



NEVADA PLANNING GUIDE



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EXECUTIVE SUMMARY

PURPOSE

The Nevada Planning Guide provides information for professional planners, citizen planners, and elected officials on how planning works in Nevada.¹ This Guide includes information on Master Plans, implementation strategies (e.g., zoning and subdivision regulations), fiscal tools, and legal issues. In addition, this Guide provides practical advice on the Nevada Open Meeting Law and ethics. The Nevada Planning Guide also includes commonly used acronyms as well as a Nevada Planning Glossary.

WHAT IS PLANNING?

From its earliest days², the city and regional planning profession has been focused on addressing existing and future issues in a community through the development of plans. While many issues have changed over the decades, the planning process remains grounded in the use of data, public input, and development of specific recommendations, in the form of goals, policies, and strategies, to address these issues. The analytical process allows a planner to look at the physical, social, and economic aspects of a community. The planning process is used different kinds of plans, such as Master Plans, Neighborhood Plans, or Regional Plans. To be effective, plans must be monitored and updated to reflect new and changing priorities for a community. The purpose of planning is to develop and implement strategies that create better neighborhoods and communities.

PLANNING IN NEVADA

In Nevada, the first state planning laws were adopted in 1921. Nevada Revised Statutes (NRS) 268.100 through 268.220 allowed communities to establish planning commissions. In 1924, NRS was amended to allow cities to adopt zoning regulations. Today's main planning enabling laws for Nevada were adopted by the state legislature in 1941 and 1947 and are contained in NRS 268 and NRS 278. In 2013, the state planning laws were amended again when the Nevada legislature revised the requirements for Master Plans (AB 55) and added a new requirement for above ground utility plans.

¹ Some of the material in the Nevada Planning Guide was previously published in the Planner's Guide (State Lands Division, 2008) and the Planning Commissioners Handbook (Nevada APA Chapter, 2005)

² The first City Planning Conference took place in Washington, D.C in 1909

ORGANIZATION OF NEVADA PLANNING GUIDE

The Nevada Planning Guide includes six chapters. Chapter 1 provides information on Master Plans in Nevada, including the Master Plan Elements that are required for different jurisdictions. Chapter 2 discusses planning at the State level, including the role of the State Land Use Planning Agency. Chapter 3 discusses implementation tools such as zoning and subdivision regulations. Fiscal tools, such as Redevelopment Districts and Impact Fees, are discussed in Chapter 4. Important information on Nevada's Open Meeting Law and Ethics are provided in Chapters 5 and 6. Chapter 7 provides a concise discussion of key legal decisions. Finally, a Nevada Planning Glossary is included as well as commonly used planning acronyms.

CHAPTER ONE – MASTER PLANS IN NEVADA

INTRODUCTION

A Master Plan, or Comprehensive Plan, is an official public document adopted by a governing body as a guide to decisions about the physical development of the governed area. The area included in the Master Plan can be a city, a county, or a region. The Master Plan identifies current issues and needs in the community based on research, analysis, and extensive public input, and sets forth goals, policies, and actions to address issues. The plan has four main aspects:

1. It is comprehensive, encompassing all portions of the area under consideration and all facets of the community that will be impacted by physical development. It should address current issues in the community and provide strategies to help solve problems in the community, such as stormwater management or affordable housing.
2. The plan is general and it summarizes goals, but does not indicate specific locations or detailed regulations necessary to achieve the goals. Policies are also included, but only as directions, not as laws.
3. It is long range, setting goals for a set period, commonly twenty years, looking forward.
4. To be effective, the Master Plan should include specific actions to achieve the goals adopted for each element in the Plan.

Nevada Revised Statutes (NRS) requires communities to adopt a Master Plan when a Planning Commission has been established. Planning Commissions with seven members are mandated for counties that have more than 40,000 people or cities with more than 25,000.

MASTER PLANS IN NEVADA

Nevada Revised Statutes (NRS) requires communities to adopt a Master Plan when a Planning Commission has been established. Planning Commissions with seven members are mandated for counties that have more than 40,000 people or cities with more than 25,000. Many communities do not meet the NRS threshold for a Planning Commission, but still have Master Plans, such as the City of West Wendover. The difference is that all the functions of a Planning Commission are handled by the governing body. In the City of West Wendover, for example, the City Council acts as the Planning Commission.

NRS Chapter 278 was amended by the Nevada Legislature in 2013 to include an amended section on Master Elements as well as a new section requiring utility plans. Senate Bill 55 amended NRS Section 278.160 to reduce the number of Master Plan Elements from 18 to 8. In addition, the Nevada Legislature approved a new section in state planning law (AB 239) which requires communities to adopt an aboveground utility plan (NRS 278.165) by December 31, 2014. The eight Master Plan Elements spelled out in state law are as follows:

1. Conservation Element. The Conservation Element must include a conservation plan as well as a solid waste disposal plan.
2. Historic Preservation Element. The Historic Preservation Element must include a historic neighborhood preservation plan and a historic properties preservation plan.

3. **Housing Element.** The Housing Element must include 8 components including an inventory of housing conditions, a determination of present and prospective need for affordable housing, and a plan for maintaining and developing affordable housing to meet the housing needs of the community for at least 5 years.
4. **Land Use Element.** The Land Use Element must include a land use plan that includes an inventory and classification of types of natural land and of existing land cover and uses. The Land Use Element may include plans or policies regarding the acquisition and use of federal land (see NRS 321.7355). For any county with a population greater than 700,000 (Clark County), the Land Use Element must include a rural neighborhoods preservation plan.
5. **Public Facilities and Services Element.** The Public Facilities and Services Element must include an economic plan to support the implementation of the element, a population plan, an aboveground utility plan, a plan for utilities, and a school facilities plan.
6. **Recreation and Open Space Element.** The Recreation and Open Space Element must include a recreation plan which includes parks, trails, and reserved riverbank strips.
7. **Safety Element.** The Safety Element must include a seismic safety plan and for counties with populations greater than 700,000 (Clark County), a safety plan which identifies natural and manmade hazards.
8. **Transportation Element.** The Transportation Element must include a street and highways plan, a transit plan, and a transportation plan showing a comprehensive transportation system.

When a city or county adopts a Master Plan, state law requires the adoption of specific Master Elements, based on the size of the jurisdiction, as depicted in the table below.

Jurisdiction Size	<ul style="list-style-type: none"> • Master Plan Elements Required
Jurisdictions within counties less than 100,000	If a city or county adopts any elements as part of a Master Plan, the Plan must include an above ground utility plan of a Public Services and Facilities Element
Jurisdictions within counties over 100,000	<ul style="list-style-type: none"> • Conservation Plan of the Conservation Element • Housing Element • Population Plan of the Public Services and Facilities Element • Aboveground Utility Plan of Public Services and Facilities Element
Jurisdictions within counties over 700,000	All Elements are Required: <ul style="list-style-type: none"> • Conservation Element • Historic Preservation Element • Housing Element • Land Use Element • Public Facilities and Services Element, including an aboveground utility plan • Recreation and Open Space Element • Safety Element • Transportation Element

Nevada planning law does not mandate how often Master Plans should be prepared or updated. However, NRS 278.190 does require that the Planning Commission prepare an annual report to the governing body with any recommendations concerning the Master Plan. Typically, the planning staff will prepare this report for the Planning Commission.

Public Land Policy Plans are not required under NRS 278.160 but are often incorporated in county master plans to address public land issues. Chapter 2 provides information about the public land policy plans authorized under NRS 321.7355

MASTER PLAN COMPONENTS

Master Plans usually contain four main components: 1) A Community Profile; 2) A Survey of Existing Conditions; 3) Master Plan Elements, such as the Land Use Element and the Housing Element; and 4) the Action or Implementation Section. More information on each component is described below.

COMMUNITY PROFILE

Most plans begin with an introduction to the community. The community profile creates familiarity for both residents of the community and nonresidents as well. It might begin with a description of the geography, followed by a brief summary of the history of the community. Graphics, maps and photographs help to provide a clearer picture of the community for the reader. Other information to include in the community profile:

- Geographical location
- Regional setting
- Population
- Housing summary
- Major economic activities
- Form of government
- Educational and recreational activities
- Special features and attractions

EXISTING CONDITIONS

All Master Plans need to include information on current conditions and trends for different functional areas, such as housing, land use, and transportation. The information on existing conditions needs to include population projections and future housing demand. This information provides the basis for determining community needs. This information may be contained within each element of the Master Plan or else treated as a separate section of the Master Plan, such as an inventory section.

MASTER PLAN ELEMENTS

All Master Plans contain specific elements and these elements typically cover functional areas such as land use and transportation. The Master Plan element contains goals, policies, and actions to meet the needs of the affected community, as described below.

Goals. The goals of the community are fundamental to the planning process. They provide the means for making choices and affirming decisions. For this reason goals need to be clear, simple declarations of what the community hopes to achieve. The goals do not necessarily have to be fully achievable for a plan to be successful. Goals should instead represent long term targets towards which planning efforts are directed. Goals do not have a specific time frame other than

the typical 10 or 20 year time frame of a Master Plan. Goals are broad general statements on what is ultimately desired and form the basis for the Master Plan. An example of a housing element goal would be: Increase the supply of affordable housing for families, the elderly, and persons with disabilities.

Policies. A policy provides a framework to achieve a goal. Master Plan elements may often contain many policies to guide how a jurisdiction achieves specific goals, but policies are not actions. An example policy may be to carry out redevelopment projects in an historic business district which are in character with the existing buildings.

Strategies/Actions. Successful implementation of a Master Plan requires the adoption of specific strategies or actions to meet the goals for each element. These actions are specific tasks which are often contained in an action matrix that provides information on when the action will be completed and which departments or entities are responsible for completing the action.

FUTURE LAND USES V. ZONING DISTRICTS

Master Plans include land use elements that depict the most appropriate future land uses for a community. Future land designations, such as conservation, rural, open space, residential, or industrial, are general land use categories and are not the same as zoning districts, which are regulatory tools that help to implement a Master Plan. A future land use depicts the desired development pattern for a community. The future land use may represent what actually exists, such as an industrial land use, or may represent a future land use that is more appropriate, such as commercial land uses. Where is the best location for future residential development? Where should urban development be located? Where are sensitive lands located? Where should urban development be prohibited? Is there adequate land for industrial development? The future land uses need to represent general categories of land uses that are most appropriate for a particular community. Typically, a community will include a chart in the Master Plan to depict the zoning districts which are compatible with each future land use.

Most communities in Nevada have adopted zoning districts to regulate the location and intensity of different types of land uses, such as commercial uses. Nevada law states that jurisdictions may establish zoning districts and regulations for each district but zoning regulations must be “adopted in accordance with the master plan for land use...” (NRS 278.250).

Chapter 3 provides more information about zoning and subdivision regulations in Nevada and explains how development regulations should be used to implement the Master Plan.

CHAPTER TWO – STATE PLANNING IN NEVADA

INTRODUCTION

Nevada has the unique distinction of consisting of almost 86% federally-managed lands. The majority of Nevada's counties have less than 25% of their land area available for economic development on private lands and the associated tax base. Some counties have less than 5% private land area available.

This situation has led to challenging land use and natural resource planning at the State level. Mechanisms have been established and authorized by statute to help in these endeavors.

NEVADA STATE CLEARINGHOUSE

Authorized by gubernatorial executive order in 1989, the Nevada State Clearinghouse, within the Department of Conservation and Natural Resources, Division of State Lands, exists to inform Executive Branch agencies of significant federal projects and policy initiatives that affect our state. The Clearinghouse has Memorandums of Understanding (MOUs) with Federal agencies to ensure that the consultation requirements of the National Environmental Policy Act (NEPA) are met.

The Nevada State Clearinghouse is the single point of contact (SPOC) for NEPA proposals statewide and should be notified of all NEPA projects that occur on public land in Nevada. Pursuant to NEPA, federal agencies must coordinate with the State and local governments whenever a project or policy initiative is proposed on public lands.

- The Clearinghouse ensures that pertinent State agencies are notified about the projects and then provides their comments back to the federal agencies to help facilitate the consultation process.
- In addition to State agencies, the Clearinghouse notifies pertinent local governments of the projects and seeks comments. The Clearinghouse notifications act as outreach to ensure local-level entities are informed.

60-DAY GOVERNOR'S CONSISTENCY REVIEW PROCESS

To ensure State and local coordination and consistency review, an additional final step is afforded the State. Pursuant to 43 Code of Federal Regulations (C.F.R.) § 1610.3-2 (e), prior to the approval of a proposed Bureau of Land Management (BLM) Resource Management Plan (RMP), or amendment to a management framework plan or BLM RMP, the 60-Day Governor's Consistency Review process is required and gives the State and local governments an additional review opportunity that follows NEPA consultation and coordination criteria.

When the 60-Day Governor's Consistency Review process is triggered, there is a set sequence of events that occur:

- The BLM State Director shall submit to the Governor the proposed plan or amendment and shall identify any known inconsistencies with State or local plans, policies or programs.
- The Governor shall have 60 days in which to identify inconsistencies and provide recommendations in writing to the BLM State Director.

- If the Governor does not respond within the 60-day period, the plan or amendment shall be presumed to be consistent.
- If the written recommendation(s) of the Governor recommend changes in the proposed plan or amendment which were not raised during the public participation process on that plan or amendment, the BLM State Director shall provide the public with an opportunity to comment on the recommendation(s).
- If the BLM State Director does not accept the recommendations of the Governor, the BLM State Director shall notify the Governor and he shall have 30 days in which to submit a written appeal to the National BLM Director in Washington DC.
- The National BLM Director shall accept the recommendations of the Governor if he determines that they provide for a reasonable balance between the national interest and the State's interest.
- The National BLM Director shall communicate to the Governor in writing and publish in the Federal Register the reasons for his determination to accept or reject such Governor's recommendations.

NEVADA JOINT MILITARY AFFAIRS COMMITTEE

The Nevada Joint Military Affairs Committee (NJMAC) is held twice a year and is facilitated by the Nevada State Clearinghouse. NJMAC was created to increase dialogue and coordination between the State and its military partners. NJMAC is composed of personnel from the military, federal land managers, state agencies, Congressional staff and one representative from the Nevada Association of Counties. The intent of NJMAC is to meet and discuss topics of mutual interest, increase dialogue and be proactive regarding emerging issues of importance to Nevada.

STATE LAND USE PLANNING AGENCY

The State Land Use Planning Agency (SLUPA) provides technical planning assistance to local governments and other agencies, and represents the state on a wide variety of federal land management activities.

- In cooperation with other state agencies and local governments throughout the State, SLUPA helps develop and update county-level public land policy plans for the use of public lands which are managed by agencies of the federal government.
- These plans provide local governments with a strong voice in federal planning-related matters such as land use and natural resource plan updates and NEPA reviews for public land development proposals. NEPA requires coordination between Federal, State and local governments. These plans are a major tool in fostering collaboration between various levels of government.
- SLUPA also publishes the "*Laws Relating to Planning*". This document is a compilation of the Nevada Revised Statutes relating to planning, zoning, land division, planned use development, housing, and other land use and natural resource planning subjects.

STATE LAND USE PLANNING ADVISORY COUNCIL

SLUPA is staff to the Nevada State Land Use Planning Advisory Council (SLUPAC). SLUPAC (NRS 321.740) is the only Governor-appointed council that has a county commissioner

representative from each of Nevada’s seventeen counties as well as Nevada Association of Counties (NACO).

Nevada has an existing infrastructure for meaningful coordination between counties, State agencies, and Federal agencies through the Nevada State Clearinghouse and SLUPAC. The Clearinghouse has a recently-adopted MOU with the BLM specifying consistency and coordination responsibilities between the State and BLM. Meaningful coordination and principled consistency review between the BLM, State and local governments using SLUPAC as the avenue for dialogue, is an explicit goal of this MOU.

- SLUPAC is the State-level avenue for local governments to express concerns or discuss issues related to land use and natural resource planning.
- SLUPAC is the mechanism for local governments to elevate local level land use and natural resource related issues to the State.
- The Clearinghouse notifies the county representative on SLUPAC regarding NEPA projects and it is the responsibility of that representative to conduct additional outreach at the local level to determine the need for any further review, comment or follow up. The Clearinghouse coordinates with the NACO representative on SLUPAC as an additional avenue for outreach to local governments.

NRS 321.750 Duties. The State Land Use Planning Advisory Council shall:

- Advise the Administrator on the development and distribution to cities and counties of information useful to land use planning.
- Advise the State Land Use Planning Agency regarding the development of plans and statements of policy.

The State Land Use Planning Advisory Council shall develop recommendations and proposed regulations relating to land use planning policies in areas of critical environmental concern (ACEC’s).

The Executive Council of the State Land Use Planning Advisory Council, which consists of the Administrator and four persons selected by the Advisory Council from among its members shall resolve inconsistencies between the land use plans of local government entities when requested.

PUBLIC LAND POLICY PLANNING

Since Nevada is so unique in the union, with the most federally-managed lands (86%) of any other state, it is important to maintain “local voice” in the planning process on Nevada’s public lands. SLUPA is authorized by statute to assist in preparation of public land policy plans at the county level. Typically, these plans are adopted as an element of the master plan to facilitate coordination and consistency review pursuant to NEPA.

NRS 321.7355: Plan or statement of policy concerning lands under federal management.

The State Land Use Planning Agency shall prepare, in cooperation with appropriate Federal, State and local governments, plans or statements of policy concerning the acquisition and use of lands in the State of Nevada that are under federal management.

The purpose of a Public Land Policy Plan is to:

- Detail a county's vision and strong policy voice concerning public lands and potential Congressional actions.
- Define public land-related issues and needs.
- Provide locally developed land management policies that enable the federal land management agencies to better understand and respond in a positive fashion to the concerns and needs of a county in a collaborative process through meaningful coordination and principled consistency review.
- Increase the role a county has in determining the management of the federal lands.
- Provide an opportunity to positively address federal land use management issues directly and thereby offer a proactive alternative rather than an after-the-fact response.
- Encourage public comment and involvement.

Public land policy plans represent a review of existing and emerging public lands issues that are of importance to counties and the State in working with federal agencies under NEPA and other public processes, including, for example, BLM's organic act – the Federal Land Policy Management Act (FLPMA).

Within these plans are descriptions of issues and opportunities relating to public lands and how best to work collaboratively with the federal planning partners, most notably Bureau of Land Management (BLM), US Department of Energy (DOE), US Department of Defense (DOD), US Forest Service (USFS), US Bureau of Reclamation (BOR), US Fish and Wildlife Service (FWS), and the US Bureau of Indian Affairs (BIA).

- These plans enable the federal land management agencies to better understand and respond to the concerns and needs of counties and the State through meaningful coordination and principled consistency review.
- Planning, effective communication and coordination by Nevada's governments, in concert with its citizens, can establish a set of policies for the proper use of these lands and to take advantage of the "consistency" language in Section 202(c)(9) of the Federal Land Policy and Management Act (FLPMA).
- Section 202(c)(9) governs BLM Planning and directs the BLM to give consideration to appropriate state, local, and tribal lands in the development of land use plans for federal lands.
- The BLM is to provide for meaningful public involvement of state and local government officials in the development of land use plans, regulations and decisions for federal lands.
- The BLM will review each Resource Management Plan (RMP) and proposed federal action for consistency with public land policy plans, and all other plans, policies, programs and processes, and will attempt to make the RMPs and proposed actions consistent to the extent that the Secretary of the Interior finds them consistent with federal law and the purpose of FLPMA.

