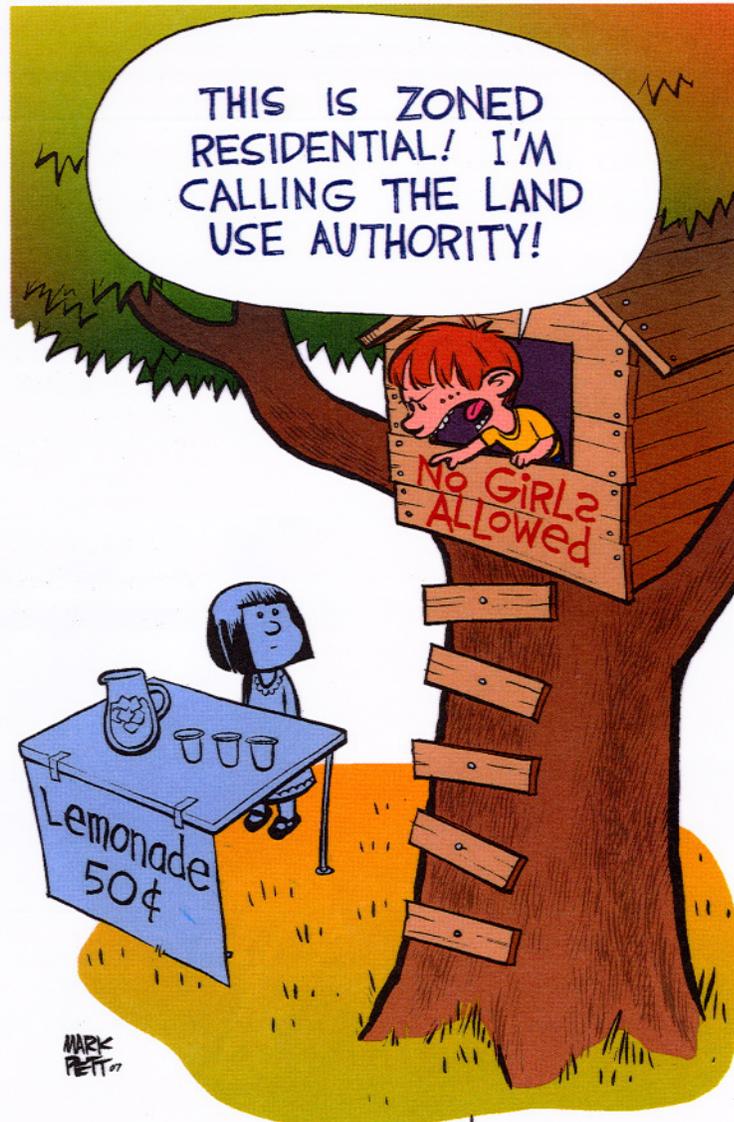


Handbook for Planning Commissions and Land Use Authorities



Utah League of Cities and Towns

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Introduction

Congratulations! You are a Planning Commissioner and a Land Use Authority!

A what? If you are reading this material, we can assume that you have accepted the position, or are seriously considering accepting the position, of a Planning Commissioner. So just what have you gotten yourself into? What does a Commissioner do? What is a land use authority? The purpose of this book is to answer the questions you might have about your duties, responsibilities, liabilities, and limitations in the role as a Planning Commissioner.

Now What?

This document explains the laws that govern the land use authority and the planning commission specifically. We have tried to present them in such a way as to make them easily understood, and have included examples that will illustrate the legal principles.

When specific law is quoted, the citation or reference is noted. We have also provided practical suggestions that you might find helpful in your new role.

Where do We Start?

In 2005 and 2006, the Utah State Legislature revamped the laws that regulate planning and zoning for municipalities in Utah. In addition to the state and federal constitutions, the law that governs most land use decisions in Utah, is called LUDMA (Land Use Development Management Act). It is found in Title 10, Chapter 9, of the Utah State Code. The direct website address is (<http://le.utah.gov/xcode/Title10/10.html>).

Here are some legal definitions that you need to know:

Appeal Authority. A person, board, commission, agency, or other body designated by ordinance to decide an appeal of a decision of a land use application or a variance.

Land Use Application. An application required by a municipality's land use ordinance.

Land Use Ordinance. A planning, zoning, development, or subdivision ordinance of the municipality, but does not include the general plan.

Land Use Authority. A person, board, commission, agency, or other body designated by the local legislative body to act upon a land use application.

Being a “good” planning commissioner takes time and effort but it can also be very rewarding. The decisions you will help make will determine your community’s future. You, your family, and neighbors, will live with the results of your efforts, good or bad, for a very long time to come. In addition to the impact that you will have on land use,

development, and growth, you will also help to determine the credibility of your municipal government. It is important that you act in a legal and ethical manner because you will be acting as a city official and, in your capacity, you are a spokesperson for the government that appointed you.

Why Should We Plan?

Why are many Utah Cities complemented by wide streets laid out in a grid pattern? Planning.

Why are industries located away from residential zones? Planning.

How will Utah cities continue to grow in ways that support a safe, convenient and healthy environment? Planning.

Planning has deep roots in Utah. Joseph Smith, the founder of the Mormon Church, was Utah's first planner. In 1847, Joseph Smith convened a planning commission to create a community plan that would last several lifetimes. From that process, Joseph Smith described a *Plat for the City of Zion*, which guided the design and development of over 300 cities in the intermountain west.

Today, Utah's planners are citizens like yourselves who serve on City and County Planning Commissions and Councils. In larger communities, citizen planners have professional planning staffs to help them weigh and decide important community planning issues such as: Do we need more parks? If so, where should they be located? Are the roads safe for today's traffic patterns? Will the roads be safe as the community grows? Where should development occur and when?

As in the past, citizen planners play a vital role in promoting the vitality of your community.

What is Planning?

Zoning is a tool, which implements a community's vision or its "Plan" on how to develop. Zoning is not required, but keep in mind without zoning you have no authority to regulate or determine land use in your community. A zoning ordinance, legally adopted, has the force of law. Zoning has been part of the law in this country since the 1920's and has been through, literally, hundreds of challenges, here in Utah and nationwide.

A zoning ordinance can be very simple and usually consists of two parts: a map (or series of maps) and text. The zoning map shows how the community is divided into different use districts or zones. Common zoning districts include residential, commercial, industrial, and agricultural. The zoning map must show precise boundaries for each district. Consequently, most zoning maps rely on street or property lines as district boundaries.

A zoning ordinance serves two important functions. First, it explains the rules that apply in each zoning district. These rules typically establish a list of land uses permitted in each district plus a series of specific standards governing lot size, building height, and required yard and setback provisions. Second, the ordinance typically sets forth a series of procedures for administering and applying the zoning ordinance.

Most zoning ordinances will include — at a minimum — residential, commercial, and industrial districts. Often in urban areas these uses are combined in what is known as “Mixed Use” Districts.

Residential districts, in turn, are often broken down further into zones for single-family and multi-family dwellings of varying density. Similar distinctions, based on intensity of use, are also often found in business and industrial districts (e.g., light industry versus heavy industry).

Other common types of zoning districts are agricultural, conservation, and institutional. Many zoning ordinances include one or more special purpose zones addressing flood hazard areas, historic properties, and other specialized uses. These special zones are often applied as "overlays" — that is, those geographic areas subject to overlay zones are also within an "underlying" zoning district. For example, a property within a residential zone might also be located within a flood hazard zone. This property would be subject to the regulations of both the underlying zone (in this case, residential) and the overlay zone (often design related).

In addition to listing and defining zoning districts, this section of the zoning ordinance sets out rules for the use of land in each district. Most basic is the list of permitted versus special or conditional uses. If a use is deemed permitted (commonly referred to as a "by-right" or "matter-of-right" use), it need only meet the ordinance's lot and building standards, as well as "impact standards" (such as parking, landscaping, and signage).

Other uses may be allowed within a district provided they are granted a special or conditional use permit. The terms special exception, special use, and conditional use permit generally have the same meaning; what term you're familiar with depends on the community in which you live. The zoning ordinance sets out the standards, which must be met for a development permit.

When a zoning ordinance is adopted some existing uses, structures, and parcels may not comply with the regulations of the zoning district in which they are located. These uses, structures, or parcels are then classified as "nonconforming." While they are typically permitted to continue, their future expansion, reconstruction, or conversion is regulated by provisions set out in this section of the zoning ordinance.

Good luck in your new position. We recommend that you read this handbook and then get a copy of your own local land use ordinances. That should start you on your way!

Part I - The Legal Justification of the Land Use Controls and the creation of a Planning Commission

1. Utah law.

Cities and Towns are not individual legal entities recognized in the Constitution of the United States. States are. As a result, cities and towns are “creatures” of the state and derive their powers and authority from the state. Utah local governments are enabled by the Utah State Legislature with very broad powers to control land use and development. The enabling statute reads as follows:

10-9a-102. Purposes -- General land use authority.

