

New Orleans Charter Strengthens the Master Plan

By William E. Borah

Using the New Orleans Home Rule Charter amendments proposed by the Bureau of Governmental Research¹ as a starting point, and working closely with Robert L. Zoeckler, Daniel R. Mandelker, Stuart Meck, and Paul H. Sedway,² I drafted charter amendments to require the city to prepare a Master Plan with the force of law. The work was authorized and supported by the nonprofit, Smart Growth for Louisiana. The charter changes subsequently received the support of the Steering Committee of the District One Unified New Orleans Plan, numerous civic and neighborhood organizations,³ and were presented to City Council President Jacquelyn Brechtel Clarkson, who agreed to take the lead in the adoption process.

On July 10, 2008, the City Council, on a 7–0 vote, adopted the amendments to the Home Rule Charter of the City of New Orleans. Just eight days later on July 18, the Mayor followed the Council’s lead by approving the ordinance. On November 4, 2008, citizens went to the polls in a general election and approved the charter amendments. Because of this voter approval and the resulting amendments to the charter, the manner in which the city plans for the use of its land will dramatically change, because the city is now required to prepare a Master Plan to direct its future development that will have the force of law—a plan that public officials as well as private citizens will be required to follow. Moreover, all land use regulations—including the zoning ordinances—will have to be consistent with the plan. Capital improvements, as well as the capital budget, also will be required to be consistent with the plan. And because of the approval of the amendments, citizens and neighborhoods will be structured into the planning process in a more comprehensive and inclusive manner.

This commentary reviews the charter amendments and explains why some sections were added and some were removed during the drafting process.

Description of the Master Plan

The City Planning Commission is required to prepare, adopt, amend, and recommend to the City Council a 20-year Master Plan for the physical development of the city. The plan consists of a number of elements, including Vision, Goals, and Policy; Land Use; Transportation; Housing; Community Facilities and Infrastructure; and Historic Preservation. These physical elements are to be interrelated with each other and provide overall guidance for city policy and priorities. The Land Use element consists of text setting forth land use issues and policies and a Future Land Use Map setting forth categories of allowable uses and density for the city. Home Rule Charter, City of New Orleans art. V, ch. 4, § 5-402 (1).

Preparation of the Master Plan

In preparing the Master Plan, the Planning Commission is required to hold at least one public meeting in each planning district in the city, or other designated neighborhood planning unit, to solicit the opinions of citizens that live or work in that district or planning unit. It is also required to hold at least one public hearing to solicit the opinions of citizens from throughout the community. Furthermore, the Planning Commission takes affirmative steps to involve neighborhoods in master planning activities and complies with the requirements of any neighborhood participation program that the city adopts by ordinance. *Id.* § 5-404 (1).

On completion of the public meetings and hearing(s) and completion of the Master Plan, and following the adoption of the plan by resolution, the Planning Commission will forward the Master Plan to the City Council for adoption by ordinance. The Council has the option to adopt the Master Plan, reject it, or propose modifications within 90 days. If it rejects the plan, or proposes any modification, the document returns to the Planning Commission for public hearing and comment, and a recommendation is provided back to the City Council within 60 days. *Id.* Final action is taken by the City Council within 45 days of receipt of the recommendation from the City Planning Commission. Should the City Council fail to act on the Master Plan as required by this section after its submission by the Planning Commission, or after a resubmission by the Commission after the Council has modified or rejected the Plan, the Master Plan initially submitted to the Council by the Commission shall be deemed adopted by the Council. *Id.*

Legal Effects of the Master Plan

Following adoption of the Master Plan, no public project or facility and no public utility, whether publicly or privately owned, shall be authorized or significantly altered except in conformity with the adopted Master Plan. *Id.* § 5-404(3)(a). All land development regulations and amendments, including amendments to the zoning ordinance and the zoning map, as well as all other land use actions, including but not limited to, preliminary or final approval of a subdivision plan; site plan; approval of a planned unit development, or similar site specific development plan; approval of conditional use; granting of a variance, or a decision by local government to construct a capital improvement; and/or acquire land or community facilities, including transportation facilities, shall be consistent with the Master Plan adopted by the City Council. *Id.* § 5-404(3)(c).

