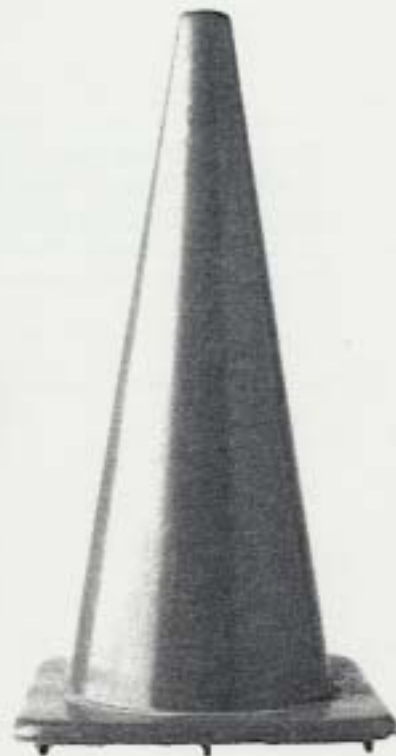


A CITIZEN'S
GUIDE TO
TEXAS
ZONING

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 REAL ESTATE CENTER

Real Estate Center

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Solutions Through Research

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Summary

Zoning is used throughout the state of Texas. In today's real estate environment, it is important to understand the regulation of land uses within municipalities. This study identifies common zoning questions and problems and illustrates how these issues are normally addressed.

This study uses survey data on zoning ordinances in Texas cities throughout the state. A survey developed by the Real Estate Center at Texas A&M University was sent to 50 Texas cities. Municipalities were selected based on their 1998 population as estimated by the Texas Department of Economic Development. The 20 largest Texas cities were included (with the exception of Houston because of their lack of zoning); 15 cities with a population between 50,000 and 100,000; and 15 cities with a population between 25,000 and 49,999.

Questionnaires were sent along with a request for a copy of their zoning ordinance (see sample survey in Appendix B). Of the largest cities, 35 percent responded. Eleven cities with populations between 50,000 and 100,000 responded (73 percent, and seven of the 20 cities with a population of more than 100,000 responded (47 percent). The response rate to a request for a copy of the zoning ordinances was 26 percent, or 13 of 50. The survey and zoning ordinances are referred to throughout this guide.

Introduction

Zoning is one of the most important legal tools used by local governments to encourage or prohibit certain types of real estate developments. Zoning is a police power device that allows for legislative division of space into districts and the imposition of regulations prescribing type of use and intensity of use to which land within each designated district may be placed.

Zoning attempts to improve the living conditions in populated areas by preventing one landowner from damaging neighbors or the community through the improper use or development of land. For example, a zoning ordinance might prohibit someone from placing an automobile repair shop next door to a new home.

The same ordinance that protects property from what occurs next door also limits the development of property. This creates a conflict that is resolved through the local political process.

According to a 1998 survey by the Real Estate Center at Texas A&M University, 55 percent of city planners believe that their zoning ordinance is up to date and easy to understand. Twenty-six percent believe that their ordinance is sometimes easy to understand. Nineteen percent think their city's zoning ordinance is

outdated or not easy to understand by citizens and developers.

This guide explains the terms, procedures and processes of Texas zoning. It provides a better understanding of the process and enables citizens to read and understand a zoning ordinance.

Real estate agents dealing with property on a daily basis should read this guide. In some cases, the potential buyer will want to change the use of the property or add an addition to the property. In these cases, it is helpful for licensees to be able to explain to the client how they would go about achieving those changes.

The average citizen may think they will never come in contact with the zoning process. Quite the contrary. In some instances, a neighbor or business down the street may request to rezone their property or apply for a special-use permit. It is helpful for citizens to understand the rezoning process and their role in the decision-making process.

In other cases, a citizen may want to build a garage in the backyard or add a large front porch. In these situations, contact with the planning department may be required. A homeowner may wish to operate a business and may need to know which businesses are allowed in a particular section of the community.

This guide is a helpful tool for property owners, citizens and members of the real estate

community. Where specific answers are needed, however, the local planning department should be contacted.

Zoning Basics

Zoning can be difficult to understand. Here are answers to frequently asked questions.

What is zoning?

Zoning is the division of land into districts or zones for the regulation of land uses and development standards.

Why is there zoning?

Zoning was created to ensure the compatibility of land uses by minimizing conflicts between uses and, therefore, protecting the health, safety and welfare of the community while enhancing the urban environment.

For example, assume a beautiful home on a half-acre lot has just been built. Six months after construction and move-in, the property owner next door decides to put in a restaurant. This means parking problems and late-night noise.

Without a zoning ordinance, there may be nothing to prohibit the adjacent landowner from building the restaurant or a manufacturing facility, for that matter. Zoning works to protect a home or business from incompatible land uses. There are additional controls, including deed restrictions and nuisance ordinances, that can restrict land uses.

Where is Zoning?

In cities, the zoning ordinance applies to all areas within the city limits. As a city annexes land, that property then becomes zoned as well. The extra-territorial jurisdiction (added land) of the municipality is not subject to zoning regulations. There are no zoning restrictions outside the city limits. Texas counties cannot pass zoning ordinances.

What is a zoning district?

Zoning districts are established to promote compatible patterns of land use within the city limits. Zoning districts establish site development regulations appropriate to the purposes and the uses allowed in each district. Distinct zoning districts exist for residential, office, retail and industrial uses. Also see the glossary, Appendix C.

Who can help with zoning problems?

The first question most people ask when confronted with a city's zoning ordinance is "whom do I contact at the city about this

matter?" The planning department is the best place to start because it normally has someone in charge of city zoning. In large cities, there is an entire department devoted to zoning. In smaller cities, an individual who handles zoning matters may be part of the building or community development department.

The planning department in most cities is responsible for handling zoning questions, such as those related to development services, community development or building permits. In addition, the department that handles the planning functions will have copies of the zoning ordinance and the zoning map. The department has the responsibility for implementing city zoning, even though final decisions on zoning changes are made by the city council or planning and zoning commission.

What is the staff looking for in a request for a zoning change?

The staff and members of the planning and zoning commission consider zoning change requests. A number of areas are considered in a proposed change. General questions that the Amarillo planning staff answers on a request for a zoning change follow. Most cities use similar questions.

Comprehensiveness

- Is the change requested contrary to the established land-use pattern?
- Will the change constitute the only example of this zoning category in the vicinity?
- Will a zoning change alter the population density and increase the demand placed on public facilities (sewers, streets, and so forth)?
- Will the proposed change be contrary to the land-use relationship requirement of the city's comprehensive plan?

Changed Conditions

- Have the land-use conditions in the immediate vicinity been subject to change?
- Has development of the area been contrary to existing regulations?

Public Welfare

- Will the change have a negative influence on living conditions in the neighborhood?
- Will the change create or increase traffic congestion?
- Will the change reduce the light and air to adjacent areas?

- Will the change have a negative effect on property values?
- Will the change constitute a grant of special privilege to an individual in contrast to the general welfare?

Reasonableness

- Are there any reasons why the property cannot be used in conformance with its present zoning?
- Is the zoning change being requested so that the property owner may realize a higher profit from resale than under its current zoning classification?

Example: Single-Story Office to High-Rise Office

Developer Jane has purchased a piece of property that is just big enough for a new six-story office complex. The land was quite a deal. The office building can be seen from the interstate highway and is next to a neighborhood where potential employees live. The property is zoned Office 1 (O-1) for single-story office buildings, so Jane submits a request to change the zoning to Office 2 (O-2) for high-rise office buildings.

On the surface, this may seem like a reasonable rezoning request. But, there are problems. For example, the location is surrounded by residential areas. The size of the structure is inappropriate for the area. A six-story office building will allow workers to look into the backyards of the residential neighbors.

The site is located on a collector street that was not designed to handle the traffic created by a large office building. The comprehensive plan calls for neighborhood services for the area. A large office building would not fit under neighborhood services.

What would be an appropriate use of the property? The zoning of O-1 is for smaller office buildings. Uses may include professional offices, medical clinics and banks. The purpose of the O-1 zoning is to provide area residents convenient access to local services.

For these reasons, the planning staff is likely to recommend denial of the proposed zoning change.

What can Jane do now? She can choose to make a presentation to the planning and zoning commission and the city council on why she believes her development is a compatible use for the area. If the city council denies the request, Jane may choose to develop the property in accordance with the zoning ordinance and build a one-story office building.

Example: Home Office Conversion

Homeowner Joe is an accountant. He currently has a small office in a strip center. His home is 50 years old and was, at the time of purchase, located on the corner of a quiet neighborhood. Today, the street that runs on the side of the house is a major arterial. The street that his house fronts on is a busy collector, and there is a stop light at the same corner as his home.

Joe decides that it would be cheaper for him to convert his home to an office than to lease space in a retail center. He has acquired a vacant lot next door to use for parking. Joe submits a request to change the zoning from single-family residential (R-1) to O-1.

A small office will not excessively increase traffic on the already busy street. The location at the corner of a busy intersection is not conducive to a single-family home. There is a service station at one corner of the intersection and a bank at another.

Although the property is being used in conformance with its present zoning, it is unlikely that the property would remain in use as a single-family home because of its age and location, if the current resident were to move. Many of his neighbors have had a difficult time selling their properties because of the noise created by the busy street. In addition, two neighbors operate home businesses. Joe has spoken with his neighbors, and none of them oppose his request.

The planning staff is likely to recommend that Joe request a zoning change to neighborhood service instead of O-1. Neighborhood service would allow his accounting office. The nearby properties are currently zoned neighborhood service. This request would simply be an extension of the surrounding uses. The planning staff is likely to recommend approval of this zoning request based on the area's changing land-use patterns.