Forest Service regulations for land management planning and for implementing NEPA requires that the Forest Service determine the consistency of any project proposal with state and/or local laws and plans.

The agency is required to describe any inconsistencies and the extent to which the agency would reconcile its proposal with the state/local laws and plans. This consistency review is also provided for by the Council of Environmental Quality (CEQ) regulations (40 CFR 1506.2(d)) developed to implement NEPA.

Other Federal agencies have similar coordination and consistency requirements.

CHAPTER THREE – IMPLEMENTATION TOOLS

INTRODUCTION

When units of government in Nevada adopt plans to carry out and achieve their goals, objectives, and policies, zoning ordinances, subdivision regulations, and capital project budgeting and finance are the primary methods and tools of plan implementation. As is the case in states across the country, Nevada's governments enact zoning ordinances to divide their communities into districts, regulate land use activities, and establish methods of dividing land into multiple parcels to ensure future land uses are incorporated in to the comprehensive plan are achieved, that existing land uses are protected from incompatible land uses or nuisances, the development is adequately served by infrastructure, and that development avoids sensitive areas. As a part of their duties established by laws, counties, cities, and special units of government also establish budgets based on their respective revenues to expend money for improvements. Finally, special authorities that have been created to ensure certain areas or regions plan for growth in a coordinated fashion and that efforts by multiple units of government do not come into conflict by various methods of conformance.

POWERS FOR PLANNING IMPLEMENTATION

The roots of Nevada planning are embedded within key laws through delegation of power from the [Nevada Constitution](#).

- As a condition for being admitted into the Union in 1864, Nevada's Constitution contains an Ordinance that allows Federal control of unappropriated land. As a result, approximately 85% of Nevada is under control by Federal agencies in 2015, divided between the Bureau of Indian Affairs, the Bureau of Land Management (BLM), Bureau of Reclamation, Department of Defense, Department of Energy, Fish and Wildlife Services, Forest Service and National Park Service. The remaining land that is held is subject to control by state and local governments.
- The Legislature has held that planning authority resides with the local governments, which are closest to the people. Article 4 required the Legislature to establish a uniform system of County and Township government and defined powers for commissions and officers of Nevada's 17 counties. Similarly, Article 8 charged the Legislature to establish laws to allow for the creation and organization of cities and towns, either by special act or charter or through general law. Article 8 also establishes Nevada as a Dillon's rule state by restricting powers of taxation, assessment, borrowing money, contracting debts, and loaning credit.
- While limited functional home rule was granted to cities and counties at the 2015 Legislative Session, Nevada's municipal corporation have effectively derived their powers and rights wholly from the Nevada Legislature.

In the early 20th Century, the Progressive movement saw the national passage of reforms at the national, state, and local levels to help protect public safety and welfare. Although planning was still in its infancy, Nevada's earliest state and local laws established a rudimentary framework for city planning. By 1925, Nevada and eighteen other states had adopted the Standard State Zoning Enabling Act wholly or in part. By the 1930's and 1940's, new powers for city planning were established through Nevada Revised Statutes (NRS).

Over time and as Nevada has grown, the Legislature and local governments would amend these laws and create, adopt, and utilize these tools for implementation. The Legislature has further refined its stance on planning, finding that unregulated growth and development results in harm to the public safety, health, and general welfare; that cities have a responsibility for guiding the development of areas within their respective boundaries for the common good, and the counties have similar responsibilities with respect to their unincorporated areas; and that city, county, regional and other planning must be done in harmony to ensure the orderly growth and preservation of the state.

There are two titles of NRS that specifically govern planning:

- Titles 20 and 21 – The chapters of NRS within these two titles establish uniform rules and powers for county government and specific officers (NRS Chapters 243 – 260), general laws for cities ([NRS 266](#) – Ely, Fallon, Fernley, Lovelock, Mesquite, West Wendover, Winnemucca), and powers common to both chartered and general law cities ([NRS 268](#) – Boulder City, Caliente, Carlin, Carson City, Elko, Henderson, Las Vegas, North Las Vegas, Reno, Sparks, Wells, Yerington), including the creation of city planning commissions. While many of the laws within these titles aren't necessarily specific to planning or plan implementation, they do establish powers and methods for adoption of codes, local government finance, provision of public infrastructure and services, and means of protecting health, safety, and welfare.
- Title 22 – The chapters within this title are specific to Planning and Zoning, Regional Transportation Commissions, and Development and Redevelopment. The most pertinent chapters include:
 - [NRS 278](#) specifically covers Planning and Zoning. This chapter covers:
 - A wide range of planning definitions (NRS 278.010 – NRS 278.0237)
 - [Southern Nevada Regional Planning Coalition](#) (NRS 278.02507 – NRS 278.029)
 - [Truckee Meadows Regional Planning Agency](#) (NRS 278.026 – NRS 278.029)
 - City and County Planning Commissions ([NRS 278.030—278.140](#))
 - Subdivision law ([NRS 278.320 – 278.5695](#))
 - [Tahoe Regional Planning Agency](#) (NRS 278.780 – NRS 278.828)
 - [NRS 278A](#) – Chapter 278A establishes standards and conditions for planned unit developments (PUD) and authorizes cities and counties to enact ordinances to exercise chapter's provisions. PUD ordinances must specify minimum standards of design (NRS 278A.090-278A.370):
 - Permitted uses and types of housing in the PUD
 - Density and intensity of land uses
 - Design, bulk, and location of buildings
 - Common open space areas and jointly owned areas
 - Public facilities and Provision of utilities
 - Minimum site areas
 - Drainage
 - Fire protection systems
 - Streetlighting
 - Parking
 - Setbacks
 - Sewers and wastewater treatment

- Public and private street construction, design, and addressing Approval or disapproval of a PUD must be consistent with NRS 278A.440 - 278A.590.
- [NRS 278B](#) – Authorizes governing bodies to charge impact fees for new development. Specific procedures for capital improvement plans and collection of fees are provided (See Chapter 4 for more information about impact fees).
- Chapters governing community redevelopment include [NRS 279](#) (Redevelopment), [NRS 279A](#) (Rehabilitation of Property in Residential Neighborhoods), and [NRS 278C](#) (Tax Increment Areas). In general, the chapters require formation of redevelopment plans and grant powers and special implementation tools to local governments to create redevelopment agencies for the purpose of planning, constructing or operating redevelopment projects within blighted areas with social or economic liabilities. In addition, other powers for economic development and local improvements may be utilized by local governments under [NRS 271](#) (Local Improvements), [NRS 271A](#) (Tourism improvements), [NRS 271B](#) (Economic Diversification districts – utilized for attracting TESLA to Storey County), [NRS 274](#) (Zones for Economic Development). See Chapter 4 for more information about these different financing mechanisms.
- Transportation capital improvement planning by Regional Transportation Commissions (RTC) is covered in [NRS 277A](#), as are powers and duties as a metropolitan planning organization (MPO).

Nevada's local government bodies and Planning Commissions are empowered with plan implementation. All cities with a population of 25,000 or more (Carson City, Henderson, Las Vegas, North Las Vegas, Reno, and Sparks) and all counties with a population of 40,000 or more (Clark, Douglas, Elko, Lyon, Nye, and Washoe) are required to create a planning commission. In cities and counties below the population threshold, creation of a planning commission is optional and the council or commission may perform the functions and duties that would otherwise be performed by a planning commission (NRS 278.030).

Under NRS 268 and NRS 278, city and county planning commissions are empowered to perform, recommend, and advise their governing bodies and other public authorities on several important functions:

- Prepare and adopt a comprehensive, long-term, general plan for the physical development of the city, county or region (see Chapter 2) and promote public interest in and understanding of the plan, and consult and advise public officials, agencies, utilities, and the public on carrying out the plan. The “master plan” must then be adopted by the governing body; the Planning Commission is then required to make annual recommendations to its respective governing body for implementation of the plan ([NRS 278.190](#)).
- Recommend to the city council and all other public authorities plans and regulations for the future growth, development and beautification of the municipality in respect to its public and private buildings and works, streets, parks, grounds and vacant lots, and the development of affordable housing.
- Recommend the laying out, widening, extending, paving, parking and locating of streets, sidewalks and boulevards.

- Recommend betterment of housing and sanitary conditions, establish zones or districts within which lots or buildings may be restricted to residential commercial or industrial use that limit the height, area, and bulk of buildings and structures.
- Conduct public hearings on land use applications and take final action subject to a possible appeal to the governing body.
- Perform any other acts, study, and propose measures for municipal welfare and in the interest of protecting the area's natural resources.

ZONING

[NRS 278.250](#) grants authority to Nevada's local governments to implement zoning to divide the city, county or region into zoning districts in accordance with their master plan. While there is no requirement or mandate in Nevada law to adopt zoning as a tool to implement a master plan, it has been favored by Nevada's cities and counties. The statute provides the process and guidelines for design of a typical ordinance, such as districts and uses, heights, setbacks, bulk, parking, design, signage, and non-conformance, but grants discretion to the governing body about their contents, including:

- Health and general welfare
- Air and water quality
- Adequate housing supply, including the development of affordable housing.
- Conservation of open space and natural and scenic resource protection.
- Solar access, solar and wind energy, and use of materials that increases building energy efficiency
- Recreational needs
- Protection of life and property from natural hazards
- Conformance with an adopted population plan
- A timely, orderly, and efficient transportation network for pedestrians and bicycles.
- Development is commensurate with the character and the physical limitations of the land
- Immediate and long-range financial impact of the application of particular land to particular kinds of development and the relative suitability of the land for development
- Protection of existing neighborhoods and communities, including rural preservation neighborhoods and historic neighborhoods (Clark County).
- Compatibility of land uses with military installations
- Use of additional controls that may be deemed appropriate, including density bonuses, inclusionary zoning, and minimum density zoning

The local government council or commission must take action on zoning ordinances and maps, including amendments; planning commissions and zoning hearing examiners typically make recommendations for approval. In Washoe County, conformance of zoning regulations with the master plan is mandatory.

To adopt or amend a zoning ordinance, a local government must place a 10 day notice in a newspaper of the new or amended regulation (NRS 278.260). In Clark County, the regulation cannot become effective until 5 days after transmittal of adopted regulation to an unincorporated town board. Similarly, zoning map adoptions and amendments have notification and adoption processes that vary for individual counties and their respective jurisdictions:

- In general for all counties, a notice is mailed to the applicant requesting action and to all property owners within 300 feet of the subject property within 10 days of a zoning hearing. A provision to notify base commanders is also in place if the property is within 3,000 feet of a military installation. At least 30 separate property owners must be noticed, no matter their distance from the subject property. In addition, notice must also be provided to town boards, should an application involve a change within unincorporated towns. If a proposed amendment involves a change in the boundary of a zoning district which reduces the density or intensity, the notice must have a section that allows owners of surrounding property to indicate approval or opposition of the amendment.
- Within Washoe and Clark Counties, notification remains the same, but the notice area is within 750 feet of the subject property. In Clark County, there are additional notification requirements: notices must include official notices of a public hearing; signage is required on-site, including information about the proposed zoning, the day and time of the meeting, and contact information. Finally, while downzoning may occur, an amendment involves a change in the boundary of a zoning district that reduces the density or intensity and 20 percent of the property owners to whom notices were sent oppose the amendment. The city or county cannot approve the amendment unless it separately considers the merits of each aspect of the proposed amendment to which the owners expressed opposition and it makes a written finding that the public interest and necessity will be promoted by approval of the amendment.

VARIANCES AND SPECIAL USE OR CONDITIONAL USE PERMITS

The local government council or commission must take action on zoning ordinances and maps, including amendments; the jurisdiction's planning staff, planning commissions and zoning hearing examiners typically make findings of fact for recommendations for approval or denial that establish and confirm that zoning regulations and actions are in line with other actions and plans. In Washoe County, conformance of zoning regulations with the master plan is mandatory.

As can be found in many jurisdictions nationwide, [NRS 278.315](#) allows local governments to authorize variances and special or conditional use permits by a board of adjustment, the planning commission or a hearing examiner. Special exceptions are usually reviewed by local government staff and focused on the physical issues of the exception; they may also be reviewed by advisory bodies, such as town boards. A public hearing on an application is required within 65 days of submittal, while findings of need or detriment are determined by local government staff. NRS 278.319 also allows a process for minor deviations of less than 10 percent to be determined by a planning director or other designated staff member.

- Variances – In Nevada, variances are treated as an exemption from a local government's established standard; they are not granted in order to permit uses in zoning districts in which a use is not allowed, vary minimum spacing requirements, or relieve hardships that are solely personal, self-created or financial in nature. Variances are intended to provide relief to individual property owners where the regulations would create an undue hardship.
- Special Use Permits – A use requiring some type of special review as determined by a local government can require an additional permit. Conditions of approval typically accompany a special use permit, but these must be rationally related to the use, and may have impacts to both the property and off the premise. Certain land uses may require

special use permits in some zoning districts whereas the same land use may be allowed by right in more intense land use districts.

Application requirements are determined by each jurisdiction, but noticing requirements are established by statute – in all counties except Washoe and Clark, notices must be sent to all property owners within 300 feet of the subject parcel, and all tenants of manufactured housing within 300 feet of the subject parcel. A provision to notify base commanders is also in place if the property is within 3,000 feet of a military installation. In Washoe and Clark counties, if the deviation is less than 30%, notifications must be sent to all property owners and tenants of manufactured housing within 100 feet of the subject parcel; however, if the deviation is greater than 30%, the notification radius expands to 500 feet and also includes the 30 closest separately owned parcels if they are not otherwise duplicated. Additional notification requirements are in place for Clark County establishments that serve alcoholic beverages (on or off premise) in districts that are not defined as gaming enterprise districts.

A process for an appeal of a decision made by a planning commission, board of adjustment, hearing examiner, or planning director may be made to either the elected governing body or district court, as required by NRS 278.3195

GROWTH MANAGEMENT TOOLS: CONSERVATION EASEMENTS AND TRANSFER OF DEVELOPMENT RIGHTS

Nevada law authorizes growth management tools that are commonly utilized across the country. [NRS 111.390 – NRS 111.440](#) enact the Uniform Conservation Easement Act which imposes limits or obligations on government or charitable organizations property owners, typically for unlimited duration, that:

- Retains or protects natural, scenic or open space values of land,
- Assures property availability for agricultural, forest, recreational, or open space uses,
- Protects natural resources,
- Maintains or enhances air or water quality, or
- Preserves historical, architectural, archaeological, paleontological, or cultural aspects of land and property.

The easements can be created, conveyed, modified, assigned, transferred, or terminated in the same manner of other easements. These easements provide a valuable mechanism that restrict sensitive lands, including farmland or riparian habitat, from development or improper usage, often while being protected on the tax roll in perpetuity.

Conservation easements often work in tandem with transfer of development rights (TDR) programs. These programs, such as those in place through TRPA, Douglas County, and [Churchill County](#), can be established and designed by local governments to prevent environmental impacts and manage growth by properly allocating development, retiring or restoring previously developed areas, or transferring development from more sensitive land to land more appropriate for development. A conservation easement restricts development on property, while the development rights, such as land coverage, density, floor area, or residential units, are sold and moved from the property to other property suitable for development. These programs are voluntary and incentive based and intended to reduce pressure on sensitive areas. Some TDR programs provide bonus rights and incentives between sending and receiving

properties for benefits that occur by conserving land or natural features given specific conditions of each location. Overall, TDR provides a market-based solution that supplements local government regulation, open space acquisition programs, and growth management plans.

DIVISION AND SUBDIVISION OF LAND

[NRS 278.320 – 278.5695](#) is Nevada’s subdivision law that establishes provisions and procedures for tentative maps, final maps, parcel maps, divisions of large parcels, map amendments, and other miscellaneous provisions. NRS 278.326 requires local subdivision ordinances be adopted by all local governments and define the application process and map requirements for each type of land division. Ordinances for subdivisions must establish regulations that govern improvements, mapping, surveying, and engineering and must include provisions specifying the time within which improvements must be completed and authorize security by a performance bond, letter of credit, or cash escrow.

In general,

- A subdivision (for which a map is required) is defined as a division of land into five or more parcels for the purpose of transfer or development.
- Whenever a division of real property into four or fewer lots is proposed for sale, transfer or development, the submittal, approval and recordation of a parcel map is required (NRS 278.461 – NRS 278.469).
- If a division of land does not meet the criteria for a parcel map, applicants are required to file a tentative map of the proposed subdivision. A final map (or series of final maps), prepared in accordance with the approved tentative map, establish the proposed boundaries, new legal lot lines, dedications, and easements and is ultimately recorded
- A map of division into large parcels is (or may be) required for land divided into areas covering large acreages, as provided by NRS 278.471 – NRS 278.4725.

Tentative maps (NRS 278.330) are the initial action in connection with making any subdivision; notifications and action by commissions or council are required within 60 days (45 days in Clark County). In addition to review by the governing body, these maps are subject to review by state and local agencies, including school districts, the county, other cities, irrigation and general improvement districts, the Division of Water Resources, Public Utilities Commission, and a district board of health (NRS 278.330 – NRS 278.349) for the following:

- Conformity with the zoning ordinances and master plan, except that if any existing zoning ordinance is inconsistent with the master plan, the zoning ordinance takes precedence
- Physical characteristics of the land such as floodplain, slopes, and soils
- Conformity with the governing body’s master plan of streets and highways

Environmental and health laws and regulations concerning water and air pollution solid waste, water supply, and wastewater treatment

- Availability and accessibility of water and utilities
- Availability and accessibility of public services such as schools, police and fire protection, transportation, recreation, and parks and the availability and accessibility of water for the prevention of fires, including wildfires

- The effect of the proposed subdivision on existing public streets and the need for new streets or highways
- Payment of real estate transfer taxes imposed by NRS Chapter 375
- NRS 278.4979 authorizes local governing bodies to require, by ordinance, the dedication of land for parks or playgrounds to serve future residents of the subdivision or development, with a corresponding increase in density to compensate for the loss of property.

Upon review, the local government's council, commission or planning commission, within four years after the approval of a tentative map, can take action for a final map (NRS 278.360; NRS 278.380); extensions of time may be granted. Final maps also have specific requirements for survey (NRS 278.371), contents (NRS 278.372), and certificates from overseeing authorities and reviewers (NRS 278.373 to NRS 278.378). Upon approval, the final map is the recoded with the County (NRS 278.460).

