PLANNING AND ZONING PROCEDURES

FOR MISSOURI MUNICIPALITIES

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INTRODUCTION

Many municipalities in Missouri are experiencing changes in both their population and economic base. Municipalities have two methods to influence the change and growth of their communities. First, the city may provide a service or facility as it does for streets, water systems, parks, fire protection, police protection and many others. Second, the city may guide and influence private action and decisions by enacting and administering ordinances and regulations pertaining to zoning, subdivisions, building codes, housing codes, etc. Both approaches are important and complement each other. However, the private sector determines the majority of changes that occur in a community. It is, therefore, essential that cities develop public policies to guide and coordinate these changes.

This manual is designed to introduce city officials to the ordinances and planning tools that are used to coordinate and guide changes within the city. The focus of the manual is on planning principles, tools used in local planning, the responsibilities of local officials and the legal aspects associated with the establishment and administration of a local land use program.

WHAT IS PLANNING AND ZONING?

Planning and zoning is the mechanism with which municipalities design and control the development of private land. All cities, towns and villages in Missouri may adopt planning and zoning. Statutory authority to enact planning and zoning is found in Chapter 89 of the Revised Statutes of Missouri (RSMo). Chapter 89 establishes the procedural framework in which planning and zoning is enacted and administered. Planning and zoning gives municipal officials the opportunity to coordinate development activities within their community. Without this tool, land use decisions are left to the whims of a wide variety of private groups that are motivated by personal interests instead of the public interest. Left uncoordinated, land use patterns are unpredictable and public services are provided in a haphazard manner, often adversely affecting the quality of life within the community.

Zoning is the set of regulations that prescribe how land within a municipality is used. Generally, municipal officials understand the concept of zoning; planning, on the other hand, is not well understood. The way planning is addressed in the Missouri Revised Statutes contributes to the confusion. Section 89.040 RSMo requires that zoning regulations ". . . **shall** be made in accordance with a 'comprehensive plan'" (emphasis added). Whereas Section 89.310 RSMo states that "Any municipality in this state **may** make, adopt, amend and carry out a city plan . . ." (emphasis added). A comprehensive plan is not the same as a city plan. A "city plan" is a detailed development plan, commonly referred to as a comprehensive development plan or master plan, showing the future growth of the municipality. A "comprehensive plan" as used in Section 89.040 RSMo means that zoning decisions should be governed by what is good for the community as a whole rather than by what is best for an individual land owner. In other words, zoning must be designed to protect public interests, not private interests. A zoning ordinance based on a comprehensive plan is administered in a consistent manner and furthers a legitimate public purpose. The difficult task for municipal officials is to develop a zoning ordinance that conforms to this statutory standard. Most professional city planners believe that a separate document or plan is needed in order for zoning to work, both from a legal and practical standpoint.

THE PLANNING AND ZONING COMMISSION

The Missouri Revised Statutes makes provisions for a zoning commission (Section 89.070 RSMo) and a planning commission (Section 89.320 RSMo). The purpose of the zoning commission is to write the original zoning ordinance. The planning commission's function is to plan for the development of the municipality. Most cities combine these two commissions into the planning and zoning commission. Whether the city has one or both groups, the commission must have been created by an ordinance passed by the city council. Membership consists of: 1) the mayor, if the mayor chooses to be a member, 2) a councilman selected by the council if the council chooses to have a member serve on the commission, and 3) not more than 15 nor fewer than five citizen members appointed by the mayor and approved by the council, holding staggered four-year terms. The citizen members may not receive compensation for their services, however, they may be reimbursed for their expenses. The commission must consist of at least seven members, but not more than fifteen members.

The officers of the commission consist of a chairman and a secretary, who are elected from the citizen members. The city clerk may not serve as secretary. The clerk may attend the meetings and take the minutes, but someone else must sign the minutes and be responsible for their accuracy.

Duties

In addition to the commission's responsibilities in zoning regulations, the commission has other duties and powers.

1) It makes and adopts a city plan or comprehensive development plan, describing the future development of the city.

2) It adopts a major street plan showing the proposed streets for the municipality. The major street plan may be included as a component of the comprehensive development plan (transportation plan).

3) The commission will prepare a zoning ordinance and review proposed amendments to the ordinance.

4) The commission may recommend, and the council may adopt, a subdivision ordinance.

5) After the adoption of the subdivision ordinance, no land may be platted, (that is no plat of a subdivision of land lying within the city may be recorded) unless the proposed subdivision has been submitted to the commission for recommendation to the city council for approval.

6) After a city development comprehensive plan has been adopted, no street, public facility or utility may be constructed or authorized by the city council unless the planning commission is first allowed to make recommendations. If the planning commission disapproves, a two-thirds vote of the entire membership of the city council is required to override its recommendation. If the planning commission approves, a simple majority of the governing body may approve the recommendation. The acceptance, widening, removal, extension, relocation, narrowing, vacation, abandonment, change of use, acquisition of land for sale or lease of any street or other public facility is subject to similar submission and

approval, and the failure to approve may be similarly overruled. If the planning commission does not act on the requested matter within 60 days, the city council then treats the submitted item as if it had been approved by the commission.

Planning Staff

Many large and moderate sized cities hire a professional planning staff to assist the planning and zoning commission in the preparation and administration of the comprehensive development plan, zoning ordinance and subdivision regulations. However, in most smaller cities the planning commission functions without a professional staff. In this situation the planning commission mainly will be concerned with the administration of the zoning ordinance and subdivision regulations.

Few of the commissions in smaller cities attempt to develop and prepare a comprehensive plan, zoning ordinance or subdivision regulations on their own. They usually rely on consultants to assist them in the preparation of these documents.

THE COMPREHENSIVE DEVELOPMENT PLAN
(Master Plan)

A comprehensive development plan is an official document adopted by a city as a policy guide to decisions about the physical development of the community. The plan is not a regulatory ordinance, but a guide to be used when regulatory ordinances are developed and administered. Nor is the comprehensive development plan a detailed capital improvement program showing precise locations of public improvements and community facilities; it is used as a guide in the more detailed development planning that must occur before those facilities are built. The plan is a comprehensive document in that it covers all portions of the city and all facilities that relate to development.

The comprehensive development plan is not designed to solve all the problems that confront the city, but it can contribute toward solving some of those problems. For example, city government has considerable influence over how development will take place in the city. At most city council meetings there are items on the agenda that deal with development issues. A developer may be seeking approval for construction of a shopping center, residential subdivision or industrial park; new streets are being constructed and fire stations built, and sewer and water lines are being extended. The plan can help improve decisions on these matters by providing the city with information on how much the city will grow, its priorities, what proposals will help achieve community objectives, and how all the various elements relate to one another.

The comprehensive planning process has four basic steps:

1. Establishment of goals and objectives,

2. Basic research,

3. Plan preparation, and

4. Plan implementation.

Goals and Objectives

The main purpose of the comprehensive development plan is to serve as a guide for making the city a better place to live and work. It is, therefore, essential to determine what constitutes a "better place." This can be accomplished by establishing basic long-term goals and short-term objectives to carry out those goals. Through such a statement of goals and objectives a consensus of future development policy can be formed. The goals and objectives established by the city will provide the foundation from which the plan will be developed.

Although establishment of goals should involve the planning commission, all city officials and all departments, the city council should play the leading role in the goal and objective formulation process. The city council, as the policy-making body for the city, will be making most of the development decisions, and the plan would be unrealistic if it does not express their desires. Also, when the plan is completed it is desirable that the council formally adopt it as public policy. If they were not involved in the development process, it would be unlikely that they would adopt the plan.

Basic Research

A plan is only as accurate as the basic information on which it is based. All pertinent information must be examined and analyzed before any plans can be made. The second step in developing a comprehensive plan is formation of basic studies and maps. The analyses of these studies and maps should reveal the city's needs and problems and examine its objectives.

1. Mapping — The first map that is needed is a base map. A base map indicates such existing features as the street system, railroads, rivers, parks or other community facilities. The map is the foundation for all other maps to be used in the planning process. An important outgrowth of the base map is the existing land use map. It shows the current use of each parcel of land, usually divided into such categories as residential, commercial, industrial, agricultural, public and semi-public uses. The finished map gives an accurate picture of the city and how its land is being utilized.

   A slope map showing the topography of the city also is needed to determine land characteristics that will influence future development. It should show the degree of buildable slopes, the existence of subsoil conditions that affect development and the existence of flood plains.

2. Land Use Analysis — Land use analysis is accomplished by studying the land use map for deficiencies in the existing land use pattern. The study should determine the quantities and qualities of various land uses and the condition of structures. A land use analysis points out areas of conflict and inefficient development as well as specific areas with desirable land use patterns. The land use analysis also is a guide in preparing land use plans.

3. Population Studies — The planning process must include research on the present and future population of the city. The population study should indicate present population trends and development and where population growth may be expected as well as its gross amount. Unless the number and characteristics of the future population are roughly known, it is difficult to determine any realistic plans or proposals.

4. Economic Studies — Economic studies indicate how the city makes a living. They analyze industry and its role in the present economy, as well as retail-wholesale trade, agriculture or any other major producer of economic activity. The economic study also projects the effects of economic trends on the city's future and suggests methods and techniques for achieving a more realistic and balanced economic base.

Plan Preparation

Once the goals and objectives have been formed and the research accomplished, a plan can be prepared. The plan tries to indicate how private and public action can achieve certain community goals and policies in the next 10 to 20 years. A plan brings together the available information and organizes it in various ways to address specific problems. A plan is not a rigid design for the future; it suggests solutions to specific current problems and to those future problems that can be foreseen. For the plan to be effective the city must carry it out, not in 20 years but continuously.

The comprehensive development plan should include at least three basic plans: the community facilities plan, the transportation plan and the land use plan.

The Community Facilities Plan

A community facilities plan describes the general location, characteristics, extent and adequacy of all public facilities, including maps of their present and proposed locations and extent.

In developing a community facilities plan, the planning staff or consultant must determine community goals and objectives based on the level of municipal services desired. The plan should attempt to balance community desires for needed future services. First, an inventory is made of present services and facilities. Then, the present level is compared to the community goals and the expected needs to determine the future level and extent of services and facilities.