A land use action is consistent with the Master Plan if it

1. furthers, or at least does not interfere with, the goals, policies, and guidelines, including design guidelines, that are contained in the Land Use Element of the Master Plan; and
2. is compatible with the proposed future land uses, densities, and intensities designated in the Land Use Element of the Master Plan. *Id.* § 5-404(3)(d).

It is important to note that the capital improvement plan and the capital budget must also be consistent with the Master Plan. *Id.* § 5-402(4).

Zoning Ordinance

The purpose of the zoning ordinance, its revisions as well as its amendments, is to promote the health, safety, aesthetics, and general welfare of the city and to implement the Master Plan. The ordinance can contain regulations on the location height, bulk, size of buildings, and other structures; the size of yards, courts, and other open spaces; the density of population; and the use of buildings, structures, and land for trade, industry, business, residence, or other purposes.

The zoning ordinance includes an official Zoning Map, and the ordinance and the map may be periodically amended by the City Council provided any amendments are consistent with the Master Plan. The text, diagrams, and maps in the Land Use Element of the Master Plan that address the location and extent of future land uses, and the zoning ordinance that implements those provisions, can also address urban form and design. They can differentiate neighborhoods, districts, and corridors, provide for a mixture of land uses and building types within each, and provide specific measures for regulating relationships between buildings, and between buildings and outdoor public areas, including streets, sidewalks, and other right-of-ways. *Id.* § 5-402(3)(c). Any zoning ordinance or amendments adopted by the Council must be consistent with the Master Plan. Inconsistent ordinances and amendments are null and void. *Id.* § 5-406(1).

Simultaneous with any amendment to the Master Plan, the Planning Commission reviews the comprehensive zoning ordinance to determine, after one or more public hearings, whether the ordinance requires revision and amendment. *Id.* § 5-406(3).

Mandatory Review of Master Plan

At least once every five years, but not more often than once per calendar year, and at any time in response to a disaster or other declared emergency, the Planning Commission is required to review the Master Plan and determine, after one or more public hearings, whether the plan requires amendment or comprehensive revision and, if so, recommend amendments or comprehensive revisions. The Planning Commission will hold at least one public meeting for each planning district or other designated neighborhood planning unit affected by amendments or revision in order to solicit the opinions of citizens that live or work in that district or planning unit; it also will hold at least one public hearing to solicit the opinions of citizens from throughout the community. The Planning Commission is also required to comply with the neighborhood participation program that the city may adopt in the future. *Id.* § 5-404(4).

Orientation and Continuous Education Training

Each member of the Planning Commission and Board of Zoning Adjustments is required to attend a minimum of six hours of orientation training concerning the duties and responsibilities of the Planning Commission or Board of Zoning Adjustments. *Id.* § 5-409(1). Each year they also will receive at least six hours of continuous education in any of the following subjects: land use, land use planning, land use law, zoning, transportation, community facilities, historic preservation, ethics, public utilities, parliamentary procedure, public hearing procedure, economic development, housing, public buildings, land subdivision, and powers and duties of the Planning Commission and Board of Zoning Adjustments. *Id.* § 5-409(2)–(3). If they fail to complete the required training, they can be removed by a majority vote of the Planning Commission or Board of Zoning Adjustment. *Id.* § 5-409(4).

Neighborhood Participation

The city is required to establish a system for organized and effective neighborhood participation in land use decisions and other issues that affect quality of life. The system must provide for timely notification to a neighborhood of any proposed land use action affecting the neighborhood and also provide the opportunity for meaningful neighborhood review and comment. *Id.* § 5-410.

