

## AGENDA

### CITY OF GUADALUPE PLANNING COMMISSION

Tuesday, November 18, 2008

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, Jesse Ramirez, Vice-Chair Carl Kraemer, and Chair Frances Romero.

1. **CALL TO ORDER.**
2. **PLEDGE OF ALLEGIANCE.**
3. **ROLL CALL.** Commissioners Monika Huntley, Alejandro Ahumada, Jesse Ramirez, Vice-Chair Carl Kraemer and Chair Frances Romero.
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 October 21, 2008 to be ordered filed.
- b. Code Enforcement Monthly Summary.

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. **DESIGN REVIEW OF SITTING ALCOVE, 858 GUADALUPE STREET.** That the Planning Commission receive a presentation from staff and take action on the request for a Design Review Permit.

- a. Written Staff Report (Rob Mullane)
- b. Planning Commission discussion and consideration.
- c. It is recommended that the Planning Commission receive a presentation from staff and take action on the request for a Design Review Permit.

7. **PLANNING COMMISSION WORKSHOP # 9: LEGAL ISSUES.** That the Planning Commission receive the presentation from staff.

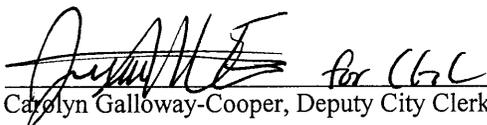
- a. Written Staff Report (Rob Mullane)
- b. Planning Commission discussion and consideration.
- c. It is recommended that the Planning Commission receive the presentation from staff.

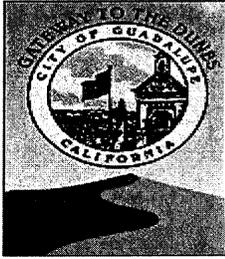
8. **FUTURE AGENDA ITEMS.**

9. **ANNOUNCEMENTS.**

10. **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 14th day of November 2008.

By:  for Clerk  
Carolyn Galloway-Cooper, Deputy City Clerk



4a.

## MINUTES

### CITY OF GUADALUPE PLANNING COMMISSION

Tuesday, October 21, 2008

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.*

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

1. **CALL TO ORDER.** 6:00 by Chair Romero
2. **PLEDGE OF ALLEGIANCE.**
3. **ROLL CALL.** Commissioners Monika Huntley, Alejandro Ahumada, Jesse Ramirez, Vice-Chair Carl Kraemer and Chair Frances Romero.  
All Present
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.

**MINUTES – CITY OF GUADALUPE PLANNING COMMISSION**

**Regular Meeting – October 21, 2008**

**Page 2**

- a. Minutes of the Planning Commission meeting of September 16, 2008 to be ordered filed.
- b. Code Enforcement Monthly Summary.

Item 4b. pulled from the agenda for discussion. Vice Chair Kraemer requested that monthly summaries from the Police Department be also included on future Planning Commission agendas. The intent is to have information on parking and abandoned vehicle violations as the Fire Department summary does not include these code enforcement actions.

City Planner Rob Mullane stated that he would forward this request to the City Administrator.

Motion: Kramer/Ahumada moved to approve the consent calendar.

**VOTE:       Ayes: 5**  
**Noes: 0**  
**Motion passed**

Chair Romero then announced that agenda items 6-8 would be reordered to allow for decision items to take place before the conceptual review item. Item 8, the Curves Sign Design Review, would be the first regular item, followed by Item 6, the Cultural Center Variance, and then Item 7, the Apio Landscaping Request would be discussed.

**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.*

Speaker #1, George Alvarez: Noting concern with items referred to the Planning Commission by the City Council. Mr. Alvarez also noted that he was unable to access the Apio application files at the public planning and building counter even though he request to access the files was made 50 minutes prior to City Hall closing time. He noted this as unacceptable.

**6.       VARIANCE FOR THE GUADALUPE CULTURAL CENTER EXPANSION – PUBLIC HEARING.** That the Planning Commission conduct a Public Hearing and adopt PC Resolution No. 2008-04.

- a. Written Staff Report (Rob Mullane)
- b. Written Communications.
- c. Public Hearing.
  1. Those in favor to be heard.
  2. Those in opposition to be heard.
  3. Rebuttals to be heard.
  4. After all persons have been heard and all communications filed, the hearing will be ordered closed.

## MINUTES – CITY OF GUADALUPE PLANNING COMMISSION

Regular Meeting – October 21, 2008

Page 3

- d. Planning Commission discussion and consideration.
- e. It is recommended that the Planning Commission conduct a Public Hearing and adopt PC Resolution No. 2008-04.

City Planner Rob Mullane gave a brief staff report providing a history of the project and an overview of the request. Mr. Mullane noted that the conditions of approval attached to the proposed City Council resolution are draft conditions, and revisions may be desired by the Commission. He also noted that the City Attorney recommended an additional condition related to the maintenance of the shared parking agreement, and that the applicant had some concerns with some of the City Engineer's conditions. Mr. Mullane noted that some of the specifics on wording of the new and revised conditions could be worked out prior to the City Council's consideration of the request, rather than being definitively settled at this Planning Commission.

The Commission had a number of questions, including questions regarding the status of the original request for a larger addition, the disabled parking requirements, the potential for a nearby undeveloped lot to be acquired by the City for more public parking, and the enforcement of conditions related to maximum occupancy at special events. City Planner Mullane fielded many of these and deferred to the applicant on a couple of the questions.

The Chair opened the public hearing.

Speaker #1: Benny Gonzalez, agent for the applicant. Mr. Gonzales indicated that the Cultural Center has been operating as such for approximately 6 years. The purpose of the addition and remodeling is to provide more room and more convenience for continued operations. The applicant expects an average of 40-50 people at the largest events. Mr. Gonzales also clarified that no previous Variances were granted to the Center. He noted that the applicant assents to the draft conditions of approval with the exception of a few of the City Engineer's conditions, which he expects can be worked out with staff prior to the City Council meeting. He also noted that Leroy Park is close by and is also expected to provide off-street parking capacity during events.

Speaker #2: Joe Talaugon, applicant. Addressed why the addition was scaled back from the initial proposal and clarified that they no longer are interested in pursuing this larger addition.

Vice Chair Kraemer had questions on the adequacy of the dune center's parking lot, which is unlined, to meet peak parking demand, and stated his desire to make sure that events don't rely on on-street parking.

Speaker #3: Karen Evangelista, applicant, noted the excellent relationship between the Cultural Center and the Dunes Center and that there is a gate between the two properties to provide convenient access during events.

Speaker #4: George Alvarez, noted his support for the Cultural Center and the proposed addition. Noted concerns with Dune Center Parking Lot, since it is unpaved and unlined.

**MINUTES – CITY OF GUADALUPE PLANNING COMMISSION**

**Regular Meeting – October 21, 2008**

**Page 4**

Mr. Alvarez also requested clarification on what the parking requirement was for the project.

Mr. Mullane clarified the parking requirement, which was noted in the staff report and that there would be little difference in the number of required spaces for the existing uses in comparison to the demand with the requested addition.

Chair Romero noted that the addition, while small, does require that parking requirements for existing and proposed uses together to be assessed and required, which is why the Variance is needed for the addition.

The public hearing was closed at 7:15 pm.

