



**RIVERDALE CITY PLANNING COMMISSION AGENDA  
CIVIC CENTER - 4600 S. WEBER RIVER DR.  
TUESDAY – AUGUST 27, 2013**

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**6:00 p.m. –Work Session** (*City Council Conference Room*)

The purpose of the work session is to review maps, plans, paperwork, etc. No motions or decisions will be considered during this session, which is open to the public.

**Planning Commission Work Session Items**

- Planning Commission training
  - o Review and discuss *The Planning Commission* document
  
  - o Review and discuss *A Collection of Terms: Commonly Heard in Local Government and in Land Use Planning* document
  
  - o Next training document to be *The Planning Process and the General Plan*
- Discuss next meeting (Sept 10) agenda items
  - o Rezone request pending for property along South Weber Drive and Land Use Master Plan potential change to support rezone request
  - o Other items for meeting to note
- Discretionary Items
- Adjournment

**6:30 p.m. – Planning Commission Meeting** (*Council Chambers*) – **CANCELED**

**A. Welcome & Roll Call**

**B. Open Communications**

(This is an opportunity to address the Planning Commission regarding your concerns or ideas. Please try to limit your comments to three minutes.)

**C. Presentations and Reports**

None

**D. Consent Items**

**E. Action Items**

None

**F. Discretionary Items**

**G. Adjournment**

- The public is invited to attend all Council meetings.
- In compliance with the Americans with Disabilities Act, persons in need of special accommodation should contact the City Recorder at 394-5541 x 1232.
- This agenda has been properly posted and a copy provided to local news media.



# **THE PLANNING COMMISSION**

**Local Government  
Land Use Education Program  
Center for Public Policy & Administration  
University of Utah**

Center for Public Policy & Administration University of Utah

# **THE PLANNING COMMISSION**

**An Educational Handbook for Group Discussion**

**2007**



## THE PLANNING COMMISSION

The planning commission has perhaps a greater opportunity to affect community change than any other public agency. Planning Commission decisions and recommendations can impose a significant impact on the physical and social development of the community they represent.

The planning commission is an authorized function of local government. The planning commission will vary in a number of respects from one community to the next. Planning commissioners are advisors, assisting the local elected officials in the decision-making process regarding the manner in which community development takes place. The commission also deals with the delicate balance between the public interest and private rights.

The work of planning commission must be conducted with a constant recognition of its responsibility to assure due process of law to every citizen who participates in the local planning process.

### A BRIEF HISTORY

Citizens serving voluntarily to advise local government is a tradition in America. Since the time of the first settlers, private residents have served unpaid in some form of an advisory role. The citizen planning advisory commission was important to the City of Chicago to help implement the great Chicago Plan of 1909. The State of Massachusetts passed a law in 1913 making the creation of local planning commissions mandatory. Modern day planning commissions are a continuation of this tradition.

In the early years of the twentieth century, the states began enabling local governments to conduct planning and land use regulation (the police power authority) to protect the public health, safety and welfare. Included in those enabling acts was the addition of a planning commission.

As local governments increased in reliance upon their police power authority, the courts slowly but consistently have supported this exercise of local legislative decision-making. The existence of a community general plan was increasingly recognized as the logical precedent to land use regulation. Initial legislation granted wide powers to the commission. This enabled them to carry out their duties as advisors and planners. State legislation established the citizen planning commissions as advisory to the legislative policymaking function.

The need for citizen involvement became obvious as cities grew in size and

complexity and the decision-making became increasingly confined to a small group of elected officials. This transition generated the need for a body of non-elected individuals representative of the community, giving citizens a voice on how the land should be used. Planning commissions were not impeded solely for advising the direction of general planning, but also for helping to shape the tools that will lead to intelligent and well-informed regulations for the development of the community.

A major rationale for establishing a planning commission composed of local citizens is that planning is too important to be left entirely to professional planners, or politicians. The planning commission represents the values and aspirations of the community it serves. If there is a wide ethnic or economic diversity in a community, then all the various views should be represented on the commission.

## QUALIFICATIONS OF A PLANNING COMMISSIONER

There is very rarely an "ideal" profile for membership on the commission. A member's background, knowledge and experience are important. Most crucial, however, is a commissioner's objectivity and interest in the community's growth and future. A planning commissioner should have a genuine desire to preserve and improve the community's quality of life. A commissioner must be willing to commit to devoting many hours to this calling. This means attending meetings that are often long and stressful. The candidate with dedication and honest concern is more valuable to a planning commission than one with a specialized background concerned only with protecting a personal interest.

### ***Included among the most important character traits for an effective planning commissioner are:***

A willingness to serve the long-range interests of the community with a sensitivity to the impact that each decision will impose upon the future of the community.

An ability to avoid politics, or extreme biases, from affecting decisions. The dedicated planning commissioner bases all decisions on the facts, an objective interpretation of the regulations, and the best interest of the total community.

An ability to clarify the feelings in the community on all sides of an issue. The commissioner's responsibility is to sort out opinions and make recommendations to enable the decision-makers to vote in the best interest of the community. The commission can help prevent an elected official from acting in an arbitrary or capricious manner by clarifying the issues. Many times such clarification can avoid the

sacrifice of a long range benefit for short term gratification.

A desire to expand his/her knowledge of the community. The commissioner should be well informed of the history, development and social and physical needs of the community. The commissioner should review carefully all available facts concerning the community to understand its values, characteristics and dynamics.

An understanding of the community's regulatory tools, such as the zoning, subdivision, and other pertinent ordinances. These tools are the primary means of implementing the general plan. Like any powerful tools, they must be handled with skill, sensitivity, and care.

***It is essential that planning commissioners become well acquainted with the content and the use of their ordinances. These are their tools.***

## ESTABLISHMENT OF THE PLANNING COMMISSION

### THE UTAH STATE ENABLING LEGISLATION

#### ***Land Use Development and Management Act (LUDMA)***

#### **Title 10 - Municipalities**

#### **Title 17 - Counties**

LUDMA requires that a planning commission be created in a municipality or county (countywide or township planning commissions) by ordinance (*Utah Code*, Title 10 Chapter 9a and Title 17, Chapter 27a, Part 3, Sections 10-9a-301 and 17-27a-301). Commissioners work without pay, except for reasonable compensation for expenses. The size of a city's planning commission is determined by the local ordinance.

#### **Part 3, Planning Commission**

##### **10-9a-301. Ordinance establishing planning commission required – Ordinance requirements – Compensation.**

- (1)(a) Each municipality shall enact shall an ordinance establishing a planning commission.
- (b) The ordinance shall define:
  - (i) the number and terms of the members and, if the municipality chooses, alternate members;
  - (ii) the mode of appointment;
  - (iii) the procedures for filling vacancies and removal from office;

- (iv) the authority of the planning commission; and
  - (v) other details relating to the organization and procedures of the planning commission.
- (2) The legislative body may fix per diem compensation for the members of the planning commission, based on necessary and reasonable expenses and on meetings actually attended.

**17-27a-301. Ordinance establishing planning commission required – Exception – Ordinance requirements – Township planning commission – Compensation.**

- (1)(a) Except as provided in Subsection (1)(b), each county shall enact an ordinance establishing a countywide planning commission for the unincorporated areas of the county not within a township.
- (b) Subsection (1)(a) does not apply if all of the county is included within any combination of:
- (i) municipalities; and
  - (ii) townships with their own planning commissions.
- (2) The ordinance shall define:
- (a) the number and terms of the members and, if the county chooses, alternate members;
  - (b) the mode of appointment;
  - (c) the procedures for filling vacancies and removal from office;
  - (d) the authority of the planning commission; and
  - (e) other details relating to the organization and procedures of the planning commission.
- (3)(a) If the county establishes a township planning commission, the county legislative body shall enact an ordinance defining appointment procedures, procedures for filling vacancies and removing members from office, and other details relating to the organization and procedures of each township planning commission

The provisions of LUDMA shown above establish that the appointment of a planning commission by all local governments is required. Local ordinances will provide for the appointment process, size of the commission and establishment of rules of conduct. It should be pointed out that Section 17-27a-301, Counties, is much longer and complicated to accommodate the provisions for townships. The reader may refer to the complete reprint of Part 3 for counties in the Appendix to this handbook.

## POWERS AND DUTIES OF THE PLANNING COMMISSION

**10-9a-302. Planning commission powers and duties.** The planning commission shall make a recommendation to the legislative body for:

- (1) a general plan and amendments to the general plan;
  - (2) land use ordinances, zoning maps, official maps, and amendments;
  - (3) an appropriate delegation of power to at least one designated land use authority to hear and act on a land use application;
  - (4) an appropriate delegation of power to at least one appeal authority to hear and act on an appeal from a decision of the land use authority; and
  - (5) application processes that:
    - (a) may include a designation of routine land use matters that, upon application and proper notice, will receive informal streamlined review and action if the application is uncontested; and
    - (b) shall protect the right of each:
      - (i) applicant and third party to require formal consideration of any application by a land use authority;
      - (ii) applicant, adversely affected party, or municipal officer or employee to appeal a land use authority's decision to a separate appeal authority; and
- (iii) participant to be heard in each public hearing on a contested application.

**17-27a-302. Planning commission powers and duties.**

- (1) Each countywide or township planning commission shall, with respect to the unincorporated area of the county, or the township, make a recommendation to the county legislative body for:
- (a) a general plan and amendments to the general plan;
  - (b) land use ordinances, zoning maps, official maps, and amendments;
  - (c) an appropriate delegation of power to at least one designated land use authority to hear and act on a land use application;
  - (d) an appropriate delegation of power to at least one appeal authority to hear and act on an appeal from a decision of the land use authority; and
  - (e) application processes that:
    - (i) may include a designation of routine land use matters that, upon application and proper notice, will receive informal streamlined review and action if the application is uncontested; and
    - (ii) shall protect the right of each:
      - (A) applicant and third party to require formal consideration of any application by a land use authority;
      - (B) applicant, adversely affected party, or county officer or employee to appeal a land use authority's decision to a separate appeal authority; and
      - (C) participant to be heard in each public hearing on a contested application.
- (2) The planning commission of a township under this part may recommend to the legislative body of the county in which the township is located:
- (a) that the legislative body support or oppose a proposed incorporation of an area located within the township, as provided in Subsection **10-2-105**(4); or
  - (b) that the legislative body file a protest to a proposed annexation of an area located within the township, as provided in Subsection **10-2-407**(1)(b).

If so recommended by the planning commission, the basic responsibility of the planning commission as the designated land use authority will be to assist local elected officials and planning professionals in designing or modifying the community's general plan and the planning process. The commission shall:

**☞ Make a recommendation to the legislative body for a general plan and amendments to the general plan**

As part of the planning process, the plan serves as the heart of the guidance system for the city's or county's growth and development. The plan provides the basis for the development of the policies that initiate the action programs and fuel the planning process.

