

A Zoning Option for Small Communities

*Extension to Communities
College of Design*

More than half of Iowa's 952 municipalities have populations of less than 500 residents. Community leaders in these cities may experience difficulties in designing and implementing a planning and zoning program for their community.

City councils that embark on such a program need resources to hire staff and/or consultants to assist in preparing the comprehensive plan and the zoning ordinance. There is also a need to fund a zoning administrator to oversee and enforce the planning and zoning effort. Resources to cover these costs may not be available in smaller cities.

Furthermore, the citizens of some small towns may not see the need for a full blown planning and zoning effort. It may even be difficult to find the ten to twelve volunteers needed to staff the two bodies called for in the *Code of Iowa*, the planning and zoning commission and the zoning board of adjustment.

Such considerations have been a real deterrent to the establishment of planning and zoning programs in communities with populations under 500. In fact only about twenty percent of such places have any type of community planning in place. Thus, in some 80 percent of small towns, the city councils have not seen the need, or have not been able to locate the resources necessary, to launch a formal planning and zoning effort. Fortunately, the *Code of Iowa* provides an alternative.

Restricted Residence Zoning

The Iowa Code provides a means for small municipalities to prepare and adopt a version of zoning that is less complex and easier to administer than a conventional zoning plan. Under this approach, the city council establishes areas of the community called "restricted residence districts." The council, by ordinance, establishes rules for land uses that are allowed in such districts, but, in general, only houses, schools, churches, and similar structures are authorized.

There are two ways that such an ordinance may come about. The city council may take the initiative in passing such a local law after holding a hearing and going through

other procedures. The Iowa Code also provides a means for citizens to take action. It states that, if the council receives a petition signed by at least 60 percent of the real estate owners in a restricted residence district, it shall create the District. Here is the language from the *Code of Iowa*:

Section 414.24 Restricted residence districts.

A city may, and upon petition of sixty percent of the owners of the real estate in the district sought to be affected who are residents of the city shall, designate and establish, after notice and hearing as provided in section 414.4, restricted residence districts within the city limits.

In the ordinance designating and establishing a restricted residence district, the city may establish reasonable rules for the use and occupancy of buildings of all kinds within the district, and provide that no building or other structure, except residences, schoolhouses, churches and other similar structures, shall be erected, altered, repaired or occupied without first securing from the city council a permit to be issued under reasonable rules as may be provided in the ordinance. An ordinance and rules passed under the section shall not conflict with applicable building and housing codes.

A building or structure erected, altered, repaired, or used in violation of an ordinance passed under this section shall be deemed a nuisance.

When a city has proceeded under the other provisions of this chapter, this section shall no longer be in effect for the city.

Advantages

Relative simplicity is the primary advantage of the restricted residence approach. Small communities that have never had any type of land use regulation may nevertheless see a need to provide some sort of consistency and orderliness within the residential areas of the city.

Restricted residence districts can help them achieve this goal by insuring that only appropriate structures are placed in residential neighborhoods.

Restricted residence districts are also easy to administer. The city council runs the whole show. There are no other boards and commissions. Adoption, amendments, permitting, and enforcement are all handled by the council. In this way, both cost and complexity are kept to a minimum.

Residents of cities under 500 may find it difficult to see the need for a full blown planning and zoning program. Yet they may well support the more limited approach offered by restricted residence districts.

In some cases, cities that have used this system of land use controls have later moved on to a complete program of planning and zoning regulations. It may be that, through the experience of the restricted residence districts, citizens and local officials have gotten used to the terminology and procedures involved with zoning and are more ready to move onto an approach that covers the whole community.

Disadvantages

One clear disadvantage is that only residential areas of the city are regulated through restricted residence districts. Communities that are having problems in commercial and industrial areas of the city and wish to influence the land uses in those areas must have a complete program including a comprehensive plan and zoning ordinance. A restricted residence approach simply cannot be used to regulate commercial and industrial areas.

Not having a planning and zoning commission and a zoning board of adjustment may actually be seen as a disadvantage in some communities. The city council may want these other appointed bodies to assist in handling land use administration and enforcement in the community.