- (1) The purposes of this chapter are to provide for the health, safety, and welfare, and promote the prosperity, improve the morals, peace and good order, comfort, convenience, and aesthetics of each municipality and its present and future inhabitants and businesses, to protect the tax base, to secure economy in governmental expenditures, to foster the state's agricultural and other industries, to protect both urban and nonurban development, to protect and ensure access to sunlight for solar energy devices, to provide fundamental fairness in land use regulation, and to protect property values.
- (2) To accomplish the purposes of this chapter, municipalities may enact all ordinances, resolutions, and rules and may enter into other forms of land use controls and development agreements that they consider necessary or appropriate for the use and development of land within the municipality, including ordinances, resolutions, rules, restrictive covenants, easements, and development agreements governing uses, density, open spaces, structures, buildings, energy efficiency, light and air, air quality, transportation and public or alternative transportation, infrastructure, street and building orientation and width requirements, public facilities, fundamental fairness in land use regulation, considerations of surrounding land uses and the balance of the foregoing purposes with a landowner's private property interests, height and location of vegetation, trees, and landscaping, unless expressly prohibited by law.

However, this broad grant of power is limited. It is limited by the procedures you have to follow to exercise the power and by both state and federal statutory and constitutional law. Since control of private property can be controversial and intrusive, there will always be challenges to the use of this power. These challenges will generally include failure to follow proper procedure, violation of state laws, violation of federal laws, or constitutional violations.

The challenges to procedure may include violations of self-imposed procedural requirements as well as of state imposed requirements. The Utah courts have consistently required a city or town to follow its own ordinances when regulating land uses, and the state code now specifically requires it.

10-9a-509. (2) A municipality is bound by the terms and standards of applicable land use ordinances and shall comply with mandatory provisions of those ordinances.

In addition to powers and limitations given by the state, legal authority for municipalities also comes as a result of action taken by the courts. Although case law is the result of specific cases brought before the court, resulting decisions can have broad impacts on municipal powers and limitations.

The third set of laws that you need to be concerned with are, of course, the laws of the municipality that you represent. The General Plan, the Land Use or Zoning Ordinance, and the Subdivision Ordinance, are the documents that are the basis of the decisions that you are called to make.

It is essential that planning commissioners know, and keep updated on, all three areas of the law. Your planning staff, city attorney, conference sessions, and training, are all available to assist you with the changes in any part of the law.

Land Use Authorities

The city and town land use ordinances must identify a land use authority and an appeal authority for every land use decision applying the adopted city or town land use ordinances. (Utah Code 10-9a-302)

There can be several land use authorities in a town or city. Remember a land use authority is defined as "a person, board, commission, agency, or other body designated by the local legislative body to act upon a land use application. In effect this means staff members, planning commissioners and city council could all be acting as land use authorities if they take final action on a land use permit for the city or town. Each locality should clearly illustrate in their local ordinance the responsibilities of each person board or commission that may act as a land use authority.

The Planning Commission may be designated in the land use ordinances as the land use authority in the city for making all or specific land use decisions or they may be designated as the appeal authority for appeals from land use decisions, but the planning commission cannot be the deciding authority and the appeal authority on the same issues.

For example, if the Planning Commission is given by the city or town ordinance the authority to review and approve site plans, then some other person or body must be given the authority to appeal the decisions of the planning commission on site plans.

Planning Commission enabling legislation

Every Utah city and town is required to pass an ordinance establishing a planning commission.

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

- (1) (a) Each municipality shall enact an ordinance establishing a planning commission.
- (b) The ordinance shall define:
- (i) the number and terms of the members and, if the municipality chooses, alternate members;
 - (ii) the mode of appointment;
 - (iii) the procedures for filling vacancies and removal from office;
 - (iv) the authority of the planning commission;
 - (v) subject to Subsection [\(1\)\(c\)](#), the rules of order and procedure for use by the planning commission in a public meeting; and
 - (vi) other details relating to the organization and procedures of the planning commission.
- (c) Subsection [\(1\)\(b\)\(v\)](#) does not affect the planning commission's duty to comply with [Title 52, Chapter 4, Open and Public Meetings Act](#).
- (2) The legislative body may fix per diem compensation for the members of the planning commission, based on necessary and reasonable expenses and on meetings actually attended.

The ordinance must define the number and terms of the members and alternate members, if any. In addition, the ordinance should indicate the mode of appointment. Mayors or city managers, depending on the form of government in the city, clearly have the statutory authority to appoint, with the advice and consent of councils, persons to the city commissions including the Planning Commission.

The ordinance must also contain the procedures for filling vacancies and removal from office. This has been an overlooked provision in most ordinances and the source of some contention and even law suits. The best practice is to make this section fairly specific and have definite standards of conduct and attendance for commission members. Without these specifics it may be difficult to remove members from a commission prior to the expiration of their term in office.

Powers and Duties

The ordinance should also detail the authority and duties of the Planning Commission. Every Planning Commission is given some minimal authority under state law. This authority, given by state law, cannot be taken from the Planning Commission by the city or town council.

These duties include holding public hearings and making a recommendation to the city or town council for adoption and amendment of the general plan and hearings and recommendations to the city or town council on the adoption or amendment of land use

ordinances, zoning maps, or official maps. The Planning Commission must also be involved in holding hearing and making recommendations on proposed subdivision plats and recommending an annexation policy plan for the city or town. These are all advisory duties.

Additional duties can be assigned and delegated to the planning commission by the city or town council. These may include the authority to approve specific land use applications.

10-9a-302. Planning Commission powers and duties.

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

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

No other powers or duties need be given to the planning commission by the city or town and the Planning Commission does not have any other inherent powers. Many commissions try to involve themselves in matters such as business licensing, animal regulations and nuisance enforcement. This is appropriate only if the city or town ordinances delegate these responsibilities to them.

Here is an example of how a local ordinance detailing the planning commission duties may look.

POWERS AND DUTIES. The planning commission shall:

1. Prepare and recommend a general plan and amendments to the general plan to the city council;
2. Prepare and recommend to the city council, zoning ordinances and maps, and

amendments to zoning ordinances and maps, which conform to the provisions of the general plan adopted by the city council;

3. Prepare and recommend to the city council, subdivision regulations and amendments to those regulations, which conform to the provisions of the general plan adopted by the city council;
4. Recommend approval or denial of subdivision applications;
5. Advises the city council on matters as the city council directs and hears, or decides any matters that the city council designates and as otherwise authorized by state law (add the specific duties if so delegated such as the approval or denial of conditional use permits and review of non conforming uses and structures.
6. Assists the city council with the creation of an appeal authority for the city of Xanadu;
7. Conduct such public hearings as are required by law or as deemed necessary by the zoning code;
8. The Planning Commission has the power and authority to employ experts and a staff, and to pay such expenses as may be reasonable and necessary for carrying out the duties of the planning commission, but not in excess of such sums as may be appropriated by the city council;
9. The Planning Commission or its authorized agents may enter upon any land, public or private, at reasonable times to make examinations or surveys.

The ordinance should reflect the powers designated by state law and any additional duties that were given to them at the local level.

2. Ethics.

All municipal officials (that's you) are subject to the Municipal Officers' and Employees' Ethics Act (Utah Code 10-3-13 et seq.)

The stated purposes of this state law are to establish standards of conduct for municipal officers and employees and to require a disclosure of actual or potential conflicts of interest between public duties and personal interests. The Ethics Act does two things: It sets up a disclosure system for conflicts of interest and it describes crimes specific to public service.

Following are three important points in the Act:

- You may not use your office for personal or financial benefit. This applies to receiving materials, money, special favors, and the use of information received in your position that results in a benefit to you. As an elected or appointed official, you may not personally or financially benefit from your position any more than any other citizen does.

- You may not receive a gift of substantial value that is given with any connection to a case or a person that will be appearing before the commission.

The exceptions to the above are for an employee or officer to receive an occasional nonpecuniary gift having a value of less than fifty dollars or an award publicly presented or a loan made in the ordinary course of business, or a political campaign contribution actually used in a political campaign.

- Conflict of interest should be disclosed in two ways: In written form to be kept on file and available to the public, and verbally in a public meeting at the time it is applicable. You are required to file a public disclosure with the city recorder as to any business interest that you may have that is regulated by the city. This document is required when you first take your position with the commission and should be updated each time you are reappointed or each time your business interests change in a way that is material to the disclosure. Any personal interest or investment which creates a conflict with your public duties must be disclosed in open meeting and submitted to the municipality annually in a disclosure form.

Voting and Conflict of Interest

You have been asked to serve in order to vote. You should not abstain unless the conflict is real and the chair agrees. A difficult or unpopular vote is no reason to abstain. Also, keep in mind that there will be some issues such as zoning of land, where everyone on the commission will have a conflict. That does not mean that no action can be taken.

There may be times when you fulfill the legal requirements for conflict of interest but there is a perception that you are too involved or connected with an issue to cast an unbiased vote. If you feel unable to make an unbiased decision, you should request to be excused from both the discussion and the vote.

In special circumstances there are times when the chair may require you to vote even when you would prefer not to do so and have declared a conflict of interest. The "disclose and vote" concept applies to legislative action and to quasi-judicial (administrative) actions in only one context: where recusal would defeat a quorum. This means that your lack of a vote would result in not having enough members to take action on the item.

