



FRUITA
COLORADO

**PLANNING COMMISSION WORKSHOP
MEETING**

Fruita Civic Center

Tuesday, May 14, 2024, at 6:15 PM

AGENDA

AGENDA ITEMS

1. Planning Commission Training.
2. Current Projects Update.



2024 Fruita Planning Commission Training

May 14, 2024



Home Rule & City Charter

- **Fruita is a home rule municipality. Article XX, Section 6 of the Colorado Constitution grants municipalities home rule authority to create or amend Charters to govern local and municipal matters. As a home rule municipality, the City possesses “all the powers possible for the City to have under the Constitution and the laws of this State.” Under a home rule form of government, matters of “local concern” are controlled by local citizens through the City’s Charter, and ordinances rather than through the General Assembly and the state statutes. This provides the citizens of Fruita freedom from the need for state legislation in matters of local concern. Thus, home rule municipalities have absolute authority over issues solely of local concern, and a home rule municipality is not inferior to the General Assembly with respect to local and municipal matters that fall within this authority.**

Creation of Planning Commission

- Authorized by Section 6.39 of the Charter
- Created by Section 2.39 of the Municipal Code (“Code”)
- 7 Members must be City residents; appointed by Mayor with City Council approval for 3 year terms
- Meets 2nd Tuesday of every month
- Quorum is majority of members, excluding vacancies

Roles of Commissioners

All actions by simple majority vote; tied motion is a failed motion:

1. Elect a chair and vice-chair who remain voting members;
2. Make studies and recommend to the City Council plans, goals and objectives related to the growth, development and redevelopment of the city and surrounding extraterritorial planning area;
3. Develop and recommend to the City Council policies, ordinances, administrative procedures, and other means for carrying out land use planning in a coordinated and effective manner;
4. Adopt bylaws, rules and procedures for the conduct of Planning Commission business, not inconsistent with the Code.
5. Conduct public hearings and make recommendations to City Council concerning land use applications in accordance with the requirements of the City's Land Use Code (Title 17 of the Code);
6. Conduct public hearings and issue decisions concerning land use applications in accordance with the requirements of the City's Land Use Code (Title 17 of the Code).

Roles of Commissioners cont.

- **Planning Commissioners are *not* policy makers. In reviewing and considering land use applications, Commissioners are bound by the Land Use Code.**
- **Planning Commission must comply with the Open Meetings Law**
- **Minutes shall be kept of all Planning Commission proceedings (reviewed and approved by the Commission at a later meeting)**
- **Planning Commission may hold work sessions – open to the public but no voting takes place**

Norms of Conduct

- **Fun**

- We will seek to “keep it positive.”
- Any form of humor will be in the best interest of the group, not at the expense of any member or offensive in any way to another.

*Always keep in mind public perception

Additional Norms of Conduct cont.

• Respectful

- Respect the Chair's "traffic direction" role.
- Praise in public, criticize in private.
- Be tough on issues, but not on each other.
- Respect one another and the staff, our limited time resources, and varying learning styles.
- Respect equality of power in our discussions by not interrupting and listening intentionally.
- Not make assumptions – understand and clarify differences of opinion.

Additional Norms of Conduct cont.

• United

- Seek points of compromise
- Speak with one voice after a decision has been reached. Respect the will of the majority and continue to be constructive even if you were a dissenting vote/voice.
- Seek to understand differing points of view, especially when there isn't an agreement.
- Ensure everyone has had the opportunity to have a say, uninterrupted, before discussion commences.
- Listen to understand, not just to respond.
- Wait to commit to a position until have heard everyone's point of view.

Rules of Procedure

• General Guidelines

- Chair serves as parliamentarian.
- Abstaining from Voting is not Permitted.
- A Conflict-of-Interest Mandates a Recusal from Voting.
- A Motion is Not a Prerequisite to Discussion or Debate on a Matter

Rules of Procedure cont.

