

# Keeping Things in Order:

## PLANNING COMMISSION BY-LAWS

by David J. Allor

During my training sessions for planning commissioners, I am often asked procedural questions. Seeking to stimulate discussion, my initial response has always been "What do your by-laws say?" I reluctantly report that in many cases my inquiry has been unanswered. There are some planning commissions whose by-laws are silent on important matters. Other planning commissions simply cannot find their by-laws. A surprising number of planning commissions have never adopted by-laws.

There are three principal reasons for adopting and using by-laws:

First, they serve to guide the internal conduct of the planning commission. For instance, by-laws can specify that during a public hearing a commissioner's job is to receive and analyze information on an agenda item, but that during a deliberative meeting the job is to synthesize and share information with other commission members, and decide the item.

Second, by-laws also serve to guide the conduct of persons appearing before the commission. By-laws, for example, can spell out that during a public hearing, members of the public have the right to be present and to be given equitable opportunity to speak to the planning commission, but that during a deliberative meeting, though members of the public have the right to remain in the room, they cannot address the commission.

Third, by-laws, if properly constructed and consistently followed, serve to strengthen the commission's decisions. They can help to ensure that the planning commission conducts its affairs in a fair and reasonable manner, that due process is afforded to all parties, and that decisions are supported by relevant and sufficient findings.

I recognize that members of planning commission are reluctant to undertake so dry and tedious an activity as constructing a set of by-laws. I encourage planning com-

CONSIDER BY-LAWS  
CREATION IN MUCH  
THE SAME WAY AS A  
VACCINATION:  
TRADING SHORT-TERM  
DISCOMFORT FOR THE  
INCREASED ASSURANCE  
OF LONG-TERM  
SECURITY.

missions to consider by-laws creation in much the same way as a vaccination: trading short-term discomfort for the increased assurance of long-term security. I hope the outline of a set of planning commission by-laws which is set out on the following pages will help ease any short-term discomfort you might otherwise have.

In addition to addressing the concerns I have already mentioned, the outline deals with four other important issues: (1) that by-laws be consistent with state constitutions, relevant state statutes, state planning enabling legislation, and possible municipal charter provisions; (2) that by-laws be written so as to be comprehensible to members of the planning commission and the public; (3) that gender neutral language be used; and (4) that direct reliance upon Robert's Rules of Order, Revised be reduced by tailoring procedures to the specific needs of a planning commission.

As some of the articles interlock, be sure to review the entire outline. Articles 1 through 5 focus on the construction of the planning commission and professional staff support. Articles 6 through 9 define hearings and meetings processes. Articles 10

and 11 define quorum, motions and voting procedures. Articles 12 through 14 focus on administrative procedures. Articles 15 and 16 govern the conduct of the members of the planning commission and of the public before the planning commission. The concluding Articles 17 and 18 incorporate legal-technical provisions.

I am aware that many planning commissions in smaller communities do not have full-time, professional staff, such that Article 5 would require revision. For larger communities, whose professional planning staff are employed under uniform administrative personnel procedures, Article 5 would require complete revision.

I hope that the vaccination takes effect, yet I know that we all need periodic booster shots. In like manner, planning commission by-laws require periodic amendment. Nevertheless, a properly constructed and consistently implemented set of by-laws can serve to improve the work of a planning commission and ensure fair public participation. The end result will be better decisions and an increased level of trust in the planning processes.

I wish to express my appreciation to C. Gregory Dale who reviewed the early drafts of this outline and to the members of local and regional planning commissions in Utah and Nevada, during whose respective 1993 state planning conferences, revised drafts were presented. They may take credit for the improvements. I retain responsibility for errors and omissions. ♦

David J. Allor is Professor, School of Planning, and Fellow, Center for the Study of Dispute Resolution, University of Cincinnati. He is the author of *The Planning Commissioners Guide: Processes for Reasoning Together*, and a member of both the American Institute of Certified Planners (AICP) and the Society of Professionals in Dispute Resolution (SPIDR).



# Outline of Articles of By-Laws for a Planning Commission



**1.** While the great majority of planning commissioners conscientiously and capably fulfill their duties, it is nevertheless useful to spell-out in the by-laws the conditions under which a commissioner should be removed. Continuing unpreparedness, continuing absence from meetings, biased participation, and conflict of interest are all causes for removal because they impair the quality of decision-making and diminish the integrity of the planning commission.

[Editor's Note: For more on how to deal with chronic absenteeism, see Greg Dale's column, "The Ghost Commissioner" in Issue 6 of the Journal]

*Editor's Note: We hope the following outline drafted by David Allor will help you in developing or improving your commission's by-laws. Please note, however, that by-laws should be reviewed by your legal counsel to ensure conformance with state enabling law and any local charter requirements. In fact, Article 18 of the outlined articles states that this kind of review should take place.*

*By-Laws of the the Planning Commission of the (Village, City, or County) in the State of (State), as amended (Giving most recent date)*

**Article 1: Authority**

- specific citation of state enabling legislation or municipal charter provisions to create a planning commission.

**Article 2: Jurisdiction**

- specific definition of the political-geographical jurisdiction of the commission.
- specific definition of any extra-territorial jurisdiction of the commission.
- specific definition of the time limit to make recommendation or decision by the commission.

**Article 3: Appointment and terms of members**

- specification of appointing authority and process.
- specification of number of citizen members and residency requirements.
- specification of term (time period) of appointment, usually appointed in overlapping terms.
- appointment of "ex officio" members of the planning commission, specifying with or without right of vote.
- specification of appointment of planning commission members to other boards or commissions.
- specification for the removal of a planning commission member "for cause". **1**
- provision to replace a planning commission member to complete an unexpired period of appointment.

**Article 4: Planning commission officers and their duties** **2**

- Chairperson - presides at all hearings and meetings of the commission, assures proper order of the commission and the public in all proceedings, signs all documents of the commission, prepares the agenda of the commission, and represents the commission before legislative and administrative bodies.
- Vice-chairperson - prepares the annual report of planning commission activities, coordinates the annual meeting of the planning commission, provides orientation to new planning commission members, and, in the absence of the chairperson, performs all of the chairperson's duties.
- Secretary - prepares all official instruments of the planning commission, records the proceedings of all hearings and meetings, and prepares the minutes of the commission hearings and meetings; together with the chairperson signs all documents of the planning commission, and assures the proper indexing of all planning commission documents as public records.
- Treasurer - where a planning commission retains direct control over the budget for operations and staff, the treasurer shall maintain complete, accurate and orderly accounts in preparation for the annual audit, and together with the chairperson shall sign all authorizations and payments of funds.
- Chairperson-pro-temp - where both the chairperson and vice chairperson are absent from a hearing or meeting, the remainder of the citizen members of the planning commission shall elect a chairperson-pro-temp from among their own number by majority vote.

**2.** It is helpful in the by-laws to specify the duties of and relations among both the officers of the commission and the staff. Contingency provisions are important so that the work of the commission can proceed in the event of unavoidable absence.

**3.** It is not unusual for planning commissioners to forget that a hearing is designed to obtain testimony from the applicant and members of the public, while a meeting of the planning commission is one where cases are deliberated and decided. By-laws must clearly establish and reinforce separate procedures for hearings and meetings.

*Article 5: Staff of the commission and their duties* 2

- Director of Planning - advises the planning commission, legislative body, and chief administrative officer on matters related to planning, development, and redevelopment, coordinates and supervises the work of all other staff and consultants, prepares all documents for presentation to the planning commission, and assists the chairperson and secretary in the exercise of their duties; the director of planning or designee shall have the privilege to address the planning commission during regular meetings.
- Zoning Administrator - advises the planning commission on all matters regarding the regulation of development, prepares all related documents for presentation to the planning commission, and serves as staff to the board of zoning appeals.
- Commission staff - the planning commission may appoint other staff members to carry-out appropriate functions.
- Consultants - the planning commission may hire consultants to perform planning related activities under terms of contract prepared by the director of planning and approved by the planning commission.
- Legal counsel - the county attorney or municipal director of law shall serve as legal counsel to the planning commission; prepares memoranda of law as requested by the planning commission, and reviews drafts of ordinances, resolutions, and by-laws, and their amendment.

*Article 6: Hearings of the planning commission* 3

- Public hearing - a noticed official hearing, the express and limited purpose of which is to provide an equitable opportunity for the public to speak on matters before the planning commission, for which publicly-accessible minutes must be prepared; the planning commission may neither deliberate nor take a substantive

vote during a public hearing.

- Working Session - a noticed official hearing open to the public to discuss specific matters before the commission; the intent of the working session is informational; the planning commission may neither deliberate nor take a substantive vote during a working session.

*Article 7: Meetings of the planning commission* 3

- Regular meeting - a noticed official meeting, open to the public, during which the planning commission deliberates and may take substantive votes on specific items.
- Emergency meeting - in the event of a true emergency, the chairperson, with the assent of a majority of citizen planning commission members contacted by telephone, may call an emergency meeting without notice; such meeting is open to the public; publicly-accessible minutes shall carry the specific justification for such meeting. 4
- Executive meeting - a noticed official meeting, closed to the public, whose topics of deliberation are truly confidential in nature; there shall be neither deliberation nor vote on agenda items before the commission.

*Article 8: Order of a public hearing* 5

1. Sign-in sheets by agenda item, listing printed name, signature, address of persons wishing to testify, and indication of support or opposition to items.
2. Call to order and determination of quorum.
3. Presentation by the staff summarizing the item.
4. Testimony of agencies related to the item.
5. Presentation by the applicant.
6. Testimony of the proponents.
7. Testimony of the opponents.
8. Concluding comments of the applicant.

*continued on page 18*

**4.** Provision should be made for calling emergency meetings. Such a provision reduces public suspicions and avoids contentious disputes about how to proceed when emergency action is needed.

**5.** It is very important to follow a prescribed order when holding a public hearing. This serves to ensure equitable and consistent treatment of all applicants. Moreover, it permits interested parties to arrange for such practical matters as time off from work, child care, and travel to the hearing.

6. Motions should be brief, clear, and complete. A commission should not, for example, simply move approval of a project, but should move approval with specific, stated reasons.

## Articles of By-laws

continued from page 17

9. Concluding comments of the staff.
10. Request of the Chairperson for a motion to close the public hearing.

### Article 9: Order of a regular meeting

1. Call to order and determination of quorum.
2. Approval of the minutes of the previous meeting.
3. Items carried-over from a previous agenda:
  - a) matters regarding the comprehensive plan,
  - b) matters regarding capital improvements,
  - c) matters regarding subdivision of land,
  - d) matters regarding zoning of land,
  - e) matters regarding other regulatory action.
4. Items of the present agenda, presented in same order as above.
5. Other business.
6. Review of the planning commission calendar and announcement of future meetings.
7. Request of the chairperson for a motion to adjourn.

### Article 10: Form and character of motions 6

- The form and character of motions shall conform to those offered within Robert's Rules of Order, Revised, except as specified below.
- Upon review of the full public record and due deliberation among the members of the planning commission, any of its members, except the chairperson, may make a substantive motion. The motion shall include not only direction (Approval, Approval with specified conditions, or Disapproval) but also a recitation of findings which support the motion.
- A second, citing compatible findings shall be required
- Other commission members may support the motion with other compatible findings.
- A motion shall die for lack of second.
- Where a motion to disapprove an item has been defeated, a member of the planning commission initially in the opposition may make a motion to approve or approve with conditions.

### Article 11: Quorum and voting requirements 7

- A majority of the appointed citizen members of the planning commission shall constitute a quorum; ex officio members shall not be counted within a quorum.
- A majority of the citizen members of the planning commission shall be required to pass a motion.
- All votes shall be taken by the Secretary in random order, except that the chairperson shall vote last.
- Abstention from voting shall not be counted in the determination of a motion but shall be recorded.
- In the event of a tie vote, the motion shall have been defeated.

### Article 12: Requirements for the submission of requests

- The planning commission shall adopt standard forms for the submission of each type of request required for its consideration; such forms shall specify the schedule of submission, form and content of complementary materials, and scale and content of drawings.
- The secretary of the planning commission shall certify the completeness of submissions.
- Certified requests shall be fully noticed under requirements of law and agendized on the planning commission calendar on the same day.
- Any request disapproved by the planning commission shall not be resubmitted for a period of six months.
- The planning commission may establish a reasonable fee schedule in order to recover costs associated with notice publication, request processing, agenda, staff report and related materials duplication and distribution; moreover, the planning commission may require the applicant to post signs on the affected property, in conformance with provisions of the ordinance, and to notify adjacent property owners, tenants, and community residents of the nature of the applicant's request.

### Article 13: Instruments and documents of the planning commission

- The official instruments of the planning commission are the record of notice, the agenda, and the minutes of hearings and meetings. Where in special cases the planning commission wishes to provide advice to the legislative body or administrative agency, it may do so by resolution.

7. A surprisingly large number of planning commissioners do not have a clear sense of their quorum and voting requirements. A question such as "What happens if there is a tie vote?" usually comes up when the case is controversial. To avoid both embarrassment and frustration, clearly specify both quorum and voting requirements in the by-laws.

**8.** Given the sheer number of cases decided by many planning commissions, it makes sense to hold an annual meeting to review the previous year and to develop a work program for the coming year. If the by-laws require such a meeting, it will not be forgotten.

**9.** Defining the proper conduct of the members of a planning commission is of critical importance in helping to ensure that the public has confidence in the commission's integrity. For that reason, the appointment of conscientious citizens is essential. Each planning commissioner must retain objectivity in the face of prejudice, impartiality in the face of contentious interests, and reasonableness in the face of strident disputes.

**10.** Conflicts of interest can be extraordinarily sensitive. If a member of a planning commission has declared a conflict of interest, that member should leave the commission chambers so as not to have an indirect but undue influence upon deliberations. If a member of a planning commission wishes to have personal interests stated, the member should still leave the commission chamber, entrusting that presentation to a competent third party.

- Any and all materials submitted to the planning commission regarding an item shall be entered into the public record by a motion to "Accept for the record."
- All notices, agendas, requests, agency or consultant letters or reports, citizen petitions, staff reports, minutes of hearings and meetings, and resolutions shall constitute the documents of the planning commission and shall be indexed as a matter of public record.

*Article 14: Administrative calendar*

- Notice for all hearings and meetings shall conform to requirements of law.
- The planning commission shall hold an annual meeting to review both the activities of the previous year and decide the work program for the coming year. **8**
- The election of planning commission officers for the coming year shall occur at the annual meeting of the planning commission.
- The regular meeting schedule for the coming calendar year shall be determined at the annual meeting of the planning commission.
- Copies of the agenda, requests, staff reports, and related documents shall be delivered to each planning commission member no less than five working days prior to a public hearing and regular meeting.

*Article 15: Conduct of the members of the planning commission* **9**

- Members of the planning commission shall take such time as to prepare themselves for hearings and meetings.
- Any citizen member of the planning commission absent from three consecutive regular meetings or any four regular meetings within a calendar year, without being excused by the chairperson, may be removed for cause.
- A planning commission member with a conflict of interest in an item before the commission must state that a conflict of interest exists and withdraw from participation in the public hearing, working session, emergency meeting, or regular meeting on that item. **10**
- The interests of that planning commission member may be represented before the planning commission by a specifically designated representative or legal agent at the public hearing or working session, and testimony entered into the public record.

- Participation of a planning commission member under cloud of a conflict of interest is cause for removal.

*Article 16: Conduct of persons before the planning commission*

- During all public hearings and working sessions, members of the public shall be given equitable opportunity to speak. Comments should be addressed to the item before the planning commission. Where a comment is irrelevant, inflammatory, or prejudicial, the chairperson may instruct the planning commission to "disregard" the comment, which nevertheless remains in the public record. **11**
- During all regular and emergency meetings of the planning commission, the public may be present but shall remain silent unless specifically invited by the chairperson to provide comment.
- During all planning commission proceedings, members of the public have the obligation to remain in civil order. Any conduct which interferes with the equitable rights of another to provide comment or which interferes with the proper execution of commission affairs may be ruled by the chairperson as "out-of-order" and the offending person directed to remain silent. Once having been so directed, if a person persists in disruptive conduct, the chairperson may entertain a motion to "eject" from the planning commission hearing or meeting. Where the person fails to comply with the successful motion to eject, the chairperson may then call upon civil authority to physically remove the individual from the chamber for the duration of hearing or deliberation on that item. **12**

*Article 17: Separability*

- Should any article of the planning commission by-laws be found to be illegal, the remaining articles shall remain in effect.

*Article 18: Adoption and amendment of by-laws* **13**

- By-law adoption or amendment shall be made following review by the legal counsel and public hearing.
- The by-laws shall be adopted or amended upon a vote of a majority plus one of the citizen members of the planning commission.
- Adoption or amendment of by-laws takes effect immediately following a successful vote. **◆**

**11.** In order for the work of the planning commission to be both impartial and efficient, members of the public should be informed of their responsibilities to each other and to the commission in all hearings and meetings. The commission must protect the integrity of its deliberations by explicitly disregarding demeaning, hateful, or vulgar language.

**12.** While very rare in occurrence, where the conduct of a member of the public interferes with the rights of others or impairs the orderly work of the commission, that person may be ejected from the hearing or meeting on that matter.

**13.** Planning commissioners need to remember that their by-laws are a public document. Consideration of any amendment to by-laws should come only after review by legal counsel and full discussion in public hearing. It is only fair that members of the public, whether future applicants, proponents, or opponents fully understand the rules which guide their conduct before the commission.