AMENDING THE ZONING ORDINANCE

It is obvious that provision must be made for changing the regulations as conditions change or new conditions arise. Otherwise zoning would be a "strait-jacket" and a detriment to a community instead of an asset.


Experience has demonstrated that even the best zoning ordinances do become out of date. Periodic revision is essential if the ordinance is to establish and maintain a rational land use pattern. But most amendments are not comprehensive ordinance revisions proposed by planning agencies after reconsideration of the city's plan. The typical amendment is initiated by a property owner who would like to use his land in a way not permitted by the regulations. Officials in a number of cities have expressed dissatisfaction with present methods of processing this type of amendment.

The criticisms most frequently described by subscribers to Planning Advisory Service relate to the inefficiency of the amending process itself. Property owners may grow impatient during the several months it sometimes takes to determine the fate of a zone change application. Concern has been expressed over the number of public hearings at which neighbors must sometimes appear in order to protect their interest in the status quo. By far the most frequent complaint, however, is that zone change requests take up an amount of time of councils and planning agencies that is quite out of proportion to the importance of the requests. Plan commissions directed to consider amendments find that they are spending almost all of their time on zoning.

This concern over inefficiency is sometimes coupled with other complaints that are still more serious. Commentators have long been aware that amendments can easily be arbitrary. In 1929, for example, Ernst Freund stated that the "'comprehensive plan' [is] one of the valuable features of zoning laws from the point of view of equity; obviously the benefit of comprehensiveness is lost in the amending process."¹ Though individually proposed


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amendments can, of course, conform to a comprehensive plan, far too many are, in fact, adopted without sufficient awareness or consideration of planning principles. Evaluation of proposed changes is often dominated by politics and personalities. And far too frequently the decisions are downright unfair.

Changes in procedure clearly cannot solve all these problems. For example, it is unfortunately true that several months may be needed for the planning agency to recommend and the council to decide upon the most intelligent course of action. Procedural safeguards that increase the likelihood of fair play are also likely to increase the processing time required. It also seems clear that no fair procedure can dry up a flood of requests to amend an unreasonable or obsolete ordinance. And so far as we have heard, no one has devised any procedure -- in zoning or elsewhere -- that produces consistently rational governmental decisions.

Procedural devices, however, have long been suggested as remedies for some problems. A 1931 Department of Commerce pamphlet, The Preparation of Zoning Ordinances, states that a city may want to "protect itself against applications for changes of small plots, or impulsive applications of one or two individuals, or repetitive applications." Some of the relatively minor modifications of common procedure now being used in some cities and considered in others are designed to cope with these and similar problems. Examples include required minimum land areas for each rezoning application, required waiting periods between successive applications for rezoning of the same property, and high fees imposed in an attempt to cut down the number of applications.

A few subscribers have suggest more radical changes. We were recently asked for comments on proposed legislation that would allow map changes to be made by the planning commission. This, too, is not a new idea. A report by Robert Whitten in Model Laws for Planning Cities, Counties, and States, published in 1935 as Volume VII of the Harvard City Planning Studies, suggests:

The council in establishing zoning and other planning regulations should authorize the planning commission to make changes in zoning maps, official street maps, or land development plans. These powers will in general be much more intelligently and satisfactorily exercised by the planning commission than by the council.

Such a drastic change is not likely to be of serious interest in most of the cities that are encountering problems with amendments. A few, however, may be interested in exploring the idea. The underlying policies that must be considered in evaluating both major and minor procedural changes seem to be much the same.

THE STATUTORY FRAMEWORK

The Standard State Zoning Enabling Act, on which the enabling legislation of the majority of states is generally modeled, places few restrictions on local amendment procedure:
Such regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified, or repealed. In case, however, of a protest against such change, signed by the owners of 20 per cent or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending ___ feet therefrom, or of those directly opposite thereto extending ___ feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths of all the members of the legislative body of such municipality. The provisions of the previous section relative to public hearings and official notice shall apply equally to all changes or amendments.

The notice and hearing requirements to which reference is made state:

However, no such regulation, restriction, or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least 15 days' notice of the time and place of such hearing shall be published in an official paper, or a paper of general circulation, in such municipality.

As would be expected, there are many deviations from this text, even in statutes that generally follow it. For example, some statutes specify that the legislative body must hold the required hearing, while others specifically authorize the planning commission or some other body to do so. And some, instead of merely requiring that no amendment become effective without a public hearing, affirmatively require that a public hearing be held on every amendment petition submitted in proper form. Others even require a vote by the legislative body on each such petition.

Perhaps most important of the additional provisions are requirements that the planning commission be given a voice in the amending process. In about one-third of the states, cities that have planning commissions are required by the enabling legislation to submit proposed amendments to the commission for recommendation before the amendments can become effective. (Of course, modern ordinances in other states ordinarily contain a similar requirement.)

In a few states, legislation gives the planning commission unusual power in the consideration of amendments. In Tennessee, for example, an amendment disapproved by the planning commission can be adopted only by a majority of the entire membership of the legislative body. Other examples include Maine and New Jersey, in which a two-thirds vote of the legislative body is required to override planning commission disapproval, and Indiana, where a three-fourths vote of the city council is required.

Recent Arkansas legislation gives the planning commission special power by providing that amendments may be adopted in only one prescribed manner. The first required step is a public hearing by the planning commission, following which the proposed ordinance may be approved by the commission in either the original or a modified form. The commission then certifies the ordinance to the legislative body.

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The legislative body may return the plan or plans and recommended ordinances and regulations to the planning commission for further study or re-certification, or, by a majority vote of the entire membership, shall by ordinance or resolution adopt plans and recommended ordinances or regulations submitted by the planning commission.

No other procedure, presumably including initiation of amendments by the legislative body, is authorized.

WHAT IS AN AMENDMENT?

An amendment may be defined as a zoning change made by the legislative body while acting in its legislative capacity. The effect of zoning on any particular piece of property may be altered by administrative bodies, too. Thus, boards of appeals are usually given the power to grant variances. Planning commissions, boards of appeals, and occasionally even zoning administrators may be authorized to issue special use permits. But only the legislative body may make amendments. Unfortunately for simplicity of classification, the legislative body sometimes also makes other decisions relevant to zoning that are not amendments. In some states, legislative bodies may grant variances. Much more frequently, legislative bodies retain the power to pass on applications for special use permits. But since these decisions are made within the framework of the zoning ordinance as previously adopted rather than affecting changes in it, they are often said to be made by the legislative body in an administrative capacity rather than in a legislative one.

We are accustomed to thinking of a zoning amendment as a change in the text of the ordinance or in the boundaries as shown on the zoning map. This is because, with only rare exceptions, every zoning regulation and zone boundary line is incorporated into the ordinance that is adopted by the legislative body. And any change in the ordinance is almost invariably made by the legislative body that enacted it. Few officials have expressed any interest in limiting this area of legislative jurisdiction by empowering administrative bodies to make changes. Those who have, though, can properly point out that the present extent of legislative jurisdiction is not inevitable. The question remains whether those who would restrict it can find an acceptable basis for assigning some of the decisions currently made by city councils to administrative bodies instead.

SHOULD THE PLANNING AGENCY BE ABLE TO CHANGE ZONING REGULATIONS?

