

# ORDINANCE 04-283 (cont.)

## SECTION 3 (of 7)

### ADMINISTRATION OF ZONING REGULATIONS

#### 3.100 ROLES OF CITY OFFICIALS

The general roles of City officials and agencies under this Ordinance are as follows:

A. City Commission

The City Commission receives and acts upon reports and recommendations by the Planning and Zoning Commission and the Building Official or his/her designee, to review, approve, approve with modifications or deny the following: zoning districts, permitted uses in each zoning district, amendments to the zoning maps and the text of this Ordinance and to the Comprehensive Plan, historic districts and landmarks, variances from the literal application of the terms of this Ordinance in those cases authorized by State laws, and administrative appeals.

B. Planning and Zoning Commission

The Planning and Zoning Commission recommends favorably or unfavorably for zoning districts, permitted uses in each zoning district; amendments to the zoning maps, the text of this Ordinance, and to the Comprehensive Plan; historic districts and landmarks; and variances; from the literal application of the terms of this Ordinance in those cases authorized by State law. It also conducts studies and makes recommendations on other matters relating to the planning and development of the City.

C. Building Official and City Staff

Except as otherwise provided in this Ordinance, the Building Official or his/her designee, shall administer and enforce this Ordinance, including making determinations on the proper classification of land uses, receiving and confirming all applications and fees, issuing required notices, inspecting premises and issuing building permits and certificates of occupancy.

### **3.110 ESTABLISHMENT OF THE PLANNING AND ZONING COMMISSION**

#### **A. Planning and Zoning Commission Created & Powers and Duties**

An agency of the City Commission and of the City of Mason is hereby created which shall be known as the Planning and Zoning Commission.

1. Such commission shall consist of four (4) regular members and one (1) chairman, each appointed by the City Commission, and they all must be residents of the City of Mason.
2. The terms for the Planning & Zoning Commission shall run concurrently with the terms of the City of Mason Mayor and the City Commission.
3. The Planning and Zoning Commission may create rules and procedures and that enabling resolution shall be on record with the City of Mason City Secretary.

### **3.120 JURISDICTION**

1. The City Commission shall have final jurisdiction with respect to all applications for Zoning Code Text Amendments, Rezoning Requests, Comprehensive Plan Amendments, Conditional Use Permits and Variance Requests and the Commission may approve the requested application as submitted by the Planning & Zoning Commission, approve it with further modifications or deny the application.
2. The Planning and Zoning Commission shall review and submit a written recommendation to the City Commission for all Zoning Code Text Amendments, Rezoning Requests, Comprehensive Plan Amendments, Conditional Use Permits and Variance requests prior to action by the City Commission. It may recommend approval as submitted, approval with conditions, or denial.
3. All applications require public hearings conducted by the Planning & Zoning Commission and the City Commission.
4. Rezoning Requests, Comprehensive Plan Amendments and Conditional Use Permits shall be indicated on the Comprehensive Land Use Map.

### **3.130 INITIATION**

1. City property owners, the Planning & Zoning Commission or the City Commission may initiate requested changes for Zoning Code Text Amendments, Rezoning Requests or Comprehensive Plan Amendments.
2. A property owner(s) or his /her authorized agent may also request Rezoning Requests, Comprehensive Plan Amendments, Conditional Use Permits, or Variances.