**Goals and Policies.** The general plan establishes goals and policies for a community's future physical development. It guides the community to attain its goals by developing and maintaining planning and land management regulations. The commission's responsibility is to direct growth and development to achieve community goals and objectives. The planning process and the planning commission are far more effective when general plan goals are well conceived and clearly defined. Goals and objectives that are not clearly stated or that are not realistically attainable can frustrate the achievement of desired results. Clear and thoughtful goals allow the professional planner, the commission and the elected officials, to work together toward achievement of a well planned community.

The community's general plan may be a combination of map and text. These elements constitute an official document designed and approved by the planning

commission and adopted by the local legislative body. A carefully prepared plan must be adopted as the background and support document for the policy tools used to implement the goals. The tools for plan Implementation include zoning and subdivision ordinances and other programs designed to assist in community development.

Flexibility. The plan should be flexible enough to allow modification in the event of unforeseen changes in environment, economy, goals and desires. It is the commission's responsibility to anticipate these changes and modify the plan as may be needed. One of the greatest mistakes a planning commission can make is to assume that once the general plan is drafted and approved, its job is done. Planning is a never ending process, however, modifications of the plan must be made with the same objectivity and care for the public good as the preparation of the original plan.

The reader should also refer to the companion training handbook, *The Planning Process and the General Plan*.

*The general plan should never be regarded as a substitute for the zoning ordinance; the general plan is not a regulatory ordinance. The zoning ordinance is not a plan.*

### **Make a recommendation to the legislative body for land use ordinances and amendments and at least one appeal authority**

The planning commission is assigned the awesome responsibility to produce and recommend to the local governing body a process for conducting and expediting the land use process. It is most likely that planning commissions will continue to function as they have traditionally. Policy and zoning regulation amendments and the review of development proposals normally consumes the vast majority of the planning commission's time. The role of commission requires the commissioners to be well acquainted with the ordinances to assure that recommendations granting or denying the proposed changes have a solid legal foundation. The commission must understand the legal and social implications when considering any ordinance change or development proposal. The commissioners must understand how the proposed changes will impact the community. The commission should always evaluate any proposed changes or developments to assure they are consistent with the community's general plan goals and policies.

The Appeal Authority. The planning commission must also recommend a method and process for administering appeals to decisions made by officials applying the land use ordinances, and variances to regulations to rectify hardships created by a building lot. These are functions that were traditionally assigned to the board of

adjustment. The planning commission may recommend that the board continue as the appeal authority or consider an alternative arrangement as described in Part 7 of Titles 10-9a and 17-27a. The appeal function is treated in the companion training handbook, *Land Use Appeals and Variances*.

The information that follows in this training handbook is focused upon the traditional function of the planning commission, the administration of the general plan and the tools for its implementation.

After comparing a proposed development with the ordinance guidelines, examining the social implications and studying the plan, the commission can advise the officials whether to grant or deny a development request. The planning commission must treat all proposals fairly and equally when considering development proposals or requests to amend an ordinance. Local officials cannot produce an interpretation for one group and not another.

It is important to remember, the planning commission only reviews a request to amend the ordinance and makes a recommendation to the legislative body. The planning commission follows the local ordinance recommends a course of action, and does so impartially. The final approval and adoption of zoning changes and ordinance modifications is the responsibility of the legislative body.

*The challenge of a land use authority is to understand and guide that delicate balance between private rights and the public interest.*

## THE FUNCTIONAL PLANNING COMMISSION

An effective commission must first of all enjoy an internal harmony in order to work effectively with other groups such as elected officials and professional planners. To ensure harmony and cooperation the commission must have effective communication between its members. Without communication, the group will be generally unproductive and may have difficulty accomplishing its mission.

Any group experiencing internal conflicts seldom performs well. An effective commission unifies its energies toward accomplishing its purpose. An essential ingredient for developing good group dynamics is an effective chairperson.

### ***The Chairperson***

The chairperson should endeavor to develop the group's communication networks. The chairperson is the unifying member of the commission. The chairperson's responsibility is to assure that meetings are conducted by the rules and each member is allowed to express opinions. The chairperson should encourage discussion, but discourage arguments. A planning commission is a

problem-solving group, and it is the responsibility of the chair to propel the group toward its goals and prevent irrelevant and distracting discussion. An effective chairperson is an organizer who develops and maintains good group interaction to assure a successful and timely conclusion of each item on the meeting agenda.

### ***Meetings***

Central to good group functioning is organization. A planning commission should meet regularly, at least once a month. Small communities experiencing little development or change may call meetings as needed, as established by the commission bylaws.

*All meetings must follow the requirements of the Open and Public Meetings Act, "The Sunshine Law", Title 52, Chapter 4, Utah Code as well as notice requirements of LUDMA, Part 2.* These Code provisions are intended to assure that public meetings are conducted with proper notice, allow all participants access to the process and provide full disclosure of all facts regarding the issues that are discussed. Proper conduct of all meetings assures the basic constitutional guarantee of *procedural due process*.

### ***Work Sessions***

In addition to regular public meetings, a planning commission should also schedule work sessions when necessary. A work session provides the commission an opportunity to meet with consultants, public officials, regulatory agencies, etc. If a work session will involve a quorum of the members, and is to discuss community issues, the session must also conform to the notice requirements. The complete text of the Open and Public Meetings Act is reprinted in the appendix to the companion handbook, *The Public Meeting*.

### ***Bylaws***

Equally as important as holding the regularly scheduled meetings is a set of well developed policies and procedures for conducting and organizing a meeting. *Roberts Rules of Order* (which may be simplified) can provide the standard guidelines for effective parliamentary procedure. Specific bylaws governing the commission should be developed and adopted by the commission members. All rules should be formalized in writing to allow current and future members to refer to them. The chairperson must be familiar with the commission's bylaws and rules of order and assure they are followed. A recommended outline for commission bylaws is provided in the appendix of this handbook.

To help develop a productive planning commission, the commission needs an effective communication network, a strong chairperson, regular and organized

meetings and work sessions, and thorough and effective bylaws.

### ***Working with Others***

In addition to maintaining internal communication, the commission must relate with other organizations in the community. The most important group with which a planning commission works is the local legislative body. LUDMA specifies that the planning commission is advisory to the legislative body. A working relationship with the legislative body is essential in order to assure implementation of the goals and policies generated by the planning process. The planning commission functions as the primary advisors to the public officials on all planning matters. The planning commission should maintain liaison with the legislative body by various means including written reports, public hearings, public meetings and joint work sessions.

The planning commission must relate also with other governmental agencies such as school districts, highway departments, federal agencies, and other planning commissions. This interaction is essential because the decisions made by the commission can affect a variety of agencies -- and the reverse is also true. A decision of a school district, for instance, can impose a major impact on a community and its planning objectives. Effective communication between the commission and other federal, state and local agencies could contribute considerably to avoiding adverse decision-making and bad feelings.

A commission needs to coordinate with citizen organizations such as community councils, civic groups, homeowners and special interest groups. The planning commission does more than just educate citizens. It must meet with the citizens to assure that planning is consistent with community needs and desires. Public meetings and public hearings are an effective means of interacting with the community.

### ***Conflict Resolution***

It is extremely important that the planning commission place considerable importance upon its ability to communicate effectively with those with whom they interact face-to-face. These could be a complaining citizen, an apprehensive applicant, a domineering developer, or a nasty neighborhood group. Periodic training with a specialist in group communication or conflict resolution can help a deliberative body deal with troublesome issues or individuals arrive at a mutually satisfying resolution. It has been observed that many major conflicts, even law suits, began with a relatively minor misunderstanding. As Viscount Morley wrote, "You have not converted a man because you have silenced him."

### ***Community Education***

*Education is often overlooked as an important opportunity for the planning commission*

Though not specifically called for by the state enabling legislation, it is generally intended that the planning commission assume an important responsibility to educate the citizens and local officials on planning matters. The commission's duty is to keep the public informed about controversial planning issues. The planning commission must maintain good public relations. The commission can have a difficult time accomplishing its tasks without public support. The planning commission and the legislative body will have more success in dealing with a development proposal that appears to be contrary to the public interest as defined in the plan, if the citizens understand the rationale and the objectives of the plan.

In addition to educating the community, the planning commission should assure a proper education of public officials in matters of planning. Since local officials make the final decisions on planning issues, they must be convinced that the planning commission's recommendations are well founded. There are some local officials do not fully appreciate the advantages of good planning. When the commission encourages effective communication with the elected officials regarding important planning issues, the officials will be far more capable of sound decisions.

Information about planning should be communicated to officials and citizens through as many channels as possible. A planning commissioner should always be prepared to respond to questions about planning and the advantages of proper land management. Education encourages greater public support - a valuable asset for any planning commission.

## **The Public Hearing**

The planning commission is often required to call a public hearing to gather citizen input and attitudes and disseminate information. Public hearings allow two-way communication between the commission and the community. Public hearings can be used to gather public input and to provide the deliberative body with sufficient insight into the public interest for them to make a wise and proper decision. Notice requirements for various public hearings are explained in LUDMA, Part 2.

## **PLAN AND ORDINANCE ADOPTION**

With completion of the general plan, the enabling act (LUDMA) provides for the official adoption of the plan by the legislative body, and the important role to be assumed by the planning commission, as described in 10-9a-404 and 17-27a-404. Because of some differences between the procedures for municipalities

and counties, it is advisable to read the Code Sections cited above, available in the Appendix.

1. A public hearing, conducted by the planning commission, is required by LUDMA before a general plan can be adopted by the legislative body. A planning commission public hearing is required in both cities and counties. The hearing must follow the required notice provisions of LUDMA. The law calls for a (single) hearing, but a planning commission may conduct as many hearings as necessary to fulfill its responsibility to assure public information and participation.
2. Following the hearing, the planning commission will forward the plan to the legislative body with its recommendation.
3. The legislative body is not required to hold a public hearing. The legislators may adopt, eject or amend the plan as presented to them by the planning commission.

A similar process is followed for adoption of the zoning ordinance or amendments to the ordinance. The legislative body is required to request a planning commission recommendation.

## PROFESSIONAL ASSISTANCE

Planning commissioners are generally not professional planners and may not be acquainted with all the legal and technical aspects of planning. In larger communities, the commission will have access to a permanent professional staff for technical assistance. In smaller communities, temporary assistance, such as a planning consultant, may be more compatible with the budget.

