

# ORDINANCES: BRINGING YOUR PLAN TO LIFE

Most people deal with plans on a daily basis. A recipe is a plan. It informs the cook how to prepare a dish. A set of blueprints is a plan depicting how something is to be constructed. A trip itinerary is a plan that indicates the means and schedule by which a person gets from one place to another. In each case, a plan provides directions to get to some desired end result.

the  
RULE  
BOOK

## An introduction to development ordinances and the rules of the “game”

Community plans are no different. They identify a desired end result and the goals and objectives necessary to get there. But like all plans, community plans are burdened by a common truth:

**If a plan is not translated into action, then the plan itself becomes the end result and the vision of the plan will never be realized.**

So how does a community act on a plan?

Translating a plan into action requires three steps:

1. *The **plan** becomes **policy**.*
2. *The **policy** becomes **law**.*
3. *The **law** is administered and **enforced**.*

## Plans, policies, law, and administration

Plans depend upon the interaction of policy, law, and administration to have any real effect. When the plan becomes policy, it provides the basis for the enactment of laws, or “rules of the game,” necessary to regulate the actions of the government and general public so the intended results of the plan can be realized. If they are to have any effect, the laws must be administered and enforced.

## The rules of the game

Games have rules that govern the conduct of all players and referees and as such are codes of conduct. A code of conduct is defined as a set of conventional principles and expectations that is considered binding on any person who is a member of a particular group.<sup>1</sup> Rules of the game should clearly describe the goal of the game, what actions score points and how many, and what actions result in penalties and the nature of those penalties. By providing a code of conduct, the rules of the game provide two important services:

- *The rules provide the structure for the game.*
- *By providing the structure for the game, the rules allow the players and referees to understand how the game is played and what to expect when playing the game.*

Like the rules of the game, laws governing development provide the structure for the review and permitting process associated with government approval of a development proposal. And like the rules of the game, the development law provides a code of conduct that is binding on everyone in the community: property owners, developers, and government itself.

The plan provides the overall goals and objectives that the laws are intended to accomplish. The laws provide the structure of the development “game” by spelling out the expectations necessary to develop properties in accordance with the comprehensive plan. This structure should then allow everyone in the community to clearly understand the development approval process. The law should explain

what may be developed where, what will be taken into consideration when a development proposal is submitted for review, the rules of the review and approval process itself, the conditions necessary for approval, the process for challenging, or appealing, decisions, and the manner in which penalties for not obeying the rules may be imposed.

Of course, community development is not a game. It is very serious business with implications for the future economic growth and development of the community, public costs and benefits and the taxes and services associated with both, and property values and rights. But if there are no rules of the game in your community, how are the players to know what to expect? On what basis, and by what process, are development decisions being made? If your community has rules of the game but no plan, what goals and objectives are the rules intended to achieve?

## Regulation of development is constitutional.

Imagine you live in a pleasant small town not too far from a growing metropolitan area. There is industrial development nearby, and many residents of your community make daily commutes to those industrial plants. Your community wants and needs industry, but you have concerns that heavy industry might be developed adjacent to residential neighborhoods. Heavy truck traffic, noise, emissions, and other issues raise questions and concerns about the compatibility of industrial and residential uses and the overall well-being of the community if land is allowed to be developed in this manner. The community is not opposed to industrial development, but it wants it to be located in areas best suited for that particular kind of use. As a result, the community passes a law that establishes different use districts to facilitate compatibility among uses. Residential and industrial districts are proposed, as are commercial and retail districts.

This is ostensibly what the Village of Euclid, Ohio, did in 1922 as industrial growth expanded out from Cleveland and moved toward this farming community. Property owners sued, claiming that the village's regulation of uses reduced the value of some properties and therefore deprived them of their liberty and property without due process or compensation. In 1929, the U.S. Supreme Court ruled that it is in the interest of public health, safety, and welfare for local governments to regulate land use and that such regulation did not constitute a taking of the land by the government.<sup>2</sup>

## Regulations should have justification.

Beyond the Euclid case, courts at all levels have acknowledged the right of communities to regulate development in accordance with a plan. Provisions in ordinances that are backed up by plans are more likely to be found to be in the legitimate interest of the public health, safety, and welfare. The following are some general lessons from the courts.

- *Laws should be tied directly to a specific public purpose. The plan defines the development goals and objectives – the purposes – underlying the law.*

- *There should be “rough proportionality” between the impacts of a proposed development and the exactions the municipality wishes to impose upon the developer. An adopted plan establishes the rationale underlying a preferred path towards development that is in the interest of the common welfare of the community as a whole and as such establishes benchmarks to be met by new development.*

- *Restrictions on the use of a property do not constitute taking of the land by government unless the owner of the property is deprived of all economically viable use of their land. Plans should inform the type of development activities that are to be encouraged in all areas of the community within the context of the plan's vision. The laws should facilitate the types of development that are supported by the plan.*

The State of Mississippi recognizes the relationship between plans and development regulations. Section 17-1-9 of the Mississippi Code states that regulations shall be made in accordance with a comprehensive plan.<sup>3</sup>



Many Mississippi communities have adopted “smoking ordinances” in recent years.

## Ordinances

Ordinances are municipal **regulations** or **laws**.<sup>4</sup> Many communities regulate development by what are known as “zoning ordinances.”

Zoning ordinances regulate development by use (e.g., residential, retail, commercial, industrial, agricultural, etc.) and by dimensional requirements (e.g., setbacks, sideyards, minimum lot sizes, height, etc.). Zoning ordinances are also used to regulate the appearance of development. Use areas are designated on a zoning map, and development requirements associated with each use and zone are contained within the text of the ordinance.

The zoning ordinance is the most common type of development ordinance, but there are others. Form-based codes regulate the form and scale of buildings and their relationship to the street and other public spaces. Whereas zoning ordinances place a priority on the regulation of use and dimensions, form-based codes place a priority on the scale, appearance, and relationships among built elements to one another.

Ordinances establish the rules for the development for all properties within a given jurisdiction (e.g., city, county).

Ordinances govern the following:

- The type of development allowed
- The conditions that must be met in order for such development to be permitted (i.e., setbacks, density, building size, parking requirements, access, environmental requirements, etc.)
- Treatment of nonconforming uses<sup>5</sup>
- The process by which an application for development will be considered
- The process by which a decision on a development application may be appealed

Whereas plans are quite general in their goals and objectives, ordinances are very specific in their identification of what may be developed where and how the rules apply. Each property exists within a zone or zones.<sup>6</sup> A well-written ordinance will spell out exactly what is or is not allowed within the zone in question.

## Variations

An ordinance may allow for variations from the strict application of the ordinance. For instance, the ordinance may allow for variations in dimensional requirements (e.g., setbacks). In some specific situations, uses that otherwise would not be allowed may be permitted if specific conditions can be met (special exceptions). In either instance, the ordinance should spell out the specific circumstances and conditions by which a variance may be granted.

Variations should not be used to “re-zone” a property – allowing development of a property in a manner that is inconsistent with the ordinance that is presently in force. If a property is found to have been zoned in a manner that is inconsistent with the plan or is otherwise in error (such as a mistake in the drawing of the zoning map), then the property should go through a formal rezoning process. Using variations to effectively override the ordinance exposes the community to legal challenges and severely compromises the integrity of the decision makers, the development review and approval process, and the ordinance itself.

## Playing by the rules

Once the rules are in place, players have to know how to play by them. The ordinance should lay out the general authorities and processes. For example, it should establish the decision-making authority granted to boards, commissions, committees and individual officials (i.e., zoning officer), and the limits of that authority. It should establish the means by which applications for development are to be decided, the manner in which appeals to decisions may be made, the process by which variations may be considered, the process by which enforcement actions may be taken, and the penalties associated with failure to comply with the ordinance.

For the ordinance to be effective it must be administered and enforced in a manner that is consistent with the provisions of that ordinance. Any action taken should find its justification in the ordinance. Fans expect referees to treat their team fairly and in accordance with the rulebook. Property owners expect the same thing. Being consistent

with the law and in the administration of the law also protects the officials in question. A property owner may not like a decision and may challenge it in court. But if the law guided the decision and the decision-making process treats everyone fairly and equally, then the courts will be more likely to uphold the decision. Perhaps more importantly, the integrity of the law, the process, and the officials will be reinforced.