The following must be determined:

1. The city's future population and its distribution (part of the population study), and

2. The level and types of services the community desires, expressed as local standards and policies for development.

Such local standards for community facilities, when used with projected population levels and distribution, are a guide to preparing a plan for the placement of schools, the amount and placement of recreational land, the location and extent of public buildings and the needs for such health facilities as a sewerage system, water system and a solid waste disposal system.

It is very important to coordinate the community facilities plan with the land use plan and the transportation plan; the location and arrangement of city investments should implement the land use and transportation plans.

The following items usually are included in the community facilities plan:

1. Open areas

    a. Parks, golf courses, fairgrounds, preserves;

    b. Playgrounds and recreational facilities such as swimming pools; and

    c. Rivers and other bodies of water.

2. Educational and cultural facilities

    a. Schools — The plan should show the type, location and size of present schools to be retained, enlarged or modernized, and new ones to be built. The area or district and estimated population of each school should be indicated.

    b. Colleges and universities — Both public and private institutions should be shown.

c. Libraries — The plan should show the location of existing and proposed central and branch libraries.

d. Cultural facilities — Cultural facilities also should be shown such as theaters, museums, zoos, etc.

3. Medical facilities — The plan should show the location, character and capacity of medical centers, hospitals, nursing homes and clinics, and those to be retained, altered, enlarged or built.

4. Religious and other institutions — The location of major institutional developments that serve the city as a whole or that are regional institutions should be shown in the plan for public facilities and the land use plan

5. Public Buildings — The locations and sizes of public buildings to be retained and those to be built should be shown. Public buildings are:

   a. Government buildings, such as municipal offices, county buildings, post offices, state and federal buildings;

   b. Public safety buildings and facilities, fire and police stations and jails; and

   c. Other public buildings such as public markets, civic auditoriums and group-care facilities for children or the aged.

6. Environmental health facilities — The plan should show the location and extent of environmental health facilities that deal with the physical and mental health or social well being of the community. Because health hazards rarely consider jurisdictional boundaries, environmental studies must be on a regional rather than a community basis.

   These studies should include:

   a. Water supply, including its source, capacity, treatment, storage and distribution;

   b. Water pollution control, including the sewerage system and wastewater treatment methods;

   c. Solid waste disposal control by sanitary landfill, incinerator or similar methods, and determination of the most appropriate means of collection;

   d. Air pollution, including a study of its various sources and means of control; and

   e. Flood control, including areas subject to flooding and appropriate development pattern.

The Transportation Plan

A transportation plan is a pattern or alternative patterns of the general location and extent of the city's circulation needs. This plan again is based on the goals, objectives and needs of the city. The transportation plan also analyzes the adequacy of existing transportation systems and their specific requirements and relationships. The purpose of the plan is to foresee as accurately as possible all the transportation problems the city faces and to suggest feasible solutions.

The transportation plan should be carefully coordinated with the land use plan. A major determination of how much traffic a particular street will carry is the development and arrangement of the land use in its vicinity. Also, the land use arrangement in an area is determined to a great extent by traffic patterns.

The transportation plan also should consider any transportation needs for railroads, waterways and airports.

The Land Use Plan

A land use plan is a graphic and written analysis of a desirable and feasible land use pattern. It gives the general location, character, extent and the relationship of future land uses.

The first section should contain specific goals and objectives for land use development, based on the general goals of the city and on prior analysis and research. Such goals might indicate a desire for a particular type of residential pattern and also might show the desired amount and types of commercial activity. This section might show the amount of anticipated industrialization and where, in general, it could occur.

The next step is to develop standards for the extent and location of the various types of land uses that will be needed. Local standards set a feasible level of performance and adequacy for each type of land use, both its location and extent. These standards might specify the amount of residential land needed for each 1,000 increase in population, the location of schools or the amount and location of commercial property.

The next step is to design a land use plan showing a feasible pattern based on the goals and objectives and on determined local standards. A land use plan should include at least the following uses of land:

1. Residential — where the size and complexity of a locality requires it, residential uses may be subdivided to show

    a. Low density areas,

    b. High density areas.

2. Commercial

    a. Central business areas,

    b. Outlying neighborhood areas,

    c. Highway oriented commercial areas.

3. Industrial

    a. Light industry, including warehouses,

    b. Heavy industry.

4. Open areas, parks and recreational areas.

5. Public and semi-public buildings and institutions

    a. Educational — schools and colleges,

    b. Government buildings,

    c. Cultural — libraries, museums and theaters,

    d. Public safety buildings — police and fire,

    e. Medical — hospitals and health centers,

    f. Public utility plants and facilities.

Plan Implementation

A comprehensive development plan is a guide to the physical development of the city and its success depends on the way it is implemented. One way a plan can be implemented is by public action. If a city builds its public buildings and civic developments in accordance with the plan, much can be done to carry out the proposals of the plan. Private action also is important in implementing the plan. The plan can direct private development in two ways:

1. By regulations, such as zoning ordinances, subdivision regulations, requiring minimum standards for development; and

2. By influence on private citizens to develop their land in accordance with the broad community goals and objectives, benefiting the developer and the city as a whole.

Adoption Procedures

Before the comprehensive development plan can be adopted, the planning commission first must hold a public hearing (Section 89.360 RSMo). A 15-day notice of the hearing must be published in a newspaper having general circulation within the city. The notice must state the time and place of the hearing. Once the hearing has been conducted, the commission may adopt the plan, which requires a majority vote of the full membership of the commission. Then a certified copy of the comprehensive plan is sent to the city council and city clerk. A copy also is required to be filed in the office of the county recorder of deeds (Section 89.360 RSMo).

Although state law only requires the plan to be adopted by the planning commission, it is advisable that the city council also adopt the plan by resolution. This will give some assurance that the plan does represent the views of the city council.

ZONING

Zoning probably is the most commonly used technique to implement the land use plan of a municipality. The principal purpose of zoning is to insure that the land uses of the city are properly situated in relation to one another, providing adequate space for each type of development. It allows the city to control the density of development within its corporate limits to insure that services such as streets, schools, recreation, utilities and waste disposal systems can be adequately provided to all areas of the community.

Zoning may be defined as the division of a city into districts and the regulation within those districts of:

1) The height and bulk of buildings and other structures;

2) The area of a lot that may be occupied and the size of required open spaces;

3) The density of population; and

4) The use of buildings and land for trade, industry, residence or other purposes.

An aspect of zoning that is very important to the citizen is the role zoning plays in the stabilization and preservation of property values. Without zoning, no property owner could have assurance that nearby land would not be developed so as to ruin his investment. Residential areas could be spoiled by the conversion of houses into crowded apartments or businesses. Even a retail shopping area could be damaged by the inclusion of some use like a truck terminal, where danger and noise of heavy traffic would reduce business volume and thus reduce property values. There would be no assurance of adequate spacing of buildings for light and air and fire control, nor that the utilities would not be overloaded.

Zoning And The Comprehensive Plan

The distinction between the zoning ordinance and the comprehensive plan is sometimes a confusing subject for those outside the planning profession. This confusion arises out of the fact that many cities adopt zoning ordinances before a comprehensive plan is prepared. Therefore, it sometimes is difficult to understand the logical connection between the two documents.

According to state law (Section 89.040 RSMo), a zoning ordinance must be based on a comprehensive plan. A zoning ordinance that is not based on a comprehensive plan is not legally sound. The Missouri legislature recognized the desirability of treating zoning as part of the overall planning program of a city by providing that the planning and zoning commission be responsible for initial preparation of the zoning ordinance. This process insures that the zoning ordinance implements the goals and objectives set forth in the comprehensive plan and that a desirable land-use pattern develops. When a zoning ordinance is not based on a comprehensive plan, there is a tendency for development to become frozen in existing patterns or for an undesirable development pattern to occur.

An ordinance that is not developed in accordance with a plan generally requires many amendments, which makes the ordinance very difficult to interpret and administer.

What A Zoning Ordinance Does Not Do

The zoning ordinance is not designed to regulate the types of materials used for the construction of buildings or the manner in which buildings are constructed. This is the function of building codes. Also, the zoning ordinance does not establish the minimum cost of permitted structures nor control their appearance. These matters are generally controlled by protective covenants contained in the deed to property.

The zoning ordinance does not regulate the design of streets, the installation of utilities or the dedication of parks, street rights-of-way and school sites and related matters. These are controlled by the subdivision regulations and by an official map preserving beds of proposed streets against encroachment.

Zoning ordinances deal primarily with future development and cannot be used to correct existing conditions. These generally are addressed by the housing code, which establishes minimum housing standards and requires the rehabilitation or demolition of existing substandard structures.

All these devices, along with the zoning ordinance, are used to improve the quality of life within the city. It is desirable that the zoning ordinance, housing codes, subdivision regulations, building codes and street plans be coordinated to implement the goals and objectives set forth in the city's comprehensive plan.

Preparing The Zoning Ordinance

Unlike many other municipal ordinances, the drafting of the zoning ordinance cannot be accomplished by using a model ordinance or by using an ordinance from another city. The zoning ordinance deals with land development patterns, which differ from city to city. Although some of the provisions of the zoning ordinance may be standardized, such as those sections dealing with amendment and enforcement procedures, the ordinance as a whole must be tailored to meet the needs of a specific city. To insure that the city's needs are addressed, the ordinance should be based on the economic, population and land use studies in the comprehensive plan. The zoning ordinance also should reflect the goals and objectives established in the plan.

The first step required by state statutes is the creation of a zoning (or a planning) commission, which is responsible for preparing a tentative zoning ordinance, holding public hearings and submitting the ordinance to the city council or board of aldermen for adoption. It is important to note that the state statutes also authorize the city to designate the planning commission as the body to do the initial work on the ordinance. It is recommended the planning commission be given the responsibility of developing the zoning ordinance rather than creating a separate zoning commission. This is because the planning commission's duties, in general, require it to make the same studies as those needed in preparing the zoning ordinance, and it would be a duplication to create another commission to act in the same capacity.

Necessary Information

Most of the information needed to develop the zoning ordinance already should have been assembled and included in the city's comprehensive plan. Following is the type of information that will be useful in preparing the zoning ordinance.

1) The existing use of every piece of property within the city;

2) The terms of restrictive covenants applying to large sections of the city;

3) The location and capacities of all utility lines and major streets;

4) The assessed valuation of properties in different sections of the city;

5) The location and characteristics of all vacant land in the city;

6) The location of all new buildings erected during the past five years;

7) The width of streets;

8) The size of front, side and rear yards;

9) The heights of buildings;

10) The dimensions of lots; and

11) The number of families in each dwelling.

Once this information has been gathered and mapped, it should be analyzed. Analysis of the information should focus on the amount of land used for dwellings, businesses and industries; the predominant yard size; building heights; population densities; availability of utilities and street types. These studies along with the economic studies and population studies in the comprehensive plan can aid the city in forecasting future land requirements for each land use.

Elements Of A Zoning Ordinance

Most zoning ordinances consist of two parts: a zoning map indicating the boundaries of the various zoning districts and written regulations defining the manner in which property may be used in each district.

The Zoning Map

In preparing the zoning map it is necessary to answer a number of questions.

1) How many sets of districts shall there be?

2) How large should the districts be?

3) What types of land are suitable for each type of district?

4) What should be the physical relationships between the various types of districts?

5) Where should the districts be located?

6) Where should the boundary lines of each district run?

The questions pertaining to the area to be allocated to each type of district, the types of land suited to particular development, the best arrangement of the districts, and the general

location of each district all should be answered in the formulation of the land use plan (part of the comprehensive plan). However, it generally is the case, when attempting to formulate a zoning district map, that existing land use patterns conflict with the land use plan to some degree. When this occurs, a compromise must be made between existing land use patterns and the city's desired land use pattern as developed in the land use plan. The land use plan then becomes a guide for this decision process, as well as a guide to be followed in making later amendments to the zoning ordinance.

One of the most difficult aspects of developing a zoning district map is the drawing of exact boundary lines between districts, since all boundary lines are somewhat arbitrary, and individual property owners are likely to raise protests that are hard to resolve. Generally, district boundary lines should be located along rear property lines rather than running down the middle of the street and should avoid splitting lots. These general rules will help minimize opposition from property owners.

Types Of Districts

The most common types of districts created by cities are residential, commercial and industrial, although cities are not limited to these types. Local conditions may warrant creation of specialized districts such as university districts, agricultural districts, river port districts or flood plain districts.

Residential uses may be divided into several different classes according to the type of dwellings permitted — single family, two family, multiple family — according to compatible uses in each district (for example, country clubs, hospitals, cemeteries, clinics) according to minimum lot sizes and yard requirements, or on some other basis.

Commercial or business uses may be divided into classes according to the kinds or sizes of stores permitted; according to location (central business district and neighborhood district); according to the kinds of merchandising undertaken (retail and wholesale); according to the maximum building height permitted; or some other basis.

Industrial uses may be divided into classes according to the type of industry permitted such as light industry or heavy industry; according to performance standards, which specify the degree of noise, odor, heat, vibration, smoke, dust, glare, etc. that will be tolerated; or some other basis.

Zoning Regulations

The written regulations of most zoning ordinances contain three basic divisions: 1) enactment and interpretation, 2) district regulations, and 3) administrative provisions.

The first of these relates to the purpose of the ordinance, its enactment into law, and definition of terms used in the ordinance. The second division includes the actual regulations pertaining to each district and any additional provisions that affect all the district. The third part deals with administrative details such as enforcement, the issuing of building permits, certificates of occupancy, and provisions for appeals and amendments. Also, a specific provision must be included in the zoning regulations that states that the use of all land, buildings or structures shall be in conformity with the regulations.

Each type of district will have regulations that control the height of buildings, bulk of buildings, lot coverage, yard requirements and a special provision dealing with off-street parking and loading.

Height regulations — Typical height limitations in a single-family and two-family district are 35 feet or two stories. In apartment districts, depending on the nature and size of the city, heights may range up to 150 feet or fifteen stories. Neighborhood business districts should not have heights much over adjacent residential districts, but central business districts may go much higher such as 150 feet or fifteen stories. In industrial districts height limits usually are set at five stories; however, most modern manufacturing facilities only require one story.

Bulk regulations — Bulk regulations are closely related to height regulations. Most ordinances achieve some control over building bulk through height and yard requirements. However, many zoning ordinances require that residences must have a minimum floor area. This type of provision may be held invalid by the courts if the city cannot show that the minimum floor area represents the minimum space required for the mental and physical health of the occupant.

Lot area — The most common way of regulating the population density of a district is by establishing minimum lot sizes. Lot size requirements are particularly important in areas using septic tanks for waste disposal and wells for water supply. In residential districts minimum lot size requirements range from as low as 2,500 square feet to as high as 20,000 square feet per dwelling unit. To avoid very deep and narrow lots or oddly shaped lots, most ordinances require a minimum lot width in residential districts. In agricultural districts lot sizes generally are three acres to ten acres in size.

Minimum lot size requirements usually are not required in business or industrial districts.

Yard regulations — Yard regulations may be divided into front, rear and side yard requirements. Most ordinances only require front, rear and side yards in residential districts and exclude business and industrial districts from yard regulations.

Front yard requirements commonly are expressed in four ways:

1) As a minimum number of feet between the front lot line and the front of the building,

2) As a percentage of the lot depth,

3) As a relationship between the front yards of existing buildings in the neighborhood, and

4) As a minimum number of feet between the front of the building and the center of the street.

Front yard depths vary from city to city. A common method for determining approximate front yard requirements is that the total distance between buildings facing one another, including street right-of-way, is between two and three times the minimum height limit for the district. Common front yard requirements in single-family residential districts are 25 to 40 feet. It may be desirable to require a large front yard in multi-family districts to insure adequate space for children to play.

Side yard requirements should be based on fire insurance requirements and should be increased where fire protection is inadequate. Common side yard requirements in most

cities are five to eight feet on both sides in residential districts. Side yards are not generally required in business or industrial districts, but, if they are required, they should be of sufficient size so as to be easy to clean.

Rear yard requirements may be expressed in feet or as a percentage of the lot depth. Common minimum rear lot depths range from 15 to 40 feet. Zoning ordinances usually allow the erection of accessory buildings, such as garages and tool sheds, in the rear yard provided: 1) they do not occupy more than a stated percentage of the required yard, and 2) they are located at stated distances from all lot lines.

Corner lots present problems that should be dealt with in the zoning ordinance. One of the problems is insuring visibility for motorists. This may be done by prohibiting any structure or plantings more than a specific height, often two to four feet, above the curb level within a distance of 20 to 40 feet from a street intersection. Another problem relates to blocks where buildings face each of two intersecting street intersections. In this situation the side yard requirements for the corner lot usually is increased to a distance more closely approximating the front yard requirements of the neighboring lot.

Off-street parking and loading — The written regulations also should provide for requirements for off-street parking and loading. Space for parking and loading may be permitted within specific front, side or rear spaces or they may be prohibited from occupying these spaces. Whichever the case, the amount of space required for parking or loading depends on the use of the property. Commercial and multi-family uses, would require more parking than single-family or two-family dwellings. In the case of commercial and multi-family uses, the regulations may require an increase in the lot size to provide adequate parking for customers and for tenants of apartment complexes. Parking requirements for apartments could be based on the number of units in the complex allowing, for example, two parking spaces for each unit. Parking for commercial uses could be based on floor area, requiring, for example, one parking space for every 200 square feet of floor space.

Nonconforming Uses

At the time a zoning ordinance is originally adopted, there are in almost every district some uses that existed before the ordinance was adopted that do not conform to the regulations for that district. These are known as nonconforming uses. Other nonconforming uses are created by amendments to the zoning ordinance. Most zoning ordinances make provisions for nonconforming uses by prohibiting:

1) The enlargement or extension of a nonconforming use,

2) The resumption of a nonconforming use after the use has been discontinued for a stated period of time,

3) The changing of a nonconforming use to any other use except for one that is permitted in the district in which it is located, or

4) The rebuilding or reconstructing of a nonconforming use after a specific degree of damage or destruction has occurred.

Some zoning ordinances require an owner of a nonconforming use to secure a certificate of occupancy or a use permit for that use within a certain period of time after adoption of the ordinance or amendments that made the use nonconforming. If the owner fails to get such a permit or certificate, it is considered that the use has been discontinued.

Administration Of The Zoning Regulations

No matter how much care or forethought goes into the preparation of a zoning ordinance and the excellence of the finished product, it is of little use if it is not enforced. The effectiveness of a zoning ordinance can be severely diminished if:

1) The zoning enforcement officer is indifferent or lax in enforcing the ordinance,

2) The board of adjustment is too liberal in approving variances from the ordinance, or

3) The city council adopts unwise amendments (rezoning) to the ordinances at the request of individual property owners.

The enforcement process should not involve the city council. A zoning enforcement officer should be appointed. In most smaller and moderate size communities, the building inspector also serves as zoning enforcement officer because the duties of the building inspector includes issuing building permits and making inspections under the building codes. It is a simple matter for him to check compliance with the zoning ordinance at the same time he carries out his other duties. In general, the duties of the zoning enforcement officer are to:

1) Issue zoning permits,

2) Issue certificates of occupancy,

3) Check to see if the work is carried out according to the permit,

4) Administer the provisions of the ordinance dealing with nonconforming uses,

5) Make periodic checks for zoning violations,

6) Initiate court action for violation of the zoning ordinance,

7) Keep records, and

8) Serve as secretary of the board of adjustment, in some cases.

In general, the zoning enforcement officer is charged with the literal enforcement of the zoning ordinance. He cannot modify any provision of the zoning ordinance for individual cases.

The Board Of Adjustment

All zoning ordinances must provide for the creation of a board of adjustment to hear appeals on the zoning officer's decisions and to grant relief from literal enforcement of the ordinance in certain hardship situations. (Sections 89.080-89.110 RSMo)

The city council appoints the members of the board who serve five-year, overlapping terms. Three alternate members also are appointed to serve in the absence of or disqualification of a regular member.

The board of adjustment is a quasi-judicial body designated by the zoning ordinance and state law to perform the following functions:

1) Interpret the zoning ordinance,

2) Grant special use permits and conditional use permits, and

3) Grant "variances" from the strict letter of the provisions of the zoning ordinance.

Interpretation — The board's function of interpreting the zoning ordinance is very much like that of a court. It hears appeals from the zoning enforcement officer's decisions when it is alleged that he misinterpreted the meaning of the zoning ordinance or misapplied its provisions. The board first reviews all facts applying to the case and then determines the proper meaning of the zoning ordinance.

Granting of a conditional use or special use — A conditional use or special use means a use authorized in a given district, but which is permitted only after a review to determine the degree to which the proposed land use complies with standards and criteria set forth in the zoning ordinance. While it is important that the conditions and standards be stated in specific and concise terms in the zoning ordinance, it is the function of the board to determine if the conditions and standards are applicable to the surrounding area.

Granting of variances — The board of adjustment is authorized to grant relief where there are practical difficulties or unnecessary hardship in carrying out the strict letter of the zoning ordinance. The property owner must show that if he complies with the ordinance he cannot make reasonable use of his land. The hardship must not be a result of the applicant's own actions. Also the variance, if granted, must be in harmony with the general purpose and intent of the zoning ordinance.

Amendments To Zoning Ordinance

Normally, requests for an amendment to the zoning ordinance (rezoning) will come from individuals who wish the zoning of a particular property or area or the regulations relating to it altered. Amendments also may be initiated by the planning commission, the city council, the board of adjustment or by municipal officials, such as the enforcement officer. All these groups, not just the individual citizen, have the continuing obligation to review the zoning system to make sure it is working as intended.

Procedure

The first step usually required is that an application be made. When a private citizen applies, he normally is required to submit a written request to the city clerk (or some other officer) and pay a fee, generally in the neighborhood of $25 and up. The fee is required because of the requirement that a public notice be placed in the newspaper.

The Missouri statute is like that of most states in that a requested rezoning does not have to be referred to the planning commission for its recommendation. Usually, however, local zoning ordinances will require a rezoning request to be reviewed by the planning commission. Although the city council is not always required to refer the application to the planning commission, it is a desirable procedure.

Whether or not the recommendation of the planning commission is obtained, a public hearing must be held to allow the proponents and opponents of the zoning district boundary change an opportunity to be heard. The state statutes require at least 15 days notice of the

public hearing, giving the time, place and purpose of the hearing. The public notice must be published in a newspaper with general circulation within the municipality.

Although the statutes do not specifically mention what must be contained in the public notice, it would be advisable to give the description of the property to be rezoned and what the proposed action will be. The city also may include, along with the legal description of the property, a map showing the area for which a rezoning is proposed or state the popular name and mailing address(es) of the area.

Next, the public hearing must be held at the time and place specified in the notice. The public hearing may be held before the city council or the planning commission. After the public hearing the city council may approve or disapprove the rezoning request. This action by the city council generally is performed at the council's regularly scheduled meeting and requires the passage of an ordinance changing the zoning classification of the area under consideration.

The requirement for passage of the rezoning ordinance is a simple majority. It takes a two-thirds vote, however, if the owners of thirty percent or more of the land within 185 feet of the boundaries of the area of land (exclusive of streets and alleys) that is being rezoned sign and acknowledge (before a notary public) a written protest against the rezoning (Section 89.060 RSMo).

In some cities there are additional self-imposed limitations on rezoning amendments. These limitations state that, if the planning commission recommends against the proposed amendment, then it will take a three-fourths vote of the council to overturn that action.

Group Homes For The Mentally And Physically Handicapped

Section 89.020 RSMo provides that the zoning classification "single-family" shall include any home in which eight or fewer unrelated mentally retarded or physically handicapped persons reside with house parents. The law, which was passed in 1985, prohibits municipalities from restricting the placement of group homes in areas zoned for single-family residences.

Substance Abuse Treatment Facilities

During the 1990 legislative session, the Missouri General Assembly adopted legislation requiring municipalities to make provisions for the placement of substance abuse facilities. The law (Section 89.143 RSMo) requires municipalities with more than 500 persons that do not provide for the placement of substance abuse treatment facilities as a permitted, conditional special use, to do so. If a municipality does not make provisions for substance abuse treatment facilities in their zoning ordinance by January 1, 1991, then these facilities will be deemed permitted uses in any commercial district. When making provisions for these facilities municipalities may establish density standards and require that exterior appearance conform to area standards.

SUBDIVISION REGULATIONS

Subdivision regulations are locally adopted laws governing the process of converting raw land into building sites. This is accomplished through plat approval procedures, which require a developer to submit a plat (map) of the proposed subdivision of land to the planning commission, which makes a recommendation to the city council as to the approval or disapproval of the proposed subdivision. The criteria used by the planning commission for approval or disapproval is set forth in the subdivision regulations. If a developer attempts to record an unapproved plat or sell lots, he is subject to a fine of not less than $100 nor more than $500, or confinement in the county jail for not more than one year, or both a fine and confinement (Section 89.470 RSMo).

Subdivision regulations serve a number of purposes:

1) To insure that new residential developments have a safe water supply and sewerage system;

2) To insure that new residential developments are properly drained;

3) To insure adequate records of land titles;

4) To insure safe design and proper construction of new streets, utilities and drainage systems;

5) To provide a record of the location of underground utilities;

6) To insure that water systems are of adequate size and pressure for fire fighting purposes;

7) To insure that fire trucks and equipment can maneuver on streets;

8) To insure that lot purchasers will receive a buildable, properly oriented, well drained lot, provided with adequate facilities to meet day-to-day needs;

9) To protect the developer from adjacent substandard development that will reduce the value of his subdivision; and

10) To enable the city to coordinate the otherwise unrelated plans of a great many developers.

Subdivision Regulations And The Comprehensive Plan

Before a city can adopt and enforce subdivision regulations there must be in place or in the process of being developed a city plan or major street plan (Section 89.400 RSMo). This requirement insures that subdivision regulations are not arbitrary or discriminatory and that appropriate provisions are made for rights-of-way of major thoroughfares. It also assists the developer in determining when major services will be provided and what easements will be necessary for major utility lines.

Subdivision Regulations And The Zoning Ordinance

In some instances provisions in the subdivision regulations overlap those in the zoning ordinance. This especially is true of lot size and frontage requirements. To avoid conflict between the two it is desirable to state in the subdivision regulations that lots must conform to zoning requirements of the district in which it is located.

Subdivision Procedures

The procedure for subdividing land generally consists of five steps: 1) sketch plan or pre-application process, 2) preliminary plat, 3) construction of improvements, 4) final plat, and 5) recording of plat.

Sketch Plan

This step in the subdivision process usually is not a mandatory requirement, but only a suggestion that might help the developer through the remainder of the subdivision procedures. Preparation of the sketch plan will give the developer an opportunity to receive guidance as to what probably will be required of him before he has gone to the expense of making detailed plans of his subdivision. It is important at this stage that both the developer and the city official in charge of subdivision review understand that this is not binding and is only designed to be an exchange of information.

The sketch plan generally consists of a map showing the location and topography, the approximate location of lots and streets and existing buildings, lakes or other significant features.

Preliminary Plat

The preliminary plat is the first formal action required of the developer and is the most important step in the entire approval process. At this stage the developer receives approval to begin constructing streets and installing utilities. It is important that the subdivision regulations spell out exactly what information is required on the preliminary plat. Generally, this includes:

1) Boundary lines, bearings and distances sufficient to locate the exact area proposed for subdivision;

2) The names and locations of all adjoining subdivisions drawn to the same scale and shown in dotted lines and in sufficient detail as to show accurately the existing streets and alleys and other features that may influence the layout and development of the proposed subdivision;

3) The names of owners and locations of all adjoining unplatted properties;

4) The location and widths of all streets, alleys, easements and rights-of-way existing and proposed within the subdivision limits;

5) The location of all existing buildings, sewers, water mains, gas mains or other underground structures, or other existing features within the area proposed for subdivision;

6) The name under which the proposed subdivision is to be recorded, the name of the owner with sufficient data to show ownership, and the name of the engineer platting the tract;

7) Proposed arrangement of lots, which should be numbered consecutively from one to the total number of lots in the subdivision;

8) Location and size of proposed parks, playgrounds, churches or school sites or other special uses of land to be considered for dedication to public use, or to be reserved for use of all property owners in the subdivision and any conditions of such dedication or reservation;

9) Scale, north arrow, date and the pertinent data;

10) Topography with contour intervals of not more than five feet, also the location of water courses, ravines, bridges, lakes, large free-standing trees, wooded areas, approximate acreage;

11) Approximate grade and gradients of each proposed street and location of proposed culverts and bridges;

12) The location of sewers (storm and sanitary), along with information regarding any necessary improvements of such channels;

13) Data regarding the location, size and type of construction of any culverts, bridges or underground facilities for disposing of either storm water or sewage; and data regarding the area served by these facilities, the estimated volume of run-off and similar information;

14) Location of any easements necessary to accommodate the sewers or storm water drains or underground construction; and

15) Location of all permanent markers and monuments.

The subdivision regulations also should require the submission of enough copies of the preliminary plat to insure that the various reviewing agencies will have copies. The plat should be reviewed by the public works department, city engineer, utility companies, telephone companies and health department and, of course, the planning commission and staff. Also, the preliminary plat must be submitted in sufficient time to allow the various agencies to comment on the plat before the public hearing held by the planning commission.

Approval or disapproval of a preliminary plat usually is the responsibility of the planning commission. The city council generally has the final say in the approval of the final plat, which allows the developer to begin selling lots.

Construction Of Improvements

Subdivision regulations generally prohibit the construction of improvements until the preliminary plat has been approved. However, once the preliminary plat is approved, improvements must be made before approval of the final plat is given.

The developer usually is given three options:

1) Actually complete construction of all required improvements,

2) Post a performance bond guaranteeing such construction within a given period of time, or

3) Establish an escrow account to cover the costs of all required improvements.

