

## **Zoning Summary**

Zoning is a legislative act that separates allowable land uses into districts or “zones” within a municipality. Zoning is a tool used by local governments to regulate land uses to include building height, bulk, lot size, and density, etc.

All land uses within the same zoning district are allowed by right subject to the regulations of the zoning and Building Codes. For example, we can not require more of a liquor store than we could any other land use within the B-3A zoning district.

Chapter 211 of the Texas Local Government Code (LGC) prescribes the role of the Planning and Zoning Commission in the zoning process. Zoning consists of two separate instruments, the text of the zoning ordinance and the zoning map.

**Note:** The Planning and Zoning Commission does not act in a lawmaking capacity when it considers matters for recommendation to the City Council that are legislative in nature. However, in making its recommendation, the Commission considers the same factors and matters of public policy as the City Council. Final authority rests with the City Council.

### **ZONING COMMISSION.**

#### **The Texas LGC Sec. 211.007 states:**

(a) To exercise the powers authorized by this subchapter, the governing body of a home-rule municipality shall, and the governing body of a general-law municipality may, appoint a zoning commission. The commission shall recommend boundaries for the original zoning districts and appropriate zoning regulations for each district. If the municipality has a municipal planning commission at the time of implementation of this subchapter, the governing body may appoint that commission to serve as the zoning commission.

(b) The zoning commission shall make a preliminary report and hold public hearings on that report before submitting a final report to the governing body. The governing body may not hold a public hearing until it receives the final report of the zoning commission unless the governing body by ordinance provides that a public hearing is to be held, after the notice required by Section 211.006(a), jointly with a public hearing required to be held by the zoning commission. In either case, the governing body may not take action on the matter until it receives the final report of the zoning commission.

#### **Sec. 31-39 (Killeen Code of Ordinances). Amendments.**

(a) *Authority.* The city council may from time to time amend, supplement or change by ordinance the boundaries of the districts or overlays or the regulations herein established. Each person making application for an amendment to the zoning ordinance shall furnish with his written application the fee set by the council, payable to the city, to be used in defraying the administrative and legal costs necessary to process the rezoning application.

(b) *Submission to planning commission.* Before taking action on any proposed amendment, supplement or change the city council shall submit the proposed revision to the planning commission for its recommendation and report.

### **Zoning ( Brief summary of process)**

- 1) Application is submitted and fees are paid.
- 2) Staff researches property ownership within 200 feet of the property under consideration for zoning change.
- 3) Staff schedules public hearings dates for the P&Z and Council.
- 4) Staff sends letters to these property owners informing them of the requested zoning change, and the time, place and dates of public hearings.
- 5) Staff does site visits to visually survey the site and the surrounding area.
- 6) Staff reviews the Future Land use Plan of the Comprehensive Plan to determine if the proposed zoning change is in compliance with the Plan. Staff also researches related issues.
- 7) Staff prepares a report on its findings and observations and states its recommendation. Recommendations are based on the Comprehensive plan (map and text) and what exists on the ground. Report is sent to the P&Z.
- 8) P&Z holds its public hearing and a recommendation is made to the Council.
- 9) Public hearing is held by the City Council. Staff presents its report and the P&Z's recommendation.

### **Pharr v. Tippitt**

The Texas Supreme Court in *Pharr v. Tippitt*, 616 S. W 2<sup>nd</sup> 173 (Tex 1981) established general guidelines which the Zoning Commission and City Council should take into consideration when making their respective recommendation and decision.

#### **A. General Factors to Consider:**

Is the request in accordance with the comprehensive plan?

Is the request designed to lessen congestion in the streets; secure safety from fire, panic or other dangers; promote health and the general welfare; provide adequate light and air; prevent the

overcrowding of land; avoid undue concentration of population; or facilitate the adequate provision of transportation, water, sewers, schools, parks and other public requirements?

What if any, is the nature and degree of an adverse impact upon neighboring lands?

The suitability or unsuitability of the tract for use as presently zoned.

Whether the amendment bears a substantial relationship to the public health, safety, morals or general welfare or protects and preserves historical and cultural places and areas.

Whether there is a substantial public need or purpose for the new zoning.

Whether there have been substantially changed conditions in the neighborhood.

Is the new zoning substantially inconsistent with the zoning of neighboring lands? (Whether the new zoning is more or less restrictive.)

The size of the tract in relation to the affected neighboring lands – is the tract a small tract or isolated tract asking for preferential treatment that differs from that accorded similar surrounding land without first proving changes in conditions?

Any other factors which will substantially affect the health, safety, morals or general welfare.