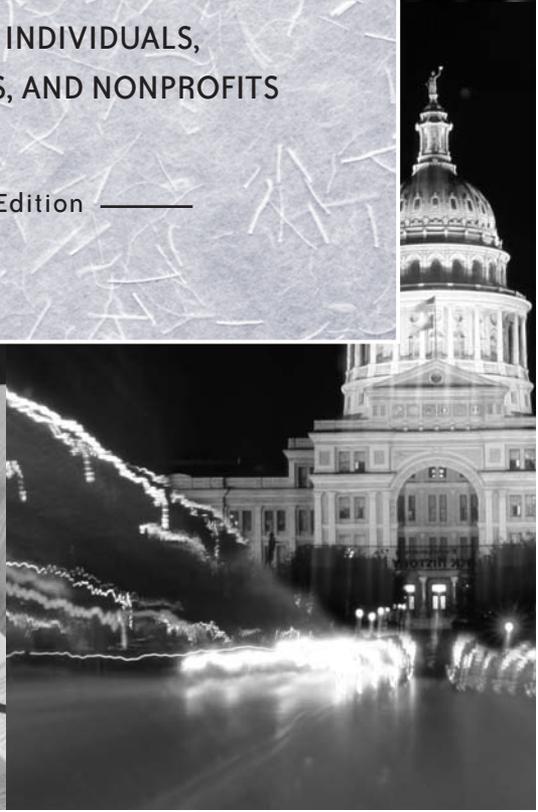




Zoning in Austin

A GUIDE FOR INDIVIDUALS,
SMALL BUSINESSES, AND NONPROFITS

———— 2009 Edition ————



Introduction

Zoning designates how land is used. It can be a complicated and daunting process. This guide is intended to orient you, a nonprofit or small business, with the basic process of zoning and what to expect if you need to request a zoning change. This guide was created by Texas C-BAR with the support of the Austin Bar Association's Real Estate Section.

Texas Community Building with Attorney Resources (Texas C-BAR) is the only initiative of its kind in Texas: the Texas RioGrande Legal Aid-sponsored project provides free business law services to nonprofits that serve low income persons through affordable housing and other services. Through direct services and a pro bono referral program, as well as legal workshops and an extensive online resource library, Texas C-BAR helps dismantle the legal barriers to low-income commercial and economic development.

Legal Assistance Microenterprises Project (LAMP) is a project of TRLA and Texas C-BAR. It provides free legal services, training and resources for qualified low-income microentrepreneurs to start or sustain their small business.

Texas RioGrande Legal Aid (TRLA), which sponsors Texas C-BAR and LAMP, provides free legal and related educational services to low-income and disadvantaged clients. Its 68-county service area includes the entire Texas-Mexico border and the southwestern third of the state.

How to Use This Guide

This guide is geared toward the owners, operators, and directors of small businesses and nonprofit organizations, as well as individual property owners in Austin, Texas. It is divided into three parts: (1) ZONING OVERVIEW, (2) REZONING APPLICATION, (3) REZONING PROCESS. Each part is organized into a series of frequently asked questions.

The Guide does not provide any specific advice related to specific situations. It should not be used as a substitute for, nor does it constitute, legal advice. Only an attorney who knows the details of your particular situation can provide the kind of advice you need.

The goal of this guide is to give you a basic roadmap to the legal issues you may find while you seek a zoning approval or change and to make you aware of your legal rights and responsibilities.

PART I: ZONING OVERVIEW

What is zoning?

Zoning determines how land may be used. Austin's Zoning Code designates land into residential, commercial, industrial, and civic areas—as well as regulates what can be done on each property. In Austin, zoning is the first step in any development process.¹

What are zoning restrictions?

Zoning ordinances tell property owners *what they can build* on their property. For example, some neighborhoods might be zoned for single-family residences, while others might allow for multi-family units or commercial space.

The Zoning Code also tells property owners *how they can use* their property. For example, a single-family home might not be permitted to operate a business, but a commercial district might allow small businesses such as grocery stores or restaurants.

On any given piece of property, a use may be permitted by law, permitted only under specific conditions, or not permitted at all. There may be additional restrictions outlined in the property's mortgage or deed. Be sure to research the deed or mortgage for old restrictions that may limit your use of the property.

What is the Development Assistance Center (DAC)?