The zoning process can be complicated. By understanding what the planning staff looks for in a zoning change request, applicants can be prepared to answer staff questions. It also helps the applicant to select an appropriate zoning district. In Joe's case, the planning staff was helpful in determining a more suitable zoning district under which he could operate his business.

In many cases, meeting with the staff prior to submitting an application can be worthwhile. The planning staff sees hundreds of applications and has a good understanding of which applications are the most likely to be approved

by the planning and zoning commission and city council.

The Internet also can be a helpful tool in understanding the planning process within a specific community.

Zoning and the Internet

The Internet is quickly becoming an easy way to obtain information about zoning in a particular city. Cities are finding it useful to provide information about whom to contact, the zoning process and their zoning ordinance.

Larger cities are more likely to provide Internet information. The following selected Texas cities provide information on Web sites.

Contact Information Provided

Amarillo—<http://www.ci.amarillo.tx.us/Departments/planning.htm>
Arlington—<http://www.ci.arlington.tx.us/planning/index.html>
Austin—<http://www.ci.austin.tx.us/development/default.htm>
Bryan—<http://www.ci.bryan.tx.us/city.htm>
College Station—<http://www.ci.collegestation.tx.us/cbook/develop.htm>
Corpus Christi—<http://www.ci.corpuschristi.tx.us/main.html>
Dallas—http://www.ci.dallas.tx.us/html/planning_development.html
Denton—<http://www.ci.denton.tx.us/planning/index.html>
El Paso—<http://www.ci.el-paso.tx.us/direct.htm>
Fort Worth—<http://www.ci.fort-worth.tx.us/fortworth/planning/>
Garland—<http://www.ci.garland.tx.us/cogplan.htm>
Laredo—<http://www.cityoflaredo.com/>
Lufkin—<http://www.ci.lufkin.tx.us>
Midland—<http://www.basinlink.com/MIDLAND/city.html>
North Richland Hills—http://www.ci.north-richland-hills.tx.us/general/html/d_plan.htm
Odessa—<http://www.ci.odessa.tx.us>
Pasadena—<http://www.ci.pasadena.tx.us/importantnos.htm>
Richardson—<http://www.ci.richardson.tx.us/cityhall/planning/planning.html>
San Marcos—<http://www.ld.centuryinter.net/sanmarcostx/directln.html>

Zoning Information Provided (may include agendas, maps, minutes, schedules, the zoning process and so forth)

Amarillo—<http://www.ci.amarillo.tx.us/Departments/planning.htm>

Arlington—<http://www.ci.arlington.tx.us/planning/index.html>
Austin—<http://www.ci.austin.tx.us/development/default.htm>
Corpus Christi—<http://www.ci.corpuschristi.tx.us/main.html>
Denton—<http://www.ci.denton.tx.us/planning/index.html>
Irving—<http://www.ci.irving.tx.us/CommDev/zoning.htm>
Lubbock—<http://planning.ci.lubbock.tx.us/>
North Richland Hills—http://www.ci.north-richland-hills.tx.us/general/html/d_plan.htm
Odessa—<http://www.ci.odessa.tx.us>
Plano—<http://www.ci.plano.tx.us/services.htm>
Waco—<http://www.waco-texas.com/>

Zoning Ordinance Provided

Amarillo—<http://www.ci.amarillo.tx.us/Departments/planning.htm>
Austin—<http://www.ci.austin.tx.us/development/ldc1.htm>
Corpus Christi—<http://www.ci.corpuschristi.tx.us/main.html>
El Paso—<http://www.ci.el-paso.tx.us/index.htm>
Fort Worth —<http://ci.fort-worth.tx.us/fortworth/csec/>
Irving—<http://www.ci.irving.tx.us/CommDev/zoning.htm>

Dealing with Zoning Officials

Zoning is a process that may be influenced by the political process, and emotions also become involved. It becomes difficult to predict events when emotions are involved. The citizen, developer, zoning official or politician may be unpredictable. Planners want to protect the compatibility of land uses. Landowners and developers want to protect their financial interests. Politicians may have pressures from constituents.

Because zoning involves humans, it often involves compromises, and, in many cases, neither party gets what they originally wanted.

Every city operates differently. Some cities may strictly enforce the zoning ordinance while others may not. Some may grant variances freely while a neighboring city may not. Each city staff has its own procedures and processes that are used to ensure compatible land uses.

It is important not to underestimate the power of citizens and neighborhood opposition. Twenty-three percent of zoning cases that were denied in 1997 in responding Texas cities, were because of neighborhood opposition, according to the Real Estate Center survey.

Yelling or threatening is rarely an appropriate way to deal with city staff. According to the Center survey, the most effective means of obtaining a zoning change is by meeting with the planning staff to discuss the request and following up with the staff throughout the process.

None of the responding communities preferred to meet with an attorney or other representative of the developer. Some communities added that meeting with the surrounding property owners to help reduce opposition also is effective.

Some communities have pre-application meetings with those persons who are interested in developing a property to discuss potential problems before they arise.

In general, there are some simple rules to follow. First, understand that members of the planning staff are professionals who assist citizens in developing properties in accordance with regulations. Rely on their expertise and advice.

Second, remember that future contacts with this staff may be necessary, and it is best to create a positive relationship. This can be done by acting in a professional manner. If there are disagreements, discuss them with the staff in a calm manner.

Third, neighbors can be allies. If the zoning change is going to be controversial, it is much better to discuss the change with the neighbors before they talk to the planning and zoning commission or city council. Work with the neighbors or surrounding businesses before presenting a zoning case. Even if no resolution can be reached, the needs and opinions of the surrounding community will have been considered.

Use of Regulations and Development Standards

In general, cities divide land into districts based on use. There are three primary types of districts: residential, commercial and industrial. Each district is divided into more restrictive districts.

For example, North Richland Hills has 18 districts. Garland has 21 districts. Arlington has 16 normal zoning districts and eight special-purpose districts. Richardson has the most zoning districts in the study with 28, and McAllen the fewest with 11.

Zoning controls the use of property through restrictions and development standards. Use restrictions control the types of uses allowed within a designated area or district. Within the

zoning ordinance, a list of permitted uses is included. The following example is an agricultural district for McAllen.

Sec. 138-162. Permitted Uses.

The uses permitted in the A-O agricultural and open-space districts are as follows:

- (1) Farming, ranching, related activities and accessory uses.
- (2) One single-family dwelling or one mobile home on parcels of five acres or more.
- (3) Maids' quarters.
- (4) Portable buildings or storage buildings used as an accessory to the primary use and not for living quarters.
- (5) Signs in accordance with applicable ordinances.

McAllen does not use cumulative zoning which allows a use in one district to also be used in another. Normally it means that a less intensive use is allowed in a more intensive-use district. Thus, uses permitted in an A-O agriculture and open-space district also would be allowed in an R-1 single-family residential district. The city of College Station uses cumulative zoning. Here is an example from the College Station zoning ordinance.

7.7 District R-5 Apartment-Medium Density

- A. PURPOSE: This district provides land for development of apartment and condominium units at medium densities. This district may serve as a transitional zone between residential areas and non-residential areas.
- B. PERMITTED USES:
 - Single-family dwellings, built under the zoning restrictions of District R-1A.
 - Duplex dwelling units, built under the zoning restrictions of District R-2.
 - Townhouse dwelling units, built under the zoning restrictions of District R-3.
 - Apartment(s) and apartment buildings.
 - Convalescent homes.
 - Home occupations.
 - Dormitories.
 - Parking lots associated with other permitted uses in this district.
 - Rooming and boarding houses.

Some cities allow cumulative zoning within types of zoning districts. In College Station,

residential uses are cumulative. Commercial districts are cumulative but do not include residential uses. Amarillo is almost completely cumulative. Single-family homes are allowed in every district, except industrial districts.

Cumulative zoning may be a surprise for citizens. For example, in Amarillo, a subdivision could be built in an office district. It may be a surprise for residents when their new neighbors are mid-rise office buildings. This type of zoning provides the most flexibility to the property owners, especially in the more intense zoning districts.

The second way that the use of land can be controlled is through development standards. This applies standards or requirements to the improvements or placement of the improvements on land. Development standards vary according to the zoning district. Development standards can include height requirements, minimum area for rear and side yards and off-street parking regulations. The following is an example of development requirements for Lufkin's R-L Residential Large Single-Family Dwelling District.

Section 2. HEIGHT REGULATIONS

No building shall exceed two and one-half (2 ½) stories in height.

Section 3. AREA REGULATIONS

1. Front Yard

(A) There shall be a front yard having a minimum depth of not less than twenty-five (25) feet, except as hereinafter provided in the Article on Exceptions and Variances.

(B) Where lots have double frontage, running through from one street to another, the required front yard shall be provided on both streets.

2. Side Yard

There shall be two (2) side yards with a width of not less than five (5) feet each. The side yard of corner lots adjacent to a side street shall not be less than ten (10) feet. The side yard of corner lots having adjoining structures fronting on two adjacent property lines shall have a twenty-five (25) foot side yard.

3. Rear Yard

There shall be a rear yard setback line of fifteen (15) feet away from and parallel to the rear lot lines of each lot or tract. The rear yard area

shall not have any part or portion of the main building or any detached structures as hereinafter defined, within it.

Irrespective of the setback requirements herein established, no more than fifty (50) percent, of the area of any lot shall be covered by a structure as hereinafter defined.

Except for corner, flag, and triangular lots, all property lines that are not the front line or connected to the front lot line shall be considered a rear property line. The determination of what is a rear property line on a corner, flag or triangular lot shall be determined by the building official.

4. Area of the Lot

The minimum area of the lot shall be ten thousand (10,000) square feet; however, a lot having an area of less than ten thousand (10,000) square feet that was of record prior to passage of this ordinance may be used for any use permitted in this Article.

5. Width of Lot

The minimum width of the lot shall be eighty (80) feet.

