



# LAND USE OFFICIALS HANDBOOK

This handbook was adapted from a handbook prepared by the City Development Department of the City of Rio Rancho for use by its Planning and Zoning Commission. The graciousness and cooperation of the City Development Department is acknowledged and appreciated.

Last updated April, 2019

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## **CHAPTER I**

### **INTRODUCTION**

#### **A. CITIZEN PARTICIPATION**

The underlying purpose for municipalities to establish Boards and Commissions is to provide a means for residents who have special experience or interest to participate in the municipality's decision making process by advising the Mayor and Governing Body on various issues.

The Commission system provides an opportunity to interact creatively with people of all ages, interests, and backgrounds. Unity can be realized when citizens are able to come together across neighborhood, political, and economic lines to assist in making the community decisions that will shape lives.

Most municipalities establish a variety of appointed citizen Boards, Commissions, and Committees ("Commissions") that advise the elected officials of the municipality on various issues. As citizen participation has evolved into a vital and integral part of local government, the number, diversity and specialization Commissions has steadily grown.

For this system to be effective, the municipality must stress not only the right and duty of citizens to participate in planning for the future but also the municipality's responsibility to provide all Commission members with tools to carry out their respective duties. That responsibility includes orientation sessions, training and useful written procedures.

#### **B. COMMISSION MEMBER RESPONSIBILITIES**

##### **1. Commission Member Job Description**

Position title: Commission Member

Works with: Commission Chairperson

Purpose: To act as a voting member of the Commission; to receive input from the public and to represent the views and interests of the electorate; to develop policies, procedures, and regulations for the operation of the Commission and for the betterment of our community; to monitor the usefulness and effectiveness of programs and services.

##### **2. The full Commission's responsibilities:**

- a) Establish policy.
- b) Voice concerns, suggestions, and opinions of constituents.
- c) Report to constituents on important issues and decisions.
- d) Monitor the usefulness and effectiveness of programs and services.

**3. Individual Commission member duties:**

- a) Attend all Commission meetings, work sessions, and committee meetings as assigned and show commitment to Commission activities.
- b) Be well-informed on issues and agenda items in advance of meetings.
- c) Contribute skills, knowledge, and experience when appropriate.
- d) Listen respectfully to others' points of view.
- e) Participate in organizational decision-making, support all decisions of the full Commission or council.
- f) Assume leadership roles in all Commission activities.
- g) Represent the Municipality in a professional manner to members of the public and to private enterprise.

## **CHAPTER II**

### **SERVING ON A COMMISSION**

#### **A. MEMBERSHIP**

##### **1. Application Procedure**

Unless otherwise provided by state law or local ordinance, all members of Commissions, will be appointed by the Mayor with the approval of the members of the Governing Body. Openings on the Commissions may be advertised in the local newspaper and posted at Municipal facilities. Interested parties may obtain applications from the Mayor's office.

##### **2. Appointments**

Commission members generally are required to be residents of the Municipality except where specifically exempted by statute or other ordinances. Some boards and commissions have members that must reside in a particular voting district of the municipality. These members represent the entire community, not just the residents of the district in which the member resides. Other Commissioners may represent other constituencies such as an owner of a lodging facility or an owner of a tourist related business endeavor.

No member of the Governing Body or any employee of the Municipality will be appointed to any Commission as a voting member, unless specifically authorized by statute or ordinance. The Mayor and, all other members of the Governing Body may be ex-officio members of Commissions. No member of the Governing Body may serve on the planning and zoning commission or the board of adjustment, or as otherwise provided for by ordinance. All Commission members are expected to follow the Code of Conduct for Commission Members and the New Mexico Governmental Conduct Act.

The current Commissions are as follows:

[List current Commissions]

##### **3. Terms of Office**

The terms for Commissioners are staggered and limited to \_\_\_\_\_ years. No member may serve more than \_\_\_\_\_ terms unless otherwise stated in the ordinance establishing the Commission. The Mayor will appoint members within \_\_\_\_\_ days of the formation of the Commission or within \_\_\_\_\_ days of any vacancy on a Commission or advisory Commission.

Except as otherwise provided by ordinance, members of all Commissions will serve at the pleasure of the Governing Body and may be removed at any time with or without cause by a majority vote of the Governing Body.

#### **4. Residency Requirements**

As required by Ordinance \_\_\_\_\_, members of any Commission will be residents of the municipality unless the member is required by federal or state law or the ordinance establishing the Commission to represent a specified organization, agency, group, category or profession, or is exempted from the residency requirement. The Secretary of the Commission will report to the Mayor's office within one week after receiving notification from a Commissioner that he or she is no longer a resident of the municipality. A vacancy in office will be declared on the date the Secretary notifies the Mayor's office that a Commissioner is no longer qualified to serve on the Commission.

#### **5. Attendance Requirements**

After a member has been absent without a reasonable excuse from two (2) consecutive regular meetings, the Mayor's office will advise the member that the unexcused absence from three (3) consecutive regular meetings of the body may result in removal from the Commission. The Chair of the Commission or the Mayor shall determine whether the absence of a member is excused. Extended absences must be approved by the Mayor. Within one week of the third consecutive unexcused absence, the Mayor will notify the Commissioner in writing of the termination of his or her appointment. No further action by the Governing Body is necessary under these circumstances. The Mayor will fill the vacancy in accordance with paragraph A(8) of this chapter.

Commissions may adopt a rule establishing a maximum time those present will wait for a quorum prior to canceling the meeting. If it is known far enough in advance of a meeting to notify all members that a quorum will not be achieved, the staff will cancel the meeting.

#### **6. Resignation Procedures**

A Commission member wishing to resign may submit a letter of resignation directly to the Mayor. Once submitted, a letter of resignation cannot be withdrawn and will be effective on the date specified in the letter of resignation or the date accepted by the Mayor, whichever is later. The Mayor will fill the vacancy in accordance with paragraph A(8) of this chapter.

#### **7. Accommodations for Commissioners with Disabilities**

Upon request, Commissioners with disabilities are entitled to receive reasonable accommodations in order to participate fully in Commission meetings or activities. The Municipal Clerk must be notified at least one week prior to the meeting or as soon as possible.

#### **8. Vacancies on Commissions**

If a vacancy occurs on a Commission, the Mayor's office shall be notified as soon as possible. The Mayor's office shall cause a notice of vacancy to be advertised in the local newspaper and posted at municipal facilities<sup>1</sup>. The Mayor's office shall

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<sup>1</sup> This is an optional procedure.

provide for a reasonable time for interested people to submit applications for appointment to the Commission. The Mayor may conduct interviews in his/her discretion. The Mayor is not required to make Commission appointments from those submitting applications, unless required to do so by ordinance, but all Commission members must nevertheless prepare and submit an application after their appointment is confirmed. Individuals nominated for appointment to a Commission must be confirmed by the Governing Body prior to beginning service on the Commission.

## **B. COMMISSION ORGANIZATION**

### **1. Officers Election and Term of Office**

Unless otherwise provided by ordinance, the Chair, Vice Chair, and Secretary of the Commission are elected by the majority of the Commission for a \_\_\_\_\_ year term. No Commissioner will serve as Chairperson for more than \_\_\_\_\_ consecutive years. The result of the vote will be recorded in the minutes of the Commission.

### **2. Duties of Commission Officers**

- a) The Chair performs the following duties:
  - i. Presides over all meetings of the Commission;
  - ii. Appoints subcommittees and Chairs of subcommittees subject to the approval of the Commission;
  - iii. Approves the agenda prior to posting;
  - iv. Signs correspondence on behalf of the Commission;
  - v. Represents the Commission before the Governing Body with approval of the Commission; and
  - vi. Performs other duties necessary or customary to the office.

The most crucial duty of a chairperson presiding at a meeting is to ensure that the work of the Commission is accomplished. To this end, the Chair must exert sufficient control of the meeting to eliminate irrelevant, repetitious, or otherwise unproductive discussion. At the same time the Chair must ensure that all viewpoints are heard and are considered in a fair and impartial manner.

- b) In the absence of the Chair the Vice Chair will perform all of the above duties as performed by the Chair.
- c) The Secretary performs the following duties:
  - i. Record, prepare, and distribute the Commission agenda and minutes of each meeting;
  - ii. Prepare correspondence for the Commission;
  - iii. Keep records in an organized fashion.

### **3. Transfer of Chair**

In the event of the Chair's absence or inability to act, the Vice Chair will preside. In the event of the absence or inability to act of both the Chair and Vice Chair, the remaining members of the Commission shall elect one of the remaining members to act as temporary Chair.

## CHAPTER III

### COMMISSION MEMBER'S CODE OF CONDUCT

**Section 1. Commission Member Behavior:** The Municipality expects that the behavior of each of its Commission Members will be proper and above reproach. Conduct that interferes with the Municipality's operations, that brings discredit to the Municipality, or that is generally offensive to the public or fellow Commission Members will not be tolerated.

**Section 2. Attendance and Punctuality:** All Commission Members are expected to attend meetings with regularity and punctuality. There may be times, however, when Commission Members will be unable to attend meetings or to report on time due to illness, accident or emergency situation. Such occurrences must be kept to a minimum.