The City of Austin Development Assistance Center (DAC) is your first stop for information on zoning and hard copies of development applications. DAC staff is available to answer your questions and provide initial project consultation. In addition, the DAC also conducts research, sells development maps, and oversees site plans. While the Neighborhood Planning and Zoning Department and the Watershed Protection and Development Review Department coordinate zoning in Austin, the DAC is your primary contact in navigating this process.

1. After getting zoning approval, applicants must also get subdivision (if you are subdividing a tract of land), site plan approval for multi-family, commercial, and industrial projects, and building permit approvals (in that order). Austin City Code § 25-1-61.

How do I know if my development plans comply with Austin's Zoning Code?

Check with the Development Assistance Center. To learn more about your property, visit the Center during drop-in hours, 9 a.m. to 12 p.m. on any work day, or call to set up an appointment: (512) 974-6370. The Center is located at:

One Texas Center, First Floor
505 Barton Springs Road
Austin, TX 78704

The City of Austin website also maintains public resources and applications on zoning. If you know what zoning district your property falls under, you can check to see if what you want to do is permitted. You can download a permitted use chart at <http://www.ci.austin.tx.us/development/> (scroll down to “The Development Process” > “Zoning” > “Zoning Use Districts Table”).

Make sure that you confirm your findings with the DAC, as there still may be restrictions (or “intended conditional overlays”) on a permitted use. For instance, there may be specific height or occupancy restrictions on a property, even if your intended use is allowed.

What if my plans are permitted?

If your plans for development are allowed under current zoning and this has been confirmed with the DAC, you can proceed with the development process.

If your development plans are permitted with restrictions (if there is a conditional overlay in your zoning district), you may first need to apply for a conditional use permit. The DAC can help you complete and submit this application.

What if my plans are NOT permitted?

If your development plans do not comply with the Zoning Code, you can:

Accept the circumstances and either choose another property or alter your own plans to make sure they comply.

Apply for rezoning to accommodate your plans. More detailed information about the rezoning process is provided in the next section.

PART II: REZONING APPLICATION

What does the rezoning process look like?

Getting a zoning change approved can be a lengthy process. The smoothest developments might take as little as three months, but more complicated ones can take six months to over a year. Here is an overview of the process:

1. Prepare and submit an application packet.
2. The Neighborhood Planning and Zoning Department staff reviews the application and submits a recommendation.
3. A Land Use Commission (either the Planning Commission or Zoning and Platting Commission) holds a public hearing on the application and then issues its recommendation.
4. The City Council holds another public hearing. It either approves or denies your rezoning request. This may be done at one or more meetings.

Before you begin the application process, it is strongly advised that you get in touch with the local neighborhood association, resident groups, and adjacent property owners. Coordinating with neighborhood groups will help make the entire process smoother for you. Should neighborhood groups support your request, they can offer invaluable support throughout the hearing process. Should they not support your request, early discussions and negotiations with them can help you understand how to design a project that reduces their concerns.

What is a neighborhood plan and future land use map?

Most neighborhoods maintain a neighborhood plan and/or a future land use map, which outlines future zoning plans. It is usually consistent with current zoning, but

there are some discrepancies. Before you can submit a rezoning application, you must make sure that your plans comply with your neighborhood's future land use map. The DAC can help you confirm this.

If it does not comply, you must seek a Neighborhood Plan Amendment before proceeding. This could take months because you can only file an application once a year—in either February or July, depending on your location. The application process is similar to a rezoning request. After your application is filed, it goes through at least two public hearings before a request is approved or denied. You will want to speak with a DAC planner before proceeding with a Neighborhood Plan Amendment.

Note: You cannot submit a rezoning application before a Neighborhood Plan Amendment application, but you may submit both applications at the same time. Make sure to plan for this in your timeline if you need an amendment. The only way to bypass this process might be to have your neighborhood planning team apply on your behalf.

Where do I pick up a rezoning application?

Applications can be found online at <http://www.ci.austin.tx.us/development/> (scroll down to “Application Packets” > “Zoning > “02-Zoning”). You may also pick up the application in person at the Intake Center of the One Texas Center, Fourth Floor, 505 Barton Springs Road, Austin, TX 78704. The Center is open any working day 7:45 a.m.-4:45 p.m. Only the property owner or authorized agent may submit an application.

What information does the application require?

The application will require the following components:

1. Complete Application Form—including current/proposed property uses, property description, owner information, applicant signature(s), etc.

2. Tax Maps—available at the Travis County Appraisal District at Walnut Creek Business Park, 8314 Cross Park Drive (U.S. 290 and Cross Park Drive), (512) 834-9317, open any working day 7:45 a.m. to 4:45 p.m. For an additional charge, tax maps can also be found at Map Sales, One Texas Center, First Floor, 505 Barton Springs Road.
3. Tax Certificate—available for a small fee at the County Tax Office, 5501 Airport Blvd.
4. Traffic Impact Analysis—may or may not be necessary. To find out, fill out the given form and bring to a Traffic Planner at the DAC *before* submitting application.
5. Application Fee
6. Submittal Checklist and Verification
7. Acknowledgment Form Concerning Subdivision Plat Note/Deed Restrictions—if you have not reviewed these documents, you will need to obtain them. Plat notes are kept at City Hall or the Courthouse; deed restrictions at the Courthouse.

Complete instructions can be found in the application packet.

How do I submit the application?

The application may NOT be submitted online or through the mail. Applications are accepted by appointment only at:

Intake Center, Fourth Floor
Watershed Protection and Development Review Department
One Texas Center
505 Barton Springs Road
Austin, TX 78704

To make your appointment, call (512) 974-2681 or (512) 974-2689. Your appointment will probably last around 20-30 minutes. A planner will enter your request and assign you to a case manager, who will be your primary contact throughout the rest of the process. You will also be given an invoice and pay the application fee that day.

PART III: REZONING PROCESS

What happens after I submit my application?

Neighborhood Planning and Zoning Department staff will make public its written report on your case no later than 28 calendar days after your application is submitted. As your case passes to the Land Use Commission and then the City Council for hearings, your assigned case manager will be your primary contact. He/she will coordinate your hearing date and be available to answer any questions or problems you may have during the rezoning process.

In rare cases, planning staff may suggest that you withdraw your application if it seems that your rezoning application will not only end in denial, but also work further against your favor. For instance, if your property is an isolated commercial plot within a single-family residential zone, suggesting the property for rezoning might push City Council to zone it back to single-family residential—rather than according to your request. In such a case, withdrawing your application might actually save you the hassle of going through a likely unsuccessful process. The DAC can help you gauge this possibility.

What are the Commission and City Council hearings?

Zoning requests are heard, first, by the Land Use Commission and then the City Council at public hearings.

At least six weeks after the staff report is released, a Land Use Commission (either the Planning or Zoning and Platting Commission) will conduct a public hearing and issue a recommendation on your case. The Commission will designate either a positive or negative recommendation, or they may not issue one at all. Under certain circumstances they might postpone a recommendation (perhaps in the event that not enough Commissioners are present). Though the Commission hearing is important

as it sets the stage for your Council hearing, its recommendation holds limited influence over the request's final outcome. Do not be discouraged if you get a negative recommendation. Of the same token, do not be overly confident with a positive recommendation. At worst, a postponement might delay your rezoning process further.

The City Council usually will hear your case several weeks later. This hearing follows an almost identical setup as the Commission hearing, but its outcome is much more important. Thus, you should treat the Commission hearing as valuable preparation for the Council hearing. The first hearing will introduce you to the hearing proceedings, as well as give you a sense of the opposition's argument, which you should try to incorporate in your Council presentation.

You may request a postponement at any time, should you need to finalize details or regroup your supporters before a recommendation is issued. Your request may or may not be granted.

Where are the hearings held?

The hearings are held in the Council chambers at City Hall at 301 West Second Street, Austin, TX 78701.

How should I prepare for a hearing?

Below is a suggested list of “dos” and “don'ts” to help you prepare for a hearing. Depending on the details of your application you may have to adjust this list or complete additional tasks to be better prepared for your hearing.

- **DO** meet with neighborhood associations and other groups (such as school officials, residents, etc.) to hear their concerns about your zoning request. At best, you might quell opposition and garner support for your case. Or, these discussions might help you hone your presentation to address specific concerns from the opposition. Set up meetings at least a couple of months in advance.

- **DO** identify contentious issues with local groups so that you can address them directly and objectively during the hearing. Also try to identify your opposition's vulnerabilities to better form your own argument.
- **DO** gather project consultants to speak on your behalf at the hearing. This includes engineers/architects and lawyers who can speak objectively about the project, as well as former clients, board members, or staff who can attest to your organization's services.
- **DO** acquire a traffic impact analysis (if applicable) and other necessary documentation for project approval.
- **DON'T** get involved in a petition war. Austin maintains complicated guidelines on what constitutes a valid petition, and it most likely will not help your case much anyway.

What will the hearings be like?

In general, the hearings allow time to hear from you and your supporters, the opposition, as well as rebuttal and questions. Here is a skeleton agenda:

1. SUPPORT

- a. 5 minutes for you (the applicant) to present.
- b. 3 minutes for each supporter you call in to speak on your behalf, if time is allotted for this. The governing body may or may not limit how many or how long these speakers talk. Councils often limit speakers to 12 minutes total.

2. OPPOSITION

- a. 5 minutes for the primary opposition to speak.
- b. 3 minutes for supporting speakers. Rules set forth for first round of supporting speakers will apply here.

3. REBUTTAL

- a. 2-3 minutes for you to respond to the concerns of the opposition and restate your case.

Commissioners or Council members may ask questions throughout the hearing, but these will not count against your time limits. Also remember that time limits are subject to change, and often time is not even allotted for supporting speakers. In general, the Commission only allows time for primary presenters, while the Council also allows supporting presenters to donate their time. You should come prepared for any of these situations and bring supporting presenters regardless.

What should I do at a hearing?

- **DO** treat the hearing as you would any important meeting or interview. Dress nicely, be prepared, and arrive on time. Remember to turn off your cell phone and do not talk during the session.
- **DO** keep your presentation clear and concise. You do not need to use up all of your 5 minutes, and if supporting speakers are allowed, you might be better off letting them speak on your clock.
- **DO** remain polite and acknowledge time limits. The Commission or Council could limit the number of supporters you have, but they might be more likely to let you go over time limits if you are respectful.
- **DON'T** let your presentation get repetitive. You should plan ahead of time what each of your speakers will address and in what order they will be speaking.
- **DON'T** bring in too many neighborhood residents. It is difficult to control what they will say, and they are more invested and thus susceptible to emotional neighborhood issues. Rely more on your professional consultants and staff members.
- **DO** keep your case as objective as possible, highlighting the practical (not personal) points of your development (traffic analysis, structural engineering, etc.). You want to eliminate any skepticism surrounding your project's progress.
- **DON'T** let your case degenerate into personal issues. That is counterproductive and makes your case less legitimate. If anything, let the opposition fall onto emotional ground.
- **DON'T** frame your plans as necessarily better or worse than existing conditions—such as with architectural renderings, etc. You want to avoid sparking

controversy over whether rezoning or new development will raise or lower property values.

- **DO** spend time preparing your rebuttal while the opposition is speaking. Take note of their specific concerns and, if you can, address each one in your rebuttal. You should summarize your earlier statements but also tailor your comments to the opposition.
- **DO** take advantage of the fact that you get to speak both first and last. The Council may choose to let the opposition also present a rebuttal, but in general, you will get to open and close your part of the hearing.

What are the possible outcomes of my City Council hearing?

There are four possible outcomes. The City Council may:

- A.** Approve your request for rezoning. You can proceed with the development process.
- B.** Approve your request with specifications. For instance, City Council may approve a rezoning request for a restaurant but could limit its hours of operation.
- C.** Deny your request. If this happens, you cannot make the same rezoning request on the same property for twelve months. You must reconsider your options, as the City of Austin does not have an appeals process.
- D.** Postpone your request to be decided at a later date. The Council must vote on your request on three readings. They may vote on all three readings at once, or they might lengthen the process by voting on them separately.

What's next?

Remember zoning is just the beginning of the process for properly developing a location for a new business or nonprofit organization in the City of Austin. You also may

need to obtain a site plan, and will definitely need building plans and a building permit, and, at the end of the development process, a Certificate of Occupancy. Many businesses also have to seek health department approval or a license specific to the industry, such as a childcare license. Some businesses may also be regulated by a state agency or required to get a state license, such as barbers and beauticians.

For more information about developing a new business in Austin, visit the Small Business Development Program at the One Texas Center, 505 Barton Springs Road, Thirteenth Floor, Austin, TX 78704 or call (512) 974-7800. The Program hosts classes and other resources about development in the City of Austin.

To apply for free legal assistance for income-eligible microentrepreneurs, contact LAMP at 1-800-369-9270 or (512) 374-2700. Visit <http://lamp.texasbar.org> or 4920 N. IH-35, Austin, Texas 78751.



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