### **The Planning Staff**

Most larger cities and counties hire a full or part-time professional planner as the staff assistant to the planning commission. The planner may also have a staff of researchers, data collectors and other assistance, as budgets allow. The duties of the planner and staff members include assisting in the preparation of the general plan, drafting of ordinances, conducting surveys or other data collection and providing technical advice and guidance to the commission, legislative body, and citizen inquiries.

Hiring a professional planner is a challenging process for public officials and the planning commission should encourage selection of professionals with the best possible credentials. A standard guide is, "hire the best you can afford." Budget capability generally guides the choice between hiring a planner with education, experience and desired skills and hiring an applicant with lesser qualification. Ultimately, however, it may be wiser to employ a more highly qualified planner

than an applicant who lacks the necessary technical skills because he or she fits the budget. Economizing on technical staff assistance could prove to be costly decision.

In any working relationship, the parties involved have certain expectations of one another. When both parties perform as is expected of them, effective communication results and both groups can accomplish their tasks. The relationship between commission and planning staff should be clearly understood.

***The planning commission should expect its planning staff to:***

- be competent and accurate;
- be able to interpret rather than just collect data;
- possess the education and experience to fulfill their responsibilities;
- be professional and ethical in their conduct;
- avoid conflicts of interest;
- interact well with other staff members and the planning commission;
- avoid publicity and indiscreet disclosure of confidential information;
- become well acquainted with the planning jurisdiction to know its land, people, laws, advantages and disadvantages; and
- work within the constraints and existing policies of the commission and the community as a whole.

***A professional planner and staff have certain expectations of the planning commission; the staff should expect the commission to:***

- seek their professional opinions on planning matters;
- support the staff when challenged on issues that have been discussed and mutually agreed upon;
- never use the staff as a scapegoat if a planning issue becomes unpopular;
- introduce the staff to the people of the community who are leaders and decision makers (the staff must be well acquainted with the local power structure);
- be generally supportive of the staff in public meetings and public hearings;
- reserve legitimate criticism for private meetings between the staff and commission.
- be willing to work with the staff and compromise when necessary; and
- insulate the staff as well as possible from partisan politics to allow them to accomplish their work regardless of the ebb of the political tide.

**The Consultant**

Private consultants are often retained when the in-house staff lacks the time,

expertise or experience to handle certain planning tasks. The purpose for engaging a consultant is to assist the community planners to accomplish their assignments more competently. The most efficient use of a consultant is as a supplemental resource to the professional planner and staff. When a consultant is called upon to assist the planning staff, it is usually a temporary retention for the duration of a specific project.

Consultants can also be retained on a continuing basis to provide assistance to the planning commission by communities that do not have a professional planner or paid staff. The lack of a professional staff encourages the commission to work closely with the consultant. The commission provides the local input while the consultant provides the professional advice. It is not the responsibility of the consultant to make policy decisions. The consultant provides the technical skills to identify problems and issues, then describes and evaluates alternative solutions.

Communities sometimes delegate all planning functions to the consultant. In such instance, it is the consultant's role to advise and assist. The planning commission is responsible for the majority of the planning. Consultants can be commissioned on a temporary basis for a specific project without a staff, or the planning commission can keep the consultant under retainer as an advisor to the commission and legislative body. A consultant on retainer is then available to attend all meetings, review proposed development projects, subdivision and zoning questions rather than being confined to specific plan production.

## ETHICS OF THE PLANNING COMMISSIONER

**Ethics is defined as “the discipline dealing with what is good and bad with moral duty and obligation ... a set of moral principles or values.”**

The lack of trust in government by private citizens is a perpetual problem. The planning commissioners, as quasi-government officials, are representatives of local government. The general citizen perception of local officialdom may be determined by the contact with the planning commission. The work of the planning commission influences the future of a community, and through certain planning measures can have impact upon the value of property. It is therefore important that the actions and behavior of commission members are at all times legally sanctioned and completely ethical.

The canons of ethics are sometimes imprecise. To provide specific, detailed

rules of behavior is difficult. Guidelines for ethical behavior in public planning, however, do exist. Rules for the conduct of planning commissioners fall into four areas: conflict of interest, gifts and favors, treatment of information and political activity.

### **Conflict of Interest**

A planning commissioner to whom some private benefit may be derived as the result of a planning commission action should not be a participant in the action. The following are recommended as guidelines for dealing with conflicts:

The private benefit may be direct or indirect, create a material personal gain or provide an advantage to relatives, friends or groups and associations which hold some share of a person's loyalty. Mere membership itself in a group or organization, however, shall not be considered a conflict of interest as to planning commission action concerning such group or association unless a reasonable person would conclude that such membership in itself would prevent an objective consideration of the matter.

State law requires that a public official experiencing a conflict of interest declare the conflict publicly. It is strongly recommended, however, that a planning commissioner with a conflict abstain from voting on the action in question and leave the room during consideration of the action. The commissioner should not discuss the matter privately with any other commissioner. The vote cast by a planning commissioner who has a conflict of interest, but who has not excused him or herself, shall be disallowed.

A conflict of interest may exist under these rules although a planning commissioner may not believe that a conflict exists. A planning commissioner who has any question about a conflict of interest under these rules should raise the matter with the other planning commissioners and the county or city attorney's office in order that a determination may be made as to whether a conflict of interest exists.

No planning official should engage in any transaction in which he or she has a financial interest, direct or indirect, with the agency or jurisdiction that the official serves unless the transaction is disclosed publicly and determined to be lawful.

Public officials in making appointments to the planning commission should not attempt to exclude whole categories or associations of business, professional, or other persons in anticipation of conflict of interest problems. The service of competent people of good character need not be sacrificed. Their withdrawal from participation in planning

matters is necessary only in those specific cases in which a conflict of interest arises.

### **Gifts and Favors**

Gifts, favors or advantages must not be accepted if they are offered because the receiver holds a position of public responsibility. Even small gifts that come in the form of business lunches, calendars or office brick-a-brac are not always acceptable. The best rule to follow regarding gifts and favors is this: In cases of doubt, *refuse*. In cases of even marginal doubt, *refuse*

It is important to distinguish between planning information that belongs to the public and planning information that does not.

Reports and official records of a public planning agency must be open on an equal basis to all inquiries. Planning advice should not be furnished to some unless it is available to all.

Information on private affairs learned in the course of performing planning duties must be treated in confidence. Private affairs become public affairs when an official action, such as a change in zone classification or approval of a plat, is requested. Only then is a disclosure of relevant information proper.

Information contained in studies that are in progress by a planning commission should not be divulged except in accordance with established commission policies on the release of its studies.

Prearranged private meetings between a planning commissioner and applicants, their agents, or other interested parties are prohibited. Partisan information on any application received by a planning commissioner whether by mail, telephone, or other communication should be made part of the public record.

### **Political Activity**

Membership in a political party and contributions to its finances or activities are matters of individual decision and should neither be required of, nor prohibited to, planning commissioners.

The extent of participation in political activities should be governed by professional judgment as well as limited by an applicable civil service law or regulations.

The special position of a planning commissioner should not be used

to obtain contributions or support for a political party and should not partisan favors.

Partisan debate of a community's planning program and the consideration of planning in a party's platform is proper. Planning officials should, however, give political parties equal access to information.

### **Ex Parte Contact (Latin: “From a one-sided or partisan point of view.”)**

Although a member of the legislative body may gather information from many sources to augment his/her decision-making role, this activity is limited for an administrative body, such as a planning commission. There will be occasions when a planning commissioner will be contacted by an applicant whose issue is on the agenda for a forthcoming meeting. The contact may be an innocent desire to provide information, or a less than innocent attempt to influence the commissioner's decision. In either case, the commissioner should inform the applicant that a commissioner is not at liberty to discuss the matter – or inform the applicant that any information received by the commissioner must be shared with all at the public meeting, before deliberation on the issue.

Such disclosure is also expected from a commissioner who might uncover additional information or insight by personal observation. The commissioner should bring this information to the meeting and present it during the discussion.

These rules for ethical conduct should serve as a guideline for all commission members. A commission member should use individual judgment because each situation is unique.

*The key point is that all decisions made by a land use authority must be conducted with total fairness.*

### **SUMMARY**

The planning commission is a group of unpaid citizens appointed by public officials. Planning commission is advisory on all planning issues, assisting in the development or revision of the general plan. Public officials choose a prospective commission member based on his/her dedication to the community and willingness to serve in an effort to guide the development of the community.

The duties of a planning commissioner are variable. In addition to developing the goals and desires of a community, drafting and reevaluating the

comprehensive plan, the commission must also strive to educate public officials and the general public on the importance of good planning. An effective commission member must work closely with other commissioners and develop a communication network with different groups such as public officials, government agencies and citizen committees. The commissioners as lay persons may need outside assistance from professional planners, paid staffs and private consultants.

The duties of planning commissioner are challenging. Service requires time, patience, the ability to work with others, and a strong desire to improve the community. In addition to these requirements, a commissioner must also be ethical and fair. A commissioner must be able to recognize a conflict of interest, know how to deal with gifts and favors, know the proper treatment of information and deal with the restrictions of political activities. Despite the endless demands and seemingly impossible requirements, being a planning commissioner is generally a rewarding experience and well worth the time and dedication.

## Appendix A

### **FOURTEEN WAYS TO BUILD A BETTER COMMISSION**

1. Develop and adopt bylaws and procedures, and abide by them.
2. Develop and make available good reliable information, data and maps.
3. Prepare and maintain an effective general plan, and refer to it. Make and implement decisions that are consistent with its policies.
4. Annually reexamine what you are doing as a commission, how well you are doing it, and how to do it better.
5. Outline a year's work on active planning and stick to it. Do not confuse development permit processing, reactive planning or plan review, with real planning.
6. Ask to participate in preparing the planning agency's budget.
7. Meet periodically with your legislative body to exchange ideas and to assess your mutual objectives.
8. Consider a public forum every year. Ask people (your "clients") how things are going and what they want done (if anything).
9. Tell your staff what you want and how you want material presented to you. Do not be a passive commission that waits for "the experts" to tell you what to do next.
10. Attend some short courses on new planning techniques or the latest in landuse law, and expect your staff to do the same.
11. Visit other communities as a commission to see what others are doing. Sometimes you will be uplifted to find out how many light years ahead of your neighbors you really are, and sometimes you will get some ideas worth borrowing.
12. Appoint a commission representative to appear before the elected body when it is necessary to explain or sell an action. Do not expect the staff to do your job.
13. Promote and encourage good planning. If you do not, who will?
14. Take time to orient new commissioners to the job. (Remember how tough it was to get the hang of it when you were a new member of your commission.)