- **General Rules Governing the Meeting**

- Quorum Required
- No Interruptions or Side Discussions
- Vote Requirement
- Aye or Nay Vote Required

Points & Motions – Most Common

| MOTIONS | Second Required | Debatable | Vote |
|-------------------|------------------------|------------------|-------------|
| MOVE | YES | YES | YES |
| RECONSIDER | YES | YES | YES |
| CONTINUE | YES | YES | YES |
| ADJOURN | YES | YES | YES |

| SUBSIDIARY MOTIONS | Second Required | Debatable | Vote |
|---------------------------|------------------------|------------------|-------------|
| Amend | Yes | Yes | Yes |
| Close Debate | Yes | No | Yes |



Points & Motions – Most Common

| <i>PRIVILEGED MOTIONS</i> | Second Required | Debatable | Vote |
|---------------------------|-----------------|-----------|------|
| Recess | Yes | No | Yes |
| Executive Session | Yes | Yes | Yes |

| <i>POINTS</i> | Second Required | Debatable | Vote |
|--------------------|-----------------|-----------|------|
| Order | No | No | No |
| Information | No | No | No |
| Appeal | No | Yes | Yes |

Open Meetings

- All meetings of **three** or more members of Planning Commission must be open to the public and noticed 24 hours in advance – however, case law may be changing this (*Douglas County School Board*).
- A Meeting is “any kind of gathering convened to discuss public business in person, by telephone, electronically, or by other means of communication”
 - E-mails among 3 or more commissioners discussing public business constitutes a meeting
 - Chance meetings and social gatherings at which discussion of public business is not the central purpose are NOT considered a meeting
- Planning Commission can only act at properly-noticed meetings
- Any action taken at a meeting that does not comply with the Open Meetings law is void



Open Meetings cont.

- **Executive Sessions not required to be open to public**
 - Enumerated purposes including:
 - Personnel matters unless involving a specific employee who has requested open session
 - Receiving legal advice
 - Discussing a property transaction
 - Negotiation strategies
 - Specific procedures to be followed
 - Must be noticed
- **Public Hearings**
 - For Land Use Applications
 - Require additional noticing provisions to be completed by land use applicant

Colorado Open Records Act

C.R.S. & 24-72-201, *et seq.*

- All public records are open for inspection by any person at reasonable times
- A public record is any writing:
 - Made, maintained, or kept
 - by the City
 - For use in the exercise of functions authorized by law or rule
 - Or involving receipt or expenditure of public funds
- Content of record is key as to whether disclosure is required

Colorado Open Records Act C.R.S. & 24-72-201, *et seq.*

• “Record” Includes:

- e-mails, recordings, meeting minutes, memos, and any other documentary material
- Following 2017 amendments to CORA, electronic documents must be produced in their native format (e.g., the actual e-mail not a paper copy or .pdf version of it)
- City has adopted its own CORA policy that describes the process for requesting the City’s records

Colorado Open Records Act

C.R.S. & 24-72-201, *et seq.*

- Government official's correspondence is subject to CORA unless it is:
 - Work product (advisory or deliberative materials, e.g. memos)
 - Without a demonstrable connection to official functions
 - From a constituent and clearly intended to be private and confidential
- Records not kept in "official capacity" are not subject to CORA BUT
 - Cannot use personal e-mail to avoid CORA
 - Discussing public business/official functions through personal e-mail may subject personal e-mail account to search and/or disclosure
 - Be careful with use of social media
 - Only use City e-mail to discuss official business

Communication

- Email, no reply all, blind copy
- Social Media
- Text
- Media

Planning Commission Meetings

- BE PREPARED – read the packet
- Rules of Procedure
- Agenda Orientation
- Meetings v. Workshops
- Preparing for Meetings –Packet
- Minutes
- Consent Agenda
- Public Hearings
- Executive Sessions



Public Hearings: Legislative vs. Quasi-Judicial

- **Legislative actions:**

- enacting laws, policies, and regulations of general applicability
- the Planning Commission typically does not have legislative public hearings unless the City is in the process of adopting or amending comprehensive plans, Land Use Code

- **Quasi-Judicial actions: applying laws to specific facts (e.g., approving land use applications)**