6. The above area regulations apply to the "R-L" Residential Large Single-Family Dwelling District and do not apply to lots which may be of ten thousand (10,000) square feet or larger in other districts.

7. Minimum Depth of Lot

The minimum depth of the lot shall be one hundred (100) feet.

8. Parking Regulations

Off-street parking spaces shall be provided on the lot to accommodate one (1) motor car for each dwelling unit; however, no supporting member of any garage, carport or other automobile storage structure shall be located within the required front yard. Places of public assembly shall provide off-street parking at the ratio of one space for each five seats.

9. Area of Dwelling

Twelve hundred (1,200) square feet shall be the minimum living area of the dwelling.

**Office Zoning Districts Development Standards
City of Amarillo Table**

ZONE	TYPE USE	MIN. LOT SIZE & DIMENSIONS			MINIMUM YARD SETBACKS (feet)					MAX LOT COVERAGE (percent)	MAXIMUM HEIGHT (stories)	REQUIRED OFF-STREET PARKING (spaces per unit)
		AREA (sq. ft)	WIDTH (feet)	DEPTH (feet)	FRONT	REAR	INTERIOR	SIDE ON STREET	SIDE/REAR GARAGE ENTRANCE			
0-1 OFFICE	SF- Detached	6,000	50	100	15	10	5 See 4-10-171b9	10 See 4-10-170b5&6	20	65	2	1
	SF- Detached	2,000	20	100	15	10	none See 4-10-171b5	10 See 4-10-170b5&6 & 4-10-171b5	20	65	2	1
	2F- Duplex Unit	3,000	60	100	15	10	5	10 See 4-10-170b5&6	20	65	2	1 1/2
	Apts.- 1&2 Story	1,200	60	120	15	10	15	15 See 4-10-171b3	20	65	2	1 1/2
	Non.-Res. Main Bldg.	none	none	none	15	none See 4-10-172b2	10 See 4-10-171b8	10 See 4-10-171b8	none	50	2	See 4-10-2112
0-2 OFFICE	SF- Detached	6,000	50	100	15 See 4-10-170b7	10	5 See 4-10-171b9	10 See 4-10-170b5&6	20	65	unlimited *	1
	SF- Detached	2,000	20	100	15 See 4-10-170b7	10	none See 4-10-171b5	10 See 4-10-170b5&6 & 4-10-171b5	20	65	unlimited *	1
	2F- Duplex Unit	3,000	60 See 4-10-168c	100	15 See 4-10-170b7	10	5	10 See 4-10-170b5&6	20	65	unlimited *	1 1/2
	Apts.- 1,2& 3 Stories	1,200	60	120	15 See 4-10-170b7	10	15	15 See 4-10-171b3	20	65	3	1 1/2
	Apts.- Over 3 Stories	600	60	120	15 See 4-10-170b7	See 4-10-172b4	15 See 4-10-171b2	15 See 4-10-171b2	20	65	unlimited * See 4-10-171b2 & 4-10-1724	1 1/2
	Non.-Res. Main Bldg.	none	none	none	15 See 4-10-170b7	See 4-10-172b2	10 See 4-10-171b8	10 See 4-10-171b8	none	50	unlimited *	See 4-10-2112

Source: City of Amarillo Zoning Ordinance

Some cities use a table as the form of their development standards. Amarillo is a good example. The table summarizes the development standards for office zoning districts. Amarillo has cumulative zoning and, therefore, has the development standards for residential as well as non-residential buildings.

Interpreting Development Standards Ordinance

Joshua wants to develop an office building in an O-1 district but does not know what requirements he needs to meet. By looking at the table, he discovers that there are no area, width or depth requirements. He must provide a 15-foot front setback and setbacks of ten feet on the sides of the building. He also discovers that he is limited to a two-story building that covers 50 percent of the property.

He also finds that this table does not tell him how many parking spaces are needed. This is because the parking requirements are based on the type of use, not the type of district. These requirements will be found in another portion of the ordinance. This ordinance does not prohibit Joshua from exceeding these requirements. He may choose to provide all of the landscaping in the front and provide a 40-foot front yard.

Lufkin places the development standards within each zoning district's description. Amarillo uses a chart. Other cities group the requirements in a text format in one place within the ordinance. Because of their complexity, certain types of requirements often are placed in a separate section of the zoning ordinance. Harlingen does this for their off-street parking requirements. The following is a partial listing of Harlingen's off-street parking requirements for non-residential uses.

2. PARKING SPACE SCHEDULE NON-RESIDENTIAL USES IN ALL NON-RESIDENTIAL USE DISTRICTS:
 - (a) Assisted – Living Facility – Two (2) spaces for each living unit;
 - (b) Bars, Taverns, or Nightclubs – One (1) space for each 100 square feet of floor area or one (1) for each two seats provided, whichever is greater;
 - (c) Beauty Shop – One (1) space for each 300 square feet of floor area;
 - (d) Bowling Alley – Six (6) spaces for each lane;
 - (e) Churches – One (1) space for each four (4) seats in auditorium or sanctuary;

Interpreting Parking Ordinances

Janet is building a 100-unit assisted-living facility. She must provide 200 parking spaces. Why so many? A large number of the residents will only have one car, if they drive at all. However, this allocation provides parking for employees and visitors. Senior care is labor-intensive, and employees and residents will share the parking spaces. In this case, Janet may decide to divide the parking spaces. She could place some in the rear of the development and reserve them for employees. She also can allocate some in the front of the complex for visitors. As long as 200 parking spaces are provided, Janet can allocate them as she wishes.

In this example, the parking requirements vary depending on the use. There are a number of other development standards used in cities. Some of these standards are required as part of the subdivision process. Landscaping requirements are one example. North Richland Hills provides a detailed example. This city lists recommended shrubs and trees and works on a credit system. In this system a one-inch caliper tree is equivalent to 200 square feet of landscaped area credits. A portion of these follow.

- D. Landscape Plan Required. When an application is submitted for a building permit on any site where these Landscape Regulations are applicable, the building permit application shall be accompanied by a landscape plan. The Enforcing Officer shall review the landscape plan to determine compliance with these landscape regulations. The plan shall include sufficient information to determine compliance with this section, and shall as a minimum contain the following information:
 1. The date, scale, north arrow, title and name of owner.
 2. A minimum scale of not less than one-inch equals 20 feet.
 3. All existing and proposed buildings and other structures, paved areas, planted areas, power poles, light standards, fire hydrants, signs, fences, sidewalks and other permanent features to be added and/or retained on the site.
 4. The location and height of all trees to be preserved or retained.
 5. The location of all plants and landscaping material to be used including paving, benches, screens,

fountains, statues or other landscape features.

6. A delineation of the designated landscaped area.
 7. A list of the species of all plant material to be used.
 8. A list of the size and height of all plant material to be used.
 9. The spacing of the plant material where appropriate.
 10. The layout and description of an irrigation system.
 11. The name, address, and telephone number of the person or firm responsible for the preparation of the landscape plan.
- B. Required Landscaped Area. Every platted lot, as required by this Section, shall provide a landscaped area equivalent to fifteen percent (15%) of the total land area of the lot. With the exception of the R-7 MF District, at least one-half of the required total landscaped area shall be located in the street yards. All ground surfaces not used for buildings, sidewalks, roadways or other impermeable surfaces shall be covered with live grass, turf, shrubbery, trees, ground cover, flowering plants or appropriate mulching.
- C. Landscaping Credits. Credit for trees and shrubs is intended to encourage the enhancement of the lot through additional landscaping elements. As an alternative to the required fifteen percent (15%) total landscaped area, landscape credits may be utilized to reduce the total amount of land area dedicated for landscaping purposes. However, in no instance shall the credits reduce the total amount of landscaping on a lot to less than seven and one-half percent (7 ½%) of the total land area. Credits are allowed for existing or newly planted trees and shrubs, and only if the feature is maintained as a permanent element of the landscape plan.
- All landscaped areas, including shrubs and trees which received landscaping credits, shall be properly maintained. If any plant material dies, such material shall be subject to replacement as specified in Section 900, Subsection G.

Interpreting Landscape Credits

Johnny is going to be developing a retail strip center on a 100,000-square-foot lot. He can either provide the 15 percent of landscaping, or he can decide to keep some of the large trees that are on the lot already and add less additional landscaping. This means that he would have to provide 15,000 square feet of landscaping.

In this case, he needs additional space for parking and would rather keep some of the existing landscaping. Johnny decides he can build the parking lot around the six large existing trees in the front of the yard. Those trees are worth 1,200 square feet each in landscaping credit. This provides 7,200 of the 15,000 square feet of points that he needs. He can now meet the minimum 7.5 percent requirement by providing shrubs along the frontage of the store on the two streets his business has access from. This allows Johnny to clear the site where the building will sit and provide continuous parking on most of the rest of the lot.

Signs tend to be one of the most important requirements for businesses. In many cases, owners would like as large a sign as possible. Cities normally limit the size of a sign based on a number of factors. Arlington provides an extensive explanation of their sign ordinance. Their sign size is based on the type of business and the size of street on which it is located. The following is a small portion of the sign requirements for a general business sign on an arterial.

Section 16-900. General Business Sign.

A. Arterials:

1. Permitted construction
 - Pole Sign
 - Maximum square footage – 35 square feet
 - Maximum height – 20 feet
 - Setback – 10 feet from the interior side lot lines
 - Lighting – Internal or External
 - Time limit – None

Special Conditions

- a. One general business pole sign is permitted per lot if the lot has more than 100 feet of street frontage. Lots with less than 100 feet of frontage are not permitted a general business pole sign.
- b. Two general business signs, each for use by a separate tenant may be substituted for (1) above on a

lot with more than 399 feet of street frontage along a single street. For the purpose of this section, a tenant is required to be separated by all other tenants by full-height demising walls, or must be located in a separate building, and shall be served by its own entrance. The minimum spacing between signs shall not be less than 150 feet. No product line or tenant shall be displayed on more than one sign. The use of this special condition shall not be permitted when a multi-tenant sign is located on the property; however, a ground sign complying with the specific requirements for such signs may be permitted in lieu of a second pole sign.

