CITY OF ALAMOSA
PLANNING COMMISSION

October 28, 2020
6:00 PM
300 Hunt Ave. Alamosa CO 81101

Mission Statement: We are committed to providing balanced, effective and efficient public services for our residents, visitors and businesses by cultivating a vibrant, resilient and livable city.

Any person needing reasonable accommodation to attend or participate in a public meeting, please contact the Alamosa City Clerk's office by telephone (719) 589-2593, by email cityclerk@ci.alamosa.co.us, in person at 300 Hunt Avenue, or by mail at POB 419, Alamosa, CO 81101.

AGENDA

I. Call to Order

II. Roll Call

III. Agenda Approval

IV. Approval of Minutes

A. Minutes from 09/23/2020

V. Public Comments

VI. Regular Business

VII. Other Business

A. Annual Training and Overview

VIII. Correspondence

IX. Adjournment

ALAMOSA PLANNING COMMISSION
COMMISSION COMMUNICATION

Subject/Title:
Minutes from 09/23/2020

ATTACHMENTS:

	Description	Type
🗋	Minutes 08232020	Minutes

City of Alamosa
Planning Commission
September 23, 2020
6:00 p.m.
Minutes of the Meeting

The regular meeting of the Planning Commission was called to order on the above date at 6:02p.m. by Mark Manzanares. Also present via Zoom (due to Corona Virus Outbreak) were the following members: Darrell Cooper, David Mize, Christopher Lopez, Kindra Lambert and Reyna Martinez. A quorum was declared. Staff present: Harry Reynolds, Deacon Aspinwall, Steve Copley, Nicole Valdez and Erich Schwiesow.

Agenda Approval: M/S/C. Mize/Lopez. Motion approved to approve agenda as presented. All approved, none opposed.

Approval of the Minutes: M/S/C. Mize/Lopez. Motion approved to approve minutes of the March 25, 2020 meeting as presented. All approved, none opposed.

Public Comments: None

Regular Business:

A) Request for Side Setback Variance and Building Separation Variance at 1315 Lakewood Drive

Aspinwall reads staff report.

Bill Gurule, 1315 Lakewood Drive speaks about his request.

No Public Comments.

Lopez makes motion: I recommend that we approve the variance as submitted with one stipulation that no additional structures or construction occur in the variance area. I move that we approve this because the structure was put in place by a contractor who was consulted on the project by the home owner and the home owner was told that the construction permit was not required.

Added by Martinez: As the neighbor is okay with this variance as long as nothing else is built in the area. Also because the lay out matches what other neighbors have done.

All approved, none opposed.

B) Request for Rear Setback Variance on Lots 33-C, Block 210, Washington Addition.

Staff reported presented by Aspinwall.

J.J Hostetter, 8342 South River Road speaks about his request.

No Public Comments.

Lopez makes motion to deny variance request based on the information provided by City Staff.

No seconds, motion fails.

Mize makes motion to approve variance because the construction provides much-needed affordable housing. The setback fits the neighborhood character and it’s in line with previous approvals.

Lambert seconds motion, 4 approved, 1 opposed.

Motion is approved.

Other Business:

Administrative Appeal- Order to remove fence from ROW at 2924 West Sixth Street

Schwiesow, acting as hearing officer, explains hearing rules and procedures.

Ramos presents her appeal. Stating that she was told that her property extended to the sidewalk.

Aspinwall presents evidence constituting administrative action.

Ramos states rebuttal and closing arguments.

Lopez: Based on evidence provided by the City of Alamosa that clearly shows where the property lines are for 2924 West Sixth Street, evidence that clearly shows the owner of the property constructed fencing in the public right of way and impedes the public right of way. I move that the cities order to remove the fence be upheld.

Lambert seconds motion. All approved, none opposed.

Appeal denied.

Appellant will have 20 days to demolish fence from delivery of order to comply. (to happen in days following meeting date.)

-Discussion about contractors not following land use code was led by Manzaneres. Concerns about forgiveness vs. permission, etc. Manzaneres asks City Staff why there are no fines for lacking to go through proper channels as far as a variance goes.

Schwiesow informs the Planning Commission that the city does have fine schedules for someone that does not follow rules when a permit was required. He reminds the board that the situations that they are seeing are situations where there was no permit required. Schwiesow says that he doesn’t see what purpose a fine would serve. Reason being, you should not condition the granting of a variance on a motion of punishment. A variance should be granted if the conditions for granting a variance are met and if they are, why have a fine for doing it after the fact.

Correspondence:

After no further business, the meeting was adjourned at 7:54 p.m.

Respectfully Submitted,

Nicole Valdez
Recording Secretary

ALAMOSA PLANNING COMMISSION
COMMISSION COMMUNICATION

Subject/Title:
Annual Training and Overview

Background:
See Attached Training Manual

ATTACHMENTS:

	Description	Type
🗋	Training Manual	Presentation

PLANNING COMMISSION REVIEW

OCTOBER 2020

PLANNING COMMISSIONER REVIEW

- Planning Overview & Authority
  - What is Planning and Why Should a Community Plan?
  - Local Government Land Use Authority in Colorado
- Long-Range Planning
  - Comprehensive Plan
  - Three-Mile Plans
  - Role of PC
- Meetings & Decision-Making
  - Planning Tips on Running Public Hearings, Parliamentary Procedures
  - Defensible Decision Making
- Legal & Ethical Issues
  - Due Process, Ex Parte Contacts, & Conflicts of Interest
- **UDC 101**
  - Public Notices
  - Processes

PLANNING OVERVIEW & AUTHORITY

What is Planning and Why Should a Community Plan?

- To **protect the public** and preserve quality of life
- To develop community **vision** and achieve **goals**
- To protect **private property rights**
- To encourage/continue **economic development**
- To facilitate decision-making on **land use**

PLANNING OVERVIEW & AUTHORITY

Local Government Land Use Authority in Colorado

Home rule municipalities have the power to create their own charter, ordinances, and laws including zoning and subdivision. There are three primary limitations:

- First, a home rule municipality only has power to supersede state law where a matter is of ***local concern***.
- Second, maters of ***mixed state-wide and local concern*** allow the municipality to legislate so long as it is not in conflict with state law.
- Third, matters of ***purely state concern*** allows for no local legislation.

ROLE OF PLANNING COMMISSION

ARTICLE XIV, Section 2. - Powers and Duties of the Planning Commission.
The functions and powers of the Commission shall be:

(a) To prepare and submit to the Council for its approval a **master plan** for the physical development for the City, including the general location, character and extent of streets, bridges, parks, waterways, and other public ways, grounds and spaces together with the general location of public buildings and other public property, public utilities and the extent and location of any public housing projects and to recommend such modification of said plan from time to time as it deems necessary in the interest of the City's welfare and development.

(b) **To advise the Council** on zoning, subdivisions, annexations, major public and private projects, public works matters, city buildings, capital outlay budgeting and long range planning.

(c) To cooperate with school, county and any other planning and zoning boards and with the approval of the Council to enter into agreements to **promote uniform planning** and zoning within and without the city limits.

(d) To **exercise the authority** vested in it by State Planning and Zoning Laws.

(e) To perform such **other duties** and exercise such other powers as the Council may provide.

ROLE OF PLANNING COMMISSION

Sec. 21-8-103. - Planning commission

(c) *Decisions*. The planning commission shall hear and decide or make recommendation upon, as the case may be, the following types of applications:

(1) Conditional use
(2) Preliminary plat
(3) Final development plans
(4) Comprehensive plan amendments
(5) Variances that are applied to subdivision plats.

(d) *Recommendations*. The planning commission shall make recommendations with respect to the following types of applications:

(1) Rezoning
(2) Certificate of designation
(3) Preliminary development plan (and major amendments to PDP)
(4) Vacation of plats
(5) Abandonment of easements or rights-of-way
(6) Text amendments to this UDC

ROLE OF PLANNING COMMISSION

As Zoning Board of Adjustment (Sec. 21-8-104)

(b) **Powers and Duties.** The Zoning Board of Adjustment has the following powers and duties:

(1) To hear and decide all questions on appeal from final decisions of the Administrator.

(2) To hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, decision or determination made by an administrative official based on or made in the enforcement of this UDC.

(3) To hear and decide (grant or deny) applications for variances, except variances applied to subdivision plats.

(4) To hear and decide such other matters as the City Council may prescribe by ordinance.

(c) **Decisions.**

(1) The Zoning Board of Adjustment shall decide applications for variances from this UDC.

(2) The Zoning Board of Adjustment shall decide administrative appeals from final decisions of the Administrator.