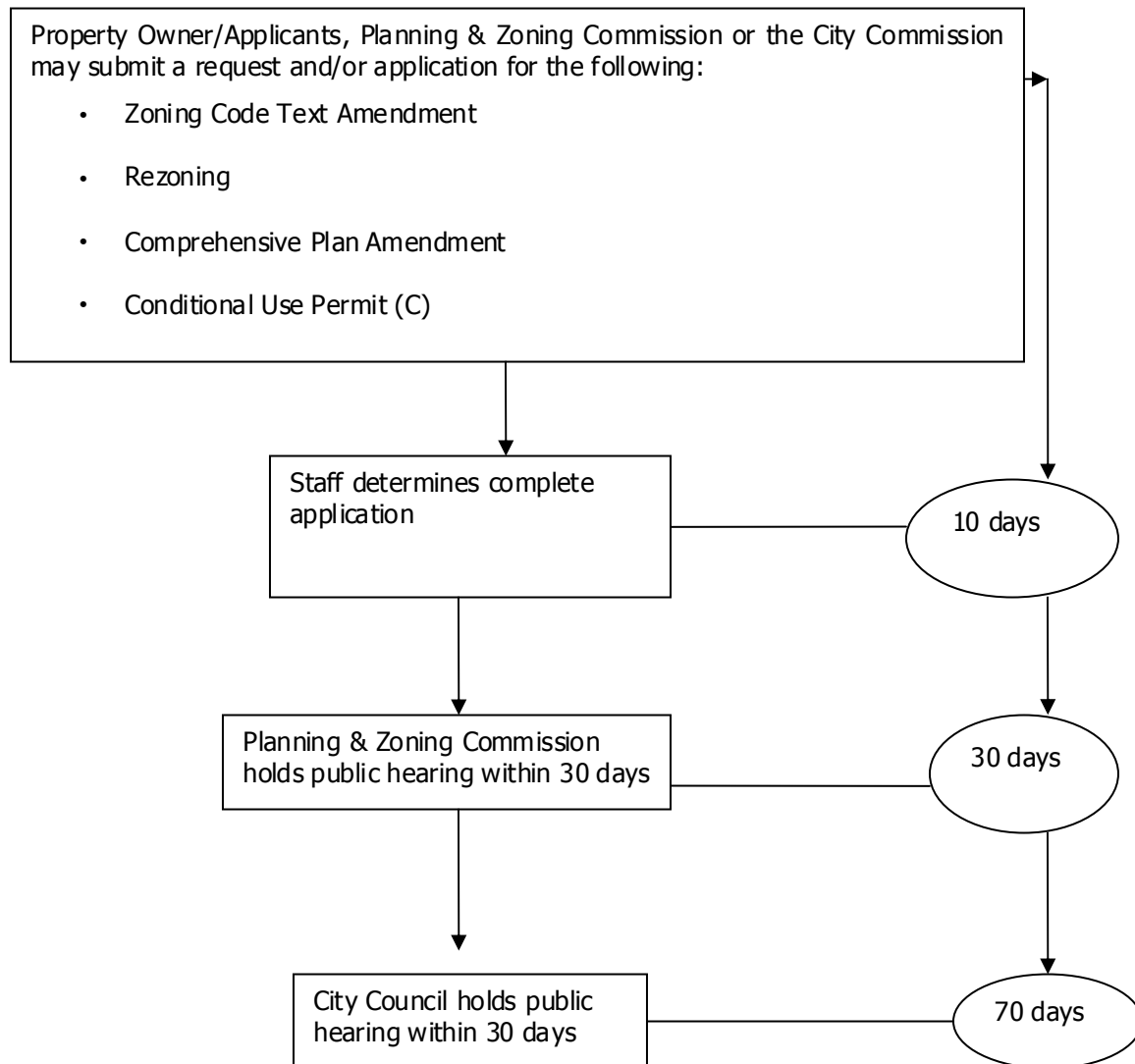
### 3.130 PROCEDURAL DIAGRAM

The following diagram shows the process with timelines for Zoning Code Text Amendments, Rezoning Requests, Comprehensive Plan Amendments, Conditional Use Permits and Variances.

#### **ZONING CODE TEXT AMENDMENTS, REZONING REQUESTS**

#### **COMPREHENSIVE PLAN AMENDMENTS**

#### **CONDITIONAL USE PERMIT (C) AND VARIANCES**



### **3.150 Review by the Building Official**

1. The Building Official or his/her designee shall review the appropriate application and shall determine whether the application is complete or requires additional information.
2. If the appropriate application requires additional information, the Building Official or his/her designee shall return it to the applicant for completion.
3. When the application is complete, the Building Official or his/her designee shall provide a letter of completion to the owner/applicant and shall provide the completed application to the City Secretary for processing.

### **3.160 Processing by the City Secretary**

1. The City Secretary shall coordinate and publish all public hearing and public meeting dates and times for the Planning and Zoning Commission, and the City Commission, only after receipt of the completed application from the Building Official or his/her designee.
2. Public notice shall be given as prescribed in these Zoning Regulations.

### **3.170 Recommendation of Building Official**

1. The Building Official or his/her designee shall review each application and shall prepare a written recommendation which shall be filed with the City Secretary and made available to the Planning and Zoning Commission, and the owner/applicant no less than fifteen (15) days prior to the public hearing.

### **3.180 Applications & Fees**

1. Application for a Rezoning Request, Comprehensive Plan Amendment, Conditional Use Permit, or Variance initiated by a property owner/applicant or the Planning & Zoning Commission shall be filed with the Building Official or his/her designee on a form prescribed by the City of Mason, which may be updated from time to time, accompanied by a designated fee.
2. Fees shall be established by the City Commission.

