



CITY OF PLANO

NOTICE OF MEETING

PLANNING & ZONING COMMISSION

PLANO MUNICIPAL CENTER

1520 K AVENUE

FEBRUARY 7, 2006

6:00 PM	Dinner	Building Inspections Training Room
6:30 PM	Training Session	Building Inspections Training Room

TRAINING SESSION AGENDA

1. Discussion and training on the Texas Open Meetings Act.
2. Discussion and training on the Role and Duties of the Planning & Zoning Commission.
3. Discussion and training on site plan regulations and procedures.

ACCESSIBILITY STATEMENT

Plano Municipal Center is wheelchair accessible. A sloped curb entry is available at the main entrance facing Municipal Avenue, with specially marked parking spaces nearby. Access and special parking are also available on the north side of the building. Requests for sign interpreters or special services must be received 48 hours prior to the meeting time by calling the Planning Department at (972) 941-7151.

CITY OF PLANO
PLANNING & ZONING COMMISSION

February 7, 2006

Agenda No. 1

Discussion and Training on the Texas Open Meetings Act

DESCRIPTION:

Discussion and training on the Texas Open Meetings Act.

REMARKS:

Paige Mims, Assistant City Attorney III, will brief the Commission on the requirements of the Texas Open Meetings Act.

TEXAS OPEN MEETINGS ACT
(FREQUENTLY ASKED QUESTIONS)

TEXAS OPEN MEETINGS ACT (Excerpt from OAG Frequently Asked Questions)

Why is the Texas Open Meeting Act significant?

The stakes are high for city officials. Texas courts have ruled that in certain cases, a local public official can be convicted of participating in an illegal closed meeting even though the official may have believed at the time that the closed meeting was authorized. City officers can also face criminal penalties if they attempt to avoid open meetings requirements by meeting in numbers of less than a quorum for the purpose of secret deliberations about city business.

Application of the Open Meetings Act

When does the Open Meetings Act generally apply?

The Open Meetings Act (OMA) generally applies when a quorum of a governmental body is present and discusses public business. However, it does not apply to purely social gatherings or to the attendance of public officials at conferences or training if no formal actions are taken and if the discussion of public business is only incidental at such events.

Can members of a governmental body receive a briefing from city staff without posting the briefing as an open meeting?

State law no longer allows a quorum of a governmental body to receive a briefing from city staff without posting the briefing as an open meeting. Instead, a city council is now required to post such a meeting and hold it in open session.

What can city council members do if an unposted issue is raised at an open meeting ?

Members of the governmental body may not deliberate or make any decision about an unposted issue at a meeting of the governmental body. If an unposted item is raised, the government body has four options. A member may respond with a statement of specific factual information or recite the governmental body's existing policy on that issue. Second, a city official may direct the person making the inquiry to visit with city staff about the issue. Third, the city official may offer to place the item on the agenda for discussion at a future city council meeting. Finally, the government body may offer

to post the matter as an emergency item if it meets the criteria for an emergency posting. It should be noted that members of the city officials are limited in the same way from having unposted items discussed at a city meeting.

Does the Open Meeting Act apply if a quorum of city officials informally meet and no action or vote is taken on public business?

The Open Meetings Act applies to a gathering of a quorum of city officials if they discuss public business, regardless of whether there is any action or vote taken. All requirements under the Open Meetings Act must be followed for such gatherings unless otherwise provided under state law. As noted earlier, state law provided a limited exception for gatherings at social events, training seminars, or conferences, if the discussion of public business is only incidental and no vote or action is taken.

Can a quorum of city council members attend a committee meeting of the city?

A quorum of city council could attend a committee hearing. However, the attendance of a quorum of the city council would constitute a meeting which would require compliance with the Open Meetings Act. In JC-0313, the Attorney General concluded should a quorum of a governmental body attend a committee meeting then the committee would be subject to the Open Meetings Act when a majority of the governmental body is present at a meeting of the committee, and members of the governmental body "receive information from, given information to, ask questions of, or receive questions from any third person, including an employee of the governmental body, about the public business or public policy" over which the governmental body has authority, regardless of whether the committee members or any members of the governmental body engaged in a deliberation.

Is a gathering of less than a quorum of city officials subject to the Open Meetings Act?

A gathering of less than a quorum of city officials is not generally subject to the Open Meetings Act. However, if a standing committee or subgroup of the governmental body meets and the discussion of public business occurs, there is an argument that such gatherings should also be posted and conducted as open meetings.

