraphernalia as permitted by law.
    - Any manufacturer, wholesaler, or retailer licensed by the Board of Pharmacy to sell or transfer drug paraphernalia.
    - Any tobacco retailer or drug paraphernalia retailer operating with a valid Use Permit issued by the City.
  - The following businesses would be permitted to obtain a Use Permit to begin operating as tobacco retailers:
    - Convenience stores that are ancillary to a gas station having less than 20% of their sales area devoted to tobacco products.
    - Retail businesses larger than 5,000 sq..
  - These businesses would be prohibited from selling tobacco unless the following conditions were met:
    - The business may not display signs advertising tobacco products.
    - The business may not sell drug paraphernalia.
    - If the business did not sell tobacco products prior to June 1, 2017, they may not begin selling tobacco if they are located within 500 feet of a sensitive use.
  - Existing tobacco and paraphernalia retailers would be considered legal non-conforming uses that could continue to operate subject to the following conditions:
    - A tobacco retailer or drug paraphernalia retailer may be sold and transferred at any point prior to January 1, 2023.
    - From January 1, 2023 onward, a tobacco retailer or drug paraphernalia retailer may not be sold or transferred.

The City conducted a basic analysis as to the projected impacts of the 2023 prohibition on sales and transfer. The analysis concluded that existing tobacco and paraphernalia retailers would not be detrimentally impacted by the 2023 prohibition. Tobacco and paraphernalia retailers typically operate within existing retail spaces and do not require special equipment, plumbing or electrical upgrades, or other substantial start-up costs. In 2016, all eleven of the existing tobacco and/or paraphernalia retailers in the City reported to the Finance Department average gross receipts of \$189,170. Over a period



of five years, a typical tobacco and/or paraphernalia retailer would generate \$945,000 in gross receipts. As such, a typical retailer would realize profits even if the retailer only operated as a tobacco and/or paraphernalia retailer for five years. The City Council finds that the prohibition on transfer or sale of retailers will eventually reduce the number of tobacco and paraphernalia retailers in Antioch thereby serving significant public health and welfare benefits while ensuring no detrimental impacts to established retailers who may continue operating indefinitely. The amendments allow established retailers the opportunity to generate profits for as long as they continue to operate.

**RESOLUTION NO. 2017-\*\***

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ANTIOCH  
RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE  
REPEALING, REPLACING AND AMENDING ZONING REGULATIONS FOR  
TOBACCO AND PARAPHERNALIA RETAILERS**

**WHEREAS**, the Planning Commission of the City of Antioch did receive an application from the **City of Antioch** requesting approval of amendments to the Zoning Ordinance of the Antioch Municipal Code; and,

**WHEREAS**, Pursuant to CEQA Guidelines sections 15060(c)(2) and 15061(b)(3), the proposed amendments to the Antioch Municipal Code are exempt from CEQA because it can be seen with certainty to have no possibility of a physical change to the environment or a significant impact on the environment; and,

**WHEREAS**, the Planning Commission provided notice of public hearing as required by law; and,

**WHEREAS**, on May 17, 2017, the Planning Commission held a public hearing on the matter, and received and considered evidence, both oral and documentary.

**NOW, THEREFORE BE IT RESOLVED** that the Planning Commission, after reviewing the staff report and considering testimony offered, does hereby recommend that the City Council **ADOPT** the attached ordinance amending regulations for Tobacco and Paraphernalia Retailers.

\* \* \* \* \*

**I HEREBY CERTIFY** the foregoing resolution was duly adopted by the Planning Commission of the City of Antioch, County of Contra Costa, State of California, at a regular meeting of said Planning Commission held on the 17<sup>th</sup> day of May, 2017, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

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Forrest Ebbs, Secretary to the  
Planning Commission

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANTIOCH DEFINING  
AND ESTABLISHING ZONING REGULATIONS FOR TOBACCO AND  
PARAPHERNALIA RETAILERS**

**SECTION 1. Findings.** The Antioch City Council hereby finds, determines and declares as follows:

**A.** The City of Antioch holds the right to make and enforce all laws and regulations not in conflict with general laws, and the City holds all rights and powers established by state law.

**B.** On April 22, 2014, the City Council adopted Ordinance No. 2086-C-S extending a moratorium on Tobacco and Paraphernalia Retailers pursuant to findings regarding a current and immediate threat to the public health, safety and welfare from the effects and impacts of Tobacco and Paraphernalia Retailers, including but not limited to incidents involving burglary and attempted burglary, armed robbery, fights and disturbances including those involving juveniles, petty theft, assault, threats, loitering, panhandling, harassment, stolen vehicles, and passing counterfeit bills. The findings in Ordinance No. 2086-C-S are incorporated into this ordinance.

**C.** The Planning Commission conducted a duly noticed public hearing on April 5, 2017 at which time a resolution was approved to initiate and recommend to the City Council that this ordinance be adopted. The City Council held a duly noticed public hearing on \_\_\_\_\_ at which time all interested persons were allowed to address the Council regarding adoption of this ordinance.

**D.** The City Council finds that the public necessity, convenience, and general welfare require a prohibition on the establishment and operation of any new tobacco and/or paraphernalia retailers, and require regulations providing that established tobacco and/or paraphernalia retailers may continue as legal nonconforming uses, and that legal nonconforming tobacco and/or paraphernalia retailers may not sell or transfer the business after January 1, 2023. These amendments are not detrimental to properties within Antioch because potential financial impacts to existing tobacco and paraphernalia retailers would be nominal due to the minimal initial investment required to establish a tobacco or paraphernalia retailer, and because existing businesses may continue to operate indefinitely. Tobacco and paraphernalia retailers typically operate within existing retail spaces and do not require special equipment, plumbing or electrical upgrades, or other substantial start-up costs. In 2016, all eleven of the existing tobacco and/or paraphernalia retailers in the City reported to the Finance Department average gross receipts of \$189,170. Over a period of five years, a typical tobacco and/or paraphernalia retailer would generate \$945,000 in gross receipts. As such, a typical retailer would realize profits even if the retailer only operated as a tobacco and/or paraphernalia retailer for five years. The City Council finds that the prohibition on transfer or sale of retailers will eventually reduce the number of tobacco and

paraphernalia retailers in Antioch thereby serving significant public health and welfare benefits while ensuring no detrimental impacts to established retailers who may continue operating indefinitely. The amendments allow established retailers the opportunity to generate profits for as long as they continue to operate.

**E.** The City Council finds that the Municipal Code amendments are in conformance with the Antioch General Plan.

**SECTION 2.** Section 5-16.01 is hereby repealed.

**SECTION 3.** Section 6-8.14 is hereby repealed.

**SECTION 4.** Section 9-5.203 is hereby amended to repeal the definitions of *TOBACCO AND PARAPHERNALIA RETAILER* and *TOBACCO PRODUCT*.

**SECTION 5.** Title 9, Chapter 5, Section 9-5.203, definition of *TOBACCO PRODUCT* is hereby repealed and replaced with the following language:

*TOBACCO PRODUCT*

(A) A product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or snuff.

(B) Any device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, vaporizer pen, or hookah.

(C) Any component, part, or accessory of a tobacco product, whether or not sold separately. *TOBACCO PRODUCT* does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

**SECTION 6.** Title 9, Chapter 5, Article 38, Section 9-5.3843 is hereby repealed in its entirety and replaced with the following language, with no other amendments to this Section:

**9-5.3843 TOBACCO AND PARAPHERNALIA RETAILERS**

**(A) DEFINITIONS**

*DRUG PARAPHERNALIA.* Drug paraphernalia shall have that definition set forth in California Health and Safety Code section 11364.5, as it may be amended.

*DRUG PARAPHERNALIA RETAILER.* Any establishment that sells drug paraphernalia as defined herein.

*PERSON.* Any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

*SOLD OR TRANSFERRED.* Any assignment, delegation, designation, sale, or transfer of real property or interests in real property, including but not limited to (1) A change to the name of the operator on the City of Antioch business license; (2) A change in the leaseholder of the commercial space; (3) A change to the name listed on any other official government document related to the business.

*TOBACCO PRODUCT.*

(A) A product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or snuff.

(B) Any device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, vaporizer pen, or hookah.

(C) Any component, part, or accessory of a tobacco product, whether or not sold separately. TOBACCO PRODUCT does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

*TOBACCO RETAILER.* Any establishment that sells tobacco products as defined herein.

**(B) TOBACCO RETAILERS PROHIBITED.**

It is unlawful for any person to cause or permit the creation of, or operation of, a tobacco retailer. The operation of a tobacco retailer shall constitute a public nuisance subject to abatement under this Code.

**(C) DRUG PARAPHERNALIA RETAILERS PROHIBITED.**

It is unlawful for any person to cause or permit the creation of, or operation of, a drug paraphernalia retailer business. The operation of a drug paraphernalia retail business shall constitute a public nuisance subject to abatement under this Code.

**(D) NONCONFORMING USES.**

(1) Tobacco retailers or drug paraphernalia retailers lawfully established and operating prior to the effective date of this ordinance may continue to operate as non-conforming uses, provided that the retailer complies with the following provisions:

(a) A tobacco retailer or drug paraphernalia retailer may be sold and transferred at any point prior to January 1, 2023.

(b) From January 1, 2023 onward, a tobacco retailer or drug paraphernalia retailer may not be sold or transferred.

(c) All nonconforming tobacco retailers and drug paraphernalia retailers shall comply with State regulations regarding the sale of tobacco products and drug paraphernalia, as these laws may be amended from time to time.

**(E) EXCEPTIONS.**

(1) This chapter shall not apply to any of the following:

(a) Any pharmacist or other authorized person who sells or furnishes drug paraphernalia upon the prescription of a physician, dentist, podiatrist, or veterinarian as permitted by law.

(b) Any physician, dentist, podiatrist, or veterinarian who furnishes or prescribes drug paraphernalia to his or her patients as permitted by law.

(c) Any manufacturer, wholesaler, or retailer licensed by the Board of Pharmacy to sell or transfer drug paraphernalia.

(d) Any tobacco retailer or drug paraphernalia retailer operating with a valid Use Permit issued by the City.

(b) Grocery stores as defined in §9-5.203 and pharmacies larger than 5,000 square feet and having less than 5% of their sales area devoted to tobacco products.

(2) Notwithstanding section 9-5.3843 subdivision (B), the following business types shall be permitted to sell tobacco products subject to approval of a Use Permit in zoning districts where such business types are allowed pursuant to AMC § 9-5.3803

(a) Convenience stores as defined in §9-5.203 when ancillary to a gas station and having less than 20% of their sales area devoted to tobacco products.

(b) Retail businesses larger than 5,000 square feet. (3) Businesses described in subdivision (2) of this section are permitted to sell tobacco products only if the following conditions are met:

(a) The business may not display any signs visible from off of the subject property that advertise tobacco products.

(b) The business may not sell drug paraphernalia.

(c) Businesses described in 9-5.3843 subdivision (E)(2) that did not sell tobacco products prior to the effective date of this ordinance, shall be prohibited from obtaining a Use Permit to sell tobacco products if the business is located or proposes to be located within 500 feet of any of the following sensitive uses: any school, public park, playground, recreational center, day care center, or other similar use.

**SECTION 7. CEQA.**

This Ordinance will not have a significant effect on the environment pursuant to CEQA Guidelines sections 15060(c)(2) and 15061(b)(3) because it can be seen with certainty that there is no possibility that the Ordinance will result in a physical change in the environment or a significant effect on the environment. The Ordinance will not expand the range of uses permitting in the Zoning Code nor will it increase the development intensity of uses authorized in the Zoning Code.

**SECTION 8. Publication; Effective Date.**

This Ordinance shall take effect and be enforced thirty (30) days from and after the date of its adoption by the City Council at a second reading and shall be posted and published in accordance with the California Government Code.

**SECTION 9. Severability.**

Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

\* \* \* \* \*

**I HEREBY CERTIFY** that the foregoing ordinance was introduced at a regular meeting of the City Council of the City of Antioch held on the \_\_\_\_ day of \_\_\_\_ and passed and introduced at a regular meeting thereof, held on the \_\_\_\_ day of \_\_\_\_\_, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

\_\_\_\_\_  
**Sean Wright, Mayor, City of Antioch**

**ATTEST:**

\_\_\_\_\_  
**Arne Simonsen, City Clerk of the City of Antioch**

**STAFF REPORT TO THE PLANNING COMMISSION  
FOR CONSIDERATION AT THE MEETING OF MAY 17, 2017**

**Prepared by:** Kevin Scudero, Associate Planner  
**Approved by:** Alexis Morris, Planning Manager  
**Date:** May 12, 2017  
**Subject:** Administrative Use Permit and Design Review for Tri Delta Transit Park and Ride Lot (AR-16-15, AUP-16-26)

**RECOMMENDATION**

It is recommended that the Planning Commission approve the design review and administrative use permit request subject to the conditions contained in the attached resolution.

**REQUEST**

The applicant, Tri Delta Transit, is requesting approval of administrative use permit and design review for the design and construction of a new park and ride lot. The project is located at the northeast corner of Auto Center Drive and West Sixth Street (APN 074-130-081).

**ENVIRONMENTAL**

Where two or more public agencies will be involved with a project, the determination of which agency will be the lead agency is determined by the criteria set forth in Article 4 Section 15051 of the California Environmental Quality Act (CEQA) Guidelines. Criteria "a" states that "If the project will be carried out by a public agency, that agency shall be the lead agency even if the project would be located within the jurisdiction of another public agency." Based on this criteria, it was determined that Tri Delta Transit should act as lead agency on this project with the City of Antioch designated as the responsible agency.

Therefore, as the lead agency, Tri Delta Transit has determined that the proposed project is an infill project, and is considered exempt from environmental review pursuant to the California Environmental Quality Act (CEQA) Guidelines section 15332 – Infill Development Projects: 1) The project is consistent with the General Plan as well as the applicable zoning designation and regulations; 2) The proposed development occurs within the city limits on a project site no more than five acres; 3) The project site has no value as habitat for endangered, rare, or threatened species; 4) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or



water quality; 5) The site is adequately served by all required utilities and public services.

As responsible agency the City of Antioch has reviewed their environmental analysis (Attachment C) and concurs with their decision that the proposed project is an infill project and is considered exempt from environmental review.

## **ANALYSIS**

### **Issue #1: General Plan, Zoning and Land Use**

The General Plan designation for the site is Commercial and the Zoning designation is Neighborhood/Community Commercial (C-2). Commercial Parking Lots are permitted in C-2 with approval of an administrative use permit.

The proposed site is also located within the new Downtown Specific Plan that is currently being drafted by the City. While the Downtown Specific Plan has not been adopted, the draft Specific Plan would allow this use with approval of a use permit.

Surrounding land use and zoning designations are:

North:	KangaZoom / Neighborhood Commercial (C-2)
South:	Various Automotive Uses / Neighborhood Commercial (C-2)
East:	Vacant Land, Automotive Repair / Neighborhood Commercial (C-2)
West:	Baseball Fields / Light Industrial (M-1)

### **Issue #2: Analysis**

The proposed project consists of the construction of a new park and ride lot with parking for approximately 186 vehicles and other transit related amenities on a 4.25 acre property at the intersection of West Sixth Street and Auto Center Drive. The site will ultimately serve two Tri Delta Transit routes taking riders to various locations in east Contra Costa County.

Improvements to the site include a transit area with two bus berths, one layover space, transit shelters (covered benches) new sidewalks, the build out of West Sixth Street along the property frontage, landscaping, a bus loop (bus-only driveway) and a passenger drop-off (“kiss and ride”) area within the parking lot. The parking areas will be located to the south and west of the transit platform and would meet City of Antioch standards with double striped spaces and no more than ten consecutive spaces between parking islands. Staff has also conditioned that all landscaped parking islands adjacent to parking spaces have a one foot wide concrete step out area.

The transit area bus loop would be constructed to accommodate the added loads of transit vehicles. The adjacent transit platform will be paved with colored concrete in a five foot square grid pattern and contain benches, transit shelters, trees and lighting.

Staff has conditioned that a photometric plan of the entire site be submitted at building permit submittal to determine whether the proposed lighting plan sufficiently illuminates the site.

Landscaping will be placed around the perimeter of the site in addition to the interior parking islands. The trees around the perimeter of the property will provide a landscape buffer between the park and ride lot and adjacent properties. The proposed landscaping consists of drought tolerant trees, shrubs and ground cover that are consistent with the City of Antioch Design Guidelines. There will also be a six foot high black vinyl clad chain link fence installed along the rear property line.

### Bicycle Parking

The project description submitted by Tri Delta Transit indicated that the site will be designed with bicycle storage in mind; however, they did not show on the plans where the storage would be located or how many bicycle parking spaces would be provided. The Antioch Municipal Code does not have a specific bicycle parking ratio for transit stations; therefore, the Assistant City Engineer made the interpretation that the ratio required for office uses of one bicycle parking space for every fifteen parking spaces was the most appropriate for this location and has conditioned the project accordingly. Commuters who utilize the bicycle parking at the park and ride lot will likely utilize the space for a long period of time during the day similar to people who ride their bicycle to their place of work. Also, all of Tri Delta Transit fixed route and commuter buses are equipped with bicycle racks or bicycle storage so everyone who rides their bicycle to the park and ride lot does not necessarily have to store it there.

### ATTACHMENTS

- A: Site Plan
- B: Project Description
- C: Environmental Analysis
- D: ECCTA Resolution #170222

## **RESOLUTION NO. 2017-\*\***

### **RESOLUTION OF THE CITY OF ANTIOCH PLANNING COMMISSION APPROVING DESIGN REVIEW AND ADMINISTRATIVE USE PERMIT FOR TRI DELTA TRANSIT PARK AND RIDE LOT AT THE SOUTHEAST CORNER OF WEST SIXTH STREET AND AUTO CENTER DRIVE**

**WHEREAS**, the Planning Commission of the City of Antioch did receive a request from Tri Delta Transit for approval of an administrative use permit and design review for the design and construction of a new park and ride lot. The project is located at the northeast corner of Auto Center Drive and West Sixth Street (APN 074-130-081); and

**WHEREAS**, acting as lead agency, the East Contra Costa Transit Authority, at a meeting of their Board of Directors, on February 22, 2017, has determined that this project is categorically exempt from the provisions of CEQA pursuant to CEQA Guideline section 15332 – Infill Development Projects; and,

**WHEREAS**, acting as responsible agency, the City of Antioch does determine that this project is categorically exempt from the provisions of CEQA pursuant to CEQA Guideline section 15332 – Infill Development Projects; and,

**WHEREAS**, the Planning Commission on May 17, 2017, held a hearing, and received and considered evidence, both oral and documentary.

**NOW, THEREFORE BE IT RESOLVED** that the Planning Commission of the City of Antioch does hereby APPROVE the administrative use permit and design review for the design and construction of a new park and ride lot (AR-16-15, AUP-16-26), subject to the following conditions.

#### **A. GENERAL CONDITIONS**

1. The applicant shall defend, indemnify, and hold harmless the City in any action brought by a third party to challenge the land use entitlement. In addition, if there is any referendum or other election action to contest or overturn these approvals, the applicant shall either withdraw the application or pay all City costs for such an election.
2. The project shall be implemented as indicated on the application form and accompanying materials provided to the City and in compliance with the Antioch Municipal Code, or as amended by the Planning Commission.
3. No building permit will be issued unless the plan conforms to the site plan as approved by the Planning Commission and the standards of the City.

**RESOLUTION NO. 2017-\*\***

May 17, 2017

Page 2

4. This approval expires two years from the date of approval (expires May 17, 2019), unless a building permit has been issued and construction has diligently commenced thereon and has not expired, or an extension has been approved by the Zoning Administrator. Requests for extensions must be received in writing with the appropriate fees prior to the expiration of this approval. No more than one one-year extension shall be granted.
5. No permits or approvals, whether discretionary or mandatory, shall be considered if the applicant is not current on fees, reimbursement payments, and any other payments that are due.
6. All required easements or rights-of-way for improvements shall be obtained by the developer at no cost to the City of Antioch. Advance permission shall be obtained from all pertinent property owners and easement holders, if applicable, for any work done within such property or easements.
7. All existing easements shall be identified on the site plan and all plans that encroach into existing easements shall be submitted to the easement holder for review and approval, and advance written permission shall be obtained from any property or easement holders for any work done within such property or easements.
8. The project and all proposed improvements shall comply with the City of Antioch Municipal Code and City Standards unless a specific exception is granted thereto or as approved by the City Engineer.
9. The applicant shall obtain an encroachment permit for all work to be done within the public right-of-way or easements, and peak commute-hour traffic shall not be impeded by construction related activity.
10. The project shall be identified by a decorative addressing method easily visible to emergency responders and modified as deemed necessary by the Antioch Police Department.
11. The developer shall install and maintain parking lot and pathway lights and landscaping within the project area at no cost to the City.
12. The property owner agrees to participate in the Streetlight and Landscape District 2A Zone 1 and accept a level of annual assessments sufficient to maintain the public streetlights and landscaping in the vicinity of the project area at no cost to the City.
13. The City engineering, planning and clean water staff will inspect the site and adjacent right-of-way for compliance with conditions of approval and the project shall conform to all conditions of approval prior to final certificate of occupancy.

**RESOLUTION NO. 2017-\*\***

May 17, 2017

Page 3

14. City of Antioch “No Dumping – Drains to River” decal buttons shall be installed on new and existing storm drain inlets to alert the public to the destination of storm water and to prevent direct discharge of pollutants into the storm drain system.
15. All access driveways shall be constructed to current ADA and City Standards, subject to review and approval by the City Engineer.
16. All parking spaces shall be double-striped and all parking lot dimensions shall meet minimum City policies and Municipal Code requirements.
17. All cracked, broken or damaged concrete curb, gutter, and sidewalk in the public right-of-way shall be removed and replaced as required by the City Engineer.
18. All buildings, parking and access shall meet ADA/Title 24 requirements as determined by the Chief Building Official.
19. Prior to the approval of the grading plan(s), the City Engineer shall determine if it is necessary to engage soils and structural engineers, as well as any other professionals, deemed necessary to review and verify the adequacy of the building plans submitted for this project. If deemed necessary by the City Engineer, this condition may include field inspections by such professionals to verify implementation of the plans. Costs for these services shall be borne by the developer.
20. A turning template shall be shown on the site plan confirming that all expected vehicles can successfully ingress, egress, and safely maneuver through the site, as approved by the City Engineer.
21. Sight distance triangles shall be maintained per Antioch Code of Ordinances § 9-5.1101, Site Obstructions at Intersections, or as approved by the City Engineer.
22. The property owner shall maintain all undeveloped areas within this project in an attractive manner, which shall also ensure fire safety.

