



Handbook for New Planning Commissioners

The Utah League of Cities and Towns

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The Utah League of Cities and Towns is a nonpartisan, inter-local, government cooperative, working to strengthen the quality of municipal government and administration.

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Introduction

If you are reading this material, we can assume that you have accepted the position, or are seriously considering accepting the position, of a Planning Commissioner. So just what have you gotten yourself into?

The purpose of this pamphlet is to answer that question and at least some of the other questions you might have about your duties, responsibilities, liabilities, and limitations as a Planning Commissioner.

One piece of advice, given to me by an older, wiser cousin, was to never accept a position that came with a box. I have spent some time considering the implications of her advice - just what a "box" implies - and have decided that it suggests that you are not only responsible for what you do in the future, but that you are expected to know what has happened in this position in the past. I know of no Planning Commission that presents a new member with a box at their first meeting, but hopefully we can provide you with some of the material that would be in that box if there were one. In other words, this job comes with a "box", but please don't let that stop you from having a great experience.

Being a "good" Planning Commissioner takes time and effort but it can also be very rewarding. The decisions you will help make will determine your community's future. You, your family, and neighbors, will live with the results of your efforts, good or bad, for a very long time to come. In addition to the impact that you will have on land use, development, and growth, you will also help to determine the credibility of your municipal government. It is important that you act in a legal and ethical manner because you will be acting as a city official and, in your capacity, you are a spokesperson for the government that appointed you.

In addition to the rules, laws, and tips that you will find here, we will also include resources that are available to you if, and when, you need additional information.

Good luck in your new position. We hope that this material assists you in becoming an effective member of your Planning Commission.

Sydney Fannesbeck
Utah League of Cities and Towns

I - The Legal Justification of the Planning Commission

Cities and towns are not individual legal entities recognized in the Constitution of the United States. States are. As a result, cities and towns are "creatures" of the state and derive their powers and authority from the state. In addition to powers and limitations given by the state, legal authority for municipalities also comes as a result of action taken by the courts. Although case law is the result of specific cases brought before the courts, resulting decisions can have broad impacts on municipal powers and limitations.

The third set of laws that you need to be concerned with is, of course, the laws of the municipality that you represent. The General Plan, the Zoning Ordinance, and the Subdivision Ordinance, are the documents that are the basis of the decisions that you are called to make.

It is essential that Planning Commissioners know, and keep updated on, all three areas of the law. Your planning staff, city attorney, conference sessions, and training, are all available to assist you with the changes in any part of the law.

Utah Code

Establishment

Sections 10-9-201- 205, of the Utah Code Annotated (U.C.A.), deal with the establishment and the powers and duties of the Planning Commission. Section (1), parts (a) and (b), gives each town and city the authority to establish a Planning Commission and make certain decisions regarding the make-up and procedure of the Commission.

Duties as an Advisory Board

The state law requires that every city and town in Utah have a General Plan. Section 10-9-301, U.C.A., describes the necessary elements of the plan as well as material that may be made part of the plan. By law, the Planning Commission is responsible for the creation of, and any amendments to, the General Plan, as well as the Zoning Ordinance (10-9- 402, U.C.A.) and the Subdivision Ordinance (10-9-802, U.C.A.). Although the Planning Commission is responsible for the plan, it does not become the city's or town's General Plan until it is passed by the legislative body (the Council or Board). If one reads the section on "powers and duties" of the Planning Commission (10-9-204, U.C.A.), it will be noted that almost every sentence begins with words such as "prepare and recommend", or "recommend, and advise". This is because the power of the Commission is as an advisory body. There are few occasions when the Commission makes final decisions. Its decisions must automatically go to the Council for final approval or denial or can be appealed to the City Council and Mayor for a final decision. In addition to the General Plan, the same can be said of the Zoning Ordinance, the Subdivision Ordinance, and amendments to any of the three.

The Planning Commission may also be responsible for administering the ordinances if given the power to do so. (10-9-204 (3), U.C.A.). The law also allows for the legislative body and Mayor to grant other responsibilities to the Commission. (10-9-204(8), U.C.A.). (There is no assumption, however, that the Commission can be granted the powers expressly reserved for either the legislative body or for the Board of Adjustment).

Procedures

The state law also gives the Commission the power to elect its chairperson and to establish its own rules of procedure. (10-9-202, U.C.A.)

Ethics

All municipal officials (that's you) are subject to the Municipal Officers' and Employees' Ethics Act (10-3-1301, U.C.A.). Conflict of interest should be disclosed in two ways: 1 -In written form (10-3-1306-07, U.C.A.), to be kept on file and available to the public, and 2- Verbally in a public meeting at the time it is applicable (10-3-1308, U.C.A.). In the opinion of David Church, legal counsel for the Utah League of Cities and Towns, once the conflict is made known, a person may participate in the discussion and vote on the issue. The party may, however, request to be excused from the discussion and the vote if there is an evident conflict of interest. (Resource: There is a good summation of the Ethics Act in the League's Powers and Duties Handbook. Every city has at least one copy.)

Meetings

It is assumed that all Planning Commission meetings will adhere to the Open and Public Meetings Act (52-4-1, U.C.A.). This means that every meeting will have an agenda that is posted before a meeting, that all issues and items voted on during the meeting will be on the agenda and that meetings will be held before the public. Any time that the majority of the Commissioners are meeting and/or talking about Commission business, they are in violation of the law unless the meeting has an agenda and is being held in public. It is possible to have a "closed" meeting (52-4-5, U.C.A.) but the Commission should not do so except on the advice of an attorney and in strict adherence to the exceptions.

City/Town Ordinance

State law gives a municipality the flexibility to make a number of decisions regarding the Planning Commission. The following decisions should be made by the legislative body and the Mayor and be reflected in city ordinance:

- the number of members of the Commission;
- the term of office;
- duties in addition to those enumerated by state law (see other duties);
- authority to decide questions concerning nonconforming uses;
- authority to deal with conditional uses;
- the mode of appointment and how vacancies are to be filled (see 10-9-201 or 10-3-809 (h) U.C.A.);
- procedure for application to meet with the Commission;

The Commission may also make decisions on its own, such as:

- meeting procedures (as long as the Open Meetings Law is not violated);
- date, time and place that meetings are to be held.

