The Zoning Ordinance

Fundamentals

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TXAPA Annual Conference
Galveston, October 2013

Based on *A Guide to Urban Planning in Texas Communities* published by the Texas Chapter of American Planning Association

Definition of Zoning

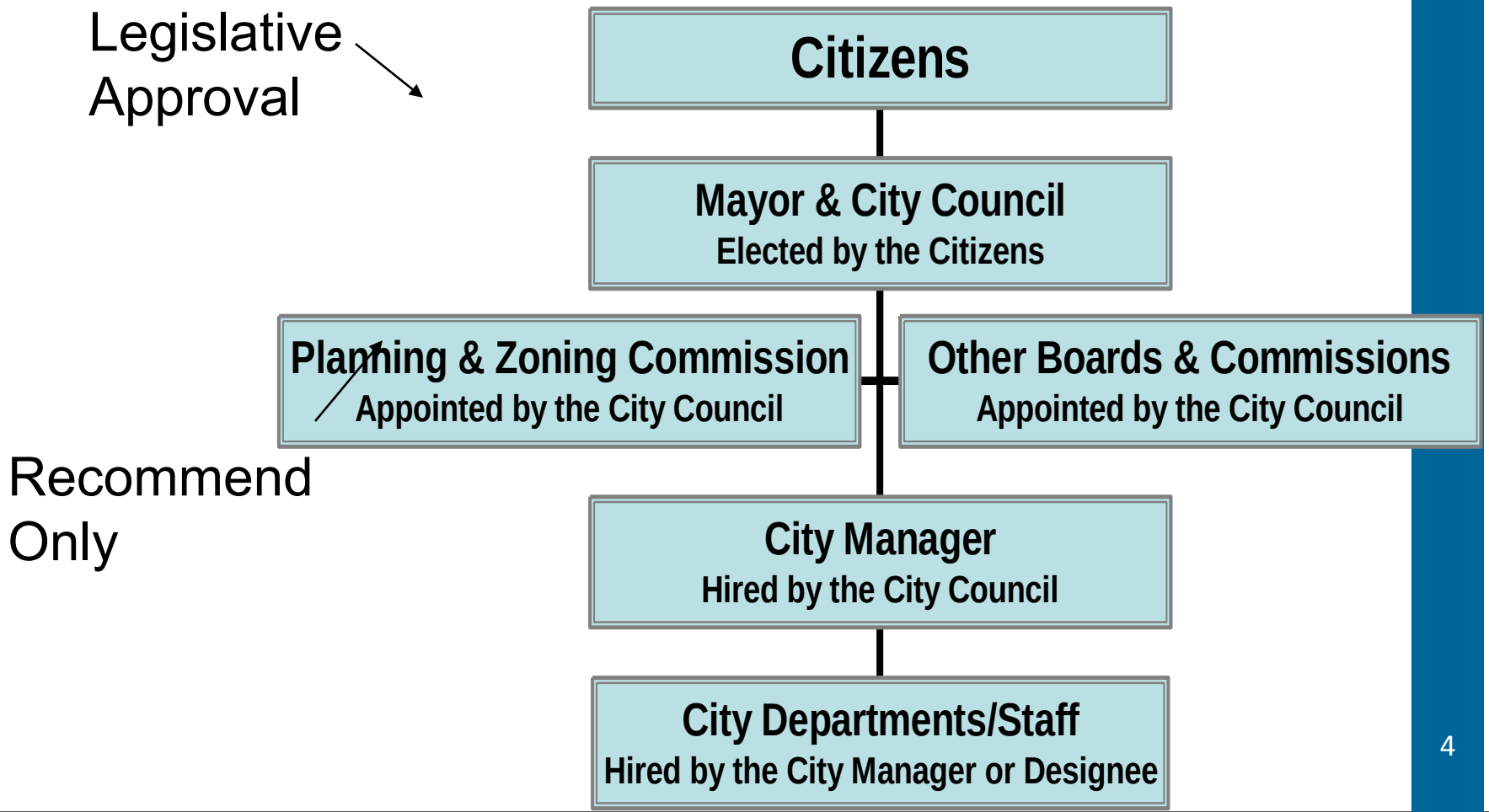
the division of a jurisdiction into districts (zones) within which permissible uses are prescribed and restrictions on building height, bulk, layout and other requirements are defined.

How can a city do this?

