

**CITY OF MANHATTAN BEACH
[DRAFT] PLANNING COMMISSION
MINUTES OF REGULAR MEETING
JUNE 13, 2012**

A Regular Meeting of the Planning Commission of the City of Manhattan Beach, California, was held on the 13th day of June, 2012, at the hour of 6:30 p.m., in the City Council Chambers of City Hall, at 1400 Highland Avenue, in said City.

1. ROLL CALL

Present: Conaway, Gross, Ortmann, Paralusz, Chairperson Andreani
Absent: None
Staff Present: Laurie Jester, Planning Manager
Eric Haaland, Associate Planner
Recording Secretary, Sarah Boeschen

Chairperson Andreani introduced and welcomed new Commissioner Mr. Steve Ortmann.

2. CEREMONIAL

Planning Manager Jester acknowledged Sandra Seville-Jones for her service on the Commission and thanked her for her service to the community.

Mayor Pro Tem David Lesser thanked Sandra Seville-Jones and presented her with a plaque on behalf of the City and the City Council in recognition of her service on the Commission. He indicated that she has always been thoroughly prepared for discussions of issues; has always been sensitive to the goals of the General Plan; and has always been kind to speakers who came before the Commission.

Chairperson Andreani presented Sandra Seville-Jones with a certificate on behalf of the Community Development Department in recognition of her service on the Planning Commission. She thanked her for her dedication and for the example she has set for the Commission. She said that she has always come to meetings prepared and had a knowledge of the Code. She also indicated that she is very good at listening to the positions of others and has a skill for articulating her positions.

Chairperson Andreani read an email from Councilman Wayne Powell stating that the community has benefited from Sandra Seville-Jones' service in the many tough issues that she has considered on the Commission.

Commissioner Conaway thanked Sandra Seville-Jones for her service on the Commission. He commented her for her for her clarity of thought and ability to clarify complex issues.

Commissioner Gross indicated said that the Commission and City have benefited from the wisdom that Sandra Seville-Jones has provided as a Commissioner. He indicated that she has been able to bring the Commission together to reach a consensus.

Commissioner Paralusz echoed the comments of the other Commissioners. She thanked Sandra Seville-Jones and indicated that she has set the bar high as a Commissioner.

Sandra Seville-Jones indicated that she is appreciative to have had the opportunity to serve on the Commission. She thanked all of the staff members and Commission members who she has

worked with as a Commissioner. She indicated that it has been an honor to serve on the Commission. She commented that the most important role she had on the Commission was to listen carefully to all sides and apply the Code and craft conditions that are reasonable to the particular situation. She said that the Commission has strived to create an environment that is respectful to everyone. She commented that the issues are very personal to the people who appear before the Commission. She said that she appreciates the deep thought that her colleagues have brought to the issues. She said that she has always attempted to clearly lay out her reasoning in reaching her positions so that others are able to challenge her views. She commented that Director Thompson and the staff have always done an exceptional job in presenting an excellent written work product, in preparing concise and thoughtful presentations, and in answering all of the questions from the Commission.

3. APPROVAL OF MINUTES – May 9, 2012

Chairperson Andreani suggested that the second sentence of the second paragraph on page 3 of the May 9 minutes be revised to read: “He said that consideration as a special circumstance as is preserving an important piece of architecture within the City.”

A motion was MADE and SECONDED (Gross/Paralusz) to **APPROVE** the minutes of May 9, 2012, as amended.

AYES: Conaway, Gross, Paralusz, Chairperson Andreani
NOES: None
ABSENT: None
ABSTAIN: Ortmann

4. AUDIENCE PARTICIPATION

5. PUBLIC HEARINGS

06/13/12-3 Variance from Building Height Standards for an Existing Three-Family Residence on the Property Located at 2505 Crest Drive

Associate Planner Haaland summarized the staff report.

Chairperson Andreani asked whether any issue regarding penalties for completing work without a permit that was done for the subject site should be forwarded to the City Council.