## APPENDIX B

### TOOLS OF THE TRADE FOR PLANNING COMMISSIONERS

**As a planning commissioner you can function best if you have received the following materials:**

1. A copy of your jurisdiction's general plan and all amendments to it, including a clear statement of community goals and policies.
2. An accurate and up-to-date community base map at a usable scale and sheet size.
3. Copies of all regulatory ordinances (zoning, subdivision, sign control, etc.)
5. The jurisdiction's capital improvements plan. (If there isn't one, find out why.)
6. The planning commission's bylaws and written procedures.
7. Copies of regional or state policies or programs with which you may be expected to be familiar.
8. A copy of any current agreements the planning agency has with other agencies or consultants.
9. Copies of the rules, regulations and forms members of the public receive when they come to the agency for information or permits. (Look at them to see if you think they are clear, ensure due process, and are in all cases necessary.)

**When entering the room in which the commission meets you should find the following:**

1. A place of entrance where interested persons can pick up a copy of the meeting agenda as well as any other useful and relevant information.
2. A map of the city or county showing current land use on the wall, visible to all.
3. A current zoning map on the wall, also visible to all.
4. A comfortable seating arrangement for the public. The room should be selected that will accommodate the reasonably expected attendance; especially public hearings on controversial issues.

## APPENDIX C

### HOW TO BE A MORE EFFECTIVE PLANNING COMMISSIONER

#### *A Checklist of Relevant Questions About You and Your Land Use Authority*

#### **DOES YOUR PLANNING AGENCY HAVE:**

1. an up-to-date general plan (revised and adopted within the last five years)?
2. general plan documents and maps readily available to the public?
3. an up-to-date general plan - with required elements?
4. an effective zoning ordinance that has been up-dated to current state law?
5. a current zoning map prominently displayed at the zoning counter and in the room in which you hold commission meetings?
6. zoning maps available to hand out?
7. an up-to-date existing land-use map?
8. a published set of specific action programs to implement the goals and policies of the general plan?
9. a professionally trained planning staff or consultant who keeps up to date through continuing education and training?
10. a procedure for regular reconsideration and review of your general plan and implementation devices (zoning ordinance, etc.)?
11. a procedure for reviewing and acting on referrals from city departments and other agencies?

#### **HAVE YOU EVER...**

1. voted "yes" on a proposed zone change or other such proposal when you really wanted to vote "no?"
2. been intimidated by staff or consultant and felt at their mercy?
3. been intimidated by an applicant?
4. told your staff or consultant what you wanted when they disappointed you or

failed to present materials in the way you wanted them?

5. had a study session with your staff or consultant to go over procedures and matters of commission-staff relations

6. had a meeting with your city or county attorney to discuss legal powers and limitations, the jurisdiction's planning laws, current case law, etc.?

7. had a meeting with a neighboring city or the county planning commission to discuss common problems?

8. met as a body jointly for study session purposes, with your own city council or county commission?

9. held a public meeting to ask citizens what they want of you and of the planning program for their community (not a public hearing on a specific issue, but an open non-agenda function?)

10. read a book or article about \ planning or related subjects?

11. felt the planning commission is impotent or held in low esteem ( usually over-ruled).

12. represented the planning commission before the city council or county commission as an advocate of a specific planning commission position?

13. lobbied in the community for a planning commission proposal you believed in?

14. been asked to review the proposed budget for the planning department?

15. participated in developing an annual work program for the planning department?

16. reviewed a work program for the department?

17. reviewed the procedures that you are following in conducting meetings and public hearings?

18. been instructed by your staff on the importance of "making findings of fact" before making decisions, and how to do so?

19. participated in hiring a consultant?

20. video-taped a commission meeting and viewed yourself in action as a commissioner?

21. felt you had become almost totally dependent upon your staff for ideas and

the basis for making decisions?

22. felt decisions sometimes are made almost entirely on the basis of the popularity or debating ability of proponent or opponent?

23. felt you wanted to complain to the city or county manager or the city council or county commission about the performance or behavior of your staff planners?

## APPENDIX D

### UTAH CODE Title 10, Chapter 9a Title 17, Chapter 27a

#### Municipalities 10-9a Part 3. Planning Commission

##### **10-9a-301. Ordinance establishing planning commission required -- Ordinance requirements -- Compensation.**

- (1) (a) Each municipality shall enact an ordinance establishing a planning commission.
- (b) The ordinance shall define:
  - (i) the number and terms of the members and, if the municipality chooses, alternate members;
  - (ii) the mode of appointment; (iii) the procedures for filling vacancies and removal from office;
  - (iv) the authority of the planning commission; and
  - (v) other details relating to the organization and procedures of the planning commission.
- (2) The legislative body may fix per diem compensation for the members of the planning commission, based on necessary and reasonable expenses and on meetings actually attended.

##### **10-9a-302. Planning commission powers and duties.**

The planning commission shall make a recommendation to the legislative body for:

- (1) a general plan and amendments to the general plan;
- (2) land use ordinances, zoning maps, official maps, and amendments;
- (3) an appropriate delegation of power to at least one designated land use authority to hear and act on a land use application;
- (4) an appropriate delegation of power to at least one appeal authority to hear and act on an appeal from a decision of the land use authority; and
- (5) application processes that:
  - (a) may include a designation of routine land use matters that, upon application and proper notice, will receive informal streamlined review and action if the application is uncontested; and
  - (b) shall protect the right of each:
    - (i) applicant and third party to require formal consideration of any application by a land use authority;
    - (ii) applicant, adversely affected party, or municipal officer or employee to appeal a land use authority's decision to a separate appeal authority; and
    - (iii) participant to be heard in each public hearing on a contested application

##### **10-9a-303. Entrance upon land.**

The municipality may enter upon any land at reasonable times to make examinations and surveys pertinent to the:

- (1) preparation of its general plan; or
- (2) preparation or enforcement of its land use ordinances.

##### **10-9a-304. State and federal property.**

Unless otherwise provided by law, nothing contained in this chapter may be construed as giving a municipality jurisdiction over property owned by the state or the United States.

##### **10-9a-305. Other entities required to conform to municipality's land use ordinances -- Exceptions -- School districts and charter schools.**

(1) (a) Each county, municipality, school district, charter school, special district, and political subdivision of the state shall conform to any applicable land use ordinance of any municipality when installing, constructing, operating, or otherwise using any area, land, or building situated within that municipality.

(b) In addition to any other remedies provided by law, when a municipality's land use ordinances is violated or about to be violated by another political subdivision, that municipality may institute an injunction, mandamus, abatement, or other appropriate action or proceeding to prevent, enjoin, abate, or

remove the improper installation, improvement, or use.

(2) (a) Except as provided in Subsection (3), a school district or charter school is subject to a municipality's land use ordinances.

(b) (i) Notwithstanding Subsection (3), a municipality may subject a charter school to standards within each zone pertaining to setback, height, bulk and massing regulations, off-site parking, curb cut, traffic circulation, and construction staging.

(ii) The standards to which a municipality may subject a charter school under Subsection (2)(b)(i) shall be objective standards only and may not be subjective.

(iii) Except as provided in Subsection (7)(d), the only basis upon which a municipality may deny or withhold approval of a charter school's land use application is the charter school's failure to comply with a standard imposed under Subsection (2)(b)(i).

(iv) Nothing in Subsection (2)(b)(iii) may be construed to relieve a charter school of an obligation to comply with a requirement of an applicable building or safety code to which it is otherwise obligated to comply.

(3) A municipality may not:

(a) impose requirements for landscaping, fencing, aesthetic considerations, construction methods or materials, building codes, building use for educational purposes, or the placement or use of temporary classroom facilities on school property;

(b) except as otherwise provided in this section, require a school district or charter school to participate in the cost of any roadway or sidewalk, or a study on the impact of a school on a roadway or sidewalk, that is not reasonably necessary for the safety of school children and not located on or contiguous to school property, unless the roadway or sidewalk is required to connect an otherwise isolated school site to an existing roadway;

(c) require a district or charter school to pay fees not authorized by this section;

(d) provide for inspection of school construction or assess a fee or other charges for inspection, unless the school district or charter school is unable to provide for inspection by an inspector, other than the project architect or contractor, who is qualified under criteria established by the state superintendent;

(e) require a school district or charter school to pay any impact fee for an improvement project that is not reasonably related to the impact of the project upon the need that the improvement is to address; or

(f) impose regulations upon the location of a project except as necessary to avoid unreasonable risks to health or safety.

(4) Subject to Section **53A-20-108**, a school district or charter school shall coordinate the siting of a new school with the municipality in which the school is to be located, to:

(a) avoid or mitigate existing and potential traffic hazards, including consideration of the impacts between the new school and future highways; and

(b) to maximize school, student, and site safety.

(5) Notwithstanding Subsection (3)(d), a municipality may, at its discretion:

(a) provide a walk-through of school construction at no cost and at a time convenient to the district or charter school; and

(b) provide recommendations based upon the walk-through.

(6) (a) Notwithstanding Subsection (3)(d), a school district or charter school shall use:

(i) a municipal building inspector;

(ii) a school district building inspector; or

(iii) an independent, certified building inspector who is:

(A) not an employee of the contractor;

(B) approved by a municipal building inspector or a school district building inspector; and

(C) licensed to perform the inspection that the inspector is requested to perform.

(b) The approval under Subsection (6)(a)(iii)(B) may not be unreasonably withheld.

(c) If a school district or charter school uses an independent building inspector under Subsection (6)(a)(iii), the school district or charter school shall submit to the state superintendent of public instruction, on a monthly basis during construction of the school building, a copy of each inspection certificate regarding the school building.

(7) (a) A charter school shall be considered a permitted use in all zoning districts within a municipality.

(b) Each land use application for any approval required for a charter school, including an application for a building permit, shall be processed on a first priority basis.

(c) Parking requirements for a charter school may not exceed the minimum parking requirements for schools or other institutional public uses throughout the municipality.

(d) If a municipality has designated zones for a sexually oriented business, or a business which sells alcohol, a charter school may be prohibited from a location which would otherwise defeat the purpose for the zone unless the charter school provides a waiver.

(e) (i) A school district or a charter school may seek a certificate authorizing permanent occupancy of a school building from:

(A) the state superintendent of public instruction, as provided in Subsection **53A-20-104**(3), if the school district or charter school used an independent building inspector for inspection of the school building; or

(B) a municipal official with authority to issue the certificate, if the school district or charter school used a municipal building inspector for inspection of the school building.

(ii) A school district may issue its own certificate authorizing permanent occupancy of a school building if it used its own building inspector for inspection of the school building, subject to the notification requirement of Subsection **53A-20-104**(3)(a)(ii).

(iii) A charter school may seek a certificate authorizing permanent occupancy of a school building from a school district official with authority to issue the certificate, if the charter school used a school district building inspector for inspection of the school building.

(iv) A certificate authorizing permanent occupancy issued by the state superintendent of public instruction under Subsection **53A-20-104**(3) or a school district official with authority to issue the certificate shall be considered to satisfy any municipal requirement for an inspection or a certificate of occupancy.

### **Counties 27a Part 3. Planning Commission**

#### **17-27a-301. Ordinance establishing planning commission required -- Exception -- Ordinance requirements -- Township planning commission -- Compensation.**

.(1) (a) Except as provided in Subsection (1)(b), each county shall enact an ordinance establishing a countywide planning commission for the unincorporated areas of the county not within a township.

.(b) Subsection (1)(a) does not apply if all of the county is included within any combination of:

.(i) municipalities; and (ii) townships with their own planning commissions.

.(2) The ordinance shall define:

.(a) the number and terms of the members and, if the county chooses, alternate members;

.(b) the mode of appointment;

.(c) the procedures for filling vacancies and removal from office;

.(d) the authority of the planning commission; and (e) other details relating to the organization and procedures of the planning commission.

.(3) (a) If the county establishes a township planning commission, the county legislative body shall enact an ordinance defining appointment procedures, procedures for filling vacancies and removing members from office, and other details relating to the organization and procedures of each township planning commission.

.(b) The planning commission for each township shall consist of seven members who, except as provided in Subsection (3)(e), shall be appointed by:

.(i) in a county operating under a form of government in which the executive and legislative functions of the governing body are separated, the county executive with the advice and consent of the county legislative body; or

.(ii) in a county operating under a form of government in which the executive and legislative functions of the governing body are not separated, the county legislative body.

.(c) (i) Members shall serve four-year terms and until their successors are appointed or, as provided in Subsection (3)(e), elected and qualified. (ii) Notwithstanding the provisions of Subsection (3)(c)(i) and except as provided in Subsection (3)(e), members of the first planning commissions shall be appointed so that, for each commission, the terms of at least one member and no more than two members expire each year.

.(d) (i) Except as provided in Subsection (3)(d)(ii), each member of a township planning commission shall be a registered voter residing within the township.

.(ii) (A) Notwithstanding Subsection (3)(d)(i), one member of a planning commission of a township reconstituted under Chapter 389, Laws of Utah 1997, or reinstated or established under Subsection **17-27a-306**(1)(e)(i) may be an appointed member who is a registered voter residing outside the township if that member:

.(I) is an owner of real property located within the township; and

.(II) resides within the county in which the township is located.

.(B) (I) Each appointee under Subsection (3)(d)(ii)(A) shall be chosen by the township planning commission from a list of three persons submitted by the county legislative body.

.(II) If the township planning commission has not notified the county legislative body of its choice under Subsection (3)(d)(ii)(B)(I) within 60 days of the township planning commission's receipt of the list, the county legislative body may appoint one of the three persons on the list or a registered voter residing within the township as a member of the township planning commission.

.(e) (i) The legislative body of each county in which a township reconstituted under Chapter 389, Laws of Utah 1997, or reinstated or established under Subsection **17-27a-306(1)(e)(i)** is located shall enact an ordinance that provides for the election of at least three members of the planning commission of that township.

.(ii) The election of planning commission members under Subsection (3)(e)(i) shall coincide with the election of other county officers during even-numbered years. Approximately half the elected planning commission members shall be elected every four years during elections held on even-numbered years, and the remaining elected members shall be elected every four years on alternating even-numbered years.

.(f) (i) (A) The legislative body of each county in which a township reconstituted under Chapter 389, Laws of Utah 1997, or reinstated or established under Subsection **17-27a-306(1)(e)(i)** is located shall enact an ordinance appointing each elected member of the planning and zoning board of the former township, established under Chapter 308, Laws of Utah 1996, as a member of the planning commission of the reconstituted or reinstated township. Each member appointed under this subsection shall be considered an elected member.

.(B) (I) Except as provided in Subsection (3)(f)(i)(B)(II), the term of each member appointed under Subsection (3)(f)(i)(A) shall continue until the time that the member's term as an elected member of the former township planning and zoning board would have expired.

.(II) Notwithstanding Subsection (3)(f)(i)(B)(I), the county legislative body may adjust the terms of the members appointed under Subsection (3)(f)(i)(A) so that the terms of those members coincide with the schedule under Subsection (3)(e)(ii) for elected members.

.(ii) Subject to Subsection (3)(f)(iii), the legislative body of a county in which a township reconstituted under Chapter 389, Laws of Utah 1997, or reinstated or established under Subsection **17-27a-306(1)(e)(i)** is located may enact an ordinance allowing each appointed member of the planning and zoning board of the former township, established under Chapter 308, Laws of Utah 1996, to continue to hold office as a member of the planning commission of the reconstituted or reinstated township until the time that the member's term as a member of the former township's planning and zoning board would have expired.

(iii) If a planning commission of a township reconstituted under Chapter 389, Laws of Utah 1997, or reinstated or established under Subsection **17-27a-306(1)(e)(i)** has more than one appointed member who resides outside the township, the legislative body of the county in which that township is located shall, within 15 days of the effective date of this Subsection (3)(f)(iii), dismiss all but one of the appointed members who reside outside the township, and a new member shall be appointed under Subsection (3)(b) no later than August 16, 1997, to fill the position of each dismissed member.

(g) (i) Except as provided in Subsection (3)(g)(ii), upon the appointment or election of all members of a township planning commission, each township planning commission under this section shall begin to exercise the powers and perform the duties provided in Section **17-27a-302** with respect to all matters then pending that previously had been under the jurisdiction of the countywide planning commission or township planning and zoning board.

.(ii) Notwithstanding Subsection (3)(g)(i), if the members of a former township planning and zoning board continue to hold office as members of the planning commission of the township planning district under an ordinance enacted under Subsection (3)(f), the township planning commission shall immediately begin to exercise the powers and perform the duties provided in Section **17-27a-302** with respect to all matters then pending that had previously been under the jurisdiction of the township planning and zoning board.

.(4) The legislative body may fix per diem compensation for the members of the planning commission, based on necessary and reasonable expenses and on meetings actually attended.

#### **17-27a-302. Planning commission powers and duties.**

.(1) Each countywide or township planning commission shall, with respect to the unincorporated area of the county, or the township, make a recommendation to the county legislative body for:

.(a) a general plan and amendments to the general plan;

.(b) land use ordinances, zoning maps, official maps, and amendments;

.(c) an appropriate delegation of power to at least one designated land use authority to hear and act on a land use application;

.(d) an appropriate delegation of power to at least one appeal authority to hear and act on an appeal from a decision of the land use authority; and

.(e) application processes that:

- .(i) may include a designation of routine land use matters that, upon application and proper notice, will receive informal streamlined review and action if the application is uncontested; and
- .(ii) shall protect the right of each:
  - .(A) applicant and third party to require formal consideration of any application by a land use authority;
  - .(B) applicant, adversely affected party, or county officer or employee to appeal a land use authority's decision to a separate appeal authority; and
  - .(C) participant to be heard in each public hearing on a contested application.
- .(2) The planning commission of a township under this part may recommend to the legislative body of the county in which the township is located:
  - .(a) that the legislative body support or oppose a proposed incorporation of an area located within the township, as provided in Subsection **10-2-105**(4); or
  - .(b) that the legislative body file a protest to a proposed annexation of an area located within the township, as provided in Subsection **10-2-407**(1)(b).

**17-27a-303. Entrance upon land.**

A county may enter upon any land at reasonable times to make examinations and surveys pertinent to the: (1) preparation of its general plan; or (2) preparation or enforcement of its land use ordinances.

**17-27a-305. Other entities required to conform to county's land use ordinances -- Exceptions -- School districts and charter schools.**

(1) (a) Each county, municipality, school district, charter school, special district, and political subdivision of the state shall conform to any applicable land use ordinance of any county when installing, constructing, operating, or otherwise using any area, land, or building situated within the unincorporated portion of the county.

(b) In addition to any other remedies provided by law, when a county's land use ordinance is violated or about to be violated by another political subdivision, that county may institute an injunction, mandamus, abatement, or other appropriate action or proceeding to prevent, enjoin, abate, or remove the improper installation, improvement, or use.

(2) (a) Except as provided in Subsection (3), a school district or charter school is subject to a county's land use ordinances.

(b) (i) Notwithstanding Subsection (3), a county may subject a charter school to standards within each zone pertaining to setback, height, bulk and massing regulations, off-site parking, curb cut, traffic circulation, and construction staging.

(ii) The standards to which a county may subject a charter school under Subsection (2)(b)(i) shall be objective standards only and may not be subjective.

(iii) Except as provided in Subsection (7)(d), the only basis upon which a county may deny or withhold approval of a charter school's land use application is the charter school's failure to comply with a standard imposed under Subsection (2)(b)(i).

(iv) Nothing in Subsection (2)(b)(iii) may be construed to relieve a charter school of an obligation to comply with a requirement of an applicable building or safety code to which it is otherwise obligated to comply.

(3) A county may not:

(a) impose requirements for landscaping, fencing, aesthetic considerations, construction methods or materials, building codes, building use for educational purposes, or the placement or use of temporary classroom facilities on school property;

(b) except as otherwise provided in this section, require a school district or charter school to participate in the cost of any roadway or sidewalk, or a study on the impact of a school on a roadway or sidewalk, that is not reasonably necessary for the safety of school children and not located on or contiguous to school property, unless the roadway or sidewalk is required to connect an otherwise isolated school site to an existing roadway;

(c) require a district or charter school to pay fees not authorized by this section;

(d) provide for inspection of school construction or assess a fee or other charges for inspection, unless the school district or charter school is unable to provide for inspection by an inspector, other than the project architect or contractor, who is qualified under criteria established by the state superintendent;

(e) require a school district or charter school to pay any impact fee for an improvement project that is not reasonably related to the impact of the project upon the need that the improvement is to address; or

(f) impose regulations upon the location of a project except as necessary to avoid unreasonable risks to health or safety.

(4) Subject to Section **53A-20-108**, a school district or charter school shall coordinate the siting of a new school with the county in which the school is to be located, to:

(a) avoid or mitigate existing and potential traffic hazards, including consideration of the impacts between the new school and future highways; and

(b) to maximize school, student, and site safety.

(5) Notwithstanding Subsection (3)(d), a county may, at its discretion:

(a) provide a walk-through of school construction at no cost and at a time convenient to the district or charter school; and

(b) provide recommendations based upon the walk-through.

(6) (a) Notwithstanding Subsection (3)(d), a school district or charter school shall use:

(i) a county building inspector;

(ii) a school district building inspector; or

(iii) an independent, certified building inspector who is:

(A) not an employee of the contractor;

(B) approved by a county building inspector or a school district building inspector; and

(C) licensed to perform the inspection that the inspector is requested to perform.