Contents of Ordinance

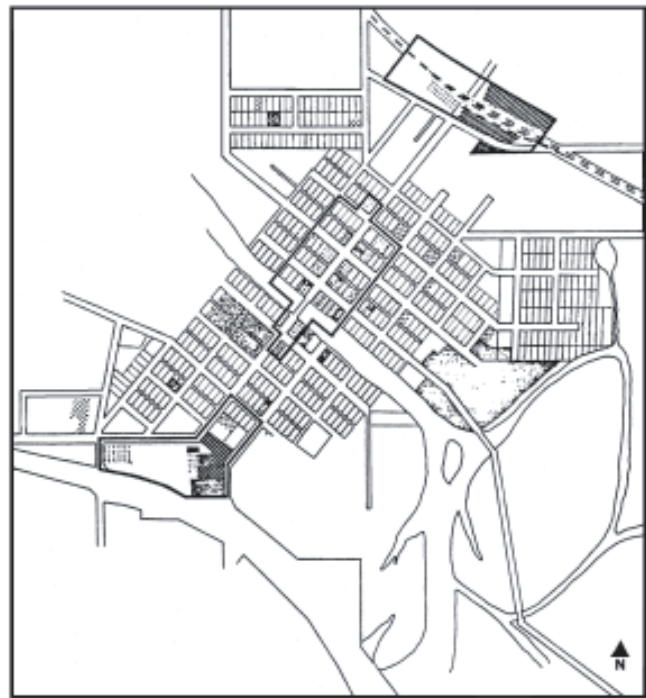
In considering what the ordinance contains, there are a couple of things to keep in mind. First, each community is unique. The ordinance should be crafted in such a way as to reflect the history, land use patterns, and goals and objectives that characterize the community. Second, the ordinance is a legal document. It is therefore critical that the city obtain legal advice so that the ordinance is properly structured and legally enforceable.

The ordinance establishing a restricted residential district in the city need not be lengthy or complex. A few pages are generally sufficient. Nevertheless, certain items need to be included in the ordinance to insure its completeness and validity.

First, there should be a listing of the reasons for enacting such a measure. These may include the necessity of establishing regulations that will protect and preserve the traditional character of the residential portions of the city. If property owners have submitted a petition requesting the establishment of a restricted residence district, that may also be cited. Additionally, reference should be to the *Code of Iowa* section (414.24) that authorizes cities to establish restricted residence districts. Next, as with all zoning ordinances, there should be some reference to the police power. That is, there needs to be a statement to the effect that the regulations are enacted to protect the health, safety, and general welfare of the community.

The ordinance should include a list of definitions. The definition section may include terms such as dwelling (and the various types of dwelling units covered by the ordinance—single family, two-family, condominium, and so forth), lot, setback, yard, and any other terms that have specific meanings under the ordinance.

The ordinance should also make reference to a map of the city, such as the example below.



Map 1. Restricted residence map. Note that the commercial and industrial areas of the community have been identified and are excluded from regulation.

The official map should be maintained by the city clerk and should be available to be viewed by interested citizens in the city hall. The map will indicate the two areas, or zones, of the city. First, it will show areas of the city that are primarily non-residential in terms of the uses of land. Generally speaking, these are the commercial and industrial areas of the community. These areas are not regulated through restricted residence zoning.

Second, the map will delineate the restricted residence district, essentially, all of the residential areas in the city. That is, all of the city that is not in the excluded zone.

Next, the ordinance should list the permitted uses in the restricted residence district. These permitted uses should generally follow those outlined in the Code of Iowa, that is, residences, schools, churches, and other similar structures. This language however, still allows the city latitude. The council may, for example, determine the types of dwellings, such as single-family, multifamily, condominiums, and so forth that will be permitted.

One cautionary note in this regard. Section 414.28 stipulates that cities may not refuse to accept manufactured housing only on the grounds that it is manufactured housing. Cities may however adopt regulations regarding foundation types, set backs, minimum dimensions and square footages, roof pitches, and so forth. However such regulations must apply to all housing, not just manufactured housing.

The “similar structures” language gives the city considerable leeway to allow virtually any land use that can be thought of as compatible with the residential character of the restricted residence district. Examples might include fire stations, parks and playgrounds, nursing and retirement homes, and even those types of agricultural uses that don’t produce high levels of noise, odor, or dust.

The ordinance should include a section that deals with lot sizes and building regulations. This section spells out the minimum square footage requirements for lot for each type of dwelling unit. It also covers such areas as front, side and rear yard requirements and building height limits.

There should be a paragraph that explains the manner in which the ordinance and the map may be amended or changed. There should be a discussion of violations and penalties. Such violations should be treated as nuisances as provide in the Code of Iowa.

Often such ordinances also contain a “validity” statement to the effect that, if any part of the ordinance is declared invalid by a court, the remaining provisions of the ordinance remain in effect. Finally, the ordinance will provide an effective date and spaces for the necessary signatures.

Procedures

As with the passage and enforcement of any public law, the adherence to procedures becomes important in ensuring fairness and limiting liability. For example, any time an ordinance is adopted or changed, there must be a public hearing. This is important because it allows for input into the process by interested citizens. Notice of the time, date, and place of the hearing must be published according to Code of Iowa section 362.3.

In small cities that have no daily or weekly newspaper, the Code now provides that the publication requirement for ordinances and amendments may be met by posting the notification in “three public places in the city which have been permanently designated by ordinance.”

Whether published or posted, the notice needs to appear at least seven days prior to the meeting and “in no case shall the public hearing be held earlier than the next regularly scheduled city council meeting following the published notice.”

Other procedural considerations might include making sure that the restricted residence regulations are reasonable and clear. Can the average resident of the community read the regulations and have a good understanding of what they mean for his or her property? Is there clarity with respect to what is and is not permitted?

City councils should also try to avoid drafting regulations that are subjective or that call for a great deal of judgement on the part of those who are administering the ordinance. The regulations should be clear and should be equally applied to all property. The city council should of course also carefully adhere to the open meeting law in all of their dealings regarding land use regulation.

If the restricted residence regulations deal with signs, only criteria such as the size, placement, construction, and lighting of signs should be regulated. Cities should not try to regulate the content of signs, even if some in the community may find the content of certain types of signs objectionable. In other words, citizens have free speech rights to express their views in the form of signage if they so desire, however, like all signs, these signs must conform to the regulations in terms of size and so forth.

Cities should keep careful records of their deliberations, their decisions, and the reasons for those decisions. In any land use regulation matter, it is always possible that there may be an appeal of a decision. In that case, it is important that the city’s records be accurate, complete, and up to date.

Finally, cities should make timely decisions on land use matters. Unless there is a good reason to delay a decision, a

citizen who makes a request for a permit or other action, should not have to wait six months or a year for an answer.

Land Uses and Structures that are “Grandfathered In”

Whenever land use regulations are passed covering an existing community, there will undoubtedly be existing buildings and land uses that do not conform to the new ordinance. Such non-conforming, preexisting uses and structures are “grandfathered in.” That is, they are allowed to continue even though they do not meet the requirements of the ordinance. Even though these uses may continue, they may not be expanded or substantially changes. Many ordinances also provide that if the use is vacated, or becomes inactive for a period of time, such as one year, it cannot be restarted.

Conclusion

This publication has looked at a zoning option for small cities that is less costly and complex than full blown

planning and zoning programs. Both the advantages and disadvantages of restricted residence districts have been explored. Consideration has been given to what should be included in ordinance establishing such a program locally. Proper procedures have been laid out.

Local officials in smaller cities who have been reluctant to embark upon a planning and zoning effort, should consider carefully whether restricted residence districts might be an approach that would work in their situation. Assistance is available from Iowa State University Extension to Communities through extension offices in every county or by contacting Stuart Huntington, extension planning and development specialist, at (515) 294-2973.

Another source of help may be available to small communities from the regional level. Many of the councils of governments and regional planning commissions around the State offer assistance in the planning and zoning area.

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