Commissioner Paralusz asked about the penalties for completing work on a site without a permit.

Planning Manager Jester said that there are standard penalties in the Building Code for building without a permit which are double the permit fees. She said that the staff does not have the ability to administratively issue additional fees or fines.

In response to a question from Commissioner Paralusz, Associate Planner Haaland indicated that the Height Variance for the project at 700 8th Street was approved in 2000 and the 3rd story Variance for the project at 931 Highview Avenue was approved recently. He indicated that the applicants did not begin work on the projects at 700 8th Street and 931 Highview Avenue without permits before requesting the Variances.

In response to a question from Commissioner Paralusz, Associate Planner Haaland indicated that the building inspector noticed the work being done on the subject property and determined

that no permits had been issued. He said that staff is not certain of how long the construction was being done before it was realized by the City that permits were not issued.

In response to a question from Commissioner Conaway, Associate Planner Haaland indicated that the proposal is under the 50 percent valuation of the existing structure.

In response to a question from Commissioner Conaway, Associate Planner Haaland said that the proposed lower addition to the structure could have been approved administratively with a Minor Exception. Enclosing the balcony on the upper level requires a variance as it is over the height limit.

In response to a question from Commissioner Conaway, Associate Planner Haaland said that in order to approve the Variance the Commission must make all three findings: find that there are special circumstances applicable to the subject property; that the Variance may be granted without substantial detriment to the public good; and that approving the Variance would not be granting a special privilege to the applicant.

Commissioner Ortmann commented that there is a new home on the southeast corner of 25th Street and Crest Drive that appears extremely massive. He said that he has difficulty understanding the issue with the height of the structure on the subject property when the new home at 25th Street and Crest Drive complies with Code requirements but yet appears much more massive than the structure on the subject property.

Planning Manager Jester pointed out that the home at the corner of 25th Street and Crest Drive is on a corner lot which has a 1 foot setback along Crest Drive, the long side of the lot, which is much closer and more visible from the street than the subject property which is located on an interior lot with a 5 foot setback. She also pointed out that the height limit on sloped lots in the 30 foot 3-story areas allows a building to go up to 36 feet in height on the low side.

In response to a question from Commissioner Gross, Associate Planner Haaland said that staff has not reached a conclusion as to whether there is a special circumstance related to the lot that would meet the required finding to approve the Variance.

In response to a question from Commissioner Paralusz, Associate Planner Haaland indicated that the project does propose an additional deck area which does provide sufficient open space.

Chairperson Andreani opened the public hearing.

Antonina Armato, the applicant, stated that she had no previous experience with the process of building construction before hiring a contractor to do work on her home. She commented that she decided to have her balcony fixed by a friend who was a general contractor after she saw that the railings were corroded and dangerous. She said that she agreed to have the balcony area enclosed with windows. She indicated that she was very busy working and did not monitor the construction very carefully. She said that she didn't ask any questions of the contractor. She commented that she was completely surprised when the City issued a stop work order for the construction and that she feels irresponsible for not policing the work of the contractor. She indicated that enclosing the area has created some separation from her parent's home to the south and has added living area. She indicated that she was not intentionally attempting to violate the requirements of the City by failing to apply for permits. She commented that it would be very expensive and difficult to undo the work that has been done on the upper level.

In response to a question from Commissioner Paralusz, **Ms. Armato** said that the contractor who did the work on her home was Mike Perryman, who is a friend of a family member. She said that she was busy and allowed him to oversee the project. She commented that enclosing the upper area did not seem to be a very substantial renovation.

Commissioner Paralusz indicated that she is sorry that the contractor is not present at the hearing in order to ask him why he did not apply for the appropriate permits, particularly if he has done previous work in the City. She commented that it is important for her to understand how the decision was made to do the work without permits. She indicated that the contractor should have known to apply for the permits, and she does not know that his actions should mean that the property owner should be punished for his actions.