Requirements and procedures for parcel maps may similarly be established by local governments. Parcel map applicants proposing subdivisions of land must provide copies of their maps to the planning commission or clerk of the local government, in addition to Nevada Division of Water Resources if served by a well or in certain hydrographic basins (NRS 278.461). Parcel maps aren't required for rights of way, easements, small adjustments of parcel lands in transfers, or transfer of space between apartments or commercial buildings, nor are they required for certain legal transactions. Local governments may require street grading, drainage and lot designs, as well as certain improvements if necessary based on the type of development. Parcel mapping procedures are similar to tentative and final map procedures, with respect to their survey, form and contents, preparation, and recordation (NRS 278.463 – NRS 278.468).

CAPITAL PROJECT PLANNING

Local governments in Nevada are required to prepare a capital improvement plan (CIP) covering 3-20 fiscal years that conforms with its master plan, typically for public buildings and facilities, police and fire protection, water and wastewater treatment plants, parks, and street and highway improvements (NRS 278.0226). The plan for capital improvements, which may be done internally by city staff, planning and public works departments, or special committees, must identify both the costs that the local government expects to incur during this period and the sources of revenue that the local government will use for capital projects.

Capital projects may be funded through a local government's general fund, capital project fund, bonds, fees, or through a collaborative entity, such as an RTC, school district, redevelopment agency, or an improvement district. Impact fees may be imposed by local governments on new development (NRS 278B.020) to finance the costs of new infrastructure, a capital improvement, or a facility expansion necessitated by and attributable to the new development. Some developers, including Summerlin in Southern Nevada, may enter into development agreements with local governments to construct new infrastructure and facilities which substitutes for the need of an impact fee. Nevertheless, prior to imposing an impact fee, the local government must establish by a capital improvements advisory committee and hold a public meeting to consider land use assumptions and conformance with the master plan that will be used to develop the capital improvements plan and approve or disapprove of them (NRS 278B.150). After a CIP is developed, another hearing is held to consider the adoption of the plan and the imposition of an impact fee. If adopted, the CIP and impact fees go in to effect. While there are some uses of

impact fees that are prohibited, including for operations and maintenance, statutes clarify the amount, use, and collection of fees (NRS 278B.220 – NRS 278B.280), as well as provide a provision to review and revise a CIP within three years of adoption of the CIP (NRS 278B.290).

NRS 278.4983 – NRS 278.4987 authorizes city councils and county commissions to impose a residential construction tax to raise revenue for neighborhood parks and facilities, provided a master plan has been adopted and included locations of future or present sites of parks. The tax is imposed on the construction of new apartment houses, residential dwelling units and developing mobile home lots and may not exceed one percent of the valuation of each building permit issued or \$1,000 per residential dwelling unit. PUD's may receive credit for dedications of park space.

As part of their duties as MPO's, each RTC is a funder of transportation capital improvements, including streets and highways, bicycle facilities, pedestrian areas, and public transportation. In addition to revenues that can be expended through an RTC, county commissions may impose taxes for transportation improvements on new residential, commercial, industrial construction and other development after receiving the approval from county or transportation district voters in a general election. Revenues from the tax must be used exclusively to pay the cost of projects related to the construction and maintenance of sidewalks, streets, and highways and other public rights of way used primarily for vehicular traffic. The tax cannot exceed \$500 per single-family dwelling unit or 50 cents per square foot on other new commercial development. (NRS 278.710).

PLANNING IMPLEMENTATION BY SPECIAL AGENCIES

While plan implementation may be the role of local governments, there are more than one hundred special purpose districts (controlled under NRS Chapter 308) and units of government in Nevada. These other special agencies, including regional planning entities, RTC's, school districts, health districts, housing authorities, water and wastewater authorities, redevelopment agencies, and other special purpose districts and agencies provide necessary services and play a role in the planning process. While the role of implementation might not necessarily be related to zoning, subdivisions, or capital improvements, these other agencies may collaborate with city and county governments to achieve single purpose or shared purpose goals, such as the provision of public transportation, improvements to air quality, increased economic development, targeted development along a street or highway corridor, or redevelopment of a downtown, as examples:

- With the exception of Washoe County, a board of county commissioners of any county may establish a regional planning commission (NRS 278.090). In Washoe County, Truckee Meadows Regional Planning Agency (NRS 278.026 – NRS 278.029) was specifically created to ensure that comprehensive planning is carried out with respect to population, conservation, land use and transportation, public facilities and services, annexation, and intergovernmental coordination. The Regional Planning Commission and Governing Board develop and approve a plan for managed growth over a twenty year window that considers conformance of ordinances, regulations, and master plans made by Washoe County, Reno, and Sparks, projects of regional significance, and growth and development within respective jurisdictions and spheres of influence.
- Tahoe Regional Planning Agency's (TRPA) bi-state governing body is required to adopt a regional plan that considers land use, transportation, conservation, recreation, public facilities, and services, as required by the Tahoe Bi-State Compact (NRS 278.780 – NRS 278.826). The plan is specifically designed to preserve, restore, and enhance the

unique natural and human environment of the Lake Tahoe region. TRPA is also granted specific powers that implement the Regional Plan that supersede those of local governments and authorities, including:

- Review of construction applications referred to TRPA by a local authority
 - Review and approval of all public works
 - Enforce permitted and conforming uses subject to a moratorium
 - Adoption and enforcement of ordinances, rules and regulations that carry out the regional plan and transmit them to all regional political subdivisions.
- Southern Nevada Water Authority (SNWA), the regional water purveyor serving the Las Vegas metro area's local governments and water districts, collaboratively develops long-range resource and conservation plans. While SNWA was developed as a cooperative utility with member agencies, it is charged with managing regional water resources and facilities for both present and future water needs. Its nearly \$3 billion CIP is necessary to ensure Nevada's share of Colorado River water is delivered to residents, while at the same time develops strategies, plans, and ordinances for adoption by Clark County and Southern Nevada's cities.

ZONING AND SUBDIVISION CODES OF NEVADA'S CITIES, COUNTIES AND TOWNS

Most zoning and subdivision codes can be accessed through the Nevada Legislature's County and City codes page:

<https://www.leg.state.nv.us/Division/Research/Library/Links/Codes.html>

Cities		
Carson City	Title 18 - Zoning	Title 17 - Division of Land, Subdivision of Land
City of Boulder City	Title 11 - Zoning and Subdivisions	
City of Caliente		
City of Carlin	Title 3 - Zoning Regulations	Title 4 - Subdivision Regulations
City of Elko	Title 3 - Zoning Regulations	
City of Ely	Title 11 - Subdivision Regulations	Title 12 - Zoning Regulations
City of Fallon	Title 20 - Subdivisions	Title 21 - Zoning
City of Fernley	Title 10 - Community Development and Building	
City of Henderson	Title 19 - Henderson Development Code	
City of Las Vegas	Title 19 - Unified Development Code	
City of Lovelock	Title 16 - Subdivisions	Title 17 - Zoning
City of Mesquite	Title 9 - Unified Development Ordinance	
City of North Las Vegas	Title 16 - Development Code	Title 17 - Zoning Ordinance
City of Reno	Chapter 18 - Land Development Code	
City of Sparks	Title 17 - Subdivisions	Title 20 - Zoning Code
City of Wells	Title 10 - Zoning Regulations	Title 11 - Subdivision Regulations
City of West Wendover	Title 8 - Zoning Regulations	
City of Winnemucca	Title 16 - Subdivisions	Title 17 - Zoning
City of Yerington	Title 10 - Zoning Regulations	Title 11 - Subdivision Regulations

Counties		
Churchill County	Title 16 - Consolidated Development Code	
Clark County	Title 30 - Development Code	
Douglas County	Title 20 - Consolidated Development Code	
Elko County	Title 4 - Zoning Regulations	Title 5 - Subdivision Regulations
Esmeralda County		
Eureka County	Title 8 - Division of Lands	
Humboldt County	Title 16 - Subdivisions	Title 17 - Zoning
Lander County	Title 16 - Subdivisions	Title 17 - Zoning
Lincoln County	Title 13 - Planning and Development	
Lyon County	Title 10 - Land Use Regulations	Title 11 - Division of Land
Mineral County	Title 16 - Subdivisions	Title 17 - Zoning
Nye County	Title 16 - Subdivisions	Title 17 - Comprehensive Land Use Planning and Zoning
Pershing County	Title 16 - Subdivisions	Title 17 - Zoning
Storey County	Title 16 - Subdivisions	Title 17 - Zoning
Washoe County	Chapter 110 - Washoe County Development	
White Pine County	Title 16 - Subdivisions	Title 17 - Zoning

CHAPTER FOUR – FISCAL ISSUES

INTRODUCTION

According to Gerasimos A. Gianakis and Clifford P. McCue, in their 1999 book titled *Local Government Budgeting: A Managerial Approach*, “Budget deliberations tend to focus on total spending or spending in specific expenditure categories, such as travel, printing or contracts. Important policy decisions may emerge as consequences of spending decisions, but budget deliberations are focused on fiscal policy rather than substantive policy.” The decisions that policy makers make during the public budgeting process becomes a formal expression of the policies that a government entity will pursue in the coming budget year. As a result, planners, and the elected and appointed officials, other government executives, and those members of the public that have a hand in the development of land use and planning decisions in Nevada, should have a comprehensive understanding of the public budgeting process used in Nevada.

This chapter presents a discussion regarding the relationship between planning and public budgeting and finance in Nevada. A brief discussion regarding the public budgeting process in Nevada as outlined in Nevada Revised Statute (NRS) Chapter 354 *Budgets of Local Governments* is also presented. The remaining portion of this chapter focuses on specific approaches to funding local government in Nevada including the use of impact fees, the use of Special Assessment Districts, Tourism Improvement Districts, Tax Increment Areas, Redevelopment Districts, General Improvement Districts, and Conservation Districts.

THE RELATIONSHIP BETWEEN PLANNING AND PUBLIC BUDGETING AND FINANCE

According to Gianakis and McCue (1999), based upon the work completed by Allen Schick in 1966, the public budgeting process serves four primary functions in the administration of local government. First, the public budgeting process serves as a control mechanism. In order to ensure public accountability and transparency, the public budgeting process is designed to hold program managers, including planning directors and officials, accountable for using public funds for approved ends. Second, the public budgeting process helps to guide the operations of the entire organization, such as a municipality or county government, and individuals departments and agencies, such as a planning department. The public budgeting process provides managers and staff an explicit list of expectations regarding their expected output and further helps managers plan their work and their department’s or agency’s work schedule for the coming fiscal year. Third, the public budgeting process is an enunciation of public policy. The public budgeting process enables policy makers and public administrators to plan how public funds will be used to achieve desired societal outcomes. And fourth, the public budgeting process helps shape and influence organizational culture at both the organizational level, such as a municipality or county government, and at the department or agency level, such as a planning department. The public budgeting process and the formal and approved budget of the organization becomes a reflection of the basic values of the organization and the organization’s departments and agencies.

Program managers, including planning directors and officials, begin the public budgeting process by, first, providing an indication as to which programs the department, agency, or entity will seek to accomplish in the coming fiscal year. This first step in the public budgeting process provides program managers with an opportunity to allocate scarce resources to priority program areas.

Government agencies, including planning departments and agencies, face the same type of resource constraints that private citizens, entire government entities, and private sector firms face. While the opportunities and funding needs that a planning department faces on an annual basis may be infinite, the department or entity must select only those programs and initiatives that it has resources to fund. This prioritizing first step in the public budgeting process requires program managers to select only those programs and initiatives that require the most immediate attention and could have the greatest possible positive impact on their community.

Second, program managers, including planning directors and officials, must then consider how the mission of the organization will be accomplished through the annual programs and initiatives prioritized by the program manager and then determine the scope of resources the organization, the department, the agency, or the entity will need to successfully accomplish them. Program managers should take into consideration the necessary staffing requirements, equipment, supplies, and other tangible items needed to perform the various activities related to the prioritized programs and initiatives. Once this identification of necessary resources is completed, program managers can then begin to estimate the financial costs associated with the expenditure and use of the resources needed to complete the various activities related to the prioritized programs and initiatives. This third and final component of the public budgeting process requires program managers, including planning directors and officials, to estimate both the variable costs and fixed costs associated with performing each of the various activities selected by the program manager. Once individual variable costs and fixed costs are estimated, the program manager may then present the estimation of total costs to the elected governing board of the jurisdiction in which the programs and initiatives will be enacted and performed.

In performing these three functions, program managers, including planning directors and officials, should consider three characteristics of the general fiscal environment that their organization, department, entity, or agency operates within. First, program managers should consider the degree of control and discretion afforded to the program manager in broadening the tax and resource base and how much individuals pay. In Nevada, program managers are, at least on face, provided very little discretion in terms of broadening their tax and resource base and setting individual rates. However, program managers may use a variety of financing tools, including impact fees, redevelopment districts, General Improvement Districts, Special Assessment Districts, Tax Increment Areas, Tourism Improvement Districts, and Conservation Districts, in order to develop the resources needed to achieve stated organizational and department-level or agency-level goals and objectives.

Second, program managers should consider the degree of economic risk present within the fiscal environment that could potentially impact the ability of program managers to achieve stated goals and objectives and complete the prioritized programs and initiatives selected for achievement and implementation in the fiscal year. Related to economic risk, program managers should consider both the sustainability of the resource base, specifically the capacity of the revenue to grow comparably to the growth in service demand, and the volatility of the resource base, specifically the level of year-to-year fluctuation that occurs in the resource base. And third and finally, program managers should consider the degree of political risk present within the fiscal environment that could potentially impact the ability of program managers to achieve stated goals and objectives. Program managers must keep a watchful eye on changing political and policy trends and how changes in existing political and policy trends could either positively or negatively impact the flow of revenues and resources the program manager will need by either appropriation

or reallocation by the federal government, the state government, or by the local government entity.

The planning decisions made by a planning department or agency does not occur in a fiscal vacuum or bubble. The decisions that planning directors and officials make will both impact the fiscal conditions of the department's or agency's jurisdiction and will be impacted by the public budgeting process and fiscal decisions made by policy makers at the federal, state and local level. Planning directors and officials must carefully understand how their decisions and initiatives will impact the availability of current and present resources during the public budgeting process and must also take into account changes in the availability and amount of resources provided for the implementation and completion of prioritized planning programs, projects and initiatives.

NEVADA REVISED STATUTE CHAPTER 354, *BUDGETS OF LOCAL GOVERNMENTS*

NRS Chapter 354 *Budgets of Local Governments* outlines the various steps that local governments are expected to perform in the development and adoption of a local government budget. Planning directors and officials should be aware of the various requirements of NRS Chapter 354 in order to properly participate in the public budgeting process and to better identify and secure the resources necessary to achieve organizational and department-level or agency-level goals and objectives. This section provides a brief introduction to NRS Chapter 354 *Budgets of Local Governments*. Planning directors and officials should work collaboratively with the appropriate budget and finance staff and officials within their local jurisdiction to develop a budget that improves both public accountability and transparency *and* organizational efficiency and effectiveness.

NRS Chapter 354 Section 472 outlines the purposes of the *Local Government Budget and Finance Act*. The five primary purposes of the *Local Government Budget and Finance Act* are:

1. To establish standard methods and procedures for the preparation, presentation, adoption and administration of budgets for all local governments.
2. To enable local governments to make financial plans for programs for both current and capital expenditures and to formulate fiscal policies to accomplish these programs.
3. To provide for estimation and determination of revenues, expenditures and tax levies.
4. To provide for the control of revenues, expenditures and expenses in order to promote prudence and efficiency in the expenditure of public money.
5. To provide specific methods enabling the public, taxpayers and investors to be apprised of the financial preparations, plans, policies and administration of all local governments.

While each jurisdiction will have a slightly different approach to the way in which it develops its annual budget, NRS Chapter 354 Section 470 through Section 725 outlines the general process that all local governments in Nevada must follow. Specifically, the public budgeting process in Nevada is divided into two separate parts. The first, found in NRS Chapter 354 Section 578, outlines the general process by which a tentative budget must be developed. The tentative budget is the budget that is initially prepared, published and recorded by the elected members of the local governing body, a city council or county commission, for the coming fiscal year. The tentative budget must be submitted and approved to the Nevada Department of Taxation and

other supervisory boards as are charged by law with the responsibility and requirement to examine tentative budgets prior to the budget's eventual adoption.

The second part of the required public budgeting process in Nevada is found in NRS Chapter 354 Section 524. This section of NRS Chapter 354 outlines the general process by which a final budget must be developed and adopted by the governing body of the local government, either a city council or county commission. The process by which a final budget is adopted by the governing body of the local government is further outlined in NRS Chapter 354 Section 470 through NRS Chapter 354 Section 626. Once the local governing body has properly adopted and approved the final budget, the final budget must then be submitted to the Nevada Department of Taxation for final approval that the final budget has been developed and adopted in compliance with all applicable state statutes and regulations.

NEVADA REVISED STATUTE CHAPTER 278B, *IMPACT FEES FOR NEW DEVELOPMENT*

The Nevada State Legislature, understanding that new development may cause considerable increases in the demand and cost for various new public services in the short-term, and that new property tax revenues, sales-and-use taxes, business license revenues, and other publically collected revenues generated from the new development may not cover the costs incurred by the local government as a result of this new development in the short-term, has authorized local governments to charge impact fees on the new development. NRS Chapter 278B *Impact Fees for New Development* outlines the various capital improvement needs that may be financed through the charging of an impact fee and the process by which a local government may levy these fees.

According to NRS Chapter 278B, a local government, either a municipality or county, may charge an impact fee to cover the costs associated with the provision of eight separate and defined capital improvement needs, including: (1) a drainage project, (2) a fire station project, (3) a park project, (4) a police station project, (5) a sanitary sewer project, (6) a storm sewer project, (7) a street project, or (8) a water project. As to what constitutes a project that is eligible to be funded through the charge of an impact fee is defined thoroughly in NRS Chapter 278B Section 020 through NRS Chapter 278B Section 140.

The process by which a local government, either a municipality or county, may establish and impose an impact fee on new development is outlined in NRS Chapter 278B Section 150 through NRS Chapter 278B Section 280. According to NRS Chapter 278B Section 150, before the local government determines and imposes an impact fee, the local governing body must, by resolution, establish a capital improvements advisory committee which must be composed of at least five members. The local governing body may designate the local Planning Commission as the capital improvements advisory committee if the Planning Commission includes at least one representative of the real estate, development, or building industry who is not an officer or employee of the local government. If no current member of the Planning Commission meets this requirement, the governing body may appoint a representative of the real estate, development, or building industry to serve on the capital improvements advisory committee as long as this appointee is not an officer or employee of the local government. This appointed member will serve as a voting member of the Planning Commission only when the Planning Commission is meeting as the capital improvements advisory committee.

The capital improvements committee, once established, will be responsible for, first, reviewing the land use assumptions related to the new development and determining whether they are in conformance with the master plan of the local government and, second, review the established capital improvements plan of the local government and file written comments and findings to the local governing board. Third, the capital improvements committee must, every three years, file a report with the local governing board concerning the progress of the local government in carrying out the capital improvements plan as it pertains to the new development. Fourth, the capital improvements committee will report to the local governing board any perceived inequities in the implementation of the capital improvements plan or the imposition of any established impact fees and, fifth and finally, advise the local governing board about any need or needs that arise regarding the update or revision of the land use assumptions, capital improvements plan, or the ordinance initially adopted by the local governing board establishing the impact fee or fees.