Commission deliberations and further questions to staff included discussion of the benefit to the City of the Cultural Center, the recognized difficulty of providing adequate parking onsite on this parcel and other parcels in the Downtown Commercial Core, the desire to have peak demand not interfere with other street parking needs, and a potential lack of adequate disabled parking spaces during events. Mr. Mullane noted some possible revisions or clarifications to the conditions of approval to address these issues, specifically:

1. That one or more additional disabled parking space be provided for during special events by temporarily designating one of the existing non-disabled parking spaces that are on-site as a disabled parking spot, and that additional temporary disabled parking spaces be identified in areas close to the Center.
2. That a specific City official be specified as the contact person in Condition #9.
3. That the Center be required to include a notation on any invitations for events where parking would be available and to direct attendees into parking lots such as the Dunes Center, Leroy Park, and the municipal parking lot to the south to avoid excessive demand for on-street parking.
4. That a condition be added to note the need to maintain the shared parking agreement.
5. That City Engineer staff, Planning staff, and the applicant will review the City Engineer's conditions and see if mutually acceptable changes can be made.

Motion (Ahumada/Ramirez): move for adoption of Planning Commission Resolution 2008-04, recommending that the City Council grant the requested Variance, with revisions to conditions of approval discussed and directed by the Planning Commission.

**VOTE: Ayes: 5**

**Noes: 0**

**Motion passed**

7. **APIO LANDSCAPING REDUCTION REQUEST CONCEPTUAL REVIEW, 4595 MAIN STREET.** That the Planning Commission receive a presentation from staff and provide direction to the applicant on the proposed project.

- a. Written Staff Report (Rob Mullane)
- b. Planning Commission discussion and consideration.

## MINUTES – CITY OF GUADALUPE PLANNING COMMISSION

Regular Meeting – October 21, 2008

Page 5

- c. It is recommended that the Planning Commission receive presentation from staff and provide direction to the applicant on the proposed project.

City Planner Rob Mullane gave a brief staff report summarizing the request and the project's status in the planning application process. Mr. Mullane noted that providing the Zoning Ordinance-required 10% landscaping coverage is more difficult for larger properties like the Apio property, as these properties have large areas with proportionally smaller perimeters in comparison with smaller parcels. He noted that the Commission's review at this point is conceptual only, and that the Commission would take formal action on the request during the consideration of the necessary Design Review Permit. Mr. Mullane also distributed some supplemental materials for Commission consideration: an excerpt of the Zoning Code (Section 18.52, Design and Development Standards), and a table of landscape coverage requirements from other cities in the area. Later in the discussion, Mr. Mullane noted that there is some guidance on screening and landscaping requirements in the Zoning Code and General Plan in addition to the landscaping requirements in Section 18.64.

Speaker #1: Ron Midyett, applicant, provided some context for the expansion project that is in the application review process and the efficiencies in operation the expansion would allow. Mr. Midyett also noted some apparent errors in the stated landscaping areas in the report, but confirmed that the request is for a reduction in coverage from 10% to 3%. He also noted a health and safety concern related to augmenting the landscaping near buildings that handle produce, as landscaping can encourage pests.

Chair Romero asked if the expansion would require an expansion of use of ammonia for cooling facilities, and Mr. Midyett replied that it would not.

Speaker #2: George Alvarez, noting a general concern with big developments in the City not providing adequate development impact fees and carrying their load of impacts. He thought that the 10% requirement is fair, and wanted to see what 10% coverage would look like on a set of plans in comparison to the 3% request.

Speaker #3: slip for Sparky Locke, but speaker was Ron Midyett, speaking for the second time. Mr. Midyett emphasized that the cost of providing the required landscaping was not the issue for Apio, but that it was the practical difficulty of providing that amount. The site is already largely developed and configured. Mr. Midyett also expressed Apio's willingness to provide improvements to landscaping in other areas of the City as an alternative to meeting the 10% on-site standard.

Commissioner Huntley noted that off-site landscaping was an interesting idea.

The Commission reviewed the table of landscape coverage requirements from other jurisdictions and noted that 10% is a fairly standard requirement.

Chair Romero noted that the existing plants and landscaping onsite is not in good condition, a concern with palettes stored on property to heights that exceed the height of

**MINUTES – CITY OF GUADALUPE PLANNING COMMISSION**

**Regular Meeting – October 21, 2008**

**Page 6**

the perimeter fence, and that more effective screening is a requirement by most other cities.

Vice Chair Kraemer note his agreement that the 10% coverage requirement may be excessive in this case, and also noted his concern with the storage of stacked palettes that are visible from Obispo Street. His concern was mostly that the peripheral screening is improved, but suggested that the applicant consider augmenting the interior landscaping in certain areas, including employee break areas. He encouraged the applicant to approach the proposed landscaping with an emphasis on performance standards rather than a percentage requirement.

Commissioner Ramirez noted that the aesthetics of the site should be improved, especially along the Obispo Street frontage for the benefit of the residents of the Treasure Park subdivision, which is immediately to the east of Apio. He also noted a need for better dust control on the Apio site.

Commissioner Huntley expressed her concurrence with other Commission members' comments.

Speaker #4: Amy Cunningham, agent for Apio, pointed out that one constraint on providing more landscaping was that parking requirements also need to be met. She also noted that better screening is also a desire of the applicant.

The Commission concluded their conceptual review and thanked the applicant for attending the meeting.

**8. DESIGN REVIEW OF SIGNAGE FOR CURVES, 879 GUADALUPE STREET.**

That the Planning Commission receive a presentation from staff and take action on the request for a Design Review Permit.

- a. Written Staff Report (Rob Mullane)
- b. Planning Commission discussion and consideration.
- c. It is recommended that the Planning Commission receive a presentation from staff and take action on the request for a Design Review Permit.

Associate Planner Rob Fitzroy gave a brief staff report with an overview of the request.

Speaker #1: Anita Navarro, applicant, expressed her hope that the sign would be favorably received by the Commission.

Vice Chair Kraemer noted that he likes the proposed sign at the proposed location. Commissioner Ramirez concurred, indicating that the proposal provides a nice looking sign.

Motion (Kraemer/Ramirez): move for approval of the Design Review Permit as submitting, acknowledging that the Commission makes the required findings for approval.

**MINUTES – CITY OF GUADALUPE PLANNING COMMISSION**

**Regular Meeting – October 21, 2008**

**Page 7**

**VOTE:       Ayes: 5**  
**Noes: 0**  
**Motion passed**

**9.       PLANNING DIRECTOR’S REPORT.**

City Planner Mullane noted the upcoming Housing Element Update workshops being facilitated by CalPoly, with the first workshop occurring this Thursday evening (10/23/08).

Mr. Mullane updated the Commission on zoning clearances issued in the last month (none), sign permits issued (1, for La Fogata), Planning Counter questions fielded by staff (approximately 6); and on the status of the DJ Farms project.

The Commission asked for an update on the Ruiz stockpile, and Mr. Mullane discussed the status of this project.

**10.      FUTURE AGENDA ITEMS.**

a.       Historical Building Regulations.

City Planner Mullane noted that there will likely be some evaluation of historical buildings in the City as part of the Housing Element update, and that the CalPoly team plans to assist with data collection.

**11.      ANNOUNCEMENTS.**

Commissioner Huntley reminded the audience to please spay and neuter their pets.

**12.      ADJOURNMENT.**

Meeting adjourned by motion (Ahumada/Ramirez) and vote (5-0) at 8:30 pm.

Submitted by:

Affirmed by:

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Robert A. Mullane, City Planner  
Planning Commission Secretary

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Frances Romero, Chair

4b.



## GUADALUPE FIRE DEPARTMENT

TO: CITY COUNCIL & PLANNING COMMISSION

FROM: FIRE CHIEF JACK OWEN, JR.

SUBJECT: MONTHLY ACTIVITY REPORT – OCTOBER, 2008

DATE: NOVEMBER 10, 2008

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### CALLS FOR SERVICE

INCIDENT TYPE	NUMBER
Medical	28
Structure Fire	0
Motor Vehicle Accidents	4
Vehicle Fire	0
Grass/Vegetation Fire	3
Hazardous Materials Spill/Release	0
Public Assistance	5
Other Fire	10
False Alarm	2
<b>TOTAL</b>	<b>52</b>

### INSPECTIONS & CODE COMPLIANCE

VIOLATION TYPE	NUMBER
Weeds, Trash, Rubbish	4
Business License	5
Work Without Permit	4
Unsafe Building	1
General Fire Inspection	12
<b>TOTAL</b>	<b>26</b>

**REPORT TO THE PLANNING COMMISSION**  
**November 18, 2008**

151

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**Prepared By:**  
**Rob Fitzroy, Associate Planner**  
**Rob Mullane, City Planner**

151

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**Approved By:**  
**Carolyn Galloway-Cooper**

**SUBJECT:** Design Review of Sign for Guadalupe Sitting Alcove, 858 Guadalupe Street (Planning Application #2008-014-DR, -ZC; APN 115-101-003)

**EXECUTIVE SUMMARY:**

The City received an application for a sitting alcove and public art structure, located at 858 Guadalupe Street. The sitting alcove is a public art display intended for pedestrian use. The alcove is 6' in width, 7'6" in depth, and 8'6" in height. The alcove would be located in the southeast corner of the lot, abutting a vacant building located to the north of the Royal Theater. At tonight's meeting, the Planning Commission can approve, conditionally approve, or continue the item. Any approval or conditional approval would be done by motion and majority vote of the Commission.

**RECOMMENDATION:**

- 1) Receive a presentation from staff
- 2) Provide an opportunity for the applicant to present the proposed project
- 3) Take any comments from the public
- 4) Take action on the request for a Design Review Permit

**BACKGROUND:**

The City was approached by the applicant regarding the idea for the sitting alcove and public art structure in early November. Conceptual plans were presented to the City at that time and permit requirements discussed with the applicant. The formal application for a minor Design Review Permit (DRP) and Zoning Clearance (ZC) was received on November 13, 2008.

The applicant is Jeff Shelton (Architect), and the owner is Andy Johnson. The application was deemed complete for processing on November 13, 2008. In the review of the application, staff noted that the project is consistent with objectives in the General Plan for improving the appearance and pedestrian-friendly nature of the Central Business District.

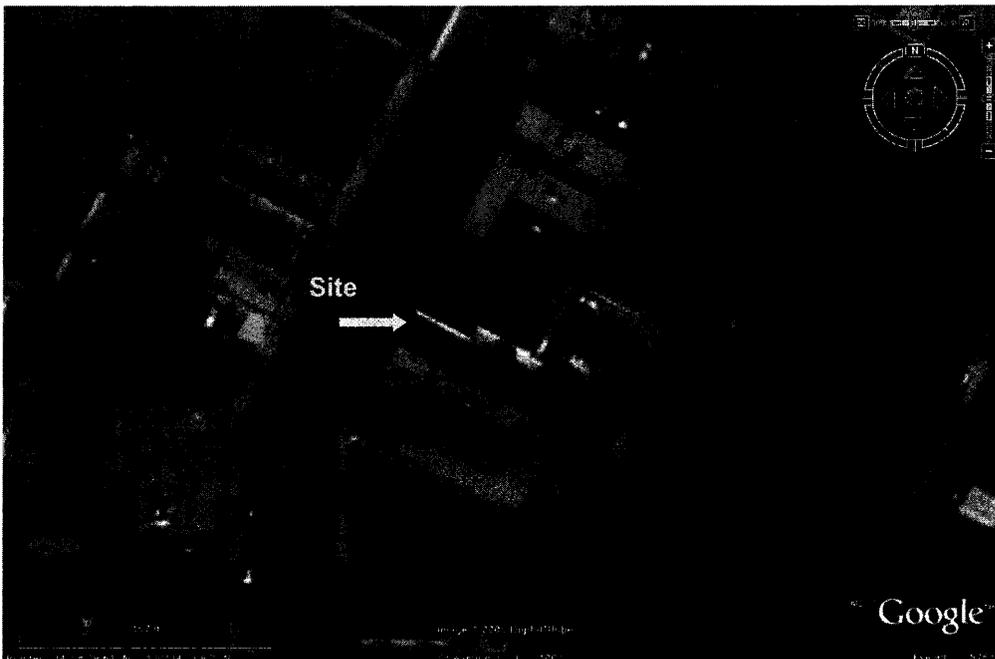
**DISCUSSION:**

The request is for the construction of a sitting alcove and public art structure. Staff has characterized this as a public art structure, but it should be noted that the structure would be located on private property. The structure would be in the southeast corner of the subject property, abutting the vacant building immediately north of the Royal Theater. The structure would be approximately 6' in width, 7'6" in depth, and 8'6" in height (see Attachment 1). A sitting area would be located inside the alcove, where art displays would be housed. The structure would be constructed of concrete and plaster. An archway of approximately 6'6" in height would mark the entrance to the alcove. The exterior of the archway would face Guadalupe Street and have a marble surface.

**Site Information**

LOCATION	858 Guadalupe Street
APN	115-101-003
ZONING	G-C, General Commercial
LOT SIZE	~2,500 sq ft
PRESENT USE	Vacant Lot
SURROUNDING USES AND ZONING	Nardos Restaurant to the north Vacant Building/Royal Theater to the south Guadalupe Street (State Highway 1) to the east Vacant General Commercial lot to the west

The property consists of a 2,500 sq ft vacant lot with surrounding uses as noted in the above table. A vicinity map is below, and site photos are included as Attachment 2.



## **General Plan and Zoning Conformity**

The proposed sitting alcove is consistent with the General Plan Land Use Element in that it enhances the aesthetics of the City's Central Business District. It would provide an aesthetically pleasing sitting area and promote a pedestrian-friendly street frontage. The alcove is consistent with the height and setback requirements of the General-Commercial zone as set forth in the City's Zoning Code.

## **CEQA Review**

The project is exempt from CEQA pursuant to Section 15061(b)(3). This section of the CEQA Guidelines states:

*...CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.*

The request is for design review of a sitting alcove and public art structure. The request conforms to the General Plan and zoning requirements, and is within the scope of the Planning Commission's review for aesthetic considerations, with such review ensuring that significant aesthetic impacts do not result.

## **Planning Commission Consideration**

The Design Review Permit process is set forth in Chapter 18.73 of the City's Zoning Code. The requirement for design review of the proposed structure is provided in Section 18.73.010 (a), which states in part:

*A Design Review Permit is required for any development...on properties in the City's Central Business District (as defined in the General Plan) or on properties with frontage along Guadalupe Street or Main Street, unless the proposed development would not be visible from these streets....*

The project qualifies for a minor Design Review Permit as set forth in Section 18.73.020. A project requiring a minor Design Review Permit is subject to a reduced application fee and has different noticing requirements than a regular Design Review Permit application.

In considering a DRP, the Planning Commission may approve as submitted, approve with conditions of approval, or provide direction to the applicant on recommended changes and continue the item to a future meeting of the Commission. As a reminder to the Commission, should the PC approve the DRP application, as a part of the motion to approve, the PC should explicitly state that Commission is above to make findings for approval per Section 18.73.100

For this specific request, staff does not note any project components that conflict with the findings for approval, but many of these findings involve aesthetic considerations that are subjective and should be evaluated by the Commission. The applicant was informed of the requirement to post notice of the pending DRP on-site as required by Section 18.73.070.