In addition to guidance as to the workings of the Planning Commission, the municipality should have a General Plan, a Zoning Ordinance, and a Subdivision Ordinance. A Commissioner needs to have access to, and a working knowledge of, each of these. When decisions are made, quoting from one or more of these documents will help to provide a legal justification for the decision. Further discussion of these documents will follow.

Case Law

It is almost impossible to quote all of the case law that has had an impact on the duties of the Planning Commission. Much of old case law has now become part of the state code and municipal ordinance. New law is created by the courts on an ongoing basis. To be well informed, a Planning Commission needs regular updates not only on new state and federal legislation but on case law that may impact how the Commission works and makes its decisions. Occasionally, a very important case comes along that sets new precedent or reverses old law. Most city attorneys, especially those who deal with municipal or land use

law, will be familiar with such cases and their ramifications. Such material is also the subject of news and journal articles and workshop sessions. With some effort and assistance, a Planning Commission can be kept current with the law, especially as it affects the power, responsibility, and liability of the Commission.

II- The Responsibilities of the Planning Commission

Legal Responsibilities

Section 10-9-204, U.C.A., defines the powers and duties of the Planning Commission. They are:

- Prepare and recommend a General Plan, or amendments to the General Plan, to the legislative body;
- Recommend zoning ordinances, or amendments to a zoning ordinance, to the legislative body;
- Administer the zoning ordinance once it has become law;
- Recommend subdivision ordinances, and amendments, to the legislative body;
- Recommend approval or denial of subdivision applications;
- Write and recommend an annexation policy plan if requested to do so by the legislative body;
- Give advice on other planning and land use matters to the legislative body when asked;
- Publicly hear and decide any other matters designated by the legislative body, such as conditional uses, status or expansion of nonconforming uses, building permits, historical designation, long-term planning, open-space designation, etc.

"Political" Responsibilities

The "softer" responsibilities of the Planning Commission, assumed but not quoted in the state code, require that the Commission:

- Represent the "public good";
- Strike a balance between private property rights and the good of the community;
- Allow citizens to have an active role in the planning processes of their community;
- Ensure that planning is done in a reasonable, legal fashion;
- Protect Constitutional rights, such as "due process", property rights, and fair and equal treatment.

The Creation and Maintenance of Documents

The General Plan (10-9-301, U.C.A.).

Every city and town, regardless of size, is required to have an updated General Plan. The state requirements for the plan are fairly simple. They are:

- present and future needs of the community;
- a plan for the development of the territory covered;
- the results of an affordable housing assessment; and
- a map of the community as currently used or zoned.

The law then goes on to suggest a long list of other elements that "may" be included. Most communities add some or all of the elements suggested because doing so will assist them with future budget and land use decisions. The plan should be a "working plan", developed to not only meet the required essentials but to be of use to the community for at least the next five years.

The process requires the writing of the plan to be under the supervision of the Planning Commission. The Commission is required to have at least one public hearing (with 14 days notice) before recommending it to the legislative body (10-9-303, U.C.A.). Once it is recommended by the Planning Commission, the plan may be adopted, amended, or rejected by the City Council. The Council may adopt the Plan as either an advisory tool or as an ordinance with the force of law (10-9-303 (6) (a) and (b), U.C.A.).

Zoning Ordinances

It is not required that a municipality have zoning, but keep in mind that, without zoning, you have no authority to regulate or determine land use in your community. A zoning ordinance can be very simple. There is at least one community in Utah whose original ordinance consisted of one zone with one permitted use; all other uses were conditional. It was two pages long and included the necessary legal jargon and a definition of terms.

In case you have heard otherwise, a zoning ordinance, legally adopted, has the force of law. Zoning has been part of the law in this country since the 1920's and has been through, literally, hundreds of challenges, here in Utah and nation-wide.

The Zoning Ordinance, like the General Plan, is initially the responsibility of the Planning Commission. Once it is written, and agreed to, the Commission recommends it to the legislative body. While the Commission is not required to have a public hearing, it is highly recommended that you do so. The Council is required to have a public hearing with 14 days notice (10-9-402 (2) (a) and (b), U.C.A.). Once the ordinance is passed, it is the responsibility of the Planning Commission to administer it. (It is important that the Commissioners know the difference as to when they are acting as administrators, interpreting the law, and when they are acting as a legislative body, making new law).

The procedure to amend the ordinance is basically the same. Sometimes the Council, the Commission, or a petition from a citizen, will request an amendment in order to clarify, or make additions to, or deletions from, the ordinance. More often, the Commission will hear a petition from a citizen to change the zoning on his or her land. Either change requires the full-fledged amendment procedure, including final action of the Council, after a public hearing with 14 days notice. In making changes, the Commission needs to consult and be influenced by the General Plan. If the change is supported by the General Plan, then reference to the Plan should be used to give support to the decision. If it is in opposition to the General Plan, the Commission should acknowledge the Plan and give reasons or "findings" for the lack of concurrence.