NRS Chapter 278B Section 170 outlines the various requirements of a capital improvements plan that must be in place and properly adopted by the local governing board prior to the imposition and collection of an impact fee or fees. The seven specific requirements of a capital improvement plan must include:

1. A description of the existing capital improvements and the costs to upgrade, improve, expand or replace those improvements to meet existing needs or more stringent safety, environmental or regulatory standards.
2. An analysis of the total capacity, level of current usage and commitments for usage of capacity of the existing capital improvements.
3. A description of any part of the capital improvements or facility expansions and the costs necessitated by and attributable to the new development in the service area based on the approved land use assumptions.
4. A table which establishes the specific level or quantity of use, consumption, generation or discharge of a service unit for each category of capital improvements or facility expansions.
5. An equivalency or conversion table which establishes the ratio of a service unit to each type of land use, including but not limited to, residential, commercial and industrial uses.
6. The number of projected service units which are required by the new development within the service area based on the approved land use assumptions.
7. The projected demand for capital improvements or facility expansions required by new service units projected over a period not to exceed 10 years.

Depending on the type of project requiring the use of an impact fee or fees to fund (drainage, fire station, park, police station, sanitary sewer, storm sewer, street, or water project), the local government, the amount and way in which the impact fee or fees are assessed and imposed may vary. NRS Chapter 278B Section 220 through NRS Chapter 278B Section 270 outlines the various conditions a local government must follow when assessing and imposing an impact fee or fees based upon the type of project the impact fee or fees are designed to fund. However, NRS Chapter 278B Section 280 outlines six specific conditions in which local governments are prohibited from assessing and imposing an impact fee. These six prohibited conditions include:

1. The construction, acquisition or expansion of public facilities or assets other than capital improvements or facility expansions which are included in the capital improvements plan.
2. The repair, operation or maintenance of existing or new capital improvements or facility expansions.

3. The upgrading, expansion or replacement of existing capital improvements or facilities to serve existing development to meet more stringent safety, environmental or regulatory standards.
4. The upgrading, expansion or replacement of existing capital improvements or facilities to provide better service to existing development.
5. The administrative and operating costs of the local government.
6. Except as otherwise provided in NRS Chapter 278B Section 220, the payments of principal and interest or other finance charges on bonds or other indebtedness.

ALTERNATIVE APPROACHES TO THE FUNDING OF LOCAL GOVERNMENT AND PLANNING INITIATIVES IN NEVADA

Planning directors and officials, when developing new planning documents, should consider both the fiscal impacts their plans will have on the jurisdiction covered by the planning document and how Nevada's existing fiscal system could potentially impact the success of the planning document during implementation. This section outlines various fiscal tools that local planning organizations, departments, entities, and agencies can use to mitigate negative fiscal impacts of new plans and ensure a long-term sustainable source of revenue to support ongoing plan implementation and administration. This discussion provides an overview of six separate special district funding mechanisms including NRS Chapter 271 *Local Improvements*, NRS Chapter 271A *Tourism Improvements*, NRS Chapter 278C *Tax Increment Areas*, NRS Chapter 279 *Redevelopment of Communities*, NRS Chapter 318 *General Improvement Districts*, and NRS Chapter 548 *Conservation*. Each of these six special district funding mechanisms have unique planning authorities and, as a result, are granted special funding approaches to help fund various planning initiatives during implementation and administration.

NEVADA REVISED STATUTE CHAPTER 271, LOCAL IMPROVEMENTS (SPECIAL ASSESSMENT DISTRICTS)

A Special Assessment District, as defined in NRS Chapter 271, is a broad financing tool that local county and municipal governments can use to fund a variety of infrastructure and improvement projects. The governing body of a county or municipal government may use future ad valorem (property tax) revenues, assessed at a rate that is above the state constitutionally set cap of \$3.64 per \$100.00 of assessed value, either through annual collections or through the issuance of ad valorem backed bonds or other securities, to finance different infrastructure and improvement projects that the governing body has determined necessary to support the development of the Special Assessment district and to provide necessary services to property owners and businesses located in the Special Assessment District.

The process of creation for a Special Assessment District is outlined in NRS Chapter 271 Section 275, which outlines two separate ways a Special Assessment District can be created: (1) by a provisional order of the local government authority, or (2) by petition of property owners or business owners located in the proposed Special Assessment District. According to the Nevada Department of Taxation, there were a total of 82 active Special Assessments Districts (including just one Commercial Area Vitalization Project) located throughout the State of Nevada.

NRS Chapter 271 Section 265 outlines the broad powers and authorities of a Special Assessment District. A Special Assessment District may acquire, improve, equip, operate and

maintain a variety of projects including a Commercial Area Vitalization Project (NRS 271.063), a curb and gutter project, a drainage project, an energy-efficiency project, an off-street parking project, an overpass project, a park project, a public safety project, a renewable energy project, a sanitary sewer project, a security wall, a sidewalk project, a storm sewer project, a street project, a street-beautification project, a transportation project, an underpass project, a water project, or any combination of these projects. A Special Assessment District may also acquire, improve, equip, operate and maintain additional projects including an electric project, a telephone project, a combination of an electrical and telephone project, a combination of an electric and telephone project, or any combination of these projects. Special Assessment Districts may also finance an underground conversion project with the approval of each service provider that owns the overhead service facilities to be converted and, in municipalities in a county whose population is less than 700,000, acquire, improve, equip, operate and maintain an art project or a tourism and entertainment project.

NRS Chapter 271 Section 063 outlines the powers and authority of the Commercial Area Vitalization Project, a variant of the Special Assessment District that is oriented toward supporting various commercial and private-sector initiatives. As there is currently no authorizing Business Improvement District (BID) legislation in the Nevada Revised Statutes, the Commercial Area Vitalization Project is the closest to a Nevada-specific BID. In the case of a Commercial Area Vitalization Project, the local governing legislative body may authorize the creation of this variant Special Assessment District at the request of business owners within the proposed district and use either ad valorem or sales tax revenues (both assessed above the existing constitutional cap on ad valorem rates and above the current sales tax rate applicable to the county and/or municipality in which the district may operate) to fund the district's activities.

Unlike the broad authorities of a typical Special Assessment District, NRS Chapter 271 Section 063 outlines specific powers and authorities granted to the Commercial Area Vitalization Project. A Commercial Area Vitalization Project may pursue projects and programs related to the beautification and improvement of the public portions of an area zoned primarily for business or commercial purposes including, without limitation, public restrooms, facilities for outdoor lighting and heating, decorations, fountains, landscaping, facilities or equipment, or both, designed to enhance the protection of persons and property within the improvement district. A Commercial Area Vitalization Project may also fund the construction and maintenance of ramps, sidewalks, and plazas and rehabilitate or remove existing structures. The Commercial Area Vitalization Project may also improve an area zoned primarily for business or commercial purposes by providing promotional activities.

NEVADA REVISED STATUTE CHAPTER 271A, TOURISM IMPROVEMENTS (SALES TAX ANTICIPATED REVENUES BONDS)

A Tourism Improvement District, as defined in NRS Chapter 271A, is an economic development tool specifically designed to aid local governments, such as a municipality or county, in the attraction and creation of retail businesses that will attract visitors to a specific market and allow the area's residents to partake of the retail business. The Sales Tax Anticipated Revenue bond is the primary financial tool that a local government may use to attract and develop new tourism-oriented retail by using the incremental sales tax revenues generated from those new tourism-oriented retailers to offset the cost of acquisition, demolition and construction associated with new tourism-oriented retail development.

NRS Chapter 271A Section 080 outlines eight separate prerequisites that must exist within the proposed Tourism Improvement District prior to adoption and creation of the district. First, the governing body, a city council or county commission, must determine that no existing retailers have maintained or will maintain a fixed place of business within the proposed geographic boundaries of the Tourism Improvement District. If the boundaries of the proposed Tourism Improvement District are amended to include additional area, the governing body must determine that no retailers will have maintained or will maintain a fixed place of business within the additional area on or within 120 days preceding the adoption of the additional area. Second, the governing body has made a written finding at a public hearing that the project, including the new retailer or retailers to be developed within the proposed Tourism Improvement District, will benefit the entire district.

Third, the governing body has made a written finding, using independent consultants, at a public hearing as to whether the project and the financing of the project with pledged sales and use tax revenue will have a positive fiscal effect on the provision of local government services. Fourth, the governing body must provide, to the Board of Trustees of the locally impacted school district, at least 45 days before making the written finding listed above, each analysis prepared by or for or presented to the governing board regarding the fiscal effect of the project and the use of the pledged sales-and-use tax revenue on the provision of local government services including education.

Fifth, if the governing board is a municipality, the governing board, in this case the city council, must provide the impacted county government, through the Board of County Commissioners, with the same information provided to the impacted school district as listed above. Sixth, the governing board, either a city council or county commission, must determine that, as a result of the project, retailers will locate businesses within the proposed Tourism Improvement District and that a preponderance of the increase in the sales-and-use taxes will be attributable to sales of retail goods and services to tourists who are not residents of the state of Nevada.

Seventh, the Nevada Commission on Tourism must determine, at a public hearing, that a preponderance of the increase in sales-and-use taxes within the proposed Tourism Improvement District will be attributable to sales of retail goods and services to tourists who are not residents of the state of Nevada. And, eighth and finally, the Governor of the State of Nevada must determine that the project and the pledge of sales-and-use tax revenues from the proposed Tourism Improvement District will contribute significantly to the economic development and tourism industry of the state of Nevada.

Once each of these eight prerequisites have been met, the local governing body may proceed with the creation of a Tourism Improvement District by adoption of a single ordinance with the purpose of completing a project designed to attract visitors to the area and generate retail sales. In the same ordinance or in a separate ordinance, the local governing body may also pledge up to 75 percent of the sales-and-use taxes generated from the various required components of the sales tax rate including the state tax rate of 2.0 percent, the Local School Support Tax rate of 2.25 percent, and the Basic and Supplemental City/County Relief Tax rate of 2.25 percent. The local governing body may then use these incremental sales-and-use tax revenues to issue long-term debt, in the form of a Sales Tax Anticipated Revenue bond, to fund the development of the proposed project within the established Tourism Improvement District.

Depending on the location of the Tourism Improvement District, in a city or county with a population of 700,000 or more or in a city or county with a population of less than 700,000, the type of project that the Tourism Improvement District and Sales Tax Anticipate Revenue bonds can fund vary in NRS 271A.050. In a county with a population of 700,000 or more, a project means an art project (as defined by NRS 271.037), a tourism and entertainment project (as defined by NRS 271.234), or a sports stadium that can be used for home games of a Major League Baseball or National Football League team, and for other purposes including structures, buildings, and other improvements and equipment. Cities located in a county with a population of 700,000 or more may pursue each of these three projects plus any recreational project (as defined by NRS 268.710).

NRS 271A.120 governs the issuance of bonds, in the form of a Sales Tax Anticipated Revenue bond, as well as agreements to reimburse entities for project costs, requirements for feasibility studies, defaults on bonds or reimbursement agreements, security of bonds and agreements, and the termination period for bonds. Under this section and other sections of NRS 271A, if the governing body of a municipality or county adopts an ordinance creating a Tourism Improvement District, the jurisdiction may:

- Issue bonds or notes as special obligations to finance or refinance projects proposed or built to benefit the Tourism Improvement District. All bonds and notes issued in benefit of the Tourism Improvement District may be secured by a pledge of the sales-and-use tax revenues authorized in NRS 271A.070, by any revenue received by the governing body from any revenue-producing projects in the Tourism Improvement District, or any combination thereof.
- Enter into an agreement with one or more governmental entities (federal, state, local, etc.) or other persons to reimburse that entity or person for the cost of acquiring, improving, or equipping any project, including the payment of reasonable interest and other financing costs incurred by the entity or person.
- The ability to issue long-term Sales Tax Anticipated Revenue bonds, backed by annual collections of sales-and-use taxes from the Tourism Improvement District, allows local county and municipal governments in Nevada the opportunity to fund retail-based tourism projects in areas that could potentially benefit from increased retail and tourism development.

NEVADA REVISED STATUTE CHAPTER 278C, TAX INCREMENT AREAS

NRS Chapter 278C permits local governments, counties or municipalities, to establish a tax increment area for the primary purpose of financing specific types of infrastructure projects that are determined to be critical to attracting new economic development projects to the community. Tax Increment Areas, similar to the use of redevelopment as outlined in NRS Chapter 278, use tax increment financing to support the development of new infrastructure projects within the defined boundaries of a Tax Increment Area.

Unlike the use of redevelopment as outlined in NRS Chapter 278, no finding of blight is required in order to create a Tax Increment Area and the Tax Increment Area is directly administered by the authorizing local government without establishing a separate governing board. NRS Chapter 278C only requires that the authorizing local government find that the establishment of a Tax Increment Area, needed in order to fund a specific type of infrastructure as permitted in the statutes, is necessary and will be created in an area largely dominated by undeveloped land

where basic infrastructure improvements will make the undeveloped land within the Tax Increment Area more attractive to new business development.

NRS Chapter 278C Section 150 prohibits the creation of a Tax Increment Area in any area that is already defined as (1) the right-of-way of a railroad company that is under the jurisdiction of the state Surface Transportation Board **unless** the inclusion of the property is mutually agreed upon by the authorizing local government and the railroad company, (2) an existing and active redevelopment district as defined by NRS Chapter 278, and (3) any land that has, for the past 50 years, been included in another Tax Increment Area. If the area for consideration for inclusion into a new Tax Increment Area meets these three conditions, the authorizing local government may proceed with the establishment and administration of a new Tax Increment Area.

Tax Increment Areas can only be created and used to fund certain specific infrastructure projects as defined in NRS Chapter 278C Section 140. In the case of a county government establishing a Tax Increment Area, the Tax Increment Area may only be used to fund a drainage and flood-control project (as defined by NRS Chapter 244A Section 027), an overpass project (NRS 244A.037), a sewage project (NRS 244A.0505), a street project (NRS 244A.53), an underpass project (NRS 244A.055), or a water project (NRS 244A.056). In the case of a city or municipal government, the Tax Increment Area may only be used to fund a drainage and flood-control project (NRS 268.682), an overpass project (NRS 268.700), a sewage project (NRS 268.714), a street project (NRS 268.722), an underpass project (NRS 268.726), or a water project (NRS 268.728).

NRS Chapter 278C Section 155 outlines the special usage of a Tax Increment Area if created by a city or municipality created pursuant to a cooperative agreement between the authorizing local municipality and the Nevada System of Higher Education. A municipal government may, in addition to the projects described above for cities, create and use a Tax Increment Area to fund any other infrastructure project necessary or desirable for the principal campus of Nevada State College that is approved by the Board of Regents or for the University of Nevada.

NEVADA REVISED STATUTE CHAPTER 279, REDEVELOPMENT OF COMMUNITIES

NRS Chapter 279 authorizes local municipalities and counties to establish a redevelopment district for the purpose of mitigating and eliminating blight, as defined by NRS Chapter 279 Section 388, if the local jurisdiction finds that the establishment of a redevelopment district is in the interest of the health, safety, and general welfare of the public. As of fiscal year 2015-2016, according to the Nevada Department of Taxation (*Local Government Finance: Property Tax Rates for Nevada Local Governments Fiscal Year 2015-2016*), there are currently 14 separate redevelopment districts in operation throughout the state of Nevada.

NRS Chapter 279 Section 432, Section 470, and Section 486 outlines the various projects and programs that a redevelopment agency, responsible for the administration of a redevelopment district, may fund and undertake using its authority to collect incremental ad valorem (property tax) revenue from properties located within the redevelopment district. NRS Chapter 279 Section 432 permits other public bodies (a state agency, county or municipal government) may dedicate, sell, convey or lease any of its property to the redevelopment agency. Other public bodies may also cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works that it is otherwise empowered to undertake, to be furnished adjacent

to or in connection with redevelopment projects. Public bodies may furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, alleys, sidewalks or other places that it is otherwise empowered to undertake in the redevelopment district or plan, replan, zone or rezone any part of a redevelopment district and make any legal exceptions from building regulations and ordinances.

NRS Chapter 279 Section 470 permits a redevelopment district to purchase, lease, obtain option upon or acquire by gift, grant, bequest, devise or otherwise, any real or personal property and acquire any property by eminent domain. Redevelopment agencies may further clear buildings, structures or other improvements from any real property acquired by the redevelopment agency and sell, lease, exchange, subdivide, transfer, assign, pledge, encumber by mortgage, deed or trust, or otherwise dispose of any real or personal property within the redevelopment district. Redevelopment agencies are also permitted to rent, maintain, manage, operate, repair and clear any real property either owned by the redevelopment agency or in partnership with any other public or private property owner of property located within the redevelopment district.

Number and Total Value of Local <i>Redevelopment Districts</i> Active in Nevada FY 2016-17			
Redevelopment Agency	Year Formed	City or County the Redevelopment Agency is Located In	Total Incremental Assessed Value of Active Redevelopment District FY 2016-17
Carson City Redevelopment Agency	1986	Carson City	\$66,785,153
Boulder City Redevelopment Agency	1999	City of Boulder City	\$45,909,389
Clark County Redevelopment Agency	2004	Clark County	\$392,261,565
City of Henderson Redevelopment Agency	1994	City of Henderson	\$558,228,496
City of Las Vegas Redevelopment Agency	1985	City of Las Vegas	\$855,006,156
City of Mesquite Redevelopment Agency	1995	City of Mesquite	\$113,207,478
City of North Las Vegas Redevelopment Agency	1999	City of North Las Vegas	\$70,963,749
Douglas County Redevelopment Agency	1998	Douglas County	\$108,006,002
City of Elko Redevelopment Agency	2008	City of Elko	\$11,567,375
Reno Redevelopment Agency #1	1984	City of Reno	\$62,182,240
Reno Redevelopment Agency #2	2005	City of Reno	\$36,840,119
Sparks Redevelopment Agency #1	1978	City of Sparks	\$85,829,515

Number and Total Value of Local Redevelopment Districts Active in Nevada FY 2016-17			
Redevelopment Agency	Year Formed	City or County the Redevelopment Agency is Located In	Total Incremental Assessed Value of Active Redevelopment District FY 2016-17
Sparks Redevelopment Agency #2	1999	City of Sparks	\$91,818,461
City of Ely Redevelopment Agency	2005	City of Ely	\$1,072,807
TOTAL	-	-	\$2,499,678,505

Source: Nevada Department of Taxation, Division of Local Government Services, Property Tax Rates for Nevada Local Governments Fiscal Year 2016-2017 (REDBOOK)

NRS Chapter 279 Section 486 contains various general provisions regarding the purchase and construction of certain buildings, facilities and improvements by the redevelopment agency or by any other public body in support of the redevelopment agency's efforts. Specifically, NRS Chapter 279 Section 486 states that, "An agency may, with the consent of the legislative body, pay all or part of the value of the land and the cost of the construction of any building, facility, structure or other improvement and the installation of any improvement which is publicly or privately owned and located within or without the redevelopment area."

