

# SPECIALTY TOOLS IN THE ZONING TOOLBOX

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# BASIC LAND USE AND DEVELOPMENT CONTROLS

## ZONING GENERALLY

Zoning regulates the use of land. Zoning authority may be extended to areas within a municipality's corporate limits. Once established, the Council has broad discretion to approve or disapprove requests for changes to the zoning map provided that the decision is not arbitrary and capricious.

Traditional zoning divides the City into districts (R1, R2, C1, C2, I, etc.) and specifies the land use regulations that are applicable to all properties uniformly throughout the district.

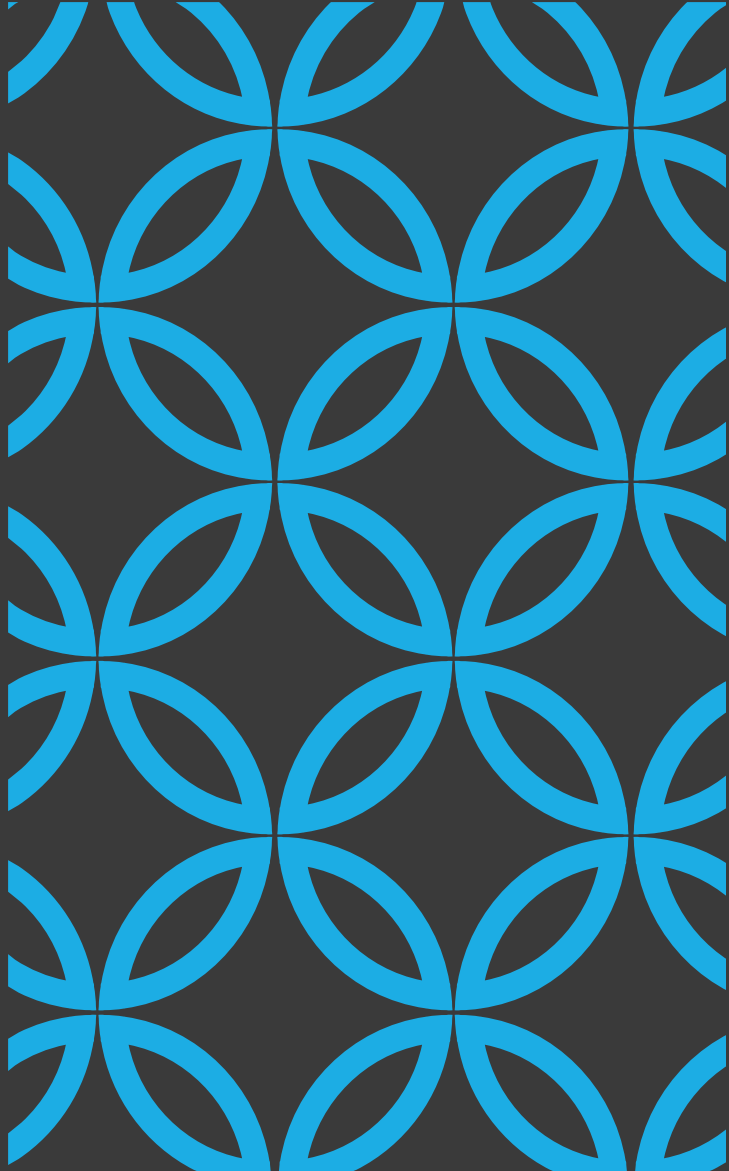
# PURPOSE OF SPECIAL ZONING REGULATIONS

Traditional zoning allows for the consistent development and uniform application of regulations throughout a district, but it does not accommodate innovative development.

Special zoning tools bring flexibility to the rigid restrictions of the zoning ordinance and may also control troublesome or somewhat incompatible uses by establishing, in advance, standards that admit the use only under certain conditions and standards which must be met.

Specific Use Permits and Conditional Use Permits generally allow property to be put to a purpose that the zoning ordinance conditionally allows.

Planned Development District or Planned Unit Development are site specific zoning tools that provide greater flexibility of development tied to a site plan and development process.



# SPECIAL USE PERMITS, SPECIFIC USE PERMITS, AND CONDITIONAL USE PERMITS

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Permission for land uses not allowed as a matter of right within the zoning district, which is subject to approval and conditions.

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Requirements for approval must be included in the zoning ordinance with SUP/CUP procedure.

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Planning and Zoning Commission and City Council must follow requirements and make appropriate findings based upon the city's SUP/CUP ordinance if approving the specific use.

# SUP/CUP APPROVAL CRITERIA

Approval criteria should be included in the zoning ordinance SUP/CUP procedure. Example of approval criteria:

The proposed use at the specified location is consistent with the policies embodied in the adopted comprehensive land plan;

The proposed use is consistent with the general purpose and intent of the applicable zoning district regulations;

The proposed use is compatible with and preserves the character and integrity of adjacent developments and neighborhoods, and includes improvements either on-site or within the public rights-of-way to mitigate development-related adverse impacts, such as safety, traffic, noise, odors, visual nuisances, drainage, or other similar adverse effects to adjacent development and neighborhoods;

The proposed use does not generate pedestrian and vehicular traffic which will be hazardous or conflict with the existing and anticipated traffic in the neighborhood;

The proposed use incorporates roadway adjustments, traffic control devices or mechanisms, and access restrictions to control traffic flow or divert traffic as may be needed to reduce or eliminate development-generated traffic on neighborhood streets;

The proposed use incorporates features to minimize adverse effects, including visual impacts, of the proposed use on adjacent properties;

The proposed use meets the standards for the zoning district, or to the extent variations from such standards have been requested, that such variations are necessary to render the use compatible with adjoining development and the neighborhood;

The proposed use promotes the health, safety, or general welfare of the city and the safe, orderly, efficient, and healthful development of the city;

Other criteria which, at the discretion of the planning and zoning commission and city council, are deemed relevant and important in the consideration of the specific use permit.

# USING THE SUP/CUP TOOL

## When to Use SUP/CUP

Land uses which could be permitted in a traditional district but due to their nature require additional conditions to be compatible in that district at the specific requested location.

## When Not to Use SUP/CUP

Listing “undesirable” uses as SUP/CUP in order to deny development

Using SUP/CUP to potentially allow any land use in any district

# SUP/CUP CONDITIONS

Basis for SUP/CUP conditions should be in the zoning ordinance.

Conditions added should be deemed necessary to mitigate adverse effects of the proposed use and carry out the spirit and intent of the zoning ordinance.

Examples of possible conditions include:

- Limitation of building size or height
- Limitations on impervious surface
- Enhanced loading and parking requirements
- Placement and orientation of buildings and entryways
- Increased screening and buffering
- Signage restrictions
- Hours of operation of the land use





# SUP/CUP VS. VARIANCE

What is the difference between SUPs/CUPs and a Variance?

Variances allow for deviations from the zoning ordinance (other than land use) that would otherwise be prohibited by law but are allowed based upon the specific circumstances of the property which create a hardship for the landowner.