**Section 3. Political Activity:** The following policy of political activity applies to all Commission Members:

- A. All Commission Members on their own time:
  1. Are encouraged to register to vote;
  2. Have a right to express their opinions on all political subjects and candidates;
  3. May serve as convention delegates;
  4. May attend political rallies;
  5. May sign nominating petitions and make voluntary contributions to political organizations;
  6. May engage in political activity;
  7. May serve as an election judge, clerk, translator, challenger, watcher or observer, unless otherwise prohibited by law.
  
- B. All Commission Members are prohibited from:
  1. Using official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office or for any other political purpose;
  2. Directly coercing, attempting to coerce, commanding, or advising a Commission Member, applicant before the Commission or any other person to pay, lend or contribute anything of value to a party, committee, organization agency, or person for a political purpose;
  3. Being an elected official where such service conflicts with the Commission Member's duties and responsibilities with the Municipality.

**Section 4. Public Relations:** All Commission Members will deal with the public and fellow Commission Members in a patient, courteous, and helpful manner and will represent the Municipality in a positive way. When authorized by the commission, the Chair or other designated person shall be the official spokesperson of the Commission. Individual Commissioners are prohibited from speaking on behalf of the Commission without prior authorization.

## **Section 5. Ethical principles of public service**

- A. Commissioners shall treat their position as a public trust. Commissioners shall use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests.
- B. Commissioners shall conduct themselves in a manner that justifies the confidence placed in them by the people, at all times maintaining the integrity and discharging ethically the high responsibilities of public service.
- C. Full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct. At all times, reasonable efforts shall be made to avoid undue influence and abuse of office and the appearance of impropriety in public service.
- D. No Commissioner may request or receive, and no person may offer a Commissioner, any money, thing of value or promise thereof that is conditioned upon or given in exchange for promised performance of an official act by the Commissioner.
- E. Commissioners shall disclose in writing to the Mayor or Clerk all employment engaged in by the Commissioner other than employment with service to a state or local government agency.
- F. No Commissioner shall use or disclose confidential information acquired by virtue of the Commissioner's position for the Commissioner's or another's private gain or benefit.

## **Section 6. Gifts and Disqualification.** In addition to any other applicable provision of law, the provisions of this section shall govern disclosure and voting by Commission Members as follows:

- A. It is unlawful under the Governmental Conduct Act for a Commissioner to take an official act for the primary purpose of directly enhancing Commissioner's financial interest or financial position.
- B. A Commissioner shall be disqualified from engaging in any official act directly affecting the Commissioner's financial interest, except a Commissioner shall not be disqualified from engaging in an official act if the benefit of the financial interest to the Commissioner is proportionately less than the benefit to the general public.
- C. No Commissioner shall acquire a financial interest when the Commissioner believes or should have reason to believe that the new financial interest will be directly affected by the Commissioner's official acts.
- D. Commissioners may not request, receive or accept a gift, gratuity, personal property, loan, or any other item of value, or request, receive or accept a gift gratuity, personal property, loan, or any other item of value, on behalf of any other person or organization, if it tends to influence the Commission member in the discharge of any official act.

E. Gifts; Exceptions. The prohibitions of Subsection D of this section shall not apply to:

- 1) An occasional non-pecuniary gift; insignificant in value;
- 2) An award publicly presented in recognition of public service;
- 3) A commercially reasonable loan made in the ordinary course of business by an institution authorized by the laws of the state to engage in the business of making loans; or
- 4) A political campaign contribution, provided that such a gift or loan is actually used in a political campaign.

F. Contracts with Current Commissioners. The Municipality shall not enter into any contract with any Commission member or member of the Commissioner's family, or business in which the Commissioner or the family of the Commissioner has a substantial interest, unless the Commissioner has disclosed the Commissioner's substantial interest through public notice and unless the contract is awarded pursuant to a competitive process.

G. Contracts with Former Commissioners. The Municipality shall not enter into a contract with, or take any action favorably affecting, any person or business that is:

- (1) represented personally in the matter by a person who has been a Commissioner within the preceding year if the value of the contract or action is in excess of one thousand dollars (\$1,000) and the contract is a direct result of an official act by the Commissioner; or
- (2) assisted in the transaction by a former Commissioner, while in office that, directly resulted in the municipality making that contract or taking that action.

H. Lobbying and Other Representative Interests. A former Commissioner shall not represent a person in the person's dealings with the government on a matter in which the former Commissioner participated personally and substantially while a Commissioner. A former Commissioner shall not represent for pay a person before the Commission at which the former Commissioner served or worked.

I. Outside Business or Professional Interests. All Commission members have outside business or professional interests. However, they may not make a profit in any way for employment or business interests from their association with the municipality.

J. Personal Beliefs. Commission members hold a wide range of personal beliefs, values, and commitments. These beliefs, values, and commitments are considered a conflict of interest if they prevent Commission members from carrying out their responsibilities.

## CHAPTER IV

### COORDINATION WITH GOVERNING BODY, STAFF, AND OTHERS

#### A. COORDINATION WITH GOVERNING BODY

##### 1. Relationship to Governing Body

All Commissions, even those that are quasi-judicial, administrative, or advisory to the Mayor, also advise the Governing Body. As the only authorized legislative body of the municipality, the Governing Body is responsible for accepting, rejecting, or modifying Commission recommendations. The Governing Body relies on the various Commissions to increase the variety of viewpoints and talents brought to bear on municipal problems. By concentrating on specific areas, Commission members expand their expertise and conduct detailed analyses that the Governing Body itself may not have time or expertise to pursue. It is expected that in legislative matters, Commissions will adopt positions of advocacy within their specific spheres of interest. However, the Governing Body's role in legislative matters is to consider the many varied and sometimes conflicting public needs and render its judgment of what will best serve the public good. The Governing Body must weigh the effect of any given recommendation, not only on the particular area of interest but on all municipal goals and programs.

It is the responsibility of the municipal administration and staff to operate programs authorized by the Governing Body. In a few cases, a specific program will be designated by the Governing Body to be sponsored by a specific Commission, and even in such instances, the administration of the program is the responsibility of the staff. Nevertheless, Commissions may be called upon to advise the Governing Body concerning various programs run by the municipality. Commissioners must recognize that their role is normally advisory in nature, Commissions are not themselves normally charged with operating individual programs, nor are most Commissions vested with the final decision making authority.

In quasi-judicial matters, both the Commission and the Governing Body are required to assess and weight the evidence presented to them, to apply the evidence to the applicable ordinance and to render a decision that is supported by substantial evidence in the record.

##### 2. Communications from the Governing Body

Each Commission will be given an opportunity to review and make recommendations on items relevant to its charge. The administrative staff will notify Commissions of relevant items requiring Governing Body action while still in the development stage so as to provide adequate response time from the Commission.

The Governing Body may also transmit to the Commission referrals for information or action through the Mayor. When appropriate, the Governing Body may indicate a desired date for response and specify the Commissions to be consulted. This, of course does not prevent the Commission from raising issues on its own, that are

relevant to its jurisdiction, for the purpose of making recommendations to the administration or to the Governing Body.

### **3. Communications to Governing Body**

A Commission transmits its findings, responds to referrals, and other communications to the Governing Body through the Governing Body agenda. Upon the direction of the Commission, the Commission Chair or the staff prepares and submits the item for the Governing Body agenda. Commission reports are to be approved by the Commission Chair or its designee before submittal. Submission is to be directed to the Mayor no later than **three weeks**<sup>2</sup> following Commission action. If a Commission determines that severe detriment will occur by the three-week delay, then the Commission may submit the communication sooner.

Commissions may submit Reports for Action, and Reports for Information to be included on the Governing Body Agenda. To be accepted for the agenda, Reports for Action should contain a specific recommendation for Governing Body approval, adoption, or authorization. Such recommendations should be clear and spell out who is taking action and what the action will accomplish. The subject matter appropriate for Reports for Information is that which seeks to advise or inform the Governing Body on a subject but does not request any action or report by the Governing Body,

### **4. Completed Commission Work**

It is the Commission's responsibility to provide complete, concise, and accurate reports to the Governing Body and prepare it in such a manner that the Governing Body fully understands the issue and what action; if any, it is requested to take. A Commission report should include a clear recommendation, the reason for the recommendation, the facts upon which it is based, the points of disagreement within the Commission or with staff, if any, and the minority recommendation if any. Quality Commission reports and recommendations take into account the Governing Body's necessity to view an issue from as wide an angle as possible. Submission of quality reports will enable the Governing Body to act knowledgeably and expeditiously on Commission reports and will reduce the likelihood of the Governing Body referring the report back to the Commission for clarification.

Quality reports entail four key procedural aspects:

1. Review by and consultation with other affected Commissions prior to submission to the Mayor;
2. Proper report format and preparation;
3. Legal review when appropriate; and
4. Realistic funding plans which do not hurt other programs.

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<sup>2</sup> Insert whatever time is appropriate.

## **5. Governing Body Meetings and Agendas**

Regular meetings of the Governing Body are held \_\_\_\_\_ in the Governing Body Chambers. Commissions making presentations or reports to the Governing Body must adhere to Governing Body rules and regulations.