3. The Building Official or his/her designee shall keep applications, fee schedules and checklist forms for applicants.

### **3.190 Planning & Zoning Commission Public Hearing**

1. Within thirty (30) days after the filing of a completed application with the City Secretary, the Planning and Zoning Commission shall hold a public hearing on the appropriate application.
2. At the public hearing, the Planning and Zoning Commission shall review the application and shall receive pertinent evidence relating to its consistency with the objective of this Ordinance, the Comprehensive Land Use Plan, and the development policies of the City.

### **3.200 Rezoning Request**

A rezoning request consists of changing an existing land use district to a proposed land use(s) district for a certain land area. Before it can recommend a proposed land use, the Planning & Zoning Commission must acknowledge the following findings of the Building Official to the City Commission:

1. Name and address of the owner and applicant.
2. Address and legal description of the property.
3. The current zoning and requested zoning of the property.
4. If the applicant is not the legal owner of the property, a signed and notarized statement by the owner that the applicant is the duly authorized agent of the owner of the property.
5. A plot plan of the proposed area with labeled dimensions to the existing property lines and labeled dimensions for existing and proposed driveways.
6. The property address and the name and mailing address of the owner of each lot within two hundred (200) feet of the subject property and a map with parcels keyed to the ownership and address data.

The Building Official or his/her designee may require additional information or plans if it is necessary to enable the Planning and Zoning Commission and City Commission to determine whether the change is consistent with the objectives of the Zoning Ordinance and the Comprehensive Land Use Plan.

### **3.210 Comprehensive Plan Land Use Amendment**

The Comprehensive Land Use Plan is the document or map used to show existing land uses and future growth areas. Before it can recommend a Comprehensive Land Use designation, the Planning & Zoning Commission must affirm the following findings of the Building Official to the City Commission:

1. The property affected by the request is adequate in size and shape to facilitate those uses normally associated with the requested designation.
2. The property affected by the request does not exceed the capabilities of the infrastructure.
3. The request will have no significant adverse effect on any property within six hundred (600) feet of the affected property.
4. The requested change is to accommodate an appropriate land use and is consistent with other elements of the Comprehensive Land Use Plan.
5. The request, together with the applicable conditions, will not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity.

The Building Official or his/her designee may require additional information or plans if it is necessary to enable the Planning and Zoning Commission and City Commission to determine whether the change is consistent with the objectives of the Comprehensive Land Use Plan.

### **3.220 Conditional Use Permit**

Conditional Use Permits are land uses not allowed by right, and they typically have unusual site development features or unique operating characteristics requiring special consideration so that

they may be located, designed, and operated compatibly with uses on surrounding properties and within the City at large. Before it can recommend a Conditional Use Permit, the Planning & Zoning Commission must affirm the following findings of the Building Official to the City Commission:

1. Name and address of the owner and applicant.
2. Address and legal description of the property.
3. If the applicant is not the legal owner of the property, a signed and notarized statement by the owner that the applicant is the duly authorized agent of the owner of the property.
3. A statement describing the nature and operating characteristics of the proposed use, including any data pertinent to the findings required for approval of the application. For uses involving public assembly or industrial processing, or uses potentially generating high volumes of vehicular traffic, the Building Official or his/her designee may require specific information relative to the anticipated peak loads and peak use periods, relative to industrial standards, or substantiating the adequacy of proposed parking, loading, and circulation facilities.
4. Site plans, preliminary building elevations, preliminary improvement plans, and such additional maps and drawings, all sufficiently dimensioned as required to illustrate the following:
  - a. The date, scale, north point, title, name of owner, and name of person preparing the site plan.
  - b. The location and dimensions of boundary lines, with distances and bearings, easements, and required yards and setbacks, water courses, drainage features and location and size of existing and proposed streets and alleys, and the one hundred (100) year flood plain.



- c. The location, height, bulk, general appearance, and intended use of existing and proposed buildings on the site, and the approximate location of existing buildings on abutting sites within fifty (50) feet.
  - d. The location of existing and proposed site improvements including parking and loading areas, pedestrian and vehicular access, landscaped areas, utility or service areas, fencing and screening, signs, and lighting.
  - e. The location of water courses and drainage features.
  - f. The number of existing and proposed off-street parking and loading spaces, and a calculation of applicable minimum requirements.
  - g. For sites with an average slope greater than ten (10%) percent, a plan showing existing and proposed topography and grading and proposed erosion control measures.
  - h. The relationship of the site and the proposed use to surrounding uses, including pedestrian and vehicular circulation, current use of nearby parcels, and any proposed off-site improvements to be made.
5. The property address and the name and mailing address of the owner of each lot within two hundred (200) feet of the subject property and a map with parcels keyed to the ownership and address data.

