



AGENDA

CITY OF GUADALUPE PLANNING COMMISSION

Tuesday, April 20, 2010

Regular Meeting 6:00 p.m.

City Hall, Council Chambers
918 Obispo Street, Guadalupe, CA 93434

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in a City meeting or other services offered by this City, please contact the City Clerk's office, (805) 356-3891. Notification of at least 72 hours prior to the meeting or time when services are needed will assist the City staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting or service.

*If you wish to speak concerning any item on the agenda, please complete the Request to Speak form that is provided at the rear of the Council Chambers prior to the completion of the staff report and hand the form to the City Clerk. **Note:** Staff Reports for this agenda, as well as any materials related to items on this agenda submitted after distribution of the agenda packet, are available for inspection at the office of the City Administrator, City Hall, 918 Obispo Street, Guadalupe, California during regular business hours, 8:00 a.m. to 12:00 pm. and 1:00 p.m. to 5:00 p.m., Monday through Friday; telephone (805) 356-3891.*

MEMBERS OF THE PLANNING COMMISSION: Commissioners Monika Huntley, Alejandro Ahumada, Kenneth Chamness, Vice-Chair Jesse Ramirez, and Chair Carl Kraemer.

1. **CALL TO ORDER.**
2. **PLEDGE OF ALLEGIANCE.**
3. **ROLL CALL.** Commissioners Monika Huntley, Alejandro Ahumada, Kenneth Chamness, Vice-Chair Jesse Ramirez, and Chair Carl Kraemer.
4. **CONSENT CALENDAR.** The following routine items are presented for Planning Commission approval without discussion as a single agenda item in order to expedite the meeting. Should a Commissioner wish to discuss or disapprove an item, it must be dropped from the blanket motion of approval and considered as a separate item.
 - a. Minutes of the Planning Commission special meeting of February 17, 2010 to be ordered filed.

5. **COMMUNITY PARTICIPATION FORUM.**

Each person will be limited to a discussion of 3 minutes. Pursuant to provisions of the Brown Act, no action may be taken on these matters unless they are listed on the agenda, or unless certain emergency or special circumstances exist. The Planning Commission may direct Staff to investigate and/or schedule certain matters for consideration at a future Planning Commission meeting.

6. **PLANNING COMMISSION WORKSHOP: ROLE AND PURVIEW OF THE COMMISSION IN CONSIDERING DISCRETIONARY APPLICATIONS.** That the Planning Commission receive the presentation from staff.

- a. Written Staff Report (Rob Mullane)
- b. Planning Commission discussion and consideration.
- c. It is recommended that the Planning Commission receive the presentation from staff.

7. **PLANNING COMMISSION WORKSHOP: STATUS REPORT ON THE PLANNED RESIDENTIAL DEVELOPMENT OVERLAY PROCESS.** That the Planning Commission receive the presentation from staff.

- a. Written Staff Report (Rob Mullane)
- b. Planning Commission discussion and consideration.
- c. It is recommended that the Planning Commission receive the presentation from staff and direct staff to return with a subsequent status report in approximately 18-24 months.

8. **PLANNING DIRECTOR'S REPORT.**

9. **FUTURE AGENDA ITEMS.**

10. **ANNOUNCEMENTS.**

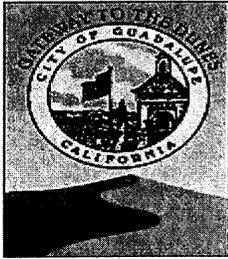
11. **ADJOURNMENT.**

I hereby certify under penalty of perjury under the laws of the State of California that the foregoing Agenda was posted at the City Hall display case, the Water Department, the City Clerk's office, and Rabobank not less than 72 hours prior to the meeting. Dated this 20th day of April 2010.

By:



Regan Candela, Deputy City Clerk



Draft MINUTES

CITY OF GUADALUPE PLANNING COMMISSION

Wednesday, February 17, 2010

Special Meeting 6:00 p.m.

**City Hall, Council Chambers
918 Obispo Street, Guadalupe, CA 93434**

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MEMBERS OF THE PLANNING COMMISSION: Commissioners Monika Huntley, Alejandro Ahumada, Kenneth Chamness, Vice-Chair Jesse Ramirez, and Chair Carl Kraemer.

Staff present: Rob Mullane, City Contract Planner; Rob Fitzroy, Associate Planner; City Attorney, Dave Fleishman

1. **CALL TO ORDER.** 6:00 p.m. by Chair Kraemer
2. **PLEDGE OF ALLEGIANCE.** Conducted.
3. **ROLL CALL.** Commissioners Kenneth Chamness, Vice-Chair Jesse Ramirez, Monica Huntley and Chair Carl Kraemer: present. Commissioner Alejandro Ahumada: absent.
4. **CONSENT CALENDAR.** The following routine items are presented for Planning Commission approval without discussion as a single agenda item in order to expedite the meeting. Should a Commissioner wish to discuss or disapprove an item, it must be dropped from the blanket motion of approval and considered as a separate item.

- a. Minutes of the Planning Commission meeting of September 15, 2009 to be ordered filed.

Commissioner Chamness asked to have the item pulled for discussion and noted that the issue of whether an elevator was required for Item #6 should be noted in the minutes.

Motion: Ahumada/Ramirez moved to approve the consent agenda, with revision noted by Commissioner Chamness.

VOTE: Ayes: 4
 Noes: 0
 Absent:1
 Motion passed

5. COMMUNITY PARTICIPATION FORUM.

Each person will be limited to a discussion of 3 minutes. Pursuant to provisions of the Brown Act, no action may be taken on these matters unless they are listed on the agenda, or unless certain emergency or special circumstances exist. The Planning Commission may direct Staff to investigate and/or schedule certain matters for consideration at a future Planning Commission meeting.

6:05. Speaker #1 George Alvarez – Noted displeasure with the City Council and mentioned a raspberry award. Noted that he will be speaking again on the medical marijuana issue.

6:08. Speaker #2 Regan Candelario – Recognized by the audience as the new City Administrator and was invited to say a few welcoming words.

6. AHUMADA ADDITION AND REMODEL (CASE # 2009-018-CUP, 4645

SEVENTH STREET). That the Planning Commission: 1) Receive a presentation from staff; 2) Conduct a public hearing on the request; 3) Adopt PC Resolution No. 2010-01 approving Conditional Use Permit (Case #2009-018-CUP) for a residential addition 4645 Seventh Street.