(b) The approval under Subsection (6)(a)(iii)(B) may not be unreasonably withheld.

(c) If a school district or charter school uses an independent building inspector under Subsection (6)(a)(iii), the school district or charter school shall submit to the state superintendent of public instruction, on a monthly basis during construction of the school building, a copy of each inspection certificate regarding the school building.

(7) (a) A charter school shall be considered a permitted use in all zoning districts within a county.

(b) Each land use application for any approval required for a charter school, including an application for a building permit, shall be processed on a first priority basis.

(c) Parking requirements for a charter school may not exceed the minimum parking requirements for schools or other institutional public uses throughout the county.

(d) If a county has designated zones for a sexually oriented business, or a business which sells alcohol, a charter school may be prohibited from a location which would otherwise defeat the purpose for the zone unless the charter school provides a waiver.

(e) (i) A school district or a charter school may seek a certificate authorizing permanent occupancy of a school building from:

(A) the state superintendent of public instruction, as provided in Subsection **53A-20-104**(3), if the school district or charter school used an independent building inspector for inspection of the school building; or

(B) a county official with authority to issue the certificate, if the school district or charter school used a county building inspector for inspection of the school building.

(ii) A school district may issue its own certificate authorizing permanent occupancy of a school building if it used its own building inspector for inspection of the school building, subject to the notification requirement of Subsection **53A-20-104**(3)(a)(ii).

(iii) A charter school may seek a certificate authorizing permanent occupancy of a school building from a school district official with authority to issue the certificate, if the charter school used a school district building inspector for inspection of the school building.

(iv) A certificate authorizing permanent occupancy issued by the state superintendent of public instruction under Subsection **53A-20-104**(3) or a school district official with authority to issue the certificate shall be considered to satisfy any county requirement for an inspection or a certificate of occupancy.

### **17-27a-306. Townships.**

(1) (a) (i) Subject to Subsection (1)(a)(ii), a county legislative body may, without having received a petition under Subsection (1)(b), enact an ordinance establishing a township within the unincorporated county or dividing the unincorporated county into townships.

(ii) Before enacting an ordinance under Subsection (1)(a)(i), the county legislative body shall, after

providing reasonable advance notice, hold a public hearing on the proposal to establish a township or to divide the unincorporated county into townships.

(b) If 25% of the private real property owners in a contiguous area of the unincorporated county petition the county legislative body to establish a township for that area, the county legislative body shall:

(i) hold a public hearing to discuss the petition;

(ii) at least one week before the public hearing, publish notice of the petition and the time, date, and place of the public hearing at least once in a newspaper of general circulation in the county; and

(iii) at the public hearing, consider oral and written testimony from the public and vote on the question of whether or not to establish a township.

(c) If the county legislative body establishes a township pursuant to a petition, the members of the township planning commission shall be appointed as provided in Subsection **17-27a-301(3)(b)** to perform the duties established in this part for the township.

(d) Except as provided in Subsection (1)(e), each township shall:

(i) contain:

(A) at least 20% but not more than 80% of:

(I) the total private land area in the unincorporated county; or

(II) the total value of locally assessed taxable property in the unincorporated county; or

(B) (I) in a county of the first, second, or third class, at least 5% of the total population of the unincorporated county; or

(II) in a county of the fourth, fifth, or sixth class, at least 25% of the total population of the unincorporated county; or

(ii) have been declared by the United States Census Bureau as a census designated place.

(e) (i) (A) A township that was dissolved under Chapter 389, Laws of Utah 1997, is reinstated as a township under this part with the same boundaries and name as before the dissolution, if the former township consisted of a single, contiguous land area.

(B) Notwithstanding Subsection (1)(e)(i)(A), a county legislative body may enact an ordinance establishing as a township under this part a former township that was dissolved under Chapter 389, Laws of Utah 1997, even though the former township does not qualify to be reinstated under Subsection (1)(e)(i)(A).

(C) A township reinstated under Subsection (1)(e)(i)(A) or established under Subsection (1)(e)(i)(B) shall be subject to the provisions of this part.

(ii) Each planning district established under Chapter 225, Laws of Utah 1995, and each township planning district established under Chapter 389, Laws of Utah 1997, shall continue in existence as a township, subject to the provisions of this part.

(f) (i) After May 1, 2002, the legislative body of each county in which a township that has been reconstituted under Chapter 389, Laws of Utah 1997, or reinstated under Subsection (1)(e)(i) is located shall review the township and determine whether its continued existence is advisable.

(ii) In conducting the review required under Subsection (1)(f)(i), the county legislative body shall hold a public hearing with reasonable, advance, published notice of the hearing and the purpose of the hearing.

(iii) Each township that has been reconstituted under Chapter 389, Laws of Utah 1997, or reinstated or established under Subsection (1)(e)(i) and its planning commission shall continue in effect, unless, within 90 days after conducting the review and public hearing required under Subsections (1)(f)(i) and (ii), the county legislative body by ordinance dissolves the township and its planning commission.

(g) A township established under this section on or after May 5, 1997, may use the word "township" in its name.

(2) (a) If the county legislative body establishes a township without having received a petition, the county legislative body may:

(i) assign to the countywide planning commission the duties established in this part that would have been assumed by a township planning commission designated under Subsection (2)(a)(ii); or

(ii) designate a planning commission for the township.

(b) (i) If the county legislative body fails to designate a planning commission for a township, 40% of the private real property owners in the area proposed to be included in the township, as shown by the last county assessment roll, may petition the county legislative body to designate and appoint a planning commission for the township.

(ii) If the county legislative body determines that the petition is validly signed by 40% of the private real property owners in the township, as shown by the last county assessment roll, it shall designate and appoint

a planning commission for the township.

(3) (a) Except as provided in Subsection (1)(f)(iii), a county legislative body may dissolve township planning commissions created under the authority of this section only by following the procedures and requirements of this Subsection (3).

(b) If 20% of the private real property owners in the county petition the county legislative body to dissolve township planning commissions and to appoint a countywide planning commission, the county legislative body shall:

(i) hold a public hearing to discuss the petition;

(ii) at least one week before the public hearing, publish notice of the petition and the time, date, and place of the public hearing at least once in a newspaper of general circulation in the county; and

(iii) at the public hearing, consider oral and written testimony from the public and vote on the question of whether or not to dissolve township planning commissions and to appoint a countywide planning commission.

(c) (i) If the county legislative body fails to dissolve township planning commissions and to appoint a countywide planning commission when petitioned to do so by private real property owners under this subsection, 40% of private real property owners in the county, as shown by the last county assessment roll, may petition the county legislative body to dissolve the township planning commissions and to appoint a countywide planning commission.

(ii) If the county legislative body determines that the petition is validly signed by 40% of private real property owners in the township, as shown by the last county assessment roll, it shall dissolve the township planning commissions and appoint a countywide planning commission.

**17-27a-307. Certain township planning and zoning board dissolved.**

Except as provided in Subsection **17-27a-306**(1)(f), the planning and zoning board of each township formed before May 5, 1997, under Chapter 308, Laws of Utah 1996, is dissolved.

# **A Collection of Terms**

## **Commonly heard in Local Government And in Land Use Planning**

*The reader is cautioned to seek legal counsel for definitive answers.  
Because this collection was put together for use by public officials in Utah, there are occasional  
references to Utah law. Generally the terms are fairly generic. Recommendations of terms to be  
included and any corrections are welcomed.*

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**Acting Without Authority (Ultra Vires).** If a local government regulates the use of land in a manner that has not been authorized by the state, it is invalid and can have no force or effect. Illegal means the decision is outside the authority of the board making the decision or is contrary to some required procedure. *Failure to strictly follow the statutory requirements in enacting the ordinance renders it invalid.* Call v. City of West Jordan, 727 P.2d, 183 (Utah 1986). *If local government does not adopt zoning laws in specific conformance with state enabling statutes, the zoning laws will be struck down.* Hatch v. Boulder Town, 2001 UT App 55. *Municipal zoning authorities are bound by the terms and standards of applicable zoning ordinances and are not at liberty to make land use decisions in derogation thereof.* Thurston v. Cache County, 626 P.2d 440-45

## **Actions and Powers**

Actions by local government officials have different levels of discretion.

**Legislative** acts are decisions made by a public vote of the city council or county commission/council that results in an ordinance, amendment to an ordinance, adoption of or amendment to the General Plan, or creation of an official policy. These actions by the elected officials are afforded greater deference by the courts. A legislative action is not arbitrary or capricious so long as the grounds for the decision are reasonably debatable. *■ If an ordinance could promote the general welfare; or even if it is reasonable debatable that it is in the interest of the general welfare, we will uphold it.* • Utah Supreme Court. Examples of legislative actions include: adopting or amending the General Plan or zoning ordinances.

**Administrative** actions are applying existing law to a particular application. Subdivision, site plan approvals, and consideration of conditional uses are typical administrative actions. Administrative actions require findings of fact and there should be substantial evidence on the record that justifies the action. The courts will only uphold administrative acts if they are based on substantial evidence on the record that justifies the action. *■.. When a land use decision is made as an exercise of administrative or quasi-judicial powers, we have held that such decisions are not arbitrary and capricious if they are supported by ■substantial evidence.* • Xantos v. Bd. Of Adjustment of Salt Lake City, 685 P.2d 1032, 1034-35

**Quasi-judicial** is a term applied to actions of a body requiring it to investigate facts, or ascertain the existence of facts, hold hearing, and draw conclusions from them as a basis for official actions and to exercise discretion of a judicial nature. These actions include variances and appeals. The substantial evidence standard is applied. The Board of Adjustment and or the Appeal Authority acts in a quasi-judicial manner in their hearings.

**Adult Use.** An adult use is a business that provides sexual entertainment or services to customers. Adult uses include: X-rated video shops and bookstores, live or video peep shows, topless or fully nude dancing establishments, combination book/video and "marital aid" stores, non-medical massage parlors, hot oil salons, nude modeling studios, hourly motels, body painting studios, swingers clubs, X-rated movie theaters, escort service clubs, and combinations thereof. Also referred to as sexually oriented businesses (S.O.B.)

**Annex:** to absorb by legal incorporation; to bring previously unincorporated land into municipal incorporation

**Approve:** to ratify, confirm, or sanction. To approve in planning can mean either to make formal recommendation to the legislative body of local government or to make specific determination of an application. Where the approval is a recommendation, the legislative body can accept, reject or modify the request. Where the approval is a determination, it is final (subject to judicial review).

**Arbitrary and Capricious:** Arbitrary is an action not supported by fair or substantial evidence or reason. Capricious: unpredictable and subject to whim.