The Building Official or his/her designee may require additional information or maps if it is necessary to enable the Planning and Zoning Commission and City Commission to determine whether the change is consistent with the objectives of the Zoning Ordinance and the Comprehensive Land Use Plan.

### **3.230 Protest Provision – Rezoning Request & Conditional Use Permit**

1. If the Planning and Zoning Commission has recommended denial of the Rezoning or Conditional Use Permit request, or

2. If there is a protest against the Rezoning Request or Conditional Use Permit Request signed by the owners of twenty percent (20%) or more either of the area of the property included in the Rezoning or Conditional Use Permit request, or of the area of the property immediately adjoining the same and extending two hundred (200) feet therefore
3. Such rezoning shall not become effective except by the concurring vote of a three-quarter vote of four members of the City Commission.

### **3.240 Revocation – Rezoning Request and Conditional Use Permit**

A Rezoning Request or a Conditional Use Permit shall be revoked after thirty (30) days written notification to the owner of a use or property subject to a Conditional Use Permit upon:

1. Violation of any applicable provision of this Ordinance, or,
2. If granted subject to conditions; or
3. Upon failure to comply with conditions for approval.

### **3.250 VARIANCE PROCEDURE**

Variances are intended to provide relief from the regulations of the Zoning Ordinance when special circumstances apply to a subject property and the strict application of the Zoning Ordinance deprives the subject property of privileges enjoyed by other properties in the vicinity and under identical zoning. A variance will be applied for before construction begins.

Before it can recommend a Variance, the Planning & Zoning Commission must affirm the following findings of the Building Official to the City Commission:

1. Name and address of the owner or applicant.
2. Address and legal description of the property.
3. If the applicant is not the legal owner of the property, a statement that the applicant is the authorized agent of the owner of the property.
3. A statement describing the Variance requested and the reasons why it complies with the criteria for Variances.

5. The property address and the name and mailing address of the owner of each lot within two hundred (200) feet of the subject property and a map with parcels keyed to the ownership and address data.
6. Site plans, preliminary building elevations, preliminary improvement plans, or other maps or drawings, sufficiently dimensioned as required to illustrate the following, to the extent related to the Variance application:
  - a. Existing and proposed location and arrangement of uses on the site, and on abutting sites within fifty (50) feet.
  - b. Existing and proposed site improvements, buildings, and other structures on the site, and any off-site improvements related to or necessitated by the proposed use. Building elevations shall be sufficient to indicate the general height, bulk, scale, and architectural character.
  - c. Existing and proposed topography, grading, landscaping, and screening, irrigation facilities, and erosion control measures.
  - d. Existing and proposed parking, loading, and traffic and pedestrian circulation features, both on the site and any off-site facilities or improvements related to or necessitated by the proposed use.
  - e. The zoning regulations applicable to the property do not allow for a reasonable use.
  - f. The plight of the owner of the property is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the zoning district in which the property is located.
  - g. The Variance will not alter the character of the area adjacent to the property, will not impair the use of adjacent conforming property, and

will not impair the purposes or regulations to the Zoning District in which the property is located.

The Planning & Zoning Commission may recommend to the City Commission the granting of a Variance to a regulation prescribed by this Ordinance with respect to the number of off-street spaces or loading facilities required if it makes findings of fact that the following additional criteria are also satisfied:

1. Neither present nor anticipated future traffic columns generated by the use of the site or the uses of sites in the vicinity reasonably require strict or literal interpretation and enforcement of the specified regulation.
2. The granting of the Variance will not result in the parking or loading of vehicles on public streets in such a manner as to interfere with the free flow of traffic of the streets.
3. The granting of the Variance will not create a safety hazard or any other condition inconsistent with the objectives of this Ordinance.

The Building Official or his/her designee may require additional information or maps if it is necessary to enable the Planning and Zoning Commission and City Commission to determine whether the change is consistent with the objectives of the Zoning Ordinance.

### **3.251 Lapse of Variance**

1. Where a Variance is granted by the Commission and no building or structure is started pursuant to such Variance within six (6) months after the date of the granting, said Variance becomes null and void and of no force or effect.
2. A granted Variance subject to lapse may be renewed by the City Commission for an additional period of six (6) months, provided that prior to the initial expiration date, a written request for renewal is filed with the City Commission.
3. The City Commission may grant or deny any application for renewal.