- a. Written Staff Report (Rob Mullane)
- b. Conduct Public Hearing:
 - i. those in favor of the proposed project
 - ii. those in opposition to the proposed project
 - iii. rebuttals
- c. Planning Commission discussion and consideration.
- d. It is recommended that the Planning Commission 1). Adopt PC Resolution No. 2010-01 approving Conditional Use Permit (Case #2009-018-CUP) for a residential addition at 4645 Seventh Street.

Mr. Fitzroy gave a brief staff report that provided an overview of the CUP request for a remodel and second-story addition to an existing commercial building located at 4645 Seventh Street.

Public Hearing opened at 6:45 pm.

Speaker #1, Al Ahumada (applicant). Stated he would answer any questions. Stated that only he and two others live in the house and that it would not be a second unit. Also noted that there would be no increase in wastewater flow, relative to the City Engineer's comments on the application. Expressed that he does not think it is necessary to include additional clean out valves and check valves.

Speaker #2, George Alvarez. Stated his support for the application and was curious regarding the amount of fees collected by the City for this application.

Chair Kraemer. Noted that the concern is related to future owners and that the City Engineer's recommendations should be upheld.

Motion: Kraemer/Huntley moved to adopt Resolution #2010-01 approving Planning Application #2009-018-CUP with the inclusion of the staff-recommended conditions of approval.

VOTE: Ayes: 4
Noes: 0
Absent:1
Motion passed

7. **MEDICAL MARIJUANA DISPENSARY ORDINANCE.** That the Planning Commission: 1). Receive a presentation from staff; 2) Conduct a public hearing on the proposed Ordinance; 3) Adopt PC Resolution No. 2010-02 recommending that the City Council approve the proposed Medical Marijuana Dispensary Ordinance.
- a. Written Staff Report (Dave Fleishman, City Attorney)
 - b. Conduct Public Hearing:
 - i. those in favor of the proposed ordinance
 - ii. those in opposition to the proposed ordinance
 - iii. rebuttals
 - c. Planning Commission discussion and consideration.
 - e. It is recommended that the Planning Commission 1). Adopt PC Resolution No. 2010-02 recommending that the City Council approve the proposed Medical Marijuana Dispensary Ordinance.

Mr. Fleishman gave a staff report that provided a background and overview of the proposed Medical Marijuana Dispensary Ordinance.

Public Hearing opened at 7:25 pm

Speaker #1, Shirley Boyston. Stated that she supports the ordinance and that the City lacks staffing to monitor dispensaries.

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Speaker #2, George Alvarez. Stated that California allow marijuana dispensaries and that the City should uphold the State Constitution. Expressed the need for compassion for those people that need medical marijuana. Suggested that the people of the City vote whether to ban dispensaries.

Public Hearing closed at 7:35 pm

Commissioner Chamness expressed support for a third option: let the citizens of the City vote. Recommends strong public input.

Commissioner Huntley noted that traffic impacts would be a result of dispensaries, and that sales of medical marijuana would not be a revenue generator for the City, since sales taxes are not collected.

Vice Chair Ramirez. Stated he has no opinion on the item.

Chair Kraemer stated that he favors the proposed ordinance and that dispensaries are not the best avenue for dispensing medical marijuana.

After additional discussion, the Commission expressed a preference for not adopting proposed Planning Commission Resolution 2010-02, which would have recommended to the City Council that medical marijuana dispensaries be prohibited in the City. The Commission favored taking no action on the Resolution and communicating to the Council that they have no recommendation on the prohibition of such dispensaries.

Motion: Chamness/Ramirez moved to take no action on proposed Resolution No. 2010-02, and to convey to the City Council that the Planning Commission had no opinion on this issue.

VOTE: Ayes: 3
Noes: 1 (Kraemer)
Absent:1
Motion passed

8. PLANNING COMMISSION WORKSHOP: BROWN ACT REVIEW. That the Planning Commission receive the presentation from staff.

- a. Written Staff Report (Dave Fleishman)
- b. Planning Commission discussion and consideration.
- c. It is recommended that the Planning Commission receive the presentation from staff.

Mr. Fleishman conducted the workshop and presented a Power Point presentation. The workshop covered the Brown Act, conflicts of interest, ex parte communications, and the Political Reform Act. Mr. Fleishman also noted several resources from the Fair Political Practices Commission, including the availability of Ethics Training per AB 1234 on the FPPC website.

9. **PLANNING COMMISSION WORKSHOP: ROLE AND PURVIEW OF THE COMMISSION IN CONSIDERING DISCRETIONARY APPLICATIONS.** That the Planning Commission receive the presentation from staff.

- a. Written Staff Report (Rob Mullane)
- b. Planning Commission discussion and consideration.
- c. It is recommended that the Planning Commission receive the presentation from staff.

Chair Kraemer recommending continuing this item to the next Planning Commission meeting given the late hour and to allow for participation by the full commission. The Commission concurred.

10. **PLANNING COMMISSION WORKSHOP: POTENTIAL LOCATIONS FOR A SKATEPARK.** That the Planning Commission receive the presentation from staff. (At the request of Chair Kreamer, this item taken out of order and was heard prior to Item #6.)

- a. Written Staff Report (Rob Mullane)
- b. Planning Commission discussion and consideration.
- c. It is recommended that the Planning Commission receive the presentation from staff.

Speaker #1, George Alvarez. Expressed that there is a need for a skate park within the City. Note that a lack of funding would be a major hurdle to implementing a skate park. Suggested selling Royal Theater to raise funds.

Chair Kraemer. Stated that the Planning Commission will forward their recommendations to the Parks and Recreation Department. He welcomed further input from the audience.

Commissioner Chamness. Expressed agreement with Chair Kraemer.

Commissioner Huntley. States that the Parks and Recreation Department should identify a site and then have the Planning Commission consider it. Vice Chair Ramirez concurred.

Chair Kraemer. Stated that existing park sites may not be suited for a skate park. Recommends ranking the top five locations and then proceeding. Commissioner Chamness concurred with such a ranking.

Mr. Candelario conferred with a group of interested audience members on potential sites and reported back that a list of such sites had been developed. This input will be provided to the Parks and Recreation Commission.

11. **PLANNING DIRECTOR'S REPORT.**

Mr. Mullane provided an update on the DJ Farms project: a revised Specific Plan has been submitted, which staff is reviewing.

Mr. Candelario responded to a question from the last Planning Commission meeting regarding the number of Unreinforced Masonry (URM) projects that are active in the City: 22 projects.

Mr. Mullane requested updated contact information from each of the Commissioners for administrative purposes.

Commissioner Huntley exited the meeting at 8:50 pm.

12. FUTURE AGENDA ITEMS.

None noted.

13. ANNOUNCEMENTS.

Chair Kraemer reminded the audience to please spay and neuter their pets. Chair Kraemer also noted a need for supporting the public library.

14. ADJOURNMENT.

Chair Kraemer adjourned the meeting at 8:58 pm.

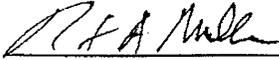
Submitted by:

Affirmed by:

Robert A. Mullane, City Planner
Planning Commission Secretary

Carl Kraemer, Chair

REPORT TO THE PLANNING COMMISSION
April 20, 2010


 Prepared By:
 Rob Mullane, City Planner


 Approved By:
 Regan Candelario

SUBJECT: Planning Commission Workshop: Role and Purview of the Planning Commission

EXECUTIVE SUMMARY:

This item was continued from the meeting of February 17, 2010. Last fall, the Planning Commission requested that staff review with the Commission the Planning Commission's purview and discretion in considering development applications and similar entitlement requests.

Planning staff will present a brief review of the Commission's options and latitude in reviewing projects and requests before them, and will be available to go into further detail on this topic of discussion.

RECOMMENDATION:

- 1) Receive a presentation from staff
- 2) Allow for Commission discussion and/or questions and answers on the workshop topic

DISCUSSION:

Staff will provide a review of the typical types of applications and requests that will come before the Planning Commission and discuss the Commission's purview and options for such applications and requests. Staff will review the main tools for considering Planning applications and requests, which are: the City's General Plan and the City's Zoning Code, as well as the purpose of noticing and public hearings, the application of conditions of approval, and the need to make findings.

In advance of the workshop, the Commission is encouraged to review the first couple of pages of Chapter 1 and the pertinent section of Chapter 4 (pages 41-49) of the Planning Commissioner's Handbook. For the convenience of the Commission, the pertinent excerpt of the handbook is included as an attachment to this staff report.

ATTACHMENT:

- 1) Pertinent Excerpts of the Planning Commissioner's Handbook

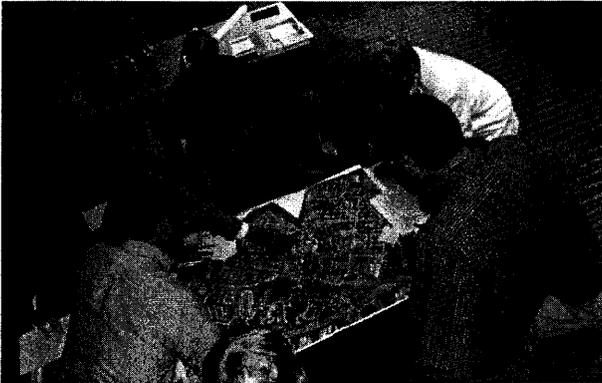
AGENDA ITEM:

ATTACHMENT 1

**PERTINENT EXCERPTS OF THE PLANNING COMMISSIONER'S
HANDBOOK**

SECTION 1

The Planning Commissioner's Role



WHAT IS A PLANNING COMMISSION?

The planning commission is a permanent committee made up of five or more individuals who have been appointed by the governing body (city council or board of supervisors) to review and act on matters related to planning and development.¹ Most planning commissioners are lay people without any previous land use experience. Commissioners serve at the pleasure of the council or board of supervisors, so commission membership may change in response to changes in those bodies. A local agency need not create a planning commission; in some jurisdictions, the governing body functions in that capacity.²

WHY PLAN?

Planning is a proactive process that establishes goals and policies for directing and managing future growth and development. Local agencies plan to address

fundamental issues such as the location of growth, housing needs, and environmental protection. Additionally, planning helps account for future demand for services, including sewers, roads, and fire protection. In addition, planning:

- **Saves Money.** Good planning can save on infrastructure and essential service costs.
- **Sets Expectations.** Planning establishes the ground rules for development. A comprehensive general plan, for example, sends a clear signal that accepted standards and procedures apply to community development. This will not eliminate conflicts entirely, but at least sets expectations that can help minimize conflict.
- **Improves Economic Development and Quality of Life.** Economic development and quality of life issues go hand in hand because businesses want to locate in communities where their employees want to live. Planning outlines alternatives and choices so that the community can promote employment and economic well-being.
- **Provides a Forum for Reaching Consensus.** Planning processes, such as the development of the general plan, provide a forum for seeking community consensus. Planning efforts should always involve broad and diverse segments of the community to assure that the resulting plan fully addresses community needs. This will provide the public with a sense of ownership over the plan.

¹ Cal. Gov't Code § 65100.

² Cal. Gov't Code § 65101.

- **Connects People to the Community.** Planning ensures that architectural and aesthetic elements are incorporated into projects to connect people to their community and establish a sense of place.
- **Protects Property Values.** Property values are enhanced when a community plans for parks, trails, playgrounds, transit, and other amenities. Planning also protects property and property values by separating incompatible land uses. Imagine if a factory could just set up shop in the middle of a neighborhood. Planning assures that this will not occur.
- **Reduces Environmental Damage and Conserves Resources.** Planning helps identify important natural and cultural resources and can channel development in a way that protects or augments these resources.

THE COMMISSION'S DUTIES

The planning commission plays a central role in the planning process in three important ways. First, it acts as an advisory board to the main governing body on all planning and development issues. Second, the commission assures that the general plan is implemented by reviewing development applications on a case-by-case basis. Just as you build a building one brick at a time, you implement a community vision one project at a time. Third, the commission functions as the decision-making body for many proposals. However, any planning commission action can be appealed to the governing body, which can uphold the commission's decision, overturn it, modify it, or send it back for further study.

Planning commission duties vary depending on the jurisdiction. You can learn about your commission's particular responsibilities by asking the planning department. Most commissions have the following responsibilities:³

- **General Plan.** Assist in writing the general plan and hold public hearings on its adoption. (The governing body retains authority to actually adopt the general plan.) Promote public interest in the general plan.

Consult with and advise public officials and agencies, utilities, organizations, and the public regarding implementation of the general plan. Also review, hold hearings on, and act upon proposed amendments to the plan.