Final Plat

The final plat stage is the last opportunity for the city to do anything about a subdivision. Submission procedures of the final plat generally are the same as those of the preliminary plat, requiring submission of enough copies and in sufficient time to be reviewed by the various agencies. Again, the final plat should be reviewed by the public works department, city engineer, health department, utility companies, telephone company and planning commission and staff. Most subdivision regulations require that the final plat must be submitted within a stated period after the approval of the preliminary plat (such as one year). This prevents the developer from putting the city to the trouble and expense of the approval process when he has no intention of carrying out his plans. Following is the information generally required on the final plat or accompanying it:

1) Name of subdivision;

2) Names of adjacent subdivisions and owners of adjoining parcels of un-subdivided land;

3) Name of subdivider, owner and engineer;

4) Location of section, township, range, city, county and state;

5) Names of adjacent streets within adjoining subdivisions;

6) Plat boundaries showing traverse bearings obtained by determination of true north by solar or celestial observation and internal angles with dimensions in hundredths of feet to close the traverse bearings within a maximum of one foot in 10,000 feet;

7) Date, scale and north point;

8) Proposed street center line bearings;

9) Length of all arcs, radii, internal angles, points of curvature and tangent bearings;

10) When lots are located on a curve or when side lot lines are at angles other than 90 degrees, the widths at the building line should be shown;

11) All easements for rights-of-way provided for public services or utilities and any limitations of such easements;

12) All lot numbers and lines, with accurate dimensions in feet and hundredths, and with bearings and angles to street and alley or crosswalk lines;

13) Accurate outlines of any areas to be dedicated or temporarily reserved for public use with the purpose indicated;

14) Building setback lines and dimensions;

15) Protective covenants, if any, for recording;

16) Surveyor's Certificate, placed on the plat;

17) An express dedication to the public for public use of all streets, alleys, rights-of-way, parks, school sites, easements, and other public places shown on the plat;

18) Owner's Certificate of Deed if dedication;

19) Certificate of Approval by the planning commission (to be placed on the plat); and

20) Certificate of Approval by the city council (to be placed on the plat).

Once the final plat has been submitted, the planning commission reviews the plat, holds a public hearing and makes its recommendations to the city council, which will approve or disapprove the final plat.

Recording Of The Final Plat

The last step before lots within a subdivision can be sold is the recording of the plat. The subdivision regulations should state what information is needed on the plat before the county recorder of deeds can record the plat and should be one of the conditions for approval. The city should determine from the county recorder, when developing the subdivision regulations, what information is needed and what form it should take, also what size the plat must be to be recorded.

The recording of the plat serves two functions:

1) It provides for the legal dedication to the public of the streets, parks, utility easements, school sites, etc. shown on the plat; and

2) It is a convenient method for describing a particular lot the developer wishes to deed to a purchaser.

Fees

To cover administrative costs most cities require the developer to pay a fee to the city for both the preliminary plat and final plat process. The fees should be reasonable and should reflect the actual costs accrued by the city for such items as review of plat, advertising the public hearing, site inspections and recording fees.

Most cities charge a base fee plus an additional amount for each lot, although a city may charge a flat fee for any size subdivision.

Subdivision Design Provisions

Many subdivision regulations contain certain general provisions relating to the location and design of subdivisions, followed by more detailed regulations covering the layout of streets, alleys, utility easements, blocks and lots.

Three general provisions that should be included in the subdivision regulations are:

1) Prohibiting subdivision activity where soil, subsoil or flood conditions would create a health or safety problem if the development occurred;

2) Requiring that all subdivisions conform to the city's comprehensive plan, particularly in regard to major street rights-of-way, schools, recreational areas, and major utility lines that are planned; and

3) Coordination of streets, utilities and drainage facilities with adjacent subdivisions, existing or proposed.

The developer also may be required to submit information on areas surrounding his subdivision and information about his long-range plan, if the proposed subdivision is only a portion of a larger tract.

Streets

Streets are a very important element in the design of a subdivision. They provide access to property and provide convenient rights-of-way for transmission and distribution lines of most utilities such as water, sewerage, gas, electric and telephone systems. Streets also determine the way lots are laid out in the subdivision.

When the developer begins to design streets for his subdivision, he should be required to take three things into consideration:

1) The major street plan of the city,

2) Coordinating streets with existing street patterns of adjacent subdivisions, and

3) The terrain.

The major street plan (transportation plan) indicates the location of rights-of-way for "arterial" or collector streets and, if the street plan shows a major thoroughfare going through a proposed subdivision, the developer must take this into account and provide adequate rights-of-way prescribed in the plan for that type of street. Entrances to subdivisions should be from high capacity streets and designed to avoid traffic hazards and to encourage the orderly flow of traffic.

Some streets within a proposed subdivision should be designed to carry a large volume of traffic (collector streets) while others (minor streets) should be designed to provide access to residences and discourage through traffic. This can be accomplished by using cul-de-sacs and loops.

Coordinating streets with adjacent subdivisions is very important. It insures that streets are properly aligned and that rights-of-way widths are consistent. Streets also should be built to the boundaries of adjoining properties so streets can be continued in the future.

Terrain is an important factor when designing streets. The terrain will determine where streets can be located and then how many lots will be available for sale. Streets must be designed to allow for safe passage. Grades must not be too steep, and curves, both vertical and horizontal, must be gradual enough that adequate sight distance is provided. Sanitary and storm sewers usually are located on street rights-of-way and operate for the most part on a gravity flow system. This means that streets must follow the topography in a way as to permit such a flow.

The following is a list of specific requirements concerning streets that should be included in the subdivision regulations.

- Streets should intersect or, as nearly as possible, be at right angles.
- Multi-street intersections should be avoided.
- Intersections of minor streets with major streets should be kept to a minimum.
- "Jogs" resulting from failure to align streets on either side of an intersection should be prohibited, with a minimum offset of 125-150 feet between centerline of parallel streets being required.
- Corners at intersections should be rounded, with a radius of 20-25 feet to promote turning movements.
- Tangents of 100-200 feet, depending upon the type of street and the expected speed limit, should be provided between "reverse curves" (where the street curves first in one direction and then in the other).
- Minimum radii of 150-400 feet for horizontal curves and 100-200 feet for vertical curves to provide adequate sight distance.
- Street right-of-way widths should be specified for various types of streets, i.e., arterial streets may require a 180-foot right-of-way; collector streets within a subdivision may require 60-foot rights-of-way, with pavement of 28-44 feet. Minor streets may require 40-50 foot rights-of-way with pavement of 18-28 feet.
- Cul-de-sac streets should be limited to 400-500 feet in length, with a minimum turnaround radius of 45-50 feet.
- Alleys should be avoided.
- Street grades vary according to terrain; in general, a minimum of 0.5-1 percent should be required for adequate drainage. Maximum grades vary according to the type of street, with steeper grades allowed on minor streets than on collectors or arterials. In general, 10-12 percent grades should be the maximum allowed for minor streets, and approximately 5-7 percent as a maximum for larger streets.
- Street names within a new subdivision should be coordinated with adjoining streets to promote the continuation of the same street. New streets should not have the same or similar name as streets in different parts of the city, except if they are a continuation of an existing street. Coordination of street names is important and will reduce response time for emergency services such as fire, police and ambulance.

Utility Easements

Most utility lines will be laid in the beds of streets, but, in some cases, this will not be feasible (for example, telephone and electrical lines and drainage facilities). When this situation occurs, it is desirable that lines be laid down rear lot lines and an easement provided for the line so maintenance personnel will have a legal right to enter the property and maintain or replace them. Easements should be carefully planned in advance and located with the same care as streets. Easements should run along lot lines and not cross lots at locations that will interfere with the placement of buildings. Minimum widths should be large enough to permit maintenance and construction to operate, usually 20-30 feet.

In some cases natural watercourses are used as an essential part of the storm drainage system and, in such event, a drainage easement should be designated so that city personnel may enter the land and keep the channel clear of obstruction.

Blocks

Block requirements generally have to do with the intervals at which streets must be provided in order to facilitate access from one area to another. Most subdivision regulations specify that blocks may be no more than 1,000-1,200 feet long and that where a block exceeds a given length, such as 800 feet, there must be a pedestrian right-of-way through the middle of the block.

Lots

Subdivision regulations usually require that lots conform to the zoning ordinance requirements as to the minimum permissible area and width.

Lot lines usually are required to be at right angles to straight streets or radial to curved streets. Double frontage lots (through lots) are considered undesirable, as are reverse frontage lots (corner lots in which houses face the side street rather than the street faced by their neighbors).

Dedication Of Land

Almost all subdivision regulations require that developers dedicate street rights-of-way, utility easements or recreation areas for public use. A dedication simply is a gift by the owner of a right to use land for a stated purpose.

Since this involves a transfer of property rights, the dedication must be made by a written instrument, sometimes by a deed and sometimes by a plat coupled with a certification of dedication. To insure that the purpose of the dedication will not be modified or withdrawn, there must be an acceptance of the dedication by the city council or utility involved.

Most subdivision regulations making requirements of a dedication of streets or other public lands call for a "certificate of ownership" and dedication to accompany the final plat when it is submitted for approval and later recorded with the county recorder of deeds. However, the approval of the final subdivision plat should not constitute an approval of the

dedication because that would make the city immediately liable for maintaining the facility in a safe manner. The decision to accept the dedication should be a separate one from the decision to approve the plat.

Required Improvements

Most subdivision regulations require the developer to construct or install certain improvements. These required improvements generally have to do with streets, sewerage collection systems, drainage systems and utility systems.

When deciding whether to require the installation of particular improvements, the city should take into consideration the purpose to be served by such requirements.

The most important consideration is to insure that development of an area does not create a health or safety hazard. In some situations soil and subsoil conditions make it hazardous to permit development with individual wells for water supplies and individual septic tanks for sewage disposal. When these conditions exist, the developer should be required to install an adequate water and sewerage disposal system.

Paving of streets and covering the soil with roofed structures greatly increases the rate of run-off of rain water. If inadequate provisions are made for such run-off, basements may be flooded, streets undermined, house foundations weakened, and adjoining areas may be subject to flooding.

Another consideration is the protection of unwary lot purchasers. Frequently, lot purchasers do not consider whether their water supply is coming from a 2-inch pipe instead of the 6-inch or 8-inch main, which is necessary for adequate fire protection, nor do they consider the type of street pavement. If the street is paved with just a thin topcoat of asphalt on a bed of clay, the first freeze and thaw will disintegrate the street.

The city also should consider how to provide for large capacity streets and utility mains designed to serve the needs not only of a particular subdivision but also of future subdivisions. For example, an 8-inch water main might be adequate to serve the needs of the particular subdivision, but the city may consider it wise to run a 12-inch main so as eventually to serve projected development on the far side of the subdivision.

