

### ***DIVISION 13. ORGANIZATION AND ENFORCEMENT***

#### **Sec. 15.02.721 General statutes, ordinances and rules applying to the zoning commission**

- (a) *Governance.* The planning and zoning commission, hereinafter referred to as "the commission," shall be governed by all the following statutes, ordinances and rules:
  - (1) To the extent that they remain in force and effect, as they are amended, or as they may be added to, the commission and its members, alternates and officers shall be governed by state statutes and local ordinances, including, but not limited to the following:
    - (A) State statutes applying generally to public boards, members, and officials, including, but not limited to all subsections of V.A.C.S., article 1011 and the Texas Local Government Code;
    - (B) Ordinances and rules of the city generally affecting its local boards and officials, including, but not limited to this article; and
    - (C) Upon taking office, all commission members and alternates shall familiarize themselves with the foregoing, and, while in office, shall maintain such knowledge, including knowledge of amendments and additions, and shall be strictly governed thereby in the conduct of commission affairs.
- (b) *Duties of the commission.* The duties of the commission are as follows:
  - (1) To recommend the boundaries of original zoning districts and appropriate regulations to be enforced therein;
  - (2) To hold public hearings and prepare a final report for city council on recommendations for changes in zoning district boundaries or regulations in zoning districts; and
  - (3) To hold public hearings and prepare a final report for the city council on recommendations for the enforcement of regulations in zoning districts, including specific use permits and nonspecified uses as required under this article.
- (c) *Location of office.* The official location of the office of the commission is: Leon Valley City Hall, 6400 El Verde Road, Leon Valley, Texas, 78238.
- (d) *Establishment, composition, appointments.*
  - (1) Pursuant to Texas Local Government Code, section 211.007, the commission is established consisting of seven regular members and three alternate members.
  - (2) The commission members and alternates must be citizens and residents of the city who meet the same qualifications that are required to obtain a voter registration certificate to vote in the city municipal elections.
  - (3) Appointment of commission members and alternates shall be made by the mayor of the city and passed and approved by the city council. In specifying alternate members, the appointment shall also specify the order in which the alternates are to serve in the absence of a member.
  - (4) In the event that any person appointed by the mayor is not approved by a majority of the city council or if a vacancy occurs, the mayor shall make another appointment within 45 days, subject to approval by a majority of the city council.