- **Specific Plans.** Assist in writing any specific plans or community plans and hold public hearings on such plans. (The governing body retains authority to actually adopt specific plans.) Also review, hold hearings on, and act upon proposed amendments to such plans.
- **Zoning and Subdivision Maps.** Review, hold hearings on, and act upon zoning ordinances, maps, conditional use permits, and variances. Similarly consider subdivision applications.
- **Individual Project Approvals.** Review individual projects for consistency with the general plan, any applicable specific plans, the zoning ordinance, and other land use policies and regulations.
- **Report on Capital Improvements Plans.** Annually review the jurisdiction's capital improvements program and the public works projects of other local agencies for consistency with the general plan.
- **Coordinate Planning Efforts.** Coordinate local plans and programs with those of other public agencies.
- **Consider Land Acquisitions.** Report to the governing body on the consistency of proposed public land acquisition or disposal with the general plan.
- **Special Studies.** Undertake special planning studies as needed.

With so many responsibilities, it is important for every planning commission to think about how it will divide its time between day-by-day approvals and long-range planning efforts, both of which are important. It is easy to get caught up in the day-to-day efforts at the expense of long-range planning.

³ See for example Cal. Gov't Code §§ 65103, 65353, 65400, 65401, 65402, 65854 and 66452.1.



For More Information

For more information on specific plans, see *The Planner's Guide to Specific Plans* (Governor's Office of Planning and Research, 2001 ed.).

similar to that for a general plan, with a few exceptions. Unlike the general plan, which must be adopted by resolution, a specific plan may be adopted by resolution or ordinance, or a combination of both. Additionally, a specific plan can be amended as often as necessary.

ZONING

Zoning is the separation of a city into districts, or "zones," that provide for the regulation of the intensity of development and uses of land. A zoning designation is typically assigned to every parcel. An accompanying map helps citizens (and commissioners) know where the boundaries between zones are and understand which uses can be permitted where. Zoning ordinances must be consistent with the general plan and, except in some charter cities, are invalid when they are not. Typically, zoning ordinances:

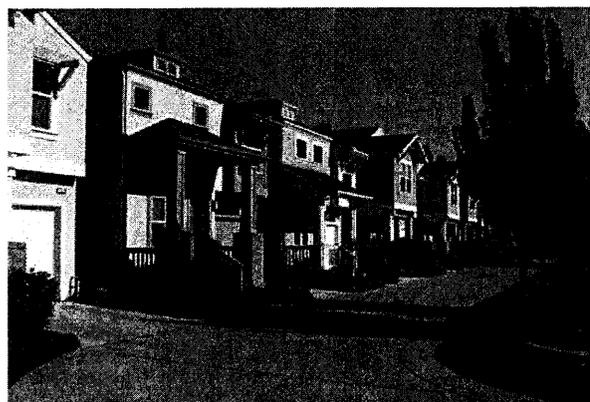
- Divide a jurisdiction into various land use designations, such as heavy and light industrial, commercial, residential, open space, agricultural, recreational, scenic corridor, natural resource, and other purposes.
- Provide for the intensity of use (for example, 18 units per acre).
- List permitted uses within each designation.
- Provide for conditional and accessory uses.
- Establish development standards, such as building height and bulk, setbacks, lot coverage, parking, signage, and landscaping.

- Provide for administrative procedures for variances, conditional use permits, design review, and zone changes.

Zoning works to assure that neighboring land uses are compatible. Residential uses, for example, are generally incompatible with heavy industrial uses. Most agencies have multiple zones in which similar uses are permitted but with differing development standards. For example, a minimum residential density might be 12 units to the acre in one zone and 16 units to the acre in another.

A zoning ordinance will list permitted uses that are allowed "by right" for each zone. However, the term "by right" does not mean that the zoning ordinance confers a universal right to develop a particular use. Zoning is merely a legislative planning designation. As such, zones are always subject to change and do not confer a right or entitlement. Instead, the term "by right" means that the permit is not subject to the discretionary review that is typical of the conditional use permit process.

The planning commission is not necessarily the only body within a local agency that may be responsible for making zoning decisions. A board of zoning adjustment or a zoning administrator may be appointed to consider use permit and variance requests. Building design may also be subject to approval by a design review or architectural review board.



STATUTORY LIMITATIONS

The state has imposed many specific limitations on the exercise of local zoning power. The following are some examples.²⁴

- **Residential Zoning.** Sufficient land must be zoned for residential use based on how much land has been zoned for non-residential use and on the future housing needs. A small exception applies to built-out communities.
- **Mobilehome Park Conversions.** A developer converting a mobilehome park must submit a report describing the displacement of the residents and the availability of replacement space. The local agency may require mitigation.
- **Second Units (“Granny Flats”).** Qualifying second unit applications are not subject to discretionary review.
- **Density Bonuses/Affordable Housing.** A local agency must allow a housing development to proceed at a density level that is 25 percent higher than allowed by the zoning ordinance when a developer agrees to make 25 percent of the pre-bonus units affordable to low-income households (or 10 percent affordable to very low-income households).
- **Group Homes and Child Care Facilities.** Day care facilities for six or fewer children licensed under the Community Care Facilities Act must be treated as single-family type residential uses. In addition, residential facilities serving six or fewer persons must also be considered equivalent to conventional single-family uses. The law also requires cities and counties to treat large family day care centers as single-family homes.
- **Coastal Zone.** Land in the coastal zone cannot be developed without a coastal development permit. (See page 72).
- **Solar Energy Systems.** Local agencies, including charter cities, may not unreasonably restrict the use of solar energy systems in a way that significantly increases cost or decreases efficiency.
- **Discrimination.** Ordinances that deny rights to use or own land or housing based on ethnic or religious grounds are illegal.
- **Manufactured Homes.** Manufactured homes cannot be prohibited on lots zoned for single-family dwellings.
- **Timber and Agricultural Land.** Farm and timber lands that are enrolled in special zones or preserves—which provide tax breaks in return for the promise to keep the land in agricultural or timber production—may not be developed without payment of a penalty. For agricultural lands, additional controls include (in some cases) a prohibition on annexation while the land is enrolled in such programs.
- **Psychiatric Care.** Zoning ordinances may not discriminate against general hospitals, nursing homes, and psychiatric care and treatment facilities.
- **Billboards and Signs.** Outdoor advertising displays cannot be removed without payment of just compensation. Reasonably sized and located real estate “for sale” signs must also be permitted.
- **Surplus School Sites.** If all public agencies waive their rights to purchase a surplus school site, the city or county with jurisdiction over the site must zone the property in a way that is consistent with the general plan and compatible with surrounding land uses.

Conditional Use Permits

Conditional uses are land uses that are not automatically authorized but may be approved under the zoning code upon meeting specific conditions. The conditional use permit (“CUP”—also called a “special use permit”)

allows a local agency to review individual projects that may potentially affect neighboring land uses negatively. The review process allows staff and the planning commission to develop a set of conditions to minimize the impact before allowing the development to proceed.