**Next Steps**

Should the Commission approve or conditionally approve the DRP, staff would issue the associated Zoning Clearance once any prior to issuance conditions—if any—have been met and once the 10-day appeal period has run.

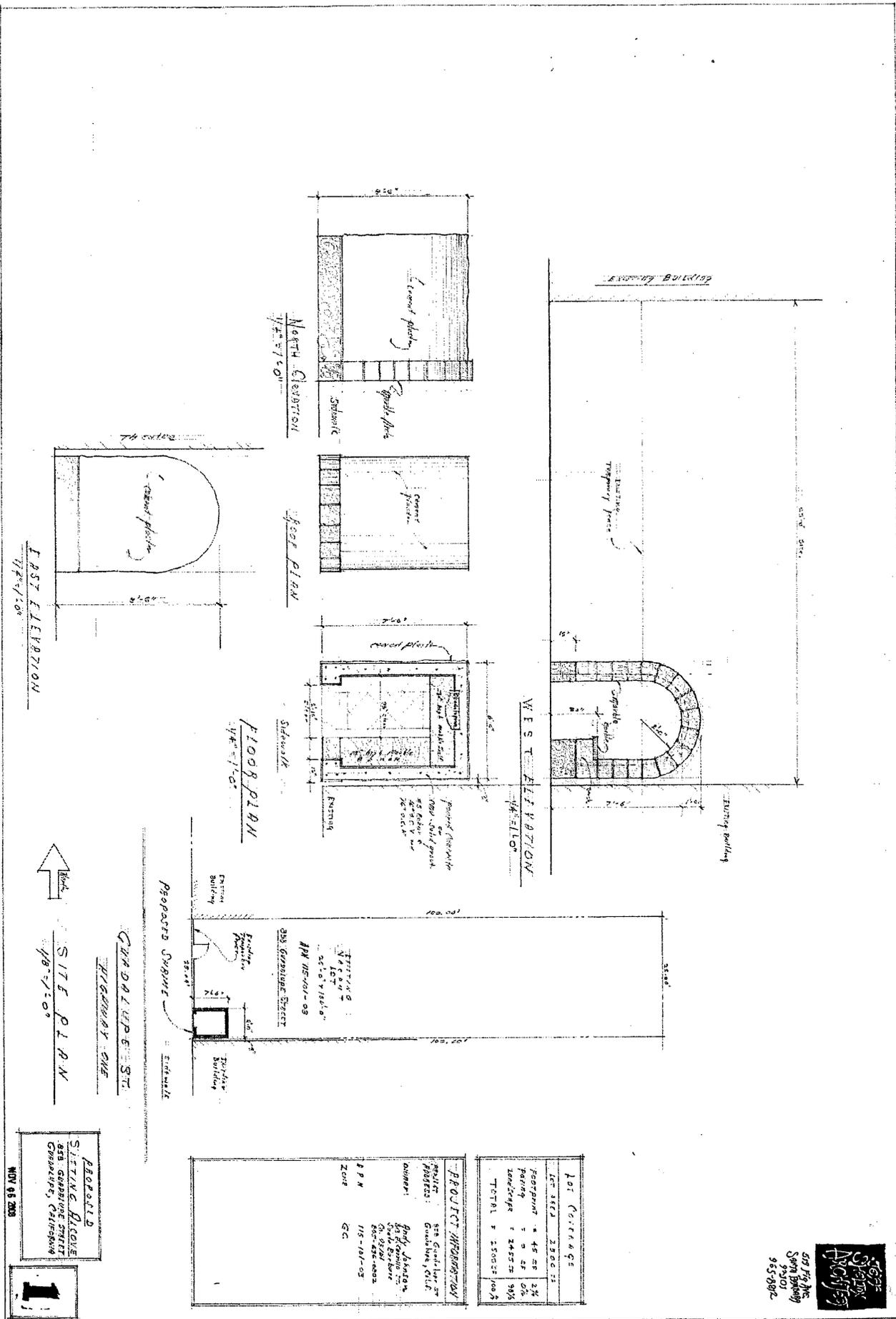
**ATTACHMENTS:**

1. Site Plan and Elevations
2. Site Photographs

**AGENDA ITEM:**

# **ATTACHMENT 1**

Project Site Plan and Elevations



LOT COVERAGE	
Lot Area	2,800 sq. ft.
Footprint	45 sq. ft.
Parking	2 sq. ft.
Landscaping	2453 sq. ft.
TOTAL	2,500 sq. ft.

**PROJECT INFORMATION**

PROJECT: 328 Guadalupe St. Guadalupe, CA

OWNER: City of San Jose

ARCHITECT: [Faint text]