- Decisions to be based on the record
 - No ex parte communications
 - Beware of social media
 - Any communications had or facts learned outside public hearing must be stated on the record
- Procedural due process
- Substantive due process
- 28 days to challenge per CRCP 106 (abuse of discretion) if Planning commission is making decision (not just recommendation to City Council)
- Federal Challenges

Personal Liability

- **Liability under Fruita Code Chapter 2.70 and the Board of Ethics**
- **Immune from tort claims under Colorado Governmental Immunity Act**
- **42 U.S.C. § 1983 Actions**
 - Lawsuit regarding violation of right, privilege, or immunity granted by US constitution or federal law
 - Can be sued in official and/or individual capacity
 - Official capacity: action that violated rights taken pursuant to official policy or custom of the City; City pays damages, if any
 - Personal capacity: action that violated rights taken while acting in furtherance of official duties; individually responsible for damages



Ethics

- Must carry out duties for the benefit of the people you serve
- Avoid conduct that violates or appears to violate the public trust
- Abstain from personal financial gain
- Must not use position to gain an unfair advantage
- **Guiding Principle: what is the right thing for the City?**

Gifts

- State and local laws restrict gifts to public officials- including members of the Planning Commission
- Fruita Code Sec. 2.70.50(2) Commissioners are prohibited from accepting gifts “which would tend to improperly influence a reasonable person” to depart from impartially discharging their public duties or “which they know or a reasonable person in their position should know. . . is primarily for the purpose of rewarding them for official action they have taken.”



Conflicts of Interest

- **Private interests (both financial and non-financial) that infringe on Commissioner's ability to objectively perform duties**
- **Colorado Code of Ethics (C.R.S. §§ 24-18-101, *et seq.*) establishes:**
 - ethical standards
 - prohibited conduct
 - civil and criminal liability for failing to comply
- **Financial Interests include**
 - Ownership interest in a business
 - Being a director or officer of a business
 - Employment or prospective employment
 - Ownership of real or personal property

Conflicts of Interest cont.

- Found in Chapter 2.70 of the Code:
- If a Commissioner has a “personal or private interest” in any matter proposed or pending before Planning Commission, he or she must disclose such interest, shall not vote, and must avoid influencing other members (best to leave the room). Although the Colorado statutes would allow the councilmember to vote in certain circumstances, the Fruita Code at Section 2.70 prohibits any participation in deliberation or voting. (State conflict of interest laws found at C.R.S. § 24-18-101 et seq. but since Fruita is home rule, its Code trumps the statute).
- If a Commissioner serves on the board of a nonprofit entity: It is NOT a conflict of interest or breach of any duty for the Commissioner to vote on matters affecting the nonprofit, provided that the Commissioner announces his or her involvement before voting
- The Commissioner need only file a disclosure statement and refrain from voting if the member has a financial interest in or receives services from the nonprofit that are independent of his or her duties as a member of the board of directors
- Fruita Code Section 2.70 CONFLICT OF INTEREST. Financial or personal interest.
 - A. No official, either on his own behalf or on behalf of any other person shall have any financial or personal interest in any business or transaction with any public body unless he shall first make full public disclosures of the nature and extent of such interest.
 - B. Disclosure and disqualification. Whenever the performance of his official duties shall require any official to deliberate and vote on any matter involving his financial or personal interest, he shall publicly disclose the nature and extent of such interest and disqualify himself from participating in the deliberation as well as in the voting.
 - C. Incompatible employment. No official shall engage in private employment with, or render services for, any private person who has business transactions with any public body unless he shall first make full public disclosure of the nature and extent of such employment or services.
 - D. Representation of private persons. No official shall appear on behalf of any private person, other than himself, before any public body in the city.
- Personal conflicts not within Colorado Code of Ethics or City Code may nonetheless raise the “appearance of impropriety” and warrant recusal



Applications before Planning Commission

(R=recommend; D=decisionmaker)

| Application Type | Planning Commission | City Council |
|-------------------------------|---------------------|--------------|
| Annexations | R | D |
| Conditional Use Permit | D | - |
| Concept Plan | R | R |
| PUD Subdivison | R | D |
| PUD Zoning | R | D |
| Rezone - General | R | D |
| Land Use Code Amendment | R | D |
| Historic Property Designation | R | D |



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