

Date of Meeting: September 5-6, 1958

Date of Memo: August 29, 1958

Memorandum No. 8

Subject: Study #16 - Planning Procedure

The 1955 session of the Legislature authorized the Commission to undertake a study to determine whether there is need for clarification of the law respecting the duties of the city and county legislative bodies in connection with planning procedures and the enactment of zoning ordinances when there is no planning commission. This study, which is described at page 32 of the Commission's 1955 Report to the legislature, was placed on our agenda at the suggestion of a city attorney of a city having no planning commission. He reported that the existing statutory law on the subject is rather confusing, a fact which the study we have made tends to confirm.

A copy of a staff study on this subject is attached. Attached also is a copy of a letter which I have received from Ralph Kleps relating to the staff study and particularly to the recommendations made therein. My comments on Ralph's letter are as follows:

1. I agree with his observations concerning the unsatisfactory state of the statutes relating to planning and his view that the Commission should undertake the minimum amount of revision in this area which is commensurate with discharge of our responsibilities under the study assigned by the Legislature.

2. I am inclined to the view that we would not be courting any great problems if we were to recommend substantially the revisions proposed at pages 5-6 and 8-11 of the staff study and that this would be in some respects preferable to recommending a

this would be in some respects preferable to recommending a section along the lines of that suggested in Ralph's letter.

3. Whatever is decided as to legislative recommendations to be made, the problem is presented of how much of the study, if any, to publish. One possibility would be to publish all of it (with such modification in detail as is deemed necessary) in order to focus attention on some of the obvious defects in the statutory law relating to planning. At the other extreme we might publish no study at all, particularly if we were to recommend the statute proposed by Ralph. A middle ground would be to publish only pp. 2-6 of the study, dealing with the enactment of zoning ordinances if our recommendation is limited thereto or only pp. 2-12, dealing with the enactment and administration of zoning ordinances if our recommendation deals with both subjects.

Respectfully submitted,

John R. McDonough, Jr.,
Executive Secretary

State of California
CALIFORNIA LAW REVISION COMMISSION

School of Law
Stanford, Calif.

Sacramento, California
August 8, 1959

Prof. John R. McDonough, Jr.
Executive Secretary
California Law Revision Commission
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Dear John:

We started to do a detailed comment on the staff study with respect to zoning ordinances and master plans, but I have decided to make some general observations instead.

The first comment is that this whole area of our statutory law is in deplorable condition. For example, on page 7, the staff study indicates that either a city or a county may create a "board of zoning adjustment," while only a city may have a "zoning administrator." Since the 1955 amendment to Section 65850,* however, both entities may create either, and Section 65853 sounds as if certain actions are to be taken jointly by the administrator and the board. Consider the possibility of a city's having both, against the background of Section 65852 (a 1953 section) which gives the powers of the board to the administrator in cities. (Query: what as to counties?) Many other such complications could be pointed out, but the conclusion I draw is that no simple set of amendments will make much impression in this field. We should either limit ourselves to the specific problem raised, therefore, not claiming that we've cleaned up the situation, or we should recognize that a far more ambitious project is involved.

As described in the 1955 Report, at page 32, this study involves only the holding of multiple hearings by

* All references are to the Government Code.

Prof. John R. McDonough, Jr. - p. 2

the legislative body due to the wording of Section 65808. My suggestion would be that we take care of this problem only, unless we're ready to revise the whole planning law.

Viewing the study from this point of view, I wonder about the theory of the staff report. The basic concept seems to be that the existing procedural provisions should be duplicated in the law, but with special application to the situation in which there is no planning commission. (Query: what about the situations in which the law requires a planning commission, but it was never created or is inoperative?) This duplication of existing sections, however, runs the risk of creating a variance between the existing law and the new section. (See, for example, the existing Section 65806 and the recommended Section 65806.5.) If we make a sensible new section, we have to revise the existing section also and this is apt to have substantial repercussions on the whole act. I would prefer attempting to devise new language which would solve the multiple hearing problem alone. It would make a much simpler bill, for one thing, and it would not involve us in restating so much confused statutory language.

What about something like this, added to Section 65808:

"No legislative body which exercises the powers of a planning commission under this section is required to conduct multiple hearings at any stage of a proceeding merely because it is exercising the powers of a planning commission as well as its own powers."

This language may not be the best possible, but it expresses the approach I have in mind.

