

# NOW

BGR's Spotlight on Local Government Issues

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## **It's the Law: Land Use Decision Making and the Master Plan**

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IN RECENT YEARS, New Orleans amended its charter to give its master plan the force of law, created a new master plan and, most recently, put a new comprehensive zoning ordinance into effect. Suddenly, there is a very different framework for land use decision making.

With any such momentous change in the way a city operates, there are bound to be challenges, confusion and missteps. Recently, differences have emerged at both the City Council and City Planning Commission levels on the extent to which the Master Plan has the force of law in land use decision making.

Understanding the reach of the Master Plan's force of law is critical to bringing clarity and predictability to land use decision making. With legal force, where contemplated, the Master Plan serves as a common script for public officials, developers and residents: Land use decisions are made more consciously, since they must be weighed against the plan. An incorrect interpretation of the Master Plan's force of law could expose the city to costly lawsuits and have damaging financial impacts on developers who may have received improper approvals. A misinterpretation could also stymie worthwhile projects.

The views on this matter range widely among citizens and policy makers. Some suggest that a wide variety of decisions of city government must be consistent with every element of the master plan. Others believe the master plan is merely a guide. Both views are incorrect.

To inform public dialogue and assist policymakers on the interpretive issue, we offer the following observations.<sup>1</sup>

## **The Master Plan’s force of law is not all-encompassing.**

By giving the Master Plan the force of law in the city charter, voters did not make the plan itself a law. Rather, they specified certain laws and decisions that must conform to it. To be clear, not every city action must conform to the Master Plan. For example, the city may use the Master Plan to guide its decisions on operating budget priorities, but it is not required to do so.

Only actions that have a direct impact on the physical development of the city are required to be consistent with the Master Plan. These include the city’s capital improvement plan, its capital budget, public projects and, most notably for present purposes, zoning laws and “land use actions.”<sup>2</sup> Land use actions include the approval of any zoning map amendment, zoning ordinance text change, subdivision, site plan, planned unit development, conditional use, variance or decision of the city to construct a capital improvement.<sup>3</sup>

Land use actions must conform to only one element of the Master Plan: the land use element, which the Master Plan calls the Land Use Plan.<sup>4</sup> Other elements of the Master Plan – and indeed the vast majority of the Master plan – provide only a non-binding guide for city decision making on land use actions. Examples of these elements are “Neighborhoods and Housing,” “Historic Preservation,” “Green Infrastructure” and “Health and Human Services.”

The Land Use Plan, by contrast, is not merely a guide. The charter requires every land use action to “further, or at least not interfere with, the goals, policies and guidelines” in the Land Use Plan and to be “compatible with the proposed future land uses, densities and intensities” in the plan.<sup>5</sup> This means that land use actions in general must be consistent with the Land Use Plan, or at the very least be neutral with regard to it.

## **The Comprehensive Zoning Ordinance must conform to the Land Use Plan.**

The charter places an even higher standard on zoning decisions. As with land use actions generally, the charter explicitly requires that “Any

zoning ordinance or amendment adopted by the Council must be consistent with the Master Plan.”<sup>6</sup> It further states that their purpose should be to *implement* the plan.<sup>7</sup> The charter is direct in stating that inconsistent zoning ordinances and amendments “shall be null and void.”<sup>8</sup>

The charter is so emphatic upon this point, in fact, that it contains a mechanism to ensure consistency. Under the charter, the city must create and adhere to a consistency table setting forth how the zoning categories in the zoning ordinance conform to the land use designations set forth on the Future Land Use Map in the Land Use Plan.<sup>9</sup> The categories set forth in the table must be consistent at all times.

In other words, if an amendment to the zoning ordinance does not correlate to the land use map and the designations set forth in that table, it is not legal. The consistency table is set forth [in an appendix](#) to the recently enacted Comprehensive Zoning Ordinance.