Yet another consideration that should be addressed by the subdivision regulations is what to do about requiring water and sewerage systems in subdivisions too distant from existing water and sewerage systems to permit easy connection with the city's system. There are three common approaches followed in dealing with this situation:

1) Barring any subdivision activity in the area that cannot be connected to the city's sewerage system;

2) Authorizing the construction of a central sewerage collection system for the subdivision that is approved by the health department or the Department of Natural Resources, and requiring that the system be designed to connect to the city's system when it becomes available; and

3) Permitting the use of individual septic tanks for sewage disposal (with the approval of the Department of Natural Resources and the health department) but requiring the developer also to install and cap a complete sewerage system that can be connected with the city's system when feasible.

Finally, the city should take into account its cost of maintaining required improvements once they are turned over to the city. The savings in street maintenance costs where curbs and gutters are installed may be very great. An inadequately paved street may be more expensive to maintain than a graveled street, and maintenance costs of a properly constructed street may be far less expensive than a graveled street. So comparisons of original cost may present only part of the picture.

Street Improvements

Street construction requirements begin with the basic requirement that the developer grade out the streets and make them suitable for passage. From this point there is a range of successively greater requirements as to the base that must be provided and the types of surfacing required. Different types of streets carry different loads so that construction requirements for one type of street may be either too little or too much for another; for example, a local access residential street need be built only to a fraction of the load-bearing capacity of a heavy duty commercial or industrial street. Soil conditions also vary widely from one area to another so a professional engineer must be sought in developing standards for the various types of streets in any city.

Drainage Facilities

Closely associated with street construction is the provision of drainage facilities. These may range from culverts and ditches to "rolled" or "valley" gutters to curb and gutters and full-scale storm sewer systems. If inadequate provision is made for drainage, streets will deteriorate more rapidly as well as cause damage to private property. As with the design of specific street standards, an engineer must be consulted when developing requirements for drainage facilities.

Sidewalks

Sidewalks provide children with hard surfaced play areas other than streets and a safe access to schools and playgrounds. Sidewalks serve those who wish to walk rather than drive. Although more costly, hard surfaced sidewalks meet the requirements of users better than dirt or gravel walkways.

Utility Systems

The most common utilities developers are required to install are water and sewer systems. Other utilities such as electric, gas and telephone usually are provided by privately owned utility companies with the developer required to provide an easement for future maintenance. Even though fire protection is a general municipal responsibility, it is desirable to require the developer to install fire hydrants within the subdivision.

Monuments

Subdivision regulations should require the installation of monuments at key points throughout the subdivision and of corner stakes on individual lots. These are intended to be permanent markers from which property lines can be accurately surveyed.

Variances

Unlike zoning, the state statutes make no provision for the granting of variances from the requirements in hardship cases. However, most subdivision regulations allow the planning commission or board of adjustment to grant relief from the usual requirements in cases where they do not make sense or impose unusual burdens as applied to a particular situation.

The most common situation in which variances are sought is where a developer divides his land into the greatest possible number of lots, barely meeting minimum standards, and then seeks permission to create substandard lots out of the remaining land. The subdivision regulations are intended to set forth minimum standards for development, not maximums, and the intent of the regulation is to use the remnants of land to increase lot sizes rather than create substandard lots. When variances are granted allowing substandard lots, it weakens the legal position of the city and its regulations and makes it difficult to defend its subdivision standards.

Commercial and Industrial Subdivisions

Most subdivision regulations do not adequately address the placement of commercial and industrial subdivisions. This is due to the fact that many commercial shopping centers and industrial parks remain in one ownership and lots are leased to their tenants. This would not conform to the definition of a subdivision, although they would be subject to regulations under the zoning ordinance. But there are a number of both types of developments where there is an actual division and sale of land, and these situations should be addressed in the subdivision regulations.

Regulations governing commercial and industrial subdivisions differ from those governing residential subdivisions in two ways: 1) design and improvement requirements, and 2) procedures for plat approval.

Both large commercial developments and industrial parks require streets to be constructed to higher specifications because of the type of traffic they carry. Unlike residential streets, which discourage through traffic, commercial and industrial streets should promote the free movement of traffic and should be designed to handle a larger volume and heavier weights. They also may require additional lanes or construction of an access street paralleling existing streets. Sidewalks also may be desirable in commercial areas and frequently in industrial areas.

In industrial parks, streets should be designed to promote the movement of large and cumbersome trucks. Dead-end streets should be avoided, corners should be well rounded, curves should not be too abrupt. Street locations in industrial parks must be coordinated with railroad spurs.

Extra large water, sewage, gas and electrical lines normally are required, depending on the particular needs of the type of commercial or industrial development expected. Because of the extensive areas covered by roofs or pavement, the drainage system for these areas must be larger than usually required for other types of development.

Instead of requiring dedication of school sites or recreation areas in these types of development, the subdivision regulations may require dedication of off-street parking in

shopping centers or planting strips of various kinds around the development. Special attention must be paid to protecting adjacent residential areas from nuisance effects.

The standard plat approval process may present a problem in regard to industrial subdivisions (and to a lesser degree in commercial subdivisions). Lots usually are custom tailored to the needs of particular purchasers, and standard subdivision procedures require the plat to show lot lines. The city may choose to modify this procedure when it comes to industrial subdivisions (and perhaps for commercial subdivisions) by allowing the approval of an industrial plat that only shows streets and easements and not individual lot lines. The exact location of lot lines then could be exempted from further approved requirements, provided they meet certain general requirements. This approach gives the city adequate protection without unduly impairing the process of industrial development.

THE LANGUAGE OF PLANNING AND ZONING

Understanding the terms and phrases used by planners, zoning administrators, consultants, developers and realtors is an important step for any local official involved in developing a planning and zoning program for their city. The following is a list of terms and phrases used in the planning and zoning process.

Accessory use: An activity or structure incidental or secondary to the principal use on the same site, i.e., storage shed, swimming pool.

Aerial mosaic: A compilation of individual vertical aerial photographs joined together to provide a composite view of an entire area covered by the photographs.

Airport zoning: The zoning of areas adjacent to airports and runways to prevent the creation of obstacles that might constitute a hazard to airplanes in flight, and to protect local residents from hazards and inconveniences.

Alteration, structural: Any change in a supporting member of a building.

Amortization: A term used in zoning to mean the process by which nonconforming uses and structures must be discontinued or made to conform to requirements of the ordinance at the end of a specified period of time.

Bench mark: A permanent point of reference from which various measurements may be made.

Blight: Deterioration, the presence of deficiencies and inadequacies in buildings, facilities, and their environment or in relation to their environment.

Building area: The total square footage of a lot covered by a building measured on a horizontal plane at mean grade level, exclusive of uncovered porches, terraces and steps.

Building codes: Regulations governing building design and construction. They are based on the government's police powers to protect the health, safety and welfare of the public.

Building inspector: A municipal employee charged with enforcement of the building codes and such other ordinances (zoning, housing, electrical and plumbing) as may be assigned.

Building line: A building limit fixed at a specific distance from the front, rear or side boundaries of a lot beyond which a structure cannot lawfully extend.

Bulk regulations: Zoning or other regulations that by controlling the height, mass, density and location of buildings set a maximum limit on the intensity of development so as to provide proper light, air and open space.

Cluster development: A type of development that allows the reduction of lot sizes below the zoning ordinance's minimum requirements if the land thereby gained is preserved as permanent open space for the community.

Code enforcement: The attempt by a government unit to cause property owners and others responsible for buildings and related land to bring their properties up to standards required by building codes, housing codes and the zoning ordinance.

Community facilities: Public or privately owned facilities used by the public, such as streets, schools, libraries, parks and playgrounds; also facilities owned and operated by nonprofit private agencies such as churches and neighborhood associations.

Compatibility: The characteristics of different uses or activities that permit them to be located near each other in harmony and without conflict. The designation of permitted and special permit uses in a zoning district are intended to achieve compatibility within the district.

Comprehensive Development Plan: A plan for development of an area that requires the physical, economic, social, political and related factors of the community involved. Sometimes known as the General Plan, Master Plan or City Plan.

Condemnation: The taking of private property by a government unit for public use when the owner will not relinquish it through sale or other means; the owner is compensated by payment of fair market value.

Conditioned use: A use that may be located in certain zoning districts provided it will not be detrimental to the public health, morals and welfare and will not impair the character of the zoning district. Examples of conditional use permitted in a commercial, industrial or agricultural zone are temporary carnivals, religious revivals and rock concerts.

Condominium: The legal arrangement in which a dwelling unit in an apartment building or residential development is individually owned but in which the common areas are owned, controlled and maintained through an organization consisting of all the individual owners.

Conversion: The partitioning of a single-dwelling unit into two or more separate households or the conversion of the use of an existing building into another use. "Bootleg conversion" is a common term for an illegal conversion of a structure.

Dedication: A turning over of private land for a public use by an owner or developer, and its acceptance for such use by the governing body in charge of the public function for which it will be used. Dedications for roads, parks, schools, sites or other public uses are often made conditions for the approval of a development.

Density, control of: A limitation on the occupancy of land. Density can be controlled through zoning by one method or a combination of the following methods: use restrictions, (single- or multiple-family dwelling); minimum lot-size requirements; floor area ratio; setback requirements and yard requirements; direct limitations on units per acre; and requirements for lot area per dwelling unit. The major distinction between different residential districts often is in their allowable density.

Downzoning: A change in the zoning classification of land to a classification permitting development that is less intensive or dense, such as from multi-family to single-family or from commercial or residential to residential.

Easement: Usually, the right to use property owned by another for specific purposes. Utility companies often have easements on the private property of individuals for utility facilities and maintenance access.

Environmental impact: An assessment of a proposed project or activity to determine whether it will have significant environmental effect on the natural and manmade environment.

Exception (also called variance): The official granting of an exemption from compliance with the terms or conditions of a building or zoning regulation by a local board of adjustment or building commission. It usually is granted if there are practical difficulties in meeting the existing requirements. Exceptions should not be granted because of financial difficulties in meeting the terms of the regulations.

Exclusionary zoning: Zoning that has the effect of keeping out of a community racial minorities, poor people, or in some cases, additional population of any kind. This type of zoning has been ruled unconstitutional by the courts.

Final subdivision plat: A map of an approved subdivision filed in the county recorder's office. It usually shows surveyed lot lines, street rights-of-way, easements, monuments and distances, angles and bearings, pertaining to the exact dimensions of all parcels, street lines and so forth.