Regards,

/s/ Ralph

Ralph N. Kleps
Ex Officio Member

RNK:r

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May 7, 1958

A STUDY ~~TO DETERMINE WHETHER THE~~
~~LAW~~ REGARDING THE ADOPTION AND
ADMINISTRATION ~~OF ZONING ORDINANCES~~
~~AND~~ OF MASTER AND PRECISE PLANS BY
CITIES AND COUNTIES NOT HAVING PLAN-
NING COMMISSIONS ~~SHOULD BE REVISED~~ *

*A study Made by the Staff of the Law Revision
Commission.

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A STUDY TO DETERMINE WHETHER THE
LAW REGARDING THE ADOPTION AND
ADMINISTRATION OF ZONING ORDINANCES
AND OF MASTER AND PRECISE PLANS BY
CITIES AND COUNTIES NOT HAVING PLAN-
NING COMMISSIONS SHOULD BE REVISED

Chapter 3, Title 7 of the Government Code, which is en-
titled "Local Planning," provides, inter alia,¹ for the creation
of city and county planning commissions² and for the appoint-
ment,³ organization³ and financing⁴ of such commissions. Chapters
3 and 4 of Title 7 provide that where there is a city or county
planning commission that body shall have specific powers and
and responsibilities in connection with the adoption and adminis-
tration of master plans,⁵ precise plans,⁶ and zoning ordinances⁷
and with respect to changes in street names.⁸ It seems probable
that these statutes were originally drafted on the assumption
that there would be a planning commission in every city or county
which would be acting under them. The possibility that this might
not be the case was apparently visualized by the draftsman only
in connection with Chapter 4 of Title 7 which deals with the
adoption and administration of zoning ordinances; his solution
for this problem is Section 65808 of the Government Code which
provides:

If there is no city or county planning commission
the legislative body of such city or county shall do all
things required or authorized by this chapter of the city
or county planning commission.

As will be shown below, however, Section 65808 is a less
than satisfactory solution to the problem.

Two questions are considered in this study. The first is whether Chapter 4 of Title 7 of the Government Code should be revised to clarify how zoning ordinances are to be adopted and administered in a city or county not having a planning commission. The second is whether provision should be made in Chapter 3 of Title 7 of the Government Code for the adoption and administration of master and precise plans in cities or counties which do not have planning commissions. These questions will be discussed separately.

WHETHER SPECIFIC PROVISION SHOULD BE
MADE FOR THE ADOPTION AND ADMINISTRATION
OF ZONING ORDINANCES IN A CITY OR COUNTY
NOT HAVING A PLANNING COMMISSION

This problem will be divided into two parts for consideration: (1) the adoption of zoning ordinances; (2) the administration of zoning ordinances.

The Adoption of Zoning Ordinances

Article 1 of Chapter 4 of Title 7 of the Government Code provides for the adoption of zoning regulations by the legislative body of a city or county. Section 65803 provides:

§ 65803. Except as otherwise provided in this article, a zoning ordinance shall be initiated and adopted in the same manner as a precise plan, pursuant to Chapter 3. This section does not require the adoption of a master plan prior to either the initiation or adoption of a zoning ordinance.

Article 11 of Chapter 3 of Title 7 deals with the adoption or amendment of a precise plan or regulation. Applying the provisions of that Article to the initiation and adoption of a zoning ordinance, as contemplated by Section 65803, two procedures are provided by which such an ordinance may be adopted. Under one procedure, detailed in Sections 65650-65655, the following steps are required to be taken: (1) A proposed ordinance is originated by the planning commission of a city or county after at least one public hearing⁹ of which published notice is required to be given;¹⁰ (2) the ordinance is recommended to the legislative body of the city or county by a vote of not less¹¹ than two-thirds of the members of the planning commission; (3) the legislative body may adopt the ordinance or regulation only after holding at least one public hearing,¹² of which published notice is required to be given; (4) the legislative body may not make a change in the proposed ordinance until the change has been referred to the planning commission for a report and such report has been filed.¹³ Under the other procedure, detailed in Section 65657, a zoning ordinance may be originated by the legislative body but may be adopted only after it has been referred to the planning commission for a report which is to be made after the commission has held at least one public meeting of which published notice must be given.¹⁴

Under these provisions the participation of the planning commission is contemplated in the adoption of every zoning ordinance. But suppose there is no planning commission?¹⁵ This

contingency is provided for by Section 65808 which provides:

If there is no city or county planning commission the legislative body of such city or county shall do all things required or authorized by this chapter of the city or county planning commission.

Literally applied in conjunction with Section 65803, Section 65808 would appear to require a city or county legislative body in adopting a zoning ordinance, if the first procedure outlined above is followed, to first sit as a planning commission, hold a hearing, make a recommendation to itself as a legislative body, and then, sitting in the latter capacity, hold another hearing and approve or reject the recommendation. Moreover, the legislative body, sitting as such, would be required to refer any suggestion for a change in the recommendation back to itself sitting as a planning commission for a report. If the second procedure outlined above is followed the legislative body must refer any proposed zoning ordinance to itself sitting as a planning commission for a report and must hold at least one public hearing in that capacity.

It is not clear that the courts of this State would give Section 65808 a literal interpretation and hold a zoning ordinance invalid if a city or county legislative body failed to sit in the separate capacities and hold the several public hearings which a literal compliance with Sections 65803 and ¹⁶ ~~65808~~ would seem to require. There have been no California court decisions which have defined the meaning of Section 65808. In the only case found, the court merely commented in passing that the city council had acted in

accordance with the provisions of the statute.

It may be thought to be undesirable to leave this question open for judicial interpretation. If so, Chapter 4 of Title 7 of the Government Code could be amended to state explicitly what procedure is to be followed in adopting a zoning ordinance in a city or county not having a planning commission. Such a procedure should, it is believed, require only that before adopting such an ordinance the legislative body hold one public hearing on the subject, of which published notice should be required to be given. The legislative changes necessary to accomplish this result are the following:

(1) Amend Section 65803 to make it applicable only where there is a planning commission, as follows:

~~§ 65803. . . Except as otherwise provided in this article, when there is a planning commission in the city or county, a zoning ordinance shall be initiated and adopted in the same manner as a precise plan, pursuant to Chapter 3. This section does not require the adoption of a master plan prior to either the initiation or adoption of a zoning ordinance.~~

(2) Repeal Section 65808 and enact in its stead a new section, as follows:

§.65803.5. If there is no planning commission in a city or county the legislative body thereof may adopt a zoning ordinance or regulation after holding at least one public hearing. Notice of the time and place of such hearing shall be given in the city or county at least 10 days before the hearing by publication pursuant to Section 6061 of this code and by such other means as the legislative body deems necessary.

(3) Enact a new section as a counterpart to Section 65806, as follows:

§ 65806.5. If there is no planning commission in a city or county the legislative body thereof may, to protect the public safety, health and welfare, adopt a temporary interim zoning ordinance as an urgency measure when

- (a) New territory has been or may be annexed to a city, or
- (b) The legislative body is conducting or intends to conduct studies within a reasonable time of the adoption of a new zoning ordinance or of amendments or additions to an existing zoning ordinance.
- (c) The legislative body has held or plans to hold a public hearing in connection with the adoption of a new zoning ordinance or amendments or additions to an existing zoning ordinance.

A temporary interim zoning ordinance may prohibit uses which would be in conflict with a zoning ordinance which may be adopted or with amendments or additions which may be made to an existing zoning ordinance.

A temporary interim zoning ordinance may be initiated and adopted as other ordinances not relating to zoning are initiated and adopted.

(4) A desirable change for better draftsmanship of Chapter 4, although one not necessary to accomplish the result under consideration, would be to repeal Section 65807 and to amend Section 65804 as follows:

§ 65804. ~~Except-as-otherwise-provided-in-this article,~~ An amendment to a zoning ordinance which ~~amendment~~ changes any property from one zone to another or imposes any regulation listed in Section 65800 not theretofore imposed or removes or modifies any such regulation theretofore imposed shall be initiated and adopted in the same manner as required for the initiation and adoption of the original zoning ordinance.

In all other cases, an amendment to a zoning ordinance may be initiated and adopted as other ordinances are initiated and adopted.

The Administration of Zoning Ordinances

Article 2 of Chapter 4 of Title 7 is entitled "Administration." Its function is to establish procedures through which persons may apply for conditional uses or permits under a zoning ordinance or for a variance from such an ordinance or may appeal from orders, decisions and other action of administrative officials taken pursuant to a zoning ordinance. Article 2 empowers a city or a county to create a board of zoning adjustment and empowers a city to create the office of zoning administrator. A board of zoning adjustment or a zoning administrator is empowered to hear applications for uses, permits and variances and to hear appeals from administrative action, subject to review by the legislative body, and then by competent courts. Provision is made in Article 2 for the contingency that neither a board of zoning adjustment nor a zoning administrator may exist in a particular city or county; Section 65852 provides that in such a case the planning commission shall have all of the powers and duties of a board of zoning adjustment. But what if there is no planning commission either? Here, as in the case of the adoption of zoning ordinances as provided in Article 1, the governing provision is found in Section 65808:

"...the legislative body...shall do all things...

required by this chapter of the...planning commission."