²⁴ See Cal. Gov't Code § 65913.1 (Residential Zoning); Cal. Gov't Code § 65863.7 (Mobilehome Park Conversions); Cal. Gov't Code § 65852.1 (Second Units); Cal. Gov't Code § 65915 (Density Bonus); Cal. Health & Safety Code §§ 1597.45 & 1597.46 (Group Homes and Child Care Facilities); Cal. Gov't Code § 65850.5 (Solar Energy); Cal. Gov't Code § 65852.3 (Manufactured Homes); Cal. Gov't Code §§ 51100 and following (Timberland); Cal. Gov't Code §§ 51200 and following (Agricultural Land); Cal. Welf. & Inst. Code § 5120 (Psychiatric Care); Cal. Bus. & Prof. Code § 5412 (Billboards); Cal. Civ. Code § 713 (Signs Advertising Real Property); Cal. Gov't Code § 65852.9 (Surplus School Sites).

The typical local zoning ordinance allows the city or county to grant a conditional use permit when the proposed use is in the interest of public convenience and necessity and is not contrary to the public health, morals, or welfare.²⁵

Common conditions on approval include limited hours of operation, road improvements, soundproofing, additional landscaping, and additional parking. A condition must bear a reasonable relationship to the public need created by the development. This should be supported by evidence on the record.²⁶ Conditions often include a requirement that the use be commenced within a reasonable time or the permit will expire.

Conditional use permits are quasi-judicial actions and require a public hearing. A decision either to grant or reject the permit must be supported by findings. The terms of the permit may be modified by the agency if the original permit so provides.²⁷ The permit is granted on the land, not to the property owner, and will remain valid even if the property changes hands. A conditional use permit may be revoked for noncompliance or other reasons cited in the permit. Notice and a hearing will be required before the permit can be revoked.²⁸

Variances

A variance is a limited waiver of zoning standards for a use that is already permitted within a zone. Variances are usually considered when the physical characteristics of a piece of property, such as size, shape, topography, location, or surroundings, pose unique challenges. For example, a very small or oddly shaped lot may need a variance from a setback or floor area ratio requirement in order to be developed.

A variance can only be granted in special cases where the strict application of zoning regulations deprives the owner of the uses enjoyed by nearby lands in the same zone. The variance should not be a grant of a special privilege. Economic hardship alone is not sufficient justification for approval of a variance. A variance may not be used to permit a land use that is not otherwise allowed in a zone, such as a heavy industrial use within a residential zone. This would require a zoning change, as there is no such thing as a “use variance.”



Questions to Ask When Considering a Conditional Use Permit:

- Is the permit consistent with the general plan?
- Is the site appropriate for the proposed use?
- Is the proposed use compatible with surrounding uses?
- If not, can mitigation measures be imposed that will make it compatible?
- Will the proposed mitigation measures address any underlying issues?
- Will the project have any environmental effects? What will those effects be? What level of environmental review is required?
- Can the proposed use adequately be served by infrastructure and other services, such as police and fire protection?

Nonconforming Uses

There are two types of nonconforming uses: illegal and legal. Legal nonconforming uses—sometimes called grandfathered uses—are uses that were in place prior to the adoption of the zoning ordinance. Such uses are generally permitted for as long as they operate. However, the use typically is not allowed to expand or be replaced if voluntarily abandoned or accidentally destroyed.²⁹ The idea is to strike a balance between the notion of fairness (the use was legitimate at the time of development) and the changed circumstances of the community (the use is no longer compatible with the character of the area).

There are a few situations where tougher regulation of legal nonconforming uses may be appropriate. A local agency may require that a legal nonconforming use terminate after a reasonable period of time. This is called amortization. The idea behind amortization is to allow the owner enough time to recoup the value of the investment in developing the property while also addressing the needs of the greater community.

²⁵ *Upton v. Gray*, 269 Cal. App. 2d 352 (1969).

²⁶ *Bank of America v. State Water Resources Control Bd.*, 42 Cal. App. 3d 198 (1974).

²⁷ *Garavatti v. Fairfax Planning Comm.*, 22 Cal. App. 3d 145 (1971).

²⁸ *Community Development Comm. v. City of Fort Bragg*, 204 Cal. App. 3d 1124 (1988).

²⁹ *Paramount Rock Co. v. County of San Diego*, 180 Cal. App. 2d 217 (1960); *City of Fontana v. Atkinson*, 212 Cal. App. 2d 499 (1963).

Reasonableness depends upon such factors as the useful life of the structure, the extent of investment and present value, and the possibility and cost of relocation.³⁰

On the other hand, illegal nonconforming uses are those that were built or started in violation of an existing zoning ordinance. Such uses are not allowed. Local agencies have the right to require that such uses be terminated immediately, regardless of the investment on the part of the owner. Illegal nonconforming uses are usually addressed through code enforcement. (See "Code Enforcement" sidebar on page 45).

Interim Zoning or Zoning Moratoria

Interim zoning—or a zoning moratorium—is a temporary halt to all or a particular kind of development. A moratorium is enacted to prohibit any

uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the agency plans to study within a reasonable time. The adoption of a moratorium requires a four-fifths vote for an initial 45-day period and may be extended for a total period that does not exceed 22 months and 15 days.³¹ Additional limitations apply to moratoria that affect projects that include a significant percentage of multifamily housing. (See Section 5, page 59).

Floating and Overlay Zones

A zoning ordinance may include regulations for a zone that is not tied to any piece of property on the zoning map. This is referred to as a floating zone. The zone "floats" until such time that a property owner requests to have it applied to his or her land through rezoning. A common example is a mixed-use district. The zoning

ZONE CHANGE CHECKLIST

The following are some questions to which you should be able to answer "no" before approving a zone change to enable a specific project to proceed:

Relationship to Community

- Is the proposed change contrary to the land use map in the general plan?
- Is the proposed change incompatible with established land use patterns?
- Would the proposed change alter the population density pattern and thereby increase the load on public facilities (schools, sewers, streets, etc.) beyond community desires, plans, or capabilities?
- Are present zone boundaries properly drawn in relation to existing conditions or development plans with respect to size, shape, and position?

Changed Conditions

- Have the basic land use conditions remained unchanged since adoption of the existing zones?
- Has the development of the area conformed to existing regulations?

Public Welfare

- Will the change adversely affect neighborhood living conditions?
- Will the change adversely affect property values in adjacent areas?
- Will the change deter improvement or development of adjacent property in accordance with existing regulations?
- Will the change constitute a grant of special privilege to an individual?

Reasonableness

- Can the property be used in accordance with the existing zoning regulations?
- Is the change requested out of scale with the needs of the neighborhood or community?
- Are there adequate sites for the proposed use in zones permitting such uses?
- Will allowing the zone change set an undesirable precedent?

³⁰ *Metromedia, Inc. v. City of San Diego*, 26 Cal. 3d 848 (1980); *City of Los Angeles v. Gage*, 127 Cal. App. 2d 442 (1954); *United Business Com. v. City of San Diego*, 91 Cal. App. 3d 156 (1979).

³¹ Cal. Gov't Code § 65858.

CODE ENFORCEMENT

As a planning commissioner, you typically enforce the zoning code through the permit process. A permit is granted only when specified conditions—like setbacks and hours of operation—are met. What happens when those conditions are violated after the permit is issued? Zoning codes may include provisions that authorize administrative³², civil, or criminal penalties.³³ Most agencies have a code enforcement officer. The building official and fire inspector also enforce the code to the extent that related health and safety issues are involved.

Enforcement will vary. A city ordinance may classify violations of the zoning code as infractions and authorize enforcement officials to issue citations similar to traffic tickets. Typically, a warning is the first step. If the condition persists, the ordinance may provide that a separate infraction can be charged for each day a violation continues.³⁴ Infractions may be punished by fines of up to \$100 for a first violation, up to \$200 for a second violation, and up to \$500 for each additional violation of the same ordinance within a year.³⁵

A local agency may also ask a court to issue an order requiring a property owner to correct violations of a zoning ordinance.³⁶ Enforcement costs may be recovered by a judgment lien when authorized by local ordinance.³⁷

In addition, there may be special enforcement mechanisms. For example, a business that sells alcohol is subject to a permit issued by the state Department of Alcoholic Beverage Control (ABC). If the violation is related to rental housing, a local agency may be able to block the owner from taking various tax deductions and collect fees through the Franchise Tax Board.³⁸ A local agency may also file a notice against a property and “cloud” its title for violations of the local subdivision ordinance.³⁹

conditions associated with mixed-use development “attach” as soon as the proposal is made.

An overlay zone, on the other hand, places additional regulations on existing zones within areas of special concern. Their boundaries are fixed, and usually encompass all or part of multiple zones. They are often used in floodplains, near fault lines, around airports, and in other areas where additional regulations are necessary to ensure public safety. Overlay zones are also commonly applied to downtowns and historic districts to ensure a certain aesthetic character.

Planned Unit Developments

Planned unit developments (“PUDs” or “planned communities”) are both a type of development and a zoning classification. As a development, they normally consist of individually owned lots with common areas for open space, recreation and street improvements.

They often set aside many conventional zoning standards to permit a more imaginative use of undeveloped property, such as clustering of residential uses and compatible commercial and industrial uses. The plan of development for a PUD is usually so specific that it meets or exceeds all of the typical zoning requirements. Any substantial alteration in the physical characteristics and configuration of the development usually requires that rezoning procedures be followed.⁴⁰

SUBDIVISIONS

The Subdivision Map Act governs how local agencies oversee the subdivision of land. A subdivision is any division of contiguous land for sale, lease, or financing. Usually, any land transaction that creates a new right to exclusive occupancy is a subdivision. Each city, charter city, and county must adopt an ordinance that

³² Cal. Gov’t Code § 53069.4.

³³ Cal. Gov’t Code § 36900(a).

³⁴ See *People v. Ratko Djekich*, 229 Cal. App. 3d 1213 (1991).

³⁵ Cal. Gov’t Code § 36900(b).

³⁶ *City of Stockton v. Frisbie & Latta*, 93 Cal. App. 277 (1928).

³⁷ Cal. Gov’t Code § 38773.1.

³⁸ Cal. Rev. & Tax. Code §§ 17274, 24436.5.

³⁹ Cal. Gov’t Code § 66499.36.

⁴⁰ *Millbrae Ass’n. for Residential Survival v City of Millbrae*, 262 Cal. App. 2d 222 (1968).



Zoning vs. Building Codes

It is easy to confuse building codes with zoning codes, but they are not the same thing. Building codes are established at the state level and are incorporated into local codes to set structural safety requirements. They regulate details of construction, including use of materials; and electrical, plumbing, and heating specifications. Zoning ordinances, on the other hand, regulate the compatibility of neighboring land uses in terms of use, intensity, location, height and/or mass, and a number of other factors.⁴¹ Unlike the flexibility cities and counties enjoy in adopting zoning requirements, local discretion with respect to building codes is limited.

designates a local process for subdivision approval.⁴² In this way the Map Act encourages orderly development and infrastructure. The process also protects against fraud by assuring that all subdivisions are recorded with the county recorder.⁴³ Local ordinances can be more restrictive than the Map Act so long as they do not contradict or override its provisions.

The Map Act contains two procedures to process subdivision applications based on project size. “Major subdivisions”—those with five or more parcels—require more formal procedures that involve filing both a *tentative map* and a *final map* for approval. On the other hand, “minor subdivisions”—those that involve four or fewer parcels—require only a single *parcel map* and the oversight is more abbreviated (though the local ordinance can specify that tentative maps be filed for minor subdivisions as well). The reasoning behind this distinction is that larger subdivisions will raise more complex issues, such as traffic and infrastructure needs, than a minor subdivision.

Tentative Map Applications

Tentative map applications typically include a map of the proposed design of the lots, public streets, sidewalks, parks, utilities, and other improvements. Upon receipt, staff checks the application to see that it is complete and conforms to the general plan and the zoning code. Once the application is deemed complete, it is submitted to the “advisory agency,” which is usually the planning commission. The local subdivision ordinance designates whether the advisory agency can actually approve or deny tentative maps, or merely make recommendations to the governing body. If no advisory agency is designated, then the tentative map is submitted directly to the governing body.⁴⁴

After a public hearing, the local agency may approve, conditionally approve, or deny the map after making specific findings. The advisory agency may impose additional conditions when approving a tentative map. The Map Act includes a number of provisions that govern specific conditions, such as bike paths, transit facilities, school fees, and parkland, to name a few.⁴⁵ The local agency may incorporate other conditions that are consistent with the general plan and the zoning code.⁴⁶

After the tentative map is approved, the applicant has two years in which to meet the conditions. Local ordinances may extend this period by an additional year and the applicant can apply for a five-year extension.⁴⁷ The applicant will then prepare a final map that incorporates the imposed conditions. All conditions must either be performed or guaranteed—by agreement, bond, letter of credit, or otherwise—before the final map can be approved. The final map must be filed before the tentative map expires. If not, then the process begins all over again. An engineer usually reviews of the final map. Approval of the final map is a ministerial act—meaning there is no discretion to reject the final map if all the conditions are met.⁴⁸ The approved final map is then recorded with the county and the applicant can proceed with the development.

