

Planner's Guide

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Duties of the Planning Commission

Authority for Planning (NRS 278.020):

1. For the purpose of promoting health, safety, morals, or the general welfare of the community, the governing bodies of cities and counties are authorized and empowered to regulate and restrict the improvement of land and to control the location and soundness of structures.
2. Any such regulation, restriction and control must take into account:
 - a) The potential impairment of natural resources and the total population which the available natural resources will support without unreasonable impairment; and
 - b) The availability of and need for affordable housing in the community, including affordable housing that is accessible to persons with disabilities.

Authority for Zoning (NRS 278.250):

The governing body may divide the city, county or region into zoning districts of such number, shape and area as are best suited to carry out the purposes of NRS 278.010 to 278.630. Within the zoning district it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land.

Authority for Ordinance Governing The Subdivision of Land (NRS 278.326):

Local subdivision ordinances shall be enacted by the governing body of every incorporated city and every county prescribing regulation which . . . govern matters of improvements, mapping, accuracy, engineering and related subjects but shall not be in conflict with NRS 278.010 to 278.630 inclusive.

Planning Commissions (NRS 278.030—278.140):

All cities with a population of 25,000 or more and all counties with a population of 40,000 or more are required to create a planning commission. In cities and counties below the population threshold, creation of a planning commission is optional. Rather, the governing body may, if it considers the creation of a planning commission unnecessary or inadvisable, perform all the functions and have all of the powers which would otherwise be granted to and be performed by the planning commission.

The board of county commissioners of any county alone or in collaboration with the governing body of the incorporated cities in the county or any of them, or in collaboration with the board or boards of an adjacent county or counties (excluding Washoe County), may establish a regional planning commission (NRS 278.090).

The city planning commission may perform the following duties (NRS Chapter 268)

1. Recommend and advise the city council and all other public authorities concerning:

- (a) The laying out, widening, extending, paving, parking and locating of streets, sidewalks and boulevards.
 - (b) The betterment of housing and sanitary conditions, and the establishment of zones or districts within which lots or buildings may be restricted to residential use, or from which the establishment, conduct or operation of certain business, manufacturing or other enterprises may be excluded, and limiting the height, area and bulk of buildings and structures therein.
2. Recommend to the city council and all other public authorities plans and regulations for the future growth, development and beautification of the municipality in respect to its public and private buildings and works, streets, parks, grounds and vacant lots, which must include for each city a population plan if required by [NRS 278.170](#) [in counties of 100,000 or more] and a plan for the development of affordable housing.
 3. Perform any other acts and things necessary or proper to carry out the provisions of [NRS 268.110](#) to [268.220](#), inclusive, and in general to study and propose such measures as may be for the municipal welfare and in the interest of protecting the municipal area's natural resources from impairment.

As a practical matter, the specific duties of a planning commission in a given jurisdiction could be much more expansive than listed above. The local ordinance that creates the planning commission is likely to define in more detail what the responsibilities of the planning commission are. Many planning commissions are authorized by the governing body to conduct public hearings on land use applications and take final action subject to a possible appeal to the governing body. Senate Bill 554, passed in the 2001 legislative session, requires the governing body of each city and county to adopt by ordinance a procedure to appeal decisions of the planning commission, board of adjustment or hearing examiner to the governing body.

The Planning Commission (NRS Chapter 278):

- Shall hold at least one regular meeting each month.
- Shall adopt rules for transaction of business and keep a record of its resolutions, transactions, findings and determinations.
- May appoint employees.
- May contract with planners, engineers, architects and other consultants.
- Expenditures shall be within the amounts appropriated by the governing body which shall provide the funds, equipment and accommodations necessary for the commission's work.
- Shall prepare and adopt a comprehensive, long-term general plan for the physical development of the city, county or region. The "master plan" must be prepared so that all or portions of it may be adopted by the governing body.
- Shall promote public interest in and understanding of the plan, and consult and advise public officials and agencies, public utility companies, civic, educational, professional and other organizations, and with citizens generally in relation to carrying out the plan.

Authority For Planning Commission To Grant Variances, Special And Conditional Use Permits And Other Special Exceptions (NRS 278.315):

The governing body may provide by ordinance for the granting of variances, special use permits, conditional use permits or other special exceptions by the board of adjustment, the planning commission or a hearing examiner. The governing body may impose this duty entirely on the board, commission or examiner, or provide for the granting of enumerated categories of variances, special use permits, conditional use permits or special exceptions.

Ethical Issues

Appearance of Fairness

The governing body and/or the planning commission becomes involved in two types of decision-making processes. The first is legislative. Legislative acts, such as the adoption of an ordinance or a comprehensive plan amendment, affect the public as a whole. On the other hand, decisions on applications or proposals involving a single parcel of land or small group of parcels and affecting specific individuals are considered quasi-judicial. It is in the quasi-judicial arena that appearance of fairness becomes an important issue. An applicant is entitled to a fair hearing of the facts and issues of a case before unbiased officials. A hearing must be fair not only in fact, but in appearance as well. Unpopular decisions are more readily accepted when the interested parties have been afforded an opportunity to be heard, when they understand the basis of the decision, and when they see the process as fair.

Personal Bias

Personal bias exists when prejudice or prejudgment of the facts causes an official to be unable to make an objective decision on the merits of the case. The official should disqualify him/herself.

Actual or Potential Conflict of Interest

Conflict of interest exists when a decision would result in either financial benefit or financial harm to an official, a member of his/her household or a business association of the official. In this case, the official should disqualify him/herself.

A potential conflict exists when a decision could result in such benefit or harm. The official should disclose the potential conflict. The hearing body should allow the applicant or proponent of the land use action an opportunity to respond.

Ex-Parte Contact

An ex-parte contact occurs when the merits of a case are discussed with one or more individuals outside the presence of all interested parties. An ex-parte contact should be disclosed, and the hearing body should allow the applicant or proponent to respond.

American Planning Association (APA)

The American Planning Association and its professional institute, the American Institute of Certified Planners, are organized to advance the art and science of planning and to foster the activity of planning -- physical, economic, and social -- at the local, regional, state, and national levels. The objective of the Association is to encourage planning that will contribute to public well-being by developing communities and environments that meet the needs of people and society more effectively.

The American Planning Association is the result of a merger between the American Institute of Planners, founded in 1917, and the American Society of Planning Officials, established in 1934.

The organization has 46 regional chapters and 17 divisions of specialized planning interests. It is a non-profit public interest and research organization representing 30,000 practicing planners, officials, and citizens involved with urban and rural planning issues. Sixty-five percent of APA's members are employed by state and local government agencies. These members are involved, on a day-to-day basis, in formulating planning policies and preparing land use regulations. APA's objective is to encourage planning that will contribute to public well-being by developing communities and environments that meet the needs of people and society more effectively.

The American Institute of Certified Planners (AICP) is APA's professional and educational component, certifying planners who have met specific educational and experiential criteria and passed the certification. AICP is concerned with requirements for certification of professional planners, ethics, professional development, planning education, and the standards of practice. Certified planners are skilled at finding solutions to current community problems in ways that will carry a community toward long-term goals.

AICP/APA Ethical Principles in Planning (As Adopted May 1992)

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

The planning process exists to serve the public interest. While the public interest is a question of continuous debate, both in its general principles and in its case-by-case applications, it requires a conscientiously held view of the policies and actions that best serve the entire community. Section A presents what we hold to be necessary elements in such a view.

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

Those who practice planning need to adhere to a special set of ethical requirements that must guide all who aspire to professionalism. These are presented in Section C.

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

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

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

Planning Process Participants should:

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

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

Planning Process Participants should:

1. Exercise fair, honest and independent judgment in their roles as decision makers and advisors;
2. Make public disclosure of all "personal interests" they may have regarding any decision to be made in the planning process in which they serve, or are requested to serve, as advisor or decision maker;
3. Define "personal interest" broadly to include any actual or potential benefits or advantages that they, a spouse, family member or person living in their household might directly or indirectly obtain from a planning decision;
4. Abstain completely from direct or indirect participation as an advisor or decision maker in any matter in which they have a personal interest, and leave any chamber in which such a matter is under deliberation, unless their personal interest has been made a matter of public record; their employer, if any, has given approval; and the public official, public agency or court with jurisdiction to rule on ethics matters has expressly authorized their participation;
5. Seek no gifts or favors, nor offer any, under circumstances in which it might reasonably be inferred that the gifts or favors were intended or expected to influence a participant's objectivity as an advisor or decision maker in the planning process;
6. Not participate as an advisor or decision maker on any plan or project in which they have previously participated as an advocate;
7. Serve as advocates only when the client's objectives are legal and consistent with the public interest.
8. Not participate as an advocate on any aspect of a plan or program on which they have previously served as advisor or decision maker unless their role as advocate is authorized by applicable law, agency regulation, or ruling of an ethics officer or agency; such participation as an advocate should be allowed only after prior disclosure to, and approval

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

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

APA Members who are practicing planners:

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

Nevada Ethics In Government Law

NRS 281.421 Legislative declaration and findings. General Provisions

1. It is hereby declared to be the public policy of this state that:
 - a) A public office is a public trust and shall be held for the sole benefit of the people.
 - b) A public officer or employee must commit himself to avoid conflicts between his private interests and those of the general public whom he serves.

The legislature finds that:

1. The increasing complexity of state and local government, more and more closely related to private life and enterprise, enlarges the potentiality for conflict of interests.
2. To enhance the people's faith in the integrity and impartiality of public officers and employees, adequate guidelines are required to show the appropriate separation between the roles of persons who are both public servants and private citizens.

NRS 281.433 "Decision" defined.

The making of a "decision" is the exercise of governmental power to adopt laws, regulations or standards, render quasi-judicial decisions, establish executive policy or determine questions involving substantial discretion. The term does not include the functions of the judiciary.

NRS 281.4345 "Legislative function" defined.

"Legislative function" means introducing or voting upon any ordinance or resolution, or voting upon:

1. The appropriation of public money;
2. The issuance of a license or permit; or
3. Any proposed subdivision of land or special exception or variance from zoning regulations.

NRS 281.4365 "Public officer" defined.

1. "Public officer" means a person elected or appointed to a position which is established by the constitution of the State of Nevada, a statute of this state or an ordinance of any of its counties or incorporated cities and which involves the exercise of a public power, trust or duty. As used in this section, "the exercise of a public power, trust or duty" includes:
 - a) Actions taken in an official capacity which involve a substantial and material exercise of administrative discretion in the formulation of public policy;
 - b) The expenditure of public money; and
 - c) The enforcement of laws and rules of the state, a county or a city.

2. "Public officer" does not include:
 - a. Any justice, judge or other officer of the court system;
 - b. A commissioner of deeds;
 - c. Any member of a board, commission or other body whose function is advisory;

Code of Ethical Standards

NRS 281.481 General requirements; exceptions.

A code of ethical standards is hereby established to govern the conduct of public officers and employees:

1. A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties.
2. A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any member of his household, any business entity in which he has a significant pecuniary interest, or any other person. As used in this subsection, "unwarranted" means without justification or adequate reason.
3. A public officer or employee shall not participate as an agent of government in the negotiation or execution of a contract between the government and any private business in which he has a significant pecuniary interest.
4. A public officer or employee shall not accept any salary, retainer, augmentation, expense allowance or other compensation from any private source for the performance of his duties as a public officer or employee.
5. If a public officer or employee acquires, through his public duties or relationships, any information which by law or practice is not at the time available to people generally, he shall not use the information to further the pecuniary interests of himself or any other person or business entity.
6. A public officer or employee shall not suppress any governmental report or other document because it might tend to affect unfavorably his pecuniary interests.
7. A public officer or employee, other than a member of the legislature, shall not use governmental time, property, equipment or other facility to benefit his personal or financial interest. This subsection does not prohibit:
 - (a) A limited use of governmental property, equipment or other facility for personal purposes if:
 - (1) The public officer who is responsible for and has authority to authorize the use of such property, equipment or other facility has established a policy allowing the use or the use is necessary as a result of emergency circumstances;
 - (2) The use does not interfere with the performance of his public duties;

- (3) The cost or value related to the use is nominal; and
 - (4) The use does not create the appearance of impropriety;
- (b) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or
 - (c) The use of telephones or other means of communication if there is not a special charge for that use. If a governmental agency incurs a cost as a result of a use that is authorized pursuant to this subsection or would ordinarily charge a member of the general public for the use, the public officer or employee shall promptly reimburse the cost or pay the charge to the governmental agency.
8. A member of the legislature shall not:
- (a) Use governmental time, property, equipment or other facility for a nongovernmental purpose or for the private benefit of himself or any other person. This paragraph does not prohibit:
 - (1) A limited use of state property and resources for personal purposes if:
 - i. The use does not interfere with the performance of his public duties;
 - ii. The cost or value related to the use is nominal; and
 - iii. The use does not create the appearance of impropriety;
 - (2) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or
 - (3) The use of telephones or other means of communication if there is not a special charge for that use.
 - (b) Require or authorize a legislative employee, while on duty, to perform personal services or assist in a private activity, except:
 - (1) In unusual and infrequent situations where the employee's service is reasonably necessary to permit the legislator or legislative employee to perform his official duties; or
 - (2) Where such service has otherwise been established as legislative policy.
9. A public officer or employee shall not attempt to benefit his personal or financial interest through the influence of a subordinate.
10. A public officer or employee shall not seek other employment or contracts through the use of his official position.

NRS 281.491 Additional standards:

Representation and counseling of private person before public agency; disclosure required. In addition to the requirements of the code of ethical standards:

1. A member of the executive branch or public employee of the executive branch shall not accept compensation from any private person to represent or counsel him on any issue pending before the agency in which that officer or employee serves, if the agency makes decisions. Any such officer or employee who leaves the service of the agency shall not, for 1 year after leaving the service of the agency, represent or counsel for compensation a private person upon any issue which was under consideration by the agency during his service. As used in this subsection, "issue" includes a case, proceeding, application, contract or determination, but does not include the proposal or consideration of legislative measures or administrative regulations.
2. A member of the legislative branch, or a member of the executive branch or public employee whose public service requires less than half of his time, may represent or counsel a private person before an agency in which he does not serve. Any other member of the executive branch or public employee shall not represent a client for compensation before any state agency of the executive or legislative branch of government.
3. Not later than January 10 of each year, any legislator or other public officer who has, within the preceding year, represented or counseled a private person for compensation before a state agency of the executive branch shall disclose for each such representation or counseling during the previous calendar year:
 - a) The name of the client;
 - b) The nature of the representation; and
 - c) The name of the state agency.The disclosure must be made in writing and filed with the commission.

NRS 281.501 Additional standards: Voting by public officers;

Effect of abstention from voting on quorum; disclosures required of public officers and employees.

1. Except as otherwise provided in subsection 2 or 3, a public officer may vote upon a matter if the benefit or detriment accruing to him as a result of the decision either individually or in a representative capacity as a member of a general business, profession, occupation or group is not greater than that accruing to any other member of the general business, profession, occupation or group.
2. In addition to the requirements of the code of ethical standards, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by:
 - (a) His acceptance of a gift or loan;
 - (b) His pecuniary interest; or
 - (c) His commitment in a private capacity to the interests of others.

It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his pecuniary interest or his commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to him or to the other persons whose interests to which the member is committed in a private capacity is not greater than that

accruing to any other member of the general business, profession, occupation or group. The presumption set forth in this subsection does not affect the applicability of the requirements set forth in subsection 3 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.

3. A public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon any matter:
 - (a) Regarding which he has accepted a gift or loan;
 - (b) Which would reasonably be affected by his commitment in a private capacity to the interest of others; or
 - (c) In which he has a pecuniary interest,
 - (d) without disclosing sufficient information concerning the gift, loan, commitment or interest to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the person to whom he has a commitment, or upon his interest. Except as otherwise provided in subsection 6, such a disclosure must be made at the time the matter is considered. If the officer or employee is a member of a body which makes decisions, he shall make the disclosure in public to the chairman and other members of the body. If the officer or employee is not a member of such a body and holds an appointive office, he shall make the disclosure to the supervisory head of his organization or, if he holds an elective office, to the general public in the area from which he is elected. This subsection does not require a public officer to disclose any campaign contributions that the public officer reported pursuant to [NRS 294A.120](#) or [294A.125](#) in a timely manner.
4. If a public officer declares to the body or committee in which the vote is to be taken that he will abstain from voting because of the requirements of this section, the necessary quorum to act upon and the number of votes necessary to act upon the matter, as fixed by any statute, ordinance or rule, is reduced as though the member abstaining were not a member of the body or committee.
5. If a public officer is voting on a matter which affects public employees, he shall make a full public disclosure of any personal pecuniary interest which he may have in the matter.
6. After a member of the legislature makes a disclosure pursuant to subsection 3, he may file with the director of the legislative counsel bureau a written statement of his disclosure. The written statement must designate the matter to which the disclosure applies. After a legislator files a written statement pursuant to this subsection, he is not required to disclose orally his interest when the matter is further considered by the legislature or any committee thereof. A written statement of disclosure is a public record and must be made available for inspection by the public during the regular office hours of the legislative counsel bureau.
7. The provisions of this section do not, under any circumstances:
 - (a) Prohibit a member of the legislative branch from requesting or introducing a legislative measure; or

- (b) Require a member of the legislative branch to take any particular action before or while requesting or introducing a legislative measure.
- 8. As used in this section, "commitment in a private capacity to the interests of others" means a commitment to a person:
 - a. Who is a member of his household;
 - b. Who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity;
 - c. Who employs him or a member of his household;
 - d. With whom he has a substantial and continuing business relationship; or
 - e. Any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection.

NRS 281.505 Contracts in which public officer or employee has interest prohibited; exceptions

1. Except as otherwise provided in this section, a public officer or employee shall not bid on or enter into a contract between a governmental agency and any private business in which he has a significant pecuniary interest.
2. A member of any board, commission or similar body who is engaged in the profession, occupation or business regulated by such board or commission, may, in the ordinary course of his business, bid on or enter into a contract with any governmental agency, except the board, commission or body of which he is a member, if he has not taken part in developing the contract plans or specifications and he will not be personally involved in opening, considering or accepting offers.
3. A full- or part-time faculty member in the University and Community College System of Nevada may bid on or enter into a contract with a governmental agency if he has not taken part in developing the contract plans or specifications and he will not be personally involved in opening, considering or accepting offers.
4. A public officer or employee, other than an officer or employee described in subsection 2 or 3, may bid on or enter into a contract with a governmental agency if the contracting process is controlled by rules of open competitive bidding, the sources of supply are limited, he has not taken part in developing the contract plans or specifications and he will not be personally involved in opening, considering or accepting offers.

NRS 281.541 Specialized or local ethics committee: Establishment; functions; confidentiality.

1. Any department, board, commission or other agency of the state or the governing body of a county or an incorporated city may establish a specialized or local ethics committee to complement the functions of the commission. A specialized or local ethics committee may:

- (a) Establish a code of ethical standards suitable for the particular ethical problems encountered in its sphere of activity. The standards may not be less restrictive than the statutory ethical standards.
 - (b) Render an opinion upon the request of any public officer or employee of its own organization or level seeking an interpretation of its ethical standards on questions directly related to the propriety of his own future official conduct or refer the request to the commission. Any public officer or employee subject to the jurisdiction of the committee shall direct his inquiry to that committee instead of the commission.
 - (c) Require the filing of statements of financial disclosure by public officers on forms prescribed by the committee or the city clerk if the form has been:
 - (1) Submitted, at least 60 days before its anticipated distribution, to the commission for review; and
 - (2) Upon review, approved by the commission.
2. A specialized or local ethics committee shall not attempt to interpret or render an opinion regarding the statutory ethical standards.
3. Each request for an opinion submitted to a specialized or local ethics committee, each hearing held to obtain information on which to base an opinion, all deliberations relating to an opinion, each opinion rendered by a committee and any motion relating to the opinion are confidential unless:
- a) The public officer or employee acts in contravention of the opinion; or
 - b) The requester discloses the content of the opinion.

The complete text of the Nevada Ethics in Government Law can be found at Nevada Law Library website: <http://www.leg.state.nv.us/law1.cfm>.

Due Process

Due process has two components:

Procedural, which says that a rule or action was properly adopted after proper notice and the opportunity to be heard, and substantive, which means the rule or action gives adequate notice of what is intended or regulated and is reasonably related to a matter appropriate for government regulation. As it relates to planning, due process most commonly takes these forms:

Procedural Due Process: a right to have certain rules followed before significant changes occur to one's rights, responsibilities, or property. The key to procedural due process is adequate notice and is the prerequisite for any lawful municipal action.

Substantive Due Process: the right to have rules adopted which are reasonable in aim and scope, and which are targeted to objectives appropriate for municipal action. The questions which arise under substantive due process include:

Proper exercise of the police power.

- Does the action seek to achieve a legitimate public purpose, i.e., protect the public health, safety and welfare?
- Are the means used to accomplish the lawful purpose reasonably necessary to achieve the stated objective, i.e., standards for manufactured homes rather than prohibition?
- Is the chosen regulation unduly burdensome on the land owner, i.e., "balancing test": balance the seriousness of the public problem against the value lost, extent of remaining use?

Vagueness

Courts have held ordinances to be unconstitutionally vague when the ordinance "forbids conduct in terms so vague that persons of common intelligence must guess at its meaning and differ as to its application," i.e., limited use or adequate parking.

Nexus

There must be a logical connection between the problem the community is trying to solve and the limitation, regulation or exaction sought by the municipal action, as in *Nollan v. California Coastal Commission*. The commission required the property owner to dedicate a beach front public walkway (without compensation) as a condition to remodel a home. The court decided in favor of the plaintiff because of the lack of "nexus."

Proportionality

In *Dolan v. City of Tigard*, the city required the owner of a commercial property to dedicate a portion of her land for a public greenway along the creek to (1) minimize flooding as a result of increases in impervious surfaces from the development and (2) for a pedestrian/bicycle path to

relieve traffic congestion. This requirement was imposed as a condition for a building permit its expand her store. The court ruled that the city must demonstrate a “rough proportionality” between the condition imposed and the impact to be mitigated. In other words, the required dedication must be related both in nature and extent to the proposed development’s impact.

Takings

The U.S. Constitution states that property shall not be taken without just compensation. The most frequent challenge to land use regulations is that property has been “taken” through the regulatory process. The issue is whether a regulation leaves an owner a reasonable use of property.

The first question is whether the regulation safeguards the public interest in health, safety, the environment or the fiscal integrity of an area. This is to be contrasted with a regulation which goes beyond preventing a public harm and actually enhances a publicly owned right in property. If the regulation does not advance a legitimate state interest, then a taking has occurred for which compensation is required.

The second question is whether the regulation destroys one or more of the fundamental rights of property ownership—frequently referred to as the “bundle of rights”—including the right to possess, to exclude others, to dispose of and to make economically viable use of property. If on its face the regulation deprives the owner of all economically viable use of a property, a compensable taking has occurred. In *Lucas v. South Carolina Coastal Council*, the state legislature had enacted the Beachfront Management Act which prohibited Lucas from erecting any permanent habitable structures on his property. The Supreme Court ruled that regulations that deny the property owner all “economically viable use of his land” constitute one of the discrete categories of regulatory deprivations that require compensation.

NEVADA OPEN MEETING LAW CHECKLIST

(Chapter 241 Of Nevada Revised Statutes)

The following summary is provided to assist local communities in complying with the Open Meeting Law. The full text of the Nevada Open Meetings Law Manual is available at the Office of the Attorney General, Official Home Page, <http://ag.state.nv.us/openlaw/omlmanual.pdf>.

Does the Open Meeting Law Apply?

The Nevada Open Meeting Law requires that all meetings of public bodies be open and public, and all persons must be permitted to attend. Reasonable accommodation must be made to assist and accommodate physically handicapped persons.

_____ Is the entity a public body?

Any administrative, advisory, executive or legislative body of the state or local government which expends or disburses or is supported in whole or in part by tax revenue, or which advises such a body.

_____ Is the activity exempt from the open meeting law?

Exceptions: Judicial proceedings; legislature; state ethics commission; local ethics committee; hearings by school boards to consider expulsion of pupils; certain labor negotiations; medical/dental screening panels; meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of a person not an elected official.

_____ If a person's character, alleged misconduct, professional competence or physical or mental health is going to be considered at the meeting, has that person been given written notice of the time and place of the meeting?

_____ Was it personally delivered to the person at least five working days before the meeting or sent by certified mail to the last known address of that person at least twenty-one working days before the meeting?

_____ Did the public body receive proof of service of the notice before holding the meeting?

_____ Is a meeting going to occur?

A gathering of members of a public body at which a quorum is present to deliberate toward a decision or to take action on any matter over which it has supervision, control, jurisdiction or advisory power.

_____ Will a quorum (simple majority) of the members of the public body be present?

_____ To deliberate toward a decision or take action?

A public body that is required to be composed of elected officials only may not take action unless at least a majority of the total membership of the public body vote in favor of the action.

An affirmative vote of a majority of the total membership of the governing body or planning commission is required to make final disposition of a tentative subdivision map.

_____ On any matter over which the public body has supervision, control, jurisdiction or advisory power?

Notice, posting and mailing

Except in an emergency, written notice of all meetings must be given at least three working days before the meeting unless otherwise provided by statute or ordinance and include:

_____ Time, place and location of the meeting?

Agenda

_____ An agenda consisting of the following:

_____ Has a clear and complete agenda of all topics to be considered been prepared?

_____ Does it list all topics on which action may be taken during the meeting, and clearly identify that action may be taken?

_____ Have all the topics been described with clear and complete detail so the public is adequately noticed, i.e., name of applicant, parcel numbers, addresses, legal descriptions, code sections, et cetera?

_____ Does the agenda include a time for public comments and does it state that actions may not be taken on the matters considered during this period until specifically included on an agenda as an action item?

_____ If a closed session is required for discussion of an exempt matter, has it been included on the agenda?

_____ Does the written notice contain a statement regarding assistance and accommodations for physically handicapped people?

_____ A list of places (at least three) where the agenda was posted?

_____ Was the written notice posted at the principal office of the public body, or if there is no principal office, at the building in which the meeting is to be held?

- _____ Was the written notice posted at not less than three other separate, prominent places within the jurisdiction?
- _____ Was the written notice posted not later than 9 a.m. of the third working day before the meeting (don't count the day of the meeting)?
- _____ Was the written notice mailed at no charge to those who requested a copy?
- _____ Was the written notice mailed in the same manner in which notice is required to be mailed to a member of the body?
- _____ Was the written notice delivered to the postal service used by the body not later than 9 a.m. of the third working day before the meeting?
- _____ Have persons who requested notice of the meeting been informed with the first notice sent to them that their request lapses after six months?
- _____ Upon request, has at least one copy of an agenda, a proposed ordinance or regulation that will be discussed at the meeting, and any other supporting material (except confidential material identified by statute) been provided at no charge to each person who requests it?

The statute does not require that supporting material for an item on an agenda to be mailed to members of the general public requesting such material. Such material must be made available for requestors to pick up as the material becomes available.

Emergency Meetings

- _____ Is this an emergency meeting?
- _____ Were the circumstances giving rise to the meeting unforeseen?
- _____ Is immediate action required?
- _____ Do the minutes reflect the nature of the emergency and why notice could not be given?
- _____ Has an agenda been prepared limiting the meeting to the emergency item?
- _____ Has an attempt been made to give public notice?
- _____ While the notice and agenda requirements may be relaxed in an emergency, are all other provisions of the Open Meeting Law being observed (i.e., meeting open and public, minutes kept, etc.)?

Meeting open to the public, accommodations

- _____ Have all persons been permitted to attend?
- _____ Have members of the public been given the opportunity to speak during the public comment period?
- _____ Are facilities adequate and open?
- _____ Have reasonable efforts been made to assist and accommodate the handicapped?
- _____ If a telephone or video conference, can the public hear each member of the body?
- _____ Have members of the general public been allowed to record public meetings on audiotape or other means of sound reproduction so long as it in no way interferes with the conduct of the meeting?

Minutes

Each public body must keep written minutes of each meeting including the following:

- _____ The date, time and place of the meeting?
- _____ Those members who were in attendance and those who were absent?
- _____ The substance of all matters proposed, discussed or decided?
- _____ Remarks made by the general public?
- _____ Any other information which any member of the body requests to be part of the minutes?

Have the minutes of the meeting:

- _____ Been made available for inspection by the public within thirty working days after the adjournment of the meeting and retained for at least five years?

A public body may record on audiotape or other means of sound reproduction each of its meetings, including closed sessions. The record must be retained by the public body for at least one year after the adjournment of the meeting and must be made available for public inspection during the time the record is retained.

A member of the general public may record all or part of a meeting of a public body provided this is no way interferes with the conduct of the meeting.

SAMPLE AGENDA

Notice of Public Meeting and Agenda of the [city or county] Planning Commission

The *[city or county]* Planning Commission will conduct a public meeting on *[date]* beginning at *[time]* at the following location: *[Location]*

Below is an agenda of all items scheduled to be considered. Unless otherwise stated, items may be taken out of the order presented on the agenda at the discretion of the chairperson.

Reasonable efforts will be made to assist and accommodate physically handicapped persons desiring to attend the meeting. Please call *[contact person]* at *[telephone number]* in advance so that arrangements may be conveniently made.

Public comment may be limited to five minutes per person at the discretion of the chairperson.

AGENDA

(Action may be taken on those items denoted "Action")

1. Call to Order. (Action)
2. Roll Call. (Action)
3. Approval of Minutes for meeting (s) of *[date(s)]* . (Action)
4. Old Business. (Action)

(Under this heading, all items must be individually listed for consideration and must be noted either as an action or non-action item. Each item should be described with clear and complete detail and include such things as applicant name, parcel number, street addresses, legal descriptions, specific code references, etc.)

5. New Business. (Discussion)

(Under this heading, all items must be individually listed for consideration and must be noted either as an action or non-action item. Each item should be described with clear and complete detail and include such things as applicant name, parcel number, street addresses, legal descriptions, specific code references, etc.)

6. Public Comments. (Discussion)

(Public comment time may be limited, i.e., "Public comment may be limited to five minutes per person at the discretion of the chairperson." It may also be limited to items that are not on the agenda, provided that comments are allowed on agenda items, i.e., "The public may comment on agenda items by submitting a Request to Speak form to the City Clerk.")

7. Closed Session to discuss *[description of item to be discussed.]* (Discussion)
8. Adjournment. (Action)

This notice and agenda has been posted on or before 9 a.m. on the third working day before the meeting at the following locations:

(a) The *[city or county]* planning commission's principal office at *[location]*

- (a) [location]*
- (b) [location]*
- (c) [location]*

Public Notice Requirements			
NRS	Type of Action	Form of Notification	Notification Period
268.586	Annexation in County with population of 400,000 or more	Publication in newspaper of general circulation Notice by certified mail to all property owners within the territory proposed to be annexed	Not less than 20 days prior to the date of the public hearing
268.625	Program of Annexation in County with Population of 100,000 but less than 400,000	Notice mailed to all owners of property in the proposed program of annexation	
268.642	Annexation in accordance with program of annexation in county with population of 100,000 but less than 400,000	Notice to each city within 7 miles of exterior boundaries of territory proposed to be annexed Notice to any interested person who has requested such notice Proponents of the annexation	Not less than 15 days prior to the date of the public hearing
268.654	Intention to annex	Publication in newspaper of general circulation Notice by certified mail to all property owners within the territory proposed to be annexed	Not less than 20 days prior to the date of the next regular meeting of the governing body
268.664	Detachment of territory	Publication in newspaper of general circulation	Not less than 7 days prior to the date set for consideration of the detachment
270.040	Correction of plats, additions and subdivisions	Publication in newspaper of general circulation	At least once a week for four consecutive weeks
270.160	Vacation of plat	Publication in newspaper of general circulation	At least once a week for three consecutive weeks
278.0272	Amendment of regional plan in County with population of 100,000 but less than 400,000	Publication in newspaper(s) of general circulation	Not less than 10 days prior to the date of the public hearing in each of the cities within the region Not less than 30 days prior to the date of the public hearing to consider final approval
278.0276	Adoption of regional plan annexation in county with population of 100,000 but less than 400,000	Published in newspaper of general circulation	Not less than 10 days prior to the date of the public hearing
278.02786	Joint planning area adoption of master plan annexation in county with population of 100,000 but less than 400,000	Published in newspaper of general circulation	Not less than 10 days prior to the date of the public hearing
278.147	Application for conditional use permit for manufacture, processing, transfer or storage of explosives	Notice mailed to applicant; each owner or tenant of real property within 1,000 feet; property owners of at least 30 separately-owned parcels nearest the property or boundary in question; each tenant of a mobile home park or multiple-unit residence within 1,000 feet; any advisory board for the affected area; administrator of the division of environmental protection; state fire marshal; administrator of the division of industrial relations Published in newspaper of general circulation	Not less than 30 days prior to the date of the public hearing
278.210	Adoption of master plan by planning commission	Published in newspaper of general circulation	Not less than 10 days prior to the date of the public hearing

278.220	Adoption of master plan by governing body	Published in newspaper of general circulation	Not less than 10 days prior to the date of the public hearing
278.260	Adoption, enforcement or amendment of zoning regulations and boundaries of zoning districts by governing body	Published in newspaper of general circulation Notice mailed to applicant; each tenant of a mobile home park within 300 feet In a county with population less than 400,000, notice mailed to each owner of real property within 300 feet; property owners of at least 30 separately-owned parcels nearest property or boundary in question; any advisory board established for the affected area In a county with population of 400,000 or more, in addition to all of the above, notice mailed to each owner of real property within 500 feet; erection of a sign on the affected property with information regarding the request; and to an adjacent city if the proposal is located in an unincorporated enclave	Not less than 10 days prior to the date of the public hearing
278.315	Hearing to consider variance, special use permit, or other special exceptions	In a county with population less than 100,000, notice mailed to applicant; each owner of real property within 300 feet; each tenant of a mobile home park within 300 feet; any advisory board established for the affected area	Not less than 10 days prior to the date of the public hearing
278.315	Hearing to consider variance, special use permit, or other special exceptions	In a county with population of 100,000 or more, notice mailed to applicant; and If application for deviation of at least 10 percent but not more than 30 percent, each owner of real property within 100 feet; each tenant of a mobile home park within 100 feet; If application for special use permit or deviation of more than 30 percent, each owner of real property within 500 feet; property owners of at least 30 separately-owned parcels nearest property in question; each tenant of a mobile home park within 500 feet; If application for zone change or project of regional significance, each owner of real property within 750 feet; property owners of at least 30 separately-owned parcels nearest property in question; each tenant of a mobile home park within 750 feet; and Any advisory board established for the affected area	Not less than 10 days prior to the date of the public hearing
278.315	Hearing to consider variance, special use permit, or other special exceptions	In a county with population of 400,000 or more, if application for special use permit for establishment which serves alcoholic beverages in a district not a gaming enterprise district, notice mailed to applicant; each owner of real property within 1,500 feet; property owners of at least 30 separately-owned parcels nearest property in question; each tenant of a mobile home park within 1,500 feet; any advisory board established for the affected area; and erection of a sign on the affected property with information regarding the request	Not less than 10 days prior to the date of the public hearing
278.480	Vacation or abandonment of street or easement	Notice by certified mail to each property owner abutting the proposed abandonment	Newspaper publication at least once a week for two weeks; posting of notice should be concurrent

		Published in newspaper of general circulation	
278.802	NTRPA Meeting	Published in newspaper of general circulation in the Lake Tahoe region of Nevada and Carson City	Not less than 5 days prior to the date of the public meeting
278A.480	Hearing to consider application for planned unit development	Notice shall be given in the manner prescribed by law for hearings on amendments to a zoning ordinance: Published in newspaper of general circulation Notice mailed to applicant; each tenant of a mobile home park within 300 feet In a county with population less than 400,000, notice mailed to each owner of real property within 300 feet; property owners of at least 30 separately-owned parcels nearest property or boundary in question; any advisory board established for the affected area In a county with population of 400,000 or more, in addition to all of the above, notice mailed to each owner of real property within 500 feet; erection of a sign on the affected property with information regarding the request; and to an adjacent city if the proposal is located in an unincorporated enclave	Not less than 10 days prior to the date of the public hearing
278B.180	Hearing to consider land use assumptions used to develop capital improvements plan	Published in newspaper of general circulation Posting the notice at principal office of local government and at least three other prominent places	Newspaper publication at least once a week for two weeks; posting of notice should be concurrent
278B.190	Hearing to consider adoption of capital improvements plan and imposition of impact fee	Published in newspaper of general circulation Posting the notice at principal office of local government and at least three other prominent places	Newspaper publication at least once a week for two weeks; posting of notice should be concurrent
278B.290	Hearing to consider revision of capital improvements plan	Published in newspaper of general circulation Posting the notice at principal office of local government and at least three other prominent places	Newspaper publication at least once a week for two weeks; posting of notice should be concurrent

Sample Outline of Planning Commission Meeting

Call to Order.

Action taken by the chairperson to bring the members, staff, and audience into order.

Call for Quorum.

Action taken by the chairperson, with confirmation by the secretary, that the commission may conduct official business. "Quorum" means a simple majority of the constituent membership of a public body or another proportion established by law.

Approve the Agenda.

Action taken by the chairperson to proceed with the agenda as published, so that persons attending and possibly wishing to testify may know the order of issues to be heard and decided. A commission member may move to amend the order, but not the content, of the agenda. This motion requires a second and a vote.

Approve the Minutes.

Action to approve the minutes of a previous meeting or meetings. The minutes may be amended to improve clarity, accuracy, and completeness, but not to reopen debate on a previously decided agenda item. A commission member may move to approve the minutes or move to approve the minutes as amended. This motion requires a second and a vote.

Public Comment Period.

The public comment period may be at the beginning or end of the meeting. Public comments are restricted to items that are not on the agenda. Public comments may be limited to five minutes per person at the discretion of the chairperson. If members of the public wish to comment on agenda items, they may submit a "Request to Speak" form or make their request known by another method determined by the planning commission.

Public Hearing Procedure.

At a public hearing before the planning commission, presentations should be made in the following order:

- Staff report (if any)
- Applicant
- Opponents
- Other parties at interest

As each party comes forward, he should state his name and address for the record. Each presentation should include that party's testimony, the testimony of any witness the party calls to testify, and any physical evidence that the party wishes to submit to the planning commission. At the conclusion of the presentation, no further evidence or testimony will be permitted by that party, except that relevant rebuttal testimony will be permitted after the presentation of the initial testimony and evidence of all the parties.

Testimony, including physical evidence, should address the standards and criteria applicable to the specific agenda item. In the case of an application, testimony may suggest conditions which may or may not be appropriate to the application.

Physical evidence such as photographs, documents, tapes, or other material to be offered as evidence for consideration by the planning commission should first be submitted to the secretary for the commission and assigned a number or letter for identification. The original must be left with the secretary if offered as evidence by that or any other party.

Staff Report.

The staff report should identify the name and address of the applicant, the location of the property at issue, a map, the applicable sections of the statutes or ordinance, standards and criteria, and a brief summary of the issue. The staff report also includes, at the option of the commission, suggested conditions of approval, suggested findings of fact and recommended disposition of the application.

Motion to Accept for the Record.

This is a procedural motion to officially incorporate an application, agency report, consultant's report, letter, petition, or other written or visual materials into the public record. This motion requires a second and a vote.

Testimony by Applicant.

Testimony by Opponent.

Testimony by Other Parties at Interest.

If members of the public wish to comment on agenda items, they may submit a "Request to Speak" form or make their request known by another method determined by the planning commission.

Rebuttal Testimony.

Close the Public Hearing.

A procedural motion made when all public testimony has concluded. A commission member may move to close the public hearing. This motion requires a second and a vote.

At the close of the public hearing, the planning commission may immediately enter deliberations or defer to a future meeting. Both the record of written and visual materials and the oral testimony form the basis of consideration and decision. An application may be approved, approved with conditions, or disapproved. The commission should make specific written findings of fact in support of its written decision. The decision of the planning commission will be mailed immediately upon its issuance to all parties of record in the proceeding before the commission.

Defer to Specific Time.

If testimony on a public hearing or deliberation by the commission on an agenda item cannot be concluded within a single session, a commission member may move to defer to a specific time, that is, the immediately next meeting is appropriate. The motion requires a second and a

vote. The deferred item becomes the first item in the succeeding agenda. Care must be taken to not violate notice or time limitation requirements.

Call to Entertain a Motion.

After broad discussion and deliberation among the members of the planning commission, the chairperson may invite, but may not make, a motion.

Close Deliberation.

A procedural motion to test whether the planning commission is ready to move from deliberation to decision. A commission member may move to close deliberation. This motion requires a second and a vote.

Motion to Approve, Approve with Conditions, or Disapprove.

This is a substantive motion (the main motion). It may take one of two forms: a definitive action or a recommendation (to the governing body). A commission member may move to approve, move to approve with conditions, or move to disapprove. The motion requires recitation of reasons (findings) in support of the motion. This motion requires a second and a vote. It is debatable and amendable. Both the mover and the seconder must concur in the reasons and in the conditions, if such are attached. A tie vote constitutes defeat of the motion. When a motion to disapprove is defeated, a converse motion should be made to secure approval or approval with conditions.

Motion to Amend the Previous Motion.

Amending motions may be either procedural or substantive. When a motion has been moved and seconded and is within the period of debate, it is subject to substitution, alteration or perfection. When an amendment is seen as "friendly," that is, compatible with the previous motion by the initial mover and seconder, the amendment may be incorporated directly into the previous motion by verbal assent; where the amending motion is seen as "unfriendly," it must be debated and decided first. All motions to amend the previous motion must be decided prior to deliberation and vote on the main motion.

Recess.

A procedural motion to permit a very brief suspension of public hearing or deliberative meeting to facilitate commission operations or for the comfort of the public. This is an opportune time for planning commission members to draft their findings or perfect their motion. They should, however, avoid contact with interested parties during the recess.

The Vote.

Senate Bill 329, passed in the 2001 legislative session, amends Chapter 241 by addition of the following new section: "A public body that is required to be composed of elected officials only may not take action by vote unless at least a majority of all the members of the public body vote in favor of the action. For purposes of this section, a public body may not count an abstention as a vote in favor of an action." If, therefore, the local governing body is acting in place of the planning commission, the vote must be a majority of all the members.

In the case of an application for tentative map approval, Senate Bill 329 also amends NRS 278.349 follows: “The governing body or planning commission shall, by an affirmative vote of a majority of all the members, make a final disposition of the tentative map.”

Appeal.

Senate Bill 554, passed in the 2001 legislative session, requires each governing body to adopt an ordinance specifying procedures for appealing a decision of the planning commission, board of adjustment, hearing examiner or any other person authorized to make administrative decisions regarding the use of land. The chairperson should advise parties of that procedure after the planning commission has rendered its decision.

Sample text: Any party of record may give written notice of appeal of a decision of the planning commission, board of adjustment or hearing examiner within 10 days (or other period determined by the governing body) of mailing of the decision. The notice of appeal must state the decision from which the appeal is taken; state with specificity the errors asserted in the findings of fact; and state the relief sought on the appeal, including a statement of whether the decision should be reversed, modified, or remanded for further proceedings. The secretary will mail copies of the notice of appeal to all parties of record in the proceeding within 5 days (or other period determined by the governing body) of the date of filing the notice of appeal.

Adjournment.

While a motion to adjourn is always appropriate, it is best used when all agenda items have been decided or remaining items have been deferred to specific time. A commission member may move to adjourn. This motion requires a second and a vote unless otherwise specified in the planning commission by-laws.

Source: Adapted from “Model Outline of Motions for Planning Commissions and Zoning Boards,” Planning Commissioners Journal.

Standards, Criteria and Findings

Standards and criteria are not clearly defined in land use law, yet once established in a local ordinance they should be clear and objective because they form the basis for our decisions as community planners. While these words are frequently used interchangeably, there are some subtle differences.

Standards might include: setbacks, building height, minimum lot size, lot coverage, siding and roofing materials, fence height and a variety of other requirements often referred to as design standards. Standards will vary between zoning districts, i.e., in a residential zone 5 foot sidewalks might be required whereas in a commercial zone 8 foot sidewalks would be required.

If the local zoning ordinance specifies a front yard setback as ten feet, that is clear and objective. Similarly, if maximum building height is 35 feet, that also is clear and objective.

Criteria, on the other hand, are not as simple. Criteria come into play when someone wants an exception to the standards and requests a variance, for example. An applicant wants to build on his residential property, but he proposes a front yard setback of only five feet and is, therefore, requesting a variance.

The purpose of a variance is to provide relief when compliance with the ordinance would create an undue and/or unnecessary hardship on the applicant. Variances are to compensate for conditions that arise specifically from the land. The local ordinance should specify the criteria for approval of a variance. For example:

- Special circumstances or conditions apply to the property in question shape or topography, which do not apply generally to other properties in the same district.
- The proposed variance will not be materially detrimental to the public health, safety or general welfare, or injurious to property and improvements in the same area.
- The proposed variance is the minimum required to alleviate the hardship.
- The proposed variance does not establish a use which is not permitted in the district.
- The proposed variance is not the result of a self-created hardship.

Unlike the standards suggested above, these criteria are not nearly so clear and objective. It is for that reason that findings must be clear, precise, and objective.

FINDING: By reason of exceptional narrowness, shallowness, or shape of the property in question, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of the property in question, the strict application of the ordinance would result in exceptional and undue hardship upon the applicant.

As a general rule, a finding should be developed for each of the standards and criteria found in an ordinance. While the example given is a variance application, findings are appropriate for all land use applications whether it be a conditional or special use, a variance or a parcel map. The ordinance will include standards and criteria and the reviewing officer or body should develop findings to address those standards and criteria.

Why Communities Plan

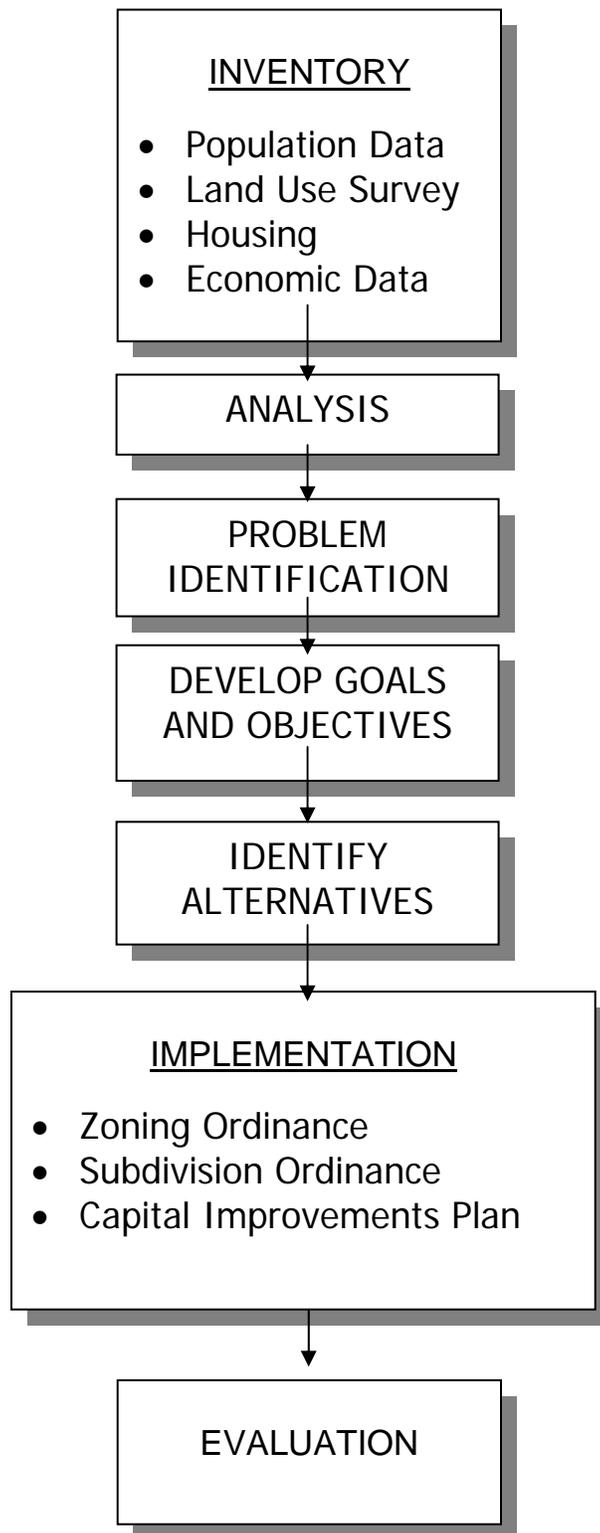
“Early town plans contained a street layout, building lots, parks, a central business district, and residential neighborhoods. These original town plans, unfortunately, were one-time blueprints. They could not guide future additions to the towns, show how to provide new roads, or account for the many changes that would occur in the community. . . . Main Street was the economic and social heart of the community with the general store, barbershop, saloon, bank, and livery stable.”

Source: The Small Town Planning Handbook

Community planning:

- Serves the best interests of the community.
- Promotes community thought and encourages public participation.
- Promotes community pride and accomplishments.
- Maintains a positive quality of life and revitalizes the community.
- Identifies strengths, weaknesses, opportunities and threats.
- Identifies goals and objectives for all aspects of the community.
- Forms the legal basis for land use regulations and guide for capital improvements plan.
- Establishes priorities and guidelines for spending public money.
- Manages development and public infrastructure.
- Shapes the physical appearance of the community.
- Provides for the public's health, safety and welfare.
- Responds to legislative change.

THE PLANNING PROCESS



What Master Plans Cannot Do

Produce immediate changes.

Be a substitute for action.

Create instant economic growth.

Replace zoning and subdivision regulations.

Solve all problems.

What's In A Master Plan?

The master plan shall be a map, together with such charts, drawings, diagrams, schedules, reports, ordinances, or other printed or published material, or any one or a combination of any of the foregoing as may be considered essential . . . (NRS 278.200)

Community Profile

Most plans begin with an introduction to the community. The community profile creates familiarity for both residents of the community and nonresidents as well. It might begin with a description of the geography, followed by a brief summary of the history of the community. Graphics, maps and photographs help to provide a clearer picture of the community for the reader. Other information to include in the community profile:

- Geographical location
- Regional setting
- Population
- Housing summary
- Major economic activities
- Form of government
- Educational and recreational activities
- Special features and attractions

Master Plan Elements

The Nevada Revised Statutes 278.160 gives a comprehensive list of master plan elements. Not all of these elements are required in every plan. Nor is the master plan limited to only these subjects. If there is an issue in your community for which you need to develop a plan, do so.

The planning commission is required to adopt a plan that will provide a basis for the development of the city for a reasonable period of time. In counties with populations greater than 100,000, but less than 400,000, if the governing body chooses to adopt only a portion of the master plan, it must include a conservation plan, a housing plan and a population plan.

Legislation enacted in the 2001 legislative session requires that counties with a population of 400,000 or more address each of the elements listed in 278.160.

- Community Design.
- Conservation Plan.
- Economic Plan.
- Historical Properties Preservation.
- Housing Plan.
- Land Use Plan
- Open Space
- Population Plan
- Public Buildings
- Public Services and Facilities
- Recreation Plan
- Rural Neighborhoods Preservation Plan
- Safety Plan
- School Facilities Plan
- Seismic Safety Plan
- Solid Waste Disposal Plan
- Streets and Highways Plan
- Transit Plan
- Transportation Plan

Admittedly, the list is daunting. However, public participation in the planning process defined above will help to identify which topics which must be addressed and their priority.

Creating The Master Plan

Existing Conditions

- Population
- Employment
- Land Use
- Housing
- Transportation
- Public Facilities
- Habitat → Endangered Species
- Flood Plain
- Slopes Greater Than 15%

Issues

- Lack of economic diversification?
- Disconnection between residential and commercial/industrial uses?
- Land assembly?
- Downtown revitalization (Main Street Program)?
- Neighborhood revitalization?

Opportunities & Constraints

- ?
- ?

Vision

- What is the best thing about your city/town/county?
- What were the things that were good in the “good old days”?
- What would you like to celebrate 10, 20, 30 years from now?
- Is hanging on good enough?
- How do you want to paint your future?

Goals and Policies

- A Goal is a general aim of jurisdiction, i.e., increase economic diversity.
- A Policy is an action to take to meet goals, i.e., develop a marketing plan, create brochures, and establish a web page advertising the benefits of locating a business in the city.

Findings

The problem identification stage of the process will result in findings such as the following examples:

- The city/county has experienced a ten percent loss of population in the last decade.
- The city/county has experienced a downturn in its economy due to the large drop in gold prices.
- The city/county has a shortage of “affordable” housing.
- The city/county received a substantial donation of property for parks and recreation.

- The city/county has received a grant from the EPA to upgrade water systems.
- The “Smith House” has been listed on the National Register of Historic Places.

Not all findings are negative. Not all issues are problems per se, but they should be prioritized and goals established through the community participation process.

Goals

The goals of the community are fundamental to the planning process. Goals form the basis of community plans, considering alternatives and evaluating results. They provide the means for making choices and affirming decisions. For this reason goals need to be clear, simple declarations of what the community hopes to achieve. The goals do not necessarily have to be fully achievable for a plan to be successful. Goals should instead represent long term targets towards which planning efforts are directed.

Goals are broad general statements on what is ultimately desired and form the basis for the Master Plan. Sample goals:

- The city/county should attract more businesses to diversify the economy.
- The city/county should develop the newly acquired park properties.
- The city/county should upgrade existing water systems.

Policies

A policy is a course of action adopted and pursued to achieve the goals of the community. Policies are the implementation tool for the master plan. Sample policies:

- Develop a marketing plan, create brochures, and establish a web page advertising the benefits of locating a business in the city.
- Inventory the donated park properties in order to develop an implementation plan.
- Perform a condition assessment on existing water systems for the purpose of establishing priority water projects.

In some cases, policies will relate directly to the zoning and/or subdivision ordinances.

For example:

Policy: Approve parcel maps with conditions that recognize infrastructure improvements.

Subdivision Ordinance: Parcel maps shall include a street improvement plan that details culvert locations and their sizes at all drainage crossings. The plan shall be prepared and stamped by a licensed engineer.

Similarly, a relationship exists between goals, policies and ordinances, such as:

Goal: The city should create a program for increasing affordable housing.

Policy: Provide incentives for developers to provide affordable housing.

Zoning Ordinance: Maximum density may be increased by ten percent in a development to provide for "affordable housing." The increase in density shall be developed for "affordable housing," i.e., a ten-acre residential development with minimum lot size of 6,000 square feet would provide 70 buildable lots. The increased density allowance would provide for 77 buildable lots, seven of which must be developed as affordable housing.

Land use map

The land use map designates general areas and types of land use within the city, county or region. These areas would include residential, commercial, industrial, agricultural, public, parks and open space. It is a 15-20 year dynamic blueprint for future growth, and identifies areas for future expansion and development, or redevelopment. This is unlike the zoning map which is the regulatory tool for development.

Zoning

Zoning has its origins in English common law, specifically for the abatement of nuisances. With the onset of the industrial revolution, deplorable living and working conditions became the norm. Zones or districts were established as a means of separating industrial uses from residential uses in an attempt to improve the quality of life. Overcrowding and squalor eventually led to the imposition of the standards we are familiar with as density, setbacks, building height, etc., which served the function of providing light and air. Disease and pestilence led to standards for health and sanitation that we encounter in our building codes.

Understandably, early attempts to impose zoning in this country met with opposition, but the United States Supreme Court held, in 1926, that zoning was an appropriate exercise of the police power. It is from these roots that we obtain the language found in most contemporary ordinances, "to protect the health, safety and general welfare of the public." Indeed, in order for an ordinance to withstand judicial scrutiny, it must have a statement of purpose.

The authority for local governments in the State of Nevada to implement zoning derives specifically from NRS 278.250 which grants the governing body the authority to divide the city, county or region into zoning districts. The language of this section is permissive. Unlike the requirement that the planning commission shall adopt a master plan, Section 278.250 provides that the governing body may adopt zoning regulations. However, zoning regulations must be adopted in accordance with the master plan. In this, they are implementation tools for the long-range land use plan. The legislature has provided a comprehensive list of purposes, 11 to be precise, from preserving air and water quality to providing for recreational needs and transportation to promoting health and the general welfare.

While your zoning ordinance is likely the longest and most detailed of all your ordinances, the statutes are very abbreviated on the subject of zoning. They are specific about process, but grant the governing body broad discretion in land use regulation, specifically, "the governing body may use any controls relating to land use or principles of zoning that the governing body determines to be appropriate, including, without limitation, density bonuses, inclusionary zoning and minimum density zoning."

Describe and locate zoning districts.

The location of zoning districts should take into consideration existing land uses, transportation corridors, and natural constraints of the land, i.e., steep slopes, flood plains, and critical habitats. Boundaries of zoning districts should be easily identifiable, such as, street centerlines, section lines, stream corridors, ridgelines, etc. While it is possible for a single parcel to be situated in more than one zoning district, it is not advisable. When the boundaries of the districts have been identified, they are then plotted on the Zoning Map which becomes part of and is adopted along with the text of the Zoning Ordinance.

Boundary disputes

If the boundaries of zoning districts have been established using logical boundaries as identified above, the occasions for dispute should be rare. In any event, the zoning ordinance should include a procedure for resolving such disputes.

Provide standards for regulating development.

- Uses permitted outright (usually includes “other similar uses as determined by the governing board or planning commission”).
- Uses permitted conditionally.
- Maximum density.
- Minimum/maximum lot size, i.e., 6,000 square feet.
- Maximum lot coverage, i.e., 40 percent.
- Minimum/maximum dimensions of lot, i.e., minimum width of 50 feet.
- Setbacks: front, rear, side (interior lots, corner lots).
- Maximum building height (should not exceed fire service capability).
- Parking requirements.
- Sidewalks.
- Fences, walls and hedges, Signage, Landscaping, Screening.

Define standards and processes for nonconforming uses or structures.

A nonconforming use or structure is one that was lawfully created prior to the adoption of an ordinance. While such nonconformities are prohibited under the provisions of the current zoning ordinance, they are allowed to continue subject to certain conditions specified in the ordinance. The zoning ordinance must define nonconforming use and nonconforming structure. It must address the following questions:

- Can they be altered?
- Can they be expanded?
- Can they be repaired?
- Can they be replaced?
- Under what conditions?

Care should be exercised in the process of defining and locating zoning districts. If, for example, an existing residential neighborhood is rezoned to commercial, consequences for property owners can be dire. Many banks will not loan money on a nonconforming use or structure unless it can be guaranteed that the building can be reconstructed in the event of a casualty loss such as fire, flood, earthquake, etc. The term “grandfathered” is frequently used in relation to nonconforming uses or structures, but can be misleading since there is not unconditional acceptance or approval of nonconforming uses and structures.

Define standards, criteria and processes for special exceptions.

The governing board may authorize the planning director to approve minor deviations without a hearing, however, specific standards for what constitutes a “minor” deviation should be clearly defined in the ordinance. Other exceptions including variances, special and conditional use

permits typically require a public hearing before the planning commission and/or the governing body. The ordinance should specify that no variance as to use is permitted. Such an action would constitute a de facto zone change.

Amendments to the zoning map (rezone) or to the text of the zoning ordinance are legislative changes which require a hearing before the governing body. The planning commission may hold a hearing for purposes of formulating a recommendation to the governing body, but it has no authority to make a decision.

Establish procedures for public hearings.

In drafting these procedures, pay special attention to notice requirements specified in the statutes as well as provisions of the open meeting law. The ordinance should set forth each step in the hearing procedure, specify notice requirements, and appeals process. This section of the ordinance meets the requirements for procedural due process.

- NRS 278.264 requires the governing body to adopt an ordinance setting forth rules of procedure for the processing and hearing of applications which are to be considered by a hearing examiner. The procedure, once adopted, can be used by the planning commission and zoning board of adjustment as well as a hearing examiner.
- Senate Bill 554 passed by the 2001 Nevada State Legislature requires the governing body of each city and county to adopt by ordinance a procedure to appeal decisions of the planning commission, board of adjustment or hearing examiner to the governing board.

Establish enforcement authority, process, and penalty.

Administrative notice of violation, order to comply, time limit and requirements for compliance.

Planning director authorized and empowered to prepare, sign and serve criminal misdemeanor citations. -OR-

Planning director may refer notice of violation to city, county or district attorney for abatement, removal or enjoinder of violation.

Penalty: Monetary, each day is a separate offense.

Conviction does not relieve any person from compliance under the zoning ordinance.

SCHEDULE OF DISTRICT STANDARDS

Zoning District	Minimum Lot Size	Maximum Lot Coverage	Setbacks			Maximum Building Height
			Front	Side	Rear	
Rural Residential	43,560 sq. ft.	25%	30'	15'	30'	32'
Single-Family Residential	6,000 sq. ft.	40%	20'	5'	20'	26'
Multiple-Family Residential	6,000 sq. ft.	40%	20'	5'	10'	45'
Office	6,000 sq. ft.	40%	15'	10'	20'	50'
Neighborhood Commercial	9,000 sq. ft.	100% ¹	0	0	0	26'
General Commercial	6,000 sq. ft.	100% ¹	0	0	0	45'
Light Industrial	21,000 sq. ft.	100% ¹	30'	30'	10'	32'
Heavy Industrial	43,560 sq. ft.	100% ¹	30'	30'	30'	45'
Public	6,000 sq. ft.	40%	15'	10'	20'	50'
Agricultural	10 acres	N/A	30'	30'	30'	26'
Open Space	10 acres	N/A	0	0	0	None

¹Maximum lot coverage includes setbacks, parking and loading.

NOTE: This table is illustrative only.

It is not intended to in any way suggest that the entries are appropriate development standards.

General Provisions For Zoning Ordinances

All ordinances should include some basic provisions that help to ensure their legal viability in the event of judicial scrutiny. While we invest our time, energy and creativity in the substance of our ordinances, we cannot overlook these requirements. The lack of a valid purpose or appropriate legal authority could result in an entire ordinance being invalidated by a court.

Title

These regulations shall officially be known, cited, and referred to as the Zoning Ordinance of *[name of municipality]*, hereinafter "this Ordinance."

Purposes

These regulations are adopted for the following purposes:

1. To protect and provide for the public health, safety, and general welfare of the municipality *[this is the absolute minimum]*.
2. To guide the future growth and development of the municipality in accordance with the Master Plan.
3. To provide for adequate light, air, and privacy, to secure safety from fire, flood, and other danger, and to prevent overcrowding of the land and undue congestion of population.
4. *[NRS 278.250 provides an extensive list of purposes for zoning regulations.]*

Authority

In accordance with Nevada Revised Statutes 278.020, for the purposes of promoting health, safety, morals, or the general welfare of the community, the governing bodies of cities and counties are authorized and empowered to regulate and restrict the improvement of land and to control the location and soundness of structures.

In accordance with Nevada Revised Statutes 278.250, the governing body of *[name of municipality]* is vested with the authority to divide the *[city, county or region]* into zoning districts, and may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land.

Jurisdiction

These regulations apply to all zoning of land located within the corporate limits of *[the municipality]* or outside the corporate limits as provided by law.

Enactment

These zoning regulations are hereby adopted and made effective as of *[effective date]*.

Interpretation, Conflict And Severability

In their interpretation and application, the provisions of these regulations shall be held to be the minimum requirements for the promotion of the public health, safety, and general welfare. These regulations shall be construed broadly to promote the purposes for which they are adopted.

These regulations are not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law except as provided in these regulations. Where such conflict exists, the provision which is more restrictive or imposes higher standards shall control.

If any part or provision of these regulations is adjudged invalid by any court of competent jurisdiction, the judgment shall be confined in its operation to the part or provision so judged, and shall not affect or impair the validity of the remainder of these regulations.

Variances

Where the governing body finds that extraordinary hardships or practical difficulties may result from strict compliance with these regulations, it may approve variances, exceptions, and waiver of conditions to these regulations. Variances, exceptions and waiver of conditions shall not be approved unless the governing body makes findings based upon the evidence in each specific case that:

1. The granting of the variance, exception, or waiver of conditions will not be detrimental to the public safety, health, or welfare or injurious to other property.
2. The conditions upon which the request is based are unique to the property for which the relief is sought and are not applicable generally to other property.
3. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result if the strict letter of these regulations is carried out.
4. The relief sought will not in any manner vary the provisions of the Zoning Ordinance, Master Plan, or Official Map.

Definitions

A comprehensive definition section is an essential part of any ordinance. It is intended to provide specificity in areas where ambiguity would lead to confusion and the opportunity to evade requirements. All generic and technical terms are precisely defined so that easy reference can be made to the usage in the regulations.

SOURCE: Model Subdivision Regulations

LAND DIVISIONS

1. A **subdivision map** is required for:

A division of land into five or more lots, parcels, sites, units or plots any of which is less than 40 acres.

A division of land for agricultural purposes into parcels of more than 10 acres, if a street, road or highway opening or widening or easement of any kind is not involved, is exempt from this provision.

2. A **parcel map** is required for:

A division of land into four or fewer lots any of which is less than 40 acres.

3. A **map of division into large parcels** is required for:

A division of land into two or more parcels each of which is 40 acres or more.

A local governing body may, by ordinance, apply this requirement to a division of land where each proposed lot is at least ten acres.

A division of land into lots or parcels each of which is not less than 640 acres is exempt from this provision.

Subdivision Ordinance

NRS 278.326 requires that local subdivision ordinances be adopted by the governing body of every incorporated city and every county setting forth regulations, in addition to NRS 278.010 to 278.630, which govern improvements, mapping, accuracy, engineering and related subjects. The content of the ordinance is not limited by the NRS, but must not conflict with it.

Establish control mechanisms.

Define the application process and map requirements for each type of land division, i.e., tentative subdivision map, final subdivision map, parcel map, tentative map of division into large parcels (may be waived), map of division into large parcels. The form and content of these maps is clearly defined in the Nevada Revised Statutes, but should be adopted into the local ordinance.

Specify standards for improvements.

- NRS 278.326 authorizes local governing bodies to adopt regulations governing improvements. The required improvements should be outlined in the subdivision ordinance and could include

water and sewer connections, storm drainage, streets, street name signs, lights, sidewalks, curbs and gutters, bikeways, street trees, landscaping, utilities.

- Design requirements for the improvements should be clearly defined in the subdivision ordinance. All improvements are to be made by the developer, at its expense. The final map must include the appropriate dedications and easements.
- NRS 278.385 requires, for approval of a final map, a water meter plan for any subdivision served by a public water system.
- NRS 278.346 provides for the tentative map to be reviewed by the school board. If a school site is required within the subdivision, the statute defines a procedure for acquisition by the school district of an appropriate site.
- NRS 278.4979 authorizes local governing bodies to require, by ordinance, the dedication of land for parks or playgrounds to serve future residents of the subdivision or development, with a corresponding increase in density to compensate for the loss of property.

Outline provisions for completing and maintaining improvements.

The subdivision ordinance should include provisions specifying the time within which improvements must be completed. In order to assure timely completion, the governing body is authorized by NRS 278.380 to require "good and sufficient bond or other security." The security can be provided by a performance bond, a letter of credit, or a cash escrow if specified in the ordinance.

Planned Unit Development.

All planning, zoning and subdivision matters relating to the platting, use and development of a planned unit development is vested in the city or county, and must be determined and established by the city or county. NRS Chapter 278A sets forth the standards and conditions for planned unit developments and authorizes cities and counties to enact ordinances to exercise the powers granted in the chapter. Such an ordinance must specify the uses permitted in a planned unit development; standards for density or intensity of use; open space requirements; standards for public facilities including streets and highways, alleys, curbs, gutters, sidewalks, street lights, parks, playgrounds, school grounds, storm water drainage, water supply and distribution, sanitary sewers, and sewage collection and treatment; and standards for design, bulk and location of buildings. All procedures with respect to the approval or disapproval of a planned unit development and its continuing administration must be consistent with the provisions set forth in NRS 278A.440 to 278A.590.

Impact fees.

An impact fee is a charge imposed by a local government on new development to finance the costs of a capital improvements or facility expansion necessitated by and attributable to the new development. Impact fees may be charged for drainage, fire station, park, police station, sanitary sewer, storm sewer, street or water projects. If an owner is required to pay a

residential construction tax or to dedicate land for a capital improvement project, he is entitled to a credit against the impact fee imposed for the project.

Residential construction tax:

One percent of the valuation of each building permit issued or \$1,000 per residential dwelling unit, whichever is less, to provide neighborhood parks and facilities.

Establish procedures for public hearings.

In drafting these procedures, pay special attention to notice requirements specified in the statutes as well as provisions of the open meeting law. The ordinance should set forth each step in the hearing procedure, specify notice requirements, and appeals process. This section of the ordinance meets the requirements for procedural due process.

- NRS 278.264 requires the governing body to adopt an ordinance setting forth rules of procedure for the processing and hearing of applications which are to be considered by a hearing examiner. The procedure, once adopted, can be used by the planning commission and zoning board of adjustment as well as a hearing examiner.
- Senate Bill 554 passed by the 2001 Nevada State Legislature requires the governing body of each city and county to adopt by ordinance a procedure to appeal decisions of the planning commission, board of adjustment or hearing examiner to the governing board.

Establish enforcement authority, process, and penalty.

Administrative notice of violation, order to comply, time limit and requirements for compliance.

Planning director authorized and empowered to prepare, sign and serve criminal misdemeanor citations. -OR- Planning director may refer notice of violation to city, county or district attorney for abatement, removal or enjoinder of violation.

Penalty: Monetary, each day is a separate offense.

Conviction does not relieve any person from compliance under the subdivision ordinance.

General Provisions For Subdivision Ordinances

All ordinances should include some basic provisions that help to ensure their legal viability in the event of judicial scrutiny. While we invest our time, energy and creativity in the substance of our ordinances, we cannot overlook these requirements. The lack of a valid purpose or appropriate legal authority could result in an entire ordinance being invalidated by a court.

Title

These regulations shall officially be known, cited, and referred to as the Subdivision Ordinance of [name of municipality], hereinafter "this Ordinance."

Purposes

These regulations are adopted for the following purposes:

1. To protect and provide for the public health, safety, and general welfare of the municipality *[this is the absolute minimum]*.
2. To guide the future growth and development of the municipality in accordance with the Master Plan.
3. To provide for adequate light, air, and privacy, to secure safety from fire, flood, and other danger, and to prevent overcrowding of the land and undue congestion of population.

Authority

In accordance with Nevada Revised Statutes 278.020, for the purposes of promoting health, safety, morals, or the general welfare of the community, the governing bodies of cities and counties are authorized and empowered to regulate and restrict the improvement of land and to control the location and soundness of structures.

In accordance with Nevada Revised Statutes 278.326, the governing body of [name of municipality] is vested with the authority to enact a local subdivision ordinance prescribing regulations which govern matters of improvements, mapping, accuracy, engineering and related subjects.

Jurisdiction

These regulations apply to all subdivision of land located within the corporate limits of [the municipality] or outside the corporate limits as provided by law.

Enactment

These subdivision regulations are hereby adopted and made effective as of *[effective date]*.

Interpretation, Conflict And Severability

In their interpretation and application, the provisions of these regulations shall be held to be the minimum requirements for the promotion of the public health, safety, and general welfare. These regulations shall be construed broadly to promote the purposes for which they are adopted.

These regulations are not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law except as provided in these regulations. Where such conflict exists, the provision which is more restrictive or imposes higher standards shall control.

If any part or provision of these regulations is adjudged invalid by any court of competent jurisdiction, the judgment shall be confined in its operation to the part or provision so judged, and shall not affect or impair the validity of the remainder of these regulations.

Variances

Where the governing body finds that extraordinary hardships or practical difficulties may result from strict compliance with these regulations, it may approve variances, exceptions, and waiver of conditions to these regulations. Variances, exceptions and waiver of conditions shall not be approved unless the governing body makes findings based upon the evidence in each specific case that:

1. The granting of the variance, exception, or waiver of conditions will not be detrimental to the public safety, health, or welfare or injurious to other property.
2. The conditions upon which the request is based are unique to the property for which the relief is sought and are not applicable generally to other property.
3. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result if the strict letter of these regulations is carried out.
4. The relief sought will not in any manner vary the provisions of the Zoning Ordinance, Master Plan, or Official Map.

Definitions

A comprehensive definition section is an essential part of any ordinance. It is intended to provide specificity in areas where ambiguity would lead to confusion and the opportunity to evade requirements. All generic and technical terms are precisely defined so that easy reference can be made to the usage in the regulations.

SOURCE: Model Subdivision Regulations

STATE OF NEVADA REQUIREMENTS FOR DIVISION OF LAND			
	NRS 278.320 – 278.460	NRS 278.461 – 278.469	NRS 278.471
	Subdivision Map	Parcel Map	Map of Division Into Large Parcels
Survey Requirement	Yes	Yes	Yes
Improvements	Local option	Local option	Required access road for emergency vehicles
Improvement Bond	Local option	No	No
Local Government Power of Denial	Yes, approval or conditional approval must include a statement of the reason for that action.	Yes. If governing body fails to take action with required time, the final map is approved.	Yes, with statement of changes necessary for approval. If governing body fails to take action within required time, the final map is approved unconditionally.
Tentative Map Review by Agencies <u>(Written comments to Planning Commission within 15 days)</u>	Division of Water Resources Division of Environmental Protection Health Division or its designate Public Utilities Commission School District		
Tentative Map Review by Agencies (Written comments to Planning Commission within 30 days)	General Improvement District Irrigation District		
Required Certificates and Signatures on Final Map	Certificate(s) of landowner(s) Offers of dedication, Reservations, and Easements Statement by parties to whom easements are granted Report from title company Written consent of	Easements granted or dedications made Certificate of professional land surveyor Signature(s) of landowner(s) Report from title company (local option) Written consent of holder(s) of security interest (local option) Written statement of County	Certificate of professional land surveyor Certificate(s) of landowner(s) Dedications and Easements Certificate of clerk of the governing body or its designate or secretary to planning commission Written statement of County Treasurer Report from title company (local option) Written consent of holder(s) of security interest (local option)

STATE OF NEVADA REQUIREMENTS FOR DIVISION OF LAND			
	NRS 278.320 – 278.460	NRS 278.461 – 278.469	NRS 278.471
	Subdivision Map	Parcel Map	Map of Division Into Large Parcels
Required Certificates and Signatures on Final Map	holder(s) of security interest Certificate of professional land surveyor Certificate of city/ county surveyor or engineer Certificate of Health Division or its designate Certificate of Division of Water Resources Certificate of Clerk of Governing Body or Planning Commission or Planning Director Water meter plan Written statement of County Treasurer	Treasurer Certificate of clerk of the governing body or its designate or chairman of planning commission	
Processing Time	90 to 120 days	45 to 60 days	Up to 120 days

Considerations In Determining Action On Tentative Map

NRS 278.349 The governing body or planning commission shall consider:

1. Environmental and health laws and regulations concerning water and air pollution, the disposal of solid waste, facilities to supply water, community or public sewage disposal and individual systems for sewage disposal.
 - Topography and drainage (5' or 2' contours) onsite and offsite for surrounding 200' minimum
 - Proposed drainage system – patterns, easements, and improvements
 - Erosion control – vegetation removal and revegetation plans, grading proposals and plans, alterations to topography (cut and fill)
 - Increase in vehicular traffic – emissions and dust
 - Traffic flow and parking
 - Trash pick-up or provisions to discourage indiscriminate dumping
 - Method of sewage disposal or treatment
 - Location and size of nearest public sewer main
 - Estimate amount of sewage to be contributed to sewer system
 - Adequacy of capacity of sewage disposal facility
 - Depth to water table
 - Septic tank information – soil types and interpretations, percolation rates, seasonally high water table
2. Availability of water which meets applicable health standards and is sufficient in quantity for the reasonably foreseeable needs of the subdivision.
 - Source of water supply
 - Quantity and quality of water supply
 - Location of existing wells and springs
 - Water supply adequate for fire protection
3. Availability and accessibility of utilities.
 - Electric power, telephone, gas, sewer, water
 - Easements for existing and future utilities
4. Availability and accessibility of public services such as schools, police protection, transportation, recreation and parks.
 - Reservations or dedications for parks and recreation areas, common open space, schools, fire and police facilities.
 - Projected schedule for development and projected build-out rate.
 - Current tax status of lands – paid up or delinquent.
 - Analysis of tax revenues versus costs of services including factors such as increase in property tax values; costs of school construction, buses, and increases in staffing; future road paving and maintenance; police and fire stations, equipment and

personnel; park maintenance; sewer or water system expansion; and health facilities impacts.

5. Conformity with the zoning ordinance and master plan, except that if any existing zoning ordinance is inconsistent with the master plan, the zoning ordinance takes precedence.
 - Master plan policies and map
 - Zoning ordinance text and map
6. General conformity with the governing body's master plan of streets and highways.
 - Easements and rights-of-way for roads or streets
 - Access to lots
 - Typical section of street improvements
 - Width, surfacing, radius of curves, and grade (especially for emergency vehicles)
 - Parking amount and location
7. Effect of the proposed subdivision on existing public streets and the need for new streets or highways to serve the subdivision.
 - Existing roads, streets, trails, rights-of-way
 - Alignment of old and new streets
 - Number and location of points of access
 - Traffic flow patterns and quantities
8. Physical characteristics of the land such as flood plain, slope and soil.
 - Topography and drainage (5' or 2' contours) onsite and offsite for surrounding 200' minimum
 - Subject to flooding or storm water overflow
 - Drainage easements and improvements
 - Geological hazards – earth slide potential, avalanche areas, unstable soils
 - Rock outcroppings
 - Cut and fill due to slope
9. Recommendations and comments of those entities reviewing the tentative map
10. Availability and accessibility of fire protection, including, but not limited to, the availability and accessibility of water and services for the prevention and containment of fire including wild land fires

General design considerations:

- Design harmonious with topography, street pattern design and lot design
- Street lighting, street furniture
- Relationship to adjacent uses and designs
- Landscaping plans
- Tree preservation and protection plans

- Prominent landmarks, historic and archaeological sites, unique natural beauty, vistas, treed areas
- Snow storage areas
- Screening for exposed storage areas, service areas, truck loading areas, utility buildings

Considerations In Determining Action On Parcel Map

NRS 278.462 provides for requirements which may be imposed by the governing body or the planning commission, if so authorized, relating to parcel maps.

1. The governing body may require street grading, drainage provisions and lot designs.
2. In addition, if the governing body anticipates that the parcels will be used for residential, commercial, or industrial purposes, it may require offsite access, street alignment, surfacing and width, water quality, water supply and sewerage provisions reasonably necessary and consistent with existing uses of similarly zoned land within 660 feet of the proposed parcel.
3. If the parcels are less than one acre, the governing body may require additional improvements that are reasonably necessary and consistent with the use of land if it is developed as proposed.

In an effort to preclude any attempt to evade subdivision requirements through subsequent parceling, the Legislature made additional provisions for subsequent parcel maps. For a second or subsequent parcel map with respect to a single parcel or a contiguous tract of land under the same ownership, the governing body **may require any reasonable improvement**, but not more than would be required for a subdivision.

Subsequently, the Legislature went a step further. NRS 278.464(5) provides that:

A governing body may consider or may, by ordinance, authorize the consideration of the criteria set forth in subsection 3 of NRS 278.349 in determining whether to approve, conditionally approve or disapprove a second or subsequent parcel map for land that has been divided by a parcel map recorded within the 5 years immediately preceding the acceptance of the second or subsequent parcel map as a complete application.

The criteria set forth in NRS 278.349 are the criteria applied to action on a tentative subdivision map and include:

1. Environmental and health laws and regulations concerning water and air pollution, the disposal of solid waste, facilities to supply water, community or public sewage disposal and individual systems for sewage disposal.
2. The availability of water which meets applicable health standards and is sufficient in quantity for reasonably foreseeable needs.

3. The availability and accessibility of utilities.
4. The availability and accessibility of public services such as schools, police protection, transportation, recreation and parks.
5. Conformity with the zoning ordinance and master plan.
6. Conformity with the governing body's master plan of streets and highways.
7. The effect of the proposed development on existing public streets and the need for new streets or highways.
8. Physical characteristics of the land such as flood plain, slope and soil.
9. The availability and accessibility of fire protection.
10. The recommendations and comments of any or all of the following agencies:
 - a) Division of Water Resources
 - b) Division of Environmental Protection
 - c) Health Division
 - d) Public Utilities Commission
 - e) School Board
 - f) General Improvement District
 - g) Irrigation District

While these agencies have no specific statutory authority governing parcel maps, the Legislature has authorized governing bodies to impose that requirement upon applicants and request review and recommendations by the agencies who are willing to do so.

A governing body may consider or adopt any or all of the requirements. An assessment should be made of how these criteria are relevant to issues in your community, not only currently, but for the future as well. Are water quality or quantity at risk? Are roads sufficient to provide access to all residents by emergency vehicles? Is adequate water available for prevention and containment of fire? Are unbuildable parcels being created on steep slopes or in the flood plain? Are easements being granted for roads or utilities? What are the fiscal effects to the local government of unfettered parceling?

PUBLIC LANDS POLICY PLAN

The primary purpose of a Policy Plan for Public Lands (“Plan”) is to help address and resolve the State’s public land issues. The Plan:

1. Details a local vision and strong policy voice for Nevada’s public lands.
2. Defines public land-related issues and needs.
3. Encourages local input into the planning and management activities of federal land management agencies with an emphasis on collaboration amongst local entities, citizens and the federal planning partners.
4. Defines and helps resolve public land issues at a local scale and in context with today’s challenges.
5. Summarizes public land policies and defines related action items designed to help implement the policies. It is hoped that the policies and action items make a major contribution to the combined effort needed to facilitate the management and condition of Nevada’s public lands. Overall, Nevada wishes to strike a balance between protecting and conserving its natural, recreation and cultural resources while meeting the needs of its urban and rural communities, residents and resource-dependent industries.

A strong policy voice for public lands is especially important because the federal planning partners that manage approximately 86% of Nevada’s land must be consistent with State, local and tribal policies and plans unless such policies and plans are inconsistent with federal laws pursuant to the National Environmental Policy Act (NEPA) and the Federal Land Policy and Management Act (FLPMA). The Plan provides important guidance to federal agencies on a wide array of public land issues and activities.

For the purposes of the Plan, “public land” refers to land within Nevada’s borders that is managed by federal agencies. Nevada Revised Statutes (NRS) refers to public land as “federal land” or “lands under federal management.” While tribal lands are held in trust by the federal Bureau of Indian Affairs for Native Americans, they are not considered public land because they are managed by Native Americans and considered sovereign.

The Plan’s policies encourage and support all efforts to plan on a comprehensive basis statewide, regardless of the land ownership.

Federal Agency Consultation, Dialogue And Collaboration

Within the Plan are descriptions of issues and opportunities relating to public lands and how best to work collaboratively with the federal planning partners, most notably Bureau of Land Management (BLM), US Forest Service (USFS), US Fish and Wildlife Service (USFWS) and the National Park Service (NPS), Bureau of Land Management (BLM), Bureau of Indian Affairs (BIA), Bureau of Reclamation (BOR), Department of Defense (DOD), Department of Energy (DOE).

- The Plan enables the federal land management agencies to better understand and respond to the concerns and needs of local communities.
- Planning, effective communication and coordination by Nevada's governments, in concert with its citizens, can establish a set of policies for the proper use of these lands and to take advantage of the consistency language in Section 202(c)(9) of the Federal Land Policy and Management Act (FLPMA).
- Section 202(c)(9) governs BLM Planning and directs the BLM to give consideration to appropriate state, local, and tribal lands in the development of land use plans for federally administered lands.
- The BLM is to provide for meaningful public involvement of state and local government officials in the development of land use plans, regulations and decisions for federally administered lands.
- The BLM will review each Resource Management Plan (RMP) or proposed federal action and will attempt to make the RMP or proposed federal action compatible with the local plan to the extent that the Secretary of the Interior finds consistent with federal law and the purpose of FLPMA.
- Forest Service and other federal agency regulations for Land Management Planning and for implementing the National Environmental Policy Act (NEPA) requires that those agencies determine the consistency of any project proposal with state and/or local laws and plans.
- The Forest Service is required to describe any inconsistencies and the extent to which the agency would reconcile its proposal with the state/local laws and plans. This consistency review is also provided for by the Council of Environmental Quality (CEQ) regulations (40 CFR 1506.2(d)) developed to implement NEPA.

All levels of government – federal, State, local, and tribal – are involved in the management of natural resources in Nevada. Each agency has statutory authorities that specify jurisdictions, and a range of responsibilities and duties. Intergovernmental coordination and cooperation is essential because watersheds, wildlife habitat, and many other natural features overlap political boundaries. State of Nevada policy promotes collaborative resource management planning and coordination with federal and local agencies.

Public Land Management Goals

1. These management goals form the basis for Nevada's public land policies and are included in the Department of Conservation and Natural Resources' (DCNR) "State of Nevada Department of Conservation and Natural Resources 1998-2003 Strategic Plan", and the Nevada Statewide Policy Plan for Public Lands.
 - a) Conserve, protect, enhance and preserve Nevada's natural, cultural and recreation resources.
 - b) Encourage and provide for beneficial and wise uses and development of our public land resources.
 - c) Reduce conflicts between the beneficial uses of public land. Promote agriculture, mining and the development of energy facilities while protecting other resources.
 - d) Practice multiple use and sustained yield management principles.
2. Increase cooperation and coordination between agencies at all levels of government and between agencies and users of public lands and encourage local level planning efforts.
3. Increase State and local input into the activities of federal land management agencies.
4. Improve coordination and communication among agencies and between agencies and stakeholders.
5. Improve federal agency environmental documents and related decision-making.
6. Protect the State's right to own its water resources and manage its wildlife populations, water quality and air quality.
7. Protect and respect local access and road ownership rights under RS 2477. Pursue timely resolution of outstanding disputes over local versus federal ownership.
8. Limit federal ownership of water rights to only those situations where such ownership is in the public interest.
9. Protect the State's communities, its people and environment from the management, treatment, storage and disposal of hazardous, toxic and nuclear waste.
10. Prevent the transportation and disposal of nuclear and other hazardous waste within Nevada.
11. Seek more acquisitions of federally managed lands and a net increase in private lands, both within the State as a whole and within the boundaries of each county.

12. Increase federal land disposals and the amount of private land in the State and in each county, subject to concurrence by affected local governments.
13. Promote a range of resource planning, inventory and research activities for the protection and use of the State's public lands.
 - a) Improve conditions in the State's important vegetation communities and wildlife habitat types, including sagebrush habitat. Provide more protection to important habitat types, including wetlands and riparian areas. Reduce the risk of listing more plant and animal species under the Endangered Species Act.
 - b) Maintain and increase public access to public lands. Meet the fast-growing demand for outdoor recreation, including access for off-highway vehicles and other forms of recreation.
 - c) Preserve open space, especially in view sheds in and near urban areas and to help keep working ranches and farms from being "urbanized".
 - d) Improve the regulation of grazing on public lands.
 - e) Prevent the proliferation of noxious weeds and other invasive species such as cheatgrass.
 - f) Reduce the State's wild horse and burro populations, and maintain such populations, within Appropriate Management Levels.
 - g) Reduce the risk of wildfires, especially at the urban/wildland interface, and improve inter-agency coordination.
 - h) Prevent damage to historic and prehistoric cultural resources.
 - i) Avoid unfunded mandates and underfunded programs at all levels of government.
 - j) Develop and implement quality education and public information programs and services.
 - a. Improve public land-related education opportunities and financial support.
 - b. Help urban residents better understand the needs of rural residents and vice versa.
 - k) Protect the interests of the State, its communities, its people and resources with respect to federal activities.
 - c. Improve the process by which Congress creates special designations, including wilderness, roadless areas, National Conservation Areas, etc. Encourage Congressional action on existing Wilderness Study Areas.
 - d. Improve the health of rural economies that are dependent on public land resources. Pursue full Payment in Lieu of Taxes funding levels.
 - l) Promote agriculture, mining and the development of energy facilities while protecting other resources.
 - e. Improve the regulation of mining on public lands, mitigate pollution from "problem" mines that are no longer operating, and reduce safety hazards at abandoned mines.
 - f. Reduce adverse impacts of military activities on nearby residents and natural resources.
 - g. Encourage careful and coordinated siting of power and transmission facilities on public lands.

LAND USE PLANNING TOOLS AND TECHNIQUES

The following authorities have been granted by the Nevada State Legislature to govern the use of land. The Legislature has made it very clear that planning is a local issue and has granted substantial flexibility and discretion to local entities.

Legislative findings and declaration (NRS 321.640):

- It is in the public interest to place the primary authority for the planning process with the local governments, which are closest to the people;
- Unregulated growth and development of the state will result in harm to the public safety, health, comfort, convenience, resources and general welfare;
- The cities of the state have a responsibility for guiding the development of areas within their respective boundaries for the common good, and the counties have similar responsibilities with respect to their unincorporated areas;
- City, county, regional and other planning must be done in harmony to ensure the orderly growth and preservation of the state.

Community Planning

For the purpose of promoting health, safety, morals or the general welfare of the community, the *governing bodies* of cities and counties are authorized and empowered to regulate and restrict the improvement of land (NRS 278.020).

Authority for Zoning

The *governing body* may divide the city, county or region into zoning districts (NRS 278.250). The zoning regulations must be adopted in accordance with the master plan and should be designed to meet the following objectives, among others:

- To Preserve Air And Water Resources,
- Promote The Conservation Of Open Space,
- Provide For Recreational Needs,
- Protect Life And Property From Natural Hazards,
- Provide For Transportation, Public Facilities And Services,
- Promote Health And The General Welfare, And
- Encourage the Most Appropriate Use of Land.

In exercising the powers granted in this section, the *governing body* may use any controls relating to land use or principles of zoning that the governing body determines to be appropriate, including, without limitation, density bonuses, inclusionary zoning and minimum density zoning.

All cities with a population of 25,000 or more and all counties with a population of 40,000 or more are required to create a *planning commission*. In cities and counties below the population threshold, the governing body may either create a planning commission or perform all the functions and have all of the powers which would otherwise be granted to and be performed by the planning commission (NRS 278.030).

The Planning Commission

- Shall prepare and adopt a comprehensive, long-term general plan for the physical development of the city, county or region. The “master plan” must be prepared so that all or portions of it may be adopted by the governing body (NRS 278.150).
- Shall promote public interest in and understanding of the plan, and consult and advise public officials and agencies, public utility companies, civic, educational, professional and other organizations, and with citizens generally in relation to carrying out the plan (NRS 278.185).
- Shall annually make recommendations to the governing body for implementation of the plan (NRS 278.185).

Controls Relating To Land Use Or Principles Of Zoning

A very strong property rights ethic exists in Nevada due, in part, to the fact that approximately 86 percent of all lands in the state are managed by federal agencies. Private property is relatively scarce and is, therefore, jealously guarded from what is perceived to be excessive regulation by local, state and federal agencies. In order to meet statutory requirements while preserving property rights, local governments should take advantage of creative techniques and incentives for managing land use within their jurisdictions. Building flexibility into the zoning ordinance not only makes it less contentious but is also more likely to produce “the most appropriate use of land.”

Density Bonus

A density bonus is an incentive granted to a developer in exchange for performance of certain functions considered desirable by the governing body. It is most commonly used to promote the development of affordable housing or senior housing in single-family or multi-family residential areas.

In a single-family residential zone with a minimum lot size of 10,000 square feet, maximum density would be equal to approximately 4 units per acre. A 10-acre development would normally contain 40 dwelling units. A density bonus could allow a 30% increase in the number of dwelling units if 20% of the total number of units were reserved for affordable housing:

40 dwelling units + 30% = 52 dwelling units
52 dwelling units x 20% = 10 “affordable” dwelling units
42 “market rate” dwelling units

In a multi-family residential zone with a maximum density of 15 units per acre, a 7-acre development would have 105 dwelling units. With the same 30% density bonus, there could be 136 dwelling units with 27 units (20%) reserved for affordable housing.

Senior housing has special requirements that might not be met without the incentive of a density bonus. Adjacent land uses should be free of health, safety or noise problems. The site needs to be fairly level to accommodate persons with limited mobility. It should also be in proximity to commercial development that provides for food shopping, drugstores, banks, medical and dental facilities, public transit and appropriate recreation facilities.

A density bonus might also be used in commercial areas to encourage the development of child care, amenities for seniors or recreational facilities.

Infill Development

Infill development is the development of homes and businesses on vacant, underutilized or redeveloped land within the urbanized area. It reduces the need to convert agricultural or open space lands to residential or commercial uses, minimizes municipal expenditures for infrastructure, promotes restoration of historic properties, revitalizes neighborhoods and encourages people to move back into the "downtown." Demographic changes, including an aging population, smaller household size and an increasing number of single person households, create a potential market for infill development. The diversity of needs created by these demographics cannot be met by the traditional single-family home. Infill development encourages a variety of housing options, i.e., granny cottages, townhouses and studios as well as business opportunities. Incentives to encourage infill development include mixed-use zoning (residential and commercial uses within a district or on the same site), proximity to public amenities (parks, library, schools, senior center), density bonuses, flexibility in performance standards, reduction in fees and expedited permit processing.

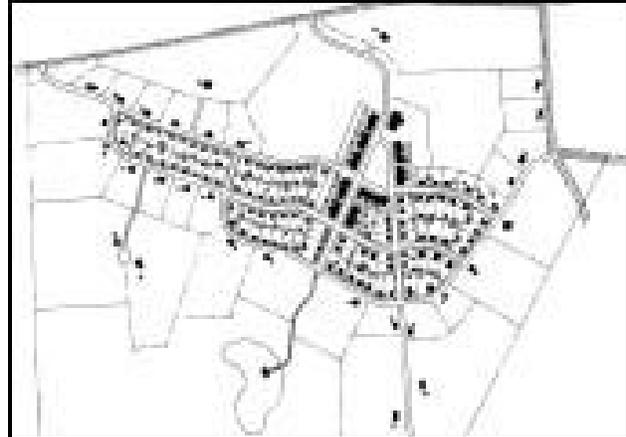
Cluster Development

Cluster development can be used to preserve the rural landscape, protect valuable agricultural land, minimize infrastructure costs and maintain density when confronted with development challenges such as steep slopes, flood plains, wetlands or other natural features which shouldn't be disturbed.

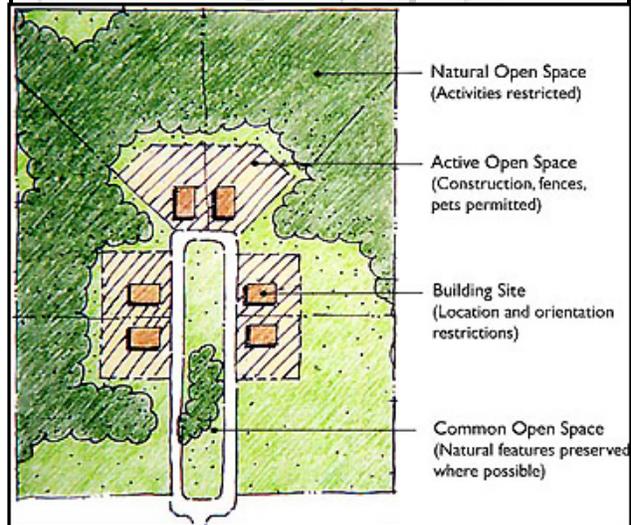


Traditional zoning specifies minimum lot size, maximum lot coverage, identical setbacks and uniform street rights-of way. The result is homes that are placed in the same location, on lots of the same size, regardless of the unique characteristics of the land. No remnant of the open space or natural features from which the subdivision was carved remains. Each of the lots in the subdivision is privately owned.

In contrast, given the same parcel of land, a cluster subdivision groups homes together on smaller individual lots. Each of these lots is individually owned, but each property owner also holds an undivided interest in the open space. Cluster development maintains density while it preserves natural features such as woodland areas, meadows, streams or wetlands. All property owners have access and enjoy the natural attributes of the land.



The closer proximity of homes in a cluster subdivision minimizes infrastructure costs by reducing the length and, therefore, the costs of pipe and pavement—connection to public water and waste water systems and construction of roads. In an environment not served by public sewer and water, clustering homes together allows for community water and waste water treatment facilities rather than individual wells and septic tanks. Street maintenance costs are also lower for the local government.



As a practical matter, there are few, if any, subdivisions of this size in rural Nevada. Cluster development is, nevertheless, a valuable land use management tool. The following situation occurred in a rural Nevada community, and cluster development provided one possible solution.

A property owner had a 40-acre parcel zoned for one dwelling unit per each five acres. Under that zoning designation, he would be entitled to create eight five-acre parcels, each supporting one dwelling unit. However, a substantial portion of the property was located in the flood plain. There were numerous springs, and the property was continuously wet. Approximately 75 percent, or 30 acres, was not developable. Using principles of cluster development, the property owner could construct eight dwelling units on the ten dry acres with the remaining property held in common ownership by the eight subsequent property owners, usually in the form of a homeowners' association.

In this case, the property owner wished to construct eight dwellings, one of which he would own, and retain ownership of the 30 acres. To ensure that no additional future development would occur on the property, a conservation easement would be required (see discussion below). The conservation easement could be donated to a land trust or to a government entity. The property owner retained ownership of the land and the right to use it. It could not, however, be further developed. It must remain in its natural state.

Conservation Easements

The fundamental rights of property ownership—frequently referred to as a “bundle of rights”—include the right to possess, the right to exclude others, the right to dispose of and the right to make economically viable use of the property. An easement grants one or more of these rights to someone who does not own the land. Easements are commonly granted to provide certain rights to governments and utilities, or to provide access to adjoining property.

Conservation easements are intended to preserve natural or man-made features of the land and prevent residential or commercial development. The objects of such preservation include natural, scenic or open space land; agricultural and ranch land; forest; recreational land; and historic properties. Conservation easements may be donated or purchased and constitute legally binding covenants. The easement is publicly recorded and runs with the deed to the property. A conservation easement is usually granted in perpetuity unless the instrument creating it specifies otherwise or a court orders that the easement be terminated or modified. Under Nevada law, conservation easements may be held by a governmental body or a charitable corporation, association or trust (NRS 111.390—111.440).

The value of a conservation easement is dependent on which of the property rights are granted, which are retained and whether the easement covers a portion or the whole of a property. Each conservation easement is negotiated, and each is unique. While the land trust or government entity has as its primary interest the preservation of natural values of the land, the property owner benefits from the easement as well. The easement can be written to meet the needs of the property owner while protecting the natural values.

The property owner may agree to prohibit the construction of any structures or roads, prohibit any subdivision of the land, restrict land disturbance and chemical application in a flood plain or prohibit fill or dredging in a wetland. He may grant or restrict public access. The property owner may retain the right to live on the property, use it, lease or sell it. He may agree to a specified use of the property, for example, agriculture or ranching. Donation of a conservation easement may qualify as a tax deductible gift for purposes of federal income tax. A conservation easement is likely to reduce the market value of the property and result in lower estate and property taxes.

Purchase of Development Rights

The purchase of development rights can be used by a local jurisdiction or land trust to preserve agricultural or open space land or other natural resource values such as riparian areas. This is a purchase of one of the “bundle of rights,” leaving all the remaining rights, in order to promote a public good. Local governments pay for these purchases through some sort of taxation which usually requires approval of the local electorate.

This is an option which can greatly benefit farmers and ranchers who are cash poor and land rich. Rather than selling land for development, property owners can sell their development rights and retain the right to use the land for agricultural production.

Assume that a piece of land has an agricultural value of \$2,000 per acre. On the other hand, a developer is willing to pay \$5,000 an acre for the land. The development value is determined

by subtracting the agricultural value from the fair market value. In this case, the development value would be \$3,000 per acre.

Purchase of development rights is a voluntary program. If a land trust or government agency makes an offer to purchase land, the property owner always has the option of refusing or trying to negotiate a higher price. When and if an agreement is reached, a permanent deed restriction is placed on the property often in the form of a conservation easement (see discussion above). No development may occur on the restricted land, however, the property owner retains all other rights to use the land, sell the land or exclude others from the land.

Impact Fees

An impact fee is a charge imposed by a local government on **new development** to finance the costs of a capital improvement or facility expansion **necessitated by and attributable to the new development**. Capital improvements for which an impact fee may be charged are defined in NRS 278B.020 and include: drainage project, fire station project, park project, police station project, sanitary sewer project, storm sewer project, street project or water project. The costs which may be collected through the use of an impact fee are limited to: the estimated cost of actual construction, estimated fees for professional services, estimated cost to acquire the land, and fees paid for professional services for preparation or revision of a capital improvements plan.

Prior to imposing an impact fee, the local government must do the following:

- Establish by resolution a capital improvements advisory committee.
- Hold a public hearing to consider land use assumptions that will be used to develop the capital improvements plan.
- Approve or disapprove the land use assumptions within 30 days after the public hearing.
- Develop a capital improvements plan.
- Hold a public hearing to consider the adoption of the plan and the imposition of an impact fee.
- Consider the arguments and, by resolution or ordinance, pass upon the merits of each complaint, protest or objection.
- Approve or disapprove the adoption of the capital improvements plan and the imposition of an impact fee within 30 days after the public hearing.
- For additional requirements, see NRS Chapter 278B.

The impact fee per service unit must not exceed the amount determined by dividing the costs of the capital improvements by the total number of projected service units.

Example: If, in order to provide water and sewer service to new development, the water and sewer mains must be extended, then an impact fee for the extension may be charged to the developer. Suppose the new development consists of 100 units, but the facility extension enables the local government to provide services in the future to a total of 500 units. The developer of the 100 units would be charged a proportional amount, in this case 20%, for extension of services to his development.

Alternatively, the developer may enter into an agreement with the local government to construct or finance the capital improvement or facility expansion. In that case, the costs incurred would be credited against the impact fee for the development, or the local government would reimburse the developer from impact fees paid from other developments using the capital improvement or facility expansion.

Residential Construction Tax

The purpose of the residential construction tax is to raise revenue to enable cities and counties to provide neighborhood parks and facilities for parks which are required by the residents of new apartment houses, mobile homes and residences. In order to impose a residential construction tax, the city council or board of county commissioners must have an adopted master plan and recreation plan which includes future or present sites for neighborhood parks. It may then, by ordinance, impose a residential construction tax. The tax is imposed on the privilege of constructing apartment houses, residential dwelling units and developing mobile home lots. The tax may not exceed one percent of the valuation of each building permit issued or \$1,000 per residential dwelling unit. For additional requirements, see NRS 278.4983.

Tax for Improvement of Transportation

A board of county commissioners may by ordinance impose a tax for the improvement of transportation on the privilege of new residential, commercial, industrial and other development after having received the approval of a majority of the registered voters of the county or within the boundaries of a transportation district. Revenues from the tax must be used exclusively to pay the cost of projects related to the construction and maintenance of sidewalks, streets, avenues, boulevards, highways and other public rights of way used primarily for vehicular traffic. The tax must not exceed \$500 per single-family dwelling unit of new residential development or 50 cents per square foot on other new development. For further details, see NRS 278.710.

RLUIPA

Does RLUIPA Mean Houses Of Worship Get Anything They Want?

by Stuart Lieberman

Houses of worship sometimes want to expand or move to a new building. They are not immune from the need to appear before local planning and zoning boards; sometimes they win and sometimes they lose. A new federal law called the Religious Land Use and Institutionalized Persons Act, or RLUIPA, means they will win more often. It effectively changes the playing field in favor of houses of worship. And, it is making planning and zoning boards cringe in fear.

RLUIPA was signed into law in 2000. The law provides that a government cannot impose or implement a land use regulation in a manner that imposes a substantial burden on a religious assembly or institution unless the government demonstrates that the imposition of the burden furthers a compelling governmental interest and is the least restrictive means of furthering the compelling government interest.

Furthermore, under the law no government may impose or implement a land use regulation that treats a religious assembly or institution on less-than-equal terms with a nonreligious assembly or institution.

Where houses of worship claim there has been a violation of this law, they may proceed in Federal Court in a lawsuit against the allegedly offending government. In addition, the law provides that if the house of worship prevails, it can be awarded attorney's fees.

In *Elsinore Christian Center vs. City of Lake Elsinore*, a Judge ruled that a portion of the law was unconstitutional because it will cause many land use decisions in the United States to be invalidated despite the fact that they are legitimately motivated and generic in effect. The Judge was concerned that this improper result would be caused by the simple fact that the applicant is a house of worship.

The facts in the Elsinore case are much the same as those in similar cases that are being filed at a rather rapid rate all over the United States. Elsinore Christian Center had been renting downtown space for over 12 years but it outgrew the building and sought to relocate to a more suitable area. It wanted to move in the same geographic area so that it could continue to serve the religious needs of the downtown community. This resulted in the center entering into an agreement to purchase a naval and military school.

A conditional use permit was required by the local planning board for conversion of the school into a church to occur. While the Board staff consented to the application, when the full Planning Board met it denied the application and that resulted in the lawsuit.

The Church relied on RLUIPA to support its contention that the Planning Board was legally required to grant approval for its application. This is a common position now taken or threatened by houses of worship facing local land use denials.

In ruling for the municipality, the Judge found much of the law to be unconstitutional because it utilizes a different standard of review than that which has historically been used in similar church

land use laws. In other words, the federal law took away too much discretion from planning and zoning boards that may have good intentions and may want to act fairly. You should know that this was one Judge's opinion. Many have already ruled to the contrary.

Undeniably, many communities in the United States take measures to avoid houses of worship from locating either entirely within their confines or in certain neighborhoods. Clearly, that kind of wrongful conduct needs to be avoided and a remedy must be in place for these situations.

Planning boards and zoning boards all over the United States are absolutely petrified of this law. They maintain that they are being compelled to take actions that they believe are not in the public's best interest and they believe are not supported by sound land use policies because they are afraid of being hauled into Federal Court. That is a very bad result of this law.

Land use laws throughout the United States have always required that planning boards and zoning boards not act in a discriminatory manner and that they not be arbitrary, capricious and unreasonable in the manner in which they decide the cases. And the First Amendment has always provided protection against those who seek to prevent or penalize houses of worship. But houses of worship should not be entitled to any kind of super priority. Planning boards and zoning boards should not be bullied into engaging in unfair or bad land use policies simply because they cannot afford another lawsuit.

Planning boards and zoning boards have to stick up for themselves. Legitimate land use decisions need to be supported. Hopefully, the Supreme Court will consider this matter and provide us all with certainty and guidance. It is needed in this arena.

PLANNING ACRONYMS AND ABBREVIATIONS

AAG	Association of American Geographers
AASHTO	American Association of State Highway & Transportation Officials
ACEC	Area of Critical Environmental Concern
ADA	Americans with Disabilities Act (1990)
ADT	Average Daily Traffic (or Average Daily Trips)
ADU	Accessory Dwelling Unit
AF	Acre Foot
AFT	American Farmland Trust
AICUZ	Air Installation Compatible Use Zone
AICP	American Institute of Certified Planners
AOD	Airport Overlay District
APA	American Planning Association
APTA	American Public Transit Association
APWA	American Public Works Association
AQMP	Air Quality Management Plan
ASCE	American Society of Civil Engineers
ATV	All Terrain Vehicle
B – 1, 2 ...	Business zone/use of specified intensity
BAT	Best Available Technology
BLM	Bureau of Land Management (US)
BMP	Best Management Program (or Practice)
BOA	Board of Appeals or Board of Adjustment
BoCC	Board of County Commissioners
BOCA	Building Officials and Code Administrators, International
BoS	Board of Supervisors
BP	Building Permit
BTS	Bureau of Transportation Statistics
BZA	Board of Zoning Adjustment
C – 1, 2 ...	Commercial zone/use of specified intensity
CAA	Clean Air Act (see also FCAA)
CAD	Computer Aided Design
CBD	Central Business District
CCD	Census County Division
CC&Rs	Conditions, Covenants and Restrictions
CDBG	Community Development Block Grant
CofAs	Conditions of Approval
CF/S	Cubic Feet per Second
CIP	Capital Improvements Plan (or Program)
CMSA	Consolidated Metropolitan Statistical Area (see also MSA, SMSA, PMSA)
CO	Certificate of Occupancy
COG	Council of Governments
CUP	Conditional Use Permit
DOE	Department of Energy (US)

DOT	Department of Transportation (US)
DRI	Developments of Regional Impact
DU	Dwelling Unit
EDA	Economic Development Administration
EIR	Environmental Impact Report
EIS	Environmental Impact Statement
EMF	Electromagnetic Field
EPA	Environmental Protection Agency
EZ	Enterprise Zone
FAA	Federal Aviation Administration
FAR	Floor Area Ratio
FCAA	Federal Clean Air Act
FCC	Federal Communications Commission
FEMA	Federal Emergency Management Agency
FHA	Federal Housing Administration
FHWA	Federal Highway Administration
FIRE	Finance, Insurance and Real Estate
FIA	Fiscal Impact Analysis (also Federal Insurance Administration)
FMHA	Farmers Home Administration
FNMA	Federal National Mortgage Administration (or Fannie Mae)
FTA	Federal Transit Administration
GDP	General Development Plan
GFA	Gross Floor Area
GID	General Improvement District
GIS	Geographic Information System
GLA	Gross Leasable Area
GM	Growth Management
GNIS	Geographic Names Information System
GPS	Global Positioning System
HO	Home Occupation
HOD	Highway Overlay District
HOV	High Occupancy Vehicle
HUD	US Department of Housing and Urban Development
I – 1, 2 ...	Industrial Zone/use of specified intensity
IDA	Industrial Development Authority
ITE	Institute of Transportation Engineers
ICMA	International City/County Managers Association
ISTEA	Intermodal Surface Transportation Efficiency Act
LAFCO	Local Agency Formation Committee/Council
LCB	Legislative Counsel Bureau
LEPC	Local Emergency Planning Committee
LBCS	Land Based Classification System

LMC	Land Management Code
LOS	Level of Service (traffic flow rating)
LRV	Light Rail Vehicle
LUI	Land Use Intensity (standards developed by the Federal Housing Administration)
LULU	Locally Unwanted Land Use
LUR	Land Use Ratio
LWCF	Land and Water Conservation Fund
M – 1, 2 ...	Manufacturing Zone/use of specified intensity
MGD	Millions of Gallons per Day
MF	Multi-family
MH	Manufactured Housing
MPC	Master Planned Community
MPD	Master Planned Development
MPO	Metropolitan Planning Organization
MSA	Metropolitan Statistical Area (see also CMSA, PMSA, SMSA)
MTS	Metropolitan Transportation System
MXD	Mixed Use Development
NAHB	National Association of Home Builders
NAHRO	National Association of Housing & Redevelopment Officials
NAICS	North American Industrial Classification System
NARC	National Association of Regional Councils
NBGN	National/Nevada Board of Geographic Names
NEPA	National Environmental Policy Act
NFIP	National Flood Insurance Program
NGO	Nongovernmental Organization
NHPA	National Historic Preservation Act
NHS	National Highway System
NRCS	Natural Resources Conservation Service (formerly Soil Conservation Service)
NRI	Natural Resources Inventory
NRS	Nevada Revised Statutes
NTHP	National Trust for Historic Preservation
OHV	Off-Highway Vehicle
ORV	Off-Road Vehicle
PC	Planning Commission
PCD	Planned Commercial Development
PCS	Personal Communication Services
PHT	Peak Hour Traffic (or Peak Hour Trips)
PID	Planned Industrial Development
PMSA	Primary Metropolitan Statistical Area
PRD	Planned Residential Development
PDR	Purchase of Development Rights
PPB	Parts Per Billion
PPM	Parts Per Million
PWS	Public Water Supply

PUD	Planned Unit Development
QOL	Quality of Life
R – 1, 2 ...	Residential Zone/use of specified intensity
RCRA	Resource Conservation and Recovery Act
RDA	Redevelopment Authority
RFP	Request for Proposals
RFQ	Request for Qualifications
RFRA	Religious Freedom Restoration Act
RPA	Regional Planning Agency
RPC	Regional Planning Commission
RTPA	Regional Transportation Planning Agency
RV	Recreation Vehicle
ROW	Right-of-way
SFD	Single-family dwelling
SAD	Special Assessment District
SCPEA	Standard City Planning Enabling Act
SEPC	State Emergency Planning Committee
SF	Single-family
SHPO	State Historic Preservation Office
SIC	Standard Industrial Classification (Code)
SID	special Improvement District
SIG	Street Index Guide
SLAPP	Strategic Lawsuits Against Public Participation
SLO	Sensitive Lands Ordinance
SLUPA	State Land Use Planning Agency
SLUPAC	State Land Use Planning Advisory Council
SMSA	Standard Metropolitan Statistical Area
SOI	Sphere of Influence
SOV	Single Occupancy Vehicle
SPA	Specific Plan Area
SRO	Single Room Occupancy
STP	Surface Transportation Program
SUP	Special Use Permit
TAZ	Traffic Analysis Zone
TIF	Tax Increment Financing
TIP	Transportation Improvement Program
TDM	Transportation Demand Management
TDR	Transfer of Development Rights
TDS	Total Dissolved Solids
TMA	Transportation Management Association (also Transportation Management Area)
TOD	Transit Oriented Design (or Development)
TRPA	Tahoe Regional Planning Agency
TSM	Transportation System Management

ULI	Urban Land Institute
USDA	US Department of Agriculture
USDI	US Department of Interior
USFS	US Forest Service
USFWS	US Fish and Wildlife Service
USGS	US Geological Survey
USPLS	US Public Land Survey
UTM	Universal Transverse Mercator Grid
VMT	Vehicle Miles Traveled
VOC	Volatile Organic Compounds
WHPA	Wellhead Protection Area
WMP	Watershed Management Program
WP	<i>Western Planner</i> organization and publication
WPR	Western Planning Resources
WQMP	Water Quality Management Plan
ZLL	Zero Lot Line
ZO	Zoning Ordinance