The Subdivision Ordinance

As the third part of the municipality's development plan, the Planning Commission is responsible for the creation and maintenance of the Subdivision Ordinance. Good subdivision development is important to almost every community in Utah. One or two houses are probably not going to have a city-wide influence no matter how large or out-of-character they may be. A large subdivision can and will have a major impact on the community's character, population, and the need for services. Therefore, the creation of a subdivision ordinance must be carefully, clearly, and precisely done. If your municipality is using the same ordinance that it has used for more than five years, it is probably out of date. There have been a lot of new ideas and innovations in what cities can do with subdivisions. Here are just a few general rules that need to be considered:

- The primary objective of the ordinance should be to put the Planning Commission in a proactive rather than a reactive situation. In other words, you should be telling the developer how you want development to occur rather than merely reacting to his plans. Both fiscal and aesthetic issues should be considered;
- The ordinance needs to clearly state that all development costs, including those incurred by the city for review, must be borne by the developer;
- It must require the developer to procure a cash bond, a portion of which will be

- held for one year after the project is completed;
- The Commission cannot make demands of a developer if those demands are not in the ordinance, unless the ordinance specifically allows for negotiations;
- The developer should be responsible for all development fees. If the city charges impact fees, it must have completed a professional study that justifies the fees. (If you do not know the difference between impact fees and development fees, see the section on definitions);
- The ordinance should include the numbers of plans to be submitted for sketch plan approval and preliminary approval as well as the manner in which the final plan should be submitted;
- The ordinance should, and in some cases, must, consider natural hazards and resources that need to be addressed by the Commission and the developer;
- Subdivision Ordinances should consider landscaping requirements, especially in commercial areas, and can require design elements in all zones;
- Both the physical elements of road construction, such as width, depth, and materials, and the impact and flow of the traffic roads will produce, should be addressed in the ordinance;
- The plan should also plan for infrastructure and utility needs with a view to long-term demands that apply to future needs rather than just the short-term needs of a single development.

You may have decided by now that the writing of a subdivision ordinance is a very complicated endeavor. No one will disagree with you. A poorly written ordinance will come back to haunt you and the municipality for a very long time. A Commission should take its time, look at a lot of ordinances, and even get good assistance. While ordinances from other cities and towns can be helpful, you will need to make changes that will suit your own community. Be aware, too, that by hiring a professional, you may still get a copy of someone else's plan, unless you are careful to make sure that you are getting a custom-made product.

There are a lot of resources available to assist you in writing a Subdivision Ordinance. A partial list is in the section entitled "Resources".

Other Duties

The elected officials of a municipality are allowed to decide which land use board (the Planning Commission or the Board of Adjustment) will deal with nonconforming uses and with conditional uses; A new board member should inquire if the Planning Commission deals with either and be prepared to discuss either or both as needed. Both are fairly complicated but here is some general information that may help:

Nonconforming uses are uses that existed prior to a change of zoning. For example: A small business is established in an area that is zoned for light commercial. Ten years later, it is obvious that few businesses are interested in the area and most of it is being used for residential. The city rezones the property for residential use only, therefore, no new businesses will be allowed. As a result, our existing business becomes nonconforming. When a petitioner comes before the Planning Commission on a nonconforming matter, he or she is usually asking one of two questions:

1. Is my businesses legally nonconforming? The legal standing is important so that it can be fully insured or because the owner wishes to sell it as a business, or,
2. Can expand my nonconforming use?

If the Commission is answering question #1: The petitioner must be able to prove that the

business was legally established in the first place. In other words, did he or she go through the required process to establish the business? Did the zoning at the time allow for the business? Has the business been maintained legally in the meantime? The answer to each question must be "yes". If not, the business is not a legal, nonconforming use. Time does not buy legality. Just because the business has been in existence for a long time does not make it a legal business.

Question #2: Assuming the business is legal and wants to expand: The state code (10-9-408, U.C.A.) assumes that nonconforming uses will generally not be expanded unless the municipality has a policy that allows for expansion. If, as a matter of policy, the municipality wants to allow for expansion, the Zoning Ordinance should "spell out" the circumstances and conditions under which it will be allowed. A new Commissioner needs to read and refer to what the Ordinance says about nonconforming uses. Ordinances will vary depending on choices made by policy makers.

Conditional Uses are tools that are meant to give flexibility to a Zoning Ordinance. Reference to them should appear in two different sections of your ordinance. There should be a section entitled "Conditional Uses" that explains how your city/town deals with them, and the criteria that should be used to establish conditions. Conditional uses must also appear under each zone where they are allowed. (Specific zones usually have lists of permitted uses and conditional uses. It is possible to have zones that have no conditional uses. In fact, it is possible that your community does not have conditional uses at all. They must be listed in order for the Planning Commission to issue such a permit. It is also possible that you have too many Conditional Uses and that the Planning Commission should look at limiting the number). Let's assume that a specific use is listed as conditional in a given zone. The petitioner will apply by filing a form with the clerk. Once it comes to the Planning Commission, you will apply the criteria from the ordinance to the request and place specific conditions that the applicant must agree to before the permit can be issued. Such conditions can be tailored to the specific location and use. Conditions may differ from previous or future petitions. The standard that must be met is: You should be able to show that each condition being imposed safeguards the health, safety, and welfare of those who live or own property as a permitted use. As long as you can show findings that support your conclusions, you are on safe ground.

As mentioned, both issues are fairly complicated and deserve a lot more explanation. You will understand them much better after you have dealt with them a few times. They are also a good topic for training sessions.

Other Duties as Assigned

In addition to the duties spelled out in the state code, the legislative body of the municipality can ask that the Planning Commission take on additional responsibilities. Many cities and towns ask that the Planning Commission do such things as: approve building permits to make sure zoning standards are being met; do a historical survey of the community; plan for future parks and open space; make recommendations for the development of affordable housing; or do a five year capital improvement plan. As long as it is planning-related and does not require the Planning Commission to be other than an advisory board, the legislative body can assign the Commission additional duties. (Note that the request should come from the legislative body, not from an individual member of that body, and it should come to the Commission in writing). In addition, the Planning Commission can suggest to the city council, activities or projects that it feels need attention. Commissioners may base such a need on the General Plan or on their own

observations and experiences.

III- The Role of the Individual Commissioner

There are no absolute rules that are written any place about how you should act as a Commissioner. There are, however, a lot of suggestions from many different sources.

Here are some very basic rules that apply:

- Remember that you are a member of a Commission that has power, but the power lies in the majority vote- not with the individual.
- Remember that you are not there representing a specific neighborhood, business, or interest. Your responsibility is to protect "the public good" which has hopefully been defined by the General Plan and the development ordinances.
- You are subject to the same rules of ethics and procedures as elected officials.

Perhaps the easiest way of defining the role of a Planning Commissioner is to look at a list of "shalts" and "shalt nots".

The Shalts:

- attend meetings and vote;
- preview materials for cases and take field trips when appropriate;
- pay attention to the information that is presented by all parties in the meetings of the Commission;
- ask questions if you need to;
- represent the good of the community rather than the good of the few;
- be knowledgeable and respectful of Constitutional Rights;
- become an advocate of the city, its General Plan, and its development ordinances;
- become familiar with and respect the laws of the Country, the State, and the City or Town in which you live;
- treat others with dignity, regardless of how you may view their issue or point of view;
- be able to say "no" when it is appropriate;
- make decisions based on the law, and good planning, rather than on public sentiment or pressure;
- become knowledgeable about planning, both in theory and practice;

The Shalt Nots:

- be afraid to make difficult decisions even though they may be unpopular;
- have meetings one-on-one with petitioners;
- have a closed mind to arguments or new ideas;
- make up your mind before hearing all the available information;
- represent a single point of view or base your vote on a single personal experience;
- violate the open meetings law or the ethics act of the State of Utah or of the municipality in which you live;
- use your position, or information given to you as a result of your position, to benefit yourself, friends, or family.

IV - Questions on the Ethical Conduct of a Planning Commissioner

The Legal Ethics

All municipal employees and officers (that's you) are responsible to the "Municipal Officers' and Employees' Ethics Act". That Act can be found in the State Code, 10-3-1301, (U.C.A.). Basically, it has two requirements:

1. You must make a public disclosure, at the time of appointment, of any business interest which is subject to regulation by the municipality. It must be in the form of a sworn statement before the mayor and then kept on file. The statement must be made available to the public on request. (A sample form can be found in the appendix of the League's Powers and Duties Manual).
2. At the time a petition is called for consideration, before discussion starts, you must verbally and publicly declare your conflict of interest.

Once both of these requirements are met, you have fulfilled the ethics requirements that are established by the state code. The state law does not require you to excuse yourself from voting. In fact, the chair may require you to vote even when you would prefer not to do so. Likewise, neither the chair, nor any member of the council, can request that you not vote. If you feel unable to make an unbiased decision, you may request to be excused from both the discussion and the vote.

Some municipalities have adopted more stringent ethical requirements. If your community is one of them, you should become familiar with those requirements and act accordingly. Such rules must be written, part of the municipal code, and should be made available to you prior to your first meeting.

Political Ethics

There may be times when you fulfill the legal requirements for conflict-of-interest but there is a perception that you are too involved or connected with an issue to cast an unbiased vote. The state law does not require you to abstain from the vote. You may, however, ask the chair to be excused from the discussion and the vote on the issue. Unless your abstention would deny the presence of a quorum, the chair will usually agree and excuse you.

Word of Caution

You have been asked to serve in order to vote. You should not abstain unless the conflict is real and the chair agrees. A difficult or unpopular vote is no reason to abstain. Also, keep in mind that there will be some issues, such as zoning of land, where everyone on the Commission will have a conflict. That does not mean that no action can be taken.

General Ethics

Aside from the occasional conflict of interest, there are other ethical issues that you should keep in mind. For the sake of brevity, a list follows. You may want to discuss these further with your fellow Commission members. It is not an all-inclusive list but it should give you a good start.

1. You should not personally benefit from information you get as a result of being on the Planning Commission;
2. You are there to represent the interests of the general public, not those of a specific profession or group;
3. You are expected to support the Constitution of the United States, state law, and municipal ordinances;

4. You should not show bias, positively or negatively, towards the people who appear before you;
5. There should never be favoritism based on race, religion, gender, ethnicity, social standing, or length of residency.
6. Approach problems with an open mind rather than with preset assumptions about the issue or a petitioner;
7. Understand that while making administrative decisions (those where you are enforcing the law rather than making new law), you are as bound by the law as anyone in the community;
8. Treat your fellow-Commissioners with respect and courtesy, even when you are in disagreement;
9. Acknowledge the work done by your staff, listen to their advice, and do not criticize them publicly;
10. Be aware that, as a representative of the municipality, you are establishing the credibility of your municipal government and should, therefore, act accordingly.

V- Stuff You Should Be Given As You Begin

Listed below are materials that every municipal Planning Commissioner should have. If you are given a blank look when you ask for any of these items, you can encourage your Commission to develop whatever is missing.

1. A copy of your General Plan. (Every city and town is required by State law to have an updated General Plan).
2. A copy of the Zoning Ordinance, and Subdivision Ordinance, including maps.
3. Access to a copy of the municipal ordinances.
4. A copy of the Commission's by-laws and procedures.
5. A copy of the meeting schedule for the remainder of the current year.
6. The Commission's work plan - things the Commission intends to deal with, other than responses to petitioners.
7. A copy of the conflict of interest statement that you should complete and return to the city recorder, clerk, or Commission staff-person.

VI- Questions Often Asked and Answers Often Given about The Planning Commission

How much time will need to spend doing Planning Commission business?

It really depends on the municipality in which you live. Most Commissions meet once a month. When there are major projects underway, such as the writing of a General Plan or Zoning Ordinance, you may be asked to meet more often in work sessions. The length of the meetings in which you respond to petitions will vary, depending on the number of issues before the Commission. In addition to meetings, it is generally assumed that you will spend time reading up on city documents in preparation for meetings. You may also be expected to attend some council meetings and an occasional retreat.

Can be personally sued for vote s make as a PlanningCommissioner?

It is very unlikely that you will be personally sued. Your name may be included in a filing, but, as an official of the city, the city's attorney and insurance will protect you. The only time you may not be covered is if you act illegally. That usually means that you are using your position for personal gain; to do so can and will get you into trouble. In your normal activities as a Commissioner you will be protected.

As a Planning Commissioner to whom a m "answerable"?

You are appointed by the Mayor with the advice and consent of the Council. The Planning and Zoning Commission is advisory to the Mayor and the Council. Serving as a citizen planner your responsibility is to the "public good". Your planning "bibles" are your General Plan, and your development ordinances. If it sounds as if you have many "masters", you should know that all of them should have the same goals and intentions. That should make things easier for you and your fellow board members.

How do the Planning Commission and the Board of Adjustment Interface?

Each has its own responsibility as defined by state code. The Commission, for example, will never decide variances. There are times when the Commission will table a request or a permit, send it to the Board, and then complete the application only when a variance has been granted by the Board. There may be one Planning Commissioner who is assigned to sit on the Board of Adjustment as a way to keep communication open between the two. You should know that, while the Commission is primarily an advisory board, the Board of Adjustment acts as a quasi-judicial body. It has a very different set of rules to follow and standards that must be met.

How much interference should we expect from members of the City Council?

The Council, as a body, advises the Mayor on your appointment. It may also, as a body, request that the Commission work on projects that represent policies expressed in the General Plan. No single member of the legislative body should interfere in the decision-making of the Commission. Since everything the Commission does is appealable to the City Council, every Councilmember will have the opportunity to deal with the issue in that capacity. Certainly, Councilmembers have the right to attend Planning Commission meetings but they should do so as citizens rather than as members of the City Council. The same applies to the Mayor.

Who "Runs" Planning Commission Meetings?

The Chair is in charge of managing Commission meetings. The Commission should have written procedures and should elect a Chair once a year. It is the Chair's responsibility to see that the meeting is run in a fair, legal, and efficient manner. It is also the Chair's responsibility to ensure that the public is dealt with fairly but not allowed to disrupt or

interfere with the Commission's business.

Who Establishes the Commission's Agenda?

The city/town must have a policy for handling petitions from the public. The accepting of petitions is usually dealt with initially by the clerk or recorder's office. There should also be rules for how elected officials or Commission members request consideration of the Commission. Your staff should supply you with a copy of these procedures. The Commission should review their procedures and policies once a year and make improvements as needed.

If you have other questions, please feel free to call our office or David Church. We will do our best to answer your questions.

VII- Additional Resources Available to You and Your Planning Commission

Written Materials

- The Center for Public Policy and Administration at the University of Utah has created a series of manuals on almost every aspect of planning, zoning, and special activities of the Planning Commission. They are available on request, free of charge. Contact Gene Carr.
- The Utah League of Cities and Towns has a library of materials that you can check out. Call our office for more information.
- The League also has provided the text: Citizens Planner's Guide to Subdivision Development: Evaluating Natural Hazards and Resources During Subdivision Approval. A second edition should be available the summer of 2003. There is a modest fee.
- Your Planning Commission should be receiving occasional "Planning Notes" from the Utah League of Cities and Towns.
- There are also a number of "tool kits" available for a small fee. Included are the kits from Envision Utah and "Western by Design" from the Western Rural Design Center at Utah State University.

Web Sites and E-mail Resources

- The League web-site usually has information regarding land use. Our address is www.ulct.org.
- You can pull up the state code at www.le.state.ut.us/~code.
- There are at least three national addresses that you may want to check out for planning ideas. They are: <http://www.cyburbia.org>, <http://plannersweb.org>, and <http://www.planetizen.com>;
- If you have questions, you can e-mail them to Sydney Fannesbeck or Meg Ryan at sfannesbeck@ulct.org.

Training and Assistance

- The Utah League of Cities and Towns offers free training to Planning Commissions at the convenience of the Commission. Call to set up a date.
- In addition, the League offers technical assistance to help with specific ordinances, annexation policies, and the like. For this type of assistance call 800-852-8528 and ask to be put in touch with Meg Ryan.
- The Utah Local Governments Trust schedules workshops throughout the state for Planning Commissioners and members of the Board of Adjustment. There is a modest fee. Call the Trust for a schedule of meeting times and locations.
- The Annual Conference, the Midyear Conference, and the Water- Planning Conference presented by the Utah League of Cities and Towns contain several workshops specifically for planners. A schedule of upcoming conferences, detailed information and registration is available on our website - www.ulct.org - or call our office for more information.
- The League's legal counsel, David Church, is available to answer specific legal questions dealing with land use issues or procedure. He can be reached at: Office: 801-261-3407 or Cell: 801-243-3437.
- The League also provides two additional people to give you assistance or provide training. Sydney Fannesbeck and Meg Ryan are both available through our office. Our toll free number is 800-852-8528.

VIII- Definitions of Planning, Zoning, and Development Terms

Abandonment: The relinquishment of property, or a cessation of the use of the property by the owner, with the intention neither of transferring rights to the property to another owner nor of resuming the use of the property.

Abutting: Having property or zone-district boundaries in common.

Access: A way of approaching or entering a property. In zoning and subdivision regulations, lots of record usually are required to have direct access to a public street or highway or to a private street meeting public standards. In the context of land-use controls, access includes ingress, the right to enter, and egress, the right to leave.

Accessory Use: A use of land or of a building or portion thereof customarily incidental and subordinate to the principal use of the land or building and located on the same lot with such principal use.

Aesthetic Zoning: The regulation of building design and site developments in the interest of appearance. (Yes, this is legal)

Air Rights: The right to use the air space over the property of someone else, typically, but not always, over railways and highways.

Amortization: A method of eliminating nonconforming uses by requiring the termination of the nonconforming use after a specified period of time.

Appeal: When a person believes a decision was made in error, an appeal may be filed so that a higher decision-making body can review the case.

Assessment Ratio: The relation between the assessed value of a property and true market value.

Board of Adjustment: A local body, created by ordinance, and appointed by the mayor with the advice and consent of the council, whose responsibilities include the granting of variances, appeals of administrative decisions, and special exceptions. It also hears requests for conditional uses unless otherwise directed by the legislative body.

Bonuses: (Also known as incentive zoning): The awarding of bonus credits to a development in the form of allowing more intensive use of the land if the developer is willing to provide for greater public benefits than those required.