⁴¹ *Taschner v. City Council of the City of Laguna Beach*, 31 Cal. App. 3d 48 (1973).

⁴² Cal. Gov't Code § 66411.

⁴³ Cal. Gov't Code § 66464.

⁴⁴ Cal. Gov't Code §§ 66452.1, 66452.2.

⁴⁵ See generally, Cal. Gov't Code §§ 66475–66498.

⁴⁶ Cal. Gov't Code §§ 66411, 66418–66419.

⁴⁷ See Cal. Gov't Code § 66452.6.

⁴⁸ Cal. Gov't Code § 66458.

CHECKLIST FOR APPROVING SUBDIVISION MAPS

Commissioners should be able to answer “yes” to the following questions when approving a subdivision map.

- Is the proposed map and design consistent with the general plan and any applicable specific plans?
- Is the site physically suited to the proposed type and density of development?
- Is the design of the subdivision or the proposed improvements unlikely to cause serious public health problems?
- Is the design of the subdivision or the proposed improvements unlikely to cause either substantial environmental damage or substantial and avoidable injury to fish or wildlife or their habitat?
- Have adequate conditions been applied to the approval (or has the project been redesigned) to mitigate the environmental effects identified in the environmental analysis?
- Are all dedications and impact fees reasonably related to the impacts likely to result from the subdivision?
- If a mitigated negative declaration or environmental impact report has been adopted or certified for the project, have the identified mitigation measures been made conditions of approval?

Source: *The Planning Commissioner's Book* (Governor's Office of Planning and Research, 1998).

Vesting Tentative Map Applications

Some tentative maps are filed as “vesting tentative maps.”⁴⁹ If approved, a vesting tentative map confers a vested right to proceed with the development in accordance with the local ordinances, policies, and standards that were in effect when the local agency deemed the map application complete. Vesting tentative maps offer developers a degree of assurance not otherwise available except through a development agreement. The applicant may file a vesting tentative map for a parcel map even if the local subdivision ordinance does not require tentative parcel maps. Vesting tentative maps must be processed just like a standard tentative map. However, local agencies may impose additional application requirements and almost all do, which is why developers do not always use vesting tentative maps.

Parcel Map Applications

Procedures and approvals for parcel maps are left to local ordinance.⁵⁰ The primary difference between parcel maps and tentative maps is the number of conditions that can be applied. With a parcel map, a city or county can only impose requirements for the dedication of rights-of-way, easements, and the construction of

reasonable off-site and on-site improvements for the parcels that are being created. Additionally, absent urgent health and safety reasons, local agencies cannot require the installation of improvements until the development permit is issued, although the subdivider may agree to early installation voluntarily.



Illegal Quartering

On occasion, a subdivider may try to avoid tentative map and final map requirements by subdividing one parcel four times using a parcel map and then repeating the process over and over again. Known as “quartering” or “4 X 4,” this process is illegal and can result in severe penalties.⁵¹ When a subdivider seeks to divide property that is contiguous to property he or she already subdivided, the earlier subdivisions are counted to determine the total number of parcels and thus what sort of map is required.⁵²

⁴⁹ Cal. Gov't Code § 66498.1.

⁵⁰ Cal. Gov't Code § 66463.

⁵¹ Cal. Gov't Code § 66499.31; Cal. Bus. & Prof. Code §§ 11000 and following.

⁵² *Bright v. Board of Supervisors*, 66 Cal. App. 3d 191 (1977).

DEVELOPMENT AGREEMENTS

In California, developers generally do not have a vested right to develop until they obtain a building permit and have performed substantial work in reliance on that permit.⁵³ Until then, there is no guarantee that the local policies and regulations affecting the development will remain the same. A project that is in the approval process or not yet built may be subject to new regulations and fees as they are adopted.

To offset this risk, developers often propose that their development be approved through a development agreement, which is a detailed contract between a developer and a local agency that spells out the rules of development for a particular project in very specific terms. For developers, the advantage is that they can “lock in” their entitlements and the local regulations that are in effect at the time the agreement is approved, allowing them to obtain financing and get the project moving. For local agencies, the advantage is that the developer will usually agree to additional conditions—such as extra parkland, school facilities, and other public improvements—that go beyond what the agency could require through the normal development process.

A development agreement must describe the permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for the reservation or dedication of land for public purposes. It also must specify the duration of the agreement, commonly as long as 15 to 20 years. However, most agreements go well beyond these minimums and will include construction and phasing elements, terms for financing public facilities, a description of the scope of subsequent discretionary approvals, and a host of other items. A development agreement affords a tremendous amount of flexibility, but also requires a great deal of planning and forethought.

The development agreement constitutes a negotiated—and thus voluntary—deal. Once approved, the agreement works like any contract. The developer therefore cannot come back later and challenge the conditions as being excessive. On the other hand, the local agency is also bound to the terms of the deal. If the

agency wants to make changes, the developer will likely seek certain concessions if he or she agrees to modify the agreement at all.

The timing of a development agreement in the development process can also vary. Some come late in the process, some come early. In many cases, the agreement is combined with a tentative map. For large projects, a development agreement may be the very first step to lock in the laws that will apply during a lengthy approval process. These “front-end” development agreements are often the most detailed because they will have to include provisions for every stage in the approval and development process.

DESIGN REVIEW

Design review is often used to enhance aesthetic character. A community may prohibit uses detrimental to the general welfare, as well as developments that are



More on Development Agreements

- Development agreements only “lock in” local regulations, not federal and state laws.
- Upon request, local agencies must establish procedures for processing development agreements.
- Agreements should be reviewed annually to evaluate the developer’s good faith compliance.
- Agreements may be terminated or modified if the developer does not comply with the terms.
- Agreements must be consistent with the general plan and are subject to environmental review. (Development agreements are projects under the California Environmental Quality Act.)
- A development agreement can be amended or canceled by mutual consent of the parties to the agreement, but the amendment itself is subject to the same approval procedures as the original agreement.