In response to a question from Commissioner Paralusz, **Ms. Armato** indicated that the upper level was under construction for a long time before the City inspector issued the stop work order. She commented that she was busy at the time and did not complain about the length of time of the construction. She commented that the scaffolding was still in place for months after the construction was done. She indicated that the construction began in November a couple of years ago.

In response to a question from Commissioner Gross, **Ms. Armato** indicated that she would have difficulty in choosing between retaining the enclosed area on the upper level or completing the lower level renovations. She commented that it would be difficult and expensive to remove the work that has been done to the upper level.

In response to a question from Commissioner Conaway, **Luis Murillo**, the project architect, said that he has not done any solar, shadow or view studies to determine if there would be any impact to the neighbors to the north of the subject site. He commented, however, that the building to the north has no visual relationship with the southwest corner of the subject site where the addition is proposed. He commented that a corner of the existing building would be enclosed, which is within the existing building envelope and would not change the appearance of the structure to the property to the north. He said that there would be additional volume with the lower addition as proposed.

In response to a question from Commissioner Ortmann, **Ms. Armato** indicated that the contractor also replaced the windows in addition to enclosing the upper level area. She indicated that the contractor never talked to her about permits from the City. She said that she assumed the contractor was taking care of receiving any necessary permits. She commented that she also thought that the scope of the job was small.

In response to a question from Commissioner Gross, **Ms. Armato** indicated that no interior work has been done on the top or mid levels, and the only work that has been completed is the enclosure of the balcony and windows.

In response to a question from Commissioner Gross, **Ms. Armato** said that she hired **Mr. Murillo** to work on the project in December of 2011.

Mr. Murillo commented that his company was retained by the applicant in December of 2011. He said that the project would include research and preparation that would ensure compliance with all codes and would allow them to obtain the required permits to complete the work on their home. He commented that they have been in close communication with City staff in the preparation of the project. He indicated that no work has been started in the interior of the home. He commented that the stop work order prompted the applicant to hire his company to develop an overall project for the site including removal of the exterior finishes, a complete

renovation of the exterior, and substantial interior finishes. He pointed out that none of the work has been started pending approval of the Commission. He said that the enclosure of the balcony eliminates a deck that was inefficient and that was a nuisance to the neighboring property to the south by any noise or any odors emanating from a barbeque on the deck. He indicated that they are requesting that the Commission consider that the building is nonconforming in height because of a change in the method of calculating the maximum height. He said that they are also requesting that the Commission consider that the current maximum height regulations prevent the homeowner from correcting a deficient architectural layout that is a nuisance for the adjacent neighbors to the south of the subject site. He pointed out that the 53 square foot addition would be well within the boundaries of the existing structure; would follow the existing height and setbacks; and would not have a negative impact to the adjacent properties. He stated that the total square footage of the structure as proposed would be approximately 1,000 square feet less than would be permitted on the site.

Chairperson Andreani closed the public hearing.

Commissioner Conaway said that he does not feel that the project would be detrimental to the public good or that approving the Variance would be granting the applicant a special privilege. He indicated that the new addition as proposed would not impact the property to the north. He stated that the fact that no adjacent property owners have objected to the proposal indicates that it would not have a detrimental impact to the adjacent properties. He said that he appreciates the applicant's explanation of the history of the project. He indicated, however, that he does not feel that the site creates an undue hardship that warrants granting the Variance.

Commissioner Paralusz commented that her initial feeling is that the bad behavior of doing work without a permit should not be rewarded. She commented, however, that she also must take into account that the applicant herself did not intentionally violate the City requirements. She indicated that she feels the findings can be met that the project would not be a detriment to the public good and that it would not be granting a special privilege to the applicant. She pointed out that the height of the structure was conforming at the time the structure was built and the applicant is not proposing to increase the height. She indicated that the adjacent neighbors would not be impacted. She commented that she does not think that approving the request would be granting a special privilege to the applicant. She indicated that the applicant reasonably relied on the general contractor who knows the rules. She pointed out that there is a penalty of double the cost of the permit fee for doing work without a required permit. She indicated that she does not feel that enclosing the balcony is a hardship.

Commissioner Ortmann said that he would be more supportive of the proposal if the applicant had come before the Commission to enclose the deck and match the existing structure. He said that he is concerned about all of the other work that he saw being done on the subject property. He stated that he also feels the findings can be made that the project would not be a detriment to the neighbors and would not be granting a special privilege to the applicant. He commented, however, that he has difficulty making the finding for a special circumstance.

Commissioner Gross indicated that he feels the finding can be met that the proposal would not be a detriment to the neighbors. He stated, however, that he does not feel the findings can be met that there is a special circumstance and that approving the Variance would not be granting a special privilege to the applicant. He commented that he feels approving the proposal would be granting the applicant a special privilege. He commented that his recollection is that the initiative to change the height calculation was placed on the ballot to relax height restrictions in the area where the subject property is located. He said that there were alternative height calculations on the ballot that were very confusing. He pointed out that the City does not have a view ordinance, and the height limit is used to limit the height of structures. He commented

that the views are very valuable close to the beach. He stated that his recollection is that the issue regarding changing the calculation of maximum height was too controversial for the Council, and the Council decided to place it as a ballot measure for a vote. He stated that the four point method as approved by the voters resulted in the maximum allowable building height becoming lower. He indicated that he feels allowing the additional height for the applicant would set a precedent for other property owners that want to remodel their properties.

Commissioner Paralusz pointed out that the Commission does have the authority to approve a Variance, and it is not necessarily granting a special privilege.

Commissioner Gross pointed out that it is very rare for a height Variance to be approved for a residential property, particularly in the Sand Section.

Chairperson Andreani indicated that the building height has already been established, and the structure was conforming at the time it was constructed.

Commissioner Gross said that nonconforming structures are permitted to remain after Code requirements change; however, additions must meet the new height requirements. He said that it is very rare for a height Variance to be granted for a residential property, and approving the application would set a precedent.

Chairperson Andreani commented that she agrees with the comments of the other Commissioners. She indicated that she feels the finding can be met that the project would not have a detrimental impact on the neighbors. She indicated that she does not feel the finding can be met that there is a special circumstance to warrant granting the Variance. She indicated that she also is not certain that approving the Variance would not be granting the applicant a special privilege. She indicated that she does not feel that all three of the required findings can be met to approve the Variance. She commented that she would not have automatically approved the proposal to enclose the 53 square feet if the project had come before the Commission without any previous work having been done, as she is a proponent of open space. She said however, that she could have supported the enclosure of the 53 square feet if additional open space were created by the other deck area. She indicated that she would agree with Commissioner Paralusz that any penalty should be placed on the contractor rather than the applicant.

Commissioner Paralusz commented that she hopes that the applicant has retained counsel to advise her on recovering costs that have been incurred as a result of the actions of the contractor.

Chairperson Andreani said that it appears from the discussion that the Commissioners agree that all of the three findings are not met for granting the Variance.

Commissioner Paralusz pointed out that the Commissioners have no discretion to deviate from applying the law if they do not feel that all three findings for granting the Variance are met. She said that her understanding from the discussion is that the Commissioners do not feel that all three findings are met. She said that when she was on the PPIC the City Council did have the discretion to make exceptions for those cases. She suggested that the applicant consider appealing the decision of the Commission to the City Council.

Planning Manager Jester pointed out that the City Council does have the discretion to make exceptions for local Encroachment Permit Code requirements, that are the applications reviewed by the PPIC. She said, however, that the required findings for the subject Variance

request are based on State as well as local requirements which the Council must also follow. She said that the Council may look at the project differently than the members of the Commission; however, the Council members are also required to determine that all three findings are met. She said that the applicant does have the ability to appeal the decision of the Commission to the City Council.

In response to a question from Commissioner Ortmann, Planning Manager Jester indicated that the applicant has the ability to appeal the decision to the City Council if the Variance request is denied. She said that staff would be able to act to approve the Minor Exception even if the Variance request is denied. She commented that the enclosed area would need to be changed back into an open area if the City Council denies an appeal from the applicants. She indicated that the applicant would be able to convert it into roof area rather than a balcony if they wished.

Chairperson Paralusz thanked the applicant for coming before the Commission. She commented that she is disappointed in the contractor for putting the applicant in a difficult position. She stated that she would urge the applicant to appeal the decision to the City Council. She said that she would like to approve the project but is not able to determine that the necessary findings are met. She also encouraged the applicant to consider seeking compensation from the contractor for expenses.

In response to a question from Commissioner Ortmann, Planning Manager Jester indicated that the findings for special circumstances include the narrowness, hollowness, or shape/topography of the lot. She said that there must be an unusual characteristic which creates a difficulty in developing a property that creates an undue hardship.

Chairperson Andreani said that perhaps the Variance can be granted without granting an entitlement for any other work on the structure if the Council determines that the three findings can be met.

Commissioner Conaway commented that there is a question as to when a project exceeds the 50 percent valuation which requires all existing nonconformities to be brought to current Code requirements.

Chairperson Andreani reopened the public hearing.

Nancy Armato, a resident of the 2100 block of Crest Drive, commented that she is not clear in reading the required findings that a special circumstance applies strictly to the shape of the lot.

Planning Manager Jester stated that the finding indicates that special circumstances must be applicable to a subject property, including narrowness, hollowness, or shape. Pie shaped, flag, very narrow or short, and very steep lots are examples.

In response to a comment from **Ms. Armato**, Commissioner Paralusz pointed out that it would defeat the purpose of having a maximum height limit if it were easy to meet the requirement for a special circumstance in order to grant a height Variance.

Ms. Armato said that the use of the word “hardship” would seem to relate to a personal aspect of a particular project rather than only relate to the shape of the lot.

Planning Manager Jester indicated that the finding must be read and applied all together and not broken down into separate components.

Chairperson Andreani closed the public hearing.

A motion was MADE and SECONDED (Paralusz/Gross) to **DENY** a Variance from building height standards for an existing three-family residence on the Property Located at 2505 Crest Drive

AYES: Conaway, Gross, Ortmann, Paralusz, Chairperson Andreani
NOES: None
ABSENT: None
ABSTAIN: None

Planning Manager Jester indicated that a resolution will be brought back to the Commission on their consent calendar at their meeting of June 27. She indicated that, the applicant will have the ability to appeal the decision to the City Council after the Resolution is adopted.

6. DIRECTORS ITEMS

Planning Manager Jester said that the Commission has received a hard copy as well as a disc of the Draft Environmental Impact Report for the Manhattan Village Shopping Center Enhancement Program. She stated that the information is also available on the City's website. She said that the report is available for public review until July 23rd. She commented that the report will be on the agenda for the next Planning Commission meeting of June 27. She said that there will also be several other formal Planning Commission and City Council hearings regarding the project. She indicated that the draft report addresses potential environmental impacts such as traffic, air quality, aesthetics, and light. She said that people can receive information and provide comments regarding the document during the review period. She indicated that then a Final Environmental Impact Report will be prepared which responds to the public comments and potentially changes the project to respond to the comments if determined appropriate by staff and the applicant. She stated that then will be public hearings before the Commission and City Council after the Final Environmental Impact Report is completed. She stated that the project will include a Master Use Permit Amendment, a Sign Program, a height Variance, and a Development Agreement. She commented that the developer is asking for a Development Agreement so that have the ability to develop the project in components over a number of years.

In response to a question from Commissioner Paralusz, Planning Manager Jester said that the developer is planning to construct the project in phases in order to minimize impact to the operations of the shopping center. She indicated that the developer also would like flexibility to respond to market demands. She stated that it is planned to have the hearings completed for a final vote by the beginning of next year.

In response to a question from Commissioner Gross, Planning Manager Jester commented that the Commission will be voting on the Master Use Permit. She commented that the Commission will actually be making recommendations to the City Council. She emphasized that there will be several meetings regarding the issue, and the meeting on June 27th is to reintroduce the project to the Commission and the community.

7. PLANNING COMMISSION ITEMS

Commissioner Gross said that he would like to suggest that the penalty for doing construction without receiving permits be reviewed to determine whether or not it should be increased.

Planning Manager Jester said that the penalties are set by the Building Code. She stated that staff will report back to the Commission on the possibility of increasing the penalties.

At 8:50 a 10 minute recess was taken.

A. Brown Act and Conflict of Interest Act Training- Discussion and Presentation by City Attorney

Roxanne Diaz gave a powerpoint presentation on the Brown Act. She indicated that the premise of the Brown Act is that all meetings shall be open and public and all persons shall be permitted to attend any meeting of the legislative body of a local agency. She stated that the intent of the Brown Act is to provide the public with an opportunity to see how the government works. She said that the Brown Act applies to the City Council and bodies formed by the City Council. She said that the Brown Act also applies to standing committees, which are meetings of two members with a regular meeting schedule with a continuing subject matter jurisdiction. She indicated that the Brown Act does not apply to advisory committees, which are not considered legislative bodies. She indicated that an advisory committee includes two members who study a very specific issue. She said that an advisory committee is disbanded after it has provided its recommendations.

Ms. Diaz said that a meeting is a congregation of a majority at the same time and place to hear, discuss, or deliberate any item within the subject matter jurisdiction of the legislative body. She indicated that it is illegal to conduct a serial meeting, which is indirect or direct communication employed by a majority to develop a collective concurrence as to an action to be taken. She commented that serial meetings are basically discussions that occur outside of the meeting room. She stated that a "hub and spoke" is a serial meeting where one member of a body talks to another member who then talks to a third member outside of a meeting about an issue. She commented that e-mail discussions and telephone discussions between commission members can also potentially be a Brown Act violation.

Ms. Diaz said that a member of a legislative body may have a discussion with a resident about an issue that is on an agenda. She indicated that it is not considered a Brown Act violation for members as a group to attend conferences, seminars, social events, community meetings, social or ceremonial events, or ad hoc committee meetings. She indicated that public perception of potential conflicts should also be carefully considered by legislative bodies. She commented that a third member of a legislative body may attend a standing committee meeting to observe but would be in violation of the Brown Act once they speak at the meeting. She said that types of meetings include regular meetings, special meetings, adjourned meetings, and emergency meetings. She indicated that agendas for regular meetings must be posted 72 hours in advance and must include a brief description of the items scheduled for discussion. She commented that the posted agenda for regular meetings must be freely accessible to the public. She stated that special meetings can be called by the chair or a majority of the body; notice must be posted 24 hours in advance of the meeting; written notice of the meeting must be received by each member unless waived; and only items on the agenda can be considered. She stated that members of the public have a right to speak at special meetings regarding items that are on the agenda and at regular meetings regarding items that are on the agenda or any item within the jurisdiction of the body. She indicated that an adjourned meeting is an instance when a regularly scheduled meeting is adjourned to another time and place. She stated that an emergency meeting happens on the Council level and are required to have one hour notice.

Ms. Diaz commented that there is not to be discussion or decision of items not on the posted agenda. She said that agendas must be publicly accessible and distributed in advance to those who request copies. She indicated that an item can be added to the agenda if it is an urgent

matter that came to the attention of the agency after the agenda was posted that requires action before the next meeting. She commented that there can be brief comments, clarification, announcements, requests, or reports of items not on the agenda.

Ms. Diaz commented that public agencies may not prohibit public criticism of the agency or body at a public meeting, and Civil Code Section 47 makes statements at a public meeting generally privileged. She indicated that the public is not required to register in order to speak. She indicated that rules of decorum are permitted at public meetings. She commented that the amount of time that people may be permitted to speak can be regulated. She said that recording of public meetings is permitted provided that it does not disrupt the meeting. She commented that only City Council can have a closed session. She indicated that there must be an announcement of the closed session prior to and after the meeting, and it must be regarding very specific items. She said that there is an opportunity to cure a violation of the Brown Act by placing an item back on the agenda. She indicated that a civil action can be brought to invalidate an action that is taken in violation of the Brown Act. She stated that the members of a body can be criminally prosecuted for violations of the Brown Act that are shown to have been made with the intent to deprive the public of information.

Ms. Diaz indicated that transparency of government allows people to feel they are part of the process. She indicated that process of government is important. She indicated that there is a consequence of having bad publicity through the press, the public and the legislature. She indicated that violations of the Brown Act may affect city action and may result in a civil or criminal penalty.

Ms. Diaz said that the Political Reform Act in California was enacted in 1974 by the voters which created the Fair Political Practices Commission (FPPC). She indicated that a Form 700 Statement of Economic Interest must be filled out by members of legislative bodies annually to disclose financial and business interests. She said that the form helps the members to determine if they have a conflict of interest in making decisions. She indicated that there are penalties for late filing or failure to file. She said that accurate reporting prevents conflicts and increases public confidence. She stated that failure to report an interest will almost always make the FPPC, public, and press suspicious. She commented that the reporting would apply to campaign contributions and behested contributions. She indicated that the rule regarding conflict of interest states that “no public official shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.” She stated that the test is whether it is reasonably foreseeable that a governmental decision will have a material financial effect on any of a member’s economic interests. She indicated that economic interests that would constitute a conflict of interest include a member’s real property interest worth at least \$2,000.00 including a spouse or minor child’s property or lease agreements except month to month; \$500 or more in the last 12 months of a member’s income or promised income, child’s income or spouse’s income; and business investment interests of \$2,000.00 or more.

Ms. Diaz said that a legislative body member owning property within 500 feet of a subject property under consideration is considered a conflict of interest. She commented that a legislative body member receiving a notice of a project is an indication that the property under discussion is within 500 feet of the member’s property. She indicated that if a legislative body member is disqualified from considering an issue they are not to discuss the item or influence staff or colleagues. She said that the member must identify the nature of the conflict at the meeting and leave the chambers after stating the abstention unless the item is on the consent calendar. She said that exceptions are if a member has personal interest as an applicant of a project; if the decision affects the public generally in the same manner as the member; or if a member is legally required to participate due to a lack of quorum because there is a conflict of

interest with a majority of the members. She stated that the penalties for participation in an item with a conflict of interest is invalidation of the decision; a misdemeanor violation; loss of office; fines of \$5,000-\$10,000 per violation; reimbursement of attorney fees; and embarrassment. She commented that the City Attorneys' office is available to answer questions of any member as to whether they may have a conflict of interest in considering an item. She indicated that members can also talk to the FPPC.

Ms. Diaz stated that City officials are not to take bribes and are not to solicit or accept contributions, things of value or payments in exchange for votes or other official action. She indicated that officials are to report gifts of \$50 or more. She indicated that it can be several gifts from the same source within one calendar year. She said that officials are not to accept gifts of \$420.00 or more per calendar year. She said that a gift is anything of value for which the recipient did not provide payment or services of equal or greater value to the donor. She indicated that the rules regarding receiving gifts apply to elected officials; the mayor; the members of the City Council; City Manager; Planning Commissioners; City attorney; City treasurer; chief administrative officer; candidates for any of the these offices; and City employees or other City officials as designated in the Conflict of Interest Code. She pointed out that gifts can include food and drinks; entertainment; certain kinds of travel or lodging; and rebates or discounts. She said that out of state gifts must be reported. She said that exceptions to the rules regarding gifts include if they are received from a spouse; child; stepchild; parent; grandparent; grandchild; brother or sister; brother or sister in law; nephew or niece; grand nephew or niece; aunt or uncle; grand aunt or uncle; first cousin; or the spouse or former spouse of any family members listed.