Finding: A determination or conclusion based on the evidence presented by a hearing body in support of its decision. A board of zoning adjustment or governing body is required by law to hold public hearings to hear evidence when it receives a petition for a variance, special use permit, rezoning or appeal of an administrative official's decision.

Floating zone: A zoning district that is described in the text of the zoning ordinance but is not indicated on the zoning map. For example, a regional shopping district.

Highest and best use: The use of land in such a way that its development will bring maximum profit to the owner.

Improved land: Raw land that has been improved with basic facilities such as roads, sewers, water lines and other public infrastructure facilities.

Infrastructure: Streets, water and sewer lines and other public facilities necessary to the function of an urban area.

Land-use plan: A basic element of a comprehensive plan, it designates the future use or reuse of the land within a given city's planning area, and the policies and reasoning used in arriving at the decisions in the plan. The land use plan serves as a guide to official decisions in regard to the distribution and intensity of private development as well as public decisions on the location of future public facilities and open spaces. It also is a basic guide to the structure of the zoning ordinance, subdivision regulations and capital improvement programs.

Leapfrog development: Development that occurs well beyond the existing limits of urban development and thus leaves vacant land behind. This bypassing of the next-in-line lands at the urban fringe results in a haphazard shotgun pattern known as "sprawl."

Metes and bounds: A system of describing and identifying land by measures (metes) and directions (bounds) from an identifiable point of agricultural areas.

Moratorium: In planning, a freeze on all new development pending the completion of a comprehensive plan.

Neighborhood: The smallest sub-area in city planning, defined as a residential area whose residents have public facilities and social institutions in common, generally, within walking distance of their homes.

Nonconforming use: A structure or use that is not permitted by its present district's zoning regulations. If it was established after the enactment of the zoning ordinance, it is illegal and must be discontinued, but if it existed before the enactment of the zoning ordinances, it is a legal nonconforming use and may continue, although a new or different nonconforming use may not replace it. Most ordinances provide that its extension or enlargement is not permissible.

Nuisance: Anything that interferes with the use or enjoyment of property, endangers personal health or safety, or is offensive to the senses.

Official map: A detailed public improvement plan adopted by the city council that protects from development the sites and rights-of-way shown.

Open space: That part of the countryside that has not been developed and is desirable for preservation in its natural state for ecological, historical or recreational purposes, or in its cultivated state to preserve lot numbers, setback lines, and lot dimensions; and location of any easements, culverts, storm drains, creeks, ponds or other significant natural features, including contours and adjacent structures. If the land is to be subdivided in sections, the preliminary plat often is required to include a precise plan of streets, public facilities and lots for the entire holding as well as the section being submitted for approval, so the city can see at the outset that the pieces will fit together when the development is completed.

Parcel: A lot, or contiguous group of lots, in single ownership or under single control and usually considered a unit for purposes of development.

Peak hours: For any given highway or street, the sixty-minute period of day during which it carries its highest volume of traffic.

Planned Unit Development (PUD): A self-contained development, often with a mixture of housing types and densities, in which the subdivision and zoning controls are applied to the project as a whole rather than to individual lots, as in most subdivisions. Therefore, densities are calculated for the entire development, usually permitting a trade off between clustering of houses and the provision of common open space.

Police power: The inherent right of a government to restrict an individual's control or his use of his property in order to protect the health, safety, welfare and morals of the community.

Preliminary subdivision plat: The first formal submission by a subdivider in the form of a map with accompanying documents required by the subdivision regulation. Generally, the following is contained in the preliminary plat: name of the subdivision; its location, acreage, owner and engineer or surveyor; the location of property line, roads, existing utilities and the bearings and dimensions; names of adjoining properties; zoning classification of the property; proposed water, sewer, drainage and public utility systems to be employed; names of new streets; reference such as a monument or other marker; the corner of intersecting streets, or in rural cases, a tree or other permanent feature.

Principle use: The main use of land or structures as distinguished from a secondary or accessory use. A house is a principal use in a residential area; a garage or swimming pool

is an accessory use. Zoning ordinances often will establish a general rule that only one principal structure or use will be permitted on each lot.

Property map: A map showing the dimensions of all property lines by figures and by scale.

Public purpose: That which promotes the health, welfare, morals, good order, prosperity and contentment of the populace in a given political unit.

Reversion clause: A requirement that may accompany special use permit approval or a rezoning that returns the property to its prior classification if a specified action, such as taking out a building permit or beginning of construction, does not begin in a specified period of time. This is a way of protecting a community against using permits or rezoning for speculative purposes.

Right-of-way: The right of passage over the property of another.

Road or street system: The classification of streets and highways by their function and design. The following is the commonly used hierarchy of streets and highways for planning purposes:

> Local street — a roadway allowing access to abutting land, serving local traffic only.
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> Collector — a street whose function is to channel traffic from local streets to major arterials; it has direct access to abutting properties.
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> Major arterial — a road that serves through-traffic movement across the city, often subject to controlled access from properties fronting on the right-of-way.
>
> Expressway — a divided multi-lane highway whose purpose is to move large volumes of through traffic from one part of a metropolitan area to another; intersections are separated by underpasses or overpasses at major intersections. It does not provide land access service between intersections.
>
> Freeway — a multi-lane highway with full-grade separator, total control of access, median strip and fencing or landscaping strips along the sides.
>
> Parkway — An expressway or freeway designed for noncommercial traffic only; usually located within a strip of landscaped park or natural vegetation.

Sewerage system: A facility designed for the collection, removal, treatment and disposal of waterborne sewage generated within a given service area. It usually consists of a collection network of pipelines and a treatment facility to purify and discharge the treated wastes.

Site plan: A plan showing uses and structures proposed for a parcel of land as required by the regulations involved. It includes lot lines, streets, building sites, reserved open spaces, buildings, major landscape features — both natural and manmade — and locations of proposed utility lines.

Site plan review: The process whereby local officials, usually the planning commission and staff, review the site plans and maps of a developer to assure that they meet standards of the zone, provide for the necessary public facilities such as roads and schools, and protect and preserve topographical features and adjacent properties through appropriate location of structures and landscaping.

Spot zoning: The awarding of a use classification to an isolated parcel of land that is detrimental or incompatible with the uses of the surrounding area.

Strip zoning: A mélange of developments, usually commercial, extending along both sides of a major street leading out of a city.

Subdivision: The process of laying out a parcel of raw land into lots, blocks, streets and public areas. Its purpose is the development of raw land into building sites.

Taking: The appropriation by government of private land for which compensation must be paid.

Topographic map: A map showing all principal physical features of an area, including elevation. In city planning, topographic maps of a scale 400-2000 feet to one inch are normally satisfactory. Contouring lines, which show points of equal elevation, are used on these maps. Contour intervals usually vary between twenty feet in hilly country and five feet in relatively level areas.

Trip: The journey from the traveler's point of origin to his destination and the smallest unit of movement considered by transportation studies.

Trip generation: The reasons that account for people making trips in autos or mass transit.

Urban design: The attempt to give form, in terms of both beauty and function, to entire areas or to whole cities.

Urban fringe: An area at the edge of an urban area usually made up of mixed agricultural and urban land uses.

Value, market: The price a willing buyer presumably would pay for a property when it is offered for sale by a willing seller in an open market.

Yard: The un-built upon space on a building lot situated between the front, rear or side walls. It is more common in planning and zoning to be more specific and designate the front yard, side yard and rear or back yard as the spaces between those respective sides of the building and the adjoining lot line.

Zoning: Zoning is a police power measure enacted by units of local government under permissive state legislation. Zoning regulations establish, in advance of applications for development, groups of permitted uses that vary from district to district. They also control the placement, height, bulk and overage of structures within each of the districts into which the jurisdiction is divided by the zoning map, which is a part of the zoning ordinance.

Zoning district: A section of a city designated in the zoning ordinance and delineated on the zoning map, in which requirements for the use of land and buildings and development standards are prescribed within each district. All requirements must be uniform.

FACTORY-BUILT HOMES

Manufactured Homes (Mobile Homes) and Modular Homes

Municipal officials throughout Missouri are addressing the issue of allowing the placement of factory-built homes in their communities. Many times these efforts are not completely voluntary. Pressure from the factory-built homes industry and affordable housing advocates are forcing cities to deal with this issue. Factory-built homes do have a place within a community. However, their location depends on the type of factory-built home and the needs of the municipality.

Different Types Of Units

The term factory-built home consists of several types of housing units. There are manufactured homes, mobile homes and modular homes. To understand the distinction between these types of housing units, it is important first to understand the federal and state regulatory history of factory-built homes. Since June 15, 1976, when the Federal Mobile Home Construction and Safety Act of 1974 went into effect, the U.S. Department of Housing and Urban Development has regulated the construction of mobile homes. In the 1980 Housing Act, the U.S. Congress mandated that the term "mobile home" be changed to "manufactured home."

The 1974 Act now is known as the Federal Manufactured Home Construction and Safety Act of 1974 (hereinafter referred to as the HUD Code). The reason given for this change in terminology was the improved quality of this type of factory-built home and the decreased mobility of the unit once it is placed on a site. The HUD Code establishes uniform national construction standards with which all manufacturers of manufactured homes must comply. HUD ensures compliance by a system of reviewing and approving manufactured home designs and conducting factory inspections to monitor construction of these housing units. The design reviews and factory inspections are conducted by engineers certified by HUD and hired by the manufactured home manufacturers.

Another key component of the HUD Code is its preemption over local building codes. If the construction of a manufactured home complies with the HUD Code and carries the HUD seal of compliance, the home does not have to comply with local building regulations. However, local zoning regulations are not preempted. Compliance with the HUD Code does not affect the placement or location of a manufactured home within a community. Manufactured homes built prior to the HUD Code or manufactured homes not constructed according to its standards come under the scrutiny of local building codes. The HUD Code does not regulate the construction of modular units, which come under the authority of the State of Missouri.

The State of Missouri has regulated the construction of factory-built homes since 1974. Sections 700.010 through 700.320 Revised Statutes of Missouri govern the state's role in regulating factory-built homes. The state's regulatory authority over manufactured homes was preempted when the HUD Code went into effect in 1976. Currently, the Missouri Public Service Commission (PSC) and the U.S. Department of Housing and Urban Development have an administrative agreement, which gives the PSC the responsibility of investigating consumer complaints concerning manufactured homes. In addition, the PSC regulates the anchoring and tie-down of manufactured homes.