**B. CONSTRUCTION CONDITIONS**

1. The use of construction equipment shall be as outlined in the Antioch Municipal Code. Construction is restricted to weekdays between the hours of 7:00 AM and 6:00 PM. Requests for alternative days/times may be submitted in writing to the City Engineer for consideration.
2. The project shall be in compliance with and supply all the necessary documentation for AMC 6-3.2: Construction and Demolition Debris Recycling.

**RESOLUTION NO. 2017-\*\***

May 17, 2017

Page 4

3. Standard dust control methods and designs shall be used to stabilize the dust generated by construction activities. The applicant shall post dust control signage with a contact number of the applicant, City staff, and the Bay Area Air Quality Management District.

**C. FIRE REQUIREMENTS**

1. All requirements of the Contra Costa County Fire Protection District shall be met:
  - a. Any relocation of a fire hydrant will require Fire District approval. The developer shall submit a minimum of two (2) copies site improvement plans indicating proposed hydrant locations for review. Final placement of the relocated hydrants shall be determined by the Contra Costa County Fire Protection District. (501.3) CFC

**D. FEES**

1. The developer shall pay all City fees which have been established by the City Council and as required by the Antioch Municipal Code.
2. The developer shall pay all pass-through fees. Fees may include but are not limited to:
  - East Contra Costa Regional Fee and Financing Authority (ECCRFFA) Fee in effect at the time of building permit issuance.
  - Contra Costa County Fire Protection District Fire Development Fee in effect at the time of building permit issuance.
  - Contra Costa County Flood Control District Fee.
  - School Impact Fees.
  - Delta Diablo Sewer Fees.
  - Contra Costa Water District Fees.

**E. PROPERTY MAINTENANCE**

1. A parking lot sweeping program shall be implemented that, at a minimum, provides for sweeping immediately prior to, and once during, the storm season.
2. The site shall be kept clean of all debris (boxes, junk, garbage, etc.) at all times.

**F. GRADING**

1. The grading operation shall take place at a time and in a manner so as not to allow erosion and sedimentation. The slopes shall be landscaped and reseeded as soon as possible after the grading operation ceases. Erosion measures shall be implemented during all construction phases in accordance with an approved erosion and sedimentation control plan.
2. All lots and slopes shall drain to approved drainage facilities as approved by the City Engineer.
3. Wall and fence locations and elevations shall be included on the grading plan.
4. Any existing wells or septic systems on the property shall be properly abandoned under permit from the Contra Costa County Environmental Health Department.
5. The grading for slopes shall be contoured to provide as natural an appearance as possible as required by the City Engineer.
6. All grading shall be accomplished in a manner that precludes surface water drainage across any property line.
7. Asphalt paving shall be designed for a minimum traffic index (TI) of 4.5 and shall have a minimum slope of 2%, concrete paving shall have a minimum slope of 0.75%, and asphalt paving for identified accessible parking stalls and access routes may have a minimum slope of 1.5% and a maximum 2% slope, or as approved by the City Engineer.
8. All off-site grading is subject to the coordination and approval of the affected property owners and the City Engineer. The developer shall submit written authorization to "access, enter, or grade" adjacent properties prior to performing any work.
9. The grading plan for this project shall be approved by the City Engineer.
10. All elevations shown on the plans shall be on the USGS 1929 sea level datum or NAVD 88 with conversion information, as approved by the City Engineer.
11. Retaining walls shall be of masonry construction and shall not be constructed in City right-of-way or other City maintained parcels unless approved by the City Engineer.
12. All retaining walls shall be reduced in height to the maximum extent practicable and the walls shall meet the height requirements in the setback and sight distance triangles as required by the City Engineer.

13. The grading transitions from parcel to parcel or parcel to lot shall have a maximum slope of 2:1, and shall be accommodated entirely on the lower lot or as approved by the City Engineer.

**G. CONSERVATION/NPDES**

1. Water conservation measures, including the use of drought tolerant landscaping, shall be used.
2. The project shall meet or exceed Tier 1 of the CALGreen Building Code.
3. That the project shall comply with all Federal, State, and City regulations for the National Pollution Discharge Elimination System (NPDES) (AMC§6-9). (Note: Per State Regulations, NPDES Requirements are those in affect at the time of the Final Discretionary Approval.) Under NPDES regulations, the project is subject to provision C.3: New development and redevelopment regulations for storm water treatment. Provision C.3 requires that the project include storm water treatment and source control measures, as well run-off flow controls, so that post-project runoff does not exceed estimated pre-project runoff. C.3 regulations require the submittal of a Storm Water Control Plan (SWCP) that demonstrates how compliance will be achieved. The SWCP shall be submitted simultaneously with the project plans. For the treatment and flow-controls identified in the approved SWCP, a separate Operation and Maintenance Plan (O&M) shall be submitted and approved before the Building Department will issue Certificate of Occupancy permits. Both the approved SWCP and O&M plans shall be included in the project CC&Rs. Prior to building permit final and issuance of a Certificate of Occupancy, the developer shall execute any agreements identified in the Storm Water Control Plan that pertain to the transfer of ownership and/or long-term maintenance of storm water treatment or hydrograph modification BMPs.
4. The following requirements of the federally mandated NPDES program (National Pollutant Discharge Elimination System) shall be complied with as appropriate, or as required by the City Engineer:
  - a. Prior to issuance of permits for building, site improvements, or landscaping, the developer shall submit a permit application consistent with the developer's approved Storm Water Control Plan, and include drawings and specifications necessary for construction of site design features, measures to limit directly connected impervious area, pervious pavements, self-retaining areas, treatment BMPs, permanent source control BMPs, and other features that control storm water flow and potential storm water pollutants.



**RESOLUTION NO. 2017-\*\***

May 17, 2017

Page 7

- b. The Storm Water Control Plan shall be certified by a registered civil engineer, and by a registered architect or landscape architect as applicable. Professionals certifying the Storm Water Control Plan shall be registered in the State of California and submit verification of training, on design of treatment measures for water quality, not more than three years prior to the signature date by an organization with storm water treatment measure design expertise (e.g., a university, American Society of Civil Engineers, American Society of Landscape Architects, American Public Works Association, or the California Water Environment Association), and verify understanding of groundwater protection principles applicable to the project site (see Provision C.3.i of Regional Water Quality Control Board Order R2 2003 0022).
- c. Prior to building permit final and issuance of a Certificate of Occupancy, the developer shall submit, for review and approval by the City, a final Storm Water BMP Operation and Maintenance Plan in accordance with City of Antioch guidelines. This O&M plan shall incorporate City comments on the draft O&M plan and any revisions resulting from changes made during construction.
- d. Prior to building permit final and issuance of a Certificate of Occupancy, the developer shall execute and record any agreements identified in the Storm Water Control Plan which pertain to the transfer of ownership and/or long-term maintenance of storm water treatment or hydrograph modification BMPs.
- e. Prevent site drainage from draining across sidewalks and driveways in a concentrated manner.
- f. Collect and convey all storm water entering, and/or originating from, the site to the nearest adequate downstream manmade drainage facility or natural watercourse, without diversion of the watershed. Submit hydrologic and hydraulic calculations with the Improvement Plans to Engineering Services for review and approval.
- g. Prior to issuance of the grading permit, submit proof of filing of a Notice of Intent (NOI) by providing the unique Waste Discharge Identification Number (WDID#) issued from the Regional Water Quality Control Board.

**RESOLUTION NO. 2017-\*\***

May 17, 2017

Page 8

- h. Submit a copy of the Storm Water Pollution Prevention Plan (SWPPP) for review to the Engineering Department prior to issuance of a building and/or grading permit. The general contractor and all subcontractors and suppliers of materials and equipment shall implement these BMP's. Construction site cleanup and control of construction debris shall also be addressed in this program. Failure to comply with the approved construction BMP may result in the issuance of correction notices, citations, or a project stop work order.
- i. Install appropriate clean water devices at all private storm drain locations immediately prior to entering the public storm drain system. Implement Best Management Practices (BMP's) at all times.
- j. Install "No Dumping, Drains to River" decal buttons on all catch basins.
- k. If sidewalks are pressure washed, debris shall be trapped and collected to prevent entry into the storm drain system. No cleaning agent may be discharged into the storm drain. If any cleaning agent or degreaser is used, wash water shall be collected and discharged to the sanitary sewer, subject to the approval of the sanitary sewer District.
- l. Include erosion control/storm water quality measures in the final grading plan that specifically address measures to prevent soil, dirt, and debris from entering the storm drain system. Such measures may include, but are not limited to, hydro seeding, gravel bags and siltation fences and are subject to review and approval of the City Engineer. If no grading plan is required, necessary erosion control/storm water quality measures shall be shown on the site plan submitted for an on-site permit, subject to review and approval of the City Engineer. The developer shall be responsible for ensuring that all contractors and subcontractors are aware of and implement such measures.
- m. Sweep or vacuum the parking lot(s) a minimum of once a month and prevent the accumulation of litter and debris on the site. Corners and hard to reach areas shall be swept manually.
- n. Ensure that the area surrounding the project such as the streets stay free and clear of construction debris such as silt, dirt, dust, and tracked mud coming in from or in any way related to project construction. Areas that are exposed for extended periods shall be watered regularly to reduce wind erosion. Paved areas and access roads shall be swept on a regular basis. All trucks shall be covered.

**RESOLUTION NO. 2017-\*\***

May 17, 2017

Page 9

- o. Clean all on-site storm drain facilities a minimum of twice a year, once immediately prior to October 15 and once in January. Additional cleaning may be required if found necessary by City Inspectors and/or City Engineer.
5. All impervious surfaces to be constructed as part of the project, including off-site roadways, are subject to C.3 requirements per State Regulations.

**H. UTILITIES**

1. The applicant shall install all infrastructure to serve the site. Infrastructure for access to the site (sewer, water, storm, joint trench, and surface improvements) shall be completed prior to issuance of building permits.
2. All onsite utilities shall be privately maintained and connected to public facilities in accordance with City Standards, or as approved by the City Engineer.
3. All existing and proposed public utilities (e.g. transformers) shall be placed underground (subsurface installation) in accordance with the Antioch Municipal Code, unless otherwise approved in writing by the City Engineer.
4. A reduced backflow prevention device shall be installed on all City water meter services.
5. Reduced pressure backflows, water meters, and double detector check backflows shall be enclosed within an easement granted to the City at no cost to the City.
6. All sewage shall flow by gravity to the intersecting street sewer main or as approved by the City Engineer.
7. All proposed drainage facilities, including open ditches, shall be constructed of Portland Concrete Cement or as approved by the City Engineer.
8. The developer shall comply with all conditions stipulated in Contra Costa County Flood Control District letter dated April 6, 2017 and submit hydrology and hydraulic analyses with a Storm Water Control Plan to the City for review and approval, and submit same to the Contra Costa County Flood Control District for review at no cost to the City if directed by the City Engineer.
9. The developer shall provide adequate water pressure and volume to serve this development. This will include a minimum residual pressure of 20 psi with all losses included at the highest point of water service and a minimum static pressure of 50 psi or as approved by the City Engineer. See Fire Requirements for additional water flow conditions.

**I. LANDSCAPING**

1. Landscaping, grading and signage shall not create a sight distance problem.
2. Detailed landscaping and irrigation plans for the entire site (including C.3 basins) shall be as approved by the Planning Commission on plans dated October 5, 2016. Final landscape and irrigation plans shall be submitted to the City for review and approval. All landscaping and irrigation shall be installed in accordance with approved plans prior to the issuance of certificates of occupancy.
3. All trees shall be a minimum 24-inch box size and all shrubs shall be a minimum 5-gallon size.
4. Landscape shall show immediate results and be permanently maintained in good condition.
5. Based on drought conditions, the City Engineer has the authority to delay some or all of the landscape Conditions of Approval.

**J. PROJECT-SPECIFIC CONDITIONS**

1. This design review and administrative use permit approval applies to the design and construction of a new park and ride lot as depicted on the project plans submitted to the City of Antioch on November 22, 2016.
2. Storm water from West Sixth Street shall flow to the bio-retention facilities along the project frontage by means of through-curb drains. The owner shall maintain the property frontage from back-of-curb, including all pavements, drainage, bio-retention facilities and landscaping.
3. Parking drive aisles located in the area south of the bus turnout shall be redesigned to intersect at approximately right angles, or as approved by the City Engineer.
4. The existing slope easement shall be vacated by the property owner, or as approved by the City Engineer.
5. No steps (rungs) shall be allowed in City manholes.
6. No stairs or steps shall be allowed in the public right-of-way.
7. The West Sixth Street roadway improvements shall extend east of the property to provide a smooth transition to the travel lane, as approved by the City Engineer.

**RESOLUTION NO. 2017-\*\***

May 17, 2017

Page 11

8. A photometric plan of West Sixth Street and the project site shall be provided to identify the potential need for additional lighting, and streetlights shall be provided as required by City standards, at no cost to the City.
9. City standard storm drain manholes shall be provided adjacent to the right-of-way line to allow for maintenance by City crews.
10. Wheel stops shall only be used in handicap parking spaces.
11. The connection point for the irrigation system shall be at the eastern terminus of the 12" waterline extension on West Sixth Street, or as approved by the City Engineer.
12. The proposed abandonment of the 12" storm drain line crossing the site shall not create a drainage issue for the adjacent property owner.
13. Provide a one (1) foot clear step-out area for finger planters adjacent to the parking stalls.
14. The proposed fence on the southern property line shall be a 6 foot high black vinyl clad chain link fence.
15. One bicycle parking space shall be provided for every fifteen parking spaces. Location and design of bicycle parking facilities shall be approved at building permit submittal.
16. All illegal dumping on site shall be removed within 24 hours.

\* \* \* \* \*

**I HEREBY CERTIFY** that the foregoing resolution was adopted by the Planning Commission of the City of Antioch at a regular meeting thereof held on the 17<sup>th</sup> day of May, 2017 by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

---

FORREST EBBS,  
Secretary to the Planning  
Commission

# ATTACHMENT “A”





TRI DELTA TRANSIT - ANTIOCH PARK AND RIDE

PROPOSED SITE PLAN



Figure 2



# ATTACHMENT “B”



## Project Description

*Project Title:* Antioch Park and Ride Lot

*Lead Agency Name:* Tri Delta Transit, 801 Wilbur Avenue, Antioch, CA 94509

*Project Sponsor/Contact Person and Phone Number:* Tri Delta Transit, Steve Ponte, 925-754-6622

*General Plan Designation:* Focus Area

*Zoning:* C-2, Neighborhood/Community Commercial District

**RECEIVED**

NOV 22 2016

## Project Background

CITY OF ANTIOCH  
COMMUNITY DEVELOPMENT

Tri Delta Transit proposes to construct a new Park and Ride Lot on a 4.25 acre property at the intersection of West 6<sup>th</sup> Street and Auto Center Drive in the City of Antioch.

The site would be developed with parking for approximately 186 cars and other transit-related amenities. Improvements to West 6<sup>th</sup> Street would also include a transit area with 2 bus berths, one layover space, transit shelters (covered benches), new sidewalks, a bus loop (bus-only driveway) and a passenger drop-off (kiss and ride) area within the parking lot.

## Project Location and Site Description

**Figure X, Project Location,** depicts the project site. As shown, the project site is located on the southeasterly quadrant of the intersection of West 6<sup>th</sup> Street and Auto Center Drive. It generally slopes from west to east, varying approximately from 11-feet to 27-feet above mean sea level. At this time, the site is not being used for anything; it is currently an empty parcel with no structures or buildings.

## Project Description

**Figure X, Site Plan,** shows the proposed configuration of the transit area as well as the proposed design of the Park and Ride Lot.

The transit area would be located on the northern portion of the project site, along West 6<sup>th</sup> Street, and would include a transit platform, 2 bus berths, a layover bus space, and a bus loop (bus-only driveway). The transit area would also be developed with bicycle storage and transit shelters in mind. To accommodate parking for approximately 186 vehicles, areas to the south and west of the transit platform would be paved with asphalt and striped accordingly. The transit area bus loop would be constructed to accommodate the added loads of transit vehicles.

While main access to the parking lot would be located along West 6<sup>th</sup> Street, a new 20-foot wide concrete driveway is required along Auto Center Drive to provide secondary access for emergency vehicles.

**Figure X, Grading Plan**, shows how the parking lot would be constructed at a higher elevation than the transit area to allow parked vehicles to be above the established base flood elevations. A set of stairs is located near the south side of the transit platform to provide access from the parking lot. A concrete ADA pedestrian path is also required to maintain accessibility from the parking lot to the transit platform. The passenger drop-off area is located within the parking lot and is adjacent to both the ADA pedestrian path and the stairs.

The total new and reworked impervious surface for the proposed improvements is approximately 115,000 square feet. The project would include stormwater related site improvements that will not increase the amount of stormwater flowing off the site, while also improving stormwater quality. As shown on **Figure X, Landscaping Plan**, and **Figure X, Utility Plan**, bioswales and bioretention areas are provided throughout the Park and Ride Lot. The Landscaping Plan was developed with City requirements in mind; the plant palette consists primarily of native and/or drought-tolerant plants.

The proposed Park and Ride Lot will ultimately serve two Tri Delta Transit routes taking riders to various locations in east Contra Costa County: Routes 387 (to be renamed Route 87) and 388 (to be renamed Route 88). Route 388 currently utilizes Auto Center Drive/West 4<sup>th</sup> Street. Under the proposed project, Route 388 would be slightly diverted into the West 6<sup>th</sup> Street Park and Ride bus loop, and then return to its existing route along Auto Center Drive/West 4<sup>th</sup> Street. Route 387 would be rerouted from its current alignment along L Street, between West 10<sup>th</sup> Street and West 4<sup>th</sup> Street. The proposed Route 387 would turn off of its current L Street alignment at West 10<sup>th</sup> Street, travel along West 10<sup>th</sup> Street until Auto Center Drive/West 4<sup>th</sup> Street, and divert into the West 6<sup>th</sup> Street bus loop entrance before continuing along West 4<sup>th</sup> Street and returning to its existing route at the 4<sup>th</sup> Street/L Street intersection. The realignment of Route 388 would account for 43 daily trips to Park and Ride Lot. Route 387 would contribute another 30 daily trips.

The project site is regularly disked, is dominated by non-native grasses and invasive plant species, and is in a highly disturbed condition. However, suitable habitat for burrowing owl (*Athene cunicularia*), a special-status species, occurs between disking cycles. Prior to the commencement of construction, surveys will be conducted in order to avoid any inadvertent effects to burrowing owls. The pre-construction surveys will be conducted in accordance with the current California Department of Fish and Wildlife (CDFW) burrowing owl survey protocol. The first step of the survey process will include a habitat assessment, as this assists the surveyor in determining whether or not occupancy surveys are needed. If suitable habitat is not present within 14 days of construction activities, then no further surveys are required. If suitable habitat is present, then take avoidance (pre-construction) surveys will be conducted. If a nesting burrowing owl is observed on the project site, then work will be postponed until the conclusion of the breeding season (i.e., August 31) or until a qualified biologist determines that nesting is complete. If non-

nesting burrowing owls are found, then burrow exclusion will be conducted prior to construction in accordance with the CDFW (2012) requirements; CDFW approval of the burrowing owl exclusion plan will be required.

# ATTACHMENT “C”

# Notice of Exemption

## Appendix E

**To:** Office of Planning and Research  
P.O. Box 3044, Room 113  
Sacramento, CA 95812-3044  
  
County Clerk  
County of: Contra Costa  
555 Escobar Street  
Martinez, CA 94553

**From:** (Public Agency): Tri Delta Transit  
801 Wilbur Avenue  
Antioch, CA 94509

(Address)

Project Title: Antioch Park and Ride

Project Applicant: Tri Delta Transit

Project Location - Specific:

The project site is located on the southeasterly quadrant of the intersection of West 6th Street and Auto Center Drive in the City of Antioch, CA.

Project Location - City: Antioch

Project Location - County: Contra Costa

Description of Nature, Purpose and Beneficiaries of Project:

Tri Delta Transit proposes to construct a new Park and Ride Lot on a 3.5 acre property at the intersection of West 6th Street and Auto Center Drive in the City of Antioch. See Attachment A for a full description of the project.

Name of Public Agency Approving Project: Tri Delta Transit

Name of Person or Agency Carrying Out Project: Tri Delta Transit

Exempt Status: **(check one):**

- ☐ Ministerial (Sec. 21080(b)(1); 15268);
- ☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));
- ☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- ☒ Categorical Exemption. State type and section number: In-Fill Development Projects, 15332
- ☐ Statutory Exemptions. State code number: \_\_\_\_\_

Reasons why project is exempt:

Attachment B detail the reasons for a Categorical Exemption and why exceptions do not apply to the project. Attachment C substantiates that the project would not result in any significant impact, in the form of a CEQA Checklist.

Lead Agency

Contact Person: Steve Ponte

Area Code/Telephone/Extension: 925-754-6622

**If filed by applicant:**

1. Attach certified document of exemption finding.

2. Has a Notice of Exemption been filed by the public agency approving the project? ☐ Yes ☐ No

Signature: [Signature]

Date: 12-22-16

Title: COV

☐ Signed by Lead Agency ☐ Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.

Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: \_\_\_\_\_

## **TRI DELTA TRANSIT ANTIOCH PARK AND RIDE- CEQA CATEGORICAL EXEMPTION**

Tri Delta Transit proposes to construct a new Park and Ride lot on a 3.5 acre property at the intersection of West 6th Street and Auto Center Drive in the City of Antioch. After a detailed review of the potential environmental effects of the proposed Park and Ride lot (the project), Tri Delta Transit has determined that the project qualifies as exempt from the provisions of CEQA under Section 15332, Class 32. An explanation of how the project conforms to Class 32 of categorical exemption follows.

### **Class 32**

Section 15332 of the CEQA guidelines defines a categorical exemption for in-fill development as projects that meet the following five criteria:

1. The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
2. The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
3. The project site has no value as habitat for endangered, rare or threatened species.
4. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
5. The site can be adequately served by all required utilities and public services.

### **Criterion 1**

The Antioch General Plan map indicates that the project site is zoned C-2 Industrial, and is surrounded by similar commercial/industrial land use designations. The proposed park and ride lot is consistent with local land uses designation and the applicable City of Antioch zoning ordinance. Therefore, the project meets Criterion 1.

### **Criterion 2**

The project site is located within the incorporated boundaries of City of Antioch on a site that is entirely surrounded by urbanized/commercial land uses. Therefore, the project meets Criterion 2.