DATE: 11-19-03

ZONE: GC

**LEONARD SLITING & BLOW**  
 858 GARDNER STREET  
 CARMEL, CALIFORNIA

NOV 05 2003

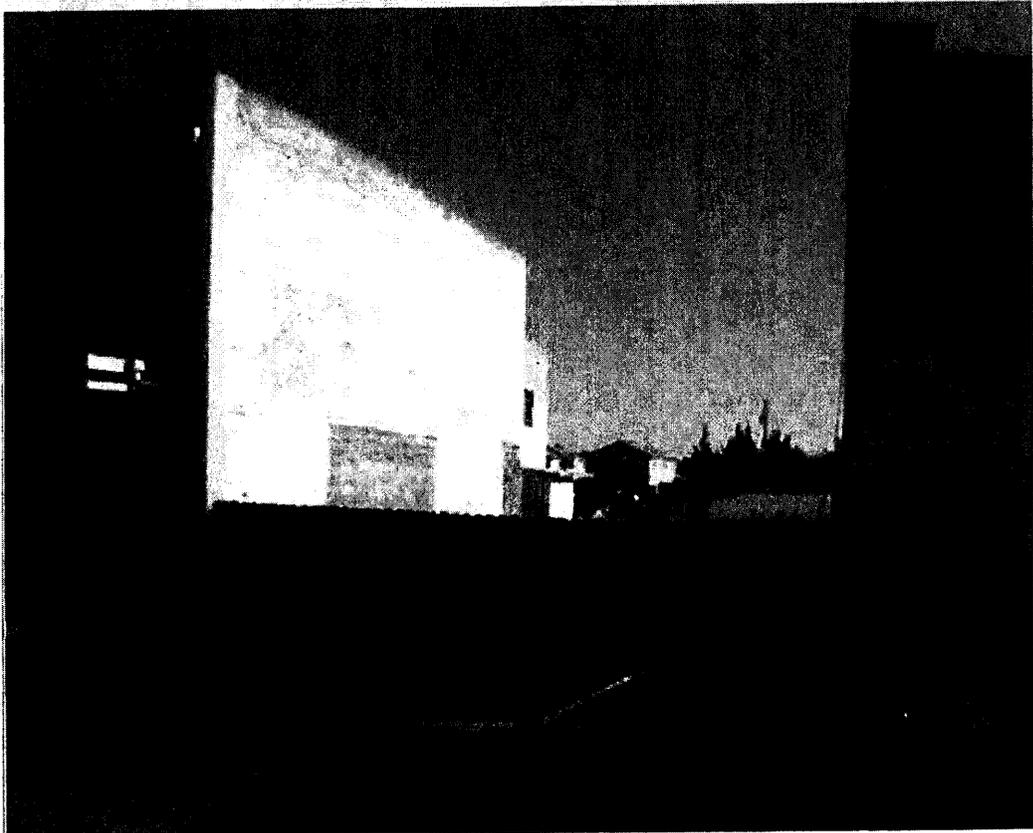
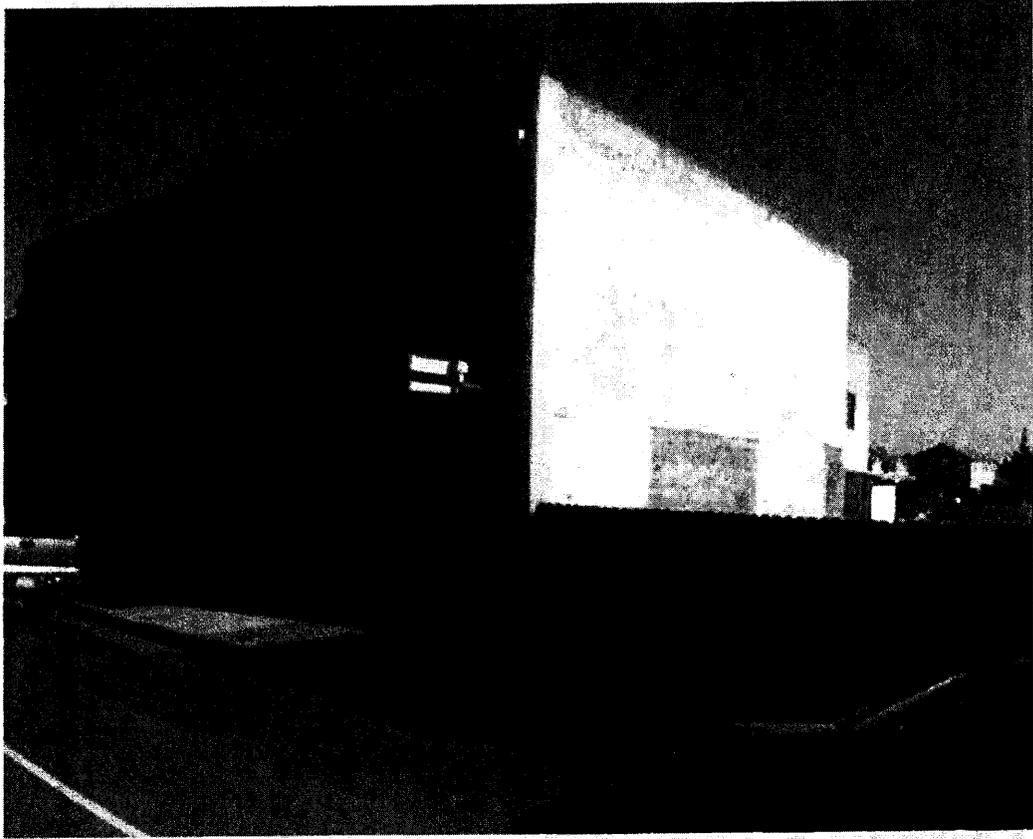


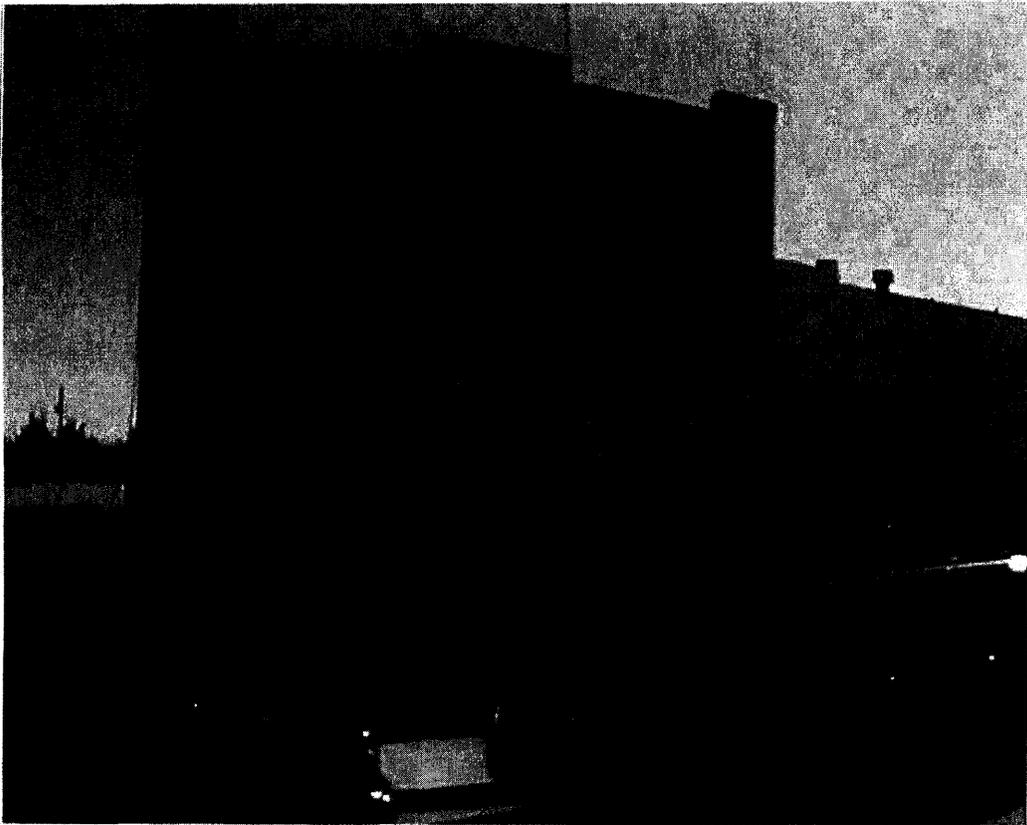
517 7th Ave  
 San Jose, CA  
 95101  
 953-0802



## **ATTACHMENT 2**

Site Photographs





The photograph captures a stark, industrial scene at night. The primary subject is a large, dark building, possibly a factory or warehouse, which is almost entirely in shadow. A few small, bright lights are scattered across the building's surface, providing the only illumination for its form. The sky above is dark and textured, with some faint, distant lights or structures visible on the horizon to the left. The overall mood is somber and industrial.

**REPORT TO THE PLANNING COMMISSION  
November 18, 2008**

                      
Prepared By:  
Rob Mullane, City Planner

                      
Approved By:  
Carolyn Galloway-Cooper

**SUBJECT:** Planning Commission Workshop #9: Legal Issues

**EXECUTIVE SUMMARY:**

This is ninth in a series of workshops for the Planning Commission. This workshop will provide an overview of Legal Issues: the ninth chapter of the *Planning Commissioner's Handbook*, a resource produced by the League of California Cities.

This series of workshops uses the Planning Commissioner's Handbook as a guide for content. The goal of these workshops is to increase each Commissioner's comfort level with the role and responsibilities of the Planning Commission.

**RECOMMENDATION:**

- 1) Receive a presentation from staff
- 2) Allow for questions and answers on topics presented by staff

**BACKGROUND:**

The provision of workshops or trainings for the Planning Commission has been a desire of City Management, City Council, and the Planning Commission. Such workshops are valuable as a review of key concepts or to introduce new changes to City procedures, regulations, and State law.

This workshop series started at the September 18, 2007 Planning Commission meeting, with subsequent workshops on October 16, 2007, January 15, 2008, April 15, 2008, May 20, 2008, June 17, 2008, August 19, 2008, and September 16, 2008. This workshop, like previous workshops, is intended to allow a free discussion of the concepts and issues presented.

**DISCUSSION:**

This workshop focuses on the topics covered in Section 9 of the *Planning Commissioner's Handbook*. Section 9 covers Legal Issues, which includes:

- The Police Power
- Preemption
- Takings and Property Rights

- Substantive Due Process and Vested Rights
- Procedural Due Process: Notice and Hearings
- Discrimination and Equal Protection
- First Amendment: Signs, Adult Uses and Free Speech
- Religious Issues

The Commission previously received copies of the Planning Commissioner's Handbook, and having these handbooks at the meeting will be helpful to follow along with the staff presentation. For the benefit of the public, Chapter 9 of the handbook is included as Attachment 1 to this staff report.

**ATTACHMENTS:**

- 1) Excerpt of Planning Commissioner's Handbook: Chapter 9

**AGENDA ITEM:**

# **ATTACHMENT 1**

**EXCERPT OF THE PLANNING COMMISSIONERS  
HANDBOOK: CHAPTER 9**



SECTION 9

# Legal Issues

THE POLICE POWER .....103

PREEMPTION .....103  
    Preemption and Charter Cities..... 104

TAKINGS AND PROPERTY RIGHTS .....104

SUBSTANTIVE DUE PROCESS  
& VESTED RIGHTS .....105

PROCEDURAL DUE PROCESS:  
NOTICE & HEARINGS .....106

DISCRIMINATION &  
EQUAL PROTECTION .....106

FIRST AMENDMENT: SIGNS,  
ADULT USES & FREE SPEECH .....107

RELIGIOUS USES .....108

## SECTION 9

# Legal Issues



### THE POLICE POWER

The legal basis for all planning and land use regulation is the “police power.” This power emanates from the Tenth Amendment to the United States Constitution and entitles states to take actions to protect the public’s health, safety, and welfare. In turn, the California Constitution grants the same power to cities and counties, but limits the grant to the extent that local regulations may not conflict with state law.<sup>1</sup>

The police power is “elastic,” meaning that it can expand to meet the changing conditions of society. Thus, actions that might not have been thought of as part of the general welfare a century ago (like actions to curb sprawl, perhaps) can fall within its purview today. Zoning and other forms of land use regulation are within the broad scope of the police power.<sup>2</sup> The U.S. Supreme Court expressed it this way:

*The police power is not confined to elimination of filth, stench, and unhealthy places, it is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.<sup>3</sup>*

Courts have found that a wide variety of local concerns fall within the police power, including socio-economic balance, aesthetic values, residential character, and growth management.<sup>4</sup>

However, the police power is not unlimited. There are several constitutional limitations that affect the extent to which local agencies can use the police power. As mentioned above, local agencies cannot adopt regulations that conflict with state law. Other constitutional limitations include takings, equal protection, and freedom of speech, to name a few. These restrictions are outlined in more detail in the following sections.

### PREEMPTION

A local agency may not take actions that conflict with state or federal law. Federal clean water and endangered species laws, for example, sometimes restrict the scope of local zoning ordinances. Likewise, the state Planning and Zoning Law imposes minimum planning standards with which local agencies must comply. This is known as preemption—the principle of law through which federal or state regulations supersede those of a city or county. When a conflict occurs, the local ordinance is invalid.

<sup>1</sup> Cal. Const. art. XI, § 7; *Miller v. Board of Public Works*, 195 Cal. 477 (1925).

<sup>2</sup> *Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926); *Associated Home Builders, Inc. v. City of Livermore*, 18 Cal. 3d 582 (1976).

<sup>3</sup> *Village of Belle Terre v. Boraas*, 416 U.S. 1, 4-6 (1974).

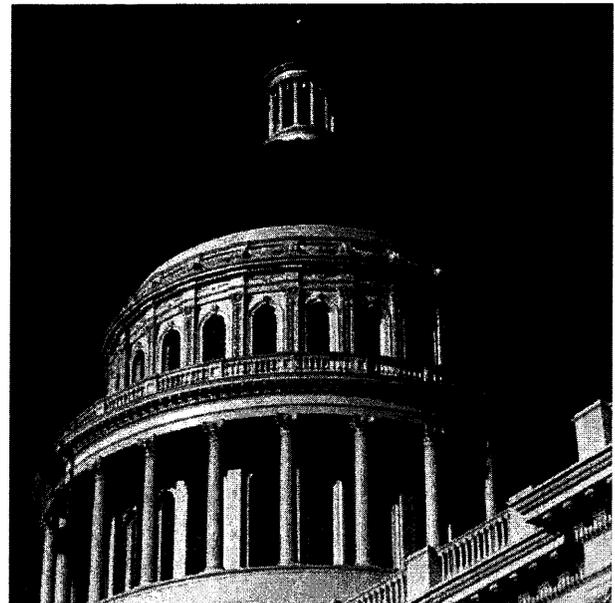
<sup>4</sup> See *Metromedia, Inc. v. City of San Diego*, 26 Cal. 3d 848 (1980); *Ewing v. City of Carmel-by-the-Sea*, 234 Cal. App. 3d 1579 (1991); *DeVita v. County of Napa*, 9 Cal. 4th 763 (1995).

The extent to which local regulation may be preempted varies. In some cases, the Legislature has signaled a strong preference for statewide uniformity. In other cases, the paramount need for local control prevails. For example, the Planning and Zoning Law serves only as a minimum standard with which local agencies must comply, reserving in cities and counties the maximum degree of control over local zoning law.<sup>5</sup> Thus, local agencies retain a great deal of control over most zoning decisions. An exception is the extent to which local agencies may adopt temporary moratoria on development.<sup>6</sup> Here, the Legislature has adopted detailed procedures—including time limits, findings requirements, and supermajority voting requirements—with which local agencies must comply. As a result, local agency discretion in this area is much more limited.

Just because there is a state law on a subject does not necessarily preempt all action. There is often room for additional local action, particularly if the local ordinance is *more restrictive*. In other words, state and federal laws often act as a legislative minimum in the absence of a clear indication that the state or federal statute was intended to “occupy the regulatory field” entirely. For example, state law requires that a general plan include seven mandatory elements. However, cities and counties are free to adopt other elements beyond those seven—such as an agricultural protection or economic development element—that address specific local concerns.

### Preemption and Charter Cities

There are actually two kinds of cities: charter and general law. Charter cities have “local constitutions”—called charters—that describe the organization and fundamental policies of the city or county. The state constitution grants charter cities authority over “municipal affairs” even when they conflict with state law.<sup>7</sup> In the land use context, the most important municipal affair is the power to develop internal procedures, such as those to process and approve legislative and adjudicative actions. As a result, charter cities are exempt from *some* of the procedural requirements in the Planning and Zoning Law. In other instances, however, such as the laws governing the adoption of moratoria (mentioned above), the



Legislature has made it clear that charter cities and general law cities have the same authority.<sup>8</sup> In recent years, the state Legislature has increasingly limited charter city authority, particularly in the area of affordable housing.

### TAKINGS AND PROPERTY RIGHTS

The Takings Clause of the U.S. Constitution limits the police power, not by prohibiting certain actions but by requiring compensation when those actions impinge too far on private property rights. You are probably familiar with the principle that if land is condemned for a public road, the local agency taking the land must pay the owner the fair market value of the land taken. This form of taking is called eminent domain. The same general principle applies when a regulation—such as a zoning ordinance—has the same effect as physically appropriating land. This is known as a regulatory taking. An example would be a regulation that zoned an individual’s parcel as a public park. The regulation would have the same effect as a taking because it would prevent the owner from excluding others and putting the land to economic use.