- Zoning is an exercise of a city's "police powers"

  --Legislative/policy-making power to establish rules to preserve public order & tranquility and protect the public health, safety, morals, and welfare.

Participants in the Zoning Process



History Of Zoning – United States

- Nuisance laws for land use controls
- New York City (1916)
  - Light /air standards at street level
  - Separation of incompatible land uses
- Standard State Zoning Enabling Act (1922)
- *Village of Euclid v. Ambler Realty Co.*, U.S. Supreme Ct. 1926

History Of Zoning - Texas

- Adopted its version of Standard Zoning Enabling Act in 1927: Chapter 211, Texas Local Gov't Code
- Gave zoning power to cities, but not counties
- Required zoning be in accordance with comprehensive plan
- Zoning must be for protection of health, safety and general welfare of public

Purpose Of Zoning

To regulate land uses in order to:

- Prevent incompatible adjacent land uses, undue density and traffic congestion;
- Restrict height and size/bulk of buildings; and,
- Provide setbacks to lesson fire hazard and promote aesthetic value

In doing so--zoning helps protect private property values

Texas Local Government Code Section 211.004

- "Zoning regulations must be adopted in accordance with a comprehensive plan and must be designed to:
  - lessen congestion in the streets;
  - secure safety from fire, panic, and other dangers;
  - promote health and the general welfare;
  - provide adequate light and air;
  - prevent the overcrowding of land;
  - avoid undue concentration of population; or
  - facilitate the adequate provision of transportation, water, sewers, schools parks, and other public requirements."

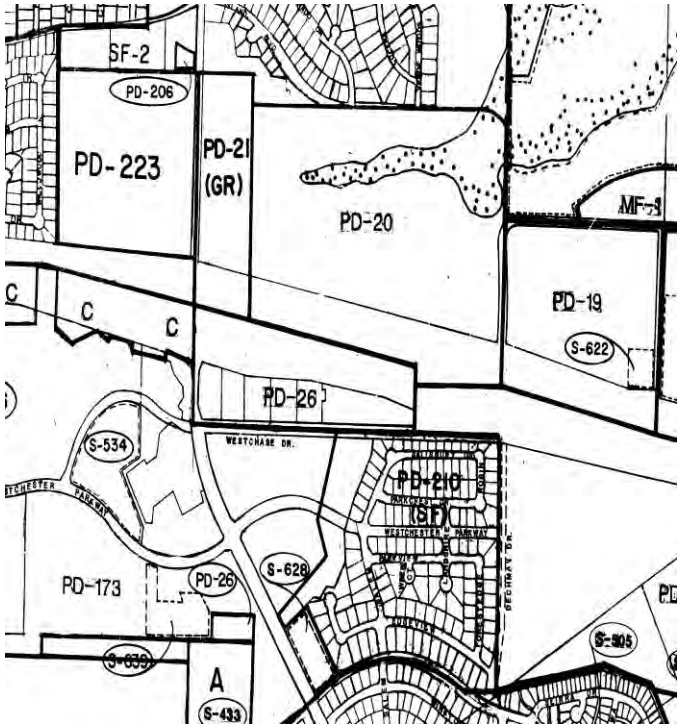
Comprehensive Plan

- Texas Local Gov't Code Ch. 213
- Often overlooked or undervalued element of zoning administration.
- Very important element to base decision on: recognized in court cases to uphold decisions.
- Can make zoning decisions much easier for commission and council, and your lawyers if sued.
- Decisions based on sound comprehensive plan, created with strong community input, can be better supported.

Zoning
A Tool to Enforce the Comprehensive Plan

- "adopted plan must serve as basis for zoning amendments" *Mayhew vs. Sunnyvale*

- "forbids actions that disregard long-range master plans" *Pharr vs. Tippit*



Components of Zoning

1. **Zoning Text—**the Comprehensive Zoning Ordinance
2. **Zoning Map—**the Official Zoning Map, also adopted by ordinance

New trends such as Unified Dev'mt Codes (UDCs), form-based codes, and electronic mapping tools present new issues

Zoning Text

- Document adopted as ordinance by local governing body
- Sets out regulations for uses, bulk, height, lot size
- Should be written in language easy to understand by average citizen
- Document should be well organized and concise
- Pictures and tables are good tools—words control