[Emphasis added.]

But here again if the legislative body follows the mandate of Section 65808 literally an anomalous situation, involving an apparently unnecessary duplication of effort, results. The following example illustrates this: An appeal is taken under § 65853(c) from the order of an administrative official acting pursuant to a zoning regulation. This appeal is heard initially^{17a} by the legislative body sitting as a planning commission.²³ Under §65850 the aggrieved party then has a right to appeal this determination to the legislative body sitting as such. Thus the legislative body finds itself reviewing a decision which it made a few days before sitting in another capacity.

In Article 2 as in Article 1 it may be thought desirable to eliminate this duplication of effort by making special provision for the administration of zoning ordinances by the legislative body of a city or county when there is no board of zoning adjustment, zoning administrator or planning commission. This could be done by making the following changes in Article 2:

(1) Amend Section 65852 to provide for the situation where there is no planning commission, as follows:

§ 65852. The zoning administrator of a city shall have all the powers and duties of a board of zoning adjustment. If there is neither a board of zoning adjustment, nor a zoning administrator, the planning commission shall have all the powers and duties of a board of zoning adjustment. If there is not a board of zoning adjustment, nor a zoning administrator, nor a planning commission, the legislative body shall have all the powers and duties of a board of zoning adjustment.

(2) Repeal Section 65808 and enact a new Section 65853.5

as follows:

§ 65853.5. If there is no board of zoning adjustment, zoning administrator, or planning commission in a city or county the legislative body thereof may, in appropriate cases and subject to appropriate conditions and safeguards as provided by the zoning ordinance, or charter if there be such, hear and decide:

(a) Applications for conditional uses or other permits when the zoning ordinance provides therefor and establishes criteria for determining such matters.

(b) Applications for variances from the terms of the zoning ordinance when the following circumstances are found to apply:

(1) That any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which subject property is situate.

(2) That because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance is found to deprive subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification.

(c) Appeals, where it is alleged by the appellant that there is error in any order, requirement, permit, decision or determination made by an administrative official in the administration or enforcement of this chapter or any ordinance adopted pursuant to it. Acts and determinations of the legislative body authorized herein may be reviewed by competent courts.

(3) Amend Section 65855 to make it applicable where there is no planning commission, as follows:

§65855. In exercising the powers granted by Section 65853(c), Section 65853.5(c) or Section 65856, ~~such-board~~ the person or body hearing the appeal may, in conformity with this chapter, reverse or confirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such an order, requirement, decision or determination as should be made, and, to that end, shall have all the powers of the officer from whom the appeal is taken.

(4) Amend Section 65856 to make it applicable where there is no planning commission, as follows:

§ 65856. ~~An appeals to-the-board-of-adjustment~~ may be taken from any decision of the an administrative official by any person aggrieved, or by any officer, department or bureau affected by ~~any decision of the administrative official~~ thereby to the person or body in the city or county empowered to hear appeals under Section 65853(c) or Section 65853.5(c) of this code. Such appeal shall be taken within a reasonable time, as provided by rules of the ~~board~~ person or body hearing the appeal, by filing with the officer from whom the appeal is taken, and with the ~~board~~ person or body hearing the appeal a notice of appeal specifying the grounds. The officer from whom the appeal is taken shall forthwith transmit to the ~~board~~ person or body to whom the appeal is taken, all the papers constituting the record upon which the action appealed from was taken.

(5) Amend Section 65857 to make it applicable where there is no planning commission, as follows:

§ 65857. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to

the board-of-adjustment, person or body hearing the appeal, after the notice of appeal shall have been filed with him that, by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life and property. In such case proceedings shall not be stayed except by a restraining order which may be granted by the board-of-adjustment person or body hearing the appeal or by a court of record on application, and notice to the officer from whom the appeal is taken and due cause shown.

Conclusion and Recommendation

The only information at hand which indicates the extent to which Section 65808 affects California communities is that found in the 1953 Report of the Assembly Interim Committee on Conservation, Planning and Public Works which states:

All but 89 cities - with a total population of 248,438 (2.3% of the state population) - have established planning commissions. Only five of these cities have more than 10,000 population.

It is recommended that the ambiguities and anomalies which presently exist by virtue of Section 65808 of the Government Code in respect of the enactment and administration of zoning ordinances by cities and counties not having planning commissions be eliminated by the adoption of the statutory revisions suggested above.

In determining whether this recommendation is sound it might be noted that the present statute has never required judicial interpretation. Perhaps this indicates that little or no practical problem exists. Attention might also be given to the fact that under the new statutory provisions proposed above zoning ordinances

may be enacted by cities and counties without planning commissions with greater facility than those having planning commissions. It might be considered whether this would tend to discourage the creation of planning commissions and, if so, whether such a possible result is desirable.

WHETHER CITIES AND COUNTIES SHOULD
BE AUTHORIZED TO ADOPT MASTER AND
PRECISE PLANS WITHOUT PARTICIPATION
BY A PLANNING COMMISSION

Master Plans

Adoption of Master Plans By Cities and Counties
Not Having Planning Commissions

The adoption of a master or general plan by a city or county having a planning commission or within the jurisdiction of a regional or area planning commission is governed by Articles 7 and 8 of Chapter 3 of Title 7 of the Government Code. The authorized procedure is the following: A master plan is prepared by a city, county, regional or area planning commission; two public noticed hearings are required to be held prior to its adoption by the commission. The commission may adopt the plan by resolution of two-thirds of the voting members. Following such adoption the plan is required to be certified to the legislative body by the planning commission. The legislative body may then adopt the plan by resolution but only after holding a noticed public hearing. Any

change in the plan proposed by the legislative body must be referred to the planning commission for a report before it can be acted on.²⁴ If no report is forthcoming within 40 days, the changes are deemed approved²⁵ and the legislative body is free to act.

Amendments to the master plan may also be adopted in the above manner. However, an alternative method is provided whereby a proposed amendment may be originated by the legislative body²⁶ but must be referred to the planning commission for a report. The planning commission must hold a noticed public hearing and file a report with the legislative body within 90 days.²⁷ If the planning commission files a report or if no report is received within 90 days the amendment is deemed approved and after a noticed public hearing²⁸ the legislative body may take action.

If Articles 7 and 8 of Chapter 3 of Title 7 are read alone, it could easily be concluded that cities and counties without a planning commission are incapable of adopting master plans. This conclusion could be supported by the absence of any provision in Chapter 3 comparable to Section 65808 which permits the legislative body to adopt and administer zoning ordinances even though there is no planning commission and also by the language of Section 65511 which authorizes a legislative body to change or add to a master plan but does not authorize it to adopt one. However, under Section 65066 cities or counties that are included in a regional planning district may enter into contracts with any other counties or cities in the district for the

preparation of master and official plans or the performance of other planning functions pursuant to Article I, Chapter 5, Division 7 of Title 1 (Joint power agreements). Through this device a city or county not having its own planning commission can presumably adopt a master plan.

Section 65066 might be considered a sufficient answer to the master plan problems of cities and counties without planning commissions. This would appear to be true if the view is taken that the preparation of a master plan is so technical and complex an undertaking that no legislative body should be empowered to adopt such a plan without having had the assistance of a planning commission in preparing it. Such a conclusion could also be supported by reference to the fact that Article 9 of Chapter 3 which deals with the administration of a master plan obviously contemplates there will be in existence a planning commission to perform the various functions authorized and required therein; as is pointed out below, the legislative body of a city or county could hardly be required to perform all of these functions in the absence of a planning commission. It should be noted, however, that this argument might well lead to the conclusions (1) that Section 65066 should be amended to provide that a city cannot adopt a master plan through contracting for the services of an outside planning commission unless it intends either to create a planning commission to administer the plan or to contract with the outside planning commission to administer it, and (2) that a master plan may not be continued in effect unless there is a

planning commission to administer it.

If it is concluded that cities and counties which do not desire to have planning commissions and which do not wish to contract with outside bodies for planning services should be able to adopt master plans, provision therefor may be made by the following amendments to Chapter 3 of Title 7 of the Government Code:

(1) Amend § 65460 to read:

Each commission or planning department shall prepare and the commission shall adopt a comprehensive, long-term general plan for the physical development of the city, county, area or region, and of any land outside its boundaries which in the commission's judgment bears relation to its planning. The plan may be referred to as the master or general plan and shall be officially certified as the master or general plan upon its adoption by the planning commission and the legislative body.

In a city or county without a planning commission the legislative body may prepare and, in accordance with the provisions of Section 65517 of this code, adopt a comprehensive long-term general plan for the physical development of the city, county, area, or region, and of any land outside its boundaries which in the legislative body's judgment bears relation to its planning. The plan may be referred to as the master or general plan and shall be officially certified as the master or general plan upon its adoption by the legislative body.

(2) Enact new Section 65517 as follows:

§65517. Legislative bodies of cities and counties without planning commissions may adopt master or general plans after at least two public hearings. The legislative

body may change or add to all or part of an adopted master or general plan after at least one public hearing. Notice of the time and place of such hearings shall be published pursuant to Section 6061 in the city or county at least 10 days before the hearing.

Administration of Master Plans By Cities
and Counties Not Having Planning Commissions

Article 9 of Chapter 3 of Title 7 of the Government Code provides for the administration of master plans. It authorizes the planning commission of a city or county to make recommendations for putting a master plan into effect,²⁹ to make annual reports to the legislative body on the status and progress of the plan,³⁰ to promote public understanding of and interest in the plan,³¹ to request public officials to furnish information necessary to the commission's work,³² to enter upon land and make examinations and surveys,³³ to prepare coordinated programs of proposed public works, etc.³⁴ Other officials and agencies are required to furnish information requested by the planning commission³⁵ and to submit lists of proposed public works to the commission.³⁶ No street, square, park, other public ground, or open space may be acquired, no street may be disposed of and no public building or structure may be constructed or authorized until its location, purpose and extent have been submitted to and reported upon by the planning commission.³⁷

The provisions of Article 9 appear to have been drafted on the assumption that any city or county which has a master plan will have a planning commission to administer it. But suppose

it does not; how shall the plan be administered? Section 65066 referred to above, would appear to authorize the legislative body of any city or county included in a regional planning district to solve this problem by contracting with other counties or cities in the district for the administration of its master plan. But no provision appears to have been made for the administration of such a plan in the absence of such a contractual arrangement. Should such provision be made? If so, how may this be done?

One answer to this question, suggested above, would be to provide that no city or county may adopt or continue in effect a master plan unless it creates or contracts for the services of an outside planning commission to administer it. If this answer be rejected, consideration should be given to what provisions of Article 9, if any, should be made applicable when there is a master plan but no planning commission to administer it. It would not seem to be realistic to require the legislative body to perform the various duties imposed on planning commissions by Article 9. It may, however, be desirable to give the legislative body the powers of a planning commission and to require other public officials and agencies to treat it as a planning commission. If this is deemed desirable, it could be accomplished by enacting the following provision:

§ 65566. When a city or county not having a planning commission has adopted a master plan the legislative body thereof shall be deemed to be a planning commission for the purposes of Sections 65541, 65542, 65543, 65544, 65545, 65548, 65549, 65551, 65552, 65553, 65554, and 65555 of this code.

Precise Plans

Adoption of Precise Plans By Cities and Counties Not Having Planning Commissions

A city or county which has a master plan may adopt precise plans based thereon. The adoption of a precise plan by a city or county having a planning commission is governed by Articles 10 and 11 of Chapter 3 of Title 7 of the Government Code. Two procedures are authorized. The first is quite similar to the procedure for the adoption of a master plan. Under it, the precise plan is prepared by the planning commission.³⁸ The Commission may, after one noticed public hearing³⁹ adopt the plan by resolution of two-thirds of the voting members.⁴⁰ Then, after a noticed public hearing the legislative body may adopt the precise plan by resolution or ordinance.⁴¹ Any modification or change in the plan proposed by the legislative body must first be referred to the planning commission for a report.⁴² The alternative method by which a precise plan may be adopted provides that it may be initiated by the legislative body and referred to the planning commission for a noticed hearing and a report.⁴³ After receipt of the report, or if the planning commission does not report in 40 days, the legislative body may adopt the plan.⁴⁴

For the same reasons as were advanced in the discussion of the adoption of master plans, it would be possible to conclude from a reading of Articles 10 and 11 of Chapter 3 above that cities or counties without a planning commission cannot adopt

precise plans. Again, however, Section 65066 makes it possible for a city or county to contract with other bodies for planning services and there would appear to be no barrier to the adoption of a precise plan through this device. Indeed, the Attorney General has even held that when a county planning commission performed this service gratis, it did not constitute a prohibited gift of public funds.⁴⁵

Should provision other than Section 65066 be made for the adoption of precise plans by cities and counties which do not have planning commissions? It is arguable that the same considerations discussed above, which would suggest that such a city or county should not be able to adopt a master plan without the participation of a planning commission, are applicable here. There is, however, an important difference in the two cases. The question of whether a city or county not having a planning commission should be able to adopt precise plans can only arise in a city or county which has a master plan since the existence of such a plan is a prerequisite to the adoption of a precise plan. It is arguable that if the city or county does have a master plan it ought to have the power to adopt precise plans in order to effectuate it.

If it is concluded that cities and counties which do not have planning commissions and do not wish to contract with outside bodies for planning services should be able to adopt precise plans, provision therefor may be made by the following amendments to Chapter 3 of Title 7 of the Government Code:

- (1) Amend § 65600 to read:

From time to time, the planning commission or the planning department may, or if so directed by the legislative body shall, prepare precise plans based on the master or general plan and drafts of such regulations, programs, and legislation as may in its judgment be required for the systematic execution of the master or general plan and the commission may recommend such plans and measures to the legislative body for adoption.

In cities or counties without a planning commission the legislative body may prepare and, in accordance with the provisions of Section 65660 of this code, adopt precise plans based on the master or general plan and such regulations, programs and legislation as may in its judgment be required for the systematic execution of the master or general plan.

- (2) Enact new Section 65660 as follows:

§ 65660. Legislative bodies of cities and counties may adopt precise plans and regulations after at least one public hearing. Notice of the time and place of the hearing shall be published pursuant to Section 6061 in the city or county at least 10 days before the hearing.

Administration of Precise Plans By Cities and Counties Not Having Planning Commissions

The only change in existing law which may be desirable here is to amend Section 65703 as follows:

§ 65703. No city or county shall improve any street, or lay or authorize sewers or connections or other improvements to be laid in any street within any territory for which the legislative body has adopted a precise street or highway plan until the matter has been referred to the planning commission for a report and a copy of the report has been filed with the legislative body unless one of the following conditions applies:

(a) The street has been accepted, opened, or has otherwise received the legal status of a public street prior to the adoption of the plan.

(b) It corresponds with streets shown on the plan.

(c) It corresponds with streets, highways, and freeways shown on a subdivision map or record of survey approved by the legislative body.

(d) It corresponds with streets, highways, and freeways shown on a subdivision map previously approved by the planning commission.

If there is no planning commission in a city or county any matter required by this section to be referred to the planning commission shall be referred to the legislative body.

Conclusion and Recommendations

From the above discussion it seems clear that cities or counties which do not have planning commissions can adopt and administer master and precise plans by contracting for the planning services required by the Government Code in connection therewith.

While this procedure may not be wholly satisfactory this may be a very good thing as a practical matter in that it will induce cities and counties to set up planning commissions. Whether cities and counties should be authorized to adopt and administer master and precise plans without participation by a planning commission is open to serious question. It is quite evident that the preparation of such plans is a long-range project, involving considerable research and the thoughtful consideration of trained persons. From the emphasis placed upon planning commissions by Title 7 of the Government Code and from the failure of the Legislature to provide for the adoption of master and precise plans without the participation of such a commission it is arguable that the Legislature has

determined that participation by a planning commission is essential to long-range planning.

If a city or county without a planning commission finds that contracting with another entity for planning services is unsatisfactory, it has the alternative of appointing its own planning commission. Any other solution, such as the legislative body performing the planning function, may be antipodal to the scheme laid down by the Legislature.

Moreover, it may be doubtful that cities or counties which do not have planning commissions desire master and precise plans. This possibility would appear to be supported by the 1953 Report of the Assembly Interim Committee on Conservation, Planning and Public Works which showed that some 241 of a total of 368 cities and counties with planning commissions had not adopted master plans governing land use.

Therefore, it is recommended that no changes be made in Chapter 3 of Title 7 of the Government Code. However, if it is desired to empower cities and counties not having planning commissions to adopt and administer master and precise plans, the various revisions proposed above are recommended to accomplish this result.

CONFUSING STREET NAMES

Article 13 of Chapter 3 of Title 7 of the Government Code consists of Section 65711 which provides:

§ 65711. Whether a master plan or any portions of it have been adopted or not, whenever a county or city planning commission finds that there are two or more streets within the city or county having the same name or names so similar as to confuse the public, the commission may adopt a resolution of intention to adjust, alter, or change any of such street names so as to serve the public convenience under the procedure provided in this article.

Section 65711 may be thought to raise a doubt as to whether confusing street names can be changed by the legislative body of a city or county which does not have a planning commission. ⁴⁶ If such doubt exists, it could be eliminated by adding to Section 65711 the following paragraph:

In a city or county without a planning commission the legislative body may, upon finding that there are two or more streets within the city or county having the same name or names so similar as to confuse the public or that any street is known by two or more names or that portions of the same street have names that conflict, take any action which it considers proper.

FOOTNOTES

1. Cal. Govt. Code § 65300.
2. Cal. Govt. Code §§ 65330-65362.
3. Cal. Govt. Code §§ 65400-65404.
4. Cal. Govt. Code §§ 65430-65434.
5. Cal. Govt. Code §§ 65460-65555.
6. Cal. Govt. Code §§ 65600-65704.
7. Cal. Govt. Code §§ 65800-65857.
8. Cal. Govt. Code §§ 65711-65715.
9. Cal. Govt. Code § 65650.
10. Cal. Govt. Code § 65651.
11. Cal. Govt. Code § 65652.
12. Cal. Govt. Code § 65654.
13. Cal. Govt. Code § 65655.
14. Cal. Govt. Code § 65657.
15. Section 65300 of the Government Code provides that all counties shall and all cities may have planning commissions. In discussing this section, the Committee stated:

All but two counties have planning commissions established. However, 10 counties have either abandoned their commissions or they are inactive to the extent that a report was not submitted. By existing law the counties are required to establish planning commissions. This is an unrealistic requirement with respect to the smaller population counties. Aside from the fact that the boards of supervisors in these counties can adequately handle planning problems, the cost of maintaining a commission would be far out of proportion due to the great distances and difficulties in travel involved. Final report, Assembly Interim Committee on Conservation, Planning and Public Works, State of California, p. 48 (April 1953).

16. Illustrative of this point is Hopkins v. MacCulloch, 35 Cal. App.2d 442, 95 P.2d 950 (1939). Although this case involves a city with a planning commission, the court's lack of regard for the necessity of strict adherence to the letter of the law by that body, points up the flexibility of action permitted of planning commissions. The court held that the plaintiff could complain of no injury (1) when there was no published notice of a hearing before the planning commission on her application for a variance (as required by ordinance), and (2) when the planning commission refused to receive her application for a variance prior to any public hearing thereon. In reaching this conclusion, the court noted that the plaintiff could appeal to the city council and that the planning commission was only an "advisory body."

17. Biscey v. Burlingame, 127 Cal. App. 213, 15 P.2d 784 (1932).

17a. Cal. Govt. Code §§ 65808, 65852.

18. Cal. Govt. Code § 65500.

19. Cal. Govt. Code §§ 65501, 65502.

20. Cal. Govt. Code § 65503.

21. Cal. Govt. Code §§ 65506, 65507.

22. Cal. Govt. Code § 65508.

23. Cal. Govt. Code § 65509.

24. Cal. Govt. Code § 65510.

25. Ibid.

26. Cal. Govt. Code § 65512.

27. Ibid.

28. Cal. Govt. Code §§ 65513, 65514.

29. Cal. Govt. Code § 65540.

30. Cal. Govt. Code § 65541.
31. Cal. Govt. Code § 65542.
32. Cal. Govt. Code § 65543.
33. Cal. Govt. Code § 65545.
34. Cal. Govt. Code § 65550.
35. Cal. Govt. Code § 65544.
36. Cal. Govt. Code § 65549.
37. Cal. Govt. Code § 65551.
38. Cal. Govt. Code § 65600.
39. Cal. Govt. Code §§ 65650, 65651.
40. Cal. Govt. Code § 65652.
41. Cal. Govt. Code § 65653.
42. Cal. Govt. Code § 65655; although Section 65655 requires the legislative body to receive a report before taking action, it is possible that a court would read this section in pari materia with Sections 65510 and 65658 and conclude that the planning commission's failure to report in 40 days should be deemed approval.
43. Cal. Govt. Code § 65657.
44. Cal. Govt. Code § 65658.
45. 5 Ops. Atty. Gen. 197.
46. Since § 65602 of the provisions governing precise plans and regulations provides that plans may include street and highway naming, a city or county without a planning commission could rectify confusion in street names in the same manner in which it can amend a precise plan or regulation. Also, § 65466 of the provisions governing master plans provides

that a master plan may include a system of street naming. Thus it would seem that a city or county without a planning commission would be able to change street names if it could adopt or amend a master plan.