State law also provides that if less than a quorum of city official gather with the intent of circumventing the purposes of the Open Meetings Act, criminal penalties can be imposed against the participating officials. In other words, if city council members are holding their discussion of public business in numbers less than a quorum in order to avoid having to meet the requirements of the Open Meetings Act, criminal prosecution can be pursued against such officials for such discussions.

Determining when meetings of less than a quorum cross the line and constitute a violation of the Act has proven troublesome. Perhaps the most difficult question arises when a member of a governmental body visits individually with other members to discuss issues that will come before the entity. Presumably, this frequently happens as persons seek input on and support for proposals they hope to bring before the governmental body. In Texas Attorney General Letter Opinion 95-055 (1995), the Attorney General said that he "cannot advise you that a member of the city council may telephone individually a quorum of the members of the council to express his views and/or concerns about public business without violating the act." Certainly, the Attorney General is correct that one cannot give a blanket endorsement of such action as there may be situations in which a violation could occur, but it may be reaching to suggest that mere conversation about policy among individual board members constitutes a violation of the Act. The authorities the Attorney General relied on involved situations in which the governmental body took *action* by conducting a telephone poll, Hitt v. Mabry, 687 S.W.2d 791 (Tex. App.--San Antonio 1985, no writ), or by circulating a letter to be signed by a majority of the board. Op. Tex. Att'y Gen. No. DM-95 (1992). It is probably safe to say that governmental action taken by having members meet in numbers of less than a quorum violates the Act⁽¹⁾ but that the rule relating to mere discussions in small groups of members of a governmental body is not so clear. It is reasonable to assume that the Legislature never intended to prohibit interchange between individual members of a governmental body regarding proposed governmental action other than the discussions that occur in a formal meeting; however, it is impossible to say that such discussions are clearly permissible. See Attorney General Letter Opinion No. LO 95-055 (1995).

Can less than a quorum of city council members meet with independent contractors, or with public or private groups without posting the gathering as an open meeting?

It is not uncommon for several council members to be present at a private or public gathering that is put on by another entity. The Open Meetings Act does not require that the gathering be treated as an open meeting if less than a quorum of city council members are present. However, as noted above, a city official faces potential criminal penalties if such gatherings are used with the intent of circumventing a discussion of public business at an open meeting. Is it for the sole purpose of receiving information or is public business being discussed?

Can less than a quorum of city council members visit over the phone without violating the Open Meetings Act?

The mere fact that two council members visit over the phone does not in itself constitute a violation of state law. However, if city council members are using individual telephone conversations to poll the members of the council on an issue or are making such telephone calls to conduct their deliberations about public business, there may be a potential criminal violation. Physical presence in one place is not necessary to violate the Open Meetings Act. It would remain a fact issue whether certain phone conversations between less than a quorum of city council members would be a violation of the Open Meetings Act. Such interactions could amount to meeting in numbers less than a quorum to circumvent the purposes of the Open Meetings Act.

Enforcement of the Open Meetings Act Requirements.

Civil Enforcement of the Open Meetings Act

What civil remedies does an individual have if the Open Meetings Act is violated?

An individual may sue to prevent, stop, or reverse a violation of the Open Meetings Act. If a court finds that there will be or is a violation of the Open Meetings Act, the court has at least four options. First, the court may order a city or an official to stop violations of the Act, to avoid future violations of the Act, or to perform a duty required by the Act. Second, a court may invalidate any action that a governmental body has taken in violation of the Open Meetings Act. Third, in cases where the Act was violated in the course of firing an employee, the courts may order the governmental body to provide back pay to the employee. Finally, at its own discretion, a court may make the losing side in such a case pay costs of litigation and reasonable attorneys fees.

Is an action automatically void if it was accomplished without compliance with the Open Meetings Act?

Actions that violate the Open Meetings Act may be invalidated by a court. However, such actions are not automatically void. Whether to invalidate a particular action is at the discretion of the court. In fact, it is possible that a court may not invalidate an action even if the court finds that the action was taken in violation of the Open Meetings Act. Nonetheless, it is always the safer course to attempt to achieve full compliance with the Open Meetings Act to avoid the likelihood of later court challenges.

Can a city council later "ratify" an action that was handled in a meeting that did not comply with Open Meetings Act requirements?