Zoning Text

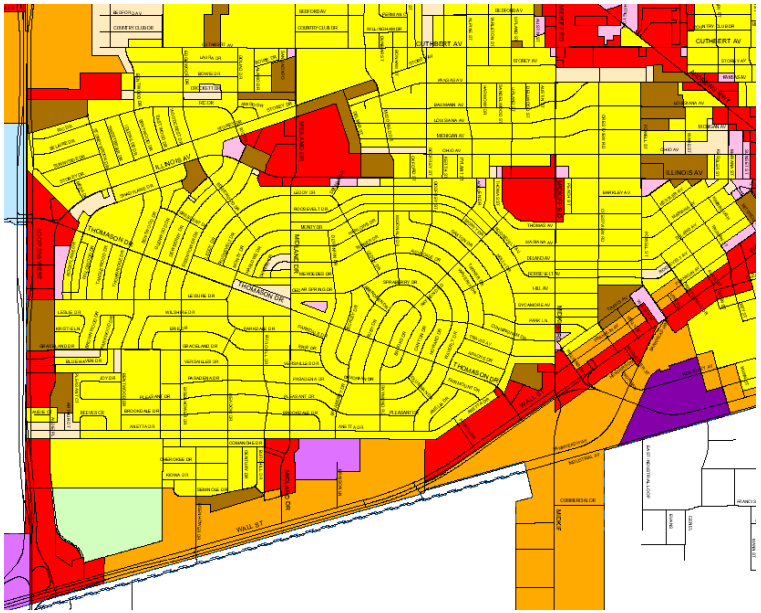
⑩ If other items are included in your zoning ordinance, this has planning and legal implications:

- Can lead to applications at ZBA for things that may be best left to specialized appeals: signs, historic preservation..
- Could lead to claims of vested rights.

Zoning Map

- Set of maps showing zoning district boundaries for entire city
- Usually a detailed city map overlaid with patterns, colors, district classification codes, or other type of district boundary designation to depict various zones which indicate what land uses are allowed and where
- Accessible for public view
- Adopted as part of the zoning ordinance or by separate ordinance
- Changing as a tool now with advent of websites- Important to declare what constitutes THE official map.

Zoning Map



Elements Of Basic Zoning Ordinances

1. Definitions
2. Use Chart
3. Zoning District Requirements
4. Off Street Parking Requirements
5. Procedure for Amending the Zoning Ordinance and/or Map
6. Nonconforming Uses/Structures
7. Zoning Board of Adjustment
8. Other Requirements and Standards

Definitions

- Good definitions make administration easier for applicants, staff, commission, council and legal.
- Should provide thorough and precise definitions of terms used in ordinance and land uses in use chart.

Use Chart

- Can be a matrix showing uses allowed by right, by conditional permit or not at all w/in particular zoning district
- Some ordinances list permitted, conditional, and special uses within each zoning district chapter along with development regulations.
  - Permitted uses are those allowed by right.
  - Conditional uses are those allowed IF they meet all conditions listed in the ordinance
  - Special uses are allowed after commission and council action. = rezoning.

Use Chart

OFFICE AND RETAIL	Agriculture	Single-Family - 7	Duplex	Multi-Family - 12	Multi-Family - 18	Office	Health Services	Neighborhood Service	Shopping Center	General Business	Commercial - 1	Commercial - 2	Industrial - 1	Industrial - 2	Freeway	Planned Development	Parking Requirements
Bed and Breakfast	s															*	1 / room
Drug Store/Pharmacy							x	x	x	x	x	x			x	*	1 / 200 gfa
Financial Institutions						x		x	x	x	x	x	x		x	*	1 / 300 gfa
Grocery/Supermarket								x	x	x	x	x			x	*	1 / 200 gfa
Home Improvement									x	x	x	x	x		x	*	1 / 200 gfa
Hotel, Full Service						x							x		x		1.25 / room
Motel, Limited Service						s							s		s		1.25 / room
Landscape Nursery	s								x	x	x	x			s		1 / 200 gfa

Zoning District Requirements

- Establishes different zones applicable in community
- Establishes development standards for setbacks, lot coverage, height limitations, lot size and others in each district
- Confirms the permitted uses

Other land use standards

- Parking
- Landscaping
- Signs
- Historic preservation

Off-Street Parking Requirements

- Establishes number of off-street parking spaces required for each type of land use
- Generally expressed as ratio of spaces to square footage of building area
- Includes both residential and non-residential uses

Also provides dimensions for parking and maneuvering areas

Landscaping/yards

Procedures for Amending Zoning Ordinance/Map

- Must comply with state law and local requirements for notice and publication, number of public hearings
- Clearly define procedure to amend zoning ordinance, including both zoning changes and text amendments
- Also define requirements for hearings, appeals, notice and fees

Nonconforming Uses/Structures

- Does not meet the current zoning requirements for use or district requirements—may have been annexed or in place before current ordinance and is legally protected.
  - AKA “Grandfathered”
  - Is legal as long as continues the same
  - Example: a small neighborhood store having parking spaces for 10 cars while current regulations require spaces for 25.
  - Example: a building that is built to a smaller, formerly lawful setback line (e.g., predates zoning, but complies with deed restrictions).