The appearance of fairness doctrine requires you to abstain from voting on a matter on which you have a material conflict of interest. Always consult with your city attorney as

to whether you should abstain from a decision based on your personal or financial interest.

Some municipalities have adopted more stringent ethical requirements. If your community is one of them, you should become familiar with those requirements and act accordingly. Such rules must be written, part of the municipal code, and should be made available to you prior to your first meeting.

3. Meetings and Minutes

All meetings of the Planning Commission are subject to the Open and Public Meetings Act, (Title 52, Chapter 04).

This means that every meeting will have an agenda that is posted before a meeting; that all issues and items voted on during the meeting will be on the agenda; and that meetings will be held before the public. The meetings must also be summarized in written and adopted minutes. Additionally, all meetings must be voice recorded.

Anytime that the majority of the commissioners are meeting and/or talking about commission business, they are in violation of the law unless the meeting has an agenda, was noticed and is being held in public. It is possible to have a “closed” meeting but the commission should not do so except on the advice of an attorney and in strict adherence to the exceptions stated in Utah law.

Minutes of the meeting are very important. If the commission is sued the judge will base his or her decision, in part, on what is found in the minutes.

It is important, therefore, that minutes be taken by someone trained in the skill and that they reflect not only final decisions but the reasons for making the decision.

“Findings”, the written facts and evidence used in making a decision, are more important to the court than is the decision itself. A court has no interest in making land use decisions for you; it is interested in making sure that you followed due process, obeyed the law as written, and protected the rights of everyone involved. The findings of fact are often a separate document from the meeting minutes. However, the substance of the findings of fact must be reflected in the minutes.

Minutes and tape recordings are public property and will be made available to the public on request. As you review the minutes of a meeting, make sure that they reflect the important points of the discussion, the findings, decision, final vote and any conditions that may have been attached to the project. You are not allowed to change the minutes after the meeting to reflect what you wish had been said but did not.

Approval of the minutes should not be automatic or perfunctory; they should be read for accuracy and completeness, before being approved.

There is a great deal more that needs to be known about how minutes are kept and how records must be handled and your staff needs to be fully informed. It is prudent, therefore, that the clerk attend training for the planning commission, as well as that offered by the Clerks and Recorders Association.

The best way to avoid problems with the Open and Public Meetings Act is to err on the side of public openness. When in doubt, the meeting should be open. City councils and other committees or commissions of cities should not attempt to violate even the spirit of the act. It is important that the meeting not only is conducted in public, but the deliberations be conducted openly. It is not appropriate for members of public bodies such as city councils and Planning Commissions to conduct their deliberations privately and then in the public meeting just perfunctorily hold the vote.

4. Public Meetings, Public Hearings and Notice

A public hearing is required by law for many things that a planning commission may be involved in and can be held by many planning commissions on other matters as a matter of routine. It is different than a public meeting and this misunderstanding often leads to long meetings. All public hearings are public meetings but not all public meetings are public hearings. Here are the definitions from Utah state law.

Public Meeting. A meeting that is required to be open to the public under Utah Title 52, Chapter 4, Open and Public Meetings.

Public Hearing. A hearing at which members of the public are provided a reasonable opportunity to comment on the subject of the hearing.

The purpose of a public hearing is to receive information from and give information to the public. To listen, learn and educate. A public hearing is held within a public meeting for a specified time. It is not to seek the public's approval or permission to do something. The common land use issues that require a public hearing are the adoption (or amendment) of the general plan, land use control and subdivision ordinances, and the approval of certain subdivisions.

It is never appropriate to poll the members of the public in attendance at a meeting to see what they think. While what they say matters, the volume and number of repetitions does not. A public hearing should be a time that the planning commission listens and learns. It is not a time to convince or argue with the public.

Public hearings can become quite contentious. They don't have to be. It is the duty of the chair of the meeting to see that they are kept in control. The best way to do this is to establish clear rules for the public hearing. Those rules can include reasonable limitations on the time each speaker is given and the conduct of the speaker. What is reasonable depends on the issue, the number of people present and the time constraints of the meeting. One good way of keeping a public hearing on track is for the chair to keep members of the council and city staff from responding directly to the member of the public who is speaking. It is very tempting to try to correct

misstatements made in a public hearing, but this is rarely helpful. It leads to unnecessary confrontation and argument. A summary of what you have heard from the public at the end of the meeting also helps the public to know they are part of the process. It is also encouraged to let the public know what the next steps are in the approval process after the hearing is held and how their concerns might be addressed. Remember, listen, learn and educate.

Procedural due process requires that an applicant for any permit be given notice of any meeting regarding his or her application, the right to be heard, and a fair hearing or decision. Utah law requires that the applicant be given specific notice of the date, time and place of any meeting where the application is being considered and also be given copies of any staff reports regarding the application at least three days before the meeting or hearing.

Utah Code 10-9a-202.

- (1) For each land use application, the municipality shall:
 - (a) notify the applicant of the date, time, and place of each public hearing and public meeting to consider the application;
 - (b) provide to each applicant a copy of each staff report regarding the applicant or the pending application at least three business days before the public hearing or public meeting; and
 - (c) notify the applicant of any final action on a pending application.
- (2) If a municipality fails to comply with the requirements of Subsection [\(1\)\(a\)](#) or [\(b\)](#) or both, an applicant may waive the failure so that the application may stay on the public hearing or public meeting agenda and be considered as if the requirements had been met.

5. Ordinances and Resolutions

Municipal power is exercised by city legislative bodies through passage of ordinances and resolutions. The Utah Municipal Code sets forth the general process for enacting an ordinance or resolution. (Utah Code 10-3-701 et seq.)

The difference between an ordinance and a resolution is that a resolution is used to exercise only administrative powers. Examples of administrative powers are such things as establishing water and sewer rates, charges for garbage collection, or adopting personnel policies or guidelines regulating the use of municipal property. All legislative functions must be done by ordinance. Most planning commission actions will focus on making recommendations to the legislative body on land use ordinances. The zoning ordinance and subdivision ordinance are two such examples. Items such as punishments, fines, or forfeitures, may not be imposed by resolution but must be imposed by ordinance.

All ordinances and resolutions must be in a written form prior to their passage. The written form of an ordinance and resolution should be substantially the following:

1. A number.
2. A title that indicates the nature of the subject matter of the ordinance or resolution.
3. A preamble that states the need or reason for the ordinance or resolution.
4. An ordaining clause which states “be it ordained (or resolved) by the (name of the governing body and municipality).”
5. The body or subject of the ordinance or resolution.
6. When applicable, a statement indicating the penalty for violation of the ordinance.
7. A statement indicating the effective date of the ordinance or when the ordinance shall be come effective.
8. A place for the signature of the mayor or acting mayor.
9. A place for the municipal recorder to attest the signature of the mayor.

Part II. The Responsibilities of the Planning Commission

1. The Planning Commission's role

The Planning Commission is the body that helps the council make policy decisions on land use. They are the "local experts" that help craft a consensus on land use issues. They may take final action on land use application if the council has so delegated the power to them. It is not uncommon for members of a planning commission to be at odds with the city or town council. This is understandable since the primary purpose of the planning commission is to act as an advisory body that makes reasoned recommendations to the council about the general plan and the land use ordinances, but the city or town council is under no obligation to take the recommendations of the Planning Commission.

It is not a rare occurrence for members of a Planning Commission to become invested in their recommendations. These recommendations are the product of long public processes and hard decision making. It can appear disrespectful to the process and the efforts of the Planning Commission when the council ignores the recommendations of the planning commission and goes off on its own. Open communication and meeting annually with the Council to set priorities and goals may help alleviate any tensions. It may not. Planning Commissioners can always run for office if they feel there needs to be a change.

Decisions regarding the general plan and the adoption of land use ordinances are legislative acts that are intended to be made by elected policy makers and not by appointed commissioners. Council members must always respect the recommendation of the Planning Commissions, but in the end they need to vote for their own constituents according to their own consciences and the city and town code.

It is also not uncommon for city and town councils to become frustrated with their own Planning Commissions. This is generally not because of any recommendation made by the Planning Commission as an advisory body, but when the commission is acting as a land use authority and granting or denying permits and approvals.

The principle source of this frustration is a Planning Commission's attempt to exercise discretion in granting or denying these permits. Utah law is very clear that a landowner is entitled to approval of a land use application if the application complies with the city or town's ordinance. (Utah Code section 10-9a-509(1)(a))

It is also specifically stated in Utah law that a land use authority cannot impose any requirement on an applicant for a land use permit that is not specifically expressed in either state law or local ordinances. (Utah Code section 10-9a-509(1)(i))

In addition, the law states that if a proposed subdivision, with limited exceptions, complies with the city or town ordinances, it must be approved. (Utah Code section 10-9a-603(2)(a)) What all this means is that the Planning Commission, when acting as a land use authority, has very little discretion on whether or not to grant or deny the

permit. If the land owner's application complies with the ordinances the commission must approve it, and if it does not comply then the Planning Commission must deny the application. This is regardless of whether or not the planning commission, or the public, thinks that the application is a good or bad idea.

When a Planning Commission ignores the law and approves (or denies) a land use application in violation of the city or town ordinances it just makes trouble for the city or town council. This type of trouble can lead to resentment.