In legislative matters, the chair or the representative of the Commission has the right to address the Governing Body on matters within their charge at the time their item is heard. A minority position may also be presented by an appointed representative. Commission members not delegated to speak as the official representative should not utilize the Open Microphone and should not be questioned by Governing Body members.

## **B. COORDINATION WITH STAFF**

### **1. Duties of Assigned Staff**

A department of the municipality may be designated by the Mayor to serve as assigned staff to the Commission. Assigned staff to a Commission are there to perform the ministerial and housekeeping functions as outlined below and do not vote. In addition, as municipal professionals they have the responsibility to assure that the Commission is apprised of the laws and the administrative processes affecting proposed policy recommendations and operational recommendations. This will save reprocessing all the good work of these bodies that serve largely without compensation and which contribute valuable time to the municipality.

More importantly, the assigned staff must at all times consider the policy and fiscal impacts of proposals and provide the Commissioners with early and timely information not only on the fiscal and policy impact of a proposal, but its relationship to the overall department and citywide fiscal capacity and priorities. Assigned staff must constantly be aware of the responsibility to represent overall Governing Body priorities and administrative policies of the municipality. To this end all assigned staff is strongly encouraged to attend training annually on such matters. Should assigned staff members have questions they should see the administration official to whom they report for advice and consultation.

The main responsibilities of assigned staff are:

- 1) to assist the Commission in its functions;
- 2) to represent the Mayor and their assigned department;
- 3) Additional responsibilities are as follows: Provide professional and technical advice, and to assist the Commission in the discharge of its responsibilities.

The assigned staff will also make sure that the Executive Committee (Chairperson, Vice-Chairperson, and/or Secretary) fulfill the following requirements:

- 1) Prepare, duplicate, and distribute Commission letters and reports;
- 2) Maintain a copy minutes of meetings and records of hearings and official actions;

- 3) Report the attendance or record of each member to the Mayor's office;
- 4) Prepare appropriate reports based on the Commission's action for the Governing Body agenda;
- 5) Refer draft reports to other Commissions when applicable; Review the minutes and agendas of other Commissions and summarize them for the benefit of the Commission when appropriate;
- 6) Maintain a current copy of the Commissioner's Manual and bring it to the Commission meetings;
- 7) Secure meeting rooms for Commission meetings;
- 8) Assist in mobilizing resources needed for research and preparation of various reports.

## **2. The Relationship between Assigned Staff and the Commission**

Unless employed directly by the Commission<sup>3</sup>, the assigned staff to a Commission are primarily employees of municipal departments. In some instances, a department head who is named as assigned staff delegates the responsibility to subordinate staff members. While other staff members may assist the Commission from time to time, clerical staff may normally not be assigned to Commissions. The Secretary of each Commission has the responsibility for clerical duties.

While the assigned staff's role is to assist the Commission, the assigned staff and other staff assistants are not employees of the Commission. At all times the assigned staff is directly responsible to the department head and to the Mayor. The following are some ways to avoid misunderstanding and to keep the channels of communication open:

- a) Commissioners should realize that the assigned staff to the Commission reports directly to a municipal supervisor and may not be able to carry out every recommendation or direction of the Commission;
- b) Contacts with staff members should clearly be in the framework of the Commission's assignment;
- c) Citizen complaints concerning the assigned staff to the Commission should be immediately referred to the staff member's immediate supervisor; and
- d) Commissioners should not ask for individual reports, favors, or special consideration from assigned staff.

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<sup>3</sup> If the Commission directly employs staff, the commission should adopt policies setting forth the employment relationship.

At the same time the assigned staff has a responsibility to:

- a) Keep the Commission informed by making sure that other employees and all Commission members know the purpose and goals for the City;
- b) Initiate suggestions so that the Commission has an idea of how to seek out information or resolutions;
- c) Promote the team spirit, so that all Commissioners can participate in a manner which will maximize their satisfaction in the municipality. Recognizing Commissioners contributions and encouraging involvement are two ways to let everyone know that their ideas are welcome;
- d) Take the initiative to inform Commissioners about activities, projects, and work that is taking place elsewhere in the City and among other Commissions; and
- e) Present a balanced report on controversial issues, so that both positive and negative aspects can be readily identified.

If a Commission desires information or a report which will require an excessive amount of staff time, the Commission should request the Mayor or Department Head's permission to pursue the project. The Commission should direct the assigned staff with regard to the urgency of the referral. Following this procedure will prevent staff from being diverted from other priority projects.

Reports issued to the Governing Body by the Commission should present objectively the Commission's recommendation and deliberations but should also make reference to any disagreements with staff so as to fully inform the Governing Body of the implications of the report. It is suggested that the assigned staff maintain a simple report for tracking the status of all referrals to the Mayor and the Governing Body. The report could be updated for each meeting providing a brief description of the referral, the date of the referral, and when it was transmitted to the Governing Body or the Mayor.

Assigned staff are professionals who are dedicated to provide their best technical and professional advice both to the Commission and to the Mayor. Occasionally this dual role will result in staff opposing a Commission recommendation. In such cases, the Commission receives copies of the Mayor's report at the same time the Governing Body receives the report.

## **C. RELATIONS WITH OTHER COMMISSIONS, OUTSIDE AGENCIES AND THE GENERAL PUBLIC**

### **1. Other Commissions**

There are enormous benefits when Commissions work together on projects. Besides the advantages of time and energy savings, Commission work can reflect a more accurate blend of community sentiment when efforts are made to coordinate overlapping subject matter.

When one Commission recommends an action relating to a sphere of interest of another Commission, the other involved Commissions should be notified and given

an opportunity to comment before any reports are forwarded to Governing Body. Referrals for information or review of proposals from one Commission to another are transmitted through the respective secretaries of each Commission.

In order to develop a useful liaison between Commissions, each Commission should determine which other bodies regularly deal with overlapping subject matter. Commissions which regularly overlap on each other's activities should request agendas, minutes, and relevant reports from each other. Commissions which do not ordinarily inter-relate need not routinely communicate with each other, but where an issue arises which is of concern to both, the two Commissions should review the issue with each other before submitting a report to the Mayor's office for distribution to the Governing Body.

## **2. Outside Agencies**

From time to time, Commissions pass resolutions to send communications directly to outside agencies. Unless specifically authorized by the Mayor's office or the Governing Body, Commissions may not represent the policy of the municipality. Commission functions are to advise, and in the absence of an explicit delegation of an independent role, to act on the municipality's behalf on the direction of the Governing Body on a particular issue. Commissions may not directly communicate with outside agencies. If a Commission wishes to support or object to a particular policy or program, it should frame its action as a recommendation to the Governing Body on whose behalf the letter will actually be sent.

Supporting or opposing legislation need not take the form of a resolution. Action by Governing Body on such a Commission request would be in the form of a letter. However, should a resolution be requested of the Governing Body, such resolution would be attached to the Governing Body report (in proper format) ready for Governing Body action. If a request for an official policy statement is received from an outside jurisdiction, the Commission should analyze and study the request. It should then make a recommendation to the Governing Body.

Commissions may not take any action such as endorsing grant applications, receiving donations and gifts, or approving use of municipal property, facilities or other resources that commits or indicates an intention to commit the municipality without authorization by the Governing Body and coordination with the Mayor. All communications from and to outside agencies are transmitted through the Commission's assigned staff.

## **3. General Public**

The purpose of Commission meetings is to permit open discussion on specific topics in a setting that is more informal than a Governing Body meeting, to hear public expression on issues and to inform the public of what the Commission is doing. Commissioners have the obligation to consider the welfare of the municipality, to be fair, objective, courteous, and to afford a fair process to all who come before them.

Public opinion must be sought but no Commissioner should permit his/her judgment to become subservient to the criticism of those citizens attending the

meetings. In order to conduct its business, the Commission has the authority to reasonably limit discussion and public participation on any subject.

All communications from the Commission to members of the public are transmitted through the Commission's assigned staff. Similarly, communications received by the staff are relayed to the Commission through the agenda. The staff is responsible for acknowledging all communications received.

#### **4. Individual Commissioners**

Unless authorized by the Commission, an individual Commissioner may not represent the Commission before any other Commission, outside agency, to the press, or the general public. When an individual Commissioner is appearing in a private capacity before other Commissions, outside agencies or the general public, the Commissioner must clearly indicate that s/he is speaking as a private individual, not as an official representative of his/her Commission.

#### **5. Press and Other Media**

- a) In order to inform the public as much as possible of Commission activities, the assigned staff, with the approval of the Commission or the Chairperson or other designated Public Information Officer ("PIO") should provide the media with all pertinent information.
- b) Press Releases must be cleared through the Mayor's office. Prior to the release of all press communications and all other notices a copy is to be sent to the Mayor for approval.
- c) Working effectively with the media includes:
  1. Returning reporters phone calls as soon as you can;
  2. Provide adequate documentation to the reporter;
  3. Correct the media if the facts of a story are incorrect;
  4. Compliment the reporter if he/she has done a good job;
  5. Know what is public information, be aware of open meeting laws;
  6. Pay attention to media deadlines; and
  7. Leave the door open for the reporter or audience to contact you for further clarification.
- d) When being interviewed:
  1. Be prepared, do your homework on the issue;
  2. Don't go "off the record" when talking with a reporter; there is no such thing;
  3. Tell the truth;
  4. Give the facts first;
  5. Short answers are better than long ones;
  6. Avoid "no comment" answers;
  7. Be cautious of paraphrasing;
  8. Ask for questions to be repeated if the intent is unclear to you;

9. Avoid jargon;
10. Be positive;
11. Develop a “message” and stay on “message” and
12. Always thank the reporter for interviewing you.