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- (5) Alternates for the commission do not have status as voting members unless directed by the chairman of the commission to sit as a voting member due to the absence or nonvoting status of a member. This provision is not intended to restrict in any way the nonvoting participation of alternates, to the extent allowed by the chairman.
  - (6) Commissioners shall serve the public at large, however, each commissioner, with the exception of the alternates, shall serve by place. Place one through place seven are hereby created.
- (e) *Terms of members.*
- (1) The term of commission members 2, 4, and 6 and alternate member 2 is two years, beginning on June 1st of every year ending in an even number (0, 2, 4, 6, 8).
  - (2) The term of commission members 2, 4, and 6, and alternate member 2 expires on May 31st of every year ending in an even number (0, 2, 4, 6, 8).
  - (3) The term of commission members 1, 3, 5 and 7, and alternates 1, and 3, is two years, beginning on June 1 of every year ending in an odd number (1, 3, 5, 7, 9).
  - (4) The term of commission members 1, 3, 5 and 7, and alternate members 1 and three expires on May 31 of every year ending in an odd number (1, 3, 5, 7, 9).
  - (5) Any appointment of a commission member or alternate is only for the remainder of a term, regardless of the point in the term at which the appointment is made.
- (f) *Regular election of chairman, vice-chairman and second vice-chairman.*
- (1) As the first item of new business at the regular meeting of the commission in June of all years ending in an even number (0, 2, 4, 6, 8), the commission shall elect a chairman, vice-chairman and second vice-chairman. If there is no regular meeting, and no special meeting, or if a quorum is lacking at such a meeting prior to July 1 of any year ending in an even number (0, 2, 4, 6, 8), city council may appoint a chairman and a vice-chairman to serve until a meeting occurs at which an election can be held.
  - (2) The former chairman, vice-chairman or second vice-chairman, in that order, and if reappointed to the commission, may remain in office until their successor(s) take office at the next regular or special meeting following their appointment; unless a replacement is appointed by the city council.
- (g) *Succession of vice-chairman to office of chairman; special election.* If the chairman resigns his office or is no longer a member of the commission, the vice-chairman shall succeed him in office for the remainder of the term. If the vice-chairman resigns his office, is no longer a member of the commission, or succeeds to the chairman's office, the second vice-chairman shall succeed him in office for the remainder of the term. If any of the above do not apply, a special election shall be held at the next meeting of the commission to select a chairman, vice-chairman and/or second vice-chairman to complete the term, provided that if such meeting precedes the regular election by three months or less, and any duties to be performed by the vice-chairman or second vice-chairman can be performed in a satisfactory manner, the commission may permit the office of vice-chairman or second vice-chairman to remain vacant for that period.
- (h) *Duties of chairman, vice-chairman or second vice-chairman; appointment of temporary chairman to preside at meetings.*
- (1) If present and able, the chairman shall preside at all meetings and hearings. If the chairman is absent or unable to preside, the vice-chairman shall preside. If the vice-chairman is also absent or unable to preside, the second vice-chairman shall preside.
  - (2) In accordance with these and other applicable rules, the chairman or the presiding officer, acting as chairman, shall decide all points of procedure or order, unless otherwise directed by a majority of the members in attendance, on motion duly made and passed. He shall maintain order and decorum, and to that end may order removal of disorderly or disruptive persons.

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- (3) The chairman or officer presiding in his absence shall determine the absence of any member and direct the seating of alternate(s) in the order determined by the appointment of alternates by the mayor and city council.
  - (4) The chairman may delegate duties as he sees fit to any member or alternate. In the case of the absence or the incapacity of the chairman, the vice-chairman shall perform any or all duties of the chairman, whether or not delegated.
  - (5) Subject to the rules of this article and further instructions from the commission, the chairman shall direct the official business of the commission, guide the work of city staff as it relates to the affairs of the commission and exercise general disciplinary power.
  - (6) The chairman may delegate members of the commission to make personal inspections when necessary for proper consideration of cases, and shall appoint such committees as may be found necessary.
  - (7) The chairman shall report to the commission on all official transactions which have not otherwise come to the attention of the commission. The chairman shall also make or cause to be made, any reports concerning the affairs of the commission required or requested by the city council.
- (i) *Causes for removal from the commission.* Causes for removal of members or alternates of the commission by the city council shall include particular malfeasance, misfeasance, or nonfeasance generally, and in particular the following:
- (1) Failure to maintain reasonable familiarity with state statutes and local ordinances and rules affecting the commission, or failure to be governed thereby, as required in section 15.02.721(a); and/or
  - (2) Failure to disclose conflict of interest for purposes of disqualification when a member has personal or monetary interest in the matter involved, or will be directly affected by a decision of the commission.
- (j) *Resignation, generally and by absence.*
- (1) When members or alternates of the commission propose to resign, if reasonably feasible, they shall give notice of their intent to the chairman and/ or staff, making the date of resignation effective in such a manner as to allow time for appointment of replacement.
  - (2) Failure to attend three consecutive regular meetings or three of any seven consecutive meetings ~~without the recorded consent of the chairman~~, shall be construed as resignation from the commission by absence. This provision shall apply to both members and alternates.
    - a) If a member or alternate can not be in attendance at a meeting. They must contact either the Planning and Zoning Director and/or Chairman.
    - b) The absence will be placed on the next available Planning and Zoning Commission meeting agenda, and the absences will be determined by the commission to be excused or unexcused.
- (k) *Vacation of office.* When a member or alternate of the commission dies or resigns (including resignation by absence), the chairman shall promptly indicate to the mayor that a vacancy exists. When a member becomes incapacitated for office permanently, or for what appears to be a protracted period, or moves from the jurisdiction, or becomes for any other reason no longer qualified for office and fails to resign, the chairman shall cause any necessary investigation to be made. Based on that investigation, the chairman may declare the office vacant and shall promptly indicate to the mayor that a vacancy exists.
- (l) *Duties of legal counsel.* The city attorney, or his designate, shall provide legal advice to the commission as to matters under their jurisdiction.
- (m) *Conduct of members of the commission, alternates and city staff.*
- (1) No member of the commission, alternate or city staff member shall represent applicants on matters on which the commission is to make recommendations.