The following points are some basic rules for members of a Planning Commission to follow that will help the planning process and avoid conflict between the Planning Commissions and the city or town councils.

Legislative and Administrative

Planning Commissioners must understand and appreciate the dual role that they may play. When they are making a recommendation on a general plan or on a land use ordinance they are a part of the political, legislative process. They have broad discretion in what their recommendation can be. They can listen to the public even if it is just uneducated clamor.

When the Planning Commission is acting as a land use authority it has little discretion. They are acting in an administrative capacity. The land owner's application either complies with the ordinances or it does not. An individual Planning Commissioner's opinion of the merits of a proposed land use application is not relevant to the process. Any individual Commissioner's opinion, and any of the public's comments and concerns, are relevant only to the extent that they speak to issue of compliance with the existing law.

Advisory Body

Planning Commissioners must understand that the Planning Commission is intended to shape policy not make policy. It is not a representative body and has no constituency. Commissioners do not represent neighborhoods and are not gate keepers. Their role is to be experts in planning and the local ordinances. They are to make reasoned recommendations and apply the ordinances as written.

If a Planning Commissioner wants to be a policy maker they just need to put their names on a ballot and win an election. Until they do so they should not attempt to make policy. They should be content with just shaping policy.

Due Process

Planning commissioners should respect the public process and the due process rights of the land owners. As previously discussed all meetings of the Planning Commission must comply with the Utah Open and Public Meetings Act. This means that both decisions and deliberations of a planning commission must be public.

Public Service

Lastly, it is important to remember that being on a Planning Commission is about public service. One of the primary roles of a planning commission is to help the landowner accomplish with his land what the landowner desires, in a manner consistent with the city's plans and ordinances. Many Planning Commissioners seem to delight in frustrating the plans of the landowner. They take delight in telling people no—instead of how. Some planning commissioners feel that it is their role to force an applicant to do what the commissioner would do if the Commissioner owned the property. These attitudes do not serve the public.

A Planning Commission fulfills its purpose when it acts in a manner supportive of the policy and policy makers. It is not intended to be adversarial to the council. It is not a check or balance to the council. It is not there to slow growth or frustrate land owners. It is there to add professionalism, fairness and common sense to the planning and land use control process. It only serves this valuable function when it works within the constraints of the law and without regard to public prejudice and the clamor of the crowd.

2. The Creation and Maintenance of Documents

The General Plan

Every city and town, regardless of size, is required to have an updated general plan. The general plan is a practical vision of the future capable of shifts in detail and arrangement over time as available resources and public preferences change. The comprehensive plan is practical in that it lays out a series of objectives that the community realistically intends to accomplish over the coming years. The plan also reflects vision in that it encapsulates the community's goals and aspirations for its future. State law describes the general plan in this way:

10-9a-401. General plan required -- Content.

- (1) In order to accomplish the purposes of this chapter, each municipality shall prepare and adopt a comprehensive, long-range general plan for:
 - (a) present and future needs of the municipality; and
 - (b) growth and development of all or any part of the land within the municipality.
- (2) The plan may provide for:
 - (a) health, general welfare, safety, energy conservation, transportation, prosperity, civic activities, aesthetics, and recreational, educational, and cultural opportunities;
 - (b) the reduction of the waste of physical, financial, or human resources that result from either excessive congestion or excessive scattering of population;
 - (c) the efficient and economical use, conservation, and production of the supply of:
 - (i) food and water; and

- (ii) drainage, sanitary, and other facilities and resources;
 - (d) the use of energy conservation and solar and renewable energy resources;
 - (e) the protection of urban development;
 - (f) the protection or promotion of moderate income housing;
 - (g) the protection and promotion of air quality;
 - (h) historic preservation;
 - (i) identifying future uses of land that are likely to require an expansion or significant modification of services or facilities provided by each affected entity; and
 - (j) an official map.
- (3) Subject to Subsection [10-9a-403\(2\)](#), the municipality may determine the comprehensiveness, extent, and format of the general plan.

The state requirements for the general plan are fairly simple. The plan must include:

1. present and future needs of the municipality;
2. growth and development of all or any part of the land within the municipality;
3. the results of an affordable housing assessment (towns are exempt); and
4. a map of the community as currently used or zoned.

The law then goes on to suggest a long list of other elements that “may” be included. Most communities add some or all of the elements suggested because doing so will assist them with future budget and land use decisions. The plan should be a “working plan” and a “practical vision for the future”, developed to not only meet the required essentials but to be of use to the community for at least the next five years. Many communities choose to review the plan annually to make sure they are in step with the vision and meetings any goals and objectives they may have set.

The process requires the writing of the plan to be under the supervision of the Planning Commission. The Commission is required to have at least one public hearing before recommending it to the legislative body. In practical experience you will most likely hold several meetings as you are trying to create policy and a consensus on the future of your city or town. Once it is recommended by the Planning Commission, the plan may be adopted, amended, or rejected by the city council.

Land Use (Zoning) Ordinances

It is not required that a municipality have zoning, but keep in mind that without zoning, you have no authority to regulate or determine land use in your community.

10-9a-501. Authority to enact land use ordinances and zoning map.

The legislative body may enact land use ordinances and a zoning map consistent with the purposes set forth in this chapter.

A zoning ordinance can be very simple. There is at least one community in Utah whose original ordinance consisted of one zone with one permitted use; all other uses were

conditional. It was two pages long and included the necessary legal jargon and a definition of terms.

In case you have heard otherwise, a zoning ordinance, legally adopted, has the force of law. Zoning has been part of the law in this country since the 1920's and has been through, literally, hundreds of challenges, here in Utah and nation-wide.

The zoning ordinance, like the general plan, is initially the responsibility of the planning commission. Once it is written, and agreed to, the Commission, after a public hearing, recommends it to the legislative body

10-9a-502. Preparation and adoption of land use ordinance or zoning map.

- (1) The planning commission shall:
 - (a) provide notice as required by Subsection [10-9a-205\(1\)\(a\)](#) and, if applicable, Subsection [10-9a-205\(4\)](#);
 - (b) hold a public hearing on a proposed land use ordinance or zoning map;
 - (c) if applicable, consider each written objection filed in accordance with Subsection [10-9a-205\(4\)](#) prior to the public hearing; and
 - (d)
 - (i) prepare and recommend to the legislative body a proposed land use ordinance or ordinances and zoning map that represent the planning commission's recommendation for regulating the use and development of land within all or any part of the area of the municipality; and
 - (ii) forward to the legislative body all objections filed in accordance with Subsection [10-9a-205\(4\)](#).
- (2) The municipal legislative body shall consider each proposed land use ordinance and zoning map recommended to it by the planning commission, and, after providing notice as required by Subsection [10-9a-205\(1\)\(b\)](#) and holding a public meeting, the legislative body may adopt or reject the ordinance or map either as proposed by the planning commission or after making any revision the municipal legislative body considers appropriate.

Once the ordinance is passed, it may be the responsibility of the Planning Commission to administer it. (It is important that the Commissioners know the difference as to when they are acting as administrators, interpreting the law, and when they are acting as a legislative body, making new law).

The procedure to amend the ordinance is basically the same. Sometimes the Council, the Commission, or a petition from a citizen, will request an amendment in order to clarify, or make additions to or deletions from the ordinance.

More often, the Commission will hear a petition from a citizen to change the zoning on his or her land. Either change requires the full-fledged amendment procedure, including final action of the Council, after a public hearing with notice.

In making changes, the Commission should be influenced by the general plan. If the change is supported by the general plan, then reference to the plan should be used to give support to the decision. If it is in opposition to the general plan, the commission should acknowledge the plan and give reasons or “findings” for the lack of concurrence.

The Subdivision Ordinance

Once again it is not required that a municipality have a subdivision ordinance but the law does set a minimum standards of review if no local ordinance is in place. Again we highly recommend that you institute an ordinance so that the unique vision of each community can be realized.

10-9a-601. Enactment of subdivision ordinance.

(1) The legislative body of a municipality may enact ordinances requiring that a subdivision plat comply with the provisions of the ordinance and this part before:

- (a) it may be filed or recorded in the county recorder's office; and
- (b) lots may be sold.

(2) If the legislative body fails to enact a subdivision ordinance, the municipality may regulate subdivisions only to the extent provided in this part.

The Planning Commission is responsible for the creation and maintenance of the subdivision ordinance.

10-9a-602. Planning commission preparation and recommendation of subdivision ordinance - Adoption or rejection by legislative body.

(1) The planning commission shall:

(a) prepare and recommend a proposed ordinance to the legislative body that regulates the subdivision of land;

(b) prepare and recommend or consider and recommend a proposed ordinance that amends the regulation of the subdivision of the land in the municipality;

(c) provide notice consistent with Section 10-9a-205; and

(d) hold a public hearing on the proposed ordinance before making its final recommendation to the legislative body.

(2) The municipal legislative body may adopt or reject the ordinance either as proposed by the planning commission or after making any revision the legislative body considers appropriate.