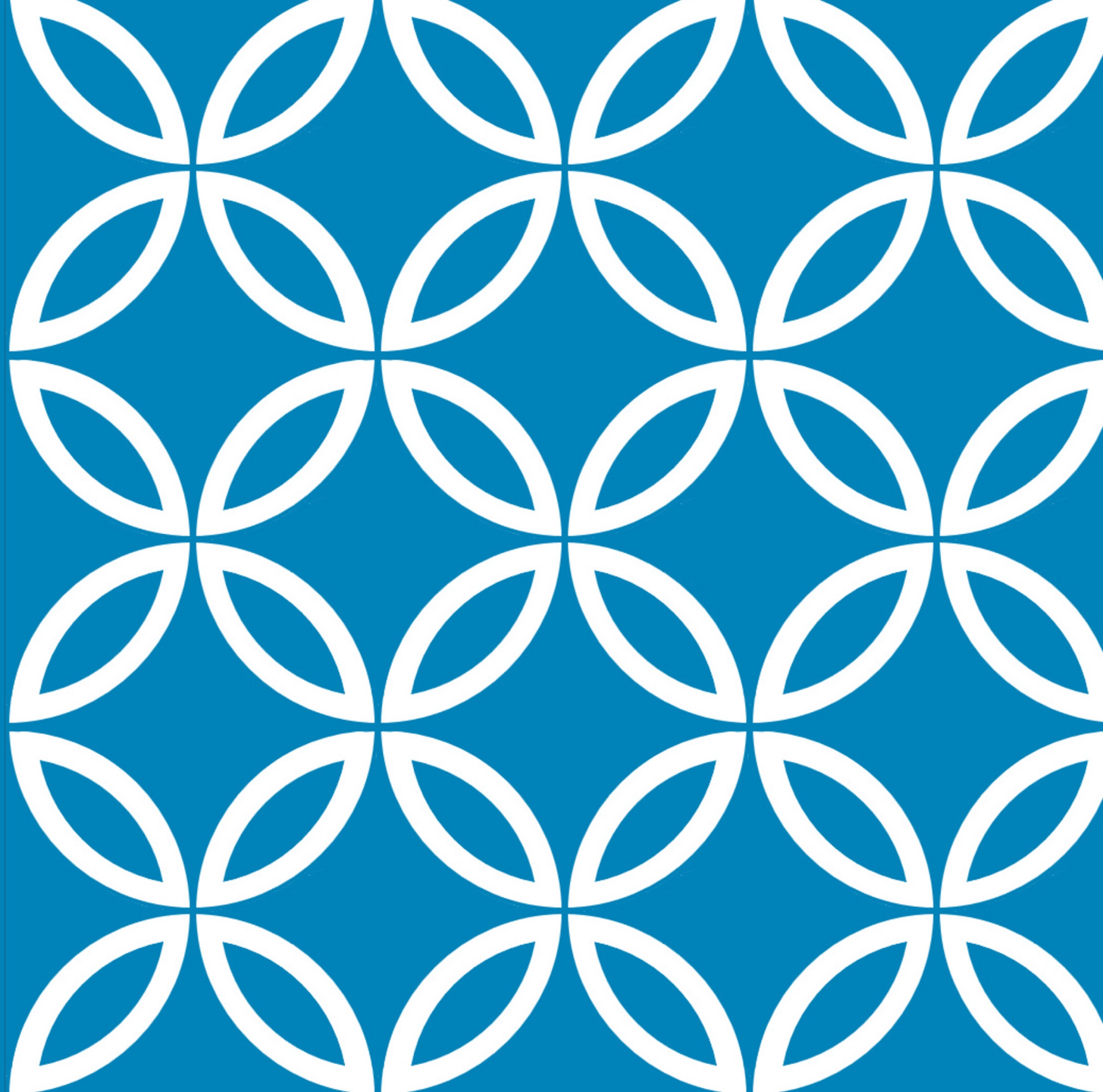
- Ex. Physical limitations of a site. Hilly lot makes it impossible for landowner to conform with City's minimum setback requirements.

SUPs/CUPs relate to uses that are allowed in specific zoning districts provided the use meets certain conditions or criteria set out in the ordinance. The applicant must show that the proposed use fits the specific use requirements.

- Ex. Automobile Repair, Major in a neighborhood services district.

PLANNED  
DEVELOPMENT  
DISTRICT / PLANNED  
UNIT DEVELOPMENT

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# PLANNED DEVELOPMENT DISTRICT / PLANNED UNIT DEVELOPMENT

Intended to promote and encourage innovative development that is sensitive to surrounding land uses and to the natural environment.

Intended to encourage flexible and creative planning, ensure the compatibility of land uses, incorporate new planning concepts into a development, allow for the adjustment of changing demands to meet the current needs of the community, and to result in a higher quality development for the community than would result from the use of traditional zoning districts.

If this necessitates varying from available zoning districts, the proposed development should demonstrate community benefits.

A Planned Development should not be used to deviate from the provisions of this zoning ordinance in a way that contradicts its intent.