Interpreting Sign Ordinances

Johnny put together his landscaping plan and is now ready to think about signage for his business that will have multiple tenants. He has slightly more than 400 feet frontage on one arterial street.

He is permitted one general business pole sign based on the street frontage and must set the sign back ten feet from the side lot lines. The center has two access points from the front of the shopping center. Johnny decides the best place to put the sign is in between these entrances that are more than ten feet from the side lot lines.

The sign can be as much as 20 feet in height with a maximum of 35 square feet of sign space. He cannot add a second sign because none of the tenants will be in a separate building. The strip center is one continuous building.

Is there any way to negotiate these requirements?

The answer may be *yes*. In some cases, a property owner may be able to rezone a property for a planned development and negotiate these requirements. This concept is explained more thoroughly in the next section.

Planned Developments

A planned development is one that does not follow the normal use requirements and development standards. In many cases, the requirements of a planned development are negotiated between the staff and developer. Normally, a community will require a minimum

size to apply for rezoning to planned development. This typically is between three and five acres.

The purpose of the planned development is to encourage innovation by allowing mixed-uses that offer a greater variety in type, design and layout of buildings. To get property zoned as a planned development, it is normally required that a site plan be submitted at the same time as the application. The planned development may encompass a number of items. The following is an excerpt from the Frisco zoning ordinance.

33.3 PLANNED DEVELOPMENT REQUIREMENTS.

- A. Development requirements for each PD District shall be set forth in the amending Ordinance granting that PD District shall include, but may not be limited to; uses, density, lot area, lot width, lot depth, yard depths and widths, building height, building elevations, coverage, floor area ratio, parking, access, screening, landscaping, accessory buildings, signs, lighting, project phasing or scheduling, management associations and other requirements as the city council and planning and zoning commission may deem appropriate.

Planned developments have become popular in recent years. According to the Real Estate Center survey, 32 percent of zoning applications approved in 1997 were for planned developments. Medium-sized cities saw the most frequent use of the planned development district.

Example: Office Building to Planned Development District

Mary owns a large tract of land that is zoned for O-1. She wants to develop the property as a 20-acre office park with office buildings varying in size from one to five stories. She also would like to have a small amount of retail; primarily consisting of restaurants, and possibly a dry cleaners, to serve the offices.

The zoning requirement for the O-1 district she is in limits her to two-and-a-half stories and does not allow retail. She believes that the project would not be harmful because the taller structures would be in the innermost area of the complex. Because of the size and complexity of the project, it would make sense to rezone the area to a planned development district.

City officials agree that an application for a planned development district makes sense. To the north of the property is a highway, to the east is another office park, the west fronts onto an arterial street and to the south the property is zoned for apartments. She works with the city planning department on the site plan and is able to negotiate for her five-story building along with the other retail buildings.

In return, Mary agrees to provide a fence along the south side of the property to screen the office complex from the apartment zoning. She also agrees to provide additional landscaping along the arterial road.

The planning and zoning commission hears her application, and it is approved. The application goes to the city council with a recommendation for approval. Once the application is approved by the city council, Mary is free to develop the property.

There are downsides to a planned development. Once the uses within the planned development are set, they cannot be changed without amending the zoning ordinance. This means that if an office development owner wants to lease space to a beauty shop, the ordinance must be amended. Such changes involve time and expense, and there is no guarantee that the request will be approved.

What if a planned development is not needed, but an exception to the rule is sought?

There are cases where exceptions can be made. The variance and specific use permit are two examples. These are discussed in detail in the following two sections.

Variations

What is a variance?

A variance is an exception to the restrictions and regulations of the zoning ordinance. Variations allow owners of properties that are not similar to other properties in the area some relief from the restrictions of zoning ordinances.

Example: New Porch Fails Setback Test

Jerry recently purchased a home. The family has decided to build an enclosed porch in the back yard. The lot is an odd shape and would not meet the rear and side yard requirements. The porch would extend one foot into the side yard requirement and three feet into the rear yard setback in one area.

In this case, because of the shape of the lot, Jerry would be unable to modify the home. The surrounding neighbors have rectangular shaped lots. A variance to the side and rear

yard requirements could be granted. The intrusion to the setback is minimal, and the surrounding neighbors should not be harmed by the variance.

Normally, variations are granted only if the property owner can demonstrate that a hardship exists. The hardship may not be self-created. For example, Jerry could not have sold ten feet of his rear yard and then requested a variance because the lot was no longer deep enough to meet the rear yard requirements.

The characteristics of the property must be unique and not exist in more than a few other properties for the variance to be granted. In Jerry's case, it is unlikely that there are a large number of odd-shaped lots within the city. It is the responsibility of the property owner to show that the requirements or standards set forth in the ordinance will deprive the property owner of a reasonable use of the land and that the variance will be adequate to allow for reasonable use of the property. The impact on neighboring properties and the public is a consideration.

The board of adjustment is the entity within the city responsible for granting variations. An example of the authority of the North Richland Hills board of adjustment follows. (Article 2 "Amendments, Board of Adjustment and Enforcement").

The Board of Adjustment, in specific cases, may authorize or order the following:

1. Interpretation: To hear and decide appeals where it is alleged there is error on any order, requirement, decision, or interpretation of the Zoning regulations by the Building Official in the enforcement of this Ordinance or a zoning district boundary. In reaching its decision, the Board shall establish firm guidelines for future administrative actions on like matters.
2. Permits for Nonconformities: To authorize a building permit for the reconstruction, extension, or enlargement of a building occupied by non-conforming uses, on the lot or tract occupied by such building, provided such reconstruction does not prevent the potential return of such property to a conforming use.
3. Discontinuance of nonconformities: To require discontinuance of non-conforming uses of land or structures under any plan whereby the full value of the structure and facilities can be amortized within a definite period of time, taking

into consideration the general character of the neighborhood and the necessity of all property to conform to the regulations of this Ordinance. All actions to discontinue a non-conforming use of land or structure shall be taken with due regard to the property rights of the persons affected when considered in the light of the public welfare and the character of the area surrounding the designated non-conforming use and the conservation and preservation of the property. The Board shall, from time to time on its own motion or upon cause presented by interested property owners, inquire into the existence, continuation or maintenance of any non-conforming use within the city.

4. Variances: To authorize upon appeal, in specific cases, such variance from the terms of this Ordinance as will not be contrary to the public interest and where, because of special conditions, the enforcement of the Ordinance would result in an unnecessary hardship. However, the Board shall not have the power to grant variances from the terms of this Ordinance to grant a variance for a change in use not allowed in a district. In exercising its power to grant a variance, the Board of Adjustment shall make findings and show in its minutes that:
 - a) Literal enforcement of the controls will create an unnecessary hardship or practical difficulty in the development of the affected property.
 - b) The situation causing the hardship or difficulty is neither self-imposed nor generally affecting all or most properties in the same zoning district.
 - c) The relief sought will not injure the permitted uses of adjacent conforming property.
 - d) The granting of the variance will be in harmony with the spirit and purposes of these regulations.

In some cases, the officials will notice a trend in the types of requested variances. A large number of a certain type may indicate that there is a need to modify the zoning ordinance.

Granting numerous variances may lead to spot zoning and the destruction of the purpose of the zoning ordinance. The property owner needs to understand the variance procedure

and whether the variance is likely to be approved.

Harlingen provides a good description of their variance process. The description follows.

Zoning Board of Adjustments—What to Expect

You've just been told you need a variance or special exception to a city ordinance. What do you do now?

The Process

First, one of our staff members will sit down with you and discuss your options for your particular problem. Explain the situation in detail, we are here to assist you.

If we determine that you need to apply for a variance, you will get an application for a hearing with the Zoning Board of Adjustments (ZBA). There is a \$50 non-refundable charge to apply. You will be required to provide copies of your latest tax receipts, a copy of the deed for the property in question and a site plan showing distances between the structure, and street and property lines.

Staff will mail a notice of application with the time, date and location of the public meeting to be held on the subject. This notice goes to all property owners within 200 feet of the site in question and to the local newspaper. We will also post the meeting agenda as required by Texas Local Government Code.

Staff members will visit the site and study other relevant information such as neighboring land uses, traffic characteristics, utility line capacities, special physical circumstances, and planning and zoning principles and laws, to determine a recommendation for the board. An information package with the executive summary of staff recommendation and other pertinent information (maps, a copy of the application, any correspondence relevant to the matter, etc.) is provided to board members several days prior to the meeting.

Attend the ZBA meeting. Sometimes Board members will have questions regarding the request or will seek input from the applicant. You may want to consider bringing your neighbors or any other support you may have. No one will be forced to speak, nor will they be denied the opportunity to speak during the public hearing portion of the meeting. There will be Spanish interpretation available upon request. The Chairman

of the meeting will declare the public hearing closed once everyone who wishes to, has had the opportunity to speak. The Board members will then deliberate their course of action and take a vote. An application requires the consenting vote of at least four members of the Board in order to be passed.

Who is the ZBA and How Does it Work?

The Zoning Board of Adjustments is a five-member board appointed by the City Commission which hears and decides appeals for variances to the zoning ordinance, special exceptions to ordinance provisions, and administrative review.

There must be at least four members present to make a quorum and allow a public hearing to take place. It takes at least four affirmative votes to pass an item. Any appeals to the decision of the ZBA would go to District Court.

The ZBA meets once a month, on the first Wednesday of each month at 9:30 a.m. in City Hall Townhall. Meeting agendas are posted at least 72 hours in advance of the meeting in the bulletin cases located in front of City Hall at 118 E. Tyler Avenue, Harlingen, Texas 78550.