LONG-RANGE PLANNING

- Comprehensive Plan
  - Adopted 2/2017
  - Provides a vision for the future and sets out specific goals, policies, and land use planning that specify how to achieve this vision
  - Spawned UDC, Downtown Plan, etc.
- Three Mile Plan
  - Updated annually by staff with recommendations by Planning Commission per State Statute

MEETINGS & DECISION-MAKING

MEETINGS & DECISION-MAKING

ELEMENTS OF DEFENSIBLE PROCEDURES

1) NOTICE
2) OPPORTUNITY TO BE HEARD
3) FULL DISCLOSURE
4) FINDINGS – APPLICATION OF LAWS & FACTS
5) UNBIASED DECISIONS
6) TIMELY DECISIONS
7) COMPLETE RECORDS

MEETINGS & DECISION-MAKING

1. Chair calls meeting to order, moves agenda along
2. Public hearings: quasi-judicial proceedings. Touchstone is notice and opportunity to be heard
3. Chair declares the public hearing open.
4. Staff introduces the case and includes the following supplemental information:
   - Official application form and attachments, if any
   - Staff report
   - General reference map of the area
   - Applicable Comprehensive Plan & UDC references
5. Staff presents its analysis of the and makes a recommendation for PC.
6. Applicant presents their case, and formally requests action to be taken.
   - **NOTE: The burden rests with the applicant to produce evidence sufficient to prove the request is justified.**

MEETINGS & DECISION-MAKING

6. Public may comment or ask questions.
   - Proponents speak first, opponents speak second
   - **NOTE: At no time should the public speak directly to the applicant or vice versa. All comments should be directed to the Commission.**
7. Applicant may answer staff and public questions.
8. Commission may ask questions of applicant.
9. Chair will close public portion of the hearing.
10. Discussion by the Commission. Others may wish to adjourn to do a site visit
    - **NOTE: Only the staff may be questioned at this stage.**
11. Declaration of Findings of Fact. Decision based only on information presented at the hearing.
12. Action by the Commission.
    a) Motion by Commission member
    b) Roll call, chair votes last

MEETINGS & DECISION-MAKING

FINDINGS OF FACT

Factual foundations for your conclusions as to whether the standards are met

PRINCIPLES OF FINDINGS – you are giving a roadmap to your decision

- Your decisions must be based on facts
- The facts must address the standards
- The burden of proof is on the applicant
- Information is not the same things as "facts"
- Weighing of the evidence is your responsibility
- You do not have to believe everything you hear
- Opinions without a factual basis are subject to challenge by Rule 106 or Council
- Public sentiment is not sufficient basis for decisions
- You can rely on personal knowledge, but make it a part of the record

MEETINGS & DECISION-MAKING

APPLY THE FACTS AT HAND TO THE STANDARDS IN ORDER TO COME TO A DECISION

MEETINGS & DECISION-MAKING

TIPS FOR DETERMINING THE FINDINGS

- Use the application process to put the burden on the applicant
- Use the staff report as a starting point
- Announce the rules in advance
- Announce the standards in advance
- Encourage factual testimony
- <u>Have the standards in front of you</u>
- Ask questions designed to get evidence related to the standards
- Keep your records neat and complete
- Deliberate the facts and standards
- Assess compliance explicitly
- Make careful motions with stated reasons – facts found and how the applicable standards apply to them

LEGAL & ETHICAL ISSUES

LEGAL & ETHICAL ISSUES

Due Process

- Any applicant before a decision-making body is entitled to receive legal **due process**
  - This means notice and opportunity to be heard. Same for members of the public.

LEGAL & ETHICAL ISSUES

EX PARTE CONTACTS

- Any communication initiated outside of a quasi-judicial public hearing between an official with decision-making authority and one or more of the parties, but not all of the parties
- Ex parte contact **removes due process** – both notice and opportunity to be heard

LEGAL & ETHICAL ISSUES

What do I do if someone attempts to contact me before a quasi-judicial hearing?

Stop the Person. If it is a verbal contact, advise the person that you are deciding the matter and you cannot listen to or review anything about the issue prior to the hearing.

Disclose the Contact. At the next public meeting or prior to the hearing on the public record, advise the remaining members of the board and the parties of the contact, your response, and whether or not you think you can make an impartial evidence-based decision despite the contact.

Consider Whether the Ex Parte Contact Requires Abstention. An ex parte contact, by itself, is usually not enough to reverse the final decision or require you to abstain from voting. Each contact must be reviewed to determine whether it affects your impartiality or ability to be fair, whether it creates an appearance of impropriety, whether it creates a conflict such that you cannot participate in the decision-making process, or whether it otherwise affects the rights of the parties seeking the decision to "fundamental fairness" or due process in the decision making proceedings.

LEGAL & ETHICAL ISSUES

CONFLICTS OF INTEREST

- It is not a conflict of interest to have an **opinion**! It is only a conflict of interest when you **act** on that opinion for **personal gain**, rather than in the general **public interest**.

- Please refer to the City Council Policy Manual, pg. 41, for the City's conflict of interest policy.

UDC 101

TABLE 21-8-202B
ADMINISTRATIVE APPROVALS AND PERMITS

Approval or Permit	Required For	Timing	Exceptions	Decision-Maker	Reference[1]
Land Use Approvals and Permits					
Temporary Use Permit	Operation of temporary use	Prior to establishment of temporary use	None	Administrator	Div. 2-4
Use Permit or Change in Use Permit	Check for zoning compliance as condition of issuance of building permit	Simultaneously with issuance of building permit	Building permits that are not related to the establishment of or change to a land use	Administrator	Div. 2-2
Limited Use Permit	Establishment of Limited Use	Prior to establishment of Limited Use	None	Administrator	Div. 2-2 and 2-3

Site or Design Related Permits and Approvals					
Infrastructure Construction Plans	Construction of public improvements such as streets, utilities, and stormwater management systems	Processed with final plat or site plan; approved prior to commencement of construction of specified improvements	N/A	Administrator	Engineering Standards Manual
UDC Compliance Approval	Check for UDC compliance as condition of issuance of building permit	Simultaneously with issuance of building permit	Plumbing, electrical, or other permits that do not implicate UDC standards	Administrator	*passim*
Grading, Erosion and Sediment Control	Authorization for site grading	Prior to site grading, generally simultaneously with building permit or approval of infrastructure construction plans	Traditional agricultural practices; routine landscape maintenance; ditch maintenance	City Engineer	Engineering Standards Manual
Final Plat (major or minor subdivision)	Conveying lots by reference to plat; obtaining building permits within a subdivision	If infrastructure is provided, approval of infrastructure construction plans is prerequisite to approval of final plat; final plat required prior to sale of or construction upon individual lots	N/A	Administrator	*passim*

Site Plan	All development	Prior to issuance of building permit and grading, erosion, and sediment control permit	Single-family detached or duplex buildings on individual lots; changes in the use of a building that do not involve exterior modifications or site work	Administrator	*passim*
Development Agreement; Improvements Agreement; Public Improvements Agreement (however titled)	Providing timing and security for implementation of infrastructure construction plans or landscape plans	Prior to issuance of infrastructure construction permits, or as set out in the development agreement	Development agreements that establish vested rights or materially depart from City-approved form	City Manager	Sec. 21-6-301
Modifications and Other Relief					
Administrative (Minor) Modification	Minor modifications to standards within this UDC or to approved final development plans	Prior to the issuance of permits or approvals to which the modifications apply	N/A	Administrator	Sec. 21-8-701

TABLE NOTE:

[1] References are provided for convenience only and are not intended to limit the application of this UDC

TABLE 21-8-203B
DISCRETIONARY APPROVALS AND PERMITS

Approval or Permit	Required For	Timing	Exceptions	Recommendation By	Issued By	Reference[1]
Land Use / Zoning						
Conditional Use Permit	Establishment of a conditional use	Prior to the establishment of a conditional use	N/A	Administrator	PC, ratified by City Council[4] [5]	Div. 2-2 and 2-3
Rezoning	Changing the zone that applies to a subject property	Prior to the application of standards from the requested zone	N/A	PC	City Council[3]	Sec. 21-2-106
Certificate of Designation	Development of solid waste disposal sites and facilities	Prior to issuance of any permits for solid waste disposal sites and facilities	N/A	PC	City Council[2] [5]	C.R.S. § 25-15-201 or Title 30, Article 20, C.R.S., as applicable

Site Development / Subdivision / Planned Unit Development						
Preliminary Plat	Approval of a proposed major subdivision (not required for minor subdivisions)	Prior to final plat or issuance of permits that authorize construction or site work	N/A	Administrator	PC, ratified by City Council[4]	*passim*
Preliminary Development Plan ("PDP")	First step of Planned Unit Development process; if applicable, filed with preliminary plat	Prior to approval of Final Development Plan	N/A	PC	City Council[2]	Div. 8-3
Final Development Plan ("FDP")	Second step of Planned Unit Development process; may be filed with final plats or site plans	Prior to approval of final plat or site plan	N/A	Administrator	PC , ratified by City Council[2] [4] [5]	Div. 8-3, Art. VI
Campus Master Plan	Approval of the general layout of development and arrangement of uses within a campus in the CA Zone	Prior to final plat, or if no final plat is required, prior to approval of site plans or building permits that authorize site work or building construction	N/A	PC	City Council[2] [5]	Div. 8-3, Art. II, Art. III, Art. V, Art. VI
Development Agreement; Improvements Agreement; Public Improvements Agreement (however titled)	Providing timing and security for implementation of infrastructure construction plans or landscape plans; vesting development rights	Prior to issuance of construction permits, or as set out in the development agreement	Agreements that may be approved administratively	Administrator	City Council[2] [5]	Div. 6-3 and authority under City Charter

TABLE 21-8-203B
DISCRETIONARY APPROVALS AND PERMITS

Approval or Permit	Required For	Timing	Exceptions	Recommendation By	Issued By	Reference[1]
Vacation / Abandonment						
Planned Unit Development Amendment, Major	Major changes to approved Preliminary Development Plan	Prior to implementation of major changes	N/A	PC	City Council[2] [5]	Div. 8-7
Vacation of Plat or Abandonment of Easement or Right-of-Way	Vacation of plats or abandonment of easements or rights-of-way	N/A	N/A	PC	City Council[3] [5]	Sec. 21-8-520
Amendments						
LDC Text Amendment	Amending the text of this LDC	N/A	N/A	PC	City Council[3]	N/A
Comprehensive Plan Amendment	Amending the text or maps of the Comprehensive Plan	N/A	N/A	Administrator	PC[4]	N/A
Relief						
Variance	Authorizing development which does not strictly comply with the requirements of this UDC	Prior to issuance of permits that authorize the construction or site work	Variances shall not authorize uses which are otherwise prohibited in the zone, nor authorize development that does not comply with the Floodplain Management Regulations	N/A	ZBOA[4] [5]	Sec. 21-8-702
Administrative Appeals	*See* Sec. 21-8-703, *Administrative Appeals*					

TABLE 21-8-511C

Types of Public Notice

Type of Notice	When Required	Frequency or Duration	Other Requirements
Publication (PUB)			
PUB.1	At least 14 days before public hearing	1 publication	NA
PUB.2	At least 7 days before public hearing	1 publication	NA
Posting (PO)			
PO.1	At least 7 days before public hearing	Post until public hearing commences	NA
Mail (ML)			
ML.1 (radius or area)	At least 7 days before public hearing	1 mailing	Mail notice must be sent to all property owners within 300 feet of the boundaries of the subject property.

Required Public Notice by Application Type

Application Type	Form of Required Public Notice for ... Board or Commission Review	Council Review
Use-Oriented Permits and Approvals		
Conditional Use Permit	PO.1; (PUB.1 if vested rights are requested)	N/A
Rezoning	PUB.1; PO.1; ML.1	PUB.2; PO.1
Comprehensive Plan Future Land Use Map Amendment	PUB.1; PO.1	N/A
Site Development (Layout)		
Preliminary Development Plan	PUB.1; PO.1; ML.1 (all owners within proposed zone, and all owners within 300 ft. of proposed boundaries)	PUB.1; PO.1; ML.1 (all owners within proposed zone, and all owners within 300 ft. of proposed boundaries)
Final Development Plan	PUB.1; PO.1; ML.1 (all owners within proposed zone, and all owners within 300 ft. of proposed boundaries)	N/A
Relief		
Variance	PO.1; ML.1	N/A
Administrative Appeal	PUB.2; PO.1	N/A
Administration		
Development Agreement	By type of approval associated with development agreement; PUB.1 if vested rights are requested	
Vested Rights	As provided in Division 8-6, *Vested Property Rights*	

TIPS FOR RUNNING A PUBLIC HEARING

1) Chair calls meeting to order, announces agenda, approves minutes of past meeting(s), and outlines the general procedures under which cases will be considered.

2) Chair declares the public hearing open.

3) Staff introduces the case and enters, if applicable, the following exhibits into the record:

   a. Proposed ordinance or resolution by title only
   b. Official application form and attachments, if any
   c. Staff report
   d. General reference map of the area
   e. Applicable Comprehensive Plan documents by reference
   f. Zoning Ordinance by reference
   g. Official Zoning Maps by reference
   h. Proof of Posting
   i. Proof of Publication
   j. Public hearing roster, if used

4) Staff presents its analysis of the case and the comments of referral agencies, and then makes a recommendation for Commission action.

5) Applicant presents the case, including presentation of exhibits, and formally requests action to be taken.

NOTE: The burden rests with the applicant to produce evidence sufficient to prove the request is justified.

6) Chair establishes whether proponents and opponents are represented by a spokesperson. The Chair may establish a time limit on persons (staff and applicants excepted) who wish to address the Commission.

7) Public may comment or ask questions.

   a. Proponents speak first
   b. Opponents speak second

NOTE: At no time should the public speak directly to the applicant or vice versa. All comments should be directed to the Commission.

8) Applicant may reply to staff and public questions, but may not introduce any new evidence or information not previously presented by either group.

9) Commission may ask questions of applicant.

10) Chair will close public portion of the hearing.

11) Discussion by the Commission.

NOTE: Only the staff may be questioned at this stage.

12) Declaration of Findings of Fact.

13) Action by the Commission.

   a. Motion by Commission member
   b. Roll call/electronic vote, chair votes last

WHAT IS PLANNING AND WHY SHOULD A COMMUNITY PLAN?

Planning is a basic function and power of local government in Colorado. Unlike some other states, Colorado does not have a statewide land use plan. Master plans and land use regulations such as zoning, building codes, design standards and sign codes are, for the most part, locally designated. Planning commissions and local elected officials prepare plans in order to preserve the public health, safety and welfare. Effective planning ensures the orderly development of land within the planning jurisdiction.

Local governments plan for a variety of reasons:

- **To protect the public and preserve quality of life**
  Planning can provide a wide number of benefits to a community. Effective planning can reduce problems such as school overcrowding and road congestion and prevent development in high-risk areas like flood plains and steep slopes. It can also ensure that open space and viable agricultural lands are protected from development – an issue that is paramount to communities struggling to preserve their quality of life in the face of rapid growth.

- **To develop community vision and achieve goals**
  The creation and adoption of a master plan provides the blueprint a community needs to realize its shared vision for the future. An effective planning process will engage the public and build on the strengths of the community. The master plan is more than just a list of goals and values, however. It is also a roadmap that allows the community to achieve these goals through specific land use policies and actions.

- **To protect private property rights**
  Too often, planning is seen as infringing on, rather than enhancing, private property rights. While regulations like zoning may place limits on an individual landowner's ability to utilize his or her land, they are, at their core, intended to *protect* the property rights of *all* landowners in a planning jurisdiction. Striking the balance between individual liberties and the public good is critical to every planning effort.

- **To encourage/continue economic development**
  Orderly planning provides the kind of certainty and predictability that developers, lending institutions and business owners seek. Planning can help outline the future capital improvements and infrastructure a community will require to grow, and identify the means to finance these infrastructure needs. Good planning can also ensure that sufficient land is available for employee housing and new business development.

- **To facilitate decision-making on land use**
  Decision making by local governments is made in accordance with master (or comprehensive) plans, zoning and/or other land use regulations. Good land use planning is proactive in nature and helps prevent accusations that land use decisions have been made in an arbitrary or capricious manner. In the absence of planning, land use decisions can often be made haphazardly or by default. Without planning, the impacts of land use decisions are still felt and their costs are borne by the entire community. Good planning leads to sound decision-making.

> *"Successful communities don't just happen; they must be continually shaped and guided. A community must actively manage its growth and respond to changing circumstances if it is to meet the needs of its residents and retain the quality of life that initially attracted those residents to the community."*
>
> *(Growth Plan, City of Grand Junction)*

CITY COUNCIL POLICY MANUAL EXCERPT

XIV. CONFLICTS OF INTEREST

Conflicts of interest arise when a Council Member's personal or private interests are involved in matters coming before the City, and the Councilor is in a position to derive private benefit from actions taken in his or her official capacity or from actions brought before City boards, commissions, or staff over whom he or she has direct or indirect authority. In order to assist Council, staff is willing to point out potential conflicts of interest to individual Council Members on items they are aware of based on previously submitted individual Council information pertaining to business interests, income sources, property, and potential family interests. However, there is no possible way for staff to anticipate every potential conflict so Council Members should remain diligent in their efforts to avoid conflicts of interest. The following is a guideline for determining and addressing conflicts of interest.

1. The Council as a whole and individual Councilors strive to serve the citizens of Alamosa with the highest ethical standards in carrying out their duties as Council Members.

2. Council Members are governed by, and abide by, ethical principles set out in State Statute, Charter, and City Ordinances. In particular, the following ethical principles govern the conduct of Council Members (Exhibit H):

   a. The Code of Ethics found at C.R.S. § 24-18-101 et seq.
   b. The Municipal disclosure and abstention statute found at C.R.S. § 31-4-404(2) and (3). This statute mimics the provisions of C.R.S. § 24-18-109(3). c. Charter Article III, Section 10
   d. Code of Ordinances Section 2-17(9).

3. The purpose of this policy is not to supplant these provisions, but to provide guidance in situations where the application of the provisions may be unclear. This policy is intended to be more restrictive than the statutory and ordinance provisions referenced above. No set of policies can prescribe action in every situation that may come before a Councilor. In any determination of whether a conflict of interest exists, the guiding principle shall be to ensure that any decision made by Council is made impartially, with no bias on the part of any Council Member.

4. Council Members have an obligation under City Charter and general principles of good government to vote on every matter that comes before Council, unless they have a conflict of interest.

5. Instances where Council Members have direct financial interests, as defined in C.R.S. §
24-18-102(4) provide clear conflicts of interest, and Council Members will disclose the nature of their financial interest and shall be excused from and refrain from voting or participating in the discussion of such issues.

6. Employment interests, as defined in § 24-18-102(4)(c) can provide potential for conflict which is less clear. C.R.S. § 24-18-109(2) prohibits a Councilor from performing an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he/she either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent. To clarify such situations, the following principles shall apply

    a. For purposes of this policy, a Councilor shall not only refrain from performing official acts as addressed in C.R.S. § 24-18-101 et seq, where the Councilor has a conflict of interest, but also from performing any act where the City is party to the act. In other words, a Councilor with a conflict shall not only refrain from matters coming before Council, but also before boards, commissions, and City staff.
    b. Unless the conflicted Councilor is a management level employee, it shall not be a conflict to perform an official act relating to an employer of the Councilor, where the act does not result in a direct economic benefit to the employer. For example, a Councilor may vote on a zoning request of his or her employer, but may not vote on a request concerning taxation, or a request for a waiver of fees. A councilor may not vote on a contract relating to the Councilor's employer, pursuant to provisions of the Code of Ethics. As noted in the introduction to this paragraph 6, where the Councilor is engaged as counsel, consultant, representative, or agent of a party with a matter before the City, the Councilor has a conflict of interest no matter the nature of the matter for which the Councilor is engaged.
    c. Where a Councilor's employer is in front of Council as an agent for another entity (ex. an attorney or architect), it shall not be a conflict to perform an official act that may benefit that other entity so long as the Councilor's employer does not receive any economic benefit that is contingent upon the outcome of the question before Council
    d. It shall not be a conflict of interest to perform an official act relating to a competitor in the same business as a Councilor's employer. It shall not be a conflict to approve monthly expenditure reports of expenses paid to the Councilor's employer or any entity in which the Councilor has a financial interest.

7. Instances where Council Members have personal or private interests present a difficult determination under C.R.S. § 24-18-109(3): A member of the governing body of a local government who has a personal or private interest in any matter proposed or pending before the governing body shall disclose such interest to the governing body and shall not vote thereon and shall refrain from attempting to influence the decisions of the other members of the governing body in voting on the matter. To clarify such situations, the following principles shall apply:

a. A Councilor has a personal or private interest where the Councilor or any member of the Councilor's immediate family (spouse, parents or step parents, siblings or step siblings, children or step-children or anyone playing an essentially equivalent role in the Councilor's personal life to any such identified immediate family member) have a direct interest, whether financial or otherwise, in the matter pending before the body. A direct interest shall be understood to exist where the person with the interest is interested in the matter in the sense of advocating on one side or the other of the issue, or will experience a direct economic impact as a result of the determination of the issue.

b. A Councilor has a personal or private interest where the Councilor is so connected to the matter that either (1) a reasonable person would conclude, or (2) the Councilor, in his or her own judgment concludes, that the Councilor will not be able to render an impartial decision, i.e. will not be able to separate consideration of his or her interest in the matter from the general public interest. When declaring any such interest, a Councilor shall bear in mind his or her obligation to vote on every matter pending before the Council, and shall not lightly declare a private interest. In no event should a Councilor declare a private interest merely because to vote on an issue pending before Council may present the Councilor with uncomfortable political choices.

8. A Councilor who has a conflict of interest in any matter pending before the Council shall inform the Council of the existence and nature of the conflict, and shall refrain from voting on or participating in the discussion of that matter. Council construes the provisions of Art. X, Section 10 of the Alamosa Charter to apply to any conflict of interest defined by the laws of the State of Colorado, including personal interests as set forth in C.R.S. § 24-18-109(3). Thus, in any situation in which a Councilor has declared a conflict of interest, whether personal or financial, the Councilor shall be excused from voting, and the Councilor's abstention shall not be recorded as a vote in the affirmative.

DUE PROCESS, EX PARTE CONTACTS, CONFLICTS OF INTEREST, AND PERSONAL LIABILITY

DUE PROCESS IN LAND USE HEARING

I. Any applicant appearing before a local body requesting a decision of that local body when acting within the scope of its powers is entitled to receive due process of law.

A. Due process is guaranteed by the United States Constitution.

1. Amendment 5 provides that no person shall "be deprived of life, liberty, or property, without due process of law;" Article 14, Section 1 provides "Nor shall any state deprive any person of life, liberty or property without due process of law…"
2. A similar provision exists in the Colorado Constitution at Article II, Section 25. "No person shall be deprived of life, liberty or property without due process of law."

B. In the land use context, because property rights are at issue, the provisions of each of the constitutional sections cited above, together with 42 U.S.C. § 1983, are applicable.

II. Legislative v. Quasi-Judicial Actions.

A. The level of due process which is required to be afforded depends upon whether the action of the governing body is legislative or quasi-judicial in nature.

B. The Colorado Supreme Court, in the case of Cherry Hills Resort Development Company v. City of Cherry Hills Village, 757 P.2d 622 (Colo. 1988) has discussed the distinction as follows:

> Legislation action is usually reflective of some public policy relating to matters of a permanent or general character, is not normally restricted to identifiable persons or groups, and is usually prospective in nature. Quasi-judicial action, on the other hand, generally involves a determination of the rights, duties, or obligations of specific individuals on the basis of the application of presently existing legal standards or policy considerations to past or present facts developed at a hearing conducted for the purpose of resolving the particular interests in question. This type of decision-making is denominated "quasi-judicial" precisely because it bears similarities to the adjudicatory function performed by courts. If a statute or ordinance authorizes the exercise of quasi-judicial authority but does not provide for notice and hearing, these basic requirements may property be implied as a matter of fundamental fairness to those persons whose protected interests are likely to be affected by the governmental decision.

C. The leading case on what makes a matter quasi-judicial is Snyder v. City of Lakewood, 542 P.2d 371 (Colo. 1975). In Snyder the Court identified three criteria for identifying a matter as quasi-judicial, which are: (1) a state or local law requiring that the body give adequate notice to the community before acting; (2) a state or local law requiring that the body conduct a public hearing, pursuant to notice, at which time concerned citizens must be given an opportunity to be heard and present evidence; (3) a state or local law requiring the body to make a determination by applying the facts of a specific case to certain criteria established by law.

III. Elements which must be present in a hearing.

A. The hallmark of a due process hearing is that a "fundamental fairness" attack to the proceedings. <u>Monte Vista Professional Building, Inc. v City of Monte Vista</u>, 531 P.2 400.

B. The first element of fundamental fairness is adequate notice to place all parties in interest on notice that a hearing is to held, and giving fair notice as to what will be the scope and requested outcome of that hearing. Failure to give adequate notice may void any action taken at the hearing.

C. Level of formality. The level of formality to be afforded at the hearing is essentially a question of local preference, so long as adequate opportunity is afforded for all viewpoints which are relevant to the application to be aired.

D. Necessity of findings. In order to comply with due process requirements, and in order to insulate the decision made from successful judicial attack, findings must be made by the legislative body (which findings are always better put in writing), which relate both to the evidence presented and to the criteria which exist and which are applicable to the application being heard. <u>Bauer v. City of Wheat Ridge</u>, 513 P.2d 203.

E. Impartial decision-making panel. Applicants are entitled to an impartial panel. Any evidence of predecision, or decision based on matters other than those appearing in the record, potentially subject the decision-makers to liability to the applicant for violation of the applicant's due process rights.

Ex Parte Contacts and Quasi-Judicial Decisions

What is an ex parte contact?

Broadly defined, an ex parte contact is any written or verbal communication initiated outside of a regularly noticed public hearing between an official with decision-making authority and one or more of the parties, but not all of the parties, concerning a particular subject matter which is under, or which is about to become under, consideration by that official, and which seeks either to influence, or present information relating to, that matter which is the subject of the decision. The term is usually used in a courtroom context; the judge cannot discuss a case with either party or their attorney without the other party and the attorney being present. The term is also equally applicable to any quasi-judicial matter pending before a local governmental body. An ex parte contact may include discussing an upcoming hearing or decision with the staff.

Why are ex parte contacts before making a quasi-judicial decision improper?

1. <u>All</u> parties are entitled to have the matter heard by an impartial person or body. At the very least, ex parte contact, whether the contacting person is an applicant or a protestant, call into question the impartiality of the decision maker.

2. Every quasi-judicial decision must be supported by findings of fact, and the findings of fact must be based solely upon the evidence as it appears in the record of the proceeding. The record of the

proceeding consists <u>only</u> of matters presented at the hearing, not anything presented before or after the hearing. Therefore, to have a defensible record, only evidence presented during the hearing, on the record of the hearing, may be relied upon in reaching the body's decision.

3. In some instances, the parties have the right of cross-examination of the opposing side. They cannot cross-examine an ex-parte contact.

4. In the event one party challenges the final decision, you can be sure any ex parte communications will be included as one of the grounds for reversing the decision.

What do I do if someone attempts to contact me before a hearing?

1. <u>Stop the Person.</u> If it is a verbal contact, advise the person that you are sitting as a judge in the matter and you cannot listen to or review anything about the issue prior to the hearing.

2. <u>Disclose the Contact.</u> At the next public meeting or prior to the hearing on the public record, advise the remaining members of the board and the parties of the contact, your response, and whether or not you think you can make an impartial decision based on the evidence presented at the hearing despite the contact.

3. <u>Consider Whether the Ex Parte Contact Requires Abstention.</u> An ex parte contact, by itself, is usually not enough to reverse the final decision or require you to abstain from voting on the issue. Each individual contact must be reviewed to determine whether it affects your impartiality or ability to consider the matter fairly, whether it creates an appearance of impropriety, whether it creates a conflict such that you cannot participate in the decision-making process, or whether it otherwise affects the rights of the parties seeking the decision to "fundamental fairness" or due process in the decision-making proceedings.

4. <u>Consider Adopting Formal Procedures.</u> It is difficult to tell a neighbor or a constituent that you cannot talk to them about an issue that may be very important to them. Very often constituents are unable to understand why they cannot speak about particular issues to those who have been elected or appointed to represent those constituents. It may help to have specific procedures that the governing body or the planning commission has adopted that you can point to as the reason you cannot handle a quasi-judicial issue in the same manner as you do other legislative or administrative issues. This will also help to make sure all board members handle ex parte contacts in the same manner.

CONFLICTS OF INTEREST

Premise: It is not a conflict of interest to have an opinion! It is only a conflict of interest when you act on that opinion for personal pecuniary gain, rather than in the general public interest.

I. Basics

A. Statutory Provisions

1. Sections 31-4-404, 24-18-109, and 24-18-201, <u>et. seq.</u>, C.R.S. provided guidelines to defining and disclosing conflicts and abstention from participation when there is a conflict. Most of these deal with having a direct financial interest in a contract being

awarded or other decisions being made. Municipalities have more limitations than other local governments.

a) 31-4-404(2). Any member of the governing body of any city or town who has a personal or private interest in any matter proposed or pending before the governing body shall disclose such interest to the governing body and shall not vote thereon, and shall refrain from attempting to influence the decision of the other members of the governing body in voting on the matter.
b) 24-18-109(2). A local government official or local government employee shall not: (a) engage in a substantial financial transaction for his private business proposes with a person whom he inspects or supervises in the course of his official duties; or (b) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent.

2. Potential criminal ramification for conflicts are in 18-8-301, et. seq., and 18-8-401, et. seq., C.R.S.

3. Many municipalities have local ordinances or rules governing conflicts.

4. What to do if you have a conflict
   a. Disclose
   b. Abstain from voting (except if necessary for quorum)
   c. Do not participate in the process (you cannot lobby your fellow board members or speak as a regular citizen)

AVOIDING PERSONAL LIABILITY IN THE MAKING OF A LAND USE DECISION

I. Following the rules for conducting quasi-judicial hearings clothes the decision maker in the common law judicial immunities.

A. Pearson v. Ray, 386 U.S. 547

B. This immunity can be lost, however, when judges act in some manner other than as judges.

II. Legislative immunity.

A. At common law, legislators, when acting within the provisions of the “speech and debate clause” of the United States Constitution, are absolutely immune from liability for their official actions. Tenney v. Brandhove, 341 U.S. 367.

B. This immunity, too, may be waived when ultra vires action are taken.

III. Colorado Governmental Immunity Act

A. The Colorado Governmental Immunity Act, 24-10-101, et. seq., C.R.S., affords protection to government officials when acting within the scope of their duties except for six identified, but here irrelevant, circumstances.

B. Willful and wanton conduct is not protected by the Governmental Immunity Act.

IV. How to lose your immunity.

A. There are some very, very easy ways to lose immunity and therefore subject yourself to personal liability. Among these are:
   i. Prejudging a matter.
   ii. Having ex parte contacts with applicants or objectors.
   iii. Making a decision which is in violation of clearly established law.
   iv. Acting outside the scope of your authority.
   v. Ignoring or going against publicly given legal advice.
   vi. Ignoring, or acting outside the bounds of established procedures or ordinances.

Source:
Hayes, Phillips & Maloney, P.C., Attorneys at Law, Suite 450, The Market Center, 1350 17th Street, Denver, Colorado, 80202

OPEN MEETINGS REQUIREMENTS

I. STATUTORY AUTHORITY

A. History. In 1991, the Colorado legislature adopted SB 91-33 which purports to apply to local governments.

B. Current. The provisions of the Colorado Sunshine Law applicable to open meetings of local governments are in Section 24-6-401, et. seq., of the Colorado Revised Statutes.

II. APPLICATION

A. Local Public Bodies. The law applies to Planning Commissions and Boards of Adjustment as well as County Commissioners, Boards of Trustees and City Councils. A local public body includes:

> any board, committee, commission, authority, or another advisory; policy-making, rule-making, or formally constituted body of any political subdivision of the state ... but does not include administrative staff. 24-6-402(l)(a).

Political subdivision is defined to include:

> any county, city, city and county, town, home rule city, home rule county, home rule city and county, school district, special district, local improvement district, special improvement district, or service district. 24-6-402(l)(c).

B. Home Rule Municipalities. The Sunshine Act has a declaration of statewide interest and specifies that it applies to home rule municipalities. However, the court, not the legislature, is the final arbiter of whether a statute is a matter of statewide or local concern.

While there are not yet any cases on point, there is very good reason to believe that the Colorado Supreme Court will find that the meetings of a local governmental body are a local matter, and home rule municipalities are not subject to the Sunshine Law. See, Glenwood Post v. City of Glenwood Springs, 731 P.2d 761 (Colo. App. 1986) and City and County of Denver v. State, 788 P.2d 764 (Colo. 1990).

Consequently, most home rule municipalities tend to set forth, either by Charter or ordinance or both, the circumstances giving rise to valid executive sessions as well as the rules of notice and publication of meetings which are applicable within the home rule city's boundaries.

C. Meetings Open to Public. All meetings of a quorum or three or more members of a body, which ever is fewer, at which any public business is discussed or at which any formal action may be taken must be open to the public unless an exception applies. § 24-6-402(2)(b). The Open Meetings Law defines a "meeting" as "any kind of gathering, convened to discuss public business, in person, by telephone, electronically, or by other means of communication." § 24-6-402(1)(b).

1. Does not apply to chance meetings or social gatherings at which discussion of public business is not the central purpose. § 24-6-402(2).

2. Does not apply to executive sessions held in compliance with the statute. § 24-6-402(4).

D. Meetings for Which Notice is Required. Not all meetings which are required to be open to the public require public notice. Public notice is only required for meetings at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or at which a majority or quorum of the body is in attendance, or is expected to be in attendance. § 24-6-402(2)(c).[1]

Not all meetings which are required to be open to the public require public notice.

1. "Full and timely" is the type of notice required. The statute does not define the term, but gives one example which can be used, but is not required to meet the notice requirement. That is a notice of the meeting posted in a designated public place within the boundaries of the local government at least 24 hours before the meeting. The posting place must be designated at the first regular meeting of the calendar year, and if possible, the notice should include agenda information. § 24-6-402(2)(c).

2. See Lewis v. Town of Nederland 20 B.T.R. 1205 (Colo. App.1996), wherein the Court of Appeals held that an "emergency meeting" of a Town Board did not require advance notice, since "an emergency necessarily presents a situation in which public notice, and likewise a public forum, would be either impractical or impossible."

E. Meetings for Which Minutes are Required. Minutes are not required for all public meetings and are not required for all public meetings for which notice is required. Minutes are required for all meetings at which a policy, position, resolution, rule, regulations or formal action occurs or could occur. § 24-6-402(2)(d)(II). For instance, most cities have policies that formal action cannot be taken at workshops, so minutes would not be required, but the meeting must be open to the public.

Minutes are not required for all public meetings and are not required for all public meetings for which notice is required. For instance, most cities have policies that formal action cannot be taken at workshops, so minutes would not be required, but the meeting must be open to the public.

[1] This point is further addressed in the court case, Board of County Commissioners of Costilla County, Colorado vs. Costilla County Conservancy District and McGowan, which found that the Open Meetings Law requires a local public body to provide public notice of any meeting held or attended by a quorum of the public body when that meeting concerns matters that are related to the policy-making function of that body.

F. Remedies for Violations. Any formal action taken is not valid unless it meets the requirements of the Act. Any citizen can enforce the Act and the court shall award attorneys fees to a prevailing citizen. If the public body prevails, it only receives attorneys fees if the court determines the citizen's action was frivolous, vexatious, or groundless. § 24-6-402(8). The statute does not exclude any inadvertent violations of the Act or describe if an open meeting violation voids an action only if it occurs by the final decision-making body or anywhere in the process.

III. EXECUTIVE SESSIONS

This section has been updated since HB 01-1359 (executive session procedures).

A. Procedure. Executive sessions can only be called during a regular or special meeting. Before going into executive session, the topic for discussion must be announced in the open meeting. In the open meeting, before going into executive session, the topic for discussion during the executive session must be announced, but should be general enough so as not to nullify the confidential purpose of an executive session. This announcement should include the specific statutory citation regarding the reason for the executive session.

Executive sessions may be held upon the affirmative vote of two-thirds of the quorum present at a regular or special meeting for any of the matters listed in the statute, except no formal action can occur at an executive session (except for approving previous executive session minutes). § 24-6-402(4).

An electronic record of the actual contents of the discussion in the executive session must be made. However, pursuant to CRS 24-6-401(2)(d.5)(II)(B) all or portions of the executive session that constitute a privileged attorney-client communication are not required to be recorded. The executive session record must also contain a citation to the specific provision in the statute that authorizes the session.

B. Subjects. When making the announcement in the open meeting before going into executive session, and when confirming the citation in the executive session, these are the subjects allowed for executive sessions:

1. Transfers of property interests, except the executive session cannot be for the purpose of concealing a member's personal interest in the transfer, 24-6-402(4)(a);

2. Conference with an attorney for legal advice, except the presence of the attorney alone does not meet this requirement, 24-6-402(4)(b);

3. Matters required to be kept confidential by federal or state law, 24-6-402(4)(c)- and cite the law, rule, or regulation;

4. Details of security arrangements or investigations, 24-6-402(4)(d);

5. Determining positions and development strategy for negotiations and instructing negotiators, 24-6-402(4)(e);

6. Personnel matters, but in certain situations the subject employee can request an open meeting, and the discussion of other members of the body or of elected officials are not allowed in executive session, nor is the appointment of any person to fill an office of the body or elected official allowed, 24-6-402(4)(f);

7. Consideration of documents protected by the mandatory non-disclosure provisions of the Open Records Act, 24-6-402(4)(g).

C. Procedures Following the Executive Session. The record must be kept for at least 90 days following the executive session. 24-6-402(2)(d.5)(II)(E). If legally challenged, a judge may privately review the executive session record to see whether the body's discussion strayed substantially off topic or whether the body took prohibited formal actions in its executive session. 24-72-204(5.5). However, the executive session record is not available directly to the public for review and is not subject to discovery in any administrative or judicial proceeding. 24-6-402(2)(d.5)(II)(D).

This document is meant to provide general guidance in these matters;
it is NOT to be construed as legal advice.
It is merely a summary of law, not comprehensive.
Please seek legal counsel from your municipal, county, or district attorney.

This material has been used in DOLA land use planning workshops and was provided by John Hayes of Hayes, Phillips & Maloney, P.C., Attorneys at Law, 1350 Seventeenth St., Ste. 450, Denver, Colorado 80202-1517, (303) 825-6444. Updated information regarding executive sessions was taken from handouts from the Colorado Municipal League, 303-831-6411 (memo from Geoff Wilson) and from Griffiths, Tanoue, Light, Harrington & Dawes, P.C., 303-298-1601 (prepared by Tami Tanoue). CDO updated information concerning the Costilla County case.

A CHECKLIST FOR DEFENSIBLE DECISION MAKING

ELEMENTS OF DEFENSIBLE PROCEDURES

1) **NOTICE**
   Notice should be adequate and timely. It should be reasonably calculated to notify interested parties of a proposed action and give them an opportunity to present their objections. The average person must be able to understand the notice. It must allow sufficient time for interested parties to prepare. Also it must meet statutory and/or charter deadlines and posting requirements.

2) **OPPORTUNITY TO BE HEARD**
   All parties interested in a proposed action must have the opportunity to be heard and present evidence to support their position. Hearings must be open to the public.

3) **FULL DISCLOSURE**
   All parties must have full access to information, statements and evidence relied upon by decision-makers to make their decision. Ex parte communications should be avoided. Avoid acting on information received at the last minute.

4) **FINDINGS**
   Findings are the legal "footprints" that should be left in administrative proceedings to explain how the decision-maker progressed from the facts through established policies to the decision. The decision must be explicitly stated, as well as the underlying rationale.

5) **UNBIASED DECISIONS**
   The decision maker should be clear of bias or prejudice. Conflicts of interest or apparent conflicts of interest must be identified. In some but not all cases, abstention is required.

6) **TIMELY DECISIONS**
   Decisions should be made within a reasonable period of time. The decision-maker must avoid having the process used as a delaying tactic.

7) **COMPLETE RECORDS**
   A full and clear record must be kept of the proceedings, including not just the deliberation of the decision-makers, but also all evidence which is offered and relied upon by the decision-makers.

8) **CLEAR RULES**
   Rules for the proceedings should be set out clearly in advance and followed.

ELEMENTS OF DEFENSIBLE DECISIONS: QUESTIONS TO CONSIDER

1) **DOES THE REGULATION ADVANCE A LEGITIMATE PUBLIC INTEREST?**
   Review old regulations to ensure they have the intent and effect of accomplishing results that are legitimate public policy objectives.

2) **IS THE REGULATION A REASONABLE WAY TO ACCOMPLISH THAT PUBLIC INTEREST?**
   There may be many ways to accomplish a certain objective, but one must balance public interest and private interest. The particular regulatory approach should be reasonable in light of this balancing.

3) **CAN THE RELATIONSHIP BETWEEN THE REGULATION AND PUBLIC INTEREST BE DOCUMENTED?**
   A regulatory body should be able to show how the particular zoning regulation advances the public interest. Typically, this is best accomplished by ensuring that zoning decisions are made in accordance with a land use plan. See discussion of findings below.

4) **DOES THE REGULATION ALLOW A REASONABLE ECONOMIC USE OF PROPERTY?**
   Again, the public interest being served by the regulation must be balanced with the private interests such that there is some reasonable use of the property under the zoning regulation.

5) **IS THE REGULATION FAIRLY APPLIED?**
   Generally speaking, similarly situated property should be regulated equally. If not, care should be taken to document legitimate reasons as to why this is not the case.

Findings of Fact

What are they?

Findings of fact are a citation of specific facts about the application that the approval body finds to be true and which led to its conclusion that the application conforms or fails to conform to one or more applicable approval criteria. They are:

- Legal footprints
- Findings of fact and conclusions of law
- Factual foundations for your conclusions as to whether your standards are met

Principles of Findings

- Your decisions must be based on facts
- The facts must address the standards
- The burden of proof is on the applicant
- Information is not the same things as "facts"
- Weighing of the evidence is your responsibility
- You do not have to believe everything you hear
- Opinions without a factual basis are without merit
- Public sentiment is not a basis for decisions
- You can rely on personal knowledge, but make it a part of the record

Tips for Determining the Findings

- Use the application process to put the burden on the applicant
- Use the staff report as a starting point
- Announce the rules in advance
- Encourage factual testimony
- Have the standards in front of you
- Ask questions designed to get evidence related to the standards
- Keep your records neat and complete - documents and exhibits
- Keep the evidence phase separate from the deliberation phase
- Deliberate the facts and standards
- Assess compliance explicitly
- Make careful motions with stated reasons
- Have a "package" of application, records, staff report, motion and minutes:
    - lists the record
    - lists the standards
    - reflects a weighing of the evidence
    - determines compliance
    - clearly states the decision with any conditions

Adapted from Rocky Mountain Land Use Institute 2001 Annual Conference handout by Gregory Dale, AICP, Principal, McBride Dale Clarion. Cincinnati, Ohio.

Annexation Workflow

Pre Application Meeting, establish application fees including recording fees and title fees

Draft Annexation Agreement (must include conditions set out in Sec. 21-8-402 (b))

Petition for Annexation and Land Use Application, also include Property owner disclosure documentation– Preliminary Zoning of property to be annexed (Sec. 21-8-404)

Determine required dedications and fees in lieu following Div. 6-2

Completeness and sufficiency review

If applicable (ie if contiguity established by using ROW or waterway), send notice by regular mail to landowners abutting the annexed road, advising of their right to petition for annexation on “the same or similar terms and conditions.” C.R.S. § 31-12-105(1)(e.3).

Resolution of Substantial Compliance and set Eligibility Hearing

Send Resolution, Petition, and notice for Eligibility Hearing to County Commissioners, County Attorney, and any special districts and school districts serving the area proposed to be annexed. C.R.S. § 31-12-108(2). (drafted by City Attorney, sent by Clerk)

Publish notice for Eligibility Hearing. Must be at least 30 days but no more than 60 days from substantial compliance meeting published once per week for four weeks successive.

Required for 10+ acres unless waived by City and by County Commissioners

Annexation Impact Report including maps, annexation agreement, plans for service extensions (and financing), existing districts and effect on school system. Filed with Board of County Commissioners 25 days prior to hearing.

Obtain Certificate of Publication from Newspaper

3 copies of final plat stamped and signed by applicant

Eligibility Hearing after which council adopts resolution identifying Findings of Fact

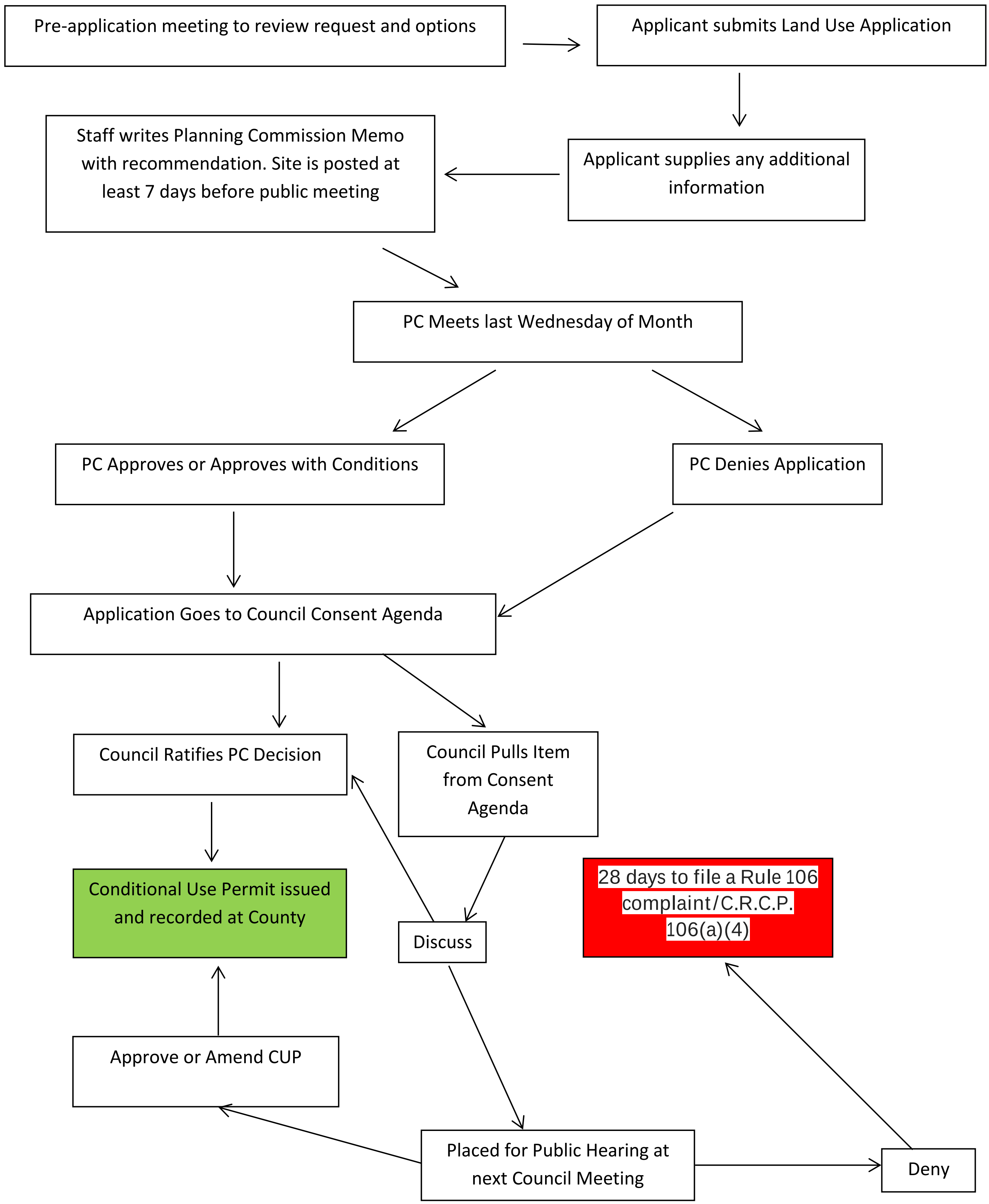
First Reading of annexation ordinance by City Council

Second reading of ordinance City Council– any final conditions may be imposed. Open for public hearing

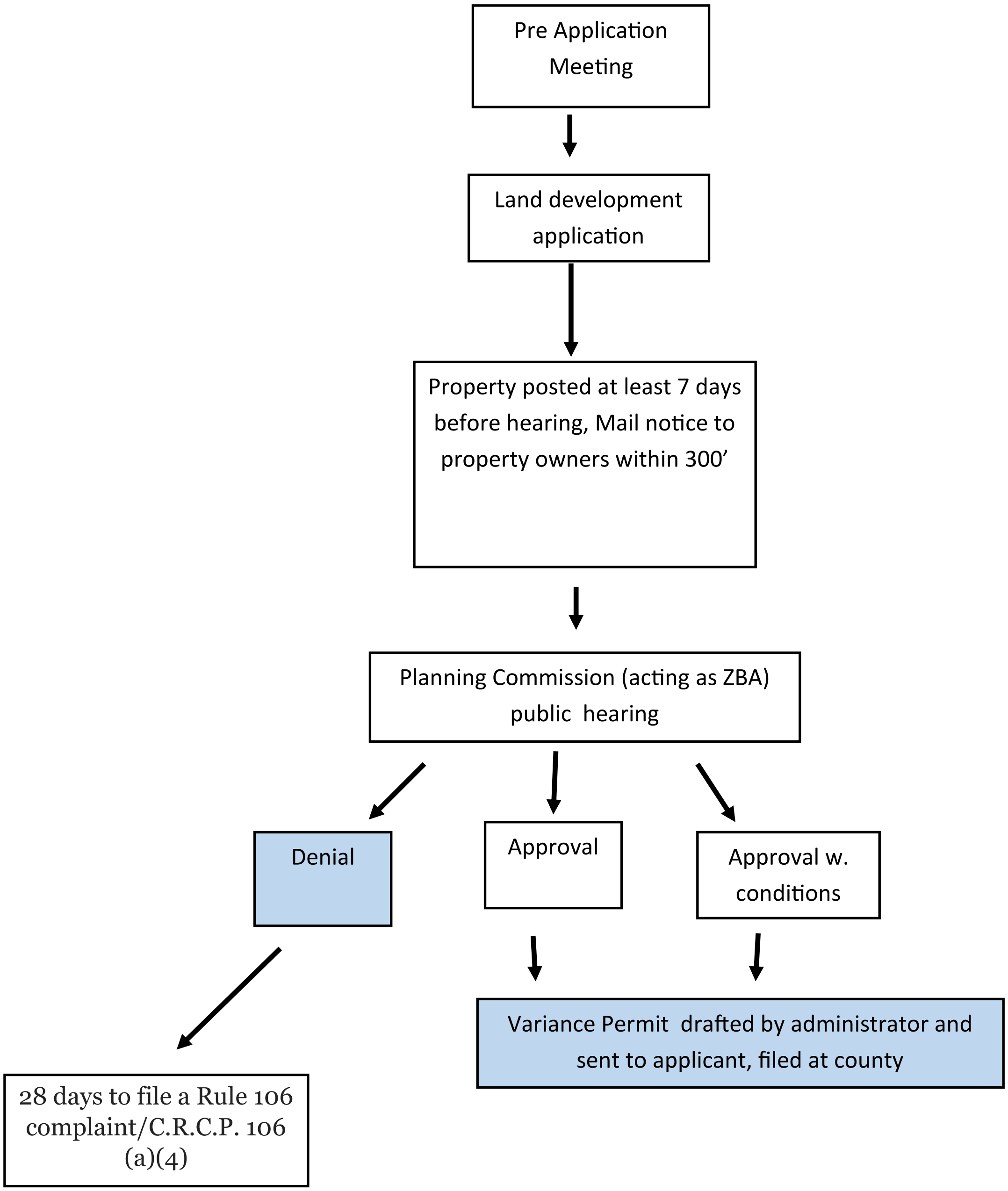
Upon approval, City Clerk and mayor signs annexation plats

Three copies filed at county clerk together with Ordinance and Annexation Agreement

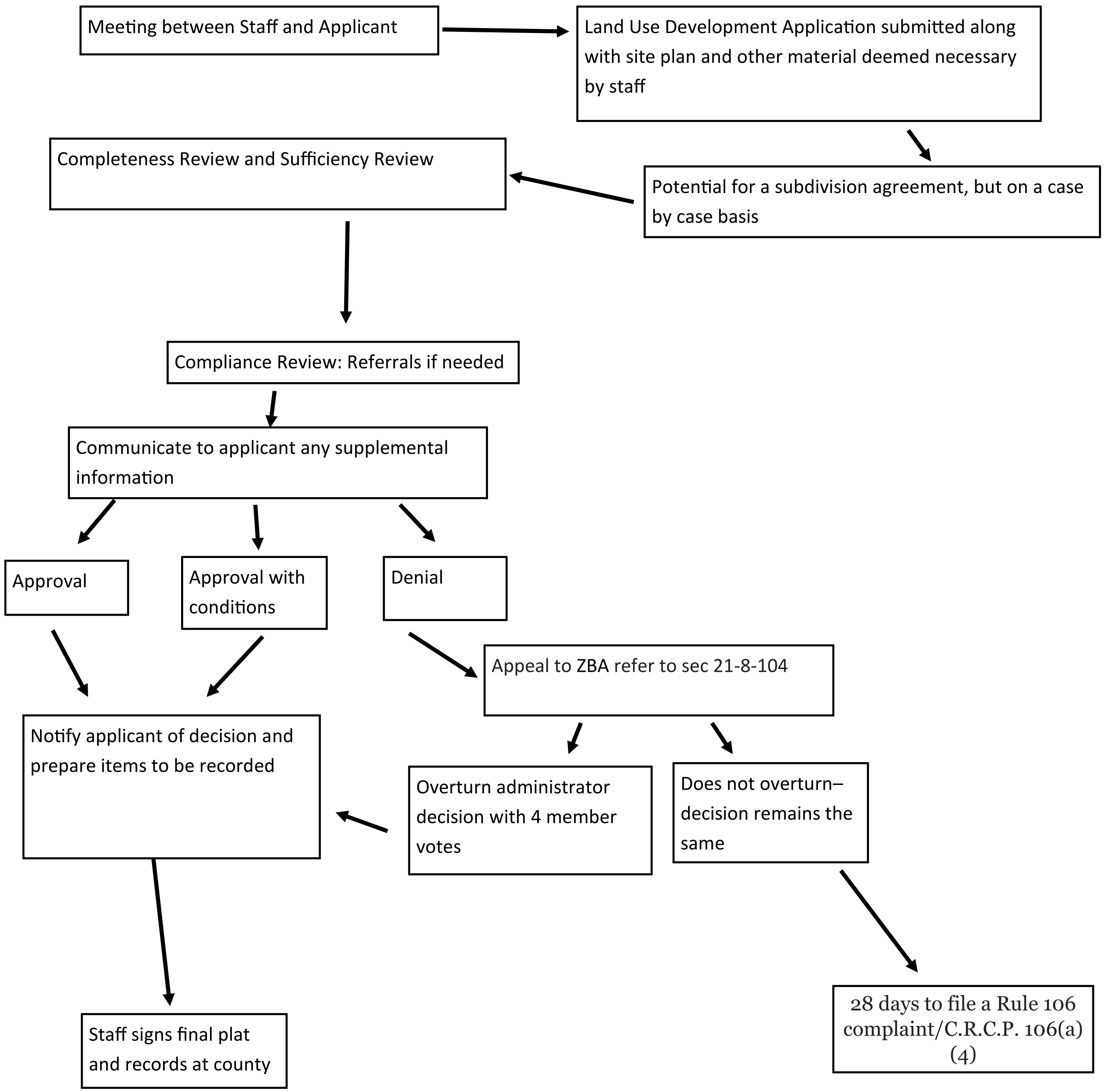
Conditional Use Permit Workflow



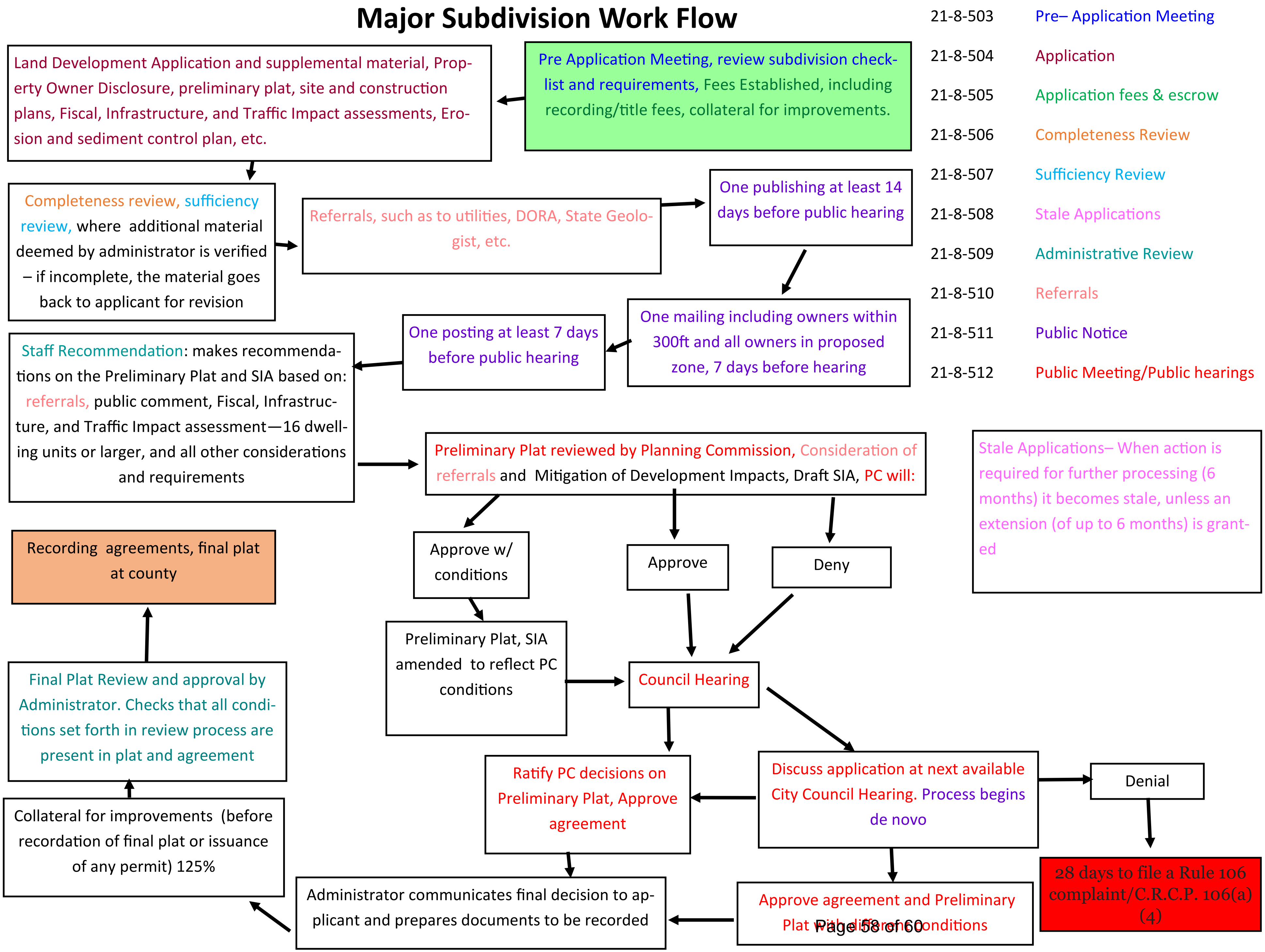
Variance Workflow



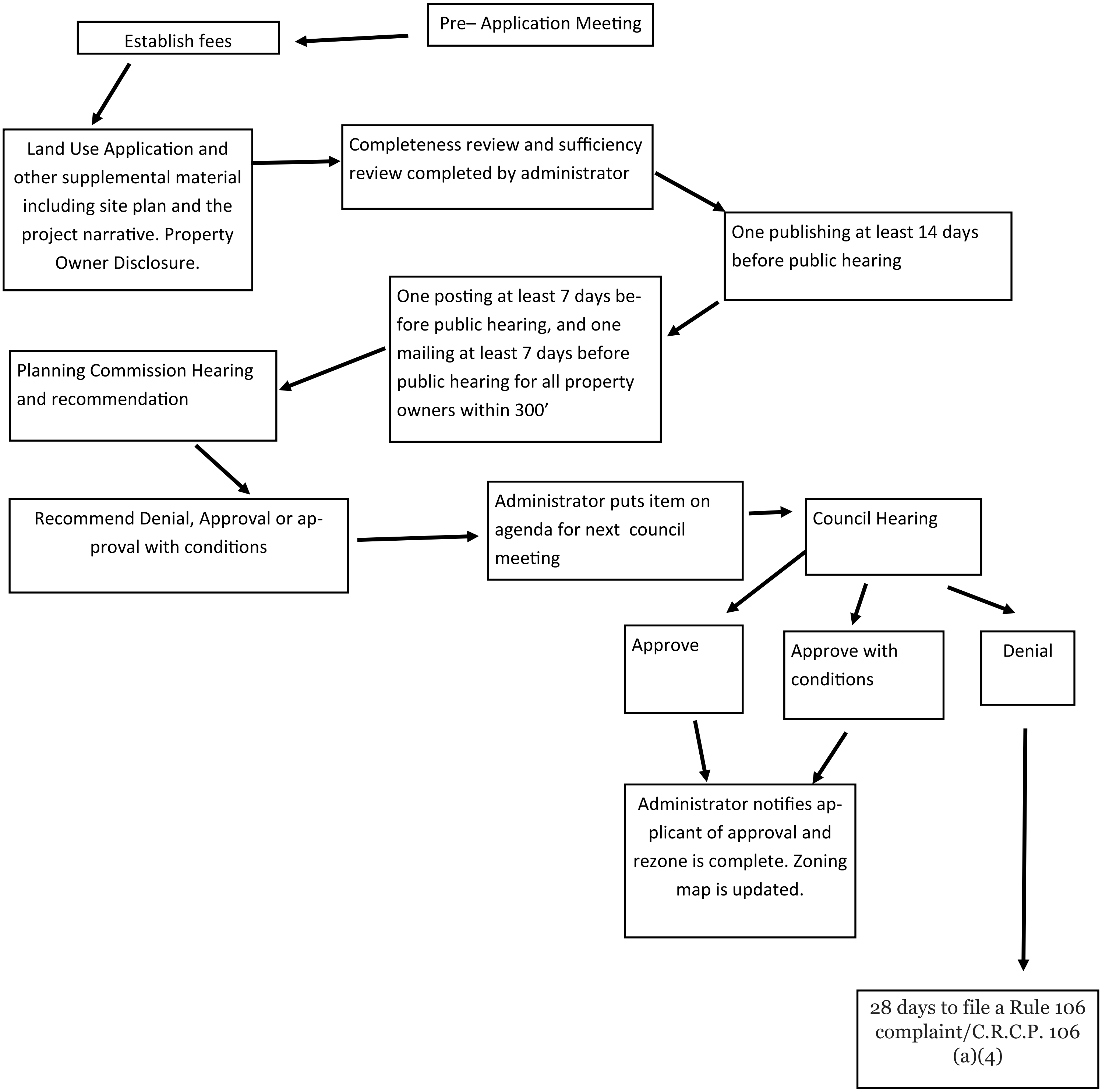
Minor Subdivision (<5 lots) Work Flow—Includes Vacations, LLAs, and Replats



Major Subdivision Work Flow



Rezone Workflow



Temporary Use Permit Workflow