## **6. The Proper Meeting Conduct**

- a) Make an effort to prepare for meetings by reading the agenda and supporting materials;
- b) Take part in all discussions on issues that come before the Commission for action;
- c) Keep discussions focused on the issue at hand and limit comments to a reasonable amount of time;
- d) Understand the basics of parliamentary procedure.
- e) Get along with other Commission members by being flexible and practicing the art of compromise. Above all, be polite;
- f) Listen to the comments of other Commission members;
- g) Work toward consensus on issues;
- h) Focus on the ultimate mission of the City and the needs of those it serves rather than those of any special interest group or personal agenda.

Each Commissioner has the obligation to work cooperatively with other Commissioners. Commissioners should exercise self-discipline and strive always to be objective, fair, and courteous with each other as well as with staff and the public. Respect for the time of other Commissioners, staff, and the public is of critical importance.

## **D. ANALYTICAL PROBLEM SOLVING**

It is important for those who recommend policy, operational, and other improvements in municipal Government to use an analytical problem solving approach. This pertains not only to Commissions but to staff people, executives, and others who wish to improve municipal services. As resources dwindle, systems become more complex and the public becomes more accustomed to the world's highly competitive consumer oriented economy, all municipalities must adapt. In order to provide quality services with the efficient use of financial, personnel, and technical resources, an analytical approach needs to be taken prior to advocacy and mobilization of support. A shorthand approach includes:

1. What is the problem we are trying to solve? If we probe deeper is the apparent problem a symptom or is there really a deeper problem?
2. What general approaches could be used to solve the problem? Avoid single solution answers.
3. Of the possible approaches, which is the best one and why?
4. How will the selected approach or solution work? What personnel, financial, and other resources are necessary to make it work? Where will these come from: If there are insufficient resources, what other equally valued programs or activities could be reduced or eliminated to free up the resources required?

5. Have all those who will actually have to implement the proposal had input and do they agree?
6. Does the proposal meet legal requirements and has the municipality's budget office indicated the financial part of the proposal is, in fact feasible and workable?
7. Can the proposal be proven to work by putting it on a standard schedule for implementation?

If each proposal or recommendation brought to the Governing Body were thoroughly tested against the above criteria the Governing Body would be much more likely to approve recommendations rather than sending them back for laborious staff analysis.

## CHAPTER V

### PLANNING and ZONING COMMISSION RULES OF PROCEDURE

#### ARTICLE I GENERAL PROVISIONS

##### 1.1 Meetings

- A. Meetings of the Commission shall be held in accordance with Section \_\_\_\_\_, and in compliance with the Open Meetings Act, NMSA, 1978, 10-15-1 *et. seq.*
- B. All binding actions of the Planning and Zoning Commission shall be taken at regular meetings, special meetings, or emergency meetings. Work sessions may be held for the purpose of examining issues, but no official action may be taken.
- C. The Commission may recess and reconvene a meeting to a subsequent date provided that prior to recessing, the presiding officer specifies the date, time and place for continuation, and immediately posts notice of the date, time and place for the reconvened meeting on or near the door of the Commission Chambers and in the lobby of City Hall. Only matters appearing on the agenda of the original meeting may be discussed at the reconvened meeting.
- D. Notice of all meetings shall be in accordance with the Municipal Open Meetings Resolution.

##### 1.2 Attendance

Members of the Commission are expected to attend all scheduled meetings and shall make every effort to attend all special meetings.

##### 1.3 Officers

The officers shall be a Chair, a Vice-Chair, and a Secretary. Unless appointed to office by the Mayor, the officers shall be elected by the Commission, at the first regular meeting of each year and will serve until the close of the next annual meeting of the following year. In the event of any vacancy in office, a replacement for the un-expired term shall be designated by the Mayor subject to Governing Body approval.

##### 1.4 Duties of the Presiding Officer

- A. The Chair, or in his absence, the Vice-Chair shall preside at all meetings and public hearings of the Commission and perform the following duties:
  1. Preserve order and decorum and have general direction of the meeting room;

2. Announce the business before the body in the order in which it is to be acted upon;
3. Recognize the speakers entitled to the floor and guide and direct the proceedings of the body;
4. **Call for public input on agenda items<sup>4</sup>;**
5. Decide all points of order, subject to appeal, unless the Chair prefers to submit the question to the decision of the Commission;
6. Put to vote all questions that are properly moved or otherwise arise in the course of the proceedings;
7. **The presiding officer can neither make a motion nor second one<sup>5</sup>;**
8. **The presiding officer may [only vote if his/her vote will determine the outcome] [only vote in the event of a tie vote among the Commissioners] [vote on all matters coming before the Commission]<sup>6</sup>.**

#### 1.5 Quorum

A quorum must be present for a meeting or a public hearing. A quorum is composed of a majority of the membership of the Commission.

#### 1.6 Regular Meeting Dates and Times

Planning and Zoning Commission meetings will be held \_\_\_\_\_ . Other meetings and work sessions may be called at any time provided the Open Meetings Resolution requirements are met.

#### 1.7 Holidays Observed

A holiday schedule shall be voted on and approved by the Governing Body and amended by the Commission as necessary.

#### 1.8 Public Hearings

All matters including but not limited to conditional use permits, variance requests, zone map amendments, subdivision applications and administrative appeals shall be considered at a public hearing called for that purpose. In the event a need is shown for a special hearing, the Chair shall, at the request of any three (3) members of the Commission, call for such a special public hearing to be held at least fifteen (15) days following such request, with proper public notification. A special meeting can be called by a majority of the Commission with notice posted five (5) days prior to the meeting. All other statutory and ordinance requirements relating to notice and timing of public hearings must also be followed.

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<sup>4</sup> Optional, unless the Commission is conducting a public hearing, in which case the public has a reasonable opportunity to be heard.

<sup>5</sup> Optional provision. The Commission should decide on this point and include or delete it from these rules.

<sup>6</sup> Policy decision for the Commission to make.

## 1.9 Conduct of Meetings and Public Hearings

At all public hearings before the Commission, all interested people must be afforded an opportunity to be heard. Public input at meetings in which a public hearing is not held is within the discretion of the Commission. In the reception of testimony and evidence, the Commission shall not be bound by the usual common law or statutory rules of evidence or by any technical or formal rules of procedure, other than herein provided, but may conduct the investigation in such a manner as in its best judgment is best calculated to ascertain the substantial rights of the parties, to protect and promote the safety, health, morals and general welfare and to carry out the spirit of the state statutes and municipal ordinances and resolutions regulating planning, platting and zoning.

## 1.10 Adopted Rules

- A. Any matter not covered by these rules shall be governed by decision of the presiding officer, applying Robert's Rules of Order, Newly Revised Edition or the adopted Parliamentary Authority of the Governing Body of the municipality.
- B. Amendment of Rules. These rules or any part thereof, may be amended, repealed, altered or rescinded by a vote of a majority of the Commission, after notice of the intended proposal. Such notice shall be presented by resolution at a regular meeting of the Commission.
- C. Suspension of the Rules. Except for statutory or ordinance provisions, these rules, or any part thereof may be temporarily suspended by a vote of 2/3<sup>7</sup> of the Commissioners. When a suspension of a rule is requested, and no objection is offered, the presiding officer shall announce the rule suspended by unanimous consent, and the Commission may proceed accordingly.
- D. Violation of the Rules. Violation of these rules does not invalidate action of the Commission.

## 1.11 Commissioners Responsibilities

In addition to other duties, responsibilities and rights given by the Chair, Commissioners shall:

- A. In all public statements, make clear that they speak only for themselves unless authorized by the Mayor.
- B. Insure that the Mayor is informed, as soon as practical, of significant communications with outside entities, be they either directed to or initiated by the Commission.
- C. Refrain from negotiating contracts or other agreements on behalf of the municipality, without authority from the Mayor. Only the Mayor or the Mayor's designee can negotiate a contract on behalf of the municipality.

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<sup>7</sup> May insert a different vote requirement, but 2/3 is traditional.

## **ARTICLE II PROCEDURES**

### **2.1 Preparation and Distribution of Agenda**

- A.** The assigned staff in consultation with the Chair shall prepare the agenda for all Commission meetings.
  - 1. The assigned staff and Commissioners may place matters on the agenda subject to time and space limitations as determined by the Chair in his/her discretion.
  - 2. The Commission Secretary shall assure that scheduled public hearings have been duly advertised.
- B.** The agenda, along with introductions and related material, shall be available to each member of the Commission at least seven days in advance of the meeting.
- C.** The agenda shall be posted in the Office of the City Clerk and in the lobby of City Hall at least 72 hours in advance of any meeting.