NEVADA REVISED STATUTE CHAPTER 318, GENERAL IMPROVEMENT DISTRICTS

The primary purpose of a General Improvement District, as outlined in NRS Chapter 318, is to provide local county and municipal governments in Nevada a financing tool flexible enough and capable enough to finance a variety of infrastructure projects designed to encourage private sector investment. The local authorizing government legislative body, a county commission or city council, is responsible for the creation of the General Improvement District and a designated authority (in many cases a department or division of the county or municipality but may also include a non-profit organization or entity other than the county or municipality) to administer and manage the General Improvement District.

A General Improvement District may collect ad valorem (property tax) revenues, assessed at a rate that is above the state constitutionally set cap of \$3.64 per \$100.00 of assessed value, and issue debt for a wide range of projects ranging from the development and maintenance of cemeteries, swimming pools, streets, alleys, curbs, gutters, and sidewalks to the furnishing of fencing, facilities needs for the protection from fire, and the control and eradication of noxious weeds. A General Improvement District may also use tolls and charges for services as a way to fund various programs and projects, including the continued administration, operations, and maintenance of these programs and projects, as outlined in NRS Chapter 318.

The creation of a General Improvement District may be initiated by either a resolution adopted by the local governing body (a county commission or city council) or by petition submitted by any

owner of property located within the proposed General Improvement District. Existing General Improvement Districts generally cannot be modified to cover new purposes or projects in addition to the initial purpose or project the existing General Improvement District was formed to fund, complete, and/or administer. General Improvement District can generally be laid one on top of the other to fund individual but multiple purposes within a defined geographic area.

Number and Total Value of Local General Improvement Districts Active in Nevada FY 2016-17		
County	Number of Active General Improvement Districts FY 2016-17	Total Assessed Value of Active General Improvement District FY 2016-17
Carson City	0	\$0
Churchill County	0	\$0
Clark County	0	\$0
Douglas County	15	\$991,270,309
Elko County	0	\$0
Esmeralda County	0	\$0
Eureka County	1	\$3,133,851
Humboldt County	1	\$6,228,869
Lander County	0	\$0
Lincoln County	2	\$20,072,366
Lyon County	3	\$50,172,592
Mineral County	1	\$6,949,909
Nye County	1	\$12,091,790
Pershing County	0	\$0
Storey County	2	\$293,490,259
Washoe County	4	\$1,601,542,770
White Pine County	0	\$0
TOTAL	30	\$2,984,952,715

Source: Nevada Department of Taxation, Division of Local Government Services, Property Tax Rates for Nevada Local Governments Fiscal Year 2016-2017 (REDBOOK)

A General Improvement District can only be used for the specific reasons as outlined in NRS Chapter 318 Section 116. NRS Chapter 318 Section 116 outlines the 21 specific powers and uses of a General Improvement District, including:

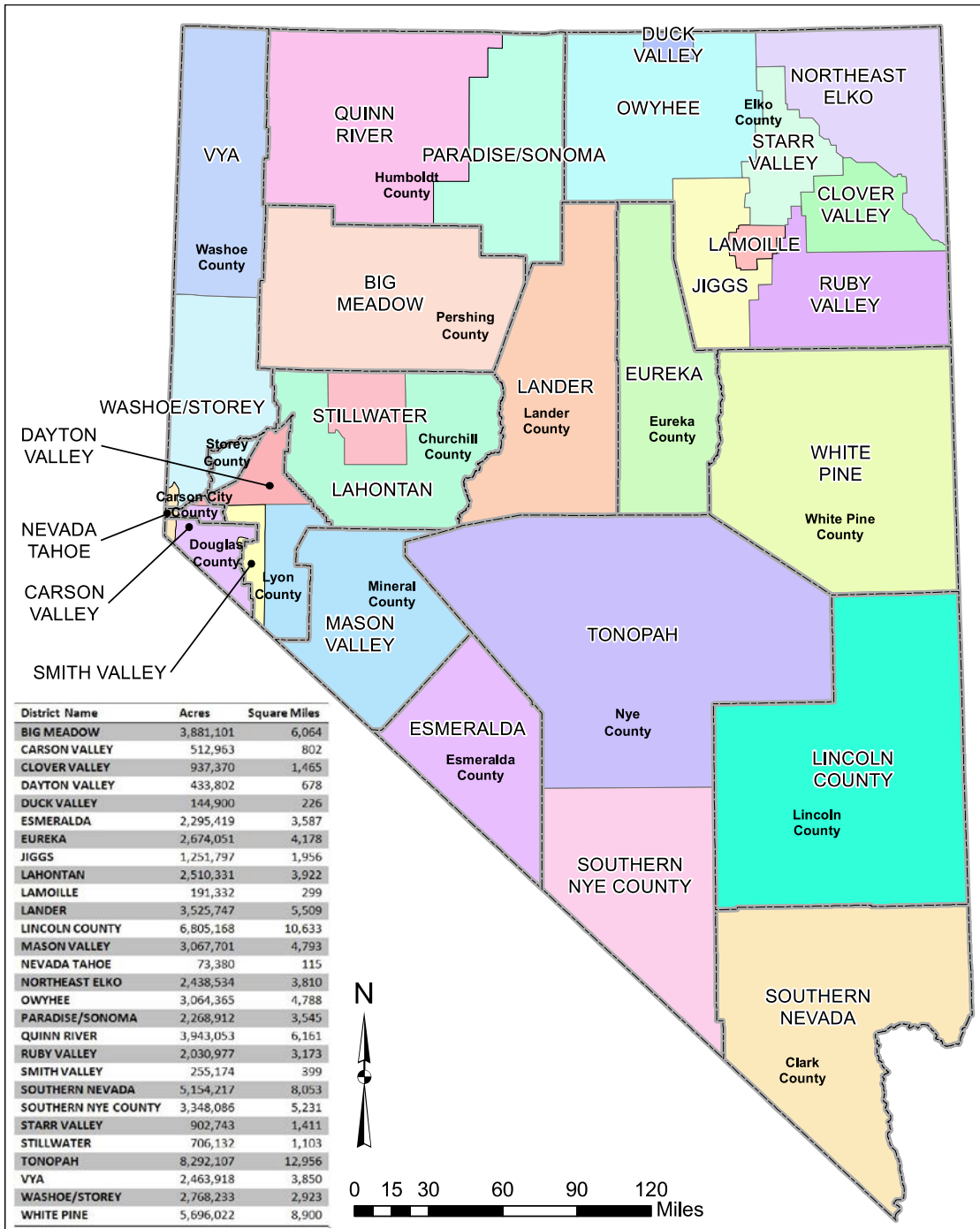
- Furnishing electric light and power (NRS 318.117).
- Extermination and abatement of mosquitoes, flies, other insects, rats and liver fluke (NRS 318.118).
- Furnishing facilities or services for public cemeteries (NRS 318.119).

- Furnishing facilities for swimming pools (NRS 318.1191).
- Furnishing facilities for television (NRS 318.1192).
- Furnishing facilities for FM radio (NRS 318.1187).
- Furnishing streets and alleys (NRS 318.120).
- Furnishing curbs, gutters and sidewalks (NRS 318.125).
- Furnishing sidewalks (NRS 318.130).
- Furnishing facilities for storm drainage or flood control (NRS 318.135).
- Furnishing sanitary facilities for sewage (NRS 318.140).
- Furnishing facilities for lighting streets (NRS 318.141).
- Furnishing facilities for the collection and disposal of garbage and refuse (NRS 318.142).
- Furnishing recreational facilities (NRS 318.143).
- Furnishing facilities for water (NRS 318.114).
- Furnishing fencing (NRS 318.1195).
- Furnishing facilities for protection from fire (NRS 318.1181).
- Furnishing energy for space heating (NRS 318.1175).
- Furnishing emergency medical services (NRS 318.1185).
- Control and eradication of noxious weeds (as defined in NRS 555).
- Establishing, controlling, managing and operating an area or zone for the preservation of one or more species or subspecies of wildlife that has been declared endangered or threatened pursuant to the federal Endangered Species Act (NRS 318.1177).

NEVADA REVISED STATUTE CHAPTER 548, CONSERVATION DISTRICTS

NRS Chapter 548 outlines the general powers and duties of a local Conservation District established in the state of Nevada. NRS Chapter 548 Section 095 through NRS Chapter 548 Section 110 outlines the legislative rationale and intent behind the creation of a local Conservation District. NRS Chapter 548 Section 095 states that the renewable natural resources of the state of Nevada are basic assets and that they are being affected by the ever-increasing demands of farm and ranch operations and by changes in land use from agricultural to nonagricultural uses such as residential and commercial developments, highways, and other major infrastructure developments, and that the conservation, protection, and controlled development of these renewable natural resources are necessary at such a rate and at such levels of quality as they will continue to meet the needs of the people of Nevada. NRS Chapter 548 Section 105 further states that, as a matter of legislative determination, persons in local communities are best able to provide basic leadership and direction for the planning and accomplishment of the conservation and development of renewable natural resources through the creation, organization, and operation of a local Conservation District.

A local Conservation District, according to NRS Chapter 548 Section 340, is an independent governing authority separate from local counties and municipalities with the authority and responsibility to exercise Public Powers. Once established, members of the Conservation District's governing board are elected by residents and property owners residing and owning property within the Conservation District. Like other elected bodies, a local Conservation District has the authority, through its enumerated police powers, to pass and create laws through the ordinance creation process and enforce those laws and ordinances in cooperation with other local governing bodies such as a county or municipality.



NRS Chapter 548 Section 340 through NRS Chapter 548 Section 400 outlines the various powers and responsibilities of a local Conservation District in Nevada. A local Conservation District may conduct surveys, investigations, and research but no Conservation District shall initiate any research program except in cooperation with the government of the state of Nevada or any of its agencies, or with the government of the United States or any of its agencies. A local Conservation District may also conduct demonstration projects within the geographic boundaries of the Conservation District in order to demonstrate the means, methods, and measures by which renewable natural resources may be conserved.

A local Conservation District may also initiate any preventative and control measure or measures and repair and restore property in order to conserve and protect existing renewable natural resources. These measures may include engineering operations, methods of cultivation, growing of vegetation, and even changes in existing land use. Conservation Districts may initiate these measures on any lands that include, but are not limited to, wetlands, stream corridors, and other riparian property(ies). A local Conservation District may also develop, implement, and administer their own cooperative agreements with other local, state, and federal government agencies and may provide agricultural and engineering machinery, fertilizer, and seeds to private property owners within the local district. A local Conservation District may further construct, operate, improve, and maintain facilities and structures identified by the local Conservation District as necessary in the performance of the local district.

A local Conservation District may also develop their own independent plans for the conservation of renewable natural resources within the local district and these plans may include any necessary acts, procedures, performances, and avoidances and identify specification of engineering operations, methods of cultivation, growing of vegetation, cropping programs, tillage practices, and changes in land use. A local Conservation District may administer any project initiated by the Conservation District, accept gifts, and participate in cost-sharing on federally financed projects. A local Conservation District may, as a separate and independent public body, acquire, dispose, maintain, and improve any real property within the local district and use the income received from the disposal of any real property within the local district to further implementation of the Conservation District's plan.

Specific to land use, land use planning, and land use controls, a local Conservation District may, according to NRS Chapter 548 Section 430, develop and adopt any provisions requiring the carrying out of necessary engineering operations, including the construction of terraces, terrace outlets, check dikes, dams, ponds, ditches, and other necessary structures. A local Conservation District may also develop and adopt any provisions requiring observance of particular methods of cultivation, including contour cultivating, contour furrowing, lister furrowing, sowing, planting, strip cropping, seeding, and planting of lands to water-conserving and erosion-preventing plants, trees and grasses, forestation, and reforestation. The local Conservation District may prepare and file a petition with the local Board of County Commissioners to formulate land use regulations applicable to the local district. The local Board of County Commissioners shall conduct public meetings and public hearings within the local district(s) regarding the proposed land use regulation(s) and any proposed land use regulation(s) adopted shall be embodied in an ordinance.

Historically, a local Conservation District had no authority to levy any fee or tax within the local district to finance the local district's operations. In 2015, during the 2015 session of the Nevada State Legislature, the Legislature passed Senate Bill 476 (2015), an act authorizing any local Conservation District in Nevada to impose a fee on parcels within the local district and use those fee-based revenues to fund conservation efforts within the local district's jurisdiction. Section 4 of Senate Bill 476 (2015) authorizes a local Conservation District, to be imposed by the local Board of County Commissioners, an annual fee, not to exceed \$25.00, on each parcel in a Conservation District, if the imposition of the fee is approved at an election. The local Board of County Commissioners must submit to the voters within the local Conservation District the question of whether to impose the fee upon receipt of a petition signed by either a majority of the Supervisors of the Conservation District or at least ten percent of the registered voters eligible to vote within the Conservation District.

CONCLUSION

The development, implementation and administration of comprehensive master plans, land use plans, transportation plans, economic development plans, environmental plans, historic preservation plans, and other important planning documents does not occur in a fiscal vacuum or bubble. These various planning documents will greatly impact and will be greatly impacted by the various budgeting and fiscal decisions and conditions that exist within the larger environment in which these plans will be implemented and administered. Planning directors and officials must purposely understand these budgeting and fiscal decisions and conditions in order to better understand how their plans will impact and be impacted by the larger fiscal environment. A proper understanding of how public budgets are developed and how fiscal decisions are made will better enable planning directors and officials to develop, implement, and administer planning decisions that best serve the interests of their community's residents, businesses and visitors alike. A proper understanding of the larger public budgeting and fiscal environment will also further improve overall public accountability and transparency in the planning process and further improve the overall organizational efficiency and effectiveness of the planning department, organization, entity, or agency.

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CHAPTER 5 – NEVADA’S OPEN MEETING LAWS

INTRODUCTION

Nevada Revised Statutes (NRS) Chapter 241, Meetings of State and Local Agencies, contains legislation governing how public meetings are conducted in Nevada. This chapter summarizes the key sections of NRS Chapter 241 for locally elected and appointed officials, government executives, and citizens who are interested in the state’s open meeting laws. The information presented in this chapter includes the changes made to NRS Chapter 241 by the 27th session of the Nevada State Legislature in 2013 that took effect on Jan. 1, 2014. Future sessions of the Nevada State Legislature may choose to revise NRS Chapter 241, and elected and appointed officials are encouraged to consult their jurisdictions’ legal counsel about any additional questions they may have regarding their responsibility to follow Nevada’s open meeting law.

RESPONSIBLE ADMINISTRATION

Nevada’s open meeting laws exist to aid elected and appointed officials in conducting the people’s business. NRS Chapter 241 was designed to ensure that the actions of elected and appointed officials, including city councilmembers, county commissioners, planning commissioners, neighborhood and community advisory board members, and other elected and appointed officials, conduct the people’s business openly. Nevada’s open meeting laws exist to ensure accountability and responsibility in the policies and laws made by Nevada’s elected and appointed officials.

Cooper (2012), in his book *The Responsible Administrator: An Approach to Ethics for the Administrative Role*, argues that, “...together we craft for ourselves, through discourse and deliberation, conventions such as values, beliefs, and ethical norms to give meaning and order to our lives. Collective decision making in the governance process, including public administration, works best in a postmodern society when it emerges out of an inclusive conversation about how to create order and meaning in our lives together. Hence, democratic governance provides mechanisms and arenas for this social process.” Nevada’s open meeting laws provide the legal and institutional structure by which Nevadans collectively craft our values, beliefs and ethical norms through the construction of public policy and law. This fact sheet provides a general outline of these open meeting laws for elected and appointed officials, government executives and the public in order to facilitate the transparent development of public policy and law that affects the everyday lives of Nevada’s citizens.

DEFINITIONS, NRS 241.015

NRS Chapter 241 Section 015 provides several key definitions that elected and appointed officials, government executives and the public should know. Among these key definitions are action, meeting, public body and quorum.

“Action” means a decision, commitment or promise made by a majority of the members present at a meeting of a public body. In Nevada, a public body is made up of elected or appointed officials who have the authority to make a decision, commitment or promise.

“Meeting” means a gathering of members of a public body at which a quorum is present to deliberate on a matter over which the body has jurisdiction or supervisory authority. Even gatherings of members of a public body at which no quorum is present may constitute a public meeting if any deliberation or decision making by the members of the public body takes place. “Meeting” does not apply to social functions or meetings with legal counsel. For example, holiday parties hosted by a city government where the mayor and a majority of the elected city council are present would *not* constitute a public meeting *unless* the mayor and the elected city councilmembers engaged in the deliberation or discussion of issues that could be considered part of the public agenda.

“Public Body” means any administrative, advisory, executive or legislative body (other than the Nevada Legislature) of the State or local government consisting of at least two persons that expends or disburses or is supported in whole or in part by tax revenue or makes recommendations to any entity that expends or disburses or is supported in whole or in part by tax revenue. Any committee or subcommittee created by resolution or ordinance by the previously defined public bodies is subject to the statutory requirements of Nevada’s open meeting laws. A city council or a county commission qualifies as a “public body” as do advisory committees, such as a neighborhood or community advisory board, a planning commission, a liquor license board or a historical preservation committee.

“Quorum” means a simple majority of the membership of a public body or other proportion established by law. Without the presence of a quorum, the elected or appointed officials are prohibited by law from conducting public business. Discussions regarding agenda topics can be held, but no decision can be made.

MEETINGS, NRS 241.020

NRS Chapter 241 Section 020 outlines the prescribed process of how public meetings should be conducted and how public meetings should be generally advertised and solicited to the public. Except in rare occasions, failure to follow this process is a violation of state law. Nine specific guidelines are provided in NRS Chapter 241 Section 020, including:

(1) All meetings of all public bodies in Nevada are to be open to the public. In some cases, certain exceptions can be made. If the elected or appointed board chooses to close a meeting of the elected or appointed board, the board may close the meeting only pursuant to a statute adopted by the board. The board must restrict its decision making to only those issues and items listed in the statute. For example, a city council may opt to hold a closed meeting to discuss a confidential personnel matter, such as the termination of a city manager for cause. Reasonable efforts to accommodate persons with disabilities must also be made for all public meetings.

(2) Written notice of any public meeting must be provided by 9 a.m. at least three working days prior to the meeting. The written notice must include:

- (a) The time, place and location of the meeting.
- (b) A list of the locations where the notice was posted.
- (c) The posted agenda must include:
 - i. a clear and complete statement of topics to be considered;
 - ii. a notation of “for possible action” next to all items on which action may be taken;

iii. periods of time devoted to public comment, provided either at the beginning and end of the meeting *or* on each item before any action is taken, but must allow a period of time for the public to speak to issues not on the agenda.

(d) If any portion of the meeting is closed, the name of the person being considered is listed on the notice and agenda.

(e) If administrative action is possibly to be taken, the name of the person against whom administrative action may be taken must be listed on the notice and agenda.

(f) Notification that (1) items may be taken out of order; (2) items may be combined; and (3) items may be removed or delayed to a later time in the meeting.