**Board:** a committee of persons legally organized to exercise responsibilities of management, direction, or superintendence or to control specified matters, or to discharge certain functions that constitute a public office. A board of adjustment is a quasi-judicial board that can grant a specific parcel of real property relief from the strict application of the zoning ordinance. A board of county commissioners is the legislative-administrative unit for unincorporated county government.

**Capital Facilities Program (Capital Improvements Program).** An element of the General Plan. A combination of text, maps and tables that show what capital improvements will be built, when, and how much each will cost. The CFP/CIP sets forth the essential facilities and services necessary to support future growth and development as well as to serve the existing population. Included are planning for future streets, water and sewer facilities, parks, libraries, police headquarters, jails, city buildings and all other capital expenditures to be funded from public tax support or dedicated revenue bonds.

**Citizen Actions.** Initiative is the power of the people to propose legislation, and to enact or reject them at the polls, independent of legislative assembly. A right reserved to the people themselves to propose laws to be enacted by the legislature. Different from a “referendum” which is a right of the people to have legislative acts referred to the voters for final approval or rejection.. ( Utah Code – Title 20A – Chapter 7)

**Cluster Development.** A design technique permitted by some zoning ordinances allowing the clustering of residential units on a smaller lot per unit than would normally be allowed.. The controlling factor is that the normal average density for the zone must be maintained. If the zoning regulations permits three units to an acre, a developer’s plan could be approved in which the units are clustered on individual parcels provided the density of three units per acre is maintained. The remaining land is typically utilized for common open space or public use.

**Concurrency.** A timed growth element in growth management plans, which requires that those public facilities and services necessary to support new development are adequate and available at the time development, occurs. Intended to insure that adequate public facilities are in place, planned, or provided for as demands for service occur from new development. Concurrency prevents a decline in service as development proceeds. Does not insist that developers pay for public improvements, only that such developments be made when development occurs

#### **10-9a-507. Conditional uses.**

(1) A land use ordinance may include conditional uses and provisions for conditional uses that require compliance with standards set forth in an applicable ordinance.

(2) (a) A conditional use shall be approved if reasonable conditions are proposed, or can be

imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards.

(b) If the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards, the conditional use may be denied.

Amended by Chapter 245, 2005 General Session

(10-9a-507/ 17-27a-506 Land Use Development and Management Amendments - LUDMA)

**Conflict of Interest.** To allow due process, members of planning commissions, councils, county commission and appeal boards, who have an interest in a project should not take part in the discussion nor vote.

**Consistency with General Plan.** Many states require by statute that zoning ordinances conform to a general plan or comprehensive, master plan. The general plan provides the best reference source for explaining why and how zoning ordinances and other regulations were adopted.

**Covenants, conditions and restrictions:** commonly called ■CC&R.s.● Written rules, limitations and restrictions on use, mutually agreed to by all owners of homes in a subdivision or condominium complex. CC&Rs may limit the size of homes, exterior colors, pets, ages of residents etc. They are a private legal restriction on the use of land, contained in the deed to the property or otherwise formally recorded. Generally, covenant restrictions are enforced by home owner associations and not local governments.

**Dedication.** The giving of land by a private person or entity to the government, typically for a street, park or school site, as part of and a condition of a real estate development. The local town, city or town must accept the dedication before it is complete. ( It is not unusual to see ■dedicated● areas on subdivision maps which were never officially accepted and in effect belong to no one.).

**Delegation of Power.** Only the elected legislative bodies have legislative ability and they may not delegate their legislative or policy making power to administrative agencies. However, legislators may delegate substantial discretion to such agencies, so long as this delegation is accompanied by a clear-cut policy guideline to control the exercise of the delegated authority.

**Due process.** Probably the most important constitutional protection for land owners comes from the 5th and 14th amendment to the U.S. Constitution. The Fifth Amendment states: *No person shall be deprived of life, liberty or property, without due process of law . . .* Due process of law is also an important constitutional principle that those involved in planning must understand. Due process prescribes the limits of the ability of the government to regulate for the health, safety and the general welfare of the public. The term refers to the constitutional protection provided to ensure that laws are reasonable and not arbitrary or capricious. In a word, due process means fairness.

**Procedural Due Process:** Rights to have certain rules followed before significant changes occur to one's rights, responsibilities, or property. Procedural due process applies when a governmental body applies an established land use policy that is applicable to a specific parcel of property. It is important to understand the difference in administrative or quasi-judicial decisions, and legislative actions. This distinction is important because certain procedural requirements do not apply to legislative decision-making but are required in quasi-judicial and administrative decisions. The

courts have held that a legislative decision is valid if “reasonably debatable” and not “illegal” while an “Administrative or quasi-judicial” decision is valid if supported by “substantial evidence” and not “illegal.”

Procedural due process includes: adequate and effective notice of hearing; an opportunity to participate and be heard; full disclosure – all parties have full access to information, statements and evidence relied upon to make decisions; an unbiased decision based on the record supported by reasons and findings of fact: avoidance of conflicts of interest and ex parte communications: and prompt decision making.

52-4-102. Declaration of public policy.

*In enacting this chapter, the Legislature finds and declares that the state, its agencies and political subdivisions, exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.*

(See footnotes for more state law on Public Meeting)

**Substantive Due Process:** The right to have rules adopted which are reasonable in aim and scope, and which are designed to accomplish a valid public purpose.. Rules should be related to health, safety and welfare issues.

The land use regulation must not only advance a legitimate public interest but also be a reasonable way to further legitimate governmental purposes. This relationship between the regulation and public interest should be documented. *A municipality's land use restriction does not violate the substantive component of the due process clause unless it lacks a reasonable relation to public health, safety, or general welfare.* UT Ct. App. 1998

The due process clause of the Fourteenth Amendment prohibits any state from depriving "*any person of life, liberty or property, without due process of law.*" This clause imposes both substantive and procedural due process requirements.

**Down zoning.** Down zoning occurs when a land use classification is changed from a more intensive to a less intensive use, which increases the restriction on the development of the property. It is an exercise of the government's police power, but it must not transgress the constitutional rights of property owners. Down zoning affects large areas of land in diverse ownership. It is implemented only after following authorized and proper procedures.( See Smith Investment Company v. Sandy City, 958 P.2d 245, 342 Utah Adv, Rep 10, 1998 Utah App. LEXIS 30 (1998) for an excellent overview of due process and takings law in Utah.)

**Eminent Domain.** The right of the state to take private property for public use. The Fifth Amendment to the United States Constitution requires that just compensation be made whenever private property is taken for public use.

**Equal Protection.** The Fourteenth Amendment to the U.S. Constitution provides that no state or any of their local governments "*shall deny to any person within its jurisdiction the equal protection of its laws.*" Equal protection assures that all citizens will be treated alike unless a legitimate reason exists for treating them differently.

**Equitable Estoppel.** Based on the concept of fairness. For example, if a builder justifiably depends on a government action, such as the issuance of a building permit, and the reliance is made to the builders detriment, the government is "estopped" from denying or revoking that permit. In order to claim estoppel, the property owner must show that the local government committed an act or omission upon

which he relied in good faith by making substantial changes in position or in incurring extensive expenses. Unauthorized statements or promises from city officials are usually insufficient to invoke equitable estoppel.

**Exaction.** In Utah, a municipality may impose an exaction or exactions on development proposed in a land use application if an essential link exists between a legitimate governmental interest and each exaction is roughly proportionate, both in nature and extent, to the impact of the proposed development. (10-9a-508 LUDMA.)

**Findings of Fact.** A Finding of Fact is a complete record of determination that statutory ordinance requirement has been satisfied. Adequate findings identify the pertinent standards or criteria in the ordinance and identify facts relied on to make the decision. Findings provide a record that the action taken was based on substantial evidence received in hearings.

The connection between the facts and decision should be made clear. Putting reasons for action on the record allows the court to understand why the decision was made. Findings apply to administrative/ quasi-judicial actions such as Board of Adjustment actions, Conditional use permits, Special exceptions etc.

**Freedom of Speech and Religion.** *Congress shall make no law . . . abridging the freedom of speech, or of the press . . .* Local governments commonly run into constitutional issues when dealing with sign regulations and sexually oriented businesses ( S.O.B.) As with other land use issues, when there is any question about proper handling, it is best to seek expert legal advice.

**General Plan.** The General Plan is a document that a municipality adopts that sets forth general guidelines for proposed future development of the land within the municipality. The Planning Commission shall make and recommend a General Plan to the legislative body who makes the approval. The General Plan serves as a basic guide to the structuring of zoning and subdivision controls, urban renewal, and capital improvement programs. A basic element of a general plan designates the future use or reuse of the land within a jurisdiction's planning area. The plan includes policies and the reasoning used in arriving at the decisions in the plan.

As a policy document, the General Plan provides the legal basis for all subdivision, zoning and related ordinances. . . .”*the trial court also correctly determined that the city’s denial of the rezoning decision did not result in arbitrary and capricious “reverse spot zoning” or a violation of their substantive due process rights because the denial was based on the requirements contained in the city’s general plan.* 2007 UT APP 260

All jurisdictions in Utah “shall” adopt a General Plan that includes the following elements: Land Use; Transportation & traffic circulation; Moderate Income Housing. (General Plan is a term used in Utah statutes; commonly called Comprehensive or Master Plan in other states.)

**Impact Fees.** An impact fee is a charge levied against new development in order to generate revenue for funding capital improvements made necessary by that development.. Impact fees are generally levied at the time a building permit is issued. Since the purpose of a impact fee is to finance a specific expenditure, the fee amount must be reasonably equivalent to the cost of the activity regulated. U.C.A. 11-36-101 *et seq.*

In Utah, Banberry Development Corp. v South Jordan City, 631 P.2d 899 (Utah 1981), established guidelines to be followed, which include: a written analysis of each impact fee that identifies the

impact on system requirements generated by new development, system requirements and existing, as well as future public improvements providing service to the community. The analysis identifies how the new demand is reasonably related to new development, and estimates the proportionate cost of meeting the increased demand attributable to the new development. It also identifies how the impact fee is calculated. In calculating the fee the analysis may include: the cost of land, improvements, materials and fixtures, cost of planning, surveying and engineering fees and debt service charges. The Utah Code should be carefully studied before adopting impact fee regulation. It is well to seek professional help.

**Laches.** The property owner cannot wait to challenge an action by a municipality until it is too late for the municipality to avoid onerous losses. A citizen cannot plat coy while a municipality digs a deep pit of liability and then come forth with a lawsuit after it is too late for the government to mitigate the injury its actions may have caused.