Good subdivision development is important to almost every community in Utah. One or two houses are probably not going to have a city-wide influence no matter how large or out of character they may be. A large subdivision can and will have a major impact on

the character, population, and the need for services. Therefore, the creation of a subdivision ordinance must be carefully, clearly, and precisely crafted.

If your municipality is using the same ordinance that it has used for more than five years, it is probably out of date. There have been a lot of new ideas and innovations in what cities can do with subdivisions. Here are just a few general rules that need to be considered:

- The primary objective of the ordinance should be to put the Planning Commission in a proactive rather than a reactive situation. In other words, you should be telling the developer how you want development to occur rather than merely reacting to his plans. Both fiscal and aesthetic issues should be considered. Fiscal in how the town will pay for future services to the development and aesthetic in how it will fit into the already developed areas of town;
- The ordinance needs to clearly state that all development costs, including those incurred by the city for review, must be borne by the developer;
- The Commission cannot make demands of a developer if those demands are not in the ordinance, unless the ordinance specifically allows for negotiations;
- The developer should be responsible for all development fees. If the city charges impact fees, it must have completed a professional study that justifies the fees. (If you do not know the difference between impact fees and development fees, see the section on definitions);
- The ordinance should include the numbers of plans to be submitted for sketch plan approval and preliminary approval as well as the manner in which the final plan should be submitted;
- The ordinance should, and in some cases, must, consider natural hazards and resources that need to be addressed by the Commission and the developer;
- Subdivision ordinances should consider landscaping and street lighting requirements, especially in commercial areas, and can require design elements in all zones;
- Both the physical elements of road construction, such as width, depth, and materials, and the impact and flow of the traffic roads will produce, should be addressed in the ordinance;
- The plan should also plan for infrastructure and utility needs with a view to long term demands that apply to future needs rather than just the short term needs of a single development.

You may have decided by now that the writing of a subdivision ordinance is a very complicated endeavor. No one will disagree with you. A poorly written ordinance will come back to haunt you and the municipality for a very long time.

A Commission should take its time, look at a lot of ordinances, and even get good assistance. While ordinances from other cities and towns can be helpful, you will need to make changes that will suit your own community. Be aware too, that by hiring a professional, you may still get a copy of someone else's plan, unless you are careful to make sure that you are getting a custom-made product.

There are a lot of resources available to assist you in writing a subdivision ordinance. A partial list is in the section entitled “Resources for Assistance”.

Other Duties as Assigned a.k.a. acting as a Land Use Authority

In addition to the duties spelled out in the state code additional duties can be assigned and delegated to the Planning Commission by the city or town council. These may include the authority to approve specific land use applications. In this case the Commission would be acting as a land use authority on that specific activity.

Many cities and towns ask that the Planning Commission do such things as: approve building permits to make sure zoning standards are being met; do a historical survey of the community; plan for future parks and open space; make recommendations for the development of affordable housing; or do a five -year capital improvement plan. (Note that the request should come from the legislative body, not from an individual member of that body, and it should come to the Commission in writing).

In addition, the Planning Commission can suggest to the city council activities or projects that it feels need attention. Commissioners may base such a need on the general plan or on their own observations and experiences.

The elected officials of a municipality are also allowed to decide which land use authority will deal with nonconforming uses and with conditional uses. A new member should inquire if the Planning Commission deals with either and be prepared to discuss either or both as needed. Both are fairly complicated but here is some general information that may help:

Nonconforming uses (Utah Code 10-9a-511) are uses that existed prior to a change of zoning. The legislative body has the responsibility of deciding which land use authority will hear applications on nonconforming uses and noncomplying structures.

In 2006 changes were made to the law in this area. Virtually all cities and towns need to amend their ordinances pertaining to nonconforming uses. Most will need to add a new concept of noncomplying structure. The new definitions that were added are:

1. **Noncomplying Structure.** A structure that:
 - (a) legally existed before its current land use designation; and
 - (b) because of one or more subsequent land use ordinance changes, does not conform to setback, height restrictions, or other regulations, excluding those regulations that govern the use of land.

2. **Nonconforming Use.** A use of land that:
 - (a) legally existed before its current land use designation;
 - (b) has been maintained continuously since the time the land use ordinance regulation governing the land changed; and

(c) because of one or more subsequent land use ordinance changes, does not conform to the regulations that now govern the use of the land.

By definition, a nonconforming use is one that existed prior to a change in zoning that would prohibit such a use. For example: A small business is established in an area that is zoned for light commercial. Ten years later it is obvious that few businesses are interested in that area and that most of it is being used for residential. The city rezones the property for residential use only, therefore, no new businesses will be allowed. As a result, our existing business becomes nonconforming. A new commissioner needs to read and refer to what the ordinance says about nonconforming uses. Ordinances will vary depending on choices made by policy makers.

Dealing with nonconforming uses can be very tricky but here are some rules and questions to ask that generally apply:

1. The legality of a nonconforming use is determined by its legality at the time it came into being. Was it legal at the time? Was it legally established? If not, it has no legal right to continue in its present location. Time does not buy legality. The burden of proof or legality lies with the applicant not the municipality.
2. Unless your land use ordinance makes provision for limiting the continuation of a legal nonconforming use, it may continue to exist.
3. A municipality does not need to allow for the expansion of any nonconforming use. If there are going to be circumstances when you believe they ought to be allowed to expand, those need to be detailed in your ordinance.
4. While you can limit the existence of nonconforming uses in a number of ways, the one exception to that rule is billboards. You will need to refer to the section of the State Code that in Title 10 to learn more about these special creatures.

In addition to the new definitions added in 2006 another change was made to this issue as well. Most cities and towns have a code provision, which allows the city to order the demolition of a nonconforming use/noncomplying structure if the building is partially destroyed by fire or other natural calamity. The law now requires that each city and town repeal such an ordinance and thereby allow the reconstruction of a nonconforming use/noncomplying structure that succumbs to a natural disaster.

The issue of nonconforming uses can be very complicated. It is a good area in which to get training and the advice of your attorney.

Conditional Uses (Utah Code 10-9a-507) are tools that are meant to give limited flexibility to a zoning ordinance.

Conditional uses should be specifically detailed in each zone where they are allowed with accompanying review standards. Specific zones usually have lists of permitted uses and conditional uses. It is possible to have zones that have no conditional uses.

In fact, it is possible that your community does not have conditional uses at all. They must be listed in order for the planning commission to issue such a permit. It is also possible that you have too many conditional uses and that the Planning Commission should look at limiting the number.

Let's assume that a specific use is listed as conditional in a given zone. The petitioner will apply by filing a form with the clerk or recorder. Once it comes to the Planning Commission, you will apply the criteria, from the ordinance to the request and place specific conditions that the applicant must agree to before the permit can be issued. Such conditions can be tailored to the specific location and use. Conditions may differ from previous or future petitions.

The standard that must be met is: You should be able to show that each condition being imposed safeguards the health, safety, and welfare of those who live or own property as a permitted use. As long as you can show findings that support your conclusions, you are on safe ground.

A conditional use is regulated by the following standards:

10-9a-507. Conditional uses.

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

(2) (a) A conditional use shall be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards.

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

Here is some general information about a conditional use:

1. It must be listed as such in the land use ordinance.
2. Once a permit is granted, the conditional use stays with the land rather than with the owner.
3. The use, and the required conditions attached to it, is a vested property right unless, or until, the conditions are violated.
4. There should be a written record of any conditions that were attached to the permit when approved or written reasons for a denial.

An example of a conditional use section in a land use ordinance may look like this:

Conditional Uses for the Residential District:

- Home occupations
- Child Care
- Small neighborhood commercial

Standards of review for condition use applications must be written in your code. They may look like this:

CONDITIONAL USE STANDARDS OF REVIEW. The City shall not issue a Conditional Use Permit unless the planning commission concludes that the application fully mitigates all identified adverse impacts and complies with the following general standards applicable to all conditional uses, as well as the specific standards for the use.

A. GENERAL REVIEW CRITERIA: An applicant for a conditional use in the zone must demonstrate:

1. The application complies with all applicable provisions of this title, state and federal law;
2. The structures associated with the use are compatible with surrounding structures in terms of use, scale, mass and circulation;
3. The use is not detrimental to the public health, safety and welfare;
4. The use is consistent with the city general plan, as amended;
5. Traffic conditions are not adversely effected by the proposed use including the existence of or need for dedicated turn lanes, pedestrian access, and capacity of the existing streets;
6. Sufficient utility capacity;
7. Sufficient emergency vehicle access;
8. Location and design of off-street parking as well as compliance with off-street parking standards;
9. Fencing, screening, and landscaping to separate the use from adjoining uses and mitigate the potential for conflict in uses;
10. Compatibility of the proposed mass, bulk, design, orientation, and location of the structures on the site; including compatibility with buildings on adjoining lots and to the street;
11. Exterior lighting that complies with the lighting standards of the zone and is designed to minimize conflict and light trespass with surrounding uses; and
12. Within and adjoining the site, impacts on the aquifer, slope retention, flood potential

Part III. The Role of the Individual Commissioner

There are rules that limit your powers and duties as a Planning Commissioner but there are no absolute rules written any place about how you should act as a Commissioner. There are, however, a lot of suggestions from many different sources.