The Drafting Process

To get increasing numbers of citizens on the Planning Commission and Board of Zoning Adjustments (BZA) who have knowledge about land use planning, the charter amendments initially authorized the City Council to create a nominating committee to nominate citizens to serve on the Planning Commission and BZA. When Planning Commission members objected because it led to “too many conflict of interest situations” and other citizens argued that the process was too cumbersome and interfered with the right of elected representatives to appoint members of the Planning Commission, the provision was removed. The selection process remains as it is today and as it is defined in the City Charter. The Mayor appoints all the members of both bodies with the approval of the City Council—nine-year terms for Commission members and five-year terms for BZA members.

The second concern was the requirement that the Planning Commission would “hear and decide all applications for conditional use.” Under our current zoning ordinance, conditional use is defined as “a land use which because of its unique nature is compatible with the permitted land uses in a given zoning district only on a determination that the external effects of the use in relation to the existing and planned uses of adjoining property and the neighborhood can be mitigated through impositions of standards and conditions.” Placing a school in a single-family residential area is an example.

There are 100+ pages in the current zoning ordinance addressing conditional uses in some fashion. Historically, the community has used conditional uses as a way to amend the zoning ordinance without using the rezoning process. There has been significant community support for designating the Planning Commission as the final decision maker in conditional use applications to ease the City Council’s burden with such applications. But some community leaders, particularly those representing the less affluent areas of the city, strongly believe that the City Council—not the Planning Commission—should decide whether or not a conditional use permit should be issued. Their argument is that elected officials, unlike political appointees, can be held accountable by citizens for their actions, and decisions by such an elected body are consequently more equitable and just. The decision was made to remove all language pertaining to conditional use from the charter amendments. This decision drew added strength from the recognition that the most appropriate time and place to address the conditional use issue was when the city prepared its

Endnotes

1. Bureau of Governmental Research, "Planning for a New Era: Proposed Charter Changes for Land Use Decision Making in New Orleans" (August 2006). Janet R. Howard, President & CEO, and Peter Reichard, Principal Author, drafted the Charter amendments. Daniel R. Mandelker, Howard A. Stamper Professor of Law, Washington University, St. Louis, Missouri, was legal consultant. William E. Borah, New Orleans, Louisiana; Thomas G. Pelham of Fowler White Boggs Banker, Tallahassee, Florida; and Edward J. Sullivan, Portland State University, Portland, Oregon, reviewed the Charter amendments.

2. Robert R. Zoeckler, Maddox, Nix, Bowman & Zoeckler, Conyers, Georgia, land use attorney, former associate city attorney, Atlanta, Georgia; Daniel R. Mandelker, Howard A. Stamper Professor of Law, Washington University, St. Louis, Missouri, co-author of *Planning and Control of Land Development: Cases and Materials* (7th ed. 2008) and author of *Land Use Law* (4th ed. 1997); Stuart Meck, FAICP, Director and Faculty Fellow, Edward J. Bloustein School of Planning and Public Policy, Rutgers, The State University of New Jersey, New Brunswick, New Jersey, General Editor, Principal Investigator and General Editor, *Growing Smart Legislative Guidebook: Model Statutes for Planning and the Management of Change* (American Planning Association 2002); and Paul H. Sedway, FAICP, Sedway Consulting, San Francisco, California, attorney/planner, former principal in planning firm of Sedway Cooke Associates.

3. Among the organizations supporting the Charter amendments were the *Times-Picayune*, *Gambit Weekly*, *New Orleans City Business*, Bureau of Governmental Research, and Business Council of New Orleans and the River Region, Downtown Development District, American Planning Association, the local chapter of the American Institute of Architects, National Trust for Historic Preservation, Smart Growth for Louisiana, League of Women Voters, Preservation Resource Center, Citizens for a Better New Orleans/Metropolitan Area Committee, Southern Christian Leadership Council, City-Wide Tenants Organization, and Vieux Carré Property Owners and Residents Association.

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