

## **SECTION 17 PLANNING & ZONING COMMISSION**

### **Section 17.01 Organization**

The Mayor shall appoint two (2) members and Commissioner-Place 1, Commissioner-Place 2, Commissioner-Place 3, Commissioner-Place 4 and Commissioner-Place 5 shall each appoint one (1) member to the Planning and Zoning Commission. A chairman and vice-chairman will be elected by the members each year during annual elections by the Planning and Zoning Commission. The Planning and Zoning Commission shall consist of seven (7) members, each to be appointed by the Mayor or City Commission for a maximum term of three (3) years, but in no case shall the term of a member exceed the term of office of the Mayor or Commissioner making such appointment. In the event a member of the Harlingen Planning and Zoning Commission vacates office during his term, the Mayor or Commissioner making such appointment shall appoint a replacement who shall serve for a term not to exceed the remaining term of office of the Mayor or Commissioner making said replacement appointment. Each appointee to said board shall be at least 18 years of age and each appointee or the appointee's spouse must be a resident of Harlingen or work or operate a business in Harlingen and be of good moral character and demonstrate an interest in the general welfare of Harlingen. Each appointee shall continue to serve until a successor is appointed. An appointee shall forfeit his office if such appointee fails to attend three (3) meetings during any twelve (12) month period.

### **Section 17.02 Jurisdiction**

The powers and duties of the Planning and Zoning Commission shall be to:

- (a) Hold hearings, conduct investigations and make recommendations to the City Commission relative to changes and amendments to the zoning regulations of the City;
- (b) Hold hearings, to conduct investigations and approve or disapprove proposed plats of subdivisions of land within the City and land within five (5) miles of the City (the extraterritorial jurisdiction). If the Planning and Zoning Commission fails to act on a preliminary or final plat due any reason at its regularly scheduled meeting on which the plat was or was to be on the meeting agenda, and the plat has not otherwise been approved by operation of law, said plat shall be placed for consideration at the next scheduled meeting of the City Commission.
- (c) Hold hearings, conduct investigations and make recommendations to the City Commission relative to the future plans and developments of the City.

All hearings conducted by the Planning and Zoning Commission relative to proposed changes or amendments to the zoning regulations of the City, and proposed zoning of new additions to the City shall be open to the public, and all owners of properties, or the persons rendering the property for City taxes, affected by such proposed zoning changes or amendments or new zoning, and all owners of property, or the persons rendering such property for City taxes, located within two hundred feet (200') of any property affected by such proposed zoning changes or amendments or new zoning shall

be given written notice within not less than ten (10) days before any such hearing is held by depositing such notices properly addressed and postage paid in the United States mail, setting forth the time and place where such meeting shall be held. Upon the holding of such hearings by the Planning and Zoning, all persons entitled to notices as above stated shall be given an opportunity to present evidence for or against the proposed new zoning, and if necessary to permit all persons to be heard, such hearings may be continued from day to day and from time to time as shall be necessary to give all persons desiring to do so, an opportunity to be heard.

### **Section 17.03 Action of the Board**

Any four members shall constitute a quorum for the transaction of the business. The affirmative vote of a majority of those attending any meeting at which there is a quorum present shall be necessary to pass any motion, recommendation or resolution of the Planning and Zoning Commission. The chairman does not vote except in the event of a tie.

All recommendations to the City Commission relative to any matter within the jurisdiction of the Planning and Zoning Commission as set forth in this article shall be submitted in writing, which written recommendation shall be included in the minutes of the meeting of the City Commission at which the recommendations are presented. For information on the appeal process, refer to Section 3.03 (8).

### **Section 17.04 Rezoning Process**

The first step to rezone your property is to sit down with one of the staff members from the Planning & Development Department. Explain your situation in detail, they can help you identify and examine your various options. While a staff member cannot tell you for sure than an option will or will not work, they can give you their professional opinion and reasons why or why not one option is more feasible than another.

If you proceed with the rezoning, fill out an application for rezoning with the Planning and Zoning Commission (P&Z). There is a non-refundable charge to apply which covers the cost of necessary advertisement and mail notification plus some staff review time. If a request is for non-contiguous tracts of land or requires two separate actions, it will require two separate applications and fees. In addition, if a tract of land requested to be rezoned is contiguous, but the request is for two or more different classifications of zoning, separate applications and fees will be due for each type of zoning requested.