### **2.2 Minutes**

- A.** Minutes shall include, at a minimum, the date, time and place of the meeting, the names of members in attendance and those absent, the substance of the proposals considered and a record of any decisions and votes taken that show how each member voted.
- B.** Verbatim transcription of entire Commission proceedings will be prepared only upon the vote of 2/3 of those Commissioners present<sup>8</sup>.
- C.** Approval of the minutes shall be placed on the agenda. Unless a reading of the minutes is requested by a member, the minutes of previous meetings may be corrected and approved without reading.
- D.** Previously approved minutes may be corrected whenever an error is noticed, notwithstanding the time to reconsider the vote has elapsed in accordance with Article II, Section 6 of these rules.

### **2.3 Order Business.** The order of business of the Commission shall be conducted in the following order; provided, however that the presiding officer may, during a meeting, rearrange items on the agenda to conduct the business before the Commission more-efficiently:

- 1. Call to order and Pledge of Allegiance
- 2. Swearing in of persons wishing to speak before the Commission (if a quasi-judicial hearing is to take place)

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<sup>8</sup> This is optional. I would not put it into the rules.

3. Approval of Minutes
4. Public Hearings
5. Staff Reports
6. Commission Business
7. **Comments from the Public<sup>9</sup>**
8. Adjournment

## 2.4 Motions

### A. Presentation of Motions

1. Motions, comments and seconds shall be directed to the presiding officer.
2. Main Motion. A main motion presents a proposition for the passage, adoption or approval of a question. The question is usually stated in the positive form, (e.g. to “pass”, to “adopt” or to “approve”)
3. Only one main motion may be on the floor at a time. A Commissioner may give brief explanatory comments before stating the motion, but must refrain from debate until the motion has been seconded and stated by the Chair. In the absence of a second, the motion fails. Main motions are debatable, amendable, and can be reconsidered after adoption.
4. Motions become the official recorded statement of an action taken by the Commission. A motion should therefore be worded in a concise, unambiguous, and complete form appropriate to such a purpose. A motion should not be offered if its only effect is to propose that the Commissioners refrain from doing something since the same result can be accomplished by no motion at all.

### B. Processing Motions

1. A member first must obtain the floor from the Chair.
2. Once the member obtains the floor, the member may make a Motion.
3. Another member may second the motion without the need to first obtain the floor.
4. After the Second, the Chair shall State the motion. That is, the Chair shall re-state the Motion exactly as it was made by the member.
5. After the Motion is stated, the Chair shall ask for any debate on the motion. It is customary to begin debate with the member that made the motion.

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<sup>9</sup> Optional, but highly recommended.

6. Debate shall proceed with the members of the Commission going first and then (if provided for by rules of the Commission) debate by members of the public.
7. When debate has concluded, the Chair shall put the motion to a vote, exactly as the motion was left after any amendments or substitutions.
8. The Commission shall vote on the Motion as put to them by the Chair.
9. The Chair shall announce the result of the vote.

C. Withdrawal and Modification of Motions. Until a motion is seconded and stated by the Chair, the mover may withdraw or modify the motion without consent. When a motion is seconded and stated by the Chair, it is in the possession of the Commission and can, therefore be withdrawn or modified only by consent of the Commission.

## 2.5 Postponement of Action

- A. Postponement (to a definite time). The motion to postpone defers action on a pending question to some definite day, time or meeting. When a question has been postponed to a certain time, it becomes an order of the day for that time. When the time to which a question has been postponed arrives and the action is taken up, it can be postponed again if the additional delay will not interfere with the proper handling of the postponed question. The motion to postpone is debatable, amendable, and may be reconsidered.
- B. To Table (postpone temporarily). Any measure before the Commission may be tabled temporarily. Items must be removed from the table and acted upon prior to adjournment. The motion to table is not debatable, not amendable, and cannot be reconsidered.
- C. To Remove from the Table (resume consideration). The purpose is to bring before the Commission for action a question that has previously been laid on the table. The motion to remove from the table is not debatable, not amendable and cannot be reconsidered.

2.6 Reconsideration of Action. The purpose is to permit the Commission to reconsider a vote on previous action. A request to reconsider previous action must be made no later than the next regular meeting, and must be made by a Commissioner who voted on the prevailing side of the vote. This can obviously cause problems if a person has taken action in reliance on the vote of a Commission only to have it reconsidered. I suggest that reconsideration be limited to reconsidering actions at the same meeting. (If reconsideration is limited to items on the same agenda, the next sentence is unnecessary). Intent to propose reconsideration must be indicated as an agenda item if it is to be acted upon in a subsequent meeting. Upon passage of a motion to reconsider, the matter is returned to the table and must be acted upon prior to adjournment. The motion to reconsider is not amendable, cannot be reconsidered, and is debatable only if the original motion is debatable.

## 2.7 Appeal of a Decision of the Presiding Officer.

An appeal must be made promptly before any debate or other business has intervened. When an appeal is taken, the presiding officer should clearly state the decision being appealed and may state his/her reasons for the decision. If there is no debate, or when debate has concluded, the presiding officer shall put the question to the Commission. A majority vote of those present decides the appeal.

## 2.8 Amendments to Motions

A. Every amendment proposed must be relevant to the subject of the proposition.

B. A proposed amendment takes precedence over the main motion out of which it arises and must be voted upon before the main motion.

C. After an amendment is adopted, the question as amended must be put to a vote.

D. Rejection of an amendment leaves the pending question worded as it was before the amendment was offered.

E. Form of amendments

1. Amendments should be offered in a concise, unambiguous and in a complete form of a motion.

2. In form, amendments may be divided into the following types:

- a. To add (that is to place at the end)
- b. To insert
- c. To strike out
- d. To strike out and insert

F. Decision on amendments

1. An amendment, once adopted, may not thereafter at the same meeting be changed or modified, except upon reconsideration of the vote by which it was adopted.

2. When a proposed amendment has been defeated, the same amendment may not be proposed again without first reconsidering the vote by a member that voted in the negative (on the prevailing side) in which the amendment lost.

G. Withdrawing Amendments and Accepting Modification

1. Amendments may be withdrawn before being seconded and stated by the presiding officer. After it is seconded and stated, it is in the possession of the Commission and may be withdrawn only with the consent of the Commission.

2. A member may modify an amendment before it is seconded and stated by the presiding officer. After it is seconded and stated, it is in the possession of the Commission and can be modified only with the consent of the body. The presiding officer may put the question of modification without waiting for a motion, if there is no objection.

## 2.9 Appeals

Appeals to the Governing Body are the class of action mandated by statutory or Ordinance provisions. The presiding officer may appoint himself/herself or another Commissioner to present the concerns of the Commission as a whole to the Governing Body if such a presentation from the Commission is requested by the Governing Body.

## **ARTICLE III** **RULES OF ORDER**

3.1. Rules of Debate. Debate is the essential feature of a legislative body, it is the means by which the opinions of members are exchanged, questions deliberated and conclusions reached on the business before the body.

A. To permit debate:

1. There must be a debatable question before the body, and one member must have been recognized as entitled to speak.
2. All debate must be addressed to the presiding officer, and not to the members.
3. Debate must be confined to the question before the body.

B. Time Limits. The presiding officer may set reasonable time limits in debate.

C. Call the Question (Previous Question). Debate may be closed immediately by moving the previous question (calling the question). The motion for the call for the question may motivate unanimous consent to ending debate. Before such a motion has been seconded, the chair may ask if there is any objection to closing debate. If there is no objection, the presiding officer shall immediately call the question. If any member objects, the presiding officer shall ask if there is a second to the motion. If there is a second to the call, the Presiding Officer must immediately take a vote on whether to order the call for the question. The call of the question requires a **2/3<sup>10</sup>** vote before the vote on the question to which it is applied. The call for the question is not amendable nor debatable and can be reconsidered.

3.2 Rules of Voting

- A. Each Commissioner in attendance must vote for or against all measures before the Commission, unless there is a conflict of interest, for which abstention is recognized.
- B. A Commissioner shall not explain his vote during voting, which would be the same as debate at such a time.
- C. Except for procedural matters, voting shall be by roll call and each Commissioner's vote shall be recorded in the minutes. Roll call votes shall be at random. Actions declared as procedural by the presiding officer may be decided by a show of hands.
- D. The presiding officer may [only vote if his/her vote will determine the outcome] [only vote in the event of a tie vote among the Commissioners] [vote on all matters coming before the Commission].<sup>11</sup>

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<sup>10</sup> The customary percentage.

<sup>11</sup> Policy decision for the Commission to make.

### 3.3 Decorum

- A. Members must address all remarks through the presiding officer.
- B. Members of the Commission shall confine their remarks to the question under discussion or debate, avoiding personal references or attacks on fellow members, staff members or members of the public. No member of the Commission shall engage in private discourse or commit any other act tending to distract the attention of the Commission from the business before it.
- C. A Commissioner who resorts to persistent irrelevant or persistent repetition may be directed to discontinue his/her speech by the presiding officer.
- D. Point of Order. A Commissioner may call attention to a violation of these rules or a mistake in procedure by rising to a point of order. The presiding officer may permit a brief explanation of the point of order being raised before ruling on the point, or may submit the question to the full Commission for decision by majority vote. A point of order does not require a second, is not debatable nor amendable and cannot be reconsidered.
- E. Question of Privilege. Questions of privilege do not relate to pending business, but have to do with special matters of immediate and overriding importance that, without debate, should be allowed to interrupt the consideration of anything else. The presiding officer makes a ruling as to whether it is admitted as a question of privilege and whether it requires consideration before the pending business is resumed.