If a city council has taken an action at a meeting that may not have fully complied with the requirements of the Open Meetings Act, the council may at a later time meet again to re-authorize the same action. If the second meeting is held in accordance with all requirements of law including the Open Meetings Act, then the action under certain circumstances may be considered valid from the date of the second meeting. For example, if a city council fires a city employee at a meeting that does not meet the requirements of the Open Meetings Act, it may then fire the same city employee at a later open meeting that meets the requirements of the Act. However, the city may owe back pay to the employee from the time period between the first meeting and second meetings if a court finds that the first meeting was invalid.

Criminal Enforcement for Violations of the Act

What are the criminal penalties for noncompliance with the Open Meetings Act?

There are four provisions of the Open Meetings Act that provide criminal penalties for violation of the Act:

1) **Unauthorized Executive Sessions.** If a closed meeting is not authorized by law, a city council member commits a crime if he calls or aids in calling such a meeting, closes or aids in closing such a meeting, or participates in such a meeting. A violation of this sort is a misdemeanor punishable by a fine of between \$100 and \$500, one to six months of jail time, or both. Recently, a Texas court has ruled that a public official could be convicted of participating in an illegal closed meeting even if the official attended the session pursuant to advice of legal counsel that the session was legal. The court reasoned that people, including public officials, are generally presumed to know the law. However, in 1999, the Texas Legislature amended the Open Meetings Act to allow a city council member to rely on official written advice from a court, the attorney general, or from the city attorney regarding the legality of an executive session. Specifically, the amendment provides that if a council member has a form written interpretation from one of these sources indicating that a particular closed meeting is legal, the council member may use that written interpretation as a defense if he or she acted in reasonable reliance on the written interpretation, and is later prosecuted for participating in an illegal closed session. Cities may want to consider asking their local legal counsel to provide in advance a written opinion noting the legal authority for an executive session prior to the city holding the closed meeting.

2) **Meeting in Numbers Less than a Quorum With Intent to Circumvent the Act.** A city council member commits a crime if that official conspires to circumvent the Open Meetings Act by meeting in numbers of less than a quorum for the purpose of secret deliberations in violation of the Act. A violation of this sort is a misdemeanor punishable by a fine of between \$100 and \$500, one to six months of jail time, or both.

3) **Failure to Produce a Certified Agenda.** A city council member commits a crime if the official participates in a closed meeting knowing that a certified agenda or tape recording of the closed meeting is not being made. A violation of this sort is a Class C misdemeanor and is punishable by a fine of up to \$500.

4) **Disclosure of Copy of Certified Agenda.** Any individual, corporation, or partnership commits a crime if they release to the public a copy of the tape or certified agenda of a lawfully closed meeting. A violation of this sort is a Class B misdemeanor, and is punishable by a fine of up to \$2,000, a jail term of up to 180 days, or both.

Can a city council member be criminally prosecuted if he/she did not intentionally or knowingly violate the open meetings laws?

Recently, a Texas court has ruled that an individual would not have to know that a closed meeting was illegal in order to be convicted of participating in an illegal closed meeting. Instead, the individual would only have to know that he or she was participating in a closed meeting. Under this court ruling, if it later turned out that there was no legal authority to hold that closed meeting, the person could be convicted of a crime even if he or she thought at the time that it was legal to hold the closed meeting. However, in 1999, the Texas Legislature amended the Open Meetings Act to allow a city council member to rely on official written advice from a court, the attorney general, or the city attorney. If a council member has a formal written interpretation from one of these sources indicating that a particular closed meeting is legal, and the councilmember acted in reasonable reliance on that interpretation, the councilmember may use the written interpretation as a defense if he or she is later prosecuted for participating in an illegal closed session. Prosecution of such a crime is at the discretion of the local district or prosecuting county attorney.

What is the role of the local district attorney or prosecuting county attorney regarding Open Meetings Act violations?

As mentioned above, the local district attorney or prosecuting criminal county attorney (depending on the county) has the authority to prosecute criminal violations of the Open Meetings Act. As with other alleged crimes, the local prosecutor retains the discretion to determine which alleged violations he or she will prosecute.

What is the role of the Texas Attorney General regarding Open Meetings Act Issues?

The Attorney General may issue an official opinion answering questions about the legal meaning of the Open Meetings Act if the opinion is requested by an authorized official such as the Governor, the chair of a state legislative committee, or a district or county attorney. City officials generally work through their district or county attorney or a state legislator to request an attorney general opinion. The Attorney General can only make conclusions about the legal meaning of a law. The Office of the Attorney General does not rule on the facts of a specific case. Thus, in most cases the Attorney General cannot rule as to whether a specific person violated the Open Meetings Act on a specific occasion if it requires a determination of the applicable facts.