If you have any questions throughout the process, feel free to call 956-427-8727. We understand this may be a new situation for you, and we are happy to help in any way we can.

The majority of communities in the survey responded that there is an average amount of difficulty in obtaining a variance. By meeting with the planning staff, it is possible to determine whether a request for a variance is likely to be approved or disapproved.

Specific-Use Permits

What are specific-use permits?

Specific-use permits allow special uses within a zoning district with a permit. Some uses are never allowed by normal permit and restricted to usage on a special-use permit basis. Examples of uses that may require such a permit include: public buildings, schools, day-care centers, churches and radio or cellular towers.

Harlingen provides an excellent article summarizing the specific-use permit (SUP) process. The portions that follow explain the requirements for an SUP.

Specific-Use Permit Requirements

You've been told you need a Specific-Use Permit for what you want to do on your property. How feasible is it and what is involved?

The Process

If you determine you need to obtain a Specific-Use Permit (SUP) to use your property the way you desire, the first step is to sit down with one of our staff members from the Planning & Development Department. Explain your situation in detail; they can help you identify and examine various options. While a staff member cannot tell you for sure that an option will or will not work, they can give their professional opinion and reasons why or why not one option is more feasible than another.

When you are ready to proceed with the permit, you need to fill out an application for Specific-Use Permit with the Planning & Zoning Commission (P&Z). There is a \$65 non-refundable charge that applies. You will also be required to provide a detailed site plan, which may be hand drawn and copies of your latest tax receipts.

Staff members will mail a notice of application with the time, date and location of the public meeting to be held on the subject. This notice goes to all property owners within 200 feet of the site in question and to the local newspaper. We will also post the meeting agenda as required by Texas Local Government Code.

Staff members will visit the site and study other relevant information such as neighboring land uses, traffic characteristics, utility line capacities, the Comprehensive Plan and planning and zoning principles and laws, to determine a recommendation for the board. An information package with the executive summary of staff recommendation and other pertinent information (maps, a copy of the application, any correspondence relevant to the matter, etc.) is provided to board members several days prior to the meeting.

Attend the Planning and Zoning Commission meeting. Sometimes Board members will have questions regarding the rezoning request, or will seek input from the applicant. You may want to consider bringing your neighbors or any other support you may have. No one will be forced to speak, nor will they be denied the opportunity to

speaking during the public hearing portion of the meeting. There will be Spanish interpretation available upon request. The chairman of the meeting will declare the public hearing closed once everyone who wishes to speak has had the opportunity to speak. The Board members will then deliberate their course of action and take a vote. An application requires the consenting vote of a majority of the members of the Board in order to be passed. The Chairman does not vote except to break a tie.

If the P&Z passes a Specific-Use Permit request, it will go on for two readings at the following two City Commission meetings. The first reading is generally one week after approval by the P&Z, and if the item is approved on the first reading, the second reading will be the next regular City Commission meeting. The entire process takes approximately six to eight weeks to complete.

Who is the P&Z Board and How Does it Work?

The Planning & Zoning Commission is a six-member board that hears and decides a recommendation on rezoning cases and specific use permits and approves land subdivisions.

There must be at least four members present to constitute a quorum and allow a public hearing to take place. It takes a simple majority of affirmative votes to pass an item. The chairman only votes in the event of a tie.

Most cities have similar processes. The best advice is to meet with the city staff to discuss the case; they can guide citizens through the process. It is helpful to understand that approval for a SUP can take anywhere from a few weeks to two months.

What if a use does not conform to the current zoning ordinance and is not eligible for a variance or a specific-use permit?

In some cases, the property's current use was in place before the zoning ordinance was created or before the property received its current zoning. In these cases, the property could be considered a non-conforming use.

The non-conforming use is explained in the next section. If the property is in violation of the zoning ordinance and is not a non-conforming use, the current use should be discontinued or an application for rezoning submitted. The following sections discuss violations of

the zoning ordinance and the process of rezoning a property.

When should someone ask for a variance or a special-use permit?

The property owner should request a variance when changes to the property are desired, but, because of unusual property characteristics, the changes cannot be completed without a variance. A special-use permit should be requested when the desired use of the property is not allowed within the existing zoning district except by special use.

Non-Conforming Uses

What is a non-conforming use?

A non-conforming use exists when an existing property does not meet the newly imposed regulations. The most frequent incidence of this occurs through annexation. A service station that was at one time on a country road may be annexed into the city with the property zoned agricultural uses. The gas station is now a non-conforming use.

What happens if a property is non-conforming?

Most cities allow the property to continue its existing use. In some cases, officials may specify an amount of time until a use must conform to the zoning ordinance. For example, Amarillo requires adult businesses that are in operation at the time of annexation to conform to the zoning ordinance within three years.

When does a property lose its non-conforming status?

Normally, a non-conforming use loses its status in several instances. If the use is discontinued for 12 consecutive months, the property loses its status. After that time, the use could not begin again.

The second instance where a non-conforming use loses its status is in the case of a fire. If the fire destroys more than 50 percent of the structure, the building cannot be rebuilt to its original non-conforming use.

Lufkin provides an example of a non-conforming use ordinance. Some ordinances are more detailed and explicit in the description of when a use is non-conforming and describe the time frame in which a use must conform.

Section 1. Any use of property existing at the time of the passage of this ordinance that does not conform with the regulations prescribed in the preceding sections of this ordinance shall be deemed a nonconforming

use, except that of any single-family, duplex or apartment use.

Violations and Enforcement

City officials have several options when it comes to enforcing a zoning ordinance. They can choose to ignore the situation, or they can try to get the violation stopped.

Twenty-five percent of survey respondents report that they send a letter to the violator calling on them to bring the property into compliance within a specified number of days. Seven percent send an inspector to discuss the violation with the property owner. In one case, the violator was called about the violation.

Many of the communities responding to the survey use a combination of methods. Most send a letter and an inspector out to the property. Prosecuting the violator is the last resort. In one case, the violator was allowed to discuss and or apply for a zoning change. Prosecution consists of filing a civil law suit against the violator.

Depending on the city, the person responsible for the enforcement of the zoning ordinance varies. Most are in the planning, building permit, code enforcement or community development department. Although, in some cases, the city secretary may be responsible for enforcing the ordinance.

Eighteen percent of the cities surveyed reported that the planning department is the primary department responsible for zoning enforcement. In many cases, there are multiple departments that are responsible for the enforcement of the zoning ordinance. An example of the enforcement section of the city of Deer Park's zoning ordinance follows.

Sec. 12.02. Enforcement [official].

It shall be the duty of the building official to enforce this ordinance and to refuse to issue any permit for any building or structure or the use of any premises which would violate any of the provisions hereof. Appeal from the decision of the building official, may be made to the board of adjustment as provided herein.

Why would the planning department not be responsible for enforcing the zoning ordinance?

In many cases, the city has a department of code enforcement that is specifically designed to enforce all of the city's codes, including the zoning ordinance. In other cases, the building permit office has inspectors who enforce the zoning ordinances as well as the building code.

The main reason a city would have these departments handle zoning enforcement is because they have personnel that are out in the city every day. In most cases, the city planners spend the majority of their time in the office. In many cities, other departments can report violations of the zoning ordinance to the enforcing department.

How do they find out if a violation is occurring?

In many cases, neighbors will report a violation. Many times a neighbor will report that someone is operating a business out of their home or that a mobile home has been moved in. The planning staff catches other zoning violations when they are out on their personal time. For example, a violation to the parking requirement may be found when a planner goes out to dinner and discovers that the restaurant has expanded their seating area without expanding their parking.

City officials cannot uncover every zoning violation. Violations may occur in areas that city officials do not often visit. However, once the violation is spotted, there can be serious consequences. Fines for violating a zoning ordinance can be severe. In the case of Richardson, the fine may be as much as \$2,000 per day. Their ordinance follows.

ARTICLE XXVIII. PENALTY FOR VIOLATION.

Sec. 1. Maximum fine prescribed.

Any person or corporation who shall violate any of the provisions of this ordinance or any amendment thereto, or fail to comply therewith or with any of the requirements thereof, or who shall build or alter any building or use in violation of any detailed statement or plan submitted and approved hereunder, shall be guilty of a misdemeanor and shall be liable to a fine of not more than \$2,000 and each day such violation shall be permitted to exist shall constitute a separate offense. The owner or owners of any building or premises or part thereof where anything in violation of this ordinance shall be placed or shall exist, and any architect, builder, contractor, agent, person, or corporation employed in connection therewith and who may have assisted in the commission of any such violation shall be guilty of a separate offense and, upon conviction, shall be fined as herein provided.

Deer Park adds the other enforcement options that are available.

Sec. 12.01. Violation and penalty.

Any person, firm or corporation who shall violate any of the provisions of this ordinance or who shall violate or fail to comply with any order or regulation made thereunder, or who shall build in violation of any detailed statement of specification or plans submitted and approved thereunder, or any certificate or permit issued thereunder, shall, for each and every violation and noncompliance respectively be deemed guilty of a misdemeanor, and upon conviction therefore shall be fined any sum not less than twenty-five dollars (\$25.00) nor more than two thousand dollars (\$2,000) and each and every day that such violation or noncompliance shall exist shall be deemed a separate offense.

But in case any person, firm or corporation violates any of the provisions of this ordinance or the general law or fails to comply therewith, the City of Deer Park, in addition to imposing the penalties above provided, may institute any appropriate action or proceedings in court to prevent, restrain, correct or abate, any illegal act, conduct, business or use, in or about land; and the definition of any violation of the terms of this ordinance as a misdemeanor, shall not preclude the City of Deer Park from invoking the civil remedies given it by law in such cases, but same shall be cumulative of and in addition to the penalties prescribed for such violation.

Citizens also have the right to bring civil action against a violator of these ordinances.