Regulation of the construction of modular units rests with the PSC. The HUD Code plays no role in the regulation of the modular unit. Missouri's process of regulating modular

units is similar to the approach used by HUD when regulating manufactured homes. The state establishes construction regulations for modular units and then certifies third party private engineers to review unit designs and conduct factory inspections. The PSC has adopted the Building Officials and Code Administrators International, Inc. (BOCA) and the International Conference of Building Officials (ICBO) as the construction standards that manufacturers of modular units must follow. The manufacturer has the option of complying with BOCA or ICBO. Once certified by the Missouri Public Service Commission, the modular unit is exempt from local building codes. All certified modular units will carry a seal issued by the PSC. As with manufactured homes, state certification does not preempt local zoning regulations.

Types Of Factory-Built Homes

Factory-built homes consist of three types of housing units: manufactured homes, modular homes and mobile homes.

Manufactured Home is defined by state law as a factory-built structure or structures that, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, contains 320 or more square feet, equipped with the necessary service connections and made so as to be readily movable as a unit or units on its or their own running gear and designed to be used as a dwelling unit or units with or without a permanent foundation. The phrase "without a permanent foundation" indicates that the support system is constructed with the intent that the manufactured home placed thereon may be moved from time to time at the convenience of the owner. The state's definition of manufactured homes is consistent with that used in the HUD Code.

Modular Unit is defined by the state as a factory-fabricated transportable building unit designed to be used by itself or to be incorporated with similar units at a building site into a modular structure to be used for residential, commercial, educational or industrial purposes.

Mobile Homes have no statutory definition at the federal or state level. However, used in local regulations, the term mobile home is helpful in distinguishing between manufactured homes that meet the HUD Code and those built prior to the HUD Code.

A mobile home may be defined as a transportable, factory-built home designed to be used as a residential dwelling and built prior to the enactment of the Federal Manufactured Home Construction and Safety Standards Act of 1974, which became effective June 15, 1976.

Zoning For Factory-Built Homes

Locating factory-built homes within a community often is controversial. Property owners fear the decline in property values. Manufactured home dealers want the opportunity to expand their market. Affordable housing advocates view factory-built homes as a means of providing low-cost housing. Fire and building officials want to be assured that factory-built homes are safe. Balancing these varying interests and concerns can be a difficult task.

Generally, manufactured homes are the most controversial type of factory-built homes to locate within a community. Unlike modular units, manufactured homes do not comply with standard municipal building codes and often are not compatible with site-built homes without modifications. Manufactured homes are not appropriate in all residential areas of a city, but in some areas manufactured homes could be an asset to the community. Residential areas with declining housing conditions may be improved by permitting

manufactured homes. Manufactured home subdivisions also provide a viable affordable housing option to municipal residents. Subdivisions can be an asset if they are designed to local standards that ensure safe traffic circulation and at a density that provides adequate spacing between manufactured homes.

The city's zoning ordinance specifies where manufactured homes are permitted within the community. Manufactured homes could be allowed in specific residential districts, in manufactured home subdivisions or in both. When manufactured homes are permitted, the zoning ordinance should require mandatory performance standards. Performance standards may require manufactured homes to be attached to a permanent foundation in compliance with local building codes — that the hitch, axles and wheels be removed, that manufactured homes be oriented on the lot so that its long axis is parallel with the street. In addition, the standards could specify that only double-wide manufactured homes be allowed. However, it is uncertain whether all municipalities have the authority to regulate appearance standards of manufactured homes, such as requiring the pitch of the roof and type of shingles and siding. The city attorney should be consulted before imposing appearance standards.

If manufactured homes are permitted in a municipality, whether in a subdivision or in a specified zoning district, factory-built homes that do not meet the HUD Code, Missouri PSC Code or local building codes should not be allowed. These homes may present a safety hazard.

Potential Legislation

The manufactured home industry has expressed a desire to introduce legislation in the Missouri General Assembly that mandates manufactured homes be permitted by right in all residential districts of a municipality. Manufactured homes may be a viable housing option in some situations. However, location of manufactured homes and the standards applied to them can best be determined at the local level where the unique conditions of each municipality are taken into consideration.

Factory-built homes are a valuable component of today's housing options. When built to federal and state standards and located in compliance with local ordinances, factory-built homes provide a safe and less expensive housing alternative. Factory-built homes that are located in disregard to local land-use conditions have an adverse impact on the community, just as factory-built homes that do not meet federal and state codes have an adverse impact on the safety of their occupants.

UNSAFE STRUCTURES

Unsafe buildings exist in almost every municipality in Missouri. These public nuisances may be small backyard sheds or large commercial buildings. Regardless of the size of the unsafe structures, they generally have common characteristics. In every instance, the unsafe structure poses a threat to the health and safety of the public. The unsafe structure may be a breeding ground for insects and rodents or on the verge of collapse. The unsafe structure also adversely affects the property values in both the municipality and the neighborhood where it is located and may discourage investment or reinvestment into the community. Owners of such structures often are reluctant to repair or demolish the structure. When an owner refuses to repair or demolish an unsafe structure, the municipality has two choices: allow the structure to remain a public hazard or use the procedures authorized in Sections 67.400-67.450 of the Revised Statutes of Missouri to remove the nuisance.

All cities, towns and villages are authorized by state law to enact an ordinance requiring mandatory repair or demolition of structures that have been determined to be unsafe. The statutes do not simply grant a municipality the authority to regulate unsafe structures, they spell out in some detail how the ordinance is to be structured.

Required Provisions

What is an unsafe structure? The state statutes require that an unsafe structure ordinance define an unsafe structure. The ordinance must identify those conditions or defects that make a structure unsafe and, therefore, a nuisance to the public health, safety and welfare. However, the statutes do not identify those conditions or defects; that is a determination that is made by the governing body of the municipality. Some common conditions and structural defects used in unsafe structure ordinances include: walls that lean or are buckling, deteriorated foundations or supporting members, inadequate or lack of sanitary facilities and substantial damages due to fire or wind. This is not a complete list of unsafe conditions, but provides an example of the standards that must be included in an unsafe structure ordinance.

Inspection and notification. In order to determine if a structure is unsafe, it first must be inspected. Unsafe structure ordinances must provide for the appointment of a building inspector and the duties performed by the inspector. The inspector may be any municipal employee or combination of employees. In some municipalities the city police officers are the inspectors, in others it may be a public works employee. Where it is not practical to use municipal employees, a volunteer may conduct the inspection. No matter who acts as building inspector it is essential to the validity of the unsafe building ordinance that the inspector use the conditions established in the ordinance to make the determination that a structure is unsafe.

In addition to performing inspections, it is the duty of the building inspector to notify owner(s) of an unsafe structure that it is a public hazard and corrective action needs to be taken. The notice sent by the inspector must declare the structure a public nuisance and specify the location of the property, whether the structure needs to be repaired or demolished and, if applicable, that occupants need to be vacated. The notice must indicate a reasonable time when the repair work or demolition is to begin.

Notice of the nuisance must be served in person or by certified mail, return receipt requested. If the property owner(s) cannot be notified by either of these methods, then notice must be published in the newspaper. The statutes do not specify the length of time a

person has to repair or demolish an unsafe structure. This will depend on the immediacy of the hazard. When an unsafe structure poses an immediate threat to the public the statutes allow emergency measures to be taken to vacate, repair or demolish the unsafe structure.

Appointment of a building commissioner. Municipalities are required by state statutes to appoint a building commissioner. The building commissioner may be the mayor, governing body, city manager/administrator, department head or any other designated official. The function of the building commissioner is to supervise the activities of the building inspector. The commissioner also is responsible for conducting a hearing when owners of an unsafe structure refuse to comply with the building inspector's order to repair, demolish or vacate the structure. Affected property owners must be given a written notice 21 days prior to the date of the hearing. The property owner must receive a full and adequate hearing and may be represented by counsel. After the hearing, it is the duty of the building commissioner to determine whether the evidence supports the building inspector's findings that the property owner's structure is unsafe. If the building commissioner makes a determination that the evidence supports the inspector's findings, the commissioner then issues an order listing the facts that show the structure to be unsafe and the structure must be repaired or demolished.

Failure to comply. What recourse does the municipality have if the property owner refuses to repair or demolish a structure that has been declared a nuisance? The municipality is authorized to make the necessary repairs or demolish the unsafe structure if the property owner refuses to do so. The statute provides municipalities with several methods of recovering the cost of removing the nuisance. After the municipality repairs or demolishes the unsafe structure, a special tax bill is issued that becomes a lien on the property. The special tax bill is collected in the same manner as property taxes. However, upon the request of the property owner the special tax bill may be repaid in ten annual installments. In addition, the tax bill becomes a personal debt of the property owner(s), and the municipality may seek a court judgment to recover the cost of removing the nuisance.

Structure damaged by fire. When a structure is damaged by fire or other casualty loss and the structure is covered by insurance, the municipality may require the insurance company to withhold ten percent of the insurance proceeds and pay it over to the municipality. In order to take advantage of this provision, the damage to the structure must exceed 50 percent of the value of the policy. Once the municipality receives the money from the insurance company, it has 30 days to start proceedings under its unsafe structure ordinance or release the money. In order to have insurance proceeds withheld, a municipality must adopt an ordinance establishing the procedure. This can be accomplished by including it in the unsafe structure ordinance. Once adopted, the municipality has 14 days to notify the Missouri Department of Insurance that it has adopted this provision by ordinance. The Department of Insurance will notify all insurance companies doing business in Missouri of the municipalities that have adopted the insurance proceeds provisions.

Fines. A municipality also may provide that failure to comply with the notice declaring a nuisance within a reasonable amount of time or failure to proceed continuously without delay will be punishable as set forth in the ordinance. In other words, the municipality may fine a property owner who does not comply with the order to repair or demolish an unsafe structure. Each day the order is ignored can be a separate violation.

Adopting an unsafe structure ordinance is only the first step. Once in place, the ordinance must be consistently and continually enforced. Without an active enforcement program even the best ordinance will be ineffective.

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