### **The Land Use Plan can be changed.**

It must be remembered that the Master Plan, the Comprehensive Zoning Ordinance and the force of law directive marrying them are all new to New Orleans. Certain zoning requirements mandated under the Master Plan appear to have been either mistakes or not well considered. For instance, a vacant private property held for future investment in the Irish Channel appears to have been mistakenly designated in the Master Plan as parkland and open space. The property owner did not discover the problem until he sought to develop it. As BGR found in its reports reviewing the draft plans, the Master Plan is not a perfect document.<sup>10</sup>

The Land Use Plan’s legal force places a greater burden on policymakers to make sure they get at least that element of the Master Plan right. The overarching goal should be to create clarity and predictability in land use decision making, while ensuring that the plan strongly reflects citizens’ aspirations for their neighborhoods.

Fortunately, there is a process in place for dealing with mistakes and shortcomings in the Land

Use Plan. As frequently as once per year, the City Planning Commission may initiate a fresh review of the Master Plan and determine whether the plan should be amended. If the commission recommends any amendments, it must prepare draft amendments, hold public hearings and forward final recommendations to the City Council for approval, modification or rejection.<sup>11</sup> This review process provides a predictable mechanism for changing the ground rules.

The last revision of the Master Plan was approved in July 2012. On October 27, the City Planning Commission voted to initiate a fresh revision process. The commission's staff expects the process to take at least 18 months.

In interviews with BGR, policymakers rightly pointed out that the Land Use Plan – like a constitution – will always be subject to some level of interpretation. As time goes on, flaws will emerge, inconsistencies will be revealed and amendments (made through the review process) will be needed. But where the Land Use Plan provides clear directives as to land use decisions, decision makers must adhere to it. After all, it's the law.

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## ENDNOTES

1 BGR is well positioned to address the issue of interpretation. The movement to reform land use decision making was prompted in part by a 2003 BGR report. (Bureau of Governmental Research, *Runaway Discretion: Land Use Decision Making in New Orleans*, October 2003.) In 2006, at the request of a committee convened by the city, BGR drafted and published proposed charter changes to reform land use decision making. (BGR, *Planning for a New Era: Proposed Charter Changes for Land Use Decision Making in New Orleans*, August 2006.) This proposed language influenced the charter changes that the city ultimately produced in 2008, and BGR offered numerous suggestions to the city as it proceeded to a final draft charter amendment. BGR published an analysis of the proposed charter changes and supported them. (BGR, *On the Ballot: Jefferson, Orleans and State Propositions*, November 2008, pp. 1-3.) BGR also published analyses of drafts of the new Master Plan and Comprehensive Zoning Ordinance. (See BGR's letter calling on the City Planning Commission to clarify the draft Comprehensive Zoning Ordinance, November 1, 2011; BGR's letter to the City Planning Commission on the draft Comprehensive Zoning Ordinance, August 29, 2014; and *A Trojan Horse in the Draft CZO: Article 5 Puts Years of Planning at Risk*, October 2014.) All of this work was supported by some of the nation's leading land use lawyers, whom BGR retained as consultants.

2 For a full list of the actions that must be consistent with the plan, see the Home Rule Charter of the City of New Orleans, Secs. 5-402(3) & (4) and 5-404(3).

3 Ibid., Sec. 5-412.

4 Ibid., Sec. 5-404(3)(d). See also *Plan for the 21<sup>st</sup> Century: New Orleans 2030*, August 2010, p. 14.2.

5 Home Rule Charter of the City of New Orleans, Sec. 5-404(3)(d)(1-2).

6 Ibid., Sec. 5-406(1).

7 Ibid., Sec. 5-402(3)(c). The charter states that the city may prepare a zoning ordinance and make amendments to it for the purpose of "promoting public health, safety aesthetics and general welfare, and implementing the Master Plan."

8 Ibid., Sec. 5-406.

9 Ibid., Sec. 5-404(3)(b).

10 See BGR, *In Search of the Master Plan: Making the New Orleans 2030 Draft Plan Work*, October 2009; *Connecting Neighborhoods to City Hall: Neighborhood Participation and the New Orleans 2030 Draft Plan*, October 2009; *A Need for Clarity: The Revised New Orleans 2030 Draft Plan*, April 2010.

11 Ibid., Sec. 5-404(4).