To prevent fines, the property owner should attempt to rezone the property so that it conforms with the current zoning ordinance. This process is discussed in the following section.

Amendment Process

When is a change to the zoning ordinance necessary?

In certain cases, a use may not be defined within the city’s zoning ordinance. This may especially be the case in smaller communities. The city is normally the agent to change the text of the zoning ordinance. The staff responsible for zoning will present to the planning and zoning commission the reason for a change or addition of a use to the zoning ordinance.

For example, today many cities choose to add cellular towers as a use in their zoning ordinance. Others choose to interpret cellular towers under an existing use.

It is possible to have the creation of a special zoning district that may not be used in other cities. For example, Richardson has a technical office district. The uses allowed within this district are restricted to research facilities, offices and manufacturing facilities for electronics, communication and precision scientific and technical equipment. This district is more specific than most office or industrial districts and combines some of the uses found in conventional districts.

The process to amend the zoning ordinance may vary slightly from city to city. Deer Park provides a typical example in the process used to amend their zoning ordinance.

ARTICLE XIII.AMENDMENT.

Sec. 13.0. General.

Reserved.

Sec. 13.01. Application for amendment.

13.11. Who may initiate action: Amendments may be initiated by the city council, planning and zoning commission or by an application of one or more property owners.

13.12. Accompanying data: An application for an amendment by the property owner shall be filed with the planning and zoning commission upon such forms and accompanied by such data and information as may be prescribed for the purpose by the planning and zoning commission. When applicable, an accurate legal description and map of the land and existing building shall be submitted with the application. It shall be the responsibility of the applicant to indicate any applicable deed restrictions applying to subject property (Ord. No. 1715 VIII, 3-20-84).

13.13. Application fee: Each application by a property owner or their designated agents shall be accompanied at the time of filing by a two hundred dollar (\$200) fee (Ord. No. 1830 10, 11-19-85).

Wherever the entire application for alteration or change hereunder is withdrawn before publication of notice is ordered to be given of the hearing before the city council, the unused portion of the application fee paid shall be refunded to the applicant.

Sec. 13.02. Attendance at hearings.

Each application for amendment by a property owner must contain the name of the owner's designated agent or attorney if the owner is to be represented by some other person. The owner, his designated agent or attorney shall attend all public hearings which are required by this article (Ord. No 1830 7, 11-19-85).

Sec. 13.03. Hearing and notice; planning and zoning commission.

Upon filing of an application for rezoning or upon the initiating of procedure for an amendment the planning and zoning commission shall hold a public hearing thereon as provided for herein.

13.031. Notice of public hearing: Notice of the time, place and purpose of a public hearing before the planning and zoning commission shall be given by United States mail and by publication in the official city newspaper, at least ten (10) days prior to the date of said hearing and if the amendment proposed changes the classification of any property, notice shall also be sent to applicant and to the owners of property any part of which lies within a radius of two hundred (200) feet of the property proposed for rezoning or reclassification. For this purpose the tax records of the City of Deer Park shall be used. Where all property within the two hundred-foot distance is under the same ownership as the property proposed to be rezoned or reclassified, the owners of all property adjoining said property in the same ownership shall be notified (Ord. No. 1715 IX, 3-20-84).

Sec. 13.04. Action by planning and zoning commission.

At the conclusion of any public hearing, the planning and zoning commission shall submit a report and recommendation on such proposed amendment of the city council.

Sec. 13.05. Action by the city council.

13.051. Action on planning and zoning commission recommendation: After receipt of a copy of any report and recommendation on any application or amendment, the city council and the planning and zoning commission shall hold a joint public hearing thereon.

Notice of said public hearing shall be given by: (1) one publication in a newspaper of general circulation in the City of Deer Park, not less than fifteen (15) days prior to the time fixed for such hearing; and (2) at least fifteen (15) days before said hearing; and if the amendment proposed changes the classification of any property, notices are also to be sent by United States mail to applicant and to the owners of property any part of which lies within a radius of two hundred (200) feet of the property proposed for rezoning or reclassification. For this purpose the tax records of the City of Deer Park shall be used. Where all property within the two hundred-foot distance is under the same ownership as the property to be rezoned or reclassified, the owners of all property adjoining said property in the same ownership shall also be notified. At the conclusion of the joint public hearing, the planning and zoning commission may submit another report and recommendation on such proposed amendment to the city council. (Ord. No. 1715 IX, 3-20-84; Ord. No. 1830, 8, 11-19-85)

13.052. Protest. If a protest is made against proposed change in this ordinance signed by the owners of twenty (20) percent or more of either the area included in such proposed change, or those immediately adjacent in the rear thereof extending two hundred (200) feet therefrom, or of those directly opposite thereof extending two hundred (200) feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths (3/4) of all of the members of the city council.

13.06. Reapplication. No amendment, or repeal of any section of this ordinance which has been disapproved by the city council, shall be considered either by the city council or the planning and zoning commission on a petition by an applicant before the expiration of one year from the date of the final action by the city council.

To change the text of the zoning ordinance or the zoning map, a request must be submitted. This is the most direct way to change the zoning on a property. The procedure for getting an amendment varies depending on

whether it is to the map or to the text. Once passed, the amendment is part of the zoning ordinance. Amendments can be initiated by anyone, including citizens, property owners, planners or the city council. Most map amendments are proposed by property owners.

When the text of a zoning ordinance is amended, it means that the actual zoning ordinance is changed. This could mean adding a use to an existing zoning district or the creation of a new zoning district.

Example: Coffee Shop in Apartment Zoning District

James wants to open a small coffee shop to serve nearby apartments. He wants to have coffee shops added to the list of acceptable uses in the apartment zoning district. He approaches the city staff and submits an application to amend the text of the zoning ordinance.

When the map of the zoning ordinance is amended, it does not change the wording of the text. It changes the boundary lines that are on the map. In some cases, it may be difficult to amend the map; in other cases, it may not.

Example: Amending the Zoning Map

Once the city annexes land, it normally gives it an agriculture or interim zoning district classification. Joe owns a tract of land in this district that he would like to develop as a subdivision. In this case, the land-use plan is residential, but the property is still zoned for agriculture; therefore, a zoning change may be relatively easy. Joe would need to submit an application to have the map amended.

The process to amend the text or map of a zoning ordinance varies with the city. A diagram of the procedure follows. Normally, the person who wants the amendment must submit an application and a filing fee. The city staff writes a report based on the application. The planning and zoning commission reviews the amendment. The commission makes a recommendation to the city council. The city council or city commission votes on the amendment to the text or map.

Public hearings must be held, and notification of the hearing must be completed before

any action can be taken on the amendment. These hearings are usually held by the city council and the planning and zoning commission.

At the public hearing, if there is no opposition to the amendment by citizens and the planning commission has given a favorable recommendation to the city council, the amendment normally will be added to the text or map.

If property owners protest the amendment to the zoning ordinance, the city council must vote in favor by three-quarters rather than by a mere majority. An example of College Station's requirements for protests follows.

17.6. EFFECT OF PROTEST TO PROPOSED AMENDMENT.

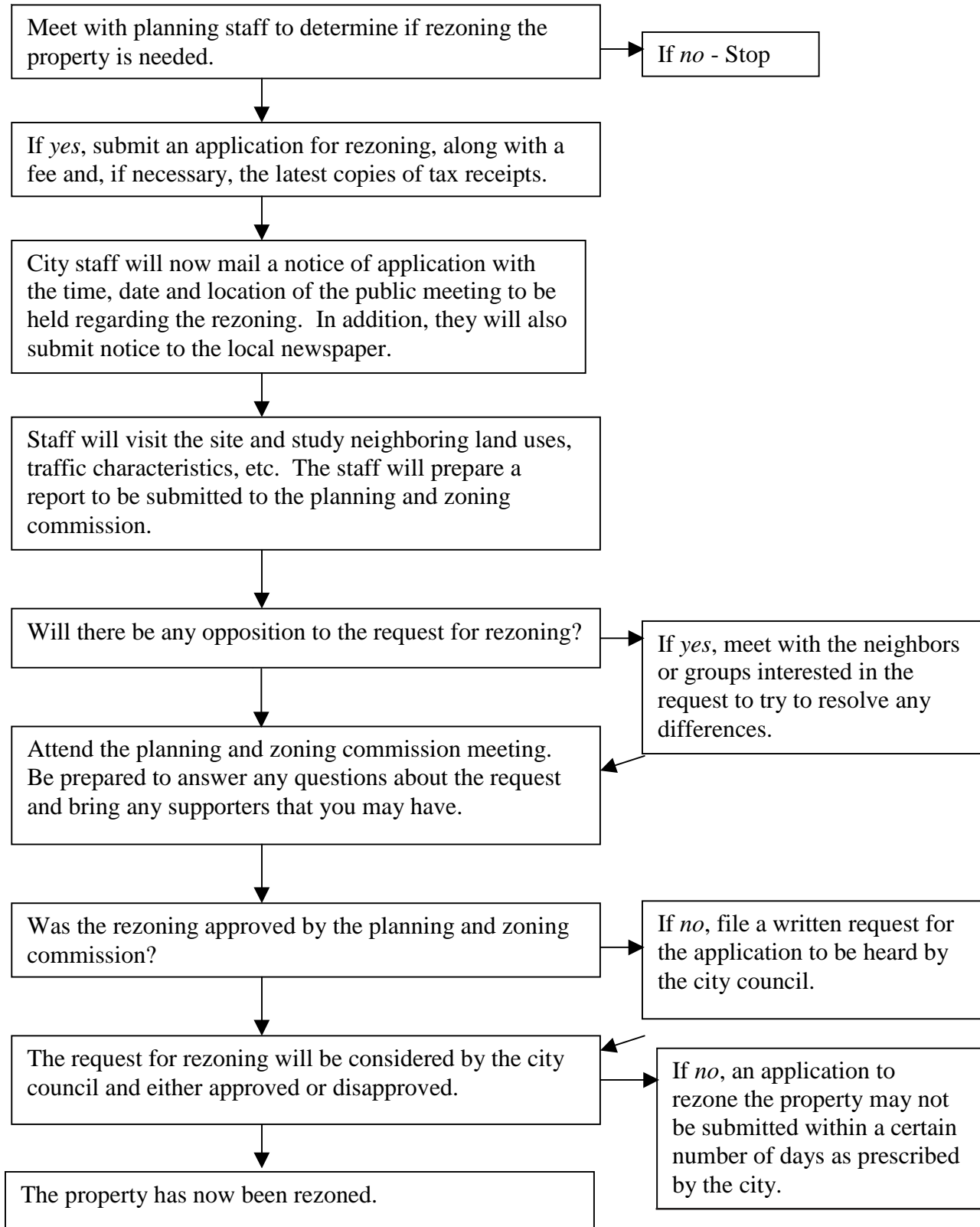
In case a protest against any proposed amendment to this ordinance is presented in writing to the City Secretary prior to the public hearing thereon duly signed by the owners of twenty percent (20%) or more, either of the area of lots included in such proposed change, or of the lots or land immediately adjoining the same and extending two hundred (200) feet there from, such amendments shall not become effective except by the favorable vote of three-quarters (3/4) of all members of the council.