### **3.252 Revocation of Variance**

Upon violation of any applicable provision of this Ordinance, or, upon failure to comply with granted conditions, a Variance shall be revoked after thirty (30) days written notification to the owner of the use or property.

### **3.253 Variance to Run With Land or Structure**

Unless pertaining to off-street parking and loading regulations, or otherwise specified at the time a Variance is granted, a Variance shall run with the land and shall continue to be valid upon a change of ownership of the site or structure to which it applies.

### **3.300 ADMINISTRATIVE APPEALS**

This procedure is intended to afford review of administrative actions taken pursuant to the Zoning Ordinance where such actions may be in error.

#### **3.310 Procedures**

1. Appeals to the City Commission may be taken by any person aggrieved or by any officer, department, or board of the City of Mason affected by any administrative decision of the Building Official or his/her designee.
2. Such appeal shall be taken within thirty (30) days after the decision, by filing with the Building Official or his/her designee, and with the City Commission a notice of appeal which shall specify the grounds thereof.
3. The Building Official or his/her designee shall transmit all papers to the City Commission constituting the record for the appeal.

#### **3.320 Stay of Proceedings**

1. An appeal from the action of the Building Official or his/her designee shall stay all proceedings in furtherance of such action unless the Building Official certifies to the City Commission after the notice of appeal has been filed with him/her, that by reason of that fact stated in the certificate a stay would, in his/her opinion, cause imminent peril to life or property.

2. In the event the Building Official or his/her designee shall make and file such certificate, his/her action shall not be stayed otherwise than by a restraining order that may be granted by a court of record, upon application of the party aggrieved by the action of the Building Official or his/her designee and after notice to him/her and upon due cause shown.

### **3.330 Public Hearing and Notice**

1. The City Commission shall hold a hearing within thirty (30) days on the appeal. Notice shall be given as prescribed in this Section.
2. Upon the hearing of such appeal, any interested party may appear in person or by an agent or by attorney.

### **3.340 Actions**

1. The City Commission may act on the appeal within twenty (20) days following the closing of the public hearing. In exercising the powers set out in this Section, the City Commission, shall in conformity with the provisions of this Ordinance, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all powers of the Building Official or his/her designee from whose action the appeal is taken. The City Commission shall notify the appellant of its decision.
2. The concurring vote of not less than three of the four members of the City Commission (excluding the Mayor) shall be necessary to reverse any order, requirement, decision, or determination of the Building Official or his/her designee or to decide in favor of the applicant any matter upon which it is required to pass under this Subsection.
3. An applicant may not apply for a variance for the same issue determined by the Administrative Appeal.

### **3.400 PUBLIC NOTICE PROCEDURE AND FEES**

#### **3.410 Public Notice Procedure**

Notice of a public hearing for consideration of a Rezoning, Text Amendment, Conditional Use Permit, Comprehensive Land Use Change, Variance, or Administrative Appeal shall be as follows:

1. Notice shall be given by publication of a legal notice in a newspaper of general circulation in Mason, Texas, at least fifteen (15) calendar days prior to the date of the hearing.
2. Notice shall be given by regular US mail to the applicant at least ten (10) calendar days prior to the date of hearing.
3. Notice of a possible change in zoning classification shall be given by regular US to the owner of each site within two hundred (200) feet of the subject property at least ten (10) calendar days prior to the date of the hearing.
3. At the option of the Building Official or his/her designee, notice may be given by regular mail to the owner of any site more than two hundred (200) feet from the subject property at least ten (10) calendar days prior to the date of the hearing.
5. At the option of the Building Official or his/her designee, notice may be given by regular mail to any neighborhood organization having a potential interest in the application.
6. At the option of the Building Official or his/her designee, notice may be given by posting a notice on or adjacent to the subject property at least ten (10) calendar days prior to the date of the hearing.

#### **3.420 Fees**

See City of Mason Rate and Fee Schedule.

### **3.421 Time of Payment**

The fees are due and payable at the time of the initial request or application and entitle the applicant to consideration only and not an affirmative disposition.

### **3.422 Waivers**

1. The intent of this Section is further to assure that no citizen or group is denied access to due process of law through an inability to pay for such services.
2. When an individual or group requests an action under this Ordinance for which a fee is required, the City Commission is hereby authorized to inquire into hardships which may be caused by this payment of such fees and may instruct that all or part of such fee is to be waived.

### **3.423 Refunds**

The fees shall be non-refundable to the applicant.