“monotonous” in design and external appearance.⁵⁴ As one court put it: “Mental health is certainly included in the public health.”⁵⁵ Whereas the zoning code usually focuses on the type and intensity of a use, design review focuses on aesthetic and architectural standards. Design review procedures usually rely on deeply held values and beliefs about what is beautiful and what is ordinary. The use of an appointed review board is standard. In larger communities, this is usually a separate “design review board” or an “architectural review committee.” In some communities, the planning commission functions as the design review board.

Local design review ordinances are usually folded into the zoning process in some way. The amount of information included in a design review application will vary. An application for a small addition, for example, will probably not have as much information as an application for a large subdivision. Here is a list of some of the information likely to be presented as part of a design review application:

- Color boards showing the site plan, including the shape and size of the building or buildings, their relationship to the site, landscaping, and parking.
- Conceptual color elevations of each wall of the building(s), especially those seen by the public or from off-site.
- Models sufficient to show building mass, form, relationship to the landscape, and effects caused by grading. These can range from simple hand-built models to sophisticated computer-generated analyses.
- Design details, such as plazas, pavement design, window treatments (sills, awnings, etc.), entry gateways, building top (molding) and base treatment, screening details, pedestrian walkways, and lighting.
- Colored landscape plans sufficient to illustrate how landscaping will be used to soften the building’s impact on its environment.
- Controls to ensure that signage will fit in with the rest of the development.
- Summary data, including facts on adjacent properties and sight lines.

Design review has some drawbacks. First, it makes it more difficult from the landowner’s or developer’s perspective to determine what will be an acceptable level of development. Accordingly, the more specific the design standards, the greater the certainty from the developer’s perspective. Second, design review can breed monotony (or even mediocrity) to the extent that all buildings must conform to a narrow set of guidelines. The trick is to develop design guidelines that leave enough room for creativity. Finally, in some instances, the design review process may be abused by those who are looking for an opportunity to stop a development.

DEDICATIONS AND FEES

Dedications and fees are often imposed as conditions on development approvals to offset new demands on public resources. New development usually requires the extension of infrastructure, such as roads, parks, pathways, libraries, and schools. At one time, local agencies could fund infrastructure with property tax revenues, but such revenue has become more limited since the adoption of Proposition 13 in 1978. State legislation and voter-approved revenue limitations have further diminished local finances.⁵⁶ As a result, cities and counties rely heavily on dedications and fees to ensure that new development “pays its way.” (See Section 10, page 113).

Dedications and fees are sometimes called “exactions.” A dedication occurs when ownership of an interest in real property is transferred to a local agency. Dedications are most frequently used to secure land for parks, roads, bike paths, and schools. Development fees are often imposed in lieu of dedications when the type of infrastructure does not lend itself easily to case-by-case dedications of property, such as with sewers, water systems, affordable housing, libraries, and open space.

The basic rule when imposing dedications and fees is that they must be reasonably related in purpose and roughly proportional in amount to the impacts caused by the development.⁵⁷ Thus, a small development that will only generate light traffic cannot be required to cover the cost of an entire freeway interchange. The basis for a dedication or fee is often established in the general plan, but can also be established by a capital

⁵⁴ *Novi v. City of Pacifica*, 169 Cal. App. 3d 678 (1985).

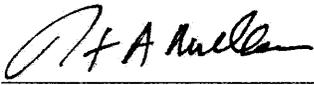
⁵⁵ See *Crown Motors v. City of Redding*, 232 Cal. App. 3d 173, 178 (1991).

⁵⁶ J. Fred Silva & Elisa Barbour, *The State-Local Fiscal Relationship in California: A Changing Balance of Power* (1999) (available online at www.ppic.org).

⁵⁷ *Ehrlich v. City of Culver City*, 15 Cal. App. 4th 1737 (1993); Cal. Gov’t Code §§ 66000-66025.

REPORT TO THE PLANNING COMMISSION

April 20, 2010



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SUBJECT: Planning Commission Workshop: Status Report on the
Planned Residential Development Overlay Process

EXECUTIVE SUMMARY:

On January 22, 2008, the City Council adopted an amendment to the Zoning Code that created a process for applying a Planned Residential Development Overlay. The Planned Residential Development Ordinance (Ordinance CC # 2008-391) provided greater flexibility in site design and allows for modifications to certain Zoning Code requirements for projects with demonstrable City benefits.

During the Planning Commission's consideration of the Planned Residential Development Overlay process, the Commission requested that staff provide an update on how effective the ordinance was and if there were any issues presented by this new process. The Commission requested an update approximately 2 years following its adoption.

It has been slightly more than two years since adoption of the overlay. However, as yet no applicants have sought application of the overlay for a proposed development. Staff notes that over the last 2 years, there has been a sharp decrease in development interest as a result of the economic downturn. This is the case for Guadalupe as well as for other Central Coast communities, although recently, there has been an uptick in interest in new development projects. Staff recommends that another update on the use of the Planned Development Overlay process be provided in approximately another 2 years, once at least one or two applicants have opted for application of the overlay.

RECOMMENDATION:

- 1) Receive a presentation from staff
- 2) Allow for Commission discussion and/or questions and answers on the workshop topic
- 3) Direct staff to provide a subsequent update in approximately 18-24 months

DISCUSSION:

The City Council on May 22, 2007, directed staff to develop a process that could allow for consideration of residential projects that are well designed, but that may not meet all zoning code requirements. At the time, it was noted that a number of potential residential development projects that had been proposed or were being considered included components that were not easily addressed by the City's Zoning Code. In particular, multifamily projects such as apartments and condominiums on smaller lots can have setbacks, parking, and other components that conflict with the standards set forth in the City's Zoning Code. This was seen as problematic and an obstacle to development, hindering the approval of otherwise well-designed projects, if such projects required minor modifications to the City's zoning requirements.

In response to this Council direction, staff prepared, and the Planning Commission reviewed, an amendment to the City's Zoning Code to allow a process for considering more flexible design through application of a Planned Residential Development Overlay. Application of such an overlay is done through a rezone of the subject property or properties, and the rezone request would undergo Planning Commission consideration and City Council approval. The design of the proposed development would be considered as part of the rezone request, and specific findings were developed for approval of Planned Residential Development.

One project, the Casa Bella Development, was a candidate for application of the Planned Residential Development Overlay, but the applicant opted not to proceed with the development.

Staff recommends that an evaluation of the effectiveness of the Planned Residential Development Overlay process be conducted once development interest picks back up, and one or more projects are identified as candidates for the overlay.

AGENDA ITEM: