PLANNING COMMISSION:
Roles, Responsibilities and Restrictions

March 30, 2023
City Charter - Commissions: Intent and Purpose

- Except as otherwise provided in this Article, the appointive commissions established by or pursuant to a Charter are intended to serve as *advisory bodies to the Council* and the City Manager in carrying out their respective duties.

- “Advisory” means making recommendations, not setting policy.
Source of Powers

- City Charter
- City Code
- Government Code – Sections 65100 & 65103
- Commission Handbook is usually **not** a source of power- it is a *reference* manual
City Charter –
The Council may:

• Created by *ordinance* such advisory boards or commissions as in its judgment are required; and

• Grant them such powers and duties as are consistent with the provisions of the Charter.
Sources of Power – Charter Cities and State Law

*In addition* to the powers and duties of the individual commissions as outlined in a Charter – Planning Commission must also follow:

- State Law
- City Code
- Ethics Laws
Sources of Power –
State Law (Govt. Code Section 65100-65101)

State Law requires a planning agency to carry out the purpose of the State Planning Laws. The City Council shall by ordinance:

• Assign the functions of the planning agency to the planning department.
• Specify the number of Commissioners (at least 5).
Sources of Power – State Law (Govt. Code Section 65103)

The Planning Commission shall have the following State Law general powers, duties and responsibilities:

• Prepare, periodically review, and revise, as necessary, the general plan.

• Implement the general plan through actions including, but not limited to, the administration of specific plans and zoning and subdivision ordinances.
Sources of Power – 
State Law

• Annually review the capital improvement program (CIP) of the city or county and the local public works projects of other local agencies for their consistency with the general plan.

• Endeavor to promote public interest in, comment on, and understanding of the general plan, and regulations relating to it.
Sources of Power – State Law and City Code

• Consult and advise with public officials and agencies, public utility companies, civic, educational, professional, and other organizations, and citizens generally concerning implementation of the general plan.

• Promote the coordination of local plans and programs with the plans and programs of other public agencies.

• Perform other functions as the legislative body provides, including conducting studies and preparing plans other than those required or authorized by State Law.
Planning Commission’s Role

• Advise the City Council on the following:
  – General and Specific Plans and Zoning
  – Conditional Use Permits (CUPs)
  – Variances
  – Subdivisions
  – Historic resources
  – CEQA
Planning Commission’s Role

The Planning Commission reviews projects in two ways:

**Quasi-Legislative body**
- General Plan, Specific Plan and Zoning
- Findings not required
- Make Recommendation to City Council
  - Action is not final until adopt by the City Council
Planning Commission’s Role

Quasi-Judicial
- CUPs
- Variance
- Design Review (*new housing laws have restricted this role)
- Findings required
  - Objective
  - Subjective
  - HAA, SB 330 and SB 35
Commission Action

• Planning Commission acts as a body.
• Accomplished through a majority of the body voting on a matter.
• Majority of the full body (3 of 5) OR (4 of 7)
Commission Action

• May be a final action-
  – CUP or Variance
  – Findings are required
  – Usually appealable to City Council
  – Findings explain the Commission’s action
Commission Action

• Commissioner’s statements or comments are **not** direction – must be **IN** the motion.
  – Contained in the Project Conditions of Approval

• Previous Commission actions (ordinances, resolutions, policies) remain in effect until changed by a subsequent vote of the Council or Commission.

• Planning hearing require public hearings
  – Notice and opportunity to be heard
  – Due process
Commission Action

• Commissioners are not policy makers.

• Commissioners should refrain from making land use decisions based solely on economics, personal judgment and/or opinion.

• Commissioners should only consider projects that come before them in the normal review process or are their approved work plans.
  • Going outside normal scope of its review, the commission creates unnecessary work for planning staff
CONFLICTS OF INTERESTS

Political Reform Act

• Having a conflict of interest does not mean you did something wrong.

• Requires that public officials / City Councilmembers or Commissioners should not make, participate in making or attempt to use his/her official position to influence a governmental decision if he/she knows they have a financial interest.
CONFLICTS OF INTERESTS
Political Reform Act

• Requires public official to file financial disclosure (Form 700).
  – Disclosure requirements ($50).
  – Disqualification requirement.
TYPES OF CONFLICTS

• Source of income-
  – $500 within 12 months prior to decision.

• Interest in real property-
  – Direct or indirect interest of $2,000.
  – Month to month tenancies not considered.

• Business entity investment-
  – Direct or indirect investment of $2,000.

• Employee/manager of business entity-
  – Director, officer, partner, position of management.

• Gifts-
  – $590 total within 12 months of decision.
OWNERSHIP OF REAL PROPERTY

Could the decision affect the value of real property located within 500 feet of the official’s property line.

*NEW rule: AKA DONUT RULE

Now there is a presumption that:
A decision involving property within 500 feet of an official’s property will have a material impact on the official’s interest.
OWNERSHIP OF REAL PROPERTY

• For decisions involving property located between 500 and 1,000 feet from the official’s property, whether the decision creates a conflict now depends on a number of factors:

• Would it change the parcel’s development potential, income-producing potential, highest and best use, market value, or,

• Would it would change the parcel’s “character by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality.”
Recusal

- Publicly identify the financial interest.
- Refrain from discussing it and/or voting on it.
- Step down from the dais and leave the room—*except*
  - Consent items (must id conflict).
  - Personal interest.
- Cannot participate in closed session.
- Disqualified member doesn’t count towards the quorum.
- Contact the City Attorney early!
**Ethical Rules**

- *Perception* is as important as reality.
- FPPC rules are the minimum - what you “must do.”
- Ethics - what you “ought to do.”
- Common law conflicts.
- Due process and fair hearings.
  - Public expects you to be impartial and avoid favoritism.
  - *Ex parte* contacts.
- Ex parte disclosures.
- Abstentions – duty to vote (counted towards quorum- not vote).
QUESTIONS?
Contact

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