

City of Clayton Planning Commission Study Session



Overview of Planning, Environmental and Land Use Legislation and Practice and Planning Commission Procedures

August 22, 2023



Study Session Topics

- Planning and Zoning Law and Policy
- California Environmental Quality Act
- Planning Commission Decision-Making Process





Planning and Zoning Law and Policy

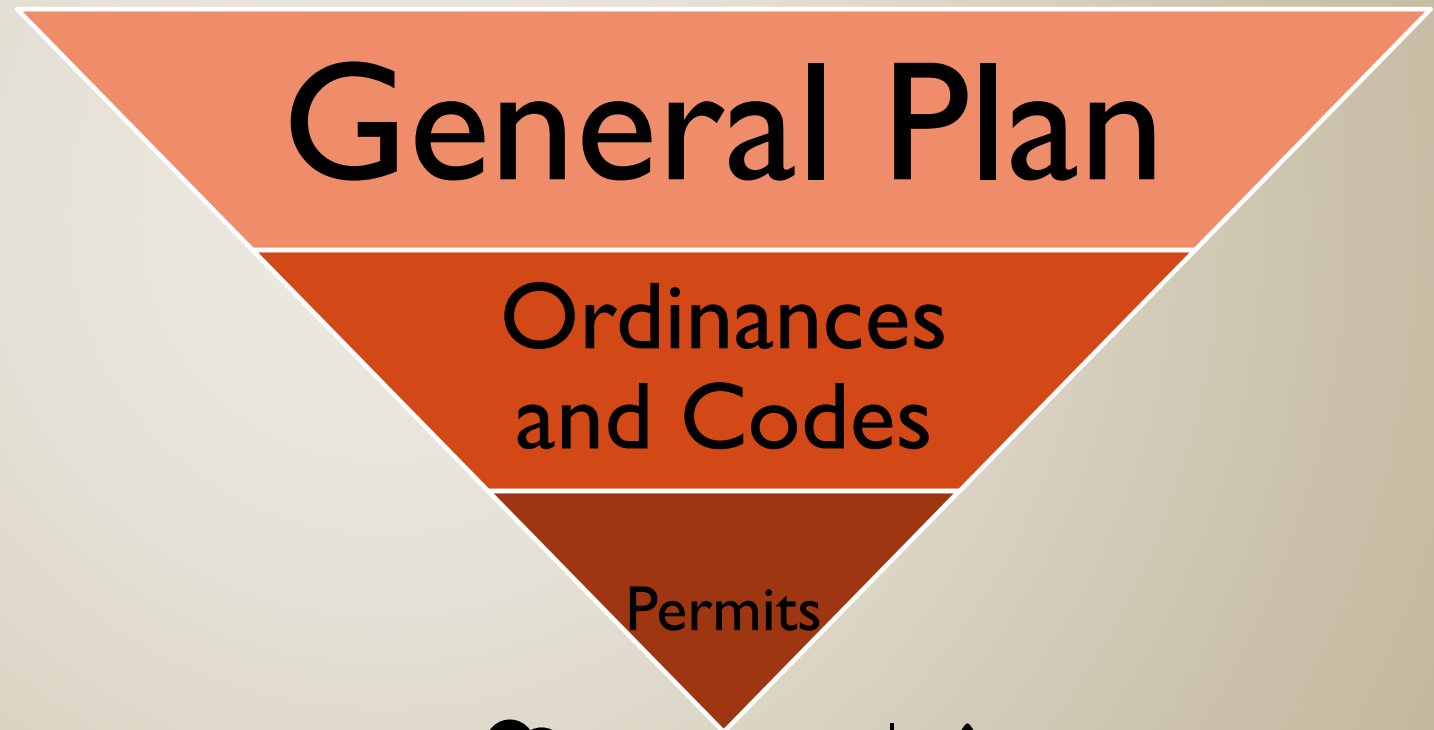


Hierarchy of Planning Documents

Local planning is governed by a series of documents, starting with the broad vision, goals and guiding policies in the agency's **general plan**.