Despite the volume and variety of building subject to regulation, traditional zoning ordinances provide administrative bodies few occasions for the exercise of discretion prior to issuance of a building permit. Unlike subdivision controls, which give planning agencies some discretion in applying subdivision standards to particular pieces of property, zoning is ordinarily self-executing. In theory anyway, the zoning ordinance contains a set of
precise rules drafted in such a way that development is ordinarily possible without the exercise of any discretion in individual cases by enforcement officials.

It is not surprising that zoning's administrative realm should have been so restricted. At the federal and state levels, the decision to impose intricate regulations on many complicated and differing activities virtually required delegation of discretionary power to administrators. On the local level, however, it is usually possible to impose even relatively complicated regulations without such delegation. And most early zoning was not complicated anyway.

But there are still other reasons why zoning gave little power to administrators. A governmental tradition -- particularly strong at the local level -- holds any avoidable delegation undesirable, since it removes decision making one step further from the people governed. This attitude has been (and still is in many communities) particularly strong with regard to land use regulations. Many people still accept controls over the use of property only grudgingly. Those who might oppose controls altogether under other circumstances rely on the accessibility of local elected representatives to assure that regulations will not be too strict.

Perhaps most important of all in restricting administrative power has been the fact that members of administrative bodies -- planning commissions and boards of appeals -- are not usually experts. Though some members of these bodies have a great deal of experience in handling zoning problems, members are not usually chosen because of special knowledge or training. As a result, these bodies often have no greater competence to deal with zoning problems than do elected representatives. When decisions are made by them, the inevitable loss of direct accountability to the electorate is seldom even partially compensated for by expert, professional administration.

Despite the large number of matters handled directly by the legislative body, there is ample precedent for allowing administrative bodies to make some important zoning decisions. Variances and exceptions are the best examples. Why don't most legislative bodies handle these? Partly as a matter of convenience. The questions presented by an application for a variance are clearly not legislative. The board of appeals does not decide for itself the desirable yard width each time a variation of that width is requested. It merely applies in particular cases a policy that the council has previously adopted. Despite the fact that variances and exceptions are not fundamental legislative decisions, it would be possible for the council to handle them. But many councils find plenty of work just making genuine legislative

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2 In practice, of course, many variances are granted by boards of appeals without regard for legislatively imposed limitations such as unnecessary hardship and compatibility of the proposed use with the district in which it is located. It has been suggested that half of all variances granted are illegal. Many of them permit land uses that could properly be authorized only by an amendment to the ordinance. This abuse of the variance power, however, should not be allowed to obscure the real and important distinctions between variances and amendments.
decisions, which cannot be delegated. It is thus convenient to relinquish nonlegislative exceptions and variances to other bodies.

There is also a second reason that variances and exceptions are not usually handled by the council. Certain decisions -- and variances are among them -- are not properly in the political sphere. Politics is not only irrelevant in reaching a decision on a variance but also can do great harm if not carefully excluded. The nearly universal condemnation of the legislative variance is in part an assertion that a legislative body is less likely than a nonlegislative one to stick closely to the relevant issues raised when a variance is requested. The administrative body, in other words, is just the more competent of the two to handle this particular type of problem.  

Acknowledging that nonlegislative bodies are competent to make some zoning decisions does not imply that they should make the decisions now handled as amendments by the legislative body. In fact, it usually seems that the distinction between amendments and all the miscellaneous variances and exceptions and special permits is one of the sharper distinctions we have in zoning. In most communities, that distinction remains sharp; variances and an occasional special exception are still the only instances of discretionary zoning decisions made by nonelected bodies. In many other communities, the parvenu special permit is becoming increasingly common, and with it the idea of administrative discretion is gradually becoming respectable in zoning. And the conditions that gave rise to the special permit are also causing some changes in the amending process in a few cities. It is possible to find situations -- unusual, perhaps, but not unimportant -- in which the distinction between amendments and the other procedural devices is not so distinct as we usually think it is.

The traditional zoning ordinance establishes relatively few zones and allows a number of compatible land uses in each one. Unfortunately, many perfectly worthwhile uses are not especially compatible with the uses permitted in any of the usual districts or at least are not compatible except under special conditions and with special safeguards. The problem posed by these uses has become more serious because of the extension of zoning to agricultural and fringe areas in which the ultimate development pattern is not clear. Rightly or wrongly, many communities have concluded that the only way to handle the placement of some of these unusual uses in these areas is to require a governmental decision each time one of them is to be established.

Most often the required decision is an administrative one to grant or deny a special permit. Suppose, for example, that an ordinance authorizes the issuance of special permits for airports (or cemeteries or golf courses or even large-scale residential developments) in residential zones. In providing for the issuance of such permits, the legislative body, in effect, determines in advance that airports are sometimes (but only sometimes) permissible in this district. The legislative body having once determined this, the body that issues the permit then merely decides whether each particular

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3 Some of the disadvantages of having variances and exceptions adopted as ordinances by the legislative body are discussed by Huber E. Smutz in "Is Zoning Wagging the Dog?" in Planning 1955 (American Society of Planning Officials, Chicago: 1956), p. 102.
instance is one of the appropriate times. And in making its decisions on each application, the permit issuing body is at least partially governed by standards established in the ordinance itself.

An amendment is sometimes relied upon to accomplish much the same purpose as a special permit. At the time the legislative body establishes zoning in most undeveloped areas, it knows that in all likelihood there will ultimately be some business areas within them. It may know of several locations that would probably be satisfactory for business zones. But for a variety of reasons –– experience with overzoning for business in the past, perhaps, or a desire to encourage construction of integrated shopping centers –– the legislative body is sometimes hesitant to establish business zones in the locations in which a shopping center might ultimately prove desirable. One solution that has been tried for this problem is to zone practically all the undeveloped area residential except for existing business districts. The result looks like traditional zoning, but it is not. The intention of the council in passing the ordinance is to require an additional governmental decision before each shopping center is permitted in the undeveloped, largely residential area.

By rezoning to a specialized shopping center district, the city in this example makes a decision that is almost identical with the decision to issue a special use permit for an airport. The important difference, other than the difference between an airport and a shopping center, is that the decision to issue the permit is presumably governed by preordained standards, while the amendment need not be. (It seems arguable that once the legislative body has decided to require a further legislative decision prior to allowing particular land uses to be established it should at the same time establish standards to guide the later decision. And, in fact, such standards are found in several ordinances that establish minimum requirements for certain districts. For example, "each B-3 district shall contain at least six acres." Unlike the standards governing special permits, however, these should be thought of as guides to future councils rather than binding directives; one council cannot restrict the discretion of its successors in making legislative changes.)

It is not necessary to rely on this combination of examples to raise a few questions about the eternal validity of our definition of the legislative function. Even one who concludes that map and text changes are naturally legislative might be willing to concede that the typical amendment reclassifying land is unlike many other kinds of legislation. Most legislation (though not all) establishes general rules that apply uniformly to unnamed individuals. Even most legitimate zoning amendments, on the other hand, reclassify a specified block of land belonging usually to one or a few owners.

Suppose a state legislature or city council did conclude that our customary distinction between legislative and administrative decisions is based at least in part on the form of our ordinances instead of on the substance of the decisions to be made in each case. If, because of the heavy demands on its time, it did want to limit the decisions made by the council to those that are really legislative, what criterion could it use? Though there does not seem to be any completely satisfactory definition of the legislative function, one useful guide is suggested by Kenneth Culp Davis in his treatise.