Here are some very basic rules that apply:

- Remember that you are a member of a Commission that has power, but the power lies in the majority vote, not with the individual.
- Remember that you are not there representing a specific neighborhood, business, or interest. Your responsibility is to protect “the public good” which has hopefully been defined by the general plan and the development ordinances.
- One of your primary roles is to help the landowner accomplish with his land what the landowner desires, in a manner consistent with the city’s plans and ordinances
- You are subject to the same rules of ethics and procedures as elected officials.

Perhaps the easiest way of defining the role of a Planning Commissioner is to look at a list of “shalts” and “shalt nots”.

The “Shalts”:

- attend meetings and vote;
- preview materials for cases and take field trips when appropriate;
- pay attention to the information that is presented by all parties in the meetings of the Commission;
- ask questions if you need to;
- represent the good of the community rather than the good of the few;
- be knowledgeable and respectful of constitutional rights;
- become an advocate of the city, its general plan, and its development ordinances;
- become familiar with and respect the laws of the country, the state, and the city or town in which you live;
- treat others with dignity, regardless of how you may view their issue or point of view;
- be able to say “no” when it is appropriate and legal;
- make decisions based on the law, and good planning, rather than on public sentiment or pressure;
- become knowledgeable about planning, both in theory and practice.

The “Shalt Nots”:

- be afraid to make difficult decisions based on the law even though they may be unpopular;
- have meetings one-on-one with petitioners;
- have a closed mind to arguments or new ideas;
- make up your mind before hearing all the available information;
- represent a single point of view or base your vote on a single personal experience;
- violate the open meetings law or the ethics act of the State of Utah or of the municipality in which you live;
- use your position or information given to you as a result of your position to benefit your self, friends, or family.

Part IV. Resources for Decision making a.k.a. Stuff You Should be Given as You Begin

Listed below are materials that every municipal Planning Commissioner should have. If you are given a blank look when you ask for any of these items, you can encourage your Commission to develop whatever is missing.

1. A copy of your general plan. (Every city and town is required by state law to have an updated general plan)
2. A copy of the zoning ordinance, and subdivision ordinance, including maps.
3. Access to a copy of the municipal land use ordinances with the section on the Powers and Duties of the Commission .
4. A copy of the Commission's by-laws and procedures
5. A copy of the meeting schedule for the remainder of the current year.
6. The Commissions work plan – things the commission intends to deal with other than responses to petitioners.
7. A copy of the conflict of interest statement that you should complete and return to the city recorder, clerk or commission staff-person.

A Checklist of Relevant Questions for You and Your Land Use Authority

Does your city or town have?

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

Important Characteristics of a Successful Planning Commission

- The selection of Commission members provides broad-based representation (a cross section of community, background, talent, and abilities).
- The Commissioner selection process places emphasis on community spirited membership that is representative, caring, and responsive to community needs.
- There are policies, rules and procedures for terminating inactive members.
- Orientation is provided for new members.
- The Commission is well-organized, with clearly defined goals and objectives and established priorities. This is essential if the commission is to function as more than a mere "zoning commission."
- There is good communication characterized by openness at meetings and positive relationships between Commission members, staff, and the general public.
- There is effective realization and utilization of outside resources.
- There is receptiveness as evidenced by open-mindedness, flexibility, and willingness to change or to compromise.
- There is an understanding and acceptance of responsibilities as evidenced by a willingness to work to face difficult issues, to stay informed, to listen and learn, and to give the time necessary for the job.
- There is a commitment to striving for a group consensus on issues through cooperation, teamwork, and the development of commission policies. This is particularly valued by elected officials.
- There is able leadership characterized by well-run meetings, good preparation, effective agendas, active committees, good attendance, promptness, respectful membership, and a pleasant atmosphere at meetings.
- Meeting times, dates and places are selected for maximum convenience to the general public.
- Members have a personal commitment based on concern, dedication, a feeling of usefulness, and an acceptance of self and others.
- Productive membership is achieved through perseverance and a willingness to accept risk, vision, and enthusiasm.
- There is an educated and knowledgeable Commission that receives continuing education through workshops, conference trips, and published materials.
- Members have an understanding of the legal elements, especially the open meetings act, due process, and individual rights as guaranteed by the Constitution.
- Humor is not forgotten. Remember you all live here and at the end of the day you all are members of the same community. Enjoy it!

Part V. Questions Often Asked about the Planning Commission

How much time will I need to spend doing Planning Commission business?

It really depends on the municipality in which you live. Most Commissions meet once a month. When there are major projects underway, such as the writing of a General Plan or zoning ordinance, you may be asked to meet more often in work sessions. The length of the meetings, in which you respond to petitions, will vary depending on the number of issues before the commission. In addition to meetings, it is generally assumed that you will spend time reading up on city documents in preparation for meetings. You may also be expected to attend some council meetings and an occasional retreat.

Can I be personally sued for votes I make as a planning commissioner?

It is very unlikely that you will be personally sued. Your name may be included in a filing, but, as an official of the city, the city's attorney and insurance will protect you. The only time you may not be covered is if you act illegally. That usually means that you are using your position for personal gain; to do so can and will get you into trouble. In your normal activities as a Commissioner you will be protected.

As a Planning Commissioner, who am I "answerable" to?

You are appointed by the mayor with the advice and consent of the council. The Planning and Zoning Commission is advisory to the mayor and the council. Serving as a citizen planner your responsibility is to the "public good". Your planning "bibles" are your general plan and your development ordinances. If it sounds as if you have many "masters", you should know that all of them should have the same goals and intentions. That should make things easier for you and your fellow board members.

How do the Planning Commission and the Appeal Authority Interface?

Each has its own responsibility as defined by state code. The commission, for example, will never decide variances. There are times when the Commission will table a request or permits, send it to the appeal authority, and then complete the application only and when a variance has been granted by that entity. You should know that, while the commission is primarily an advisory board, the Appeal Authority acts as a quasi-judicial body. It has a very different set of rules to follow and standards that must be met.

How much interference should we expect from members of the city council?

The council, as a body, advises the mayor on your appointment. It may also, as a body, request that the Commission work on projects that represent policies expressed in the general plan. No single member of the legislative body should interfere in the decision-making of the Commission. Certainly, council members have the right to

attend planning commission meetings but they should do so as citizens rather than as members of the city council. The same applies to the Mayor.

Who “runs” Planning Commission meetings?

The Chair is in charge of managing Commission meetings. The Commission should have written procedures and should elect a Chair once a year. It is the Chair’s responsibility to see that the meeting is run in a fair, legal, and efficient manner. It is also the Chair’s responsibility to ensure that the public is dealt with fairly but not allowed to disrupt or interfere with the commission’s business.

Who Establishes the Commission’s Agenda?

The city/town must have a policy for handling petitions from the public. The accepting of petitions is usually dealt with initially by the clerk or recorder’s office. There should also be rules for how elected officials or Commission members request consideration of the Commission. Your staff or clerk should supply you with a copy of these procedures. The Commission should review their procedures and policies once a year and make improvements as needed.

If you have other questions, please feel free to call our office. We will do our best to answer your questions.

Part VI. Resources for Assistance and training.

Written Materials

The League has the following books in publication

- Powers and Duties: A Guide for Utah Municipal Officials
- Handbook for Appeal Authorities
- The Planning Commissioners Guide to Streets, Roads and Traffic
- Citizen Planner's Guide to Subdivision Development
- Human resources Handbook for Cities and Towns. People, Practices and Policies
- Local Government Officials Directory

Web Sites and E-mail Resources

- The League web-site has information regarding land use. Our address is www.luau.utah.gov.
- You can pull up the state code at www.le.state.ut.us/~code.

Training and Assistance

- The Utah League of Cities and Towns offers free training to Planning Commissions scheduled on a case by case basis. Call our office to set up a date.
- In addition, the League offers technical assistance to help with specific questions on land use ordinances, annexation policies, and the like. For this type of assistance call 1-800-852-8528 or 801-328-1601.
- The Annual Conference, the Midyear Conference and the Water-Planning Conference presented by the Utah League of Cities and Towns contain several workshops specifically for planners. A schedule of upcoming conferences, detailed information and registration is available on our website – www.ulct.org – or call our office for more information.

Part VII. Definitions of Planning, Zoning, and Development Terms

These definitions are compiled from the Utah State Code, the Illustrated Book of Development Definitions, "The Job of the Planning commission", (Albert Solnit, 1987), the "Planning commissioners Handbook" published by the League of California Cities.

The lists were edited by the Utah League of Cities and Towns staff. They are intended for general reference only. For specific legal definitions consult your municipal attorney.

Abandonment: The relinquishment of property, or a cessation of the use of the property by the owner, with the intention neither of transferring rights to the property to another owner nor of resuming the use of the property.

Abutting: Having property or zone district boundaries in common.

Access: A way of approaching or entering a property. In zoning and subdivision regulations, lots of record usually are required to have direct access to a public street or highway or to a private street meeting public standards. In the context of land use controls, access includes ingress, the right to enter, and egress, the right to leave.

Accessory Use: A use of land or of a building or portion thereof customarily incidental and subordinate to the principal use of the land or building and located on the same lot with such principal use.