### 3.4 Public Hearing Procedures

- A. Reasonable efforts shall be made to give notice of public hearings to all interested people. Notice of public hearings shall state the subject, the time and place of the public hearing, the manner in which interested people may express their views and where interested people may obtain copies of the material that is the subject of the hearing.
- B. Prior to the start of a public hearing, the presiding officer shall require that all people wishing to address the Commission be sworn in giving their names and addresses. In order to promote the orderly conduct of the hearing the presiding may inquire whether they wish to speak as a proponent, opponent, or otherwise. Any person who fails to be sworn in shall not be permitted to speak until sworn. A signed affidavit may be required.
- C. The presiding officer may change the order of speakers so that testimony is heard in the most logical groupings, e.g., proponents, opponents, adjacent owners, vested interests, etc.
- D. The presiding officer will introduce the item, open the public hearing and call upon the proponent to describe the matter under consideration.

- E. Interested people shall have the opportunity to submit data, views or arguments orally or in writing. Cross examination of a witness or people expressing their views shall be permitted, but may be limited at the discretion of the presiding officer.
- F. The presiding officer or Commission may establish speaker time limits and otherwise control presentations to avoid repetition.
- G. After the proponents and opponents have had an opportunity to be heard, the presiding officer may call for rebuttal. A proponent or opponent speaking in rebuttal shall not introduce new material.
- H. After the Commission has heard all the evidence, the presiding officer closes the public hearing and entertains a motion.
- I. Following the motion and its second, discussion/debate occurs among the members of the Commission; further public input is not to be received at this point
- J. The presiding officer calls the question.
- K. Four hours shall be the maximum time for public hearings. Any items not acted on by the Commission at that time will be postponed until the next meeting unless a majority of the Commission indicates otherwise<sup>12</sup>.

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<sup>12</sup> A policy decision for the Commission to make.

## CHAPTER XII

### TYPES OF PROCEEDINGS

#### I. LEGISLATIVE vs. QUASI-JUDICIAL

- A. A decision making process will be characterized as either Legislative or Quasi-Judicial depending upon the nature of the governmental decision and the process by which that decision is reached.
- B. The Commission will employ a different procedure for conducting hearings depending upon whether the action is Legislative or Quasi-Judicial.

#### II. LEGISLATIVE ACTIONS (DECISION MAKING)

##### A. Characteristics of Legislative Actions

- 1. Legislative action is the most common form of action for Municipal Governing Bodies. Commissions do sit from time-to time in a legislative capacity.
- 2. In a Legislative capacity, Commission members undertake the role of legislator or policy maker.
- 3. Legislative Action reflects some public policy relating to matters of a permanent or general character, and is usually not restricted to identifiable people or groups.
- 4. Legislative action is usually prospective in nature.
- 5. Examples:
  - a) adoption of a city-wide zoning ordinance;
  - b) adoption of the city's comprehensive plan;
  - c) consideration of a petition for annexation;
  - d) adoption of policies applicable to municipal operations;
  - e) enacting most ordinances (some zoning ordinances and other narrowly drawn ordinances may be quasi-judicial in nature);
  - f) prescribing a course of action for the municipality; and
  - g) deciding matter that affect the municipality as a whole.

##### B. Role of the Commission Member

- 1. Gather information or opinions.
  - a) from citizens;
  - b) from staff;
  - c) any other source of information;

2. Implement policy based upon the information that is acquired.
3. Apply policy based upon the best interests of the municipality.
4. A Commission member may be appointed to "represent" an area of town or a specified constituency but the Commission must also bear in mind that the Commission must do right by the entire municipality.

### **C. The Law that Applies**

1. Globally: The Municipal Code: NMSA 1978 §§3-1-1 to 3-65-10
2. Planning and Platting: NMSA 1978 §§3-19-1 to 3-19-12
3. Subdivisions: NMSA 1978 §§3-20-1 to 3-20-16
4. Zoning: NMSA 1978 §§3-21-1 to 3-21-26
5. Manufactured Housing and Zoning NMSA 1978 §§3-21A-1 to 3-21A-8.
6. Local planning, subdivision and zoning ordinances.

### **D. Notice**

1. Provided for in the Open Meetings Act ("OMA") NMSA 1978 §§10-15-1 et. seq.
2. Meetings must be open to the public
3. OMA requires notice to be reasonable
4. Public body to determine reasonableness on an annual basis.
5. Left to discretion of the public body
6. Adoption of ordinances require special notice (See: NMSA 1978 §3-17-1)
7. Local notice requirements may be applicable.(ex. the requirement that ordinances undergo two readings prior to adoption).
8. Maximum Notice possible is advisable.
9. OMA requires a prepared agenda be made available to the public at least 72 hours prior to the meeting.
10. OMA requires that Minutes of meetings be adopted and retained. Draft minutes must be prepared and available 10 days following the meeting.
11. Required contents of Minutes
  - a) Date of meeting
  - b) Time of meeting
  - c) Place of meeting
  - d) Members in attendance
  - e) Members absent
  - f) Substance of proposals considered
  - g) Record of decisions made or votes taken
  - h) How each member voted

## **E. Procedural Requirements**

1. Roberts Rules of Order
2. Local Rules of Procedure

## **III. *Quasi-Judicial Proceedings***

### **A. Characteristics of *Quasi-Judicial Proceedings***

1. Similar to court proceedings.
2. Involves a determination of the rights, duties or obligations of specific individuals on the basis of presently existing legal standards or policy considerations to past or present facts developed at a hearing conducted for the purpose of resolving the particular interests in question.
3. Focus is on the nature of the governmental decision and the process by which that decision is reached.
4. Essence is where the agency is required to investigate facts, or ascertain the existence of facts, hold hearings and draw conclusions from them as a basis for their official action.
5. Requires the agency to afford participants with:
  - a) Procedural Due Process
  - b) Substantive Due Process
6. Required when the agency is required to notify and hear from the parties.
7. Proceedings where the decision must be based on evidence "in the record."

### **B. Role of Commission Member**

1. Take on the persona of a Judge.
2. Entertains evidence and arguments put forth by interested parties to the dispute.
3. Does not actively gather information or opinions.
4. Does not represent any particular district or constituency.

### **C. The Law that Applies**

1. Federal Due Process Jurisprudence
2. *State ex. rel. Battershell v. City of Albuquerque*  
108 N.M. 658, 777 P.2d 386 (Ct. App. 1989)
3. Planning: NMSA 1978 §3-19-6
4. Zoning: NMSA 1978 §3-21-6

### **D. Procedural Due Process**

1. Notice reasonably calculated to inform interested parties.
2. Meaningful opportunity to be heard at the hearing.

## **E. Substantive Due Process**

1. Focused on the result of the hearing.
2. Was the decision:
  - a) Arbitrary;
  - b) Capricious;
  - c) Not supported by substantial evidence in the record; or
  - d) Otherwise not in accordance with law.

## **F. Notice Requirement**

1. Must be reasonable and comply with the specific statute authorizing the public hearing.
2. Planning: NMSA 1978 §3-19-6
3. Zoning: NMSA 1978 §3-21-6
4. Must also comply with the notice and agenda requirements of the Open Meetings Act.

## **G. Records to be Kept**

1. Must keep minutes of the proceedings in accordance with the Open Meetings Act.
2. Must keep some sort of transcript of the testimony taken at the hearing
3. Must keep copies of all evidence introduced at the hearing.
4. Requirement for the Commission to prepare Findings and Conclusions and an appropriate Order. (See: NMSA 1978 § 39-3-1.1

## **H. Written Notice Of Commission Action**

1. Procedure outlined in *State ex. rel. Battershell v. City of Albuquerque* 108 N.M. 658, 777 P.2d 386 (Ct. App. 1989).
2. Prepare written decision of the Commission:
  - a) an order granting or denying relief
  - b) file the decision with the official public records of the Commission
  - c) serve a copy of the decision and order and instructions on how to file an appeal on:
    - (i) all parties to the proceeding
    - (ii) every person who has filed a written request for notice of the final decision.

## CHAPTER XIII

### QUASI-JUDICIAL PROCEEDINGS EXPLAINED

In 1989, the Court of Appeals in New Mexico decided *Battershell v. City of Albuquerque* 108 N.M. 658, 777 P.2d 386 (Ct. App. 1989) which expanded a long line of cases dealing with Due Process requirements in land use decisions. *Duke City Lumber v. Environmental Improvement Division* 95 N.M. 401, 622 P.2d 709 (Ct. App. 1980) was one of the first of such decisions. In *Duke City*, the Court of Appeals announced a new definition for "quasi-judicial":

Quasi-judicial is a term applied to administrative boards or officers empowered to investigate facts, weigh evidence, and draw conclusions as a basis for official actions.

There is no question that planning and zoning commissions engage in such activities when considering special exemptions, variances, and conditional uses, it is less clear when large scale zone changes are considered. What does this mean for planning and zoning commissions?