The general plan's goals and policies are implemented through more defined regulations and requirements in the agency's **codes and ordinances**.

Each specific **permit for development or entitlement** within the local agency must be compliant with local codes and consistent with the general plan.



The General Plan

Each planning agency shall prepare and the legislative body of each county and city shall adopt a comprehensive, long-term general plan for the physical development of the county or city, and of any land outside its boundaries which in the planning agency's judgment bears relation to its planning. (California Government Code section 65300)

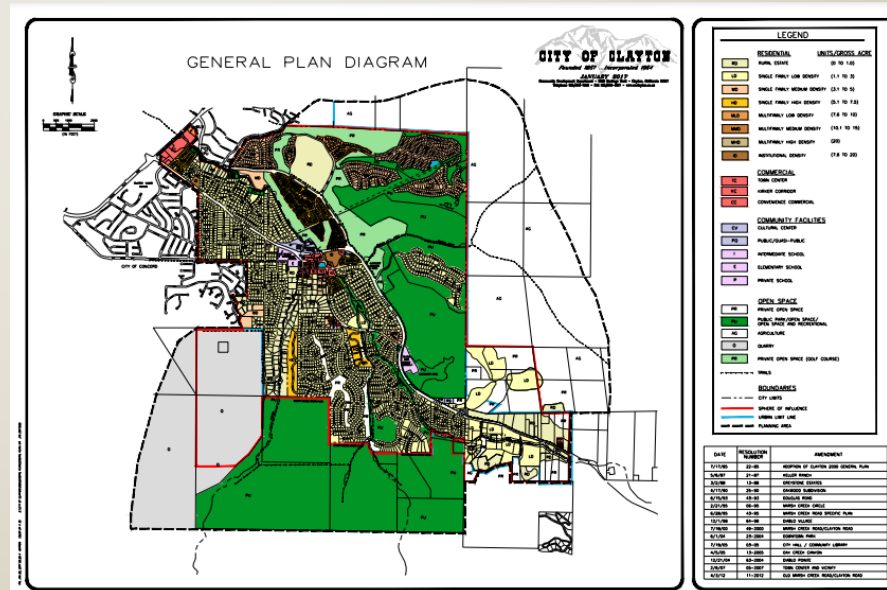
- ...the general plan and elements and parts thereof comprise an integrated, internally consistent and compatible statement of policies for the adopting agency. (Government Code section 65300.5)*
- The general plan shall consist of a statement of development policies and shall include a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals. (Government Code section 65302)*



The General Plan

Each local agency's General Plan must include the following elements. The local agency may add other elements that the agency decides are relevant to the jurisdiction's physical development:

Land Use
Circulation
Housing
Conservation
Open Space
Noise
Safety
Environmental Justice



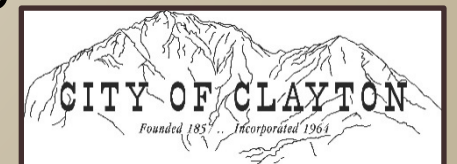
Ordinances and Codes

California Government Code section 65800 gives authority to local agencies (cities and counties) to implement their locally-adopted general Plans and to adopt and administer zoning laws, ordinances, rules and regulations. Pursuant to Government Code section 65850, local ordinances may do all of the following:

- Regulate how buildings are developed (location, height, setbacks, size, etc.), as well as how buildings and lands inside the jurisdiction are used
- Regulate signage
- Establish requirements for offstreet parking and loading
- Establish and maintain building setback lines
- Require affordability standards for residential development



Clayton's regulations are primarily codified in Clayton Municipal Code Title 17 (Zoning) and Title 16 (Land Development and Subdivision).



Permits for Entitlements

Permits required by Clayton Municipal Code entitle development and, in certain cases, how developed property is used. Types of permits or entitlements that may be requested include:

- **Tentative Map** approval for subdivision of land (Planning Commission is advisory to City Council)
- **General Plan** or **Zoning Code / Map** amendments (Planning Commission is advisory)
- **Site Plan Review Permits** for new construction or building additions over a certain size
- **Variances** from development regulations of the code
- **Use Permits** and **Temporary Use Permits*** for certain uses that might have a neighborhood impact if not regulated appropriately
- **Home Occupation Permits*** for home-based businesses
- **Sign Permits***

* Most applications of this type are processed by staff.





California Environmental Quality Act (CEQA)



CEQA Overview

- CEQA is a State law, embedded in Public Resources Code (PRC), Division 13, Section 21000 *et seq.*
- In PRC Sections 21000 and 21001, the State Legislature declares the primary intents of CEQA to ***“[maintain] a quality environment for the people of this state now and in the future,”*** and to ***“take all action necessary to protect, rehabilitate and enhance the environmental quality of the state [and] provide the people of this state with clean air and water, enjoyment of aesthetic, natural, scenic and historic environmental qualities, and freedom from excessive noise.”***
- Guidance to agencies for implementing CEQA are contained with the “State CEQA Guidelines,” California Code of Regulations (CCR) Section 15000 *et seq.*



CEQA Overview

- CEQA applies to a “project”, which is defined in PRC Sections 21065 as “an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following:
 - (a) An activity directly undertaken by any public agency.
 - (b) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.
 - (c) An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.”



CEQA Overview

- Pursuant to PRC Section 20180, CEQA also applies to “discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits, and the approval of tentative subdivision maps unless the project is exempt from this division.” Actions related to governing and policy documents such as general plans and zoning ordinances can result in reasonably foreseeable indirect physical changes to the environment.
- CEQA does not apply to ministerial projects, emergency repairs to existing public service facilities, or projects that are not approved.



CEQA Overview

There are classes of projects that fall within the definition of a project as defined in CEQA, but for which the State has identified exemptions from the Act. These classes of exemptions include, but are not limited to:

- Replacement of or small additions to existing facilities, roadways or structures
- Interior changes to existing structures
- New, small structures such as fences, signs or sheds
- A limited number of new single-family homes, multifamily residences, and small commercial buildings
- New landscaping
- Certain administrative actions taken by public agencies, such as land sales to create new parks
- Infill projects occurring on sites of no more than 5 acres



CEQA Overview

For a project that is subject to CEQA and does not qualify for an exemption, the agency tasked with deciding whether to approve the project (“lead agency”) must consider the potential environmental impacts of approving or denying the project. There are three types of documents that an agency could prepare for that assessment:

- **Negative Declaration:** Initial study of the project finds that the project would have impacts on the environment, but the severity of the impact is within an acceptable threshold defined by the lead agency.
- **Mitigated Negative Declaration:** Initial study of the project finds that the project would have significant impacts on the environment, but measures can be taken to reduce the severity of the impacts to an acceptable threshold defined by the lead agency.
- **Environmental Impact Report:** The project would have severe or significant environmental impacts for which sufficient mitigation measures are not possible or not known at the time of initial study of the project.



CEQA Overview

Negative Declarations, Mitigated Negative Declarations and Environmental Impact Reports must evaluate potential impacts of a project on the following environmental resource areas, which are listed in the Environmental Checklist Form (Initial Study) in Appendix G of the CEQA Guidelines:

Aesthetics
Agriculture / Forest Resources
Air Quality
Biological Resources
Cultural Resources
Energy
Geology / Soils
Greenhouse Gases
Hazards & Hazardous Materials
Hydrology / Water Quality
Land Use / Planning

Mineral Resources
Noise
Population / Housing
Public Services
Recreation
Transportation / Traffic
Tribal Cultural Resources
Utilities / Service Systems
Wildfire





Planning Commission Decision-Making



Open and Public

Ralph M. Brown Act (California Government Code section 54950 *et seq.*) Legislative Intent

In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

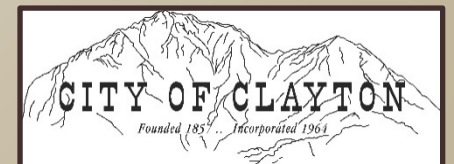
The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.



Open and Public

Planning Commission decisions must be made in compliance with the Brown Act.

- Any majority of the Commission (3 or more members) **must not** discuss, deliberate or take action on any item of Planning Commission business outside of a noticed meeting of the Commission.
- Commissioners **must not** engage in “serial meetings.”
 - *Example 1*: Two Commissioners discuss an upcoming proposal that will be presented to the full body for decision. One of those Commissioners then meets or communicates individually with a third Commissioner and shares what was discussed in the first meeting.
 - *Example 2*: An interested party who is not a Planning Commissioner meets individually with three Commissioners and shares in each individual meeting what was discussed in the other meetings.



Open and Public

Planning Commission decisions must be made in compliance with the Brown Act.

- Written communications by and among Planning Commissioners, including but not limited to email or commentary on social media platforms, **are not exempt** from compliance with the Brown Act. Avoid “digital deliberation.”
- Commissioners **must be mindful** about discussion of Planning Commission business when a majority (3 or more) membership of the Commission is in attendance at a conference, social event or public meeting of another public agency or decision-making body.



Commission Communications

- Planning Commissioners will be provided City email addresses. All City email accounts are accessible to City staff, and correspondence using City email accounts is subject to Public Records Act disclosure.
- Personal email or text accounts do not have privacy protection. If a personal messaging account is used to discuss Planning Commission business, the records in that personal account are also subject to mandatory disclosure upon request from a member of the public.
- Commissioners must be mindful that written communications using social media, City or personal email accounts, or text messaging accounts do not violate Brown Act (e.g., avoid “Reply to All,” “Likes” or “Dislikes,” or emojis responsive to posts about Commission business).



Commission Communications

- Commission decisions must be based on common understanding and knowledge of the item among all voting members.
 - Ex parte communications (spoken or written communication about Planning Commission business, outside of the public forum) must be disclosed during the public forum, preferably before any introduction or presentation of the item.
 - Commissioners should remain engaged during the public meeting. Put away cell phones to avoid distractions, and refrain from engaging in ex parte communications with interested parties or other Commissioners (for example, by via text or email messaging) while conducting Planning Commission business during meetings.



Commission Communications

- Commissioners may disclose their role as a Planning Commissioner when speaking to other bodies but must be mindful and clear that what they say or write does not represent or imply representation of the Planning Commission, *unless* they are referencing an action previously taken by the group in an open and public meeting.
- At any public meeting, Commissioners may only discuss items that are on the agenda for that meeting. If a Commissioner wants to discuss an item that is not on the agenda, they may request that the topic be added to a future agenda but may not discuss the matter any further until it is agendized.
- Commissioners are encouraged to ask questions of staff ahead of time on an item posted on a Commission agenda for an upcoming meeting.



Deliberation of an Agendized Item

The following outline summarizes the general process of Planning Commission decision-making on an agendized item at a public meeting:

- 1. The Chair introduces the item.** Commissioners with conflicts of interest would state their conflict, recuse themselves and leave the room at this time.
- 2. Staff provides a summary of the staff report and staff recommendation.**
- 3. Commissioners are invited to ask questions** about the facts of the proposal. *Commissioners are not to deliberate or discuss their opinions on the proposal at this time.*
- 4. The Chair opens the public hearing or invites public comment,** and anyone who wishes to speak on the item may do so. Speakers are invited but not required to share identifying information (e.g., name, address).
- 5. The Chair closes the public hearing or public comment.**



Deliberation of an Agendized Item

6. Commissioners deliberate on the item.

- Deliberation should focus on the facts of the project, any written or spoken testimony received from the public, and how Commissioners can or cannot make certain findings relevant to the action.
- Findings for each type of project are listed in the Clayton Municipal Code. Findings generally include but are not limited to determinations that the project is consistent with the General Plan, consistent with the Zoning Code, and will not negatively affect public health and safety.
- Decisions must be based on the required findings and the record presented to the Commission and may not be based solely on like or dislike of a project.

7. The Chair invites a motion and vote after all Commissioners Have been given opportunity to speak.



Questions?

