

Congratulations on your recent appointment to one of our city's boards, commissions, or committees. The city could not function without the outstanding advice, expertise, and time provided by individuals like you who volunteer to serve at no pay and with little expected reward. The city's boards, commissions, or committees link the City Council, City Secretary and City Consultants to the citizens of the Village of Volente and help keep our government vital, responsive and accountable.

These orientation pages are designed to assist you in your service. It will provide a general introduction to topics, processes and approaches which directly affect members of boards, commissions, or committees. While reading the handbook, keep in mind that not all the provisions will apply equally to every board. In cases of legal liability, for example, members of various boards and their officers may be more susceptible than others. The City Secretary and Council Member assigned to your committee will be able to provide you with more information on the specific duties and responsibilities of the board and its members.

The City Secretary and the City attorney are available as a resource to all boards, commissions, or committees. Any requests for assistance should be coordinated through the City Secretary and Council Member assigned to your board or committee.

Thank you for your interest in serving your community. Your efforts will help make the city a better place to work and live.



VILLAGE OF
VOLENTE
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Ken Beck
MAYOR

Steve Baker
MAYOR PRO-TEM

Jan Yenawine
COUNCIL MEMBER 1

Kit Hopkins
COUNCIL MEMBER 2

Roe Fleenor
COUNCIL MEMBER 3

Andy Fogarasi
COUNCIL MEMBER 4

Village of Volente Vision Statement

In 2003, the Village adopted the following statement of its citizen shared vision of what Volente should become:

We, the citizens of the Village of Volente, believe in Civic Pride, Environmental Awareness, Minimal Government, Diversity and Friendship, and Privacy and Individuality.

We are dedicated to remaining united and working together as friends, neighbors, and citizens for the protection and preservation of the natural beauty and uniqueness of our country village and family way of life.

We will endeavor to protect the quality of life for future generations and ourselves. We envision a cohesive lakeside village that promotes harmony and diversity of community, inclusive of all socio-economic strata and age groups. We will protect our environment and ensure responsible and appropriate land use. We will keep our village safe from injury, crime and pollution. We will preserve our right to remain private in our daily lives, but at the same time promote civic pride and sense of community.

We believe in minimal government regulation and taxation. As empowered citizens we will constructively participate in, question, and oversee our elected government. We understand the community will face challenges and a sufficient level of government will be provided to protect this vision and our core values.

- 1) Applicant demonstrated it is a hardship to locate any proposed improvement to the Dwelling Unit in a part of the structure outside the setback and in the buildable area.
 - 2) Effect on surrounding properties including consistency of height and similarity in size and shape.
 - 3) Effect on orderly development of the area such as proximity of other buildings, impact on sight lines, etc.
 - 4) Possible effect on public health and safety, i.e. No impediments to access by emergency personnel.
 - 5) Property rights of those seeking an exception to the requirements for non-conforming structures should be balanced equally with the property rights of adjacent property owners.
 - f) All applicable fees are paid.
 - g) Special Exceptions will run with the property.
- iii. The number of Dwelling Units occupying the structure shall not exceed the number of Dwelling Units existing at the time the structure became nonconforming.
2. A non-conforming structure can only be extended to occupy land outside of the Building Footprint of the Nonconforming Structure if that land is in the buildable area of the lot consistent with current regulations.
- F. Restoration of Nonconforming Structure:
1. If more than sixty percent (60%) of the total appraised value of a nonconforming structure, as determined from the records of the Travis County Central Appraisal District, has been destroyed, it may be rebuilt only in conformity with the then standards of the Village's ordinances.
 2. If less than sixty percent (60%) of the total appraised value of a Nonconforming Structure is destroyed, it may be reconstructed to its original dimensions.
 3. All restoration of non-conforming structures shall comply with the Village's construction codes.
- G. Right to Proceed Preserved: Nothing contained in this section is intended to alter any rights that may have accrued to proceed under prior regulations, pursuant to *Texas Local Government Code, Section 43.002, or Sections 245.001 through 245.006.*

DIVISION 5: ADMINISTRATION

Section 30.138 Planning and Zoning Commission

- A. Purpose: Planning and Zoning Commission is created to accomplish the following purposes:
1. To identify community needs and advise the Council of their short-range and long-range implications for the total Development of the Village;
 2. To recommend achievable community goals as a basis for long-range planning and Development programs;
 3. To recommend plans, programs, and policies that will aid the entire community in achieving its defined goals;
 4. To recommend to the Village Council the adoption, amendment and repeal of various provisions in the Village Comprehensive Plan;

5. To interpret the adopted plans and programs to concerned citizens so that private activities and desires may be accomplished in harmony with public needs and policies;
6. To recommend to the Village Council the adoption, modification and repeal of provisions in the Village's Zoning ordinances;
7. To recommend to the Village Council the initial and changes to the Zoning of the various parcels of land in the Village;
8. To recommend to the Village Council the adoption, modification and repeal of provisions in the Village's Subdivision ordinances;
9. To recommend to the Village Council the Approval, Approval with modification or rejection of various applications for Subdivision and re-subdivision of land within the Village;
10. To recommend to the Village Council the provisions for such other ordinances as from time to time may be requested by the Village Council;
11. The Commission shall recommend boundaries for the initial Districts and appropriate Zoning regulations for each district;
12. To consider and make recommendations to the Village Council for a Variance from the Site Development, Water Quality, and/or Subdivision Ordinance requirements. A Variance is defined as permission to depart from the specific provisions in the Site Development, Water Quality and/or Subdivision Ordinances by virtue of a unique hardship on a person's property. If a Variance is recommended by the Planning and Zoning Commission, it acts as a recommendation to the Village Council to allow a Variance from specific provisions in the Site Development, Water Quality, and Subdivision Ordinances, and may provide for alternative regulatory provisions to alleviate the unique hardship which would occur from compliance with the provisions of the applicable ordinance. The recommendation for granting a Variance does not amend the Site Development, Water Quality and Subdivision Ordinances, but it is a recommendation to the Village Council to grant a specific property where there are special circumstances and/or hardships justifying deviations from the standard provisions of the Site Development, Water Quality and Subdivision Ordinances;
13. To consider and make recommendations to the Village Council, upon a request for a special exception from the Site Development, Water Quality and/or Subdivision Ordinances. A special exception may only be recommended to the Village Council for those regulations identified by the Village Council to be subject to special exceptions, and only upon a showing of the parameters established by the Village Council for granting the special exception;
14. To consider and make recommendations to the Village Council upon an appeal of the determination or order of a Village Official on an issue that affects the Site Development, Water Quality and/or Subdivision Ordinance rights of a person. Upon the filing of an appeal, all proceedings in the furtherance of the action being appealed are stayed. If facts show that the stay would cause imminent peril to life or property, the action may be stayed only if a restraining order is granted by a district court;
15. To consider and make recommendations to the Village Council regarding non-conforming uses, including establishing an Amortization period for the termination of those uses. In establishing Amortization periods for a non-conforming use, the Commission may consider the amount the owner has invested in the property, the amount of recoupment of the investment during the Amortization period, the

availability and location of other sites, and the extent to which the non-conforming use adversely affects the neighboring property;

16. In furtherance of their recommendations to the Village Council on amendment and repeal of various provisions in the Village Master or Comprehensive Plan the Planning and Zoning Commission with Approval of the Village Council will conduct Community Surveys of the Village's residents. The Commission will make recommendations on the content of the Community Survey to the Village Council and gain their Approval prior to conducting a Community Survey.
- B. Membership and Appointment: The Planning and Zoning Commission shall be composed of five (5) permanent and two alternate members. All the members shall reside in the Village. The Village Council will consider for appointment to the Commission those persons who have demonstrated their civic interest, general knowledge of the community, independent judgment, interest in planning and zoning, and availability to attend meetings. The Village Council shall strive to appoint members who, by reason of their occupations and the areas of the Village in which they reside, will be broadly representative of the community.
 - C. Appointment of Chair: The Village Council shall appoint the Chair of the Planning and Zoning Commission.
 - D. Terms of Office; Filling of Vacancies: The terms of two of the permanent and one of the alternate members shall expire on January 1st of each odd-numbered year and the terms of three of the permanent and one of the alternate members shall expire on January 1st of even-numbered years. Place numbers one through five shall identify the permanent members of the Commission. The alternate members shall not have place numbers but can substitute for any of the permanent members if he or she is unavailable to attend a Commission meeting. Commission members may be appointed to successive terms. A member of the Commission shall serve until his or her successor is appointed and installed. The Village Council shall fill vacancies for the uncompleted term of any vacant position. Newly appointed members shall be installed at the first regular Commission meeting after their appointment.
 - E. Removal of Commissioners: The Village Council may by majority vote remove a permanent or alternate Commissioner for lack of confidence, incompetence, corruption, misconduct, or malfeasance. Any permanent Commissioner who misses three (3) consecutive meetings within a twelve (12) month time period or one-third (1/3) of all regular meetings shall be deemed to have automatically vacated his/her position on the Commission. This section shall not apply to a Commissioner who applied for and received an excused absence from the Commission chairperson prior to the meeting(s) at issue. Any Commissioner who no longer resides within the corporate boundaries is deemed to have automatically vacated his/her position on the Commission.
 - F. Motions at Meetings:
 1. A motion may be made by any member other than the presiding officer. The presiding officer may second a motion and may vote on all matters considered by the Commission.
 2. A motion to approve any matter before the Commission or to recommend Approval of any request requiring Village Council action shall require a majority vote of the members present and voting.
 - G. Disqualification from Voting: A member shall disqualify himself/herself from voting whenever the member has personal or monetary interest in a matter before the Commission that is substantially different from the interest of the other citizens of the

Village, or if the value of the member's property will be affected in a substantially different manner than other properties within the Village.

H. Rules of Procedure:

1. Organization and Officers:

- i. From among its members the Commission shall elect the Vice Chair. The Chair, or in his/her absence, the Vice Chairperson shall preside at all meetings, and shall decide all points of order or procedure.
- ii. In the absence of both the Chair and Vice-Chair, the Commission shall elect an Acting Chair.
- iii. The City Secretary shall be custodian of the minutes and other official records, shall attend to the correspondence of the Commission and shall cause to be given such notices as are required and in the manner prescribed by law.

2. Rules of Order: Roberts Rules of Order, as amended, shall be the Commission's final authority on all questions of procedure and parliamentary law not covered by these Rules of Procedure.

I. Meetings:

1. Quorum: A quorum shall consist of three members.
2. Agenda: The City Secretary shall prepare an agenda for each meeting of the Commission, and shall attach to each agenda a report of matters pending further action by the Commission. The City Secretary shall post a copy of the agenda in the City Hall and to the Village website as required by law for a period of three full calendar days, not counting the day of posting, but which may count the day of the meeting.
3. Regular Meetings: The Commission shall conduct regular meetings once a month on the second Tuesday of every month at a regularly scheduled time. The initial meeting of the Commission shall be called by the Village Council.
4. Special Meetings: Special meetings for any purpose may be held on the call of the Chair, or on request of two or more members and by giving notice to all members at least 72 hours before the meeting, or as may be scheduled by a majority of the Commission at any previous meeting. The convening authority shall determine the time and place of the special meeting.
5. Public Meetings: Any party in interest may appear in his/her own behalf or be represented by counsel or agent.

J. Official Records

1. Official Records: The official records shall be the minutes of the Commission, together with all findings, decisions and other official records of the Commission.
2. Recording of Vote: The minutes of the Commission's proceedings shall show the vote of each member, or indicate a member's absence or failure to vote.
3. Records Retention: All matters coming before the Commission shall be filed in the Village's records. Original papers of all requests and proposals shall be retained as a part of the permanent record.
4. Public Record: The official records and citizen requests filed for Commission action in regular or special meetings shall be on file in the City Hall and shall be open to public inspection during customary work hours.

K. Application Procedures

1. Written Request Required: Every proposal submitted for Commission action shall be made in writing. Where appropriate, the Village shall provide application

- forms. The proposal shall be accompanied by all prescribed fees and shall be complete in all respects before the Village shall accept it for filing.
2. **Schedules and Instructions:** Every proposal or request for Commission action or recommendation shall be filed, processed and considered in accordance with this section.
 3. **Submission and Supporting Information:** Information supporting a request or recommendation to approve or disapprove any proposal before the Commission shall be submitted through the City Secretary in writing or to the Commission in public meeting.
 4. **Withdrawal of Proposal:** When any Applicant desires to withdraw his or her proposal, he or she may do so by filing a written request with the City Secretary. Such request shall be effective upon the date of its official receipt, provided, however, that no such request shall be valid after notices have been mailed, except on action of the Commission. Withdrawal of a proposal at any stage of its processing shall terminate all consideration of it by the Village, and the case file shall be closed.
 5. **Duties and Powers:** The Planning and Zoning Commission is charged with the duty and invested with the authority to inspect property and premises at reasonable hours when required to discharge its responsibilities under the laws of the State and of the Village.
 6. Formulate and recommend to the Village Council for its adoption a Comprehensive Plan for the orderly growth and Development of the Village and its environs, and from time to time recommend such changes in the plan as it finds will facilitate the movement of people and goods, and the health, recreation, safety, and general welfare of the citizens of the Village.
 7. Formulate a Zoning plan as may be deemed best to carry out the goals of the Comprehensive Plan ; hold public hearings and make recommendations to the Village Council relating to the creation, amendment, and implementation of Zoning regulations and districts as provided in the Texas Local Government Code, as amended.
 8. Exercise all the powers of a Commission as to the Approval or disapproval of plans, plats, or replats and vacations of plans, plats or replats as provided in the Texas Local Government Code.
 9. Study and make recommendations on the location, extension, planning, vacating, and closing of public rights-of-way, Parks and other public places.
 10. Formulate and recommend to the Village Council policies and regulations consistent with the adopted Comprehensive Plan governing the location and/or operation of utilities, public facilities, and services owned or under the control of the Village.
 11. Review and make recommendations concerning Annexation of land into the Village.
 12. Hear evidence and determine the matters set forth in Sec. 30.128 of this article.

Sec.30.139 Administrative Procedures for Changes and Amendments to Zoning Regulations and Districts:

A. Application:

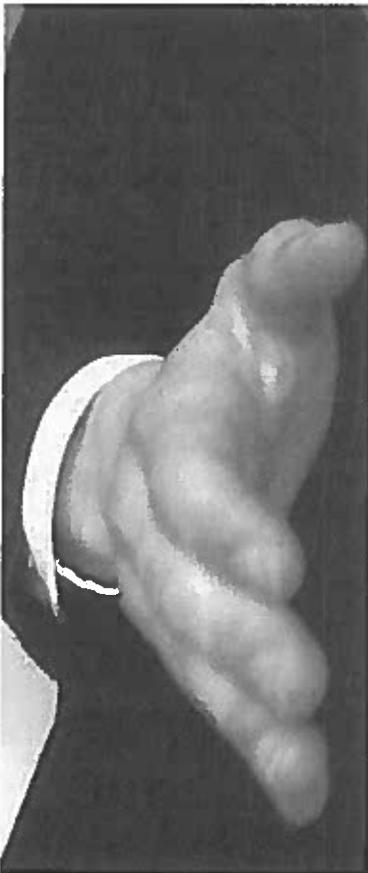
1. Each application for zoning, Conditional Use permit, or for an amendment or change to the existing provisions of this article shall be made in writing on an application form available at the Village, filed with the Village, and shall be accompanied by payment of the appropriate fee. The application shall also be accompanied by additional





Chapter 2 Ethics and the Planning Commissioner

Carol Barrett, FAICP



This chapter discusses and provides examples of how a Planning Commissioner can make complex decisions while being fair, equitable, and ethical. It provides information on the sources for ethical guidelines, particularly for the code of ethics and local ordinances. It establishes a framework and foundation for ethical planning officials and provides background on Texas law, in regards to conflict of interest. It defines common biases that impact ethical behavior and point to serious concerns about ethical misconduct. Specifically, in this chapter you will learn whether you can meet individually with applicants to hear about their project, whether you should take a tour of a project site with an applicant, if you can discuss pending development projects at your neighborhood association meeting, if friends and neighbors can offer their opinions about pending projects, what to do if a good friend has a project before the Planning Commission, and to do the job of a Planning Commissioner in a way that promotes fairness and objectivity. The following attachments are available at the end of the chapter to be used as reference guides and resources:

Attachment A: Ethical Principles in Planning, AICP

Attachment B: AICP Code of Ethics and Professional Conduct

Attachment C: By-laws for Planning and Zoning Commission, City of Collinsville, TX

Attachment D: Planning and Zoning Commission: Participating at Public Hearings, City of Arlington

Attachment E: Example Planning Commission Meeting Brochure, City of San Gabriel

Attachment F: Public Services Values, The Institute for Local Government



INTRODUCTION

“A prominent example of the appearance of a conflict came this past June when a planning commissioner recused herself, left the dais, then presented on a project to her colleagues. She said she had no recourse, since she is the only employee of her firm.”

Yikes. The sentence above comes from a local newspaper recounting a series of on-going ethical lapses in a City. In this instance, applicants may well perceive a “pay to play” rule. If you want favorable consideration by the Planning Commission, you have to pay a Commissioner or the Commissioner’s firm. This kind of behavior is wrong for a number of reasons which are discussed below. While an extreme example, it is not an isolated one. Planning Commissioners regularly face ethical questions. Thinking about those ethical questions and possible responses ahead of time prepares you to make an informed decision when confronted with an ethical challenge. That’s the

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purpose of this chapter: to give you tools for ethical decision-making.

Let’s step back for a second. What is ethical behavior? Expressed in a straightforward manner, ethical behavior is what you ought to do as a Planning Commissioner. It’s treating others as you would wish to be treated. It’s the kind of conduct that makes the world a better place.

Ethics is particularly important in public service. As a Planning Commissioner, you have been given significant authority and you are expected to use that authority with integrity. You make decisions about what can and cannot happen in your community. You make recommendations about how to spend city money, some of which comes from local taxpayers. If the Planning Commission is to do its job properly and address the challenges confronting most communities, public trust and confidence is vital. High ethical standards are required to secure and maintain public trust that is essential to the planning process and to good government.

What are common ethical questions that Commissioners need to answer?

- Can I meet individually with applicants to hear about their project?
- Should I take a tour of a project site with an applicant?
- Can I discuss pending development projects at my neighborhood association meeting?
- Can friends and neighbors offer me their opinions about pending projects?
- What happens when my best friend has a project before the Planning Commission?
- How can I do my job as a Planning Commissioner in a way that promotes fairness and objectivity?



SOURCES FOR ETHICAL GUIDELINES

Most planning officials often operate according to an unwritten, personal code of ethics. As a new planning commissioner, you know yourself to be honest in your day-to-day dealings with friends and family and you are reliable in your professional life as well. Therefore, you assume that the way you deal with ethical questions that come up as a planning commissioner will be honest as well. Most people have convictions about what is right and wrong based on religious beliefs, culture, family teachings, lessons learned in life, laws, and habits. These values may vary among your fellow commissioners. For example, loyalty to friends and family may conflict with one's responsibility to serve the public interest. Religious beliefs and culture are also a source of continuous historical disagreement over all kinds of matters. To help your Planning Commission operate consistently and fairly, a more uniform frame of reference is needed.

Codes of Ethics

This chapter can help you understand some of the more universal behavior standards for planners and planning officials so you are better prepared to think through what your response should be when ethical issues arise. The American Planning Association has adopted a Statement of Ethical Principles to help planning officials understand basic ethical expectations (See Attachment A). This Statement was prepared and adopted to provide guidance to planning officials. There is also a Code of Ethics for professional planners who have passed an examination and are members of the American Institute of Certified Planners. Their Code is also included for your reference as Attachment B. Finally, as a planning commissioner you will work with professionals from various disciplines – architects, engineers, and landscape architects for example. Like the planners, each profession has a Code of Ethics. They are not all attached here but can easily be researched on line.

Local Ordinances

In many communities and some states, there are adopted ordinances and laws governing aspects of the conduct of Planning Commissioners, especially with respect to conflict-of-interest. These materials should be provided to you by staff and covered in regular training so that you are familiar with them.



The general conflict of interest laws for Texas city officials are found in chapter 171 of the Local Government Code. It includes standards for determining when a local official has a conflict of interest that would affect his or her ability to discuss, decide or vote on a particular item. Chapter 171 conflict of interest provisions apply to all local public officials which includes planning commissioners. The Office of the Attorney General has an excellent publication that you can download from the internet. Commissioners should remember that these state requirements define the legal minimum, not what may be ethical.

General conflict of interest laws are found in chapter 171 of the Local Government Code

LAYING THE GROUNDWORK FOR ETHICAL PLANNING OFFICIALS

Serving as a planning official is not easy, especially in the face of public cynicism regarding the motives of community leaders. And then there are all the newspaper articles documenting various degrees of incompetence or corruption in the public sector. Some people will automatically assume that a level of malfeasance applies to you as a commissioner as well. Plus, your work as a commissioner is hard. You have to prepare for meetings by visiting sites and studying agenda packets which arrive only days before the meeting. You have to attend meetings which can run on for hours and listen to criticism, some of which may be ugly and very personal. But there are things that you and your community can do to help shape the public's perception about the values which underlay your decisions as a commissioner.

Elected Officials Should Appoint Good Planning Commissioners

A good Planning Commissioner is more than someone who can avoid financial conflicts of interest. A good commissioner knows a lot about the community and brings special expertise to the Commission. A good Commissioner should also have:

- An open mind to listen to new ideas from applicants, from other commissioners, and from staff.
- An ability to see both the strengths and weaknesses of the proposals.
- Critical thinking skills leading toward finding solutions.



- A willingness to spend the time required to study materials.
- An ability to manage other commitments so that attendance is regular.
- A commitment to making the process fair to all.
- A degree of independence in making choices and recommendations.
- Faith in the future and the ability of the community to shape that future.

Once you are a Planning Commissioner, you can help the elected officials to make good appointments by serving as a talent scout. You should be on the lookout for others in your community who would make good commissioners and share that information with your Mayor or planning director.

Planning Commissioners Should Have Regular Training

All new commissioners need an extended orientation to the work of the commission and the status of planning and development in your community. There should also be an ethics component of that training as well. An annual training event focused on the specific challenges in your community should be something you can request and help plan. Ethics should always be included among the topics to be covered. The community should budget to send planning commissioners to training sponsored by the Texas Chapter or other organizations whose work is relevant to your efforts as a volunteer.

If you are having problems as a Commission because one or more of your fellow Commissioners are not pulling their own weight, you can suggest training for the entire Commission that will make clear the expectations for conduct and effort. Working with your planning director can help make the training productive and relevant. In many cases, there are often other Planning Commissioners from nearby jurisdictions who can help set the ground rules and expectations. And the voice of a colleague always carries great weight. If your Planning Director doesn't have suggestions, the Texas Chapter will. The Chapter can be contacted online at <http://www.txplanning.org/>.

Planning Commissions Should Have Ground Rules

Every commission needs bylaws, written rules of procedures, and a statement of the ethical principles which will guide their work. Together, these documents provide assurance that everyone who interacts with the commission has rights -- due process, fairness, and equity. By-laws and rules of procedure tell people what to expect and help make work with the planning bodies more productive. They also set the benchmark for fair, ethical, and prompt deci-

*Everyone has
the right to due
process,
fairness, and
equity*



sions. If the process itself appears fair, there will be a much higher degree of confidence in the decision itself. By-laws and public hearing procedures from the City of Collinsville (Attachment C) are provided for your information.

It is also useful to community members to have an easy reference guide for how meetings will work written so that it can be easily understood. If you have this kind of information readily available, it will encourage the community to understand that you value their ideas and that the process is arranged so that they have an opportunity to make their point of view known. A sample Arlington, Texas (Attachment D) and one from the City of San Gabriel, California (Attachment E). The latter is always at the table outside the meeting room with agendas and includes background information on the Planning Commission as well as public hearing testimony procedures.

Finally, on evenings when there will be public hearings, the Commission Chair (or his/her designee) can briefly review the procedures so that those in attendance understand when they will be able to speak. All of this effort is directed toward making the work of the Commission transparent which is a core ethical value for public sector decision-making.

Planning Staff Should Use Standard Planning Procedures to Ensure Full, Open Consideration

Standard planning procedures help planning commissioners do their job in an ethical manner. Standard procedures also help ensure that issues will be properly aired without undue influence either in fact, or in appearance. That is a key component of ensuring the reputation of your Commission – it must both act fairly and be perceived as acting fairly.

Standard procedures lay out information that the applicant can rely on in moving a project forward; and that makes it clear to the community how and when they will be able to participate in the deliberative process. The value of transparency – the public can see and participate in what is going on – is best achieved through standard procedures. Planning Commissions should operate from posted agendas (a staff responsibility to prepare and post) and follow those agenda. Following the agenda is important because of the right of the public to address the Planning Commission. If items are taken up in a random order it makes it hard to know when to come to the meeting. That doesn't mean that the agenda can't be revised at the meeting itself. For example, if a larger number of citizens are in attendance for a single agenda item,



From time to time, even the best planners lapse into plannerspeak which is not always completely intelligible in staff reports. See below.

Version 1: It is the determination of City staff that there is a possibility of associated increases in traffic noise if this project is approved and constructed.

Version 2: City staff believe this project will increase traffic noise.

This example is from *Planning in Plain English* by Natalie Macris. It should be required reading in every planning agency.

then the Commission is likely to move that item up earlier in the meeting to allow the community to participate and get home earlier. Another aspect of agenda management is the language used to describe the work to be done. You and staff can work together to make the agenda as straightforward as possible. Here is an example:

PRJ12-00276 – ZON12-00043, APPLICANT: ORANGE COUNTY EMERGENCY PET CLINIC; PROPERTY OWNER: JEFFREY I. GOLDEN.

A request for a Conditional Use Permit to operate an after-hours emergency pet clinic per FMC 15.30.030 on property located at 3920 N. Harbor Boulevard (generally located between 420 feet and 520 feet south of Imperial Highway). (C-2- zone) (Staff Planner: Elaine Dove)

← This is a clear project description

← How do I contact the planner if I have questions?

Here is another example which also has some good aspects but still needs a bit more work as noted.

Rezoning: C814-2012-0160 – 211 S. Lamar

Location: 211 S. Lamar Boulevard, Lady Bird Lake Watershed, South Lamar Combined NPA

Owner/Applicant: Post Paggi, LLC (Jason Post)

Agent: Winstead PC (Amanda Swor)

Request: CS & CS-V to PUD

Staff Rec.: Recommended

Staff: Lee Heckman, 512-974-7604, lee.heckman@austintexas.gov
Planning and Development Review Department

← What do the letters "NPA, CS & CS-V to PUD" stand for?

← Noting the staff recommendation is useful

← Including staff contact information is very helpful

In general, the Commissioners can only discuss and act on items included in the posted agenda. Commissioners can ask to have items added to the agenda. In fact, "Items from the Commission" should be a regular item on your agenda so that everyone is reminded of this opportunity.



Example: A resident comes to the podium during citizen comment to report that the conditions of approval for a project are not being adhered to and that the quality of life for the residents on her block has been substantially degraded as a result of the Planning Commission approval several months ago. She demands that the Commission do something to solve the problem immediately because, in her mind, the Commission caused the problem and she needs her sleep.

Answer: Commissioners should refrain from discussing the project by asking for examples of problems and considering whether the conditions of approval are being met. Instead the Commission can thank the citizen, ask staff to meet with the citizen, and place the item on an upcoming agenda for more detailed consideration. Staff should be encouraged to work directly with the applicant to address the issues of concern as soon as possible.

Standard procedures also include the quality of staff work and the schedule for planning commission packet delivery. If commissioners are expected to provide thorough and diligent services, they need relevant information on a timely basis. If the commissioners seek to support community involvement in planning, then the work has to be organized so that residents can find out what is going on and can make their points of view known. You should feel free to suggest to staff ways to organize and present the information so that it is useful to your decision-making. If you look at the web sites of other cities, you may see ideas for staff reports that you like. And don't hesitate to request that staff reports be written in plain English.

Commissioners should be able to request information that will supplement staff work when they have questions. All such information should be provided to all of the Commissioners, even when requested only by one. You will have a better decision-making process if you ask your questions ahead of time so that staff can do the necessary research. Of course you can ask questions of both staff and applicants at the meeting, but if you wait to raise major issues until the public hearing, you may well end up delaying action when that is not your intention. When information is distributed for the first time during the public hearing, copies should be made available to the public.

ACTING ETHICALLY: Planning Commissions Should Know Where Ethical Guidance Can Be Found

Ethical standards for planners and planning officials have been promulgated by the American Planning Association and the American Institute of Cer-

Ethics ordinances tend to regulate:

- 1. Activities that require disclosure such as sources of income*
- 2. Behavior that is prohibited*



tified Planners. The text of both is attached. There may also be local ethics ordinances which regulate behavior and although these may pertain to the planning commission. Ethics ordinances tend to regulate two things: activities that require disclosure such as sources of income; and behavior that is prohibited. There may be quite a bit of overlap between the standards of the APA and local ordinances. For example, a prohibition against soliciting or accepting gifts is a common element.

Example: Can a planning commissioner accept a bottle of wine as winter holiday thank you from a local architect?

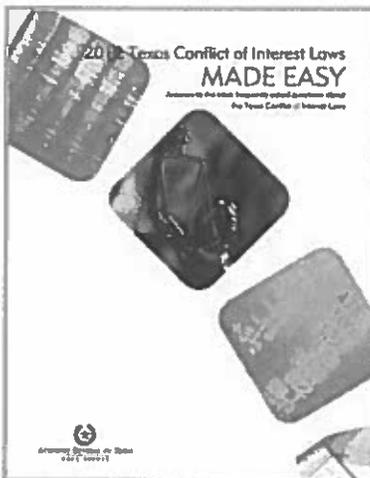
Answer: Yes. Commissioners should not solicit or accept items of a value great enough to affect their judgment. Items that can easily be consumed fall outside of influencing behavior. The prohibition against taking gifts applies in the circumstances where a reasonable person might think the commissioner's judgment had been impaired. A single bottle of wine is only a token. However, if the architect had a project pending before the Commission, even a single bottle should not be accepted.

Example: Can a planning commissioner accept a case of wine as a winter holiday thank you from a local architect?

Answer: No. See above.

Example: Can a planning commissioner accept two free weeks at a local developer's condo on the beach in California?

Answer: No. See above. Accepting such a posh offer would leave people with the impression that you were indebted to the developer and that your decisions would be affected by your sense of owing something to another person.



Check out the Attorney General's website at www.oag.state.tx.us/AG_Publications/pdfs/conflict_easy.pdf for more information.

State Law in Texas Regulates Conflicts of Interest

Planning Commissioners need to be familiar with Chapter 171 of Texas Local Government Code. It governs the conduct of planning officials who make decisions that are more than advisory. The law addresses potential conflicts of interest by local officials. The law seeks to prevent public officials from having dealings with their governmental bodies if they would derive a personal benefit. The law requires disclosure and abstention when it is time to vote if there is a substantial financial interest.

Texas Local Government Code Chapter 171 defines substantial interest as:

- (a) Owning 10% or more of the voting stock or shares or an ownership of



- \$15,000 or more of the fair market value of the business;
- (b) Receiving funds from the business exceeding 10 percent of the commissioner's gross income from the previous year;
- (c) Having an interest in real property that is either equitable or legal ownership with a fair market value of \$2500 or more;
- (d) Being related by marriage or ancestry or affinity to someone who has an interest as described above.

The national codes of APA and AICP also address conflict of interest, but call for a higher standard — even the appearance of a conflict of interest should be avoided. Sources of financial conflict-of-interest can also include loans and gifts as well as a less than direct financial benefit.

Example: A realtor sits on the Planning Commission and from time-to-time, his broker appears before the Planning Commission to seek a zoning change on behalf of a client. Can the realtor vote on these requests?

Answer: According to the APA's Statement of Ethical Principles, because securing a change in the zoning is often a contract contingency, the realtor has a financial interest in working for a successful broker. The realtor should declare the potential conflict of interest and not participate in the discussion. However, according to Texas Law, this would not be a conflict of interest.

But laws are only minimum standards. The laws define what one must (or must not) do, not what one ought to do.

Sometimes Planning Commissioners overlook disclosure obligations related to charitable fundraising. The theory is that the public has a right to know if someone is contributing to your favorite causes. The assumption is that the donations are made to establish a special relationship with you. Or worse, what if a donor believes that if she or he fails to give, there will be negative consequences? As a Planning Commissioner, you need to be sensitive to these issues. Charitable donations can also be viewed as a version of "pay to play." That perception is damaging to the public's faith in the fairness of your decision-making.

Planning Commissions Should Adopt Ethical Standards

Your community should know that you have ethical principles that will be used in decision-making. These standards may already be in place (local ordinances and charter) or you may need to draft and adopt them. The APA

Additional guidance can also be derived from your local ethics ordinances. In the case of one Texas city, the Municipal Code states:

It is the policy of the City of that all city officials and employees shall act and conduct themselves both inside and outside the city's service so as to give no occasion for distrust for their integrity, impartiality or of their devotion to the best interest of the City and the public trust which it holds.

That kind of a standard would prohibit voting by the realtor in a rezoning request made by his or her broker.



Statement of Ethical Principles has already been suggested for consideration. In summary, the Statement identifies the following ethical principles:

A. Serve the public interest.

1. Recognize the rights of citizens to participate in planning decisions.
2. Give citizens full, clear, and accurate information.
3. Expand choice and opportunity for all persons.
4. Assist in the clarification of community goals.
5. Ensure that information available to decision makers is also available to the public.
6. Pay special attention to the interrelatedness of decisions and the long range consequences of present actions.

B. Strive to achieve high standards of integrity and proficiency.

1. Exercise fair, independent, and honest judgment.
2. Publicly disclose any personal interests.
3. Define personal interest broadly.
4. Abstain from participation in a matter in which you have a personal interest and leave the chamber when the matter is being deliberated.
5. Seek no gifts or favors.
6. Abstain from participating as an advisor or decision maker on any plan or project in which you have previously participated as an advocate.
7. Serve as advocates only when the objectives are legal and serve the public interest.
8. Not participate as an advocate on any plan or program in which you have previously served as an advisory or decision maker except after full disclosure and in no circumstance earlier than one year following termination of the role as advisory or decision maker.
9. Not use confidential information to further a personal interest.
10. Not disclose confidential information.
11. Not misrepresent facts or distort information.
12. Not participate in any matter unless prepared.
13. Respect the rights of all persons.

These principles are aspirational in nature and they seek to inspire voluntary commitment through appeals to conscience. They are a positive obligation. There are no sanctions for failing to comply nor is there any regulatory scheme.



If APA's Statement seems too detailed for your community, you can always consider something shorter. A quick check of the web will turn up a number of examples. Another example is provided in Attachment F. It deals in behavior and not outcomes and includes no prohibitions. Instead, it focuses how one behaves based on values. Adoption of this type of an ethics statement could promote healthy dialogue among the Commission. At the other end of the continuum we have the following statement adopted by another Planning Commission as their own version of a Statement of Ethical Principles:

We listen carefully to applicants and the community while collaborating effectively with staff to achieve sound decisions and recommendations to the City Council. We demonstrate a commitment to the highest standards of fairness and honesty.

In reality, the actual language finally adopted is less important than the discussion that will surround the adoption. A conversation with planning colleagues will clarify points of differing interpretation. Adopting ethical standards will also advise the community that there are principles upon which they can rely. Indirectly, you will be putting people on notice that certain forms of conduct are not acceptable. Finally, once you have an adopted statement of ethical principles, it can easily eliminate the need for debate about personalities or individual proclivities. A short statement can simply be made referring to the adopted Statement and how it either encourages or precludes certain forms of conduct.

The Decisions Made by Planning Commissions Should Reflect the Adopted Ethical Principles

Planning commissions should be attentive to every point of view laid out at a commission meeting: property owner rights; equitable procedures; opinions of residents; and sustaining the environment, etc. To sort through the plethora of information and arrive at the best decision, the commissioner needs to ask herself "What decision will promote the entire community's best interest over time?"

Commissioners should also be attentive to the integrity of the planning process. Decisions should be based upon full information. This information should be discussed in an open forum where it can be debated. Certainly planning reports, studies, and other records should be available to persons on either (or any) side of an issue. Other meetings or communications a commissioner may have received which are related to a proposed decision must be

The commissioner needs to ask herself "What decision will promote the entire community's best interest over time?"



noted at a public hearing to ensure full information, comments, and rebuttals as appropriate. If a Commission conducts its business in a consistent and open manner, then the community will have more faith in the process.

Applicants Deserve Fair Decisions Made in an Un-biased Manner

Basic common law provides that Commissioners exercise the power of office for the benefit of the public and not for their private interests. The Constitution lays out due process principles that require the decision-makers to be fair and impartial when sitting in a quasi-judicial capacity on matters such as variances which require findings to be made.

What constitutes bias? Bias arises from having a personal or financial interest in the outcome. For example, one court found a council member was biased and should not have participated in a decision about new construction which would block the member's view of the ocean. There could be a personal bias based on well-known animosity toward an individual. Strong personal loyalty could also constitute a bias. If, for example, your best friend since kindergarten applied for a variance to the setbacks for her home, you could be perceived as biased in favor of the proposal. Another form of bias could come from your belief system or ideology. A Commissioner might find a proposal to approve a Conditional Use Permit for a Planned Parenthood clinic provoking a strong reaction if the Commissioner opposed education about contraception for teenagers or abortions. Another form of bias can result when information received outside of the meeting influences your thinking. All communications about the project (pro and con) should occur in the context of the noticed hearing. See the discussion of ex-parte communications which immediately follows.

Ex-parte communications

Ex-parte communications are those that occur outside of the formal meeting. These kinds of communications can undermine your efforts to establish a reputation for Planning Commission fairness.

Some Planning Commissioners insist that they are comfortable with receiving communications from the projects' neighbors or other concerned citizens. They believe being open to community input is part of their job. Those members explain that they report the ex-parte communications prior to the beginning of the official meeting. But disclosing may not be enough. You can't easily convey the full text of information received or the way you may have

Why is it a problem when information is communicated to you outside of a meeting?

- Not everyone has the same information
- The applicant cannot respond, if accusations are made
- You can't readily assess the accuracy of the information by seeking confirmation from staff
- It violates the perceived fairness of process if special information has been conveyed to a subset of the board membership



been influenced.

Site visits are a form of ex-parte communication. However, they are desirable. They can take the form of individuals driving by a site, or exploring it alone on foot. Some communities chose to organize group visits with staff. Because you may have a quorum of Planning Commissioners present, such site visits should be posted as a public meeting. Staff should prepare a brief write up of the visit for the public record. While on the site, board members should maintain an open-minded frame of mind and refrain from offering opinions to the property owner who is likely to be present.

Example: Can a planning commissioner receive information or explanations from an applicant outside of the regular meeting?

Answer: If the information is designed to influence the thinking of the Commissioner, the information should be presented in a public meeting. It should be in writing and should be part of the official public record.

Commissioners must give serious consideration to stepping aside and not participating when reviewing projects if they have listened to community input and have already determined the proper outcome in advance of receiving the evidence.

Serial Meetings

A serial meeting occurs when a series of communications among board members results in a debate and discussion of a pending item or policy. Serial meetings may be prohibited by state or local ethics codes. Whether precluded or not, they should be avoided. Serial meetings are the product of high technology, particularly e-mail. Meetings where decisions are made have to be conducted in public. E-mails about pending matters should be avoided.

Example: Can the staff send a notice to all the Planning Commission advising them that a long desired development project has been dropped from the agenda at the request of the applicant?

Answer: Yes. No discussion of pros or cons should be undertaken. No replies should be sent.

Example: Can planning commissioners send e-mails using the "reply to all" feature speculating why the applicant made the decision and what, if anything, the commission can do as a group to help get the project back on track?



Social Media and Serial Meetings:

The general rule is that a majority of the Planning Commissioners cannot use the Internet to communicate with each other about Planning Commission business. Many web sites present information or ask questions and individuals make comments or ask questions which are called postings. Multiple Commissioners cannot post or comment on others postings on Planning Commission business. If they do, then they are debating the public's business outside of the public meeting. This is a no-no. This does not mean that one-way communications like blogs are limited. Blogging can be a good way to get the work out, especially in a time of declining newspaper readership.



Answer: No. The commission would be discussing a topic with the intention of arriving at a consensus to guide future public action outside of a public meeting.

Separate communications with decision-makers to answer questions are acceptable. But those communications cannot have content which includes information about the position of other decision-makers. Commissioners should avoid all forms of communication that could result in an agreement by the Commission or a subset of Commissioners about what to do outside of a public meeting. This guidance does not preclude Commissioners from being present at the same social event or attending a training conference. It simply means that while at those events the Commissioners cannot meet to discuss the public's business.

Exchanging Votes

We've already covered the ethical standards that prohibit Planning Commissioners from soliciting or receiving bribes/gifts in exchange for their votes. Commissioners cannot give their vote in exchange for another public official's vote. Vote trading is a form of quid pro quo (this for that). Engaging in this kind of behavior compromises the decision-making process. Outcomes other than what is best for the public are being treated as what's most important when votes are traded.

Civility

It is to be expected that people will disagree about planning projects. The disagreement itself is not a bad thing; it is how the disagreement is expressed that holds the potential for problems. Many issues that come before the Planning Commission will involve controversy. But if it appears that the personalities and not the merits of the proposal are holding sway, the public will rightly doubt the wisdom of the outcome. The City of Collinsville (See Attachment C) has adopted procedures calling for civil conduct and outlining what will happen when there is a lack of order. See excerpts below.

Article 16: Conduct of Persons Before the Planning Commission

- *During all public hearings and working sessions, members of the public shall be given equitable opportunity to speak. Comments should be addressed to the item before the planning commission. Where a comment is irrelevant, inflammatory, or prejudicial, the chairperson may instruct the planning commission to "disregard" the comment, which nevertheless may, at the discretion of the board, remain in the public record.*



- *During all regular and emergency meetings of the planning commission, the public may be present but shall remain silent unless specifically invited by the chairperson to provide comment.*
- *During all planning commission proceedings, members of the public have the obligation to remain in civil order. Any conduct which interferes with the equitable rights of another to provide comment or which interferes with the proper execution of commission affairs may be ruled by the chairperson as "out-of-order" and the offending person directed to remain silent. Once having been so directed, if a person persists in disruptive conduct, the chairperson may entertain a motion to "eject" the person from the planning commission hearing or meeting. Where the person fails to comply with the successful motion to eject, the chairperson may then call upon civil authority to physically remove the individual from the chamber for the duration of the hearing or deliberation on that item.*

The advantages of having these procedures in place ahead of time is that it saves people the stress of trying to decide in the middle of an especially angry and contentious meeting what to do next. It also sets a reasonable standard to which Commissioners can refer when the shouting and the insults become untenable. Ejecting people should be avoided if at all possible, especially because law enforcement personnel rarely attend Planning Commission meetings. Nonetheless, there are occasions when the Police should be invited to attend and be prepared to "invite" unruly members of the public to leave the Planning Commission meeting chambers. For example, you may have residents with mental health issues attending meetings and threatening those who disagree with them. In one City, vague threatening statements were made at a neighborhood meeting. At the end of the meeting, when City staff left, they learned that all of their cars had been keyed. When people don't feel safe or respected at meetings, it is appropriate to take actions to restore civility. If it is a group rather than an individual causing the disruption, then the room may be cleared. Members of the media must be allowed to stay. Discussion can only take place on items posted on the agenda.

Besides removing disruptive individuals, another way to encourage civil behavior is for the Planning Commissioners to lead by example. If the Commission consistently demonstrates courtesy and respect it can help to tone down some of the rhetoric. Put simply, the Commission must avoid criticism of individuals and their motivations. The Commission's deliberations must focus on the merit of the proposal. While the Planning Commission Chair





can encourage everyone to behave in a civil manner, the Chair cannot stop people from expressing their opinions or criticizing the action of the Commission or others.

The Commission's agenda must provide an opportunity for the public to address the Commission on any item of interest to the public within the Commission's jurisdiction. The Planning Commission may adopt reasonable regulations to ensure that everyone has an opportunity to be heard in an orderly manner. This includes time limits which can help ensure that the Commission can complete its work. The time limits should not be so short that the public's position cannot be readily understood, for example thirty seconds.

Individual Planning Commissioners Should Be Prepared to Address Ethical Challenges

Most ethical challenges fall into one of two categories: Balancing two things that are both right or doing the right thing even when it may be costly to you personally or politically. For example, you might feel an ethical challenge when doing the right thing might jeopardize your appointed position – voting against a project championed by the Mayor. Or a vote may jeopardize a valued personal relationship. While it may be a hard decision, it is also easy in the sense that the right thing to do is obvious. It is accepting the cost which is onerous. Ethical provisions require that you do what is best for the public interest. This responsibility trumps your own personal interests and friendships. The other kinds of ethical challenges – deciding between competing public good or two rights – are more difficult. The one right thing to do is not so obvious. Should you approve a project that will generate badly needed additional sales tax revenue even though it will increase traffic impacting residents when there are no feasible mitigations?

Here are several steps to follow to help resolve and ethical problem.

1. Stop and define the problem. Avoid the temptation to go along to get along. Take the time to make sure you can clearly express, at least to yourself, what are your misgivings.
2. Collect the facts. Who is involved? How credible is the information you've been offered? How reliable are the people providing information? And is the information complete?



3. Refer to your guidance material. Whatever principles or codes or ordinances apply to your work, know what the recommendations are and how they would be applied.

4. Generate alternative courses of action and decide if they would have better probable outcomes. You can ask people individually or in a public setting, ask the Commission Chair to address the problem, or request a memo from the staff. When you have a list of alternatives, look for the ones that can help solve the problem while building ethical bridges to the rest of the commission.

5. Act on the best alternative. The best alternative reflects fulfilling your commitment to serve the public interest, doing the right thing, and minimizing the potential cost of following the right course.

Example: You have observed two members of the commission, in public meetings, urge the staff to waive the criteria for a variance to the subdivision standards for certain members of the development community. The commission usually goes along.

Answer: Using the above guidelines:

1. Stop and define the problem. Long time developers are receiving preferential treatment and are being granted variances to the subdivision standards without meeting the criteria.
2. Collect the facts. You always take detailed notes of the Commission's debate. Within the past six months, only two developers and all of their projects have been the subject of requests of staff by the same two commissioners. Each time, the argument is made to waive standards to support economic development and encourage homebuilding. Some of the waivers are minor; others are significant. But in each case, they are lobbying for the approval of subdivisions that are sub-standard.
3. Refer to guidance material. The APA Statement of Ethical Principles states that those who participate in the planning process should "Exercise fair, honest, and independent judgment." You believe the Commissioners are failing to achieve this standard and the credibility of the Commission has been affected.
4. Generate alternatives. Talk to the Chair of the Planning Commission. Talk to the two Planning Commissioners. Request a briefing from staff of the formal process of seeking variances and waivers. Invite a representative from the Texas Chapter of APA to discuss the potential long-term costs of waiving certain subdivision standards.



5. Act on the best alternative. You decide to talk to the Chair of the Planning Commission because this option doesn't preclude other actions if your conversation is not productive. It is your hope that together the two of you can approach the other Commissioners.

With all of the information provided in this chapter, it should feel more comfortable to answer the questions posed at the beginning of the Chapter.

Question: **Can I meet individually with applicants to hear about their project?**

Answer: _____

Question: **Should I take a tour of a project site with an applicant?**

Answer: _____

Question: **Can I discuss pending development projects at my neighborhood association meeting?**

Answer: _____

Question: **Can friends and neighbors offer me their opinions about pending projects?**

Answer: _____

Question: **What happens when my best friend has a project before the Planning Commission?**

Answer: _____

Question: **How can I do my job as a Planning Commissioner in a way that promotes fairness and objectivity?**

Answer: _____

WHEN YOU HAVE SERIOUS CONCERNS ABOUT ETHICAL MISCONDUCT

What can you do when there are ethical violations that taint the public planning process? When you notice a consistent pattern of unethical behavior and simple, direct remedies have failed, it may be time to consult with others who can bring to bear the influence of another entity.



In the case of alleged unethical conduct by a certified professional planner (AICP), you can conduct the Professional Development Officer of the APA Texas Chapter regarding a general question about accepted standards for behavior. To make a specific complaint, you should contact the Executive Director of the American Planning Association who serves as the Ethics Officer for the American Institute of Certified Planners. Contact information for these individuals is available on the Texas Chapter website: www.txplanning.org or that of the APA www.planning.org. Your peers from another jurisdiction can also be helpful in sorting out the issues and alternatives. This is particularly true when you have concerns about the conduct of a planner and you are not quite ready to consult with others.

What if the perceived problem lies with a fellow Commissioner or an elected official? You have a responsibility to act quickly to address ethical problems before they become scandals. It is often useful to assemble collective wisdom. The following steps include some from a publication from the Institute for Local Government :

1. Define and problem.
2. Collect the facts.
3. Determine the consequences of ignoring the situation.
4. Speak with others. See if they share your concerns. Do not gossip, but instead frame the conversation in terms of what needs to be done (if anything) to respond to the challenge.
5. Determine if an investigation is warranted.
6. Determine whether to contact external authorities.
7. Figure out what can be done to prevent a similar situation from occurring in the future.

These recommendations are not made lightly but with the full recognition that confronting problematic behavior may involve personal costs. Conversations can damage relationships. That's why it's best to begin with a one-on-one approach clarifying your understanding and, if things are as bad as you fear, helping a colleague to understand what can happen if the conduct does not change. By encouraging a colleague to refrain from the behavior, you are seeking to spare both the colleague as well as the City the embarrassment that will likely result. Depending on the magnitude of the transgression, you might choose to encourage the Commissioner to talk to an attorney. You

You have a responsibility to act quickly to address ethical problems before they become scandals.



can use the approach of confirming from an independent party the possible expenses that may accrue from continuing to flout the law. When you hear that the behavior is protected because no one will find out, debate that premise loudly. With all of the ways people can follow actions by Commissioners whether public or private, that strategy is bound to fail. Don't be surprised if the response remains guarded or even denial. As mentioned earlier, we all have an enormous capacity for believing that we are honest and ethical individuals and hence, our conduct is also upright.

It is a difficult lesson to learn, but nonetheless true that you as an individual will be judged by the conduct of the other Commissioners. You must be prepared to not only act ethically on your own, but also to hold others accountable when they fail to do so.

Ultimately, an ethical commissioner must be prepared to consider whether events are of such a serious nature as to require resignation to avoid guilt by association. Conversely, the Commissioner may decide, upon reflection, to maintain a lonely outpost as the ethical beacon. The lone Commissioner can be effective in a number of simple ways. One could request that the APA Statement of Ethical Principles be placed on an agenda of the Commission. A discussion can then occur without appearing to judge any individual(s). The Commissioner could request training on ethics as a part of the overall development program for volunteers. Even without bringing these outside resources to the table, consistently ethical actions by one Commissioner will, over time, raise the ethical consciousness of the entire Planning Commission for the benefit of the whole community.

What Happens When a Planning Commission Operations Unethically?

Most city attorneys will tell you that you will not be defended if you have violated the law.

There can be serious consequences for misconduct. If the administrative decision is tainted, it can be set aside. New proceedings are then required. An individual who fails to avoid conflicts of interest can lose her/his position on the Commission. If the ethical failing rises to the level of a charge of violating someone's due process rights under the constitution, there could be a lawsuit and damages awarded. Most city attorneys will tell you that you will not be defended if you have violated the law. The cost of the proceedings will have to be borne by the individual Planning Commissioners.



THE TAKEAWAY MESSAGE

Ethics for Planning Commissions is not an introspective process. You can be absolutely confident that you have put your personal interest aside, but the public may still question loudly whether that is true. Experienced Planning Commissioners know that the public's perception matters when you make your determination of what the right thing to do is. This does not mean yielding to prejudice or the loudest voice. Your responsibility remains to do what is best for your community, even if it is an unpopular choice. If you act on your best judgment (and leave outside the meeting room your personal or political or job-related interests), you will have solved 99% of the ethical conundrums. You can encourage ethical behavior simply by bringing the issue up. You and the other Commissioners should analyze issues for their ethical implications and have a shared understanding of how these issues should be addressed.

If you have taken the time to read to the end of this Chapter, you are ahead of the game!

Ethical Planning Commissioners:

1. Are clear about the behavior they demand of themselves and expect from others.
2. Promote an ethical culture within the Planning Commission and the community where they serve.
3. Have a strategy ready for dealing with ethical issues if they arise.



ATTACHMENT A

Ethical Principles in Planning (As Adopted May 1992)

This statement is a guide to ethical conduct for all who participate in the process of planning as advisors, advocates, and decision makers. It presents a set of principles to be held in common by certified planners, other practicing planners, appointed and elected officials, and others who participate in the process of planning.

The planning process exists to serve the public interest. While the public interest is a question of continuous debate, both in its general principles and in its case-by-case applications, it requires a conscientiously held view of the policies and actions that best serve the entire community.

Planning issues commonly involve a conflict of values and, often, there are large private interests at stake. These accentuate the necessity for the highest standards of fairness and honesty among all participants.

Those who practice planning need to adhere to a special set of ethical requirements that must guide all who aspire to professionalism.

The Code is formally subscribed to by each certified planner. It includes an enforcement procedure that is administered by AICP. The Code, however, provides for more than the minimum threshold of enforceable acceptability. It also sets aspirational standards that require conscious striving to attain.

The ethical principles derive both from the general values of society and from the planner's special responsibility to serve the public interest. As the basic values of society are often in competition with each other, so do these principles sometimes compete. For example, the need to provide full public information may compete with the need to respect confidences. Plans and programs often result from a balancing among divergent interests. An ethical judgment often also requires a conscientious balancing, based on the facts and context of a particular situation and on the entire set of ethical principles.

This statement also aims to inform the public generally. It is also the basis for continuing systematic discussion of the application of its principles that is itself essential behavior to give them daily meaning.

The planning process must continuously pursue and faithfully serve the public interest.

Planning Process Participants should:



1. Recognize the rights of citizens to participate in planning decisions;
2. Strive to give citizens (including those who lack formal organization or influence) full, clear and accurate information on planning issues and the opportunity to have a meaningful role in the development of plans and programs;
3. Strive to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of disadvantaged groups and persons;
4. Assist in the clarification of community goals, objectives and policies in plan-making;
5. Ensure that reports, records and any other non-confidential information which is, or will be, available to decision makers is made available to the public in a convenient format and sufficiently in advance of any decision;
6. Strive to protect the integrity of the natural environment and the heritage of the built environment;
7. Pay special attention to the interrelatedness of decisions and the long range consequences of present actions.

Planning process participants continuously strive to achieve high standards of integrity and proficiency so that public respect for the planning process will be maintained.

Planning Process Participants should:

1. Exercise fair, honest and independent judgment in their roles as decision makers and advisors;
2. Make public disclosure of all "personal interests" they may have regarding any decision to be made in the planning process in which they serve, or are requested to serve, as advisor or decision maker.
3. Define "personal interest" broadly to include any actual or potential benefits or advantages that they, a spouse, family member or person living in their household might directly or indirectly obtain from a planning decision;
4. Abstain completely from direct or indirect participation as an advisor or decision maker in any matter in which they have a personal interest, and leave any chamber in which such a matter is under deliberation, unless their personal interest has been made a matter of public record; their employer, if any, has given approval; and the public official, public agency or court with jurisdiction to rule on ethics matters has expressly authorized their participation;
5. Seek no gifts or favors, nor offer any, under circumstances in which it might reasonably be inferred that the gifts or favors were intended or expected to influence a participant's objectivity as an advisor or decision maker in the planning process;

Not participate as an advisor or decision maker on any plan or project in which they have previously participated as an advocate;

6. Serve as advocates only when the client's objectives are legal and consistent with the public interest.
7. Not participate as an advocate on any aspect of a plan or program on which they have previously served as advisor or decision maker unless their role as advocate is authorized by applicable law, agency regulation, or ruling of an ethics officer or agency; such participation as an advocate should

- be allowed only after prior disclosure to, and approval by, their affected client or employer; under no circumstance should such participation commence earlier than one year following termination of the role as advisor or decision maker;
8. Not use confidential information acquired in the course of their duties to further a personal interest;
 9. Not disclose confidential information acquired in the course of their duties except when required by law, to prevent a clear violation of law or to prevent substantial injury to third persons; provided that disclosure in the latter two situations may not be made until after verification of the facts and issues involved and consultation with other planning process participants to obtain their separate opinions;
 10. Not misrepresent facts or distort information for the purpose of achieving a desired outcome;
 11. Not participate in any matter unless adequately prepared and sufficiently capacitated to render thorough and diligent service;
 12. Respect the rights of all persons and not improperly discriminate against or harass others based on characteristics which are protected under civil rights laws and regulations.

APA members who are practicing planners continuously pursue improvement in their planning competence as well as in the development of peers and aspiring planners. They recognize that enhancement of planning as a profession leads to greater public respect for the planning process and thus serves the public interest.

APA Members who are practicing planners:

1. Strive to achieve high standards of professionalism, including certification, integrity, knowledge, and professional development consistent with the AICP Code of Ethics;
2. Do not commit a deliberately wrongful act which reflects adversely on planning as a profession or seek business by stating or implying that they are prepared, willing or able to influence decisions by improper means;
3. Participate in continuing professional education;
4. Contribute time and effort to groups lacking adequate planning resources and to voluntary professional activities;
5. Accurately represent their qualifications to practice planning as well as their education and affiliations;
6. Accurately represent the qualifications, views, and findings of colleagues;
7. Treat fairly and comment responsibly on the professional views of colleagues and members of other professions;
8. Share the results of experience and research which contribute to the body of planning knowledge;
9. Examine the applicability of planning theories, methods and standards to the facts and analysis of each particular situation and do not accept the applicability of a customary solution without first establishing its appropriateness to the situation;
10. Contribute time and information to the development of students, interns, beginning practitioners and other colleagues;



11. Strive to increase the opportunities for women and members of recognized minorities to become professional planners;
12. Systematically and critically analyze ethical issues in the practice of planning.



ATTACHMENT B

AICP Code of Ethics and Professional Conduct

Adopted March 19, 2005

Effective June 1, 2005

Revised October 3, 2009

The Executive Director of APA/AICP is the Ethics Officer as referenced in the following.

We, professional planners, who are members of the American Institute of Certified Planners, subscribe to our Institute's Code of Ethics and Professional Conduct. Our Code is divided into four sections:

Section A contains a statement of aspirational principles that constitute the ideals to which we are committed. We shall strive to act in accordance with our stated principles. However, an allegation that we failed to achieve our aspirational principles cannot be the subject of a misconduct charge or be a cause for disciplinary action.

Section B contains rules of conduct to which we are held accountable. If we violate any of these rules, we can be the object of a charge of misconduct and shall have the responsibility of responding to and cooperating with the investigation and enforcement procedures. If we are found to be blameworthy by the AICP Ethics Committee, we shall be subject to the imposition of sanctions that may include loss of our certification.

Section C contains the procedural provisions of the Code. It (1) describes the way that one may obtain either a formal or informal advisory ruling, and (2) details how a charge of misconduct can be filed, and how charges are investigated, prosecuted, and adjudicated.

Section D contains procedural provisions that govern situations in which a planner is convicted of a serious crime.

The principles to which we subscribe in Sections A and B of the Code derive from the special responsibility of our profession to serve the public interest with compassion for the welfare of all people and, as professionals, to our obligation to act with high integrity.

As the basic values of society can come into competition with each other, so can the aspirational principles we espouse under this Code. An ethical judgment often requires a conscientious balancing, based on the facts and context of a particular situation and on the precepts of the entire Code.

As Certified Planners, all of us are also members of the American Planning Association and share in the



goal of building better, more inclusive communities. We want the public to be aware of the principles by which we practice our profession in the quest of that goal. We sincerely hope that the public will respect the commitments we make to our employers and clients, our fellow professionals, and all other persons whose interests we affect.

A: Principles to Which We Aspire

1. Our Overall Responsibility to the Public

Our primary obligation is to serve the public interest and we, therefore, owe our allegiance to a conscientiously attained concept of the public interest that is formulated through continuous and open debate. We shall achieve high standards of professional integrity, proficiency, and knowledge. To comply with our obligation to the public, we aspire to the following principles:

- a) We shall always be conscious of the rights of others.
- b) We shall have special concern for the long-range consequences of present actions.
- c) We shall pay special attention to the interrelatedness of decisions.
- d) We shall provide timely, adequate, clear, and accurate information on planning issues to all affected persons and to governmental decision makers.
- e) We shall give people the opportunity to have a meaningful impact on the development of plans and programs that may affect them. Participation should be broad enough to include those who lack formal organization or influence.
- f) We shall seek social justice by working to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of the disadvantaged and to promote racial and economic integration. We shall urge the alteration of policies, institutions, and decisions that oppose such needs.
- g) We shall promote excellence of design and endeavor to conserve and preserve the integrity and heritage of the natural and built environment.
- h) We shall deal fairly with all participants in the planning process. Those of us who are public officials or employees shall also deal evenhandedly with all planning process participants.

2. Our Responsibility to Our Clients and Employers

We owe diligent, creative, and competent performance of the work we do in pursuit of our client or employer's interest. Such performance, however, shall always be consistent with our faithful service to the public interest.



- a) We shall exercise independent professional judgment on behalf of our clients and employers.
- b) We shall accept the decisions of our client or employer concerning the objectives and nature of the professional services we perform unless the course of action is illegal or plainly inconsistent with our primary obligation to the public interest.
- c) We shall avoid a conflict of interest or even the appearance of a conflict of interest in accepting assignments from clients or employers.

3. Our Responsibility to Our Profession and Colleagues

We shall contribute to the development of, and respect for, our profession by improving knowledge and techniques, making work relevant to solutions of community problems, and increasing public understanding of planning activities.

- a) We shall protect and enhance the integrity of our profession.
- b) We shall educate the public about planning issues and their relevance to our everyday lives.
- c) We shall describe and comment on the work and views of other professionals in a fair and professional manner.
- d) We shall share the results of experience and research that contribute to the body of planning knowledge.
- e) We shall examine the applicability of planning theories, methods, research and practice and standards to the facts and analysis of each particular situation and shall not accept the applicability of a customary solution without first establishing its appropriateness to the situation.
- f) We shall contribute time and resources to the professional development of students, interns, beginning professionals, and other colleagues.
- g) We shall increase the opportunities for members of underrepresented groups to become professional planners and help them advance in the profession.
- h) We shall continue to enhance our professional education and training.
- i) We shall systematically and critically analyze ethical issues in the practice of planning.



j) We shall contribute time and effort to groups lacking in adequate planning resources and to voluntary professional activities.

B: Our Rules of Conduct

We adhere to the following Rules of Conduct, and we understand that our Institute will enforce compliance with them. If we fail to adhere to these Rules, we could receive sanctions, the ultimate being the loss of our certification:

1. We shall not deliberately or with reckless indifference fail to provide adequate, timely, clear and accurate information on planning issues.
2. We shall not accept an assignment from a client or employer when the services to be performed involve conduct that we know to be illegal or in violation of these rules.
3. We shall not accept an assignment from a client or employer to publicly advocate a position on a planning issue that is indistinguishably adverse to a position we publicly advocated for a previous client or employer within the past three years unless (1) we determine in good faith after consultation with other qualified professionals that our change of position will not cause present detriment to our previous client or employer, and (2) we make full written disclosure of the conflict to our current client or employer and receive written permission to proceed with the assignment.
4. We shall not, as salaried employees, undertake other employment in planning or a related profession, whether or not for pay, without having made full written disclosure to the employer who furnishes our salary and having received subsequent written permission to undertake additional employment, unless our employer has a written policy which expressly dispenses with a need to obtain such consent.
5. We shall not, as public officials or employees, accept from anyone other than our public employer any compensation, commission, rebate, or other advantage that may be perceived as related to our public office or employment.
6. We shall not perform work on a project for a client or employer if, in addition to the agreed upon compensation from our client or employer, there is a possibility for direct personal or financial gain to us, our family members, or persons living in our household, unless our client or employer, after full written disclosure from us, consents in writing to the arrangement.
7. We shall not use to our personal advantage, nor that of a subsequent client or employer, information gained in a professional relationship that the client or employer has requested be held inviolate or that we should recognize as confidential because its disclosure could result in embarrassment or other detriment to the client or employer. Nor shall we disclose such confidential information except when (1) required by process of law, or (2) required to prevent a clear violation of law, or (3) required to prevent a substantial injury to the public. Disclosure pursuant to (2) and (3) shall not be made until after we have verified the facts and issues involved and, when practicable, exhausted efforts to obtain reconsideration of the matter and have sought separate opinions on the issue from other qualified professionals employed by our client or employer.
8. We shall not, as public officials or employees, engage in private communications with planning pro-



- cess participants if the discussions relate to a matter over which we have authority to make a binding, final determination if such private communications are prohibited by law or by agency rules, procedures, or custom.
9. We shall not engage in private discussions with decision makers in the planning process in any manner prohibited by law or by agency rules, procedures, or custom.
 10. We shall neither deliberately, nor with reckless indifference, misrepresent the qualifications, views and findings of other professionals.
 11. We shall not solicit prospective clients or employment through use of false or misleading claims, harassment, or duress.
 12. We shall not misstate our education, experience, training, or any other facts which are relevant to our professional qualifications.
 13. We shall not sell, or offer to sell, services by stating or implying an ability to influence decisions by improper means.
 14. We shall not use the power of any office to seek or obtain a special advantage that is not a matter of public knowledge or is not in the public interest.
 15. We shall not accept work beyond our professional competence unless the client or employer understands and agrees that such work will be performed by another professional competent to perform the work and acceptable to the client or employer.
 16. We shall not accept work for a fee, or pro bono, that we know cannot be performed with the promptness required by the prospective client, or that is required by the circumstances of the assignment.
 17. We shall not use the product of others' efforts to seek professional recognition or acclaim intended for producers of original work.
 18. We shall not direct or coerce other professionals to make analyses or reach findings not supported by available evidence.
 19. We shall not fail to disclose the interests of our client or employer when participating in the planning process. Nor shall we participate in an effort to conceal the true interests of our client or employer.
 20. We shall not unlawfully discriminate against another person.
 21. We shall not withhold cooperation or information from the AICP Ethics Officer or the AICP Ethics Committee if a charge of ethical misconduct has been filed against us.
 22. We shall not retaliate or threaten retaliation against a person who has filed a charge of ethical misconduct against us or another planner, or who is cooperating in the Ethics Officer's investigation of an ethics charge.
 23. We shall not use the threat of filing an ethics charge in order to gain, or attempt to gain, an advantage in dealings with another planner.
 24. We shall not file a frivolous charge of ethical misconduct against another planner.
 25. We shall neither deliberately, nor with reckless indifference, commit any wrongful act, whether or not specified in the Rules of Conduct, that reflects adversely on our professional fitness.
 26. We shall not fail to immediately notify the Ethics Officer by both receipted Certified and Regular First Class Mail if we are convicted of a "serious crime" as defined in Section D of the Code; nor immediately



following such conviction shall we represent ourselves as Certified Planners or Members of AICP until our membership is reinstated by the AICP Ethics Committee pursuant to the procedures in Section D of the Code.

C: Our Code Procedures

1. Introduction

In brief, our Code Procedures (1) describe the way that one may obtain either a formal or informal advisory ethics ruling, and (2) detail how a charge of misconduct can be filed, and how charges are investigated, prosecuted, and adjudicated.

2. Informal Advice

All of us are encouraged to seek informal ethics advice from the Ethics Officer. Informal advice is not given in writing and is not binding on AICP, but the AICP Ethics Committee shall take it into consideration in the event a charge of misconduct is later filed against us concerning the conduct in question. If we ask the Ethics Officer for informal advice and do not receive a response within 21 calendar days of our request, we should notify the Chair of the Ethics Committee that we are awaiting a response.

3. Formal Advice

Only the Ethics Officer is authorized to give formal advice on the propriety of a planner's proposed conduct. Formal advice is binding on AICP and any of us who can demonstrate that we followed such advice shall have a defense to any charge of misconduct. The advice will be issued to us in writing signed by the Ethics Officer. The written advice shall not include names or places without the written consent of all persons to be named. Requests for formal advice must be in writing and must contain sufficient details, real or hypothetical, to permit a definitive opinion. The Ethics Officer has the discretion to issue or not issue formal advice. The Ethics Officer will not issue formal advice if he or she determines that the request deals with past conduct that should be the subject of a charge of misconduct. The Ethics Officer will respond to requests for formal advice within 21 days of receipt and will docket the requests in a log that will be distributed on a quarterly basis to the Chair of the AICP Ethics Committee. If the Ethics Officer fails to furnish us with a timely response we should notify the Chair of the AICP Ethics Committee that we are awaiting a response.

4. Published Formal Advisory Rulings

The Ethics Officer shall transmit a copy of all formal advice to the AICP Ethics Committee. The Committee, from time to time, will determine if the formal advice provides guidance to the interpretation of the Code and should be published as a formal advisory ruling. Also, the Ethics Committee has the authority to draft and publish formal advisory rulings when it determines that guidance to interpretation of the Code is needed or desirable.

5. Filing a Charge of Misconduct



Any person, whether or not an AICP member, may file a charge of misconduct against a Certified Planner. A charge of misconduct shall be made in a letter sent to the AICP Ethics Officer. The letter may be signed or it may be anonymous. The person filing the charge is urged to maintain confidentiality to the extent practicable. The person filing the charge should not send a copy of the charge to the Certified Planner identified in the letter or to any other person. The letter shall accurately identify the Certified Planner against whom the charge is being made and describe the conduct that allegedly violated the provisions of the Rules of Conduct. The person filing a charge should also cite all provisions of the Rules of Conduct that have allegedly been violated. However, a charge will not be dismissed if the Ethics Officer is able to determine from the facts stated in the letter that certain Rules of Conduct may have been violated. The letter reciting the charge should be accompanied by all relevant documentation available to the person filing the charge. While anonymously filed charges are permitted, anonymous filers will not receive notification of the disposition of the charge. Anonymous filers may furnish a postal address in the event the Ethics Officer needs to reach them for an inquiry.

6. Receipt of Charge by Ethics Officer

The Ethics Officer shall maintain a log of all letters containing charges of misconduct filed against Certified Planners upon their receipt and shall transmit a quarterly report of such correspondence to the Chair of the Ethics Committee. Within two weeks of receipt of a charge, the Ethics Officer shall prepare a cover letter and transmit the charge and all attached documentation to the named Certified Planner, who shall be now referred to as “the Respondent.” The Ethics Officer’s cover letter shall indicate whether the Ethics Officer expects the Respondent to file a “preliminary response” or whether the Ethics Officer is summarily dismissing the charge because it is clearly without merit. A copy of the cover letter will also be sent to the Charging Party, if identified. If the cover letter summarily dismisses the charge, it shall be sent to an identifiable Charging Party by receipted Certified Mail. The Charging Party will have the right to appeal the summary dismissal as provided in Section 11. After the Ethics Officer has received a charge, the Charging Party may withdraw it only with the permission of the Ethics Officer. After receiving a charge, the Ethics Officer shall have a duty to keep an identified Charging Party informed of its status. If an identified Charging Party has not received a status report from the Ethics Officer for 60 calendar days, the Charging Party should notify the Chair of the AICP Ethics Committee of the lapse.

7. Right of Counsel

A planner who receives a charge of misconduct under a cover letter requesting a preliminary response should understand that if he or she desires legal representation, it would be advisable to obtain such representation at the earliest point in the procedure. However, a planner who elects to proceed at first without legal representation will not be precluded from engaging such representation at any later point in the procedure.

8. Preliminary Responses to a Charge of Misconduct

If the Ethics Officer requests a preliminary response, the Respondent shall be allowed 30 calendar days



from receipt of the Ethics Officer's letter to send the response to the Ethics Officer. The Ethics Officer will grant an extension of time, not to exceed 15 calendar days, if the request for the extension is made within the 30 day period. Failure to make a timely preliminary response constitutes a failure to cooperate with the Ethics Officer's investigation of the charge. A preliminary response should include documentation, the names, addresses and telephone numbers of witnesses, and all of the facts and arguments that counter the charge. Because the motivation of the person who filed the charge is irrelevant, the Respondent should not discuss it. The Ethics Officer will send a copy of the preliminary response to the Charging Party, if identified, and allow the Charging Party 15 calendar days from the date of receipt to respond.

9. Conducting an Investigation

After review of the preliminary response from the Respondent and any counter to that response furnished by an identified Charging Party, or if no timely preliminary response is received, the Ethics Officer shall decide whether an investigation is appropriate. If the Ethics Officer determines that an investigation should be conducted, he or she may designate a member of the AICP staff or AICP counsel to conduct the investigation. The Respondent must cooperate in the investigation and encourage others with relevant information, whether favorable or unfavorable, to cooperate. Neither the Ethics Officer, nor designee, will make credibility findings to resolve differing witness versions of facts in dispute.

10. Dismissal of Charge or Issuance of Complaint

If, with or without an investigation, the charge appears to be without merit, the Ethics Officer shall dismiss it in a letter, giving a full explanation of the reasons. The dismissal letter shall be sent to the Respondent and the Charging Party by receipted Certified Mail. If, however, the Ethics Officer's investigation indicates that a Complaint is warranted, the Ethics Officer shall draft a Complaint and send it to the Respondent by receipted Certified Mail, with a copy to the Charging Party. The Complaint shall consist of numbered paragraphs containing recitations of alleged facts. Following the fact paragraphs, there shall be numbered paragraphs of alleged violations, which shall cite provisions of the Rules of Conduct that the Ethics Officer believes are implicated. The allegations in the Complaint shall be based on the results of the Ethics Officer's investigation of the charge and may be additional to, or different from, those allegations initially relied upon by the Charging Party. The Ethics Officer shall maintain a log of all dismissals and shall transmit the log on a quarterly basis to the Chair of the Ethics Committee.

11. Appeal of Dismissal of Charge

Identified Charging Parties who are notified of the dismissal of their ethics charges shall have 30 calendar days from the date of the receipt of their dismissal letters to file an appeal with the Ethics Committee. The appeal shall be sent to the Ethics Officer who shall record it in a log and transmit it within 21 calendar days to the Ethics Committee. The Ethics Committee shall either affirm or reverse the dismissal. If the dismissal is reversed, the Ethics Committee shall either direct the Ethics Officer to conduct a



further investigation and review the charge again, or issue a Complaint based on the materials before the Committee. The Ethics Officer shall notify the Charging Party and the Respondent of the Ethics Committee's determination.

12. Answering a Complaint

The Respondent shall have 30 calendar days from receipt of a Complaint in which to file an Answer. An extension not to exceed 15 calendar days will be granted if the request is made within the 30 day period. In furnishing an Answer, the Respondent is expected to cooperate in good faith. General denials are unacceptable. The Answer must specifically admit or deny each of the fact allegations in the Complaint. It is acceptable to deny a fact allegation on the ground that the planner is unable to verify its correctness, but that explanation should be stated as the reason for denial. The failure of a Respondent to make a timely denial of any fact alleged in the Complaint shall be deemed an admission of such fact. The Ethics Officer may amend a Complaint to delete any disputed fact, whether or not material to the issues. The Ethics Officer also may amend a Complaint to restate fact allegations by verifying and adopting the Respondent's version of what occurred. The Ethics Officer shall send the Complaint or Amended Complaint and the Respondent's Answer to the Ethics Committee with a copy to an identified Charging Party. The Ethics Officer shall also inform the Ethics Committee if there are any disputed material facts based on a comparison of the documents.

13. Conducting a Hearing

- a) If the Ethics Officer notifies the Ethics Committee that material facts are in dispute or if the Ethics Committee, on its own, finds that to be the case, the Chair of the Committee shall designate a "Hearing Official" from among the membership of the Committee. At this point in the process, the Ethics Officer, either personally or through a designated AICP staff member or AICP counsel, shall continue to serve as both Investigator-Prosecutor and as the Clerk serving the Ethics Committee, the Hearing Official and the Respondent. In carrying out clerical functions, the Ethics Officer, or designee, may discuss with the Ethics Committee and the Hearing Official the procedural arrangements for the hearing. Until the Ethics Committee decides the case, however, the Ethics Officer or designee shall not discuss the merits of the case with any member of the Committee unless the Respondent is present or is afforded an equal opportunity to address the Committee member.
- b) The Ethics Officer shall transmit a "Notice of Hearing" to the Respondent, the Hearing Official and an identified Charging Party. The hearing shall normally be conducted in the vicinity where the alleged misconduct occurred. The Notice will contain a list of all disputed material facts that need to be resolved. The hearing will be confined to resolution of those facts. There shall be no requirement that formal rules of evidence be observed.
- c) The Ethics Officer will have the burden of proving, by a preponderance of the evidence, that misconduct occurred. The Ethics Officer may present witness testimony and any other evidence relevant



to demonstrating the existence of each disputed material fact. The Respondent will then be given the opportunity to present witness testimony and any other evidence relevant to controvert the testimony and other evidence submitted by the Ethics Officer. The Ethics Officer may then be given an opportunity to present additional witness testimony and other evidence in rebuttal. All witnesses who testify for the Ethics Officer or the Respondent shall be subject to cross-examination by the other party. The Hearing Official shall make an electronic recording of the hearing and shall make copies of the recording available to the Ethics Officer and the Respondent.

d) At least 30 calendar days before the hearing, the Ethics Officer and the Respondent shall exchange lists of proposed witnesses who will testify, and copies of all exhibits that will be introduced, at the hearing. There shall be no other discovery and no pre-hearing motions. All witnesses must testify in person at the hearing unless arrangements can be made by agreement between the Respondent and the Ethics Officer prior to the hearing, or by ruling of the Hearing Official during the hearing, to have an unavailable witness's testimony submitted in a video recording that permits the Hearing Official to observe the demeanor of the witness. No unavailable witness's testimony shall be admissible unless the opposing party was offered a meaningful opportunity to cross-examine the witness. The hearing shall not be open to the public. The Hearing Official shall have the discretion to hold open the hearing to accept recorded video testimony of unavailable witnesses. The Respondent will be responsible for the expense of bringing his or her witnesses to the hearing or to have their testimony video recorded. Following the closing of the hearing, the Hearing Official shall make findings only as to the disputed material facts and transmit the findings to the full Ethics Committee, the Ethics Officer, and the Respondent. The Hearing Official, prior to issuing findings, may request that the parties submit proposed findings of fact for his or her consideration.

14. Deciding the Case

The Ethics Committee (including the Hearing Official member of the Committee) shall resolve the ethics matter by reviewing the documentation that sets out the facts that were not in dispute, any fact findings that were required to be made by a Hearing Official, and any arguments submitted to it by the Respondent and the Ethics Officer. The Ethics Officer shall give 45 calendar days' notice to the Respondent of the date of the Ethics Committee meeting during which the matter will be resolved. The Ethics Officer and the Respondent shall have 21 calendar days to submit memoranda stating their positions. The Ethics Officer shall transmit the memoranda to the Ethics Committee no later than 15 calendar days prior to the scheduled meeting. If the Committee determines that the Rules of Conduct have not been violated, it shall dismiss the Complaint and direct the Ethics Officer to notify the Respondent and an identified Charging Party. If the Ethics Committee determines that the Ethics Officer has demonstrated that the Rules of Conduct have been violated, it shall also determine the appropriate sanction, which shall either be a reprimand, suspension, or expulsion. The Ethics Committee shall direct the Ethics Officer to notify the Respondent and an identified Charging Party of its action and to draft a formal explanation of its decision and the discipline chosen. Upon approval of the Ethics Committee, the expla-



nation and discipline chosen shall be published and titled "Opinion of the AICP Ethics Committee." The determination of the AICP Ethics Committee shall be final.

15. Settlement of Charges

a) Prior to issuance of a Complaint, the Ethics Officer may negotiate a settlement between the Respondent and an identified Charging Party if the Ethics Officer determines that the Charging Party has been personally aggrieved by the alleged misconduct of the Respondent and a private resolution between the two would not be viewed as compromising Code principles. If a settlement is reached under such circumstances, the Charging Party will be allowed to withdraw the charge of misconduct.

b) Also prior to issuance of a Complaint, the Ethics Officer may enter into a proposed settlement agreement without the participation of an identified Charging Party. However, in such circumstances, the proposed settlement agreement shall be contingent upon the approval of the Ethics Committee. An identified Charging Party will be given notice and an opportunity to be heard by the Ethics Committee before it votes to approve or disapprove the proposed pre-Complaint settlement.

c) After issuance of a Complaint by the Ethics Officer, a settlement can be negotiated solely between the Ethics Officer and the Respondent, subject to the approval of the Ethics Committee without input from an identified Charging Party.

16. Resignations and Lapses of Membership

If an AICP member who is the subject of a Charge of Misconduct resigns or allows membership to lapse prior to a final determination of the Charge (and any Complaint that may have issued), the ethics matter will be held in abeyance subject to being revived if the individual applies for reinstatement of membership within two years. If such former member, however, fails to apply for reinstatement within two years, the individual shall not be permitted to reapply for certification for a period of 10 years from the date of resignation or lapse of membership. If the Ethics Officer receives a Charge of Misconduct against a former member, the Ethics Officer shall make an effort to locate and advise the former member of the filing of the Charge and this Rule of Procedure.

17. Annual Report of Ethics Officer

Prior to January 31 of each calendar year the Ethics Officer shall publish an Annual Report of all ethics activity during the preceding calendar year to the AICP Ethics Committee and the AICP Commission. The AICP Commission shall make the Annual Report available to the membership.

D: Planners Convicted of Serious Crimes — Automatic Suspension of Certification

1. Automatic Suspension Upon Conviction for "Serious Crime"

We acknowledge that if we are convicted of a "serious crime," our certification and membership shall be automatically suspended indefinitely. The automatic suspension applies whether the conviction result-



ed from a plea of guilty or nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of any appeal. A "serious crime" shall include any crime a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the judgment was entered, involves false swearing, misrepresentation, fraud, willful failure to file income tax returns or to pay the tax, deceit, bribery, extortion, misappropriation, theft, conflict of interest, or an attempt to or a conspiracy or solicitation of another to commit a "serious crime."

2. Duty to Notify Ethics Officer When Convicted of "Serious Crime."

As required by Rule of Conduct 26, in Section B of the Code, we shall notify the Ethics Officer both by receipted Certified and Regular First Class Mail if we are convicted of a "serious crime" as defined in Paragraph 1. We understand that failure to do so shall result in a delay in the commencement of the one year waiting period for filing reinstatement petitions as provided for in Paragraph 3.

3. Petition for Reinstatement of Certification and Membership

Upon learning of the conviction of a Certified Planner for a serious crime, the Ethics Officer shall send the convicted individual by receipted Certified and Regular First Class Mail to the last address of record a Notice of Suspension of AICP Membership and Certification. The Notice shall advise the individual that one year from the date of the Notice, but in no event prior to release from incarceration, he or she may petition the AICP Ethics Committee for reinstatement. A Petition for Reinstatement shall be sent to the Ethics Officer, who shall forward it to the Ethics Committee. The Ethics Committee shall in its sole judgment determine whether reinstatement is appropriate and if so whether and what conditions shall be applied to such reinstatement. The Ethics Officer shall transmit the reinstatement determination to the petitioner. If the Ethics Committee denies the Petition, the Ethics Officer shall transmit the denial to the petitioner along with notice that the petitioner shall have the opportunity to file a subsequent petition after 12 months from the date of the Ethics Committee's determination.

4. Publication of Conviction for Serious Crime:

If, while we are Certified Planners, we are convicted of a serious offense, as defined in Paragraph 1, we authorize the Ethics Officer to publish our name and a description of the crime we committed in a publication of AICP and of the American Planning Association. This authority to publish shall survive the voluntary or involuntary termination or suspension of our AICP membership and certification.

ATTACHMENT C

BY-LAWS FOR PLANNING AND ZONING COMMISSION

CITY OF COLLINSVILLE, TEXAS

Used with the Permission of the City of Collinsville, Troy Vanoy, approved March, 2013.



By-Laws of the Planning Commission of the City of Collinsville, State of Texas, as established on March, 2001.

Article 1: Authority

Authority was given to Planning and Zoning as a Board by the City Council of Collinsville, State of Texas. City of Collinsville Zoning Ordinance.

Article 2: Jurisdiction

- The Jurisdiction of this board includes all property within the city limits of Collinsville, Texas, as well as any and all property within the extra-territorial jurisdiction (ETJ) of the city.
- The amount of property that falls within the ETJ is defined by State law and is based upon the current population of the city. At the present time, the ETJ for the City of Collinsville includes all area up to one-half of a mile beyond the city limits.
- All recommendations will be heard on next planned agenda and decision will be made by the Planning and Zoning board no more than 90 days from the date of the recommendation being presented to the board.

Article 3: Appointment and Terms of Members

- All appointments to the Planning and Zoning board are made by the City Council.
- The Planning and Zoning board consists of five members who must be a resident either in the city limits of Collinsville, or live within five (5) miles of the city limits of Collinsville. However in the event that a bordering county line is less than five (5) miles of the Collinsville City limits, the mileage limit stops at the Grayson County line.
- Each appointment to the Planning and Zoning board is for a two year period. If a member is unable to complete their two year term, the City Council will vote on a replacement to complete that portion of the unexpired term. Members are elected in overlapping terms, i.e., in one year two positions are appointed for two year terms and in the next year three positions are appointed for two year terms.

Article 4: Planning Commission Officers and their Duties

- Chairperson- presides at all hearings and meetings of the commission, assures proper order of the commission and the public in all proceedings, signs all documents of the commission, and represents the commission before legislative and administrative bodies.
- Vice-chairperson- provides orientation to new planning commission members, and, in the absence of the chairperson, performs all of the chairperson's duties. If applicable, prepares the annual report of planning commission activities and coordinates the annual meeting of the planning commission.
- Secretary- prepares all official instruments of the planning commission, records the proceedings of all hearings and meetings; together with the chairperson signs all documents of the planning commission, and assures the proper indexing of all planning commission documents as public records.
- Chairperson-Pro-Temp- where both the chairperson and vice chairperson are absent from a hear-



ing or meeting, the remainder of the members of the planning commission shall elect a chairperson-pro-temp from among their own number by majority vote.

- Treasurer (NOT APPLICABLE AT THIS TIME)- where a planning commission retains direct control over the budget for operations and staff, the treasurer shall maintain complete, accurate and orderly accounts in preparation for the annual audit, and together with the chairperson shall sign all authorizations and payments of funds.

Article 5: Staff of the Commission and their Duties

- Consultants- the planning commission may hire consultants to perform planning related activities under terms of a contract prepared by the Planning and Zoning Commission and approved by the City Council.
- Legal counsel- the county attorney or municipal director of law shall serve as legal counsel to the planning commission; prepares memoranda of law as requested by the planning commission, and reviews drafts of ordinances, resolutions, and by-laws, and their amendment.
- Director of Planning (NOT APPLICABLE AT THIS TIME)- advises the planning commission, legislative body, and chief administrative officer on matters related to planning, development, and redevelopment, coordinates and supervises the work of all other staff and consultants, prepares all documents for presentation to the planning commission, and assists the chairperson and secretary in the exercise of their duties; the director of planning or designee shall have the privilege to address the planning commission during regular meetings.
- Zoning Administrator (NOT APPLICABLE AT THIS TIME)- advises the planning commission on all matters regarding the regulation of development, prepares all related documents for presentation to the planning commission, and serves as staff to the board of zoning appeals.
- Commission staff (NOT APPLICABLE AT THIS TIME) - the planning commission may appoint other staff members to carry-out appropriate functions.

Article 6: Hearings of the Planning Commission

- Public hearing- a noticed official hearing, the express and limited purpose of which is to provide an equitable opportunity for the public to speak on matters before the planning commission, for which publicly-accessible minutes must be prepared; the planning commission may neither deliberate nor take a substantive vote during a public hearing.
- Working Session- a noticed official hearing open to the public to discuss specific matters before the commission; the intent of the working session is informational; the planning commission may neither deliberate nor take a substantive vote during a working session, however publicly-accessible minutes may be prepared.

Article 7: Meetings of the Planning Commission

- Regular meeting- a noticed official meeting, open to the public, during which the planning commission deliberates and may take substantive votes on specific terms, for which publicly-accessible



minutes will be prepared.

- Emergency meeting- in the event of a true emergency, the chairperson, with the assent of a majority of planning commission members contacted by telephone, may call an emergency meeting without notice; such meeting is open to the public; publicly-accessible minutes shall carry the specific justification for such meetings.
- Executive meeting- a noticed official meeting, closed to the public, whose topics of deliberation are truly confidential in nature; there shall be neither deliberation nor vote on agenda items before the commission.

Article 8: Order of a Public Hearing

1. Sign-in sheets by agenda item, listing printed name, signature, address of persons wishing to testify, and indication of support or opposition to items.
2. Call to order and determination of quorum.
3. Presentation by commissioner (or staff if applicable) summarizing the item.
4. Testimony of agencies related to the item.
5. Presentation by the applicant.
6. Testimony of the proponents.
7. Testimony of the opponents.
8. Concluding comments of the applicant.
9. Concluding comments of the commissioner (or staff if applicable).
10. Request of the Chairperson for a motion to close the public hearing.

Article 9: Order of a Regular Meeting

1. Call to order and determination of quorum.
2. Approval of the minutes of the previous meeting.
3. Items carried-over from a previous agenda:
 - a. Matters regarding the comprehensive plan
 - b. Matters regarding capital improvements
 - c. Matters regarding subdivision of land
 - d. Matters regarding zoning of land
 - e. Matters regarding other regulatory action
4. Items of the present agenda, presented in the same order as above.
5. Other business.
6. Review of the planning commission calendar and announcement of future meetings.
7. Request of the chairperson for a motion to adjourn.

Article 10: Form and Character of Motions

The form and character of motions shall conform to those offered within Robert's Rules of Order, Revised, except as specified below.



- Upon review of the full public record and due deliberation among members of the planning commission, any of its members, except the chairperson, may make a substantive motion. The motion shall include not only direction (Approval, Approval with specified conditions, or Disapproval) but also a recitation of findings which support the motion.
- A second, citing compatible finding shall be required.
- Other commission members may support the motion with other compatible findings.
- A motion shall die for lack of second.
- Where a motion to disapprove an item has been defeated, a member of the planning commission initially in the opposition may make a motion to approve or approve with conditions.

Article 11: Quorum and Voting Requirements

- A majority of the members of the planning commission shall constitute a quorum.
- A majority of the members of the planning commission shall be required to pass a motion.
- All votes shall be taken by the Chairperson in random order, with the Chairperson not voting except as needed to break a tie vote.
- If a member abstains from voting, their vote shall not be counted in the determination of a motion, but it shall be recorded in the minutes as an abstaining vote.

Article 12: Requirements for the Submission of Requests

- The planning commission shall adopt standard forms for the submission of each type of request required for its consideration; such forms shall specify the schedule of submission, form and content of complementary materials, and scale and content of drawings.
- The secretary of the planning commission shall certify the completeness of submissions.
- Certified requests shall be fully noticed under requirements of law and agendized on the planning commission calendar on the same day.
- Any request disapproved by the planning commission shall not be resubmitted for a period of six months unless the Planning and Zoning Commission shall determine that a new hearing is justified prior to the expiration of the six months waiting period.
- An application for the same type of amendment shall not be received on the same property more often than once in each twelve (12) month period unless the Planning and Zoning Commission shall determine that a change of conditions justifies a new hearing prior to expiration of the twelve (12) month period.
- A fee schedule has been put in place by the City Council to recover costs associated with notice publication, request processing, agenda, and related materials duplication and distribution; moreover, the planning commission may require the applicant to post signs on the affected property, in conformance with provisions of the ordinance, and to notify adjacent property owners, tenants, and community residents of the nature of the applicant's request.



Article 13: Instruments and Documents of the Planning Commission

- The official instruments of the planning commission are the record of notice, and agenda, and the minutes of hearings and meetings. Where in special cases the planning commission wishes to provide advice to the legislative body or administrative agency, it may do so by resolution.
- Any and all materials submitted to the planning commission regarding an item shall be entered into public record by a motion to “Accept for the record”.
- All notices, agendas, requests, agency or consultant letters or reports, citizen petitions, minutes of hearings and meetings, and resolutions shall constitute the documents of the planning commission and shall be indexed as a matter of public record.

Article 14: Administrative Calendar

- Notice for all hearings and meetings shall conform to requirements of law.
- Terms for two year appointments begin at the first regular meeting of the Planning and Zoning board in July.
- The regular meetings of the Planning and Zoning board are normally scheduled on the fourth Tuesday of each month. Additional meetings or hearings are scheduled as needed.
- Copies of the agenda and any related documents shall be delivered to each planning commission member no less than five working days prior to a public hearing and regular meeting.

Article 15: Conduct of the Members of the Planning Commission

- Members of the planning commission shall take such time as to prepare themselves for hearings and meetings.
- Any member of the planning commission absent from three consecutive regular meetings or any six regular meetings within a calendar year, without being excused by the Chairperson, may be removed for cause.
- A planning commission member with a conflict of interest in an item before the commission must state that a conflict of interest exists and withdraw from participation in the public hearing, working session, emergency meeting, or regular meeting on that item.
- The interests of that planning commission member may be represented before the planning commission by a specifically designated representative or legal agent at the public hearing or working session, and testimony entered into the public record.
- Participation of a planning commission member with a conflict of interest is cause for removal.

Article 16: Conduct of Persons Before the Planning Commission

- During all public hearings and working sessions, members of the public shall be given equitable opportunity to speak. Comments should be addressed to the item before the planning commission. Where a comment is irrelevant, inflammatory, or prejudicial, the chairperson may instruct the planning commission to “disregard” the comment, which nevertheless may, at the discretion of the board, remain in the public record.



- During all regular and emergency meetings of the planning commission, the public may be present but shall remain silent unless specifically invited by the chairperson to provide comment.
- During all planning commission proceedings, members of the public have the obligation to remain in civil order. Any conduct which interferes with the equitable rights of another to provide comment or which interferes with the proper execution of commission affairs may be ruled by the chairperson as “out-of-order” and the offending person directed to remain silent. Once having been so directed, if a person persists in disruptive conduct, the chairperson may entertain a motion to “eject” the person from the planning commission hearing or meeting. Where the person fails to comply with the successful motion to eject, the chairperson may then call upon civil authority to physically remove the individual from the chamber for the duration of the hearing or deliberation on that item.

Article 17: Separability

- Should any article of the planning commission by-laws be found to be illegal, the remaining articles shall remain in effect.

Article 18: Adoption and Amendment of By-Laws

- By-Law adoption or amendment shall be made following review by the legal counsel and public hearing.
- The by-laws shall be adopted or amended upon a vote of a majority of the members of the planning commission.
- Adoption or amendment of by-laws takes effect immediately following a successful vote.

Adopted: March 2001

Amended & Approved: December 2012



ATTACHMENT D

Used with permission from the City of Arlington, Lyndsay Mitchell, June, 2013.



PLANNING AND ZONING COMMISSION: PARTICIPATING AT PUBLIC HEARINGS

If you are interested in giving public testimony at Planning and Zoning Commission and City Council public hearings, the following information will help you become familiar with the procedures of the City Council and Planning and Zoning Commission.

Procedures for participating at a Planning and Zoning Commission or City Council public hearing

Procedures for participating at a Planning and Zoning Commission or City Council public hearing are the same, unless noted below

1. Fill out a speaker card and return it to the box at the front of the Council Chamber (for the Planning and Zoning Commission) and to the desk at the entrance of the Council Chamber (for City Council).
2. The applicant or the applicant's representative is allowed 10 minutes to speak. All other speakers for or against the items are given 5 minutes. In the event a total of five or more people are registered to speak on one side of an issue, the 10 minute time is reduced to 5 minutes and the 5 minute time is reduced to 3 for that side of the hearing. The proponent is allowed 5 minutes for rebuttal.
3. Developers who wish to make presentations to an evening City Council session should contact or make arrangements with the Community Development & Planning department at 817-459-6664.

Procedures for Registering Support or Opposition on a Public Hearing Item

1. Fill out a speaker card and return it to the box at the front of the Council Chamber (for the Planning and Zoning Commission) and to the desk at the entrance of the Council Chamber (for City Council).
2. Citizens anticipating being absent during the public hearing may write a letter in support or opposition and have it submitted by a representative or mail it to the City Council or Planning and Zoning Commission.
3. Registration of support or opposition (individual form, group form) on any item on the agenda must be submitted before or at the public hearing on the day of the hearing.

Procedures for Citizens Who Wish to Speak on an Item not on the City Council Agenda

1. Fill out a speaker card and return it to the desk at the entrance of the Council Chamber.
2. Speakers are given a 5 minute time limit.



ATTACHMENT E

Used with the permission of the City of San Gabriel, Mark Gallatin, March, 2013.



Welcome...

TO YOUR SAN GABRIEL PLANNING COMMISSION MEETING

Meetings are held on:
Second Monday of every month at 6:30 p.m.
City Hall Council Chambers
425 South Mission Drive
Second Floor

Welcome to the Planning Commission! We are glad you can join us. We want you to enjoy your visit, and have prepared this brochure to help explain the role and conduct of Planning Commission meetings.

What the Commission Does

The Planning Commission consists of five volunteer citizens who are appointed by your City Council to help guide San Gabriel's growth, development, and quality of life. There are two types of actions the Planning Commission takes:



- **Legislative Actions:** The Planning Commission bears testimony and makes recommendations to the City Council on these types of applications: zone changes, general plan amendments, specific plans, and ordinance amendments. In this role, the Commission makes recommendations only – all these actions are then referred to the City Council for action.
- **Quasi-Judicial Actions:** The Planning Commission can approve, conditionally approve, or deny: Conditional Use Permits, Variances, Master Plans, and other types of applications. The Commission also certifies environmental impact reports. In this role, Planning Commission decisions are usually final unless appealed.

How Can I Speak at a Meeting?

If you would like to speak, fill out a speaker's card with your name and address, give it to the secretary and you will be called upon at the appropriate time. Written comments can be given to a planning staff any time before a public hearing is closed. For items not on the agenda, you may speak during the time set aside for public comment. Otherwise, you may speak during the public hearings.

THE PUBLIC HEARING

Many Planning Commission matters are public hearing items, during which you as a member of the public have the opportunity to testify.

1. **ANNOUNCEMENT OF EACH ITEM:** The chairman announces each item in the order listed on the agenda. Agendas are available in the Council Chambers before each meeting.
2. **STAFF REPORT AND PRESENTATION:** The Community Development staff prepares a report regarding each proposal. A member of the staff will summarize it orally, answer any questions, and clarify issues the Commission may have. Reports are available in the Planning Division Office prior to each meeting.
3. **PRESENTATION OF EACH APPLICANT:** The applicant requesting approval of an application is given time to state his or her position in favor of the proposal.
4. **PUBLIC HEARING:** Once the Chairman invites members of the public to speak on each proposal, you may come to the podium to speak. You may also present exhibits, which become part of the City's official case file.
Please remember:

- Show courtesy and respect for everybody by addressing all comments to the Chair and the Commission, not to the audience or staff members.
- Keep comments brief and non-repetitive so that everyone gets a chance to speak.
- Always identify yourself for the public record by stating your name and address.
- Speak clearly into the microphone.



5. **DISCUSSION AND VOTE BY THE COMMISSION:** After receiving all testimony, the Chairman closes the public hearing, and the Commission discusses each proposal. Members of the Commission may ask questions of individuals or the staff. The Commission then votes on each proposal. *The public cannot testify once public hearing has been closed.*

Can I Appeal Planning Commission Decisions?

For quasi-judicial actions like variances and conditional use permits, you may appeal decisions made by the Planning Commission to the City Council within 10 business days of the decision. If no appeal is filed, the decisions are made final. For legislative actions where the Planning Commission's action is only a recommendation, these will be reheard by the City Council; you may contact staff to receive notice of the Council hearing date. If you are not certain what your appeal rights are, simply ask any staff member at the meeting.

Thank you for coming! For more information about items on this agenda, please contact us at:

Community Development Department
425 South Mission Drive
San Gabriel, CA 91776
Phone: (626) 308-2806
Fax: (626) 458-2830
Web: www.sangabrielcity.com



ATTACHMENT F PUBLIC SERVICE VALUES

From The Institute for Local Government web site: http://www.ca-ilg.org/sites/main/files/file-attachments/Basics_PersOrgEthic_WM.pdf. Site accessed June 5, 2013.

Public Service Values

How do core ethical values translate into action in public service? Here are examples of what values mean in practice.

Trustworthiness

- I remember that my role is first and foremost to serve the community.
- I am truthful with my colleagues, the public and others.
- I avoid any actions that would cause the public to question whether my decisions are based on personal interests instead of the public's interests.
- I do not accept gifts or other special considerations because of my public position.
- I do not knowingly use false, inaccurate or biased information to support my position.
- I do not use my public position for personal gain.
- I carefully consider any promise I make and then keep it.

Fairness

- I make decisions based on the merits of the issues.
- I honor the law's and the public's expectation that agency policies will be applied consistently.
- I support the public's right to know and promote meaningful public involvement.
- I support merit-based processes for the award of public employment and public contracts.
- I am impartial and do not favor those who either have helped me or are in a position to do so.
- I promote equality and treat all people equitably.
- I excuse myself from participating in matters when my or my family's financial interests may be affected by my agency's actions.
- I credit others' contributions in moving our community's interests forward.
- I maintain consistent standards, but am sensitive to the need for compromise, creativity and improving existing paradigms.

Responsibility

- I work to improve the quality of life in the community and promote the best interests of the public.
- I promote the efficient use of agency resources.
- I do not use agency resources for personal or political benefit.
- I represent the official positions of the agency to the best of my ability when authorized to do so.
- I explicitly state that my personal opinions do not represent the agency's position and do not allow the



inference that they do.

I take responsibility for my own actions, even when it is uncomfortable to do so.

I do not use information that I acquire in my public capacity for personal advantage.

I do not promise that which I have reason to believe is unrealistic.

I disclose suspected instances of impropriety to the appropriate authorities, but I never make false charges or charges for political or professional advantage.

I do not disclose confidential information without proper legal authorization.

I am proactive and innovative when setting goals and considering policies.

I consider the broader regional and statewide implications of the agency's decisions and issues.

I promote intelligent innovation to move forward the agency's policies and services.

Respect

I treat everyone with courtesy and respect, even when we disagree.

I focus on the merits in discussions, not personality traits or other issues that might distract me from focusing on what is best for the community.

I gain value from diverse opinions and build consensus.

I follow through on commitments, keep others informed, and provide timely responses.

I am approachable and open-minded, and I convey this to others.

I listen carefully and ask questions that add value to discussions.

I involve all appropriate stakeholders in meetings affecting agency decisions.

I come to meetings and I come to them prepared.

I work to improve the quality of life in my community.

Compassion

I realize that some people are sometimes intimidated by the public process and try to make their interactions as stress-free as possible.

I convey the agency's care for and commitment to its community members.

I am attuned to, and care about, the needs and concerns of the public, officials, and staff.

I recognize a responsibility to society's less fortunate.

I consider appropriate exceptions to policies when there are unintended consequences or undue burdens.

Loyalty

I safeguard confidential information.

I avoid employment, contracts and other financial, political and personal interests that can conflict with my public duties.

I prioritize competing issues based on objective benefits and burdens to the public interest, not to myself, my family, friends or business associates.

I don't oppose final decisions once they have been made by the decision makers, except through inter-



nal lines of communication.

I put loyalty to the public's interests above personal, professional and political loyalties.



**Roles, Ethics and More
Responsibilities of
Elected and Appointed Officials**

**2012 APA Texas Annual Conference
and
Short Course**

Ann C. Bagley, FAICP

Karen K. Mitchell

Fort Worth, Texas

October 4, 2012

Planning Process

The planning process exists to serve the public interest. While the public interest is a question of continuous debate, both in its general principles and in its case-by-case applications, it requires a conscientiously held view of the policies and actions that best serve the entire community.

Planning issues commonly involve a conflict of values and, often, there are large private interests at stake. These accentuate the necessity for the highest standards of fairness and honesty among all participants.

Those who practice planning need to adhere to a special set of ethical requirements that must guide all who aspire to professionalism.

Who are the Participants in the Planning Process

- | | |
|---------------------------------------|---|
| City Council | Planning Consultants |
| City Manager | Utilities |
| Planning and Zoning Commission | (water, gas, electricity, telephone, cable) |
| Zoning Board of Adjustment | Representatives and Facilitators |
| Other Boards and Commissions | Developers and Builders |
| Planning Staff-Current and Long Range | Citizens/Property Owners |
| Engineering | Neighborhood Organizations |
| Transportation | State DOT |
| Building Inspections and Permitting | School District |
| Code Compliance/Enforcement | Transit |
| City Attorney | Post Office |
| City Secretary | Arborist |
| Public Works | Neighboring Cities |
| Parks and Recreation | County |
| Public Safety (Police and Fire) | The City as a Whole |

The Planning Commission

In Texas, a *Planning Commission* is:

- A group of citizens appointed by the legislative body that performs both required and discretionary functions in land use matters.*
- May also include zoning matters and be called ***Planning and Zoning Commission***.
- There may even be separate commissions for zoning and planning
- Generally a recommending body, except may have final approval of plats



(*Texas Local Government Code 211.007)

What is a Zoning Board of Adjustment?

In Texas, a *Zoning Board of Adjustment* is:

appointed by governing body, to make special exceptions to the terms of the zoning ordinance that are consistent with the general purpose and intent of the ordinance ordinance.*

May also be called the BOA, ZBOA

Please note that the Zoning Board of Adjustment is a quasi judicial board. This means that any appeal of its decision is to a district level court.

(*Texas Local Government Code 211.008)

Participants in the Process

Mayor and City Council - elected to make the rules; formulate policy, adopt of codes and ordinances; approve or deny zoning cases; point of contact for frustrated citizens.

City Manager - in charge of the day to day operations of the City. **Expectation:** that everyone will do their job

Planning Staff - from department head to receptionist they are professionals with education or on the job experienced in stating the rules, interpreting ambiguities and providing guidance to applicants and boards and commissions.

Participants continued

The staff of a **Building Inspection** department works to ensure compliance with established adopted construction standards and enforcing City codes. Reviews plans, perform inspections

Code Compliance or Enforcement check on and determine compliance with the rules and ordinances generally responsible for enforcing city ordinances related to Housing, Zoning, Signs, Litter, Illegal Dumping, Weeds, Parking and Animal Control violations, responds to citizen requests, conducts reactive and proactive inspections and special projects, and provides education on code enforcement. New name tries to suggest a kinder, gentler approach.

Engineering is responsible for reviewing subdivision plats and private and public development engineering plans, and overseeing the construction to ensure that the City's infrastructure is built to City codes and design standards and adheres to approved plans and contract documents. May be part of Planning or vice-versa. May include flood management

Public Works –responsible for engineering and implementation of projects

Transportation –oversees the street network

More....

City Attorney - states, interprets and provides guidance as to the federal, state and local statutes and local codes. Generally there to keep you out of trouble.

City Secretary - official records keeper, posts agendas commission paper work

Parks and Recreation - oversees parks etc.— may look at parkland dedication requirement with plats

Public Safety - Police, Fire particularly for emergency access
Utilities (water, gas, electricity cable and telephone) for service provision and easements and Post Office

Other government types players: Sanitation, TXDOT, Animal Control,, School District, Transit System

And more....

Facilitators or “the Suits” - consultants that know the ropes as to how to get through the system. Lots of former city staff, attorneys, engineers and even surveyors.

Developers and Builders - often **they** initiate the processes for a particular project

Citizens/Property Owners want what they want, but do not always know how to go about it. Process should be logical, defined and transparent

Neighborhood and interested community groups involved directly or as affected bystanders

The good of the City as a whole.

Roles of the Planning Commission

- Develop and update the comprehensive plan
- Implement land use patterns
- Monitor current zoning ordinance
- Make recommendations on zoning changes
- Recommend approval of (or approve) subdivisions
- Make recommendations for annexation
- Interface with public on community values through public meetings, focus groups, and neighborhood organizations

The Commission

Creation of the Commission

- Usually by city charter or ordinance

Responsibilities and Purpose Established

Rules and Policies

- If not in the ordinance, these should establish a schedule for meeting dates, time, and place

Officers

Voting Procedures

Committees

Relationship to City Council

Code of Ethics/Ethical Principles

Understanding the Job

(applies to both elected and appointed officials)

Be familiar with your job responsibilities/expectations. Start with a

Review local sources

- City Charter
- Municipal Code of Ordinances
- Established policies and procedures
- Planning Commission by-laws or rules

Review enabling statutes in State law (*Texas Local Government Code*)
for planning and zoning for

- General Law cities
- Home Rule cities

Roles of the Planning Commission continued

- Recommend a Capital Improvements Program
- Coordinate with economic development activities
- Encourage and monitor the “visual image” through urban design
- Adopt an annual work program and prepare an annual report
- Use base data on population, land use, utilities, and topography in decision making

Duties of the Zoning Board of Adjustment

- 1)hear and decide special exceptions to the terms of a zoning ordinance when the ordinance requires the board to do so;
- 2)authorize in specific cases a variance from the terms of a zoning ordinance if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship, and so that the spirit of the ordinance is observed and substantial justice is done; and
- 3) hear and decide other matters authorized by an ordinance adopted under this subchapter. *
- 4)hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official in the enforcement of this subchapter or an ordinance adopted under this subchapter;

(*Texas Local Government Code 211.009)

Working Effectively as a Commission or Board

- Use rules of procedure and operate accordingly
- Comply with Open Meeting requirements
- Conduct fair public hearings
- Hear the facts and assess their accuracy
- Balance obligations
- Consider concerns of all who testify
- Assess the request against the standards in the ordinance
- Render a decision



Traits for Successful Elected Officials, Planning Commissioners and Board Members

- Visionary
- Has a feel for the assets, problems and potentials of the city
- Can see the big picture without missing the details
- No conflicts of interest
- Impartial and objective
- Works toward the common good
- Places community interest first
- Comes to meetings prepared
- Appreciates dialogue and enjoys collaboration
- Practical, yet creative
- Consistent

Understanding the Job

Become familiar with your responsibilities/expectations both on and off the Commission

Orientation -- begin to grasp:

- Legal issues – open meetings act
- Basic elements of planning
- Comprehensive Planning
- Zoning Ordinance
- Subdivision Regulations
- Enabling statutes in state law for planning/zoning

Be familiar with your own responsibilities and expectations both on and off the commission

Review local sources

- Charter
- Code of Ordinances
- By-laws or rules of procedure

Understanding the Ethical Dimension

Ethics: the principles of conduct governing an individual or a group –
Merriam Webster

Ethical behavior is not always easy to achieve.

There are common standards for ethical conduct:

- Your city's Code of Ethics
- APA Statement of Ethical Principles and AICP Code of Ethics
 - Serve the public interest
 - Strive to achieve high standards of integrity and proficiency
- Your own moral compass

What Are the Standards for Ethical Conduct?

American Planning Association Statement of Ethical Principles
(for Participants in the Planning Process)

A. Serve the Public Interest:

- Recognize the rights of citizens to participate in planning decisions.
- Give citizens full, clear, and accurate information.
- Expand choice and opportunity for all persons.
- Assist in the clarification of community goals.
- Ensure that information available to decision makers is also available to the public.
- Pay special attention to the interrelatedness of decisions and the long-range consequences of present actions.

APA Statement of Ethical Principles (Continued)

B. Strive to achieve high standards of integrity and proficiency:

- Exercise fair, independent, and honest judgment.
- Publicly disclose any personal interests.
- Define personal interest broadly.
- Abstain from participation in a matter in which you have a personal interest and leave the chamber when the matter is being deliberated.
- Seek (nor accept) gifts or favors.
- Abstain from participating as an advisor or decision maker on any plan or project in which you have previously participated as an advocate.
- Serve as advocate only when the objectives are legal and serve the public interest.

APA Statement of Ethical Principles (Continued)

- Not participate as an advocate on any plan or program in which you have previously served as an advisory or decision maker, except after full disclosure and in no circumstance earlier than one year following termination of the role as advisory or decision maker.
- Not use confidential information to further a personal interest.
- Not disclose confidential information.
- Not misrepresent facts or distort information.
- Not participate in any matter unless prepared.
- Respect the rights of all persons.

Local Ethics Ordinances

Prohibited conduct:

- Solicitation/acceptance of gifts
- Misuse of position
- Conflict of interest (generally financial)
- Ex parte communications (*any oral or written communication outside the record of the hearing with either proponents or opponents of a pending proceeding*)
- Serial meetings (attended by less than a quorum of members to discuss a public issue in private.

Disclosure:

- Forms and/or procedure provided by the City
- Does not have to be very detailed

What Constitutes a Conflict of Interest?

If you....

- Live in the notification area
- Have a close family member has interest (determined by your city)
- Have financial interest in real estate involved in case
- Have financial investments that exceed the local cap
- Work for someone that has financial involvement in the case
- Have oversight of client's accounts
- Sit on Board connected to the case

What to do? State that you have a COI, file necessary statement and LEAVE THE ROOM!

Conflict of Interest Sample Form



DISCLOSURE OF CONFLICT STATEMENT

This statement is filed in accordance with Chapter 12A of the Dallas City Code. Copies of the applicable code sections and additional copies of this form may be obtained from the City Secretary's office.
Please print or type all information. Attach additional pages if more space is needed.

Check One		Fill in Appropriate information
<input type="checkbox"/> Elected Official	Office Held	
<input type="checkbox"/> Appointed Official	Board or Commission Title	
<input type="checkbox"/> City Employee	Title/Department	

1. Name of Employee/Official _____

_____ have a conflict as defined in Chapter 12A, Article II, of the Dallas City Code in the following matter:

Nature of Conflict:

As a result of this conflict, I will not take any official action in regard to the matter stated above.

Signature of Employee/Official _____

Date _____

BEFORE ME, the undersigned authority, on this day personally appeared

_____, who on oath stated that the above facts are with _____ personal knowledge and are true and correct.

SWORN TO AND SUBSCRIBED BEFORE ME on this ___ day of _____

20___, to certify which, witness my hand and seal.

<NOTARY SEAL>

Signature of officer administering oath Printed name of officer administering oath Title of officer administering oath

Other Considerations

- When there is a social event where a quorum may be present, it is generally OK as long as cases or issues are not discussed.
- Texas is a community property state, therefore spouses are considered as one in matters that may be a conflict of interest.
- Do not use position title to request special treatment by city employees or private interests.
- When rescuing—leave the room.

Beware of the Serial Meeting

Commissioner A meets with Commissioner B and discusses an item that is currently or is expected to be in front of the Commission. Commissioner B delivers the A+B consensus to Councilmember C who agrees and delivers it to Commissioner D. Commissioners A+B+C+D constituted a quorum, but they did not physically "meet" as a quorum in the same space or time. Still, they conducted an illegal serial meeting. They effectively met, deliberated, and arrived at a decision (euphemistically called a "consensus" by public officials who try to rationalize their violation of law) when public attendance was impossible.

NOTE: A serial meeting need not be a face-to-face meeting or even occur in real time. It can be a series of communications (direct communication, personal intermediaries such as staff members, or technological methods such as email or telephone calls), with each unique communication involving less than a quorum, but which taken as a whole involves a majority of the body's members. A serial meeting occurs when there are systematic communications on a particular matter involving a quorum of the body acquiring information, engaging in debate, discussion, lobbying, or any other aspect of the deliberative process.

What is Ex Parte?

A discussion where only one side is presented...

Example 1: A developer has a rezoning coming up before the planning commission or city council. She contacts the chair and ask if she could have a few minutes of their time to show the decision maker why she needs the site rezoned. The chair says, "sure come right over!"

Example 2: Staff person agrees to meet with neighborhood group concerning a rezoning and does not invite the developer to attend. (but planning staff does have the professional responsibility to meet with proponents and opponents IN their OFFICE; it is NOT the same as a recommending body or decision maker (Planning Commissioner or City Councilmember) meeting privately with proponents and opponents)

Scenario 1

Through the course of your duties you form a friendship with a local landowner who periodically calls with questions about planning and zoning. He invites you to eat lunch and he buys—is this okay?

You have not suggested that an actual application over which you have some control is pending.

If that were the case, the answer would be “no.” It is always best to keep such relationships at arms-length.

Take great care to not permit public or private perception of favored action.

If you meet, each should pay for the meal ordered.

Equally, care must be taken to not discuss matters that are better suited for staff or open meetings.

Scenario 2

Someone from church is asking you to provide help or guidance and even a favorable decision on a re-zoning case.

How can you help without violating pure objectivity?

It is completely appropriate to provide guidance to an applicant regarding the procedural and submittal requirements for an application. It is also appropriate to explain that you can't pre-judge or promise any favorable action. If the planner believes that his or her objectivity is compromised, then the decision on the application should be delegated to another, if possible.

Scenario 3

A fellow commissioner calls you to discuss a case and says he has talked to other commissioners. What do you say to him?

What is the problem with talking to him?

Ex parte?

Serial meeting?

What about emails? Text? Twitter? Facebook?

Scenario 4

You are an appointed official. Your business has been slow but is now taking off. You have to travel sometimes for your business and are missing meetings.

What should you do?

Scenario 5

A developer wants to develop a new single-family subdivision in an area currently zoned for industrial uses.

What would you need to know?

What steps would need to be taken to allow it?

Scenario 6

An older gentleman wants to build a carport in front of his house. Over the front building line. He is advised to go to the Board of Adjustment for either an special exception or a variance.

Which one is appropriate?

What is his justification?

Scenario 6

You are a surveyor and your company works in the community and surrounding cities. You prepared a plat that will be considered by the Commission?

What is your role?

What should be your actions?

Thank You
and now
Questions and Discussion

Other Sources of Information

Training and Resources for Planning Commissioners:

- City orientation and training for new Commissioners
- APA Texas Chapter
 - Regional and Local Workshops for Planning Commissioners
 - Annual Short Course for Elected and Appointed Officials
 - State Planning Conference
 - www.texasplanning.org
- American Planning Association – publications and conferences
 - *Planning Magazine*
 - National Planning Conference
 - *The Commissioner* quarterly newsletter
 - Ethics Toolkit – on website
 - www.planning.org
 - CD-ROM training packages
 - www.planningbooks.com
- Planning Commissioner's Journal - online subscription
- Texas Municipal League

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