



**NOTICE OF JOINT WORKSHOP
GOVERNING BODY OF MARBLE FALLS, TEXAS
Tuesday, August 2, 2016 – 7:00 pm**

A quorum of the Marble Falls Economic Development Corporation
and the Planning & Zoning Commission may be present

Notice is hereby given that on the 2nd day of August, 2016 the Marble Falls City Council will meet in joint workshop session at 7:00 pm in the City Hall Council Chambers located at 800 3rd Street, Marble Falls, Texas, at which time the following subjects will be discussed:

1. **CALL TO ORDER**
2. **JOINT WORKSHOP with the Marble Falls Planning and Zoning Commission**
 - Discussion regarding updates to the adopted Zoning and Land Use Regulations. ***Caleb Kraenzel, Assistant City Manager***
3. **ADJOURNMENT**

"The City Council reserves the right to adjourn into Executive Session at any time during the course of this meeting to discuss any matters listed on the agenda, as authorized by the Texas Government Code including, but not limited to, Sections: 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices), 551.087 (Economic Development), 418.183 (Deliberations about Homeland Security Issues) and as authorized by the Texas Tax Code including, but not limited to, Section 321.3022 (Sales Tax Information)."

In compliance with the Americans with Disabilities Act, the City of Marble Falls will provide for reasonable accommodations for persons attending City Council Meetings. To better serve you, requests should be received 24 hours prior to the meetings. Please contact Ms. Christina McDonald, City Secretary, at (830) 693-3615.

Certificate of Posting

I, Christina McDonald, City Secretary for the City of Marble Falls, Texas, do certify that this Notice of Meeting was posted at City Hall, in a place readily accessible to the general public at all times, on the 28th day of July, 2016 at 10:00 am and remained so posted for at least 72 continuous hours preceding the scheduled time of said meeting.

/s/ Christina McDonald

Christina McDonald, TRMC
City Secretary

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MEMORANDUM

TO: Marble Falls City Council
Marble Falls Planning and Zoning Commission

FROM: Patty Akers and Monte Akers
City Attorney, City of Marble Falls

DATE: August 2, 2016

**RE: Legal Issues related to City Zoning Ordinance and Provisions Needing
Revision or Updating in the City's Zoning Ordinance**

This memo lists a few of the areas targeted for possible revisions to the zoning ordinance that our firm has identified as needing revision based on our legal analysis of the City's current zoning ordinance.

1. Mobile Homes vs. HUD Homes
2. Modular and Industrialized homes
3. Implications of Downzoning and Chapter 245 of the Local Govt Code
4. NPS Ordinance and Zoning ordinance coordination
5. Accessory uses
6. Concept and Site Plan process and consolidation of permitting processes
7. Legal Non-Conforming Uses and Structures and Redevelopment
8. Other more specific changes

Following, in section order, is a list of suggested changes, some of which are clearly needed and some of which are merely suggestions or comments.

1. State Law references in the footer on p. 2123 need to reference Chapter 211, Local Government Code, rather than Articles 974a and 1011a.

2. Sec. 225, which provides that an amendment of the ordinance does not affect a project for which a building permit has been issued, provided that construction commences within 120 days of issuance and is complete within one year of the amendment, is no longer enforceable under Ch. 245, LGC, particularly Sec. 245.005(b).
3. Sec. 230, which provides for a fine of \$25 to \$200, may be increased, up to \$2000.
4. Sec. 300—the definition of “Bed and Breakfast Inn or facility” should be moved to Section 324 and/or to the list of use classifications at 400-599, and reference to it should be made consistent throughout the ordinance (i.e. it is listed sometimes as above, sometimes as “bed and breakfast lodging” and as “Bed and Breakfast” under RT-3 conditional uses.)
5. Sec. 340—is repeated in the Code, with the second definition of “crosswalk way” being different than the first definition. If the first definition is retained, the statement that they are located between property lines seems unnecessarily restrictive. Section 339, defining “Corner lot” is also repeated, but both definitions are identical.
6. Sec. 352, defining ETJ, is not accurate in that it says that the City’s “land use regulations” or zoning, apply therein, which is not allowed. Revising it to reference Chapter 42, LGC, is suggested.
7. Sec. 355, defining “floodway” is different and more general than the FEMA definition, which is in the City’s ordinances under Section 11.5, the Flood Damage Prevention ordinance.
8. Sec. 357, defining “grade” could be problematic in determining allowable height of buildings, in that it is measured from the surface of the ground, including graded surface, rather than the natural grade, thus allowing a developer to remove or place dirt before measuring. Also note typo in the first word of the second sentence.
9. Sec. 360, “impervious cover” is imprecise, particularly in its use of “might.”
10. Sec. 368, “Manufactured housing” should be amended to delete the reference to “mobile home.” That term has a specific statutory meaning, in connection with which a court struck down a city ordinance that did not distinguish between mobile homes and HUD Code homes.
11. Sec. 378 and 379, defining “regulatory flood” and “regulatory flood protection elevation” should be compared with the flood provisions of Chapter 11 to ensure consistency, as those terms are not defined in Chapter 11. Note also the missing word, “flood” in 379 between “regulatory” and “plus.”
12. Sec. 392, defining “substandard lot” appears to define a non-conforming lot instead.
13. Secs 393 and 394 are identical definitions of “surveyor.”
14. Sec. 395, defining “uses” is unclear.

15. Sec. 396 defining “utility easement” should include persons.
16. Sec. 397 defining “value or valuation” is stated as a regulatory procedure rather than a definition.
17. Sec. 400 should be clarified or deleted, as the meaning of “Same as Section 300” is unclear.
18. Sec. 402 references Sec. 1180, which doesn’t exist.
19. Sec. 418 should delete references to mobile home and replace them with HUD Code homes (or manufactured housing if that is intended).
20. Sec. 420 is unclear—why are parking and “non-propelled vehicles” combined? Terms “behind of” and “propelled in front of a self-propelled vehicle” are misplaced.
21. Sec. 430—either revise the description of commercial use or add residential and agricultural as uses that are not commercial. Also suggest moving the description of convenience stores in 430 to either a stand-alone section or to 474--“local convenience store.”
22. Sec. 431-484 should be arranged in alphabetical to avoid misinterpretation or oversight.
23. Sec. 467, re “residential convenience service” may be unnecessary but if viable, should be amended to delete reference to mobile homes.
24. Sec. 501-511 should be alphabetical.
25. Sec. 531-556 are alphabetical except for 553 (which was probably “retirement services” previously).
26. Sec. 552—“Religious assembly” is defined as a “Civic Use,” and the types of civic uses allowed in particular districts are listed under the “permitted uses” section for each. However, religious assembly is not allowed in all districts (e.g. R-4, C-1, C-3, I-1, I-2) or is allowed only as a conditional use in others, (e.g. RT-3, R-3, R-4, R-5, MH-1, MH-3). Enactment of RFRA and TRFRA (the Religious Freedom Restoration Act and the Texas Religious Freedom Restoration Act) in 1997 and 1999 significantly reduced the ability of cities to limit or prohibit where churches may be located. The City should consider whether it desires to retain such regulations and, if so, the extent to which they are enforceable.
27. Sec. 600—the allowance of bed and breakfast inns or facilities should be moved to the “permitted uses” section of C-1, C-3 and MSD commercial districts (or as B&B uses are otherwise finalized).
28. Sec. 788 allows a preliminary plat to be used as a PDD detailed site plan in a residential district. There is no prohibition against such an approach, but it may lead to practical difficulties. Normally a site plan contains information that is not required in a plat, and a plat is subject to the 30 day rule for approval that should not be made applicable to a site plan.

29. Sec. 788 contains two sets of subsections labeled “A” and “B” which should be corrected.
30. Sections 900-926, 981-1008, and 1102 -1213 should be re-positioned to follow the other zoning regulations (Sections 201-799) so that developers and other persons reviewing the City’s requirements for the first time will not overlook zoning requirements that are separated from the initial provisions by the City’s subdivision, sign, fence, C.O, and landscaping regulations.
31. Sec. 900, regarding “general regulations” is specific to bed and breakfast parking and should be re-located as appropriate if other suggested revisions herein re bed and breakfast rules are implemented.
32. Sections. 940-955 are “District sign regulations” which should be moved to, assimilated into and made consistent with the sign regulations located at Sections 930-969.
33. Sec. 940 B references “mobile home parks” and should be modified to include concept of HUD homes.
34. Section 983, re “determination of value” of non-conforming structures states that the building official shall determine the value, and provides no guidance, procedure or safeguards for doing so. Considering the potential takings liability of the City in connection with this issue, additional detail as well as checks and balances is recommended.
35. Sections 986 and 988 cross-reference Sec. 1140, which does not exist.
36. Section 991 cross-references Sec. 1120, which does not exist.
37. Sections 1102-1119 contain requirements for site plan and site plan review, and reference those “as required by this document” but is unclear whether they are triggered only by requirements in other ordinance provisions (e.g. building permits at Sec. 1201, subdivision square footage provisions at Sec. 817(h) 6, conditional use procedures under Sec. 1124 F) then further clarification is not needed. However, if use of site plan procedures is triggered in other manners, the same should be identified.
38. Section 1110 provides that a site plan approval lapses after one year, which is too short a period of time under Chapter 245 if a site plan is treated as a permit application.
39. Sections 1140-1159, re Variance Procedures, should be revised significantly. As drafted, they appear to apply to “use variance” which do not exist under the law. A variance is for the purpose of permitting non-compliance with a physical (rather than land use) requirement. A decision should also be made regarding use of a Board of Adjustment for the granting of variances and/or special exceptions, instead of the Planning & Zoning Commission.
40. Section 1213, re penalties, can be increased from a maximum of \$200 to a maximum of \$2000, if desired.