Once the amendment has been passed, it should be read carefully to ensure changes are understood. In many cases, the changing of a few words or a percentage can be significant. It is important to make sure the most recent and correct zoning ordinance is being used and that all of the amendments are in the ordinance.

In some cities, the zoning ordinance may be changed frequently; in others it may stay the same for several years. When obtaining a copy of the zoning ordinance, it is a good idea to ask about any proposed or pending changes.

An example of a typical amendment process can be found in Appendix A. The following sections discuss time and costs associated with the rezoning process as well as the notification requirements.

Amendment Process



Notification Process

A notification process must be met before a public hearing is held. Normally, a city will place an ad in the local newspaper a specified number of days in advance so that the public will know of the time and date of the hearing. This provides the public a chance to express their opposition or support for the zoning change.

In addition, some ordinances require that the property owners within a certain distance of the property that will be affected by the change be notified individually and in writing before the hearing. In some cities, signs are posted on the affected property to let passers-by know about the upcoming public meeting. The following is a section of an ordinance describing an example of the public hearing requirements in Bryan.

- 30.4. Prior to making its report to the City Council regarding a proposed zoning change, the Planning and Zoning Commission shall hold at least one public hearing on each application. Written notice of all public hearings on proposed changes in district boundaries shall be sent to all owners of property, or to the person rendering the same for City taxes, located within the area of application and within two hundred feet (200') of any property affected thereby, within not less than ten (10) days before such hearing is held. Such notice may be served by using the last known address as listed on the latest approved tax roll and depositing the notice, postage paid, in the United States mail. Although a public hearing must be held by the Commission to consider amendments to the text of this ordinance which do not change zoning district boundaries, published notice or written notification to individual property owners is not required prior to such a hearing.

Time Line

The time it takes to amend the zoning ordinance, receive a special use permit or a variance varies from city to city. Normally, six to ten weeks are required from the submission of the application to the approval by the city council.

There are several reasons an application may take longer. If an application is submitted after the notification deadlines for the next public meeting, the application will not be heard until a later meeting. If the number of cases on an agenda is long, the staff may not be able to schedule the case until a later date.

The complexity of the case is the biggest reason that it may take longer. The more complex the case, the more time it takes for the property owner and the staff to address all of the issues.

If an application for rezoning has been denied by the planning and zoning commission or the city council, a new rezoning application for the same property may not be submitted for a set period (from the time of the final denial). This period varies between a few months to a year.

Fees

Fees vary. Some cities charge based on the type of zoning requested. For example, Amarillo charges \$175 for a straight rezoning and \$325 for a planned development.

Arlington was the most expensive fee in the communities studied. That city charges \$1,000 plus \$50 an acre for non-residential rezonings. The least expensive zoning fee was in Harlingen—\$125 for a rezoning. In most cases, a request for a SUP will be priced differently from any other rezoning.

These fees are used to assist in reimbursing the planners for the staff time spent on reviewing the application and to pay for the newspaper ad that is required for public notification purposes.

Appendix A

Typical Requirements to Amend the Zoning Ordinance

The city of Carrollton provides a good example of the amendment process. This example clearly explains what happens at each phase.

ARTICLE XXXI. CHANGES AND AMENDMENTS SECTION A. GENERAL.

The regulations, restrictions and boundaries set forth in this ordinance may from time to time be amended, supplemented, changed, modified or repealed by ordinance adopted by the city council provided, however, that no such action may be taken until:

1. Application has been made and duly filed by the property owner or authorized agent upon the forms prescribed by the city of Carrollton, the filing fee as prescribed from time to time by the city council has been paid, and such application has been submitted to the planning department; or a proposed amendment has been initiated by action of the planning and zoning commission or the city council; and,
2. The proposal or application has been referred to the planning and zoning commission for notice and public hearing, and its recommendation made to the city council; and,
3. Notice has been given and a public hearing has been held in relation to such proposal before the city council, at which time parties in interest and citizens have had an opportunity to be heard.

SECTION B. HEARING BEFORE THE PLANNING AND ZONING COMMISSION.

1. ZONING MAP CHANGES:
When any such amendment or change relates to a change in classification or boundary of a zoning district, such amendment or change shall be in accordance with the following:
 - a. PUBLIC HEARING NOTICE:
Before acting upon any application for amendment to the Official Zoning Amp, the Planning and Zoning Commission shall hold a public hearing. Notice of such hearing shall be published at least one (1) time in a newspaper of general circulation within the city of Carrollton not less than ten (10) days

prior to the public hearing. Such notice shall state the time and place of the public hearing and the nature of the change to be considered.

- b. NOTIFICATION SIGNS REQUIRED:
Notification signs shall be placed upon the property subject to a proposed amendment or change. Such signs shall be placed along all of the property's street frontage so as to be clearly visible from the street. If a property does not have a street frontage, then such signs shall be placed up the closest available right-of-way and upon the property (Ord. No. 1844, 11/03/92).

One (1) sign shall be erected for each increment of three hundred (300) feet of each street frontage of said property, or any part thereof, except that no applicant is required to erect more than twenty (20) notification signs on the property, regardless of the total amount of street frontage. If the property is limited to twenty (20) signs, and the total amount of street frontage exceeds six thousand (6,000) feet, the placement of said signs shall be determined by the Director of Planning. Such signs shall be placed in a manner to ensure maximum feasible visibility from such street frontage.

Said signs shall be erected not less than ten (10) days before the date set for public hearing before the Planning and Zoning Commission and shall remain erected until the public hearing at which a final recommendation of the Planning and Zoning Commission has been made (Ord. No. 1582, 10/03/89).

- c. ERECTION OF SIGNS:
In the event the applicant fails to erect and maintain said signs in accordance with the provisions of paragraph (1) (b) above, then the public hearing before the Planning and Zoning Commission may be postponed to a date in the future so as to allow time for compliance. The Planning and Zoning Commission shall make a determination, based upon evidence presented at the

public hearing, as to whether the intent of this ordinance has been met and the applicant has made a good-faith effort to erect and maintain the signs (Ord. No. 1844, 11/03/92).

d. WRITTEN NOTICE:

Notice of the public hearing before the Planning and Zoning Commission shall be sent to all owners of real property lying within two hundred (200) feet of the property on which the change is requested or proposed. The notice of public hearing shall be given to each taxpayer as the ownership appears on the last approved city tax roll by depositing such notice, properly addressed and postage paid, in the United States Post Office not less than ten (10) days before the date set for a public hearing before the Planning and Zoning Commission.

2. ZONING TEXT CHANGES:

When any such amendment relates to a change of a zoning regulation or to the text of this ordinance not affecting specific property, notice of public hearing of the Planning and Zoning Commission shall be given by publication in a newspaper of general circulation in the city of Carrollton without the necessity of notifying property owners by mail. Such notice shall state the time and place of such hearing and the nature of the subject to be considered. Such notice shall be published not less than ten (10) days prior to the public hearing.

3. PETITIONS FOR REZONING OR SPECIAL USE PERMITS:

The same procedure for notifying adjacent property owners established in section B(1) of this Article shall be followed by the Planning and Zoning Commission for hearings on rezoning petitions and for Special-Use Permit applications, unless otherwise provided.

4. REQUEST FOR CONTINUANCE:

Any hearing may be continued for good cause at the request of the applicant, or at the discretion of the Planning and Zoning Commission duly noted in writing in its minutes. In the event that any hearing is continued or recessed, or a matter tabled for any reason other than lack of proper notice, further notice

to surrounding property owners shall not be required provided that such continuation date and time shall be set at that meeting.

5. RECOMMENDATION REQUIRED:

Upon the final hearing of such application, the Planning and Zoning Commission shall recommend approval or denial of the same and a report of such action shall be made by the Commission to the City Council.

SECTION C. HEARING BEFORE THE CITY COUNCIL.

1. ZONING MAP CHANGES:

When any such amendment or change relates to a change in classification or boundary of a zoning district, such amendment or change shall be in accordance with the following:

e. PUBLIC HEARING NOTICE:

Before acting upon any application for amendment to the Official Zoning Map, the City Council shall hold a public hearing. Notice of such hearing shall be published at least one (1) time in a newspaper of general circulation within the city of Carrollton not less than fifteen (15) days prior to the public hearing. Such notice shall state the time and place of the public hearing and the nature of the change to be considered.

f. NOTIFICATION SIGNS REQUIRED:

Signs shall also be erected not less than fifteen (15) days before the public hearing before the City Council and remain erected until a final determination as to the application is made by the Council. Such signs shall meet the same requirements as those required for hearings before the Planning and Zoning Commission, as prescribed in Section B(1) of this Article.

g. ERECTION OF SIGNS:

In the event the application fails to erect and maintain said signs in accordance with the provisions of paragraph (1) (b) above, then the public hearing before the City Council may be postponed to a date in the future so as to allow time for compliance. The City Council shall make a determination, based upon

- a. At the request of the City Council;
 - b. Upon written request by the applicant the City Council may waive the twelve (12) month waiting period and permit a new application to be filed. Such request for waiver may be set for a public hearing if required by a majority vote of the City Council; or
 - c. Where the property involved is temporarily classified to the (IH) Interim Holding District.
9. **REQUEST FOR HEARING BEFORE COUNCIL:**
 A request that has received a recommendation of denial by the Planning and Zoning Commission shall not be scheduled for hearing before the City Council unless:
- a. The City Council requests such hearing; or
 - b. Upon written request by the applicant submitted to the Planning Department within ten (10) days of the Planning and Zoning Commission public hearing where such recommendation for denial was made.

10. **JOINT HEARINGS:**
 The City Council may hold a public hearing, after publishing the required notice, jointly and with any public hearing required to be held by the Planning and Zoning Commission. However, the City Council shall not take action unless and until it has received a final report from the Planning and Zoning Commission.

11. **CONSIDERATION OF ALTERNATIVE STANDARDS:**
 Where this ordinance authorizes City Council approval of alternatives to the minimum standards contained herein, such as alternative material in lieu of the brick or screening requirements, such consideration shall be processed in the same manner as prescribed by this Article for a change to the zoning map. The erection of notification signs, however, shall not be required.

In the event the City Council approves an alternative material concept(s), the use of such material or concept shall become valid upon passage of a resolution to that effect by City Council. Such approval shall be applicable only to the site specifically, upon which the alternative was considered (Ord. No. 1641, 07/17/90).

Appendix B

Real Estate Center at Texas A&M University
Survey of Municipalities—Study of the Zoning Process in Texas

- 1) Does your city have a comprehensive plan for the city's growth?
 - a) Yes
 - b) No
 - c) Don't Know

- 2) If the answer to #1 is yes, when was the last time your comprehensive plan was updated?
 - a) Less than 2 years
 - b) 2 to 5 years
 - c) More than 5 years
 - d) Don't know

- 3) Does your city have a zoning ordinance?
 - a) Yes
 - b) No (If answer is no, skip to question 18)

- 4) Is the zoning ordinance in your city strictly enforced?
 - a) Yes
 - b) No
 - c) Sometimes
 - d) Don't know

- 5) Which department is responsible for enforcing the zoning ordinance?
 - a) Planning Department
 - b) Building Permit Department
 - c) Code Enforcement Department
 - d) Community Development Department
 - e) Other _____

- 6) What action do the authorities in your city take when they become aware of a zoning violation?
 - a) Send a letter to the violator informing them to bring the property into compliance within a set number of days.
 - b) Send an inspector out to the property to discuss the violation with the violator.
 - c) Prosecute the violator.
 - d) Other _____
 - e) Don't know

- 7) How many applications for zoning changes were **received** in your city in 1997?
Number _____

- 8) How many applications for zoning changes were **approved** in your city in 1997?
Number _____

- 9) Of those zoning applications approved in your city in 1997, what percentage matched the comprehensive land-use plan? _____%

Real Estate Center at Texas A&M University
Survey of Municipalities—Study of the Zoning Process in Texas

- 10) Of those zoning applications **approved** in your city in 1997, what percentage requested:
- a) Straight rezoning request (i.e. agriculture to single-family) _____%
 - b) Planned development request (i.e. SF to PD for office complex) _____%
 - c) Other _____%
- 11) Of those zoning changes that were approved, what percentage was **approved** based on:
- a) Staff recommendation _____%
 - b) Political support _____%
 - c) Neighborhood support _____%
- 12) Of those requests for zoning changes that were denied, what percentage was **denied** based on:
- a) Staff recommendation _____%
 - b) Political opposition _____%
 - c) Neighborhood opposition _____%
- 13) In your opinion, what is the most effective means for a citizen to oppose a zoning change in your area?
- a) Negotiate with the developer
 - b) Contact local politicians
 - c) Contact the planning department staff
 - d) Legal action (law suit)
 - e) Group demonstration
 - f) Other _____
- 14) In your opinion, what is the most effective means of obtaining a zoning change in your area?
- a) Submit written application with a secretary and wait for the final results from the city council
 - b) Meet with the planning staff to discuss the request and follow up with staff throughout the process
 - c) Send an attorney to meet with staff about the request
 - d) Send some other representative to meet with the staff
 - e) Contact the planning and zoning commissioners or the city council members to discuss the case.
 - f) Other _____
- 15) In your opinion, do you feel that your city's zoning ordinance is up to date and easy to understand by citizens and developers?
- a) Yes
 - b) No
 - c) Sometimes
 - d) Don't know
- 16) How difficult is it to obtain a variance in your community?
- a) Not difficult
 - b) Average difficulty
 - c) Extremely difficult

Municipalities Surveyed

City	County	Population
San Antonio	Bexar	1,472,700
Dallas	Dallas	1,047,350
El Paso	El Paso	588,421
Austin	Travis	528,000
Fort Worth	Tarrant	490,000
McAllen	Hidalgo	468,625
Arlington	Tarrant	287,000
Corpus Christi	Nueces	275,419
Amarillo	Potter/Randall	206,878
Waco	McLennan	200,000
Lubbock	Lubbock	196,679
Garland	Dallas	195,252
Clear Lake	Harris/Galveston	180,000
Plano	Collin	175,000
Tyler	Smith	166,300
Irving	Dallas	165,000
Laredo	Webb	145,000
Pasadena	Harris	130,000
Odessa	Ector	124,000
Texarkana	Bowie	120,330
Midland	Midland	99,875
Carrollton	Dallas/Denton	97,200
San Angelo	Tom Green	90,000
Richardson	Dallas	75,000
Longview	Gregg	73,000
Denton	Denton	71,500
Killeen	Bell	70,000
Baytown	Harris	68,300
Victoria	Victoria	60,000
Bryan	Brazos	60,000
Harlingen	Cameron	59,100
Galveston	Galveston	59,070
Port Arthur	Jefferson	58,551
College Station	Brazos	56,000
North Richland Hills	Tarrant	50,650
Eules	Tarrant	39,750
DeSoto	Dallas	36,070
Sherman	Grayson	35,000
Huntsville	Walker	34,592
Mission	Hidalgo	33,000
Big Spring	Howard	33,000
San Marcos	Hays	32,451
Lufkin	Angelina	32,451
Pearland	Brazoria	29,500
Wesalco	Hidalgo	28,500
Deer Park	Harris	27,652
Eagle Pass	Maverick	27,000
Kingsville	Kleberg	26,010
Frisco	Collin/Denton	25,600
Plainview	Hales	25,000

Appendix C

Glossary

This is a list of definitions of the most commonly used terms, as defined by municipalities.

Board of Adjustment. The quasi-judicial body, appointed by the city council, authorized by state statutes to consider requests for variances from or interpretations of this ordinance (City of North Richland Hills).

Lot. An undivided tract or parcel of land having frontage on a public street, and which is, or in the future may be, offered for sale, conveyance, transfer or improvement, which is designated as a distinct and separate tract and which is identified by a tract or lot number or symbol in a duly approved subdivision plat which has been properly filed of record. The word "lot" includes the word "plot."

- (1) Corner lot means a lot abutting upon two or more public streets at their intersection.
- (2) Building coverage means percentage of the lot that is occupied by the ground area of a building and its accessory buildings.
- (3) Lot, double frontage means a lot abutting on two nonintersecting public streets as distinguished from a corner lot.
- (4) Lot lines mean the lines bounding a lot as defined in this section.
 - a. Front lot line means the property line between the front yard and the contiguous street right-of-way boundary.
 - b. Rear lot line means the property line between the rear yard and the adjacent property or right-of-way, and contiguous with the legal boundary of such use.
 - c. Side lot line means the property boundary between two adjacent lots or between the side yard and the contiguous street right-of-way boundary on corner lots (McAllen).

Nonconforming uses. A building structure or use of land lawfully occupied at the time of the effective date of this ordinance or amendments thereto, and which does not conform to the use

regulations of the district in which it is situated (Lufkin).

Planning and Zoning Commission. The agency appointed by the city commission as an advisory body to it and which is authorized to recommend zoning changes (Amarillo).

Planned Development (PD). Land which is under unified control and is planned and developed as a whole in a single development operation or programmed series of development with special zoning standards unique to a particular site and which usually vary from those standards required by this ordinance and other zoning districts.

Plat. The plan or map for the subdivision or addition (Richardson).

Variance. An adjustment in the application of the specific regulation of the zoning ordinance to a particular parcel of property which, because of special conditions or circumstances of hardship peculiar to the particular parcel, is necessary to prevent the property from being deprived of rights and privileges enjoyed by other parcels in the same vicinity and zoning district. Only the board of adjustment of the city of Frisco can grant a variance (Frisco).

Zoning. Control on the use and development of land, whether improved or not, by the city for the supposed benefit of citizens in the community and the public welfare. This control is accomplished through two ways, restrictions and development standards (North Richland Hills).

Zoning Administrator. The director of planning and development services of the city or the person otherwise duly designated to administer the provisions of this Ordinance (Arlington).

Zoning District. A classification applied to any certain land area within the city stipulating the limitations and requirements of land usage and development (Garland).

Zoning District Map. The official map, labeled Exhibit "A," upon which the boundaries of the various zoning district are drawn and which is an integral part of the zoning ordinance (Bryan).