### **Criterion 3**

A habitat assessment was prepared for the project in October 2016<sup>1</sup>. Given the highly developed and urban setting of the project site, the project would not result in significant biological. The urban setting surrounding the project site, as well as annual disking of the site itself, is indicative

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<sup>1</sup> Pacific Biology. 2016. Biological Habitat Evaluation.

of disturbed and low quality habitat. However, potentially suitable habitat for the white-tailed kite (*Elanus leurus*), a Fully Protected Species by the California Department of Fish and Wildlife (CDFW), may occur onsite in the form of two large trees. The white tailed kite is a species that nests in trees such as the large Arroyo Willow located on the property. Although the project site contains potentially suitable habitat for the kite, the habitat consisting of two trees does not substantiate valuable habitat as the species does not critically depend on it for its wellbeing or survival. Furthermore, these trees are not anticipated to be removed as part of the project. Pre-construction surveys will be conducted in order to preclude any potential environmental effects to white-tailed kite that might be nesting in these trees during project construction. These the pre-construction surveys are incorporated into the project scope to ensure that the white-tailed kite would not be harmed. Therefore, the project meets Criterion 3.

#### **Criterion 4**

A traffic assessment was prepared for the project in November 2016<sup>2</sup>. Under the future traffic scenarios investigated (existing plus project conditions; future traffic plus project conditions) all study intersections including West 10th Street/Auto Center Drive, West 6th Street/Auto Center Drive and L Street/West 4th Street would continue to operate within the acceptable Level of Service (LOS) standards of the City of Antioch (LOS D or better) during the a.m. and p.m. peak hours. The project would not result in significant impacts to traffic operations.

A noise analysis was prepared for the project in November 2016<sup>3</sup>. Given the relative distance to the project site, and intervening industrial and commercial buildings, construction and operational noise generated by the project would attenuate to less than significant levels at the closest noise sensitive land uses. Groundborne vibration effects from project construction would not result in significant effects at the surrounding commercial and residential properties. Therefore, there would be no significant noise impacts.

An air quality and greenhouse gas assessment was prepared for the project<sup>4</sup>. The project would result in a reduction of vehicle miles traveled (VMT), affectively reducing greenhouse gas emissions in the project area. Furthermore, the project would be compliant with the City of Antioch General Plan Policy 10.6.2a, which requires development projects to minimize the generation of particulate emissions during construction through implementation of the dust abatement actions outlined in the CEQA Handbook of the Bay Area Air Quality Management District (BAAQMD). These measures are defined in the air quality and greenhouse gas assessment. The construction and operation of the project would therefore not adversely affect air quality, and would potentially reduce greenhouse gas emissions.

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<sup>2</sup> TJKM. 2016. Traffic Impact Study: Tri Delta Transit Hub.

<sup>3</sup> Illingworth & Rodkin. 2016. Noise Study Report.

<sup>4</sup> Illingworth & Rodkin. 2016. Air Quality and Greenhouse Gas Assessment.

The Contra Costa County Watershed Program's (CWP) Municipal Regional Permit (MRP) under the National Pollutant Discharge Elimination System (NPDES) Program was enacted by the San Francisco Bay Regional Water Quality Control Board (SFBRWQCB) in December 2009. The MRP governs stormwater and non-stormwater discharges from areas owned and operated by Contra Costa County. The permit requires implementation of Stormwater Management Plans with the goal of reducing the discharge of pollutants to the maximum extent practicable (MEP). Additionally, the City of Antioch's Ordinance for Stormwater establishes requirements on allowed discharges to the stormwater system through enforcement and citation. The proposed project would ensure compliance with both County and City level regulation and would not result in an adverse or significant impact to water quality.

Given all of the above, the project meets Criterion 4.

#### **Criterion 5**

The project site is located in a developed urban area that is currently served by existing utilities and public services. The proposed improvements would be connected to existing utility infrastructure, and would not require the expansion of new utility infrastructure. The project is not proposing new residential development or a large employment center that would generate large populations of people, and is not anticipated to increase demands for public services, such as police and fire protection. Therefore, the project meets Criterion 5.

#### **Exceptions to Exemptions**

Categorical exemptions are applicable when a given project meets particular conditions/criteria, as described above, and does not involve the following exceptions listed under Section 15300.2 of the CEQA guidelines:

- a) Item (a) pertains to location criteria for certain classes of categorical exemptions; however, Tri Delta Transit is not proposing to use any categorical exemptions pursuant to item (a) for this project. Therefore, exception (a) is not applicable.
- b) Item (b) precludes the use of categorical exemptions where cumulative impacts may occur. Tri Delta Transit's analysis of the project has not indicated any reasonable possibility of a significant effect on the environment. Moreover, Tri Delta Transit is unaware of any other projects proposed for the regional area that could combine with the proposed project to result in a significant cumulative impact.
- c) Item (c) states that a categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. No unusual construction techniques or practices are needed to construct or operate the project. No unusual environmental constraints exist on the project site. Therefore, the proposed project does not entail any unusual circumstances.
- d) Item (d) states that a categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock



outcroppings, or similar resources, within a highway officially designated as a state scenic highway. There are no scenic resources on or surrounding the project site. The project is not located within or along a scenic highway.

- e) Item (e) precludes the use of a categorical exemption for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code. This list is commonly known as the "Cortese List" and it represents sites with extensive contamination of soils and/or groundwater. The project site is not listed on the Cortese List.
- f) Item (f) states that a categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource. There are no known historic resources on or surrounding the project site.

## Appendix G

## Environmental Checklist Form

NOTE: The following is a sample form and may be tailored to satisfy individual agencies' needs and project circumstances. It may be used to meet the requirements for an initial study when the criteria set forth in CEQA Guidelines have been met. Substantial evidence of potential impacts that are not listed on this form must also be considered. The sample questions in this form are intended to encourage thoughtful assessment of impacts, and do not necessarily represent thresholds of significance.

1. Project title: Antioch Park and Ride Lot
2. Lead agency name and address:  
Tri Delta Transit, 801 Wilbur Avenue, Antioch, CA 94509
3. Contact person and phone number: Steve Ponte, 925-754-6622
4. Project location: Intersection of West 6th St. and Auto Center Dr. in the City of Antioch, CA
5. Project sponsor's name and address:  
Tri Delta Transit, 801 Wilbur Avenue, Antioch, CA 94509
6. General plan designation: Focus Area      7. Zoning: C-2
8. Description of project: (Describe the whole action involved, including but not limited to later phases of the project, and any secondary, support, or off-site features necessary for its implementation. Attach additional sheets if necessary.)  
Tri Delta Transit proposes to construct a new Park and Ride Lot on a 3.5 acre property at the intersection of West 6th Street and Auto Center Drive in the City of Antioch.  
The site would be developed with parking for approximately 186 cars and other transit-related amenities. Improvements to West 6th Street would also include a transit area with 2 bus ☒
9. Surrounding land uses and setting: Briefly describe the project's surroundings:  
The project site is bordered by commercial and commercial/industrial land uses to the south, residential uses to the east and recreational uses across Auto Center Drive to the west.  
Businesses in proximity to the project site include Hertz Rent a Car, an auto collision and repair center, a Valero Gas Station, and an auto body shop. ☒
10. Other public agencies whose approval is required (e.g., permits, financing approval, or participation agreement.)  
City of Antioch

## CEQA Checklist

### I. Aesthetics

<i>Would the project:</i>	Significant or Potentially Significant Impact	Less Than Significant Impact with Mitigation Incorporated	Less than Significant	No Impact
a) Have a substantial adverse effect on a scenic vista?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The 3.5 acre property is currently vacant and surrounded by neighboring industrial land uses. There are no scenic vistas and or visual resources in proximity to the project site. As such, no scenic resources would be affected by the implementation of the project. Furthermore, the proposed park and ride lot would be visually consistent with surrounding industrial land uses, and does not include the construction of large structures.

### II. Agriculture and Forestry Resources

<i>Would the project:</i>	Significant or Potentially Significant Impact	Less Than Significant Impact with Mitigation Incorporated	Less than Significant	No Impact
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code Section 4526), or timberland zoned Timberland Production (as defined by Government Code Section 51104(g))?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Result in the loss of forest land or conversion of forest land to non-forest use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

<i>Would the project</i>	Significant or Potentially Significant Impact	Less Than Significant Impact with Mitigation Incorporated	Less than Significant	No Impact
e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use of conversion of forest land to non-forest use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

There are no farmlands or forest lands located on or immediately surrounding the project site.

### III. Air Quality

<i>Would the project</i>	Significant or Potentially Significant Impact	Less Than Significant Impact with Mitigation Incorporated	Less than Significant	No Impact
a) Conflict with or obstruct implementation of the applicable air quality plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Expose sensitive receptors to substantial pollutant concentrations?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Create objectionable odors affecting a substantial number of people?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

An air quality and greenhouse gas assessment was prepared for the project in 2016.<sup>1</sup> The proposed park and ride lot would reduce vehicle miles traveled (VMT) and therein, improves air quality. In addition, the project would be consistent with the applicable Clean Air Plan by promoting bus ridership. Furthermore, the project would be compliant with the City of Antioch General Plan Policy 10.6.2a, which requires development projects to minimize the generation of particulate emissions during construction through implementation of the dust abatement actions outlined in the CEQA Handbook of the

<sup>1</sup> Illingworth & Rodkin. 2016. Air Quality and Greenhouse Gas Assessment.

Bay Area Air Quality Management District (BAAQMD). The construction and operation of the project would therefore not adversely affect air quality.

#### IV. Biological Resources

<i>Would the project:</i>		Significant or Potentially Significant Impact	Less Than Significant Impact with Mitigation Incorporated	Less than Significant	No Impact
a)	Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b)	Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c)	Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d)	Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e)	Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f)	Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

A biological habitat evaluation was prepared for the project in 2016<sup>2</sup>. The project site is regularly disked, is dominated by non-native grasses and invasive plant species, and is in a highly disturbed condition. No wetlands or riparian habitat exist on site. However, suitable habitat for burrowing owl (*Athene cunicularia*), a special-status species, occurs between disking cycles. Prior to the commencement of construction, surveys will be conducted in order to avoid any inadvertent effects to burrowing owls. The pre-

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<sup>2</sup> Pacific Biology. 2016. Biological Habitat Evaluation.

construction surveys will be conducted in accordance with the current California Department of Fish and Wildlife (CDFW) burrowing owl survey protocol. The first step of the survey process will include a habitat assessment, as this assists the surveyor in determining whether or not occupancy surveys are needed. If suitable habitat is not present within 14 days of construction activities, then no further surveys are required. If suitable habitat is present, then take avoidance (pre-construction) surveys will be conducted. If a nesting burrowing owl is observed on the project site, then work will be postponed until the conclusion of the breeding season (i.e., August 31) or until a qualified biologist determines that nesting is complete. If non-nesting burrowing owls are found, then burrow exclusion will be conducted prior to construction in accordance with the CDFW (2012) requirements; CDFW approval of the burrowing owl exclusion plan will be required.

Additionally, the project site provides potential nesting habitat for white-tailed kite (*Elanus Leucurus*), a Fully Protected Species, according to the California Department of Fish and Wildlife, in a willow tree and another large tree onsite. If construction activities would commence anytime during the nesting/breeding season of native bird species potentially nesting near the site (typically February through August in the project region), a pre-construction survey for nesting birds would be conducted by a qualified biologist within two weeks of the commencement of construction activities.

If active nests are found in areas that could be directly affected or are within 200 feet of construction and would be subject to prolonged construction-related noise, a no-disturbance buffer zone should be created around active nests during the breeding season or until a qualified biologist determines that all young have fledged.

The project site is not located within a Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.

The City of Antioch defines landmark and/or heritage trees as having a trunk diameter of 48 inches and/or in excess of 40 feet above natural grade in height. The City of Antioch states that landmark and/or heritage trees are protected trees, and any activities related to these trees must be approved by the City's Tree Committee. Project plans indicate that the two large trees onsite, which are potentially heritage trees, would not be removed with the construction of the project.

## V. Cultural Resources

<i>Would the project:</i>		Significant or Potentially Significant Impact	Less Than Significant Impact with Mitigation Incorporated	Less than Significant	No Impact
a)	Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

<i>Would the project:</i>	Significant or Potentially Significant Impact	Less Than Significant Impact with Mitigation Incorporated	Less than Significant	No Impact
b) Cause a substantial adverse change in the significance of a unique archaeological resource pursuant to §15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Disturb any human remains, including those interred outside of formal cemeteries?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Given the vacant nature of the property, no historical resources in the form of buildings are located on the project site. According to the Historic Property Data File, the closest historic resource consists of the Antioch Historical Society, former Riverview Union High School Building, approximately 800 feet north of the project site. This resource lies well beyond the project footprint and will not be impacted.

The construction of the park-and-ride lot will not entail excavations at depths deeper than 4 feet below ground surface. Excavations up to 4 feet would occur to construct the groundwater detention basins. Given the regularly disked nature of the premises, there is a low perceived probability of identifying archeological resources and/or human remains during construction. The project would comply with the requirements of California State law with regard to the discovery of human remains during construction, whether historic or prehistoric (California Health and Safety Code 7050.5). In the event that any human remains are encountered during site disturbance, all ground-disturbing work shall cease immediately and the County coroner shall be notified immediately. If the coroner determines the remains to be Native American, the Native American Heritage Commission shall be contacted within 24 hours. A qualified archaeologist, in consultation with the Native American Heritage Commission, shall recommend subsequent measures for disposition of the remains.

## VI. Geology and Soils

<i>Would the project:</i>	Significant or Potentially Significant Impact	Less Than Significant Impact with Mitigation Incorporated	Less than Significant	No Impact
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

<i>Would the project</i>	Significant or Potentially Significant Impact	Less Than Significant Impact with Mitigation Incorporated	Less than Significant	No Impact
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
ii) Strong seismic ground shaking?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iii) Seismic-related ground failure, including liquefaction?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iv) Landslides?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in substantial soil erosion or the loss of topsoil?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Be located on geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction, or collapse?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994, as it may be revised), creating substantial risks to life or property?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The closest fault line to the project site is the Davis Fault, located approximately 2.7 miles east. Although the fault is located over 2 miles away, the project site could experience strong ground shaking related to an earthquake. The proposed project will be constructed in conformance with all applicable buildings codes and plan review process through the City of Antioch, which would ensure that all improvements meet standards related to local seismic/soil conditions. No septic tanks or alternative wastewater systems are proposed.

## VII. Greenhouse Gas Emissions

<i>Would the project</i>	Significant or Potentially Significant Impact	Less Than Significant Impact with Mitigation Incorporated	Less than Significant	No Impact
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>



- b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases? ☐ ☐ ☐ ☒

An air quality and greenhouse gas assessment was prepared for the project in 2016.<sup>3</sup> The proposed park and ride lot would encourage transit ridership and result in a reduction of overall vehicle miles travelled (VMT). Reduced VMT results in reduced greenhouse gas emissions. Therefore, the project would not result in any impacts related to greenhouse gas emissions, and would likely be beneficial in this regard.

## VIII. Hazards and Hazardous Materials

<i>Would the project</i>	Significant or Potentially Significant Impact	Less Than Significant Impact with Mitigation Incorporated	Less than Significant	No Impact
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

<sup>3</sup> Illingworth & Rodkin. 2016. Air Quality and Greenhouse Gas Assessment.

- |    |   |                          |                          |                          |                                     |
|----|---|--------------------------|--------------------------|--------------------------|-------------------------------------|
| h) | Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|----|---|--------------------------|--------------------------|--------------------------|-------------------------------------|

Historic aerial imagery dating back to 1938 shows the project site as undeveloped. According to the State Water Resources Control Board GeoTracker tool, no hazardous materials releases have been identified on site. The project is not listed as a hazardous materials site compiled pursuant to Government Code Section 65962.5. Additionally, the project would not interfere with evacuation routes in the event of an emergency, nor would the project expose people to wildland fires.

## IX. Hydrology and Water Quality

<i>Would the project:</i>		Significant or Potentially Significant Impact	Less Than Significant Impact with Mitigation Incorporated	Less than Significant	No Impact
a)	Violate any water quality standards or waste discharge requirements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b)	Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c)	Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion of siltation on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d)	Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e)	Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f)	Otherwise substantially degrade water quality?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g)	Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

- |  |                          |                          |                          |                                     |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|
| h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| j) Inundation of seiche, tsunami, or mudflow?  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Project implementation will result in approximately 115,000 square feet of new and reworked impervious surfaces. The project would incorporate various stormwater facilities including bioswale and bioretention features. The implementation of additional stormwater infrastructure would ensure that increased runoff produced would be contained and treated. No run off would flow off site as the flows would be directed to the natural bioretention features in order to facilitate groundwater recharge. Additionally, the project would be consistent with all applicable stormwater regulations and standards such that no impact to water quality would occur.

#### X. Land Use and Planning

<i>Would the project:</i>	Significant or Potentially Significant Impact	Less Than Significant Impact with Mitigation Incorporated	Less than Significant	No Impact
a) Physically divide an established community?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The project site is zoned as C-2 Industrial and is bordered by commercial/industrial land uses. The proposed park and ride lot is consistent with local zoning ordinances and land use designations. The project would not displace any residents or businesses; and would not physically divide an established community. The project site is not located within a habitat conservation plan or natural community plan.

## XI. Mineral Resources

<i>Would the project:</i>		Significant or Potentially Significant Impact	Less Than Significant Impact with Mitigation Incorporated	Less than Significant	No Impact
a)	Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b)	Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

According to the City of Antioch General Plan EIR, the project site does not contain mineral resources of valuable to the region or residents of the state.

## XII. Noise and Vibration

<i>Would the project:</i>		Significant or Potentially Significant Impact	Less Than Significant Impact with Mitigation Incorporated	Less than Significant	No Impact
a)	Expose persons to or generate noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b)	Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c)	A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d)	A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e)	For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f)	For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

A noise study report was prepared for the project in 2016.<sup>4</sup> Noise sensitive receptors are those locations or areas where dwelling units or other fixed, developed sites of frequent human use occur. Noise sensitive land uses include residences, schools, hospitals, and parks, or facilities that require quiet environments. No noise sensitive land uses are present on or immediately adjacent to the project site. The closest residential properties appear to be approximately 500 feet south of the project site. Given the relative distance to the project site, and intervening industrial and commercial buildings, construction and operational noise generated by the project would attenuate to less than significant levels at the closest noise sensitive land uses. Groundborne vibration effects from project construction would not result in significant effects at the surrounding commercial and residential properties.

### XIII. Population and Housing

<i>Would the project:</i>	Significant or Potentially Significant Impact	Less Than Significant Impact with Mitigation Incorporated	Less than Significant	No Impact
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The project would not construct any new residences or businesses, nor would it expand any roads. No displacement of housing or businesses would occur as a result of the project.

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<sup>4</sup> Illingworth & Rodkin. 2016. Noise Study Report.

#### XIV. Public Services

<i>Would the project:</i>	Significant or Potentially Significant Impact	Less Than Significant Impact with Mitigation Incorporated	Less than Significant	No Impact
a) Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for any of the public services:				
i) Fire protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
ii) Police protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iii) Schools?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iv) Parks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
v) Other public facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The project site is located in a developed urban area that is currently served by existing public utilities and public services. The project is not proposing new residential development or a large employment center that would generate large populations of people, and is not anticipated to increase demands for public services.

#### XV. Parks and Recreation

<i>Would the project:</i>	Significant or Potentially Significant Impact	Less Than Significant Impact with Mitigation Incorporated	Less than Significant	No Impact
a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The project is not proposing new residential development or a large employment center that would generate large populations of people, and is not anticipated to increase demands for parks and recreational facilities.

## XVI. Transportation / Traffic

<i>Would the project:</i>	Significant or Potentially Significant Impact	Less Than Significant Impact with Mitigation Incorporated	Less than Significant	No Impact
a) Conflict with an applicable plan, ordinance, or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways, and freeways, pedestrian and bicycle paths, and mass transit?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Result in inadequate emergency access?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

A Traffic Impact Study (TIS) was prepared for the project in 2016<sup>5</sup>. The project is expected to generate 837 daily trips in total, including 132 trips (104 inbound and 28 outbound) during the a.m. peak hour and 115 trips (29 inbound and 86 outbound) during the p.m. peak hour. Distribution of daily trips was modeled at the intersections of West 10<sup>th</sup> Street/Auto Center Drive, West 6<sup>th</sup> Street/Auto Center Drive, and L Street/West 4<sup>th</sup> Street. The modeling indicates that all study intersections would continue to operate within the acceptable Level of Service (LOS) standards of the City of Antioch (LOS D or better) during the a.m. and p.m. peak hours.

Access to the park and ride lot has been incorporated into the project design in accordance with the City of Antioch building and fire code, to allow for adequate emergency access.

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<sup>5</sup> TJKM. 2016. Traffic Impact Study: Tri Delta Transit Hub.

XVII. Utilities and Service Systems

<i>Would the project:</i>		Significant or Potentially Significant Impact	Less Than Significant Impact with Mitigation Incorporated	Less than Significant	No Impact
a)	Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b)	Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c)	Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d)	Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e)	Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f)	Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g)	Comply with federal, state, and local statutes and regulations related to solid waste?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Bioretention and bioswale features would be incorporated in project design; these features would treat all stormwater onsite. Therefore, no additional or expanded systems would be required (See Section IX Hydrology and Water Quality). The project does not propose improvements that would increase water or wastewater demands. The project does not propose land uses that would increase solid waste generation.



XVIII. Mandatory Findings of Significance

<i>Would the project</i>		Significant or Potentially Significant Impact	Less Than Significant Impact with Mitigation Incorporated	Less than Significant	No Impact
a)	Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b)	Does the project have impacts that are individually limited, but cumulative considerable? ("Cumulative considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c)	Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

# ATTACHMENT “D”



# TRI DELTA TRANSIT

Eastern Contra Costa Transit Authority  
801 Wilbur Avenue • Antioch, California 94509  
Phone 925.754.6622 Fax 925.757.2530

## RESOLUTION #170222

### Approval of Antioch Park and Ride Project and related CEQA Documents

Resolution #160525 approves the Antioch Park and Ride project and the related CEQA documents

**WHEREAS**, ECCTA is planning to build a park and ride lot in the city of Antioch and the ECCTA Board of Directors is required to approve this project, and

**WHEREAS**, ECCTA has designated itself as the lead agency for the CEQA process, and

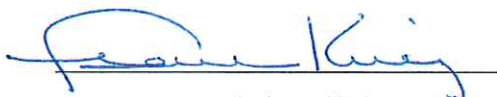
**WHEREAS**, the ECCTA Board of Directors has reviewed the CEQA documents, and

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Directors of the Eastern Contra Costa Transit Authority to adopt resolution #170222 approving the Antioch park and ride project, approving ECCTA as the lead agency in the CEQA process, and approving the CEQA documents.

PASSED AND ADOPTED THIS 22<sup>nd</sup> day of February 2017, by the following votes:

### EASTERN CONTRA COSTA TRANSIT AUTHORITY

  
Doug Hardcastle, Chair

  
Jeanne Krieg, CEO

AYES: 11  
NOES: 0  
ABSENT: 0  
ABSTENTIONS: 0

**STAFF REPORT TO THE PLANNING COMMISSION  
FOR CONSIDERATION AT THE MEETING OF MAY 17, 2017**

**Prepared by:** Forrest Ebbs, Community Development Director   
**Date:** May 12, 2017  
**Subject:** Planning Commission Rules, Bylaws, and Handbooks

**RECOMMENDATION**

It is recommended the Planning Commission review the examples of rules, bylaws, and handbooks and provide direction to staff.

**DISCUSSION**

Antioch Municipal Code Section 2-5.301 states that "each board or commission may adopt its own informal rules relating to the time and manner of the selection of its chair and vice chair, the scheduling of meetings, whether nonmember speaker time regulations will be used, and other rules of similar nature."

Staff has not been able to find a current copy of these rules and, on May 3, 2017, suggested that the Planning Commission consider developing a new set of rules at a future meeting. Attached to this report are examples of Planning Commission rules from other public agencies in California.

Planning Commission rules are also known as bylaws in many communities. These bylaws often describe the formal procedural requirements for meetings and address quorums, agenda order, and even the process for making a formal motion. The City of Pittsburg Planning Commission Bylaws is a good example of an informative and technical set of rules. The City of East Palo Alto has similar rules. The City of San Jose has very formal and codified rules of the Planning Commission.

In some instances, the rules are part of a larger Planning Commission Handbook. These handbooks can be a great asset in educating a new Planning Commissioner as to the rules of the Commission and also to other issues affecting the role of the Planning Commissioner. For example, the City of San Mateo Planning Commissioner Handbook discusses the meaning and importance of Findings in depth. The City of Pleasanton handbook is 100 pages in length and addresses a wide array of topics. It is available at: <http://www.cityofpleasantonca.gov/civicax/filebank/blobdload.aspx?BlobID=26274>

The Planning Commission is asked to look through the attached examples of rules, bylaws, and handbooks and be prepared to offer comments or suggestions to staff at the meeting. Because the Antioch Municipal Code does not specify exact requirements or formal codification of these rules, the Planning Commission should consider the

various formats and characters of these documents. Staff is supportive of a basic version, a handbook approach, or a combination of the two.

Finally, staff came across an interesting and informative document while preparing this report. It is the Institute of Local Government's Planning Commissioner Handbook. Though not specific to a City, it provides excellent background information for any Planning Commissioner.

### **ATTACHMENTS**

- A: City of Pittsburg Planning Commission Bylaws
- B: City of East Palo Alto Rules of the Planning Commission
- C: City of San Jose Rules for the Conduct of Business of the Planning Commission
- D: City of San Mateo Planning Commission Handbook
- E: Institute of Local Government Planning Commissioner Handbook

# ATTACHMENT “A”

**CITY OF PITTSBURG  
PLANNING COMMISSION BYLAWS  
Adopted by City Council May 2, 2005**

**Amended by City Council September 21, 2015**

**Article A. Purpose/Mission Statement**

**Section 1. Purpose.** The Planning Commission is the land use decision-making body appointed by the City Council and vested with the duty to guide the physical development of the community and enhance the built environment by exercising the powers and duties prescribed to it by statute, City Council resolution and by ordinance.

**Section 2. Mission Statement.** The mission of the Planning Commission is to make land use and design review decisions which will enable Pittsburgh to become the best possible place in which to live, work, learn, play, and conduct business.

**Article B. Meetings**

**Section 1. Regular Meetings.** The Planning Commission shall schedule at least one regular meeting in each month, subject to the availability of business items. All meetings shall be held in accordance with State law, the Brown Act, Government Code 54950 et. Seq. Regular meetings of the Commission shall be scheduled on the second and fourth Tuesday of each month, except as may conflict with City Council meetings, and shall be held in the Council Chambers, City Hall, 65 Civic Avenue starting at 7:00 p.m.

**Section 2. Special Meetings.** Special Meetings must be coordinated between the Chair and the Planning Secretary by providing written notice twenty four (24) hours in advance of the proposed meeting time to each Commissioner, the local newspaper and posting of said notice at 65 Civic Avenue, Pittsburgh.

**Article C. Order of Business for Regular Meetings**

The agenda shall be prepared by the Planning Secretary with the order of business at regularly scheduled meetings to generally be conducted in the following order:

1. Call to order
2. Roll Call
3. Pledge of Allegiance
4. Public Comments
5. Presentations
6. Consent Calendar
7. Public Hearings
8. Consideration Items
9. Study Sessions

- 10. Staff Comments
- 11. Committee Reports
- 12. Adjournment

## **Article D. Procedures for the Conduct of Business**

**Section 1. Quorum.** A quorum for the transaction of all Commission business shall consist of not less than four Planning Commissioners present.

**Section 2. Majority Vote.** Decisions of the Planning Commission shall be carried by a majority vote of the Commission members voting on a motion which has been seconded and received no less than three votes in the majority. Notwithstanding the foregoing requirement, Commission recommendations for approval of a general plan or specific plan action shall be carried by the affirmative vote of not less than a majority of the total membership of the Commission, in accordance with state law. Formal decisions of the Commission may be memorialized in prepared resolutions and/or as minute orders.

**Section 3. Tie Vote.** When a vote results in a tie vote, the decision shall be declared a denial of the question before the Commission and the Commission shall entertain a new motion.

**Section 4. Making Motions.** When a member of the Commission wishes to make a motion, they must go through the following steps:

1. The Commissioner must ask to be recognized by the Chair
2. After being recognized, the Commissioner must state the entire motion: *"I move that we ..."*
3. Another Commissioner must second the motion: *"I second the motion."*
4. The Chair must then restate the motion and ask for any discussion on the motion.
5. When the Chair determines that there has been enough discussion, the debate may be closed with: *"I call the question,"* or *"Is there any further discussion?"*
6. If no one asks for permission to speak, the Chair then puts the question to a vote. The Chair should restate the motion prior to the vote to ensure the motion is clearly understood by all. Any Commissioner may request a roll call vote on a motion.
7. After the vote, the Chair announces the decision: *"The motion carries unanimously,"* *"The motion carries four to three (list individually if requested),"* or *"The motion has failed."*

**Section 5. Motion to Reconsider.** Any Commissioner on the prevailing side may make a motion to reconsider a motion previously adopted. The motion to reconsider shall be brought up prior to the end of the meeting. Should a motion to reconsider be adopted, the effect of said motion is to stay the prior motion until another motion which reaffirms, amends or denies the original motion is adopted.



**Section 6. Motion to Amend.** A motion which has been seconded may be amended before the vote, in accordance with the following procedures:

1. A motion may be amended by a Commissioner stating; *"I move to amend the motion to read as follows: ..."*. The motion to amend the original motion must then be seconded by another Commissioner.
2. If another Commissioner seconds the amendment, the presiding officer shall then state; *"It has been moved and seconded to amend the motion to read as follows: ...."*. A vote shall then be taken on the motion to amend. If the motion carries, the Commission shall then take action on the amended motion.
3. Alternately, if the maker of the original motion and the Commissioner whose seconded the original motion accept the proposed amendment, they can simply state *"I accept the amendment"*, in which case the motion as amended can be restated and then voted on directly.
4. The maker of the motion to amend has the right to modify or withdraw the motion at any time before the question is called and the presiding officer has restated the motion to the Commission.

**Section 7. Other Rules of Order.** Except as may be noted above to the contrary, the Commission will strive to follow Roberts Rules of Order in the conduct of all Commission business. Any lapse in adhering to Roberts Rules of Order shall not be cause to void an action taken by the Commission.

**Section 8. Role of Chairperson and Vice Chairperson.** The Chairperson shall have the duty to preside at all meetings and make Commission committee assignments. The Vice Chairperson shall have the duty, in the absence of the Chairperson, or his/her inability to act, preside at all meetings. Refer to the Handbook for City Advisory Bodies (City Council Resolution 15-13052A), for more details on the responsibilities of the Chair.

**Section 9. Minutes and Records of Actions Taken.** Minutes of Commission meetings shall be prepared and submitted as "Action Minutes" (following City Council protocol) for review and approval of the Commission prior to becoming finalized.

## **Article E. Officers and How Selected**

**Section 1. Officers.** The officers of this Commission shall be: 1) a Chairperson whose duties shall be to preside at all meetings and make Commission committee assignments; and 2) a Vice Chairperson who shall, in the absence of the Chairperson, or his/her inability to act, preside at all meetings.

The City Planner (as defined in section 18.10.060 of the Pittsburgh Municipal Code) or his/her designated representative shall serve as the secretary to the Planning Commission with the duty to staff all Planning Commission meetings and signal

resolutions and minutes approved by the Planning Commission, but shall not be avoting member of the Commission.

**Section 2.Selection Process.**The Planning Commission shall select a Chairpersonand Vice Chairperson at its first meeting in July of each year. The positions of Chairperson and Vice Chairpersons shall be for one-year terms and shall be rotatedamong all Commission members before a Commissioner is reselected to the previouslyheld position of Chairperson or Vice Chairperson. The sitting Vice Chairperson shallautomatically be selected as Chairperson at the first meeting in July of the followingyear. The selection of the Vice Chairperson shall follow a standardized rotation orderas follows:

The position of Vice Chairperson shall be rotated among all Commissioners based onseniority. Seniority shall be determined by the order in which a Commissioner was appointedin the most recent series of Commission appointments affecting same. TheCommissioner appointed first in the rotation for that group of Commissioners shall servefirst, the Commissioner appointed second for that group of Commissioners shall servessecond and so forth. In case of appointment to the Commission to fill a vacancy,however, that person will occupy the last position in that rotation. Each new series ofappointments will determine the rotation only for that group of Commissioners. Shouldany Commissioner not be available to take his/her regular place in the establishedrotation, the next person in the rotation will be elevated to the position of ViceChairperson, and the rotation will continue as previously set.

**Section 3.Acting Chairperson.**In the event that the Chairperson and ViceChairperson are both absent from a meeting, the next Commissioner in line for thoseduties who is present shall serve as acting Chairperson in their absence, and so on.

## **Article F. Committees**

**Section 1.Selection.**Each July, the Chairperson, in consultation with the PlanningSecretary, shall determine what committees warrant Planning Commission memberrepresentation that year. Current standing committees include the Land Use Subcommittee, which includes two members from the Commission plus one alternate, and Transplan, which includes one member from the Commission plus one alternate. The Planning Secretary may request and the Chairpersonmay assign members to additional committees during the year, as needed. TheChairperson shall assign Commissioners to the various committees warrantingCommission representation. The Chairperson may assign both a committeerepresentative and alternate. An attempt shall be made to evenly distribute committeeassignments to all Commissioners, when feasible.

**Section 2.Reports to the Commission.**Commissioners assigned committee dutiesare expected to represent the Commission at the related committee meetings and provide follow-up verbal reports of committee actions to the full Commission at the nextregularly scheduled Planning Commission meeting.

## **Article G. Attendance Requirements of Commission Members**

**Section 1.** Commissioners are expected to attend all regularly scheduled meetings, barring unforeseen emergencies or other unavoidable reasons. Maintaining a quorum at regularly scheduled meetings is imperative to conducting the business of the Planning Commission and providing quality customer service to the City's business community and residents alike.

**Section 2.** Any Commissioner who is absent more than three consecutive regular meetings, without approval by way of formal action of the City Council, shall be deemed to have resigned his/her position on the Planning Commission. Additionally, any member who misses twenty five percent (25%) or more of the regular meetings in any twelve month period, without approval of the City Council, shall be deemed to have resigned his/her position on the Planning Commission.

**Section 3.** Attending a meeting by video or teleconferencing shall be avoided unless there would otherwise be a lack of a quorum. It is preferable that Commissioners not schedule vacations, out of town trips or business meetings that would require the need for the additional noticing and electronic requirements of video or teleconferenced meetings.

## **Article H. Communication with the Public, City Staff, and City Council.**

**Section 1.** All meetings with applicants or members of the public regarding pending planning related applications shall be held at City Hall with a City planning staff member present during the meeting, and at a time convenient to both the Commissioner and City staff member. Commissioners shall not indicate whether they will vote to support or not support an application, prior to the close of the public hearing on the pending action before the Commission.

**Section 2.** All communication with City planning staff related to pending planning related applications shall be through the City Planner, except as otherwise directed by the City Planner.

**Section 3.** All formal communication from the Planning Commission to the City Council on pending planning related applications shall be in writing and approved by the Commission. Resolutions and minutes shall bear the signature of the Secretary to the Planning Commission. All other written correspondence shall bear the signature of the Chairperson, except as otherwise directed by the Commission, through a minute order.

**Section 4.** Members of the Commission may want to speak to the City Council/Council members and the general public on pending planning related matters outside the provisions in Section 3 above. In such instances, the Commissioner shall clearly indicate that they are not speaking as a Commissioner or for the Commission, but for themselves, as a resident of the City of Pittsburgh.

## **Article I. Amendment of Bylaws.**

**Section 1.** The City Council has the sole authority to modify these bylaws.

Any amendments recommended to the bylaws by the Commission shall be presented to the Council for consideration. Any such recommendation shall be in the form of a resolution adopted in the affirmative and carried by the majority of the members who constitute the Commission. The bylaws shall not be amended more than once per year.

**Section 2.** These bylaws, and any amendments thereto, shall be consistent with State law, applicable Municipal Code provisions, and with the City Council Policy and Procedures manual and the Handbook for City Advisory Bodies. To the extent that they are not consistent, State law, applicable Municipal Code provisions, the City Council Policy and Procedures manual and the Handbook for City Advisory Bodies, as they may be amended from time to time, shall prevail.

## **Article J. Other Matters**

**Section 1. Annual Training Required.** Commission members shall on an annual basis participate in training concerning: 1) the Open Meeting Laws under Ralph M. Brown Act, California Government Code Section 54950 et Seq. and 2) Conflict of Interest Laws under the California Political Reform Act, Government Code Section 81000 et. Seq. Commission members shall also participate in AB 1234 and Ethics Training every two years.

### **Section 2. Special Reporting.**

1. No less than once per year, the Commission shall provide the City Council with reports of annual accomplishments, goals, and attendance records of members.

**Section 3. Inconsistencies.** If any provision of these bylaws is found to be inconsistent with applicable municipal code provisions, the Handbook for City Advisory Bodies and/or with the City Council Policy and Procedure Manual, the applicable municipal code provisions and the provisions in the adopted Handbook for City Advisory Bodies and the City Council Policy Procedure Manual shall prevail.

**Section 4. Development of Policies and Guidelines.** The Commission may develop additional policies and guidelines as tools to conduct its business, provided they are not inconsistent with these bylaws, the Handbook for City Advisory Bodies (Council Resolution No. 15-13052A) or applicable provisions of the municipal code.

**Section 5. Minutes/Official Records.** The Planning Secretary shall keep a record of all formal actions taken by the Planning Commission during regular and special meetings. A copy of the minutes shall be posted to the City website after they have been adopted. Resolutions executed by the Planning Commission shall include a resolution number, the name of the maker of the motion, the name of the Commissioner who seconded the motion, a record of the vote and the signature of the Planning Secretary confirming the

approval of the resolution. The Planning Secretary is further empowered to sign certifications referring to actions of the Commission or agenda items in accordance with State law.

# ATTACHMENT “B”

**CITY OF EAST PALO ALTO**

**RULES OF THE  
PLANNING COMMISSION**

*Adopted: October 14, 2003*  
*Updated: November 14, 2011*

## **RULE 1: COMMISSION RULES**

### **Section 1.01 DEFINITION**

The term **Rule** shall mean a regulation or set of regulations, governing actions, resolutions, policies and procedures of the City of East Palo Alto Planning Commission.

### **Section 1.02 ADOPTION AND AMENDMENTS OF RULES OF THE EAST PALO ALTO PLANNING COMMISSION**

In carrying out its authority, functions, powers and duties, the City of East Palo Alto Planning Commission, from time to time, many enact and adopt **Rules** which are not in conflict with the City's Municipal Codes and Zoning Regulations.

A **Rule** shall be adopted or amended by a motion duly seconded, and passed by a majority vote of the City of East Palo Alto Planning Commission.

### **Section 1.03 NOTICE OF PROPOSED RULES**

There is no requirement for notice of proposed **Rules** and there is no requirement for public hearings on proposed **Rules** proposed for adoption.

### **Section 1.04 MAINTENANCE OF RULES**

The City Planning Manager shall compile in orderly sequence such **Rules** adopted by the City of East Palo Alto Planning Commission for the purposes of distribution, transmittal or maintenance of public record and shall retain them for public access.

Further, the City Planning Manager shall notify the City of East Palo Alto Planning Commission of any legislative or Court action that would require the amendment, modification or rescission of **Rules** adopted by the Commission.



## **RULE 2: COMMISSION RESOLUTIONS**

### **Section 2.01 DEFINITION**

The term **Resolution** shall mean an action, decision or an expression of opinion by the City of East Palo Alto Planning Commission.

### **Section 2.02 AUTHORITY TO ADOPT RESOLUTIONS**

In carrying out its authority, functions, powers and duties, the City of East Palo Alto Planning Commission, from time to time, may enact and adopt **Resolutions** which are not specifically provided for herein, and which are not in conflict with the Municipal Code and Zoning Regulations.

### **Section 2.03 NOTICE OF PROPOSED RESOLUTIONS**

The City of East Palo Alto Planning Commission shall hold at least one (1) public hearing prior to the adoption of any proposed **Resolution**. Said hearing shall be conducted only after the proposed **Resolution** has been placed on the agenda pursuant to the Brown Act and noticed pursuant to the public hearing procedures described in the Zoning Regulations.

### **Section 2.04 MAINTENANCE OF RESOLUTIONS**

The City Planning Manager shall compile in orderly sequence such **Resolutions** adopted by the City of East Palo Alto Planning Commission for the purposes of distribution, transmittal or maintenance of public record and shall retain them for public access.

Further, the City Planning Manager shall notify the City of East Palo Alto Planning Commission of any legislative or Court action that would require the amendment, modification, or rescission of **Resolutions** adopted by the Commission.

## **RULE 3: COMMISSION POLICIES**

### **Section 3.01 DEFINITION**

The term **Policy** shall mean a principle or chosen course of action to guide the decision-making function of the City of East Palo Alto Planning Commission.

### **Section 3.02 AUTHORITY TO ADOPT POLICIES**

In carrying out its authority, functions, powers and duties, the City of East Palo Alto Planning Commission, from time to time, may enact and adopt **Policies** which are not specifically provided for herein, and which are not in conflict with the Municipal Code and the Zoning Regulations.

### **Section 3.03 NOTICE OF PROPOSED POLICIES**

The East Palo Alto Planning Commission shall hold public hearings prior to the adoption of any proposed **Policy**. Said hearing shall be conducted only after the proposed policy has been placed on the agenda pursuant to the Brown Act and noticed pursuant to the public hearing procedures described in the Zoning Regulations.

### **Section 3.04 MAINTENANCE OF POLICIES**

The City Planning Manager shall compile in orderly sequence such **Policies** adopted by the City of East Palo Alto Planning Commission for the purposes of distribution, transmittal or maintenance of public record and shall retain them for public access.

Further, the City Planning Manager shall notify the City of East Palo Alto Planning Commission of any legislative or Court action that would require the amendment, modification, or rescission of **Policies** adopted by the Commission.

## **RULE 4: COMMISSION PROCEDURES**

### **Section 4.01 DEFINITION**

A **Procedure** is defined as an established series of steps to getting something done.

### **Section 4.02 AUTHORITY TO ADOPT PROCEDURES**

In carrying its authority, functions, powers and duties, the City of East Palo Alto Planning Commission and City Planning Manager may, from time to time, adopt **Procedures** which are not in conflict with the Municipal Code and the Zoning Regulations.

### **Section 4.03 NOTICE OF PROPOSED PROCEDURES**

There is no requirement for notice of **Procedures** and there is no requirement for public hearings on **Procedures** proposed for adoption.

### **Section 4.04 MAINTENANCE OF PROCEDURES**

The City Planning Manager shall compile in orderly sequence such **Procedures** adopted by the City of East Palo Alto Planning Commission for the purposes of distribution, transmittal or maintenance of public record and shall retain them for public access.

Further, the City Planning Manager shall notify the City of East Palo Alto Planning Commission of any legislative or Court action that would require the amendment, modification or rescission of **Procedures** adopted by the Commission.

## **RULE 5: COMMISSIONER ATTENDANCE**

### **Section 5.01 PURPOSE**

This **RULE** is adopted for the purpose of ensuring that City of East Palo Alto Planning Commission Meetings are carried out in an effective manner.

### **Section 5.02 ATTENDANCE**

All members of the City of East Palo Alto Planning Commission shall make a good effort to attend all regular and special meetings of the City of East Palo Alto Planning Commission. If, for good reason, a Commissioner is unable to attend a scheduled meeting, said Commissioner shall inform the Planning Division Office and/or the Chair of the Planning Commission before the start of the scheduled meeting. The Chair of the City of East Palo Alto Planning Commission shall declare the Commissioner's absence as an **excused absence**. An unexcused absence would mean that the Commissioner did not inform the Planning Division and/ or the Chair of the Planning Commission before the start of the scheduled meeting. The minutes of the meeting shall state that the Commissioner's absence was an **excused absence**.

**Three (3) absences within a period of four months** by a Commissioner, regardless of whether the absences were excused or unexcused, may result in a consideration and/or action by the City of East Palo Alto to forward a report to the City of East Palo Alto City Council regarding the frequency of the **absences** of said Commissioner.

## **PROCEDURE 6: CONTINUANCE AND RESCHEDULING**

### **Section 6.01 PURPOSE**

This **PROCEDURE** is adopted for the purpose of informing applicants and members of the public on the process for requesting and granting continuances or rescheduling of applications pending before the City of East Palo Alto Planning Commission.

### **Section 6.02 REQUEST FOR CONTINUANCE OR RESCHEDULING**

All requests for **continuances or rescheduling** shall be made in writing and delivered to the City Planning Manager prior to the date of a City of East Palo Alto Planning Commission meeting on which a public hearing or deliberation on an application has been placed on the agenda. Such written request may be mailed, delivered or transmitted electronically to the City Planning Manager. The party requesting **continuance or rescheduling** shall have responsibility of ensuring that the request for continuance or rescheduling has been received by the City Planning Manager prior to the start of the meeting.

### **Section 6.03 ACTION ON REQUEST FOR CONTINUANCE OR RESCHEDULING**

If the party requesting the **continuance or rescheduling** is the applicant, and if the request for **continuance or rescheduling** is made prior to the filing of a legal advertisement in the newspaper (if required), the City Planning Manager may approve or deny such request for **continuance**.

If the party requesting the **continuance** is the applicant, and the request for **continuance** is made after the filing of a legal advertisement in the newspaper, the request for **continuance** must be considered by the City of East Palo Alto Planning Commission during the meeting when the item was originally scheduled. The City of East Palo Alto Planning Commission shall, by motion and vote of a majority of the voting members, grant or deny the request for **continuance**.

If the party requesting the **continuance or rescheduling** is not the applicant regardless of when the request was received by the City Planning Manager, the request for **continuance or rescheduling** must be considered by the City of East Palo Alto Planning Commission during the meeting when the item was originally scheduled. The City of East Palo Alto Planning Commission shall, by motion and vote of a majority of the voting members, grant or deny the request for **continuance or rescheduling**.

#### **Section 6.04 ATTENDANCE AT PUBLIC HEARING**

The applicant or her/his duly appointed representative should be present at the public hearing for all applications pending before the City of East Palo Alto Planning Commission. The City of East Palo Alto Planning Commission hereby directs Planning Division staff to inform all applicants of the Commission's procedures on applications where the applicant or her/his duly appointed representative is not present at the public hearing.

It is the policy of the City of East Palo Alto Planning Commission to **continue** the public hearing on an application if the applicant or her/his duly appointed representative is not at the public hearing for the application. If the applicant or her/his duly appointed representative is not able to attend the public hearing for an application pending before the City of East Palo Alto Planning Commission, the applicant may submit a written request for the City of East Palo Alto Planning Commission to hold the public hearing and act on the application. The applicant shall have responsibility of ensuring that the request for the City of East Palo Alto Planning Commission to hold the public hearing and act on the application has been received by the City Planning Manager prior to the start of the meeting.

#### **Section 6.05 ACTION ON REQUEST FOR ACTION**

The City of East Palo Alto Planning Commission shall consider a request to hold the public hearing and shall, by motion and vote of a majority of the voting members, grant or deny the request to hold the public hearing and act on the application.

If the action by the City of East Palo Alto Planning Commission to hold the public hearing and act on the application results in a need for an application to be renoticed and reconsidered by the City of East Palo Alto Planning Commission (e.g., the applicant was not in attendance to provide information or the applicant does not agree with the actions of the City of East Palo Alto Planning Commission), the applicant shall bear the full cost of renoticing the application for public hearing by the City of East Palo Alto Planning Commission.

## **RULE 7: ELECTION OF COMMISSION OFFICERS**

### **Section 7.01 OFFICERS OF THE EAST PALO ALTO PLANNING COMMISSION**

The City of East Palo Alto Planning Commission shall elect officers of the Commission. The officers shall consist of a **CHAIR** and **VICE-CHAIR**.

### **Section 7.02 DUTIES OF OFFICERS**

The **CHAIR** of the City Planning Commission shall run / chair all the meetings of the City of East Palo Alto Planning Commission. The **CHAIR** of the City Planning Commission shall work with the City Planning Director / City Planning Manager to ensure the preparation and proper dissemination of the agendas and reports for the City Planning Commission meetings. The **CHAIR** of the City Planning Commission shall have the authority to establish committees of the Planning Commission and to appoint members to such committees. Committee members shall be limited to the members of the City Planning Commission. During meetings of the City Planning Commission, the **CHAIR** shall have the authority to make changes to the agenda and to table items on the agenda. The rescheduling of tabled items is the purview of the **CHAIR** of the City Planning Commission.

The **VICE-CHAIR** of the City Planning Commission shall perform the duties of the **CHAIR** of the City Planning Commission in the absence of the **CHAIR**.

### **Section 7.03 ELECTION OF OFFICERS**

The City of East Palo Alto Planning Commission shall hold election of officers every year. Regular elections shall be held in July, starting in July 2003. Special elections shall be held to fill a vacancy of the post of **CHAIR** or **VICE-CHAIR**. There shall be no term limits for officers of the City Planning Commission.

## **RULE 8: RECONSIDERATION**

### **Section 8.01 REQUEST FOR RECONSIDERATION**

The Planning Commission may approve a **request for reconsideration** of an action taken by the Planning Commission if the party submitting such a request presents new material information not previously considered by the Planning Commission.

The **request for reconsideration** shall be made in writing on a form prescribed by the Planning Director and submitted to the Planning Division within ten (10) calendar days from the meeting at which the Planning Commission acted on the application for which such **request for reconsideration** is made. The written request submitted to the Planning Division shall describe what new material information is to be presented to the Planning Commission that may be the basis for a change on the Planning Commission's action. The party **requesting reconsideration**, whether the applicant or other interested party, shall also indicate on the prescribed form that he/she will withdraw any appeal filed with the City Council if the Planning Commission agrees to hold a new public hearing to consider the application.

### **Section 8.02 PROCEDURE OF THE PLANNING COMMISSION**

The Planning Director shall include **the request for reconsideration** as an action item in the agenda for the next available Planning Commission meeting.

The Planning Commission, by vote, shall deny or approve the **request for reconsideration**. The motion shall be made by a member of the Planning Commission who voted with the prevailing party on the decision that is the subject of the **request for reconsideration**. If the Planning Commission acts to reconsider its previous action on an application, the Planning Commission shall, in consultation with the Planning Director, identify the next available date to calendar the item for a new public hearing which shall be noticed in accordance with the applicable notice requirements in the Zoning Regulations. Due to public notification requirements, the date for the new public hearing shall be no less than fourteen (14) calendar days from the day the Planning Commission acts on the request for reconsideration.

### **Section 8.03 SUBMITTAL REQUIREMENTS**

The new information shall be submitted to the Planning Division at least ten (10) calendar days prior to the hearing date set for the reconsideration.

There shall be no **request-for-reconsideration** fee. However, if the Planning Commission agrees to reconsider its decision and sets a date for a new public hearing, the party **requesting reconsideration** shall pay a public notification fee for the new public hearing within two (2)



calendar days following the date of the Planning Commission's decision regarding reconsideration.

#### **Section 8.04 CONCURRENT APPEAL TO THE CITY COUNCIL BARRED**

The Planning Commission shall not hold a new public hearing nor take any subsequent action concerning the item that is the subject of the **request for reconsideration** if the applicant fails to withdraw his or her appeal to the City Council or the City Council has commenced public hearing proceedings on an appeal on the action of the Planning Commission that is the subject of the **request for reconsideration**.

**RULE 9: RESERVED**

## **RULE 10: REGULAR PLANNING COMMISSION MEETING AGENDAS**

### **Section 10.01 PURPOSE**

The City of East Palo Alto Planning Commission has established rules regarding the organization of regular Planning Commission meeting agendas.

### **Section 10.02 RECURRING ITEMS**

The following items shall be routinely placed on the agenda for Regular Planning Commission meetings:

1. Roll Call
2. Approval of Agenda
3. Consent Calendar
4. Open Forum
5. Planning Commission Subcommittee updates
6. Communication Items
7. Planning Commission Matters, Staff Updates and Calendars

### **Section 10.03 LENGTH OF MEETINGS**

The Planning Commission has established a goal of limiting regular Planning Commission meetings to no more than three (3) hours, when feasible. In the event that, in the judgment of the Planning Commission, there are important or time sensitive items, meetings may be expanded to last longer than three (3) hours. No new items shall be considered after three (3) hours unless approved by a majority vote of the Planning Commissioners present.

### **Section 10.04 ORGANIZATION OF ITEMS**

In the event that a meeting is anticipated to last longer than three (3) hours, the Consent Calendar, Planning Commission Subcommittee updates, Communication Items and Planning Commission Matters, Staff Updates and Calendars shall be moved to the end of the agenda.

### **Section 10.05 CONTINUED ITEMS**

Public Hearing items that have been continued from a previous meeting shall be placed ahead of new public hearing items on the agenda.

## **PROCEDURE 11: COMMUNICATING DISSENTING OPINIONS**

### **Section 11.01 PURPOSE**

In the event that a Planning Commissioner votes against the majority of the Planning Commission on a particular item, and desires to have their dissenting opinion clearly reflected in the administrative record, the Commissioner has the option of filing a “Record of Dissenting Opinion”, which is a written document which explains the rationale behind the Commissioner’s dissenting vote. The Record of Dissenting Opinion would be made part of the administrative record and would be provided to the City Council in the event that Council reviews that particular item.

### **Section 10.02 TIMELINE FOR FILING A RECORD OF DISSENTING OPINION**

A Record of Dissenting Opinion must be submitted in writing to Planning Division staff within 10 days of the date of the decision and shall include a written explanation of the rationale behind the dissenting vote.

### **Section 10.03 INCLUSION IN THE ADMINISTRATIVE RECORD**

Upon receiving a Record of Dissenting Opinion, staff shall file the document in the administrative record.

### **Section 10.04 FORWARDING TO CITY COUNCIL**

In the event that the City Council reviews an item which has a Record of Dissenting Opinion on file, the Record of Dissenting Opinion shall be forwarded to the City Council for their consideration.

# ATTACHMENT “C”

**SUPPLEMENT TO**  
**SAN JOSE PLANNING COMMISSION**  
**RESOLUTION NO. 64-1**

**September 23, 2016**

**Notice:**

Article III, Section 7, first paragraph, of Planning Commission Resolution No. 64-1 (as amended on June 22, 2016) has been superseded by San Jose City Council Ordinance No. 29771 (effective September 22, 2016) which added Section 2.08.095 to the San Jose Municipal Code changing the voting requirements for various boards and commissions, including the Planning Commission, to read as follows:

*2.08.095    Voting*

*Except for the Civil Service Commission, Deferred Compensation Advisory Committee, and the Retirement Boards, unless otherwise specifically provided by the Charter or other ordinance, no resolution, motion, or action shall be passed, adopted, or become effective unless it receives the affirmative vote or at least a majority of those voting, as long as there is a quorum present.*

None of the other provisions in Section 7 of Article III of Planning Commission Resolution No. 64-1 (as amended on June 22, 2016) are affected by Council Ordinance No. 29771.

**PLANNING COMMISSION OF THE CITY OF SAN JOSE**

**RESOLUTION NO. 64-1**

**A RESOLUTION OF THE PLANNING COMMISSION  
OF THE CITY OF SAN JOSE ADOPTING RULES FOR  
THE CONDUCT OF BUSINESS OF SAID COMMISSION**

**AMENDMENT DATES:**

February 16, 1967  
August 8, 1967  
January 9, 1968  
December 3, 1968  
February 17, 1971  
March 7, 1972  
March 22, 1972  
October 13, 1972  
March 6, 1973  
November 14, 1973  
January 1, 1974  
November 14, 1974  
May 7, 1975  
December 3, 2008  
June 23, 2010  
September 26, 2012  
March 27, 2013  
June 22, 2016

**LAST AMENDED: June 22, 2016**

**BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SAN JOSE:**

The Planning Commission of the City of San Jose, hereinafter referred to as  
"Commission," does hereby adopt the following as the rules of said Commission:



## ARTICLE I

### OFFICERS

#### Section 1. Officers, Enumeration of

The officers of the Commission shall be a Chairperson and a Vice Chairperson.

#### Section 2. Officers, Election of

A Chairperson and a Vice Chairperson of the Commission shall be elected by the Commission.

#### Section 3. Chairperson and Vice Chairperson, Term of Office of

- (a) The Chairperson and Vice Chairperson, shall be elected for terms of one (1) calendar year commencing on July 1<sup>st</sup> and continuing to June 30<sup>th</sup> of the following year.
- (b) Election of the Officer(s) for each calendar year shall be held no earlier than May 1<sup>st</sup> nor later than June 30<sup>th</sup> preceding that term.
- (c) If any Officer(s) should cease to be member(s) of the Commission prior to the expiration of their term of office, a vacancy shall be deemed to have occurred in the specific office. The Commission shall elect a successor from the existing Commissioners to fill the unexpired portion of that Officer's term. This election shall occur at the next scheduled Commission meeting, or as is reasonable given the amount of public notice required.

#### Section 4. Chairperson, Qualifications of

The Chairperson shall be one of the members of the Commission.

#### Section 5. Chairperson, Powers and Duties

The Chairperson shall have the following powers and duties:

- (a) The Chairperson shall preside at all meetings of the Commission and at all hearings conducted by the Commission.

- (b) The Chairperson shall sign all written resolutions of the Commission, and all minutes of all meetings or hearings of the Commission which shall have been approved by the Commission.
- (c) The Chairperson shall perform such other duties as may be necessary and / or required of the Chairperson either by ordinance of the City of San Jose or by resolution or order of the Commission not inconsistent with the Charter or ordinance of the City of San Jose.

Section 6. Vice Chairperson, Qualifications of

The Vice Chairperson shall be one of the members of the Commission.

Section 7. Vice Chairperson, Election of

The Vice Chairperson shall be elected by the members of the Commission.

Section 8. Vice Chairperson, Powers and Duties

The Vice Chairperson shall have the following powers and duties:

- (a) The Vice Chairperson shall have and perform all powers and duties of the Chairperson in the event of and during the absence or disability of the Chairperson.
- (b) The Vice Chairperson shall preside as Chairperson at all meetings and hearings of the Commission in the event of and during the absence or disability of the Chairperson.
- (c) The Vice Chairperson shall perform such other duties as may be required of the Vice Chairperson either by ordinance of the City of San Jose or by resolution or order of the Commission not inconsistent with the Charter or ordinances of the City of San Jose and such other duties as may be necessary to perform the required duties of the Vice Chairperson.

Section 9. Chairperson Pro Tempore, Appointment

In the event of the absence, legally required abstention, or disability of the Chairperson and Vice Chairperson at any meeting or hearing of the Commission, the Commission shall appoint, by majority vote one of its

members as Chairperson pro tempore to preside over such meeting or hearing.

Section 10. Chairperson Pro Tempore, Powers and Duties

The Chairperson Pro Tempore shall have and perform all powers and duties of the Chairperson in the event of, and only during the absence, legally required abstention, or disability of the Chairperson or Vice Chairperson.

**ARTICLE II**

**SECRETARY**

Section 1. Secretary, Appointment of

The Director of Planning, Building and Code Enforcement of the City of San Jose, hereinafter referred to as "Director," is hereby designated and appointed as the Secretary of the Commission. So long as said Director is Secretary, the powers and duties of the Secretary may be performed by any duly appointed deputy of the Director.

Section 2. Secretary, Powers and Duties of

The Secretary shall have the following powers and duties:

- (a) The Secretary shall attend all meetings and hearings of the Commission, and keep a record of minutes of all that transpires at such meetings or hearings.
- (b) The Secretary shall attest all written resolutions of the Commission and all minutes of all meetings or hearings of the Commission which shall have been approved by the Commission, and the Secretary shall have custody of the same.
- (c) The Secretary shall keep and have custody of all books, records and papers of the Commission, and certify true copies thereof whenever necessary.
- (d) The Secretary shall perform such other duties as may be required of the Secretary either by ordinance of the City of San Jose or resolution or order of the Commission not inconsistent with the

Charter or ordinance of the City of San Jose and such duties as may be necessary to perform the required duties of the Secretary.

### ARTICLE III

#### MEETINGS

Section 1. Regular Meeting Place

The regular meeting place of the Commission shall be the City Council Chambers in the City Hall of the City of San Jose.

Section 2. Regular Meetings

The regular meetings of the Commission shall be those meetings set forth by resolution adopted by the Commission.

Section 3. Adjourned Meetings: Special Meetings

Adjourned meetings and special meetings may be held by the Commission pursuant to and in accordance with the provisions of the Ralph M. Brown Act and any applicable law, resolution or policy of the City Council or the Commission.

Section 4. Study Sessions, Workshops and Retreats

The Commission may meet in a study session, informational workshop, or retreat at such time(s) and place(s) as the Commission may deem appropriate or advisable and in accordance with the provisions of the Ralph M. Brown Act and any other applicable law, resolution, or policy of the City or Commission. These meetings are to allow the Commission to engage in informational or educational discussions on topic areas to be determined by the Commission. No decisions, actions or votes may be taken by the Commission at such meetings of the Commission. These study sessions, workshops and retreats may be conducted with less than a quorum of the Commission present and do not constitute doing business under the provisions of Article III, Section 6 hereinbelow.

Section 5. Agenda: Closing Date of: Provision of

Any and all matters which are to be placed upon the agenda for consideration by the Commission at a regular meeting shall be filed with the Secretary not later than 5:00 o'clock p.m. on the 13<sup>th</sup> calendar day immediately preceding the regular meeting at which the matters on such agenda shall be considered by the Commission, provided that with respect to matters which the City Council, City boards or commissions, the Director of Planning, or other officers or departments of the City may wish to present for consideration by the Commission it shall be sufficient if notice of such matters are filed with the Secretary within such time; and the Secretary shall on the day following said final filing date make up such agenda and shall on the same day cause a copy of such agenda to be mailed to each member of the Commission.

The Commission shall not consider any matter which does not appear on the agenda except that matters referred by the City Council may be considered upon consent of a majority of the Commissioners present and other matters may be considered upon the unanimous consent of the Commissioners present.

Section 6. Quorum

Four (4) or more members of the Commission shall constitute a quorum to do business; but a lesser number may conduct a study session, informational workshop or retreat pursuant to Article III, Section 4 above, adjourn a meeting, or adjourn a meeting to a stated time and place, or continue a hearing to a stated time and place.

Section 7. Vote Required [This section is effective until October 31, 2016.]

No action shall be taken by the Commission unless the action receives the affirmative vote of at least a majority of those voting, as long as there is a quorum present, except as follows:

- (a) When less than a quorum is present, a majority of those present may adjourn the meeting, or adjourn the meeting to a specified time and place; or

- (b) When less than a quorum is present for the hearing of an item before the Commission, a majority of those present may continue the hearing to a specified time and place; or
- (c) When a quorum is present for the hearing of an appeal of a Director's decision before the Commission and the last Commission action on the appeal results in a tie vote, the Commission shall continue the item when a member or members of the Commission are absent at the hearing and may participate at a continued hearing of the Commission on the item in order to break the tie vote. In the event that the Commission is unable to take action on an appeal to the Commission as the result of a tie vote or votes, the permit shall be deemed denied.

Section 7. Vote Required [This section is effective on November 1, 2016.]

No action shall be taken by the Commission unless four or more members of the Commission vote for the taking of such action; provided, that:

- (a) When less than a quorum is present, a majority of those present may adjourn, or adjourn to a specified time and place; or
- (b) When less than a quorum is present for the hearing of an item before the Commission, a majority of those present may continue the hearing to a specified time and place; or
- (c) When a quorum is present for the hearing of an appeal of a Director's decision before the Commission and the last Commission action on the appeal results in a tie vote, the Commission shall continue the item when a member or members of the Commission are absent at the hearing and may participate at a continued hearing of the Commission on the item in order to break the tie vote. In the event that the Commission is unable to take action on an appeal to the Commission as the result of a tie vote or votes, the permit shall be deemed denied.

Section 8. Discussion through Chairperson Only; Limitation of Discussion; Disqualification of Commissioners

- (a) Discourse shall not be had directly among members of the Commission nor between persons in attendance and members of the Commission. Persons in attendance may address the Commission or members thereof only through the Chairperson.



- (b) Except as otherwise provided in the procedures governing the conduct of public hearings set forth in Article IV hereof, discussion on any particular matter either by Commissioners or by any person in attendance may be limited, in the discretion of the Chairperson, to such time as the Chairperson may find to be reasonable under the circumstances, provided that any decision of the Chairperson to limit discussion may be overruled by the Commission.
- (c) Any Commissioner who has received more than Fifty Dollars (\$50) in campaign contributions within the last twelve (12) months from any applicant or appellant on a matter before the Commission shall disclose that information as soon as that matter is reached on the Commission agenda.
- (d) Any Commissioner who is recused or otherwise legally disqualified from participating in Commission action on any particular matter shall take no part in the discussion, debate, or vote on such matter; and as soon as such matter is reached on the agenda such member shall disclose the member's recusal and the reason therefor, or if recusal is not known to the member at the time such matter is reached on the agenda the member shall make such disclosure as soon as the disqualification is known to that member. Recused Commissioners shall remove themselves from the Hearing chambers for the duration of the discussion and vote on the item in question.

Section 9. Motions, Debate Thereof, Debate Limited to Members of Commission

No debate of a motion shall be permitted prior to a second of the motion. When a motion is made and seconded, it shall be stated by the Chairperson before being debated; and such debate shall be limited to members of the Commission only. Members of the Commission may speak in debate of a motion only upon addressing the Chairperson and being recognized by the Chairperson. After the Chairperson has started to take the vote on the motion there shall be no further debate except that members of the Commission may be allowed to explain their vote, or present appropriate motions as governed by Roberts Rules of Order.

Section 10. Voting; Ayes and Noes

- (a) Every member of the Commission who is present at a meeting when a motion comes up for vote shall vote for or against the motion unless

the Commissioner has been recused from voting for any legal reason and abstains from voting because of such declared recusal.

- (b) All voting by Commission members shall be by "ayes" and "noes," or electronic vote, and shall be entered by the Secretary in the record of the Commission proceedings. Upon request of any member of the Commission, a roll call vote shall be taken on any matter upon which a vote is called, and shall be recorded by the Secretary in the record of the Commission's proceedings.

Section 11. Petitions and Communications; Filing, Report, and Inspection Thereof

All written petitions and communications on the agenda of a meeting shall be filed with the Commission at such meeting and shall be so marked by the Secretary. The substance of such petitions and communications shall be orally reported to the Commission by the Secretary; provided that upon the request of any member of the Commission present at the meeting, any such petition or communication shall be read aloud in its entirety by the Secretary. Such petitions and communications may be inspected at any time by any member of the Commission.

Section 12. Documents and Objects Presented to Commission; Filing and Inspection Thereof

All documents and all physical objects presented to the Commission at any meeting by any person (including, but not limited to, those presented by the City Council or by boards, commissions, officers, or departments of the City) shall be filed with the Commission at such meeting and shall be so marked by the Secretary. Any such document or object filed with the Commission may be inspected at any time by any member of the Commission. At the discretion of the Chairperson, true copies or photographs of such documents and objects may be filed in lieu of the originals thereof.

Section 13. Order of Business

The order of business of the Commission shall be set by the Secretary. The Commission may at any time alter the above order of business at any meeting; and said order of business shall be altered to the extent necessary to comply with the provisions of Article IV hereof relating to public hearings.



Section 14. Application of Robert's Rules of Order

Except as otherwise expressly set forth in this Resolution, and where they are not in conflict with these Bylaws or other rules governing the Planning Commission, the general procedures to be followed by the Commission at its meetings shall be those described in Roberts Rules of Order, as those rules may be amended, updated or replaced from time to time; provided, however, that a failure to follow Robert's Rules of Order by itself shall not invalidate any proceeding or action of the Commission.

**ARTICLE IV**

**PUBLIC HEARINGS**

Section 1. Procedure for Conduct of Hearings

- (a) Except as may be otherwise required by law for the conduct of a hearing on any particular matter, and provided also that the Commission may at any time during any hearing deviate from or change the procedures hereinafter set forth in this Article whenever the Commission deems it necessary or appropriate to do so for the purpose of providing a fair and orderly hearing, the procedures hereinafter set forth in the following sections of this article shall govern the conduct of all hearings before the Commission on matters which the Commission is required by law to conduct a public hearing, provided further that such procedures are for the convenience of the Commission and are merely directory and not binding on the Commission and no action of the Commission shall be affected or vitiated by any failure of the Commission, the Chairperson, or other members of the Commission to follow such procedures.
- (b) Except as may be otherwise required by law for the conduct of a hearing on any particular matter, the technical rules of evidence shall not apply; and as used hereinafter in this Article, the word "evidence" is not used in the limited sense of legally admissible evidence. Any relevant evidence shall be admissible to the Commission.

Section 2. Time of Public Hearings, Continuances

Unless otherwise specifically required by law or order of the Commission, hearings before the Commission on matters which the Commission is

required by law to conduct a public hearing include without limitation hearings on:

- (1) Variances and Exceptions under Part 11 of Chapter 20.100 of Title 20 of the San Jose Municipal Code;
- (2) Conditional Use Permits under Part 6 of said Chapter 20.100; and
- (3) Appeal Hearings for site development permits, certain single-family house permits, planned development permits, special use permits, and tree removal permits. All such hearings shall be conducted in the manner described in and pursuant to the provisions of said Chapter 20.100, in which the Commission exercises original or appellate jurisdiction, as provided for under said Chapter 20.100. These hearing matters shall be set for hearing before the Commission the regular meeting place and time of the Commission.

Starting at the respective times set for hearing, the matters on each of said hearing calendars will be called and heard in the order in which they appear on such calendars until proper disposition has been made of such matters in accordance with law. Subject to the requirements of law, any hearing before the Commission may be continued by the Commission from time to time. In continuing any such hearing, the Commission shall specify the time and place at which the hearing will be continued.

Hearings shall not be interrupted for any other item on the agenda, and all other items on the agenda shall be delayed until proper disposition has been made in accordance with law of all matters on said hearing calendars.

Section 3. Documents and Objects Not to be Submitted Prior to Time of Hearing

Except as otherwise specifically required by law (e.g. petitions for rezoning) no documents or physical objects shall be submitted prior to the time of hearing and any documents or physical objects so submitted shall not be accepted for filing nor considered by the Commission.

Section 4. Allowable Time for Presentation

All persons desiring to speak or make a presentation will be given a reasonable time to do so. As a guideline, applicants and appellants generally may be afforded five (5) minutes to make a presentation and an additional five (5) minutes to present a rebuttal and all other public

speakers may be afforded two (2) minutes to present relevant testimony; provided, however, the Chairperson may at any time impose such other reasonable time limits with respect to any presentation, testimony or hearing if the Chairperson finds such action necessary to prevent abuse or to provide all interested persons a fair and reasonable opportunity to be heard. It is urged that all presentations be as brief and concise as reasonably possible, without unnecessary delay or repetition.

Section 5. Evidence, Testimony, Statements and Arguments Submitted, Presented or Made at Hearing

- (a) Subject to subsection (b) below, any person (including, but not limited to officers or employees of the City), may submit, present, or make at said hearing, any evidence, testimony, statements, or arguments in favor of or against the matter which is being heard. Each person who submits, presents, or makes any such evidence, testimony, or statement may be requested, but shall not be required, to answer questions respecting such evidence, testimony or statements. Responses to questions from a Commissioner will not reduce the time allowed for a speaker's presentation pursuant to Section 4 above.
- (b) In connection with administrative or quasi-judicial hearings conducted by the Planning Commission, the decision of the Planning Commission is to be based upon testimony, evidence and other information received from any person at or in connection with a public hearing or contained in the public record for a public hearing before the Commission. A site visit by an individual Planning Commissioner to generally familiarize that Commissioner with the real property that is the subject of the matter to be considered by the Planning Commission is allowed. If a Planning Commissioner becomes aware of information relevant to a matter coming before the Commission that was not made a part of the public record for that matter before the Commission, the Commissioner shall have a duty to and shall disclose that information to the Planning Commission in the manner described in City Council Policy 0-32: Disclosure of Material Facts and Communications Received During Council Meetings, as the same may be amended from time to time.

Section 6. Exhibits: Marking and Filing Thereof: Examination Thereof by Members

- (a) All documentary or real evidence which is presented to the Commission at a hearing shall be identified by the person presenting the same and shall be filed by that person with the Commission as an exhibit by submitting the same at such hearing to the Secretary. The Secretary shall mark all such documentary and real evidence submitted to the Secretary as having been filed with the Commission at such hearing and shall designate the same by an appropriate exhibit number or letter. Documentary or real evidence shall not be considered by the Commission unless it is filed with the Commission as above provided.
- (b) All documentary or real evidence filed with the Commission at a hearing may be examined by any member of the Commission at any time; provided that members shall not comment on or ask questions about the same except during the hearing, nor discuss the same except during the discussion thereof among the members after the hearing has been closed and the matter stands submitted.

Section 7. Questioning Through Chairperson: By Whom Such Questioning May be Done

- (a) Questioning of persons who appear and make a presentation may, with the consent of such persons, but not otherwise, be permitted at the discretion of the Chairperson. Such questioning as may be permitted by the Chairperson, whether by members of the Commission or persons in attendance (including, but not limited to, officers or employees of the City), shall be done only through the Chairperson.
- (b) After being requested to complete a speaker card, gaining recognition from the Chairperson and stating one's name, any person in attendance at the hearing may request permission from the Chairperson to ask questions of any person who has appeared and made a presentation and who has consented to such questioning, and if the Chairperson, at his or her sole discretion, grants that request such person may then ask questions in accordance with and subject to the procedures set forth in this Article.
- (c) The Chairperson's decision on: (a) whether a person may be questioned at all, (b) who may ask questions of that person, (c) the number of questions which may be asked of that person, and (d) whether a particular question may be asked of that person, shall be



final; provided that the person being questioned may refuse to answer all or any of the questions asked of him or her.

Section 8. Discussion and Deliberation by Members on Submitted Matters

After the public hearing has been closed and the matter is submitted for decision, the members of the Commission may discuss the matter among themselves. Unless directed by the Commission, no other persons may speak and no further exhibits may be filed. Members of the Commission shall address one another only through the Chairperson. Subject to the requirements of law, the Commission may take under submission for a reasonable period of time any matter which has been heard before it and may for this purpose, vote to continue its deliberation on such matter from time to time. In continuing such deliberations the Commission shall specify the time and place at which such deliberations will be continued.

Section 9. Order of Proceedings

Hearings shall proceed in the following order:

- (a) Presentation and recommendation by the Director of Planning or staff of the City, with questioning, if any, of each person who makes an appearance upon conclusion of that person's presentation, pursuant to Sections 5 and 7 above.
- (b) Presentation by all persons of evidence, testimony, statements, and arguments related to the matter which is being heard, with questioning, if any, of each person who makes an appearance upon conclusion of the presentation, pursuant to Sections 5 and 7; provided that if the matter which is being heard by the Commission is before the Commission on the petition of any person, such as an applicant or an appellant, then in such event, such petitioner shall have the right at their option to either begin or conclude the presentation, or both, in favor of his or her petition.
- (c) If the matter which is being heard by the Commission is before the Commission on the petition of any person, then in such event such petitioner may, at the discretion of the Chairperson, be permitted to present rebuttal evidence, testimony and statements in response to testimony presented to the Commission at a hearing.
- (d) Close of public hearing and submission of matter for decision.

## ARTICLE V

### OFFICE OF THE COMMISSION

#### Section 1. Office of the Commission and Commission Secretary

The Office of the Secretary, which shall be the Director's Office located in the Planning, Building and Code Enforcement Department of the City of San Jose at the City Hall of the City of San Jose, shall be the office of the Commission.

## ARTICLE VI

### MAILING ADDRESS OF MEMBERS

#### Section 1. Mailing Address of Members

Members of the Commission shall file with the Secretary the address to which all notices and other papers which may be mailed to them shall be sent. In addition, members of the Commission shall file with the Secretary the electronic address (i.e., an e-mail address) to which notices and other communications which may be sent to them shall be sent.

## ARTICLE VII

### COMMITTEE OF THE WHOLE

#### Section 1. Procedure for Committee of the Whole

The Commission may meet as a committee of the whole at such times and at such places as may from time to time be ordered by the Commission. The committee of the whole shall study and consider only such matters as are referred to it by the Commission. All actions of the committee of the whole shall be reported to the Commission. Four (4) or more members of the Commission shall constitute a quorum to do business, but a lesser number may adjourn. The Chairperson shall preside at all meetings of the committee of the whole, and in the Chairperson's absence the Vice Chairperson shall preside. The provisions of Article III relating to meetings of the Commission shall,

insofar as they are applicable, and except as otherwise provided in this Article, govern the conduct of meetings of the committee of the whole.

Section 2. Persons in Attendance. When May Speak

Persons in attendance shall not speak unless and until expressly invited to do so by the Chairperson.

Section 3. Agenda: Provision Thereof

Only those items referred to the committee of the whole by the Commission shall appear on the agenda of the committee. The Secretary shall provide a copy of the agenda to each member of the committee within twenty-four (24) hours after the Commission meeting at which the Commission orders a meeting of the committee of the whole.

**ARTICLE VIII**

**AMENDING COMMISSION BYLAWS**

Section 1. Provision for Amending Bylaws

- (a) These Bylaws may be amended by a two-thirds (2/3) affirmative vote of the Commission, at a regularly scheduled Planning Commission meeting.
- (b) At least two (2) weeks prior notice of the intent to amend these Bylaws shall be provided to the Commission.
- (c) Notice of the intended changes to these Bylaws shall be provided to all active members of the Commission, and to the public as required by law and/or City policy, but such notices shall be provided no later than the notice of intent to amend these Bylaws.

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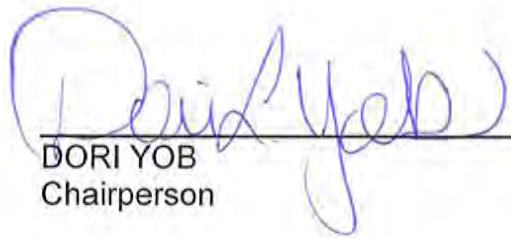
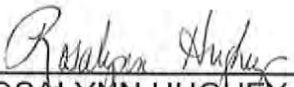
**ADOPTED** and made effective by the Planning Commission of the City of San José this 22nd day of June, 2016 by the following vote:

Ayes: Yob, Abelite, Ballard, Bit-Badal, O'Halloran, Pham, and Yesney

Noes: None

Absent: None

Disqualified: None

  
\_\_\_\_\_  
DORI YOB  
Chairperson  
\_\_\_\_\_  
ROSALYNN HUGHEY  
Secretary



# ATTACHMENT “D”

# PLANNING COMMISSION HANDBOOK

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

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

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

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

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

## Table of Contents

Chapter 1 - Welcome to the Planning Commission	5
Introduction .....	5
What is a Planning Commission?.....	5
Planning Commission Duties .....	6
Some Rules of Thumb.....	6
Chapter 2 - Role and Activities of the Planning Commission	8
Introduction .....	8
Purpose of the Planning Commission.....	8
The Authority of the Planning Commission.....	8
Duties of the Planning Commission.....	8
Characteristics of the ideal Planning Commission .....	9
The Planning Commission’s Relationship with Staff and Elected Officials .....	10
Chapter 3 - Introduction to Planning	12
Introduction .....	12
What is Planning? .....	12
Why Plan? .....	12
A Short History of Planning .....	13
Authority for Local Planning in California.....	14
What Is a General Plan? .....	15
What Planning Cannot Do .....	16
Chapter 4 - PLAN IMPLEMENTATION	18
The Importance of Implementation .....	18
Zoning Regulations .....	18
Authority for Zoning .....	18
The History of Legal Basis for Zoning .....	19
Subdivision Regulations.....	19
Authority for Subdivisions .....	20
Other Types of Planning Approvals .....	20
Other Means of Implementation .....	21
Chapter 5 - THE CALIFORNIA ENVIRONMENTAL QUALITY ACT	22
Overview.....	22
The CEQA Process.....	22
Is It A Project?.....	22
Determining if the Project is Exempt from CEQA.....	23
Preparing an Initial Study .....	23

Negative Declaration .....	23
Environmental Impact Report .....	24
Use of Environmental Documents.....	24
Chapter 6 - PLANNING COMMISSION CONDUCT .....	25
The Public Interest.....	25
Legal Aspects of Planning Commission Conduct .....	25
Conflict of Interest.....	26
What is a Conflict of Interest? .....	26
When in Doubt .....	26
Effect of Disqualification .....	27
Disclosure of Conflict.....	27
Open Meeting Act.....	27
Meetings.....	27
What is Not a Meeting.....	27
Brown Act Requirements.....	28
Ex Parte Contact .....	28
What is Ex Parte Contact? .....	28
Examples of Ex Parte Contact.....	28
How to Deal with Ex Parte Contact .....	29
Chapter 7 – THE PLANNING COMMISSION MEETING .....	31
Due Process .....	31
Conducting a Planning Commission Meeting.....	31
Chairing the Planning Commission.....	32
Responsibilities of the Chair .....	32
Qualities of a Good Chair.....	33
Practical Tips for the Planning Commissioner .....	34
Planning Application Continuance vs. Denial.....	36
Chapter 8 – MAKING A DECISION AND THE NEED FOR FINDINGS .....	37
Two Kinds of Planning Commission Decisions .....	37
The Need for Findings.....	37
Legal Adequacy of Findings .....	37
Purpose of Findings .....	38
Evidence in the Record to Support Findings .....	38
Findings in the Administrative Report.....	38
Chapter 9 – CONDITIONS OF APPROVAL .....	40
Legal Authority to Impose Conditions of Approval .....	40
Timing of Conditions.....	40

Who is Responsible for Implementing Conditions? .....	41
Mitigation Measures as Conditions .....	41
Legal Considerations in Imposing Conditions.....	42
Nollan v California Coastal Planning Commission (1987).....	42
Dolan v City of Tigard (1994) .....	43
Planning Commission Considerations .....	44
Chapter 10 – THE ADMINISTRATIVE REPORT .....	45
Administrative Report Contents.....	45
Items Not Included as Part of the Administrative Report .....	47
More About the Planning Staff Recommendation .....	47
Sources: .....	48
APPENDICES .....	49
SAN MATEO MUNICIPAL CODE CHAPTER 2.24 PLANNING COMMISSION.....	49
CHARTER OF THE CITY OF SAN MATEO, CALIFORNIA.....	50
BYLAWS AND RULES OF PROCEDURE .....	52
BOARDS AND PLANNING COMMISSIONS: RULES AND PROCEDURES .....	57
WELCOME! .....	59
HEARINGS .....	59
PLANNING COMMISSION MEETINGS .....	60
INFORMATION ON PLANNING COMMISSION VOTES – Feb 2009 .....	61

## Chapter 1 - Welcome to the Planning Commission

### Introduction

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

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

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

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

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

### What is a Planning Commission?

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

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

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

### Planning Commission Duties

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

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

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

### Some Rules of Thumb

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

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

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



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

### Introduction

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

### Purpose of the Planning Commission

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

### The Authority of the Planning Commission

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

### Duties of the Planning Commission

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

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

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

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

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

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

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

### Characteristics of the ideal Planning Commission

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

The ideal Planning Commission should reflect the following:

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

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

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

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

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

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

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

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

## Chapter 3 - Introduction to Planning

### Introduction

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

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

### What is Planning?

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

### Why Plan?

Communities can realize tangible benefits from planning:

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

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

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

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

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

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

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

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

## A Short History of Planning

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

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

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

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

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

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

### Authority for Local Planning in California

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

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

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

## What Is a General Plan?

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

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

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



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

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

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

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

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

### What Planning Cannot Do

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

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

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

## Chapter 4 - PLAN IMPLEMENTATION

### The Importance of Implementation

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

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

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

### Zoning Regulations

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

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

### Authority for Zoning

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

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

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

### The History of Legal Basis for Zoning

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

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

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

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

### Subdivision Regulations

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

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

### Authority for Subdivisions

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

The Subdivision Map Act's primary goals are to:

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

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

### Other Types of Planning Approvals

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

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

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

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

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

### Other Means of Implementation

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

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

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

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

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

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

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

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

## Chapter 5 - THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

### Overview

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

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

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

### The CEQA Process

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

### Is It A Project?

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

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

## Determining if the Project is Exempt from CEQA

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

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

## Preparing an Initial Study

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

## Negative Declaration

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

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

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



## Environmental Impact Report

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

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

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

## Use of Environmental Documents

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

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

## Chapter 6 - PLANNING COMMISSION CONDUCT

### The Public Interest

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

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

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

### Legal Aspects of Planning Commission Conduct

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

## Conflict of Interest

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

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

### What is a Conflict of Interest?

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

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

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

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

### When in Doubt

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

## Effect of Disqualification

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

## Disclosure of Conflict

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

## Open Meeting Act

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

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

## Meetings

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

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

## What is Not a Meeting

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

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

### Brown Act Requirements

In general, the Brown Act requires:

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

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

### Ex Parte Contact

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

### What is Ex Parte Contact?

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

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

### Examples of Ex Parte Contact

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

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

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

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

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

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

### How to Deal with Ex Parte Contact

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

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

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

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

## Chapter 7 – THE PLANNING COMMISSION MEETING

### Due Process

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

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

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

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

### Conducting a Planning Commission Meeting

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



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

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

### Chairing the Planning Commission

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

### Responsibilities of the Chair

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

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

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

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

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

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

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

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

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

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

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

## Qualities of a Good Chair

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

The following attributes of a good chair should be considered:

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

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

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

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

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

### Practical Tips for the Planning Commissioner

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

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

### Planning Application Continuance vs. Denial

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

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

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

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

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

### Two Kinds of Planning Commission Decisions

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

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

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

### The Need for Findings

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

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

### Legal Adequacy of Findings

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

## Purpose of Findings

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

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

## Evidence in the Record to Support Findings

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

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

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

## Findings in the Administrative Report

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

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

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



## Chapter 9 – CONDITIONS OF APPROVAL

### Legal Authority to Impose Conditions of Approval

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

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

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

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

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

### Timing of Conditions

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

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

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

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

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

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

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

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

### Who is Responsible for Implementing Conditions?

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

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

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

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

### Mitigation Measures as Conditions

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

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

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

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

### Legal Considerations in Imposing Conditions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Noting that the Dolan's project would have increase the amount of impervious 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/>	
106, 110 & 120 Tilton Ave, San Mateo, CA; APNs: 032-311-120, & -130	

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

**Recommendation:**

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

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

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

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

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

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

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

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

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

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

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

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

### More About the Planning Staff Recommendation

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

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

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

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



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

### Sources:

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

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

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

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

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

## APPENDICES

### Chapter 2.24

#### PLANNING COMMISSION

##### Sections:

2.24.010 Organization.

2.24.020 Duties.

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

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

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

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

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

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

## CHARTER OF THE CITY OF SAN MATEO, CALIFORNIA

**Adopted by vote of the People: November 3, 1970**

**Ratified by Legislature** – Resolution Chapter 10 – Statutes of 1971

**Filed with Secretary of State** – January 19, 1971

**Amended** – June 4, 1974 (Sec. 7.01)

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

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

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

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

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

## ARTICLE VI - BOARDS AND PLANNING COMMISSIONS

### Section No.

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

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

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

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

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

**BYLAWS AND RULES OF PROCEDURE**

**Of the**

**CITY OF SAN MATEO**

**PLANNING COMMISSION**

**Adopted November 12, 1968**

**Amended January 17, 1978**

**Amended February 22, 1982**

**Amended June 24, 1985**

**Amended December 9, 1986**

**Amended November 13, 2001**

**CHAPTER 1**

**RULES OF THE PLANNING COMMISSION**

**A. MEETINGS**

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

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

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

#### B. ELECTION AND TERMS OF OFFICE

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

#### C. DUTIES OF OFFICERS AND STAFF

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

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

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

#### D. MEETING AGENDA

1. At least 72 hours before each Planning Commission meeting, the Administrative Secretary or designee shall post an agenda with a brief general description of each item of business to be transacted or discussed at the meeting together with the time and location of the meeting. The agenda shall be posted in a location that is freely accessible to the public, to be determined by the Administrative Secretary. The Administrative Secretary or designee shall sign a declaration at the time and place of posting.
2. At least 24 hours before each Planning Commission meeting, a notice specifying the time and place of the special meeting and business to be transacted shall be posted in a location that is freely accessible to the public and shall be delivered personally or by mail to each member of the Planning Commission and to any other local newspaper of general circulation, radio, or television station requesting notice in writing. In the event notice is given less than 48 hours in advance of the meeting, it shall be delivered personally and not mailed. The Administrative Secretary or designed shall sign a declaration of the time and place of posting and delivery.
3. The order of business for regular meetings of the Planning Commission shall be as follows:
  - a. Pledge of Allegiance
  - b. Roll Call
  - c. Approval of Minutes
  - d. Public Comment
  - e. Public Hearing Items

- f. Study Items
- g. Communications / Announcements
- h. Other Business of the Planning Commission

The Chair of the Planning Commission shall have the discretion to change the order of items on the Planning Commission's agenda.

4. During the "Public Comment" period, members of the public shall be given an opportunity to speak on all items within the Planning Commission's jurisdiction, including non-public hearing agenda items. The Chair shall determine whether the matter is within the Planning Commission's jurisdiction. Public testimony on public hearing items will be taken during the public hearing and not during the public comment period. Each member of the public may speak for a maximum of three minutes, with a maximum of fifteen (15) minutes of the entire Public Comment period. If no member of the public wishes to speak, then no time shall be reserved for public comment. If more members of the public wish to speak than can be accommodated with the fifteen minutes period, an additional public comment period, not to exceed fifteen (15) minutes, may be scheduled after all other Planning Commission business has been completed.
5. At a special meeting, the Planning Commission may consider only that business shown on the notice of the special meeting.
6. At a regular meeting, the Planning Commission may take action only on items shown on the posted agenda, unless the Planning Commission takes one of the following actions:
  - a. Determination by a majority vote of the Planning Commission that an emergency situation exists, including work stoppage or crippling disaster which severely impairs public health, safety, or both.
  - b. Determination by a two-thirds (2/3's) vote of the Planning Commission, or by a unanimous vote if less than two-thirds (2/3's) of Planning Commission members are present, that the need to take action arose after the agenda was posted.
  - c. Determination by a majority vote that the matter was included on a properly posted agenda for a Planning Commission meeting occurring not more than five calendar days before, and at the prior meeting the item was continued to this meeting.
7. The Planning Commission shall not act or discuss any matters raised during the public comment period which are not on the agenda, but shall refer such matters to staff for review and/or place such matters on a future agenda.

#### E. PUBLIC HEARINGS

The public is permitted to speak on public hearing items subject to the following conditions:

1. The Chair may limit the amount of time allotted to speakers.



2. Members of the public may only speak when recognized by the Chair.
3. Questions from the public, an applicant, or an appellant will be answered by staff at the direction of and through the Chair and not directly to the questioner.
4. Applicants, appellants, and members of the public who wish to speak on an item shall fill out a card showing their name and address and deliver it to the staff.
  - a. The following order shall be followed in the conduct of public hearings:
    - 1) Staff presentation
    - 2) Planning Commission questions of staff
    - 3) Presentation by applicant
    - 4) Planning Commission questions of applicant
    - 5) Presentation by appellant, if applicable
    - 6) Planning Commission questions of appellant, if applicable
    - 7) Open public hearing for comments
    - 8) Final comments by applicant and/or appellant
    - 9) Further Planning Commission questions of staff, public, appellant, or applicant
    - 10) Closing of public hearing
    - 11) Planning Commission discussion and decision

#### F. DEADLINE FOR PLANNING COMMISSION CONSIDERATION

Consistent with City Council policy, no new items shall be introduced after midnight.

#### G. CANCELLATION OF MEETING

Where there is no business to be transacted at a regular meeting, the meeting may be cancelled by the Chair or by vote of the Planning Commission taken at a regular meeting of the Planning Commission. Before determining that there is no business, the Chair shall attempt to contact each Planning Commissioner to determine if they have any business for the meeting.

#### H. ADOPTION

Upon adoption of these bylaws by a majority vote of the Planning Commission of the City of San Mateo, they shall become effective.

#### I. AMENDMENTS

These bylaws may be amended by the Planning Commission at any regular meeting by a majority vote provided not less than four Planning Commission members are present.

## BOARDS AND PLANNING COMMISSIONS: RULES AND PROCEDURES

### Resolution No. 106 (1982)

#### PURPOSE

To better assure the continuity of various practices relating to the City's miscellaneous boards and Planning Commissions.

#### POLICY

##### 1. APPOINTMENTS AND INTERVIEWS:

Information as to vacancies on Boards and Planning Commissions shall be given broad dissemination and applications shall be accepted for vacant positions for a three-week period following the announcement of the vacancy.

Interviews of qualified applicants shall be held by the City Council prior to appointment. It is possible that the City Council may not interview all qualified applicants.

##### 2. ADVICE AND REPORTS TO THE CITY COUNCIL:

The primary purpose of Boards and Planning Commissions is to provide advice to the City Council to aid it on its decision-making process. It is therefore inappropriate for a Board or Planning Commission, or members thereof, to criticize or attempt to change a City Council decision reached after due consideration of the matter.

Boards and Planning Commissions shall submit their recommendations in writing accompanied by the reasons for the recommendations.

Boards and Planning Commissions shall provide quarterly reports to the City Council on matters of interest considered by the Board or Planning Commission during the previous quarter.

##### 3. ACTION TAKEN BY BOARDS AND PLANNING COMMISSIONS:

Although there are a number of items that come before the Boards and Planning Commissions that do not necessitate any formal motion and approval of that motion, when the Board or Planning Commission is developing a recommendation for City Council consideration, it should be formalized by passing a motion. This will help to ensure that the City Council clearly understands the recommendation or decision provided by the Board or Planning Commission.

##### 4. REVIEWING TAPES OF MEETINGS; ABSENT PLANNING COMMISSIONERS:

In those cases where items have been discussed at meetings and will be coming back to the Board or Planning Commission for further action in the future, any Planning Commissioner who was unable to attend the meeting should arrange to listen to the tape recording of the meeting that they missed. In

those cases where the Planning Commissioner is unable to listen to the meeting tape in advance of the need to take action at a subsequent meeting, they should abstain from discussion and voting on that particular item. Failure to review the information that had been presented at an earlier meeting handicaps the ability of a Planning Commissioner in trying to make a decision based on only a portion of information available at a subsequent meeting.

5. REQUEST FOR ADDITIONAL INFORMATION -MAKE IN ADVANCE:

In those cases where a Planning Commissioner receives information on agenda items and feels there is a need for additional information, he or she should make that request of Staff in advance of the meeting. Requesting information in advance of the meeting provides Staff with time to attempt to develop the requested information, and include it in their Staff presentation to the Planning Commission.

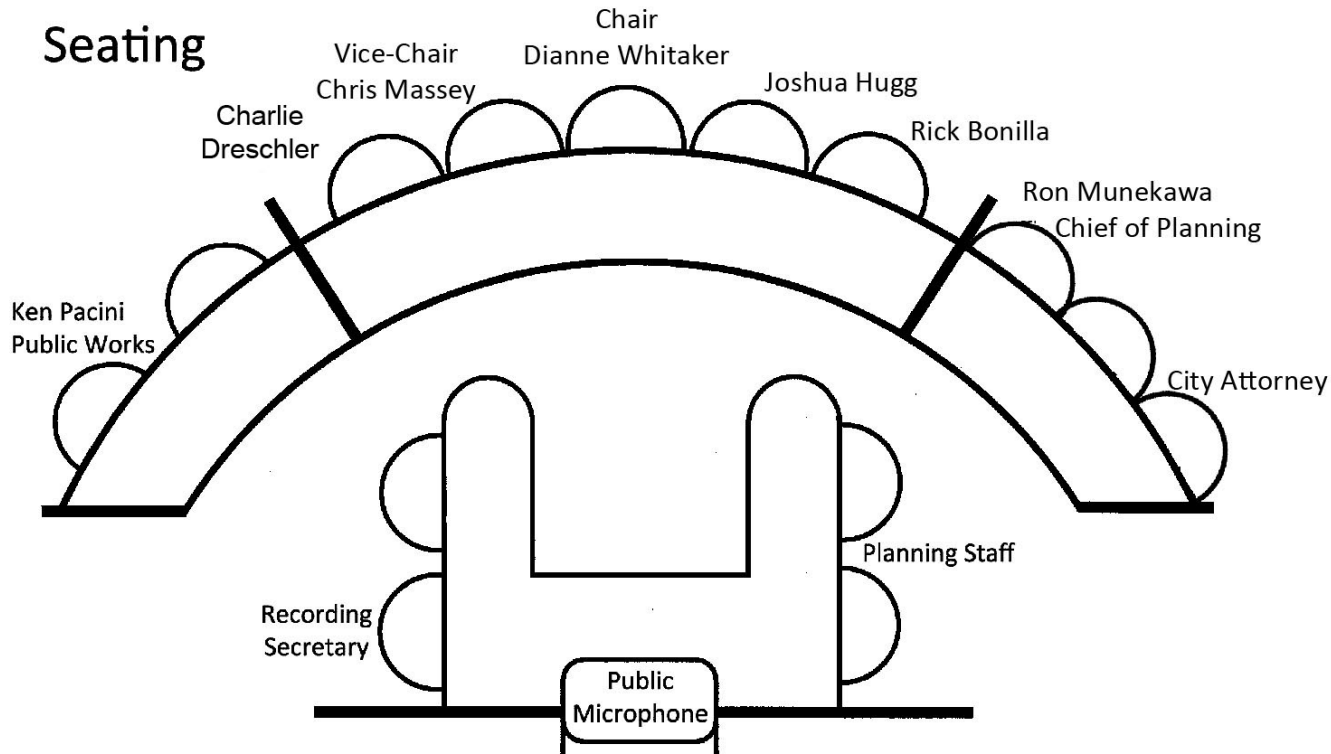
## WELCOME!

For those members of the general public who are attending their first Planning Commission meeting, the following general information is offered.

Planning Commissioners are appointed by the City Council and serve, without pay, for a four-year term. The Planning Commission acts under the policies and ordinances of the City Council. Your presence and participation are important toward furthering an informed and responsible government

## HEARINGS

Meetings are held on the 2<sup>nd</sup> and 4<sup>th</sup> **Tuesdays** of each month. The public hearings begin at 7:30 p.m. in the City Council Chambers. (Note: Special meetings are occasionally scheduled and the public is invited to these meetings). Anyone wishing to address the Planning Commission is asked to give their name and address, in writing, to the Recording Secretary. Forms for this purpose are available at the public microphone and from the Recording Secretary. Agendas for each meeting are available in the lobby and on the city website.



## PLANNING COMMISSION MEETINGS

Prior to hearing the first agenda item, the Planning Commission will hold a Public Comment Period for persons wishing to speak on any subject **not** on the agenda.

After the Public Comment Period, the Planning Commission will hear the first item listed on the agenda. All items head by the Planning Commission follow the procedure below:

1. **The Planning Commission Chair** announces the item to be heard.
2. **Staff presentation.** City staff makes a presentation. After the presentation, Planning Commissioners may ask questions of staff.
3. **Applicant presentation.** Project applicant makes a presentation. After the presentation, Planning Commissioners may ask questions of the project applicant.
4. **Public Hearing:** The Planning Commission Chair opens the public hearing.
  - a. **Speakers.** If you wish to speak, please fill out a “Request to Speak” form available in the front of the City Council Chambers. Give it to the Recording Secretary. Your name will be called in the order received. Please use the microphone at the front of the City Council Chambers and state your name and address for the public record.
  - b. **Number of Speakers:** If you agree with the points made by the previous speaker, you may so elect to have a spokesperson for your group.
  - c. **Previously submitted materials.** The Planning Commission reviews all letters, emails and correspondence from the public. All of these items are part of the public record. The Planning Commission is interested in hearing your comments, but it is not necessary to read your correspondence, verbatim, into the record. You may choose to summarize your major points.
  - d. **Courtesy.** Please do not clap, cheer, interrupt, whistle, etc., neither for or against testimony that is being presented, as the Planning Commission wishes to extend courtesy to all speakers. Please also set cell phones & pagers to vibrate before the meeting begins.
5. **Public Hearing Closed.** After all members of the public have had an opportunity to speak, the Planning Commission Chair will close the public hearing. AT that time, testimony is limited to the Planning Commission and City Staff. However, on occasion, the Planning Commission may recall the applicant to answer questions.
6. **Planning Commissioner Comments.** After all Planning Commission questions have been answered, the Planning Commission will deliberated and render a decision. Some decisions are final with the Planning Commission unless appealed to the City Council, other decisions are recommendations to the City Council for their consideration at a future City Council hearing. The Chair will announce the type of decision after the vote is taken. Please note: “study

session” items are for discussion purposes only, **no** vote is taken; instead comments are given back for consideration and subsequent plan revision before the project comes back repeating comments. You may also elect to have a spokesperson for your group.

The Planning Commission conducts the meeting according to the By-Laws adopted by the Planning Commission. Planning Commission Agendas and materials can be downloaded from the website at: [www.cityofsanmateo.org/index.asp?NID=1927](http://www.cityofsanmateo.org/index.asp?NID=1927).

### INFORMATION ON PLANNING COMMISSION VOTES – Feb 2009

Here are the instances in which being short one PC member will affect PC actions:

- 1) As you probably remember, if there is a 2-2 split on a vote, it will constitute “no action” which equates to denial of the application.
- 2) For Housing Element and General Plan recommendations to the City Council, there will need to be an affirmative vote of not less than a majority of the PC’s total membership (e.g., three “yes” votes will be required to make the recommendation). (Gov. Code sections 65354, 65356.)

Let me know if you have any follow-up questions. Thanks

Gabrielle Whelan  
Assistant City Attorney  
City of San Mateo  
330 West 20<sup>th</sup> Avenue  
San Mateo, CA 94403  
(650) 522-7020 (office)  
(650) 522-7021 (FAX)  
[gwhelan@cityofsanmateo.org](mailto:gwhelan@cityofsanmateo.org)

# ATTACHMENT “E”



## SECTION 1

# The Planning Commissioner's Role

WHAT IS A PLANNING COMMISSION? .....	1
WHY PLAN? .....	1
THE COMMISSION'S DUTIES .....	2
PUBLIC SERVICE ETHICS .....	3
ETHICS LAWS .....	4
Financial Gain .....	6
Personal Advantages and Perks .....	7
Fairness and Impartiality .....	7
WORKING WITH FELLOW COMMISSIONERS .....	8
WORKING WITH STAFF .....	9
Consultants .....	10
WORKING WITH THE GOVERNING BODY .....	10
WORKING WITH THE MEDIA .....	11
Getting Your Message Out .....	11



## SECTION 1

# The Planning Commissioner's Role



### WHAT IS A PLANNING COMMISSION?

The planning commission is a permanent committee made up of five or more individuals who have been appointed by the governing body (city council or board of supervisors) to review and act on matters related to planning and development.<sup>1</sup> Most planning commissioners are lay people without any previous land use experience. Commissioners serve at the pleasure of the council or board of supervisors, so commission membership may change in response to changes in those bodies. A local agency need not create a planning commission; in some jurisdictions, the governing body functions in that capacity.<sup>2</sup>

### WHY PLAN?

Planning is a proactive process that establishes goals and policies for directing and managing future growth and development. Local agencies plan to address

fundamental issues such as the location of growth, housing needs, and environmental protection. Additionally, planning helps account for future demand for services, including sewers, roads, and fire protection. In addition, planning:

- **Saves Money.** Good planning can save on infrastructure and essential service costs.
- **Sets Expectations.** Planning establishes the ground rules for development. A comprehensive general plan, for example, sends a clear signal that accepted standards and procedures apply to community development. This will not eliminate conflicts entirely, but at least sets expectations that can help minimize conflict.
- **Improves Economic Development and Quality of Life.** Economic development and quality of life issues go hand in hand because businesses want to locate in communities where their employees want to live. Planning outlines alternatives and choices so that the community can promote employment and economic well-being.
- **Provides a Forum for Reaching Consensus.** Planning processes, such as the development of the general plan, provide a forum for seeking community consensus. Planning efforts should always involve broad and diverse segments of the community to assure that the resulting plan fully addresses community needs. This will provide the public with a sense of ownership over the plan.

<sup>1</sup> Cal. Gov't Code § 65100.

<sup>2</sup> Cal. Gov't Code § 65101.

- **Connects People to the Community.** Planning ensures that architectural and aesthetic elements are incorporated into projects to connect people to their community and establish a sense of place.
- **Protects Property Values.** Property values are enhanced when a community plans for parks, trails, playgrounds, transit, and other amenities. Planning also protects property and property values by separating incompatible land uses. Imagine if a factory could just set up shop in the middle of a neighborhood. Planning assures that this will not occur.
- **Reduces Environmental Damage and Conserves Resources.** Planning helps identify important natural and cultural resources and can channel development in a way that protects or augments these resources.

## THE COMMISSION'S DUTIES

The planning commission plays a central role in the planning process in three important ways. First, it acts as an advisory board to the main governing body on all planning and development issues. Second, the commission assures that the general plan is implemented by reviewing development applications on a case-by-case basis. Just as you build a building one brick at a time, you implement a community vision one project at a time. Third, the commission functions as the decision-making body for many proposals. However, any planning commission action can be appealed to the governing body, which can uphold the commission's decision, overturn it, modify it, or send it back for further study.

Planning commission duties vary depending on the jurisdiction. You can learn about your commission's particular responsibilities by asking the planning department. Most commissions have the following responsibilities:<sup>3</sup>

- **General Plan.** Assist in writing the general plan and hold public hearings on its adoption. (The governing body retains authority to actually adopt the general plan.) Promote public interest in the general plan.

Consult with and advise public officials and agencies, utilities, organizations, and the public regarding implementation of the general plan. Also review, hold hearings on, and act upon proposed amendments to the plan.

- **Specific Plans.** Assist in writing any specific plans or community plans and hold public hearings on such plans. (The governing body retains authority to actually adopt specific plans.) Also review, hold hearings on, and act upon proposed amendments to such plans.
- **Zoning and Subdivision Maps.** Review, hold hearings on, and act upon zoning ordinances, maps, conditional use permits, and variances. Similarly consider subdivision applications.
- **Individual Project Approvals.** Review individual projects for consistency with the general plan, any applicable specific plans, the zoning ordinance, and other land use policies and regulations.
- **Report on Capital Improvements Plans.** Annually review the jurisdiction's capital improvements program and the public works projects of other local agencies for consistency with the general plan.
- **Coordinate Planning Efforts.** Coordinate local plans and programs with those of other public agencies.
- **Consider Land Acquisitions.** Report to the governing body on the consistency of proposed public land acquisition or disposal with the general plan.
- **Special Studies.** Undertake special planning studies as needed.

With so many responsibilities, it is important for every planning commission to think about how it will divide its time between day-by-day approvals and long-range planning efforts, both of which are important. It is easy to get caught up in the day-to-day efforts at the expense of long-range planning.

<sup>3</sup> See for example Cal. Gov't Code §§ 65103, 65353, 65400, 65401, 65402, 65854 and 66452.1.

## OTHER LOCAL PLANNING BODIES

Some local agencies divide land use decision-making by creating positions and commissions to focus on specific aspects of the land use planning process.

- **Board of Zoning Adjustment.** A local body, created by ordinance and appointed by the governing body, whose responsibility is to consider requests for variances.
- **Building Official.** The person responsible for the administration and enforcement of building, housing, plumbing, electrical, and related codes.
- **Historic Preservation Commission.** A commission appointed by the governing body charged with carrying out the historic preservation chapter of the zoning ordinance.
- **Zoning Administrator.** An appointed official who implements zoning ordinance and is also often empowered to make decisions concerning design permits, administrative use permits, and other permits as provided for in the zoning ordinance.
- **Zoning Board.** An appointed body that hears and decides matters relating to the application of the zoning ordinance and considers appeals of zoning administrator's decisions.

## PUBLIC SERVICE ETHICS

As a planning commissioner, you wield considerable power over how your community grows and develops. With this power comes the expectation that you will hold yourself to the highest ethical standards. Part of being ethical means exercising your power in the public's interests, as opposed to personal self-interest or other narrow, private interests. The chart on page 5 highlights some of the ethical values associated with public service and what they mean in terms of your duties as a planning commissioner.

There are a number of sources of guidance on your ethical obligations as a planning commissioner. One is the law. California has a complex array of laws relating to ethics that are summarized in this section. The law, however, merely sets a minimum standard for ethical conduct. Just because an action is *legal* doesn't mean that it is *ethical*. For example, it may be legal for you to vote on your best friend's project application, but if everyone in the community knows how close the two of you are, will the community truly feel that you were able to put the community's interests ahead of your personal loyalties? Another source of guidance may be your agency's own code of ethics, if it has one. Many cities



### For More Information

For more resources designed to assist local officials in working through ethical dilemmas, visit the website for the Institute for Local Self Government at [www.ilsg.org/trust](http://www.ilsg.org/trust).

and counties have adopted codes of ethics to serve as a guidepost in local decision-making.<sup>4</sup>

At some point in your service as a planning commissioner, you will likely face two common types of ethical dilemmas. The first involves situations in which doing the right thing will come at a significant personal cost to you or your public agency. In these situations, the answer is relatively simple. The bottom line is that being ethical means doing the right thing for the community regardless of personal costs.

The second type of ethical dilemma involves those situations in which there are two conflicting sets of "right" values. In these instances, drawing the ethical bottom line is more difficult. If you find yourself faced

<sup>4</sup> For more information about codes of ethics, see *Developing a Local Agency Ethics Code: A Process-Oriented Guide*, published by the Institute for Local Self Government and available at [www.ilsg.org](http://www.ilsg.org).

with a “right versus right” decision, the following questions may help you come to an answer:

- Which ethical values are in conflict (for example, trustworthiness, compassion, loyalty, responsibility, fairness, or respect)?
- What are the facts? What are the benefits to be achieved or the harm to be avoided by a particular decision? Is there a decision that does more good than harm?
- What are your options? Is there a course of action that would be consistent with both sets of values?
- Is one course of action more consistent with a value that is particularly important to you (for example, promise-keeping or trustworthiness)?
- What decision best reflects your responsibility as an officeholder to serve the interests of the community as a whole?
- What decision will best promote public confidence in the planning commission and your leadership?

For example, as a planning commissioner, you will frequently be asked to make exceptions to your jurisdiction's planning laws. A developer may, for instance, ask for a general plan amendment to enable a project to be approved. The developer is likely to point to numerous benefits that will flow to the community as the result of the amendment.

In coming to a decision in such a situation, the first step is to consider what ethical values are at stake. One might be fairness to those property owners who developed their properties in accordance with the policies expressed in the general plan. Another might be compassion for the developer seeking the amendment: if it is not economically feasible to develop the property as envisioned by the general plan, perhaps an amendment is in order.

The next step is to weigh the competing costs and benefits. Although the developer has identified the benefits to the community associated with approving the amendment, what are the benefits of adhering to the general plan? Will an amendment in this situation open the door for other amendment requests? How might the

planning commission fairly evaluate those requests while still maintaining the overall integrity of the general plan? Are there options that might enable the community to reap some of the benefits described by the developer while still being consistent with the general plan as written?