# PLANNED DEVELOPMENT DISTRICT / PLANNED UNIT DEVELOPMENT

Site specific zoning process that permits greater flexibility through modifying zoning regulations including both reduced and increased regulations.

Broader than a SUP/CUP. Whereas, typically an SUP/CUP is a tool for one type of use in one location, a PDD/PUD is a tool for multiple uses in one specified area.

Typically requires a concept plan that illustrates the boundaries of the PDD/PUD, the location of land uses, roads, lots, buildings, and open spaces.

PDD/PUD establishing ordinance must enumerate the regulations that must be followed (development standards) and should include how the PDD/PUD may be amended (i.e. major vs minor amendments).

# PDD/PUD ZONING

Each PDD/PUD is different and distinct tailored to the specific site and development.

The PDD/PUD Ordinance establishes the zoning requirements for land uses within that PDD/PUD district. Each development will have an ordinance that establishes the zoning regulations applicable.

- PDD2; PDD3; PDD4; etc.

The regulations for each specific PDD/PUD will be found in the ordinance approving the PDD/PUD.

For the City, the benefit of a PDD/PUD is that the City can accommodate unique developments (e.g. mixed use) while still regulating the land use so that it is in harmony with the City's planning.



# PDD/PUD ZONING REGULATION

City may establish minimum requirements for PDD/PUD zoning, such as:

- minimum district size (acres)
- qualifying land uses
- qualifying base zoning districts

Be cautious about establishing minimum requirements as they may work against the intended purpose of PDD/PUD zoning.

# RECOMMENDED PDD/PUD PROCESS

1. Pre-application meeting to discuss concept plan, development standards and rezoning process
2. Series of project meetings with City Staff to work through all of the details of the Planned Development
  - Simple vs. Complex developments
3. Landowner submits rezoning application for Planned Development including concept plan and development standards
4. Review and comment period
5. Begin rezoning adoption process



# PDD/PUD BEST PRACTICES

Try and use a traditional zoning district/s as the base zoning for the PDD/PUD.

Provide the right amount of detail on the concept plan. Too much or too little detail can create issues as development begins.

Make sure that the development standards state that the development will comply with the City's zoning ordinance except as specifically provided in the development standards.

Cross all the "t"s and dot all the "i"s. Double and triple check that the development standards to not create any code conflicts and that there are not any existing zoning regulations that will be problematic.

Take your time and do it right! PDD/PUD can be tricky and complicated to amend after development begins.

Try to keep it as simple as possible. City Staff and developers will appreciate this as both will be using these documents to prepare and review development plans.



# WATCH OUT! PDD/PUD PITFALLS

Is the PDD/PUD being crafted in a way that will require future amendments?