Aesthetic Zoning: The regulation of building design and site developments in the interest of appearance. (Yes, this is legal)

Affected Entity:

"Affected entity" means a county, municipality, independent special district under Title 17A, Chapter 2, Independent Special Districts, local district under Title 17B, Chapter 2, Local Districts, school district, interlocal cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified public utility, a property owner, a property owners association, or the Utah Department of Transportation, if:

- (a) the entity's services or facilities are likely to require expansion or significant modification because of an intended use of land;
- (b) the entity has filed with the municipality a copy of the entity's general or long-range plan; or
- (c) the entity has filed with the municipality a request for notice during the same calendar year and before the municipality provides notice to an affected entity in compliance with a requirement imposed under this chapter.

Air Rights: The right to use the air space over the property of someone else, typically, but not always, over railways and highways.

Amortization: A method of eliminating nonconforming uses by requiring the termination of the nonconforming use after a specified period of time.

Appeal Authority: A person, board, commission, agency, or other body designated by ordinance to decide an appeal of a decision of a land use application or a variance.

Appeal: When a person believes a decision was made in error, an appeal may be filed so that a higher decision-making body can review the case.

Assessment Ratio: The relation between the assessed value of a property and true market value.

Bonuses: (Also known as incentive zoning): The awarding of bonus credits to a development in the form of allowing more intensive use of the land if the developer is willing to provide for greater public benefits than those required.

Buffer Zone: A strip of land zoned to protect one type of land use from another with which it is noncompatible. Where a commercial district abuts a residential district, for example, additional use, yard, or height restrictions may be imposed to protect the residential property. The term may also be used to describe any zone that separates two unlike zones.

Building Area: The total square footage of a lot covered by a building measured on a horizontal plane at mean grade level exclusive of uncovered porches, terraces, and steps.

Building Code: Regulations governing building design, construction, and maintenance. In Utah, all construction is covered under the Uniform Building Code.

Building Envelope: The net cubic space that remains for placing a structure on a site after building line, setback, side yard, height, and bulk regulations are observed.

Building Official: The person responsible for the administration and enforcement of the building, housing, plumbing, electrical, and related codes. All such officials in Utah need to be certified by the State of Utah. The Building Official is the land use authority for the purposes of issuing building permits and initial decisions interpreting each of the aforementioned codes.

Capital Improvement: A government acquisition of real property, major construction project, or long lasting, expensive equipment.

Capital Improvements Program: A proposed timetable or schedule of all future capital improvements to be carried out during a specific period and listed in order of priority, together with cost estimates and the anticipated means of financing each project.

Carrying Capacity: The level of land use that can be permanently accommodated with an irreversible change in the quality of air, water, land, or plant and animal habitats.

Cluster Development: A type of development that allows the reduction of lot sizes below the zoning ordinance's minimum requirements if the land thereby gained is preserved as permanent open space for the community.

Compatibility: The characteristics of different uses or activities that permit them to be located near each other in harmony and without conflict. The conditions established in a Conditional Use process should be based on making sure that the use granted is compatible with the permitted use of the land.

Condemnation: The taking of private property by a government unit for public use when the owner will not relinquish it through sale or other means. The owner is recompensed by payment of "market value". The term "to condemn" is used to indicate determination by a government agency that a building is unfit for use because it is structurally or otherwise unsafe or unhealthy.

Conditional Use: A conditional use is a land use that, because of its unique characteristics or potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts. In order for a conditional use to be considered, it must be listed as such in the applicable zone.

Condominium: The legal arrangement in which a dwelling unit in a building or residential development is individually owned but in which the common areas are owned, controlled, and maintained through an organization consisting of all the individual owners.

Conservation Easement: A tool for acquiring open space with less than full-fee purchase; the public agency buys only certain specific rights from the owner.

Conversion: The partitioning of a single-dwelling unit into two or more separate households or the conversion of the use of an existing building into another use. Such a conversion without required process is usually illegal.

Covenant: A private legal restriction on the use of land contained in the deed to the property or otherwise formally recorded. Covenants held by homeowner associations are not enforced by the municipality.

Culinary Water Authority: The department, agency, or public entity with responsibility to review and approve the feasibility of the culinary water system and sources for the subject property.

Dedication: Gift or donation of property by the owner to another party.

Density: The number of families, individuals, dwelling units, or housing structures per unit of land; usually that unit is expressed as an acre. The control of density is one of the basic purposes of zoning. Gross density includes land for streets, schools and parks. Net density does not include area for public spaces.

Density, Control of: A limitation on the occupancy of land. Density can be controlled through zoning by one or a combination of the following methods: use restriction (single or multiple dwellings), minimum lot-size requirements; floor-area ratios; setback and yard requirements; minimum house-size requirements; establishing ratios between lot and house size; limitations on units per acre; and other means.

Design Review: Review of commercial, industrial, residential structures and some signs to ensure project design and design consistency with structures and the general environment of the surrounding area.

Development Fees: A fee or charge imposed on developers to pay for the actual costs of a new development. Fees pay for the on-site improvements that are directly related to the development. Examples would be streets, sidewalks, water, sewer, etc. They do not include the costs of offsite impacts. (See impact fees)

Development Rights: One of many rights that a property owner may expect to have on a given piece of property. It is not a guaranteed right assumed by ownership but one predicated on many other issues and rights. It is possible to sell or acquire development rights without selling or acquiring the property.

Downzoning: A change in a zoning classification of land that allows for a less intensive use of the land than had been previously allowed.

Easement: A right given by the owner of land to another party for specific limited use of that land. For example, a property owner may give or sell an easement on his/her property to allow for such uses as egress, infrastructure, etc. Once granted or sold it is assumed to be permanent.

Eminent Domain: The authority of a government to take, or to authorize the taking of, private property for public use. The Fifth Amendment requires just compensation for any taking and implicitly prohibits the taking of private property for private use unless declared blighted.

Exaction: A contribution or payment required as a precondition for receiving a development permit. (Before requiring an exaction, consult with your city attorney – there has been recent case law concerning what you can and cannot demand.)

Exclusionary Zoning: Zoning which has the effect of keeping certain types of people out of a community or a neighborhood. There are a number of zoning techniques that can and often are employed such as large-lot zoning, minimum floor space, building

requirement controls, etc. There have been a number of recent court cases challenging this type of zoning.

Fair Market Value: The price of a building or land which would be agreed upon voluntarily in fair negotiations between a knowledgeable owner willing, but not forced, to sell and a knowledgeable buyer willing, but not forced, to buy.

Feasibility Study: An analysis of a specific project or program to determine if it can or should be successfully carried out.

Final Subdivision Map: A map of an approved subdivision map filed in the county recorder's office. It usually shows surveyed lot lines, street right-of-ways, easement monuments, and distances, angles, and bearings, pertaining to the exact dimensions of all parcels, street lines, and so forth.

Finding or Findings of Fact: A determination or conclusion based on the evidence presented by the deciding body in support of its decision. When it presents its decision, the body is often required to demonstrate in writing that the facts presented in evidence support its decision in conformance with the law.

Frontage: The area that sits between a structure and the street.

General Plan: A legal document in the form of a map and accompanying text adopted by the local legislative body. The plan is a compendium of its policies regarding the long-term development of its jurisdiction. It is sometimes called a comprehensive or master plan.

Grading Permit: Issued for earthwork construction before grading or filling is begun.

Improved Land: Usually refers to vacant land that has been improved with basic facilities such as roads, sewers, water lines, and other public infrastructure facilities that meet development standards.

Incentive Zoning: The granting by the local authority of additional development capacity in exchange for the developer's provision of a public benefit or amenity. The local ordinance would have to clearly spell out the incentives that could be considered.

Inclusionary Zoning: Regulations which increase housing choice by providing the opportunity to construct more affordable, diverse, and economical housing to meet the needs of low and moderate income families.

Indirect Source: An indirect pollution source that by its nature attracts large numbers of polluting sources while not actually releasing the pollutant itself.

Infrastructure: Facilities and services needed to sustain industry, residential and commercial activities. It includes water and sewer lines, streets and roads, communications, and public facilities such as fire houses, parks, etc.

Inverse Condemnation: The taking of private property as a result of governmental activity without any formal exercise of eminent domain. An example would be the expansion of an airport runway that brings airplanes so low over residences so as to make them uninhabitable.

Just Compensation: Payment made to a private property owner by an agency with power of eminent domain when the private property is taken for public use.

Historic District: A designated area given special consideration because of its significant cultural, historical, or architectural value. Permits issued in such an area require additional procedural action.

Historical Landmark Designation: If an individual building or lot has significant cultural, historical, or architectural value, it may be designated an historic landmark. (For more specific information, contact the Utah Heritage Foundation.)

Home Owner's Association: A non-profit organization operating under recorded legal agreements running with the land. Generally, each lot owner in a condominium or similar planned development becomes a member upon purchase and each lot is subject to a charge for a proportionate share of the expenses for the organization's activities such as maintaining common areas, e.g. landscaping, recreation facilities, and parking areas.