(g) Any reasonable restrictions on general public comments must be listed on the notice and agenda, such as a time limit of three minutes for each public comment.

However, no public body may limit a person from expressing a particular viewpoint.

(3) The legal standard for a minimum public notice includes:

(a) Posting the notice at the principal office or, if no office is used, the place where the meeting is to be held should be listed on the notice and agenda. The notice and agenda must be posted at three additional prominent places within the jurisdiction. Such places may include, but are not limited to, a library, post office or other public area within the jurisdiction.

(b) The jurisdiction must post a copy of the notice and agenda on the State of Nevada's official website no later than 9 a.m. of the third working day prior to the meeting date.

(c) The jurisdiction must provide a copy of the notice and agenda to any person who has requested the notice and agenda.

(d) Electronic notification by email by the jurisdiction is permissible only if agreed to by the requestor.

(4) The jurisdiction's website, if it is regularly maintained and updated, is to include a notice of all public meetings. However, use of the jurisdiction's website to post notices and agendas is *not* considered a substitute for the physical posting of the notice and agenda in prominent public locations.

(5) If requested, the jurisdiction must provide a free copy of any agenda, ordinance or regulation, and any supporting materials unless otherwise deemed confidential by the jurisdiction (for example, a copy of an employee's annual personnel evaluation) to any member of the public who has requested a copy.

(6) Supporting materials, such as a staff report or consultant's report, must be provided to any requester no later than the same material is being provided to the public body.

(7) For jurisdictions with a population of 45,000 or more residents, the elected or appointed board must post all supporting materials, such as a staff report or consultant's report, on its website within 24 hours of the meeting's recess if the material was provided to the elected or appointed officials at the time of the meeting.

(8) The jurisdiction may provide notification of any public meeting by electronic mail (email) if requested to do so by a member of the public.

(9) At times, elected and appointed officials may have to conduct an emergency meeting. “Emergency” means an unforeseen circumstance that requires immediate action and includes, but is not limited to, natural disasters caused by fire, flood, earthquake or other natural causes; or any impairment of the health and safety of the public due to an unforeseen occurrence.

In addition to these nine specific requirements, any agenda should provide a clear and concise list describing the individual items on which the elected or appointed board may take action on and clearly denote that action may be taken on those specific items. Elected and appointed boards should also provide a clear and complete description of each agenda item. Jurisdictions should avoid the use of generic descriptions whenever possible. Phrases such as ‘reports by staff’ and ‘items for future meetings’ should be avoided. The use of generic and unspecified categories on an agenda should only be used for items on which the jurisdiction cannot adequately anticipate what specific matters will be considered.

Elected and appointed boards may also develop any reasonable rules and regulations designed to ensure the orderly conduct of the public meeting in order to ensure that the board is able to complete its business in a reasonable period of time without improper interruption. These rules should be properly adopted by the public body and should be made available to the public. Elected and appointed boards are encouraged to post these rules on their agenda and in plain sight of the public in the physical location in which the elected or appointed board will conduct their meetings. These rules are often enforced by the Chair of the elected or appointed board or the acting Chair if the Chair is not present.

EXCEPTIONS TO OPEN MEETING LAW, NRS 241.030

There are several key exceptions to Nevada’s open meeting law. These exceptions include:

(1) A public body may hold a closed meeting in order to address the following issues:

- (a) Personnel issues including a discussion about the competence and character of an employee.
- (b) To prepare, administer or grade examinations (most associated with civil service positions or employment positions within the jurisdiction that require a certain technical proficiency, such as marksmanship for a police officer).
- (c) The consideration of appeals for examinations required by the jurisdiction.

(2) A person who is subject to a closed meeting may request that it be open. Such a request must be honored by the appropriate elected or appointed board.

(3) If a public body chooses to close a meeting, the public body must, by a motion of the elected or appointed board members, state the specific nature of the business to be conducted during the closed meeting. The public body must list the statutory authority pursuant to the matter to be considered during the closed meeting to which the public body has been authorized to close the meeting.

(4) NRS Chapter 241 Section 030 does not prevent the public body from removing any person during the meeting who willfully disrupts a meeting to the extent that the public body is unable to conduct the public's business. A public body may also choose to exclude any witness from a public or closed meeting during the examination of any other witness. NRS Chapter 241 Section 030 also does not require that any meeting be closed to the public and does not allow an elected or appointed board in Nevada to discuss the appointment of any person to public office or to the membership of a publicly appointed board during a closed meeting. For example, when determining membership of a planning commission, the local city council or county commission must discuss the appointment during a public meeting.

Social gatherings, such as holiday parties, special events, and other meetings where no legislative activity will take place, which a quorum of the elected or appointed board is present either in person or by electronic means, are exempt from the state's open meeting laws. However, it is important that attending members of the elected or appointed board refrain from any discussion regarding legislative or administrative activities.

In other cases, specific actions taken by a jurisdiction or agency may be conducted as a closed meeting. In Nevada, many local governments have established local ethics committees. The deliberations and discussions of these local ethics committees, when rendering confidential opinions to elected officials, can be conducted as a closed meeting. Any subsequent action taken by an elected or appointed board regarding the recommendations or findings of a local ethics committee must be taken in an open session in full compliance with the state's open meeting laws. However, if the actions of the elected or appointed board lead to the discussion or discipline of a specific individual(s), the elected or appointed board may take that action in a closed meeting using the prescribed method outlined above in NRS 241.033.

Meetings between an elected and appointed public board and the board's or jurisdiction's legal counsel to discuss and deliberate an existing or threatened litigation may occur without public notice and have typically been conducted as a closed or non-meeting. While the deliberations conducted by an elected or appointed board in this fashion are protected by attorney-client privilege, the jurisdiction must notice the closed or non-meeting and any action taken by the elected or appointed officials as a result of the closed or non-meeting must be taken in an open session in full compliance with the state's open meeting laws.

CLOSED MEETINGS

CLOSED MEETINGS TO DISCUSS A MEMBER OF A PUBLIC BODY, NRS 241.031, AND CLOSED MEETINGS FOR PERSONNEL MATTERS OR AN APPEAL OF AN EXAMINATION, NRS 241.033

Elected boards, such as a city council or county commission, will routinely have to address matters pertaining to the character, misconduct or incompetence of an elected or appointed official. NRS Chapter 241 Section 031 and NRS Chapter 241 Section 033 outline several important steps any public body, elected or appointed, must take when discussing the potential removal or sanction of a fellow elected or appointed official.

(1) The public body with jurisdiction must provide written notice of the meeting and proof of service of the notice.

(2) Notice of the meeting is to be delivered in person to the elected or appointed official whose conduct will be discussed and deliberated at least five working days before the hearing, or sent by certified mail at least 21 working days prior to the hearing to the last known address of the elected or appointed official whose conduct will be discussed. The letter should indicate that administrative action may be taken as a result of the closed meeting. The notice must include a list of topics anticipated to be considered and a statement indicating the person's right to attend the meeting.

(3) The Nevada Athletic Commission is exempted from this procedure.

(4) The person who is the subject of a closed meeting must be allowed to attend, have representation if desired, and submit evidence, present witnesses and provide testimony relating to the subject being considered.

(5) The chair of the public body may make a determination of which persons should and are permitted to attend the closed session and/or allow the public body to make that decision by majority vote.

(6) The person subject to a closed meeting is entitled to a copy of the official record of the meeting.

(7) The casual or indirect mention of other persons in a closed meeting does not subject those persons to the law's provisions regarding notice.

ADMINISTRATIVE ACTION

ADMINISTRATIVE ACTION TAKEN AGAINST A PERSON OR ACQUISITION OF REAL PROPERTY BY EMINENT DOMAIN, NRS 241.034

NRS Chapter 241 Section 034 outlines the written notification any elected or appointed board in Nevada must follow if the meeting is held to take administrative action against a person or if the jurisdiction is considering the taking of real property through the power of eminent domain. These requirements include:

(1) A notice to the person or owner of the real property being considered during the meeting is required. The notice may be delivered personally (within five working days prior to the meeting) or by certified mail (21 working days prior to the meeting).

(2) The notification in this section is *in addition to* the requirements listed in NRS Chapter 241 Section 020.

(3) The notification in this section is *not* required if proper notice was provided pursuant to NRS Chapter 241 Section 033 and was provided with the indication that administrative action may be taken.

(4) For the purposes of this section, real property is defined as any property owned only by the natural person or entity listed in the records of the county in which the real property is located and to whom or which tax bills concerning the real property are sent.

RECORD OF PUBLIC MEETING, NRS 241.035

In addition to proper notification, a public body must properly document the process by which a public body, elected or appointed, arrives at a decision and the final decision made by the public body. NRS Chapter 241 Section 035 outlines this process that all public bodies must take.

(1) The jurisdiction must keep written minutes that must contain the date, time and place of the meeting; the names of all members present and absent; the substance of all matters considered and, if requested, an indication of the vote; and the substance of remarks made by any member of the general public or a copy of any prepared remarks.

(2) The minutes of any public meeting are public record and must be made available for inspection within 30 working days of the meeting. The jurisdiction must retain a copy of the minutes for at least five years and then archive them appropriately as required by law.

(3) The minutes of a public meeting may be recorded in any manner by a member of the general public as long as it does not interfere with the meeting.

(4) The jurisdiction must make any audio or videotape or transcripts of the meeting (including closed meeting) available to the public. The jurisdiction must keep any audio or videotape recordings of any meeting for at least one year.

(5) The same requirements that apply to tapes or transcripts collected at a public meeting apply to any closed meetings.

(6) The jurisdiction and public body must make a good faith effort to comply with the requirements of this section.

REQUIREMENT OF VOTE AND ACTION, NRS 241.0355

When elected or appointed to a public body, the public expects the elected or appointed official to conduct the public's business regardless of how controversial the item being considered might be. Although elected or appointed officials are expected to abstain from deliberation and decision making on items in which they have a conflict of interest, elected or appointed officials are not allowed to abstain from participation because they wish to avoid a controversial issue. NRS Chapter 241 Section 0355 states that abstention does not count as affirmative vote. Furthermore, if an elected or appointed official chooses to abstain, the official must seek the opinion of legal counsel stating that abstention is required and appropriate.

ENFORCEMENT BY THE ATTORNEY GENERAL OF THE STATE OF NEVADA, NRS 241.039

The Attorney General of the State of Nevada is responsible for enforcing Nevada's open meeting laws and the sections of NRS Chapter 241. The Attorney General is required to investigate and prosecute violations of this statute. The Attorney General may issue subpoenas for all documents, records or materials related to any reported violation. Willful failure or refusal by any

jurisdiction or elected and appointed official to comply with a subpoena issued by the Attorney General of the State of Nevada is considered a misdemeanor.

AGENDA TO INCLUDE ATTORNEY GENERAL FINDING, NRS 241.0395

If the Attorney General finds a willful failure to comply with Nevada's open meeting laws, the jurisdiction must include the opinion and findings of the Attorney General's Office on the next posted agenda of the elected or appointed board. Inclusion of the Attorney General's opinion and finding is not considered an admission of guilt.

CRIMINAL AND CIVIL PENALTIES, NRS 241.040

Willful failure to comply with Nevada's open meeting laws is considered a criminal act, and an individual elected or appointed official is subject to criminal and civil penalties as outlined in NRS Chapter 241 Section 040, including:

- (1) Any member of a public body, participating with knowledge of a violation, is guilty of a misdemeanor.
- (2) Wrongful exclusion of persons from a public meeting, open or closed, is a misdemeanor.
- (3) Any member attending a public meeting, open or closed, in violation of Nevada's open meeting laws is not automatically considered an accomplice to other members who willfully violated the sections of this statute.
- (4) Any member of a public body, participating with willful knowledge of a violation of this statute, is subject to a civil penalty of \$500.

SUMMARY

Nevada's open meeting law, outlined in NRS Chapter 241, exists to ensure that the public's business is conducted in a transparent manner in which the public accountability and responsibility is maintained. The public meeting, be it a city council meeting, a county commissioners meeting, or a meeting of a local parks and recreation advisory board, is the institutional mechanism through which the public seeks to find agreement on the various public aspects of life. As members of the public, we often make decisions upon how public resources are allocated, which programs and projects are funded, what laws we should enact, and what we value as a society at our public meetings. According to Cooper (2012), "Agreement on these public aspects of life must be accomplished through broad participation in the governance debate if the institutions created are to have legitimacy through intersubjective reliability." Nevada's open meeting laws, outlined in NRS Chapter 241, exist to provide this legitimacy and reliability.

REFERENCES

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CHAPTER SIX – ETHICS

INTRODUCTION

The issue of ethics can be viewed in three possible contexts: the context of personal ethical principles, the context of institutional ethical principles, and the context of statutory ethical principles. This chapter will focus on institutional ethical principles and Nevada State statutory ethical principles.

A BRIEF OVERVIEW OF ETHICS

There are a myriad of definitions of ethics. For the purposes of this chapter, the following definition is offered for the reader's consideration: "[Ethics is] An analytical tool to help us determine what course of action to take when we are confronted with two or more equally good, or two or more equally bad choices when we are forced to choose." (*Steinmann, 2014*). Caution is provided here that ethics and morality should not be considered to be synonymous. "Morality assumes some **accepted modes of behavior** that are given by a religious tradition, a culture (including an organizational culture), a social class, a community, or a family. It involves **expected courses of conduct** that are rooted in both formal rules and informal norms. Ethics, then, is one step removed from action. It involves the **examination and analysis** of the logic, values, beliefs, and principles that are used to justify morality in its various forms." (*Steinmann, 2014*). Finally, ethics should not be considered to be a shield that will somehow protect a person from possible deleterious consequences, e.g. censure, dismissal, etc. (*Steinmann, 2014*)

NEVADA STATE STATUTORY ETHICAL PRINCIPLES

The Nevada State Legislature has embodied a series of statutory ethical principles in Nevada Revised Statutes (NRS) 281A. These principles apply to

- Public Officers Elected or Appointed to a position created by a
 - Constitution
 - State Law
 - Ordinance
 - Who exercise public power, trust or duty, and
- Applies whether employed, appointed or under contract with or without compensation and regardless whether in an acting, temporary or interim position. (*Incline Village General Improvement District, Ethics in Government presentation, 2014*)

There are some exceptions as to whom NRS 281A applies. This statute does not apply to

- Judges
- Justices
- Officers of the Court System
- Members of a board, commission or other body that is advisory
- Members of a board of a general improvement district or special district only if the duties do not include budget or expenditure approval, and
- County Health Officers (per NRS 439.290) (*Incline Village General Improvement District, Ethics in Government presentation, 2014*)

NRS 281A can be summarized in the following precepts:

DO NOT

- Seek or accept any gift, service, favor, employment, etc. which would tend to improperly influence or cause a departure from faithful and impartial discharge of duties...
- Use a position in government to secure or grant unwarranted privileges for self, a business interest in which one has significant pecuniary interest, or person to whom one has a commitment in a private capacity...
- Participate in the negotiation or execution of contract(s) in which one has a significant pecuniary interest...
- Accept anything of value from a private party for the performance of public duties...
- Use non-public information to further a pecuniary interest of self, a business entity or person...
- Suppress a government report or document because it might affect a pecuniary interest of self, a business entity or person...
- Use governmental time, property or equipment outside of any "limited use" policy adopted by an entity represented or by whom employed...
- Attempt to benefit personal or financial interests through the influence of a subordinate
- Seek employment or contracts through use of an official position...
- Represent or counsel, for compensation, any person on an issue before his/her entity for one year after leaving the entity, or on any issue under consideration at the time of leaving... (*Shipman, 2014*) or before another local agency if the territorial jurisdiction of the other local agency includes any part of the county in which the person served
- As a member of a public agency board sell goods or services to a public agency, with certain exceptions
- Spend public funds to support or oppose a ballot question or a candidate (may provide a public issues forum for discussion and debate) (*Incline Village General Improvement District, Ethics in Government presentation, 2014*)

The following are important definitions as they relate to NRS 281A:

- "Commitment in a private capacity to the interests of another person" means commitment, interest or relationship to a person:
 - Spouse or domestic partner
 - Member of household
 - Related within third degree of consanguinity or affinity
 - Employs self, spouse, domestic partner or member of household
 - With whom self has a substantial and continuing business relationship
 - With whom self has a commitment, interest or relationship substantially similar to above
- "Pecuniary Interest" means any beneficial or detrimental interest that consists of or is measured in money, economic value and includes payments for government service and gifts. (*Shipman, 2014*)

NRS 281A also addresses disclosures for a conflict of interest and when an abstention from voting is allowed.

CONFLICT OF INTEREST

A person to whom this statute applies has a conflict of interest per NRS 281A.420 on a matter under consideration if it involves:

- A gift or loan to an individual to whom this statute applies;
- An economic or money interest of an individual to whom this statute applies; or
- A commitment in a private capacity to a person by a person to whom this statute applies.

When a conflict is identified, disclosure is required. For an elected or appointed member, disclosure must be made publicly and to the chair of the public body. For an administrative appointed person, disclosure must be made to his/her supervisor or superior. Disclosure involves specifically identifying the conflict and the relationship involved in the conflict. (*Shipman, 2014*)

ABSTENTION FROM VOTING

Public policy favors participation and voting. A determination to participate and vote, or abstain, is guided by the consideration of “the independence of judgment of the reasonable man”. “Reasonable man” can be defined as the consideration of whether a reasonable person would be materially affected by the disclosed conflict.

As a guide to how to act after disclosing a conflict, the following is recommended:

- After disclosing, conduct a “reasonable man” analysis to determine whether to participate and vote or to abstain from matter
- If a clear conflict does not exist, participate and vote
- If a clear conflict does exist, abstain and leave the room for the duration of the discussion and possible action on the item

For an action requiring a quorum of the body, the quorum is reduced if a member abstains; unless it is an elected body, then the quorum is NOT reduced. (*Shipman, 2014*)

NEVADA ETHICS COMMISSION

The Nevada Legislature has created an Ethics Commission to enforce the provisions of NRS 281A. Its role includes:

- The investigation of alleged violations
- Informing the Attorney General or district attorney of all cases of noncompliance with the ethics law
- Conducting hearings on requests for an opinion and rendering decisions
- Recommending legislation to strengthen the law, and
- Publishing the ethics law manual

An allegation of a violation of NRS 281A may result in the following:

- A review, the conducting of a hearing and the rendering of determination of either a violation, or of no violation
- If a violation is determined to have occurred civil fines for the following may be imposed
 - \$5,000 for first willful violation

- \$10,000 for second willful violation
- \$25,000 for third willful violation
- \$5,000 for person who interferes with investigation
- If a financial gain occurred, an additional penalty of up to 2 times the gain
- The reporting of a willful violation for purpose of initiating impeachment proceedings
- The reporting of a willful violation to the court for removal from office of the offending party

A violation may not be considered willful if legal counsel advice was obtained and it was not contrary to prior Ethics Commission opinions. (*Incline Village General Improvement District, Ethics in Government presentation, 2014*)

INSTITUTIONAL ETHICAL PRINCIPLES

For the purposes of this chapter, the institutional ethical principles that will be discussed are the American Institute of Certified Planners (AICP) Code of Ethics and Professional Conduct (hereinafter referred to as the AICP Code) and the American Planning Association (APA) Ethical Principles in Planning (hereinafter referred to as the APA Code). There are, of course, many public and private entities that have adopted unique ethics codes and the reader is urged to determine if these unique codes apply to their duties.

AICP CODE

This ethics code only applies to members of the American Institute of Certified Planners (AICP) which is the professional arm of the American Planning Association (APA). The code is divided into four segments: aspirational statements, rules of conduct, code procedures and dismissal for conviction of serious crimes.

- Aspirational Statements: These are statements that identify the ideals to which AICP members aspire to in the conduct of their professional duties. They consist of statements concerning responsibilities to the public, to clients and employers and to fellow professionals and colleagues. These statements cannot be used for the purpose of bringing a charge of misconduct by an AICP member, or as the basis for disciplinary action.
- Rules of Conduct: These are statements to which an AICP member can be held accountable. A violation of these statements can lead to private or public censure, or dismissal from the institute. The statements are very specific and address issues such as the representation of a member's qualifications, the acceptance of compensated work, the review of a colleagues work product, the use of a position for personal gain, etc.
- Code Procedures: This section of the AICP Code details the process for bringing an allegation of a violation of the Rules of Conduct, the investigation of an allegation, the rights of the accuser and the accused, the persons and bodies that make a final decision on the efficacy of an allegation, and the possible consequences if a violation is determined to have occurred. In addition, this section of the code provides a process for formal and informal advisory opinions regarding the code.
- Dismissal for Conviction of a Serious Crime: This section provides for the immediate suspension of a member's certification should a conviction of a serious crime occur, and the process for possible reinstatement of a member's certification.

The text of the AICP Code can be found at <https://www.planning.org/ethics/ethicscode.htm>

APA CODE

Unlike the AICP Code, the APA code is presented as a guide to all APA members. There are no enforcement provisions of the APA code. The APA Code is mostly aspirational in nature: “This statement is a guide to ethical conduct for all who participate in the process of planning as advisors, advocates, and decision makers. It presents a set of principles to be held in common by certified planners, other practicing planners, appointed and elected officials, and others who participate in the process of planning.” (APA Ethical Principles in Planning). There are a few voluntary directives interspersed in the code.

The principles are separated into a guide for planning participants, such as elected and appointed officials, planning professionals and the participating public. It is also a guide for APA members who are practicing planners. Examples of the aspirational guides include:

- Strive to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of disadvantaged groups and persons.
- Pay special attention to the interrelatedness of decisions and the long range consequences of present actions.

Examples of the directives contained in the APA Code include:

- Participate in continuing professional education.
- Accurately represent the qualifications, views, and findings of colleagues.

Generally, the primary focus of the APA Code is to provide guidance on the overall responsibility of APA members to the public, to employers and clients and to the profession and colleagues. It is not uncommon for planning organizations, whether appointed or professional, to use the APA Code as a basis for a set of ethical principles for that organization.

The text of the APA Code can be found at <https://www.planning.org/ethics/ethicalprinciples.htm>

SUMMARY

Ethics are a vital part of the planning process. There are statutory ethics requirements embodied in NRS 281A to which must be adhered. In addition, there are numerous guides that can be used by those participating in the planning process. Foremost among those guides is the AICP Code (for AICP members) and the APA Code (for members of APA).

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CHAPTER SEVEN – KEY LEGAL DECISIONS

INTRODUCTION

From the most basic philosophy of property rights and ownership to the complex rules governing reuse and redevelopment, everything planners do relates to or is affected by the constitutions, statutes, charters, and court decisions that dictate how we use land. The goal of this chapter is to provide planners with a basic overview of the source of Nevada’s planning laws, along with an overview of some of the seminal court cases affecting the way city councils, planning commissions, planners and others make decisions about the use of land.

By necessity, planners are typically generalists who have been trained to see the big picture and to coordinate many different disciplines. This requires both attention to detail and the ability to solve problems on the fly. It also requires coordination and flexibility to coalesce many moving parts into one cohesive track. For these reasons, addressing every facet of the legal issues involved with this diverse field is next to impossible. However, below are some of the important concepts that every planner in Nevada should know.

Although land use planning is becoming an increasingly complex field encompassing a variety of interrelated disciplines, from finance to public works to urban design, its core purpose stems from the right of local governments to restrict and designate land uses (i.e., zoning). The right to zone land comes from government’s general police power. Police power is the government’s right to protect the lives, health, morals, comfort, and general welfare of its people, and zoning is an extension of this power.

SOURCE AND SCOPE OF POWER

Nearly all of the rules governing zoning and land use come from several sources: the United States Constitution (including the First and Fifth Amendments), the Nevada Constitution, the Nevada Revised Statutes, city charters (if applicable), local ordinances, and the courts. Legal opinions interpreting land use laws are often the most helpful source for understanding the framework within which planners operate because courts have, from time to time, been tasked with analyzing the scope of government’s authority to restrict and regulate the use of land.

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The United States Supreme Court first began examining the power to zone land in the 1880s. In two cases arising in San Francisco, the Court concluded that the city could use its police power to limit the location of certain uses and their hours of operation. As cities’ land use planning ordinances became more robust and complex, the Court upheld many restrictions that have become axiomatic in planning today, including terminating non-conforming uses, prohibiting signage in residential areas, etc. These cases culminated in one of the most important planning

cases, *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). In that case, the United States Supreme Court upheld a comprehensive, citywide zoning ordinance that has since provided the basis for many modern zoning codes.

These cases provide a backdrop for Nevada's own zoning laws. Like many states across the country, Nevada is known as a Dillon's Rule state. Dillon's Rule, first expressed by Iowa Supreme Court Justice John Dillon in 1868, means that local governments "owe their origin to, and derive their powers and rights wholly from the legislature." *City of Clinton v. Cedar Rapids & M.R.R. Co.*, 24 Iowa 455 (Iowa 1868). In other words, local governments may only exercise those powers expressly granted to them by the state legislature. Section 8, Article 8 of Nevada's Constitution sets out the legal framework for Nevada's cities, stating that they are endowed with the powers given to them by the Legislature. Courts have repeatedly acknowledged the limited scope of municipal powers, restricting them as dictated by the Nevada Legislature. See, e.g. *Ronnow v. Las Vegas*, 57 Nev. 332, 341-42, 65 P.2d 133, 136 (1937) (citing *Tucker v. Virginia City*, 4 Nev. 20, 26 (1868) and *State ex rel. Rosenstock v. Swift*, 11 Nev. 128, 140 (1876)).

Many Nevada cities are also "charter cities," meaning that they are incorporated by a special act and have a governing document (a charter) setting out the city's powers in detail. Twelve of Nevada's nineteen cities are charter cities and seven are "general law" cities, organized under Title 21 of the NRS. Counties are governed by Title 20. A city's charter sets forth the specific powers bestowed upon the municipality to govern itself. Common topics of the charter include the powers of the city council. In Las Vegas, for example, these powers specifically include zoning and planning pursuant to NRS 278. See Las Vegas City Charter, Section 2.210. Those powers also include related planning topics from traffic control and parking to rights-of-way and parks.

Specific zoning rules and other laws related to planning are also contained in NRS 278. Topics addressed by the statute include everything from master plans, regional planning, subdivisions, planning commissions, manufactured housing, adult uses, development agreements, common-interest communities, etc. Although somewhat overwhelming in scope, this chapter is the most specific resource for what planning in Nevada entails. It also provides the enabling authority for master plans and zoning ordinances, which many planners use on a daily basis.

Within the scope of the powers set forth in the aforementioned sources, local governments have broad discretion to manage the use land within its boundaries. When it comes to challenges to land use restrictions, Nevada courts give great deference to the decisions of local governments and their appointed boards. "The zoning power is one of the tools of government which, in order to be effective, must not be subjected to judicial interference unless clearly necessary. For this reason, a presumption of validity attaches to a zoning ordinance which imposes the burden to prove its invalidity on the one who challenges it." *Coronet Homes v. McKenzie*, 84 Nev. 250, (1968). In *Coronet Homes*, the Nevada Supreme Court upheld the denial of a special use permit to vary the size of certain lots subject to Washoe County's Density Zoning Provision of its land use ordinance. This does not mean that courts will never interfere with the land use decisions of the local government, such as when it grants a variance without sufficient evidence of a hardship. See *Enterprise Citizens Action Comm. v. Clark County Bd. of Comm'rs*, 112 Nev. 649 (1996).

It is also important to note that a local government's right to restrict the use of land is broad but not unlimited. The personal right to use property is a particularly important one in Nevada, as the state's Constitution specifically provides that "Acquiring, Possessing and Protecting property" is

an inalienable right. Within this context, some local land use restrictions may constitute a regulatory taking or result in a full or partial inverse condemnation of property. For example, the Nevada Supreme Court determined that a height restriction on certain development near McCarran International Airport constituted a regulatory taking for which Clark County had to compensate the property owner. See McCarran Int'l Airport v. Sisolak, 122 Nev. 645 (2006).

The authority to zone land may also be limited by certain vested rights a developer acquires during the development process. As explained succinctly in Wal-Mart Stores, Inc. v. County of Clark, 125 F. Supp.2d 420 (D. Nev. 1999), vested rights protect developers from changes in zoning and land use regulations that occur during the development process. In Nevada, a developer has a vested right to proceed with a proposed project once the local government no longer has any remaining discretionary action related to the project and the developer must have considerably relied on the approvals granted. See American West Development, Inc. v. City of Henderson, 111 Nev. 804 (1995). That said, temporary moratoriums on development, even if they render property valueless until lifted, are permitted without compensation. See Tahoe-Sierra Pres. Council v. Tahoe Reg'l Planning Agency, 535 U.S. 302 (2002).

PLANNING PRACTICE AND THE LAW

As discussed elsewhere in this handbook, there are certain processes that govern land use decisions. This includes everything from long-range planning to decisions on whether to grant simple variances. While this section cannot cover every facet of the planning process, it highlights some of the important rules that apply to decision-making.

MAKING A RECORD

In making land use decisions, the governing body must retain final say over many matters (either on recommendation from the planning commission or on appeal therefrom). See Eagle Thrifty Drugs & Mkts. v. Hunter Lake Parent Teachers Ass'n, 85 Nev. 162, 164 (1969). At each step in the process, the board must make specific findings of fact. City Council of Reno v. Travelers Hotel, 100 Nev. 436 (1984). It is critical that local boards make a good record of its findings and decision because, when courts review discretionary acts of the board, they are looking for substantial evidence in support of the board's decision. See Enterprise Citizens Action Comm. v. Clark County Bd. of Comm'rs, 112 Nev. 649 (1996). While this standard is not particularly onerous, it at least requires some basis for the decision.

Governing bodies also have the authority to impose conditions on land use approvals so long as there is an "essential nexus" between a legitimate government interest and the proposed condition. See Nollan v. California Coastal Commission, 483 U.S. 825 (1987). This "essential nexus" test first explained by Nollan has been expanded by the United States Supreme Court to include that conditions must bear a relationship to the projected impact of the proposed development. Dolan v. City of Tigard, 512 U.S. 374 (1994). For example, requiring the developer of a 200-unit multi-family development to build out certain off-site improvements (such as traffic calming devices, bus stops, etc.) are permitted because they are proportional to the effect of the development on this infrastructure. However, requiring a developer who wants to expand his store and pave his parking lot to dedicate land for and construct a pedestrian and bicycle pathway is prohibited as unconstitutional. Again, making a record is critical to demonstrate the required nexus between the condition and the request.

MASTER PLANS

As discussed in Chapter 1 of this handbook, creating a master plan is an important component of land use planning. Governed by NRS 278.150-246, these master plans must contain certain elements. Once enacted, these master plans provide critical context for all future land use decisions and have been used by courts to resolve disputes over actions involving land use. For example, in Enterprise Citizens Action Committee, the Nevada Supreme Court was persuaded, in part, by the fact that the applicant's attempt to down zone property in Clark County from R-E (Rural Estates) to R-U (Rural Open Land) and then construct a commercial gravel pit operation was inconsistent with the stated goals of the master plan for the area. The collective holding of this and other cases is that zoning rules and development decisions must be consistent with the master plan. Where they are not, they are subject to reversal.

THE FIRST AMENDMENT

A planner's job is not only governed by laws related to the use of land. Planners must also consider other important rights, such as those granted by the First Amendment. A few seminal cases on these topics are discussed below.

In designing and creating public or quasi-public spaces, local governments must consider First Amendment concerns. An interesting case, ACLU of Nevada v. City of Las Vegas, 333 F.3d 1092 (9th Cir. 2003), arose out of the Fremont Street Experience in Las Vegas as a result of the development of the pedestrian mall on a portion of Fremont Street. In creating a new entertainment district on the street, the City of Las Vegas prohibited certain activities, including leafletting and other traditional forms of expression. The ACLU challenged these restrictions and the district court concluded that the Fremont Street Experience was not a public forum, meaning that some broad restrictions on speech were permissible. The court still believed that some of the speech restrictions went too far, but it upheld part of the ordinance. The Ninth Circuit Court of appeals reversed, concluding that the Fremont Street experience was a public forum and only very limited speech restrictions were permitted. In reaching this decision, the Ninth Circuit set forth the following three-part test for whether an area is a traditional public forum: "1) the actual use and purpose of the property, particularly status as a public thoroughfare and availability of free public access to the area"; "2) the area's physical characteristics, including its location and the existence of clear boundaries delimiting the area"; and "3) traditional or historic use of both the property in question and other similar properties." Fremont Street met these criteria.

In another interesting case touching on the First Amendment that directly affects zoning concerns, the United States Supreme Court upheld a distance separation ordinance for adult theaters. See Renton v. Playtime Theaters, 475 U.S. 41 (1986). The ordinance did not ban adult theaters entirely, but instead required a 1,000-foot separation from residential zones, churches, parks, and schools. The Court concluded that the restriction was content-neutral and was appropriate as a means of regulating the secondary effects of adult uses. Importantly, the Court recognized a local government's strong interest in preserving quality of life through zoning restrictions.

EMINENT DOMAIN

One of the most politically charged and controversial facets of planning involves eminent domain. Eminent domain is the power of government to take private property for public purposes in return for reasonable or just compensation, which stems from the Fifth Amendment and the Fourteenth Amendment of the United States Constitution. While it sounds simple enough, government's use of this power often leads to heated litigation and resulted in one of the most controversial decisions in the United States Supreme Court's modern history. Not surprisingly, the crux of many of these disputes involves the amount of compensation owed to the affected property owner.

Traditionally, eminent domain power was used for public projects: roads, parks, infrastructure, etc. However, in Kelo v. City of New London, 545 U.S. 469 (2005), the Supreme Court considered whether it was appropriate for the City of New London to take private land to sell to private developers under the guise of redevelopment of a blighted area (the developers had no plans to open the area up to public use). In a 5-4 decision, the Court held that governments may use eminent domain to transfer properties to a private party as long as there is a public purpose for the transfer. The Court re-enforced the concept that a public *use* includes a public *purpose* and such purpose is the central inquiry into whether the government may take property through eminent domain. In the wake of this decision, many states tightened their rules on the use of eminent domain to preclude the taking of public land for private development.

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A couple of years before Kelo, Nevada's Supreme Court had similarly concluded that "economic development [is a] public purpose" under the former version of NRS 37.010(17). City of Las Vegas Downtown Redevelopment Agency v. Pappas, 119 Nev. 429, 434 (2003). In that case, the Nevada Supreme Court considered a Las Vegas redevelopment plan that allowed the Redevelopment Agency to use eminent domain to acquire private property for projects designed to eliminate blight. Relying on this plan, the City of Las Vegas created the framework to plan and design the Fremont Street Experience. Part of that project included constructing a large parking structure, which would be financed and built through a public-private partnership with a consortium of downtown casinos. The parking garage, which would encompass an entire city block, was owned by multiple private property owners, one of whom refused the City's initial offer to purchase the land. After lengthy litigation and after the garage was constructed, the district court concluded that the use of eminent domain was improper. However, the Nevada Supreme Court overturned this decision and concluded that the use of eminent domain was proper because of the public purpose for the project (and because it was consistent with the redevelopment plan). In response to this case and Kelo, the Nevada Legislature amended the circumstances in which governments could use eminent domain so that, today, this power may

not be used for the “direct or indirect transfer of any interest in the property to another private person or entity” except in limited circumstances. NRS 37.010(2).

In a more recent case, *State v. Dist. Ct.*, 351 P.3d 736 (Nev. 2015), the Nevada Supreme Court considered a dispute arising out of Project Neon, a multi-billion transportation improvement on Interstate Highway 15 from Sahara Avenue to the U.S. Route 95/I-15 interchange. In the early 2000s, as the Nevada Department of Transportation was in the initial stages of planning for Project Neon, Ad America acquired property near I-15. Ad America planned to redevelop the property for high-end commercial offices and multi-level parking. To pursue its vision, Ad America hired a consultant to handle the land use entitlement process. The consultant believed that there was a “de facto moratorium” on development in the path of Project Neon because of the projected future need for the land, so Ad America opted not to redevelop the property. In 2007, Ad America also began informing tenants that the property would ultimately be acquired for the project. Around the same time, in coordination with NDOT, the City of Las Vegas amended part of its Master Plan to permit road widening for an arterial improvement along Martin Luther King Boulevard. In one instance, the City purchased a tract of land for this part of the project; however, the City continued to approve land use applications in and around Project Neon. At the time, neither the City nor NDOT had taken any action to take the Ad America property or commenced any eminent domain proceedings.

Ad America sued NDOT in state district court, alleging inverse condemnation and seeking precondemnation damages for alleged economic harm and just compensation for the alleged taking of its property. The district court agreed with Ad America, attributing the City of Las Vegas’ actions to NDOT even though NDOT had not taken any action related to the property. NDOT appealed, arguing that (1) there could not be a taking because there was no “physical ouster, regulatory taking, or unlawful exaction”; (2) NDOT should not be responsible for actions taken by the City of Las Vegas; and (3) finding a taking in this case would be “unjustifiably speculative,” given that federal funding was contingent and it was not certain there would be a need for Ad America’s property until 2028, the projected year for Phase 5 of Project Neon to begin. The Nevada Supreme Court ultimately agreed with NDOT and concluded that a taking had *not* occurred. The Court emphasized the importance of and protections provided for private property, but recognized a balance between such private property rights and local and state governments’ need to plan for long-term projects to serve the public good. This was an important holding as it was one of the first cases of its type after Nevada amended its Constitution to add private property protections after *Kelo*. These protections included a limitation on the number of years local governments have to use property taken through eminent domain (five). This case confirmed that long-term projects do not require that agencies acquire all necessary property at the planning stage.

OTHER FACETS OF PLANNING

Although beyond the scope of this chapter, planners may also encounter open meeting law issues (NRS 241), inter-local agreements for services or infrastructure (NRS 277), and interaction with federal agencies (such as the Bureau of Land Management through the Southern Nevada Public Lands Management Act).

