



REPORT TO THE PLANNING COMMISSION

AGENDA ITEM NO.
COMMISSION MEETING 9/7/11

September 7, 2011

APPROVED BY

FROM: KEITH BERGTHOLD, Assistant Director
Development and Resource Management Department  Michael V. Dyett I redline

DEPARTMENT DIRECTOR

SUBJECT: Workshop on the City of Fresno 2035 General Plan Update and Development Code Update

SUMMARY

Staff and consultants to present a workshop to the Planning Commission on the Fresno 2035 General Plan Update and Development Code Update Processes using the following presentation outlines:

General Plan Update Process

1. Purpose and goals of the General Plan Update
2. General Plan Update Citizens Committee (GPCC) and Schedule of Meetings and Topics

The General Plan Citizens Committee was appointed the Mayor and City Councilmember. The committee consists of 3 members at large appointed by the Mayor and 2 members from each council district. This 17 member committee (13 at present) met on August 31st, in room 4017 to review the role of the committee, Brown Act compliance, and telephone survey results conducted by the consultants Dyett and Bhatia. They also did a visioning exercise, and shared their ideas about the Update. Attached is the agenda and packet for the meeting.

Schedule of GPCC Meetings – all at 5:30 PM in City Hall Room 4017

- a. September 14, 2011 – Dyett & Bhatia will present and lead discussion of key points from GP Update Economic Development Working Paper with GPCC
 - b. September 27, 2011- Dyett & Bhatia will present and lead discussion of key points from GP Update Working Paper (WP) on Resource Conservation and Quality of Life
 - c. Working Paper with GPCC
 - d. October 12, 2011, WP on Urban Form – Part I
 - e. October 26, 2011, WP on Urban Form – Part II
 - f. November 9, 2011, WP on Healthy Communities
 - g. November 14, 2011, WP on Transportation
 - h. November 30, 2011, Wrap Up Discussion of Working Papers/Introduction of Plan Alternative Concepts
 - i. December 14 2011, Review Planning Commission Comments
 - j. February 8, 2012, Preferred Plan Selection based on January Public Workshop Input
 - k. March 7, 2012, Discussion of New Policy Initiatives/Framework Concept
 - l. April 19, 2012, Draft General Plan Outline of Key Components and Initiatives
3. General Plan Update – Public Workshops and Hearings – Schedule of Meetings and Topics
 - a. Refer to First General Plan Update Newsletter (Brochure)
 4. Framing the Issues – Systematic Telephone Survey Results

5. Review of Materials Provided -
 - a. GPCC Agenda, Schedule and Process
 - b. First General Plan Update Newsletter (Brochure)
 - c. Frequently Asked Questions (FAQ) about General Plans
 - d. Map Atlas
 - e. Summary of Survey Responses (PPT slides)

Members of the public may access all the attached and referenced documents at www.fresno.gov/newplan.

6. Request Chairman Jaime Holt to be PC Liaison with GPCC and attend all meetings and report back to PC at regular meetings
7. Questions from the Planning Commission and Public

Development Code Update Process

The Development Code Technical Committee (TAC) was appointed by the Mayor; the 7 member committee consists of code users of multiple disciplines. This committee met on August 31st, in room 4017 to review the project approach, process and Issues and Options Paper developed by the consultants Dyett and Bhatia. The committee agenda and packet is attached.

Schedule of Development Code Update TAC Meetings – all at 3:30 PM in City Hall Room 4017

- a. 8/31 – Initial Meeting – Issues and Options
 - b. 9/7 – Planning Commission Briefing By City Staff, Dyett & Bhatia, and MW Steele.
 - c. 9/29 – City Council Briefing By City Staff and Dyett & Bhatia.
 - d. 12/14 - Module 1 – Zoning Administration; Permits and Procedures.
 - e. 2/15 - Module 2 – Citywide Urban Form and Development Standards, Subdivision Design Standards (block and lot patterns, street cross-sections, etc.)
 - f. 3/15- Public Workshop - Module 2 – Proposed Standards, Subdivision Design Standards @ Council Chambers
 - g. 4/19 – Module 3 – Base and Overlay Zoning District Regulations
 - h. 5/16 – Public Workshop - Module 3 – Base and Overlay District Regulations @ Council Chambers
 - i. 7/19 – Professional Community Test Drive: Public Review Draft
 - j. 8/15 PC
 - k. 8/30 City Council – For Introduction
 - l. 9/20 City Council –For Adoption
1. The Project: Overview of Approach and Process
 - a. Introduction to Zoning and the Code Update
 - b. Related Projects
 - i. *General Plan Update*

ii. Downtown Development Code

2. Issues to be Addressed Options and Recommendations for the Code Update Review and Discussion
3. Review of Materials Provided -
 - a. Development Code Update TAC, 8/31 Agenda,
 - b. Development Code Update TAC - Schedule and Process
 - c. Development Code Update – Issues and Options Paper

Members of the public may access all the attached documents at www.fresno.gov/newplan.

4. Questions from the Planning Commission and Public

Attachments: General Plan Citizens Committee Meeting, 8/31 Agenda
GP and Code Schedule and Process
FAQ about the General Plan
Survey Results (PPT slides)
Map Atlas (to be distributed at the Meeting)
Brochure (to be distributed at the meeting)

Development Code Technical Committee Meeting, 8/31 Agenda
Issues and Options Paper

General Plan Update Citizens Committee

August 31, 2011
5:30pm Room 4017 (4th Floor)
Fresno City Hall, 2600 Fresno St., Fresno, CA 93721

Agenda

1. Welcome – Mark Scott, City Manager and Interim DARM Director
 - Introductions
 - Purpose and goals of the General Plan Updateⁱ
 - GPCC role and expectationsⁱⁱ
 - Recommended co-chair GPCC leadership structure – establish next meeting
2. Brown Act – John Fox, Deputy City Attorney
3. Review of Materials Provided at First Meeting – Keith Bergthold, Asst. Director, Long Range Planning, DARM
 - GPCC Schedule and Process
 - First General Plan Update Newsletter (Brochure)
 - FAQ about General Plans
 - Map Atlas
 - Existing 2025 General Plan
4. Framing the Issues – Michael Dyett and Martha Miller, Dyett & Bhatia
 - Survey results
 - Committee members comments on issues and concerns to be addressed in the GP Update
 - Relationship between concurrent GP Update and Development Code Update – Mark Steele, M.W. Steele Group
5. Next steps and other considerations – Keith Bergthold
 - September 14, 2011 – Dyett & Bhatia will present and lead discussion of key points from GP Update Economic Development Working Paper with GPCC
 - September 27, 2011- Dyett & Bhatia will present and lead discussion of key points from GP Update Resource Conservation and Quality of Life (aka Sustainability) Working Paper with GPCC
 - October 12, 2011, WP on Urban Form – Part I
 - October 26, 2011, WP on Urban Form – Part II
 - November 9, 2011, WP on Healthy Communities
 - November 14, 2011, WP on Transportation
 - November 30, 2011, Wrap Up/Plan Alternative
 - December 14 2011, Review Planning Commission Comments
 - February 8, 2012, Preferred Plan Selection
 - March 7, 2012, Policy/Framework
 - April 19, 2012, General Plan Outline

 - Optional meetings in September: 9-7 Planning Commission Briefing GP Update Workshop, 9-15 Community Workshop – Orientation & Visioning at Edison High School, 9-20 Community Workshop – Economic Development Working Paper Fresno High School General Plan Community Workshop Schedule included in packet.



HILDA CANTÚ MONTOY
City Attorney

**LEGAL HANDBOOK FOR CITY OF FRESNO
BOARDS, COMMISSIONS, COMMITTEES,
AND SIMILAR BODIES**

Hilda Cantú Montoy
City Attorney

April 2004

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I. INTRODUCTION

Individuals who serve on City boards, commissions, committees, and similar bodies (hereinafter "body") are public officers and carry out the duties of government. This Handbook contains basic laws and legal procedures that apply to public officers while serving on City bodies. This Handbook is intended to be used as a reference for such public officers to ensure that the actions taken in their official capacity are above reproach and in compliance with the laws. The City Attorney's Office will endeavor to assist the public officers while serving in their official capacity. In the event this Office is unable to provide assistance because the matter is private in nature or creates a conflict of interest, we will refer the public officer to the appropriate agency or to his/her private attorney.

A. HOW CITY BOARDS, COMMISSIONS, COMMITTEES AND SIMILAR BODIES ARE CREATED.

A body may be created a number of ways, such as pursuant to federal law, state law, City Charter, or the Fresno Municipal Code. The Mayor, Council, or an individual Councilmember may also create multi-member bodies as permitted by law, to assist them in carrying out their official duties.¹ Since there are many ways a body may come into existence, the enabling legislation or resolution that created the body should be consulted for determining its powers and duties.

B. THE POWERS AND DUTIES OF CITY BOARDS, COMMISSIONS, COMMITTEES, AND SIMILAR BODIES.

1. Enabling Legislation or Documents.

The City Attorney's Office receives a number of inquiries regarding the qualification, appointment, term of office, and removal process for members serving on various City bodies. The enabling legislation that created the body will govern. For example, if a body was created by federal or state law, those laws must be consulted regarding its powers and duties. For boards and commissions created by Charter, the Charter provisions located in Article IX of the Charter commencing with Section 900 *et seq.*, governs. Boards and commissions created by Charter include the Planning Commission, Civil Service Board, and City Retirement Boards. For all other bodies created by Council, the ordinance or resolution creating the body governs. Finally, whenever a body is created by the Mayor or individual Councilmember, the elected officer should file a form with the City Clerk setting forth the powers and duties of the body.

2. Internal Rules or Bylaws.

A body may also adopt bylaws for its internal governance that are consistent with its powers and duties. There are also well established laws on the governance of bodies. For example, an individual appointed to serve at the pleasure of the appointing authority may be removed from office by the appointing authority without cause and without notice and a hearing.² However, if a public officer is appointed to serve a definite term of office,

the officer may only be removed for cause before the expiration of the term. This means that there must be specific and definite charges, justifying action, with legal notice, reasonable opportunity to be heard, and a finding or judgment.³ In another example, if a person is appointed to a board who does not meet the qualifications for the appointment, the appointment is considered null and void by operation of law.⁴

C. THE RECORDS OF THE CITY CLERK.

Much of the enabling legislation and documents for City bodies are located in the City Clerk's Office. The enabling legislation may take the form of, but is not limited to, an ordinance, resolution, minutes of Council meetings, and staff reports. In early 2004, the Council also adopted the "Boards and Commissions Appointment Process" in Resolution No. 2004-6 to streamline the application process for individuals interested in serving on various City bodies. Resolution No. 2004-6 will be administered by the City Clerk, which is available on the City of Fresno website at www.fresno.gov/cityclerk/.

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II. THE BROWN ACT

A. WHAT IS THE BROWN ACT?

The Brown Act is state law that governs meetings conducted by local legislative bodies to facilitate public participation and to curb misuse of the democratic process by secret legislation by public bodies.⁵ The Brown Act generally requires local legislative bodies to conduct meetings in open public sessions, and to post meeting agendas in advance.⁶

B. TYPES OF BOARDS, COMMISSIONS, COMMITTEES, AND SIMILAR BODIES THAT ARE SUBJECT TO THE BROWN ACT.

The Council, as the governing body of the City, is the most basic type of body subject to the Brown Act. Subsidiary bodies of the Council may also be subject to the Brown Act. Any board, commission, committee, or similar bodies of the City, such as a task force, created by Charter, ordinance, resolution, or formal action of the Council are "legislative bodies" subject to the open meeting requirements of the Brown Act. The only exception to this rule are advisory ad hoc committees comprised solely of less than a quorum of the Council.⁷ Examples of bodies of the City that fall within the definition of "legislative bodies" include the following:

1. Bodies Created by Charter or Ordinance.

The Charter created three legislative bodies consisting of the Planning Commission, Civil Service Board, and Retirement Boards.⁸ Examples of bodies created by the Fresno Municipal Code include the following: Housing & Development Commission;⁹ Building Standards Appeals Board;¹⁰ Mobile Home Park/Rent Review Stabilization Commission;¹¹ Fresno Clean Air Advisory Committee;¹² Housing Advisory Finance & Appeals Board;¹³ Historic Preservation Commission;¹⁴ Joint Advisory Appeals Board;¹⁵ Building Commission;¹⁶ and the Industrial Development Authority.¹⁷ Legislative bodies created by ordinance that are not codified in the Fresno Municipal Code are also subject to the Brown Act.

2. Bodies Created by Resolution or Formal Action of the Council.

Bodies created by Council by resolution or formal action are "legislative bodies" for purposes of the Brown Act. The phrase "formal action" appears to be a term intended to distinguish between the official actions of the Council and the informal actions of particular Councilmembers. For example, if the Council designates two of its members to sit on an advisory committee and establish a committee's agenda, the Council has taken "formal action" even though Council did not act by formal resolution.¹⁸ Similarly, if the Council authorizes a public officer to appoint a committee under specified circumstances, this will more likely than not, constitute a creation of an advisory committee by formal action of the Council.¹⁹ "Formal action" of the Council is not limited to a formal resolution or a formal vote by the Council.²⁰

3. Subcommittees of Boards, Commissions, Committees, or Similar Bodies.

If the body creates a subcommittee to carry out its mission, the subcommittee may also be subject to the Brown Act. To make that determination, the same legal analysis that applies to City bodies also applies to the subcommittee. In other words, if the body that created the subcommittee is a "legislative body" for purposes of the Brown Act, the subcommittee will also be subject to the Brown Act unless the subcommittee is an ad hoc committee. To be an ad hoc committee, the subcommittee must be composed solely of less than quorum of the legislative body that created it, may not have a continuing subject matter jurisdiction, or a meeting schedule fixed by Charter, ordinance, resolution, or formal action of the body that created it.

C. BOARDS, COMMISSIONS, COMMITTEES, AND SIMILAR BODIES THAT ARE NOT SUBJECT TO THE BROWN ACT.

Examples of bodies that are not "legislative bodies" for purposes of the Brown Act include the following.

1. Ad Hoc Committees Comprised Solely of Less than a Quorum of the Council.

An "ad hoc committee" is a committee composed solely of the members of the Council that are less than a quorum of the Council, does not have a continuing subject matter jurisdiction or a meeting schedule fixed by Charter, ordinance, resolution or other formal action of the legislative body.²¹ Ad hoc committees generally serve only a limited or single purpose, are not perpetual, and are dissolved when their specific task is completed. Committees that do not qualify as an ad hoc committee are standing committees that must comply with the Brown Act.

2. Committees Created by an Individual Decision Maker.

A multi-member body created by an individual decision maker is not subject to the Brown Act.²² For example, a committee created by the Mayor or individual Councilmember is not a "legislative body" for purposes of the Brown Act. However, if the Council directs or authorizes a single individual to appoint a body, the body will probably be subject to the Brown Act.²³

D. THE GENERAL REQUIREMENTS UNDER THE BROWN ACT.

The basic mission of the Brown Act is to ensure that decisions are made public. A body that is subject to the Brown Act must comply with the rules that provide for public access to its meetings. The general requirements of the Brown Act are as follows:

1. Post the Agenda.

- The agenda must be posted in an area freely accessible to the public.
- The agenda for regular meetings must be posted at least 72 hours in advance.²⁴
- The agenda for special meetings must be posted at least 24 hours in advance.²⁵
- For emergency meetings, the media must be given one hour advance notice. Notice of meetings for dire emergencies must be given at or near the time the presiding officer notifies the members of the body of the meeting.²⁶

2. Contents of the Agenda.

- The agenda must specify the time and location of the meeting.²⁷
- The agenda must contain a brief general description of each item of business to be transacted or conducted at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words.²⁸
- The agenda must provide a public comment period for the public to address the legislative body before or during consideration of an item on the agenda. For regular meetings, the agenda must also allow members of the public to address the body on any matter within the subject matter jurisdiction of the body. For special meetings, a member of the public does not have a right to address the legislative body on matters that do not appear on the agenda.²⁹
- The agenda must include information regarding how, to whom, and when a request for disability related modification or accommodation, including auxiliary aids or services may be made by a person with a disability who requires modification or accommodation in order to participate in the public meeting.³⁰

3. The Public's Rights.

- Members of the public shall not be required to register their names, provide other information, complete a questionnaire, or fulfill any other conditions to attend the meeting.³¹
- The public has a right to videotape, record, or broadcast the meeting so long as it does not create a persistent disruption of the proceedings.³²

- Information given to a majority of the members of the legislative body in connection with an open meeting must be equally available to the public unless exempt under the Public Records Act.³³
- If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12132).³⁴

4. Non-Agenda Items Rule.

- A body cannot discuss or take action on any item not appearing on the agenda.³⁵
- Narrow exceptions to the non-agenda items rule include the following: briefly responding to comments made by a private person during the public comment period; asking staff for clarification; directing staff to place an item on a future agenda; or making a brief announcement or report regarding the member's own activities.³⁶
- Additional exceptions to the non-agenda items rule include the following: emergency situations that qualify for "emergency meetings"; when two-thirds of the members of the legislative body decide there is a need to take immediate action that was brought to their attention after the agenda was posted; or when an item was continued from a prior meeting that was posted no more than five days prior to the date action is taken on the item.³⁷

E. WHAT IS A "MEETING?"

Meetings of the legislative body must comply with the open meeting requirements of the Brown Act. The term "meeting" is very broadly defined as any congregation of a majority of the members of the legislative body at the same time and place to hear, discuss or deliberate upon any matter which comes under the subject matter jurisdiction of the legislative body.³⁸ Meetings may occur in a variety of situations.

1. Face to Face Meetings.

A meeting occurs whenever a majority of the members of the legislative body meets face to face to discuss, decide, or vote on an issue within its subject matter jurisdiction. The legislative body need not take any action for a gathering to be considered a "meeting." A gathering is a "meeting" if a majority of the members of the body receives information, hears a proposal, discusses their views on an issue, or takes action on any issue under the subject matter jurisdiction of the body.

2. Informal Gathering.

A gathering need not be formally convened to be considered a "meeting," and may occur in a variety of social situations. For example, if a majority of the members of the body have lunch together and discuss or decide matters within its subject matter jurisdiction, the gathering is a "meeting." A meeting may arise in other contexts, such as at social gatherings where a majority of the members of the legislative body discuss any matter within the body's subject matter jurisdiction.

3. Serial Meetings.

A meeting may also take place in situations where a majority of the members of the body do not meet face to face. The Brown Act expressly prohibits the use of devices, such as direct communication, personal intermediaries, or technological devices to develop a collective concurrence as to actions to be taken. For example, a member of the legislative body may not contact a majority of its members by telephone, e-mail, fax, or by a third party to discuss any matter within its subject matter jurisdiction outside of the public domain. Most often, this type of a meeting occurs through a series of communications by individual members or groups smaller than a quorum that ultimately involve a majority of the members. These meetings are called serial meetings.³⁹

F. GATHERINGS THAT ARE NOT MEETINGS.

There are six types of gatherings that are not subject to the Brown Act.⁴⁰ If a gathering does not fall within any of the six exceptions, a majority of the members in the same room who are merely listening to a discussion of the body's business will be participating in a meeting that requires notice, an agenda, and a period for public comment. The six exceptions are as follows:

1. The Individual Contact Exception.

Conversations between a member of the body and any other person, that does not serve to "poll" members of the body does not constitute a meeting for purposes of the Brown Act.⁴¹

2. The Conference Exception.

Attendance of a majority of the members of the body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the body, provided a majority of the members do not discuss among themselves specific business within the body's subject matter jurisdiction.

3. Other Public Meetings.

Attendance of a majority of the members of the body at an open and publicized meeting organized to address a topic of local community concern by a person or organization

other than the local agency, provided a majority of the members do not discuss among themselves specific business within the body's subject matter jurisdiction.

4. Meetings of Other Legislative Bodies.

Attendance of a majority of the members of the body at an open and noticed meeting of another body of the local agency, provided a majority of the members do not discuss among themselves specific business within the body's subject matter jurisdiction.

5. Social or Ceremonial Occasions.

Attendance of a majority of the members of the body at a purely social or ceremonial occasion, provided a majority of the members do not discuss among themselves specific business within the body's subject matter jurisdiction.

6. Standing Committee Exception.

Attendance by a majority of the members of the body at an open and noticed meeting of a standing committee of that body, provided that the members of the body who are not members of the standing committee attend only as observers.

G. TYPES OF MEETINGS.

There are three types of meetings that can be called under the Brown Act: regular meetings, special meetings and emergency meetings.

1. Regular Meetings.

Regular meetings are held at a regular time and place established by local rules. With certain exceptions, the body may only take action on items that are listed on the agenda.

2. Special Meetings.

Special meetings are called on an "as needed" basis for special purposes. The body may only take action on items listed on the agenda.⁴²

3. Emergency Meetings.

An emergency meeting may be called on less than 24 hours notice, regarding a work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both, as determined by a majority of the body. An emergency meeting may also be held for a "dire emergency" for a crippling disaster, mass destruction, terrorist act, or threatened terrorist activity.⁴³

H. LOCATION OF MEETINGS.

As a general rule, regular and special meetings must be held within the boundaries of the territory over which the legislative body has jurisdiction.⁴⁴ Exceptions to the boundary

requirement are as follows: to comply with federal law, state law, or court order; to inspect real property or personal property which cannot be conveniently brought within the jurisdiction; to participate in meetings with multi-agency significance located within the jurisdiction of one of the agencies; to meet in the nearest available facility if the body has no meeting facility within its jurisdiction, or at the principle office of the body located outside of the jurisdiction; to meet with federal or state officials on legislative or regulatory issues affecting the local agency; to meet in or nearby a facility owned by the local agency, if the facility is directly related to the topic of the meeting; and to visit the office of the body's legal counsel for closed session on pending litigation to reduce legal fees or cost.⁴⁵

I. CLOSED SESSIONS.

Closed sessions are not open to the public and information acquired during properly held closed sessions are confidential and may not be disclosed without the body's authorization. A body may not meet in closed session unless expressly authorized by the Brown Act. The statutory exceptions to the open meeting requirements are narrowly construed, and unless a specific statutory exception applies, a legislative body must consider the matter in open session regardless of its sensitivity.⁴⁶ Examples of authorized closed sessions include: real property negotiations, existing or anticipated litigation, threat to public services or facilities, personnel matters, health claims, and applications of early withdrawal of funds in a Deferred Compensation Plan.⁴⁷

The body should consult with their legal advisor before holding a closed session to ensure that the item meets all of the statutory requirements for holding a closed session, is properly noticed on the agenda, and that the reporting requirements following a closed session are satisfied.⁴⁸

J. BROWN ACT VIOLATIONS.

The district attorney or any interested person may demand in writing, that the body declare any actions taken in violation of the Brown Act as null and void or cure the defect within 90 days of the alleged violation. However, if the action was taken in open session, but in violation of the agenda requirements, the written demand must be made within 30 days. The body must act on the matter within 30 days of receiving the written notice. If no action is taken by the legislative body, the district attorney or any interested person may file a suit to have the action of the body declared null and void.⁴⁹

The City may be required to pay attorneys' fees and costs for successful actions.⁵⁰ Individual members of the body may also be criminally liable for violating the Brown Act, if a member attends a meeting with intent to deprive the public of information to which the member knows or has reason to know the public is entitled pursuant to the Brown Act.⁵¹ Criminal violations of the Brown Act are misdemeanors punishable by up to one year in jail and/or fines. For these reasons, the City's business must be carried out in a manner that prevents any actual or perceived Brown Act violations.

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III.
CONFLICTS OF INTEREST

A. INTRODUCTION.

Members serving on City boards, commissions, committees, and similar bodies are public officers and subject to the conflict of interest laws. The purpose of such laws is to promote public confidence in the conduct of public officers. The conflict of interest laws discussed in this Handbook include the following: the Political Reform Act; Government Code Section 1090 *et seq.* relating to conflicts in contracts; common law doctrine of incompatible offices; common law conflicts of interest; and other miscellaneous state law provisions. The laws in this area can be complex. This section of the Handbook is intended to assist public officers in recognizing situations that may give rise to a conflict of interest.

It is the duty of the individual member to contact the local agency's advisor if the member believes he or she has a conflict of interest. Deciding whether a member has a conflict of interest is fact intense and generally requires significant research and analysis. For this reason, members should contact their legal advisor regarding a possible conflict as far in advance of his or her participation on the matter as possible. In matters involving potential conflicts, advance preparation is very important to ensure that participation occurs in an appropriate manner.

If the City Attorney's Office is the local agency's legal advisor, please keep in mind that the City Attorney's Office represents the City's interest, and the public officer in his or her official capacity. Conflict of interest questions addressed to the City Attorney should be submitted in writing as far in advance of participation in the governmental decision as possible. Any last minute conflict of interest inquiries will usually result in the City Attorney's Office giving conservative advice, that the member should announce his or her conflict and disqualify himself or herself from the matter. Since conflict of interest issues may affect the decisions of the body, it is the practice of the City Attorney's Office to distribute copies of all written opinions relating to conflicts to the entire body.

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B. POLITICAL REFORM ACT.

The voters of the State of California adopted the Political Reform Act⁵² in 1974 to ensure that public officers perform their duties in a lawful and unbiased manner. The Fair Political Practices Commission administers and enforces the Political Reform Act, and issues regulations to carry out its purpose.⁵³ The purpose of the Political Reform Act is to prohibit a public officer from participating in a decision that will impact his or her economic interests. Conflicts of interest are prevented in two ways, by disclosure and disqualification.⁵⁴ The conflict of interest provisions of the Political Reform Act are applied on a decision by decision basis,⁵⁵ and do not prevent a public officer from seeking or holding office, whether public or private.⁵⁶

This section of the Handbook is intended to provide a “big picture” of the conflict of interest provisions of the Political Reform Act to make it easier for public officers to know the rules that must be applied in every given case. Understanding which of the public officer’s economic interests could give rise to a conflict of interest will assist the public officer in spotting potential conflicts of interests early. A public officer should not rely solely on this Handbook to decide whether he or she has a conflict of interest under the Political Reform Act. Deciding whether a public officer has a conflict of interest will depend heavily on the facts and a detailed application of the laws.

1. Members of Bodies Who Must Comply with the Political Reform Act.

Salaried and unsalaried members of bodies with decisionmaking authority are public officers subject to the Political Reform Act.⁵⁷ A body has decisionmaking authority if any of the following applies.

- It may make a final governmental decision.
- It may compel a governmental decision.
- It may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto that may not be overridden.
- It makes substantive recommendations that are, and over an extended period of time has been, regularly approved without significant amendment or modification by another public officer or governmental agency.⁵⁸

2. Disclosure of Financial Interests.

The purpose of disclosing financial interests is to alert public officers of personal interests that might be affected while performing their official duties, i.e., making governmental decisions. Disclosure also helps the public know about the public officer’s potential conflicts of interest. Each state and local agency must adopt a conflict of interest code designating the positions subject to disclosure, and its disclosure requirements.

The City's local conflict of interest code is located in Fresno Municipal Code Section 2-2001 *et seq.* The Council, by resolution, designates the positions and the types of financial interests that must be disclosed by persons holding those positions. The extent of disclosure will depend on the types of decisions made by the person in that position. The local conflict of interest code contains the following disclosure categories.

- Category I- Investments in business entities (e.g., stock holdings, owning a business, a partnership), and positions of management or employment with business entities.
- Category II- Sources of personal income, including gifts, loans and travel payments.
- Category III- Interests in real estate (real property).

Public officers disclose their financial interests on a form entitled "Statement of Economic Interests" (SEI) or "Form 700" issued by the Fair Political Practices Commission. SEI's are filed annually, and also within 30 days of taking office or leaving office. SEI's submitted by public officers are public records and are made available for public inspection upon request. State law also requires certain public officers to file SEI's, independent of the local conflict of interest code. Those individuals include members serving on the planning commission, and public officers who manage public investments.⁵⁹

The City makes every effort to designate all bodies that make governmental decisions in the local conflict of interest code. Members of bodies whose positions are not designated in the local conflict of interest code who believe their positions do involve making or participating in a governmental decision should contact the City Clerk's Office. The City Clerk maintains the SEI's filed by the public officers pursuant to the local conflict of interest code.⁶⁰ We must emphasize that regardless of whether the individual is required to file a statement of economic interest, every governmental officer or employee must refrain from making or participating in a governmental decision that has a reasonably foreseeable material financial effect on his or her personal financial interests.⁶¹

3. Disqualification Under the Eight Step Process.

A conflict of interest may only arise from particular kinds of economic interests. Learning to recognize the economic interests from which conflicts of interests can arise will avoid potential conflict of interest problems. Once a public officer has the ability to spot potential problems, he or she can contact the Fair Political Practices Commission or the agency's legal advisor for assistance. Deciding whether a public officer has a financial conflict of interest involves an eight step process described below.

Step One. Whether the individual is a public officer.

If the public officer is designated in the local conflict of interest code to file an SEI each year, or otherwise participates in making governmental decisions, the individual is a public officer.⁶²

Step Two. Whether the public officer is making, participating in making, or influencing a governmental decision.

Such acts generally involve exercising discretion or judgment with regard to a decision, as follows.

- Making a governmental decision (for example, by voting or making an appointment to a position).
- Participating in making a governmental decision (for example, giving advice or making recommendations to the decision maker).
- Influencing a governmental decision by communicating with the decision maker.

Step Three. Identify the economic interests.

This step involves identifying the sources of a possible financial conflict of interest. There are only six kinds of economic interests from which a conflict of interest may arise.⁶³ Those economic interests are the following.

- **Business investment.** An economic interest in a business entity in which the public officer, his or her spouse, dependent children, or anyone acting on the public officer's behalf has invested \$2,000 or more.
- **Business employment or management.** A business entity in which the public officer is a director, officer, partner, trustee, employee, or holds any position of management.
- **Real property.** An economic interest in real property in which the public officer, his or her spouse, dependent children, or anyone acting on his or her behalf has invested \$2,000 or more, and also certain leasehold interests.
- **Sources of income.** An economic interest in a source from whom the public officer has received (or has been promised) \$500 or more in income within 12 months prior to the decision. The public officer will have a community property interest in the spouse's income. Also, if the public officer, his or her spouse or dependent children, own 10% or more of a business, the public officer will be considered to receive "pass-through" income from the business' clients. In other words, the business's clients may be considered sources of income to the public officer.
- **Gifts.** An economic interest in anyone, whether an individual or an organization, who has given the public officer gifts which total \$340 or more within 12 months prior to the decision.

- **Personal financial effect.** An economic interest in the public officer's personal expenses, income, assets, or liabilities, as well as those of the public officer's immediate family. This is known as the "personal financial effects" rule. If these are likely to go up or down as a result of the governmental decision, then it has a "personal financial effect" on the public officer.

There may be situations where a public officer is not required to report an economic interest in the SEI. The economic interests that are not reported in the SEI may nevertheless be a source of a disqualifying conflict of interest. For example, a personal residence is not reported on the SEI. However, it is common for a personal residence to give rise to a disqualifying conflict of interest despite not being disclosed.

Step Four. Whether the economic interest is directly or indirectly involved in the governmental decision.⁶⁴

Directly involved economic interests are directly affected by the governmental decision, and will create a bigger risk of a conflict of interest than an economic interest that is only indirectly involved in the decision. For this reason, the conflict of interest regulations distinguish between directly involved and indirectly involved economic interests. There are specific rules for determining whether an economic interest is directly or indirectly involved in a governmental decision. The details of these rules are beyond the scope of this Handbook and will require a case by case analysis based on the particular facts.

Step Five. Whether the financial impact on the public officer's economic interests triggers a conflict of interest.

The test is whether it is sufficiently likely that the governmental decision will have a material financial effect on the public officer's economic interests.⁶⁵ The word "material" is akin to the term "important." The officer will have a conflict of interest only if it is reasonably foreseeable that the governmental decision will have an important impact on his or her economic interests. The regulation contains "materiality standards," or criteria for determining what kinds of financial impacts resulting from governmental decisions are considered material or important.

Step Six. Whether it is substantially likely that the governmental decision will result in one or more of the materiality standards being met for one or more of the public officer's economic interests.

The test is whether it is sufficiently likely that the outcome of the decision will have an important impact on the public officer's economic interests. The likelihood need not be a certainty, but it must be more than merely possible. The threshold question is whether it is substantially likely that one of the materiality standards identified in Step Five will be met as a result of the government decision.⁶⁶ Step Six requires a factual analysis as to how the economic interest fits into the entire factual picture surrounding the decision.

Step Seven. Whether the public generally exception applies.

Even if the public officer has a conflict of interest, the public officer will not be disqualified from the decision if the public generally exception applies.⁶⁷ A public officer is less likely to be biased by a financial impact when a significant part of the community is substantially likely to feel the same impact from a governmental decision. The "public generally" exception must be considered with care. There are specific rules for identifying the "specific segments" of the general population with which the public officer may compare his or her economic interest and specific rules for deciding whether the financial impact is "substantially similar."

Step Eight. Whether the public officer is legally required to participate in the governmental decision.

Even if the public officer has a disqualifying conflict of interest, his or her participation may be legally required.⁶⁸ These are rare circumstances in which the public officer may be called upon to take part in a decision despite the fact that the public officer has a disqualifying conflict of interest. This "legally required participation" rule applies only in certain very specific circumstances where the government agency would be paralyzed from acting. The public officer is most strongly encouraged to seek advice from the legal advisor or the Fair Political Practices Commission before the public officer acts under this rule.

If a public officer has a disqualifying conflict of interest, the public officer must disqualify himself or herself from participating in the decision. Public officers who hold an office specified in Section 87200 are required to announce the conflict of interest in sufficient detail to be understood by the public and recuse herself or himself from the matter. The public officer must also leave the room while the matter is being discussed, unless the item was placed on the uncontested calendar.⁶⁹ Those officers specified in Section 87200 include, but are not limited to, members of the planning commission, mayor, city manager, city attorney, city treasurer, members on the city council, and public officers who manage public investments.

In the case of a conflict of interest, the public officer in question has the duty to disqualify himself or herself. This duty cannot be delegated to staff members or to an attorney. The duty rests with the officers in question because only they know the extent of their own personal financial dealings.

4. Civil and Criminal Enforcement.

If a conflict of interest exists, there are several different agencies or persons who may bring an action to enforce the Political Reform Act. A district attorney, the California Attorney General or the Fair Political Practices Commission may bring an action, either civil or criminal.⁷⁰ In addition, any person residing within the jurisdiction may obtain authorization to bring a civil action to enjoin violations or compel compliance with the Political Reform Act. Finally, a local agency may discipline persons who violate certain provisions of the Political Reform Act.⁷¹

A knowing and willful violation of the Political Reform Act is a misdemeanor punishable by a fine and/or imprisonment. A violator may be fined up to \$10,000 or three times the amount not properly disclosed, unlawfully contributed, expended, given, or received, for each violation.⁷² Finally, any person convicted of a misdemeanor is barred from being a candidate for any elective office or acting as a lobbyist for four years following the conviction.⁷³ A court may set aside an official action of a public officer if the action might not have otherwise been taken had the violator disqualified himself or herself.⁷⁴

5. Resources Available from the Fair Political Practices Commission.

The Fair Political Practices Commission has a full-time staff and several resources available to assist public officers on the conflict laws. The resources provided by the Fair Political Practices Commission include the following:

- Seek informal assistance from a consultant at the Fair Political Practices Commission. The consultant can be reached at (916) 322-5660 or 1 (866) ASK-FPPC [(866) 275-3772] during normal business hours.
- Review materials on conflicts of interest which are available on the Fair Political Practices Commission website, located at www.fppc.ca.gov.
- Request a formal written advice letter from the Fair Political Practices Commission.

The City Attorney's Office has no statutory duty or authority under the Political Reform Act to give advice to any advisory body on the Political Reform Act or its application. By statute, the Fair Political Practices Commission has the primary responsibility for impartially administering and implementing the Political Reform Act.

Opinions from the City Attorney's Office are not binding on the Fair Political Practices Commission. Therefore, a public officer's reliance on a City Attorney's opinion will not immunize an officer from any Fair Political Practices Commission administrative action, or from any civil or criminal proceeding if any officer violated the Political Reform Act or other conflict of interest laws. Only good faith reliance on formal written advice from the Fair Political Practices Commission offers protection. We refer each officer who wants this assurance to request a formal opinion from the Fair Political Practices Commission. An officer may rely in good faith on a formal opinion, and acquire some protection from administrative action, and from civil and criminal actions or penalties.

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C. CONFLICTS OF INTEREST IN CONTRACTS UNDER SECTION 1090 *ET SEQ.*

Section 1090 prohibits public officers from being financially interested in a contract. Section 1090 states:

Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity. . . .

The purpose of Section 1090 is to make certain that every public officer is guided solely by the public interest, rather than by personal interest, when dealing with contracts in an official capacity. Any contract made in violation of Section 1090 is void, and cannot be enforced.⁷⁵ In addition, the officer who commits a violation may be subject to criminal and civil penalties, and potential disgorgement of any consideration received or any property acquired in the transaction.⁷⁶ In instances where Section 1090 conflicts with the Political Reform Act, the Political Reform Act will control over Section 1090.⁷⁷

1. Persons Who Are Subject to Section 1090 *et seq.*

Virtually all board members are public officers within the meaning of Section 1090.⁷⁸ Section 1090 also applies to members of advisory bodies if they participate in the making of a contract through their advisory function.⁷⁹ Public officers serving on a multi-member body cannot escape liability for a Section 1090 violation merely by abstaining from voting or participating in discussions or negotiations. Thus, members serving on a body are conclusively presumed to be involved in the making of all contracts under the body's jurisdiction.⁸⁰

2. Participation in Making a Contract.

The critical test for determining whether Section 1090 has been violated is whether the public officer participated in the making of a contract in his or her official capacity.⁸¹ Section 1090 has been extended to cover those who "participate" in the making of the contract by giving advice or being involved in preliminary discussion, negotiations, compromises, reasoning, planning, drawing of specifications, or the solicitation for bids.⁸²

A contract must be finalized before a violation of Section 1090 can occur. Once a contract is made, Section 1090 is violated if the officer had participated in any way in the making of the contract. In other words, a public officer may be convicted of a violation regardless of whether the officer actually participated personally in executing the contract, so long as the officer had the opportunity to, and did influence execution directly or indirectly to promote his or her personal interests.⁸³

3. A Multi-member Body May Not Execute a Contract If One of Its Members Has a Requisite Financial Interest in a Contract.

If a public officer is a member of a multi-member body that executes the contract, the officer is conclusively presumed to be involved in the making of the contract. This absolute prohibition applies regardless of whether the contract is found to be fair and equitable, or whether the officer abstains from all participation in the decision. In other words, no multi-member body may make a contract which is financially beneficial to one of its members even if the "interested" member abstains.⁸⁴

4. Requisite Financial Interest.

Section 1090 applies to contracts in which a public officer has a financial interest. The term "financial interest," is not defined in the statute. Based on case law and statutory exceptions to the basic prohibition, the term is liberally interpreted.⁸⁵ Whether a proscribed financial interest exists in a public contract is primarily a question of fact.⁸⁶ Financial interests include both direct and indirect interests in a contract.⁸⁷ The following is an example of an indirect interest: A member of a county board of supervisors sold his printing business to his son, in return for a promissory note. The printing business provided printing services to the county. The court concluded that the supervisor had a financial interest in the county printing contract, because the contract enhanced the security of his promissory note.⁸⁸

5. The Multi-member Body May Execute a Contract If Its Member Has Only a "Remote Interest" and Abstains from Participating in the Making of the Contract.

A public officer serving on a board, commission, or committee with only a "remote interest" in a contract will not be deemed to have an "interest" within the meaning of Section 1090.

If the public officer's financial interest is a "remote interest," a contract may be executed if the officer does all of the following:

- Discloses the financial interest to the agency, board, or body.
- The interest is noted in the body's official records.
- The officer completely abstains from any participation in the making of the contract.⁸⁹

An officer who intentionally fails to disclose the existence of a remote interest before action is taken on a contract in question violates Section 1090, and will be subject to criminal prosecution. However, the violation does not void the contract unless the private contracting party had knowledge of the officer's remote interest at the time the contract was executed.⁹⁰

There are 14 categories of financial interests considered “remote interests” pursuant to Section 1091(b)(1)-(14). The “remote interests” consist of the following:

- **Officer or employee of a nonprofit corporation.** An officer or employee of a nonprofit corporation, except as provided in Section 1091.5(a)(8).
- **Employee or agent of a private contracting party.** An employee or agent of a private contracting party, if the following four conditions are met: the contracting party has 10 or more other employees; the public officer was an employee or agent of that party for at least three years prior to taking office; the public officer owns less than 3 percent of the shares of stock of the contracting party; and the former or current employee or agent is not an officer or director, and did not directly participate in formulating the bid of the contracting party.
- **Employees or agents of the contracting party.** An employee or agent of the contracting party, if all of the following conditions are met: the agency in which the person is an officer is a local public agency located in a county with a population of less than 4,000,000; the contract is competitively bid and is not for personal services; the employee or agent is not in a primary management capacity with the contracting party, is not an officer or director of the contracting party, and holds no ownership interest in the contracting party; the contracting party has 10 or more other employees; the employee or agent did not directly participate in formulating the bid of the contracting party; and the contractor is the lowest responsible bidder.
- **Parent.** A parent's interest in the earnings of his or her minor child for personal services.
- **Landlord or tenant.** That of a landlord or tenant of the contracting party.
- **Attorney, stockbroker, insurance or real estate broker/agent.** This narrow exception may apply to: an attorney of a contracting party or an owner, officer, employee or agent of a firm, which renders or has rendered services to the contracting party in the capacity of stockbroker, insurance agent/broker or real estate agent/broker. For this exception to apply, two conditions must be present. The individual must not receive any remuneration, consideration or commission as a result of the contract; and the individual has an ownership interest of 10 percent or more of the law practice or firm, stock brokerage firm, insurance firm, or real estate firm.
- **Member of a nonprofit corporation formed under the Agricultural Code or Corporations Code.** Any member of a nonprofit corporation formed under either the Food and Agricultural Code or Corporations Code for the sole purpose of selling agricultural products or supplying water.
- **Supplier of goods and services.** A supplier of goods or services when those goods or services have been supplied to the contracting party by the

officer for at least five years prior to his or her election or appointment to office.

- **Party to a Land Conservation Contract.** An officer who enters into any contract or agreement under the California Land Conservation Act of 1965.
- **Director or 10 percent owner of bank or savings and loan.** Except as provided in Section 1091.5(b),⁹¹ a director of, or a person having an ownership interest of 10 percent or more in a bank, bank holding company, or savings and loan association with which a party to the contract has a relationship of borrower or depositor, debtor or creditor.
- **Employee of a consulting, engineering, or architectural firm.** An engineer, geologist, or architect employed by a consulting engineering or architectural firm who does not serve as an officer, director, or in a primary management capacity.
- **Housing assistance contracts.** An elected officer in a housing assistance payment contract, entered into pursuant to Section 8 of the United States Housing Act of 1937,⁹² as amended, provided that the officer was elected after November 1, 1986, and the contract was in existence prior to the officer assuming office. The exemption for housing assistance contracts extends only to renew or extend an existing tenant's contract or in a jurisdiction in which the rental vacancy rate is less than 5 percent as to new tenants in a unit previously under a Section 8 contract.
- **Salary, per diem, or reimbursement of expenses from a government entity.** A salary, per diem, or reimbursement for expenses from a government entity.
- **Ownership of less than 3 percent of shares in a for-profit corporation derived from employment.** A for-profit corporation that is the contracting party, provided the officer owns less than 3 percent of the shares of the corporation derived from his or her employment with that corporation.

6. Interests that Are Considered "Noninterests."

The Legislature has defined certain interests as "noninterests." Unlike the "remote interest" exception, an interest that falls into one of these categories is treated as no interest at all, and holding such an interest does not require abstention and generally does not require disclosure. The noninterests in Section 1091.5 are as follows:

- **Corporate ownership and income.** The ownership of less than 3 percent of the shares of a corporation for profit, provided that the total annual income from dividends, including the value of stock dividends, from the corporation does not exceed 5 percent of the officer's total annual income, and any other payments made to the officer by the corporation do not exceed 5 percent of the officer's total annual income.

- **Reimbursement of expenses.** Reimbursement for actual and necessary expenses incurred in the performance of official duty.
- **Public services.** A recipient of public services generally provided by the public body or board of which the officer is a member, on the same terms and conditions as if the officer were not a member of the board.
- **Landlords and tenants of governments.** A landlord or tenant of the contracting party if the contracting party is the federal government or any federal department or agency of this state or an adjoining state, any department or agency of this state or an adjoining state, any county or city of this state or an adjoining state, or any public corporation or special, judicial, or other public district of this state or an adjoining state, unless the subject matter of the contract is the property in which the officer or employee has the interest as landlord or tenant in which event his or her interest shall be deemed a remote interest within the meaning of, and subject to, the provisions of Section 1091.
- **Public housing tenants.** A tenant in public housing, created pursuant to the Health and Safety Code, in which the officer serves as a member of the board of commissioners of the authority or of a community development commission created pursuant to Part 1.7 of Division 24 of the Health and Safety Code.
- **Spouses.** A spouse of an officer or employee of a public agency in his or her spouse's employment or office holding if his or her spouse's employment or office holding has existed for at least one year prior to his or her election or appointment.
- **Unsalariated members of nonprofit corporations.** A nonsalariated member of a nonprofit corporation, provided that this interest is disclosed to the body or board at the time of the first consideration of the contract, and the interest is noted in its official records.
- **Noncompensated officers of tax-exempt corporations.** A noncompensated officer of a nonprofit, tax-exempt corporation which, as one of its primary purposes, supports the functions of a public body or board, or to which the public body has a legal obligation to give particular consideration, and provided further that this interest is noted in its official records.
- **Contracts between government agencies.** A person receiving salary, per diem, or reimbursement for expenses from a government entity, unless the contract directly involves the department of the government entity that employs the officer or employee, provided that the interest is disclosed to the body or board at the time of consideration of the contract, and provided further that the interest is noted in the official records.

- **Attorney, stockbroker, insurance or real estate broker/agent.** An attorney of the contracting party or an owner, officer, employee, or agent of a firm which renders, or has rendered service to the contracting party in the capacity of stockbroker, insurance agent, insurance broker, real estate agent, or real estate broker, if these individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract and if these individuals have an ownership interest of less than 10 percent in the law practice or firm, stock brokerage firm, insurance firm, or real estate firm.
- **Officers, employees and owners of less than 10 percent of a bank or savings and loan.** Except as provided in subdivision (b),⁹³ that of an officer or employee of or a person having less than a 10-percent ownership interest in a bank, bank holding company, or savings and loan association with which a party to the contract has a relationship of borrower or depositor, debtor, or creditor.
- **Certain bona fide nonprofit, tax-exempt corporations.** That of: (a) a bona fide nonprofit, tax-exempt corporation, having among its primary purposes the conservation, preservation, or restoration of park and natural lands or historical resources for public benefit that enters into an agreement with a public agency to provide services related to park and natural lands or historical resources and which services are found by the public agency, prior to entering into the agreement or as part of the agreement, to be necessary to the public interest to plan for, acquire, protect, conserve, improve, or restore park and natural lands or historical resources for public purposes; and (b) any officer, director, or employee acting pursuant to the agreement on behalf of the nonprofit corporation.

7. **Eminent Domain.**

Absent unusual facts, an eminent domain is not subject to Section 1090 because the process is statutorily mandated.⁹⁴

8. **Subdivided Lands.**

An officer is not prohibited from subdividing land owned by the officer or in which the officer has an interest. The officer must fully disclose the nature of the interest in the land to the body, and may not vote or participate in any manner in the approval.⁹⁵

9. **Local Workforce Investment Board.**⁹⁶

Section 1090 does not apply to contracts or grants made by local workforce investment boards created pursuant to the federal Workforce Investment Act of 1998 except when both of the following conditions are met: (a) the contract or grant directly relates to services to be provided by any member of a local workforce investment board or the entity the member represents or financially benefits the member or the entity he or she represents; and (b) the member fails to recuse himself or herself from making,

participating in making, or in any way attempting to use his or her official position to influence a decision on the grant or grants.

10. Limited Rule of Necessity.

According to the California Attorney General, the rule of necessity has two facets.⁹⁷ The first facet concerns situations in which a board must contract for essential services and no source other than that which triggers the conflict is available. The contracting officer, or a public board upon which he or she serves, would be the sole source of supply of such essential supply or service, and also would be the only officer or board permitted by law to execute the contract. Public policy would authorize the contract despite this conflict of interest.

The second facet of the doctrine focuses on the performance of official duties rather than upon the procurement of goods or services. A public officer is permitted to carry out the essential duties of his or her office despite a conflict of interest when he or she is the only one who may legally act. It ensures that essential governmental functions are performed even where a conflict of interest exists.⁹⁸

According to the California Attorney General, when the rule of necessity is applied to a member of a multi-member board, as opposed to a single officer or employee, the board member must abstain from any participation in the decision. In other words, the effect of the rule of necessity is to permit a board with a substantially interested member to nevertheless make a contract, but the board member is still prohibited from participating in its making. In the case of a single officer or employee, application of the rule of necessity permits the officer or employee to participate in the making of the contract.⁹⁹

11. Remedies for Contracts Made in Violation of Section 1090.

Generally, every contract made in violation of Section 1090 may be avoided at the instance of any party except the officer interested in the contract.¹⁰⁰ A narrow exception exists for a good faith lessee, purchaser, or encumbrancer of real property, where value was paid, and interest acquired without actual knowledge of a Section 1090 violation.¹⁰¹ In all other instances, payments made to the contracting party must be returned and no claim for future payments under such contract may be made. In addition, the Supreme Court has determined that the public entity is entitled to retain any benefits which it receives under the contract.¹⁰²

Every officer subject to Section 1090 who willfully violates any of the provision of Section 1090 *et seq.*, is punishable by a fine of not more than one thousand dollars or by imprisonment in state prison, and is forever disqualified from holding any office in the State of California.¹⁰³ Any current public officer or employee who willfully and knowingly discloses confidential information for pecuniary gain, to any other person, confidential information acquired by him or her in the course of his or her official duties, or uses any such information for the purpose of pecuniary gain, is guilty of a misdemeanor.¹⁰⁴

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D. COMMON LAW DOCTRINE OF INCOMPATIBLE PUBLIC OFFICES.

The common law doctrine of “incompatible offices” restricts the ability of public officers to hold two different public offices simultaneously if the offices have overlapping and conflicting public duties. A court has summarized the doctrine as follows:

One individual may not simultaneously hold two public offices where the functions of the offices concerned are inherently inconsistent, as where there are conflicting interests, or where the nature of the duties of the two offices is such as to render it improper due to considerations of public policy for one person to retain both.¹⁰⁵

Two elements must be present to fall within the common law doctrine of incompatibility of offices. First, the officer in question must simultaneously hold two public offices. Second, there must be a potential conflict or overlap in the functions or responsibilities of the two offices.¹⁰⁶ In the absence of statutes suggesting a contrary result, offices are incompatible if there is any significant clash of duties or loyalties between the two offices, if the dual office holding would be improper for reasons of public policy, or if either office exercises a supervisory, auditory, appointive, or removal power over the other.¹⁰⁷ The common law doctrine may be superseded by legislative enactment. In other words, the legislature may expressly authorize the dual holding of offices notwithstanding the fact that the dual holding would otherwise be prohibited by the common law doctrine.¹⁰⁸

Under the first element, the prohibition applies when both positions are “offices.” The elements of an office include the right, authority, and duty, created and conferred by law, the tenure of which is not transient, occasional, or incidental, by which for a given period an individual is vested with power to perform a public function for a public benefit.¹⁰⁹ The Attorney General summarized the requirements as follows: the public office is a position in government, (1) which is created or authorized by the Constitution or some law; (2) the tenure of which is continuing and permanent, not occasional or temporary; (3) in which the incumbent performs a public function for the public benefit and exercises some sovereign powers of the state.¹¹⁰ The second element requires a review of the duties of the two public offices, to determine whether the performance of duties of either office could have an adverse effect on the other.¹¹¹

In deciding whether the offices are incompatible, an actual clash of duties or loyalties need not be found to exist. The potential for significant clashes is sufficient to render the offices incompatible.¹¹² Under this common law doctrine, the public officer automatically vacates the first office upon assumption of the second office if the two are incompatible.¹¹³ If it appears likely that the duties of the two offices overlap, this Office will generally render conservative advice and recommend that the officer not simultaneously hold both offices to avoid an automatic vacancy in the first office.

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E. COMMON LAW CONFLICT OF INTEREST DOCTRINE.

In 1928, the California Supreme Court enunciated the common law doctrine¹¹⁴ against conflicts of interest as follows:

A public officer is impliedly bound to exercise the powers conferred on him with disinterested skill, zeal, and diligence and primarily for the benefit of the public.¹¹⁵

The common law conflict of interest is not defined by statute or by regulation. The basic rule is that a public officer is impliedly bound to exercise the powers conferred on him or her with disinterested skill, zeal, and diligence and primarily for the benefit of the public. The California Attorney General has taken the position that where no conflict is found according to statutory prohibitions, special situations could still constitute a conflict under the longstanding common law doctrine.¹¹⁶ If a situation arises where a common law conflict of interests exists as to a particular transaction, the officer is disqualified from taking any part in the discussion and vote regarding the particular matter.¹¹⁷

As a general rule, the decision maker should not be tempted by his or her own personal or pecuniary interest and the doctrine will apply to situations involving nonfinancial personal interest.¹¹⁸ A good example where a common law conflict of interest might lie is when a parent of an elected official owns property as his or her sole and separate property and applies for rezoning in order to develop an apartment complex. The elected officer may know of his or her parent's economic needs, or know that eventually he or she will inherit the apartment complex. This most likely presents a common law conflict of interest.¹¹⁹

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F. OTHER MISCELLANEOUS CONFLICTS LAWS.¹²⁰

1. Redevelopment Agency Conflicts.

An officer whose official duties require participation in the formulation or approval of plans or policies for the redevelopment of the project area may not acquire any interest in any property included within the project area.¹²¹ If any officer owns or has any direct or indirect financial interest in the property included within the project area, that officer shall immediately make a written disclosure of that financial interest to the agency and the legislative body, entering the disclosure in the official minutes of the agency and the legislative body. Failure to make this disclosure constitutes misconduct in office. A memo prepared by the City Attorney's Office on the subject is available on the City of Fresno Website at www.fresno.gov/city/staff/conflict/index.asp. The memo also includes a form entitled "Disclosure Statement Redevelopment Agency Project Areas," to be completed by the affected public officers.

2. Exception to Redevelopment Agency Conflicts.

Health and Safety Code Section 33130 does not, however, prohibit any officer from acquiring an interest in property within the project area for the purpose of participating as an owner or reentering into business pursuant to the State Redevelopment Law if the officer has owned a substantially equal interest as that being acquired for three years immediately preceding the selection of the project area.¹²² A rental agreement or lease of property which meets four conditions set forth in the statute is not an "interest in real property" for purposes of Subdivision (a).¹²³

A further exception is found in Health and Safety Code Section 33130.5, which permits any officer of the agency to acquire property for personal residential use by lease or purchase within a project area after the agency has certified that the improvements to be constructed or work to be done on the property to be purchased or leased has been completed or has certified that no improvements need to be constructed or that no work needs to be done on the property. This section also requires immediate written disclosure to the agency, recording the disclosure in the minutes, and disqualification from voting on any matters directly affecting such purchase, lease, or residency. Finally, failure to disclose constitutes misconduct in office.

3. Discount Passes on Common Carriers.

California Constitution Article XII, Section 7 prohibits public officers from accepting free or discount passes from a transportation company. The basic prohibition states:

A transportation company may not grant free passes or discounts to anyone holding an office in this state; and the acceptance of a pass or discount by a public officer, other than a Public Utilities Commissioner, shall work a forfeiture of that office. A Public Utilities Commissioner may not hold an official relation to nor have a financial interest in a person or corporation subject to regulation by the commission.¹²⁴

The Attorney General has opined that the prohibition applies in the following manner¹²⁵:

- The prohibition applies to public officers, both elected and nonelected, but not to employees.
- The prohibition applies irrespective of whether the pass or discount was provided in connection with personal or public business.
- Violation of the prohibition is punishable by forfeiture of office. *Quo warranto* proceeding is the appropriate way to enforce the remedy.

The Attorney General has indicated that where free flights or travel is part of a compensation package (i.e., where the public officer was a spouse of a flight attendant), the free transportation was offered to the public officer as a member of a larger group under a generally authorized or approved plan, a violation does not result.¹²⁶ The Attorney General has also sanctioned frequent flyer discounts and a coach to first-class upgrade as part of the airline's policy of providing free first-class upgrades to honeymooning couples.¹²⁷

Thus, if the pass or discount is provided to the officer because of his or her position as a government official, the prohibition applies. If it is provided to the officer as a member of a larger group that is not related to the functions of his or her office, the prohibition may not be applicable.

4. Government Code Section 87407: Revolving Door for Local Agencies.

Effective January 1, 2004, Section 87407 of the Political Reform Act was amended to prohibit both state and local public officers from using his or her official position to influence a governmental decision on any person in which the public officer has, is negotiating with, or has any arrangement for future employment. Before its amendment, Section 87407 only applied to state public officers.¹²⁸ Section 87407 now reads as follows:

No public official shall make, participate in making, or use his or her official position to influence, any governmental decision directly relating to any person with whom he or she is negotiating, or has any arrangement concerning, prospective employment.

The Fair Political Practices Commission has not had an opportunity to issue a written opinion on the amended Section 87407. Relying on past advice letters on the subject, the Fair Political Practices Commission has advised that merely sending a resume or application to a specific person or entity is not considered as negotiating prospective employment. Similarly, entertaining informal inquiries about a public officer's future plans and receiving expressions of general interest in discussing potential employment opportunities at some indefinite point in the future is not considered negotiating prospective employment.¹²⁹

Regulation 18747 describes the prohibition as follows:

- a. No public official subject to Government Code Section 87407 shall “make”, “participate in making” or “use his or her official position to influence” any governmental decision as defined in 2 Cal.Code Regs., Sections 18702.1, 18702.2, 18702.3, 18702.4, if the decision directly relates to a prospective employer.
- b. A governmental decision “directly relates” to a prospective employer if the public officer knows or has reason to know:
 - (1) The prospective employer is “directly involved” in the decision, as defined in Cal.Code Regs., Section 18704.1(a); or
 - (2) It is reasonably foreseeable that the financial effect of a decision on a prospective employer is material as follows:
 - (i) For a business entity, the same as 2 Cal.Code Regs., Section 18705.1(b);
 - (ii) For a nonprofit entity, the same as set forth in 2 Cal.Code Regs., Section 18705.3(b)(2); or
 - (iii) For an individual, the same as set forth in 2 Cal.Code Regs. Section 18705.3(b)(3).
- c. A person is a “prospective employer” of a public officer if the officer, either personally or through an agent, is “negotiating” or has an “arrangement” concerning prospective employment with that person.
 - (1) A public officer is “negotiating” employment when he or she interviews or discusses an offer of employment with an employer or his or her agent.
 - (2) A public officer has an “arrangement” concerning prospective employment when he or she accepts an employer’s offer of employment.
 - (3) A public officer is not “negotiating” or does not have an “arrangement” concerning prospective employment if he or she rejects or is rejected for employment.
- d. Notwithstanding subdivision (a), the prohibition of Government Code Section 87407 do not apply if:
 - (1) The governmental decision will affect the prospective employer in substantially the same manner as it will affect a “significant segment” as set forth in 2 Cal.Code Regs. Section 18707(b)(1) of the public generally;

- (2) The public officer is legally required to make or participate in the making of the governmental decision within the meaning of Government Code Section 87101 and 2 Cal.Code Regs. Section 18708; or
- (3) The prospective employer is a state, local or federal governmental agency.

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IV. RETENTION AND DISCLOSURE OF PUBLIC RECORDS

A. INTRODUCTION.

The City, including its boards, commissions, committees, and similar bodies, are subject to state laws governing the retention of public records.¹³⁰ The City's records retention schedule is located in Resolution No. 93-139, which lists the time periods certain public records must be retained by the City. In addition to the City's duty to retain records, the Public Records Act¹³¹ details what government information is and is not available to the public. The Public Records Act, which is modeled after the federal Freedom of Information Act, applies to records containing information relating to the conduct of the public's business prepared, owned, used, or retained by a local agency regardless of physical form or characteristics.¹³² City bodies are "local agencies" and subject to the Public Records Act.¹³³ Unless otherwise provided, public records are to be open to inspection at all times during the office hours of public agencies.¹³⁴ Any person may receive a copy of any identifiable public record upon request and payment of a prescribed fee.¹³⁵

B. PUBLIC RECORDS ARE SUBJECT TO DISCLOSURE UNLESS EXPRESSLY EXEMPT UNDER THE PUBLIC RECORDS ACT.

Public records are subject to disclosure unless they are expressly exempt under the Public Records Act or exempt under the "balancing test." The balancing test is also referred to as the "catchall provision," where the City must determine whether the public interest in disclosure is clearly outweighed by the public interest in nondisclosure.¹³⁶

C. PROCEDURE FOR REQUESTING AND RESPONDING TO REQUESTS FOR PUBLIC RECORDS.

- Any person may request to inspect or receive a copy of a record. The request may be verbal and need not be in writing. City staff may ask the person to submit the request in writing to ensure timely and full compliance with the request.
- The local agency must determine whether the request reasonably describes an identifiable record. If not, the local agency must make reasonable efforts to assist the person to make a focused and effective request that reasonably describes an identifiable record. This additional duty is not required if the records requested are made available, the records are expressly exempt from disclosure, or an index of the records are made available.¹³⁷
- If the records requested exist, the local agency must determine within ten (10) days of receipt of the request (verbal or written) whether the request in whole or in part, seeks disclosable records. The local agency must immediately notify the person of the determination and the reasons therefor.

Under unusual circumstances, the duty to respond may be extended by no later than fourteen (14) days. Under no circumstances may the Public Records Act be used to delay or obstruct inspection or copying of public records.¹³⁸

- The City must determine whether the records requested are exempt from disclosure under its express provisions or under the balancing test. If certain portions of the record are exempt from disclosure, the local agency must delete those portions that are reasonably segregable from the record, and make the balance of the record available for inspection.¹³⁹
- If the request is denied, the local agency must justify the denial by demonstrating that the record is expressly exempt under the Public Records Act or under the balancing test.¹⁴⁰ If the request for records was in writing, any denial in whole or in part, must be in writing. The notification of denial must include the names and titles or positions of each person responsible for the denial.¹⁴¹
- If the records are not exempt from disclosure, the local agency must have the records made available for inspection, or have copies of the records available upon payment of a fee as set forth in the Master Fee Schedule.¹⁴²
- If the documents are voluminous or in a form that is not easily reproducible, ask the person whether a summary of the information contained in existing documents may be provided as a response to the request.

The local agency should contact its legal advisor whenever there is a question of whether a document is exempt from disclosure, whenever the document is labeled attorney-client privilege, and whenever the document pertains to litigation or threatened litigation.

D. VIOLATIONS OF THE PUBLIC RECORDS ACT.

A local agency may not file a declaratory relief action solely to determine the local agency's obligation to disclose documents requested by a member of the public.¹⁴³ If the local agency refuses to supply records, the requesting person may bring an action in Superior Court to compel disclosure. If the court determines the records must be turned over, the local agency is required to pay attorneys' fees and court costs. If the local agency prevails, it is entitled to attorneys' fees only if the court finds that the request was "clearly frivolous."¹⁴⁴ Usually, refusal to disclose is based upon the privacy rights of an employee or applicant.

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**V.
RECOMMENDATIONS**

In summary, individuals serving on a City board, commission, committee, or a similar body, or one of its subcommittees are subject to a number of state laws. For this reason, we recommend that all such bodies of the City, no matter how small, maintain at a minimum, an official address, a files location, a copy of agendas, notices, and minutes of meetings in their files.

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ENDNOTES

1. See for example, Charter Section 900, which permits the Council to create boards and commissions as in its judgment are required, and grant them such powers and duties authorized by law.
2. *Zumwalt v. Trustees of Cal. State Colleges* (1973) 33 Cal. App. 3d 665, 674.
3. McQuillin Mun. Corp. § 12.230.10(3rd ed.) pp 399 - 400.
4. *Daniels V. Tergeson* (1989) 211 Cal. App. 3d 1204; 73 Ops. Cal. Atty. Gen. 197, 206 (1990) and cases cited therein.
5. *Cohan v. City of Thousand Oaks* (1994) 30 Cal. App. 4th 547, 555.
6. *Boyle v. City of Redondo Beach* (1999) 70 Cal. App. 4th 1109, the Brown Act is located in Government Code Section 54950 *et seq.* All statutory references are to the Government Code, unless otherwise noted.
7. Section 54952(b).
8. Charter Sections 907-910.
9. FMC Sections 2-903 and 17-103.
10. FMC Section 9-70103.1.4.
11. FMC Section 8-1206.
12. FMC Section 9-1904.
13. FMC Section 13-215.1.
14. FMC Section 13-404.
15. FMC Section 13-905.
16. FMC Section 13-1500.200.
17. FMC Section 18-601.
18. *Joiner v. City of Sebastopol* (1981) 125 Cal. App. 3d 799, 805.
19. *Frazer v. Dixon Unified School District* (1993) 18 Cal. App. 4th 781, 792-793.
20. *The Brown Act, Open Meetings For Legislative Bodies*, California Attorney General's Office 2003.
21. Section 54952(b).
22. 75 Ops. Cal. Atty. Gen. 263, 269 (1992).
23. *Frazer v. Dixon Unified School District* , *supra*, 18 Cal. App. 4th at p. 793.
24. Section 54954.2.
25. Section 54956.

26. Section 54956.5.
27. Section 54954.2.
28. *Id.*
29. Section 54954.3.
30. Section 54954.2.
31. Section 54953.3.
32. Section 54953.5.
33. Section 54957.5.
34. Section 54954.2.
35. *Id.*
36. *Id.*
37. *Id.*
38. Section 54952.2(a).
39. Section 54952.2(b).
40. Section 54952.2.
41. Section 54952.2(c)(1).
42. Section 54956.
43. Section 54956.5.
44. Section 54954.
45. *Id.*
46. *Rowen v. Santa Clara Unified School District* (1981) 121 Cal. App. 3d 231, 234.
47. Sections 54954-54957.10.
48. Sections 54954.5, 54957.1 *et seq.*
49. Section 54960.1.
50. Section 54960.5.
51. Section 54959.
52. Sections 81000 *et seq.*
53. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

54. Sections 87100 *et seq.*
55. "Holding Two Positions" (updated 12/19/03), prepared by the Fair Political Practices Commission.
56. *Eldridge v. Sierra View Hospital District* (1990) 224 Cal. App. 3d 311.
57. Regulation 18701.
58. *Id.*
59. Section 87200.
60. FMC Section 2-2001 *et seq.*
61. Section 82048: Regulation 18701.
62. Regulation 18702.
63. Regulation 18703.
64. Regulation 18704.
65. Regulation 18705.
66. Regulation 18706.
67. Regulation 18707.
68. Regulation 18708.
69. Section 87105.
70. Section 91001.
71. Section 91003.
72. Sections 91000, 91005.
73. Section 91002.
74. Section 91003.
75. *Thomson v. Call* (1985) 38 Cal. 3d 633, 649.
76. Section 1097.
77. Section 81013- Political Reform Act prevails over all other statutory provisions that would otherwise prohibit an individual from complying with the Political Reform Act.
78. *Thomson v. Call, supra*, 38 Cal. 3d at p. 633.
79. *Millbrae Assn. for Residential Survival v. City of Millbrae* (1968) 262 Cal. App. 2d 222, 237.
80. *Thomson v. Call, supra*, 38 Cal. 3d at p. 649.

81. *Millbrae Assn. for Residential Survival v. City of Millbrae*, *supra*, 262 Cal. App. 2d at p. 237; 66 Ops. Cal. Atty. Gen. at 160-161.
82. *Campagna v. City of Sanger* (1996) 42 Cal. App. 4th 533, 538.
83. *People v. Sobel* (1974) 40 Cal. App. 3d 1046, 1052.
84. *Thomson v. Call*, *supra*, 38 Cal. 3d at pp. 645, 649.
85. *Conflict of Interest*, California Attorney General's Office (1998), pp. 46, 51.
86. 84 Ops. Cal. Atty Gen.158 (2001).
87. *Thomson v. Call*, *supra*, 38 Cal. 3d at p. 645.
88. *Moody v. Shuffleton* (1928) 203 Cal. 100.
89. Section 1091.
90. Section 1091(d).
91. Section 1091.5(b) identifies interests deemed "noninterests."
92. 42 U.S.C. Section 1437f.
93. Section 1091.5(b) states that an officer or employee shall not be deemed to be interested in a contract made pursuant to competitive bidding under a procedure established by law if his or her sole interest is that of an officer, director, or employee of a bank or savings and loan association with which a party to the contract has the relationship of borrower or depositor, debtor, or creditor.
94. *Santa Clara Valley Water District v. Grosse* (1988) 200 Cal. App. 3d 1363, 1369.
95. Section 1091.1.
96. Section 1091.2.
97. 69 Ops. Cal. Atty. Gen. 102, 109.
98. *Id.*
99. *Id.*, school board trustee abstention; 67 Ops. Cal. Atty. Gen. 369, *supra*, at p. 378, board member abstention; 65 Ops. Cal. Atty. Gen. 305, *supra*, at p. 310, superintendent of schools permitted to participate.
100. Section 1092.
101. Section 1092.5.
102. *Thomson v. Call*, *supra*, 38 Cal. App. 3d at p. 633.
103. Section 1097.
104. Section 1098.
105. *Etridge v. Sierra View Local Hospital District*, *supra*, 224 Cal. App. 3d at p. 319.
106. 68 Ops. Cal. Atty. Gen. 337 (1985).

107. *People ex rel Chapman v. Rapsey* (1940) 16 Cal. 2d 636, 642.
108. 74 Ops. Cal. Atty. Gen. 116, 117 fn. 1 (1991).
109. *People ex rel Chapman v. Rapsey, supra*, 16 Cal. 2d at p.642.
110. 68 Ops. Cal. Atty. Gen. *supra*, at p. 337.
111. *Elridge v. Sierra View Local Hospital District, supra*, 224 Cal. App. 3d 311 at p. 319.
112. 78 Cal. Ops. Atty. Gen. 316 (1995).
113. As set forth in *People ex. rel. Chapman v. Rapsey, supra*, 16 Cal. 2d at p. 644 the mere acceptance of the second incompatible office per se terminates the first office as effectively as a resignation; but see however, 74 Ops. Cal. Atty. Gen. 116 (1991) in which the Attorney General concluded that the person will remain in the prior position as a de facto member until he or she resigns or is removed from office by a quo warranto action or other lawsuit.
114. The common law has developed through precedential court decisions. It differs from statutory law which has been created through the legislative process.
115. *Noble v. City of Palo Alto*, (1928) 89 Cal. App. 47, 51.
116. 53 Ops. Cal. Atty. Gen. 163 (1970).
117. 26 Ops. Cal. Atty. Gen. 5, 7 (1955).
118. *Clark v. Hermosa Beach* (1996) 48 Cal. App. 4th 1152.
119. League of California Cities, *Providing Conflict of Interest Advice*, February 2004.
120. *Id.*
121. Health Safety Code Section 33130.
122. Health & Safety Code Section 33130(b).
123. Health & Safety Code Section 33130(c).
124. Cal. Const. Art. XII, Section 7.
125. *Conflicts of Interest*, California Attorney General's Office (1998) at p. 72.
126. 67 Ops. Atty Gen. 81 (1984).
127. 74 Ops. Atty Gen. 26 (1991).
128. AB 1678.
129. FPPC Advice Letter A-03-269 (2004).
130. Sections 34090 *et seq.*
131. Sections 6250 *et seq.*
132. Section 6252.

133. Section 6252(b).
134. Section 6253(a).
135. Section 6253(b).
136. Section 6255.
137. Section 6253.1.
138. Section 6253.
139. *Id.*
140. Section 6255.
141. Section 6253.
142. *Id.*
143. *Filarsky v. Superior Court* (2002) 28 Cal. 4th 419.
144. Section 6259.

FRESNO GENERAL PLAN UPDATE BRIEFING

Some Frequently Asked Questions- Dyett & Bhatia Draft for City Staff:

What is a General Plan?

A general plan is a set of policies and programs that form a blueprint for physical development throughout the community. It is a long-term document consisting of written text and diagrams that expresses how a community should develop, and is a key tool for influencing the quality of life. The plan is a basis for land use decision-making used by policymakers such as the Planning Commission and the City Council. All cities and counties in California are required by law to have general plans.

Why is a General Plan required?

State law mandates that each city and county in California adopt "a comprehensive, long-term general plan." The purpose is to plan for important community issues such as new growth, housing needs, and environmental protection. Furthermore, the general plan is used to project future demand for services such as sewer, water, roadways, parks, and emergency services.

What goes into a General Plan?

There are both State-mandated and optional elements that go into a general plan. The elements of the general plan make up the framework for decision-making regarding growth and development in the City. State law requires that a general plan contain at least the seven mandated elements: Land Use, Transportation, Housing, Conservation, Open Space, Noise and Safety. Fresno's General Plan may include additional elements for Economic Development and Fiscal Sustainability; City Design; Historic Preservation; Air Quality and Greenhouse Gas Emissions; Healthy Communities; and Community Facilities and Public Services.

Why is the Plan Being Updated?

Fresno's current General Plan was adopted in the 2002 and now needs to be reexamined to ensure that it reflects the city's goals and priorities for the next 25 years. Many of the objectives of the existing General Plan have been met, and new opportunities and challenges have arisen. Substantial new population growth is expected over the next several decades. We need a new plan to manage Fresno's future growth, attract high quality businesses and jobs, protect natural resources, conserve energy and water, promote high quality design of buildings and public spaces, provide land for new parks and schools, and maintain public safety and municipal services—all of which contribute to the quality of life that residents have come to expect.

How is the General Plan Used?

The General Plan will:

- Establish a long-range vision for Fresno and outline steps to achieve this vision;
- Help guide City Council and Planning Commission decision-making;
- Provide a basis for judging whether new development projects, transportation improvements, and other actions align with the City's policies; and
- Ensure that City departments and other public agencies provide services that enhance the character and quality of the community.

What is a Master Environmental Impact Report (EIR)?

An environmental impact report is a detailed analysis of the environmental effects of a plan or development project. The Master EIR for the General Plan Update will identify alternatives to the proposed project and presents ways to reduce or avoid environmental damage. Under the California Environmental Quality Act (CEQA), a general plan is considered a project, thus requiring that an EIR be completed in conjunction with the plan. Community members can provide input at two different phases in the EIR process: in response to the Notice of Preparation (NOP), declaring that an EIR is going to be prepared, and to the Draft EIR itself. The Master EIR will be the subject of a separate Request for Proposals (RFP).

What does Sustainability mean, and why is it important to the General Plan process?

Sustainability is a term used to address a wide range of issues that ultimately affect our quality-of-life. In its most widely recognized definition, it means making choices today that will not limit our children's ability to have a high quality-of-life when they reach our age. Sustainability can be implemented operationally through policies and decisions that consistently maintain quality-of-life opportunities for all residents and communities.

Sustainability relates to many things we have heard about for years – having readily available and safe drinking water, having clean air that we can feel comfortable to breathe, avoiding toxic wastes and material use in our communities and reducing the amount of garbage we send to the landfill. It also relates to maintaining business and industry development, expansion, entrepreneurship and job creation opportunities throughout our city, and providing different transportation modes that connect housing with jobs.

In the General Plan update, choices about land use and development patterns will affect how much we drive and how that impacts air pollution, time with our family and in many cases a loss of important agricultural or natural resource lands. Because the General Plan process creates policies that will shape the form of our community, striving for a more sustainable outcome means the General Plan needs to look carefully at how and where we grow. It also means ensuring adequate fiscal resources for the City. Computer models are now available that can enable us to ensure that the new General Plan has positive net benefits for the City.

What does climate change mean, and what is its relationship to the General Plan?

Climate change is the term used to describe anticipated changes in weather patterns, caused by human actions. As we increase our use of energy, increase the miles we drive, or use excessive amounts of water, we increase the amount of 'greenhouse gases' (GHG) released into our atmosphere. Greenhouse gases (like carbon dioxide, which is a by-product of burning gasoline in our car) build up in the air, retaining the sun's heat. This results in changing rainfall patterns, increased temperatures, more severe thunderstorms and loss of snow pack, which affects the amount of water available for our use and for irrigation. The amount of GHG in the atmosphere is influenced by the choices we make in our day to day lives. Many of these impacts can be moderated by policies contained in the General Plan. Building more energy efficient homes, increasing availability of transit and making routes to schools safe and more walkable for our children all help to reduce GHG.

How can Residents and Business Owners get involved?

City staff will be soliciting citizen participation in all phases of General Plan development. A General Plan Update Advisory Committee will be appointed by the City Council and Mayor to represent the various components of the community in the General Plan Update. The role of the committee will be to ensure that the new General Plan reflects the community's vision for the future. Serving as a voice of the community by gathering diverse community input during the process, and providing feedback to the project team are all responsibilities of individual committee members. All meetings will be open to the public, and will include opportunities for public comment. The City's website will have information on the [Workshops and Meetings](#) that are planned and enable residents and business owners to contact them directly with their thoughts.

When convened, the General Plan Update Advisory Committee will start off by reviewing and discussing working papers on Sustainability, Economic Development, Healthy Communities, Urban Form and Corridors, and Transportation and Connectivity, that will then inform review and discussion about community vision, analysis of plan alternatives, and recommendation of a preferred alternative general plan concept to be fully assessed by the Master EIR.

WHAT IS A WORKING PAPER?

The working papers summarize existing conditions and future prospects in Fresno with regard to a wide range of subject matter affecting physical development, including land use, population and growth trends; the local economy; neighborhood character; urban design; transportation systems; parks and open space; historic, arts, and cultural resources; community services; natural resources; sustainability; and safety considerations. Working papers will provide background information to help the General Plan Advisory Committee and decision-makers engage in dialogue about policy issues and directions. They provide a framework for the preparation of land use alternatives and focused policy directives.

These papers will include a discussion of the local, state, and federal legislative and judicial landscape that has a bearing on planning (e.g. SB 375, Clean Air Act, Clean Water Act).

Each working paper will be concise, visually rich, and clearly written so that it can be easily understood by the public, relevant committees, and elected officials. Maps will be included to help focus discussion. Each paper will present:

- *Background data and information on Fresno today;*
- *Analysis of existing conditions as either obstacles or facilitators of Plan concepts; and*
- *Key issues and implications that require policy deliberation.*

Working papers are interim documents meant to stimulate thought and discussion, rather than to be adopted or endorsed.

Fresno General Plan and Development Code Update

Results of the Citywide Telephone Survey of Residents



Research Objectives

- Assess residents' perceptions regarding satisfaction with city services and identify what they like most and least about living in Fresno;
- Evaluate residents' priorities for funding and transportation improvements;
- Determine residents' ratings for local economic opportunities and environmental quality
- Assist in providing quantitative feedback on residents priorities and preferences related to general planning components.

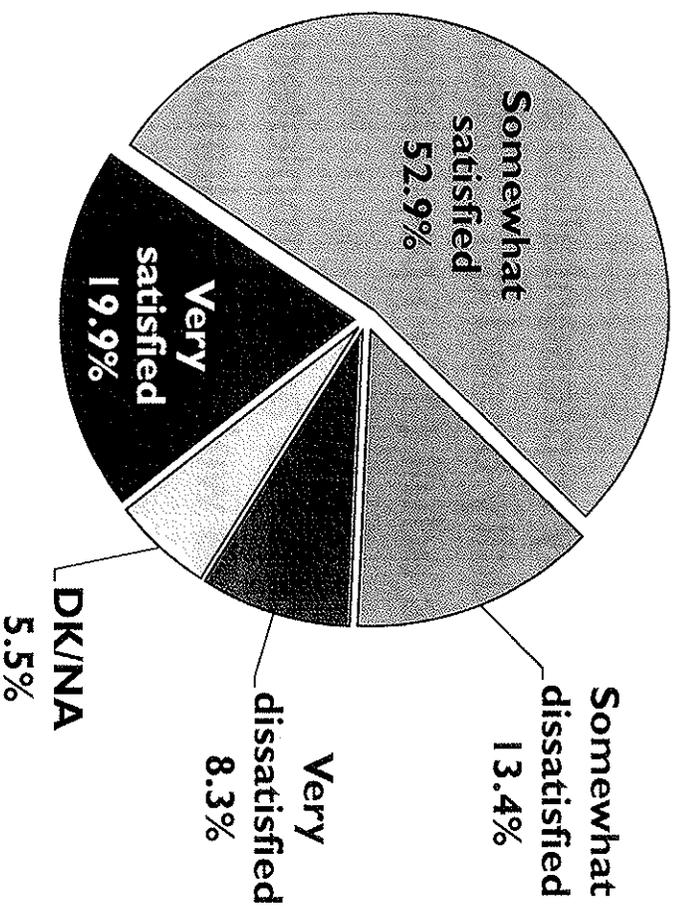
Methodology

Telephone Survey of 400 Residents

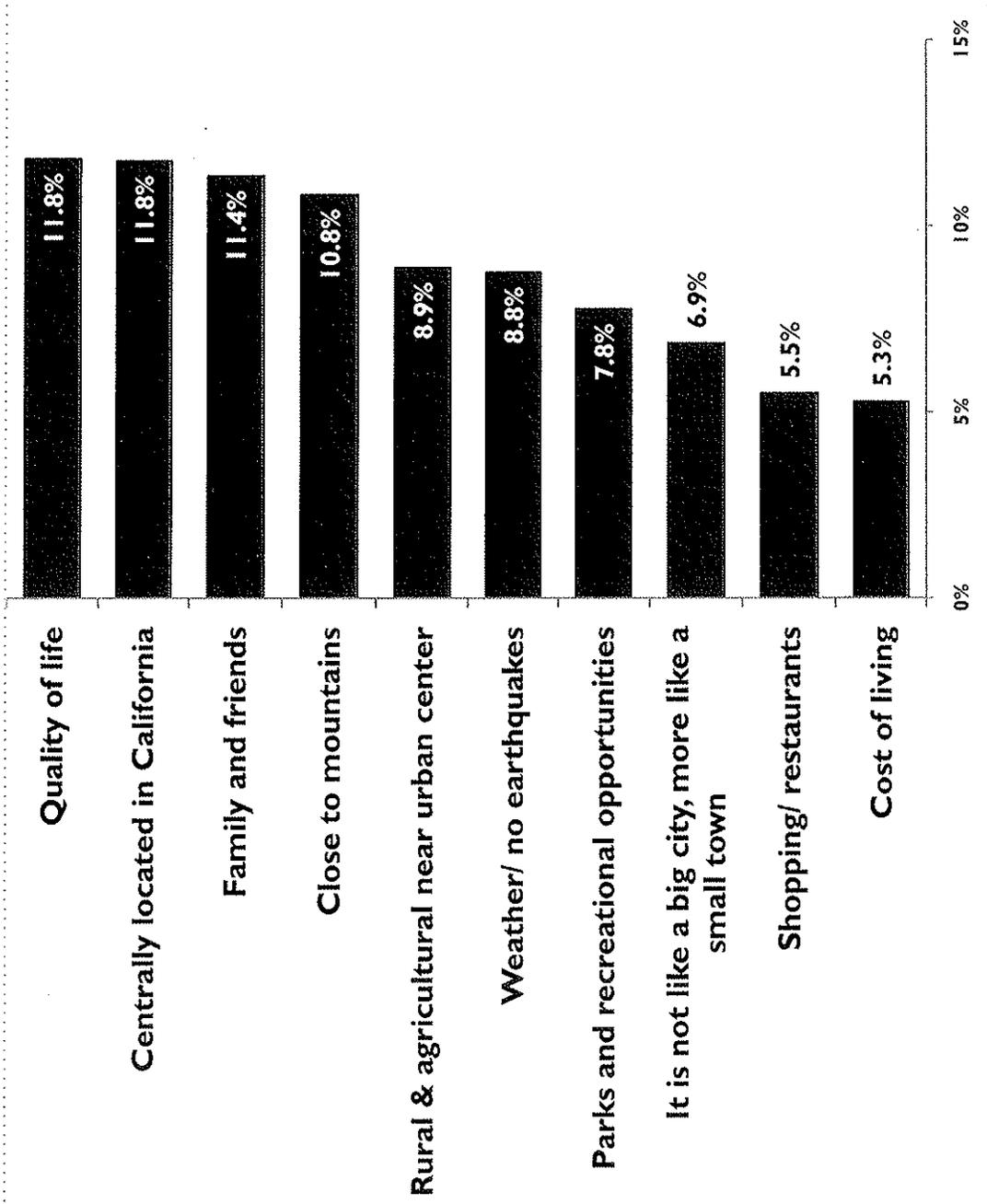
- Calls Made: August 11 - 20, 2011
- Average length: 14 minutes
- Statistically representative sample by age, gender and ethnicity based on Census 2010 data of City of Fresno's adult (18+) population
- Survey offered and completed in English and Spanish as well as with landline and mobile phones
- Margin of error +/- 4.9% (95% confidence level)

Satisfaction with City Services

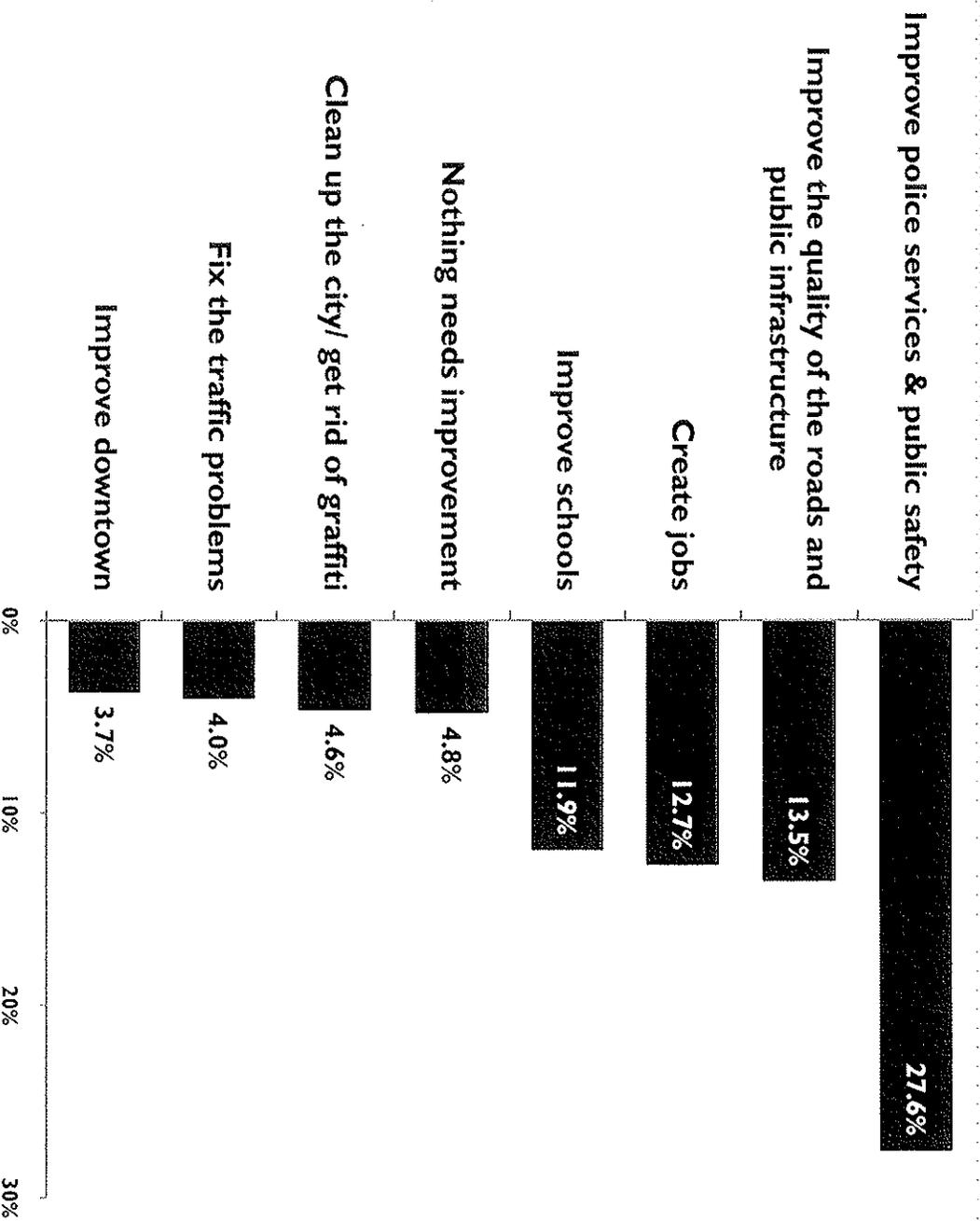
More than 7 out of 10 respondents indicated they were satisfied with the job the City of Fresno is doing overall to provide city services.



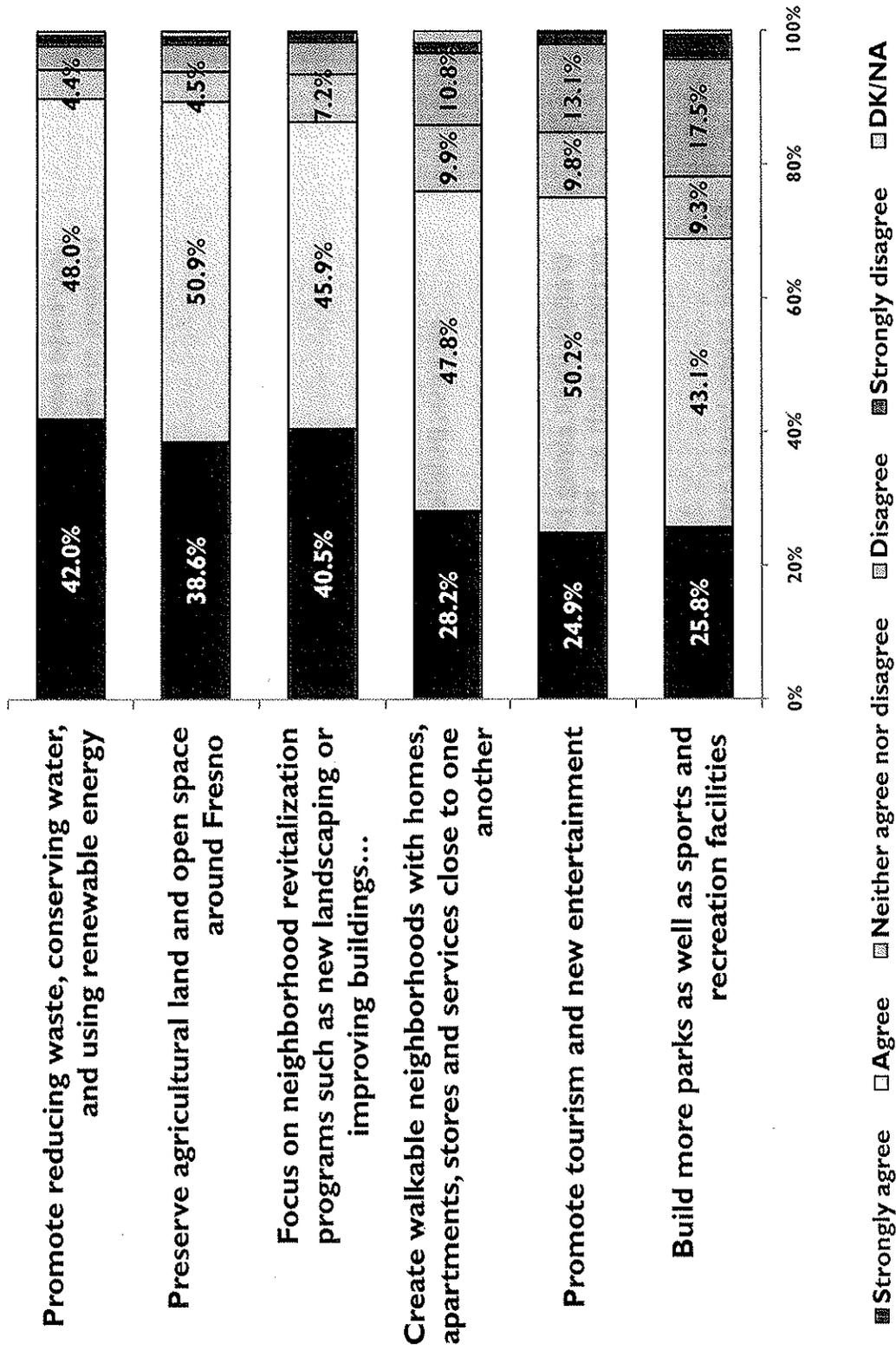
Like Most about Fresno (Open-ended)



What to Improve in Fresno (Open-ended)



Fresno's Goals for the Future



Transportation Improvements (Tier 1)

Increase peoples transportation options to shop, work, and play to destinations without a car



Synchronize traffic signals



Have sidewalks along all local streets, public and private



Expand services on bus rapid transit lines along major street corridors such as Blackstone and Ventura Kings Canyon



Provide more trees and landscaping along and between major streets



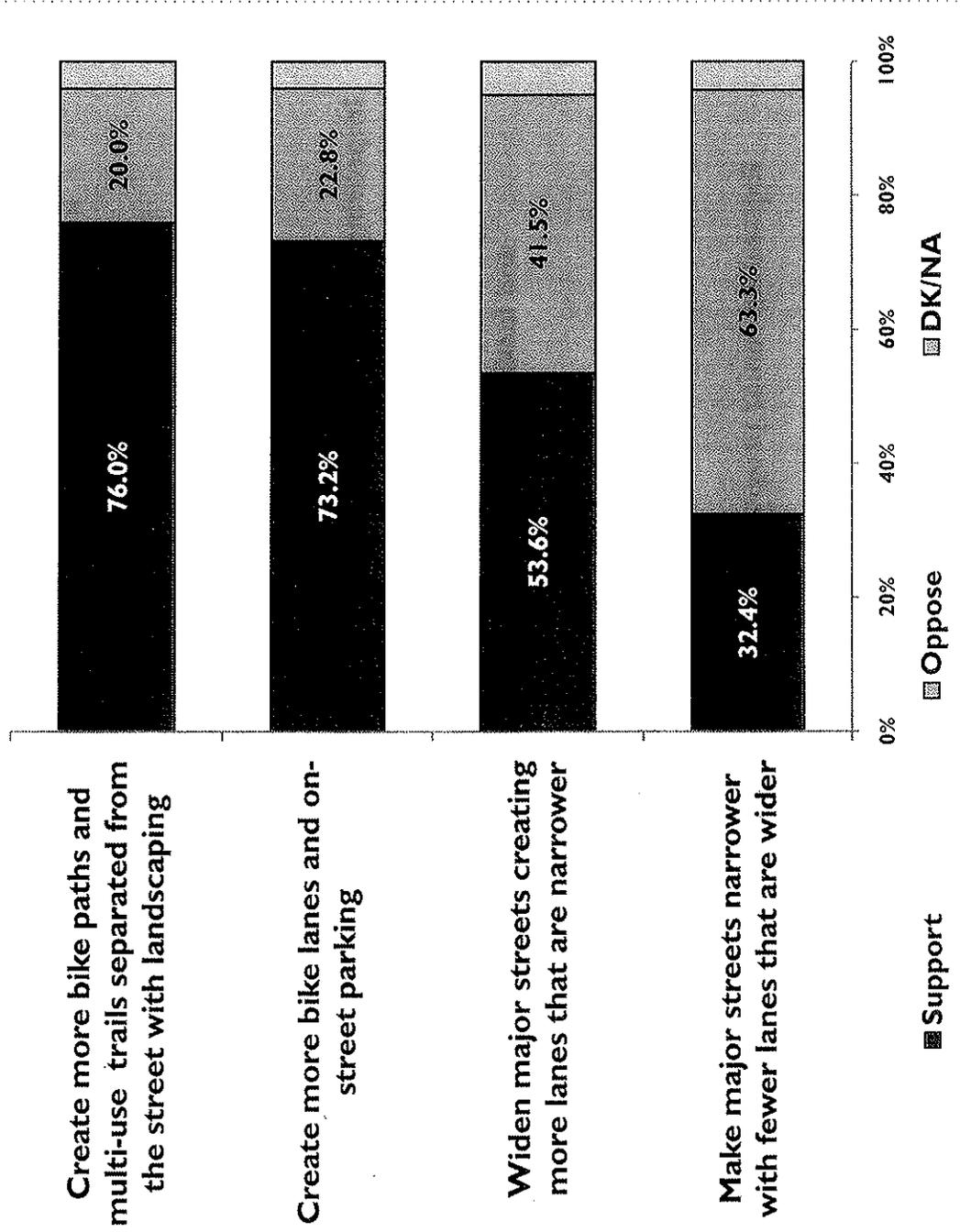
Support

Oppose

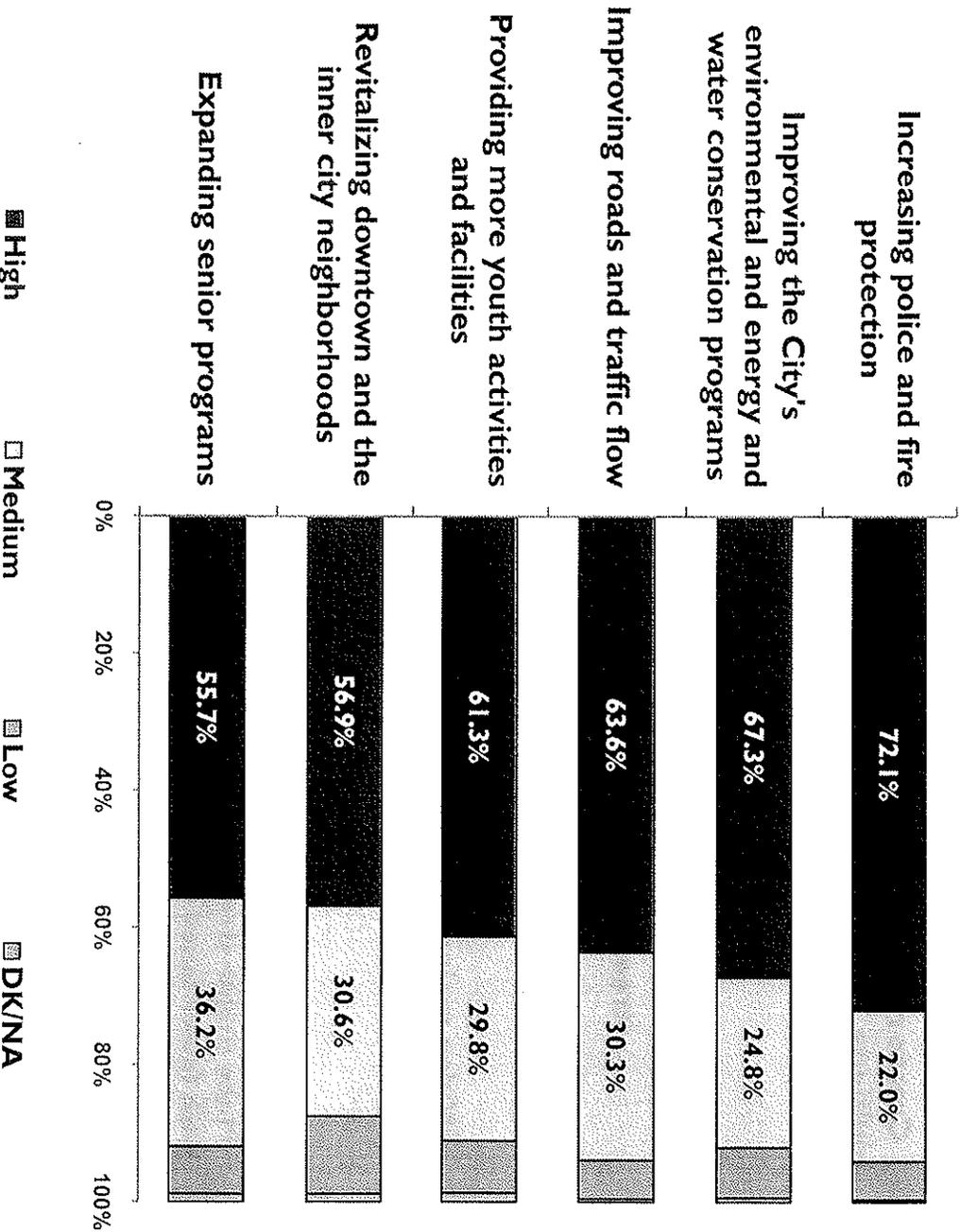
DK/NA

0% 20% 40% 60% 80% 100%

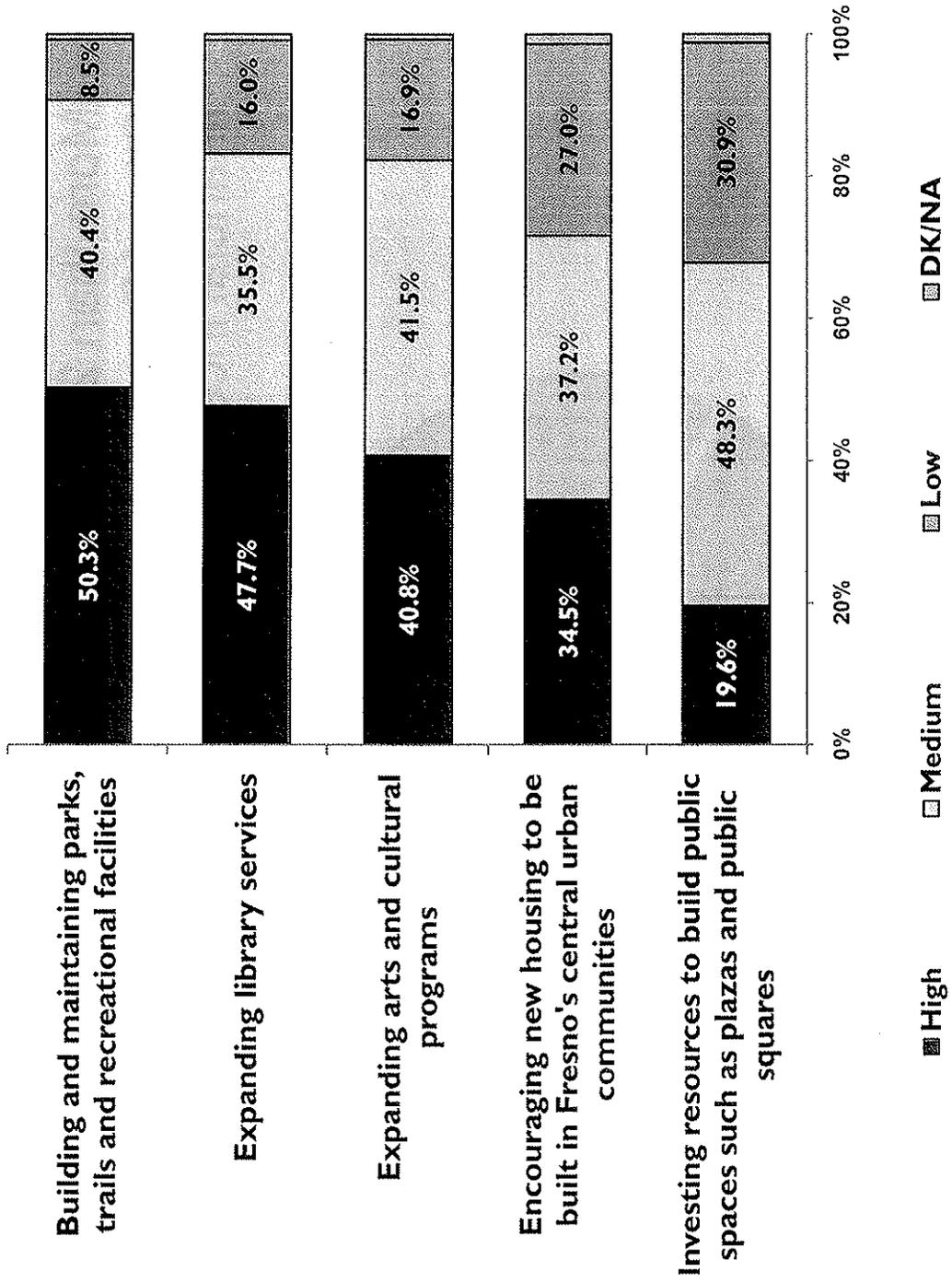
Transportation Improvements (Tier 2)



Fresno's Funding Priorities (Tier 1)

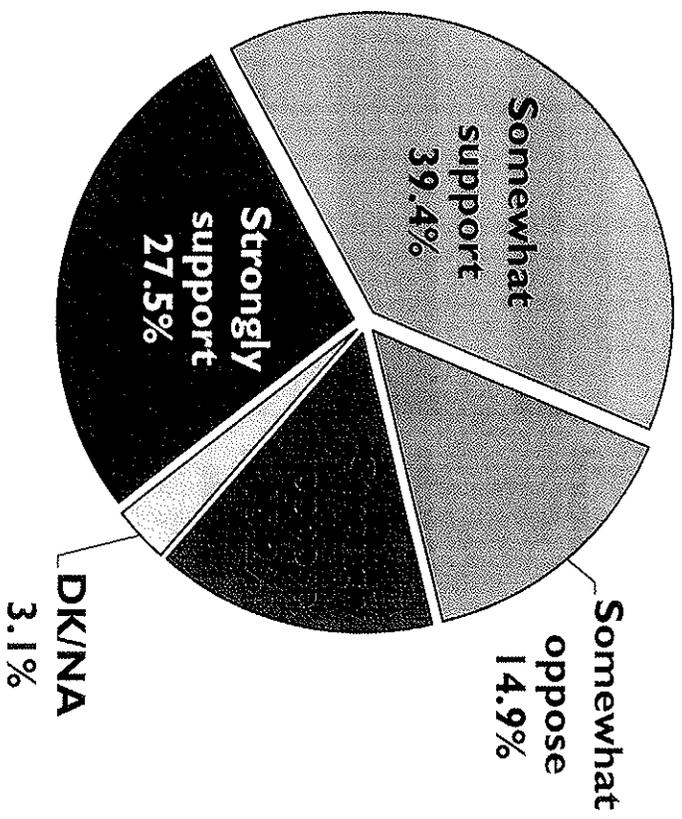


Fresno's Funding Priorities (Tier 2)



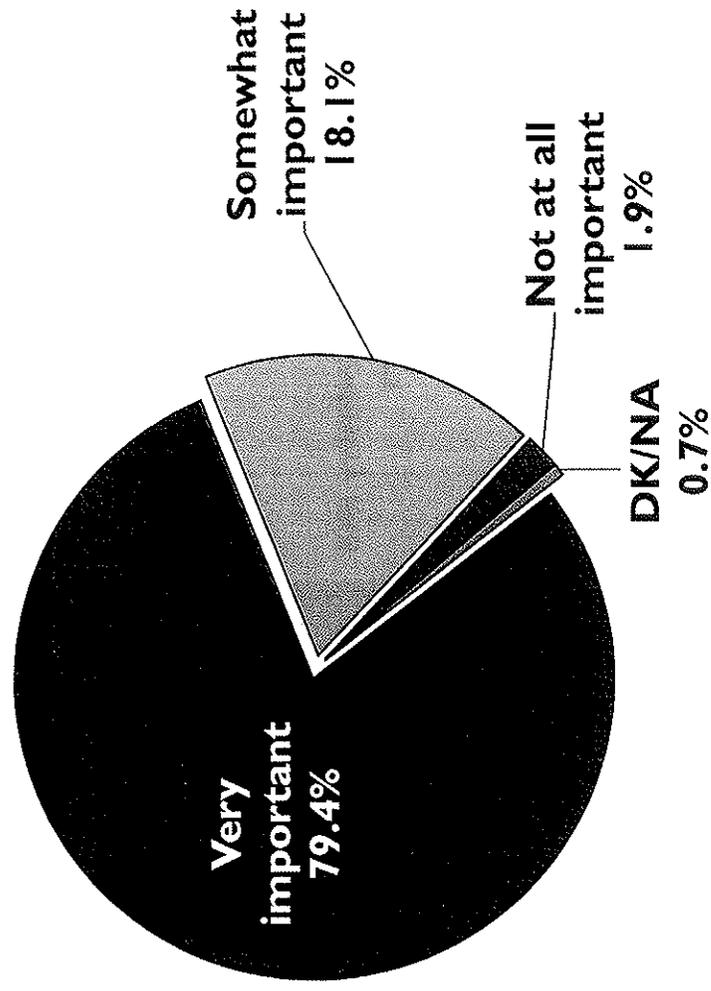
Public Investing in Fresno's Urban Centers

More than 2 out of 3 respondents indicated they supported the City of Fresno investing in public facilities or providing other financial incentives to build housing in the City's urban centers.

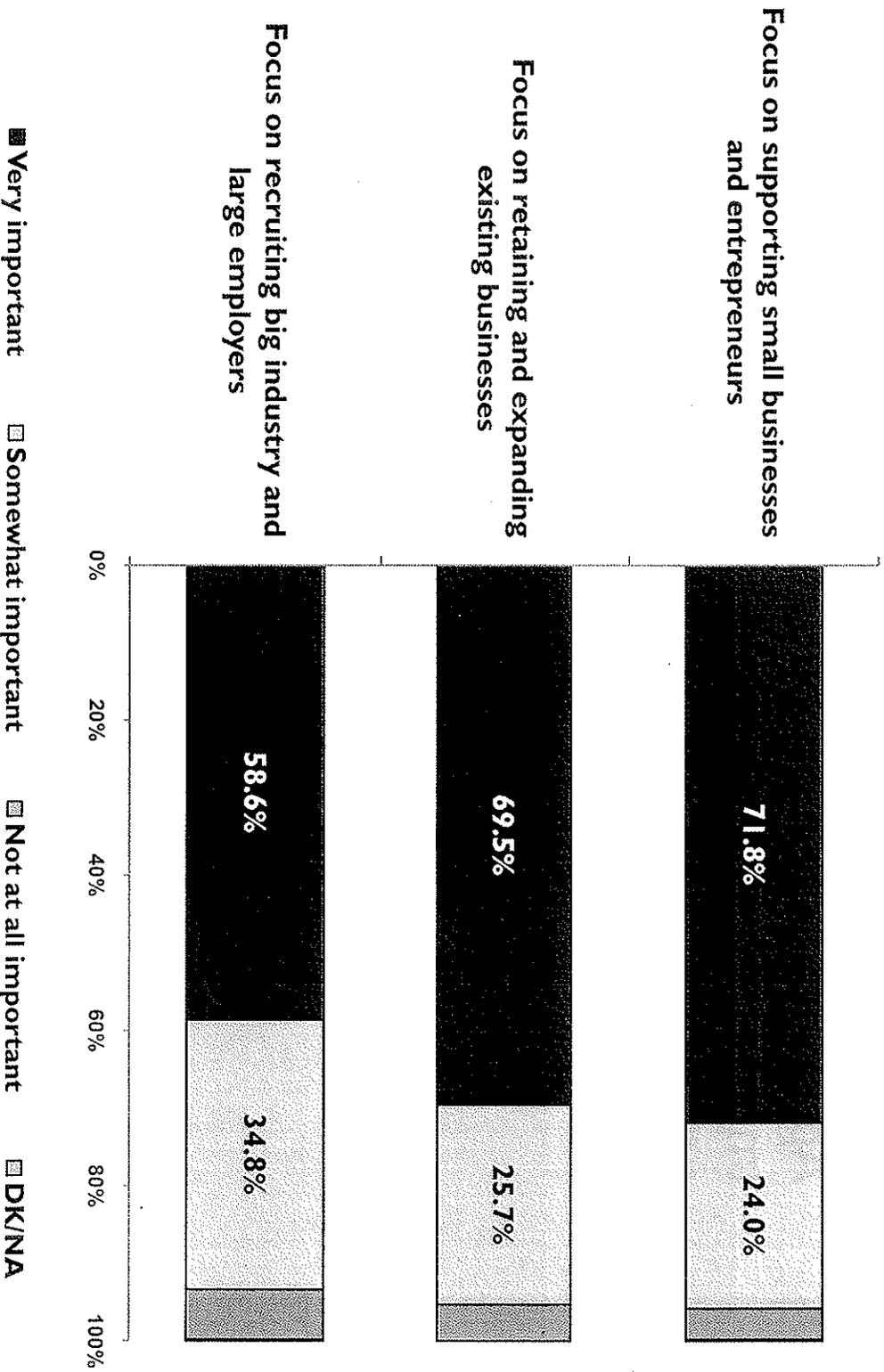


Business Development in Fresno

Approximately 4 out of 5 respondents indicated it was very important that the City of Fresno take an active role in promoting business development and employment growth.



Strategies for Business Development

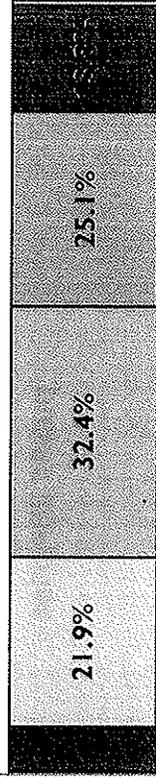


Development, Economy & Environment

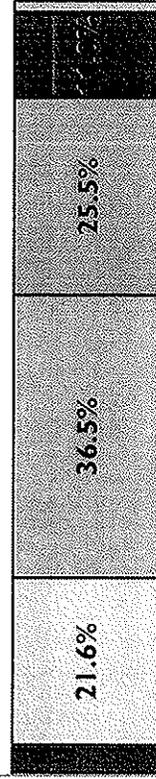
How would you rate the quality and design of new development in Fresno over the last ten years?



How would you rate Fresno's environmental qualities, like air and noise quality?



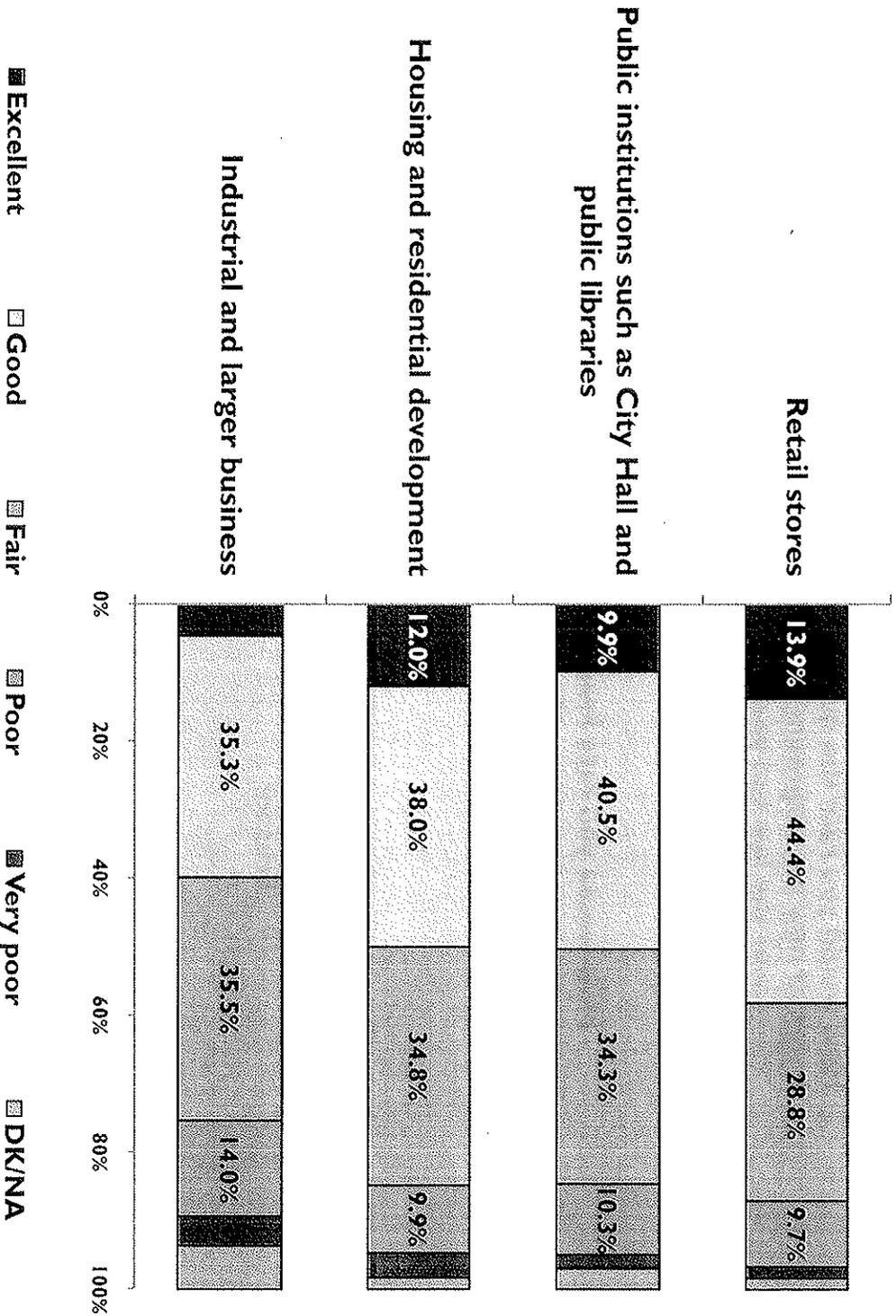
How would you rate opportunities for employment and doing business in Fresno?



0% 20% 40% 60% 80% 100%

Excellent
 Good
 Fair
 Poor
 Very poor
 DK/NA

Rating Fresno's Development



Conclusions |

Not surprisingly, increasing jobs and improving the economy was a high priority with residents, but other issues specific to Fresno were also consistently important.

- **Public safety and expanding police services**
- **Redeveloping and improving downtown and the urban center**
- **Expanding natural resource conservation programs and improving environmental quality**
- **Improving the quality of roads and expanding local transportation options**

Conclusions II

Almost three quarters (73%) of residents were generally satisfied with the job the City is doing to provide City services, this is about average or slightly below average for a larger California City.

However residents generally gave lower ratings to;

- **Fresno's environmental qualities such as air and noise quality - 39% rated it as poor or very poor.**
- **Doing business in Fresno and employment opportunities - 37% rated it as poor or very poor.**

Conclusions III

Segments of Fresno's adult population that were more satisfied, than average, with the overall job the City was doing, included;

- **Newer residents to Fresno (0 to 4 years) 90% satisfied**
- **Younger adult residents (ages 18 to 24) 84% satisfied**
- **Upper middle class residents (annual income between \$75k and \$150k) 82% satisfied**

The most notable segment that was less satisfied, than average, was middle aged residents (ages 45 to 54) 68% satisfied

Conclusions IV – Environment

Improving the environment in Fresno was a high priority with most residents and 37% of respondents rated the current environmental qualities (air and noise quality for example) in Fresno as poor or very poor.

These results were consistent with a 2011 statewide survey (PPLC) that indicated 37% of Central Valley residents indicated air pollution was a “Big problem”. In that study the only region that had a higher percentage of residents indicate air pollution as a big problem in their region was Los Angeles with 45%.

Conclusions V – Environment

Segments of Fresno’s adult population that were most likely to rate Fresno’s environmental qualities as poor or very poor, included;

- Younger adult residents (ages 18 to 24) 46% indicated poor or very poor
- Residents who identified themselves as white or Caucasian, 49% indicated poor or very poor
- High income residents (annual income \$100k+) 50% indicated poor or very poor

Conclusions VI – Economy

Respondents largely agreed that the City should play an active role in promoting business development and employment growth but showed considerably less consensus on how they rated opportunities for employment and doing business in Fresno.

The segments of the adult population that were more likely to rate employment and business opportunities as poor or very poor included;

- High income residents (annual income \$100k+), 42% indicated poor or very poor
- Low income residents (annual income \$25k -), 41% indicated poor or very poor

Conclusions VII - Economy

- Middle age residents (ages 45 to 54), 42% indicated poor or very poor

The segments of the adult population that were least likely to rate employment and business opportunities as poor or very poor included;

- Residents who identified themselves as Asian, 21% indicated poor or very poor
- Younger adult residents (ages 18 to 34), 30% indicated poor or very poor
- Middle income residents (annual income \$50k to \$75k), 32% indicated poor or very poor

Fresno Development Code Update
Development Code Technical Advisory Committee

Development Code Issues and Options

August 31, 2011
3:30 p.m. to 5:00 p.m.

AGENDA

1. **Welcome and Introduction** (Mark Scott, City Manager and Interim DARM Director; 10 minutes)
2. **The Project: Overview of Approach and Process** (Michael Dyett, Dyett & Bhatia; 7 minutes)
 - a. Introduction to Zoning and the Code Update
 - b. Related Projects
 - i. *General Plan Update*
 - ii. *Downtown Development Code*
3. **Issues to be Addressed** (Martha Miller, Dyett & Bhatia, and Mark Steele, MW Steele Group; 10 minutes)
4. **Options and Recommendations for the Code Update** (Martha Miller and Mark Steele; 15 minutes)
5. **Review and Discussion** (Group discussion; 45 minutes)
6. **Next Steps** (Keith Bergthold, Asst. Director, Long Range Planning, DARM; 3 minutes)
 - a. Issues and Options Meetings: PC September 7th, CC September 29th
 - b. TAC Meeting: Module #1: Zoning Administration; December 14th

Materials handed out at meeting:

- Development Code TAC Schedule and Process
- First General Plan Update Newsletter (Brochure)
- Map Atlas
- Existing 2025 General Plan

Fresno General Plan and Development Code Update

Development Code Update Issues and Options Report

Prepared by:

DYETT & BHATIA
Urban and Regional Planners

and

M.W. Steele Group

August 2011

City of Fresno

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Introduction

The citywide Development Code Update was initiated in mid-2010 to comprehensively reevaluate Fresno's regulation of land use and development included in the Zoning Code and subdivision regulations contained in Title 12 of the Fresno Municipal Code (FMC) and to implement the new General Plan currently in process. This project is a separate effort from the Downtown Development Code, which will be an independent set of regulations, distinct from the citywide code and separately administered. However, as with all City plans, wherever appropriate, common terms and administrative procedures will be used to ensure consistency.

As the first step of this effort, Fresno's consultant team, Dyett & Bhatia and MW Steele Group, is evaluating the City's current approach to regulating development and determining if there are alternative approaches that would better implement the new General Plan, attract high quality development meeting community needs, and respond to State and federal mandates.

The City's consultant team began working on the update in September 2010. Its work has included field reconnaissance of recent development in Fresno; interviews with City staff and community stakeholders; an assessment of existing regulatory tools and design guidelines used by the City and "peer" communities in the Valley; and preliminary recommendations for a new zoning framework.

This working paper summarizes the principal findings and conclusions of the consultant team's reconnaissance work and recommends a number of ways that the current Code could be improved to meet the overall objectives of the update. The next phase of the project will include preparation of an Annotated Outline to guide actual drafting of the new regulations, which will be prepared and reviewed in "modules" in a joint effort of the consultant team and City staff, and reviewed by the Code Advisory Committee (CAC) and the community.

To carry forward the concepts embodied in this paper, everyone's views and opinions must be heard and considered. Input from Fresno's residents and business owners will be a vital aspect of the process. Specifically, the City will want to hear about what residents want and expect development regulations to do to maintain the character and charm of Fresno's neighborhoods, capitalize on the proximity to transit, and improve the quality of life in other areas that have not benefited from recent development trends. Preservation and protection of what makes Fresno special is of utmost importance, but new regulations should not be barriers to growth and development. The regulations must be predictable, understandable, and enforceable. They must be written to make their intent

and purpose clear to everyone—property owners, developers, and residents in general. The ideas this paper presents are set forth to achieve these objectives.

Because the purpose of this paper was to identify ways to improve Fresno’s zoning and subdivision regulations for areas outside Downtown, the recommendations focus on suggested changes with only passing reference to all the positive attributes of the Code. The reader should keep this intent in mind to avoid misconstruing the consultant team’s conclusions and recommendations and thinking that the Code is inherently flawed—which it is not.

OBJECTIVES

The consultant team is taking a critical look at City policies to see how zoning can best provide a roadmap for future development and protection of resources. Overall, the revision will strive not only to ensure that regulations are relevant to today’s concerns, but also to produce a code that is understandable and easy to use. The objectives of the Development Code Update are to have a new zoning and subdivision ordinance that:

- Is consistent with and implements the new General Plan and existing policies carried forward;
- Promotes high quality design with flexible standards and performance requirements;
- Responds to community concerns about neighborhood character and project design outside Downtown;
- Promotes complete neighborhoods, infill, mixed use, and transit-oriented development (TOD) in activity centers and corridors;
- Streamlines development review and approval processes;
- Complies with State and federal requirements and current case law; and
- Is clear, concise, understandable, and easy to use.

The emphasis of the overall project is on improving procedures, introducing options, and creating a more logical and transparent body of regulations, rather than imposing new prescriptive limitations on land use and site development, which would be counter to the City’s goals for job creation and economic development and place-based revitalization

ISSUES ADDRESSED IN THIS WORKING PAPER

The City of Fresno’s existing regulatory framework may be interfering with the City’s ability to achieve its vision, implement the planning and economic development policies of the City’s General Plan, and get the type and quality of development that it wants. Based on stakeholder and City staff interviews, and the objectives noted above, the following themes

provide a framework for the *Issues and Options Working Paper*—running through all of them is the idea of ensuring consistency with the ideas emerging in the General Plan Update:

- Making Fresno’s regulatory tools easier to use and understand;
- Raising the level of design to enhance the character of the community, corridors, and districts outside Downtown and to promote efficient, cost-effective development;
- Allowing a mix of uses to enhance vitality, create a thriving urban center and support job growth and a culture of innovation;
- Reserving places for industry and commerce to support economic development;
- Providing for the needs of individual neighborhoods;
- Connecting people and places by improving the fit between land use and transportation systems and supporting transit-oriented development; and
- Streamlining development review and approval while also providing opportunities for public input in the process.

Each of these issues is addressed in subsequent sections of this Working Paper. Specific topical and technical issues, such as religious uses, housing for persons with disabilities, second units, massage therapy, emergency shelters, transitional and supportive housing, and telecommunications facilities, also are discussed at the end of this paper.

SUMMARY OF RECOMMENDATIONS

The recommendations proposed for Planning Division review and CAC consideration are grouped into the five topical areas summarized below; additional technical recommendations for the subdivision regulations and specific technical issues are included at the end of this paper. These recommendations do not all carry the same weight; some are more important and will have more far-reaching effects than others. These differences are discussed in the body of the paper.

RECOMMENDATION NO. 1: MAKE ZONING EASIER TO USE AND UNDERSTAND

- 1-A: Develop a New Format and Organization
- 1-B: Consolidate Standards
- 1-C: Simplify, Refine, or Eliminate Unnecessary Regulations and Procedures
- 1-D: Consolidate Zones and Provide Purpose Statements, Add New Zoning Districts and Subdistricts to Implement General Plan Policies
- 1-E: Employ “Use Groups”

- 1-F: Use Graphics to Reduce Wordiness
- 1-G: Tabulate and Cross-Reference Regulations

RECOMMENDATION NO. 2: CONNECT PEOPLE AND PLACES

- 2-A: Establish Districts and Subdistricts outside Downtown to Implement Plan Policies for Corridors and Activity Centers
- 2-B: Tailor Development Standards to Mixed-Use Development
- 2-C: Establish Subdivision Design Standards to Create Compact Neighborhoods and Communities
- 2-D: Create Standards to Support Walkability
- 2-E: Implement Development Standards to Create an Engaging Streetscape

RECOMMENDATION NO. 3: ACHIEVE HIGH QUALITY DESIGN

- 3-A: Adopt Standards that Address Three Primary Subjects of Design
- 3-B: Establish Detailed Design-Related Standards
- 3-C: Make the Design Standards Clear and Measurable
- 3-D: Structure the Code to Ensure Good Design

RECOMMENDATION NO. 4: SUPPORT ECONOMIC GROWTH

- 4-A Provide Incentives for Job-Generating Uses
- 4-B Provide Development and Performance Standards for Commercial and Industrial Uses
- 4-C Allow Limited Commercial Development in Appropriate Residential Districts (“Corner Stores”)

RECOMMENDATION NO. 5: STREAMLINE DEVELOPMENT REVIEW AND APPROVAL

- 5-A Reduce Reliance on Discretionary Review
- 5-B Recognize Differences Among Nonconforming Uses and Structures
- 5-C Simplify Review and Approval Procedures
- 5-D Facilitate Opportunities for Appropriate Public Input into the Development Review Process

Planning Commission and City Council comments on these recommendations will help the Planning Division provide direction to the consultant team to guide its work on the new development code during the next phase of the project.

NEXT STEPS

This paper will be the basis for a public workshop with the Planning Commission and a City Council briefing. Comments from the workshop, briefing, and further work with City staff will guide preparation of an Annotated Outline and initial drafts of preliminary regulations. They will be presented in “modules” for subsequent review, and additional workshops will be scheduled with the Planning Commission and other advisory committees to review milestone products. City staff also will continue outreach to stakeholders and interest groups with special concerns that will need to be addressed in the Code update.

City of Fresno

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Approaches to Zoning

American cities use zoning to accomplish a number of purposes. Some of these purposes are well established—such as the maintenance of stable residential areas and the prevention of health and safety hazards. Others—such as promoting transit-oriented development, maintaining aesthetic values, encouraging infill development, and creating walkable communities—are newer. All of the purposes and powers of zoning are rooted in the police powers that the State grants to local governments.

Zoning, subdivision controls, and other regulations also are intended to implement City plans, visions, and goals. A zoning code, such as Articles 1, 2, 3, 4, and 4.5 of Title 12 of the Fresno Municipal Code (FMC), translates the policies of a comprehensive land use plan into parcel-specific regulations. As such, zoning should be used to implement land use, urban design, and open space plans, rather than to serve in itself as the primary planning tool to resolve local traffic circulation issues, protect sensitive habitat, or create traditional neighborhoods.

Zoning regulations traditionally have been used to separate incompatible land uses, minimize nuisance impacts and environmental harm, and coordinate or time development intensity with supporting public infrastructure. Zoning is also effective for dealing with the geographic location of activities and for regulating the three-dimensional aspects of development with height, bulk, setback, and architectural design standards. Zoning is a way to make explicit a City's policies for development and urban design, to ensure fairness (so all lots in a given zone may be developed to similar intensities and are subject to similar restrictions and public contributions), and to avoid abuses of discretion.

In recent decades, zoning has been called on to address an increasingly diverse variety of public policy goals related to environmental protection, economic development, neighborhood revitalization, aesthetics, public safety, and transportation mode choice. Cities and counties have also used zoning to address market issues (e.g., controls on “big box” or large-format retail stores and franchise food operations). Zoning is less effective in realizing these types of public policy goals than it is in addressing physical form and uses of land. Another limitation of zoning is that it can work only on an incremental basis, as individual parcels develop or redevelop.

In sum, a zoning code deals with two basic concerns:

- How to minimize the adverse effects that buildings or using one property can have on its neighbors; and
- How to encourage optimal development patterns and activities within a community, as expressed in planning policies.

TYPES OF ZONING

Three main types of zoning codes are in use in the U.S. today: Euclidean, performance-based, and physical form codes. The pros and cons of these basic types of zoning are summarized in the table on the following page. In this table, the term “prescriptive” is intended to describe a rule-making process and the degree to which clear and objective standards for land use and development provide certainty to landowners, developers and the public at large.

Table 1: Comparisons of Types of Zoning Codes

<i>Type of Zoning Codes</i>	<i>Pro’s and Con’s</i>
<p>Euclidean: Most American zoning codes follow some variation of the Euclidean model, named after Euclid, Ohio’s zoning code. Euclidean zoning schemes divide jurisdictions into districts or zones, wherein certain types and intensities of uses are allowed. Historically, these districting schemes have been relatively homogeneous, with separate zones for residential, commercial and industrial uses, and have worked to segregate dissimilar uses. More recently, Euclidean codes also have been used to create mixed use zoning districts, although that was not the original intent. Euclidean zoning codes typically specify allowed uses, maximum residential density, and bulk and dimensional standards.</p>	<p>Euclidean codes tend to be largely prescriptive and therefore work best at preventing the most basic problems or nuisances. They are less effective in dealing with fine-grain neighborhood character issues that often arise in places where infill and redevelopment are most common.</p> <p>Within newly developing areas, Euclidean codes need to be linked to land division or subdivision regulations. These latter regulations often play a very important role, supporting zoning, because they provide the statutory basis and standards for decisions on street networks, pedestrian connections, and the location of parks, open spaces, and civic facilities.</p>
<p>Performance-based: Performance-based codes include objective, quantifiable standards that are applied to uses to reduce impacts, promote land use compatibility, and improve the quality of development. The regulations and review procedures in these codes generally focus on how uses operate. Basic performance standards may include standards that directly limit impacts (e.g., noise standards) as well as standards that control impacts indirectly by constraining intensity of operations (e.g., floor area, residential density).</p>	<p>Performance-based codes are somewhat less prescriptive than form-based codes, at least in terms of design details, and allow for more architectural creativity and context-based solutions. They may be more complicated to administer than conventional zoning or form-based codes, but they can provide more certainty as to use and density/intensity and so may be favored by the development community and neighborhood organizations over codes that prescribe architectural design or rely on discretionary procedures involving public hearings and conditions of approval to ensure land use compatibility.</p>
<p>Physical form-based: Form-based codes prescribe the design or type of building, street, or neighborhood subarea, with limited or no restrictions on use. They typically include generic design prototypes</p>	<p>Form-based codes tend to be highly prescriptive and are therefore thought of as very predictable. They are a way to express what is desired rather than what is discouraged or prohibited. These codes</p>

for housing and commercial buildings and their relation to the street and to each other. This approach may differentiate neighborhoods, districts, and corridors; provide for a mixture of land uses and housing types within each; and provide specific measures for regulating relationships between buildings and between buildings and outdoor public areas, including streets.	address matters outside those traditionally thought of as zoning (e.g., street design, sidewalks, parks, and civic spaces), and so often portrayed as more “holistic” than conventional zoning. They provide a way to bring planning and design considerations into zoning. These codes are effective where strong design guidance is needed and limitations on use and intensity are not critical.
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Other types of zoning include:

- *Incentive zoning* essentially involves trade-offs between the City and the developer: the City relaxes certain zoning requirements in exchange for developer provision of an amenity, such as public open spaces, or a public benefit, such as better transit station access or affordable housing.
- *Hybrid zoning* schemes, such as contextual or character-based zoning, seek to integrate physical design (form-based) standards and performance regulations into otherwise conventional zoning codes, while often downplaying use-based regulatory strategies. Character-based zoning may offer particular promise for communities grappling with one infill controversy after another.

WHAT TYPE OF ZONING DOES FRESNO HAVE?

Fresno’s Zoning Code primarily follows a Euclidean scheme. The majority of districts within Fresno’s zoning classification system separate types of uses (residential, commercial, etc.) and there is little guidance on urban form or performance-based expectations.

As part of the citywide Development Code Update, the City may want to consider adopting a more hybrid approach to zoning classification. Additional urban form-based zones may help implement certain General Plan goals and urban design-related policies, as they are proposed to be in Downtown and the Fulton Street Corridor. These could be established for master-planned areas on a case-by-case base, in consultation with landowners, as was proposed for the Southeast Growth Area (SEGA). Other probable candidates for form-based coding techniques are activity corridors, and other pedestrian- and transit-oriented areas. Performance-based standards may be effective in directly limiting impacts (e.g., noise and lighting standards). Fresno may also decide to adopt more contextual zoning as it attempts to preserve unique characters of distinct neighborhoods and districts.

THE BASIC DILEMMA: FLEXIBILITY VS. CERTAINTY

As Fresno considers how best to improve its zoning regulations, one issue will be how to find the right balance between flexibility and certainty that will best implement the General Plan. The dichotomy between these concepts creates tension, not only for City officials and staff who use the code on a day-to-day basis, but also for homeowners, business owners, and others who may only come into contact with zoning a few times over the years they may live or work in the City. Everyone wants to know what are the rules and standards by which new development will be judged – how are decisions made to approve, conditionally approve, or reject applications? And, for many, knowing the timeframe as well as the criteria for approval also is important – who has appeal rights, and when is a decision final so a project can proceed.

For others, flexibility is important: the site or existing building may be unique, the design innovative and responsive, or the public benefits so compelling that some relief from underlying requirements and generic architectural details may be appropriate. Perspectives of code users help inform the discussion about this issue.

USERS' PERSPECTIVES

Expectations about what zoning should or should not do, and how far it should go, are different, depending on individual perspectives. Applicants view zoning differently than design professionals, and City staff perspectives are not always the same as those of residents or City officials. At the risk of over-simplification, we offer the following set of expectations for different code users as a starting point for thinking about regulatory options for citywide regulations outside Downtown.

Applicants

Individuals applying to the City for a zoning approval through a permit or land use review generally want to know:

- **What are the rules that the City follows for development review?** These include use regulations, design guidelines and standards, and development standards, review procedures, and criteria for decision-making.
- **What is the timeframe for decision-making, and when is a decision final?** Is it the day the approval is granted, or is there some stated time they have to wait before they know they can proceed with the next steps, refine an architectural design, solicit bids, and initiate construction? Users also need to know how much time they have to obtain a building permit or business license.
- **What relief can they request if a regulation or standard constrains a design solution or otherwise limits what they would like to do with their property or their building?**In

thinking about relief, it often is useful to distinguish concerns about what the allowable uses are (recognizing that use variances are illegal and the only way to accommodate different uses would be through a zoning code or map amendment) from concerns about how to accommodate a design or improvement on a lot. Relief may be needed from physical development standards (e.g. setbacks or fence height limitations) or from performance requirements that relate primarily to the impact of a use or building design on an adjacent lot.

- **How important are neighbor concerns in the decision-making process?** If an applicant follows the rules, does the City have the right to require changes to a design solely because of a neighbor's objections? Are there limitations on conditions of approval or are all elements of a project "negotiable"? Does the City distinguish "as-of-right" development applications from those requesting exceptions to the standards in weighing how far to go to respond to community concerns?

Design Professionals

Architects and other design professionals typically want to know the answer to the same questions applicants pose, but because of their specific role in a project, they often want to know more specifically how much flexibility the code allows for site planning and architectural design. If the City wants to mandate certain design solutions, as opposed to "encouraging" a type of design, the code should say so to avoid misunderstandings during the development review process.

An example of a mandated design solution is a requirement for windows or display spaces and a prohibition of blank walls on retail frontages. In this context, design professionals also want to know whether the mandate is a guideline or a development regulation. If it's a regulation and the proposed building design doesn't benefit from adding windows, it will be necessary to request a specific form of administrative relief, which could be a variance or a design modification, in order to deviate from the dimensional requirements. By contrast, if the mandate is a design guideline, it may be possible to propose an alternative design solution that meets the guideline's objective without applying for a variance or use permit to waive design standards if the code provides for alternative ways to comply with a guideline.

The flexibility that a design professional typically seeks includes:

- Relief from overly prescriptive standards, including setbacks, building height, bulk and articulation, landscaping, location or parking, and architectural design standards (e.g. colors, finishes, porch dimensions, roof pitches, etc.);
- Relief from provisions that constrain energy efficiency and water conservation;

- Relief for buildings with historic or architectural character; and
- Relief for uses or activities with unique needs (e.g. theater scenery, lofts, Internet server farms, pharmacy drive-through windows, multiplex cinemas, grain silos, etc.).

City Staff and Officers

City staff and Planning Division members also want flexibility for a number of reasons:

- To respond to community concerns;
- To implement the General Plan and more specific master plans, and to further public policies;
- To reconcile competing priorities, as is frequently the case with a General Plan; and
- To protect unique and special resources, which may range from environmental resources to historic buildings, historic neighborhoods, affordable housing, and special retail uses.

Fresno Residents and Business Owners

While planners and City officials strive to respond to community concerns, residents and business owners don't always have the same perspective on zoning, particularly if they feel their self-interest is not served. Many critical issues are decided when a General Plan is prepared; however, as implementation details are worked out, community thinking about General Plan direction may evolve, and there may not be consensus on all of the regulatory solutions proposed to implement the plan.

Neighbors want to know with some certainty what can be built, so there are no surprises once construction begins. However, if they have concerns, they would like to know what the process is for community input – how much flexibility the City has to condition approval and what they can do to affect the final result.

Business owners likewise want to know whether they can expand or adapt space to new uses or activities. Being able to respond quickly to changing markets is important, and lengthy review times are an anathema to that objective. The idea of supporting local businesses and a culture of innovation is particularly important, given Fresno's role as a Central Valley Business Innovator.

TRADEOFFS

As the City considers the next steps for regulatory reform outside Downtown, discussion of choices could address these basic philosophical issues:

- *Flexibility vs. predictability:* Is the zoning code intended as a rule of law or a rule of individuals? Should the area for negotiation be wide or narrow? To what extent should this be determined by the code or by practice?
- *Flexibility vs. administrative cost:* What are the costs to the applicant, to opponents, and to the City's tolerance for hearings?
- *Development cost vs. quality:* Standards should be written with an understanding of their effect on developers' and consumers' costs and on the quality of the environment for both user and community at large.
- *Preservation vs. development:* Will a particular regulation stimulate or dampen change in uses, users, or appearance? A related issue is whether adopting a new standard will result in a proliferation of nonconforming situations, which could also discourage investment. Defining "areas of change" vs. "areas of stability" will be an important component of this Code update.
- *Under regulation vs. over-regulation:* How does the community strike the right balance and find the least number of rules that will do the job?

Striking the right balance will not be easy, and lessons from similar communities that have recently amended their zoning and design guidelines can enable the City to avoid mistakes others have made and achieve its goals for economic development and sustainable land use.

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Recommendation No. 1: Make Zoning Easier to Use and Understand

The need to make Fresno's Zoning Code more user-friendly and concise was one common observation noted during interviews with stakeholders. Many code users commented that the text of the Code is too complex and hard to interpret; others said that the document is difficult to navigate and should rely more extensively on pointers and references to direct users to appropriate regulations. This section contains general observations about the Code's organization, format, and usability, as well as strategies for improving them.

EXISTING ORGANIZATION AND STYLE

The City of Fresno's Zoning Code comprises five articles contained in Chapter 12, Land Use Planning and Zoning, of the FMC:

- Article 1: General Provisions Applicable to Zoning
- Article 2: Establishment of Land Use Districts and Regulations Applicable Therein
- Article 3: General Conditions Applicable to Zoning
- Article 4: Procedures Applicable to Zoning
- Article 4.5: Urban Growth Management

Each article is divided into sections, subsections, and paragraphs. Articles 1, 2, and 3 contain the majority of the development regulations. Article 1 covers basic authoritative matters and establishes common terms. Article 2 establishes development standards for each district and special district and contains extensive lists of every allowed use within those zones. Article 3 includes standards that apply citywide, regardless of base district. Administrative and permitting topics are primarily included in Articles 4 and 4.5.

Other articles in FMC Chapter 12 relate to land use but are not considered part of the City's "Zoning Code". For example, citywide standards are included in Articles 5.5, Surface Mining and Reclamation and 17, Signs. Administrative provisions are included in Article 5, Environmental Review, Article 6, Local Planning and Procedures, Article 14, Planned Communities, and Article 16, Historic Preservation.

Subdivision provisions are spread out among separate articles in FMC Chapter 12, including Article 9, Condominium Conversions, Article 10, Subdivision of Real Property, and Article 12, Parcel Maps.

There are a number of articles in FMC Chapter 12 dedicated to the payment and establishment of development fees (Articles 4.6 through 4.11, 15, and 19) as well as to other topics such as street name procedure, address numbering of property, advertising, and mobilehome park rent review and stabilization.

The Development Code Update project will update current Zoning Code and Subdivision Regulations. The other articles included in FMC Chapter 12 but not part of the Zoning Code or Subdivision Regulations will not be updated through this project. However, the City may update these at a later date.

THE ISSUES

The following observations summarize the concerns raised by Fresno staff and frequent code users, as well as independent evaluations made by the consultant team.

DISORDERLY ORGANIZATION

Overall, the article ordering of the Code is not always intuitive, and sections that should be grouped together are often found far apart or separated by other articles. The Code begins with definitions and introductory provisions, followed by district regulations. Citywide standards, administrative and permitting topics, and subdivision provisions are spread out among separate articles. While these topics are distinct, the regulations included in each section don't always fit the topic area. For example outdoor lighting standards are included under the administrative procedures for special use permits, lot line definitions are included in the citywide standards rather than the definitions section, and the required findings for residential uses in the R-P and C-P districts are located in with citywide standards rather than district regulations or administrative procedures.

There are also instances of unnecessary redundancy. District regulations often include citywide standards and citywide standards repeat district regulation topics, even if there are no distinct citywide standards. For example, Property Development Standards are identified in the regulations for each district as well as citywide. All topic areas are included (e.g., lot area, lot dimensions, population density) regardless of whether a requirement applies or if the regulations are set forth in other sections.

How regulations that apply in numerous districts are handled differs throughout the Code. For example R-1-A and R-1-AH and R-1-E and R-1-EH district standards differ only in the allowance to keep horses. The R-1-A and R-1-AH standards are located in two separate sections with cross references while the R-1-E and R-1-EH are combined into one section with an added allowance for horses in the R-1-EH district.

Over the years, sections and chapters have been updated or added without a comprehensive reformat of the Code and content is not organized according to the way that people typically use it. As a result of this, code users must search through a large amount of text before arriving at the sections they need. Many of the individuals contacted during the initial reconnaissance expressed the difficulty of simply finding desired materials, because one never knows when to stop looking. The overall organization and formatting of the Code should reflect a systematic, consistent, and sound arrangement to facilitate understanding.

CODE COMPLEXITY

The need to make Fresno's Zoning Code more user-friendly and concise was one common observation noted during interviews with stakeholders. Many code users commented that the text of the Code is too complex and hard to interpret; others said that the document is difficult to navigate. The text of the current Code is complex, referencing and repeating itself many times. This section contains general observations about the Code's organization, format, and usability, as well as strategies for improving them.

The Code contains many instances of direct duplication. For example, duplicate regulations concerning exceptions to height limits is restated in each of the residential districts and the C-P district. The rest of the commercial districts include a cross reference to those same to the height exceptions in the C-P district. When the Code repeats information in nearly or exactly the same language, it is not always clear whether nuances in wording or positioning are intended to accomplish different goals, or if they override each other entirely. Duplication such as this not only lengthens the text, but also introduces an element of doubt that differently worded regulations might affect a person's ability to develop and use property. It can also complicate zoning administration.

The Code, at times, employs archaic or overly technical language and outmoded references. Examples include the terms "reading room", "notions", and "soda fountain" in permitted use lists, even though these terms are no longer commonly used. Instances of outdated usage or the employment of terms familiar only to experts presents an enforcement problem to the City, because code users may not be able to interpret accurately and then comply with regulations. This problem is compounded by the fact that there are no graphic examples or illustrations of standards. Without clarifying visual examples of measurement standards, design guidelines, and other complex provisions, these sections are highly vulnerable to misinterpretation, which further complicates enforcement.

ZONES WITH UNCLEAR DIFFERENTIATION

At present, Fresno has 35 base zoning designations, with six other development and special use districts. Many of these districts apply to relatively limited land areas. Out of Fresno's approximately 76,000 acres of

land, the R-1-E, RP-L, C-C, C-L, P, and S-L districts each apply to fewer than 100 acres. Two uses, storage and parking, have their own separate zoning district, S-L district, Storage/Limited, Mini Storage Facility District, and P, Off-Street Parking District. Additionally, some zoning districts are very similar to each other, with only minor differences in allowable uses. For example, the two separate sets of single-family residential zones differ only in their allowance of the keeping of horses. The zone allowing horses has been applied to only 891 acres in the City, in contrast with the nearly 30,000 acres zoned under the other residential single family districts. It might be easier to have a set of special standards for specific uses, such as storage facilities and horse keeping, rather than an entire zoning district.

STANDARDS SPREAD AMONG MANY CHAPTERS

The organization of the current Code leaves standards of development spread out among various sections. Many code users have complained that when they look up the regulations governing a project, they have no confidence that they are seeing a comprehensive list. Because standards are dispersed, users are left with a nagging fear that a “hidden” regulation might affect the viability of a project. Uncertainty regarding development possibilities can be a significant barrier when attempting to attract new industry.

UNCLEAR LISTS OF ALLOWED USES

Each base zoning district currently contains an exhaustive list of every use allowed by right or by review and approval of a permit. Regulations are so specific that, for example, in the C-L district, the Code separately permits the barbershops and beauty shops. The sheer size of these sections is an obstacle to usability, as the text requires a considerable amount of time to locate needed information. Although the intent of this classification system may have been to provide a great deal of certainty regarding allowed development, the outcome is at times the opposite.

Adding to this confusion, many uses are not defined and sometimes the same use appears in different articles under similar, but different guises such as dancing academies and dancing schools, florists and florist and plant shops, and used merchandize sales, thrift store, and secondhand store.

To avoid ambiguity, the Code must be amended frequently, or Director’s Classifications need to be made, to accommodate new and changing uses; these repeated adjustments are a symptom of an overly rigid classification system. Many jurisdictions have adopted a more flexible system for use regulation to accommodate new development and minimize the need for such code amendments. Typically, this strategy includes the formulation of “use groups” that classify all land uses and activities according to common characteristics. For example, the code currently lists many types of sales separately, including bookstores, music stores, photographic supplies, stationery stores, and many others. A use group system would consolidate

all of these types of sales into one category, retail sales, because they share common physical requirements and play a similar role within neighborhoods. This strategy is discussed further in the recommendations, below.

SPECIFICATION OF BOTH “PERMITTED” AND “PROHIBITED” USES

The way that Fresno defines allowable uses has the potential of leading to unnecessary confusion regarding development possibilities. Currently, Fresno’s use regulations in Article 2 list both “permitted” and “expressly prohibited” uses for each district. Article 3, General Conditions Applicable to Zoning, then includes allowances for a number of uses, including rifle and pistol practice ranges and the sale of alcoholic beverages by retail stores, that may be permitted, except where expressly prohibited, when such uses are deemed by the Director or Planning Commission to be essential and desirable for public welfare and convenience. In contrast, the majority of zoning codes in the country list only permitted uses, allowing the prohibited items to be defined as everything that is not explicitly permitted. The City’s current specificity inadvertently creates a third, problematic category of uses: those that are neither permitted nor prohibited. Because this category inherently creates legal problems, the City should consider avoiding such a comprehensive classification scheme.

UNDERUTILIZED TABLE ORGANIZATION

Fresno’s zoning regulations contain few tables to help users identify applicable regulations quickly and easily. The tables that are included are not formatted to be easily read. For example, some large table cells contain little text, words do not fit on one line, and text runs off the page. Tables greatly enhance a Code’s usability, and they should be used extensively to organize the information presented in the Code. Places where tables may be of particular help include lists of allowed uses across districts and numerical development standards, among others.

RECOMMENDATIONS

The City should consider the following strategies to make the citywide zoning regulation easier to understand and use.

I-A: DEVELOP A NEW FORMAT AND ORGANIZATION

The City can improve the organization of its Zoning Code in a variety of ways. First, the City should reorganize the existing zoning articles and sections so that they flow more logically. For example, basic provisions and administrative chapters should be moved to the beginning, followed by chapters related to base and overlay zones, and then chapters related to specific uses and performance standards. As a general rule, the most frequently consulted provisions should come before provisions less frequently consulted. A final chapter can group all definitions and

standards of measurement together, so that users have access to a comprehensive reference section in an easily located place. Next, the Code could be enhanced with a comprehensive table of contents so that users do not have to scour the text for a section when needed.

Finally, the City should supplement these organizational revisions with improvements to the appearance of the text itself, including wider spacing, different fonts for articles, sections, and the main text, and consistent indentation.

The content of many of the chapters can be combined. For example, the chapters on residential, agricultural, commercial, and industrial zones can be consolidated and simplified with use groups, as suggested in Recommendation 1-D and 1-E, below, these chapters can be combined into a single chapter on base zoning district regulations. This chapter also could incorporate provisions from the “General Conditions Applicable to Zoning” that apply to specific zoning districts. The provisions currently in the district standards that apply citywide and the remaining provisions of “General Conditions Applicable to Zoning” could then be consolidated into one general regulations section.

These consolidated chapters could then be reorganized to flow more logically. Overall, the Code can progress from the most often referenced to the least—with basic provisions and administrative chapters in the beginning, followed by regulations of specific zones, and then use and performance standards. Definitions and standards of measurement can be moved to the end of the code as an auxiliary reference tool, so that code users do not have to scour the text for these references when needed.

I-B: CONSOLIDATE STANDARDS

The City should consolidate its performance and development standards and other requirements that are applicable to specific uses and common to all zones or all zones of one type into one or two chapters. These could be categorized into site regulations (including requirements such as parking, landscaping, and signs) and specific use regulations (e.g. requirements for specific uses such as home occupations and bars and taverns) and should also include special situations, such as nonconforming and temporary uses that apply in all zones.

Where standards apply solely to a particular set of base zones, for instance, standards for residential open space or commercial landscaping, they should be grouped immediately following the standards for this set of zones. Consolidating these rules into one section will help to ensure that standards are logical and consistently interpreted and applied. In all cases, the City should include cross-references to these supplemental provisions in the base and overlay zone regulations.

The City should group rules governing the construction of language, interpretation of code provisions, and standards of measurement together to serve as a reference section that users can turn to in the event of uncertainty regarding code provisions. Consolidating these rules into one section will help to ensure that standards are logical and consistently interpreted and applied.

I-C: SIMPLIFY, REFINE, OR ELIMINATE UNNECESSARY REGULATIONS AND PROCEDURES

Fresno should ensure that its Zoning Code functions as efficiently and with the fewest number of provisions necessary to achieve its goals. To this end, unnecessary sections of the Code should be removed in order to avoid ambiguity and reduce the sheer bulk of the Code. For example, districting chapters need not list prohibited uses, as they are already defined through the specification of allowed uses. The code update should also be used as a chance to remove all instances of redundancy or direct duplication from the text

I-D: CONSOLIDATE ZONES AND PROVIDE PURPOSE STATEMENTS, ADD NEW ZONING DISTRICTS AND SUBDISTRICTS TO IMPLEMENT GENERAL PLAN POLICIES

The Code will benefit from combining similar zones, where appropriate. In general, the Code should preserve many of the distinctions between similar zones under one combined zone, with sub-district designations where needed, in a consolidated classification system. For example, the City could combine two or three zones each in the residential, commercial, and industrial divisions, with supplemental design standards within each combined zone to ensure that no new incompatibilities arise. The City should supplement this refined set of zones with purpose statements at the beginning of each section to clarify the intent behind each zone.

The City is currently in the process of updating its General Plan. New districts may be necessary to implement the goals of the new General Plan. New classifications may include base districts aimed at creating activity centers, mixing uses or providing for small-lot residential development. One option for the creation of new districts is to directly follow the General Plan land use designations and boundaries developed through the General Plan update with subdistricts to reflect unique characteristics and needs of individual areas.

I-E: EMPLOY “USE GROUPS”

The Code should consolidate use types into a clearly defined modern classification system, which places land uses and activities into groups based on common functional, product, or physical characteristics. There are many advantages to this type of use classification system. Listing use groups instead of specific uses help streamline the use regulation parts of the Code. Categories are also broad enough to allow classification of new,

unanticipated uses, so that the City does not need to amend these sections or establish Director's Classifications as frequently as is currently necessary. This system can still allow for clear definitions and development standards for problematic uses, such as tattoo parlors, adult uses, outdoor retail sales and auto repair.

I-F: USE GRAPHICS TO REDUCE WORDINESS

In many instances, graphics can communicate development regulations more clearly and in less space than written standards. For example, images can clearly depict standards for measuring sign heights or yard setbacks, while verbal equivalents are prone to misinterpretation and uncertainty. Graphics should be used throughout the Code to strengthen written provisions and to provide visual examples of both lawful and unlawful development. With visual clarification, fewer sections of the Zoning Code will be subject to competing or incorrect interpretations, and regulations can be cleared of much of the jargon that can obscure the Code's intent.

I-G: TABULATE AND CROSS-REFERENCE REGULATIONS

The Code can rely more extensively on tables and cross references to convey development standards, provide quick access to all relevant regulations for a particular topic, and to avoid unnecessary repetition of provisions. Tables and cross references greatly improve the readability of complex regulations.

Recommendation No. 2: Connect People and Places

SETTING

Fresno began as a three mile section of land in 1885 with under 10,000 people and over the next 125 years has grown to 112 square miles with almost half a million people. One can outline the original City simply by studying the street patterns of Downtown. The original street pattern was a reflection of easy and convenient connection to the railway station. Connectivity therefore, is in the “DNA” of Fresno.

Like many cities in California that grew during the age of the automobile and shopping center, Fresno has become more and more spread out and suburban in terms of physical character. While the original three square mile core that was developed prior to WWII has remained as interconnected traditional enclaves, later post war development that characterizes much of Fresno is automobile focused with strip shopping centers providing services and goods. More often than not, schools form the identity and focus of Fresno’s newer neighborhoods.

Current zoning, while not the cause of this condition supports the suburban, disconnected nature of much of Fresno. One often needs to drive to the local shopping center even though it is nearly next door to one’s home. Local pedestrian and bike travel is often difficult and at best un-supported by a convenient attractive and safe network.

The General Plan Update will explore the concept of reconnecting and “completing” many of Fresno’s neighborhoods over time so that priority may be given to the pedestrian over the automobile. This concept will find its expression in the citywide Development Code in the form of districts, zones and standards that encourage and support connectivity throughout the City.

GENERAL PLAN POLICIES

The 2025 General Plan contains a number of policies related to connectivity and creating pedestrian-friendly, walkable neighborhoods and activity centers:

- C-3-b. Conduct a comprehensive update of the zoning ordinance to facilitate the implementation of intensity corridors. These zoning ordinance amendments should address mixed uses, expedited administrative zoning procedures, shared parking, underground and multi-story parking structures incorporated into buildings, transit facilities, open space, and aesthetic considerations.

- C-8-a. Develop zoning regulations which facilitate the appropriate mixing of commercial and noncommercial uses, either within a single structure or multiple structures within a defined area.
- C-20-d. Development projects shall be designed with appropriate layouts that provide sufficient areas for all proposed activities, for support functions, and for efficient and safe vehicular and pedestrian access.
 - Appropriate space shall be provided for activities proposed (e.g., indoor area for display of merchandise, as opposed to "sidewalk"/parking lot display).
 - Sufficient space and access shall be provided for support functions, (e.g., storage, loading, parking, waste disposal/recycling).
 - Particular attention shall be given to location of proposed customer parking areas so as to not discourage pedestrian, bicycle and other forms of transit to the project site and so as to encourage multi-modal transit activity centers.
 - Safe vehicular, bicycle, and pedestrian access shall be provided and maintained. Access for the disabled shall be incorporated into project designs as required.
 - Buildings in shopping centers should be linked by pedestrian walkways.
 - Business and industrial parks should be created as integrated, "campus-like" settings, with uniformity of improvements and shared facilities for parking, loading, mass transit, and with internal and external bicycle and pedestrian access.
 - Structural conversions and changes of occupancy shall demonstrate compliance with building and zoning codes.
- E-8-e. New residential developments (including planned unit developments with gated access or private streets and development with perimeter sound walls or other barriers) should provide safe, convenient pedestrian walkways that directly link residences and internal streets to transportation routes and transit stops as well as to nearby major activity destinations such as shopping centers, schools, and parks.

Many of these policies may be affirmed through the General Plan update and carried forward into the new General Plan.

CURRENT STANDARDS

The current Code discusses connectivity concepts in very general terms but does not include standards that mandate specific means to pedestrian connectivity and automobile connectivity. It is likely that the current Code

has not been successful in creating a walkable, interconnected city because the standards are too general. Without specifics it is difficult for developers to implement and staff to enforce the intent of the Code.

In general by concentrating standards to define five levels of planning, connectivity in new development and redevelopment can be achieved.

- ***Pedestrian Connections*** that foster walking to and from various uses such as residential to retail, civic and employment.
- ***Complete Streets*** with pedestrian paths, bicycle paths, transit and the minimum required traffic lanes, all in a well landscaped sustainable environment.
- ***Street Walls*** that are incorporated consistent active, transparent uses at or near the property line, creating a well scaled, comfortable public realm.
- ***Mixed-Use*** development at the core of neighborhoods that mix residential, commercial, employment and open space.
- ***Compact Neighborhoods and Communities*** that combine a range of densities and uses highly interconnected and tightly clustered to enable a walkable community with the appropriate densities to support a viable transit system.

Mixed-Use Development

Presently the Zoning Code and development standards allow mixed use in most commercial zones and an industrial zone. More specifically, mixed use is permitted in the C-P, C-1, C-2, C-3, C-4, C-5, C-6, and CC Districts and C-M and M-1 in the Central Plan Area. Mixed use is regulated by section 12-235 in the Fresno Municipal Code. The allowable residential density in these zones varies but never exceeds 43 units per acre, and the height is limited to 60 feet. This may or may not be an appropriate maximum density and height and should be reconsidered.

The current mixed-use provisions are cumbersome and offer no incentives to providing mixed-use development. Residential is required to account for 15 percent of a mixed-use project in the CP District. Two story buildings are also required. Regarding connectivity, there is a requirement that:

“The mix of residential use with permitted commercial uses shall occur both in the horizontal and vertical axis except that the Director may waive the requirement for vertical mix of use, if the design of the project, or the inclusion of a residential component to an existing development illustrates performance stands that meet the intent of the section by providing an integrated, well designed network of pedestrian pathways connecting the places of residences with the places of work commerce, and open space areas”
- Sec. 12-235 para.E. Standards, City of Fresno Municipal Code Chapter 12

CITYWIDE CONNECTIVITY

At the citywide level, connectivity relies largely on overall mobility patterns, landscape master plans, bike master plans and the like. Creating a strong sense of connectivity throughout the city calls for a combination of those elements plus more physical planning through concepts such as “complete streets”. Additionally, creating standards for identified pedestrian districts within the city may facilitate implementation of these new ideas.

The Southeast Area Growth Plan and Downtown Master Plan include development standards that, if adopted and implemented, will be effective in creating interconnected neighborhoods and districts. These standards could be used as a reference point for citywide standards, but it is not likely they will be appropriate for direct application to all areas of the City. However, the ideas they express are valid, and can be a starting point in developing place-based requirements that may vary from neighborhood to neighborhood and corridor to corridor, as part of this Code update.

Streets and Transit

Streets and transit are not regulated by the Development Code but form the citywide connective network linking all development and neighborhoods.

Streets and transit system planning, along with careful land use planning are the primary elements that create connectivity at the citywide level. Creating higher density neighborhoods and activity centers will allow transit to be successfully extended, connecting them to the rest of the city.

The City facilitates design of pedestrian friendly streets through separate programs and standards administered through the Traffic Engineering Division.

- **Road Diets** is a program to reduce four-lane streets to three lanes. This converts streets that have two travel lanes in each direction to a street with one travel lane in each direction with a central turn lane. The extra right of way is dedicated to bicycles.
- **Traffic Calming Standards** are focused on round-a-bouts. Standards for their design have been established by the City.

Corridors and Activity Centers

Presently, the Fresno 2025 General Plan has a section on Urban Form that establishes policies for corridors and activity centers. A map showing where these are located is in the Plan. This Plan element will be refined as part of the General Plan Update, and concurrent work on Fresno’s Activity Centers and Corridors, which is reaching completion, will be integrated into the Plan and Code Updates.

NEIGHBORHOOD CONNECTIVITY

Ultimately, the life of the City takes place in the neighborhoods. Many of Fresno's neighborhoods are not complete, in that they do not consist of a range of interconnected uses. Applying the five planning concepts discussed above to new development, infill development, and redevelopment will complete the neighborhoods and improve their livability, making them largely self-sustaining.

ISSUES

A POTENTIAL VISION FOR FRESNO

The General Plan Update will engage the public in a visioning process that will establish a clear mission statement for the future of Fresno. One thing is clear however, what most residents love about their city is the family orientation and their friendly, open neighborhoods. This is the core of a vision about Fresno that will then lead directly to decisions about physical form and nature of the place.

Until the vision statement can be completely fleshed out, it would be safe to say that Fresno's neighborhoods are important to the life style cherished by most. A reasonable goal therefore would be to create a General Plan and citywide Development Code that enhances the neighborhoods, completing those that lack the important components to support the Fresno life style, unite them through positive connectivity. In essence, creating a sense of place and community for each neighborhood would be the primary charge for this update. Areas of stability also need to be clearly distinguished from areas of change, and infill development must be respectful of neighborhood identity.

THE EVOLUTION OF FRESNO'S URBAN FORM

Arguably one of the most influential catalysts for both social and physical change in the "roaring" 1920's, the automobile was a symbol of liberation; bringing a sense of freedom, speed and excitement to the mobility of everyday Americans. The chronology of urban growth in America from "Walking Cities" to "Automobile Cities" shows how automobiles have transformed cities. Historians have mapped out a three- or four-stage transportation chronology for the American city: walking city (pre-1880), streetcar city (1880-1920), and automobile city (post-1920). One historian has divided the latter period into a "recreational vehicle" period (1920-1945) and a "freeway" period (post-1945). (Martin V. Melosi)

Some regarded this phenomenon as positive: the emergence of a private mass-transit technology effectively replacing public mass transit, and in doing so permitting settlement over a wide area and offering car owners the flexibility to work, shop, and enjoy recreation almost anywhere and at any time. To others, the swath that cut through cities to pave the way for the automobile undermined urban physical integrity, generated unending

sprawl, and sabotaged the sense of community by emphasizing personal choice at the expense of the interest of the many. (*The Automobile Shapes the City*, Martin V. Melosi)

WALKABLE CITY BLOCKS

Smaller 200 foot by 300 foot walkable blocks began extending in length with each new fringe development. Residential, commercial and public right of ways began to orient primarily toward the prominent needs for maneuvering and parking all of the personal vehicles. Vehicle speeds increased, commercial buildings were set further back to accommodate a front field of parking, which resulted in larger and taller signage to catch the eye of the passing motorists. It became less important to live in such close proximity to the workplace or a grocery store when you had the personal freedom to just “drive.” Further galvanized by the Euclidian concept of zoning, which segregated land uses into specified geographic districts, the automobile covertly began to introduce disconnectedness and fragmentation that eventually permeated every aspect of city life as we realize it today.

FRESNO'S TERRAIN

Because of the flat, almost un-interrupted terrain of Fresno, there is little in the way of unique neighborhoods and enclaves that may be found in cities such as San Francisco, Pasadena or San Diego. In some cities, bluffs, mesas and hills form recognizable districts and neighborhoods that develop as unique, connected areas similar to villages. This is not the case in Fresno. So the challenge becomes how to think about the street grid and historical development patterns as way of reconnecting communities.

EVOLVING PUBLIC ATTITUDES

While this story of the emergence of technology, terrain and the growth of the economy sets the stage for the emergence of the contemporary suburban pattern for Fresno, one must recognize that consumer attitudes supported this evolution and largely remain today. On the other hand, as Fresno has grown there has emerged attitudes among many residents that point to a more urban, interconnected and neighborhood oriented way of life.

These will likely lead to a robust discussion in the General Plan Update about growth in the future, how and where it should occur. The citywide Development Code Update and the zoning of the City will reflect the determinations made in the General Plan Update and residents' concerns about development and revitalization.

RECOMMENDED APPROACH

2-A: ESTABLISH DISTRICTS AND SUBDISTRICTS OUTSIDE DOWNTOWN TO IMPLEMENT PLAN POLICIES ON CORRIDORS AND ACTIVITY CENTERS

Areas outside Downtown that the current General Plan has identified as corridors and activity centers should have zoning and development standards that will implement Plan policies. These areas also are likely to be the earliest opportunities to create interconnected neighborhoods and districts.

New or modified zoning can be designed to create compact centers that will then form the focus of Fresno's neighborhoods. Subdistricts may be needed, consistent with the General Plan, which reflect the unique characteristics and needs of individual areas.

Most of the corridors are lined with strip retail centers. It is anticipated that many of these strip centers will be re-configured into compact centers that may also be mixed use. Zoning will need to support this place-based redevelopment.

There are also designated corridors that are not presently lined with strip centers. Development standards should direct the development of these corridors into mixed-use, focused centers, and prevent auto-oriented development from occurring.

Finally, activity centers should be planned as compact communities complete with a range of housing types and densities, retail support, employment opportunities, public space and civic uses, and development standards in the new Code should support these planning objectives.

2-B: TAILOR DEVELOPMENT STANDARDS TO MIXED- USE DEVELOPMENT

As the City implements the current General Plan goals for compact activity centers with a mix of uses, which are likely to be affirmed in the Plan Update, it will be important for development and design standards for mixed-use development area to be added to the Code based on the General Plan's goals for design quality. The fundamental standards that should govern mixed-use are:

- Include residential and commercial uses mixed either vertically or horizontally.
- Include public space or public use integrated with the development, which may be in privately-owned public open space.
- Interconnect all uses with pedestrian paths that are clear, safe, lighted and shaded. Each tenant, resident and business to be directly connected with a pedestrian path.

- Connect the pedestrian network to the public right of way and transit stops/stations with appropriate benches and shelters.
- Visually diminish parking from the public right of way through site planning (likely in the rear), “upholstered” with active uses, otherwise designed as secondary and visually screened.
- Require pedestrian paths through parking areas to be clear, lighted and shaded.
- Integrate architectural design throughout the mixed-use project.

Applying appropriate and suitable locational, form-based, and operational standards and limitations can result in a higher level of predictability in the quality and character of development. A predictable, well-illustrated, and simplified Development Code can also promote mixed-use by directing the developer/designer to options that are clear and feasible and also allow the City to approve design solutions that may be a form of “alternative compliance” as long as public benefits are provided. Incentives such as increased building height or intensity, greater residential density or streamlined processing can also be offered through zoning to make mixed-use projects financially feasible.

2-C: ESTABLISH SUBDIVISION DESIGN STANDARDS TO CREATE COMPACT NEIGHBORHOODS AND COMMUNITIES

The most interconnected neighborhoods and districts are those that are somewhat compact in form and tend to blur the lines between uses. Often they include residential and retail uses mixed either vertically or horizontally. They also may include public gathering spaces, public pedestrian ways, civic uses and a mix of residential housing types. The most successful such neighborhoods and districts are also typically located on transit lines. With this in mind, focusing the Code Update on creating mixed use zoning and development standards tailored to Fresno will be an effective way to implement the “compact neighborhoods” concept.

Connectivity can be achieved in new subdivisions and planned communities through subdivision design standards that require:

- Narrow interconnected streets, lanes and alleys forming blocks that should possibly not exceed 200 feet by 300 feet or 1000 feet in perimeter.
- A clear, safe, extensive pedestrian network of paths, trails, sidewalk, plazas and paseos that interconnect all uses. The network should focus on the community core and access points to public areas such as bodies of water, open space, recreation areas and other public amenities. A range of housing types and lot sizes, including an allowance for a percentage of small lots that may be less than the neighborhood “standard”.

- Mixed use, including residential, retail, employment and civic.
- Graduating density from a community or neighborhood core outward.
- A well defined center including civic uses and transit connections.

2-D: CREATE STANDARDS TO SUPPORT WALKABILITY

Development standards should mandate connectivity through a comprehensive approach to pedestrian circulation and land use adjacencies. For example, physical barriers between retail centers and surrounding residential neighborhoods should not be allowed unless opportunities for easy walking access are provided. Similarly, parking areas should be designed to provide safe and pleasant pedestrian ways that connect retail shops and plazas with surrounding sidewalks and transit stops. Pedestrian ways should be landscaped to provide shade and created an inviting positive experience for the pedestrian.

Pedestrian orientation of development also contributes to the walkability of an area. Some of the standards that can be included in the Code to regulate pedestrian orientation are:

- Property frontage should have at least one pedestrian path from the public side walk that is distinguishable from other hardscape, four or more feet in width, well lighted, shaded and constructed of permanent materials.
- Pedestrian paths through parking lots should be separated from vehicular access areas by physical barriers except when crossing driveways or aisles.
- Pedestrian paths should be an interconnected network that provides pedestrian access between all uses and the public right-of-way.
- Residential areas should be connected to adjacent retail areas with pedestrian paths in a regular pattern along the length of the adjoining property line.
- A “menu” of pedestrian and bike paths should be provided in the Development Code standards. Certain types of paths should be located in public easements to provide unobstructed public access.
- Clear policies and standards that define the types, dimensions and location of sidewalks and pedestrian and bike paths should be included to ensure effective walkability.

Streetscape standards that would apply to new subdivisions can support the pedestrian through pop-outs at intersections and traffic calming measures to increase connectivity in all neighborhoods and ensure the safety and ease of pedestrian travel. These standards should also include requirements for landscape that provide shade and street furniture oriented to the pedestrian. Alleys may be required in some areas as pedestrian/bike ways

with active uses. Additionally, the City's street design standards could allow for non-contiguous sidewalks in certain situations with coordinated street trees to fit with the urban forest that exists throughout Fresno.

2-E: IMPLEMENT DEVELOPMENT STANDARDS TO CREATE AN ENGAGING STREETScape

In terms of city and neighborhood design, it is the spaces, linkages, landscape and architectural design that happen in the public realm and between buildings that create the environment we all enjoy in Fresno. The interior of buildings are important to their occupants of course, but it is what happens between the buildings that affects the population in general.

Insofar as our public and private streets are the primary public realm in our cities, the standards for the siting, height and setback of buildings creates the space we occupy as the public. The nature of the first 30 feet of a building has been said to be the primary determinant of urban design quality. Along with that, the uses and fenestration at the lower levels is what creates the "life" in our cities. In order to create active streets and street walls in Fresno, standards for new development outside Downtown could accomplish the following:

- Buildings that are part of a street wall should adhere to a "build-to line" that mandates where the front of the building is sited to create or extend the street wall.
- Building heights at the street should be carefully determined and specified to create the desired scale at the street.
- Entrances and, in some instances, porches on the street should be mandated and their spacing determined.
- The degree of "transparency" of the street wall should be determined (for example 50 percent of a frontage to be windows, display cases or glass doors) to avoid blank walls for long stretches.
- Building offsets and courtyards should be required on specified frontages as a way to modulate the street wall and create a sense of pedestrian orientation.
- Building materials and design elements, such as awnings and shade trellises, should be regulated, where appropriate. Shade is necessary, overly commercial applications that serve as signs may not be.
- Landscape at the street wall should be required where needed to soften a building's appearance. For example a certain measure of trees could be part of the street wall.

Recommendation No. 3: Achieve High Quality Design

SETTING

As Fresno continues to grow, the design of what is built, rehabilitated and redeveloped becomes ever more important. When densities are low and open spaces characterize a city, design may take a back seat in zoning administration. When a city urbanizes to some degree and people live closer to one another, how the built environment is designed and arranged has a greater and greater impact on the overall quality of life and sense of place.

Fresno has been characterized in recent years by suburban sprawl, with areas often developed independent of other areas and no overall sense of urban design and community character. Increased population and infill development will change that, exacerbating conflicts and incompatibilities. With that in mind, even the design of conventional suburban development should now be evaluated in light of future needs and designed to be compact and integrated with surrounding neighborhoods.

GENERAL PLAN POLICIES

The 2025 General Plan contains a number of policies that provide direction for the physical character of development, including building appearance and design compatibility, to implement the vision of a well designed community:

- C-8-d. Ensure land use compatibility between mixed-use districts in activity centers and the surrounding residential neighborhood.
- C-12-d. Plan for the appropriate location, size, and distribution of neighborhood and community commercial uses to implement the planned urban form, promote the stability and identity of neighborhood and community areas, and allow efficient access without compromising the operational effectiveness of planned major streets.
 - Neighborhoods should be anchored by commercial centers with a mix of uses that meet the area's need to achieve activity centers that create a sense of place.
 - Community commercial centers should be located at designated activity centers.
 - Retail commercial goods and services shall be provided in planned unified shopping centers, carefully designed small-scale commercial centers, and in neighborhood-oriented stores.

- C-15-e. The city shall create and adopt special administrative procedures, development standards, and planning/design criteria to expedite infill projects.
- C-16-a. The city shall review its planning principles, development regulations, and public service, transit and infrastructure policies and programs to incorporate “Transit Oriented Development” and “Traditional Neighborhood Development” approaches.
- C-16-c. The city shall review and revise city codes to eliminate constraints on design flexibility for higher density projects constructed in infill areas.
- C-20-f. The project developer shall provide a set of documents and drawings that will allow assessment of the final building product. Materials, texture, and colors shall be noted on the original special permit drawings and on construction plans.
 - Development projects shall appropriately interface with adjacent properties.
 - High-contrast or gaudy building facades, lighting and signage which create disharmony with adjacent properties, or which draw undue attention, should be avoided.
 - Locate service truck access, loading zones, and waste storage/recycling areas at the maximum practical distance from residences and other living quarters.
 - Shopping centers shall have internally unified building design, landscaping, and signage.
 - Building facades shall include design features and decorative treatments. Visible sides of buildings shall not develop with featureless, “blank” walls.
 - Adequately screen roof-mounted mechanical equipment, and ensure that such equipment adheres to noise standards as set forth in the General Plan Noise Element and City Noise Ordinance.
 - Apply and enforce the city's Sign and Outdoor Advertising Ordinances. Pursue the amortization and removal of nonconforming and illegal signs and outdoor advertising structures.
 - Landscaping and parking lot shading shall be employed for environmental and aesthetic improvement, while observing safe lines-of-sight along access routes.
 - Exterior lighting shall not create glare for neighboring properties, but shall provide adequate on-site lighting for safety and security purposes.

Many of these policies may be affirmed through the General Plan update and carried forward into the new General Plan.

CURRENT STANDARDS AND DESIGN GUIDELINES

The Zoning Code currently contains few design related standards and no design guidelines. The City has in place some design guidelines to control the overall design of projects in general. These documents embody concepts that are likely to remain in the General Plan and also contain ideas that could well be translated into Development Code standards. These documents are:

- **Residential Infill Design Guidelines.** This document contains design guidelines for infill parcels that have either been bypassed by development, are vacant and/or largely surrounded by urban uses. The guidelines address submittal and compatibility report requirements along with issues such as building placement and scale, entrances, pedestrian and vehicular access, visual image, landscaping, fencing and a menu of desired features.
- **City-Wide Design Guidelines.** These guidelines apply to the entire area governed by the General Plan. The document includes rather general, text-based guidelines governing site design, building design, landscaping and signage. The Site Design section deals with issues such as building siting, setbacks, parking, compatibility, pedestrian and bicycle ways, parking siting and screening. The Building Design Section deals with architectural design and consistence, rooftop equipment, scale, materials and energy conservation. The Landscaping section guides planting design, lighting, street trees, parking landscape and maintenance.

These guidelines are enlightened in the thinking about Fresno as pedestrian oriented city with well-scaled, well design buildings. However, there are no illustrations or graphic examples, and the document is very general in nature. Many of the concepts in the City-Wide Design Guidelines could be translated into development standards and included in the Code update.

- **Commercial Development Design Guidelines for Ventura/Kings Canyon Road Corridor.** The purpose of these guidelines is to establish a consistent and logical approach for the Redevelopment Agency to follow when reviewing entitlement plans along this corridor and within the South Fresno Revitalization Area.

Guidelines and standards are included for mixed-use development, building location and site organization, building design and signage. The guidelines generally support pedestrian orientation, active street frontage, reduced parking impact through location, screening and pedestrian walkways, open space, creative building design and sensitive signage. This is an enlightened, illustrated

document that clearly values an active, pedestrian-oriented environment; many of these concepts could be translated into development standards and included in the Code update.

- **Tower District Specific Plan Design Guidelines.** These guidelines are organized into sections that include: General Neighborhood Structure Guidelines, Medium Density Residential Guidelines, Medium-High and High Density Residential Guidelines and Commercial Mixed-Use Guidelines.

The General Neighborhood Structure Guidelines address issues such as street interconnectivity, block lengths, alleys, lot layouts, building arrangements street and sidewalk design, setbacks, building orientation, building massing, parking areas, pedestrian access, façade elements, roofs, siding, balconies, porches, fencing, accessory buildings, mechanical equipment and lighting. In general, these guidelines focus on creating an urban, active and interconnected pedestrian-oriented community through a grid street pattern of small blocks with an active street wall.

The Medium-High and High Density Residential Guidelines address issues such as building types, lot size, building placement, yards and building height, parking and parking structures, pedestrian access, open space, façade elements, rooflines, porches, façade articulation, fences, accessory buildings mechanical equipment and lighting. In general, urban scale, pedestrian-oriented buildings with concealed parking are favored, and suburban-style apartments are discouraged.

The Commercial Mixed-Use Guidelines first define the components of a mixed-use area as a combination of pedestrian oriented retail, offices, residential uses mixed. The guidelines include lot size, building placement and setbacks, height, parking design, landscape, structures and access, open space, façade elements architectural design, storefront design, building entrances, façade elements, outdoor dining, retail space sizes, signs and accessory buildings.

These guidelines are very thorough and effective in setting the stage for a well-connected, urban, pedestrian-oriented community. Illustrations also help convey the concepts with clarity.

- **Performance Standards for Parking Lot Shading.** This is a landscape-focused guideline that requires at least 50 percent shading of parking lots within 15 years. In essence, a shade tree is required for every two parking spaces. This is a very practical and valuable guideline that makes parking lots more sustainable by reducing heat islands.

- **City of Fresno Redevelopment Agency Industrial Development Design Guidelines.** The intent of this document is to establish uniform guidelines for land designated as industrial in the redevelopment areas. The text is very general, addressing property development standards, architecture and design, building form and materials, roofs, colors, building setbacks, landscaping, lighting, walls and fences, off-street parking, service and storage yards and loading docks, storage areas, loading spaces, utility equipment, mechanical equipment, refuse and recycling and signs.

These guidelines do not foster the same vision of Fresno exhibited by the other guidelines as a pedestrian oriented, well-scaled active city.

In general, the guidelines currently in place are useful in describing Fresno's urban neighborhoods as pedestrian oriented with buildings of appropriate scale, active at the ground level. As noted above, many of the concepts in the guidelines could be readily translated into development standards and included in the Code update.

ISSUES

In interviews with many stakeholders, the theme that re-occurred was the idea that Fresno is unique. It is not like any other city. This doesn't mean that citizens do not appreciate the assets of other cities, particularly those in the West, but there's no real desire to become "someone different".

With that in mind, it is recommended that update zoning standards reflect the true spirit and nature of Fresno. This means "keeping it real" to many with achievable densities and building design.

Some other things heard from the stakeholder interviews:

- There is considerable support for "smart growth" principles of narrow streets, pedestrian orientation, mixed use development, urban development, containment of growth, transit orientation and the like.
- The suburban nature of the present code is mentioned frequently, and many of those interviewed suggested support for bringing it into a more urban mode.
- The new code needs to be more illustrative and coordinated.
- The current code does not seem to encourage and support creative solutions, mainly because of an implied preference for suburban development patterns.

RECOMMENDED APPROACH

3-A: ADOPT STANDARDS THAT ADDRESS THREE PRIMARY SUBJECTS OF DESIGN

The objective of design standards is to regulate projects within three broad areas of concern. All categories of design standards should address these three subjects:

- **Site planning** standards should address issues of building location, setbacks, open space, connectivity, access, site walls, grading, parking lots and coverage – both minimum and maximum. For example, in some conditions, building will be mandated to locate at build-to lines, in others, front setbacks are important. Access from alleys when available should be mandated.
- **Structures and buildings** design standards are concerned with all “vertical” construction. This includes occupied buildings of all uses, but also parking structures, accessory buildings and any other unique structures. Examples of design guidelines are massing, height, active frontages and transparency, materials, compatibility and style.
- **Landscape** design standards will determine the treatment of plazas, open space, common areas, building landscape and parking lot landscape. The urban forest of Fresno is unique and should be extended. Landscape standards will also address shading requirements to enhance the pedestrian experience as well as reduce heat islands.

3-B: ESTABLISH DETAILED DESIGN-RELATED STANDARDS

As discussed in Recommendation 1, the updated code should be more illustrative in nature and represent ideas through diagrams and text. Design review will likely continue to be conducted by City Staff and the Planning Commission during the project review process. That review will be based on standards in the Development Code and Design Guidelines in the General Plan. Types of design standards that could be included in the Development Code update are:

- **Residential and Commercial Design Standards** that regulate the site planning, mass, height, facades, compatibility, setbacks, parking lots and parking garages. Design standards for each level of density (population) should relate to anticipated building types and be well illustrated for clarity.
- **Infill Design Standards** that address the issues of compatibility and small lot challenges. Standards that mandate entrances to the street, adhering to build-to line and design compatibility will by their nature result in connectivity with the surrounding neighborhood.

- **Multi-Family Design Standards** to address issues such as parking design and location so it is a supporting use and concealed from the public realm. Street and intersection build-to lines and building entrance requirements can further the concept of connectivity. Standards requiring all facades facing the public realm to be treated with equal importance will serve to improve the overall design character of neighborhoods. When designed as infill, multi-family development standards regarding massing and compatibility are equally important.
- **Higher Density and Mixed-Use Standards** to achieve desirable areas and compatible design. Techniques such as build-to lines and requirements for first floor active uses and transparency that ensure a continuous and active street frontage. Requirements for porches and balconies to bring life to the street. Standards may require the provision of public amenities such as open space and landscape with higher densities in urban areas. Requirements for the retrofitting of “missing” pedestrian paths and links will make the increase density “fit” better in the neighborhood. Other techniques can encourage building forms and types that “conceal” density through design that is compatible with the surrounding development.
- **Standards to Recognize and Promote Unique Design Characteristics of Neighborhoods** should be tailored to reflect the unique characteristics of distinct areas.
- **Public Realm Standards** to address the connection to streets and sidewalks. Standards that set requirements for access, landscape and treatment of the public realm could also include hardscape, lighting, safety and siting.
- **Parking Design Requirements** should ensure parking areas are well designed so that they enhance the public realm and do not detract from it. This may be achieved by requirements for setbacks, landscaping, and screening of parking areas. Parking should be designed to incorporate shaded pedestrian ways connecting with the street sidewalks, transit stops and surrounding residential development. Structured parking should not be exposed to the public realm, but rather should be concealed by buildings, “upholstered” by active uses or otherwise made to blend into the design of the overall development.
- **Sustainable Design Standards** may address features such as water conservation, reduction of heat islands, energy conservation, alternative energy sources, day lighting, natural ventilation and Brownfield development.

All standards should be reflective of the community. Make it “Fresno” is fundamentally the sum total of the ideas outlined above. This entails capturing the right density in each neighborhood, developing standards

that reflect the local climate, guidelines that reflect the community's design values and are all feasible and achievable.

3-C: MAKE THE DESIGN STANDARDS CLEAR AND MEASURABLE

The success of the design standard in the Development Code will be a function of how clearly they are presented and how measurable they are. This is important both for the applicant as well as City staff as they administer and enforce the Code.

There was a strong sense among many stakeholders that Fresno should streamline and simplify discretionary review of projects and their associated "design" permits. Through clear and measurable design standards to implement the community's vision with predictable results, this may be possible. If a project proposal can be measured against standards, a more positive and direct process is possible. As a result, the community and decision-makers may be confident their vision is being implemented and may reduce its watch over individual projects, allowing more projects to be approved administratively.

3-D: STRUCTURE THE CODE TO ENSURE GOOD DESIGN

As discussed in the section on "Approaches to Zoning", Fresno's Zoning Code primarily follows a traditional scheme of separating the community into different "use districts" (e.g. residential, commercial, industrial, etc.) and there is little guidance on urban form or performance-based expectations.

As part of the Development Code Update, the City could incorporate additional urban form-based standards to implement the concepts discussed in Recommendation 3-A above.

Physical form-based standards should be integrated with performance and use regulations where appropriate to achieve and protect the valued overall character and environment that is truly Fresno.

Recommendation No. 4: Support Economic Growth

Maintaining a healthy economy and creating quality jobs for residents is of primary importance to Fresno. To maintain a balance between physical growth and economic growth, Fresno must devote resources to economic development. It must provide investors with enough land appropriately zoned and improve the ease of doing business in the City. Through well-crafted regulations, the Zoning Code can maximize the City's economic development "pluses" and support job creation, while also mitigating the impact of its challenges as well as ensuring that growth does not create undue impacts on its neighbors.

EXISTING REGULATION OF ECONOMIC ACTIVITY

Fresno's existing Code has ten commercial zones and four industrial zones. They include Administrative and Professional Office (C-P), Neighborhood Shopping Center (C-1), Limited Neighborhood Shopping Center (C-L), Community Shopping Center (C-2), Regional Shopping Center (C-3), Central Trading (C-4), General Commercial (C-5), Heavy Commercial (C-6), Commercial Recreation (C-R), Commercial and Light Manufacturing (C-M), Industrial Park Manufacturing (M-1-P), Light Manufacturing (M-1), General Manufacturing (M-2), and Heavy Industrial (M-3). There is also a zone specifically designated for storage facilities (S-L). While there are overlaps in uses from one district to another, each zone generally has its own distinct set of uses, with the most intense commercial uses limited to the heavy commercial or industrial zones.

During the course of interviews with community leaders for the General Plan Update, a number of key themes related to economic growth emerged. These themes included addressing challenges and threats to improve overall economic competitiveness, increasing employment opportunities for residents, and maintaining and improving community livability while not stifling economic recovery and prosperity. Specific recommendations included identifying and improving potential growth areas so they are entitled, zoned, and served with infrastructure appropriate for industrial development and expanding Fresno's economic base to new industries. Attracting and retaining jobs and industry was identified as one of the greatest challenges facing the City today.

RECOMMENDED APPROACH

The City should consider the following strategies to support economic growth through the citywide Development Code Update.

4-A PROVIDE INCENTIVES FOR JOB-GENERATING USES

In order to help bring the City's total jobs into balance with its housing, Fresno should take steps to attract businesses and industry with a high ratio of employees to floor space. The City could provide incentives for this type of use in a variety of ways. For example, the Code might allow targeted industry to receive priority application processing or set strict limits on the length of time that the City can spend considering applications for this type of development. A more comprehensive approach might include creating a general "employment" use classification that includes targeted industries. The Code would then permit this use wider freedom in location, design, and development standards. By doing this, Fresno will increase its ability to compete with other regional cities for jobs.

4-B PROVIDE DEVELOPMENT AND PERFORMANCE STANDARDS FOR COMMERCIAL AND INDUSTRIAL USES

When revising use regulations, the City should be sure to reevaluate and expand its regulation of uses that create potential incompatibilities with surrounding properties. The City should provide standards for uses that create potential nuisances where appropriate. Drive-through restaurants, live entertainment, auto repair, and other similar uses should have explicit performance standards to ensure that their operation does not intrude upon the use and enjoyment of adjacent property.

Finally, the City should allow a number of current conditionally permitted uses and uses subject to site plan review by right. The City should permit uses that do not raise substantial nuisance or safety issues as long as it couples them with physical development standards to ensure smooth integration into the urban fabric.

All of these modifications to the existing use classification system and development standards will work to reduce the need for discretionary review of new development. With clarified requirements and a more comprehensive scheme of use classification, approvals will encounter fewer delays, with heightened assurances of appropriate development and compatibility with adjacent properties.

4-C ALLOW LIMITED COMMERCIAL DEVELOPMENT IN APPROPRIATE RESIDENTIAL DISTRICTS ("CORNER STORES")

Many neighborhoods in Fresno could benefit from small-scale commercial development that serves local needs. Currently, this type of use is not allowed in residential zones, but Fresno should consider allowing low-

intensity commercial uses in some of these districts. This concept could be implemented by allowing limited commercial development through with conditional use permit approval and subject to specific findings to ensure neighborhood compatibility.

By allowing small commercial development in these districts, Fresno could both provide a new avenue for economic growth and enhance the accessibility of commercial properties for many residents in the area. Small-scale, local-serving commercial properties are ideal for small businesses.

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Recommendation No. 5: Streamline Development Review and Approvals

Zoning provisions governing development review and other administrative matters create the procedural environment through which the City can achieve the goals and policies laid out in its General Plan and other adopted policies. At their best, development review provisions can promote the type of development a community wants by providing a clear, predictable path to project approval; conversely, vague review processes with unclear requirements can cause developers a high level of anxiety, frustrate community residents, and severely dampen a City's ability to attract desirable growth. Generally, prospective developers value three central qualities in any administrative code: certainty in the requirements and structure of the review process, built-in flexibility to adjust development standards to the needs of individual projects, and opportunities to request relief from requirements that constitute a substantial burden. Certainty about the types of development they can expect to see in their community is also important to residents. The degree to which Fresno can incorporate these qualities into its Development Code will help improve its ability to compete for development in the near future.

The flexibility of a Development Code is largely defined by its hierarchy of uses and their required permits. This hierarchy establishes the different levels of review the Code requires to make various types of zoning decisions. These decisions typically range from a relatively informal counter staff review of proposed uses and structures for compliance prior to the issuance of a building permit or business license to more formal and complex procedures requiring public notice and a hearing before the Planning Commission prior to issuance of a use permit or other discretionary zoning approval.

The primary factor influencing a project's place in the hierarchy of uses is whether the proposed use is permitted "by right" or allowed subject to certain conditions, or whether a Conditional Use Permit, with review by the Director, is required. This determination is a reflection of community issues and concerns that should be embodied in the General Plan. Decisions about where an application fits in the hierarchy may also, however, be influenced by how a jurisdiction selects and designs administrative techniques. It is often possible, for example, to reduce the review threshold for a particular type of application (i.e. place it lower in the hierarchy), by increasing the specificity of development standards and performance-based criteria, along with a related increase in one or more of the following:

- Scope of public notice for neighborhood input;
- Length of time for public review; and

- Opportunities for informal public review and consultation with community organizations.

The new Code should set forth clear administrative procedures to be followed for all types of zoning decisions. The level and extent of administrative process required for different types of decisions will vary. However, for even the simplest administrative procedures, the Code should, at a minimum, establish unambiguous authority for approval.

The Development Code Update provides an opportunity to adjust review thresholds based on analysis of the types of issues and projects in the City that have typically generated the most interest and concern. Generally speaking, responsibilities should be assigned with a view toward minimizing the number of players involved in making any given decision, while increasing opportunities for meaningful public input.

Although some codeusers find the City's existing review process overly burdensome, in reality, it is not, especially when compared to many other California cities. Perhaps the most significant shortcoming of the existing code is its complex and confusing structure, which is reviewed under Recommendation Number 1 in greater detail. Simply reorganizing the existing regulations would be a meaningful first step toward streamlining existing procedures because this action alone would make the Code's provisions much easier to locate, use, and understand. Streamlining procedures is not simply making the approval process faster, it is about providing certainty in the requirements and structure of the review process and providing built-in flexibility to allow the community to say 'yes' to the development it wants. In addition, the Code includes a number of procedural features that may warrant repair or updating.

REVIEW AND DECISION-MAKING BODIES

Fresno's zoning regulations divide decision-making authority among a number of bodies and officers, as outlined below.

Planning Director

The Planning Director fulfills a variety of functions, including receiving and examining applications for Special Permits (Variance, Conditional Use Permit, and Site Plan Review), Lot Line Adjustments, Parcel Mergers, and Parcel Maps; interpreting the zoning regulations; and conducting public hearings; and deciding on requests for reasonable accommodation, deviations from Code requirements and modifications to development standards. The Director also determines whether uses not specifically listed in the Code are similar to listed uses.

Certificate of occupancy, which is required for any building or structure erected, constructed, altered, repaired, or moved; the use of vacant land; or the change in character of the use of land, is required to be obtained from the Planning Department under the direction of the Director.

Planning Commission

The Planning Commission primarily is responsible for review of tract maps. It also recommends actions to the City Council regarding land use and development, including amendments to the Zoning Map, Development Code, and General Plan. When considering the approval of a rezoning or subdivision, the Planning Commission may deny, approve, or give a conditional approval conditioned on a number of modifications or requirements. The Planning Commission also hears items referred by the Planning Director and appeals of Director decisions.

City Council

The City Council delegates authority for implementation; however, it is ultimately the final decision-making body for all zoning-related issues. It sets fees and processing costs for applications. The City Council hears and decides recommendations from the Planning Commission on Code and General Plan amendments; it also hears all appeals from the actions of the Planning Commission. Its decision is effective immediately and is final for all purposes.

Council District Implementation Committees

Council District Implementation Committees were formed to provide the opportunity for citizen review on every entitlement request and act as advisors to the Planning Commission and Council on the adopted plans in each council district. Committees review and provide recommendations on every application for a plan amendment, rezone, tentative or parcel map, conditional use permit, site plan or variance to develop property within the committees' boundaries.

PERMITS AND APPROVALS

Table 2 summarizes the types of discretionary land use and development permits and approvals that the current Code authorizes, and lists the authorities that can issue these approvals.

Table 2: Discretionary Approvals and Issuing Authorities

<i>Permit Type</i>	<i>General Purpose</i>	<i>Issuing Authority</i>
Conditional Use Permit	Required for some uses to establish conformance with the Code, General Plan, or other plans and policies, as well as compatibility with adjacent properties.	Director
Variance	Allows the modification of one or more site development standards that cause unnecessary hardship.	Director
Site Plan	Ensures applicable provisions of the Code are complied with and adverse impacts are avoided.	Director
Parcel Map	Subdivision of land that create four or fewer lots.	Director
Lot Line Adjustment	Modification of parcel boundaries without the creation of new parcels.	Director
Parcel Merger	Merging of more than one parcel.	Director
Deviations	Allows the modification of up to 10% of property development standards.	Director
Modifications	Allows modification of property development standards to accommodate the creation, by subdivision, of multiple ownership of property that is developed as a unified project.	Director
Certificate of Occupancy	Ensure compliance with the Code.	Planning Department
Tract Maps	Subdivision of land which create five or more lots.	Planning Commission

NONCONFORMING USES AND STRUCTURES

Nonconforming uses and structures are those that do not comply with current regulations and standards. Currently, Fresno’s Code prohibits the expansion, enlargement, extension, or replacement of any nonconforming use and requires that all changes to nonconforming structures bring the site into full compliance with Code provisions. Nonconforming uses abandoned for one year may only be used in accordance with the regulations for the district in which it is located. Uses or structures suffering damage over 50 percent of their value may not be restored without being brought into full compliance with current regulations and standards.

Section 12-317 of the current Code requires the termination of nonconforming commercial or industrial buildings in R districts and residential buildings in M districts in compliance with a prescribed amortization schedule unless specifically permitted. The schedule is presumable designed to allow a user to continue the nonconforming use for a “reasonable amount of time” to enjoy the benefits of its economic life. However, the City has not enforced the amortization requirements; it may be appropriate to reconsider the amortization provisions.

ISSUES

LARGE NUMBER OF DISCRETIONARY PERMITS

The current Code appears to permit a wide variety of uses and development projects by right. However, in many cases these uses are actually subject to site plan review. In fact, just about all projects in the City except for single-family residences are subject to site plan review.

Site Plan Review, Conditional Use Permits, and Variances are considered “Special Permits”. The process for each type of Special Permit is generally the same, an application is reviewed by the Planning Department and referred to various agencies and departments and the applicable District Implementation Committee. The agencies and departments and the Committee forward recommendations and conditions to the Planning Department who consolidates and attaches them to the application. There is no public notice given before a decision is made on an application for a Special Permit. The Director reviews the application and conditions and approves, modifies, denies the application. The Director may also refer the application to the Planning Commission for consideration. A notice of the Director’s decision is sent to the applicant. In the case of Conditional Use Permits and Variances, a notice of the Director’s decision is also sent to neighboring property owners within a minimum 300-foot radius of the project site, standard practice is to notice property owners within a 350-foot radius of the project site. There is a fifteen-day period in which an interested person may appeal the Director’s decision to the Planning Commission.

Many jurisdictions have also been able to reduce the number of uses that require discretionary review by amending their codes to include carefully crafted standards and restrictions that are specific to particular zoning districts, clearly-defined physical locations, or uses and implement the community’s vision for the design of the built environment with predictable results. As a result, the community and decision-makers may be confident their vision is being implemented and may reduce its watch over individual projects, allowing more projects to be approved administratively.

There are a variety of approaches the City could use to reduce the number of uses requiring review, including permitting more uses by right subject to:

- Compliance with form-based development and design standards that could be added to the Code based on the General Plan’s goals for design quality;
- Compliance with new standards and requirements that reflect “standard conditions” that are typically imposed when such uses have been conditionally approved by the Director or Planning Commission; and

- Compliance with specific limitations on location, floor area, hours of operation, and similar features that are the source of potential adverse impact.

The incorporation of “limited uses” makes it possible to eliminate discretionary review for those uses that meet specific standards and limitations and do not exceed specified threshold criteria. The Code could offer a discretionary option (using a Site Plan Review process) to applicants who can demonstrate that the proposed use is consistent with the purposes of the district and would be compatible with surrounding uses, even though it does not meet all of the standards and limitations. This would allow needed flexibility and allay concerns that may arise from those who think the proposed standards are too rigid. Conditional Use Permits would be reserved for uses that pose potential or significant land use compatibility issues.

NO DIFFERENTIATION BETWEEN NONCONFORMING USES AND STRUCTURES

Legally established uses and structures that do not comply with existing land use regulations could be a problem if Fresno tries to promote infill development or more specific design standards. This situation could place undesirable pressure on uses that do not fit new Code regulations but are otherwise well established, benign, or even beneficial to the surrounding neighborhood.

The City may want to consider a tiered system that distinguishes between those nonconforming uses that are small and relatively benign and those that are detrimental to surrounding owners and residents. This approach would provide more flexibility than the current requirements. Examples of benign nonconforming uses include those that have been inherited from the County or otherwise became nonconforming in an inadvertent manner. The Code could be changed to make it easier to upgrade those nonconforming properties that do not substantially conflict with General Plan policies and to eliminate those activities and structures that are clearly incompatible with and detrimental to surrounding uses. A tiered system could include a procedure for licensing nonconforming uses that grants property owners the privilege of continuing nonconforming activities subject to certain requirements.

This type of strategy for dealing with nonconforming situations recognizes that nonconforming uses and structures are not all the same. Some are the type of “nasty but necessary” activities, such as auto repair shops that generate noise, odors, dust, and traffic or require the use of potentially hazardous materials or procedures. Other nonconforming situations, such as billboards and adult businesses, may have little or no value to the community but may be shielded by statutes and case law. Another category is made up of buildings and uses that help to define the distinctive character of a neighborhood or district—a long-time commercial use in a residential

neighborhood or older homes that have substandard yards or inadequate parking. This category may also include nonconforming multiple dwelling structures that are an important community resource because they provide affordable housing.

Fresno could establish a process that applies different rules to:

- Benign nonconforming uses that could remain indefinitely;
- Uses that should be replaced at some time in the future in order to implement the General Plan's long term objectives where redevelopment and/or reuse is unlikely in the near term because of economic or market considerations;
- Uses that are inconsistent with the Plan and zoning regulations, will impede implementation of the Plan, and are detrimental because of health, safety, or substantial aesthetic impacts; and
- Conforming uses with non-conforming site standards, such as parking or landscaping or setbacks.

Alternatively, the City may wish to consider the creation of a "sphere of influence" for evaluating nonconforming uses and their impacts, using performance standards relating to proximity.

LACK OF A FULLY STREAMLINED REVIEW PROCESS

In the last few years, a number of jurisdictions have re-organized their application and review procedures to make it easier to obtain the necessary approvals, particularly for innovative quality and economic growth types of development. Revisions may include removing or combining unnecessary steps in the review process, publishing a step-by-step guide, or creating a one-stop center where planning and building permits could be applied at one centralized location. This phenomenon is driven by a genuine desire to improve planning procedures and a realization that developers are more willing to invest or locate their business in town if the review process costs less time and money.

Processes and procedures related to zoning such as review of applications, and notice of decisions could be further improved to shorten waiting time.

RECOMMENDED APPROACH

The City should consider the following strategies to streamline development review and approval.

5-A: REDUCE RELIANCE ON DISCRETIONARY REVIEW

The Code should allow more uses and other approvals "by right" or subject to appropriate and suitable locational, form, and operational standards and limitations and without discretionary review of building and site design. This recommendation also applies to those uses that appear permitted in

district provisions but, in fact, are subject to Site Plan Review. By allowing these uses by right, Fresno will not only speed the development process, but also provide additional certainty to prospective developers that their projects are allowed and encouraged.

The Development Code Update provides an opportunity to adjust review thresholds based on analysis of the types of issues and projects in the City that typically generate the most interest and concern. Generally speaking, responsibilities should be assigned with a view toward minimizing the number of players involved in making any given decision, while increasing opportunities for meaningful public input.

The City should allow for administrative approval for projects that meet the standards in the new code. Allowing staff to issue a Zoning Clearance for projects they determine meet the standards in the new code rather than requiring all projects be subject to Site Plan Review could do this, creating more certainty in the process for both the community and developers.

The successful implementation of this procedural strategy would also require the City to create a third category of allowed uses in each district between those that are permitted and those subject to review. This set of “limited” uses would function as permitted uses so long as they conform to certain development standards or do not exceed threshold intensities. Uses that exceed threshold intensities or otherwise do not conform to the stated limitations would then require a Special Permit.

5-B: RECOGNIZE DIFFERENCES AMONG NONCONFORMING USES AND STRUCTURES

The City could adopt a new approach to regulating nonconforming uses that would allow it to distinguish among categories of nonconforming uses that should be regulated differently. Benign uses (e.g. those that have no impacts on neighbors) would be treated differently from potentially harmful or detrimental nonconforming uses. Such a system could apply different rules to:

- Benign nonconforming uses that could remain indefinitely, as determined by the Director and subject to conditions or limitations, with provisions for revoking its “benign” status if new nuisances arise;
- Uses that should be replaced at some time in the future in order to implement the General Plan’s long term objectives where redevelopment and/or reuse is unlikely in the near term because of economic or market considerations; and
- Uses that are inconsistent with the General Plan and zoning regulations, will impede implementation of the Plan, and are detrimental because of health, safety, or substantial aesthetic impacts.

- In this classification system, benign uses are those that do not have the potential to adversely impact surrounding properties. A small grocery store or office could be classified, for example, as benign, while an engine rebuilding business, auto body shop, or adult bookstore could not. The zoning update would include the formulation of test parameters to classify a nonconforming use as benign, which may include the following:
- Does not generate noise or odors incompatible with surrounding uses;
- Does not create significant traffic; and
- Does not involve activities or processes that are potentially harmful or dangerous.

The process of determining a benign nonconforming use would allow for public comment; it also would provide authority to impose conditions to ensure that uses deemed benign do not change their operations in a way that may adversely affect neighbors (e.g., a condition limiting hours of operation or prohibiting alcohol sales).

5-C: SIMPLIFY REVIEW AND APPROVAL PROCEDURES

By clearly defining a hierarchy of review for development projects based on size and potential impacts, Fresno can simplify the review and approval procedures. To ensure smooth integration into the urban fabric, concise physical form development standards can be used to ensure these uses are also good neighbors. The goal is to help expedite project approvals and reduce the cost to business owners seeking to invest in Fresno.

5-D: FACILITATE OPPORTUNITIES FOR APPROPRIATE PUBLIC INPUT INTO THE DEVELOPMENT REVIEW PROCESS

The updated Development Code needs to locate all pertinent public hearing information (e.g., what information should be included in the notices, how notices are to be given [e.g., mailing, posting, publishing, use of the Internet], to whom notices should be sent, how hearings are to be conducted, etc.) in one succinct chapter so that code-users will have only one place to look. Further, public notice should be given before a decision on a discretionary permit is made in order to give neighbors and residents an opportunity for meaningful input.

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Other Issues

In addition to the broad categories covered in previous sections, the Code update can address a number of narrower concerns raised by the needs of particular areas, uses, and segments of the population. This section looks at how the update can address issues related to subdivision regulations and integrate policies that comply with requirements for uses protected by State and federal law, such as places of worship, housing for disabled persons, second units, affordable housing. Although these issues did not fall within the scope of the previous sections, the concerns raised here are important for ensuring that the updated Development Code meets all goals of the General Plan and are equitable, legally sound, and consistent with applicable regional policies.

SUBDIVISION REGULATIONS

Articles 9, 10 and 12 of Fresno Municipal Code Chapter 12 (Land Use Planning and Zoning) comprise Fresno's subdivision regulations. Since 1956 when the City first adopted regulations and standards for the subdivision of real property (Ord. 4816), it has incrementally amended the requirements on several occasions. Although these changes were presumably intended to maintain compliance with State law, further revisions are necessary to update some provisions that do not conform to the Subdivision Map Act. In addition, because the regulations have not been comprehensively revised for many years, there are a variety of additional changes that could be made to make the code easier to use and understand and to implement the updated General Plan including:

- Reorganization and consolidation of the content and other format changes to make it easier to identify applicable provisions;
- Incorporation and/or augmentation of Government Code provisions to minimize need to consult multiple sources; and
- Updating design standards to conform to the new General Plan.

The balance of this memo describes how Articles 9, 10, and 12 could be consolidated into a single article that would be divided into seven or eight parts. The provisions included in each part will be revised and augmented to comply with statutory and case law and implement the General Plan. The following sections provide an overview of the individual parts of the Code and highlight some of the proposed revisions.

Part I: General Provisions

This part will be divided into three articles: introductory provisions (including applicability and exclusions), administrative procedures common to several types of subdivision actions, and a summary of the different maps that the code requires. The purposes should include implementation of the General Plan, protection of affordable housing

(through regulation of condominium conversion as Article 9 now states), and ensuring availability of adequate public facilities and services. Subsequent parts of the Code will include a more specific statement of purpose for different types of actions covered by the regulations.

The section describing the respective responsibilities of the Director of Development, the Planning Commission, and other City officials will continue to assign responsibility for parcel maps (minor subdivisions under the new Code) to the Director and designate the Planning Commission as the Advisory Agency for tentative maps. Combining the responsibilities into a single section will eliminate the potential for confusion that may exist under the current Code, which designates the Planning Commission “as the Advisory Agency to the Council on all matters related to the division or subdivision of land” in Section 12.1004 and identifies the Director as the Advisory Agency in Section 12.1202.

Part 2: Maps

This part will include separate articles for Minor and Major subdivisions, to distinguish procedures and requirements for subdivisions with four or fewer lots (parcel maps in the current Code) from subdivisions that include five or more lots (tentative maps). The findings for approving maps are revised to reflect some new Map Act requirements as well as additional requirements for dedications and improvements that have been included to implement the General Plan. The article establishing requirements for vesting tentative maps could be in this part or in a separate one devoted to those provisions with cross-references as necessary to reduce duplication. Additional review criteria could be added for vesting maps.

New provisions may include a stipulation that a subdivider may file multiple final maps if the subdivider informs the City in writing of his or her intention to file multiple final maps, at the time the tentative map is filed or, if the City and the subdivider concur to the filing of multiple final maps after the filing of the tentative map. The filing of a final map on a portion of an approved or conditionally approved tentative map shall not invalidate any part of the requirements to provide for the construction of improvements as required to constitute a logical and orderly development of the whole subdivision.

Part 3: Dedications, Reservations, and Improvements

This part will include provisions in Sections 12-1012, 12-1021 and 12-1027 of the current code regarding street improvements and dedications for schools and parks. Additional requirements for dedications, reservations and improvements to implement the General Plan will be drafted to conform to the Subdivision Map Act.

Part 4: Common Interest Development

This part will combine the substantive provisions of Article 9 of the existing code governing condominium conversions along with additional regulations applicable to newly constructed condominiums. The article will be reorganized with a more detailed section listing application requirements followed by a section devoted to development standards. The application section should include a revised version of Section 12-1026 regarding Covenants, Conditions, and Restrictions.

Part 5: Reversions, Mergers, and Lot Line Adjustments

This part will include a new article that allows the City to merge substandard parcels, as provided for in the Subdivision Map Act. The merger provisions in Section 12-1211 of the current Code do not comply with various amendments to State law that were enacted in 1995. The new provisions would authorize the City to merge contiguous parcels that are under the same ownership if at least one of the parcels is undeveloped and one or both of the parcels are less than 5,000 square feet or fail to meet other standards related to health and safety. These standards could include legal access adequate for public safety purposes, slope stability standards, or standards for sewage disposal or water supply. Merger provisions could also be applied if a lot was not created in compliance with the laws in effect at the time of creation. As provided for in State law, property owners would be entitled to a hearing before the Planning Commission after the City records a notice of intent to merge. Add provision specifying requirement for consistency: No land shall be subdivided and developed for any purpose that is not in conformity with the General Plan and any applicable specific plan adopted by the City of Fresno or permitted by Zoning Code or other applicable provisions of the Municipal Code etc.

Part 6: Amendments and Enforcement

This part will consolidate the duplicative requirements for correcting and amending maps in Articles 10 and 12 with provisions for enforcing the subdivision regulations in a single place. It will include provisions for issuing certificates of compliance revised as necessary to meet current State requirements.

Part 7: Definitions

The definitions should be limited to terms that are unique to subdivisions. Terms will be updated to be consistent with the definitions in the Subdivision Map Act and will not include specific standards, measurements, or other control regulations. Terms that apply to both zoning and subdivisions (e.g. lot, street, etc.) will be in a separate part of the new unified development code that the subdivision regulations will cross-reference.

PROTECTED USES

California law grants cities and counties relatively broad discretion in the regulation of land uses and development, and the Federal courts and United States Congress have, for the most part, left land use and environmental regulation up to state and local government. There are, however, some important exceptions to this approach. If local regulations conflict with federal law, pursuant to the supremacy clause of the United State Constitution, then local laws are preempted. In some cases, both Congress and the State have identified matters of critical concern that limit the authority of California cities.

This section discusses some of these protected uses, applicable rules, and potential issues that should be addressed as part of the Development Code Update.

- *Religious uses* (Federal Religious Land Use and Institutionalized Persons Act of 2000, California Gov. Code Sec. 25373 and 37361)
- *Housing for persons with disabilities* (Federal Fair Housing Act Amendments of 1998, Americans with Disabilities Act as incorporated into California Gov. Code Section 11935 and Civil Code Section 54.1)
- *Telecommunications* (Federal Communications Act of 1996, California Gov. Code Section 65850.6, 65964)
- *Second units* (California Gov. Code Section 65852.2)
- *Affordable housing* (California Gov. Code Sections 65589.5 and 65915)
- *Massage Establishments*(SB 731, California Business Code Section 4600 et seq.)
- *Transitive and Supportive Uses*(SB 2, California Gov. Code Sections 65585, 65583, and 65589.5)

RELIGIOUS USES

The Federal Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) requires public agencies to demonstrate a compelling government interest and to use the least restrictive means when making a land use decision that imposes a substantial burden on religious exercise. The Federal Courts have ruled that requiring a church to apply for a conditional use permit, submit information needed to conduct zoning review, or obtain a rezone is, in most cases, not be considered a “substantial burden” on religious exercise. Local agencies that impose limitations on where religious uses may locate or impose requirements that the applicant considers “burdensome” may, however, be sued in Federal court and, if found in violation of the law, subject to financial penalties.

Fresno's current Code allows churches in the R-3, R-4, and C-R districts as permitted uses. In all agriculture districts, the rest of the residential districts, and the C-5, C-6, and C-C districts, churches are allowed with a use permit. The Code sets no specific design guidelines, landscaping and screening requirements, or additional setback requirements. The Code does not specify if other public uses are allowed in addition to religious services. These uses could presumably include a number of church-operated social and community services, such as daycare centers, homeless shelters, charity dining, and other activities. There are several Director's Classifications related to church uses, such as church and related activities, church-related alpha centers, church-sponsored day care, and church schools. It is important that the City makes clear how these uses are governed and provide additional provisions for them in the updated Code because they are protected by federal law.

HOUSING FOR PERSONS WITH DISABILITIES

Various provisions in both federal and State law limit the authority of local agencies to regulate facilities for mentally and physically handicapped persons. In 1988, Congress extended the 1968 Fair Housing Act's prohibitions against housing discrimination to include discrimination on the basis of handicap or familial status (families with children). The Federal Fair Housing Act Amendments (FHAA) defined "handicapped" to include persons with physical or mental disabilities and recovering alcoholics and drug addicts. The FHAA not only prevents communities from discriminating against handicapped individuals but also requires "reasonable accommodations in rules policies, practices, or services, when such accommodations are necessary to afford [handicapped persons an] equal opportunity to use and enjoy a dwelling." The California Fair Employment and Housing Act, codified as Government Code Sections 12900 to 12996, reinforces provisions of federal statute to prohibit any unlawful discrimination against persons with disabilities.

These statutes and regulations have the following important effects to zoning:

- The use of property for the care of up to six mentally disabled persons including support staff necessary to assist residents must be regulated as a single-family residential use;
- Family care homes, group homes, and foster homes for up to six persons cannot be subject to regulations that are more restrictive than those imposed on similar dwellings in the same zone;
- In-patient and out-patient facilities licensed to treat persons with mental disabilities or substance abuse problems must be regulated in the same manner as properties used for treatment of general medical patients.

Responding to federal and State laws that require local agencies to allow physical modifications necessary to make properties fully accessible to

persons with physical handicaps, the State Attorney General advised cities and counties to revise their codes to make it possible to grant accommodations where needed. The State Supreme Court has prohibited local agencies from limiting the number of persons unrelated by blood, marriage, or adoption who can reside in a single-family home. This restriction affects local ability to regulate groups of individuals who live as a single household.

Fresno's existing Code allows adult day care and group homes with 6 or fewer residents and small family day care homes in most districts where dwellings are allowed. There are some districts that allow some of these uses but not others. For example, the R-P, RP-L, and C-P districts allow group housing but not adult day care or small family day care homes. The allowance for each of these types of uses should be extended to all districts where dwellings are allowed as these uses cannot be subject to regulations that are more restrictive than those imposed on similar dwellings in the same zone.

The federal and State requirements for accommodating individuals with disabilities also dictate that cities establish procedures to allow modification of setback requirements and other standards that may preclude alterations to make buildings accessible. Section 12-406.5, Reasonable Accommodation-Housing, includes a process for reasonable accommodation to address this issue.

TELECOMMUNICATIONS

Federal law imposes constraints on the ability of local agencies to use zoning and building regulations to regulate wireless telecommunications facilities on private property and in the public right-of-way. The Federal Telecommunications Act of 1996 preserved local zoning authority so long as it does not (1) unreasonably discriminate among providers of functionally equivalent services, or (2) prohibit or have the effect of prohibiting the provision of personal wire services subject to two general limitations and a number of procedural requirements. Since 1996, the Federal courts have clarified the meaning of these provisions in scores of cases, which have, in some instances, further limited local regulation of telecommunications uses. During the same period, the State has also entered the field with legislation that both reinforces and augments the federal requirements. The Code will need to be updated to reflect the most current court decisions.

Senate Bill 1627 (Kehoe), which went into effect January 1, 2007, requires a city or county to ministerially approve an application for a co-location facility on or immediately adjacent to an existing wireless telecommunications co-location facility. It also prohibits a city or county from imposing certain conditions of approval on permits for construction or reconstruction of wireless telecommunications facility.

The current Code categorizes telecommunication facilities as Public Utility and Public Service Structures, Uses and Buildings, which are allowed in all districts, subject to Conditional Use Permit approval. The Code does not contain standards specific to telecommunication facilities. However, the City has issued policies and procedures for such facilities (Policies and Procedures No. 33: Wireless Telecommunication Facilities). The Code update will provide an opportunity to review the guidelines, codify appropriate provisions, and develop additional standards and criteria to regulate telecommunications facilities. The Code also could include incentives for co-location and “stealth” facilities and provisions that allow modification or waiver of standards when necessary to meet documented service needs.

SECOND UNITS

Changes in State law that became effective on July 1, 2003, required local agencies to treat all second units that comply with specific standards as ministerial approvals. The amendments to Government Code Section 65852.2 make the second unit provisions applicable to all residentially zoned lots with an existing single-family dwelling unit. Additionally, absent topographic or safety considerations, local agencies must allow parking in setback areas or tandem parking. The current Code permits second units by-right in all residential districts. However, the Code currently does not allow tandem parking. These provisions should be reviewed and updated, as appropriate, to meet State law.

AFFORDABLE HOUSING

Over the past several decades the California Legislature has adopted a number of laws that limit the ability of cities and counties to reject or reduce the feasibility of housing developments that will help to meet the housing needs identified in their general plan housing elements. These provisions include the State Density Bonus Law (Gov. Code 65915) which allows for density bonuses and additional incentives for affordable housing. Section 12-324, Residential Density Bonus, specifies procedures for providing density bonuses and incentives consistent with this law. Other laws include provisions that bar discretionary review of certain attached or multifamily housing projects (Gov. Code 65589.4), require local agencies to make specific written findings in order to deny an affordable housing development (Gov. Code 65589.5(d)), and limit the ability of local agencies to prohibit the repair or rebuilding of multifamily dwellings involuntarily destroyed or damaged (Gov. Code 65852.25). Regardless of whether a local agency incorporates or makes specific reference to these provisions in its Code, it is responsible for complying with these requirements. It may be advisable to include such references to State law in the revised Code to increase the public’s awareness of the City’s legal obligations and to remind decision makers of these rules.

MESSAGE ESTABLISHMENTS

SB 731 limits the City's ability to regulate those massage practitioners and establishments that elect to be certified by the State's new Massage Therapy Organization (MTO). MTO will issue, regulate, and enforce voluntary statewide certification of massage practitioners, and SB 731 limits the City's authority to regulate state-certified massage therapists. Cities are precluded from imposing local permitting requirements on state-certified practitioners and establishments, although some local regulation is allowed regarding massage business permits, zoning, and public health and safety. Generally, land use and zoning requirements for state-certified massage therapists are valid as long as the requirements uniformly apply "to other professional or personal service businesses" in the City. (California Business Code 4612(b)(1), 4612(b)(4).)

EMERGENCY SHELTERS; TRANSITIONAL AND SUPPORTIVE USES

Government Code Sections 65582, 65583, and 65589.5 require each local government to: 1) amend its Code to identify zone(s) where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit to include sufficient capacity to accommodate the need for emergency shelter identified in the housing element, and 2) treat transitional and supportive housing as a residential use of the property subject only to those restrictions that apply to other residential dwellings of the same type in the same zone.

Currently, group housing, emergency shelter, and transitional housing are allowed in districts that allow residential uses. Those that serve six or fewer people are allowed by-right while those that serve more than six people require a Conditional Use Permit. Additionally, the City is currently operating under standards for group homes set by a settlement agreement. The City should identify districts where emergency shelters are allowed by-right and identify transitional and supportive housing as a residential use, subject only to those restrictions that apply to other residential uses of the same type in the same zone, implementing Housing Element Programs 2.1.11, Zoning for Emergency and Homeless Shelters, and 2.1.13, Transitional and Supportive Housing.

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Fresno General Plan and Development Code Update

Schedule: Continuing from September 2010, initiation of Dyett & Bhatia work