Impact Analysis: A study to determine the effects of a proposed development on activities, utilities, circulation, surrounding land uses, community facilities, environment, and other factors directly, indirectly, or potentially affected. In Utah an impact analysis must be completed before impact fees can be charged.

Land Use Application: An application required by a municipality's land use ordinance.

Land Use Authority: A person, board, commission, agency, or other body designated by the local legislative body to act upon a land use application.

Land Use Ordinance: A planning, zoning, development, or subdivision ordinance of the municipality, but does not include the general plan.

Leapfrog Development: Development that occurs well beyond the existing limits of urban development and thus leaves intervening vacant land behind. Such a practice results in greater service costs and is, therefore, discouraged.

Lot: The basic development unit- an area with fixed boundaries, used or intended to be used by one building and its accessory buildings. Characteristics of lots for zoning purposes include: buildable area, lot coverage, lot depth, and lot width. A buildable lot must meet the requirements of the zoning district in which it is located and must front on a public street or an approved private street.

Metes and Bounds: A system of describing and identifying land by measures (metes) and direction (bounds) from a point of reference. (In Utah law its use is often to suggest an alternative to a formal surveyors plat. See Minor Subdivision)

Minor Subdivision: A subdivision of fewer than ten lots. A minor subdivision may be sold by metes and bounds if it meets all other procedural and actual requirements of a subdivision.

Mixed Use Zoning: A zone that is specifically designed to encourage uses that are different yet compatible. The most common is a residential zone that allows for small retail and professional uses that will fit in a neighborhood and be used by local residents. Such zones are encouraged as part of a “walkable” communities design.

Noncomplying Structure: A structure that:
(a) legally existed before its current land use designation; and
(b) because of one or more subsequent land use ordinance changes, does not conform to setback, height restrictions, or other regulations, excluding those regulations that govern the use of land.

Nonconforming Use: A use of land that:
(a) legally existed before its current land use designation;
(b) has been maintained continuously since the time the land use ordinance regulation governing the land changed; and
(c) because of one or more subsequent land use ordinance changes, does not conform to the regulations that now govern the use of the land.

Nuisance: Anything that interferes with the use or enjoyment of property, endangers personal health or safety, or is offensive to the senses.

Occupancy Permit: A permit needed for a new tenant to move into a new structure. This is considered part of the building-permit process.

Off-site Improvements: Conditions that can be required of a project that involves the installation of streets, curbs, gutters, sidewalks, street trees, etc. that are located adjacent to the project on city-owned property.

Overlay Zones: A set of zoning requirements in addition to those of the underlying district. Developments within the overlay zone must conform to the requirements of both zones or the more restrictive of the two. Such zones are usually employed to deal

with special physical characteristics such as flood plains, historical areas, soils, or hillsides.

Parcel: A lot or contiguous group of lots in single ownership or under single control, and usually considered a unit for purposes of development.

Permitted Use: A use by right which is specifically authorized in a particular zoning district. It is contrasted with conditional uses which are authorized only if certain requirements are met and after review and approval by a designated body.

Phased Development: A term referring to programs or techniques to guide the timing and sequence of development. Such zones are used as a growth management tool and must be part of the General Plan of the municipality.

Planned Unit Development (PUD): A self-contained development, often with a mixture of land uses and densities, in which subdivision and zoning controls are applied to the project as a whole rather than to individual lots. They are supposedly used to benefit both the developer, often by allowing for greater density, and the municipality, by preserving more open space or safeguarding sensitive areas. A community should make sure that they are receiving adequate benefit before agreeing to the use of this tool.

Planning Commission: The land use authority that is charged with the development of the General Plan, formulation and administration of the Zoning Map and Ordinance and the review of any other land use matters designated by the Mayor and Council. It is an advisory board.

Planning Director: The chief administrator in the planning department. Usually works as staff and professional advisor to the Planning Commission. The Zoning Ordinance can give certain powers and responsibilities to the Director as a land use authority.

Police Power: The inherent right of a government to restrict an individual's conduct or use of property in order to protect the health, safety, welfare, and morals of the community.

Policy: A statement of a public body that forms the basis for enacting legislative decisions. The policies under which zoning ordinances are enacted and administered should be found in a community's General Plan.

Preliminary Subdivision Map: The first formal submission by a subdivider is usually in the form of a map with accompanying documents providing the information about the proposed subdivision required by the local subdivision ordinance. Before formally accepting the material, it should be reviewed to make sure that all necessary information is included.

Principal Use: The main use of area, land, or structures as distinguished from Conditional Uses and accessory or secondary uses. A house is a principal use in a residential area; a garage or pool is an accessory use.

Public Hearing: A hearing at which members of the public are provided a reasonable opportunity to comment on the subject of the hearing.

Public Meeting: A meeting that is required to be open to the public under Utah Title 52, Chapter 4, Open and Public Meetings.

Revenue/Cost-Impact Analysis: A technique used to assess the revenue and impact of a proposed project on a community. If costs exceed the revenue, the project should be modified, denied, or have special development charges attached in order to sufficiently offset costs.

Right-of-Way: The right of passage over the land of another. Once a right-of-way is granted, it becomes a “legal” right that can only be removed via purchase, relinquishment, or court action.

Sanitary Sewer Authority: The department, agency, or public entity with responsibility to review and approve the feasibility of sanitary sewer services or onsite wastewater systems.

Setback Requirements: The requirements that a building be set back a certain distance from the street or lot line. They are specified in a zoning ordinance or a site-development plan.

Sign Permit: This permit allows for a sign to be erected in compliance with stated policies and conditions.

Site Plan: A plan, to scale, showing uses and structures proposed for a parcel of land. It includes lot lines, streets, building sites, public open space, buildings, major landscape features -both natural and man-made- and, depending on requirements, the locations of proposed utility lines.

Site-Plan Review: The process whereby local officials, usually the Planning Commission and staff, review the site plans of a developer to assure that the plans meet the purposes and standards of the zone, provide for necessary public facilities such as streets, parks, and schools, and protect adjacent properties through appropriate placement of structures and landscaping.

Special District: An entity established under the authority of Utah Title 17A, Special Districts, and any other governmental or quasi-governmental entity that is not a county, municipality, school district, or unit of the state.

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

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

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

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

Street System: The classification of streets and highways by their diverse functions and design. The following is the commonly used hierarchy of streets and highways for planning purposes: local, collector, major, expressway, arterial, parkway, and freeway.

Strip Development: Commercial or retail development, usually one-store deep that fronts on a major street.

Strip Zoning: A zone normally consisting of a ribbon of uses fronting both sides of a major street and extending inward for approximately half a block. Strip commercial development is the most common form. It usually is characterized by an assortment of gas stations, drive-in and fast-food restaurants, motels, tourist shops, and automobile sales and service operations.

Subdivision: The process and the result of dividing a parcel of raw land into smaller buildable sites. Complete plans will eventually include streets, blocks, open space, public areas, and other improvements. A subdivision may be established any time a new boundary line is drawn.

Temporary Zoning (TZO): In land use, a freeze or moratorium, on all or specific types of new development pending the completion and adoption of certain planning and/or zoning ordinance requirements, e.g. General Plan, zoning ordinance amendment, sewer line installations, or growth management programs. TZO's can only last up to six months. Consideration of a TZO must be on a council's agenda but no public hearing is required.

Transfer of Development Rights (TDR): The removal of the right to develop or build, expressed in dwelling units per acre, from land in one zoning district to land in another district where greater density is preferred. TDR is often used as a tool for the preservation of agricultural land, open space, or historical preservation.

Trip Generation: The total number of vehicle trips produced by a specific land use or activity. It is used to calculate traffic impact of a proposed use.

Variance: A device which grants a property owner relief from certain provisions of a zoning ordinance, when, because of particular physical surrounding, shape, or topographical condition of the property, compliance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or a desire to make more money. The petitioner must prove that a physical hardship exists, and that the request would not be alien to the design or intent of the area. Only the Appeal Authority is vested with the authority to grant variances. Any appeal of the decision must be made to the District Courts. There is no legal way to grant a variance that would change the use of a piece of property.

Vested Right: Generally, a developer is “vested” when a complete application has been submitted and accepted by the municipality. It is not vested with the zoning at the time of purchase or with the expression of an intended use by the developer. If no plans have been submitted and formally accepted, the use of the property is not vested.

Zero-Lot-Line Development: A development approach in which a building is sited on one or more lot lines with no yard. Conceivably, three of the four sides of the building could be on lot lines. The intent is to allow more flexibility in site design, and to increase the amount of usable open space on the lot.

Zoning: A police-power measure, enacted primarily by units of local government, in which the community is divided into districts, or zones, within which permitted and special uses are established, as are regulations governing lot size, building bulk, placement, and other development standards. Requirements vary from district to district but they must be uniform within districts. The zoning ordinance consists of two parts: the text and a map

Zoning Administrator: A land use authority that is an official in charge of carrying out the municipal policy as determined by the council, and also empowered to make decisions as stated in a municipalities' zoning ordinance. The Administrator may also act to enforce the zoning law.

Zoning Districts: A geographical area of a city or county, zoned with uniform regulations and requirements.

Zoning Map: The officially adopted zoning map of the municipality, specifying the uses permitted within certain areas.