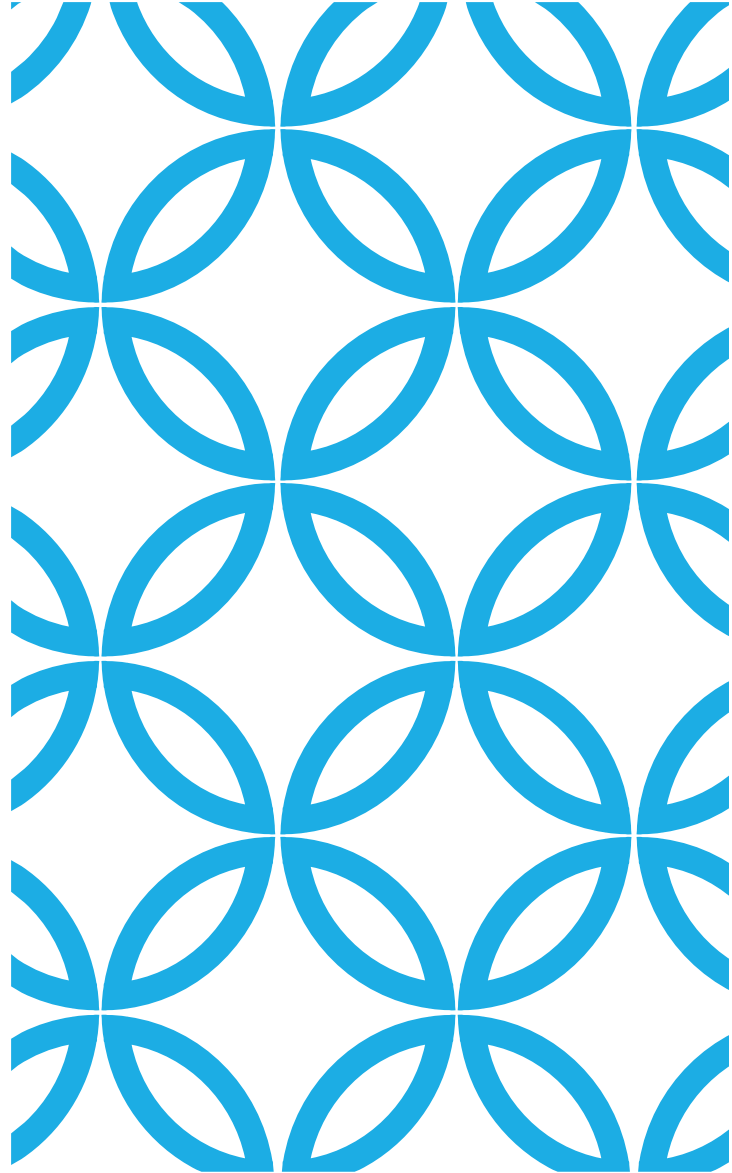
- Amendments to a PDD/PUD can be very tricky and difficult once development begins.

Is the PDD/PUD being crafted to follow a very specific set of adopted regulations?

- Development regulations change over time. PDD/PUD, which includes specific references to ordinances without including their amendments, can result in administrative difficulty in reviewing subsequent applications. It is recommended to include language that allows for those regulatory ordinances to be amended and still apply to the PDD/PUD.

Is the sole purpose of the PDD/PUD to get around city regulations?

- This is not recommended and may result in a zoning request being out of conformance with the City's Comprehensive Plan.



# AUTHORITY AND PROCESS FOR SPECIAL ZONING REGULATIONS

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# AUTHORITY FOR SPECIAL ZONING REGULATIONS

Local Government Code Chapter 211 does not directly or expressly address special use permits, conditional use permits, or planned development districts. Nevertheless, these regulations have been upheld as valid exercises of a municipality's zoning authority.

Local Government Code Section 211.003 provides that a municipality may regulate the height, number of stories, and size of buildings and other structures, the percentage of a lot that may be occupied, the size of yards, courts, and other open spaces, population density, the location and use of buildings, other structures, and land for business, industrial, residential or other purposes, and the pumping, extraction, and use of ground water by persons other than retail public utilities.

# APPROVAL OF SPECIAL ZONING REGULATIONS

As these zoning tools operate as an amendment to the zoning ordinance, they must conform to the comprehensive plan of the city, follow all procedural requirements for zoning including notice and public hearings, and also follow the CUP/SUP or PDD/PUD specific requirements that the City adopts.

**While conceptual plan review can be done administratively in order to verify that the plan conforms with the SUP/CUP or PDD/PUD ordinance, the City Council must approve the final ordinance which should include the conceptual plan as an exhibit.**

# AUTHORITY RESPONSIBLE FOR APPROVAL GENERALLY

## LGC §§211.006; 211.007

Since SUPs/CUPs/PDDs operate as amendments to the zoning ordinance, the municipal authority ultimately responsible for approval for an application is generally the City Council (governing body).

To exercise this authority in cities with a P&Z Commission, the Commission must hold a public hearing and submit a final report to the City Council before City Council is able to hold a public hearing (unless ordinance provides that a public hearing can be held jointly).

The city may not delegate approval authority for SUPs/CUPs/PDDs because approval is a legislative act.

# NOTICE AND PUBLIC HEARINGS

## Adoption of Special Zoning Regulations:

Procedures in Local Government Code Section 211.006 and 211.007 must be followed

Written notice of the public hearing mailed to all property owners within 200' of the subject property, sent at least 11 days prior to the Planning and Zoning Commission public hearing

May require nonconforming mailed notice per LGC Sec.211.006(a-1)

Published notice of the public hearing published in a newspaper of general circulation at least 16 days prior to the City Council public hearing

General Law cities without a P&Z must adhere to both the written and published notice, and may not adopt a proposed change until 31 days after the mailed notice was sent

# WRITTEN PROTEST

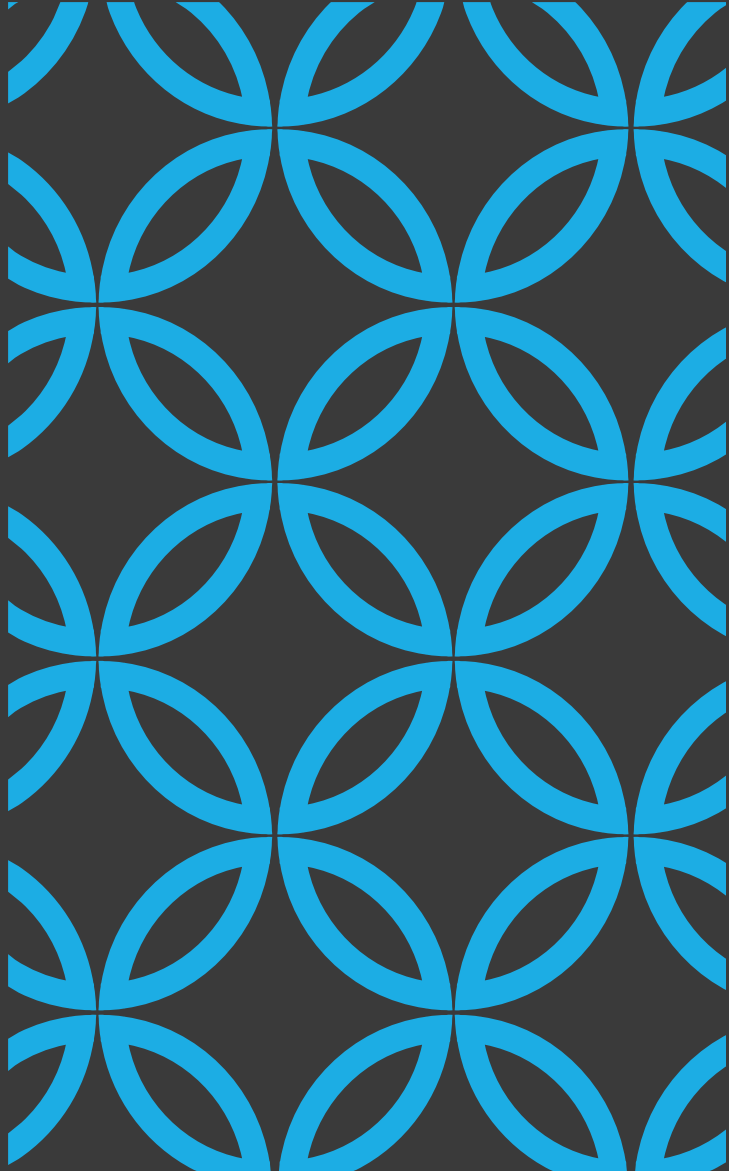
Protest procedures in Local Government Code Section 211.006 must be followed.

A proposed change must receive written protest signed by the owners of at least 20% of either:

- The area of the lots or land covered by the proposed change; or
- The area of lots or land immediately adjoining the area covered by the proposed change and extending 200 feet from that area.

In computing the percentage of land area, the area of street and alleys shall be included.

Protested changes require affirmative vote of at least  $\frac{3}{4}$  of all members of the City Council.



## FINAL NOTE: REGULATION OF PROPERTY, NOT PEOPLE

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Remember that zoning, and these zoning tools, is the regulation of property and the use of land; not the regulation of people. As such, these tools generally run with the land and will create property rights for the landowner that remain unless rezoned.



**QUESTIONS?**

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