Buffer Zone: A strip of land zoned to protect one type of land use from another with which it is noncompatible. Where a commercial district abuts a residential district, for example, additional use, yard, or height restrictions may be imposed to protect the residential property. The term may also be used to describe any zone that separates two unlike zones.

Building Area: The total square footage of a lot covered by a building measured on a horizontal plane at mean grade level exclusive of uncovered porches, terraces, and steps.

Building Code: Regulations governing building design, construction, and maintenance. In Utah, all construction is covered under the Uniform Building Code.

Building Envelope: The net cubic space that remains for placing a structure on a site after building line, setback, side yard, height, and bulk regulations are observed.

Building Official: The person responsible for the administration and enforcement of the building, housing, plumbing, electrical, and related codes. All such officials in Utah need to be certified by the State of Utah.

Capital Improvement: A government acquisition of real property, major construction project, or long lasting, expensive equipment.

Capital Improvements Program: A proposed timetable or schedule of all future capital improvements to be carried out during a specific period and listed in order of priority, together with cost estimates and the anticipated means of financing each project.

Carrying Capacity: The level of land use that can be permanently accommodated without an irreversible change in the quality of air, water, land, or plant and animal habitats.

Cluster Development: A type of development that allows the reduction of lot sizes below the zoning ordinance's minimum requirements if the land thereby gained is preserved as permanent open space for the community.

Compatibility: The characteristics of different uses or activities that permit them to be located near each other in harmony and without conflict. The conditions established in a Conditional Use process should be based on making sure that the use granted is compatible with the permitted use of the land.

Condemnation: The taking of private property by a government unit for public use when the owner will not relinquish it through sale or other means. The owner is recompensed by payment of "market value". The term "to condemn" is used to indicate determination by a government agency that a building is unfit for use because it is structurally or otherwise unsafe or unhealthy.

Conditional Use: A conditional use is a land use that, because of its unique characteristics or potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts. (10-9-103(c), U.C.A.) In order for a conditional use to be considered, it must be listed as such in the applicable zone.

Condominium: The legal arrangement in which a dwelling unit in a building or residential development is individually owned but in which the common areas are owned, controlled, and maintained through an organization consisting of all the individual owners.

Conservation Easement: A tool for acquiring open space with less than full-fee purchase; the public agency buys only certain specific rights from the owner.

Conversion: The partitioning of a single-dwelling unit into two or more separate households or the conversion of the use of an existing building into another use. Such a conversion without required process is usually illegal.

Covenant: A private legal restriction on the use of land contained in the deed to the property or otherwise formally recorded. Covenants held by homeowner associations are

not enforced by the municipality.

Dedication: Gift or donation of property by the owner to another party.

Density: The number of families, individuals, dwelling units, or housing structures per unit of land; usually that unit is expressed as an acre. The control of density is one of the basic purposes of zoning. Gross density includes land for streets, schools and parks. Net density does not include area for public spaces.

Density, Control of: A limitation on the occupancy of land. Density can be controlled through zoning by one or a combination of the following methods: use restriction (single or multiple dwellings), minimum lot-size requirements; floor-area ratios; setback and yard requirements; minimum house-size requirements; establishing ratios between lot and house size; limitations on units per acre; and other means.

Design Permit Review: Review of commercial, industrial, and residential structures, and some signs, to ensure project design and design consistency with structures and the general environment of the surrounding area.

Development Fees: A fee or charge imposed on developers to pay for the actual costs of a new development. Fees pay for the on-site improvements that are directly related to the development. Examples would be streets, sidewalks, water, sewer, etc. They do not include the costs of offsite impacts. (See impact fees)

Development Rights: One of many rights that a property owner may expect to have on a given piece of property. It is not a guaranteed right assumed by ownership but one predicated on many other issues and rights. It is possible to sell or acquire development rights without selling or acquiring the property.

Downzoning: A change in a zoning classification of land that allows for a less intensive use of the land than was previously allowed.

Easement: A right given by the owner of land to another party for specific limited use of that land. For example, a property owner may give or sell an easement on his/her property to allow for such uses as egress, infrastructure, etc. Once granted or sold it is assumed to be permanent.

Eminent Domain: The authority of a government to take, or to authorize the taking of, private property for public use. The Fifth Amendment requires just compensation for any taking and implicitly prohibits the taking of private property for private use unless declared blighted.

Exaction: A contribution or payment required as a precondition for receiving a development permit. (Before requiring an exaction, consult with your city attorney - there has been recent case law concerning what you can and cannot demand.)

Exclusionary Zoning: Zoning which has the effect of keeping certain types of people out of a community or a neighborhood. There are a number of zoning techniques that often are employed, such as large-lot zoning, minimum floor space, building requirement controls,

etc. There have been a number of recent court cases challenging this type of zoning.

Fair Market Value: The price of a building or land which would be agreed upon voluntarily in fair negotiations between a knowledgeable owner willing, but not forced, to sell and a knowledgeable buyer willing, but not forced, to buy.

Feasibility Study: An analysis of a specific project or program to determine if it can or should be successfully carried out.

Final Subdivision Map: A map of an approved subdivision filed in the county recorder's office. It usually shows surveyed lot lines, street right-of-ways, easement monuments, and distances, angles, and bearings, pertaining to the exact dimensions of all parcels, street lines, and so forth.

Finding or Findings of Fact: A determination or conclusion based on the evidence presented by the deciding body in support of its decision. When it presents its decision, the body is often required to demonstrate in writing that the facts presented in evidence support its decision in conformance with the law.

Frontage: The area that sits between a structure and the street.

General Plan: A legal document in the form of a map and accompanying text adopted by the local legislative body. The plan is a compendium of its policies regarding the long-term development of its jurisdiction. It is sometimes called a comprehensive or master plan.

Grading Permit: Issued for earthwork construction before grading or filling is begun.

Improved Land: Usually refers to vacant land that has been improved with basic facilities such as roads, sewers, water lines, and other public infrastructure facilities that meet development standards.

Incentive Zoning: The granting by the local authority of additional development capacity in exchange for the developer's provision of a public benefit or amenity. The local ordinance would have to clearly spell out the incentives that could be considered.

Inclusionary Zoning: Regulations which increase housing choice by providing the opportunity to construct more affordable, diverse, and economical housing to meet the needs of low and moderate income families.

Indirect Source: An indirect pollution source that by its nature attracts large numbers of polluting sources while not actually releasing the pollutant itself.

Infrastructure: Facilities and services needed to sustain industry, residential and commercial activities. It includes water and sewer lines, streets and roads, communications, and public facilities such as fire houses, parks, etc.

Inverse Condemnation: The taking of private property as a result of governmental activity without any formal exercise of eminent domain. An example would be the expansion of an

airport runway that brings airplanes so low over residences so as to make them uninhabitable.

Just Compensation: Payment made to a private property owner by an agency with power of eminent domain when the private property is taken for public use.

Historic District: A designated area given special consideration because of its significant cultural, historical, or architectural value. Permits issued in such an area require additional procedural action.

Historical Landmark Designation: If an individual building or lot has significant cultural, historical, or architectural value, it may be designated an historic landmark. (For more specific information, contact the Utah Heritage Foundation.)

Home Owner's Association: A non-profit organization operating under recorded legal agreements running with the land. Generally, each lot owner in a condominium or similar planned development becomes a member upon purchase and each lot is subject to a charge for a proportionate share of the expenses for the organization's activities such as maintaining common areas, e.g. landscaping, recreation facilities, and parking areas.

Impact Analysis: A study to determine the effects of a proposed development on activities, utilities, circulation, surrounding land uses, community facilities, environment, and other factors directly, indirectly, or potentially affected. In Utah, an impact analysis must be completed before impact fees can be charged.

Leapfrog Development: Development that occurs well beyond the existing limits of urban development and thus leaves intervening vacant land behind. Such a practice results in greater service costs and is, therefore, discouraged.

Lot: The basic development unit- an area with fixed boundaries, used or intended to be used by one building and its accessory buildings. Characteristics of lots for zoning purposes include: buildable area, lot coverage, lot depth, and lot width. A buildable lot must meet the requirements of the zoning district in which it is located and must front on a public street or an approved private street.

Metes and Bounds: A system of describing and identifying land by measures (metes) and direction (bounds) from a point of reference. (In Utah law, its use is often to suggest an alternative to a formal surveyor's plat. See Minor Subdivision)

Minor Subdivision: A subdivision of fewer than ten lots. A minor subdivision may be sold by metes and bounds if it meets all other procedural and actual requirements of a subdivision. (10-9-806, U.C.A.)

Mixed-Use Zoning: A zone that is specifically designed to encourage uses that are different, yet compatible. The most common is a residential zone that allows for small retail and professional uses that will fit in a neighborhood and be used by local residents. Such zones are encouraged as part of a "walkable communities" design.

Moratorium: (Temporary Zoning) In planning, a freeze on all or specific types of new

development pending the completion and adoption of certain planning and/or zoning ordinance requirements, e.g. General Plan, zoning ordinance amendment, sewer line installations, or growth management programs. Moratoriums may last up to six months. Consideration of a moratorium must be on a council's agenda but no public hearing is required.

Nonconforming Use: A Use or activity which was lawful prior to the adoption, revision, or amendment of a zoning ordinance, but which fails, by reason of such adoption, revision, or amendment, to conform to the present requirements of the zoning ordinance.

Nuisance: Anything that interferes with the use or enjoyment of property, endangers personal health or safety, or is offensive to the senses.

Occupancy Permit: A permit needed for a new tenant to move into a new structure. This is considered part of the building-permit process.

Off-site Improvements: Conditions that can be required of a project that involves the installation of streets, curbs, gutters, sidewalks, street trees, etc., that are located adjacent to the project on city- owned property.

Overlay Zones: a set of zoning requirements in addition to those of the underlying district. Developments within the overlay zone must conform to the requirements of both zones or the more restrictive of the two. Such zones are usually employed to deal with special physical characteristics such as flood plains, historical areas, soils, or hillsides.

Parcel: A lot or contiguous group of lots in single ownership or under single control, and usually considered a unit for purposes of development.

Permitted Use: A use by right which is specifically authorized in a particular zoning district. It is contrasted with conditional uses which are authorized only if certain requirements are met and after review and approval by a designated body.

Phased Development: A term referring to programs or techniques to guide the timing and sequence of development. Such zones are used as a growth-management tool and must be part of the General Plan of the municipality.

Planned Unit Development (PUD): A self-contained development, often with a mixture of land uses and densities, in which subdivision and zoning controls are applied to the project as a whole rather than to individual lots. They are supposedly used to benefit both the developer, often by allowing for greater density, and the municipality, by preserving more open space or safeguarding sensitive areas. A community should make sure that it is receiving adequate benefit before agreeing to the use of this tool.

Planning Commission: The administrative body charged with the development of the General Plan, formulation and administration of the Zoning Map and Ordinance, and the review of any other land use matters designated by the Mayor and Council. It is an advisory board. For more information, see 10-9-201, U.C.A.

Planning Director: The chief administrator in the planning department. Usually works as

staff and professional advisor to the Planning Commission and Board of Adjustment. The Zoning Ordinance can give certain powers and responsibilities to the Director.

Police Power: The inherent right of a government to restrict an individual's conduct or use of property in order to protect the health, safety, welfare, and morals of the community.

Policy: A statement of a public body that forms the basis for enacting legislative decisions. The policies under which zoning ordinances are enacted and administered should be found in a community's General Plan.

Preliminary Subdivision Map: The first formal submission by a subdivider is usually in the form of a map with accompanying documents providing the information about the proposed subdivision required by the local Subdivision Ordinance. Before formally accepting the material, it should be reviewed to make sure that all necessary information is included.

Principal Use: The main use of area, land, or structures as distinguished from Conditional Uses and accessory or secondary uses. A house is a principal use in a residential area; a garage or pool is an accessory use.