**Land Use Ordinances and Zoning.** A police-power measure, enacted primarily by local governments, 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. The planning commission shall prepare and recommend a proposed zoning ordinance, including both a map and the full text of the zoning ordinances that represents the commission's recommendations for zoning all or any part of the area within the municipality. The legislative body then holds a properly noticed public hearing and then may: adopt the zoning ordinance and map as proposed; amend the zoning ordinance and map; or reject the ordinance and map. Amendments and rezoning are handled with the same procedures. The legislative body may not make any amendments unless the amendment was proposed by the planning commission or is first submitted to the planning commission for its approval, disapproval, or recommendation. **Land-use ordinance** means a planning, zoning, development, or subdivision ordinance of the municipality but does not include the General Plan. (10-9a-502 / 17-27a-501 LUDMA.)

**Levels of Service:** a measure of the desired level of public facilities provided by the community. Examples: 5 acres of park per 1,000 residents; ■C• levels of service on arterial roads; 2,000 gals. minute fire flow; maximum of 30 students for each teacher in each classroom.

**Metes and Bounds.** A method of describing the territorial limits of property by means of measuring distances and angles from designated landmarks, and in relation to adjoining properties, which results in a legal description.

**Mitigation.** Theoretic offsets to the impacts of a project required of a developer bt government.

**Moderate income housing plan.** ■Moderate income housing• means housing occupied or reserved for occupancy by households with a gross household income equal to or less than 80% of the median gross for households of the same size of the same size in the county in which the city is located. In counties "... 80% of the median gross income of the county statistical county for households of the same size.". All cities and counties shall, as part of its General Plan, adopt a plan for moderate income housing within that city or county.

**Moratoria / Temporary zoning regulations.** The purpose of moratoria is to provide time to adopt a plan to remedy the problem or problems that existed prior to adoption of a temporary freeze on development. The moratorium is temporary while the community in good faith studies ways of alleviating the problem. In Utah, the enabling legislation provides for **Temporary regulations** 10-9a-503 /17-27a-503 LUDMA) which states that the jurisdiction may adopt a temporary zoning regulation ordinance ( TZRO) if the jurisdiction makes a finding of compelling, countervailing public interest, or the area is unregulated. The T.Z.R.O. may prohibit or regulate the erection, construction, reconstruction, or alteration of any building or structure or subdivision approval. The T.Z.R.O shall not exceed six months. `

**Nonconforming uses and structures:** means a structure or use that legally existed before its current zoning designation. Because of subsequent zoning changes, the structure or use does not conform to the zoning regulation setback, height restrictions, or other regulations that now govern the structure. 10-9a-511/ 17-27a-510 of Land Use Development and Management Amendments states in *Except as provided in this section, a nonconforming use or noncomplying structure may be continued by the present or a future property owner.*The term “Grandfathering is sometimes used when referring to the non-conforming uses.

**Nuisance.** A public nuisance is any unreasonable interference with some right that is common to the general public. Generally, a nuisance is any use, or condition of land, or any structure thereon, which endangers the public safety, health, or welfare, or creates damage to others. Generally a nuisance is shown to be an ongoing rather than an isolated instance.

**Overlay Zones.** A set of zoning requirements that are 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. It usually is employed to deal with special physical characteristics such as flood plains, historical areas, soils, or hillsides.

**Permitted Uses.** A “use by right” specifically authorized in a particular zoning district.

**Planned Unit Development (PUD).** A self-contained development, often with a mixture of housing types and densities, in which subdivision and zoning control is applied to the project as a whole rather than to individual lots, as in most subdivisions. Densities are calculated for the entire development and often permit clustering of houses to encourage provision of common open space.

**Police power.** A term used to describe the legislative or policymaking power in each state to establish laws and ordinances to preserve public order and tranquility and to promote the public health, safety, and morals, and general welfare of the public. The zoning of property derives from the states police power. The states delegate the power to zone and exercise other land use controls through enabling legislation to cities, towns and counties. Jurisdictions must strictly comply with the statute delegating them the action to act, failure to strictly follow the statutory requirements in enacting the ordinance renders it invalid. The 10th Amendment guarantees the States possess the police power to regulate for the public benefit of health, safety, and welfare. In *Berman v. Parker* (1954), the United States Supreme Court stated that the police power, on which local land use regulation rests, is for the protection of the public welfare, which is broad and inclusive. "The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine

that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled

**Policy:** an imperative or prescriptive principle that directs future action. A policy usually has three components: a specific definition of the action to be performed, a statement of the conditions under which it is to be performed, and identification of the individuals or officers responsible for performing it. Policies may be positive (prescriptive) or negative (proscriptive); they may be strict commands (employing such verbs as shall or must) or discretionary (employing such verbs as will or may)

**Presumption of Constitutionality.** When a land use regulation is challenged in the as not furthering a legitimate government purpose, the court will begin its review and analysis with a legal presumption that the regulation is constitutional. The person challenging the regulation has the burden of presenting evidence sufficient to overcome this presumption of constitutionality. *"If an ordinance could promote the general welfare; or even if it is reasonably debatable that it is in the interest of the general welfare, we will uphold it."* Utah Supreme Court.

**Proportionality.** "We think a term such as 'rough proportionality' best encapsulates what we hold to be the requirement of the Fifth Amendment. No precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development." U.S. Supreme Court 1994, Chief Justice Rehnquist.)

**Public Hearing:** a formally announced meeting of a public body, the express purpose of which is to receive written and oral testimony on specific matters. It is open to the public both for attendance and for testimony. Commission members may ask questions, but no deliberation should take place during the hearing. The full record of information should be reviewed by the staff and incorporated into its report for subsequent commission deliberation.

**Remand.** It is not uncommon that in hearing a case, the court will rule that the procedure or formalities were flawed and send the case back to the body from which the matter was appealed for further deliberation.

**Ripeness, Exhaustion of Administrative Remedies.** Generally speaking, a person cannot appeal a zoning decision to the court until the application has been denied and the applicant has exhausted the normal appeal procedure.

**Spot Zoning:** *Spot zoning* is the unjustifiable singling out of a piece of property for preferential treatment. It is not a statutory term: it is a judicial epithet signifying legal invalidity. It is zoning a relatively small area differently from the surrounding area, usually for an incompatible use and often to favor the owner of a particular piece or pieces of property. Spot zoning is not favored, since it smacks of favoritism and usually annoys neighbors.

**Street System.** The classification of streets and highways by their diverse functions and design.

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

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

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

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

**Subdivision.** The process and the result of dividing a parcel of raw land into smaller build able sites. Complete plans for a subdivision should include streets, blocks, open space, public areas, and other improvements. *■Subdivision•means any land that is divided, resubdivided or proposed to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the purpose, whether immediate or future, for offer, sale, lease or development.... (10-9a-601 / 17-27a-601 LUDMA)*

**Taking without just compensation.** From the Fifth Amendment to the United States Constitution: *"nor shall private property be taken for public use without just compensation."* Before a taking claim is made, the property owner must first exhaust administrative remedies, absent futility, and obtains a final administrative decision before making a taking claim. This is commonly called the "exhaustion of remedies" and "ripeness." There is no set precise formula for determining a taking, questions asked by the court in determining a taking may include:

- A. Does the regulation relate to, and substantially advance, a legitimate state interest?
- B. Does regulation permit or require a physical invasion of the property?
- C. Does regulation deny the property owner of "all economically beneficial use " of the property?
- D. Does the regulation impose a burden or cost on the landowner that does not bear a *■reasonable relationship•* to the impacts of the project on the community?

The term *Inverse condemnation* is also sometimes used in discussion of regulatory taking.

**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 agriculture land, open space or historical preservation.

**Variance.** A device which grants a property owner relief from certain provisions of a zoning ordinance, because of particular physical surroundings, shape or typographical conditions of the property and special circumstances attached to the property that do not generally apply to other properties in the same district. A variance can be granted when 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.

**Vested Rights.** (Sometimes referred to as "grand fathered".) The concept is that after a certain point in the approval process the landowner acquires a property interest in the property that should be protected. A determination that a property owner has *■vested rights•* is a determination that the government is precluded from applying newly-adopted land use regulations (without compensation) to

the property owner. Criteria for ascertaining the applicability of vested rights, the scope of vested rights, and issues pertaining to the divestment of vested rights are complicated.

In Utah the code states:

**10-9a-509. When a land use applicant is entitled to approval -- Exception -- Municipality required to comply with land use ordinances.**

*(1) (a) An applicant is entitled to approval of a land use application if the application conforms to the requirements of an applicable land use ordinance in effect when a complete application is submitted and all fees have been paid, unless:*

*(i) the land use authority, on the record, finds that a compelling, countervailing public interest would be jeopardized by approving the application; or*

*(ii) in the manner provided by local ordinance and before the application is submitted, the municipality has formally initiated proceedings to amend its ordinances in a manner that would prohibit approval of the application as submitted.*

*(b) The municipality shall process an application without regard to proceedings initiated to amend the municipality's ordinances if:*

*(i) 180 days have passed since the proceedings were initiated; and*

*(ii) the proceedings have not resulted in an enactment that prohibits approval of the application as submitted.*

*(c) An application for a land use approval is considered submitted and complete when the application is provided in a form that complies with the requirements of applicable ordinances and all applicable fees have been paid.*

*(d) The continuing validity of an approval of a land use application is conditioned upon the applicant proceeding after approval to implement the approval with reasonable diligence.*

*(2) A municipality is bound by the terms and standards of applicable land use ordinances and shall comply with mandatory provisions of those ordinances.*

Many states require a building permit be issued before development rights can vest however vesting determinations vary from state to state. Boards and commissions should seek legal advice when considering vesting issues. (See 10-9A-509 and 17-27a-508 (County) Land Use Approval Standards and Vested Rights and Western Lands Equities v. City of Logan, 617 P.2d 388 (1980))

**Void for Vagueness.** Courts will invalidate a regulation that is so unclear or ambiguous that a person of normal intelligence will not be able to comprehend what the regulation forbids or permits. *Standards must be written with sufficient precision to give fair warning as to what the commission will consider in making its decision.* Vagueness can also be applied if the regulation lacks sufficiently explicit standards for its application by an administrative body and thereby impermissibly delegates to that body the freedom to decide basic policy matters on an *ad hoc* and subjective basis. *because zoning ordinances are in derogation of a property owner's common-law right to unrestricted use of his or her property, provisions therein restricting property uses should be strictly construed, and provisions permitting property use should be liberally construed in favor of the property owner.* • Patterson v. Utah County Bd. Of Adjustment, 893 P.2d 602, 606 (Utah Ct. App.1 995).

Ambiguity- "Any ambiguity in the language must be resolved in favor of the property owner." Allen v. Adami, 39 NY 2d 275, New York Court of Appeals

**Welfare:** the state of being or doing well; condition of health, happiness, and comfort; well-being; prosperity.

*The concept of the public welfare is broad and inclusive. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well balanced as well as carefully patrolled.*

*Justice William O. Douglas*

03/12/08