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- (2) Members and alternates of the commission shall be aware of all state statutes and any city ordinances, rules or regulations related to conflicts of interest and the ethics of public officials generally.
  - (3) As soon as any commission member, alternate or city staff member of any agency serving the commission becomes aware of any potential conflict of interest in any case to come before the commission, he shall notify the chairman or acting chairman of the particulars. Where the chairman finds that conflict clearly exists, he shall disqualify the commission member from acting in the case, shall cause the circumstances of the disqualification to be entered in the record and make arrangements for such alternate services as are required.
  - (4) Where the chairman or acting chairman has reasonable doubt as to whether the facts and applicable law indicate a degree of conflict justifying disqualification or excuse from service, he shall seek advice from the city attorney or his designate. If the city attorney or his designate advises that, under the circumstances reported and applicable law conflict appears to exist, the chairman shall proceed to disqualify or excuse as provided above. If the city attorney, or his designate, advises that there is reasonable doubt, the chairman may either disqualify or excuse the person involved, or call for a determination by the commission at a public meeting.
  - (5) The record on any such determination by the commission shall be full and complete and shall indicate the reasons supporting the decision.
  - (6) A member and/or alternate may seek disqualification from voting whenever any applicant, or his agent, has sought to influence the vote of the member on his request (application), other than in the public hearing.
  - (7) Members and alternates of the commission may seek information from other members, the zoning administrator, city attorney or other city staff prior to the public hearing, but no member or alternate shall discuss the case with any other parties thereto prior to the public hearing. Additionally, no member or alternate shall express any bias, prejudice or individual opinion on judgment of the case prior to its hearing and determination. Violation of this rule shall be grounds for dismissal from the commission.
- (n) *Compensation.* The compensation and/or reimbursement of expenses of commission members and alternates is to be specified by ordinance. In the absence of an ordinance specifying compensation and/or reimbursement, there shall be none. The absence of such an ordinance does not preclude payment by the city of certain expenses for memberships, subscriptions, educational seminars, travel and similar expenses as might be required for commission members and alternates, as authorized by the city council.
- (o) *Meetings.*
- (1) Regular meetings of the commission shall be held at city hall on the fourth Tuesday of each month, unless designated otherwise by the commission; provided that such meetings may be held at any other convenient place if directed by the chairman in advance of the meeting or upon a finding that such other location would serve public convenience or necessity, and subject to the notice provisions as required by law.
  - (2) Special meetings for any purpose may be held at the call of the chairman of the commission or of any combination of five (4) [sic] commission members and alternate members of the commission. At least 72 hours' written notice of the time and place of any special meeting shall be given by the zoning administrator except where written waivers of notice are filed by all members required to provide a quorum and in attendance at such regular meeting, but other members shall receive written notice thereof.
  - (3) If a special meeting is called on a case or cases subject to notice of hearing, the required notice provisions for the hearing shall be met.

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- (4) Any meeting may be recessed or adjourned from day to day, or to the time of any previously announced regular or special meeting, and such recess or adjournment to a time and place certain shall not require additional public notice.
  - (5) If no business is scheduled before the commission, or if it is apparent that a quorum will not be available, any meeting may be canceled by the chairman by giving notice to all members at least 24 hours before the time set for such meeting.
  - (6) A quorum of the commission shall consist of any combination of members or alternates totaling four.
  - (7) All meetings of the commission involving hearing of evidence, decisions, or recommendations on requests shall be public, with formal notice as required by law.
  - (8) Meetings for the conduct of other business of the commission, including activities and reviews as may be assigned by the city council or required by ordinance, trips for viewing premises, and other similar meetings and activities, shall not require such formal public notice and hearing, but shall be scheduled at least 12 hours in advance, with the schedule posted at the office of the commission.
- (p) *Agenda, order of business.* The zoning administrator shall prepare an agenda for each commission meeting. The order of business shall be as follows:
- (1) Call to order and roll call, with recording of members present and absent ~~and indications as to whether absences are with consent of the chairman;~~
  - (2) Action on any previous meeting for which action is required;
  - (3) Continued hearings, with consideration and determination on cases as heard;
  - (4) New hearings, with consideration and determination on cases as heard;
  - (5) Old business;
  - (6) New business; and
  - (7) Adjournment.
- (q) *Motions.*
- (1) Any motion by a member shall require a second. After a motion has been made and duly seconded, discussion of the motion may be held for a reasonable time. Discussions by members, or by opponents or proponents of a question before the commission, shall terminate whenever a member shall call a vote upon the question or whenever the chairman shall so rule.
  - (2) A motion which is defeated is not a recommendation. If a motion is defeated, another motion must be made, seconded, voted upon and approved by a majority of the commission present and voting.
  - (3) If the commission does not make a recommendation, the failure to make a recommendation within 71 days of the assignment of a docket number to a case application shall be considered to be a recommendation of denial.
  - (4) Motions to recommend approval or denial of any change in a zoning district may, when appropriate, contain statements of commission findings in the following areas:
    - (A) Consistency and compatibility with the master plan;
    - (B) Consistency and compatibility with surrounding zoning districts;
    - (C) Consistency and compatibility with site and surrounding uses;
    - (D) Protection of the health, safety and welfare of the general public; and/or

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- (E) Protection and preservation of the property rights of the owner(s) of all real property affected by the proposed change in zoning district(s).
  - (5) Motions to recommend approval or denial of any requested nonspecified use permit or specific use permit may, when appropriate, contain statements of commission findings in the following areas:
    - (A) Consistency and compatibility with the master plan;
    - (B) Consistency and compatibility with site zoning;
    - (C) Consistency and compatibility with surrounding zoning and/or uses;
    - (D) Protection of the health, safety and welfare of the general public; and/or
    - (E) Protection and preservation of the property rights of the owner(s) of all real property affected by the proposed specific use permit.
  - (6) The zoning administrator will administer and obtain a roll call vote from the commission upon the rendering of a motion.
  - (r) *Reporting.*
    - (1) The commission, in making recommendations to city council on any matter upon which a recommendation is required, may make findings and shall issue a report to the city council.
    - (2) That report to the city council must include the results of a vote on a motion made and duly seconded, and approved by a majority of the commission present and voting.
    - (3) That report can be delivered to the city council by the chairman, member(s) or alternate(s) designated by the chairman, zoning administrator or any other city staff member designated by the chairman.
  - (s) *Additional duties of the commission.* In addition to its advisory zoning powers under established law, the commission shall be charged with the following duties: to review and update the city's master plan and cause to be submitted to the city council, every four years, no later than October 1st commencing in 1999, a written report pertaining to the status of the master plan. Such a report should include any recommendations for change in the laws and policies of the city as they relate to the use of land.
- (1972 Code, sec. 30.4001; Ordinance 07-041 adopted 9-4-07; 2008 Code, sec. 14.02.721; Ordinance adopting 2017 Code; Ordinance 2018-59 adopted 8-7-18; Ordinance 2020-10, sec. 9, adopted 3-3-20)

State law reference(s)—Zoning commission, V.T.C.A., Local Government Code, § 211.007.