Public Hearing: A properly announced meeting of an official or official body where the public is allowed to give opinions concerning the issue being considered.

Revenue/Cost-Impact Analysis: A technique used to assess the revenue and impact of a proposed project on a community. If costs exceed the revenue, the project should be modified, denied, or have special development charges attached in order to sufficiently offset costs.

Right-of-Way: The right of passage over the land of another. Once a right-of-way is granted, it becomes a "legal" right that can only be removed via purchase, relinquishment, or court action.

Setback Requirements: The requirements that a building be set back a certain distance from the street or lot line. They are specified in a zoning ordinance or a site-development plan.

Sign Permit: This permit allows for a sign to be erected in compliance with stated policies and conditions.

Site Plan: A plan, to scale, showing uses and structures proposed for a parcel of land. It includes lot lines, streets, building sites, public open space, buildings, major landscape features -both natural and man-made- and, depending on requirements, the locations of proposed utility lines.

Site-Plan Review: The process whereby local officials, usually the Planning Commission and staff, review the site plans of a developer to assure that the plans meet the purposes and standards of the zone, provide for necessary public facilities such as streets, parks, and schools, and protect adjacent properties through appropriate placement of structures and landscaping.

Special District: A district established to accommodate a special set of uses or for special purposes. The term can signify any district beyond the conventional residential, commercial, industrial, and agricultural districts. Examples include PUD and historic-preservation districts.

Special Use Permit: A zoning tool administered by the Board of Adjustment or Zoning Administrator. It allows for specific uses that are not ordinarily allowed except under certain enumerated conditions that are listed in the ordinance. It is not necessarily part of every zoning ordinance.

Spot Zoning: Where a particular small tract within a large district is specially zoned so as to impose upon it restrictions not imposed upon the surrounding lands, or grant to it special privileges not granted generally and not done in pursuance of the General Plan. (Marshall v. Salt Lake City, 141 P.2d 704 (1943)).

Street, Collector: A street which collects traffic from local streets and connects with minor and major traffic arteries.

Street, Expressway: A divided multi-lane major arterial street for through traffic with partial control of access and with grade separations at major intersections.

Street, Local: A street designed to provide vehicular access to abutting property and to discourage through traffic.

Street, Minor Arterial: A street with signals at important intersections and stop signs on the side streets, and which collects and distributes traffic to and from collector streets.

Street System: The classification of streets and highways by their diverse functions and design. The following is the commonly used hierarchy of streets and highways for planning purposes: local, collector, major, expressway, arterial, parkway, and freeway.

Strip Development: Commercial or retail development, usually one-store deep, that fronts on a major street.

Strip Zoning: A zone normally consisting of a ribbon of uses fronting both sides of a major street and extending inward for approximately half a block. Strip commercial development is the most common form. It usually is characterized by an assortment of gas stations, drive-in and fast-food restaurants, motels, tourist shops, and automobile sales and service operations.

Subdivision: The process and the result of dividing a parcel of raw land into smaller buildable sites. Complete plans will eventually include streets, blocks, open space, public areas, and other improvements. A subdivision may be established any time a new boundary line is drawn. For information on subdivision procedures see 10-9-801 of the Utah Code. (Also, see Minor Subdivisions.)

Taking: This concept is difficult to define because the courts keep changing the rules surrounding it. Currently (fall 2002), it seems to be government action that deprives the

land owner of 100% of the value of his/her property. It does not, to date, mean the partial loss of value that would occur with downzoning. If you have questions, confer with a smart lawyer.

Transfer of Development Rights (TDR): The removal of the right to develop or build, expressed in dwelling units per acre, from land in one zoning district to land in another district where greater density is preferred. TDR is often used as a tool for the preservation of agricultural land, open space, or historical preservation.

Trip Generation: The total number of vehicle trips produced by a specific land use or activity. It is used to calculate traffic impact of a proposed use.

Variance: A device which grants a property owner relief from certain provisions of a zoning ordinance, when, because of particular physical surrounding, shape, or topographical condition of the property, compliance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or a desire to make more money. The petitioner must prove that a physical hardship exists, and that the request would not be alien to the design or intent of the area. Only the Board of Adjustment is vested with the authority to grant variances. Any appeal of the Board decision must be made to the District Courts. There is no legal way to grant a variance that would change the use of a piece of property.

Vested Right: This is another concept that the courts continue to modify. Generally, a developer is "vested" when reasonable plans have been submitted and accepted by the municipality. It is not vested with the zoning at the time of purchase or with the expression of an intended use by the developer. If no plans have been submitted and formally accepted, the use of the property is not "grandfathered" in.

Zero-Lot-Line Development: A development approach in which a building is sited on one or more lot lines with no yard. Conceivably, three of the four sides of the building could be on lot lines. The intent is to allow more flexibility in site design, and to increase the amount of usable open space on the lot.

Zoning: A police-power measure, enacted primarily by units of local government, in which the community is divided into districts, or zones, within which permitted and special uses are established, as are regulations governing lot size, building bulk, placement, and other development standards. Requirements vary from district to district but they must be uniform within districts. The zoning ordinance consists of two parts: the text and a map. For more specific information, see 10-9-401, U.C.A.

Zoning Administrator: An appointed official in charge of carrying out the municipal policy as determined by the Planning Commission, and also empowered to make decisions, as stated in a municipality's zoning ordinance. The Administrator acts to enforce the zoning law.

Zoning Districts: A geographical area of a city or county, zoned with uniform regulations and requirements.

Zoning Map: The officially adopted zoning map of the municipality, specifying the uses

permitted within certain areas.

These definitions are extracted and compiled from the Illustrated Book of Development Definitions, The Job of the Planning Commission, (Albert Solnit, 1987) and the "Planning Commissioners Handbook", published by the League of California Cities. The lists were edited by S. Fannesbeck for the Utah League of Cities and Towns. They are for general reference only. For specific legal definitions consult your city attorney.

NOTES

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