You are most likely to encounter the takings issue when you are denying a project or contemplating a new zoning ordinance that will limit the use of property. The issue may also be raised when you are imposing fees or

<sup>5</sup> Cal. Gov’t Code § 65800; *DeVita v. County of Napa*, 9 Cal. 4th 763, 782-783 (1995).

<sup>6</sup> Cal. Gov’t Code § 65858.

<sup>7</sup> Cal. Const. art. XI, § 5(a).

<sup>8</sup> Cal. Gov’t Code § 65858.

requiring a dedication of property as a condition of development. Unfortunately, there is a great deal of misunderstanding about the relationship between property rights and planning regulations. The Takings Clause is often misunderstood to be a prohibition against any regulation that decreases property value or prevents the owner from “doing what they want with their land.” In reality, compensation is required only in a very limited set of circumstances.

Most land use ordinances will not rise to the level of taking. The Constitution permits property to be extensively regulated, and courts have recognized that land use ordinances are often as likely to add value to a property as they are to decrease value. Our land use system cannot treat all properties equally.

Nevertheless, some regulations may rise to the level of a compensable taking. For example, regulations that wipe out all or almost all of a property’s economic value may be held a taking. A regulation that permanently places an object on or uses a property may also be held a taking. However, these instances are comparatively rare. In the majority of cases, local regulations have been upheld against such claims. The following are some rough rules that help explain why most regulations do not rise to the level of a taking:

- **Claims Usually Fail When Economically Viable Uses of Property Remain.** Claims based on the notion that a regulation denies economical uses of property will fail when the property retains some economically viable uses. Zoning land for agriculture, for example, allows for an economic use and will generally survive a takings claim even when the owner claims the regulation is costing millions in lost development value. The Takings Clause does not guarantee that owners will be compensated for the most speculative use of land.<sup>9</sup>
- **Reasonable and Proportional Conditions on Development are Permitted.** Conditions on development will not cause a taking when they are reasonably related and proportional to the harm or impact likely to be caused by the development.<sup>10</sup> Moreover, conditions that are imposed by ordinance

instead of on a case-by-case basis are even less likely to be held a taking.<sup>11</sup>

- **Landowners Must Seek A Variance Before Suing.** Courts are reluctant to require compensation unless they are absolutely sure that a regulation or condition will be applied in a way that amounts to a taking. Thus, landowners must usually file two applications and seek one variance before courts will entertain a claim. The variance procedure guarantees that the local agency has an opportunity to take corrective action in those circumstances where a regulation unfairly affects a particular parcel.<sup>12</sup>
- **“Automatic” or Per Se Takings Are Rare.** Regulations that cause 100 percent devaluation in property or cause a permanent physical presence on property will be found to be a taking in most circumstances, but such regulations are rare. It might seem that imposing a condition on development—such as the requirement to create a park or a bike path—is equivalent to a permanent physical occupation. The reason why this is not the case is that the condition is based on the development application, which is *voluntarily* sought by the developer.<sup>13</sup>
- **Fairness Matters.** Courts are often concerned about the extent to which the landowner was treated fairly by the local agency. Thus, it is always good to design efficient, straightforward processes that are consistent with the general plan in order to set appropriate development expectations.<sup>14</sup>

These are only rules of thumb. There are exceptions. The ultimate determination of whether an action is a taking will turn on the facts of each case. For this reason it is extremely important to consult with planning staff and agency counsel when the takings issue arises.

## SUBSTANTIVE DUE PROCESS & VESTED RIGHTS

The substantive due process doctrine prohibits governmental action that arbitrarily or unreasonably deprives a person of life, liberty, or property. For planning commissioners, this issue arises most frequently in the context of property when an

<sup>9</sup> *Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency*, 535 U.S. 302 (2002).

<sup>10</sup> *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987); *Dolan v. City of Tigard*, 512 U.S. 324 (1994); *Ehrlich v. City of Culver City*, 12 Cal. 4th 854 (1996).

<sup>11</sup> *San Remo Hotel v. City and County of San Francisco*, 27 Cal. 4th 643 (2002).

<sup>12</sup> *Williamson County Regional Planning Comm’n v. Hamilton Bank*, 473 U.S. 172 (1985).

<sup>13</sup> See *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992); *Loretto v. Teleprompter Manhattan CATV Corporation*, 458 U.S. 419 (1982); *Yee v. City of Escondido*, 503 U.S. 519 (1992).

<sup>14</sup> *Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency*, 535 U.S. 302 (2002); *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687 (1999).

application has proceeded far enough through the approval process that the right to develop has attached. When this occurs the right to develop is said to have vested. Once a right vests, it cannot be affected by subsequent changes in local ordinances.

Generally, a right to develop will not vest until the last permit necessary for construction has been issued *and* substantial expenditures have been incurred in reliance on the permit. Until that time, a proposed development is vulnerable to changes in the general plan, zoning, and other local regulations.

However, there are some misunderstandings about this rule:

- **Zoning Does Not Confer A Right to Develop.** Some people misinterpret zoning regulations to mean that the level of development will be allowed automatically. Zoning confers no such right—it is merely a designation used for planning by local agencies. As such, it is always subject to any change the governing body sees fit.<sup>15</sup>
- **Initial Approval Does Not Necessarily “Lock In” Development.** Developers may argue that a preliminary approval—such as a tentative map approval—automatically exempts them from other ordinances that affect the development. Such conditions are not generally locked in, however, until the last permit is issued.<sup>16</sup>
- **Later Elements of Phased Projects May Be Subject to Different Rules.** The rules of vested rights offer less protection to developments involving multiple discretionary permits to be granted over an extended period of time. For example, a developer may spend large sums on acquisition, engineering, architectural, and planning costs for a four-phase development, but may only hold permits for phase one. To be protected from future changes in local regulations throughout the entire project, the developer would need to obtain vested rights for each phase. The vesting of rights for phase one does not vest rights for the entire project, nor does it guarantee that additional phases will even be approved.<sup>17</sup>

Given the uncertainty associated with changing regulations, developers will often seek to “lock in” their development plans. The main way to do this is to enter into an agreement with the local agency to assure that no future regulations will affect the development. However, a local agency cannot bind itself from exercising its legislative power in the future.<sup>18</sup> There are two exceptions. State law allows development applications to vest upon the filing of a vesting tentative map (see page 47) or upon entry into a development agreement (see page 48) with the local agency.

### PROCEDURAL DUE PROCESS: NOTICE & HEARINGS

A local agency must afford procedural due process before depriving a person of a property right or liberty interest. This typically means providing the person with notice of the impending action and an opportunity to be heard before taking the action. In the context of land use and zoning, local agencies can meet this requirement by complying with the state laws that delineate specific notice and hearing procedures.<sup>19</sup> The purpose of the notice and the hearing requirement is not merely to go through the motions—but to offer the affected person a meaningful opportunity to rebut the evidence that is serving as the basis of the decision.

Procedural due process requirements apply mostly when a local agency is acting in its quasi-judicial capacity—that is, applying ordinances to specific properties as part of a land use application. When the local agency is acting legislatively, due process controls are more lenient because the legislative process provides its own set of guarantees. However, state law requires specific notices for a number of legislative acts, such as rezonings and general plan amendments.

### DISCRIMINATION & EQUAL PROTECTION

The equal protection doctrine requires that similarly situated persons be treated in an equal manner. However, absolute equality is not required. Inherently, land use regulation is a system of classifying property.

<sup>15</sup> *Stubblefield Construction Co. v. City of San Bernardino*, 32 Cal. App. 4th 687 (1995); *Avco Community Developers, Inc. v. South Coast Regional Commission*, 17 Cal. 3d 785 (1976).

<sup>16</sup> *Avco Community Developers, Inc. v. South Coast Regional Commission*, 17 Cal. 3d 785, 791, (1976).

<sup>17</sup> *Court House Plaza Co. v. City of Palo Alto*, 117 Cal. App. 3d 871 (1981); *Lakeview Development Corp. v. City of South Lake Tahoe*, 915 F. 2d 1290 (1990).

<sup>18</sup> *Avco Community Developers, Inc. v. South Coast Regional Commission*, 17 Cal. 3d 785 (1976).

<sup>19</sup> See for example Cal. Gov't Code §§ 65090-65096.



Nearly every regulation will affect different properties differently. What is significant for the equal protection analysis is the extent to which a regulation makes an arbitrary or discriminatory classification that affects a fundamental right. A classification must not be arbitrary and related to some difference that has a legitimate governmental interest.

Courts will analyze equal protection claims under one of two tests: strict scrutiny or rational basis. Most land use regulations will be judged under the rational basis test. Thus, if a regulation is reasonably related to a conceivable legitimate government purpose, it will be upheld. For example, special regulations for historic districts are rationally related to preserving community character and judged under the rational basis standard even though they treat historic properties differently.

Strict scrutiny is applied when a regulation abridges a fundamental right or applies only to a suspect class. Suspect classes are limited to race, national origin, and personal decisions relating to marriage, procreation, family relationships, and child-rearing. In these cases, the government must show that there is a “compelling interest” for the classification. For example, a regulation that prohibited landlords from renting units to non-traditional couples would be more likely to be judged under the stricter standard.

There are three things to watch out for when the equal protection issue arises:

- **Developers Claiming Protected Status.** One tactic developers sometimes use is to argue that a regulation

unfairly singles them out. However, courts have ruled that developers are not a suspect class and development is not a fundamental interest.<sup>20</sup>

- **Single Property Owner Unfairly Treated.** Sometimes, landowners will bring an equal protection claim when they feel that they have been singled out. Such claims may prevail when the local agency has intentionally treated a specific landowner differently and the different treatment was motivated by ill will. This issue can be related to spot zoning issues as well.<sup>21</sup>
- **Regulations that Affect Low-Income Households.** One possible challenge to an ordinance is that it discriminates against lower-income households, of which racial minorities constitute a disproportionate percentage. Although courts have been more willing to entertain such claims in recent years, ordinances based on sound social or economic policies that are not intended to discriminate will generally be upheld.<sup>22</sup>

## FIRST AMENDMENT: SIGNS, ADULT USES & FREE SPEECH

Most land use decisions that touch on the speech issue involve sign, news rack, and adult business regulation. Regulating these uses poses difficult legal and philosophical issues. You must balance the competing goals of having a beautiful (and smut-free) community with the right to sell public wares and convey ideological messages.

When analyzing free speech rights, courts first classify the type of speech being regulated. Courts have drawn a distinction between political speech (expressing one’s views or engaging in expressive activities) and commercial speech (providing information about goods and services). Regulations that affect political speech will be more strictly scrutinized. Most zoning regulations, however, affect commercial speech.

Courts have applied the following general rules in evaluating such regulations:<sup>23</sup>

- **Time, Place and Manner.** Zoning regulations that control the time, place, and manner of speech without prohibiting the speech or activity outright will generally be upheld. In the case of adult businesses, for

<sup>20</sup> *Candid Enterprises, Inc. v. Grossmont Union High School District*, 39 Cal. 3d 878, 890 (1985).

<sup>21</sup> *Village of Willowbrook v. Olech*, 528 U.S. 562 (2000).

<sup>22</sup> *Associated Home Builders Etc., Inc. v. City of Livermore*, 18 Cal. 3d 582 (1976); *Construction Industry Association v. City of Petaluma*, 522 F.2d 897 (9th Cir. 1975).

<sup>23</sup> *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490 (1981).

example, zoning can be used to limit the location (place), business hours (time), and even some types of performances (manner), but cannot totally prohibit such businesses from a community.

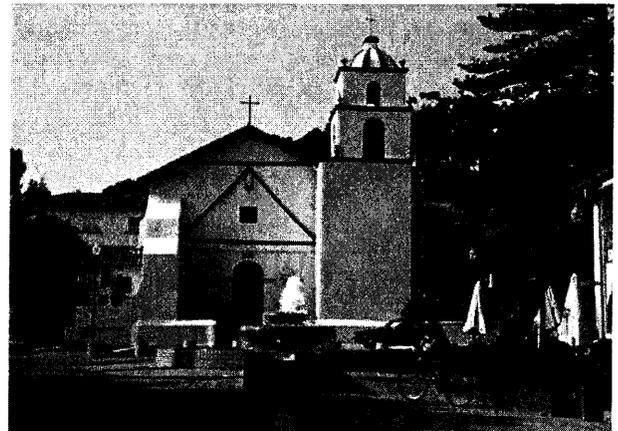
- **Content Neutral.** The restrictions must be content neutral. For example, with certain exceptions, it is generally acceptable to regulate the size of a business sign but not what message is written on the sign.
- **Substantial Governmental Interest.** The interest in regulating the activity must be substantial. Many adult business regulations are predicated on limiting secondary impacts (like crime) that are associated with such businesses rather than the “moral” nature of the speech activity itself. Courts have determined that this is a sufficient rationale to justify a regulation, provided that it is not too onerous.
- **Alternative Avenues of Communication.** There must be a location where the speech or activity may take place. For example, some local agencies set distance limitations (such as 1000 feet) between adult businesses and schools. The condition, however, must leave some places within the community where the activity can take place.

These are all just general rules and courts often apply them on a case-by-case basis. If you have concerns in this area, it is always advisable to consult with your agency's counsel.

## RELIGIOUS USES

In the past, a generally applicable land use regulation was not deemed to substantially interfere with religion. Thus, a local agency could require that a new church facility meet city parking requirements even if the condition would make the building substantially more expensive and thus infeasible.

However, Congress adopted a more stringent test when it passed the Religious Land Use and Institutionalized Persons Act (RLUIPA).<sup>24</sup> Under RLUIPA, a government may not impose a land use regulation in a manner that imposes a substantial burden on religion unless the government demonstrates that the condition furthers a compelling governmental interest. In addition, the



condition must be the least restrictive means of furthering that interest.

One issue that makes RLUIPA problematic for local agencies is that the term “substantial burden” is not defined. This uncertainty makes it easier for religious groups to challenge zoning ordinances as they apply to religious buildings. The extra costs associated with a landmark preservation ordinance, for example, could be determined to be a substantial burden on a congregation (although the law remains uncertain on this point).

The type of ancillary activities and uses that are included in the term “religious exercise” is another unresolved issue. A planner might make the assumption that religious exercise merely means worship services. A particular church, on the other hand, may apply for a permit to include a school or even a homeless shelter on church premises on the grounds that providing such services is a natural extension of its religion.

Because of the uncertainties associated with RLUIPA, local agencies must be flexible when dealing with applications from religious groups. However, they must also be careful not to favor religious groups or they may face lawsuits alleging the endorsement of religion in violation of the Establishment Clause of the U.S. Constitution. (The Constitution also prohibits governments from favoring any religion). When making decisions related to religious uses, cities and counties should maintain detailed records that show findings of either substantial burden or compelling government interest depending on the outcome of the vote.