The legislative process is especially qualified and the administrative process is especially unfit for the determination of major policies that depend more upon emotional bent and political instincts than upon investigation, hearing, and analysis.

On the other hand, he suggests (on page 13) that legislative bodies are "ill-suited for handling masses of detail, or for applying to shifting and continuing problems the ideas supplied by . . . professional advisers."

Accepting the idea that only major policies that depend primarily on emotion and politics for decision are irreducibly legislative, it still seems clear that some map changes are legislative rather than technical and administrative matters. The establishment of an entirely new industrial zone seems to be an example. And in the case of text changes, the evidence seems even clearer. The creation of any new district must be regarded as legislative. On a practical level, decisions of this kind are intimately tied up with other municipal problems and policies that the legislative body also handles. The legislative body would just not be doing its duty if it attempted to delegate these major decisions. (We are deliberately omitting discussion of the grave legal difficulties that would presumably be raised in most states were any of this attempted.)

There are, however, a few jurisdictions in which zoning changes are handled by nonlegislative bodies. Under general legislation in Connecticut, apparently in part because of the unwieldiness of handling amendments by town meeting, zoning regulations and changes must be made by a zoning commission. In Boston, some zone boundary line alterations may be made by the board of appeals. In New York City, the charter grants power to amend the zoning resolution to the planning commission, subject to modification or disapproval by the legislative body. And in Macon-Bibb County, Georgia, the state constitution establishes an unusual zoning system which includes giving full zoning power to a planning and zoning commission.

Though some changes in zoning seem quite clearly to be legislative matters, others do seem both minor and technical in nature. It is possible to imagine a system in which the legislative body adopts a general plan, describing both the objectives and the general nature of the regulations to be promulgated. The agency would draw up the detailed regulations, returning to the legislative body only when a proposed change of regulation would conflict with the general plan. On a small scale, councils might follow this system within the established zoning ordinance form by authorizing an administrative body to make rules that interpret and supplement the ordinance. The clearest need for such rules seems to be presented when a land use is not included on the

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4 The Boston system is enthusiastically described in the 1935 report by Robert Whitten, cited previously. Recent court cases indicate that the system is still in effect.
permitted list in any zoning district. If some general standards were provided, it might be possible to permit additional uses to be added by rule.\(^5\)

Another device that might be used to transfer some legislative decisions to administrators is suggested by the familiar boundary exception permitting extension of zones when the boundary line splits a lot. The same device may be suggested also by transitional zoning, which is discussed in Planning Advisory Service Information Report No. 34, The Special District -- A New Zoning Development, and No. 40, Exceptions and Variances in Zoning. Many current amendment requests are for addition of one or two vacant lots in a residence zone to the adjacent business zone. Some transitional zoning provisions in effect permit a few commercial uses (most often parking lots) in neighboring residential zones as special exceptions. In this respect, councils have decided that the precision of the zone boundary line is really a little artificial and have recognized the existence of a border area. From this small beginning, a council might go further and conclude that the location of all zone boundary lines should be regarded as approximate. With some limitations (one of which would undoubtedly be a maximum distance from the line drawn on the map), the council might permit relatively minute boundary changes to be made by the planning agency.

On balance, however, there seem to be several cogent objections to transferring any significant portion of changes in zoning to the planning agency. Theoretically, the great difficulty seems to be the drawing of a satisfactory line between legislative and administrative power. Once it is acknowledged that some zoning decisions should be made by the legislative body, such a line must be drawn. Admittedly, the line is not completely clear even at present, especially because so many legislative bodies continue to perform functions that are probably really administrative, in addition to their legislative jobs. But it is difficult to suggest an alternative that can be regarded as wholly satisfactory.

Two other objections also seem decisive. The first of these is that rezoning even one lot next to a business zone is frequently an emotion packed local issue. Particularly in small cities, elected representatives may properly believe that it is their job to decide these questions, even though major policy is hardly involved. The second objection, which has already been mentioned, is the usual lack of special competence of the administrators. Assuming that many zone changes could be intelligently granted or denied on technical grounds, there is no special assurance in many cities today that the planning commission or other agency would be any more likely than the legislature to decide the question on such grounds. There does seem to be a gradual development toward genuine professionalism among those who administer

\(^5\)There is precedent for arrangements similar to this one but that, nevertheless, provide for formal approval by the council. Gordon and Brysis N. Whitnall, Los Angeles consultants, have recommended to several cities a provision that authorizes the planning commission to interpret the ordinance when questions arise as to the classification of new uses. The interpretation does not govern, however, until it has been approved by the council. The full provision and a form suggested for use in conjunction with it are reprinted in the appendix.
zoning in some cities. If professionalism grows and if zoning continues to become more complex, delegation of more power to administrators should become more probable. For the present, however, it seems that a legislative body should be aware of the danger that it might only substitute the administrators' emotional bent for its own. The council facing many amendment requests must either reconcile itself to spending a lot of time on them or concentrate on procedural modifications that may make the amending process operate with increased efficiency as well as fairness.

**AMENDMENT PROCEDURE**

The material that follows on amendment procedure is not presented as the final word on the subject. In particular, reference is made to two other publications. One of these is Revision of Procedure for Processing Zone Change Cases by William B. Rogers, issued in 1954 as a Planning Advisory Service special report. The other is A Model Procedure for the Administration of Zoning Regulations by Robert M. Leary, published in 1958 by the Urban Land Institute, Washington, D. C.

This section discusses some of the many different provisions on amendment procedures that are found in relatively recent ordinances. It also presents some of the ideas and views of a number of practitioners in the field who responded to a questionnaire sent out by Planning Advisory Service.

Each property owner usually has a particularly direct concern with a zoning amendment applying to his own or nearby property that the unnamed individual affected by ordinary legislation does not feel. The 20 per cent protest requirement in the Standard State Zoning Enabling Act recognized the interest of each property owner in the classification of his own and neighboring land. Amendment procedures generally recognize his unusual interest in changes, too. But his interest is, of course, not the only one to be considered.

Abuses of established procedures are sometimes blamed for the fact that so much of the time of officials and councilmen is needed to handle amendment requests. In such cases, cities face the question of whether procedural modifications can prevent abuses without at the same time removing the protection that should be given to each owner's real interests.

**Who May Initiate Amendments?**

The driving force behind a proposal to amend the zoning ordinance can come from a council member, from the planning agency, or from private citizens. It is not always possible, however, for each of the three to initiate legislative consideration of a proposal. Initiation of proposed legislation is ordinarily the prerogative of members of the legislative body. In some communities, this general rule is applied to the initiation of zoning amendments too.

Many ordinances, however, include special provisions for amendments proposed by the planning commission. Since the commission is ordinarily given primary
responsibility for periodic revision of the zoning ordinance, these provisions set up a form that guarantees consideration of the commission's periodic proposals. In some communities, the commission is given the right to actually initiate amendment. In others it may only petition. The result is usually much the same. In the latter case, however, the ordinance should not require that the commission reconsider proposals it has made to the legislative body in the first place. Thus, for example, the Elkhart, Indiana ordinance provides that:

... any proposed ... amendment ... not originating from petition of the Plan Commission shall be referred to the Plan Commission for consideration and report before any final action is taken. /Emphasis added/

But most amendments are proposed by private citizens, so some system is needed that assures consideration of their proposals. If no provision is made in addition to those already mentioned, individuals can only suggest and request that a change be considered. Any citizen, whether or not he is an owner of affected property, can, of course, petition his representatives or, where appropriate, the commission. Many cities, however, have concluded that this is not enough and have given private citizens the additional right to have a public hearing on amendments they propose. Occasionally, citizens are even entitled to have the legislative body vote on every such proposal.