NEVADA PLANNING GLOSSARY

Accessory Use: An activity or structure incidental or secondary to the principal use on the same lot (e.g., a detached garage for a single family dwelling is an accessory use).

Accessory Dwelling Unit (ADU): An accessory dwelling unit is located on the same parcel as the principal dwelling unit and can either be an attached or else a detached unit. Many jurisdictions in Nevada permit ADUs provided certain standards are met (e.g., limiting the size of ADU's or requiring the principal dwelling unit to be owner-occupied).

Affordable Housing: Affordable housing is defined as housing, including utilities, that is affordable to low-income households. The standard measure of affordability is based on housing costs which do not exceed 30% of household income.

Best Management Practice (BMP): A practice or usually a combination of practices that are determined by a State or a designated planning agency to be the most effective and practicable means (including technological, economic, and institutional considerations) of controlling point and nonpoint source pollutants at levels compatible with environmental quality goals. (source: Bureau of Land Management, Public Land Statistics, 2013).

Board of Adjustment: A quasi-judicial local body whose members are appointed by the local governing body. The Board is responsible for hearing appeals from decisions of the local zoning administrator and to consider requests for variances, special use permits and other administrative determinations as may be delegated by ordinance.

Brownfield: An area previously used for industrial or commercial purposes that may contain contaminated soils or groundwater due to previous uses on the site, such as a former gas station or laundromat.

Certificate of Occupancy (CO): Official certification that a structure conforms to the provisions of the zoning ordinance and building code, and may be used or occupied.

Comprehensive Plan: See Master Plan

Cooperating Agency: A cooperating agency assists the lead federal agency in developing an environmental assessment or environmental impact statement. These can be any agency with jurisdiction by law or special expertise for proposals covered by NEPA (40 CFR 1501.6). Any tribe or Federal, State or local government jurisdiction with such qualifications may become a cooperating agency by agreement with the lead agency.

Dedication: The process of an owner or developer of private land turning that land over for public use, and the acceptance of land for such use by the governmental agency having jurisdiction over the public function for which it will be used. Dedications for roads, parks, school sites, or other public uses are often made into conditions for approval of a development by a village, city, or county.

Density: "The number of dwellings or principal buildings or uses permitted per net (or gross) acre of land." (source: [A Planners Dictionary](#), Davidson, Michael & Dolnick, Fay, Editors; Planning Advisory Service Report Number 521/522; American Planning Association; April 2004).

Development Code, Unified Development Ordinance: Regulations covering zoning and subdivision regulations which usually include chapters on zoning districts, signs, parking, division of land, public facility standards, signage, special or conditional uses, and variances. Many jurisdictions in Nevada have adopted Unified or Consolidated Development Codes, including Las Vegas, Washoe County, and Douglas County.

Disposal: Transfer of public land out of federal ownership to another party through sale, exchange, Recreation and Public Purposes Act of 1926, Desert Land Entry or other land law statutes (source: Bureau of Land Management, Public Land Statistics, 2013)

Division of Land into Large Parcels: “1. Except as provided in subsections 2 and 3, a proposed division of land is subject to the provisions of [NRS 278.471](#) to [278.4725](#), inclusive, if each proposed lot is at least:

(a) One-sixteenth of a section as described by a government land office survey; or

(b) Forty acres in area, including roads and easements.

2. The governing body of a city, the board of county commissioners with respect to the unincorporated area, may by ordinance elect to make [NRS 278.471](#) to [278.4725](#), inclusive, apply to each proposed division of land where each proposed lot is at least:

(a) One-sixty-fourth of a section as described by a government land office survey; or

(b) Ten acres in area, including roads and easements.

3. A proposed division of land into lots or parcels, each of which contains not less than one section or 640 acres, is not subject to [NRS 278.471](#) to [278.4725](#), inclusive.” [*emphasis added*] (source: [Nevada Revised Statutes](#), NRS 278.471).

Dwelling, Multi-Family: A structure containing two or more dwelling units or a combination of two or more separate single-family dwellings.

Dwelling, Single-Family: A dwelling unit contained within a permanent structure placed on a permanent foundation. These dwellings can include site-built, manufactured, and modular homes.

Dwelling Unit: A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

Easement: An easement allows a private party or a public entity to use another person’s property for access or other purposes. Easements are often provided for utilities, such as gas and water. Easements are usually recorded on the property.

Encroachment: The use of one property by another. Municipal government issues an encroachment permit that allows other entities to place facilities within the dedicated right-of-way. The permit does not confer the same rights to control the use of surrounding areas as does the easement. Those rights remain with the entity issuing the permit.

Environmental Assessment: A concise public document prepared to provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact. It includes a brief discussion of the need for the proposal, alternatives considered, environmental impact of the proposed action and alternatives, and a list of agencies and individuals consulted (source: Bureau of Land Management, Public Land Statistics, 2013).

Environmental Impact Statement: A detailed statement prepared by the responsible official in which a major federal action that significantly affects the quality of the human environment is described, alternatives to the proposed action are provided, and effects are analyzed (source: Bureau of Land Management, Public Land Statistics, 2013).

Euclidean Zoning: “A convenient nickname for traditional as-of-right or self-executing zoning in which: district regulations are explicit; residential, commercial, and industrial uses are segregated; districts are cumulative; and bulk and height controls are imposed.” (source: [A Planners Dictionary](#), Davidson, Michael & Dolnick, Fay, Editors; Planning Advisory Service Report Number 521/522; American Planning Association; April 2004).

Ex Parte Contact: “Some form of communication between one party to a proceeding (e.g. an applicant for a permit) and a public official with some responsibility for making a decision affecting that proceeding occurring outside the formal decision-making process and without the knowledge of the other party to the proceeding.” [*Comment: Such contacts are usually prohibited or circumscribed by codes of ethics to preclude conflict of interest or the appearance of favoritism to one party in a proceeding*] (source: [A Planners Dictionary](#), Davidson, Michael & Dolnick, Fay, Editors; Planning Advisory Service Report Number 521/522; American Planning Association; April 2004).

Federal Land Policy and Management Act of 1976 (FLPMA): Public Law 94-579, October 21, 1976, often referred to as the BLM’s “Organic Act,” which provides most of the BLM’s legislated authority, direction policy, and basic management guidance (source: Bureau of Land Management, Public Land Statistics, 2013).

Findings The result(s) of an investigation and the basis upon which decisions are made. Findings are used by government agencies and bodies to justify action taken by the entity.

Floodplain, 100 Year : The 100 Year Floodplain is the highest level of flooding that, on average, is likely to occur once every 100 years or that has a 1 percent chance of occurring each year.

Floodway The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the "base flood" without cumulatively increasing the water surface elevation more than one foot. No development is allowed in floodways.

Floating Zoning District A zoning district that is described in the text of a zoning ordinance but may not be associated with a specific location on a zoning map.

Form-Based Zoning (aka Contextual Zoning, Flexible Zoning): “Allows market demand to determine the mix of uses within the constraints of building type set by the community. The community establishes zones of building type and allows building owners to determine the uses. The look and layout of a street is carefully controlled to reflect neighborhood scale, parking standards, and pedestrian accessibility, but building owners and occupants are allowed maximum

flexibility to determine how the building will be used.” (source: [A Planners Dictionary](#), Davidson, Michael & Dolnick, Fay, Editors; Planning Advisory Service Report Number 521/522; American Planning Association; April 2004).

Lot: “Lot” means a distinct part or parcel of land which has been divided to transfer ownership or to build. The term does not include a parcel of land used or intended solely for use as a location for a water well.” (source: [Nevada Revised Statutes](#), NRS 278.0165).

Manufactured Housing: Manufactured housing is housing that is transported to a site on a chassis and which is also known as HUD Code Homes. Manufactured homes previous to 1976 are usually still referred to as mobile homes. The National Manufactured Housing Act regulates the inspection of these homes, which are not regulated by local building codes.

Master Plan (aka General Plan, Comprehensive Plan): “A comprehensive long-range plan intended to guide growth and development of a community or region and one that includes analysis, recommendation, and proposals for the community’s population, economy, housing, transportation, community facilities, and land use.” (source: [A Planners Dictionary](#), Davidson, Michael & Dolnick, Fay, Editors; Planning Advisory Service Report Number 521/522; American Planning Association; April 2004).

Metes and Bounds A system of describing and identifying a tract of land by distance (metes) and directions (bounds) from an identifiable point of geographical reference

Mixed-Use Properties on which various uses, such as office, commercial, institutional, and residential, are combined in a single building or on a single site in an integrated development project with significant functional interrelationships and a coherent physical design. A "single site" may include contiguous properties.

Modular Housing: Modular, or Factory Built Housing, is constructed on-site and must comply with local building codes.

Neighborhood and Community-Based Development Strategies: Economic development activities at the neighborhood level deal with both place and people. The fundamental underpinning of neighborhood and community-based development strategies is building assets both individually and collectively for the community. Traditional economic development activities are key, and involve the attraction, expansion, and retention of businesses, new business development and job creation. In some ways, neighborhood and community-based development strategies go beyond traditional economic development. Attention must be devoted to increasing wealth at the individual household or family level.

New Urbanism (aka Neo-traditional Development, Traditional Neighborhood Development): “The process of reintegrating the components of modern life-housing, workplace, shopping, and recreation-into compact, pedestrian-friendly, mixed-use neighborhoods linked by transit and set in a larger regional open space framework. Initially dubbed ‘neo-traditional planning’, the principles that define new urbanism can be applied successfully to infill and redevelopment sites within existing urbanized areas.” (source: [A Planners Dictionary](#), Davidson, Michael & Dolnick, Fay, Editors; Planning Advisory Service Report Number 521/522; American Planning Association; April 2004).

Ordinance A legislative enactment of a county or city. It is a governmental statute or regulation and its adoption requires a public hearing and publication of the text in a local newspaper.

Parcel Map: “1. Except as otherwise provided in this section, a person who proposes to divide any land for transfer or development into four lots or less shall:

(a) Prepare a parcel map and file the number of copies, as required by local ordinance, of the parcel map with the planning commission or its designated representative or, if there is no planning commission, with the clerk of the governing body; and

(b) Pay a filing fee in an amount determined by the governing body.” [*emphasis added*]
(source: Nevada Revised Statutes, NRS 278.461).

Permitted Use: A land use that is permitted by right in a specific zoning district and requires no review by the local planning department. Although a permitted use may be permitted by right, there may be specific standards that apply. For example, home occupations may be a permitted use in all residential dwellings, provided certain standards are met, such as no signage and no outside employees.

Planned Unit Development (aka PUD): “An area of minimum contiguous size, as specified by ordinance, to be planned and developed as a single entity containing one or more residential clusters or planned unit residential developments and one or more public, quasi-public, commercial, or industrial areas in such ranges of ratios, and nonresidential uses to residential as shall be specified.” (source: A Planners Dictionary, Davidson, Michael & Dolnick, Fay, Editors; Planning Advisory Service Report Number 521/522; American Planning Association; April 2004)

Planned Unit Development (NRS): 1. “Planned unit development” means an area of land controlled by a landowner, which is to be developed as a single entity for one or more planned unit residential developments, one or more public, quasi-public, commercial or industrial areas, or both.

2. Unless otherwise stated, “planned unit development” includes the term “planned unit residential development.” (source: Nevada Revised Statutes, NRS 278A.065)

Planning Commission: A group of citizens appointed by the governing body to research, survey, analyze, and make recommendations on current and long range land development policies. Elected officials acting in this capacity.

Plat: A map representing a subdivision of a parcel of land into lots, blocks and streets or other divisions and dedications.

Police Powers: Rights of government to regulate personal conduct and the use of land in order to protect the public health, safety, and welfare, as provided in the state constitution.

Principal Use: The main use of a lot or building as distinguished from a secondary or accessory use on the same lot. A dwelling is a principal use on a residential lot; a garage or swimming pool is an accessory use.

Public Land: Land or interest in land owned by the US and administered by the Secretary of the Interior through the BLM without regard to how the US acquired ownership, except lands located

on the Outer Continental Shelf and land held for the benefit of Indians, Aleuts, and Eskimos (source: *Bureau of Land Management, Public Land Statistics, 2013*).

Recreation and Public Purposes Act of 1926: Provides for the lease and sale of public lands determined valuable for public purposes. The objective of the Recreation and Public Purposes Act is to meet the needs of state and local government agencies and nonprofit organizations by leasing or conveying public land required for recreation and public purpose uses. Examples of uses made of Recreation and Public Purposes Act lands are parks and greenbelts, sanitary landfills, schools, religious facilities, and camps for youth groups. The act provides substantial cost-benefits for land acquisition and provides for recreation facilities or historical monuments at no cost (source: *Bureau of Land Management, Public Land Statistics, 2013*).

Resolution: Master Plans in Nevada are adopted by resolution of the governing body, not by ordinance. Development regulations, such as zoning and subdivision regulations, are adopted by ordinance and are part of the city or county code.

Rezoning: An amendment to the map and/or text of a zoning ordinance to effect a change in the nature, density, or intensity of uses allowed in a zoning district and/or on a designated parcel or land area. All rezonings are enacted in the form of an ordinance.

Section: The Land Ordinance of 1785 created townships of 36 square miles, or 36 sections, for territories west of the original 13 colonies. One section is one square mile and contains 640 acres.

Site Plan: A scaled drawing, often based on a survey, will show either existing or proposed uses for a property. A site plan will include property boundaries, location of easements, and building footprints, and location of driveways.

Special Use: A use that may be permitted based on additional review by the Planning Commission and compliance with specific findings. The Planning Commission may determine that a proposed use is not compatible with surrounding land uses and deny the permit. The special use designation allows the planning staff and the Planning Commission to review a proposed use that might create land use conflicts and to establish mitigation measures to reduce the impact of the proposed use on the neighborhood.

Subdivision (aka Subdivision Map, Subdivision Plat): “1. “Subdivision” means any land, vacant or improved, which is divided or proposed to be divided into five or more lots, parcels, sites, units or plots, for the purpose of any transfer or development, or any proposed transfer or development, unless exempted by one of the following provisions:

(a) The term “subdivision” does not apply to any division of land which is subject to the provisions of [NRS 278.471](#) to [278.4725](#), inclusive.

(b) Any joint tenancy or tenancy in common shall be deemed a single interest in land.

(c) Unless a method of disposition is adopted for the purpose of evading this chapter or would have the effect of evading this chapter, the term “subdivision” does not apply to:

(1) Any division of land which is ordered by any court in this State or created by operation of law;

(2) A lien, mortgage, deed of trust or any other security instrument;

- (3) A security or unit of interest in any investment trust regulated under the laws of this State or any other interest in an investment entity;
 - (4) Cemetery lots; or
 - (5) An interest in oil, gas, minerals or building materials, which are now or hereafter severed from the surface ownership of real property.
2. A common-interest community consisting of five or more units shall be deemed to be a subdivision of land within the meaning of this section, but need only comply with [NRS 278.326](#) to [278.460](#), inclusive, and [278.473](#) to [278.490](#), inclusive. [*emphasis added*] (source: [Nevada Revised Statutes](#), NRS 278.320).

Tahoe Regional Planning Agency (TRPA): The Tahoe Regional Planning Agency was created in 1969 by the US Congress to regulate development in the Tahoe Basin. TRPA adopted a new Regional Plan in December 2012 as well as a new Code of Ordinances in February 2013. The local jurisdictions within the Tahoe Basin include Placer County, El Dorado County, and the City of South Lake Tahoe on the California side, and Douglas County, Carson City, and Washoe County on the Nevada side.

Taking: The appropriation by government of private land by title or action for which compensation must be paid.

Transit Oriented Development (TOD): Transit Oriented Development involves mixed use development with a range of housing types located in proximity to public transportation such as light rail.

Use, Accessory: “A use incidental to and customarily associated with a specific principal use, located on the same lot or parcel.” (source: [A Planners Dictionary](#), Davidson, Michael & Dolnick, Fay, Editors; Planning Advisory Service Report Number 521/522; American Planning Association; April 2004).

Use, Conditional (aka Special Use): A use which, because of special problems of control that the use presents, requires reasonable, but special, unusual, or extraordinary limitations peculiar to the use for the protection of the public welfare and the integrity of the land-use plan.” (source: [A Planners Dictionary](#), Davidson, Michael & Dolnick, Fay, Editors; Planning Advisory Service Report Number 521/522; American Planning Association; April 2004).

Use, Permitted: A use permitted in a district without the need for special administrative review and approval, upon the satisfaction of the standards and requirements of an ordinance.” (source: [A Planners Dictionary](#), Davidson, Michael & Dolnick, Fay, Editors; Planning Advisory Service Report Number 521/522; American Planning Association; April 2004).

Zoning: “A police power measure in which the community is divided into districts or zones within which permitted and special uses are established as are regulations governing lot size, building bulk, placement, and other development standards” (source: [A Planners Dictionary](#), Davidson, Michael & Dolnick, Fay, Editors; Planning Advisory Service Report Number 521/522; American Planning Association; April 2004).

Zoning Map: A legislative body is allowed divide its jurisdiction into zones of the number, shape, and area it deems best suited to carry out the purposes of the zoning ordinance. These zones are delineated on a map or maps, called the Zoning Map.

PLANNING ACRONYMS

A(A)DT	Average (annual) daily trips made by vehicles in a 24-hour period
BOCA	One of the Uniform Building Codes
CBD	Central Business District
CC&Rs	Covenants, Conditions, and Restrictions - recorded with a subdivision and part of the deed by which the land is conveyed, they can restrict the way the land can be used and how it can be sold. Unless they are less restrictive than the zoning, their terms always take precedence over zoning.
CDBG	Community Development Block Grant, a program of the U.S. Department of Housing and Urban Development.
CIP	Capital Improvements Plan
COG	Council of Governments - usually including more than one county and their village and city governments. Clark County and the Cities of North Las Vegas, Las Vegas, and Henderson constitute the required membership of the Southern Nevada Strategic Planning Coalition enabled by 1999 legislation.
FAR	Floor Area Ratio - the number of square feet of building space divided by the number of square feet of the lot it is on
FEMA	Federal Emergency Management Agency, the federal agency responsible for administering the National Flood Insurance program.
FIR	Fiscal Impact Report - the cost of additional services to be provided by government and revenues to government for a specific development or project
FHWA	Federal Highway Administration
FIRM	Flood Insurance Rate Map issued by the Federal Insurance Administration defines areas of special flood hazard and the risk premium zones applicable to those areas
FmHA	Farmers Home Administration
HOV	High Occupancy Vehicle
HUD	US Department of Housing and Urban Development
LOS	Level of Service
NIMBY	Not in my backyard
NORA	Notice of Realty Action - Federal Register notice of purchase or sale of real estate.

PUD	Planned Unit Development - a description of a proposed unified development consisting, at a minimum, of a map and adopted ordinance setting forth the regulations governing, and the location and phasing of all proposed uses and improvements to be included in the development.
UBC	Uniform Building Code, e.g. BOCA, that sets forth minimum standards for construction.
UMTA	Urban Mass Transportation Administration
SRO	Single Room Occupancy