Nonconforming Uses/Structures

continued

- Specifies limitations on enlarging, expanding or changing nonconforming uses/structure
  - Generally cannot be expanded, enlarged, intensified
  - Can change to another NCU if new use is in same category
  - Can change to a conforming use
- Identifies requirements for termination of nonconforming uses/structures
  - Typically cannot be rebuilt if over 50% is destroyed, or
  - Is closed for a period of time set by Ordinance, or
  - Is found, to be incompatible, following complaint/hearing.

Can also be amortized over time, and compliance required.

Zoning Board of Adjustment

- Is quasi-judicial board
- If provided for as a separate board in the zoning ordinance,
  - Must have 5+ members/alternates
  - Must be heard by at least 75% of members/alternates
- Council may serve as ZBA
- Shall adopt rules of procedure
- Shall keep minutes and records of its meetings, which shall b filed immediately in the board's office and which are public records

Zoning Board of Adjustment

- Duties of the ZBA
  - Appeals administrative decisions, orders
  - Variances (requires certain findings)
  - Special Exceptions (ordinances must define these)
  - Other duties as assigned
    - Non-conforming determinations
    - Amortizations
- Board must issue written decision
- Next step - if not satisfied –Court
- ZBA members, if acting within scope of authority, will have immunity from suit.

Zoning Board of Adjustment

continued

- **Appeal of administrative decision**

  Any "aggrieved party," officer or employee of the city can appeal a decision by a staff member or other official:

  --issuance of a permit

  --interpretation of a term in the ordinance

  --clarification of a vague or unclear provision

- Must be filed within a reasonable time
- Notice must be provided to "interested parties"
- Stays all proceedings until decision is made
- Evidence-based

Appeal

- **Example:** The building official issued a permit for a house that had three kitchens in three essentially separate, but connected, structures. The neighbors challenged the permit, claiming that it did not meet the definition in the Zoning Ordinance for single family use. The ZBA granted the variance, but the city appealed that decision in court. The District Court upheld the single family definition.
- Example: Sports bar wanted to locate in district that did not list “bar” as a use, but listed “tavern.” What did that mean?

Zoning Board of Adjustment

continued

- **Variance** to elements such as building lines, setbacks, height may be granted if:
- BY STATUTE: **not contrary to the public interest**, and **due to special conditions**, **a literal enforcement** of the provisions of the Zoning Ordinance would result in **unnecessary hardship** and so that the **spirit of the ordinance is observed and substantial justice is done.**
- OTHER COMMON FINDINGS: that would **deprive the owner of any reasonable use** of the land or building involved and would **deprive the applicant of rights commonly enjoyed by other properties in the same district.**

Zoning Board of Adjustment

continued

- A **Special Exception** to the requirements of the Zoning Ordinance may be granted if the request is in accordance with the standards for exceptions that are written into the Ordinance.
- Situations they're often used in:
- Reduced parking
- Reduced landscaping
- Accessibility accommodation
- Carport in front if others are same in area
- Fence height

Other Planning Tools

- Overlay Districts (Historical, Airport, University, Neighborhood)
- Planned Unit Developments
- Special Districts
- Development Agreements

Overlay District

- Set of additional restrictions placed on top of an existing zone

  Examples of Overlay Districts include:

  - Historic Preservation,
  - Conservation or Neighborhood Stabilization
  - Airport Overlay,
  - Flood Hazard Areas,
  - Special Corridor Development

- Method to protect an area with unique characteristics, needs or special challenges