It should be noted that the Attorney General does not have enforcement authority with regard to the Open Meetings Act. The prosecution of criminal violations of the Act remains within the discretion and authority of the local district attorney or prosecuting criminal county attorney. A local prosecutor, however, may request the assistance of the Attorney General's Office in prosecuting an Open Meetings Act violation. It is within the discretion of that local prosecutor to determine whether to request such help from the office of the Attorney General.

Could city council pay attorney's fees incurred to defend city council members charged with violating the Open Meetings Act?

The Attorney General has concluded that although it is not required to do so, a city council may spend public funds to reimburse a city council member for the legal expenses of defending against an unjustified prosecution for Open Meetings Act violations. However, the city may not decide to pay for such legal expenses until it knows the outcome of the criminal prosecution. The city may not pay the expenses of a city council member who is found guilty of such violation. Additionally, a city council member is disqualified from voting on a resolution to pay his or her own legal fees or the legal fees for another city council member indicated on the same facts for the same offense.

CITY OF PLANO
PLANNING & ZONING COMMISSION

February 7, 2006

Agenda Item No. 2

**Discussion and Training on Role and Duties of the Planning & Zoning
Commission**

DESCRIPTION:

Discussion and training on the role and duties of the Planning & Zoning Commission.

REMARKS:

Planning and zoning commissions are part of a tradition stretching back to the 1920's to include citizens and community leaders in city planning efforts. We will discuss relationships with citizens, staff, elected officials and others, along with the responsibilities of modern planning commissions.

Planning & Zoning Commission Training Role of the Planning Commission

History of Planning & Zoning Commissions

Modern city planning grew out of the City Beautiful movement of the late 1800's and early 1900's. As cities expanded, the development of civic places, transportation facilities and comprehensive plans became more important. Civic and business groups also supported the creation of citizen based, non-political boards to study issues and make recommendations. Hartford, Connecticut established the first planning commission in 1907; with the institution of zoning, many major cities had planning commissions by the mid-1920's.

In Texas, state law requires that home rule cities establish a zoning commission. Most cities combine the planning and zoning functions in one body; however, there are some cities that have separate boards, including Fort Worth. A city council may not act on a zoning case until they have received the recommendation of the planning & zoning commission.

Role of the Planning & Zoning Commission

Traditionally, the role of planning and zoning commissions was limited to zoning matters. However, over time the functions of commissions have expanded to include:

- Formulating and updating the Comprehensive Plan
- Involvement in the capital improvements program and its conformance with the Comprehensive Plan
- Review of amendments to subdivision ordinances
- Acting as impact fee advisory committees
- Overseeing special studies such as downtown redevelopment, neighborhood plans and sector plans

In Plano, the Planning & Zoning Commission acts in an advisory capacity to the City Council on zoning cases, zoning and subdivision ordinance amendments, and comprehensive plan updates. The Commission will forward a recommendation to the City Council on these items. The Commission has final approval authority on plats, preliminary site plans, land studies and other development plans. These plans are not scheduled for City Council agendas unless the decision of the Commission is appealed.

The Planning & Zoning Commission also serves as the Impact Fee Advisory Committee, and is charged with reviewing the city's water and wastewater impact fee program and making recommendations to the City Council on this issue. The

Commission also reviews the Capital Improvements Program to determine its consistency with the Comprehensive Plan.

Relationship with Other Groups

City Council – The Commission serves at the pleasure of the City Council, but also must serve as an independent body. Commissions traditionally have been charged with providing apolitical, unbiased, balanced views of issues. Commissions should keep City Council informed of important trends and issues that are emerging in the community. The City Council relies on the Commission to consider the long-term implications of proposals, to present well-reasoned recommendations, and to focus on comprehensive plan issues.

Staff -- Staff serves as the technical support for the Planning & Zoning Commission, and should be relied upon to carry out administrative activities and to perform plan review and analysis. However, the commission should not hesitate to question staff on recommendations or to point out oversights in plan review. It is staff's responsibility to provide information and research on relevant topics, and to keep the Commission informed of new trends and issues in development and planning.

Citizens – Citizens look to the commission to protect their interests. It is important that the Commission allow full, open public debate on issues, regardless of time, repetition and emotions. However, the Commission must provide a balance between the developer and citizens, based on the ordinances and policies of the city.

Developers – Like citizens, developers are also looking to the Commission to protect their interests. Developers must have assurance that rules and regulations will be applied consistently and fairly to continue to make investments in the community. While developers are usually willing to meet with citizens and to often make changes to their plans in response, they expect in return that the Commission will not delay plan approval.

Authority of the Commission

The Planning & Zoning Commission reviews two categories of items. Zoning cases are considered to be legislative items, and the Commission has broad discretion in their decision to approve or deny a zoning request. The Commission may consider the testimony of homeowner groups, surrounding property owners and other interested parties to aid in their decision making. Decisions should be based on the testimony and facts presented in the case, and should not be arbitrary or capricious in nature.

In Plano, the City Council has delegated the authority to approve plats and site plans to the Planning & Zoning Commission. Plats, site plans and other development plans are administrative items. For these, the Commission is simply making a judgment as to the plan's conformance with the ordinances of the city. If the zoning allows the use, and the plan does not violate any ordinances, then it should be approved. Frequently homeowners will speak against a site plan because they do not like the use. This is not a basis for denial of a plan or plat. A developer's refusal to accommodate homeowner demands should not be a basis for denial, either.

State law requires that action be taken within 30 days of the submission of plats. If no action is taken, the plat is considered approved and the applicant may record it with the county clerk. For this reason, land studies, preliminary plats, final plats and replats may not be tabled. The commission must approve, deny or allow the applicant to withdraw the plat from consideration.

CITY OF PLANO
PLANNING & ZONING COMMISSION

February 7, 2006

Agenda Item No. 3

Discussion and Training on Site Plan Regulations and Procedures

DESCRIPTION:

Discussion and training on site plan regulations and procedures.

REMARKS:

After zoning cases, site plans are usually the projects most likely to generate citizen opposition and concern. Yet the commission's actions and options are limited by state and local regulations. We will spend more time discussing site planning and the framework of regulations that apply to this practice.

SITE PLAN OVERVIEW

SITE PLAN REVIEW IN A NUTSHELL

1. Following the submittal by the land developer of a concept plan and preliminary site plan, a site plan is the final plan in the approval process detailing development of the property.
2. A site plan is a procedure to ensure:
 - a. The building layout and use of the property complies with existing regulations,
 - b. Coordination and documentation of the design of public and private improvements, and
 - c. Coordination of the subdivision of land, including granting easements, and provision of surety.
3. As opposed to the zoning process, the site plan process is not legislative in nature. Unlike zoning, there is no mechanism for site plan review in state law. Therefore, while the Commission is performing a legislative act by creating law when zoning property, they enjoy significant discretion as long as their decisions are not arbitrary and capricious. Site plan review can best be described as an administrative review or ministerial act and is limited to merely applying the laws and regulations already in place to a particular proposed development. Therefore, there is minimal discretion, if any when applying relevant regulations to approval or denial of a site plan. The site plan process should not add new obligations or deprive an owner of rights that currently exist in the development process. For example, if the applicant is required to have a certain number of street access points, the Commission cannot deny those but may make reasonable changes to the location of them BUT it should be very clear in the record why the changes are being made and how the adjustment will improve the site plan for the public benefit. Similarly, how would you address requested changes for curb cuts or landscaping additions? Again, the code requirements must be strictly adhered to for site plans and any requests that vary from the code requirements would have to be based on public benefit and not individual interests.
4. The Commission may approve, conditionally approve, table or deny a site plan based on established regulations. Approval of a site plan is the city's authorization to apply for approval of building permits and to receive approval of engineering plans. Conditional approvals may be revoked by the Commission if the conditions of approval are not met.
5. The Commission's decision to approve a site plan is final and binding unless an appeal of the decision is made to Council. The applicant, Director of Planning, or two members of Council may appeal the decision of the Commission with regard to a plan by filing a Notice of Appeal in the Planning office no later than ten days after the date on which the Commission notifies the applicant of its decision. The Council shall consider the appeal at a public meeting no later than 45 days after the date on which the Notice of Appeal is filed. The Council may affirm, modify, or reverse the decision of the Commission or may remand the plan to the Commission for further proceedings consistent with the Council's decision.

6. The approval of a site plan shall be effective for two years from the date of approval by the Commission, staff or Council at the end of such time which the applicant must have submitted and received approval of engineering plans and building permits. If the building permits and engineering plans are not approved, the site plan approval is null and void. Site plan approval shall expire upon the completion of the improvements shown on the plan. Reinstatement and extension, amendments, subsequent additional development, site modifications, and redevelopment shall be permitted in accordance with the development regulations.