Finally, consider which approach will best promote the public's confidence in the planning process. Will the public's confidence be undermined if the commission doesn't enforce the plan? Or will denying the amendment look so rigid and unfair to the applicant that it will undermine the public's faith in the planning commission as a decision-making body? What decision will best support the commission's stewardship of the community's growth and development?

The answers to the questions listed above will vary with each situation and likely will not always be clear-cut or obvious. However, asking difficult questions and thoroughly evaluating the answers can go a long way in helping you make consistently ethical decisions that further the public's interests.

## ETHICS LAWS

California law promotes ethics in two ways: by requiring public disclosure and by prohibiting certain actions. The financial statements that you (and many public officials) must file with the Fair Political Practices Commission (FPPC) are an example of disclosure. In essence, the law allows the public to scrutinize the relationships between your personal finances and public decision-making. Disclosure laws allow the public (typically with the assistance of the media) to assess whether there may be too close of a relationship between your economic interests and the decisions you make as a public official.

In other instances, the law goes a step further and *prohibits* certain actions. For example, an official must disqualify him or herself from participating in a decision that will affect his or her financial interests. *This does not necessarily mean the disqualified official has done anything illegal or corrupt.* It simply means that the public's interests are better served by removing any question as to the official's decision-making motivations.

# Public Service Values for Commissioners

## ***Fairness***

- I review applications and make other decisions based on the merits of the issues.
- I honor the law's and the public's expectation that the general plan and other planning policies will govern development decisions in our jurisdiction.
- I support the public's right to know and promote meaningful public involvement.
- I am impartial and do not favor developers or others who are in a position to help me.
- I promote equality and treat all people, projects, and perspectives equitably.

## ***Compassion***

- I recognize government's responsibilities to society's less fortunate.
- I consider exceptions to planning policies when there are unintended consequences or undue burdens.
- I realize that some people are intimidated by the public process and try to make their interactions as stress-free as possible.
- I convey the agency's care for and commitment to its community members.
- I am attuned to and care about the needs of the public, officials, and staff.

## ***Respect for Others***

- I treat fellow officials, staff, and the public with courtesy, even when we disagree.
- I focus on the merits in discussions, not personalities, character, or motivations.
- I gain value from diverse opinions and build consensus.
- I follow through on commitments, keep others informed, and make timely responses.
- I am approachable and open-minded and I convey this to others.
- I listen carefully and ask questions that add value to discussions.
- I am engaged and responsive.
- I involve staff in all meetings that affect agency business.

## ***Responsibility***

- I come to meetings prepared.
- I do not disclose confidential information without proper legal authorization.
- I represent the official positions of the agency to the best of my ability when authorized to do so.
- I explicitly state that my personal opinions do not represent the agency's position and do not allow the inference that they do.
- I refrain from any action that might appear to compromise my independent judgment.
- I take responsibility for my own actions, even when it is uncomfortable to do so.
- I do not use information that I acquire in my public capacity for personal advantage.
- I do not represent third parties' interests before my agency or neighboring agencies.

## ***Integrity***

- I am truthful with my fellow commissioners, the public, and others.
- I do not promise that which I have reason to believe is unrealistic.
- I am prepared to make unpopular decisions to further the public's interest.
- I credit others' contributions in moving our community's interests forward.
- I do not knowingly use false or inaccurate information to support my position.
- I excuse myself from decisions when my or my family's financial interests may be affected by my agency's actions.
- I disclose suspected instances of corruption to the appropriate authorities.

## ***Public Trust***

- I remember that my obligation as a public official is to serve the whole community.
- I make sound planning decisions that implement the policies expressed in the general plan.
- I consider the interests of the entire community in reaching my decisions.
- I give full considerations to all aspects of a project, including protection of the environment and the need for affordable housing.
- I promote the efficient use of the agency's resources.
- I balance the fiscal impacts of a project with the agency's social and planning goals.

## ***Vision***

- I work to assure that the vision expressed in the general plan is one that works to improve the quality of life in my community.
- I am proactive and innovative when setting goals and considering proposals.
- I maintain consistent standards but am sensitive to the need for compromise, thinking outside the box, and improving existing paradigms.
- I promote intelligent innovation to forward the agency's policies and services.
- I consider the broader regional and statewide implications of the agency's decisions and issues.



California's ethics laws fall into three general categories: (1) those involving possible financial gain by you as an officeholder, (2) those involving the use of your office for personal advantages and perks, and (3) those involving situations in which your ability to conduct a fair and impartial process might be questioned. Each of these relates back to the overarching goal of assuring the public that governmental decisions are made based on what best serves the public's interests.

### Financial Gain

The notion behind financial gain laws is that the public has a right to know about a public official's financial situation and that officeholders should not even *appear* to be influenced by the effect of their decisions on their personal finances. Financial gain laws include:

- **Financial Interests—Disclosure and Disqualification Issues.** Public officials must periodically disclose their financial interests—such as interests in real property,

investments, business positions, and sources of income and gifts—to the public.<sup>5</sup> This disclosure is made on a form called “Statement of Economic Interests,” also known as “Form 700.” A public official cannot make or attempt to influence a governmental decision if it is reasonably foreseeable that the decision could have a “material financial effect” on his or her financial interests.<sup>6</sup> The FPPC has developed a series of questions (known as the “eight-step process”) to determine whether an official must be disqualified from participating in a decision. If you are worried that an upcoming decision will have an effect—positive or negative—on one or more of your financial interests, talk with your agency's attorney (not planning staff) as soon as possible.

- **Interests in Contracts Prohibited.** A public official may not have a financial interest in any contract made by the board or body of which the official is a member.<sup>7</sup> The law is very strict on this point. Such

## THE STATE POLITICAL REFORM ACT: KEY THINGS TO KNOW

- California's disclosure and disqualification requirements are administered by the Fair Political Practices Commission (FPPC), which gives both informal and formal advice on the application of these requirements. Check out the FPPC's website ([www.fppc.ca.gov](http://www.fppc.ca.gov)) for contact information, as well as for other useful information relating to the FPPC's administration of the Political Reform Act.
- For purposes of disqualification, key areas of financial interest of concern to the FPPC include business entities in which an official has an investment of \$2,000 or more; real property in which an official has an interest of \$2,000 or more; sources of income of \$500 or more within the preceding year; business entities in which the official is a director, officer, partner, trustee, employee, or manager; and anyone from whom the official has received gifts of \$340 or more in the preceding year.
- When in doubt, the FPPC will usually err on the side of disclosure and disqualification.
- The city attorney's or county counsel's advice will not immunize an official from prosecution for violating disclosure and disqualification requirements. However, it is nonetheless wise to consult agency counsel as soon as you suspect that you may have an issue under the Political Reform Act.
- Violations of the Political Reform Act are subject to civil and criminal penalties, depending on the severity of the offense. For example, knowing and willful violation of the act is a misdemeanor and subjects the violator to a fine of the greater of \$10,000 or three times the amount not reported.<sup>8</sup>
- For information on how to disqualify yourself, see Section 2, page 14.

<sup>5</sup> See Cal. Gov't Code §§ 87200 and following.

<sup>6</sup> See Cal. Gov't Code §§ 87100 and following.

<sup>7</sup> Cal. Gov't Code § 1090.

<sup>8</sup> Cal. Gov't Code § 91000(b).

contracts are void.<sup>9</sup> Under most circumstances, the prohibition cannot be avoided by disqualifying oneself from participating in the decision on the contract. Again, consult with your agency's attorney immediately if there is a contract before the commission in which you may have an interest.

- **Bribery.** Requesting, receiving, or agreeing to receive anything of value in exchange for an official action is a crime. In addition to criminal penalties, an individual convicted of bribery forfeits his or her office and is disqualified from holding public office in the future.<sup>10</sup>

## Personal Advantages and Perks

The law strictly limits the degree to which an officeholder can receive benefits relating (or appearing to relate) to his or her status as an officeholder:

- **Gifts.** With certain exceptions, a public official must disclose most gifts over \$50 on his or her Statement of Economic Interests and may not receive gifts from any one source that totals over \$340 in a single year.<sup>11</sup> Gifts include meals, certain kinds of travel payments, and rebates or discounts to public officials not offered to others in the usual course of business.<sup>12</sup> The law is particularly strict about free transportation passes (not including frequent flier awards offered to everyone); acceptance of such passes results in immediate loss of office.<sup>13</sup>
- **Speaking Fees or Honoraria.** Public officials may not receive payments for giving a speech, writing an article, or attending a conference or meeting. Limited exceptions apply. Free conference admission, lodging, and meals provided directly in connection with speeches within California, for example, are not considered prohibited honoraria and need not be reported.<sup>14</sup>
- **Use of Public Resources.** It is a felony to misuse public funds, which can include such things as submitting inaccurate or inflated expense reports from traveling on agency business. Public resources (including staff time and office supplies) may not be used for either personal or political purposes.<sup>15</sup>



### For More Information

Institute for Local Self Government, *A Local Official's Guide to Ethics Laws* (2002), available at [www.ilsg.org](http://www.ilsg.org).

California Attorney General's Office, *Conflicts of Interests* (1998), available at [www.caag.state.ca.us/publications/conflict/conflict.pdf](http://www.caag.state.ca.us/publications/conflict/conflict.pdf).

Fair Political Practices Commission booklets, available at [www.fppc.ca.gov](http://www.fppc.ca.gov) or through the toll-free advice line (866-ASK-FPPC).

- **Common Law Bias from Personal Interests.** A strong personal interest in a decision can be the basis for a finding of what is known as "common law bias." Common law bias is sufficient to disqualify a public official from participating in a decision, particularly if the official is sitting in a quasi-judicial capacity (see page 20). For example, one court found a council member biased on a proposed addition to a home in his neighborhood because the addition would block the council member's view of the ocean.<sup>16</sup>

## Fairness and Impartiality

Officeholders should make decisions in a fair and impartial manner. Key laws that planning commissioners need to be aware of include:

- **Campaign Contributions.** Commissioners who are running for office must disqualify themselves from entitlement proceedings—such as land use permits—if they received campaign contributions of more than \$250 during the previous twelve months from the applicant. Moreover, candidates may not receive or solicit contributions of more than \$250 from any applicant while the application is pending and for three months afterward.<sup>17</sup>

<sup>9</sup> Cal. Gov't Code § 1092.

<sup>10</sup> Cal. Penal Code §§ 68, 98.

<sup>11</sup> Cal. Gov't Code §§ 87200, 87207; 2 Cal. Code of Regs. § 18940.2 (\$340 amount valid through 2004).

<sup>12</sup> Cal. Gov't Code § 82028(a).

<sup>13</sup> Cal. Const. art. XII, § 7.

<sup>14</sup> Cal. Gov't Code §§ 89501, 89502; 2 Cal. Code of Regs. § 18950.3.

<sup>15</sup> Cal. Penal Code § 424. See, e.g., *People v. Battin*, 77 Cal. App. 3d 635 (1978).

<sup>16</sup> See *Clark v. City of Hermosa Beach*, 48 Cal. App. 4th 1152 (1996).

<sup>17</sup> Cal. Gov't Code § 84308.

## RECIPE FOR AN EFFECTIVE PLANNING COMMISSION<sup>21</sup>

- **Focus on the Big Picture.** Focus on the big picture before you; avoid being distracted by personalities, groups, or issues that do not have anything to do with the merits of the present agenda item.
- **Meeting Procedures.** Established rules and procedures keep meetings on track. The chairperson and staff should have defined responsibilities. In addition, rules for testimony should be clear and widely available at all meetings.
- **Follow the Law.** Keep legal requirements in mind. When in doubt, ask legal counsel for advice. Before approving an application, you should be able to answer the following questions in the affirmative: Is the proposal consistent with the general plan? Does it meet all applicable zoning and subdivision requirements? Are the environmental impacts reduced or eliminated by the conditions of approval, or are there overriding considerations? Is the commission's decision supported by findings of fact based on substantial evidence in the record?
- **Stay Informed.** Prior to the hearing, commissioners should have read the agenda packet and supplemental reports. It is also a good idea to review the portions of the general plan and the zoning ordinance that are relevant to each agenda item.
- **Open Communication.** Each commissioner shares responsibility for the free flow of ideas and discussion among everyone present at a meeting, including applicants, staff, members of the public, and the commissioners themselves. Be objective, listen, and ask questions.
- **An Efficient Pace.** The chair should recognize when testimony must be closed for deliberations. Commissioners should hold their motions until the discussion has concluded. Both the chair and the other commissioners should know whether to continue a hearing or to make a decision.
- **Effective Leadership.** An effective chairperson assists the flow of ideas and helps keep the proceedings on track.

- **Effect of Decisions on Family Members' Financial Interests.** A public official must disqualify him or herself from participating in a decision that would reasonably have a foreseeable material financial effect on a member of his or her immediate family (spouse and dependent children).<sup>18</sup>
- **Party or Factual Bias.** A strong personal animosity towards a project applicant or the receipt of information about a project may constitute a disqualifying source of bias when a planning commission is sitting in a quasi-judicial capacity.<sup>19</sup> This is a variation of the "*ex parte* communications" doctrine, which suggests that, in quasi-judicial matters, all communications to you about the merits (or demerits) of the proposed use should occur in the course of a public hearing (see page x).

- **Dual Officeholding.** State law prohibits public officials from holding multiple offices at the same time that subject them to conflicting loyalties.<sup>20</sup> Check with your agency counsel if you are worried that this prohibition may apply to an office you are seeking.

In addition to these state ethics requirements, cities and counties may have local restrictions and requirements.

## WORKING WITH FELLOW COMMISSIONERS

Good working relationships within the planning commission, as well as with planning and other staff, the city council or board of supervisors, other boards and commissions, applicants, consultants, and the public, are critical in order for planning functions to be effective and efficient. Positive working relationships are based on

<sup>18</sup> Cal. Gov't Code §§ 82029, 87103.

<sup>19</sup> See *Breakzone Billiards v. City of Torrance*, 81 Cal. App. 4th 1205, 1234 n.23 (2000).

<sup>20</sup> See Cal. Gov't Code § 1126.

<sup>21</sup> Adapted from Governor's Office of Planning and Research, *The Planning Commissioner's Book*, (revised May 1998); [http://ceres.ca.gov/plan\\_comm/](http://ceres.ca.gov/plan_comm/).



mutual understanding of the role of each group, including:

- Clear expectations about how each group will relate to the other, as defined by adopted procedures
- A common set of goals, as reflected in the general plan and other adopted planning documents
- A willingness to solve problems by listening to others, considering alternatives, and arriving at a consensus
- An ability to communicate directly and clearly with others

## WORKING WITH STAFF

A good working relationship with staff will significantly improve your effectiveness as a planning commissioner. A planning department staff member will always be present at commission meetings. Other attendees may include representatives from your jurisdiction's attorney's office and public works department.

Planning staff advises the commission on local agency plans, ordinances, and policies. In addition, they provide background information and research, prepare plans and reports, make recommendations, and answer technical questions on development proposals under the

commission's consideration. Other staff responsibilities include:

- Orienting new commissioners
- Noticing meetings
- Responding to requests for information in a timely and professional manner
- Delivering agenda packets in time for adequate review
- Highlighting key issues, data, and criteria in staff reports and presentations
- Anticipating the type of information that will be needed for a decision
- Being accessible and keeping all commissioners equally informed
- Reviewing applications for completeness
- Acting in a fair, ethical, and consistent manner

Members of the planning staff can be a tremendous resource for you. Most will have received at least some training in geography, landscape design, urban and rural planning, economics, law, and statistics. In addition to their other duties, staff are responsible for staying current on new trends, technologies, and regulations in the planning and development field. They can use this

## TIPS FOR DEVELOPING AND MAINTAINING GOOD STAFF RELATIONS

A good staff-commission relationship is built on mutual trust and respect. Here are some ways to achieve that:

- Come to meetings having reviewed the materials prepared by staff.
- Ask questions of staff in advance and alert them to concerns you intend to raise during the meeting.
- If you disagree with a staff recommendation, state specific reasons for your decision. This will help staff to draft findings in support of your decision. Simply stating "I do not like the project" is not enough.
- Clearly communicate to staff what the commission needs in order to make well-informed decisions. If material is not being presented in an understandable way, work with staff to make changes.
- Treat staff with respect.
- Do not assume that staff is wrong and a critic is right.
- Compliment staff when and where appropriate.

information to assist the planning commission in developing creative solutions to local problems.

### Consultants

Local agencies face serious restrictions on staff expansion, while the demand for public planning continues to increase. Consultants are often used to address temporary staffing needs, such as:

- Complete studies requiring special skills
- Provide additional support on an as-needed basis
- Prepare studies and analyses required by environmental laws
- Assist on large projects, such as a general plan update

The commission should consider consultants as extensions of regular staff.

### WORKING WITH THE GOVERNING BODY

One not so obvious ongoing relationship to take into account is the relationship between the planning commission and the governing body (city council or board of supervisors). In most cases, individual commissioners serve at the pleasure of one or more members of the governing body and therefore should consider the views of the governing body in making their decisions.

The planning commission-governing body relationship can become strained (at least from the commission's perspective) if the governing body repeatedly overturns planning commission decisions. In such cases, you may feel that the governing body did not look at the land use issues as closely as the commission. One thing to keep in mind, however, is that the governing body must also contend with political pressures that are not always felt by the appointed commission.

Here are some ideas on how to promote a good ongoing relationship between the planning commission and the governing body:



### *Who Does What in the Project Review Process?*

#### PLANNING STAFF

- Identifies relevant local regulations for project applications
- Works with applicants to make a project work
- Works with other departments and agencies, such as the engineering department or the regional air board, to incorporate comments and technical recommendations into a project
- Ensures that procedures are being followed
- Prepares a professional analysis and recommendation
- Monitors project implementation
- Holds consensus-building meetings on controversial projects

#### AGENCY COUNSEL

- Answers legal questions
- Does not give policy direction or advice
- Advises on relevant legal considerations, both in terms of process (for example, notice requirements) and substance

#### PLANNING COMMISSION

- Balances staff analysis, including agency goals and policies, with community input
- Renders a decision based on findings of fact when acting in a quasi-judicial capacity
- Makes recommendations to the governing body on policy matters when acting in a legislative capacity
- Evaluates land use aspects of projects and leaves more technical issues for staff review and implementation (commissioners should trust staff to implement their general directions)

#### GOVERNING BODY

- Balances staff analysis, planning commission decisions, and agency goals

- Make adequate findings to insure that the reasons for your actions are clear
- Ask for clarification of the governing body's policies or actions if they are unclear
- Include in planning commission minutes any questions or points of view that are not obvious in your decisions and findings
- Send a planning commission representative to meetings of the governing body to discuss difficult decisions
- Request an annual joint work session to discuss priorities, communication and other pressing issues
- Do not rely solely on staff to convey your message, either to the public or to the appropriate elected officials
- Do an annual self-evaluation and follow through with any needed changes in how the commission does business

Keep in mind that elected officials must answer to the voters. You may find it helpful to be familiar with the policy perspectives of the members of the governing body, particularly as they relate to land use policies and programs. (For example, are they “slow growth” or “pro-growth”?) Casting individual commission decisions in ways that address issues of concern to individual members of the governing body (if not conforming to them) reduces the likelihood that a commission decision will be overturned on appeal.

## WORKING WITH THE MEDIA

The media can be a commissioner's best friend—or worst enemy. Developing a good relationship with the local media is an important—and often underrated—element of working in local government. Most members of the public will learn about local land use decisions through local newspapers, radio, and television. Because of this, it is important to engage reporters to make sure that the local agency's side of the story gets told.

One of the keys in working with the media is to retain your credibility. Here are some tips for retaining your credibility:

- Share information when you can and be as transparent as possible.
- Return phone calls promptly (respect reporter deadlines). Leaving questions unanswered invites errors and unintentional bias.
- Never say “no comment;” this always sounds evasive.
- One of the most respected comments is “I don't know. I'll get back to you.” Be sure to get back with the information.
- Remember that there is no such thing as “off the record.” If you don't want a comment to end up in the press, don't make it.

It can be beneficial to establish ongoing relationships or an open-door policy with media representatives, but always be careful to keep your comments concise and on point. Often the media is just looking for a quote from the commission, not necessarily all the relevant facts. Staff may be able to provide reporters with more specific facts or details.

## Getting Your Message Out

Another good tip for dealing with the media is to identify and repeat a single message. If you think about it, most people are only quoted once or twice in an article. What is it that you want that quote to be? (See *Media Messages for Local Government* on the next page) If you stick to your message and keep repeating



### For More Information

*Delivering the Message* (2000). California Association of Public Information Officials. Available at [www.capio.org](http://www.capio.org)

it, it is more likely that the reporter will use that quote. The more you ramble, the greater the risk is that you will get off message and that the reporter might pull something out of context that you might not like to see in print.

In addition, focus on substance, not procedures. Most people find procedural and legal details boring. Jargon should be avoided at all costs. Instead, use everyday language. Why say “we gave it a negative declaration”

when you can say “we’ve decided it won’t significantly affect the environment”?

An excellent resource in working with the media is your jurisdiction’s public information officer. This person can alert the media to favorable stories. If you never call reporters in advance, then all they will cover are meetings, not all of which go smoothly. Contrary to popular perception, good news goes in the paper too. It is more likely that your message will stick when the story matches the message.

## MEDIA MESSAGES FOR LOCAL GOVERNMENT

Journalists often build stories around people to explain an issue in human terms. Often, land use stories are about an agency’s action in response to public concerns. Emphasizing the benefits of this responsiveness as it impacts individuals puts the story into a framework with which readers can relate. Here are some talking points that address common land use decisions from the local agency perspective:

- **Good Planning Maximizes Property Values.** Planning maximizes property values by insuring that development occurs in a way that is compatible with the surrounding community and the environment. Often, when property owners complain that a particular action devalues their property, they are forgetting that the underlying value of their property is already higher due to nearby public investments in roads, sewers, infrastructure, and good planning in general.
- **What Is the Impact to the Average Person?** Describe the positive or negative implications of decisions in terms of what they mean for the general public. How does planning promote a better community?
- **Balancing Act.** Local officials must strike a fair balance between individual preferences and the interest of the whole community. What is at stake in most planning decisions is the ability of public agencies to solve problems and respond to the public’s concerns.
- **Quality of Life.** Effective planning promotes important quality of life issues, including a sense of place and connectedness. Developing a sense of community helps draw people together and makes communities better places to live and raise families.
- **Economic Prosperity.** Quality of life and adequate infrastructure issues are often key factors when a business is deciding where to locate.
- **Fairness.** Public agencies seek solutions that achieve fairness and justice, not only for individual landowners but also for the community as a whole.