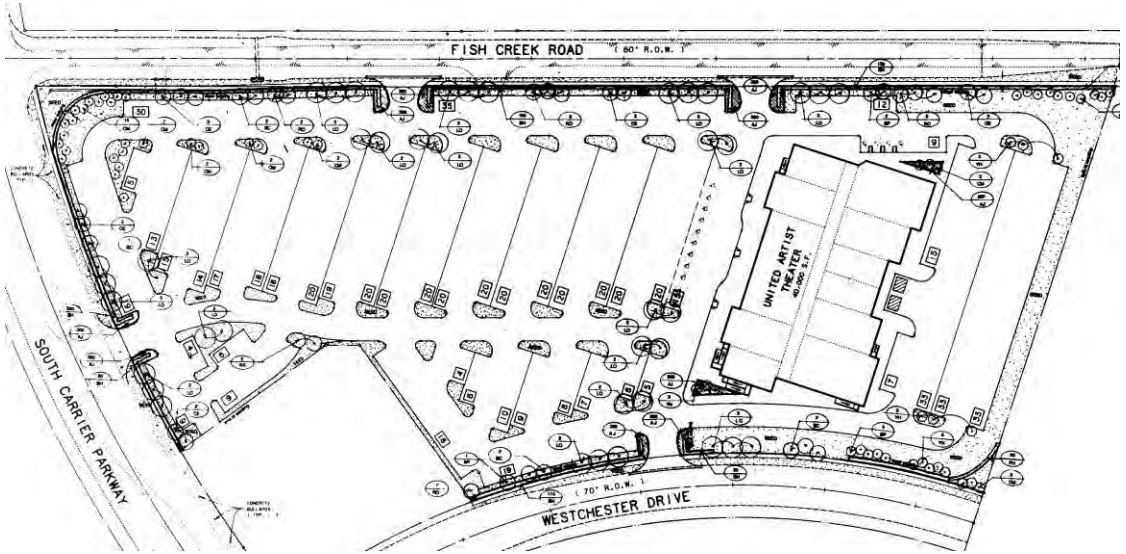
Planned Unit Developments

- A unique zoning tool that offers an alternative to more rigid regulations of standard zoning ordinance
- Promotes flexibility AND certainty in development,
- Allows diversification of uses, structures and open space
- Allows room for negotiation during review process that traditional zoning does not
- Is rezoning and requires public hearings
- Usually on a minimum sized- area—think Woodlands. Most cities have much smaller acreages.

Should not be used just to get around the rules!

Planned Unit Developments

- Should be used for unique developments, not routinely.
- Site (conceptual and development plans) attached to ordinance, follows the rezoning, public hearing process.



Factors to Consider in Making Zoning Decisions

- Compliance with Comprehensive Plan
  - Is application consistent with Plan?
  - If not, have conditions changed or has new information been offered?
- What are the surrounding zoning districts and land uses?
- What are the Infrastructure Impacts?
  - Water, Sewer, drainage, roads
- What is the intensity of use on size and location of parcel
  - Is land large enough and in proper location for proposed use?
  - What is the effect on adjacent uses?

Factors To Consider In Making Zoning Decisions

continued

- Reasonable Use of Property - Does proposed change provide the owner a reasonable use of property?
- Zoning decisions have wide latitude, and immunity from challenge.
- Applicant has the burden of proof to show it is in the best interests of City to rezone

What Zoning Can Do...

- Determine appropriate use of land
- Set development density
- Create area regulations:
  - Height
  - Lot size and dimensions
  - Lot coverage
  - Setbacks
  - Landscaping

….And Can’t Do

- Determine subdivision design,
- Determine race, occupation or income of residents.
- Determine how expensive the homes are,
- Determine if owner occupied or rental,
- Guarantee “quality” development.

Potential Problems

- Spot zoning – rezoning of a particular parcel of land to a zoning classification which is significantly different from the adjoining properties (usually less restrictive)
- Takings issues –private property taken for public use without just compensation – could be zoning to a more restrictive use that is not owner initiated
- Exclusionary zoning – zoning measures that appear to impose costs or requirements with the effect of excluding various groups of 'undesirables.'

Frequently Asked Questions

- Who can request rezoning of property?
- What are notice requirements?
- What is the 20% Rule?
- Can area subject to zoning change be increased at public hearing? Decreased?
- Can area subject to zoning change be zoned to more intense use than advertised? Less intense?
- Can I get sued for serving my city?

Other Concerns

- You are a “public official” and you generally should not have Ex-Parte Contacts with an applicant or opponent.
- You must abide by state and local rules on conflict of interest, ethics.
- Never decide a case before the hearing on the case.
- If you visit the site or learn anything from any source, share that information at the hearing.

Thank you
Any Questions?

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