If an item is tabled at the applicant's request, there will be a renotification charge. You will also be required to provide copies of your latest property tax receipts. Staff will mail a notice of application with the time, date, and location of the public meeting required to be held on the subject. This notice goes to all property owners within 200' of the site in question and to the local newspaper of record. This occurs at least 10 days prior to the public hearing. The meeting agenda is also posted 72 hours in advance as required by Texas Local Government Code.

Staff members will visit the site and study other relevant information such as neighboring land uses, traffic characteristics, utility line capacities, the Comprehensive Plan, and planning and zoning principles and laws, to determine a recommendation for the Commission. An information package with the executive summary of staff recommendation and other pertinent information (maps, a copy of the application, any correspondence relevant to the matter, etc.) is provided to Commission members several days prior to the meeting.

Attend the P&Z meeting. Sometimes Commission members will have questions regarding the rezoning request, or will seek input from the applicant. You may want to consider bringing your neighbors or any other support you may have on behalf of your request. No one will be forced to speak, nor will they be denied the opportunity to speak during the public hearing portion of the meeting. There will be Spanish interpretation available upon request. The Chairman of the meeting will declare the public hearing closed once everyone who wishes to has had the opportunity to speak. The Commission members will then deliberate their course of action and take a vote. An application requires the consenting vote of a majority of the members of the Commission in order to receive a positive recommendation. The Chairman does not vote except to break a tie.

If the P&Z passes a positive recommendation on a rezoning request, it will go on for two readings at the next City Commission meetings. The first reading is generally three weeks after approval by the P&Z, and if the item is approved on the first reading, the second reading will be the next regular City Commission meeting. The entire process takes approximately 8-10 weeks from time of submittal to complete. If the P&Z does not make a positive recommendation on a rezoning request, the decision may be appealed following procedures referenced in Section 3.03 (8).

A copy of the rezoning process flowchart, information sheet, and rezoning application is included in Appendix C.

### **Section 17.05 Specific Use Permit Process**

The City Commission of the City of Harlingen, Texas, after public hearing and proper notice to all property owners within two hundred (200) feet of the property involved, and after recommendations by the City Planning and Zoning Commission, may authorize the issuance of specific or qualified use permits. The Planning & Development Director shall waive the public hearing process for a Specific Use Permit application for a Portable Building and/or Storage Building as indicated in Section 5: Use Chart – Allowable Uses By Zone if certain conditions are met. The applications shall be administratively approved when no written complaints have been filed with the Planning & Development Department by any person within ten days from the date of publication of notice in the local newspaper of record and the mailing of the notice to all property owners within 200 feet of the site in question. If a written complaint has been filed with the Planning & Development Department concerning a permit for a Portable Building an/or Storage Building, the permit shall be processed as an original application in compliance with Section 17.04 (1) through (9).

- (1) The P&Z, in considering and determining its recommendation to the City Commission on any request for a Specific Use Permit under Section 5 hereof, may require from the applicant, plans information, operating data and expert evaluation concerning the location, function, and characteristics of any building or use proposed, and shall require a site plan for a Specific Use

- Permit. The City Commission may in the best interest of the public welfare and to assure compliance with this ordinance, establish conditions of operation, location, arrangement and authorizing the location of any of the uses listed as Specific Use Permits under Section 5 of this ordinance, the City Commission may impose such development standards and safeguards necessary for the protection of adjacent property and occupants thereof from excessive noise, vibration, dust, dirt, smoke, fumes, gas, odor, explosion, glare, offensive view, or other undesirable or hazardous conditions. If the P&Z recommends denial of a Specific Use Permit request, the item will not be carried forward to City Commission unless the decision is appealed following procedures referenced in Section 3.03 (8).
- (2) Any use permit recommended by the Planning and Zoning Commission and issued by the City Commission may be qualified as described in Subsection 1 above.
  - (3) The use permit issued by the City Commission shall be deemed an amendment to the Zoning Ordinance, and the development shall be in keeping with the plans and specifications and other data submitted to the Planning and Zoning Commission and the City Commission for the purpose of securing such use permit.
  - (4) Deviation or departure from the Specific Uses Permit shall be deemed a violation of the Zoning Ordinance and shall void such Specific Use Permit.
  - (5) The City Commission shall approve or deny an application for a specific or qualified use permit within six (6) months of the filing of a properly completed application.
  - (6) Specific and qualified used permits granted after June 20, 1990, shall be personal to the grantee and shall be transferred only by cancellation of the existing permit and issuance of a new permit. However, specific and qualified use permits granted or uses where an “s” appears under any one or more the “residence” classifications in Section 8, subsection 8, herein which shall run with the land for all classifications including non-residence ones;
  - (7) If the business for which a specific use permit was granted ceases operation for a continuous period of 3 months or more, such permit shall automatically lapse. However, a specific and qualified use permit granted for a use where an “s” appears under any one or more of the “residence” classifications in Section 5 shall run with the land for all classifications including non-residence ones. Furthermore, the Planning and Zoning Commission and City Commission may grant a Special Use Permit that may run with the land rather than the owner if the use was built specifically for one purpose and could not be used otherwise without major renovations (e.g. residential garden homes in an R1 zone or an established business which was built for a particular use which will not change);
  - (8) The denial, suspension or revocation of a specific or qualified use permit may be appealed directly to the District Courts of Cameron County, Texas within ten calendar days following such denial, suspension or revocation by the City Commission."

- (9) The placement of a portable building on the site prior to the issuance of a specific use permit shall result in doubling the specific use permit fee from \$125.00 to \$250.00 plus provisions for a repeat offender to be subject to court citation with a maximum possible fine of \$2,000.00 per day.
- (10) A call center which employs more than seventy (70) people and when located in an Office (“O”) District, shall require a traffic impact analysis.

A copy of the specific use permit process flowchart, information sheet, and application is included in Appendix D.

### **Section 17.06 SUP for Sexually Oriented Businesses**

The process for this type of Specific Use Permit is exactly the same as described above for any Specific Use Permit with the exception that there is a bi-annual renewal requirement for businesses conducting a sexually oriented business under a Specific Use Permit. As specified in Section 110.02 of the City of Harlingen Code of Ordinances, no person or other entity shall sell any alcoholic beverage or operate a business for the sale of any alcoholic beverage, within 300 feet of any church, public school, or public hospital. The measurement of the aforesaid 300 foot distance shall be along the property lines of the street fronts and from front door to front door and in direct line across intersections, where they occur.

This bi-annual review is to insure that the business maintains a standard of conduct in accordance with public health, safety, welfare and morals. Any citizen who wishes to file a complaint against an establishment of this nature may do so with the Police Department at any time. When a Permit is up for renewal, staff will check with the Police Department for any such complaints. If the establishment has excessive complaints as determined by the Planning & Zoning Commission and City Commission, it will be reason enough to deny a renewal of such permit.

- (a) Location. In no event shall any "Sexually Oriented Business" be located within a 1500 foot radius of a school, church, hospital, day nursery or kindergarten school, park, residentially zoned area or another sexually oriented business measured from the nearest property line of a property developed with a sexually oriented business to the nearest property line of a school, church, hospital, day nursery or kindergarten school, park, residentially zoned area or another sexually oriented business.
- (b) Application. No specific use permit shall be approved unless a "Sexually Oriented Business Specific Use Permit Application" has been completed and turned in prior to the deadline date for the applicable Planning and Zoning Commission meeting. In addition, a background check will be run on the applicant. If an applicant fails to provide all requested information or supplies false, fraudulent or untruthful information on the Application this shall be just cause to deny the permit.
- (c) Regulations for exhibition of sexually explicit films or videos. A person who operates a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than 150 square feet of floor space a sexually explicit film, video cassette or other video reproduction shall comply with the following requirements:

- (i) The application for a Sexually Oriented Business Specific Use Permit shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed 32 square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required, however each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches.
- (ii) No alteration in the configuration or location of a manager's station may be made without the prior approval of the Chief of Police.
- (iii) It is the duty of the applicant/licensee, the, owners, the partial owners and their agents and employees at the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
- (iv) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the managers' stations. The view required in this subsection must be by direct line of sight from the manager's station.
- (v) It shall be the duty of the applicant/licensee, owners, the partial owners, and it shall also be the duty of any agents and employees present in the premises to ensure that the view area specified in Subsection (iv) remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times that any patron is present in the premises and to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the diagram filed pursuant to Subsection (i) of this section.
- (vi) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one (1.0) foot-candle as measured at the floor level.
- (vii) It shall be the duty of the applicant/licensee, the owners, partial owners and operator and it shall also be /the duty of any agents and employees present in the premises to

ensure that the illumination described above, is maintained at all times that any patron is present in the premises.

- (d) Denial of Application for Certain Offenses. A Sexually Oriented Business Specific Use Permit Application shall be denied if an applicant or an owner or partial owner has been convicted of a crime.
- (i) Involving a violation of Chapters 21 (other than Section 21.06) or 43 or Sections 22.011, 22.012, 22.021, 25.02, 25.06 or 25.07 of the Texas Penal Code, together with future amendments thereof, or corresponding laws of other state or federal governments or criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses;
  - (ii) For which
    - (A) Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense,
    - (B) Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense, or
    - (C) Less than, five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within a 24-month period;
  - (iii) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or the partial owner.
- (e) Suspension. The Chief of Police shall suspend a Sexually Oriented Business Specific Use Permit for a period not to exceed 30 days if he determines that an applicant/licensee, owner, partial owner, or employee of an applicant/licensee has:
- (i) Violated any of the items mentioned in Subsection (e) hereof or knowingly violated Subsection (d) hereof;
  - (ii) Engaged in excessive use of alcoholic beverages while on the sexually oriented business premises;
  - (iii) Refused to allow an inspection of the sexually oriented business premises by the Fire Marshall, Health Department, Police Department or Building Inspectors during regular business hours or fails to comply with applicable fire, health building and business regulations; or,

- (iv) Knowingly permitted gambling by any person on the sexually oriented business premises.
- (f) Revocation. The Chief of Police shall revoke a Sexually Oriented Business Specific Use Permit if a cause of suspension mentioned above occurs and the permit has been suspended within the preceding 12 months or if he determines that:
  - (i) An applicant/licensee, owner or partial owner gave false or misleading information in the material submitted during the application process; or
  - (ii) An applicant/licensee, owner, partial owner or employee of an applicant/licensee has knowingly allowed possession, use or sale of controlled substances on the premises; or
  - (iii) An applicant/licensee, owner, partial owner or employee of an applicant/licensee has knowingly allowed prostitution on the premises; or
  - (iv) An applicant/licensee, owner, partial owner or employee of an applicant/licensee has knowingly operated the sexually oriented business during a period of time when the Sexually Oriented Business Specific Use Permit was suspended; or
  - (v) An applicant/licensee, owner or partial owner has been convicted of an offense listed in Subsection (e) (i) above for which the required time period has not elapsed; or
  - (vi) On two or more occasions within a 12-month period a person or person committed an offense in or on the premises of a crime listed (e) hereinabove for which a conviction obtained and the person or persons were employees of the sexually oriented business at the time the offenses were committed; or
  - (vii) An applicant/licensee or an employee has knowingly allowed or engaged in any act of sexual intercourse, sodomy, oral copulation, masturbation or sexual contact to occur in or on the licensed premises. The term "sexual contact" shall have the same meaning as it is defined in Section 21.01 of the Texas Penal Code; or
  - (viii) An applicant/licensee is delinquent in payment to the City for hotel occupancy taxes, ad valorem taxes or sales taxes related to the sexually oriented business.

When the Chief of Police revokes a permit, the applicant/licensee shall not be issued a Sexually Oriented Business Specific Use Permit for one year from the date revocation became effective.

- (g) Appeal. An appeal from such a revocation or suspension may be taken to the City Commission within 10 days from the revocation or suspension.

- (h) Previously Existing Non-conforming Uses. Non conforming uses where sexually oriented business are operated on the date of adoption hereof shall be exempt from the application and location provisions hereof, but all other provisions of this ordinance shall apply equally to such previously existing non-conforming uses.