New Mexico courts have consistently required that procedural due process be afforded the parties before an administrative body acting in an adjudicatory or quasi-judicial role. In affording procedural due process, the body must swear the witnesses and provide for cross examination of witnesses. The body must also avoid *ex parte* contacts that would improperly interfere with its role. In addition, all evidence that is presented and admitted into the record must be considered by the body.

#### **A. Swearing of Witnesses**

*Battershell* made it clear that in quasi judicial proceedings, any person giving testimony will be required to do so under oath or affirmation. Although it is far from a unanimous position among the several states, the general rule with respect to zoning hearings is that witnesses should be sworn, and their testimony taken only on an oath or affirmation. The purpose for the oath is to awaken the witnesses' conscience and impress the witnesses' mind with the duty to tell the truth in both direct testimony and cross examination. *Duke City* was the first case to hold that witnesses before quasi-judicial bodies must be sworn:

Under (NM Rules of Evidence) every witness, before testifying, must declare by oath or affirmation that he will do so truthfully. The parties have not cited us to any authority in New Mexico exempting witnesses at an administrative hearing from that rule, and we have found none.

The Hearing Examiner or Commission may, in its discretion impose reasonable limitations on the number of witnesses to be heard, and on the nature and length of their testimony.

#### **B. Cross Examination**

The cross examination of all witnesses giving testimony is another essential element of procedural due process. In *Battershell*, the Albuquerque (P & Z Commission) denied the parties the right of cross examination. The Court of Appeals held that it was error for the Commission to refuse to permit reasonable cross examination of witnesses. This does

not mean that an exhaustive, long-winded and comprehensive cross examination is required. A **reasonable** opportunity to confront and cross examine witnesses is all that is required by the Due Process Clause. In conducting the hearing, the body need not adhere strictly to the evidentiary standards applied by a court for examination and cross examination, but the body must adhere to the fundamental principles of fairness and due process. A reasonable opportunity to cross examine involves the right to ask questions bearing on the testimony presented or the position taken by the witness. It might include exploration of motivation or bias on the part of the witness, and might even touch on issues involving conflicts of interest. Cross examination must always be conducted politely and professionally; a witness should never be subjected to badgering or unreasonable attack by the cross examiner.

The Hearing Examiner or Commission may, in its discretion impose reasonable limitations on the number of people entitled to cross examine witnesses (may be limited to parties only) and on the nature and length of their cross examination.

### **C. Parties**

It is important, for a variety of reasons for the Hearing Examiner or Commission to determine who the parties are early in the proceedings, preferably before the commencement of the hearing. In an effort to streamline the hearing process it is permissible to limit the right of cross examination to interested people designated as parties. A person who is a party is also entitled, as a matter of law to receive a copy of the written decision and order of the Commission. Parties may also be afforded extra presentation time over those individuals who simply want to state their support or opposition to a proposed project or measure.

A party may include the applicant, or his/her agent or representative, an owner of property located within a short distance of the property that is the subject of the hearing (usually within 100 feet), an organized neighborhood association that has adopted by-laws and that includes the area affected by the hearing or land within 100 feet, the municipality or county, and any other people or organizations that can demonstrate a significant interest in the subject matter of the hearing. This interest may be pecuniary or some other direct interest in the outcome of the hearing. The decision concerning whether a person is a party is going to rest largely on the level of participation and involvement of the particular individual.

A Hearing Examiner or Commission should first undertake to establish who the respective parties to the hearing are in order to properly preserve the parties' right to participate in the hearing. Non-parties to the hearing will still be entitled to express their views and opinions on the proposed action that is the subject of the public hearing, they simply may not have the opportunity to cross examine other witnesses and may not be automatically entitled to receipt of the final written decision of the Commission.

### **D. *Ex Parte* Communications**

*Ex Parte* communications by, with, or among Commissioners is strictly prohibited during the pendency of *quasi-judicial* matters. The prohibition against *ex parte* communications is not applicable if the decision making process is Legislative in nature.

1. An *ex parte* communication is any communication, whether oral, written or electronic that:
  - a) involves fewer than all the parties having a legal interest in the matter;
  - b) is about a pending or upcoming matter within the jurisdiction of the administrative body;
  - c) made to or initiated by a commission member having jurisdiction over the matter;
2. An *ex parte* communication may include:
  - a) communications with people involved in the subject matter pending before the commission;
  - b) communications with people not involved in the pending matter at all;
  - c) independent investigations such as visiting the site proposed for development;
  - d) communications made with the best of intentions.
3. Permissible *ex parte* communications include:
  - a) communications for the purpose of scheduling, administrative matters or emergency purposes;
  - b) communications with the municipal attorney;
  - c) communications with commission staff (if any)

**NOTE: This is not to be confused with communications with the municipal planning and zoning department; which usually has a position on planning and zoning matters and with whom such *ex parte* communications would be IMPERMISSIBLE.**

4. *Ex Parte* communications are prohibited for a variety of reasons:
  - a) It is not fair to the other party because the decision maker may be improperly influenced;
  - b) It is not fair to the other party because the decision maker may be inaccurately informed;
  - c) It is not fair to the other party because the decision maker is only provided with one side of the issue;
  - d) In the absence of actual influence or misinformation, the other side may nevertheless feel cheated and believe the proceedings have been tainted;
  - e) The commission can acquire a reputation for being susceptible to improper influence;
  - f) Improper *ex parte* communications can invalidate the actions of the commission.

## **E. The Record**

One of the most important tasks of the Commission while conducting a quasi-judicial hearing is to develop and preserve the record. Development of a good record is important for several reasons:

1. **History** – Just as the minutes of a Commission meeting memorialize the past action/or history of a Commission’s meetings, the record serves to memorialize the past actions of the Commission when it acts in a quasi-judicial capacity.

2. **Framework for Action** – In Chapter XII, we explained that one of the characteristics of a quasi-judicial hearing is that it is a proceeding where the decisions must be based on evidence “in the record.” Depending on the complexity of the case, the record might be very simple and contain only a few items, or it may be quite elaborate and comprehensive. At the very least, the record will contain the following important parts:

- a) The legal authority upon which jurisdiction is based. Normally, this will be a statutory or ordinance reference that authorizes the contemplated actions of the Commission, (e.g. the ordinance authorizing and outlining the requirements for a Conditional Use Permit).
- b) The application of the person seeking action by the Commission. (This will include all information attached to the application in support of the application).
- c) Staff’s review of the application and any report submitted by staff.
- d) A printed transcript or tape or digital recording that contains a verbatim collection of all of the testimony of all of the witnesses that provide testimony throughout the hearing. This includes comments from the public at large and all questions and answers provided during cross-examination.
- e) Any books, photographs, maps, drawings, videotapes, reports or anything else submitted by any speaker or member of the public that is filed with the Commission during the course of the hearing.
- f) Public notices and proof of publication that demonstrate compliance with notice requirements and that establish the jurisdiction of the Commission.

3. **Basis for making its Decisions** – The Commission is required to send its decision and to support its decision by Findings of Fact in the record. Since the jurisdiction for its decision must be derived from the record, a more comprehensive record produces a better justified and defensible decision.

4. **Appellate Record** – It is this same record (or one generated by the Governing Body) that will form the basis for subsequent judicial review. The District Court and possibly the Court of Appeals or Supreme Court may be called upon to review the decision of the Commission. Any subsequent review by the court will be an “on the record review.” This means that the court will review the entire record in order to determine if the Commission:

- a) Had jurisdiction over the matter;
- b) Based its decision on substantial evidence in the record;
- c) Acted arbitrarily or capriciously; or
- d) Otherwise acted in accordance with law.

It is therefore of great importance that the record be complete and accurate so as to provide the best defense of the Commission's actions before the court on review.

## **F. Sample Provisions for Implementation of *Battershell* Proceedings**

**1. Designation of Parties.** The Hearing Examiner or Chair of the Commission should determine, prior to the commencement of the hearing, the parties to the hearing, because the parties will be afforded certain rights that do not extend to other participants. Clearly announce that the applicant or the applicant's agent or representative as well as the municipality are parties to the hearing. Other people may be designated as parties by the Hearing Examiner or Commission if they can demonstrate eligibility.

**2. Testimony under oath.** All people (other than New Mexico licensed attorneys appearing on behalf of a client and presenting only legal arguments ) giving testimony before the Commission shall be sworn in under oath before the proceeding by the Commission Administrator, Commission staff member, Chairman of the Commission, or other qualified notary public, and shall be obligated thereby to testify in a truthful manner. To assist in the orderly presentation of evidence, people giving testimony will be divided into three groups: (1) proponents; (2) opponents; and (3) interested people. To further assist in the orderly presentation of testimony and preparation of the minutes of the Commission, all people wishing to testify, (as well as attorneys representing clients) will be required to provide their names and addresses in written form to the Commission staff prior to being permitted to testify or address the Commission.

### **3. Manner of presentations to the Commission.**

- a) Staff.** Municipal staff will present their direct testimony and position with respect to the application or matter at hand. In the same manner, the staff will stand for questions by the Commissioners and cross examination by the applicant and other parties.
- b) Applicants.** Applicants are asked to address and explain the material which is the subject of their application in a succinct manner, confining their comments to matters relevant to the application and the Commission's jurisdiction and decision making responsibilities. At the conclusion of the applicant's testimony, Commissioners may question the applicant to assist in the Commissioner's understanding of the matter to be considered. This may be followed by cross examination by municipal staff. Following questions by the Commissioners and staff, other parties may pose questions in the nature of cross examination to the applicant. (NO TESTIMONY WILL BE TAKEN AT THIS TIME). If the Commission has not restricted the right of cross examination to parties, members of the public may pose questions to the applicant. If the right of cross examination is reserved to parties, omit this step.
- c) Opponents.** Opponents to the application will proceed with their direct testimony. In the same manner, the opponents will stand for questions by the Commissioners and cross examination by the staff, applicant and other parties.

- d) **Members of the public.** Similarly, any interested member of the public may make a statement concerning the application pending before the Commission. Anyone making such a statement will be subject to questioning by members of the Commission, staff, the applicant, opponents and other parties to the hearing.
- e) **All people giving testimony.** All testimony and all questioning of witnesses will be confined to matters relevant to the application pending before the Commission and the Commission's decision making authority concerning the pending application. No questions shall be asked of any individual Commissioner by applicants or others testifying before the Commission except through the Chair of the Commission. All people participating in the proceedings are expected to conduct themselves in a courteous manner.

4. **Evidence.** The Chair of the Commission shall mark for identification and enter into evidence, to be made a part of the record, any relevant written document tendered by any person during the course of the proceedings.

## CHAPTER XIV

### DECISION FINDINGS AND CONCLUSIONS

Following the presentation of all the evidence, the Commission is in a position to render its decision. It may either do so on the spot, recess into executive session (upon making an appropriate motion and taking a vote in accordance with the Open Meetings Act) to deliberate the matter with a view towards returning in a short time with a decision, or it may decide to render its decision at a later date. Regardless of the course of action the Commission decides to take, certain requirements must be met before the decision of the Commission is a final decision that may either be implemented or appealed to the next higher authority.

The Legislature enacted provisions concerning appeals from final decisions of administrative agencies; (NMSA 1978 §39-3-1.1) and the Supreme Court bolstered the statute by adopting new rules governing appeals of administrative agencies, (Rules 1-074, 1-075,) in an effort to standardize the appellate procedures. Prior to this statutory change, district courts (sitting as appeals courts from Commission decisions) and the Court of Appeals and Supreme Court were faced with the task of deciding appeals from Commission decisions or City Council/Commission decisions without the benefit of a record in many cases, and certainly without an adequate record in most cases. The Legislature made this appellate procedure applicable to most administrative agencies, including local government (meaning planning and zoning commissions and Governing Bodies acting as the planning and zoning authority for the municipality).

In NMSA 1978 § 39-3-1.1, the legislature imposed on Boards and Commissions and the City Council/Commission sitting as the planning and zoning authority for the municipality, the requirement that any final agency decisions be reduced to writing. All decisions of Planning and Zoning Commissions and Governing Bodies acting as the planning and zoning authority of the municipality are considered to be covered by the statute. The written decision must include an order granting or denying relief and a statement of the factual and legal basis for the order. The decision must be filed with the appropriate records custodian of the agency (Planning and Zoning Commission or city clerk if it is the Governing body acting as a planning and zoning authority). Finally, the written decision must be served on all parties and on every person who has made a written request for the decision. Along with the decision of the administrative agency, the agency must supply parties with information on how to file an appeal of the decision. Although this might sound like a daunting task, it really does not require much more action on the part of Commissions than under the previous system.

**1. The requirement that the order be in writing.** This is not an overwhelming requirement for most Commissions. (For purposes of this paper "Commissions" also refers to Governing Bodies acting as the planning and zoning authority for the municipality). Most if not all decisions involving planning and zoning decisions have generally been reduced to some form of writing, either a letter of denial or the issuance of some sort of permit, whether it be a sign permit, conditional use or special use permit, or acknowledgement and enactment of a zone map amendment, or the denial of any of these. The writing requirement therefore is not over burdensome. In order to comply with

the statute, the decision simply needs to be more formal and couched as an “order” of the Commission.

**2. Factual and Legal Basis for the Decision.** This is perhaps the more tricky part of the statute, but it is not much more onerous than the procedure currently followed by most Commissions. The statute requires that the order of the Commission contain a statement of the factual and legal basis for the order. Prior caselaw addressing decisions of adjudicative and quasi-judicial bodies also required that the decision be supported by substantial evidence in the record; and many statutes and ordinances required that the order of the Commission set forth those findings and conclusions in support of its order. Because of the adoption of NMSA 1978 §39-3-1.1, the Commission is required to reduce to writing that which it has already been required to state; the factual reasons and legal basis behind its decision. The requirement of findings and conclusions is nothing more than the Commissions’ reasons for its action on the application. The reasons have to be supported by some evidence in the record, be it written letters, oral testimony or other information. This is something Commissions should have already been doing. No Commission has ever had the authority to act arbitrarily or capriciously on an application. Commissions have always been required to base decisions on the information placed before it; this is simply a more formal way of implementing what is already required.

**3. Preparation of Findings and Conclusions.** There are several ways to attack this requirement. The first involves the Commission meeting to discuss the application and the Commission coming to agreement concerning the evidence in the record supporting the decision. This may be done in open or closed session of the Commission. If this can be accomplished in a short period of time, the Commission attorney or other staff person would be in a position to draft a document representing the views of the Commission. This is normally done at the conclusion of the public hearing, when all the evidence and testimony has been received by the Commission and following Commission deliberations.

If the Commission is dealing with more sophisticated participants in the application process, the Commission might ask the participants to prepare proposed findings and conclusions for use by the Commission. Having received proposed findings and conclusions from all interested parties, the Commission may pick and choose from the proposed findings and conclusions, those that match the mindset of the Commission; assuming the proposed finding or conclusion was presented during the course of the public hearing. It is customary under this process to ask for proposed findings and conclusions at the conclusion of the hearing.

In some cases there might be a split on the Commission or a divergence of viewpoints on a particular issue. Although not contemplated by the statute, there does not appear to be anything wrong with the Commission also adopting a minority position or minority opinion in conjunction with a decision.

In some cases the decision of the Commission will be rendered on the spot, meaning that the applicant will be notified that the application has been granted or denied. **IT IS IMPERATIVE TO NOTE** that the decision announced by the Commission **CANNOT BE ENFORCED** unless and until the written order containing the factual and legal basis for the order is prepared and filed with the appropriate authority. In some cases this might be a few days or a few weeks after the public hearing and announcement of the Commission decision. Similarly, since the decision of the Commission cannot be

enforced until it is reduced to writing and filed, the statute of limitations concerning a person's time to appeal a decision of the Commission does not begin to run until the decision is reduced to writing and filed.

**4. Adoption of Findings of Fact and Conclusions of Law.** The findings and conclusions and the decision on the application are **ALL** decisions of the Commission. Consequently, the Commission must establish a process for adoption of the findings and conclusions. The preferred, but most time-consuming method of approving the findings and conclusions is to have the decision (complete with findings and conclusions) prepared sometime after the public hearing. The document would be presented at the next regular meeting of the Commission for its formal approval, unless the Commission desires to call a short special meeting for the purpose of approval. In either circumstance, the decision (including the findings and conclusions) would not be filed until formally adopted by the Commission at a meeting of the Commission. The down side to this option is that implementation of the decision is delayed until the decision, complete with findings and conclusions, is approved by a majority of the Commission at a subsequent meeting.

**5. Filing the Decision of the Commission.** The statute requires that the decision be filed with the official public records of the agency. This might vary depending upon who is responsible for maintaining the records of the Commission. If the Commission retains its own records, the decision must be filed with the official responsible for maintaining custody of the Commission records. If the municipality maintains the records of the Commission, then the decision should be filed with the municipal clerk. Clearly, if the Governing Body of the municipality is acting as the planning or zoning authority, the decision should be filed with the municipal clerk.

**6. Service of the Decision.** The final requirement of the statute is that the decision and instructions on how to file an appeal of the decision be served on all persons who were parties to the proceedings and on every person who files a written request for notice of the final decision. Obviously, the person filing the application is considered a party to the proceeding. The municipality is more than likely also a party, although in many cases the outcome of the application might not matter to the municipality. To be safe, the municipality should also be served with a copy of the decision. Other people who might be considered parties are an owner of property located within a short distance of the property that is the subject of the hearing (usually within 100 feet), an organized neighborhood association that has adopted by-laws and that includes the area affected by the hearing or land within 100 feet, and any other person or organization that can demonstrate a significant interest in the subject matter of the hearing. This interest may be pecuniary or some other direct interest in the outcome of the hearing. The decision concerning whether a person is a party and thus whom to serve with the decision is going to rest largely on the level of participation and involvement of the particular individual. It is probably best to err on the side of "over service" even in the face of increased costs.

Therefore, it is recommended that in addition to the applicant and the municipality that anyone who filed a written letter of protest or objection also be served with a copy of the decision. As to those giving testimony, a good process would be to have a sign-up sheet in the hearing room and require that anyone wishing to give testimony must sign the sheet. Include on the sheet a space indicating whether or not the person giving testimony desires a copy of the decision. If the person giving testimony indicates that (s)he wants a copy of the decision, treat this as a written request for notice of the final decision of the Commission.