## Does the ordinance work?

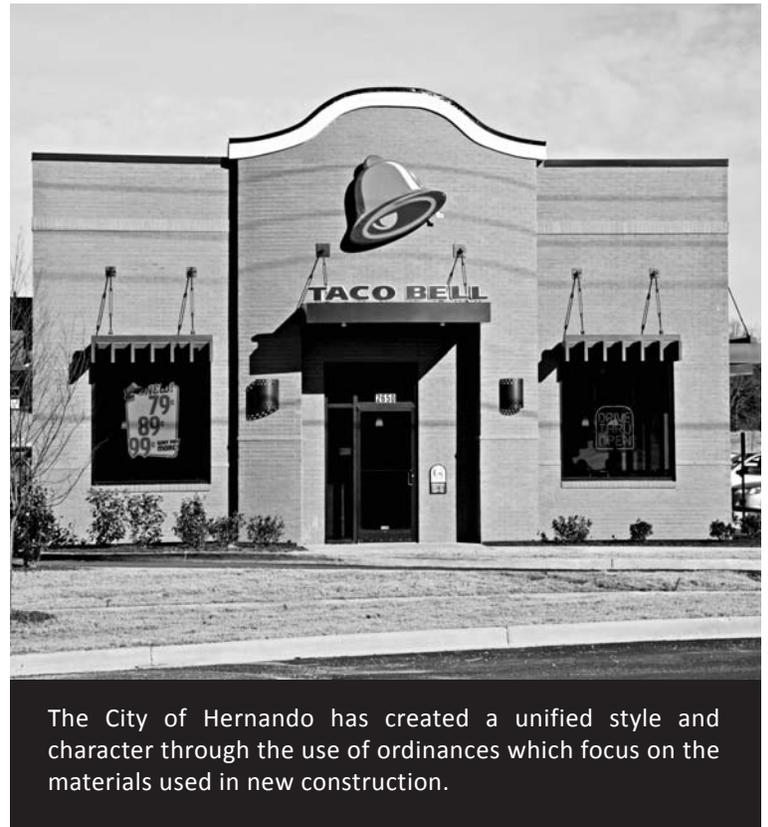
Like plans, ordinances should be revisited to evaluate whether or not they are achieving their intended effect. If the provisions of an ordinance are not accomplishing the goals and objectives of the plan they should be amended to do so. The administration of an ordinance may also reveal unintended consequences associated with ordinance, the plan, or both. This is not unusual. Planning is not an absolute science.

Provisions of a zoning ordinance that are in error, unclear, or inconsistent with other provisions of the ordinance should be amended. Similarly, the ordinance should be amended to reflect any changes to the comprehensive plan. In general, when changes are made to the plan it is very likely that changes to the ordinance will also be necessary.

## Test drives

Communities may be tempted to adopt a model ordinance, or replicate an ordinance from another jurisdiction, with little modification. While it is always a good idea to consider ordinances that have been tested, it is very important that the community in question develop and adopt an ordinance that reflects its own plan and conditions. Provisions that may be easily administered and enforced in one locale may not translate well to another place. Consultation with planning professionals is strongly recommended.

All ordinances should be given a “dry run” before they are adopted. Provisions should be tested using hypothetical development situations. Is the community able to reasonably administer the ordinance? Can the provisions be enforced? Will they result in the development goals and objectives – including the desired built landscape and development patterns – identified in the plan? What skills and human resources are needed to effectively implement the ordinance?



The City of Hernando has created a unified style and character through the use of ordinances which focus on the materials used in new construction.



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*Community Action Team*

<sup>1</sup> From Princeton Wordnet [www.wordnet.princeton.edu](http://www.wordnet.princeton.edu)

<sup>2</sup> It is from this court case that ordinances that establish zones to regulate development primarily by use and dimensional requirements are referred to as “Euclidean Zoning.”

<sup>3</sup> “Zoning regulations shall be made in accordance with a comprehensive plan, and designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings, and encouraging the most appropriate use of land throughout such municipality.” Section 17-1-9 of the Mississippi Code of 1972 [www.sos.state.ms.us/ed\\_pubs/mscode/](http://www.sos.state.ms.us/ed_pubs/mscode/)

<sup>4</sup> The New Merriam Webster Dictionary, 1989.

<sup>5</sup> Non-conforming uses are existing uses that do not conform to some aspect of the rules and regulations presently in force.

<sup>6</sup> In some cases zoning lines may cross a property in such a manner as to cause it to be contained within more than one zone (split-zoned).