

Chapter 19

PLANNING AND ZONING

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Introduction

The aim of planning, in the broad sense, is to provide a “blueprint” for the uniform and harmonious future growth of the community. Zoning provides a method of regulating the use of each parcel of land within a municipality. Zoning should be based on a land use plan. Under the provisions of L.R.S. 33:101 et seq, parishes and municipalities are authorized to adopt an official plan, and to create a planning commission by ordinance to carry out the official plan.

Additionally, municipal governing authorities are authorized by L.R.S. 33:4721 to regulate the size and use of buildings for the purpose of promoting health, safety, morals, or the general welfare of the community. Such regulation may restrict the height, number of stories, and size of structures, the percentage of the lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of the buildings, structures, and land for trade, industry, residence, or other purposes. L.R.S. 33:4722 authorizes the creation of districts and to regulate land use uniformly within each district, thus establishing a zoning ordinance.

Planning Commissions

L.R.S. 33:101 through 33:120 define and authorize municipalities and parishes to establish planning commissions. Such commissions are authorized to make and adopt a master plan for the physical development of the municipality or parish. In the following text, references to specific sections of law follow explanations of the provisions of the sections.

A municipal planning commission consists of between five and nine members, appointed by the mayor and subject to removal by the mayor, after public hearing, for inefficiency, neglect of duty, or malfeasance in office (R.S. 33:103). Municipal commissions may work in cooperation with parish or regional commissions, and may also serve as members of regional commissions. A municipal planning commission acts as the zoning commission for the municipality. When acting as such, it shall hold separate meetings with separate minutes and records [R.S. 33:106].

The municipal planning commission develops and adopts the master plan for the physical development of the municipality [R.S. 33:106]. The master plan, with accompanying maps, plats, charts and descriptive matter, may include the general location and extent of:

- Transportation routes, whether streets, bridges, waterways, airports, or other
- Recreational facilities, such as parks, playgrounds, squares, or other public spaces
- Public buildings, schools, housing, and other public property
- Public utilities, whether publicly or privately owned or operated for water, light, sanitation, communication, power, transportation, and other purposes

The master plan may involve land use, replanning of blighted districts, slum areas, changes of use of facilities or transportation routes, and shall be subject to amendments, extensions, and revisions as necessary. The plan may be adopted by a single resolution or by successive resolutions covering parts of the plan. Notice of the public hearing to adopt the resolution shall be published once ten days prior to the hearing. Certified copies of the plan or part thereof must be filed with the municipal governing body and the clerk of court of the parish [R.S. 33:108].

Once adopted and filed, no construction of public buildings, streets, utilities, parks, or other public structures can occur without approval of the planning commission. In the case of disapprovals, the commission can be overruled by a two-thirds vote of the governing body of the municipality [R.S. 33:109].

Subdivision Regulations

The planning commission must adopt regulations governing the subdivision of land within its jurisdiction. Such regulations may include provisions as to the extent to which transportation routes and public utilities shall be established, improved, and installed as a prior condition to approval of the plat, or survey, of a subdivision. Tentative approval of the plat prior to such installations may be granted, but any such tentative approval is revocable and shall not be entered on the plat. In lieu of the completion of such improvement and utilities prior to the final approval, a commission may accept bond with surety to secure the actual construction and installation of such improvements or utilities in accordance with the regulations of the commission.

All such regulations shall be published as required for ordinances; a public hearing must be held prior to adoption of the regulations. Notice of the hearing, containing the purpose, time and place of the hearing, shall be published once in a newspaper of general circulation in the municipality at least ten days prior to the hearing. Once adopted, certified copies of the regulations shall be filed with the municipal governing body and with the clerk of court of the parish. Regulations governing the subdivision of land may be amended under the same procedure by which they were adopted [R.S. 33:112].

Failure to approve or disapprove a plat within 60 days after it is submitted to the planning commission shall be deemed approval. However, this period may be extended with the consent of the applicant. A hearing on the approval must be held; notice to be sent by certified mail not less than five days prior to the hearing to the name and address provided on the plat. Notice shall also be published once not less than five days prior to the hearing date. However, in municipalities with a population in excess of 150,000, the public hearing may be waived for subdivisions creating five or fewer lots and not involving the creation of any new streets. Each plat approval serves as an amendment to the official plan. Amendments to the zoning ordinance or map may be made by the commission to the municipal governing body in order to conform to the commissions's recommendations for zoning within approved subdivisions [R.S. 33:113].

The governing authority may adopt an ordinance establishing procedures for approval of minor modifications, such as shifting lot lines, including interior lot boundary lines or the redesignation of lot numbers, provided the modification does not:

- Involve more than two acres of land or ten lots of record;
- Involve the creation of any new street or public improvement;
- Reduce lot size below minimum area or frontage requirements established by ordinance;

and otherwise meets all the requirements of the subdivision regulations and zoning ordinances. The municipal governing authority may also provide for the approval of modifications to parcels of land where a portion has been expropriated, dedicated, sold, or otherwise transferred to the municipality. All plats so approved by such procedures shall be designated as such on the plat, and the plat recorded [R.S. 33:113.1].

Prior to the approval of a subdivision plat, transfer or sale of lots by reference to the plat shall comply with the laws, ordinances, and regulations relative to the development of subdivisions. Failure to do so shall result in a penalty of \$500.00 per lot or parcel transferred, sold, or agreed or negotiated to be sold [R.S. 33:114].

Once a planning commission has adopted a major street plan, all streets and improvements, including lighting, water mains, sewers, etc., must be laid out in accordance with the plan, or with an approved subdivision plat or street plat, unless the street was a public street prior to the adoption of such plan, or unless the street is approved by the planning commission and passed by a majority of the municipal governing body. If disapproved by the commission, the street may be accepted by a two-thirds vote of the municipal governing body [R.S. 33:115].

No structure shall be erected on any lot, or building permit issued for such structure, unless the street providing access to the lot is in accordance with the plan, an approved subdivision plat, street plat, or approved as provided above. If not erected according to the plan, a structure is deemed unlawful and the municipality may bring suit to compel its removal [R.S. 33:116].

A municipality may designate the planning commission of the parish as the municipal planning commission. If so designated, the parish planning commission shall have all powers and functions of a municipal planning commission and shall be entitled to reimbursement of expenses by the municipality for services rendered to the municipality [R.S. 33:118]. Municipal planning commissions shall consult and co-operate with the parish planning commission of the parish within which the municipality is located [R.S. 33:119].

Planning commissions and governing authorities are authorized to zone in order to prohibit, restrict, or regulate hunting and the shooting of firearms, and to set penalties for violations of such regulations [R.S. 33:120].

Creation of Districts; Zoning

The governing authority of a municipality may divide the municipality into districts and regulate and restrict the erection, construction, alteration or use of buildings, structures or land within each district so created [R.S. 33:4722]. All such regulations shall be uniform for each class or kind of land and structure throughout each district. This division and regulation usually involves the establishment of a comprehensive zoning plan. As a general rule, zoning ordinances usually provide that buildings and land uses in existence on the date of the adoption of the zoning ordinance may be continued even if they do not comply with the regulations of the zoning ordinance. Such structures or lots are exempted from the zoning ordinance, subject to conditions or restrictions imposed by the ordinance. These non-conforming uses lose their protected status if the use is discontinued or the building vacated for a period of time. The exemption for pre-existing non-conforming uses can also be applied when a zoning ordinance is amended.

Once a comprehensive zoning plan is developed and adopted by the governing body of the municipality, the municipality must provide for the manner in which district boundaries are established, enforced, and amended. The regulations and restrictions required to impose the plan are subject to public hearing, notice of which shall be published in the official journal once a week for three weeks 15 days prior to the hearing. Additionally, a good-faith attempt to notify the property owners of properties to be zoned or rezoned of the time, place and subject of the hearing must be made by regular mail. However, whenever more than ten parcels are to be zoned or re-zoned by enactment of a zoning ordinance, advertisement in the official journal shall be considered adequate notice. If there is no official journal, a paper of general circulation in the municipality may be used [R.S. 33:4724].

Zoning regulations and restrictions are subject to amendment, modification, or repeal. However, if a protest against a change is lodged by the owners of 20 percent or more of the land included in a proposed change or within an area within 200 feet of the area proposed to be changed, the change must be approved by a majority vote of the members of the governing body.

In order to exercise the powers described above, the municipality shall appoint a zoning commission. If a municipal planning commission exists it shall be the zoning commission. The commission shall make recommendations to the governing body of the municipality for boundaries, regulations, and restrictions in accordance with the plan. Prior to submitting its recommendations to the municipal governing body, the zoning commission shall hold a public hearing, notice of which shall be published three times in the official journal. The first such notice shall be published at least 10 days prior to the hearing. Once the hearing is held by the zoning commission, it shall make a report of its recommendations to the municipal governing body which shall then hold hearings and take action as provided above [R.S. 33:4726].

Board of Adjustment

A municipality may provide for the appointment of a board of adjustment to determine the application of zoning laws by action of the governing body. The purpose of the board is to recognize and avoid unnecessary hardships which might be created by strict application of the zoning ordinance. The board of adjustment shall have five members, and may have two alternate members. All shall be landowners and qualified voters. Members serve five-year terms. In order to stagger the terms, the original appointments are made for different terms, from one to five years, respectively, for each member. The alternate members serve three-year terms. However, the original appointed alternates serve two years and three years, respectively. Alternate members serve only to comprise a full five-member board when a quorum of the board is present. The board elects a chairman, who serves for one year.

Meetings of the board are held at the determination of the board or called by the chairman. The board is a public body and abides by all requirements of such regarding meetings, minutes, and records. The board adopts rules in accordance with the zoning ordinance. Such rules must be approved by the governing authority in writing. Decisions based on official interpretations of the zoning ordinance may be appealed to the board by any aggrieved person or by any officer of the municipality. An appeal to the board halts the action appealed, unless such a halt would imperil life or property. Even then, the board or a court may halt the proceeding through a restraining order.

Upon receipt of an appeal, the board shall set the time for a hearing, notice of which shall be posted and provided to the interested parties. Interested parties may appear at the hearing in person or by agent or attorney. The board has the power to decide appeals where there is allegation of error in the decision of an administrative office or in an ordinance. The board may vary or modify the application of the ordinance so that the spirit of the ordinance shall be observed and justice done. The board may, by majority vote of those present, reverse or affirm, wholly or partly, the orders, requirements, decisions or determinations appealed. However, the board of adjustment does not have the power to change or amend the zoning ordinance; it can only grant waivers from the application of the ordinance. Decisions of the board may be appealed to the district court within 30 days of the decision [R.S. 33:4727].

Penalties

Erection of buildings or structures, or use of land not in compliance with the zoning ordinance or other regulations may be prevented by the municipality. The municipality may require the property owner to remedy any condition found in violation. The owner or agent of the building or premises where the violation exists is subject to a fine between \$10.00 and \$25.00 or may be imprisoned for not more than 30 days for each day that the violation continues [R.S. 33:4728].

Conflicts

When zoning regulations conflict, whether between state statute or local ordinance or regulation, the higher standard applies [R.S. 33:4729].

Exceptions

A municipality may be authorized by act of the legislature to adopt a zoning ordinance and shall not have to appoint a zoning commission in such case [R.S. 33:4730].

Municipalities of 50,000 or more in population may regulate building construction and provide for operation of businesses and trades within designated areas by ordinance. Such ordinance may be enforced by fine or imprisonment [R.S. 33:4731-4732].

In accordance with Senate Bill No. 44 of the First Extraordinary Session in 2005, all municipalities are required to adopt and enforce the State Uniform Construction Code.

Regional Planning Commissions

Regional Planning Commissions are located around the state, as authorized by L.R.S. 33:131-140. These commissions are established by participating municipalities and parishes. Such commissions organize and coordinate planning, zoning and development efforts, offering planning and zoning assistance to municipalities and other local governments within its regional planning area.