Ms. Diaz indicated that the rules regarding gifts do not apply if the gift is returned to the donor or if the donor is reimbursed within 30 days. She stated that the rules also do not apply if it is given by the official to a charitable organization if it is not included as a tax deduction. She indicated that a gift to a family member is treated as a gift to the City official if there is no established relationship between the donor and the family member or if there is evidence that the donor is attempting to influence the official. She said that here is an exception to gift rules for gifts that are exchanged at holidays that are not substantially disproportionate in value. She commented that reciprocal exchanges that occur on an ongoing basis are permitted regardless of whether it is for a holiday or other occasion. She stated that there is also an exception to the gift rule for home hospitality for meals and beverages and occasional lodging at a home, vacation home, time share, or boat. She indicated, however, that the person offering the hospitality to the official must have a relationship unrelated to the official's position with the City. She stated that there is also an exception to the gift rule for reporting inheritance; a plaque or trophy valued less than \$250; sick leave or vacation pay; disaster relief programs; a prize awarded in a competition or game of chance; and for wedding gifts. She said that 50 percent of the amount for wedding gifts must be reported; however the gifts are not subject to the gift limit. She commented that gifts at a baby shower are considered gifts to the child.

Ms. Diaz said that materials given at seminars or given to assist an official in the performance of their duties and transportation through which the information is conveyed are not considered gifts. She said that admission tickets to a concert or event are considered a gift. She said that loaning of an item or a service provided to an official that is consistent with polite behavior in a civilized society is not considered a gift. She indicated a new rule has been established that a gift over \$420.00 or more in value can be accepted by an official from a dating partner; however the official must not participate on any decision regarding a contract, license or permit pending before the City that affects the dating partner. She said that there is also an exception included to the gift rules for wedding receptions and bereavement offerings. She stated that there is a rule that a gift can be accepted by an official from a close personal friend if the official has experienced an accident, illness, unemployment, or other unexpected calamity,

provided that the donor of the gift is not a lobbyist or has an issue pending before the City. She stated that there is also an exception for gifts to the official resulting from an existing personal relationship unrelated to the official's position provided that the official does not participate in any decisions that affect the donor.

Ms. Diaz indicated that the City Attorney's office is available to answer any questions that Commissioners may have on the Brown Act and conflicts of interest.

B. Information Presented to the City Council on May 15, 2012, Regarding Liquor License Requirements in the City

Planning Manager Jester said that the Commission has previously reviewed a number of Use Permits to approve alcohol licenses in the City and suggested that the City Council review the City's policy regarding the process of approval for such licenses. She said that the Council also requested information from the Los Angeles County Health Department report regarding crimes and impacts to the community resulting from alcohol use and the granting of alcohol licenses. She said that a report from Director Thompson and the City's police chief was presented to the City Council on May 15th. She indicated that the report covers the issues discussed by the Commission and includes background information on Use Permits for alcohol licenses as well as information from other local cities. She said that the City Council has indicated that they are satisfied with the City's current practice of reviewing alcohol licenses individually through the Use Permit process. She pointed out that Manhattan Beach is the most restrictive city in the South Bay, as every alcohol license application is reviewed individually through the Use Permit process.

8. TENTATIVE AGENDA June 27, 2012

A. Adoption of Resolution – 2505 Crest Drive

B. Overview of Draft EIR- Manhattan Village Shopping Center Enhancement Project

9. ADJOURNMENT

The meeting was adjourned at 10:00 p.m. to Wednesday, June 27, 2012, in the City Council Chambers, City Hall, 1400 Highland Avenue

SARAH BOESCHEN
Recording Secretary

ATTEST:

RICHARD THOMPSON
Community Development Director