These additional rights may be restricted in many ways. On the theory that property owners have a peculiar interest in amendments that affect their land, councils sometimes accord these rights only to such owners. In some cases, the owner of any of the property that would be included in the change may petition. The Los Angeles ordinance (1955) provides, for example:

A proposed change of zone may be initiated by the Commission or City Council, or by a verified application by one or more of the owners or lessees of property within the area proposed to be changed. ... .

A common provision, however, requires that the petition be signed by the owners of at least 50 per cent of the area to be reclassified. For example, the New Orleans ordinance (1957) provides that amendments may be initiated

... On petition by property owners, by filing with the Council through the City Planning Commission an attested petition in writing which conforms to the standards and requirements of said City Planning Commission ... provided that no petition for a change in the classification of property shall be considered or acted upon unless such petition is duly signed and acknowledged by the owners ... of not less than fifty per cent of the area of the land for which a change of classification is requested. ... .

In addition to signatures of property owners within the area to be reclassified, some ordinances require that petitions include signatures of owners of surrounding property. For example, Davenport, Iowa (1958) requires that the petition shall be signed ... also by owners of fifty per cent...
of the area . . . lying outside of said tract, but within two hundred feet . . .

Requirements that more than one owner join in the petition are likely to cut down the number of requests for rezoning. Conceivably, the requests can be justified as recognizing the peculiar interest of all affected owners. It is difficult, though, to see why this interest should prevent a proposal from even being considered. (The right to have a legislator propose an amendment often means little if nearly all changes are in fact started by petition. Thus denial of the right to submit a formal petition may in effect prevent consideration of the proposal.) Squelching suggestions for change hardly seems to be a satisfactory way of reducing the time spent on amendment requests.

Still another possible restriction, commonly found in California ordinances, permits owners to initiate map changes but not text changes. Petaluma, California (1955), for example, provides that text changes may be made by the council without public hearings or other unusual procedure. Boundary changes on the other hand, may be initiated by resolution of the council or planning commission or by petition of property owners. This type of provision is consistent with the idea that the reason for giving special consideration to petitions is the unusual interest of property owners in reclassifications of their own property. As a practical matter, however, the owner's interest may be as great in obtaining a text change that adds, say, the sale of water softeners to the list of permitted uses in his district.

In order to make clear that the formal petition, with its accompanying restrictions, is not the only way to secure consideration for a proposed amendment, a few ordinances make additional provisions. Spokane County, Washington (1958) provides:

Any citizen of Spokane County or owner of property in Spokane County may appear before the Planning Commission and request the Planning Commission to initiate action to change the zoning map. The Planning Commission shall give due consideration to any and all such requests and if it deems advisable may hold a formal public hearing . . .

Such a provision is probably only a statement of the practice in many communities. But so long as the holding of a public hearing is clearly optional, this is probably a desirable way to make clear that the citizen not able to make a formal petition may nevertheless present his ideas.

A few communities have gone so far as to place essentially no limits on the right to propose amendments. Greensboro, North Carolina (1958), though requiring two public hearings on every proposal, provides that "a proposal to amend . . . may be submitted by any person who resides within the zoning jurisdiction of the City of Greensboro. . . ." And Denver (1957) allows most types of amendments to be initiated "by any person, firm or corporation filing an application therefor with the Department of Zoning Administration." So long as this type of provision works well without consuming too much "official" time, it is perhaps the most desirable of all. It would probably not be appropriate, though, in those communities already concerned about the amount of time spent evaluating unwarranted amendment proposals.
Conditions on Initiation

An individual entitled to petition for a zoning amendment must often comply with certain additional formal requirements. Perhaps the most important of these is the requirement that the petition be in a form specified by the planning commission. A few examples of forms useful in connection with the amending process are included in the appendix. A number of others are included in Planning Advisory Service Information Report No. 33, Forms for Zoning Administration. It is common to require that the proponent submit a map of the land to be rezoned and of surrounding territory, a list of the owners of this affected property, as well as the arguments offered in support of the amendment.

It is also common to require a detailed description of the development proposed if rezoning is granted. Such a description may, however, lead council and commission members into the common error of thinking that they are rezoning for a single project rather than for every use permitted in the district. Lulled by descriptions of a one-story watch factory with beautifully landscaped lawns, the council may grant rezoning that permits a wide variety of industrial uses. If financing for the watch factory proves unobtainable or if the plan existed only in the imagination of the proponent, the council may have ample cause to regret its decision. Rezoning merely places property in a different district, and the council cannot exclude any of the uses listed in the ordinance as permitted in that district.

The individual who petitions for an amendment is often required to pay a fee in order to cover the city's costs. Where fees are charged, they range from $5 or $10 in many cities to the more than $400 reportedly charged by the new city of Paramount, California. Paramount's costs are unusually high, partly because the city has temporarily arranged for amendments to be processed by the county instead of doing the processing itself.

The most usual fee seems to be somewhere between $25 and $50. Examples of the many cities charging $25 are Louisville, Kentucky; Colorado Springs, Colorado; and Youngstown, Ohio. Among the jurisdictions charging $50 are Montgomery County, Maryland; Arlington, Virginia; Modesto and Sacramento, California; Clarkstown, New York; and Seattle. Some examples of higher fees include Petaluma, California ($60) and Palm Springs and Cypress, California ($75). One hundred dollars is charged by Lake County, Illinois and also by Santa Clara County, California when petitions are filed with the planning commission.

A few cities determine the fee by the size of the area to be reclassified. El Monte, California charges $50 plus $10 a lot. Atlanta, Georgia charges $15 per parcel, and New Orleans charges $5 per acre, with a minimum of $25 and a maximum of $200. Los Angeles charges $75 for the first block or portion thereof and $10 for each additional one.

Planning Advisory Service recently asked officials in a number of cities whether they had made an estimate of the costs of processing each amendment. In almost every case in which such estimates had been made, the cost was more than the fee charged. In most cases it was substantially more, though the cost estimates ranged from as little as $28 to more than $150. In replying to the

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questionnaire, officials in a few cities said that they had raised fees in an attempt to cut down the number of amendment requests. The raise was considered successful in accomplishing this objective in only about half of the cities, however.

But is it proper to require individual proponents of amendments to pay fees? Some cities, of which Cleveland and Cincinnati are examples, do not do so. Nor do a number of other cities in which amendments are initiated as other legislation is.

It can be argued that charging a fee is inconsistent with the legislative nature of an amendment and confuses a request for an amendment with an application for a private license. In amending the ordinance, it is pointed out, the city is not granting a privilege; it is presumably exercising its police power in a more equitable and intelligent manner.

Perhaps, however, the fee is justifiable on the ground that the special petition procedure ordinarily guarantees some form of public hearing (thus incurring expenses for notice and evaluation by the city) without the possibility of any official dismissing even the most frivolous request. If the city grants this privilege of mandatory consideration in addition to usual legislative methods of initiation, it may be justified in recovering its expenses.

It seems clear, however, that charges should never exceed the expense of processing an average amendment. Since some amendments are needed to correct genuine inequities in the existing regulatory scheme, and since the city benefits by having such land reclassified into an appropriate zone, there also seem to be substantial grounds for the argument that the city should bear a share of the cost.

Quite a number of cities require that a property owner wait a certain period after denial of a rezoning request before initiating the same request again. This, too, is presumably justifiable only on the theory that it is the special petition and hearing right that is limited, without curtailing the more fundamental right to ask the legislature for a change. This type of provision may provide considerable help for cities in which a few landowners persist in bringing the same request repeatedly before the commission. At the same time, it does not penalize other amendment proponents the way that high fees do. Sacramento, California (1956) provides in its ordinance:

If a petition for rezoning is denied by either the Planning Commission or the City Council, another petition for a change to the same zone district shall not be filed within a period of one year from the date of denial, except upon the initiation of the City Council, or with the permission of or upon the initiation by the Planning Commission after a showing of a change of circumstances which would warrant a renewal.

The Oakland, California ordinance (1954) provides:

When the City Council shall have denied any application for the change of any district in which any property is located,
the City Clerk shall not thereafter accept any other application for the same change of district affecting the same property, or any portion thereof, until the expiration of one year from the date of such previous denial.

Among other jurisdictions with one-year waiting period requirements are Atlanta-Fulton County, Georgia; Rockville, Maryland; Seattle; Kalamazoo, Michigan; Kansas City, Missouri; Arlington, Virginia; and San Francisco and San Mateo, California. Pomona, California prescribes a six-month wait. Eighteen-month waiting periods are required in Montgomery and Baltimore Counties, Maryland. The Baltimore County requirement was recently upheld in *Tyril v. Baltimore County, 137 A.2d 156, 10 ZONING DIGEST 123 (Md. 1957)*. Interpreting a provision barring reapplication for either reclassification or for an exception, the court determined that a prior request for heavy industrial zoning barred a later application for a special exception that would have permitted the property to be used as a cemetery.

Connecticut legislation explicitly permits a 12-month delay of reconsideration. And in Massachusetts, a statute establishes a two-year waiting period and goes so far as to forbid reconsideration by the legislative body within that period except under specified circumstances.

After acceptance of this section . . . no proposed ordinance . . . making a change in any existing zoning ordinance . . . which has been unfavorably acted upon by a city council or town meeting, shall be considered on its merits . . . within two years after the date of such unfavorable action unless the adoption . . . is recommended in the final report of the planning board or selectmen . . .

Various methods have been attempted to discourage requests for spot zoning. The *Sacramento* ordinance (1956) places the following limitation on the right of property owners to initiate changes by petition:

No petition by an interested property owner or owners or authorized agents of such owners shall be accepted by the City Planning Commission or City Council for rezoning of any land to a less restricted zone unless said land is subject to or directly across a street or alley from property which is already zoned in the same or less restricted zone as that to which said property is proposed to be rezoned.

Other rezoning proposals can be initiated only by the commission or council. Still another condition sometimes imposed relates to the size of the area to be reclassified. For example, in Atlanta, officials do not accept petitions for reclassification of less than one acre except when the proposed classification is the same as that of adjoining property. With the same exception, Elkhart, Indiana and Chicago require at least 100 feet of frontage and at least 10,000 square feet of area. The effectiveness of this type of requirement seems limited. Any specified area size small enough to permit every legitimate amendment will also permit most spot zone requests.

Potentially more effective are minimum district sizes. In Denver, for ex-
ample, B-2 neighborhood business districts must contain at least 70,000 square feet, and several other types of districts must contain at least eight acres. The ordinance also provides that certain types of districts may not abut directly upon single-family residence districts unless the boundary line coincides with the center line of a street. Minimum district size provisions are also found in the ordinances of Bismarck, North Dakota and Pomona, California. As a matter of form, it seems clear that these limitations should apply only to amendments proposed by individuals and possibly to those proposed by the planning commission. Ordinance provisions purporting to forbid future councils to amend the ordinance in specified ways are ordinarily ineffective, however desirable they may be as statements of general policy.

After Initiation

"Assuming state legislation permitted it, would you favor regulations designed to permit rejection of some proposals without a public hearing?" Nearly all of those who responded to the Planning Advisory Service questionnaire said they would not favor such regulations. Even those who liked the idea in principle were concerned about the difficulty of carefully defining the types of proposals that could be rejected. Opportunities for abuse might be considerable. Council members who have come to rely on the petitioning procedure as the source of most (and in some cities all) amendments might rightfully object to what could in effect amount to denial of access to the legislators.

A few jurisdictions, however, have made the public hearing optional and report that the system works smoothly. For example, the Kettering, Ohio ordinance (1956) provides:

Before an application for a change of district boundaries or classification of property may be submitted to the Planning Commission, a letter shall be submitted to the Planning Commission succinctly stating the proposal and the merits of the same. The Planning Commission shall at its next regular meeting following the submission of the application letter, review the same in the presence of the applicant. If the Commission finds the proposal sufficiently meritorious to be considered at a public hearing, it shall grant permission to the applicant to file a formal application in conformance with the provision contained in this Zoning Ordinance. If the Commission does not find sufficient merit in the proposal, then the case shall be dismissed and the applicant shall have no right to file a formal application.

If the right to file a formal petition is denied, the party may ask the city council for a hearing. However, it is reported by city officials that several requests have been successfully discouraged at this point.

Other communities in which calling a public hearing is optional with the commission include the city of Fremont and the counties of San Mateo and Santa Clara in California. The Fremont ordinance (1957) provides that the "commission may, if it deems it to be in the public interest, call a public
hearing on said application." And the San Mateo County ordinance provides:

Upon receipt of such a petition the Planning Commission shall consider the requested amendment and may, if it so determines, adopt its resolution of intention to propose the amendment petitioned for, or any part thereof. Or it may determine to propose an amendment different from that petitioned for.

Even communities that want to make the formal public hearing mandatory might nevertheless find the preliminary consultation provided for in the Kettering ordinance worthwhile. (The same result is also possible under the California ordinances mentioned.) Whatever the exact procedure, it is highly desirable to have the proposed amendment freed of all obvious defects of both substance and form before the public hearing is called and notice given. Many cities rely on preliminary discussions with staff members to convince proponents that a single lot in the middle of a residential block is not likely to be rezoned for business. This ordinarily works well, it is reported. Other cities submit each proposal to the city attorney's office before hearings are scheduled in order to get an opinion on the likelihood of the proposal's being considered spot zoning. This, too, can work effectively. Particularly in smaller communities, however, preliminary consultation between the proponent and the commission members may be an appropriate method of saving a great deal of time later. If formal hearings are held before the amendment is in proper form, the commission and council are both likely to find themselves reconsidering substantially the same petition at a later time, and additional public hearings may have to be advertised and held.

Unless there is danger that state legislation may be interpreted to require a hearing on the amendment in the exact form in which it is finally passed, it may be possible to avoid additional hearings despite the fact that some changes are made after the hearing. Santa Clara County, California (1956) makes this provision:

In the event the Planning Commission, prior to recommending to the Board of Supervisors a proposed amendment, desires to make any change in the original proposed amendment after meeting the requirements of State law relative to public hearings, the Planning Commission may make such change, and the proposed amendment as changed need not be re-set for public hearing by the Planning Commission . . . unless such proposed amendment as changed shall affect or indicate:

(1) A larger area of land or property than was described in the original amendment; and/or

(2) The establishment of a Zoning District permitting a use of land or property not permitted by any regulation or use permit in the Zoning District originally included in the proposed amendment upon which a hearing has been held.

Essentially the same provision applies to changes made by the legislative body. This arrangement seems to safeguard the interests of possible protesters without requiring needless hearings.

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Assuming that the proposal is to proceed to public hearing, who should conduct the hearing? And need there be more than one? If the planning commission considers most amendments prior to their consideration by the council -- obviously the case under most of the ordinances quoted -- two hearings may be just about necessary on any amendment that is finally adopted. If the commission is thought of as making a preliminary legislative decision, it should undoubtedly hold a hearing in order to become familiar with opposing views. And if the legislators are later to get the flavor of their constituents' views, they may be unwilling to rely on a transcript or report of the commission's hearing. In some communities, however, the council does not hold a hearing after disapproval of a proposal by the commission unless the proponent "appeals" to the council.

If, on the other hand, the commission is considered merely an advisory body, rather than a screening body, it should be possible to have only a single hearing before the legislative body or a legislative committee. If the original application must contain all needed information, the commission should be able to make its recommendation without getting the views of the proponent and the objectors. These views presumably are relevant from a political viewpoint but not especially relevant from a technical one. If the commission does desire to call a hearing, it should have authority to do so.

Some cities have concluded that the burden of public hearings is too great to be handled by the commission, the legislative body, or even a legislative committee. In his previously cited article in Planning 1955, Huber E. Smutz describes the provision that was made because of a great increase in zone change requests in Los Angeles:

Provision was made for two planning examiners who are authorized to investigate and conduct the required public hearings on all proposed zone changes. . . . The commission is thus freed of the time consuming public hearings but has available for review a transcript of the testimony presented at the hearing and the examiner's analysis before reaching its decision on each such request. Frequently on bitterly contested issues, the commission permits a representative of each side to present his summary of the issue at the commission meeting prior to making a decision on the matter. The commission itself rarely conducts public hearings on such matters and can thus devote more attention to its numerous other duties and responsibilities.

Providing a complete transcript of testimony is kept, the appointment of special hearing officers may well prove to be a satisfactory way to save legislative and administrative time in many cities.

One possible restriction on the frequency of hearings should also be mentioned. The New York City charter (1938) provides that applications by taxpayers for zoning regulations may be filed only during April and may be acted upon only between the fifth of May and the end of June. A number of other cities hold hearings only at stated periods during the year. Pasadena, California holds them only twice a year; Arlington, Virginia holds them three times a
year. Seattle; Modesto, California; and Montgomery County, Maryland are among those that hold them four times a year. For example, the Modesto ordinance provides:

The hearing by the Planning Commission for any zone boundary change . . . shall be held during the month of April for amendments initiated in January, February, and March; during the month of July for amendments initiated in April, May and June; during the month of October for amendments initiated in July, August and September; and during the month of January for amendments initiated in October, November and December.

Proponents may object to the added delays likely to be caused by this batching system, though it is uncertain how great these delays may be in practice and how much importance should be attached to the complaints. The advantages of the system may be considerable. Its primary purpose is to free officials' time between amending periods. In addition, consideration of many amendments together may bolster the resistance of those council and commission members who are sometimes inclined to think that "just this one" relaxation of the ordinance will do no harm.

A proposed amendment to the Los Angeles city charter would also permit a delay in consideration when the commission is conducting a general survey or study.

When the application involves the creation or change of boundaries of a zone or district of property located in an area of the City in which the City Planning Commission is conducting a general survey or study, the Commission may withhold its determination on the particular application for a period of not to exceed 180 days from the date of filing.

Such a provision might prove worthwhile in many cities.

Limitations on Passage

It is sometimes suggested that fairer or more intelligent amendments can be expected if the legislative body does not have quite so much discretion on zoning amendments as it has on ordinary legislation. The requirement that zoning comply with a comprehensive plan ideally should assure fair -- though not necessarily generous -- treatment of property owners. Several foreign countries have found it desirable to provide for review of planning decisions by provincial or national officials in an attempt to assure that local decisions are justifiable on planning grounds. In this country, however, it is usual to provide only for an advisory opinion from a subordinate body -- the planning agency. A few states, such as those already mentioned, do require an extraordinary vote to overrule the commission. And the charter of the city of Stamford, Connecticut goes so far as to state that ". . . the Zoning Map shall not be amended . . . to permit a use in any area which is contrary to the general land use for such area [established] by the Master Plan." As
a result of this provision, each change of zoning that does not conform to the plan cannot be approved unless the planning board first amends the plan.6

This type of proposal again raises the issue of how completely amendments should be treated as legislative questions. If they are legislative, there is something anomalous and perhaps undemocratic about allowing the council's discretion to be limited by that of the commission that it created. And, of course, there can be no guarantee that the commission's decision is based on sound planning. In practice, the arrangement may imply that the commission's attitude is likely to be favorable to the comprehensive planning that underlies zoning, and is supposed to make the amendments fair. Under these circumstances, it is argued that in the absence of an unusual majority in council, the commission's recommendation should stand. But when attitudes are to influence decisions, should not the attitudes be those of lawmakers?

Perhaps the solution to the problems of amendments lies not in building administrative barriers around the legislative body but in bring the proponent and legislators together at the beginning of the amending process. This is certainly not the approach suggested by most of the provisions quoted or by most of the recent ordinances that we have seen. But, it has been pointed out, the reason that we need deterrents to the right to petition is that the legislature is not in the process early enough. No one questions the legislature’s right to reject out of hand petitions to change speed limits or the dog ordinance, but most cities are unwilling to give administrators the right to do this with zoning amendments. And one of the reasons so many cities end up with two hearings required is that the administrators make a legislative decision before the legislators do.

In reply to the Planning Advisory Service questionnaire, William B. Rogers, author of the previously cited Planning Advisory Service special report on rezoning procedure, suggested that the proper way to process amendments in small cities is to treat them like any other piece of police power legislation:

First, the legislative body should set up requirements for the proper submission of proposals -- formal application, plot plan, list of surrounding owners, etc. -- and designate an administrative officer to examine each application for conformance to these requirements. Any application which does not conform to the stated form, then, would be returned to the applicant by the administrative officer.

Second, assuming they have been properly submitted, consideration of all proposals should require adoption of a formal mo-

6This system is discussed briefly in Proceedings of the Tenth Anniversary Meeting of the Connecticut Federation of Planning and Zoning Agencies, 1958. One official commented, "If I could have foreseen some of our difficulties in 1953 when the legislation that put the planning board in its present position (was passed), I would have made the master plan even more general because we are called by the lawyers all the time." This suggests problems that might arise if it were proposed in some city to have the legislative body adopt the plan and consider amendments only when the amendments would conflict with it.
tion to consider by the legislative body. Such a motion should carry with it automatic referral to the planning agency for its advice and recommendations.

Third, the legislative body should screen, with the advice of the planning agency, all applications from whatever source to determine whether they are of sufficient merit to be considered for enactment and to be subjected to public hearing. Thus, proposals for zoning amendments would be treated like any other legislation in that they would have to find support in the legislative body and be put in ordinance form before being given a public hearing.

The Denver ordinance (1956) suggests a slightly different approach in a large city.

Upon receipt of an application for an amendment, properly and completely made as hereinabove set forth, the Department of Zoning Administration shall transmit copies of the application to the Planning Office and to any other agencies, either public or private, which might be affected by the amendment. If considered necessary, any such agency may require the applicant to furnish additional information of a pertinent and reasonable nature. Any such agency may transmit comments and recommendations concerning the application to the Department of Zoning Administration.

When an application for an amendment, including agency comments and recommendations thereon, is completely assembled, the Department of Zoning Administration shall submit to Council such completed application and agency reports.

In practice, one city official reports, if the zoning committee of the council disapproves the application, it does not reach the council floor and no hearing or additional proceedings take place. However, applicants are entitled to a hearing before the committee. It is informal, usually consisting of a discussion around a table.

It is interesting to note that either of these procedures could be used effectively in cities that have replaced planning commissions with a department of city planning. In either case -- commission or department -- the agency is relied upon only for information and recommendations within technical fields. Only in these fields, if anywhere, is it entitled to claim special competence.

This recognition that amendments are, after all, ultimately made by legislators does not lessen the importance of planning principles in guiding decisions on amendments. A number of ordinances list some of the considerations that are relevant in evaluating amendments. For example, the ordinance of Clarkstown, New York (1955) mentions these factors:

(a) whether the uses permitted by the proposed change would be appropriate in the area concerned;
(b) whether adequate public school facilities and other public services exist or can be created to serve the needs of any additional residences likely to be constructed as a result of such change;

(c) whether the proposed change is in accord with any existing or proposed plans for providing public water supply and sanitary sewers in the vicinity;

(d) the amount of vacant land which is currently zoned for similar development in the Town, and particularly in the vicinity of the area included in the proposed amendment, and any special circumstances which may make a substantial part of such vacant land unavailable for development;

(e) the recent rate at which land is being developed in the proposed district in the Town, and particularly in the vicinity of the area included in the proposed amendment;

(f) the effect of the proposed amendment upon the growth of existing communities in the Town as envisaged by the comprehensive plan;

(g) whether the proposed amendment is likely to result in an increase or decrease in the total zoned residential capacity of the Town and the probable effect of such a change on the cost of providing public services;

(h) whether other areas designated for similar development are likely to be so developed if the proposed amendment is adopted, and whether the designation for such future development should be withdrawn from such areas by further amendment of the Zoning Map; and

(i) if the proposed change involves a change from a residential to a non-residential designation, whether more non-residential land is needed in the proposed location to provide commercial services or employment for the residents of the Town.

It is also perfectly proper for ordinances to contain statements of policy that, though not binding on subsequent councils, may be of great value in guiding them. The provisions for minimum size of certain districts are an example. Similarly, the Palm Springs, California ordinance provides that every application for commercial rezoning is to be interpreted as a request for a designed shopping center zone; other types of commercial rezoning will be granted only under unusual circumstances.

CONCLUSION

Whatever technique is used, processing amendments takes time. The city facing an unusual number of requests for amendments should try to find out
why. If the ordinance is sufficiently flexible and up to date, the best course seems to be to hire more staff if necessary and bear in mind the conclusions suggested by some respondents to the questionnaire:

I still feel, right or wrong, that strict attention to some of the mundane and hackneyed proverbs of sound zoning, and sticking by your zoning plan once it is adopted, is the best answer to amendments. Nothing succeeds like success, and once a community starts being lax about zoning amendments it simply encourages more zoning amendments.

Another agency provides a case in point:

There is nothing to compare with firm administration. This commission has been reversed twice in five years by the council. The planning office has not been reversed by the commission in five years (despite some fireworks). This record will turn aside more questionable amendment attempts than any set of rules.

And finally:

Although processing applications for amendments is time consuming and burdensome, it is a necessary burden incident to democratic government.
ACKNOWLEDGMENTS

Planning Advisory Service acknowledges with thanks the cooperation of the following officials and others active in the planning field who helped to make this report possible:

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Fred G. Stickle III, Attorney, Cedar Grove, New Jersey
James H. Ward, Planning Director, Rockland County, New York
Gordon and Brysis N. Whitnall, Planning Consultants, Los Angeles, California
James A. Wright, Senior City Planner, Cincinnati, Ohio
APPENDIX

For additional forms, see Planning Advisory Service Information Report No. 33, Forms for Zoning Administration.

1. Provision authorizing the planning commission to pass resolutions interpreting the zoning ordinance -- prepared by Gordon and Brysis N. Whitnall.

Section____: CLARIFICATION OF AMBIGUITY. If ambiguity arises concerning the appropriate classification of a particular use within the meaning and intent of this ordinance, or if ambiguity exists with respect to matters of height, yard requirements, area requirements, open spaces or zone boundaries, as set forth in this ordinance and as they may pertain to unforeseen circumstances, including technological changes in processing of materials, it shall be the duty of the Planning Commission to ascertain all pertinent facts and by resolution set forth its findings and its interpretations, and such resolution shall be forwarded to the City Council and, if approved by the City Council, thereafter such interpretations shall govern.

For purposes of arriving at determinations under this Section, or to meet any other need for classifying any use as first permissible in any of the zone classifications defined by this ordinance, the degree of compatibility of any use to any other use shall be evaluated. So far as technical evidence and scientific means of measurement are available they shall be considered in determining the form and intensity of performance standards typically associated with any identifiable type of use. The term performance standards as here employed refers to such conditions, effects or results which flow from the maintenance or operation of any primary use including, but not limited to, the flow of sound measured in decibels; ambient level of sound; vibrations above and below the auditory range; odors, fumes, smoke or other emissions whether toxic or nontoxic; incidence of hazard, including explosion or contamination; the identification and classification in terms of chemical composition of the emissions from any type of use whether industrial, commercial or domestic; the traffic-generating capacity, both in terms of freight and passengers, the volume of either or both, and the time or times of daily cycle that represent peak flow or minimum flow; the consuming capacity of and need for electrical energy, natural gas, oil, water, sewage disposal and transportation facilities, including highway, water, rail and air.
2. Form prepared for use in conjunction with the preceding ordinance provisions -- prepared by Gordon and Brysis N. Whitnall.

APPLICATION FOR INTERPRETATION

(Form prescribed by City Planning Commission, Ordinance No.____)

Subject use first permitted in Zone____Use not listed in Zoning Ordinance____

(for office use only)

Application No.__________________________
Date of Filing:__________________________
Date of Hearing:__________________________
Action:__________________________
To Council:__________________________

(Above information to be supplied by Planning Department)

NOTE TO APPLICANT: Before

NOTE TO APPLICANT: The Planning Commission is required by law to determine within the meaning and intent of the zoning ordinance the zone in which a particular use is properly to be placed. There are two major circumstances that require such interpretation by the Planning Commission; (1) in the case of a use which is not identified as permissible in any zone, and (2) in the case of a use which, because of technological changes in equipment, processing, materials or otherwise, is distinguishably different from other establishments as defined in the ordinance. In order to provide the Planning Commission with all pertinent facts essential to an accurate and consistent interpretation of the characteristics of a proposed use, factual information on the subjects contained on this form are to be provided. The person desiring the interpretation should select from the items enumerated hereon all such as apply to the use in question and provide fully such facts as are responsive to each question. The person providing this information shall be a principal in the proposed project and one personally qualified to give authentic information.

1. What is the name by which this use is customarily identified?________

2. What are the materials, equipment and processing in connection with the use subject to this application that result in performance characteristics that differ from those that usually relate to the identification given in No. 1 above?________

3. What is its character?

Retail - commercial______ Is it wholly manufacturing?______
Business office only______ Light ______
(warehousing elsewhere)______ Heavy ______
Does it involve warehousing or storage on premises?______ Is it an institutional use?______

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Information Report No. 115
Partly manufacturing with retail sales on premises?

4. What are the products resulting from the operation?

5. What supplies and materials are to be kept or used on the premises?

6. If the use is manufacturing in any degree then, in terms of chemical compositions of materials used, what are the types and amounts of each that will be stored on the premises at any one time?

7. Does the use involve storage of large quantities of reserve supplies of materials to be processed?

8. Does the use involve storage of small quantities of materials to be processed which are brought in as needed?

9. Does the use involve large storage facilities for finished products such as those normally marketed seasonally?

10. Does the use involve only limited storage of finished products with distribution from the premises?

11. What is the square footage of ground space or floor space to be used for storage?

12. Is the storage space to be enclosed in a building, or in the open?

13. If any of the materials used and stored in connection with this enterprise are hazardous, what is the nature of the hazard? What precautionary means will be employed to provide safety both to employees, customers and adjoining properties?

14. How many persons are to be employed?

   In the manufacture of the product
   In the sale of the product
   In any other capacity

15. What type and volume of trucking is involved?

16. Is rail transportation involved?

17. What are the hours of peak loading and unloading?

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18. What other type and volume of traffic would be generated? __________

19. Would the establishment normally attract the public to the premises?
   Visitors? ________
   Patrons? ________

20. Will this enterprise be carried on outside of daylight working hours?
   If so, what are the hours? __________

21. What types of power will be employed?
   Electricity ________ Gas ________
   Internal combustion engine ________ Oil ________
   Steam ________ Atomic ________

22. What volume and type of noise results from operations? __________
   Have you any evidence of the decibel rating of sound emanating from
   this or a similar operation? If so, what is it? __________

23. What odors, fumes or smoke result from the operations? __________
   Are they toxic or non-toxic? __________
   What evidence do you present on these points? __________

24. Is there any sewage from the processes involved that would sterilize
   or overload existing sewer facilities? __________

25. What are the demands of this enterprise upon available public facilities
   and utilities?
   Electricity __________
   Gas __________
   Water __________
   Sewage disposal __________
   Refuse disposal __________
   Transportation (railroad and streets) __________

(USE ADDITIONAL SHEETS IF NECESSARY TO ANSWER ALL QUESTIONS AS COMPLETELY
AS POSSIBLE)

Information Report No. 115
AFFIDAVIT

I, the undersigned applicant, have personally provided the above information, or where necessary, have secured same from one known by me to be qualified to give such information, and by my signature below attest to the validity and authenticity of such information.

____________________________________
APPLICANT
(Corporation or individual owner)

By ____________________________________
Official Representative (by virtue of being __________________)
(Office or position held)

Date: ____________________

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APPLICATION FOR CHANGE OF ZONING

Date of application: ____________________________ Case No. ____________

Name of applicant: ________________________________________________

Address: __________________________________________________________

Telephone No.: ____________________ Home ____________ Business ____________

Is applicant the owner, lessee, or other of the property proposed to be rezoned? ____________

in whole or in part? ____________

Location of property where change is requested, described according to County Auditor's Property Plat Book Records:

City of Kettering Book No. ____________ Page No. ____________ Section No. ____________

Town ____________, Range ____________; name of Subdivision Plat ____________

Lot Numbers involved in change ____________

________________________

Recorded in Plat Book ____________, Page No. ____________, Total area of change: ________________ acres. Property is situated along the ____________________ (East, West, North, South)

side of ____________________, approximately _______________ feet ____________________ (Name of Street) of the intersection of ____________ (Name of Street)

________________________

with ____________________ (Name of Street)

Reasons for requesting change of zoning:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________
Formal application form -- Kettering, Ohio

Character of Neighborhood:

I, the undersigned owner, (lessee), hereby request that this property now classified as a ______________________ District, be reclassified as a ______________________ District in accordance with Article 20 of the Kettering Zoning Ordinance.

Attached are the following:

1. Two copies of a list of the names and addresses of the owners of all properties lying within two hundred (200) feet of any part of the property proposed to be rezoned.

2. Two copies of a map or plat, drawn to scale, showing the existing and proposed zoning reclassification and other pertinent information.

3. Two copies of the legal description of the property proposed to be rezoned.

4. Twenty-five dollars ($25.00) fee for the purpose of defraying expenses of publishing notices in the newspaper and mailing costs.

Verified by Applicant:

Signed: ______________________________________________________________________________________

State of Ohio, Montgomery County: S.S.

The undersigned, being first duly sworn, says that he is the ______________________

(Owner or Lessee)

named in the foregoing application, and states that all the facts in said application are true to the best of his knowledge.

__________________________________________

(Applicant) and by him

sworn to before me by the said _______________ day of _____________, 19____

__________________________________________

Notary Public in and for Montgomery County, Ohio.

October 1958
SAMPLE MAP

Indicating Radius of 375 Ft. and Land Uses.

A Map of this type shall be filed with every zoning petition.

NOTE:— Scale for Actual Map should be 1 inch = 100 Feet.
SYMBOLS ON MAP FOR LAND USES

Miami, Florida

- One Family Residence
- Two Family Residence
- Accessory building with One Dwelling Unit
- Accessory building with Two Dwelling Units
- Apartment House—(Figure) indicates number of Units
- Rooming House (Guest House)
- Boarding House (Rooms and Board)
- Hotel
- Church
- School
- Private Club, Lodge & Fraternity
- Public Building
- Fire Station
- Police Station
- Parking Lot
- Agricultural, Farms, Truck Gardens, Groves & Plant Nurseries
- Residence with Store in Front
- Home Occupation
- Retail Stores — Apartments Above
- Medical Clinic
- Hospital or Sanitarium
- Gasoline Filling Station
- Liquor Bar
- Liquor Package Store
- Beer and Wine Bar
- Restaurant
- Retail Store
- Wholesale Use
- Industrial Use

NOTE: Uses not shown here should be indicated by placing description of use on lot.

October 1958
## Evaluation form for use of planning office -- Denver, Colorado

### NATURE OF CHANGE

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<th>TO</th>
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### AREA CONDITIONS AND USES

<table>
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<tr>
<th>AREA REQUESTING CHANGE</th>
<th>NOW ZONED</th>
<th>USE</th>
<th>CONDITION</th>
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<table>
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### OWNERS REASON FOR REQUESTING CHANGE

### PLANNING OFFICE FINDINGS REGARDING AREA:

**YES**
- REZONING WOULD MAKE AREA CONFORM TO COMPREHENSIVE PLAN
- ERROR WAS MADE IN 1955 REZONING
- AREA IS PECULIARLY SUITED TO THE PARTICULAR USE PLANNED
- AREA CONDITIONS HAVE CHANGED SINCE 1955 REZONING

**NO**

### COMMENTS

### RECOMMENDATION

- APPROVE AS REQUESTED
- APPROVE EXCEPT FOR:
- DISAPPROVE
- DISAPPROVE, BUT WOULD APPROVE: