



**CITY OF ANGLETON, TEXAS  
PUBLIC NOTICE OF A PLANNING & ZONING COMMISSION MEETING  
THURSDAY, NOVEMBER 5, 2020, 12:00 P.M.  
120 S. CHENANGO STREET ANGLETON, TEXAS 77515**

**NOTICE IS HEREBY GIVEN PURSUANT TO V.T.C.A., GOVERNMENT CODE, CHAPTER 551, THAT THE PLANNING & ZONING COMMISSION FOR THE CITY OF ANGLETON WILL CONDUCT A MEETING, OPEN TO THE PUBLIC, ON THURSDAY, NOVEMBER 5, 2020, AT 12:00 P.M., AT THE CITY OF ANGLETON COUNCIL CHAMBERS LOCATED AT 120 S. CHENANGO STREET ANGLETON, TEXAS 77515.**

In accordance with an Order of the Office of the Governor issued March 16, 2020, the City Council of the City of Angleton, Texas will conduct the meeting scheduled on Thursday, November 5, 2020, at 12:00 P.M., at The City of Angleton Council Chambers located at 120 S. Chenango Street Angleton, Texas 77515 and will be live-streamed on Facebook live at <https://www.facebook.com/cityofangleton/> to advance the public health goal of limiting face-to-face meetings (also called “social distancing”) to slow the spread of the Coronavirus (COVID-19). The City will follow the minimum recommended health protocols as set forth by the Texas Health and Human Services.

**AGENDA**

1. Declaration of a quorum and call to order.
2. Hold a public hearing, discussion and possible action on a request from Emptor Angleton, LLC to recommend approval of the Preliminary Plat of Windrose Green Section Two. The subject property consists of 13.24 acres in the T.S. Lee Survey, Abstract #318, is in the City of Angleton ETJ and is located on the south side of FM 523 approximately XXX feet west of the FM 523/SH 35 intersection.
3. Conduct a Workshop on the role of the Planning & Zoning Commission.
4. Adjournment

**CERTIFICATION**

I, Walter E. Reeves Jr., AICP, Development Services Director, do hereby certify that this Notice of a Meeting was posted on the City Hall bulletin board, a place convenient and readily accessible to the general public at all times and to the City's website, [www.angleton.tx.us](http://www.angleton.tx.us), in compliance with Chapter 551, Texas Government Code. The said Notice was posted on the following date and time: Monday, November 2, 2020 by 12:00 p.m. and remained so posted continuously for at least 72 hours proceeding the scheduled time of said meeting.

*/s/ Walter E. Reeves Jr., AICP*

Walter E. Reeves Jr., AICP  
Development Services Director

***In compliance with the Americans with Disabilities Act, the City of Angleton will provide reasonable accommodations for persons attending City Council meetings. The facility is wheelchair accessible and accessible parking spaces are available. Please contact the City Secretary at 979-849-4364, extension 2115 or email [faquilar@angleton.tx.us](mailto:faquilar@angleton.tx.us).***



**CITY OF ANGLETON, TEXAS  
AGENDA ITEM SUMMARY FORM**

**MEETING DATE:** 11/5/2020

**ITEM #2**

**PREPARED BY:** Walter E. Reeves Jr., AICP Development Services Director

**AGENDA ITEM TITLE:** Hold a public hearing, discussion and possible action on a request from Emptor Angleton, LLC to recommend approval of the Preliminary Plat of Windrose Green Section Two. The subject property consists of 13.24 acres in the T.S. Lee Survey, Abstract #318, is in the City of Angleton ETJ and is located on the south side of FM 523 approximately 2,800 feet west of the FM 523/SH 35 intersection.

**AGENDA ITEM SECTION:** (choose one below)

Ceremonial Presentation

Consent Agenda

Regular Agenda

Public Hearing

Executive Session

**BUDGETED AMOUNT:**

N/A

**FUNDS REQUESTED:**

N/A

**FUND:**

N/A

**EXECUTIVE SUMMARY:**

The proposed preliminary plat of Windrose Green Section Two, consisting of 13.23 acres of land out of the T.S. Lee Survey, Abstract #318, meets all the requirements of the Code of Ordinances of the City of Angleton.

**ATTACHMENTS (Attachment description):**

1. City Engineer Determination
2. Preliminary Plat

**RECOMMENDATION:**

Staff recommends approval of proposed preliminary plat of Windrose Green Section 2 as presented.



October 29, 2020

Mr. Walter Reeves  
Director of Development Services  
City of Angleton  
121 S. Velasco  
Angleton, TX 77515

Re: On-Going Services  
Plat Review of Windrose Green Section 2 Preliminary Plat – 2<sup>nd</sup> Submittal Review  
Angleton, Texas  
HDR Job No. 20-007

Dear Mr. Reeves:

HDR Engineering, Inc. (HDR) has reviewed the plat for the above referenced subdivision and offers the following comments:

Preliminary Plat Review:

1. Pending Planning and Zoning and City Council approval, a Final Plat shall be prepared in accordance to the Developer's Agreement and in accordance to the Angleton Land Development Code (LDC) and processes.

HDR takes no objection to the Windrose Green Section 2 Preliminary Plat with the exceptions noted. It is noted that this does not necessarily mean that the entire plat submittal set, including all supporting data and calculations, has been completely checked and verified; however, the drawings and supporting data were prepared and signed and sealed by a Registered Professional Land Surveyor licensed to practice in the State of Texas, which therefore conveys the planner's and surveyor's responsibility and accountability.

If you have any questions, please feel free to contact us at our office (713)-622-9264.

Sincerely,

HDR Engineering, Inc.

Javier Vasquez, P.E., CFM  
Project Engineer

cc: Files (20-007)

Attachments

STATE OF TEXAS §  
COUNTY OF BRAZORIA §

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT EMPUTOR ANGLETON, LLC acting herein by and through its duly authorized officers, does hereby adopt this plat designating the hereinabove described property as \_\_\_\_\_ a subdivision in the jurisdiction of the City of Angleton, Texas, and does hereby dedicate, in fee simple, to the public use forever, the streets, alleys and public parkland shown thereon. The streets, alleys and parkland are dedicated for street purposes. The easements and public use areas, as shown, are dedicated for the public use forever, for the purposes indicated on this plat. No buildings, fences, trees, shrubs, or other improvements or growths shall be constructed or placed upon, over, or across the easements as shown, except that landscape improvements may be placed in landscape easements, if approved by the City of Angleton. In addition, utility easements may also be used for the mutual use and accommodation of all public utilities desiring to use or using the same unless the easement limits the use to particular utilities, said use by public utilities being subordinate to the public's and City of Angleton's use thereof. The City of Angleton and public utility entities shall have the right to remove and keep removed all or parts of any buildings, fences, trees, shrubs, or other improvements or growths which may in any way endanger or interfere with the construction, maintenance, or efficiency of their respective systems in said easements. The City of Angleton and public utility entities shall at all times have the full right of ingress and egress to or from their respective easements for the purpose of constructing, reconstructing, inspecting, patrolling, maintaining, reading meters, and adding to or removing all or parts of their respective systems without the necessity at any time of procuring permission from anyone.

STATE OF TEXAS §  
COUNTY OF BRAZORIA §

This plat is hereby adopted by the owners (called "Owners") and approved by the City of Angleton, ("City") subject to the following conditions which shall be binding upon the Owners, their heirs, grantees, successors, and assigns:

"Drainage Easements" shown on the plat are reserved for drainage purposes forever, and the maintenance of the drainage easements shall be provided by all of the owners of lots in the subdivision. All Owner documents shall specify, confirm and bind the Owner(s) to continuously maintain all Drainage Easements and shall relieve the City of Angleton of the responsibility to maintain any Drainage Easement. The fee simple title to the Drainage and Floodway Easement shall always remain in the Owner(s).

The City and Angleton Drainage District will not be responsible for the maintenance and operation of easement or for any damage or injury to private property or person that results from the flow of water along said easement or for the control of erosion, but reserves the right to use enforcement powers to ensure that drainage easements are properly functioning in the manner in which they were designed and approved.

The Owners shall keep all Drainage Easements clean and free of debris, silt, and any substance which would result in unsanitary conditions or obstruct the flow of water, and the City of Angleton or Angleton Drainage District shall have the right of ingress and egress for the purpose of inspection and supervision of maintenance work by the Owners to alleviate any public health or safety issues.

The Association hereby agrees to indemnify and hold harmless the City from any such damages and injuries.

STATE OF TEXAS §  
COUNTY OF BRAZORIA §

The owner of land shown on this plat, in person or through a duly authorized agent, dedicates to the use of the public forever all streets, alleys, parks, watercourses, drains, easements and public places thereon shown for the purpose and consideration therein expressed.

Owner \_\_\_\_\_

Duly Authorized Agent \_\_\_\_\_

STATE OF TEXAS §  
COUNTY OF BRAZORIA §

Before me, the undersigned, personally appeared \_\_\_\_\_ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and considerations therein expressed and, in the capacity, therein stated. Given under my hand and seal of office this \_\_\_\_ day of \_\_\_\_\_

Notary Public  
State of Texas

STATE OF TEXAS §  
COUNTY OF BRAZORIA §  
KNOW ALL MEN BY THESE PRESENTS:

I, Mark D. Armstrong, a Registered Professional Land Surveyor in the State of Texas, do hereby certify that META Planning + Design LLC has prepared this preliminary plat based on information furnished by Costello, Inc.

*Mark D. Armstrong*

Mark D. Armstrong  
Registered Professional Land Surveyor  
No. 5363



10/20/2020

STATE OF TEXAS §  
COUNTY OF BRAZORIA §  
KNOW ALL MEN BY THESE PRESENTS:

That I, A. Khoshkhalagh, do hereby certify that proper engineering consideration has been provided in this plat. To the best of my knowledge, this plat conforms to all requirements of the Angleton LDC, except for any variances that were expressly granted by the City Council.

*A. Khoshkhalagh*

A. Khoshkhalagh, P.E.  
Professional Engineer  
No. 101133



10/20/2020

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by the Planning and Zoning Commission, City of Angleton, Texas.

\_\_\_\_\_  
Chairman, Planning and Zoning Commission

City Secretary \_\_\_\_\_

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by the City Council, City of Angleton, Texas.

Mayor \_\_\_\_\_

City Secretary \_\_\_\_\_

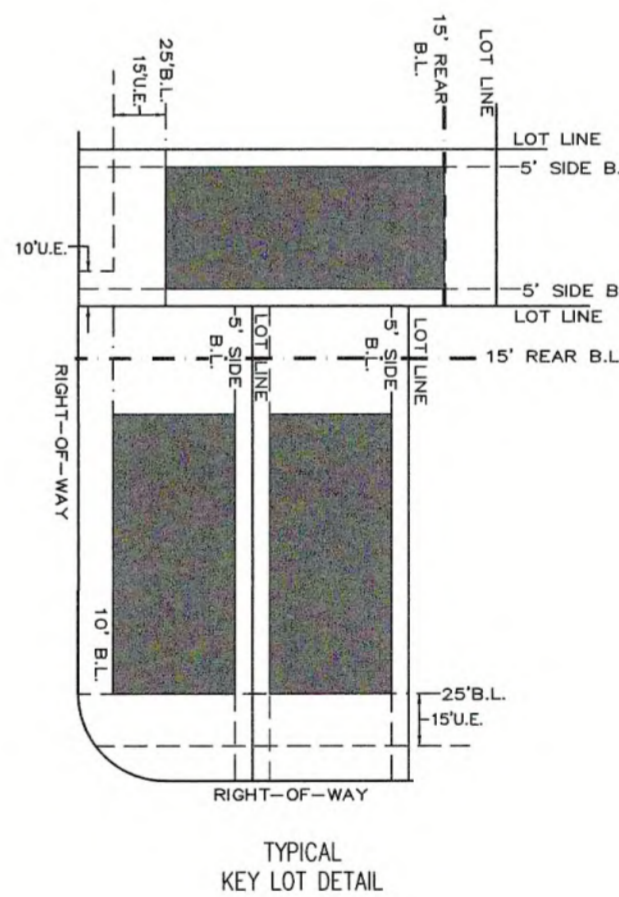
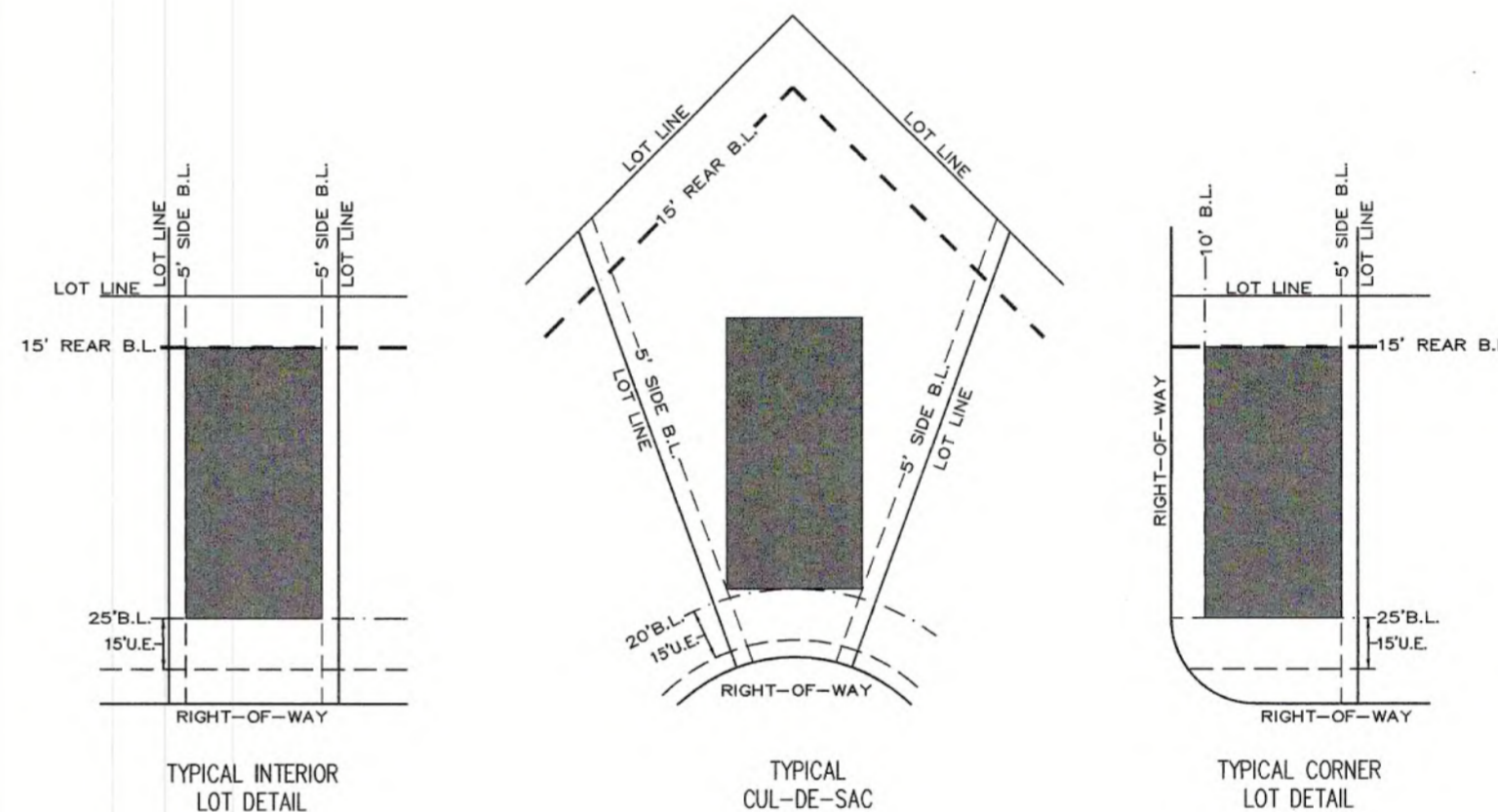
STATE OF TEXAS §  
COUNTY OF BRAZORIA §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_, City Secretary, City of Angleton, on behalf of the City.

Notary Public  
State of Texas

GENERAL NOTE:

- "B.L." INDICATES BUILDING LINE.
- "U.E." INDICATES UTILITY EASEMENT.
- "1' RES." INDICATES ONE FOOT RESERVE.  
dedicated to the public in fee as a buffer separation between the side or end of streets where such streets abut adjacent acreage tracts, the condition of such dedication being that when the adjacent property is subdivided in a recorded plat, the one foot reserve shall thereupon become vested in the public for street right-of-way purposes and the fee title thereto shall revert to and revest in the dedicatior, his heirs assigns, or successors.
- ALL PROPERTY LINE DIMENSIONS ARE APPROXIMATE.
- ALL LOT WIDTH AND DEPTH DIMENSIONS ARE APPROXIMATE, AND LOT WIDTHS ARE MEASURED AT THE FRONT BUILDING LINE, AND OR THE REAR BUILDING PAD LINE.
- NOTICE: SELLING A PORTION OF THIS ADDITION BY METES AND BOUNDS IS A VIOLATION OF THE UNIFIED DEVELOPMENT CODE OF THE CITY OF ANGLETON AND STATE PLATTING STATUTES AND IS SUBJECT TO FINES AND WITHHOLDING OF UTILITIES AND BUILDING PERMITS.
- NOTICE: PLAT APPROVAL SHALL NOT BE DEEMED TO OR PRESUMED TO GIVE AUTHORITY TO VIOLATE, NULLIFY, VOID, OR CANCEL ANY PROVISIONS OF LOCAL, STATE, OR FEDERAL LAWS, ORDINANCES, OR CODES.
- NOTICE: THE APPLICANT IS RESPONSIBLE FOR SECURING ANY FEDERAL PERMITS THAT MAY BE NECESSARY AS THE RESULT OF PROPOSED DEVELOPMENT ACTIVITY. THE CITY OF ANGLETON IS NOT RESPONSIBLE FOR DETERMINING THE NEED FOR, OR ENSURING COMPLIANCE WITH ANY FEDERAL PERMIT.
- NOTICE: APPROVAL OF THIS PLAT DOES NOT CONSTITUTE A VERIFICATION OF ALL DATA, INFORMATION AND CALCULATIONS SUPPLIED BY THE APPLICANT. THE ENGINEER OF RECORD OR REGISTERED PUBLIC LAND SURVEYOR IS SOLELY RESPONSIBLE FOR THE COMPLETENESS, ACCURACY AND ADEQUACY OF HIS/HER SUBMITTAL WHETHER OR NOT THE APPLICATION IS REVIEWED FOR CODE COMPLIANCE BY THE CITY ENGINEER.
- NOTICE: ALL RESPONSIBILITY FOR THE ADEQUACY OF THIS PLAT REMAINS WITH THE ENGINEER OR SURVEYOR WHO PREPARED THEM. IN APPROVING THESE PLANS, THE CITY OF ANGLETON MUST RELY ON THE ADEQUACY OF THE WORK OF THE ENGINEER AND/OR SURVEYOR OF RECORD.
- ALL RESERVES SHALL BE OWNED AND MAINTAINED BY HOMEOWNER'S ASSOCIATION OR MUD.
- HORIZONTAL DATUM:  
ALL BEARINGS ARE REFERENCED TO THE TEXAS COORDINATE SYSTEM, NORTH AMERICAN DATUM OF 1983 (NAD83), SOUTH CENTRAL ZONE.  
VERTICAL DATUM:  
ALL ELEVATIONS ARE REFERENCED TO THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAV88), GEOID 12B, BASED ON ALLTERRA'S RTK NETWORK, STATIONS HAGS\_1012 AND HC0G\_14012.
- ACCORDING TO THE NATIONAL FLOOD INSURANCE PROGRAM FLOOD INSURANCE RATE MAP FOR BRAZORIA COUNTY, TEXAS, MAP NUMBER 48039C0435 H, DATED JUNE 5, 1989 THIS PROPERTY LIES IN UNSHADED ZONE "X", WHICH IS DEFINED AS AREAS DETERMINED TO BE OUTSIDE THE 500-YEAR FLOODPLAIN.
- DRIVEWAY ACCESS TO FM 523 FROM LOTS 34-51, BLOCK 1 IS DENIED.
- THIS PRELIMINARY PLAT HAS BEEN PREPARED BY META PLANNING + DESIGN LLC. WITH THE AID OF INFORMATION PROVIDED BY COSTELLO, INC.
- COSTELLO, INC., TBPE FIRM REGISTRATION No. 280, TBPLS FIRM REGISTRATION No. 100486... IS A SUBCONSULTANT ONLY AND HAS NOT PREPARED THIS PRELIMINARY PLAT.
- PROPOSED MONUMENTS TO BE SET BY COSTELLO, INC., UPON RECORDATION OF A FINAL PLAT.



A PRELIMINARY PLAT OF  
**WINDROSE GREEN**  
**SECTION TWO**  
BEING 13.23± ACRES OF LAND  
CONTAINING 70 LOTS (45'/50' X 120' TYP.) AND  
ONE RESERVE IN ONE BLOCK.

OUT OF THE  
T.S. LEE SURVEY, A-318  
BRAZORIA COUNTY, TEXAS

ENGINEER/SURVEYOR:  
**COSTELLO, INC.\***  
2107 CITYWEST BLVD, 3RD FLOOR  
HOUSTON, TEXAS 77042  
TBPE FIRM REGISTRATION No. 280  
TBPLS FIRM REGISTRATION No. 100486

OWNER:  
**EMPTOR ANGLETON, LLC**  
9950 WESTPARK DR. #285  
HOUSTON, TEXAS 77063

PLANNER:



24275 KATY FREEWAY, SUITE 200  
KATY, TEXAS 77494  
Tel: 281-810-1422

PAGE 1 OF 2  
SCALE: 1" = 100'  
0 50 100 200 \* (SEE NOTE 15)

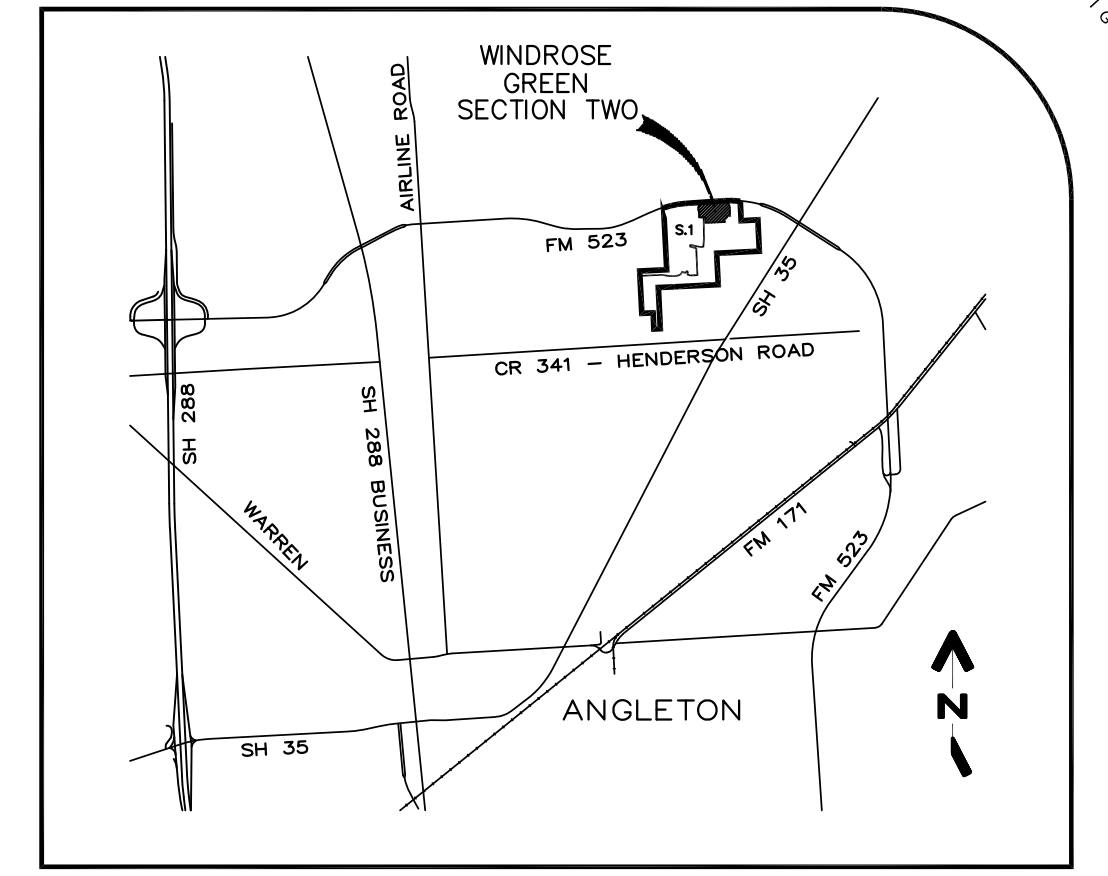
OCTOBER 15, 2020  
MTA# 56002

DISCLAIMER AND LIMITED WARRANTY

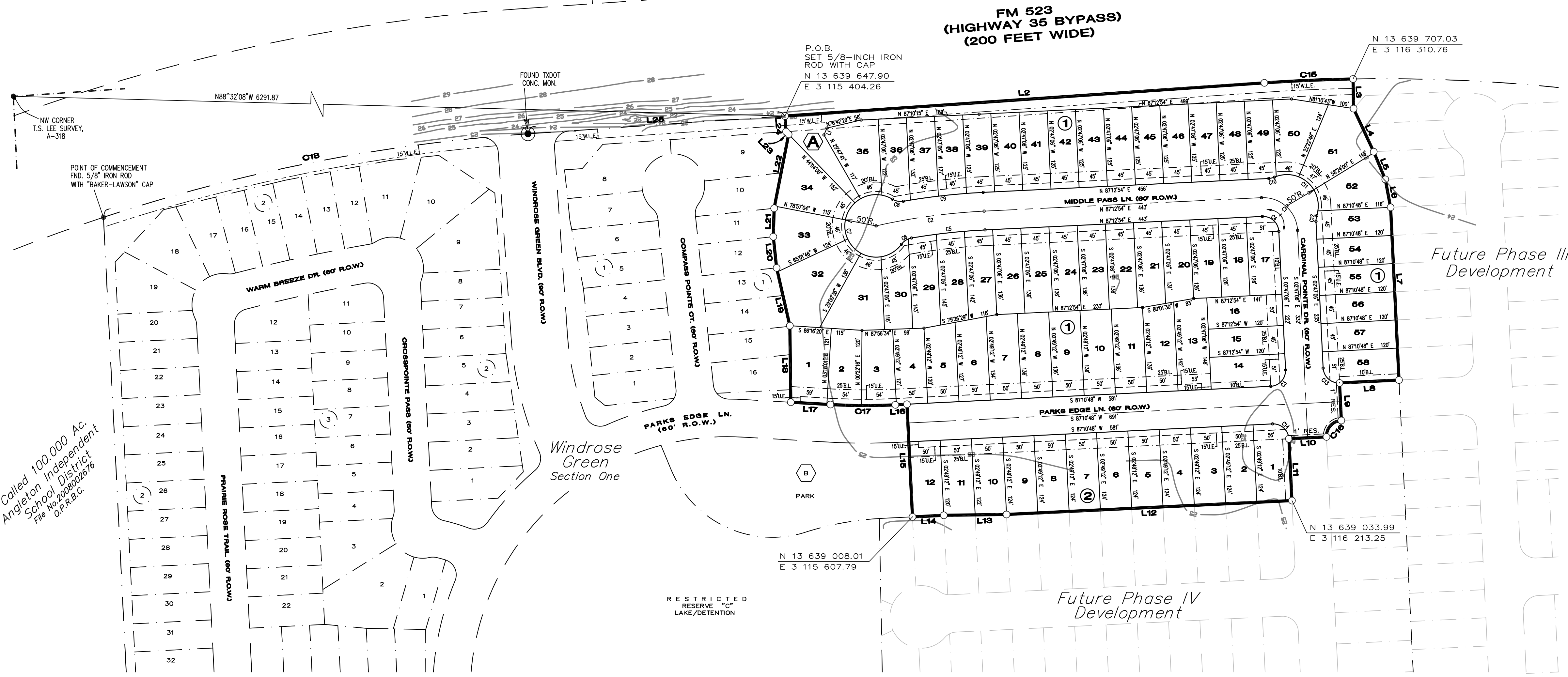
THIS PRELIMINARY SUBDIVISION PLAT HAS BEEN PREPARED IN ACCORDANCE WITH THE PROVISIONS OF THE CITY OF ANGLETON SUBDIVISION REGULATIONS IN EFFECT AT THE TIME THIS PLAT WAS PREPARED ALONG WITH ANY VARIANCE OR VARIANCES TO THE PROVISIONS OF THE AFORESAIDED ORDINANCE WHICH ARE SUBSEQUENTLY GRANTED BY THE CITY OF ANGLETON PLANNING AND ZONING COMMISSION. THIS PRELIMINARY PLAT WAS PREPARED FOR THE LIMITED PURPOSE OF GUIDANCE IN THE PREPARATION OF ACTUAL ENGINEERING AND DEVELOPMENT PLANS. THIS LIMITED WARRANTY IS MADE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND NEITHER META PLANNING + DESIGN LLC NOR ANY OF ITS OFFICERS, OR DIRECTORS, OR EMPLOYEES MAKE ANY OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED CONCERNING THE DESIGN, LOCATION, QUALITY, CHARACTER OF ACTUAL UTILITIES OR OTHER FACILITIES IN, ON, OVER, OR UNDER THE PREMISES INDICATED IN THE PRELIMINARY SUBDIVISION PLAT.

Called 75,004 Acres  
Chenango Properties, LLC.  
Document No. 2009004723  
O.P.R.B.C.

Called 8,132 Acres  
Joray One, LLC.  
Document No. 2015025521  
O.P.R.B.C.



Vicinity Map



Called 100,000 Ac.  
Angleton Independent  
School District  
File No. 2008002676  
O.P.R.B.C.

METES AND BOUNDS DESCRIPTION

Being a 13.23-acre tract of land located in the T.S. Lee Survey, Abstract No. 310 in Brazoria County, Texas; said 13.23-acre tract being a part of a called 154.6-acre tract of land recorded in the name of Emptor Angleton, LLC, in File No. 2020013621 of the Official Public Records of Brazoria County (O.P.R.B.C.); said 13.23-acre tract being more particularly described by metes and bounds as follows (all bearings are referenced to the Texas Coordinate System, North American Datum 1983, South Central Zone):

- Commencing at a 5/8-inch iron rod with cap stamped "Baker-Lawson" found at the northwest corner of said 154.6-acre tract and the northeast corner of a called 100,000-acre tract of land recorded in the name of Angleton Independent School District in File No. 2008002676 of the O.P.R.B.C., and being on the southerly right-of-way (R.O.W.) line of FM 523 (Highway 35 Bypass, 200 feet wide);
- Thence, with said R.O.W. line and the northerly line of said 154.6-acre tract, 692.12 feet along the arc of a curve to the right, said curve having a central angle of 14 degrees 20 minutes 32 seconds, a radius of 2,764.93 feet and a chord that bears North 78 degrees 52 minutes 06 seconds East, a distance of 690.31 feet to a found TxDOT concrete monument;
  - Thence, continuing with said R.O.W. line and said northerly line of the 154.6-acre tract, North 86 degrees 02 minutes 22 seconds East, a distance of 411.11 feet to the Point of Beginning the herein described tract;
  - Thence, continuing with said R.O.W. line and said northerly line of the 154.6-acre tract, North 86 degrees 02 minutes 22 seconds East, a distance of 766.81 feet;
  - Thence, continuing with said R.O.W. line and said northerly line of the 154.6-acre tract, 141.66 feet along the arc of a curve to the right, said curve having a central angle of 02 degrees 56 minutes 08 seconds, a radius of 2,764.93 feet and a chord that bears North 87 degrees 30 minutes 26 seconds East, a distance of 141.05 feet;
  - Thence, through said 154.6-acre tract, the following twenty-four (24) courses:
    - South 01 degrees 01 minutes 30 seconds East, a distance of 47.26 feet;
    - South 25 degrees 02 minutes 33 seconds East, a distance of 75.99 feet;
    - South 22 degrees 39 minutes 47 seconds East, a distance of 47.84 feet;
    - South 10 degrees 45 minutes 55 seconds East, a distance of 45.44 feet;
    - South 02 degrees 47 minutes 06 seconds East, a distance of 276.00 feet;
    - South 87 degrees 10 minutes 48 seconds West, a distance of 94.98 feet;
    - South 02 degrees 49 minutes 12 seconds East, a distance of 60.00 feet;
    - South 87 degrees 12 minutes 54 seconds West, a distance of 98.83 feet;
    - South 87 degrees 12 minutes 54 seconds West, a distance of 456.00 feet;
    - South 89 degrees 13 minutes 19 seconds West, a distance of 100.06 feet;
    - South 87 degrees 10 minutes 48 seconds West, a distance of 50.00 feet;
    - North 02 degrees 49 minutes 12 seconds West, a distance of 180.00 feet;
    - South 87 degrees 10 minutes 48 seconds West, a distance of 18.57 feet;
    - 103.61 feet along the arc of a curve to the right, said curve having a central angle of 06 degrees 07 minutes 13 seconds, a radius of 970.00 feet and a chord that bears North 89 degrees 45 minutes 35 seconds West, a distance of 103.56 feet;
    - North 86 degrees 41 minutes 59 seconds West, a distance of 63.29 feet;
    - North 00 degrees 44 minutes 14 seconds West, a distance of 121.27 feet;
    - North 12 degrees 46 minutes 37 seconds West, a distance of 95.66 feet;
    - North 06 degrees 02 minutes 37 seconds West, a distance of 50.00 feet;
    - North 01 degrees 45 minutes 07 seconds East, a distance of 45.42 feet;
    - North 11 degrees 02 minutes 56 seconds East, a distance of 120.31 feet;
    - North 44 degrees 04 minutes 08 seconds West, a distance of 5.92 feet;
    - North 03 degrees 57 minutes 38 seconds West, a distance of 25.00 feet to the Point of Beginning and containing 13.23 acres of land.

RESERVE TABLE		
RESERVE	LAND USE	ACREAGE
A	LANDSCAPE/ OPEN SPACE	±0.58

CURVE	RADIUS	DELTA	ARC	TANGENT	BEARING	CHORD
C1	65'	90°00'00"	86'	55'	N 47°47'06" W	78'
C2	1000'	09°58'50"	174'	87'	S 82°13'29" W	174'
C3	25'	89°57'54"	39'	25'	N 42°11'61" E	35'
C4	25'	90°00'00"	39'	25'	N 47°47'06" W	35'
C5	970'	06°58'30"	115'	69'	S 83°43'40" W	115'
C6	25'	44°21'27"	19'	10'	N 58°03'41" E	19'
C7	50'	285°37'36"	232'	54'	N 11°18'14" W	73'
C8	25'	41°25'49"	15'	9'	N 79°12'21" W	15'
C9	1030'	07°08'09"	128'	64'	N 83°38'50" E	128'
C10	25'	21°02'22"	9'	5'	N 78°41'43" E	9'
C11	50'	132°04'44"	115'	113'	S 47°47'06" E	91'
C12	25'	21°02'22"	9'	5'	S 07°44'05" W	9'
C13	25'	90°02'08"	39'	25'	S 47°48'09" E	35'
C14	25'	90°02'08"	39'	25'	S 47°48'09" E	35'
C15	2764.93'	02°56'08"	141.66'	71'	N 87°30'26" E	141.66'
C16	25'	90°16'22"	39.39'	25'	S 42°11'51" W	35.44'
C17	970.00'	06°07'13"	103.61'	62'	N 89°46'35" W	103.56'
C18	2764.93'	14°20'32"	692.12'	348'	N 78°52'06" E	690.31'

LINE	DISTANCE	BEARING
L1	12'	S 23°27'24" W
L2	766.81'	N 86°02'22" E
L3	47.26'	S 01°01'30" E
L4	75.99'	S 25°02'33" E
L5	47.84'	S 22°39'47" E
L6	45.44'	S 10°45'55" E
L7	276.00'	S 02°47'06" E
L8	94.98'	S 87°10'48" W
L9	60.00'	S 02°49'12" E
L10	90.00'	S 87°12'54" W
L11	98.83'	S 02°47'06" E
L12	456.00'	S 87°12'54" W
L13	100.06'	S 89°13'19" W
L14	50.00'	S 87°10'48" W
L15	180.00'	N 02°49'12" W
L16	18.57'	S 87°10'48" W
L17	63.29'	N 86°47'50" W
L18	121.27'	N 00°44'14" W
L19	95.66'	N 12°46'37" W
L20	60.00'	N 06°02'37" W
L21	45.42'	N 01°45'07" E
L22	120.31'	N 11°02'56" E
L23	5.92'	N 44°04'08" W
L24	25.00'	N 03°57'38" W
L25	411.11'	N 86°02'22" E

# A PRELIMINARY PLAT OF WINDROSE GREEN SECTION TWO

BEING 13.23± ACRES OF LAND  
CONTAINING 70 LOTS (45'/50' X 120' TYP) AND  
ONE RESERVE IN ONE BLOCK.

OUT OF THE  
T.S. LEE SURVEY, A-318  
BRAZORIA COUNTY, TEXAS  
ENGINEER/SURVEYOR:  
**COSTELLO, INC.**  
2107 CITYWEST BLVD, 3RD FLOOR  
HOUSTON, TEXAS 77042  
TBPE FIRM REGISTRATION No. 280  
TBPLS FIRM REGISTRATION No. 100486  
OWNER:

**EMPTOR ANGLETON, LLC**  
9950 WESTPARK DR. #285  
HOUSTON, TEXAS 77063



24275 KATY FREEWAY, SUITE 200  
KATY, TEXAS 77494  
Tel: 281-810-1422

DISCLAIMER AND LIMITED WARRANTY  
THIS PRELIMINARY SUBDIVISION PLAT HAS BEEN PREPARED IN ACCORDANCE WITH THE PROVISIONS OF THE CITY OF ANGLETON SUBDIVISION REGULATIONS IN EFFECT AT THE TIME THIS PLAT WAS PREPARED ALONG WITH ANY VARIANCE OR VARIANCES TO THE PROVISIONS OF THE AFORESAID ORDINANCE WHICH ARE SUBSEQUENTLY GRANTED BY THE CITY OF ANGLETON PLANNING AND ZONING COMMISSION. THIS PRELIMINARY PLAT WAS PREPARED FOR THE LIMITED PURPOSE OF GUIDANCE IN THE PREPARATION OF ACTUAL ENGINEERING AND DEVELOPMENT PLANS. THIS LIMITED WARRANTY IS MADE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND NEITHER META PLANNING + DESIGN LLC NOR ANY OF ITS OFFICERS, OR DIRECTORS, OR EMPLOYEES MAKE ANY OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED CONCERNING THE DESIGN, LOCATION, QUALITY, CHARACTER OF ACTUAL UTILITIES OR OTHER FACILITIES IN, ON, OVER, OR UNDER THE PREMISES INDICATED IN THE PRELIMINARY SUBDIVISION PLAT.



**CITY OF ANGLETON, TEXAS  
AGENDA ITEM SUMMARY FORM**

**MEETING DATE:** 11/5/2020

**ITEM #3**

**PREPARED BY:** Walter E. Reeves Jr., AICP Development Services Director

**AGENDA ITEM TITLE:** Hold a Workshop on the role of the Planning and Zoning Commission.

**AGENDA ITEM SECTION:** (choose one below)

Ceremonial Presentation

Consent Agenda

Regular Agenda

Public Hearing

Executive Session

**BUDGETED AMOUNT:**

N/A

**FUNDS REQUESTED:**

N/A

**FUND:**

N/A

**EXECUTIVE SUMMARY:**

This is a brief workshop to acquaint new Planning and Zoning Commission member with the role of the Planning and Zoning Commission and to provide a refresher for longer term members.

**ATTACHMENTS (Attachment description):**

1. Guide to Planning in Texas from the Texas Chapter of the American Planning Association
2. Job of the Planning Commissioner

**RECOMMENDATION:**

Staff recommends approval of proposed preliminary plat of Windrose Green Section 2 as presented.



American Planning Association  
Texas Chapter

# A Guide to Urban Planning in Texas Communities 2013





American Planning Association  
**Texas Chapter**

*A Guide to Urban Planning in Texas Communities 2013*

## Preface

The Texas APA Short Course for Planning Commissioners and Local Officials is one of the oldest continuing annual Chapter training programs. The idea for the Short Course was brought to Texas from California by Bob Cornish, a Texas A&M University planning professor. Cornish chaired the first task force assigned to implement the program, and William Telford, a San Antonio consultant, served as Coordinator. A faculty of nine was gathered and the first Short Course was held November 21, 1971. Seven general sessions were held, concluding with five concurrent sessions.

From 1971 to 1998 the Short Course was administered by the Education Foundation. Since 1998 the program has been supported by the Chapter's Board of Directors and implemented by the Chapter's Executive Administrator. The training program has grown over the years to include a basic track for newly appointed commission members and an advance track with more specialized topics. The program has been renamed "Planning 101". Regional training workshops have been held since 1998 in various locations throughout the State in partnership with the Texas Association of Regional Councils in addition to the Chapter's annual conference. These regional workshops provide commissioners and planners an opportunity to attend training sessions closer to home.

The Guidebook is an outgrowth of the Short Course and includes a series of articles written by professional planners in the Texas Chapter. The information provides an opportunity for the reader to become more aware of the issues that Commissioners and elected officials face in carrying out their official duties as their community develops, and a resource to study. The authors are identified so that information can be shared and questions answered.

Previous page:  
Downtown Bryan, TX

Image by win.s. on Flickr and reproduced under Creative Commons 2.0



# Table of Contents

## Posted Chapters--October 2013

<b>Chapter 1</b>	<b>Planning and Development Regulations</b>	<b>5</b>
David Gattis, FAICP, CFM		
<b>Chapter 2</b>	<b>Ethics and the Planning Commissioner</b>	<b>27</b>
Carol Barrett, FAICP		
<b>Chapter 3</b>	<b>Introduction to Subdivision Controls</b>	<b>77</b>
Craig Farmer, FAICP William S. Dahlstrom, AICP, Esq.		
<b>Chapter 4</b>	<b>Zoning Regulations in Texas</b>	<b>137</b>
William Dahlstrom, JD, AICP		
<b>Chapter 5</b>	<b>Annexation and the ETJ</b>	<b>159</b>
Ben Luckens, AICP		

## Upcoming Chapters

- Role of Appointed and Elected Officials**
- Meeting Procedures and Liability Issues**
- Sustainability Planning**
- Water Planning in Times of Drought and Plenty**
- Limits of Land Use Regulation in Texas**
- Funding Infrastructure—The Local-Pay-up-to-the-State Model**
- Economic Development Tools and Planning**
- Consensus Building and Dispute Resolution**
- Form Based and Hybrid Codes**
- Community Planning Efforts**



American Planning Association  
**Texas Chapter**

*A Guide to Urban Planning in Texas Communities 2013*



# Chapter 1

## Planning and Development Regulations

David Gattis, FAICP, CFM



Where to begin? This chapter provides a general introduction into the variety of planning issues and tools that cities will use. It begins with an analysis of various methods for community planning, examines implementation of planning goals with regulatory tools, and briefly highlights new trends. Subsequent chapters provide greater detail into these various elements.



## INTRODUCTION

*“If you don’t have a plan for where you are going, you may end up somewhere else.”*

*-Attributed to Casey Stengel*

*“If you want to predict the future, create it.”*

*-Peter Drucker*

Planning and development regulations can be two of the most important activities of elected and appointed officials in Texas. The results of those two activities, whether beneficial or detrimental, may have a lasting effect on the community for years to come.

### Why is Planning Important?

The public consistently exhibits broad support for strong community planning. A national survey in 2000 (American planning Association, 2000) indicated that likely voters want professional planners to:

- Be in their community (81%),
- Plan for adequate schools and educational facilities (76%),
- Ensure the availability of public services (74%),
- Create and protect parks and recreation areas (69%),
- Preserve farmland and open space (67%),
- Protect wetlands and other natural areas (65%), and
- Create affordable housing options for low- and moderate-income families (64%).

The support for planning crosses all political interests and 57% believe that communities can manage growth and protect private property rights at the same time.

A similar survey of Texas voters two years later (Texas Chapter, American



*Most people cite land use planning-related factors when they describe quality of life issues, such as low crime rates, clean air and water, good schools, the local economy, and low taxes.*

Planning Association, 2002) indicated that 85% of Texans believe it is important for their community to have a planner, and that the most important planning issues facing Texans was the need to:

- Protect open spaces, coastal areas and parkland (88%),
- Provide incentives for affordable housing (85%),
- Create transportation options like light rail, bus systems, and bicycle/pedestrian trails (81%), and
- Support the right of local communities to make critical decisions for private property (81%.)

When asked whether communities must choose between managing growth and the protection of private property rights, 68% of Texans said communities could do both.

Why is planning considered such an important part of government? Most people cite land use planning-related factors when they describe quality of life issues, such as low crime rates, clean air and water, good schools, the local economy, and low taxes. All of these quality of life values can be achieved and maintained through proper planning of the urban environment. Planning also reduces uncertainty by protecting public and private investment and by reducing conflict and controversy.

## TYPES OF PLANNING

Planning is a universal process, and we all use planning processes in our daily life. Melville Branch (1990) said

*“individuals and families plan at least some of their daily activities, if not to survive, to function more efficiently or to improve their condition. This is so common among the five and a half billion people on earth that it is often unrecognized or disregarded as a fundamental aspect of human behavior.”*

Because of its universality, planning has differing meanings ranging from land use planners, to financial planners, to estate planners. For our purposes, we will consider the various activities of city and urban planners, land plan-



ners, transportation planners, environmental planners, economic development planners, and social planners. Because planning is done by everyone, many people often discount the knowledge and skills of professional planners. Finally, planning is somewhat unique in that it combines the technical knowledge of professional planners with the democratic decision-making of elected and appointed officials.

## Modern Physical Planning

Modern physical planning refers to the process of graphically designing the future development of the City. This includes the laying out of lots and blocks and streets and utility systems to serve the growing community. This was the process of planning used by monarchs in the development of European cities, and by land grant recipients in the New World prior to the formation of the United States in 1781.

Modernism espoused that through proper design, social ills of the city could be mitigated. Modern physical planning invariably results in a map, a plan, developed by a single planner or group of professional planners.

## The Rational Planning Process

The rational planning process refers to the decision-making process that we all consciously or unconsciously use in evaluating alternative actions. A problem is identified, alternatives are considered and evaluated, an alternative is selected for implementation, and the result is evaluated for its effectiveness. While the rational planning process describes the process that many of us use in analyzing alternatives, it does have some limitations on implementation. Can we really start from a clean slate or are we bound to only change incrementally? Can we really identify and completely evaluate all possible alternatives? If we acknowledge that we have limitations in these areas, we must also acknowledge that the process is swayed by our own preconceived ideas and biases.

## Comprehensive Planning

Most cities use the approach of using the comprehensive plan. Like its name implies, the comprehensive plan looks at more than simply a single aspect of physical planning and often incorporates numerous aspects of the city plan



In the spirit of **rational planning**, planners mapped out bicycle paths as a means to show citizens they have 'no excuse' in using alternative modes of transportation. There are oftentimes other forces at play when plan implementation fails.

Image by BMW Guggenheim Lab on Flickr and reproduced under Creative Commons 2.0



and their inter-relationships. The noted Professor Kent notes the following six fundamental purposes of the comprehensive planning process:

1. To improve the physical environment of the community as a setting for human activities — to make it more functional, beautiful, decent, healthy, interesting and efficient.
2. To promote the public interest, the interest of the community at large, rather than the interests of individuals or special groups within the community.
3. To facilitate the democratic determination and implementation of community policies on physical development.
4. To effect political and technical coordination of community development.
5. To inject long range considerations into the determination of short-range actions. And
6. To bring professional and technical knowledge to bear on the making of political decisions concerning the physical development of the community.

In 1997, the Texas Legislature added a new chapter to the Local Government Code (now codified as Chapter 213) that enables all municipalities in Texas to develop and adopt comprehensive plans on an optional basis. The statute establishes some minimum requirements of adopted comprehensive plans (e.g. they must consider land use, transportation and public facilities; establishes procedures for adoption and amendment, and requires a statement distinguishing between land use plans and zoning regulations), but otherwise allows the city to determine for itself what constitutes a comprehensive plan. Plans may consist of traditional map-based plans, functional plans (such as a drainage plan, water distribution plan), policy plans, or sector/neighborhood plans (plans that address a specific geographic area within the community.) Perhaps more importantly, it also allows a city to determine the relationship between its comprehensive plan and its development regulations.

Although a comprehensive plan may consist minimally of land use, transportation, and public facilities elements, most cities have a greatly expanded



breadth of coverage. One award-winning comprehensive plan includes the following contents:

1. **Introduction and Framework**
2. **Historical Background**
3. **Factors Influencing the Comprehensive Plan**
  - a. Environmental Constraints
    - i. Soils and Geology
    - ii. Topography and steep slopes
    - iii. Floodplains
    - iv. Noise
  - b. Demographic trends
    - i. Populations
    - ii. Economic Potential
    - iii. Land Uses
    - iv. Population Projection
    - v. Development Trends
4. **A Vision of the Future (the Year 2030)**
  - a. Physical Development in 2030
    - i. Population and Demographics
    - ii. Land Uses and Housing
    - iii. Transportation and Communications
  - b. Economic, Social and Political Life in 2030
    - i. The Economy and Workplace
    - ii. Changing Work and Leisure Patterns
    - iii. Education
    - iv. The Return of the Neighborhood as a Social Unit
    - v. Government and Community facilities
5. **Goals Objectives, Strategies and Planning Principles**
  - a. Strategic Plan
  - b. Planning Tenets and Principles
6. **Land Use**
  - a. Existing and Planned Land Uses
  - b. General Land Use Considerations
  - c. Residential Areas
  - d. Commercial Areas
  - e. Industrial Areas
  - f. Protection of Environmentally Sensitive and Open Space Areas
7. **Transportation**
  - a. Historical Background
  - b. Street Functions
    - i. Types of Streets
    - ii. Traffic Volumes
    - iii. Street Capacity
    - iv. Relation of Land Use to Transportation
    - v. Street Location
  - c. Traffic Safety
    - i. Traffic Accidents
    - ii. Visibility
    - iii. Design Standards
  - d. Vehicular Circulation
    - i. Traffic efficiency
    - ii. Traffic control
    - iii. Parking
  - e. Pedestrian and Bicycle Circulation
    - i. Pedestrian Circulations
    - ii. Bicycles
  - f. Public Transportation
  - g. Railroads
    - i. At-grade crossings
    - ii. Spurs for industry
  - h. Air Travel
8. **Community Facilities**
  - a. Public Buildings and facilities I. City Administration



- ii. Police and Courts Building
- iii. Fire Stations
- iv. Maintenance and Service Centers
- v. Community centers
- vi. Cemeteries
- vii. Libraries
- b. Parks and recreation Facilities
  - i. Current Park facilities
  - ii. Park Planning Efforts
  - iii. Park Planning Standards (Goals and Objectives)
  - iv. Planned Park Facilities
- c. Schools and Other Education facilities

## 9. Drainage

- a. Drainage Problems
  - i. Rainfall
  - ii. Runoff
  - iii. Drainage Areas
  - iv. Floodplains
  - v. Runoff Water Quality
- b. Drainage Standards and regulations
  - i. City standards
  - ii. Federal Emergency Management Agency
  - iii. Corps of Engineers
- c. Citywide Drainage Activities
  - i. Management Activities
  - ii. Public Outreach
  - iii. Repetitive Loss Properties
- d. Site Specific Drainage Plans

## 10. Public Utilities

- a. Water
  - i. Demand
  - ii. Water Supply
  - iii. Water Treatment
  - iv. Water Quality and Water Supply Protection
  - v. Water Distribution

- vi. Water Conservation measures
- b. Energy
  - i. Electricity
  - ii. Natural Gas
- c. Communications
  - i. Telephone
  - ii. Cable Television

## 11. Waste Management

- a. Solid Waste
  - i. Solid Waste Generation
  - ii. Solid waste Collection
  - iii. Solid Waste Disposal
  - iv. Waste Minimization
- b. Wastewater
  - i. Wastewater Quantity and Quality
  - ii. Wastewater Collection
  - iii. Wastewater Treatment and Disposal
- c. Hazardous Waste

## 12. Public Safety

- a. Police
- b. Fire
- c. Emergency Medical Care
- d. Disaster response and Preparedness
  - i. Natural Hazards
  - ii. Manmade Hazards
  - iii. Emergency response
  - iv. Hazard Mitigation

## 13. Economic Development

- a. Economic Development Corporation
- b. Tax Increment Finance District
- c. Local Business Climate
  - i. Historical Economic Development
  - ii. Existing Economic Base



- d. Regional Economic Climate
- e. Economic Development Plan
  - i. Retention and Expansion of Existing Business
  - ii. Attraction of New Industry

**14. Housing, Health and Social Services**

- a. Housing
- b. Health care
- c. Social Services

**15. Quality of Life**

- a. Urban Design
- b. Urban Amenities

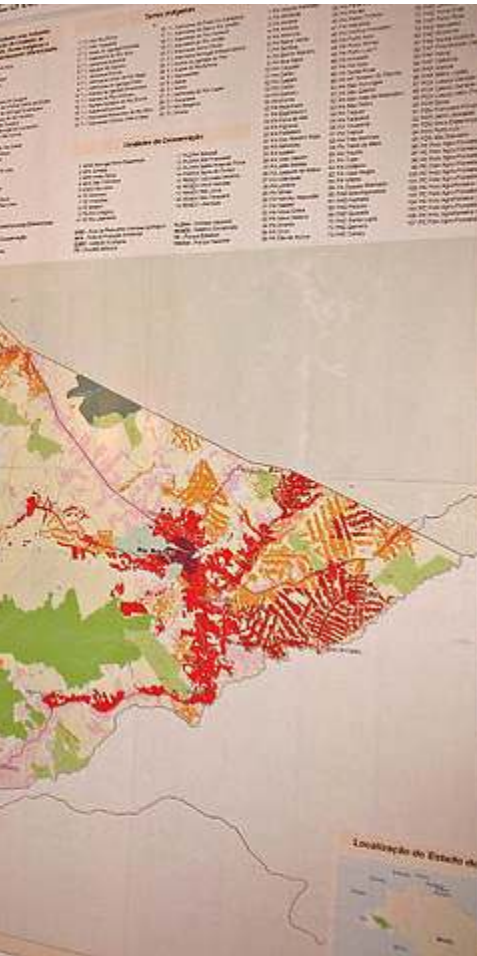
**16. Implementation and Monitoring**

- a. Techniques of Implementation
  - i. Ordinance and Policies
  - ii. Municipal Administration
  - iii. Budgeting and Investment
  - iv. Actions by Others
- b. Monitoring Report for Past Year
- c. Action Plan for Current year

**17. Capital Improvements Program**

- a. Status of Previously-Approved Capital Improvements Programs
- b. Financial Analysis
- c. Inventory of Existing facilities and Evaluation of Future Needs Community facilities
  - ii. Streets
  - iii. Drainage Facilities
- d. Five Year Capital improvement Program
  - i. Program Summary
  - ii. Detailed Project Summaries





Above: A Zoning and land use map is an integral part of the planning process.

Image by visionshare on Flickr and reproduced under Creative Commons 2.0

You can see that comprehensive plans can range in perspective, including time horizon, geographic extent, and topical coverage.

At the heart of all comprehensive planning activities is the analysis and projection of future population. From the future population, one can also project land use demands, traffic generation, water and sewer demands, increased runoff from new development, and other future population needs. Many land use planning efforts rely on the “neighborhood unit” as the basic building block of future land use. This concept was originally formulated by Clarence Perry as part of the Regional Plan for New York and its Environs in 1929, but is still used today as can be seen from the excerpt from Fort Worth in Figure 1.

During the 1960s and 1970s, increased emphasis was placed on planning for social and housing needs and environmental protection. In other communities, economic development is given higher priority. More recently, urban design issues have become important parts of the comprehensive plan.

However detailed, as a general rule, all comprehensive plans should have the following characteristics (Kent, 1961):

1. They should be visionary
2. They should focus on a 10 to 20 year horizon
3. They should be updated every five years or so
4. They should be dynamic and flexible (but not too flexible)
5. They should guide day-to-day decisions.

### Strategic Planning

In contrast to the long-range, comprehensive approach that the comprehensive planning process takes, strategic planning takes a more focused approach with the identification of specific short-term actions to be taken to achieve the long term goal. The two time horizons generally considered are long term (three to five years) and short term (one year.)



It addresses the three major forces that are acting on organizations:

1. The **mission** of the organizations (what is it that you are intending to accomplish.)
2. The internal **strengths and weaknesses** of your organization (what is it that you do best, and what resource limitations do you have.)
3. The external **opportunities or threats** to your organization (what may happen beyond your control, but that you should plan for in undertaking your mission.

Strategic planning follows a relatively specific methodology that was developed by the Defense Department in the 1960s:

1. Review (or revise) your Mission Statement. Is what you are about to undertake really something that you should be doing? Many organizations get bogged down because they are trying to do things that are not part of the mission or for which their organization is not well-suited to address. Sometimes you need to rethink your mission in terms of changing times. For example, telephone and telegraph companies had a limited future if they focused simply on telephones and telegraphs. When you consider that they were really in the communications business, their potential is endless. What is the mission of your community and your unit of local government?
2. Prepare an environmental scan and conclusions about future possible scenarios over the next three to five years. Here is where the SWOT (Strengths, Weaknesses, Opportunities, Threats) analysis is performed. Consider the possible futures that may affect how you address a specific issue: what if the economy goes into recession, what if a planned project doesn't get built, etc.?
3. Identify Goals and Objectives that will help you achieve your mission. An important difference between strategic and comprehensive planning is that strategic planning goals should be relatively few in number, measurable, and be achievable within a relatively short period (typically one to two years.) Objectives are then identified that serve as measurable targets to know whether the goal has been achieved. Strategic planning also requires that the resources required to achieve each target be identified and that a specific person be given responsibility for reaching the objective.

**So which type of planning is best for you?**

Cities will often employ both types (comprehensive and strategic) of planning and integrate them into a single document. In any event, you should use the planning type that meets your community's needs and one that is likely to be implemented.



**Capital improvements** are those city assets with a life time longer than one year; but in this case, we are primarily concerned with the construction of:

- streets,
- drainage facilities,
- water and sewer facilities, and
- community facilities, such as parks and public buildings

A city will **finance these facilities using:**

- general obligation bonds,
- revenue bonds,
- certificates of obligation, or
- the general fund and capital improvements plan

**Funding for capital improvements** can also come from:

- special assessments,
- developer contributions, or
- through the use of special districts such as public improvement districts or tax increment finance districts

*Planning is a political process*

## Capital Improvements Planning

A specialized type of planning is capital improvements planning, or the planning of the cities investments in infrastructure. The vast majority of the community is built by private developers, and therefore it is important that the City have a plan for what facilities are built and how they interconnect with each other. But the City itself also invests in the community through the construction of those public facilities that are beyond the scope of private development. The capital improvements plan can be a stand-alone document or a part of the comprehensive plan.

Capital improvements planning looks at several time horizons, including the coming fiscal year and a longer time horizon, such as five or ten years. A five-year plan is the traditional length of a capital improvements plan, but cities that have adopted impact fees must have a ten year plan.

## PUBLIC PARTICIPATION IN PLANNING

Although there are many technical aspects of the planning process (population projections, land use projections, traffic modeling, drainage calculations, etc.), in the final analysis, planning is a political process. The planning process offers an opportunity for consensus building toward a shared future vision of the community. If the public does not support the plan that is developed, its likelihood of implementation is low.

Public participation is an important component of any planning process, and particularly for comprehensive planning. There are a number of techniques to engage the public during the planning process. Citizen's advisory committees can be useful, particularly if you need to involve specific types of people, such as business leaders, neighborhood associations, or politically-active social organizations. Public meetings can also be used as a way of keeping the public up-to-date on the plan's progress and to obtain input from the public at large. Interviews and surveys can also be useful, particularly visual preference surveys or alternative futures surveys. Finally, many communities employ the charrette process, which is an intensive two to three day process of brainstorming and refining ideas for the physical layout of the community.



## **A BRIEF HISTORY OF PLANNING IN TEXAS AND THE UNITED STATES**

The earliest planning in Texas and the United States was performed under the authority of European royalty, either directly or to land speculators under Royal charter. Many of these plans were based on the grid system (Santo Domingo, 1502; New Haven, 1630, Philadelphia, 1681; Savannah, 1733), though a few also had a radial street plan reminiscent of Paris (e.g., Williamsburg, 1699; Washington, D.C., 1791).

Spanish development in the New World was developed under the so-called Laws of the Indies, first published in 1573 under King Phillip II. The laws were actually a codification of edicts and documents issued and amended over two centuries and included 148 ordinances that directed that new Spanish towns be developed with a grid system surrounding a plaza that served as the market and the center for political and religious life. The larger town site also included approximately 28 square miles of supporting farmland.

Under the federal constitution of 1789, the states and local government assumed the role of planning and development regulation. During the 19th Century, many towns in Texas were laid out by the railroads, which were granted land as a way of financing railroad construction. Railroad town sites were again based on the grid system. Some northern counties in Texas were influenced by the Northwest Ordinance of 1785, which established a rectangular survey system. Elsewhere in the country, New York's Central Park was planned and developed in 1858. By the end of the 19th Century, many urban areas in the North had suffered major fires, epidemics and other problems associated with overcrowding and poor sanitation.

Modern physical planning in the United States generally traces its roots to the World's Columbian Exposition of 1893 in Chicago designed by Daniel Burnham. Modernism espoused the theory that proper design would solve the social ills of the day and spawned movements such as the City Beautiful movement (with grand boulevards and parks) and the City Efficient movement (with an engineered approach to land use, streets, and public utilities.) Early zoning and subdivision ordinances appeared, supported by the U.S. Department of commerce's Standard Zoning Enabling Act (1922) and the



Right: **Physical Planning** can trace its roots to the World's Columbian Exposition of 1893 in Chicago designed by Daniel Burnham

Image from Montana State University on Flickr and reproduced under Creative Commons 2.0



Above: **Suburbanization** is epitomized in Levittown, Long Island, NY in 1947.

Image from MarkGregory007 on Flickr and reproduced under Creative Commons 2.0

Standard City Planning Enabling Act (1926). The first national conference on city planning (the beginnings of the planning profession) was held in Washington D.C. in 1909. Cincinnati adopted the first comprehensive plan in 1925. Dallas adopted an early land use plan (including streets and parks) by George Kessler in 1911.

Following World War II, the growth of the suburbs ballooned with the creation of mass-produced communities such as Levittown (1947) and the Interstate Highway System in 1956. A number of “new towns” were developed and the concept of regional councils of government was established. Fort Worth adopts, but never implements, a plan for downtown that eliminates automobiles in 1957.

During the last decades of the 20th Century, a number of states have adopted growth management programs in an attempt to curb urban sprawl and preserve agricultural areas and open spaces. There has also been a movement



toward strengthening urban design as part of the New Urbanism and neotraditional town planning movements.

## **PLANNING VERSUS DEVELOPMENT REGULATION**

Planning is the method of identifying the desired future and identifying steps to achieve that desired future. The two most important techniques of implementing the long range plan are through capital improvements and through development regulation, such as zoning and subdivision regulation. The largest amount of time spent by professional planners and planning commissions is on development regulation, rather than the planning.

*Planning is the method of identifying the desired future and identifying steps to achieve that desired future.*

It is important to remember that development regulation is simply a tool to achieve planning goals, and development regulations without a plan can be aimless. It is important to take time to review and update the plan on a periodic basis, and then review your development regulations to make sure they are leading you in the direction you want to go.

### **How Government Type Affects Regulation of Development**

Before you can consider development regulations, it is important to know what type of government you are designated. There are two types of local governments, general-law and home rule. General Law governments include counties, special districts and small municipalities (generally less than 5,000 population.) When a municipality's population exceeds 5,000, they may elect to convert to a home-rule form and adopt their own home-rule charter. The difference is described by Dillon's Rule: general-law governments can only do what they are specifically authorized to do by the State, while home-rule cities can do almost anything as long as they are not specifically prohibited from doing so by the State. So home-rule cities have a lot more flexibility in adopting regulations than do general law units of government.

General-law cities are also classified as Type A, B, or C, depending on its population and government form. The type of general law city has little effect on development regulation, but does have an affect on the ability to annex new territory into the municipality.



Table 1.  
**Extent of ETJ by City Size**

<b>Population</b>	<b>Extent of ETJ</b>
< 5,000	1/2 mile
5,000 to 24,999	1 mile
25,000 to 49,999	2 miles
50,000 to 99,999	3 1/2 miles
100,000 or more	5 miles

Source: Texas Local Government Code, Chapter 42

The size of a city affects the size of its extra-territorial jurisdiction, or ETJ, as shown in Table 1. The extent of the ETJ is important in that some development regulations, such as subdivision and sign regulations, can be extended into the ETJ. The ETJ and type of City Government also affects a city’s ability to annex land into the city. The enabling legislation for annexation was significantly amended in 1999 and is set out in Chapter 43 of the Texas Local Government Code.

### **Development Regulations**

Contrary to the approach of the Europeans, Americans have always held private property rights in high regard. The 5th and 14th Amendments to the U.S. Constitution provide that government cannot take private property without just compensation to the property owner. The Supreme Court has also ruled that overregulation of private property, to the extent that it cannot be used for its intended purpose, may also constitute a “taking” that requires compensation. This needs to be balanced with the Court ruling that cities can regulate the use of private property to protect the health, safety and welfare of the community at large. Government and the courts have been adjusting and modifying the balance between these two competing interests (government land use control vs. private property rights) for the past 100 years. Development regulations have always been intended to conform to the comprehensive plan, since they serve as a means of implementing the plan. One of the features of Chapter 213 of the Texas Local Government Code is that it allows cities to determine how closely zoning and subdivision regulations must conform to the comprehensive plan. In some cases, cities want to have strict conformance and will only allow a zoning change that conflicts with the comprehensive plan if the comprehensive plan is amended. Other cities want to have more flexibility in changing zoning without having to change the plan first.

### **Zoning Regulations**

In its simplest terms, zoning regulations govern the use of land, and the location, size and height of buildings. Traditional (or Euclidean) zoning divides the jurisdiction into multiple districts, with each district containing a distinct set of regulations applicable to all property within the district. Zoning ordinances consist of two parts, a map defining the boundaries of the districts and the text that includes the regulations for each district. Zoning can only



be applied to property within the city limits and, with few exceptions, there is currently no zoning in the unincorporated portions of the County.

The earliest nuisance regulations appeared in San Francisco in an attempt to keep certain nuisance land uses (such as slaughterhouses, hog storage, animal hide curing plants and Chinese laundries) out of residential areas. Los Angeles took this further in 1909 in its early zoning ordinance. New York is considered to have adopted the first comprehensive zoning ordinance in 1916, and the U.S. Department of Commerce issued its Standard Zoning Enabling act in 1922. The U.S. Supreme Court upheld zoning as a valid police power in *Euclid v. Ambler Realty Company* in 1926, hence the term Euclidean zoning.

Texas adopted the Standard Zoning Enabling Act and it is codified as Chapter 211 of the Texas Local Government Code. It outlines the purposes of zoning to be the protection of health, safety and morals and the protection of historic, cultural and architectural areas, though many ordinances enumerate other purposes as well.

For each district, the zoning ordinance typically identifies which uses are allowed to be built by right, which uses may require a specific use permit, and which uses may require a special exception. The district regulations also specify the minimum lot size, minimum setbacks from property lines, maximum building height, maximum building floor-area-ratio (FAR), maximum impervious area, and minimum off-street parking. Some zoning ordinances also regulate signs, landscaping, and architectural standards.

The intended purpose of traditional zoning was to segregate uses to prevent the detrimental effects of one use on another use area, and to aid in planning for adequate infrastructure since the use for each property was known with relative certainty. Recently, planners have realized that this approach can have the unintended consequence of promoting urban sprawl by separating where we live from where we work and where we shop. Many cities are now adopting mixed use districts, or using planned unit developments to mix uses. A planned unit development, or planned development, is essentially a zoning district with its own specially developed regulations.

*There are unintended consequences of traditional zoning-promoting urban sprawl by separating where we live from where we work and where we shop.*

The Standard Zoning Enabling Act also recognized that application of zoning regulations on individual pieces of property may result in the inability to use the property for any economic purpose. To prevent a takings claim, the Act



A landowner's desired use of their property can come into direct conflict with zoning or subdivision regulations. Zoning can only be changed by an ordinance of the City Council.

created a safety valve through the ability of the Zoning Board of Adjustment to grant variances to portions of the zoning regulations. A variance is the authorization to violate a law that presumably everyone else must comply, so the granting of variances should be a rare event.

The issue that generally faces a Zoning Commission and City Council is a request to rezone property to a use different from its currently designated use. The State enabling laws outline the process and notification requirements necessary to process a zoning change, and zoning can only be changed by an ordinance of the City Council. Only two parties have standing to request a zoning change: the land owner or the City Council. No one is entitled to a zoning change, and the courts generally defer to the City Council in making zoning changes so long as there is some justification for the action taken.

## **Subdivision Regulation**

Subdivision regulations govern the division of land into two or more parts. The regulations specify the standards for drawing and recording a plat, and the requirements for public improvements necessary to make the property suitable for development. Unlike zoning, which is limited to the city limits, subdivision regulations can be extended into the extraterritorial jurisdiction, or ETJ, subject to any agreement with the County under Chapter 242 of the Texas Local Government Code.

Early subdivision regulations were developed in Los Angeles and in New Jersey (1913). The Standard City Planning Enabling Act, which included subdivision regulations, was developed in 1928. Texas has codified its municipal subdivision statutes in Chapter 212 of the Texas Local Government Code, while county subdivision authority is provided in Chapter 232. The State Statute provides the general requirements and procedures for approving and recording plats within cities and their extraterritorial jurisdiction. Unlike the discretion provided to cities under zoning, plat review is considered a ministerial act and the city must approve a plat that conforms to its regulations. A local subdivision ordinance generally consists of general provisions and definitions; a discussion of the platting process and the content required for each plat submittal; requirements for the provisions of public rights-of-way, easements, and public improvements, including design standards; and provisions for financial assurance that the improvements will be completed if the



plat is allowed to be filed before completion.

An important part of the platting process is the requirement that the developer provide the necessary public improvements to support the proposed development, called exactions. An exaction is a requirement to dedicate land (including rights-of-way, easements and parkland), construct public improvements, and payments of fees in lieu of providing such improvements, as a condition to development approval. The U.S. Supreme Court has supported cities ability to require exactions, but has placed two important restrictions on them. First, there must be a logical relationship (rational nexus) between what the City is requiring and the demand that the development is creating. Secondly, the exaction required must be roughly proportional to what is required of other similar developments.

State law also makes a distinction between what is required for on-site improvements versus what may be required for off-site improvements. Generally, the developer is required to build all of the on-site improvements, as long as there is not significant oversizing of on-site facilities to serve other areas where the municipality may participate financially. Developers are generally not required to provide offsite facilities, except through an impact fee system.

## **Site Plans and Other Development Regulations**

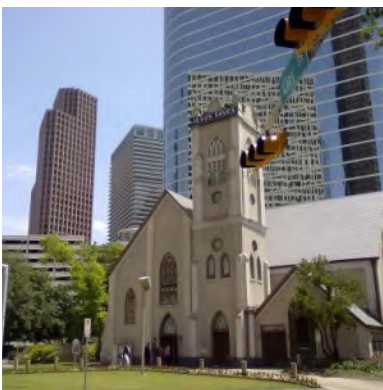
**Site Plans** Site plan review and approval may be required as standard in some zoning ordinances, for planned unit developments, for specific use permits, or other flexible zoning approvals in other ordinances. This allows the City to review the actual layout of a site as a precondition to approval. City Councils and Planning and Zoning Commissions should resist the temptation of redesigning a project, but instead use the site plan review to assure that the goals of the City are being met and that any amenities being offered by the developer are sufficient to offset any concessions to the development regulations that the developer may be requesting. Look at the big picture and leave the details (like dumpster locations) to your planning staff.

**Sexually-Oriented Businesses** Many cities regulate the location of sexually-oriented businesses through provisions of their zoning ordinance, or as a stand-alone ordinance. While there may be a strong movement to outlaw them completely, the courts have ruled that these businesses have some pro-



Above: **Signs** can be regulated in an ordinance, specifying the size, height, and location. Here is an iconic sign in Hico, TX.

Image from fables98 on Flickr and reproduced under Creative Commons 2.0



Above: **Religious institutions** have certain protections under law and cities must demonstrate a compelling government interest in order to regulate such institutions. Here is a church within the downtown of Houston, TX.

Image from matthew.devalle on Flickr and reproduced under Creative Commons 2.0

tection under the First Amendment of the U.S. Constitution. Cities can adopt minimum separation requirements (e.g. 1,000 feet) between sexually-oriented businesses and residences, schools, parks, hospitals, etc. To adopt such regulations, the city must demonstrate that the presence of such businesses are detrimental to adjacent property and that at the time the ordinance is adopted, there remains some minimal amount of land available for the location of such businesses. The Texas Municipal League has, in recent years, undertaken a secondary effects study that may be useful for all Texas cities considering regulation of these businesses.

**Signs** Many cities regulate signs as part of their zoning ordinance, or in a stand-alone ordinance. A city may regulate the size, height, and location of signs, but it should endeavor to make the regulations “content-neutral” to the extent possible. In other words, be careful about having different regulations for different types of signs. Political speech (i.e. campaign signs) has certain protections and cannot be prohibited completely, though you can regulate the size and location of such signs.

**Landscaping** Many cities also regulate landscaping as part of the zoning ordinance or in a stand-alone ordinance. Some cities require that a minimum percentage of each lot be landscaped, or that a minimum percentage of tree canopy cover be provided, or specify the size, widths and plantings for various types of landscaping required (such as bufferyards, parking lots, and interior landscaping). Be careful about required landscaping in areas where utilities may be buried (rights-of-ways, easements) and consider the use of native or adapted plants where possible.

**Religious Institutions** Religious institutions (churches, synagogues, mosques, etc.) have certain protections under law, especially since the passage of the federal Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA). Under that law, no cities can impose a substantial burden on a religious activity unless it can show that it furthers a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest. While this doesn’t eliminate a cities ability to regulate religious institutions, it places the burden on the city to demonstrate that the regulation is necessary.

**Manufactured Houses** There are three types of housing that are constructed off-site and moved to another location for occupancy. A mobile home is a



transportable dwelling built prior to June 15, 1976, while a manufactured home was one that was built under the “HUD Code” after June 15, 1976. Cities may prohibit mobile homes completely, and may regulate the location of manufactured homes within the city. A third type, industrialized housing, is constructed to the International Residential Code and a city cannot regulate them any differently than any other “stick built” house. Each biennium, the Texas Legislature considers bills that would limit a city’s ability to regulate manufactured housing.

**Unified Development Codes** Most cities have separate zoning and subdivision ordinances because their statutory authority is derived from two different laws. Some cities, however, have chosen to combine zoning and subdivision requirements into a unified development code.

**Vested Rights** Chapter 245 of the Texas Local Government Code provides that if a series of permits are required for a project, then the rules in effect at the time the first permit issued shall remain in effect for the life of the project. There are certain conditions and exemptions for this restriction, but in general it prohibits a city from rushing in to change the rules after a project has started.

## RECENT TRENDS AND ISSUES

Geographic information systems (or GIS) have become increasingly important in the development and analysis of plans. Simply put, a GIS is a computerized map that combines both graphic and tabular data that is able to analyze spatial information and generate maps of data that easily display spatial relationships of various data. One simple example is the development of environmental suitability maps, which formerly were generated by physically layering information on soils, slopes, hydrology, vegetative cover, etc. Now, those layers are contained within the computer and can easily generate a map showing the relationships between each environmental attribute.

Smart growth has become the mantra for many states around the country in an attempt to mitigate the problems associated with urban sprawl. Smart growth promotes mixing land uses, more compact development, preservation of open space, provision of alternate transportation modes (especially



**Smart growth** promotes mixing land uses, more compact development, preservation of open space, provision of alternate transportation modes (especially a pedestrian orientation), and infill development.

**New urbanism** rejects traditional zoning and seeks to regulate development by regulating the form of the street and the adjacent buildings (known as form-based codes.)

a pedestrian orientation), and infill development. Many states are revising their planning statutes to promote these ideals, as opposed to the traditional low-density residential subdivision that is pedestrian unfriendly. Transit-oriented Development (TOD) seeks to develop these types of communities at transit nodes.

Two related movements are new urbanism and sustainable development. New urbanism (sometimes called neotraditional town planning) is promoted by the Congress of New Urbanism, a group of architects and planners. New urbanism rejects traditional zoning and seeks to regulate development by regulating the form of the street and the adjacent buildings (known as form-based codes.) Different street and building types are allowed based on the location along a transect between the urban core and the rural fringe, and the building form will promote certain land uses rather than the need to regulate land uses. Several Texas cities are beginning to experiment with these types of approaches. Sustainable development seeks to promote development that will conserve energy and environmental resources, will maintain a sustainable economy that achieves social equity. The concern being that current development patterns are consuming resources at a rate where future generations will suffer.

## References

- American Planning Association, 2000. "The Millennium Planning Survey: December 2000.
- Benbrook, City of, 2005. Comprehensive Plan for the City of Benbrook, Texas.
- Branch, Melville C. Planning, 1990. Universal Process. Praeger.
- Chapin, F. Stuart and Edward J. Kaiser, 1979. Urban Land Use Planning, Third Edition. Urbana, IL: University of Illinois Press.
- Fort Worth, City of, 1991. "West Fort Worth District Plan." Department of Planning and Growth Management Services.
- Gordon, Gerald L. 1993. Strategic Planning for Local Government. Washington, D.C.: International City/County Management Association.
- Hoch, Charles, Linda C. Dalton, and Frank S. So, eds, 2000. The Practice of Local Government Planning, Third Edition. Washington, D.C.: International City/County Management Association.
- Kent, T.J., Jr., 1964. The Urban General Plan. San Francisco: Chandler Publishing Co.
- Levy, John M., 2003. Contemporary Urban Planning, Sixth Edition. Upper Saddle River, NJ: Prentice Hall.



American Planning Association  
**Texas Chapter**

*A Guide to Urban Planning in Texas Communities 2013*

Mixon, John, Dougherty, James L. and Brenda N. McDonald, 2004. Texas Municipal Zoning Law. Lexis Nexis.

Salkin, Patricia E, ed., 2004. 2004 Zoning and Planning Law Handbook. Thompson West.

Texas Chapter, American Planning Association, 2002. "Here's What Texans Think." September 2002.

Vaselka, Robert E., 2000. The Courthouse Square in Texas. Austin: University of Texas Press.



## Chapter 2 Ethics and the Planning Commissioner

Carol Barrett, FAICP



This chapter discusses and provides examples of how a Planning Commissioner can make complex decisions while being fair, equitable, and ethical. It provides information on the sources for ethical guidelines, particularly for the code of ethics and local ordinances. It establishes a framework and foundation for ethical planning officials and provides background on Texas law, in regards to conflict of interest. It defines common biases that impact ethical behavior and point to serious concerns about ethical misconduct. Specifically, in this chapter you will learn whether you can meet individually with applicants to hear about their project, whether you should take a tour of a project site with an applicant, if you can discuss pending development projects at your neighborhood association meeting, if friends and neighbors can offer their opinions about pending projects, what to do if a good friend has a project before the Planning Commission, and to do the job of a Planning Commissioner in a way that promotes fairness and objectivity. The following attachments are available at the end of the chapter to be used as reference guides and resources:

**Attachment A:** Ethical Principles in Planning, AICP

**Attachment B:** AICP Code of Ethics and Professional Conduct

**Attachment C:** By-laws for Planning and Zoning Commission, City of Collinsville, TX

**Attachment D:** Planning and Zoning Commission: Participating at Public Hearings, City of Arlington

**Attachment E:** Example Planning Commission Meeting Brochure, City of San Gabriel

**Attachment F:** Public Services Values, The Institute for Local Government



## INTRODUCTION

*“A prominent example of the appearance of a conflict came this past June when a planning commissioner recused herself, left the dais, then presented on a project to her colleagues. She said she had no recourse, since she is the only employee of her firm.”*

Yikes. The sentence above comes from a local newspaper recounting a series of on-going ethical lapses in a City. In this instance, applicants may well perceive a “pay to play” rule. If you want favorable consideration by the Planning Commission, you have to pay a Commissioner or the Commissioner’s firm. This kind of behavior is wrong for a number of reasons which are discussed below. While an extreme example, it is not an isolated one. Planning Commissioners regularly face ethical questions. Thinking about those ethical questions and possible responses ahead of time prepares you to make an informed decision when confronted with an ethical challenge. That’s the

*The purpose of this chapter is to give you tools for ethical decision-making*

purpose of this chapter: to give you tools for ethical decision-making.

Let’s step back for a second. What is ethical behavior? Expressed in a straightforward manner, ethical behavior is what you ought to do as a Planning Commissioner. It’s treating others as you would wish to be treated. It’s the kind of conduct that makes the world a better place.

Ethics is particularly important in public service. As a Planning Commissioner, you have been given significant authority and you are expected to use that authority with integrity. You make decisions about what can and cannot happen in your community. You make recommendations about how to spend city money, some of which comes from local taxpayers. If the Planning Commission is to do its job properly and address the challenges confronting most communities, public trust and confidence is vital. High ethical standards are required to secure and maintain public trust that is essential to the planning process and to good government.

### What are common ethical questions that Commissioners need to answer?

- Can I meet individually with applicants to hear about their project?
- Should I take a tour of a project site with an applicant?
- Can I discuss pending development projects at my neighborhood association meeting?
- Can friends and neighbors offer me their opinions about pending projects?
- What happens when my best friend has a project before the Planning Commission?
- How can I do my job as a Planning Commissioner in a way that promotes fairness and objectivity?



## **SOURCES FOR ETHICAL GUIDELINES**

Most planning officials often operate according to an unwritten, personal code of ethics. As a new planning commissioner, you know yourself to be honest in your day-to-day dealings with friends and family and you are reliable in your professional life as well. Therefore, you assume that the way you deal with ethical questions that come up as a planning commissioner will be honest as well. Most people have convictions about what is right and wrong based on religious beliefs, culture, family teachings, lessons learned in life, laws, and habits. These values may vary among your fellow commissioners. For example, loyalty to friends and family may conflict with one's responsibility to serve the public interest. Religious beliefs and culture are also a source of continuous historical disagreement over all kinds of matters. To help your Planning Commission operate consistently and fairly, a more uniform frame of reference is needed.

### **Codes of Ethics**

This chapter can help you understand some of the more universal behavior standards for planners and planning officials so you are better prepared to think through what your response should be when ethical issues arise. The American Planning Association has adopted a Statement of Ethical Principles to help planning officials understand basic ethical expectations (See Attachment A). This Statement was prepared and adopted to provide guidance to planning officials. There is also a Code of Ethics for professional planners who have passed an examination and are members of the American Institute of Certified Planners. Their Code is also included for your reference as Attachment B. Finally, as a planning commissioner you will work with professionals from various disciplines – architects, engineers, and landscape architects for example. Like the planners, each profession has a Code of Ethics. They are not all attached here but can easily be researched on line.

### **Local Ordinances**

In many communities and some states, there are adopted ordinances and laws governing aspects of the conduct of Planning Commissioners, especially with respect to conflict-of-interest. These materials should be provided to you by staff and covered in regular training so that you are familiar with them.



The general conflict of interest laws for Texas city officials are found in chapter 171 of the Local Government Code. It includes standards for determining when a local official has a conflict of interest that would affect his or her ability to discuss, decide or vote on a particular item. Chapter 171 conflict of interest provisions apply to all local public officials which includes planning commissioners. The Office of the Attorney General has an excellent publication that you can download from the internet. Commissioners should remember that these state requirements define the legal minimum, not what may be ethical.

*General conflict of interest laws are found in chapter 171 of the Local Government Code*

## **LAYING THE GROUNDWORK FOR ETHICAL PLANNING OFFICIALS**

Serving as a planning official is not easy, especially in the face of public cynicism regarding the motives of community leaders. And then there are all the newspaper articles documenting various degrees of incompetence or corruption in the public sector. Some people will automatically assume that a level of malfeasance applies to you as a commissioner as well. Plus, your work as a commissioner is hard. You have to prepare for meetings by visiting sites and studying agenda packets which arrive only days before the meeting. You have to attend meetings which can run on for hours and listen to criticism, some of which may be ugly and very personal. But there are things that you and your community can do to help shape the public's perception about the values which underlay your decisions as a commissioner.

### **Elected Officials Should Appoint Good Planning Commissioners**

A good Planning Commissioner is more than someone who can avoid financial conflicts of interest. A good commissioner knows a lot about the community and brings special expertise to the Commission. A good Commissioner should also have:

- An open mind to listen to new ideas from applicants, from other commissioners, and from staff.
- An ability to see both the strengths and weaknesses of the proposals.
- Critical thinking skills leading toward finding solutions.



- A willingness to spend the time required to study materials.
- An ability to manage other commitments so that attendance is regular.
- A commitment to making the process fair to all.
- A degree of independence in making choices and recommendations.
- Faith in the future and the ability of the community to shape that future.

Once you are a Planning Commissioner, you can help the elected officials to make good appointments by serving as a talent scout. You should be on the lookout for others in your community who would make good commissioners and share that information with your Mayor or planning director.

### **Planning Commissioners Should Have Regular Training**

All new commissioners need an extended orientation to the work of the commission and the status of planning and development in your community. There should also be an ethics component of that training as well. An annual training event focused on the specific challenges in your community should be something you can request and help plan. Ethics should always be included among the topics to be covered. The community should budget to send planning commissioners to training sponsored by the Texas Chapter or other organizations whose work is relevant to your efforts as a volunteer.

If you are having problems as a Commission because one or more of your fellow Commissioners are not pulling their own weight, you can suggest training for the entire Commission that will make clear the expectations for conduct and effort. Working with your planning director can help make the training productive and relevant. In many cases, there are often other Planning Commissioners from nearby jurisdictions who can help set the ground rules and expectations. And the voice of a colleague always carries great weight. If your Planning Director doesn't have suggestions, the Texas Chapter will. The Chapter can be contacted online at <http://www.txplanning.org/>.

### **Planning Commissions Should Have Ground Rules**

Every commission needs bylaws, written rules of procedures, and a statement of the ethical principles which will guide their work. Together, these documents provide assurance that everyone who interacts with the commission has rights -- due process, fairness, and equity. By-laws and rules of procedure tell people what to expect and help make work with the planning bodies more productive. They also set the benchmark for fair, ethical, and prompt deci-

*Everyone has  
the right to due  
process,  
fairness, and  
equity*



sions. If the process itself appears fair, there will be a much higher degree of confidence in the decision itself. By-laws and public hearing procedures from the City of Collinsville (Attachment C) are provided for your information.

It is also useful to community members to have an easy reference guide for how meetings will work written so that it can be easily understood. If you have this kind of information readily available, it will encourage the community to understand that you value their ideas and that the process is arranged so that they have an opportunity to make their point of view known. A sample Arlington, Texas (Attachment D) and one from the City of San Gabriel, California (Attachment E). The latter is always at the table outside the meeting room with agendas and includes background information on the Planning Commission as well as public hearing testimony procedures.

Finally, on evenings when there will be public hearings, the Commission Chair (or his/her designee) can briefly review the procedures so that those in attendance understand when they will be able to speak. All of this effort is directed toward making the work of the Commission transparent which is a core ethical value for public sector decision-making.

### **Planning Staff Should Use Standard Planning Procedures to Ensure Full, Open Consideration**

Standard planning procedures help planning commissioners do their job in an ethical manner. Standard procedures also help ensure that issues will be properly aired without undue influence either in fact, or in appearance. That is a key component of ensuring the reputation of your Commission – it must both act fairly and be perceived as acting fairly.

Standard procedures lay out information that the applicant can rely on in moving a project forward; and that makes it clear to the community how and when they will be able to participate in the deliberative process. The value of transparency – the public can see and participate in what is going on – is best achieved through standard procedures. Planning Commissions should operate from posted agendas (a staff responsibility to prepare and post) and follow those agenda. Following the agenda is important because of the right of the public to address the Planning Commission. If items are taken up in a random order it makes it hard to know when to come to the meeting. That doesn't mean that the agenda can't be revised at the meeting itself. For example, if a larger number of citizens are in attendance for a single agenda item,



From time to time, even the best planners lapse into plannerspeak which is not always completely intelligible in staff reports. See below.

**Version 1:** It is the determination of City staff that there is a possibility of associated increases in traffic noise if this project is approved and constructed.

**Version 2:** City staff believe this project will increase traffic noise.

This example is from Planning in Plain English by Natalie Macris. It should be required reading in every planning agency.

then the Commission is likely to move that item up earlier in the meeting to allow the community to participate and get home earlier. Another aspect of agenda management is the language used to describe the work to be done. You and staff can work together to make the agenda as straightforward as possible. Here is an example:

PRJ12-00276 – ZON12-00043. APPLICANT: ORANGE COUNTY EMERGENCY PET CLINIC; PROPERTY OWNER: JEFFREY I. GOLDEN.

A request for a Conditional Use Permit to operate an after-hours emergency pet clinic per FMC 15.30.030 on property located at 3920 N. Harbor Boulevard (generally located between 420 feet and 520 feet south of Imperial Highway). (C-2- zone) (Staff Planner: Elaine Dove)

← This is a clear project description

← How do I contact the planner if I have questions?

Here is another example which also has some good aspects but still needs a bit more work as noted.

**Rezoning: C814-2012-0160 – 211 S. Lamar**

*Location:* 211 S. Lamar Boulevard, Lady Bird Lake Watershed, South Lamar

*Combined NPA*

*Owner/Applicant:* Post Paggi, LLC (Jason Post)

*Agent:* Winstead PC (Amanda Swor)

*Request:* CS & CS-V to PUD

*Staff Rec.:* **Recommended**

*Staff:* Lee Heckman, 512-974-7604,  
lee.heckman@austintexas.gov  
Planning and Development Review  
Department

← What do the letters "NPA,CS & CS-V to PUD" stand for?

← Noting the staff recommendation is useful

← Including staff contact information is very helpful

In general, the Commissioners can only discuss and act on items included in the posted agenda. Commissioners can ask to have items added to the agenda. In fact, "Items from the Commission" should be a regular item on your agenda so that everyone is reminded of this opportunity.



**Example:** A resident comes to the podium during citizen comment to report that the conditions of approval for a project are not being adhered to and that the quality of life for the residents on her block has been substantially degraded as a result of the Planning Commission approval several months ago. She demands that the Commission do something to solve the problem immediately because, in her mind, the Commission caused the problem and she needs her sleep.

**Answer:** Commissioners should refrain from discussing the project by asking for examples of problems and considering whether the conditions of approval are being met. Instead the Commission can thank the citizen, ask staff to meet with the citizen, and place the item on an upcoming agenda for more detailed consideration. Staff should be encouraged to work directly with the applicant to address the issues of concern as soon as possible.

Standard procedures also include the quality of staff work and the schedule for planning commission packet delivery. If commissioners are expected to provide thorough and diligent services, they need relevant information on a timely basis. If the commissioners seek to support community involvement in planning, then the work has to be organized so that residents can find out what is going on and can make their points of view known. You should feel free to suggest to staff ways to organize and present the information so that it is useful to your decision-making. If you look at the web sites of other cities, you may see ideas for staff reports that you like. And don't hesitate to request that staff reports be written in plain English.

Commissioners should be able to request information that will supplement staff work when they have questions. All such information should be provided to all of the Commissioners, even when requested only by one. You will have a better decision-making process if you ask your questions ahead of time so that staff can do the necessary research. Of course you can ask questions of both staff and applicants at the meeting, but if you wait to raise major issues until the public hearing, you may well end up delaying action when that is not your intention. When information is distributed for the first time during the public hearing, copies should be made available to the public.

### **ACTING ETHICALLY: Planning Commissions Should Know Where Ethical Guidance Can Be Found**

Ethical standards for planners and planning officials have been promulgated by the American Planning Association and the American Institute of Cer-

*Ethics ordinances tend to regulate:*

*1. Activities that require disclosure such as sources of income*

*2. Behavior that is prohibited*



tified Planners. The text of both is attached. There may also be local ethics ordinances which regulate behavior and although these may pertain to the planning commission. Ethics ordinances tend to regulate two things: activities that require disclosure such as sources of income; and behavior that is prohibited. There may be quite a bit of overlap between the standards of the APA and local ordinances. For example, a prohibition against soliciting or accepting gifts is a common element.

**Example:** Can a planning commissioner accept a bottle of wine as winter holiday thank you from a local architect?

**Answer:** Yes. Commissioners should not solicit or accept items of a value great enough to affect their judgment. Items that can easily be consumed fall outside of influencing behavior. The prohibition against taking gifts applies in the circumstances where a reasonable person might think the commissioner’s judgment had been impaired. A single bottle of wine is only a token. However, if the architect had a project pending before the Commission, even a single bottle should not be accepted.

**Example:** Can a planning commissioner accept a case of wine as a winter holiday thank you from a local architect?

**Answer:** No. See above.

**Example:** Can a planning commissioner accept two free weeks at a local developer’s condo on the beach in California?

**Answer:** No. See above. Accepting such a posh offer would leave people with the impression that you were indebted to the developer and that your decisions would be affected by your sense of owing something to another person.



Check out the Attorney General’s website at [www.oag.state.tx.us/AG\\_Publications/pdfs/conflict\\_easy.pdf](http://www.oag.state.tx.us/AG_Publications/pdfs/conflict_easy.pdf) for more information.

### State Law in Texas Regulates Conflicts of Interest

Planning Commissioners need to be familiar with Chapter 171 of Texas Local Government Code. It governs the conduct of planning officials who make decisions that are more than advisory. The law addresses potential conflicts of interest by local officials. The law seeks to prevent public officials from having dealings with their governmental bodies if they would derive a personal benefit. The law requires disclosure and abstention when it is time to vote if there is a substantial financial interest.

Texas Local Government Code Chapter 171 defines substantial interest as:

- (a) Owning 10% or more of the voting stock or shares or an ownership of



- \$15,000 or more of the fair market value of the business;
- (b) Receiving funds from the business exceeding 10 percent of the commissioner’s gross income from the previous year;
- (c) Having an interest in real property that is either equitable or legal ownership with a fair market value of \$2500 or more;
- (d) Being related by marriage or ancestry or affinity to someone who has an interest as described above.

The national codes of APA and AICP also address conflict of interest, but call for a higher standard — even the appearance of a conflict of interest should be avoided. Sources of financial conflict-of-interest can also include loans and gifts as well as a less than direct financial benefit.

**Example:** A realtor sits on the Planning Commission and from time-to-time, his broker appears before the Planning Commission to seek a zoning change on behalf of a client. Can the realtor vote on these requests?

**Answer:** According to the APA’s Statement of Ethical Principles, because securing a change in the zoning is often a contract contingency, the realtor has a financial interest in working for a successful broker. The realtor should declare the potential conflict of interest and not participate in the discussion. However, according to Texas Law, this would not be a conflict of interest.

But laws are only minimum standards. The laws define what one must (or must not) do, not what one ought to do.

Sometimes Planning Commissioners overlook disclosure obligations related to charitable fundraising. The theory is that the public has a right to know if someone is contributing to your favorite causes. The assumption is that the donations are made to establish a special relationship with you. Or worse, what if a donor believes that if she or he fails to give, there will be negative consequences? As a Planning Commissioner, you need to be sensitive to these issues. Charitable donations can also be viewed as a version of “pay to play.” That perception is damaging to the public’s faith in the fairness of your decision-making.

## Planning Commissions Should Adopt Ethical Standards

Your community should know that you have ethical principles that will be used in decision-making. These standards may already be in place (local ordinances and charter) or you may need to draft and adopt them. The APA

Additional guidance can also be derived from your local ethics ordinances. In the case of one Texas city, the Municipal Code states:

*It is the policy of the City of that all city officials and employees shall act and conduct themselves both inside and outside the city’s service so as to give no occasion for distrust for their integrity, impartiality or of their devotion to the best interest of the City and the public trust which it holds.*

That kind of a standard would prohibit voting by the realtor in a rezoning request made by his or her broker.



Statement of Ethical Principles has already been suggested for consideration. In summary, the Statement identifies the following ethical principles:

A. Serve the public interest.

1. Recognize the rights of citizens to participate in planning decisions.
2. Give citizens full, clear, and accurate information.
3. Expand choice and opportunity for all persons.
4. Assist in the clarification of community goals.
5. Ensure that information available to decision makers is also available to the public.
6. Pay special attention to the interrelatedness of decisions and the long range consequences of present actions.

B. Strive to achieve high standards of integrity and proficiency.

1. Exercise fair, independent, and honest judgment.
2. Publicly disclose any personal interests.
3. Define personal interest broadly.
4. Abstain from participation in a matter in which you have a personal interest and leave the chamber when the matter is being deliberated.
5. Seek no gifts or favors.
6. Abstain from participating as an advisor or decision maker on any plan or project in which you have previously participated as an advocate.
7. Serve as advocates only when the objectives are legal and serve the public interest.
8. Not participate as an advocate on any plan or program in which you have previously served as an advisory or decision maker except after full disclosure and in no circumstance earlier than one year following termination of the role as advisory or decision maker.
9. Not use confidential information to further a personal interest.
10. Not disclose confidential information.
11. Not misrepresent facts or distort information.
12. Not participate in any matter unless prepared.
13. Respect the rights of all persons.

These principles are aspirational in nature and they seek to inspire voluntary commitment through appeals to conscience. They are a positive obligation. There are no sanctions for failing to comply nor is there any regulatory scheme.



If APA's Statement seems too detailed for your community, you can always consider something shorter. A quick check of the web will turn up a number of examples. Another example is provided in Attachment F. It deals in behavior and not outcomes and includes no prohibitions. Instead, it focuses how one behaves based on values. Adoption of this type of an ethics statement could promote healthy dialogue among the Commission. At the other end of the continuum we have the following statement adopted by another Planning Commission as their own version of a Statement of Ethical Principles:

*We listen carefully to applicants and the community while collaborating effectively with staff to achieve sound decisions and recommendations to the City Council. We demonstrate a commitment to the highest standards of fairness and honesty.*

In reality, the actual language finally adopted is less important than the discussion that will surround the adoption. A conversation with planning colleagues will clarify points of differing interpretation. Adopting ethical standards will also advise the community that there are principles upon which they can rely. Indirectly, you will be putting people on notice that certain forms of conduct are not acceptable. Finally, once you have an adopted statement of ethical principles, it can easily eliminate the need for debate about personalities or individual proclivities. A short statement can simply be made referring to the adopted Statement and how it either encourages or precludes certain forms of conduct.

### **The Decisions Made by Planning Commissions Should Reflect the Adopted Ethical Principles**

Planning commissions should be attentive to every point of view laid out at a commission meeting: property owner rights; equitable procedures; opinions of residents; and sustaining the environment, etc. To sort through the plethora of information and arrive at the best decision, the commissioner needs to ask herself "What decision will promote the entire community's best interest over time?"

*The commissioner needs to ask herself "What decision will promote the entire community's best interest over time?"*

Commissioners should also be attentive to the integrity of the planning process. Decisions should be based upon full information. This information should be discussed in an open forum where it can be debated. Certainly planning reports, studies, and other records should be available to persons on either (or any) side of an issue. Other meetings or communications a commissioner may have received which are related to a proposed decision must be



noted at a public hearing to ensure full information, comments, and rebuttals as appropriate. If a Commission conducts its business in a consistent and open manner, then the community will have more faith in the process.

### **Applicants Deserve Fair Decisions Made in an Un-biased Manner**

Basic common law provides that Commissioners exercise the power of office for the benefit of the public and not for their private interests. The Constitution lays out due process principles that require the decision-makers to be fair and impartial when sitting in a quasi-judicial capacity on matters such as variances which require findings to be made.

What constitutes bias? Bias arises from having a personal or financial interest in the outcome. For example, one court found a council member was biased and should not have participated in a decision about new construction which would block the member’s view of the ocean. There could be a personal bias based on well-known animosity toward an individual. Strong personal loyalty could also constitute a bias. If, for example, your best friend since kindergarten applied for a variance to the setbacks for her home, you could be perceived as biased in favor of the proposal. Another form of bias could come from your belief system or ideology. A Commissioner might find a proposal to approve a Conditional Use Permit for a Planned Parenthood clinic provoking a strong reaction if the Commissioner opposed education about contraception for teenagers or abortions. Another form of bias can result when information received outside of the meeting influences your thinking. All communications about the project (pro and con) should occur in the context of the noticed hearing. See the discussion of ex-parte communications which immediately follows.

### **Why is it a problem when information is communicated to you outside of a meeting?**

- Not everyone has the same information
- The applicant cannot respond, if accusations are made
- You can’t readily assess the accuracy of the information by seeking confirmation from staff
- It violates the perceived fairness of process if special information has been conveyed to a subset of the board membership

### **Ex-parte communications**

Ex-parte communications are those that occur outside of the formal meeting. These kinds of communications can undermine your efforts to establish a reputation for Planning Commission fairness.

Some Planning Commissioners insist that they are comfortable with receiving communications from the projects’ neighbors or other concerned citizens. They believe being open to community input is part of their job. Those members explain that they report the ex-parte communications prior to the beginning of the official meeting. But disclosing may not be enough. You can’t easily convey the full text of information received or the way you may have



been influenced.

Site visits are a form of ex-parte communication. However, they are desirable. They can take the form of individuals driving by a site, or exploring it alone on foot. Some communities chose to organize group visits with staff. Because you may have a quorum of Planning Commissioners present, such site visits should be posted as a public meeting. Staff should prepare a brief write up of the visit for the public record. While on the site, board members should maintain an open-minded frame of mind and refrain from offering opinions to the property owner who is likely to be present.

**Example:** Can a planning commissioner receive information or explanations from an applicant outside of the regular meeting?

**Answer:** If the information is designed to influence the thinking of the Commissioner, the information should be presented in a public meeting. It should be in writing and should be part of the official public record.

Commissioners must give serious consideration to stepping aside and not participating when reviewing projects if they have listened to community input and have already determined the proper outcome in advance of receiving the evidence.

### **Serial Meetings**

A serial meeting occurs when a series of communications among board members results in a debate and discussion of a pending item or policy. Serial meetings may be prohibited by state or local ethics codes. Whether precluded or not, they should be avoided. Serial meetings are the product of high technology, particularly e-mail. Meetings where decisions are made have to be conducted in public. E-mails about pending matters should be avoided.

**Example:** Can the staff send a notice to all the Planning Commission advising them that a long desired development project has been dropped from the agenda at the request of the applicant?

**Answer:** Yes. No discussion of pros or cons should be undertaken. No replies should be sent.

**Example:** Can planning commissioners send e-mails using the “reply to all” feature speculating why the applicant made the decision and what, if anything, the commission can do as a group to help get the project back on track?



### **Social Media and Serial Meetings:**

The general rule is that a majority of the Planning Commissioners cannot use the Internet to communicate with each other about Planning Commission business. Many web sites present information or ask questions and individuals make comments or ask questions which are called postings. Multiple Commissioners cannot post or comment on others postings on Planning Commission business. If they do, then they are debating the public’s business outside of the public meeting. This is a no-no. This does not mean that one-way communications like blogs are limited. Blogging can be a good way to get the work out, especially in a time of declining newspaper readership.



**Answer:** No. The commission would be discussing a topic with the intention of arriving at a consensus to guide future public action outside of a public meeting.

Separate communications with decision-makers to answer questions are acceptable. But those communications cannot have content which includes information about the position of other decision-makers. Commissioners should avoid all forms of communication that could result in an agreement by the Commission or a subset of Commissioners about what to do outside of a public meeting. This guidance does not preclude Commissioners from being present at the same social event or attending a training conference. It simply means that while at those events the Commissioners cannot meet to discuss the public's business.

### **Exchanging Votes**

We've already covered the ethical standards that prohibit Planning Commissioners from soliciting or receiving bribes/gifts in exchange for their votes. Commissioners cannot give their vote in exchange for another public official's vote. Vote trading is a form of quid pro quo (this for that). Engaging in this kind of behavior compromises the decision-making process. Outcomes other than what is best for the public are being treated as what's most important when votes are traded.

### **Civility**

It is to be expected that people will disagree about planning projects. The disagreement itself is not a bad thing; it is how the disagreement is expressed that holds the potential for problems. Many issues that come before the Planning Commission will involve controversy. But if it appears that the personalities and not the merits of the proposal are holding sway, the public will rightly doubt the wisdom of the outcome. The City of Collinsville (See Attachment C) has adopted procedures calling for civil conduct and outlining what will happen when there is a lack of order. See excerpts below.

#### **Article 16: Conduct of Persons Before the Planning Commission**

- *During all public hearings and working sessions, members of the public shall be given equitable opportunity to speak. Comments should be addressed to the item before the planning commission. Where a comment is irrelevant, inflammatory, or prejudicial, the chairperson may instruct the planning commission to "disregard" the comment, which nevertheless may, at the discretion of the board, remain in the public record.*



- *During all regular and emergency meetings of the planning commission, the public may be present but shall remain silent unless specifically invited by the chairperson to provide comment.*
- *During all planning commission proceedings, members of the public have the obligation to remain in civil order. Any conduct which interferes with the equitable rights of another to provide comment or which interferes with the proper execution of commission affairs may be ruled by the chairperson as “out-of-order” and the offending person directed to remain silent. Once having been so directed, if a person persists in disruptive conduct, the chairperson may entertain a motion to “eject” the person from the planning commission hearing or meeting. Where the person fails to comply with the successful motion to eject, the chairperson may then call upon civil authority to physically remove the individual from the chamber for the duration of the hearing or deliberation on that item.*

The advantages of having these procedures in place ahead of time is that it saves people the stress of trying to decide in the middle of an especially angry and contentious meeting what to do next. It also sets a reasonable standard to which Commissioners can refer when the shouting and the insults become untenable. Ejecting people should be avoided if at all possible, especially because law enforcement personnel rarely attend Planning Commission meetings. Nonetheless, there are occasions when the Police should be invited to attend and be prepared to “invite” unruly members of the public to leave the Planning Commission meeting chambers. For example, you may have residents with mental health issues attending meetings and threatening those who disagree with them. In one City, vague threatening statements were made at a neighborhood meeting. At the end of the meeting, when City staff left, they learned that all of their cars had been keyed. When people don't feel safe or respected at meetings, it is appropriate to take actions to restore civility. If it is a group rather than an individual causing the disruption, then the room may be cleared. Members of the media must be allowed to stay. Discussion can only take place on items posted on the agenda.

Besides removing disruptive individuals, another way to encourage civil behavior is for the Planning Commissioners to lead by example. If the Commission consistently demonstrates courtesy and respect it can help to tone down some of the rhetoric. Put simply, the Commission must avoid criticism of individuals and their motivations. The Commission's deliberations must focus on the merit of the proposal. While the Planning Commission Chair





can encourage everyone to behave in a civil manner, the Chair cannot stop people from expressing their opinions or criticizing the action of the Commission or others.

The Commission's agenda must provide an opportunity for the public to address the Commission on any item of interest to the public within the Commission's jurisdiction. The Planning Commission may adopt reasonable regulations to ensure that everyone has an opportunity to be heard in an orderly manner. This includes time limits which can help ensure that the Commission can complete its work. The time limits should not be so short that the public's position cannot be readily understood, for example thirty seconds.

### **Individual Planning Commissioners Should Be Prepared to Address Ethical Challenges**

Most ethical challenges fall into one of two categories: Balancing two things that are both right or doing the right thing even when it may be costly to you personally or politically. For example, you might feel an ethical challenge when doing the right thing might jeopardize your appointed position – voting against a project championed by the Mayor. Or a vote may jeopardize a valued personal relationship. While it may be a hard decision, it is also easy in the sense that the right thing to do is obvious. It is accepting the cost which is onerous. Ethical provisions require that you do what is best for the public interest. This responsibility trumps your own personal interests and friendships. The other kinds of ethical challenges – deciding between competing public good or two rights – are more difficult. The one right thing to do is not so obvious. Should you approve a project that will generate badly needed additional sales tax revenue even though it will increase traffic impacting residents when there are no feasible mitigations?

Here are several steps to follow to help resolve and ethical problem.

1. Stop and define the problem. Avoid the temptation to go along to get along. Take the time to make sure you can clearly express, at least to yourself, what are your misgivings.
2. Collect the facts. Who is involved? How credible is the information you've been offered? How reliable are the people providing information? And is the information complete?



3. Refer to your guidance material. Whatever principles or codes or ordinances apply to your work, know what the recommendations are and how they would be applied.

4. Generate alternative courses of action and decide if they would have better probable outcomes. You can ask people individually or in a public setting, ask the Commission Chair to address the problem, or request a memo from the staff. When you have a list of alternatives, look for the ones that can help solve the problem while building ethical bridges to the rest of the commission.

5. Act on the best alternative. The best alternative reflects fulfilling your commitment to serve the public interest, doing the right thing, and minimizing the potential cost of following the right course.

**Example:** You have observed two members of the commission, in public meetings, urge the staff to waive the criteria for a variance to the subdivision standards for certain members of the development community. The commission usually goes along.

**Answer:** Using the above guidelines:

1. Stop and define the problem. Long time developers are receiving preferential treatment and are being granted variances to the subdivision standards without meeting the criteria.
2. Collect the facts. You always take detailed notes of the Commission's debate. Within the past six months, only two developers and all of their projects have been the subject of requests of staff by the same two commissioners. Each time, the argument is made to waive standards to support economic development and encourage homebuilding. Some of the waivers are minor; others are significant. But in each case, they are lobbying for the approval of subdivisions that are sub-standard.
3. Refer to guidance material. The APA Statement of Ethical Principles states that those who participate in the planning process should "Exercise fair, honest, and independent judgment." You believe the Commissioners are failing to achieve this standard and the credibility of the Commission has been affected.
4. Generate alternatives. Talk to the Chair of the Planning Commission. Talk to the two Planning Commissioners. Request a briefing from staff of the formal process of seeking variances and waivers. Invite a representative from the Texas Chapter of APA to discuss the potential long-term costs of waiving certain subdivision standards.



5. Act on the best alternative. You decide to talk to the Chair of the Planning Commission because this option doesn't preclude other actions if your conversation is not productive. It is your hope that together the two of you can approach the other Commissioners.

With all of the information provided in this chapter, it should feel more comfortable to answer the questions posed at the beginning of the Chapter.

Question: **Can I meet individually with applicants to hear about their project?**  
Answer: \_\_\_\_\_

Question: **Should I take a tour of a project site with an applicant?**  
Answer: \_\_\_\_\_

Question: **Can I discuss pending development projects at my neighborhood association meeting?**  
Answer: \_\_\_\_\_

Question: **Can friends and neighbors offer me their opinions about pending projects?**  
Answer: \_\_\_\_\_

Question: **What happens when my best friend has a project before the Planning Commission?**  
Answer: \_\_\_\_\_

Question: **How can I do my job as a Planning Commissioner in a way that promotes fairness and objectivity?**  
Answer: \_\_\_\_\_

## **WHEN YOU HAVE SERIOUS CONCERNS ABOUT ETHICAL MISCONDUCT**

What can you do when there are ethical violations that taint the public planning process? When you notice a consistent pattern of unethical behavior and simple, direct remedies have failed, it may be time to consult with others who can bring to bear the influence of another entity.



In the case of alleged unethical conduct by a certified professional planner (AICP), you can conduct the Professional Development Officer of the APA Texas Chapter regarding a general question about accepted standards for behavior. To make a specific complaint, you should contact the Executive Director of the American Planning Association who serves as the Ethics Officer for the American Institute of Certified Planners. Contact information for these individuals is available on the Texas Chapter website: [www.txplanning.org](http://www.txplanning.org) or that of the APA [www.planning.org](http://www.planning.org). Your peers from another jurisdiction can also be helpful in sorting out the issues and alternatives. This is particularly true when you have concerns about the conduct of a planner and you are not quite ready to consult with others.

What if the perceived problem lies with a fellow Commissioner or an elected official? You have a responsibility to act quickly to address ethical problems before they become scandals. It is often useful to assemble collective wisdom. The following steps include some from a publication from the Institute for Local Government :

1. Define and problem.
2. Collect the facts.
3. Determine the consequences of ignoring the situation.
4. Speak with others. See if they share your concerns. Do not gossip, but instead frame the conversation in terms of what needs to be done (if anything) to respond to the challenge.
5. Determine if an investigation is warranted.
6. Determine whether to contact external authorities.
7. Figure out what can be done to prevent a similar situation from occurring in the future.

These recommendations are not made lightly but with the full recognition that confronting problematic behavior may involve personal costs. Conversations can damage relationships. That's why it's best to begin with a one-on-one approach clarifying your understanding and, if things are as bad as you fear, helping a colleague to understand what can happen if the conduct does not change. By encouraging a colleague to refrain from the behavior, you are seeking to spare both the colleague as well as the City the embarrassment that will likely result. Depending on the magnitude of the transgression, you might choose to encourage the Commissioner to talk to an attorney. You

*You have a responsibility to act quickly to address ethical problems before they become scandals.*



can use the approach of confirming from an independent party the possible expenses that may accrue from continuing to flout the law. When you hear that the behavior is protected because no one will find out, debate that premise loudly. With all of the ways people can follow actions by Commissioners whether public or private, that strategy is bound to fail. Don't be surprised if the response remains guarded or even denial. As mentioned earlier, we all have an enormous capacity for believing that we are honest and ethical individuals and hence, our conduct is also upright.

It is a difficult lesson to learn, but nonetheless true that you as an individual will be judged by the conduct of the other Commissioners. You must be prepared to not only act ethically on your own, but also to hold others accountable when they fail to do so.

Ultimately, an ethical commissioner must be prepared to consider whether events are of such a serious nature as to require resignation to avoid guilt by association. Conversely, the Commissioner may decide, upon reflection, to maintain a lonely outpost as the ethical beacon. The lone Commissioner can be effective in a number of simple ways. One could request that the APA Statement of Ethical Principles be placed on an agenda of the Commission. A discussion can then occur without appearing to judge any individual(s). The Commissioner could request training on ethics as a part of the overall development program for volunteers. Even without bringing these outside resources to the table, consistently ethical actions by one Commissioner will, over time, raise the ethical consciousness of the entire Planning Commission for the benefit of the whole community.

### **What Happens When a Planning Commission Operations Unethically?**

*Most city attorneys will tell you that you will not be defended if you have violated the law.*

There can be serious consequences for misconduct. If the administrative decision is tainted, it can be set aside. New proceedings are then required. An individual who fails to avoid conflicts of interest can lose her/his position on the Commission. If the ethical failing rises to the level of a charge of violating someone's due process rights under the constitution, there could be a lawsuit and damages awarded. Most city attorneys will tell you that you will not be defended if you have violated the law. The cost of the proceedings will have to be borne by the individual Planning Commissioners.



## THE TAKEAWAY MESSAGE

Ethics for Planning Commissions is not an introspective process. You can be absolutely confident that you have put your personal interest aside, but the public may still question loudly whether that is true. Experienced Planning Commissioners know that the public's perception matters when you make your determination of what the right thing to do is. This does not mean yielding to prejudice or the loudest voice. Your responsibility remains to do what is best for your community, even if it is an unpopular choice. If you act on your best judgment (and leave outside the meeting room your personal or political or job-related interests), you will have solved 99% of the ethical conundrums. You can encourage ethical behavior simply by bringing the issue up. You and the other Commissioners should analyze issues for their ethical implications and have a shared understanding of how these issues should be addressed.

If you have taken the time to read to the end of this Chapter, you are ahead of the game!

### Ethical Planning Commissioners:

1. Are clear about the behavior they demand of themselves and expect from others.
2. Promote an ethical culture within the Planning Commission and the community where they serve.
3. Have a strategy ready for dealing with ethical issues if they arise.



## **ATTACHMENT A**

### **Ethical Principles in Planning (As Adopted May 1992)**

This statement is a guide to ethical conduct for all who participate in the process of planning as advisors, advocates, and decision makers. It presents a set of principles to be held in common by certified planners, other practicing planners, appointed and elected officials, and others who participate in the process of planning.

The planning process exists to serve the public interest. While the public interest is a question of continuous debate, both in its general principles and in its case-by-case applications, it requires a conscientiously held view of the policies and actions that best serve the entire community.

Planning issues commonly involve a conflict of values and, often, there are large private interests at stake. These accentuate the necessity for the highest standards of fairness and honesty among all participants.

Those who practice planning need to adhere to a special set of ethical requirements that must guide all who aspire to professionalism.

The Code is formally subscribed to by each certified planner. It includes an enforcement procedure that is administered by AICP. The Code, however, provides for more than the minimum threshold of enforceable acceptability. It also sets aspirational standards that require conscious striving to attain.

The ethical principles derive both from the general values of society and from the planner's special responsibility to serve the public interest. As the basic values of society are often in competition with each other, so do these principles sometimes compete. For example, the need to provide full public information may compete with the need to respect confidences. Plans and programs often result from a balancing among divergent interests. An ethical judgment often also requires a conscientious balancing, based on the facts and context of a particular situation and on the entire set of ethical principles.

This statement also aims to inform the public generally. It is also the basis for continuing systematic discussion of the application of its principles that is itself essential behavior to give them daily meaning.

#### **The planning process must continuously pursue and faithfully serve the public interest.**

Planning Process Participants should:



1. Recognize the rights of citizens to participate in planning decisions;
2. Strive to give citizens (including those who lack formal organization or influence) full, clear and accurate information on planning issues and the opportunity to have a meaningful role in the development of plans and programs;
3. Strive to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of disadvantaged groups and persons;
4. Assist in the clarification of community goals, objectives and policies in plan-making;
5. Ensure that reports, records and any other non-confidential information which is, or will be, available to decision makers is made available to the public in a convenient format and sufficiently in advance of any decision;
6. Strive to protect the integrity of the natural environment and the heritage of the built environment;
7. Pay special attention to the interrelatedness of decisions and the long range consequences of present actions.

**Planning process participants continuously strive to achieve high standards of integrity and proficiency so that public respect for the planning process will be maintained.**

Planning Process Participants should:

1. Exercise fair, honest and independent judgment in their roles as decision makers and advisors;
2. Make public disclosure of all “personal interests” they may have regarding any decision to be made in the planning process in which they serve, or are requested to serve, as advisor or decision maker.
3. Define “personal interest” broadly to include any actual or potential benefits or advantages that they, a spouse, family member or person living in their household might directly or indirectly obtain from a planning decision;
4. Abstain completely from direct or indirect participation as an advisor or decision maker in any matter in which they have a personal interest, and leave any chamber in which such a matter is under deliberation, unless their personal interest has been made a matter of public record; their employer, if any, has given approval; and the public official, public agency or court with jurisdiction to rule on ethics matters has expressly authorized their participation;
5. Seek no gifts or favors, nor offer any, under circumstances in which it might reasonably be inferred that the gifts or favors were intended or expected to influence a participant’s objectivity as an advisor or decision maker in the planning process;

Not participate as an advisor or decision maker on any plan or project in which they have previously participated as an advocate;

6. Serve as advocates only when the client’s objectives are legal and consistent with the public interest.
7. Not participate as an advocate on any aspect of a plan or program on which they have previously served as advisor or decision maker unless their role as advocate is authorized by applicable law, agency regulation, or ruling of an ethics officer or agency; such participation as an advocate should



be allowed only after prior disclosure to, and approval by, their affected client or employer; under no circumstance should such participation commence earlier than one year following termination of the role as advisor or decision maker;

8. Not use confidential information acquired in the course of their duties to further a personal interest;
9. Not disclose confidential information acquired in the course of their duties except when required by law, to prevent a clear violation of law or to prevent substantial injury to third persons; provided that disclosure in the latter two situations may not be made until after verification of the facts and issues involved and consultation with other planning process participants to obtain their separate opinions;
10. Not misrepresent facts or distort information for the purpose of achieving a desired outcome;
11. Not participate in any matter unless adequately prepared and sufficiently capacitated to render thorough and diligent service;
12. Respect the rights of all persons and not improperly discriminate against or harass others based on characteristics which are protected under civil rights laws and regulations.

**APA members who are practicing planners continuously pursue improvement in their planning competence as well as in the development of peers and aspiring planners. They recognize that enhancement of planning as a profession leads to greater public respect for the planning process and thus serves the public interest.**

APA Members who are practicing planners:

1. Strive to achieve high standards of professionalism, including certification, integrity, knowledge, and professional development consistent with the AICP Code of Ethics;
2. Do not commit a deliberately wrongful act which reflects adversely on planning as a profession or seek business by stating or implying that they are prepared, willing or able to influence decisions by improper means;
3. Participate in continuing professional education;
4. Contribute time and effort to groups lacking adequate planning resources and to voluntary professional activities;
5. Accurately represent their qualifications to practice planning as well as their education and affiliations;
6. Accurately represent the qualifications, views, and findings of colleagues;
7. Treat fairly and comment responsibly on the professional views of colleagues and members of other professions;
8. Share the results of experience and research which contribute to the body of planning knowledge;
9. Examine the applicability of planning theories, methods and standards to the facts and analysis of each particular situation and do not accept the applicability of a customary solution without first establishing its appropriateness to the situation;
10. Contribute time and information to the development of students, interns, beginning practitioners and other colleagues;



American Planning Association  
**Texas Chapter**

*A Guide to Urban Planning in Texas Communities 2013*

11. Strive to increase the opportunities for women and members of recognized minorities to become professional planners;
12. Systematically and critically analyze ethical issues in the practice of planning.



## **ATTACHMENT B**

### **AICP Code of Ethics and Professional Conduct**

Adopted March 19, 2005

Effective June 1, 2005

Revised October 3, 2009

*The Executive Director of APA/AICP is the Ethics Officer as referenced in the following.*

We, professional planners, who are members of the American Institute of Certified Planners, subscribe to our Institute's Code of Ethics and Professional Conduct. Our Code is divided into four sections:

Section A contains a statement of aspirational principles that constitute the ideals to which we are committed. We shall strive to act in accordance with our stated principles. However, an allegation that we failed to achieve our aspirational principles cannot be the subject of a misconduct charge or be a cause for disciplinary action.

Section B contains rules of conduct to which we are held accountable. If we violate any of these rules, we can be the object of a charge of misconduct and shall have the responsibility of responding to and cooperating with the investigation and enforcement procedures. If we are found to be blameworthy by the AICP Ethics Committee, we shall be subject to the imposition of sanctions that may include loss of our certification.

Section C contains the procedural provisions of the Code. It (1) describes the way that one may obtain either a formal or informal advisory ruling, and (2) details how a charge of misconduct can be filed, and how charges are investigated, prosecuted, and adjudicated.

Section D contains procedural provisions that govern situations in which a planner is convicted of a serious crime.

The principles to which we subscribe in Sections A and B of the Code derive from the special responsibility of our profession to serve the public interest with compassion for the welfare of all people and, as professionals, to our obligation to act with high integrity.

As the basic values of society can come into competition with each other, so can the aspirational principles we espouse under this Code. An ethical judgment often requires a conscientious balancing, based on the facts and context of a particular situation and on the precepts of the entire Code.

As Certified Planners, all of us are also members of the American Planning Association and share in the



goal of building better, more inclusive communities. We want the public to be aware of the principles by which we practice our profession in the quest of that goal. We sincerely hope that the public will respect the commitments we make to our employers and clients, our fellow professionals, and all other persons whose interests we affect.

## **A: Principles to Which We Aspire**

### **1. Our Overall Responsibility to the Public**

Our primary obligation is to serve the public interest and we, therefore, owe our allegiance to a conscientiously attained concept of the public interest that is formulated through continuous and open debate. We shall achieve high standards of professional integrity, proficiency, and knowledge. To comply with our obligation to the public, we aspire to the following principles:

- a) We shall always be conscious of the rights of others.
- b) We shall have special concern for the long-range consequences of present actions.
- c) We shall pay special attention to the interrelatedness of decisions.
- d) We shall provide timely, adequate, clear, and accurate information on planning issues to all affected persons and to governmental decision makers.
- e) We shall give people the opportunity to have a meaningful impact on the development of plans and programs that may affect them. Participation should be broad enough to include those who lack formal organization or influence.
- f) We shall seek social justice by working to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of the disadvantaged and to promote racial and economic integration. We shall urge the alteration of policies, institutions, and decisions that oppose such needs.
- g) We shall promote excellence of design and endeavor to conserve and preserve the integrity and heritage of the natural and built environment.
- h) We shall deal fairly with all participants in the planning process. Those of us who are public officials or employees shall also deal evenhandedly with all planning process participants.

### **2. Our Responsibility to Our Clients and Employers**

We owe diligent, creative, and competent performance of the work we do in pursuit of our client or employer's interest. Such performance, however, shall always be consistent with our faithful service to the public interest.



- a) We shall exercise independent professional judgment on behalf of our clients and employers.
- b) We shall accept the decisions of our client or employer concerning the objectives and nature of the professional services we perform unless the course of action is illegal or plainly inconsistent with our primary obligation to the public interest.
- c) We shall avoid a conflict of interest or even the appearance of a conflict of interest in accepting assignments from clients or employers.

### **3. Our Responsibility to Our Profession and Colleagues**

We shall contribute to the development of, and respect for, our profession by improving knowledge and techniques, making work relevant to solutions of community problems, and increasing public understanding of planning activities.

- a) We shall protect and enhance the integrity of our profession.
- b) We shall educate the public about planning issues and their relevance to our everyday lives.
- c) We shall describe and comment on the work and views of other professionals in a fair and professional manner.
- d) We shall share the results of experience and research that contribute to the body of planning knowledge.
- e) We shall examine the applicability of planning theories, methods, research and practice and standards to the facts and analysis of each particular situation and shall not accept the applicability of a customary solution without first establishing its appropriateness to the situation.
- f) We shall contribute time and resources to the professional development of students, interns, beginning professionals, and other colleagues.
- g) We shall increase the opportunities for members of underrepresented groups to become professional planners and help them advance in the profession.
- h) We shall continue to enhance our professional education and training.
- i) We shall systematically and critically analyze ethical issues in the practice of planning.



j) We shall contribute time and effort to groups lacking in adequate planning resources and to voluntary professional activities.

## **B: Our Rules of Conduct**

We adhere to the following Rules of Conduct, and we understand that our Institute will enforce compliance with them. If we fail to adhere to these Rules, we could receive sanctions, the ultimate being the loss of our certification:

1. We shall not deliberately or with reckless indifference fail to provide adequate, timely, clear and accurate information on planning issues.
2. We shall not accept an assignment from a client or employer when the services to be performed involve conduct that we know to be illegal or in violation of these rules.
3. We shall not accept an assignment from a client or employer to publicly advocate a position on a planning issue that is indistinguishably adverse to a position we publicly advocated for a previous client or employer within the past three years unless (1) we determine in good faith after consultation with other qualified professionals that our change of position will not cause present detriment to our previous client or employer, and (2) we make full written disclosure of the conflict to our current client or employer and receive written permission to proceed with the assignment.
4. We shall not, as salaried employees, undertake other employment in planning or a related profession, whether or not for pay, without having made full written disclosure to the employer who furnishes our salary and having received subsequent written permission to undertake additional employment, unless our employer has a written policy which expressly dispenses with a need to obtain such consent.
5. We shall not, as public officials or employees, accept from anyone other than our public employer any compensation, commission, rebate, or other advantage that may be perceived as related to our public office or employment.
6. We shall not perform work on a project for a client or employer if, in addition to the agreed upon compensation from our client or employer, there is a possibility for direct personal or financial gain to us, our family members, or persons living in our household, unless our client or employer, after full written disclosure from us, consents in writing to the arrangement.
7. We shall not use to our personal advantage, nor that of a subsequent client or employer, information gained in a professional relationship that the client or employer has requested be held inviolate or that we should recognize as confidential because its disclosure could result in embarrassment or other detriment to the client or employer. Nor shall we disclose such confidential information except when (1) required by process of law, or (2) required to prevent a clear violation of law, or (3) required to prevent a substantial injury to the public. Disclosure pursuant to (2) and (3) shall not be made until after we have verified the facts and issues involved and, when practicable, exhausted efforts to obtain reconsideration of the matter and have sought separate opinions on the issue from other qualified professionals employed by our client or employer.
8. We shall not, as public officials or employees, engage in private communications with planning pro-



cess participants if the discussions relate to a matter over which we have authority to make a binding, final determination if such private communications are prohibited by law or by agency rules, procedures, or custom.

9. We shall not engage in private discussions with decision makers in the planning process in any manner prohibited by law or by agency rules, procedures, or custom.
10. We shall neither deliberately, nor with reckless indifference, misrepresent the qualifications, views and findings of other professionals.
11. We shall not solicit prospective clients or employment through use of false or misleading claims, harassment, or duress.
12. We shall not misstate our education, experience, training, or any other facts which are relevant to our professional qualifications.
13. We shall not sell, or offer to sell, services by stating or implying an ability to influence decisions by improper means.
14. We shall not use the power of any office to seek or obtain a special advantage that is not a matter of public knowledge or is not in the public interest.
15. We shall not accept work beyond our professional competence unless the client or employer understands and agrees that such work will be performed by another professional competent to perform the work and acceptable to the client or employer.
16. We shall not accept work for a fee, or pro bono, that we know cannot be performed with the promptness required by the prospective client, or that is required by the circumstances of the assignment.
17. We shall not use the product of others' efforts to seek professional recognition or acclaim intended for producers of original work.
18. We shall not direct or coerce other professionals to make analyses or reach findings not supported by available evidence.
19. We shall not fail to disclose the interests of our client or employer when participating in the planning process. Nor shall we participate in an effort to conceal the true interests of our client or employer.
20. We shall not unlawfully discriminate against another person.
21. We shall not withhold cooperation or information from the AICP Ethics Officer or the AICP Ethics Committee if a charge of ethical misconduct has been filed against us.
22. We shall not retaliate or threaten retaliation against a person who has filed a charge of ethical misconduct against us or another planner, or who is cooperating in the Ethics Officer's investigation of an ethics charge.
23. We shall not use the threat of filing an ethics charge in order to gain, or attempt to gain, an advantage in dealings with another planner.
24. We shall not file a frivolous charge of ethical misconduct against another planner.
25. We shall neither deliberately, nor with reckless indifference, commit any wrongful act, whether or not specified in the Rules of Conduct, that reflects adversely on our professional fitness.
26. We shall not fail to immediately notify the Ethics Officer by both receipted Certified and Regular First Class Mail if we are convicted of a "serious crime" as defined in Section D of the Code; nor immediately



following such conviction shall we represent ourselves as Certified Planners or Members of AICP until our membership is reinstated by the AICP Ethics Committee pursuant to the procedures in Section D of the Code.

## **C: Our Code Procedures**

### **1. Introduction**

In brief, our Code Procedures (1) describe the way that one may obtain either a formal or informal advisory ethics ruling, and (2) detail how a charge of misconduct can be filed, and how charges are investigated, prosecuted, and adjudicated.

### **2. Informal Advice**

All of us are encouraged to seek informal ethics advice from the Ethics Officer. Informal advice is not given in writing and is not binding on AICP, but the AICP Ethics Committee shall take it into consideration in the event a charge of misconduct is later filed against us concerning the conduct in question. If we ask the Ethics Officer for informal advice and do not receive a response within 21 calendar days of our request, we should notify the Chair of the Ethics Committee that we are awaiting a response.

### **3. Formal Advice**

Only the Ethics Officer is authorized to give formal advice on the propriety of a planner's proposed conduct. Formal advice is binding on AICP and any of us who can demonstrate that we followed such advice shall have a defense to any charge of misconduct. The advice will be issued to us in writing signed by the Ethics Officer. The written advice shall not include names or places without the written consent of all persons to be named. Requests for formal advice must be in writing and must contain sufficient details, real or hypothetical, to permit a definitive opinion. The Ethics Officer has the discretion to issue or not issue formal advice. The Ethics Officer will not issue formal advice if he or she determines that the request deals with past conduct that should be the subject of a charge of misconduct. The Ethics Officer will respond to requests for formal advice within 21 days of receipt and will docket the requests in a log that will be distributed on a quarterly basis to the Chair of the AICP Ethics Committee. If the Ethics Officer fails to furnish us with a timely response we should notify the Chair of the AICP Ethics Committee that we are awaiting a response.

### **4. Published Formal Advisory Rulings**

The Ethics Officer shall transmit a copy of all formal advice to the AICP Ethics Committee. The Committee, from time to time, will determine if the formal advice provides guidance to the interpretation of the Code and should be published as a formal advisory ruling. Also, the Ethics Committee has the authority to draft and publish formal advisory rulings when it determines that guidance to interpretation of the Code is needed or desirable.

### **5. Filing a Charge of Misconduct**



Any person, whether or not an AICP member, may file a charge of misconduct against a Certified Planner. A charge of misconduct shall be made in a letter sent to the AICP Ethics Officer. The letter may be signed or it may be anonymous. The person filing the charge is urged to maintain confidentiality to the extent practicable. The person filing the charge should not send a copy of the charge to the Certified Planner identified in the letter or to any other person. The letter shall accurately identify the Certified Planner against whom the charge is being made and describe the conduct that allegedly violated the provisions of the Rules of Conduct. The person filing a charge should also cite all provisions of the Rules of Conduct that have allegedly been violated. However, a charge will not be dismissed if the Ethics Officer is able to determine from the facts stated in the letter that certain Rules of Conduct may have been violated. The letter reciting the charge should be accompanied by all relevant documentation available to the person filing the charge. While anonymously filed charges are permitted, anonymous filers will not receive notification of the disposition of the charge. Anonymous filers may furnish a postal address in the event the Ethics Officer needs to reach them for an inquiry.

#### **6. Receipt of Charge by Ethics Officer**

The Ethics Officer shall maintain a log of all letters containing charges of misconduct filed against Certified Planners upon their receipt and shall transmit a quarterly report of such correspondence to the Chair of the Ethics Committee. Within two weeks of receipt of a charge, the Ethics Officer shall prepare a cover letter and transmit the charge and all attached documentation to the named Certified Planner, who shall be now referred to as “the Respondent.” The Ethics Officer’s cover letter shall indicate whether the Ethics Officer expects the Respondent to file a “preliminary response” or whether the Ethics Officer is summarily dismissing the charge because it is clearly without merit. A copy of the cover letter will also be sent to the Charging Party, if identified. If the cover letter summarily dismisses the charge, it shall be sent to an identifiable Charging Party by receipted Certified Mail. The Charging Party will have the right to appeal the summary dismissal as provided in Section 11. After the Ethics Officer has received a charge, the Charging Party may withdraw it only with the permission of the Ethics Officer. After receiving a charge, the Ethics Officer shall have a duty to keep an identified Charging Party informed of its status. If an identified Charging Party has not received a status report from the Ethics Officer for 60 calendar days, the Charging Party should notify the Chair of the AICP Ethics Committee of the lapse.

#### **7. Right of Counsel**

A planner who receives a charge of misconduct under a cover letter requesting a preliminary response should understand that if he or she desires legal representation, it would be advisable to obtain such representation at the earliest point in the procedure. However, a planner who elects to proceed at first without legal representation will not be precluded from engaging such representation at any later point in the procedure.

#### **8. Preliminary Responses to a Charge of Misconduct**

If the Ethics Officer requests a preliminary response, the Respondent shall be allowed 30 calendar days



from receipt of the Ethics Officer's letter to send the response to the Ethics Officer. The Ethics Officer will grant an extension of time, not to exceed 15 calendar days, if the request for the extension is made within the 30 day period. Failure to make a timely preliminary response constitutes a failure to cooperate with the Ethics Officer's investigation of the charge. A preliminary response should include documentation, the names, addresses and telephone numbers of witnesses, and all of the facts and arguments that counter the charge. Because the motivation of the person who filed the charge is irrelevant, the Respondent should not discuss it. The Ethics Officer will send a copy of the preliminary response to the Charging Party, if identified, and allow the Charging Party 15 calendar days from the date of receipt to respond.

### **9. Conducting an Investigation**

After review of the preliminary response from the Respondent and any counter to that response furnished by an identified Charging Party, or if no timely preliminary response is received, the Ethics Officer shall decide whether an investigation is appropriate. If the Ethics Officer determines that an investigation should be conducted, he or she may designate a member of the AICP staff or AICP counsel to conduct the investigation. The Respondent must cooperate in the investigation and encourage others with relevant information, whether favorable or unfavorable, to cooperate. Neither the Ethics Officer, nor designee, will make credibility findings to resolve differing witness versions of facts in dispute.

### **10. Dismissal of Charge or Issuance of Complaint**

If, with or without an investigation, the charge appears to be without merit, the Ethics Officer shall dismiss it in a letter, giving a full explanation of the reasons. The dismissal letter shall be sent to the Respondent and the Charging Party by receipted Certified Mail. If, however, the Ethics Officer's investigation indicates that a Complaint is warranted, the Ethics Officer shall draft a Complaint and send it to the Respondent by receipted Certified Mail, with a copy to the Charging Party. The Complaint shall consist of numbered paragraphs containing recitations of alleged facts. Following the fact paragraphs, there shall be numbered paragraphs of alleged violations, which shall cite provisions of the Rules of Conduct that the Ethics Officer believes are implicated. The allegations in the Complaint shall be based on the results of the Ethics Officer's investigation of the charge and may be additional to, or different from, those allegations initially relied upon by the Charging Party. The Ethics Officer shall maintain a log of all dismissals and shall transmit the log on a quarterly basis to the Chair of the Ethics Committee.

### **11. Appeal of Dismissal of Charge**

Identified Charging Parties who are notified of the dismissal of their ethics charges shall have 30 calendar days from the date of the receipt of their dismissal letters to file an appeal with the Ethics Committee. The appeal shall be sent to the Ethics Officer who shall record it in a log and transmit it within 21 calendar days to the Ethics Committee. The Ethics Committee shall either affirm or reverse the dismissal. If the dismissal is reversed, the Ethics Committee shall either direct the Ethics Officer to conduct a



further investigation and review the charge again, or issue a Complaint based on the materials before the Committee. The Ethics Officer shall notify the Charging Party and the Respondent of the Ethics Committee's determination.

### **12. Answering a Complaint**

The Respondent shall have 30 calendar days from receipt of a Complaint in which to file an Answer. An extension not to exceed 15 calendar days will be granted if the request is made within the 30 day period. In furnishing an Answer, the Respondent is expected to cooperate in good faith. General denials are unacceptable. The Answer must specifically admit or deny each of the fact allegations in the Complaint. It is acceptable to deny a fact allegation on the ground that the planner is unable to verify its correctness, but that explanation should be stated as the reason for denial. The failure of a Respondent to make a timely denial of any fact alleged in the Complaint shall be deemed an admission of such fact. The Ethics Officer may amend a Complaint to delete any disputed fact, whether or not material to the issues. The Ethics Officer also may amend a Complaint to restate fact allegations by verifying and adopting the Respondent's version of what occurred. The Ethics Officer shall send the Complaint or Amended Complaint and the Respondent's Answer to the Ethics Committee with a copy to an identified Charging Party. The Ethics Officer shall also inform the Ethics Committee if there are any disputed material facts based on a comparison of the documents.

### **13. Conducting a Hearing**

a) If the Ethics Officer notifies the Ethics Committee that material facts are in dispute or if the Ethics Committee, on its own, finds that to be the case, the Chair of the Committee shall designate a "Hearing Official" from among the membership of the Committee. At this point in the process, the Ethics Officer, either personally or through a designated AICP staff member or AICP counsel, shall continue to serve as both Investigator-Prosecutor and as the Clerk serving the Ethics Committee, the Hearing Official and the Respondent. In carrying out clerical functions, the Ethics Officer, or designee, may discuss with the Ethics Committee and the Hearing Official the procedural arrangements for the hearing. Until the Ethics Committee decides the case, however, the Ethics Officer or designee shall not discuss the merits of the case with any member of the Committee unless the Respondent is present or is afforded an equal opportunity to address the Committee member.

b) The Ethics Officer shall transmit a "Notice of Hearing" to the Respondent, the Hearing Official and an identified Charging Party. The hearing shall normally be conducted in the vicinity where the alleged misconduct occurred. The Notice will contain a list of all disputed material facts that need to be resolved. The hearing will be confined to resolution of those facts. There shall be no requirement that formal rules of evidence be observed.

c) The Ethics Officer will have the burden of proving, by a preponderance of the evidence, that misconduct occurred. The Ethics Officer may present witness testimony and any other evidence relevant



to demonstrating the existence of each disputed material fact. The Respondent will then be given the opportunity to present witness testimony and any other evidence relevant to controvert the testimony and other evidence submitted by the Ethics Officer. The Ethics Officer may then be given an opportunity to present additional witness testimony and other evidence in rebuttal. All witnesses who testify for the Ethics Officer or the Respondent shall be subject to cross-examination by the other party. The Hearing Official shall make an electronic recording of the hearing and shall make copies of the recording available to the Ethics Officer and the Respondent.

d) At least 30 calendar days before the hearing, the Ethics Officer and the Respondent shall exchange lists of proposed witnesses who will testify, and copies of all exhibits that will be introduced, at the hearing. There shall be no other discovery and no pre-hearing motions. All witnesses must testify in person at the hearing unless arrangements can be made by agreement between the Respondent and the Ethics Officer prior to the hearing, or by ruling of the Hearing Official during the hearing, to have an unavailable witness's testimony submitted in a video recording that permits the Hearing Official to observe the demeanor of the witness. No unavailable witness's testimony shall be admissible unless the opposing party was offered a meaningful opportunity to cross-examine the witness. The hearing shall not be open to the public. The Hearing Official shall have the discretion to hold open the hearing to accept recorded video testimony of unavailable witnesses. The Respondent will be responsible for the expense of bringing his or her witnesses to the hearing or to have their testimony video recorded. Following the closing of the hearing, the Hearing Official shall make findings only as to the disputed material facts and transmit the findings to the full Ethics Committee, the Ethics Officer, and the Respondent. The Hearing Official, prior to issuing findings, may request that the parties submit proposed findings of fact for his or her consideration.

#### **14. Deciding the Case**

The Ethics Committee (including the Hearing Official member of the Committee) shall resolve the ethics matter by reviewing the documentation that sets out the facts that were not in dispute, any fact findings that were required to be made by a Hearing Official, and any arguments submitted to it by the Respondent and the Ethics Officer. The Ethics Officer shall give 45 calendar days' notice to the Respondent of the date of the Ethics Committee meeting during which the matter will be resolved. The Ethics Officer and the Respondent shall have 21 calendar days to submit memoranda stating their positions. The Ethics Officer shall transmit the memoranda to the Ethics Committee no later than 15 calendar days prior to the scheduled meeting. If the Committee determines that the Rules of Conduct have not been violated, it shall dismiss the Complaint and direct the Ethics Officer to notify the Respondent and an identified Charging Party. If the Ethics Committee determines that the Ethics Officer has demonstrated that the Rules of Conduct have been violated, it shall also determine the appropriate sanction, which shall either be a reprimand, suspension, or expulsion. The Ethics Committee shall direct the Ethics Officer to notify the Respondent and an identified Charging Party of its action and to draft a formal explanation of its decision and the discipline chosen. Upon approval of the Ethics Committee, the expla-



nation and discipline chosen shall be published and titled “Opinion of the AICP Ethics Committee.” The determination of the AICP Ethics Committee shall be final.

### **15. Settlement of Charges**

a) Prior to issuance of a Complaint, the Ethics Officer may negotiate a settlement between the Respondent and an identified Charging Party if the Ethics Officer determines that the Charging Party has been personally aggrieved by the alleged misconduct of the Respondent and a private resolution between the two would not be viewed as compromising Code principles. If a settlement is reached under such circumstances, the Charging Party will be allowed to withdraw the charge of misconduct.

b) Also prior to issuance of a Complaint, the Ethics Officer may enter into a proposed settlement agreement without the participation of an identified Charging Party. However, in such circumstances, the proposed settlement agreement shall be contingent upon the approval of the Ethics Committee. An identified Charging Party will be given notice and an opportunity to be heard by the Ethics Committee before it votes to approve or disapprove the proposed pre-Complaint settlement.

c) After issuance of a Complaint by the Ethics Officer, a settlement can be negotiated solely between the Ethics Officer and the Respondent, subject to the approval of the Ethics Committee without input from an identified Charging Party.

### **16. Resignations and Lapses of Membership**

If an AICP member who is the subject of a Charge of Misconduct resigns or allows membership to lapse prior to a final determination of the Charge (and any Complaint that may have issued), the ethics matter will be held in abeyance subject to being revived if the individual applies for reinstatement of membership within two years. If such former member, however, fails to apply for reinstatement within two years, the individual shall not be permitted to reapply for certification for a period of 10 years from the date of resignation or lapse of membership. If the Ethics Officer receives a Charge of Misconduct against a former member, the Ethics Officer shall make an effort to locate and advise the former member of the filing of the Charge and this Rule of Procedure.

### **17. Annual Report of Ethics Officer**

Prior to January 31 of each calendar year the Ethics Officer shall publish an Annual Report of all ethics activity during the preceding calendar year to the AICP Ethics Committee and the AICP Commission. The AICP Commission shall make the Annual Report available to the membership.

## **D: Planners Convicted of Serious Crimes — Automatic Suspension of Certification**

### **1. Automatic Suspension Upon Conviction for “Serious Crime”**

We acknowledge that if we are convicted of a “serious crime,” our certification and membership shall be automatically suspended indefinitely. The automatic suspension applies whether the conviction result-



ed from a plea of guilty or nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of any appeal. A “serious crime” shall include any crime a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the judgment was entered, involves false swearing, misrepresentation, fraud, willful failure to file income tax returns or to pay the tax, deceit, bribery, extortion, misappropriation, theft, conflict of interest, or an attempt to or a conspiracy or solicitation of another to commit a “serious crime.”

### **2. Duty to Notify Ethics Officer When Convicted of “Serious Crime.”**

As required by Rule of Conduct 26, in Section B of the Code, we shall notify the Ethics Officer both by receipted Certified and Regular First Class Mail if we are convicted of a “serious crime” as defined in Paragraph 1. We understand that failure to do so shall result in a delay in the commencement of the one year waiting period for filing reinstatement petitions as provided for in Paragraph 3.

### **3. Petition for Reinstatement of Certification and Membership**

Upon learning of the conviction of a Certified Planner for a serious crime, the Ethics Officer shall send the convicted individual by receipted Certified and Regular First Class Mail to the last address of record a Notice of Suspension of AICP Membership and Certification. The Notice shall advise the individual that one year from the date of the Notice, but in no event prior to release from incarceration, he or she may petition the AICP Ethics Committee for reinstatement. A Petition for Reinstatement shall be sent to the Ethics Officer, who shall forward it to the Ethics Committee. The Ethics Committee shall in its sole judgment determine whether reinstatement is appropriate and if so whether and what conditions shall be applied to such reinstatement. The Ethics Officer shall transmit the reinstatement determination to the petitioner. If the Ethics Committee denies the Petition, the Ethics Officer shall transmit the denial to the petitioner along with notice that the petitioner shall have the opportunity to file a subsequent petition after 12 months from the date of the Ethics Committee’s determination.

### **4. Publication of Conviction for Serious Crime:**

If, while we are Certified Planners, we are convicted of a serious offense, as defined in Paragraph 1, we authorize the Ethics Officer to publish our name and a description of the crime we committed in a publication of AICP and of the American Planning Association. This authority to publish shall survive the voluntary or involuntary termination or suspension of our AICP membership and certification.

## **ATTACHMENT C**

### **BY-LAWS FOR PLANNING AND ZONING COMMISSION**

#### **CITY OF COLLINSVILLE, TEXAS**

Used with the Permission of the City of Collinsville, Troy Vanoy, approved March, 2013.



By-Laws of the Planning Commission of the City of Collinsville, State of Texas, as established on March, 2001.

### **Article 1: Authority**

Authority was given to Planning and Zoning as a Board by the City Council of Collinsville, State of Texas. City of Collinsville Zoning Ordinance.

### **Article 2: Jurisdiction**

- The Jurisdiction of this board includes all property within the city limits of Collinsville, Texas, as well as any and all property within the extra-territorial jurisdiction (ETJ) of the city.
- The amount of property that falls within the ETJ is defined by State law and is based upon the current population of the city. At the present time, the ETJ for the City of Collinsville includes all area up to one-half of a mile beyond the city limits.
- All recommendations will be heard on next planned agenda and decision will be made by the Planning and Zoning board no more than 90 days from the date of the recommendation being presented to the board.

### **Article 3: Appointment and Terms of Members**

- All appointments to the Planning and Zoning board are made by the City Council.
- The Planning and Zoning board consists of five members who must be a resident either in the city limits of Collinsville, or live within five (5) miles of the city limits of Collinsville. However in the event that a bordering county line is less than five (5) miles of the Collinsville City limits, the mileage limit stops at the Grayson County line.
- Each appointment to the Planning and Zoning board is for a two year period. If a member is unable to complete their two year term, the City Council will vote on a replacement to complete that portion of the unexpired term. Members are elected in overlapping terms, i.e., in one year two positions are appointed for two year terms and in the next year three positions are appointed for two year terms.

### **Article 4: Planning Commission Officers and their Duties**

- Chairperson- presides at all hearings and meetings of the commission, assures proper order of the commission and the public in all proceedings, signs all documents of the commission, and represents the commission before legislative and administrative bodies.
- Vice-chairperson- provides orientation to new planning commission members, and, in the absence of the chairperson, performs all of the chairperson's duties. If applicable, prepares the annual report of planning commission activities and coordinates the annual meeting of the planning commission.
- Secretary- prepares all official instruments of the planning commission, records the proceedings of all hearings and meetings; together with the chairperson signs all documents of the planning commission, and assures the proper indexing of all planning commission documents as public records.
- Chairperson-Pro-Temp- where both the chairperson and vice chairperson are absent from a hear-



ing or meeting, the remainder of the members of the planning commission shall elect a chairperson-pro-temp from among their own number by majority vote.

- Treasurer (NOT APPLICABLE AT THIS TIME)- where a planning commission retains direct control over the budget for operations and staff, the treasurer shall maintain complete, accurate and orderly accounts in preparation for the annual audit, and together with the chairperson shall sign all authorizations and payments of funds.

#### **Article 5: Staff of the Commission and their Duties**

- Consultants- the planning commission may hire consultants to perform planning related activities under terms of a contract prepared by the Planning and Zoning Commission and approved by the City Council.
- Legal counsel- the county attorney or municipal director of law shall serve as legal counsel to the planning commission; prepares memoranda of law as requested by the planning commission, and reviews drafts of ordinances, resolutions, and by-laws, and their amendment.
- Director of Planning (NOT APPLICABLE AT THIS TIME)- advises the planning commission, legislative body, and chief administrative officer on matters related to planning, development, and redevelopment, coordinates and supervises the work of all other staff and consultants, prepares all documents for presentation to the planning commission, and assists the chairperson and secretary in the exercise of their duties; the director of planning or designee shall have the privilege to address the planning commission during regular meetings.
- Zoning Administrator (NOT APPLICABLE AT THIS TIME)- advises the planning commission on all matters regarding the regulation of development, prepares all related documents for presentation to the planning commission, and serves as staff to the board of zoning appeals.
- Commission staff (NOT APPLICABLE AT THIS TIME) - the planning commission may appoint other staff members to carry-out appropriate functions.

#### **Article 6: Hearings of the Planning Commission**

- Public hearing- a noticed official hearing, the express and limited purpose of which is to provide an equitable opportunity for the public to speak on matters before the planning commission, for which publicly-accessible minutes must be prepared; the planning commission may neither deliberate nor take a substantive vote during a public hearing.
- Working Session- a noticed official hearing open to the public to discuss specific matters before the commission; the intent of the working session is informational; the planning commission may neither deliberate nor take a substantive vote during a working session, however publicly-accessible minutes may be prepared.

#### **Article 7: Meetings of the Planning Commission**

- Regular meeting- a noticed official meeting, open to the public, during which the planning commission deliberates and may take substantive votes on specific terms, for which publicly-accessible



minutes will be prepared.

- Emergency meeting- in the event of a true emergency, the chairperson, with the assent of a majority of planning commission members contacted by telephone, may call an emergency meeting without notice; such meeting is open to the public; publicly-accessible minutes shall carry the specific justification for such meetings.
- Executive meeting- a noticed official meeting, closed to the public, whose topics of deliberation are truly confidential in nature; there shall be neither deliberation nor vote on agenda items before the commission.

### **Article 8: Order of a Public Hearing**

1. Sign-in sheets by agenda item, listing printed name, signature, address of persons wishing to testify, and indication of support or opposition to items.
2. Call to order and determination of quorum.
3. Presentation by commissioner (or staff if applicable) summarizing the item.
4. Testimony of agencies related to the item.
5. Presentation by the applicant.
6. Testimony of the proponents.
7. Testimony of the opponents.
8. Concluding comments of the applicant.
9. Concluding comments of the commissioner (or staff if applicable).
10. Request of the Chairperson for a motion to close the public hearing.

### **Article 9: Order of a Regular Meeting**

1. Call to order and determination of quorum.
2. Approval of the minutes of the previous meeting.
3. Items carried-over from a previous agenda:
  - a. Matters regarding the comprehensive plan
  - b. Matters regarding capital improvements
  - c. Matters regarding subdivision of land
  - d. Matters regarding zoning of land
  - e. Matters regarding other regulatory action
4. Items of the present agenda, presented in the same order as above.
5. Other business.
6. Review of the planning commission calendar and announcement of future meetings.
7. Request of the chairperson for a motion to adjourn.

### **Article 10: Form and Character of Motions**

The form and character of motions shall conform to those offered within Robert's Rules of Order, Revised, except as specified below.



- Upon review of the full public record and due deliberation among members of the planning commission, any of its members, except the chairperson, may make a substantive motion. The motion shall include not only direction (Approval, Approval with specified conditions, or Disapproval) but also a recitation of findings which support the motion.
- A second, citing compatible finding shall be required.
- Other commission members may support the motion with other compatible findings.
- A motion shall die for lack of second.
- Where a motion to disapprove an item has been defeated, a member of the planning commission initially in the opposition may make a motion to approve or approve with conditions.

#### **Article 11: Quorum and Voting Requirements**

- A majority of the members of the planning commission shall constitute a quorum.
- A majority of the members of the planning commission shall be required to pass a motion.
- All votes shall be taken by the Chairperson in random order, with the Chairperson not voting except as needed to break a tie vote.
- If a member abstains from voting, their vote shall not be counted in the determination of a motion, but it shall be recorded in the minutes as an abstaining vote.

#### **Article 12: Requirements for the Submission of Requests**

- The planning commission shall adopt standard forms for the submission of each type of request required for its consideration; such forms shall specify the schedule of submission, form and content of complementary materials, and scale and content of drawings.
- The secretary of the planning commission shall certify the completeness of submissions.
- Certified requests shall be fully noticed under requirements of law and agendized on the planning commission calendar on the same day.
- Any request disapproved by the planning commission shall not be resubmitted for a period of six months unless the Planning and Zoning Commission shall determine that a new hearing is justified prior to the expiration of the six months waiting period.
- An application for the same type of amendment shall not be received on the same property more often than once in each twelve (12) month period unless the Planning and Zoning Commission shall determine that a change of conditions justifies a new hearing prior to expiration of the twelve (12) month period.
- A fee schedule has been put in place by the City Council to recover costs associated with notice publication, request processing, agenda, and related materials duplication and distribution; moreover, the planning commission may require the applicant to post signs on the affected property, in conformance with provisions of the ordinance, and to notify adjacent property owners, tenants, and community residents of the nature of the applicant's request.



### **Article 13: Instruments and Documents of the Planning Commission**

- The official instruments of the planning commission are the record of notice, and agenda, and the minutes of hearings and meetings. Where in special cases the planning commission wishes to provide advice to the legislative body or administrative agency, it may do so by resolution.
- Any and all materials submitted to the planning commission regarding an item shall be entered into public record by a motion to “Accept for the record”.
- All notices, agendas, requests, agency or consultant letters or reports, citizen petitions, minutes of hearings and meetings, and resolutions shall constitute the documents of the planning commission and shall be indexed as a matter of public record.

### **Article 14: Administrative Calendar**

- Notice for all hearings and meetings shall conform to requirements of law.
- Terms for two year appointments begin at the first regular meeting of the Planning and Zoning board in July.
- The regular meetings of the Planning and Zoning board are normally scheduled on the fourth Tuesday of each month. Additional meetings or hearings are scheduled as needed.
- Copies of the agenda and any related documents shall be delivered to each planning commission member no less than five working days prior to a public hearing and regular meeting.

### **Article 15: Conduct of the Members of the Planning Commission**

- Members of the planning commission shall take such time as to prepare themselves for hearings and meetings.
- Any member of the planning commission absent from three consecutive regular meetings or any six regular meetings within a calendar year, without being excused by the Chairperson, may be removed for cause.
- A planning commission member with a conflict of interest in an item before the commission must state that a conflict of interest exists and withdraw from participation in the public hearing, working session, emergency meeting, or regular meeting on that item.
- The interests of that planning commission member may be represented before the planning commission by a specifically designated representative or legal agent at the public hearing or working session, and testimony entered into the public record.
- Participation of a planning commission member with a conflict of interest is cause for removal.

### **Article 16: Conduct of Persons Before the Planning Commission**

- During all public hearings and working sessions, members of the public shall be given equitable opportunity to speak. Comments should be addressed to the item before the planning commission. Where a comment is irrelevant, inflammatory, or prejudicial, the chairperson may instruct the planning commission to “disregard” the comment, which nevertheless may, at the discretion of the board, remain in the public record.



- During all regular and emergency meetings of the planning commission, the public may be present but shall remain silent unless specifically invited by the chairperson to provide comment.
- During all planning commission proceedings, members of the public have the obligation to remain in civil order. Any conduct which interferes with the equitable rights of another to provide comment or which interferes with the proper execution of commission affairs may be ruled by the chairperson as “out-of-order” and the offending person directed to remain silent. Once having been so directed, if a person persists in disruptive conduct, the chairperson may entertain a motion to “eject” the person from the planning commission hearing or meeting. Where the person fails to comply with the successful motion to eject, the chairperson may then call upon civil authority to physically remove the individual from the chamber for the duration of the hearing or deliberation on that item.

#### **Article 17: Separability**

- Should any article of the planning commission by-laws be found to be illegal, the remaining articles shall remain in effect.

#### **Article 18: Adoption and Amendment of By-Laws**

- By-Law adoption or amendment shall be made following review by the legal counsel and public hearing.
- The by-laws shall be adopted or amended upon a vote of a majority of the members of the planning commission.
- Adoption or amendment of by-laws takes effect immediately following a successful vote.

Adopted: March 2001

Amended & Approved: December 2012



## ATTACHMENT D

Used with permission from the City of Arlington, Lyndsay Mitchell, June, 2013.



### PLANNING AND ZONING COMMISSION: PARTICIPATING AT PUBLIC HEARINGS

If you are interested in giving public testimony at Planning and Zoning Commission and City Council public hearings, the following information will help you become familiar with the procedures of the City Council and Planning and Zoning Commission.

Procedures for participating at a Planning and Zoning Commission or City Council public hearing

#### Procedures for participating at a Planning and Zoning Commission or City Council public hearing are the same, unless noted below

1. Fill out a speaker card and return it to the box at the front of the Council Chamber (for the Planning and Zoning Commission) and to the desk at the entrance of the Council Chamber (for City Council).
2. The applicant or the applicant's representative is allowed 10 minutes to speak. All other speakers for or against the items are given 5 minutes. In the event a total of five or more people are registered to speak on one side of an issue, the 10 minute time is reduced to 5 minutes and the 5 minute time is reduced to 3 for that side of the hearing. The proponent is allowed 5 minutes for rebuttal.
3. Developers who wish to make presentations to an evening City Council session should contact or make arrangements with the Community Development & Planning department at 817-459-6664.

#### Procedures for Registering Support or Opposition on a Public Hearing Item

1. Fill out a speaker card and return it to the box at the front of the Council Chamber (for the Planning and Zoning Commission) and to the desk at the entrance of the Council Chamber (for City Council).
2. Citizens anticipating being absent during the public hearing may write a letter in support or opposition and have it submitted by a representative or mail it to the City Council or Planning and Zoning Commission.
3. Registration of support or opposition (individual form, group form) on any item on the agenda must be submitted before or at the public hearing on the day of the hearing.

#### Procedures for Citizens Who Wish to Speak on an Item not on the City Council Agenda

1. Fill out a speaker card and return it to the desk at the entrance of the Council Chamber.
2. Speakers are given a 5 minute time limit.



## ATTACHMENT E

Used with the permission of the City of San Gabriel, Mark Gallatin, March, 2013.



# Welcome...

## TO YOUR SAN GABRIEL PLANNING COMMISSION MEETING

**Meetings are held on:**  
Second Monday of every month at 6:30 p.m.  
City Hall Council Chambers  
425 South Mission Drive  
Second Floor

**W**elcome to the Planning Commission! We are glad you can join us. We want you to enjoy your visit, and have prepared this brochure to help explain the role and conduct of Planning Commission meetings.

### *What the Commission Does*

The **Planning Commission** consists of five volunteer citizens who are appointed by your City Council to help guide San Gabriel's growth, development, and quality of life. There are two types of actions the Planning Commission takes:



- *Legislative Actions:* The Planning Commission bears testimony and makes recommendations to the City Council on these types of applications: zone changes, general plan amendments, specific plans, and ordinance amendments. **In this role, the Commission makes recommendations only – all these actions are then referred to the City Council for action.**
- *Quasi-Judicial Actions:* The Planning Commission can approve, conditionally approve, or deny: Conditional Use Permits, Variances, Master Plans, and other types of applications. The Commission also certifies environmental impact reports. **In this role, Planning Commission decisions are usually final unless appealed.**

## How Can I Speak at a Meeting?

**I**f you would like to speak, fill out a speaker's card with your name and address, give it to the secretary and you will be called upon at the appropriate time. Written comments can be given to a planning staff any time before a public hearing is closed. For items not on the agenda, you may speak during the time set aside for public comment. Otherwise, you may speak during the public hearings.

### THE PUBLIC HEARING

Many Planning Commission matters are public hearing items, during which you as a member of the public have the opportunity to testify.



1. **ANNOUNCEMENT OF EACH ITEM:** The chairman announces each item in the order listed on the agenda. Agendas are available in the Council Chambers before each meeting.
2. **STAFF REPORT AND PRESENTATION:** The Community Development staff prepares a report regarding each proposal. A member of the staff will summarize it orally, answer any questions, and clarify issues the Commission may have. Reports are available in the Planning Division Office prior to each meeting.
3. **PRESENTATION OF EACH APPLICANT:** The applicant requesting approval of an application is given time to state his or her position in favor of the proposal.
4. **PUBLIC HEARING:** Once the Chairman invites members of the public to speak on each proposal, you may come to the podium to speak. You may also present exhibits, which become part of the City's official case file.  
**Please remember:**

- **Show courtesy and respect for everybody** by addressing all comments to the Chair and the Commission, not to the audience or staff members.
- **Keep comments brief and non-repetitive** so that everyone gets a chance to speak.
- **Always identify yourself** for the public record by stating your name and address.
- **Speak clearly** into the microphone.



5. **DISCUSSION AND VOTE BY THE COMMISSION:** After receiving all testimony, the Chairman **closes the public hearing**, and the Commission discusses each proposal. Members of the Commission may ask questions of individuals or the staff. The Commission then votes on each proposal. *The public cannot testify once public hearing has been closed.*

## *Can I Appeal Planning Commission Decisions?*

**F**or quasi-judicial actions like variances and conditional use permits, you may appeal decisions made by the Planning Commission to the City Council within 10 business days of the decision. If no appeal is filed, the decisions are made final. For legislative actions where the Planning Commission's action is only a recommendation, these will be reheard by the City Council; you may contact staff to receive notice of the Council hearing date. If you are not certain what your appeal rights are, simply ask any staff member at the meeting.

**Thank you for coming!** For more information about items on this agenda, please contact us at:

*Community Development Department*

425 South Mission Drive

San Gabriel, CA 91776

**Phone:** (626) 308-2806

**Fax:** (626) 458-2830

**Web:** [www.sangabrielcity.com](http://www.sangabrielcity.com)



## **ATTACHMENT F**

### **PUBLIC SERVICE VALUES**

From The Institute for Local Government web site: [http://www.ca-ilg.org/sites/main/files/file-attachments/Basics\\_PersOrgEthic\\_WM.pdf](http://www.ca-ilg.org/sites/main/files/file-attachments/Basics_PersOrgEthic_WM.pdf). Site accessed June 5, 2013.

#### **Public Service Values**

How do core ethical values translate into action in public service? Here are examples of what values mean in practice.

#### **Trustworthiness**

I remember that my role is first and foremost to serve the community.

I am truthful with my colleagues, the public and others.

I avoid any actions that would cause the public to question whether my decisions are based on personal interests instead of the public's interests.

I do not accept gifts or other special considerations because of my public position.

I do not knowingly use false, inaccurate or biased information to support my position.

I do not use my public position for personal gain.

I carefully consider any promise I make and then keep it.

#### **Fairness**

I make decisions based on the merits of the issues.

I honor the law's and the public's expectation that agency policies will be applied consistently.

I support the public's right to know and promote meaningful public involvement.

I support merit-based processes for the award of public employment and public contracts.

I am impartial and do not favor those who either have helped me or are in a position to do so.

I promote equality and treat all people equitably.

I excuse myself from participating in matters when my or my family's financial interests may be affected by my agency's actions.

I credit others' contributions in moving our community's interests forward.

I maintain consistent standards, but am sensitive to the need for compromise, creativity and improving existing paradigms.

#### **Responsibility**

I work to improve the quality of life in the community and promote the best interests of the public.

I promote the efficient use of agency resources.

I do not use agency resources for personal or political benefit.

I represent the official positions of the agency to the best of my ability when authorized to do so.

I explicitly state that my personal opinions do not represent the agency's position and do not allow the



inference that they do.

I take responsibility for my own actions, even when it is uncomfortable to do so.

I do not use information that I acquire in my public capacity for personal advantage.

I do not promise that which I have reason to believe is unrealistic.

I disclose suspected instances of impropriety to the appropriate authorities, but I never make false charges or charges for political or professional advantage.

I do not disclose confidential information without proper legal authorization.

I am proactive and innovative when setting goals and considering policies.

I consider the broader regional and statewide implications of the agency's decisions and issues.

I promote intelligent innovation to move forward the agency's policies and services.

### **Respect**

I treat everyone with courtesy and respect, even when we disagree.

I focus on the merits in discussions, not personality traits or other issues that might distract me from focusing on what is best for the community.

I gain value from diverse opinions and build consensus.

I follow through on commitments, keep others informed, and provide timely responses.

I am approachable and open-minded, and I convey this to others.

I listen carefully and ask questions that add value to discussions.

I involve all appropriate stakeholders in meetings affecting agency decisions.

I come to meetings and I come to them prepared.

I work to improve the quality of life in my community.

### **Compassion**

I realize that some people are sometimes intimidated by the public process and try to make their interactions as stress-free as possible.

I convey the agency's care for and commitment to its community members.

I am attuned to, and care about, the needs and concerns of the public, officials, and staff.

I recognize a responsibility to society's less fortunate.

I consider appropriate exceptions to policies when there are unintended consequences or undue burdens.

### **Loyalty**

I safeguard confidential information.

I avoid employment, contracts and other financial, political and personal interests that can conflict with my public duties.

I prioritize competing issues based on objective benefits and burdens to the public interest, not to myself, my family, friends or business associates.

I don't oppose final decisions once they have been made by the decision makers, except through inter-



American Planning Association  
**Texas Chapter**

*A Guide to Urban Planning in Texas Communities 2013*

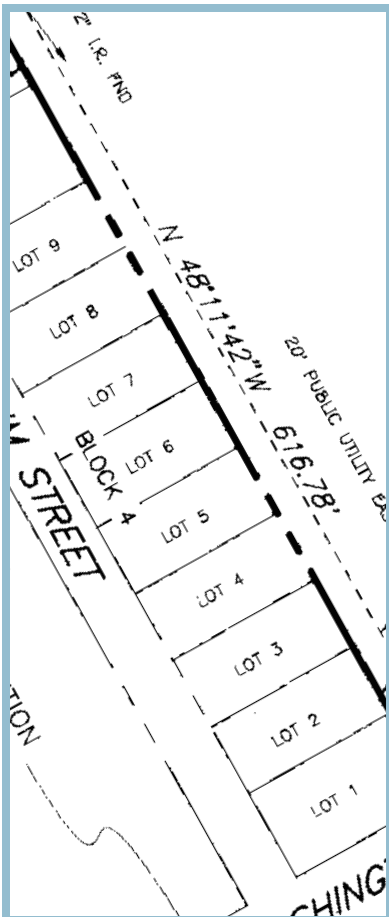
nal lines of communication.

I put loyalty to the public's interests above personal, professional and political loyalties.



## Chapter 3 Introduction to Subdivision Controls

Craig Farmer, FAICP  
William S. Dahlstrom, AICP, Esq.



This chapter delves deep into the topic of subdivision controls and platting. It provides a brief history of subdivision regulations and explains legislative and judicial events which have extended the requirement of platting. The chapter discusses when a plat is required and whom has platting authority. It describes the various types of plats--final plats; preliminary plats; master plats, concept plats, or land plats; minor plats; vacating plats; replats, residential replats; amending plats; municipal determination; and development plats. The chapter explains the platting process--determining the need, determination, plat application, plat review, and recording. The standards for review are discussed, as well as, subdivision controls, the rough proportionality requirements, and exactions. Development agreements are also explained. Finally, the chapter concludes with general guidelines for enforcements. The following attachment is available at the end of the chapter to be used as a reference guide and resource:

**Attachment:** Local Government Code, Chapter 212. Municipal Regulation of Subdivisions and Property Development



## PLATTING: AN INTRODUCTION

In many regards “planning” and “subdivision” procedures are the most important governmental processes regarding land development, yet many times the most misunderstood in purpose and application. “Platting” is typically triggered by development and “subdivision” is initiated by the division of land. In general, the platting and subdivision processes are necessitated to assure that infrastructure and utilities are provided in accordance with plans for growth. However, over the years they have become principal tools in the implementation of a city’s comprehensive plan. Through platting and subdivision processes, current administration and decision makers help guarantee the welfare of the city’s future.

Of critical importance to any planner, planning commissioner and city councilman is the familiarity with the authority bestowed to the city by State statutes. Further, these individuals must recognize the specific procedures, technical criterion, and legal standards that must be followed in order to satisfy statutory requirements. Failure to respect such could frustrate the mandate to ensure the community’s well-being.

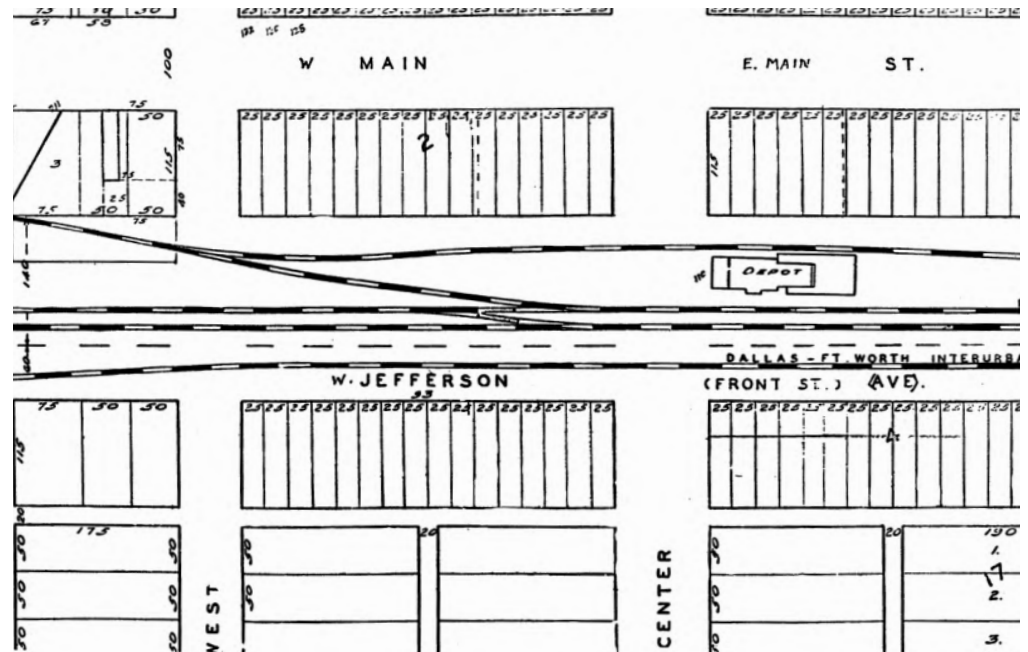
This article reviews the platting process, the purpose of platting, and the different types of plats set forth in the Texas Local Government Code (“LGC”). It also introduces legal principles that support actions taken during the platting and subdivision processes. For purposes of this article, the “planning” and “subdivision” processes will be considered to be synonymous.

## BACKGROUND AND HISTORY

There is a common misconception that subdivision platting regulations are a product of 20th “century big government” and place an undue burden on development and the cost of housing. The fact is, regulations regarding the division of land and the provision of streets, utilities and open space were in existence prior to the founding of this country and were a key part of its development. Cities like Savannah, Georgia and Philadelphia, Pennsylvania were considered “new towns” and had royal directives as to their layout and the improvements to be provided, including maps showing the street patterns and lotting. Even Washington, D.C. in 1791 had a plan map by Pierre L’Enfant

*Regulations regarding the division of land and the provision of streets, utilities and open space were in existence prior to the founding of this country and were a key part of its development.*

Right: **Historic Plats**, This hand drawn plat was from an original Texas city townsite and shows 25 foot commercial lots along the main thoroughfares and typical fifty foot residential lots outside the commercial area.



that showed street and block layouts, which are still in evidence today, over 250 years later. The continental congress itself developed regulations to guide the “surveying and disposition” of the western Territories.

In the early 1800’s even more platting regulations were developed, especially in the mid-west and far west. Excesses by land development companies created uncertainties in land titles that became a serious problem. The plat and its recording provided a mechanism to transfer title easily and to accurately document dimensions and ownership of parcels/lots. Also, plats ensured that new street right-of-way widths and alignment tied into the town’s existing street pattern and that they were approved by and dedicated to the city.

In the 1920’s and 1930’s, subdivision regulations also became an important tool for the implementation of the comprehensive plan and the new concept of zoning. The regulations also typically went further into minimum construction standards including the requirement to pave streets and provide underground water and wastewater to each lot. Today’s subdivision platting ordinances still reflect those early ordinances but have adapted to the modern development taking place today.



## WHY IS PLATTING REQUIRED?

The subdivision enabling legislation for Texas municipalities is set forth in Chapter 212 of the Texas Local Government Code, which is also referred to as the “LGC”. That chapter states that a municipality may enact subdivision regulations “to promote the health, safety, morals or general welfare of the municipality and the safe, orderly and healthful development of the municipality” (LGC Section 212.002). Typically, the platting and subdivision requirements are imposed to assure that development has adequate infrastructure. The standards for plat approval mandate approval if the plat conforms to the general plan of the city and its current and future streets, alleys, parks, playgrounds and public utility facilities and to the general plan for extension of such facilities. (LGC Section 212.010).

In the case *Lacy v. Hoff*, 633 S.W.2d 605 (Tex.Civ.App. Houston [14th Dist.] 1982, writ ref. n.r.e.), the court set forth the following purposes for platting:

1. To regulate subdivision development and implement planning policies;
2. To implement plans for orderly growth and development within the city’s boundaries and extraterritorial jurisdiction;
3. To ensure adequate provision for streets, alleys, parks and other facilities indispensable to the community;
4. To protect future purchasers from inadequate police and fire protection;
5. To insure sanitary conditions and other governmental services;
6. To require compliance with certain standards as a condition precedent to plat approval; and,
7. To provide a land registration system.

There are other practical reasons cities require platting of new development. The planner uses platting to coordinate the unrelated plans of numerous



### Who benefits from platting?

- Planners
- Engineers
- City councils
- Developers
- Lot purchasers
- Mortgage companies

individual developers. The engineer uses platting to make sure that public improvements meet city standards prior to acceptance by the city for maintenance. City councils use platting to equitably allocate the costs of public improvements serving new development between the existing taxpayers and the new lot purchasers. Responsible developers benefit from platting requirements that create a “level playing field” with no competitive advantage to substandard competitors. Finally, lot purchasers and their mortgage companies are assured that they are purchasing a buildable parcel that has been approved by the city, with paved streets and adequate water, fire protection, wastewater and drainage. All that needs to be done is obtain a building permit.

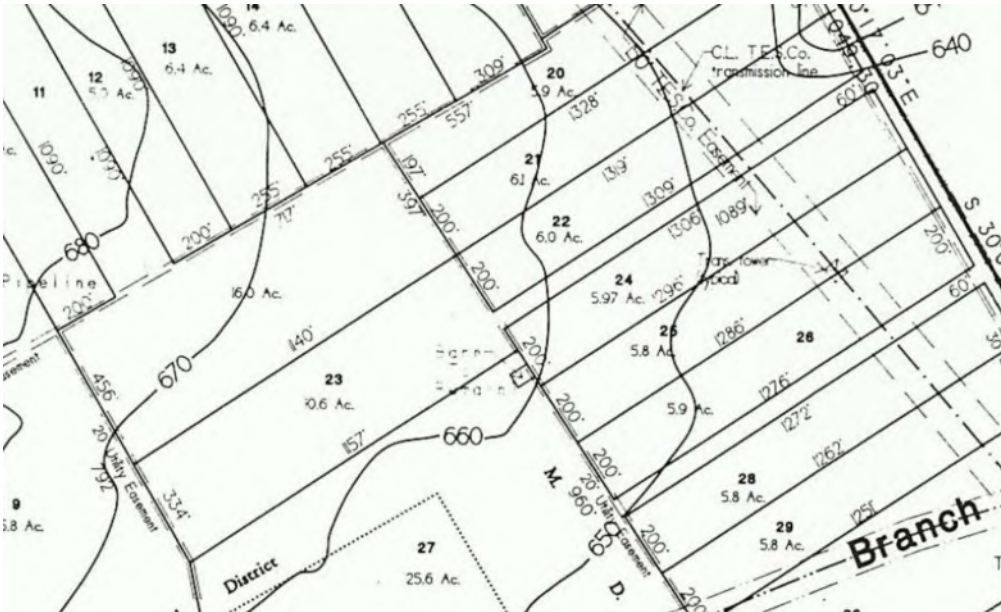
## WHEN IS A PLAT REQUIRED?

The Local Government Code sets forth the following language for establishing when a plat is required:

*“The owner of a tract of land located within the limits or in the extraterritorial jurisdiction of a municipality who divides the tract into two or more parts to lay out a subdivision of the tract, including an addition to the municipality, to lay out suburban, building, or other lots, or to lay out streets, alleys, squares, parks, or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the streets, alleys, squares, parks, or other parts must have a plat of the subdivision prepared. A division of a tract under this subsection includes a division regardless of whether it is made by using a metes and bounds description in a deed of conveyance or in a contract for deed, by using a contract of sale or other executory contract to convey, or by using any other method. A division of land under this subsection does not include a division of land into parts greater than five acres, where each part has access and no public improvement is being dedicated.” (LGC Section 212.004)*

The courts have liberally construed this language. In *City of Weslaco v. Carpenter*, 694 S.W.2d 601 (Tex. Civ. App. Corpus Christi 1985, writ ref n.r.e.), the court upheld a city’s authority to impose subdivision regulations on a mobile home rental park located in the City’s extraterritorial jurisdiction. In finding for the City, the Court stated that

*“(w)e decline to hold that the legislature intended a ‘subdivision’ to be specifically a partition of property into separate lots accompanied by a permanent transfer of ownership to the occupant of each separate lot. Rather a ‘subdivision’ of property*



Left: **Fire Acre Exemption**, One of the lots shown is a 10.6 acre lot with a 60 foot wide flag that extends over 1300 feet to the nearest public road. The home will be one-quarter mile from the closest mailbox, police and fire protection and hydrant. The proposed overall development would have had one square mile of homes with no through streets, paving or utilities.

*may refer simply to the act of partition itself, regardless of whether an actual transfer of ownership or even an intended transfer of ownership occurs.” Id. at 603.*

It is important to note that “subdivision” of land is not just the act of dividing land into lots and dedicating roads and public improvements as a part of development. The definition applies to those situations where a tract is divided into two or more parts. Cities may choose whether to apply their platting regulations to any division of land. Many cities will “grandfather” a tract division and not require platting if a property was sold prior to the adoption of the initial subdivision ordinance and has not been divided since then.

The “five acre exemption” from platting requirements mentioned in the statute where each parcel has “access and no public improvement is being dedicated” applies inside the city limits. Chapter 232 of the LGC, “County Regulation of Subdivisions” applies in the county outside the city limits and has a ten acre exemption (Section 232.0015) from subdivision requirements. Many rural developers will go to great lengths to sell land by metes and bounds and use this exemption to avoid having to dedicate rights-of-way and construct public improvements. The extreme real life example of a proposed development shown above claimed such an exemption from platting requirements.

*Cities and counties must reach agreement as to whose subdivision regulations apply in the extra-territorial jurisdiction*



Cities usually require platting as a prerequisite to the issuance of a building permit. The Court in *City of Corpus Christi v. Unitarian Church of Corpus Christi*, 436 S.W.2d 923 (Tex.Civ.App. Corpus Christi 1969, writ ref. n.r.e.), upheld the city's authority to require the filing of a plat as a prerequisite to the issuance of a building permit. However, the court further stated that the imposition of exactions and right of way dedications that were not related to the development were unenforceable if the purpose of the plat was solely to obtain a building permit.

Section 242.001 of the LGC, "Regulation of Subdivisions In Extraterritorial Jurisdiction Generally" provides that a city and a county must reach agreement as to whose subdivision regulations apply in the extra-territorial jurisdiction. Many cities incorporate the 10 acre exemption in the ETJ as part of their own ordinances to make sure the five acre exemption does not apply. Also, many cities will require properties that are exempt from having to file a plat, to file a separate instrument called a development plat with the city. (See left). Oftentimes, the advantages of not filing a plat are offset by having to prepare a development plat, and developers will choose to go ahead and follow the normal process of platting.

## PLATTING AUTHORITY

The municipal authority charged with the duty to approve plats is the municipal planning commission or, if the city has no planning commission, the governing body of the city. The city, by ordinance, has the option of requiring approval of plats by the governing body (city council) as well as by the planning commission. (LGC Section 212.006).

Section 212.0065 of the Local Government Code provides that the governing body of a city may delegate to one or more officers or employees of the city, or a utility owned by the city, the ability to administratively approve relatively simple plats:

1. Amending plats;
2. Minor plats involving four or fewer lots fronting on an existing street and not requiring the creation of any new street or the extension of municipal facilities; or
3. A replat that does not require the creation of any new street or the extension of municipal facilities. (LGC Section 212.0065)

The person designated to approve such plats may elect to present the plat to the approving authority. Further, this person does not have the authority to disapprove a plat and must refer such plat to the city's authority responsible for approving plats. *Id.*



The Local Government Code permits municipalities to adopt rules governing plats and subdivisions of land within the municipality's jurisdiction. (LGC Section 212.002) The city may extend by ordinance those subdivision platting rules to the extraterritorial jurisdiction of the city, which based on a city's population may extend one-half mile up to five miles from the current city limits. However, the city may not regulate the following in the extraterritorial jurisdiction:

1. The use of any building or property for business, industrial, residential or other purposes;
2. The bulk, height or number of buildings constructed on a particular tract of land;
3. The size of a building that can be constructed on a particular tract of land including without limitation any restriction on the ratio of building floor space to the land square footage;
4. The number of residential units that can be built per acre of land; or
5. The size, type, or method of construction of a water or wastewater facility that can be constructed to service a developed tract of land if:
  - a. The facility meets the minimum standards for water or wastewater facilities by state and federal regulatory entities; and
  - b. The developed tract of land is:
    1. Located in a county with a population of 2.8 million or more; and
    2. Served by on-site septic systems or water wells constructed before September 1, 2001, that fail to provide adequate service. (LGC Section 212.003)

## **TYPES OF PLATS**

The Local Government Code establishes different types of plats for municipal authorities as follows. There are advantages and disadvantages to each type of plat, so an understanding of these plats and their purpose is important.



**Plat or Final Plat.** The most commonly used type of plat where right of ways and easements are being dedicated with multiple lots being created. A regular plat is typically used on more complicated subdivisions of land and usually involves approval of a preliminary plat to work out details before the more expensive engineering plans and final plat are created. Compared to minor, amending and a minor-replat, this process can take longer, is more expensive to the developer and requires at least planning commission approval.

**Preliminary Plat.** Many cities require preliminary plats as part of the platting/subdivision process. Preliminary plats are products of cities' subdivision regulations and are not specifically required by the Local Government Code. They are used as a tool in the process to work out details and get preliminary approvals prior to final plat approvals.

**Master Plat, Concept Plat or Land Plan.** There are a number of names in use for a document that shows an entire large property with numerous phases of platting and development. These are also products of a particular city's subdivision ordinance and give both a city and a developer assurances as to how a property will develop and be phased. It also gives direction as to how preliminary and final plats should be prepared. Typically, on large tracts of land, a "land plan" is approved at a large scale, a preliminary plat then developed based on it and approved on a portion of the tract. A final plat is then prepared, approved and filed on an even smaller area. It is a useful platting mechanism but is usually found only in larger city ordinances. There is some merit to calling such a document a "Master, Concept or Land Plan" to avoid the confusion with a formal plat subject to state statutes.

**Minor Plat.** A minor plat involving four or fewer lots fronting on an existing street and not requiring the creation of any new street or the extension of municipal facilities may be approved by an employee of the municipality. The employee's powers are limited to approval of the plat, or presenting the plat to the appropriate municipal authority to approve the plat. The employee does not have the authority to disapprove a plat. Any plat which the employee refuses to approve must be referred to the appropriate governmental authority. (Section 212.0065)

**Vacating Plat.** Plats may be vacated in order to terminate the effectiveness of the recorded instrument. A plat may be vacated any time prior to the selling of any lots upon the approval by the appropriate governmental body and



upon recording of a signed acknowledged instrument declaring the plat is vacated. If any lots are sold in the plat, the plat may only be vacated upon the application of all owners of the lots in the plat and approved by the appropriate governmental body. Once the vacating plat is submitted to the county, the county clerk writes the word “Vacated” on the face of the plat and enters on the plat a reference to the volume and page at which the vacating instrument is recorded. (Section 212.013)

**Replat.** A subdivision or part of a subdivision may be replatted without a vacating plat if the replat is signed and acknowledged by the owners of the property being replatted, is approved after a public hearing on the matter, (emphasis added) and the replat does not attempt to amend or remove any covenants or restrictions. (Section 212.014)

**Residential Replats.** Replats for subdivisions, or parts of a subdivision, must follow special notice and hearing provisions if the subdivision of any part was, during the preceding five years, subject to zoning or deed restrictions for residential uses for not more than two residential units per lot. Notice of the replat hearing must be given the 15th day before the hearing by:

1. Publication in an official newspaper or newspaper of general circulation in the county in which the municipality is located; and,
2. By written notice to the owners of property within 200 feet of the property which is being replatted.

Such a replat must receive the affirmative vote of at least three fourths of the members of the appropriate body for approval if the replat requires a variance and the city receives written protests signed by the owners of at least 20 percent of the area of lots or land immediately adjoining the area covered by the proposed replat and extending 200 feet from that area, but within the original subdivision, are filed with the appropriate reviewing body. Streets and alleys are included in computing the percentage of land area. *Id.* at 212.015. (Note – The term “variance” is in the statute but is confusing as to whether a replat requires a three-fourths vote. The city attorney should be consulted regarding this provision)

**Amending Plat.** Amending plats are intended to correct minor errors or make minor adjustments to an existing plat. According to the Local Government Code, the appropriate reviewing agency (including a designated employee if



desired) may approve and issue an amending plat, which controls over the preceding plat, without vacation of the plat if the amending plat is signed by the applicants and is for one of the following purposes:

1. To correct an error in a course or distance showing on the preceding plat,
2. To add a course or distance that was omitted on the preceding plat;
3. To correct an error in a real property description as shown on the preceding plat;
4. To indicate monuments set after the death, disability, or retirement from practice of the engineer or surveyor responsible for city monuments;
5. To show the location or character of a monument that has been changed in location or character or that is shown incorrectly as to location or character on the preceding plat;
6. To correct any other type of scrivener or clerical error or omission previously approved by the municipal authority responsible for approving plats, including lot numbers, acreage, street names, and identification of adjacent recorded plats;
7. To correct an error in courses and distances of lot lines between two adjacent lots if:
  - a. Both lot owners join in the application for amending the plat;
  - b. Neither lot is abolished;
  - c. The amendment does not attempt to remove recorded covenants or restrictions; and,
  - d. The amendment does not have a material adverse effect on the property rights of the other owners in the plat;
8. To relocate a lot line to eliminate new encroachment of a building or other improvement on a lot line or easement;



9. To relocate one or more lot lines between one or more adjacent lots if:
  - a. The owners of all those lots join in the application for amending the plat;
  - b. The amendment does not attempt to remove recorded covenants or restrictions; and,
  - c. The amendment does not increase the number of lots; or
10. To make necessary changes to the preceding plat to create six or fewer lots in the subdivision or a part of the subdivision covered by the preceding plat if:
11. The changes do not affect applicable zoning and other regulations of the municipality;
12. The changes do not attempt to amend or remove any covenants or restrictions; and
13. The area covered by the changes is located in an area that the municipal planning commission or other appropriate governing body of a municipality has approved, after public hearing, as a residential improvement area.
14. To replat one or more lots fronting on an existing street if:
  - a. The owners of all these lots join in the application for amending the plat;
  - b. The amendment does not attempt to remove recorded covenants or restrictions;
  - c. The amendment does not increase the number of lots; and the amendment does not create or require the creation of a new street or make necessary the extension of municipal facilities. (LGC Section 212.016).

Cities are just beginning to discover that the amending plat process is a very useful tool that can be used to clean up minor platting problems, relocate lot lines or even to create more lots on an existing street for infill projects. Administrative approval by a designated employee can expedite the process and can solve platting problems discovered at the last minute at the building





permit counter.

**Municipal Determination.** Cities have the authority to define and classify divisions of land within the city’s subdivision jurisdiction. A city may determine that not all divisions of land require platting.

As the final plat document opposite shows, plats can become very complicated. There are advantages and disadvantages to each type of plat, so these plats should be considered tools in a platting toolbox, with the proper tool being selected for each job.

## DEVELOPMENT PLAT

A Development Plat is a unique type of plat specifically authorized by state statute and should not be confused with Developer Agreements which is authorized in the annexation statutes. Subchapter B of Chapter 212 of the Local Government Code authorizes cities to enact an ordinance that sets forth certain rules, general plans, and ordinances governing development plats of land within the city limits and extraterritorial jurisdiction. A development plat is required prior to the development of a tract of land in order to “promote the health, safety, morals, or general welfare of the municipality and the safe, orderly, and healthful development of the municipality.” (LGC Sections 212.041, 212.044). The unique thing about a development plat is that it is not required to be filed at the county, but may instead be filed with the city. It basically is a document to monitor the development of property as it occurs, including amendments for future additions and buildings. It should be noted that the five and ten acre platting exemptions do not apply to development plats.

The Code provides that new development cannot commence until the development plat is filed with and approved by the city. Further, if a person is required to file a subdivision plat, a development plat is not required in addition to the subdivision plat. *Id.* In the similar manner as a subdivision plat, a development plat must be approved if it conforms to:

1. The general plans, rules, and ordinances of the municipality concerning its current and future streets, sidewalks, alleys, parks, playgrounds, and public utility facilities;

The development plat must be prepared by a registered professional land surveyor as a boundary survey showing:

1. Each existing or proposed building, structure, or improvement or proposed modification of the external configuration of the building, structure, or improvement involving a change of the building, structure or improvement;
2. Each easement and right-of-way within or abutting the boundary of the surveyed property; and
3. The dimensions of each street, sidewalk, alley, square, park, or other part of the property intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the street, sidewalk, alley, square, park or other part. (LGC Section 212.045).



2. The general plans, rules, and ordinances for the extension of the municipality or the extension, improvement, or widening of its roads, streets, and public highways within the municipality and in its extraterritorial jurisdiction, taking into account access to and extension of sewer and water mains and the instrumentalities of public utilities; and
3. Any general plans, rules, or ordinances adopted under Section 212.044 (for development plats). (LGC Section 212.047).

## PROCESS

The Local Government Code details a platting process and some smaller cities chose to use that process as written. Most cities, however, have adopted a much more detailed subdivision platting ordinance that outlines a more complicated and thorough review and approval process, incorporates or references engineering and design standards, and details the participation policies for the cost of infrastructure. The platting process may be outlined as follows:

**Is a plat required?** According to Section 212.0115 of the Local Government Code, on the written request of a landowner, an entity that provides utility service or the governing body of the municipality, the municipal authority responsible for approving plats must make the following determinations regarding the land in question:

1. Whether a plat is required for the land; and,
2. If a plat is required, whether it has been prepared and whether it has been reviewed and approved by the authorities.

**Determination.** Within 20 days of a landowner request, the municipal authority must provide written certification to the requesting party of its determination informing whether a plat is required.

**Plat Application.** Section 212.008 of the Local Government Code states that a person desiring approval of a plat must apply to and file a copy of the plat with the appropriate municipal authority.

**Plat Review.** A city's subdivision rules and regulations usually set forth the



city's platting process, which generally involves the following:

1. Submission of application, plat document, filing fees and any other required documents. Many cities try to put all application requirements in the subdivision ordinance, such as number of bluelines, etc. This creates an unwieldy document that is hard to amend as requirements change. It is best to have general application requirements in the ordinance and reference the application checklists/requirements contained in administrative documents in the planning department.
2. Review for completeness by staff with written list of missing documents or information mailed to applicant within 10 business days in accordance with Section 245.002 of the LGC. Note, this is not a review for correct information, just missing information.
3. Submission of missing information by applicant within 45 calendar days. The application "expires" if the applicant fails to do so and also invalidates any vesting rights created by the application.
4. Review by staff for needed corrections of documents,
5. Comments sent to the applicant,
6. Applicant addresses comments,
7. Consideration of a preliminary plat by the appropriate authority, in which the authority approves, denies, or approves subject to conditions,
8. Preparation of final engineering plans. Again, many cities place detailed engineering and surveying standards in the platting ordinance. This also creates an extremely unwieldy ordinance that is difficult to revise or amend standards to keep up with changes in engineering practices. It is best to have very general standards in the ordinance and reference separate technical documents such as drainage manuals, engineering standards and specifications books and typical engineering detail manuals.
9. Preparation of final plat,
10. Consideration of the final plat by the appropriate governing authority within 30 days after filing, (60 days for council approval),

In *City of Hedwig Village Planning and Zoning Commission v. Howeth Investments, Inc.*, 73 S.W.3d 389 (Tex. App. – Houston [1st Dist.] 2002, rehearing overruled), the Commission argued that a party that brought action against the commission for refusal to approve a plat lacked standing because that party did not own the property in question at the time the subdivision applications were denied. The Court held, "While it is true the Local Government Code requires ownership to actually subdivide property, it does not require ownership to file an application to subdivide. . . . It is logical that a developer's decision to purchase property could be contingent on the approval of his plans to subdivide the property." *Id.* at 393. Therefore, under State law, the applicant need not be the owner; however, the signatory on the plat who divides the tract into two or more parts must be the owner (LGC Section 212.004).



11. Plat signed by the property owner(s), by the presiding officer at final approval and attested by secretary, or signed by a majority of the members of the authority,
12. Provision by applicant of recording fees, tax certificates showing taxes are current, and finally, proof that public improvements have been constructed and accepted or alternatively, surety or other required performance guarantees have been provided,
13. Plat recorded in the courthouse, and
14. Issuance of a certificate by the municipal authority to the applicant.

**Recording.** In order for a plat to be recorded, it must:

1. Describe the subdivision by metes and bounds;
2. Locate the subdivision with respect to a corner of the survey or tract or an original corner of the original survey of which it is a part;
3. State the dimension of the subdivisions and of each street, alley, square, park or other part of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the street, alley, squares, park or other part; and,
4. Contain the acknowledgment of the owner or proprietor of the tract or the owner's or proprietor's agent in the manner required for the acknowledgment of deeds. (LGC Section 212.004(b) and (c))

## **STANDARD OF REVIEW**

A municipal authority is obligated to approve a plat if:

1. It conforms to the general plan of the municipality in its current and future streets, alleys, parks, playgrounds, and public utility facilities;
2. It conforms to the general plan for the extension of the municipality and its roads, streets, and public highways within the municipality and in its extra-



territorial jurisdiction, taking into account access to an extension of sewer and water mains in the instrumentalities of public utilities;

3. A bond, if required, is filed with the municipality; and,
4. It conforms to any rules adopted by the municipality on subdivision. (LGC Section 212.010)

Further, Section 212.005 provides, “(t)he municipal authority responsible for approving plats must approve a plat or replat that is required to be prepared under this subchapter and that satisfies all applicable regulations.” (LGC 212.005). In order for a plat to be approved it must also:

1. Describe the subdivision by metes and bounds;
2. Locate the subdivision with respect to a corner of the survey or tract or an original corner of the original survey of which it is a part; and
3. State the dimensions of the subdivision and of each street, alley, square, park, or other part of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the street, alley, square, park, or other part. (LGC 212.004)

The Court in *Howeth Investments, Inc. v City of Hedwig Village* cited the standard of approval as previously established by Texas courts:

“‘[P]lat approval is a discretionary function that only a governmental unit can perform.’ Id.; accord *Woodson Lumber Co. v. City of College Station*, 752 S.W.2d 744, 747 (Tex.App.-Houston [1st Dist.] 1988, no writ). Nonetheless, in situations in which the plat applicant ‘has done all that the statutes and law demands,’ the approval of the plat ‘becomes a mere ministerial duty....’ *City of Corpus Christi v. Unitarian Church of Corpus Christi*, 436 S.W.2d 923, 927 (Tex. Civ.App.-Corpus Christi 1968, writ ref’d n.r.e.)” *Howeth Investments, Inc. v City of Hedwig Village*, 259 S.W. 3d 877, 895 Tex. App.- Houston [1st Dist.] 2008, pet. denied).

Another way of paraphrasing this court case and the statutes is if all state statutes and city ordinances and requirements are met, the city has no discretion and is obligated to approve the plat. A property owner has a right to

*If all state statutes and city ordinances and requirements are met, the city has no discretion and is obligated to approve the plat.*



plat and develop their property. Public approval bodies often confuse platting approvals with zoning, which does have discretion and cases can be denied, after a public hearing, without having to cite a reason.

The Local Government Code sets forth that the appropriate municipal authority must act on a plat within 30 days after the plat is filed or the plat is deemed approved. If a city requires approval by the city council after recommendation by the planning commission, the city council must act on a plat within 30 days after the date the plat is approved by the planning commission, or else the plat is deemed approved by the inaction. (LGC 212.009) Very few cities can review the plats and related engineering drawings, obtain revisions from the applicant's engineer and surveyor and get them approved within 30 days. Cities have developed a number of methods to deal with this statute.

1. Many ordinances have a provision that a plat is not considered "filed" until after a determination of "completeness of the application" in accordance with Chapter 245 of the LGC which could add 10 days for city review and up to 45 days for the applicant to "complete" the application.
2. Some cities use a process called "statutory denial" and place final plats on the next available agenda for a routine denial citing a list of needed corrections. They can then finalize the plat within more reasonable time frames.
3. Other cities include in the application, a waiver of the 30 day requirement by the applicant. If the applicant chooses not to sign the waiver, they process it within the 30 days which usually results in a statutory denial.
4. Finally, some cities separate the approval of the engineering drawings from the plat approval. Typically, engineering drawings need the most work and revision. Requiring approval of the engineering drawings prior to submission of the final plat allows action to be taken on the plat within the statutory 30 days.
5. These methods should be discussed with the city attorney to determine any legal concerns.

In many instances, a "preliminary plat" does not provide the level of information required for recording and, if it does not contain what the "statutes



and law” demand for recording, it is not subject to the 30-day rule. *Howeth Investments, Inc. v City of Hedwig Village*, (acknowledging that the preliminary plat in that case did not contain the information required to satisfy the recording requirements).

The Local Government Code requires that the appropriate municipal authority charged with approving plats must maintain a record of each application made and the action taken on the application by the authority. Furthermore, the authority must certify in writing the reasons taken on an application on the request of the owner of the affected tract. (LGC Section 212.009)

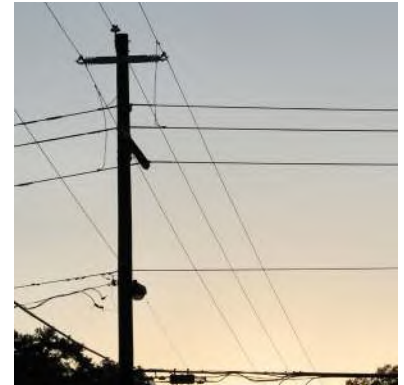
An often overlooked obligation of cities is the necessity of the municipal authority to issue to the person applying for approval a certificate stating that the plat has been reviewed and approved by the authority. Such a certificate is necessary in order to obtain service or connection with water, sewer, electricity or other utility services. (LGC Section 212.0115)

The approval of a plat does not manifest an acceptance of dedications and does not obligate the municipality to maintain or improve any dedicated parts until the appropriate municipal authority makes an actual appropriation of its dedicated parts by entry, use or improvement. If a property owner is required to construct such utilities, often times the city will accept only after the installation and approval of the utility construction by the appropriate municipal departments. (LGC Section 212.011). Many cities have a separate process for formal acceptance of the streets, easements and even public improvements with some ordinances requiring council acceptance.

## SUBDIVISION CONTROLS

A plat must be approved if it conforms to all plans for the orderly growth of the city. In order to accomplish certain plans for growth, cities impose various conditions during the platting process including the following:

1. Rights of way and easement dedication;
2. Utility construction;



*A certificate stating that the plat has been reviewed and approved by the authority is necessary in order to obtain service or connection with water, sewer, electricity or other utility services.* (LGC Section 212.0115)



3. Park dedication;
4. Impact fees assessment;
5. Other dedications; and,
6. Development agreements

## ROUGH PROPORTIONALITY OF REQUIREMENTS AND EXACTIONS



One of the most important purposes of a plat is to coordinate public and private improvements and to determine how much property is dedicated by a developer and what public improvements are required. How much of their cost is exacted from the developer and future lot purchasers and the amount of public participation is also part of the platting process. In Texas, recent legislation limits how much property dedication and the amount of development exactions that a city can burden a development with. Following is a legal discussion that outlines those limits and may need to be discussed with the city attorney and approval bodies.

Required exactions and property dedications from developers have been the topics of several significant U.S. Supreme Court cases that require a two-part test in order for an exaction to pass Constitutional muster:

1. There must be a rational nexus between the exaction and the impact from the development, and
2. The degree of the exaction must be roughly proportional to offset the impact from the development.

In *Nollan v. California Coastal Commission*, 483 U.S. 825, 107 S.Ct. 3141 (1987), a property owner attempted to obtain a building permit to rebuild a structure but was required to dedicate an access easement across a beach at one end of his property. The property owner argued that there was no connection between the need for a public access easement across the property and a building permit for his house. The U.S. Supreme Court established



the requirement that a nexus must exist between the exaction and the need to offset the impact from the proposed development. This ruling was consistent with a Texas Supreme Court decision in ***City of College Station v. Turtle Rock Corporation***, 680 S.W.2d 802 (Tex. 1984), in which the Court upheld a parkland dedication or fee in lieu of and established the nexus requirements in Texas which require that the regulation must also be adopted to accomplish a legitimate goal and must be reasonable.

The second part of the test requires that the degree of the exaction must be roughly proportional to the degree of the impact from the development. In ***Dolan v. Tigard***, 512 U.S. 374, 114 S.Ct. 2309 (1994), a property owner was required by the City to dedicate a portion of her property for improvement of a storm drainage system and property adjacent to flood plain as a bicycle/pedestrian pathway as conditions for a building permit to expand the owner's hardware store. The Court first reviewed whether the "essential nexus" existed between the "legitimate state interest" and the exactions and concluded that the nexus existed between the municipal goals of reducing flooding and traffic congestion by requiring the exactions. *Id.* at 388.

The Court then expressed that the second part of its analysis was to determine whether the degree of the exactions bore the required relationship to the projected impact of the proposed development. The Court established that the exaction must be roughly proportional to the degree of the impact from the development, basing its opinion on the general agreement among courts throughout the country that an exaction should have some reasonable relationship to the needs created by the development. *Id.* at 390.

In reaching this conclusion, the Court stated that "no precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development." *Id.* Further, the city must make an effort to quantify its finding in support of an exaction "beyond the conclusory statement that it could offset some of the traffic demand generated." *Id.* at 396.

More recently, the Texas Supreme Court addressed the application of the two-part test to a monetary, non-dedicatory exaction. In ***Town of Flower Mound v Stafford Estates***, 135S.W.3d 620, 47 Tex. Sup. Ct. J. 497, 2004 WL 1048331 (Tex. 2004), the Town's land development code required devel-



*Required exactions and property dedications must measure up to a two part test--having a rational nexus and being roughly proportional*



opers to improve perimeter streets that do not meet the Town's standards, even if the improvements are not needed due to the impact from the proposed development. As a result, the Town required Stafford Estates Limited Partnership to reconstruct an abutting asphalt road with concrete pursuant to a Code requirement even though the developer's traffic study demonstrated that the proposed subdivision would only produce about 18% of the total average traffic on the improved portion of the perimeter street. Stafford objected and requested an exception to the standard, which exception was denied. Throughout the plat review process Stafford objected, rebuilt the perimeter road, transferred the improvements, and requested reimbursement from the Town. Upon being refused reimbursement, Stafford brought a cause of action against the Town claiming that the Town had taken Stafford's property without just compensation in violation of the Texas and Federal Constitutions and Federal law.

Stafford argued that the exaction did not satisfy the two-prong test established in *Nollan v California Coastal Commission* and *Dolan v City of Tigard*. The Town responded that the test was inapplicable, arguing that the test applies only when the government exaction is the dedication of an interest in property, not when the pursued approval is conditioned on an expenditure of money. The Town also argued that Stafford's claim should be barred because it was not brought until after the perimeter road was built.

As to the constitutional claim, the court first held that there should be no difference in the taking analysis between an exaction which requires an expenditure or an improvement. The Texas Supreme Court stated that the U.S. Supreme Court did not have reason to differentiate between dedicating and non-dedicating exactions. The Town argued that non-dedicating exactions have historically been protected by constitutional taking provisions. The Court, though, stated that the issue is not whether there should be a distinction between dedicating and non-dedicating analysis, but whether the analysis should be the same. The Court saw no important distinction between a dedication of property to the public and a requirement that property already owned by the public be improved.

The Court concluded that the *Nollan/Dolan* two-prong test applied, stating:

*"We agree with the United States Supreme Court's refinement of this 'reasonable connection' analysis to Dolan's two-part 'essential nexus'/'rough proportionality'*



*test. Local government is constantly aware of the exactions imposed on various landowners for various kinds of developments. It is also aware of the impact of such development on the community over time. For these reasons, we agree with the Supreme Court that the burden should be on the government to make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development (Citing Dolan at 391)”*

The first step in determining whether the Flower Mound requirement in this case was a taking was to consider whether the objectives of the exaction advanced a legitimate government interest. The Court concluded that the safety and durability of the perimeter street was a legitimate interest and that those interests were substantially advanced by the improvements.

The second part of the analysis required the Town to make an individualized determination that the required improvements to the perimeter street were roughly proportioned to the projected impact from the proposed subdivision. The Court concluded that the Town failed to show that the improvements bore any relationship to the impact of the development on the road itself or on the Town’s roadway system, stating “On this record, conditioning development on rebuilding Simmons Road with concrete and making other changes was simply a way for the Town to extract from Stafford a benefit to which the Town was not entitled”.

The 79th Legislature enacted a bill that mandates that a developer’s portion of the costs of municipal infrastructure improvements “may not exceed the amount required for infrastructure improvements that are roughly proportionate to the proposed development.” (LGC Section 212.904). It also requires an individual determination of the impact of particular development in determining that rough proportionality.

This same bill provides a process whereby the developer may appeal a determination of costs to the governing body. The appeal of the governing body’s determination is to county or district court within 30 days of the final determination by the governing body. A municipality may not require a developer to waive this right to appeal as a condition of approval for the project. Further, a developer who prevails in an appeal is entitled to applicable costs and reasonable attorney’s fees, including expert witness fees.

#### **Testing a taking:**

- Consider whether the objectives of the exaction advance a legitimate government interest
- Determine whether the required improvements are roughly proportioned to the projected impact



## DEVELOPMENT AGREEMENTS

In the 2003 Session, the Texas Legislature adopted Section 212.171 et seq. that authorizes cities to enter agreements with the owners of property in the city's extraterritorial jurisdiction to provide for the annexation and development of such property. Specifically, a city and the owner of land in the extraterritorial jurisdiction can enter into an agreement to:

1. Guarantee the continuation of the extraterritorial status of the land and its immunity from annexation by the municipality for a period not to exceed 15 years;
2. Extend the municipality's planning authority over the land by providing for a development plan to be prepared by the landowner and approved by the municipality under which certain general uses and development of the land are authorized;
3. Authorize enforcement by the municipality of certain municipal land use (including land use controls such as zoning) and development regulations (including platting) in the same manner the regulations are enforced within the municipality's boundaries;
4. Authorize enforcement by the municipality of land use and development regulations other than those that apply within the municipality's boundaries, as may be agreed to by the landowner and the municipality;
5. Provide for infrastructure for the land, including:
  1. Streets and roads;
  2. Street and road drainage;
  3. Land drainage; and
  4. Water, wastewater, and other utility systems;
6. Authorize enforcement of environmental regulations
7. Provide for the annexation of the land as a whole or in parts and to provide for the terms of annexation, if annexation is agreed to by the parties;
8. Specify the uses and development of the land before and after annexation, if annexation is agreed to by the parties; or



9. Include other lawful terms and considerations the parties consider appropriate.

Such an agreement may be renewed or extended for successive periods not to exceed 15 years each although the total duration of the original contract and any successive renewals or extensions may not exceed 45 years.

Section 212.172 states that the agreement is binding on the municipality and the landowner and on their respective successors and assigns for the term of the agreement. However, it is not binding on, and does not create any encumbrance on title as to, any end-buyer of a fully developed and improved lot within the development, except for land use and development regulations that may apply to a specific lot. Further, such an agreement qualifies as a “permit” under Chapter 245 of the Local Government Code.

## ENFORCEMENT

Subdivision regulations may be enforced in the following manner:

1. Injunction against the violation or threatened violation of subdivision regulations by the owner;
2. Recovery of damages by the city to undertake any construction or other activity necessary to bring about compliance with the subdivision regulations;
3. Refusal to serve or connect any land with water, electricity, gas or other utility service;
4. Civil action pursuant to Chapter 54 of the Local Government Code for violation of an ordinance that establishes criteria for land subdivision; and/or,
5. An Attorney General’s action to ensure water and sewer service in certain water districts.
6. Refusal to issue any building or other required permits until compliance with the platting ordinance is obtained.

### The new provision states that a development agreement must be:

1. In writing
2. Contain an adequate legal description of the land
3. Be approved by the governing body of the municipality and the landowner
4. Be recorded in the real property records of each county in which any part of the land that is subject to the agreement is located. Id.



## CONCLUSION

Various issues remain to be determined with regard to platting. For example, the statute is silent with regard to whether the following require platting:

1. Foreclosure in which a lienholder takes a portion of a tract of land;
2. Judicial partition whereby a court divides property;
3. Release of a portion of a tract from a note;
4. The granting of an easement which may be interpreted to be a “division of property”; and
5. An exercise of eminent domain which renders properties as nonconforming.

These issues should be addressed in Chapter 212 to clarify the effect of such occurrences.

One cannot overemphasize the importance of knowing the platting process, the standards of review, the tools available, and the constitutional limitations imposed on cities. In many respects, it is the most important step in the development process. It is during this time that the city secures necessary infrastructure and assures that development is in accordance with all appropriate regulations. It is during the platting process that the developer is most affected as the result of costs, schedules, and exactions to which he is exposed during the process. It is also during the platting process that many other municipal regulations, such as zoning and utility extension, combine with state and federal law and regulations during the review and approval processes. An understanding of the city’s platting process is critical for any municipal planner and developer in order to assure the process is undertaken in accordance with the appropriate law.



## ATTACHMENT A

### LOCAL GOVERNMENT CODE

#### TITLE 7. REGULATION OF LAND USE, STRUCTURES, BUSINESSES, AND RELATED ACTIVITIES

##### SUBTITLE A. MUNICIPAL REGULATORY AUTHORITY

#### CHAPTER 212. MUNICIPAL REGULATION OF SUBDIVISIONS AND PROPERTY DEVELOPMENT

##### SUBCHAPTER A. REGULATION OF SUBDIVISIONS

Sec. 212.001. DEFINITIONS. In this subchapter:

(1) "Extraterritorial jurisdiction" means a municipality's extraterritorial jurisdiction as determined under Chapter 42, except that for a municipality that has a population of 5,000 or more and is located in a county bordering the Rio Grande River, "extraterritorial jurisdiction" means the area outside the municipal limits but within five miles of those limits.

(2) "Plat" includes a replat.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 46(b), eff. Aug. 28, 1989.

Sec. 212.002. RULES. After a public hearing on the matter, the governing body of a municipality may adopt rules governing plats and subdivisions of land within the municipality's jurisdiction to promote the health, safety, morals, or general welfare of the municipality and the safe, orderly, and healthful development of the municipality. Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

##### Sec. 212.0025. CHAPTER-WIDE PROVISION

RELATING TO REGULATION OF PLATS AND SUBDIVISIONS IN EXTRATERRITORIAL JURISDICTION. The authority of a municipality under this chapter relating to the regulation of plats or subdivisions in the municipality's extraterritorial jurisdiction is subject to any applicable limitation prescribed by an agreement under Section 242.001.

Added by Acts 2003, 78th Leg., ch. 523, Sec. 6, eff. June 20, 2003.

Sec. 212.003. EXTENSION OF RULES TO EXTRATERRITORIAL JURISDICTION. (a) The governing body of a municipality by ordinance may extend to the extraterritorial jurisdiction of the municipality the application of municipal ordinances adopted under Section 212.002 and other municipal ordinances relating to access to public roads or the pumping, extraction, and use of groundwater by persons other than retail public utilities, as defined by Section 13.002, Water Code, for the purpose of preventing the use or contact with groundwater that presents an actual or potential threat to human health. However, unless otherwise authorized by state law, in its extraterritorial jurisdiction a municipality shall not regulate:

- (1) the use of any building or property for business, industrial, residential, or other purposes;
- (2) the bulk, height, or number of buildings constructed on a particular tract of land;
- (3) the size of a building that can be constructed on a particular tract of land, including without limitation any restriction on the ratio of building floor space to the land square footage;
- (4) the number of residential units that can be built per acre of land; or
- (5) the size, type, or method of construction of a water or wastewater facility that can be constructed to serve a developed tract of land if:
  - (A) the facility meets the minimum standards



established for water or wastewater facilities by state and federal regulatory entities; and

(B) the developed tract of land is:

(i) located in a county with a population of 2.8 million or more; and

(ii) served by:

(a) on-site septic systems constructed before September 1, 2001, that fail to provide adequate services; or

(b) on-site water wells constructed before September 1, 2001, that fail to provide an adequate supply of safe drinking water.

(b) A fine or criminal penalty prescribed by the ordinance does not apply to a violation in the extraterritorial jurisdiction.

(c) The municipality is entitled to appropriate injunctive relief in district court to enjoin a violation of municipal ordinances or codes applicable in the extraterritorial jurisdiction.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 46(b), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 822, Sec. 6, eff. Sept. 1, 1989; Acts 2001, 77th Leg., ch. 68, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 731, Sec. 3, eff. Sept. 1, 2003.

**Sec. 212.004. PLAT REQUIRED.** (a) The owner of a tract of land located within the limits or in the extraterritorial jurisdiction of a municipality who divides the tract in two or more parts to lay out a subdivision of the tract, including an addition to a municipality, to lay out suburban, building, or other lots, or to lay out streets, alleys, squares, parks, or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the streets, alleys, squares, parks, or other parts must have a plat of the subdivision prepared. A division of a tract under this subsection includes a division regardless of whether it is made by using a metes and bounds description in a deed

of conveyance or in a contract for a deed, by using a contract of sale or other executory contract to convey, or by using any other method. A division of land under this subsection does not include a division of land into parts greater than five acres, where each part has access and no public improvement is being dedicated.

(b) To be recorded, the plat must:

(1) describe the subdivision by metes and bounds;

(2) locate the subdivision with respect to a corner of the survey or tract or an original corner of the original survey of which it is a part; and

(3) state the dimensions of the subdivision and of each street, alley, square, park, or other part of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the street, alley, square, park, or other part.

(c) The owner or proprietor of the tract or the owner's or proprietor's agent must acknowledge the plat in the manner required for the acknowledgment of deeds.

(d) The plat must be filed and recorded with the county clerk of the county in which the tract is located.

(e) The plat is subject to the filing and recording provisions of Section 12.002, Property Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 46(b), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 624, Sec. 3.02, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 1046, Sec. 1, eff. Aug. 30, 1993.

**Sec. 212.0045. EXCEPTION TO PLAT REQUIREMENT: MUNICIPAL DETERMINATION.**

(a) To determine whether specific divisions of land are required to be platted, a municipality may define and classify the divisions. A municipality need not require platting for every division of land otherwise within the scope of this sub-



chapter.

(b) In lieu of a plat contemplated by this subchapter, a municipality may require the filing of a development plat under Subchapter B if that subchapter applies to the municipality.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 46(b), eff. Aug. 28, 1989.

**Sec. 212.0046. EXCEPTION TO PLAT REQUIREMENT: CERTAIN PROPERTY ABUTTING AIRCRAFT RUNWAY.** An owner of a tract of land is not required to prepare a plat if the land:

- (1) is located wholly within a municipality with a population of 5,000 or less;
- (2) is divided into parts larger than 2-1/2 acres; and
- (3) abuts any part of an aircraft runway.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 46(b), eff. Aug. 28, 1989.

**Sec. 212.005. APPROVAL BY MUNICIPALITY REQUIRED.** The municipal authority responsible for approving plats must approve a plat or replat that is required to be prepared under this subchapter and that satisfies all applicable regulations.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 46(b), eff. Aug. 28, 1989; Acts 1993, 73rd Leg., ch. 1046, Sec. 2, eff. Aug. 30, 1993.

**Sec. 212.006. AUTHORITY RESPONSIBLE FOR APPROVAL GENERALLY.** (a) The municipal authority responsible for approving plats under this subchapter is the municipal planning commission or, if the municipality has no planning commission, the governing body of the municipality. The governing body by ordinance may require the approval of the governing body in addition to that of the municipal planning commission.

(b) In a municipality with a population of more than 1.5 million, at least two members of the municipal planning commission, but not more than 25 percent of the membership of the commission, must be residents of the area outside the limits of the municipality and in which the municipality exercises its authority to approve subdivision plats.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 46(b), eff. Aug. 28, 1989.

**Sec. 212.0065. DELEGATION OF APPROVAL RESPONSIBILITY.** (a) The governing body of a municipality may delegate to one or more officers or employees of the municipality or of a utility owned or operated by the municipality the ability to approve:

- (1) amending plats described by Section 212.016;
- (2) minor plats or replats involving four or fewer lots fronting on an existing street and not requiring the creation of any new street or the extension of municipal facilities; or
- (3) a replat under Section 212.0145 that does not require the creation of any new street or the extension of municipal facilities.

(b) The designated person or persons may, for any reason, elect to present the plat for approval to the municipal authority responsible for approving plats.

(c) The person or persons shall not disapprove the plat and shall be required to refer any plat which the person or persons refuse to approve to the municipal authority responsible for approving plats within the time period specified in Section 212.009.

Added by Acts 1989, 71st Leg., ch. 345, Sec. 1, eff. Aug. 28, 1989. Amended by Acts 1995, 74th Leg., ch. 92, Sec. 1, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 566, Sec. 1, eff. June 2, 1997; Acts 1999, 76th Leg., ch. 1130, Sec. 2, eff. June 18, 1999;



Acts 2001, 77th Leg., ch. 402, Sec. 13, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 316, Sec. 1, eff. June 15, 2007.

Sec. 212.007. **AUTHORITY RESPONSIBLE FOR APPROVAL: TRACT IN EXTRATERRITORIAL JURISDICTION OF MORE THAN ONE MUNICIPALITY.** (a) For a tract located in the extraterritorial jurisdiction of more than one municipality, the authority responsible for approving a plat under this subchapter is the authority in the municipality with the largest population that under Section 212.006 has approval responsibility. The governing body of that municipality may enter into an agreement with any other affected municipality or with any other municipality having area that, if unincorporated, would be in the extraterritorial jurisdiction of the governing body's municipality delegating to the other municipality the responsibility for plat approval within specified parts of the affected area.

(b) Either party to an agreement under Subsection (a) may revoke the agreement after 20 years have elapsed after the date of the agreement unless the parties agree to a shorter period.

(c) A copy of the agreement shall be filed with the county clerk.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 212.008. **APPLICATION FOR APPROVAL.** A person desiring approval of a plat must apply to and file a copy of the plat with the municipal planning commission or, if the municipality has no planning commission, the governing body of the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 212.009. **APPROVAL PROCEDURE.** (a) The municipal authority responsible for approving plats shall act on a plat within 30 days after the date the plat is filed. A plat is considered approved by the municipal authority unless it is disapproved within that period.

(b) If an ordinance requires that a plat be approved by the governing body of the municipality in addition to the planning commission, the governing body shall act on the plat within 30 days after the date the plat is approved by the planning commission or is considered approved by the inaction of the commission. A plat is considered approved by the governing body unless it is disapproved within that period.

(c) If a plat is approved, the municipal authority giving the approval shall endorse the plat with a certificate indicating the approval. The certificate must be signed by:

(1) the authority's presiding officer and attested by the authority's secretary; or

(2) a majority of the members of the authority.

(d) If the municipal authority responsible for approving plats fails to act on a plat within the prescribed period, the authority on request shall issue a certificate stating the date the plat was filed and that the authority failed to act on the plat within the period. The certificate is effective in place of the endorsement required by Subsection (c).

(e) The municipal authority responsible for approving plats shall maintain a record of each application made to the authority and the authority's action taken on it. On request of an owner of an affected tract, the authority shall certify the reasons for the action taken on an application. Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 212.010. **STANDARDS FOR APPROVAL.** (a) The municipal authority responsible for approv-



ing plats shall approve a plat if:

- (1) it conforms to the general plan of the municipality and its current and future streets, alleys, parks, playgrounds, and public utility facilities;
- (2) it conforms to the general plan for the extension of the municipality and its roads, streets, and public highways within the municipality and in its extraterritorial jurisdiction, taking into account access to and extension of sewer and water mains and the instrumentalities of public utilities;
- (3) a bond required under Section 212.0106, if applicable, is filed with the municipality; and
- (4) it conforms to any rules adopted under Section 212.002.

(b) However, the municipal authority responsible for approving plats may not approve a plat unless the plat and other documents have been prepared as required by Section 212.0105, if applicable. Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 624, Sec. 3.01, eff. Sept. 1, 1989.

**Sec. 212.0101. ADDITIONAL REQUIREMENTS: USE OF GROUNDWATER.** (a) If a person submits a plat for the subdivision of a tract of land for which the source of the water supply intended for the subdivision is groundwater under that land, the municipal authority responsible for approving plats by ordinance may require the plat application to have attached to it a statement that:

- (1) is prepared by an engineer licensed to practice in this state or a geoscientist licensed to practice in this state; and
  - (2) certifies that adequate groundwater is available for the subdivision.
- (b) The Texas Commission on Environmental Quality by rule shall establish the appropriate form and content of a certification to be attached to a plat application under this section.
- (c) The Texas Commission on Environmental Quality, in consultation with the Texas Water

Development Board, by rule shall require a person who submits a plat under Subsection (a) to transmit to the Texas Water Development Board and any groundwater conservation district that includes in the district's boundaries any part of the subdivision information that would be useful in:

- (1) performing groundwater conservation district activities;
- (2) conducting regional water planning;
- (3) maintaining the state's groundwater database; or
- (4) conducting studies for the state related to groundwater.

Added by Acts 1999, 76th Leg., ch. 460, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 99, Sec. 2(a), eff. Sept. 1, 2001.

Amended by:  
Acts 2007, 80th Leg., R.S., Ch. 515, Sec. 1, eff. September 1, 2007.  
Acts 2007, 80th Leg., R.S., Ch. 1430, Sec. 2.29, eff. September 1, 2007.

**Sec. 212.0105. WATER AND SEWER REQUIREMENTS IN CERTAIN COUNTIES.** (a) This section applies only to a person who:

- (1) is the owner of a tract of land in a county in which a political subdivision that is eligible for and has applied for financial assistance through Subchapter K, Chapter 17, Water Code;
- (2) divides the tract in a manner that creates any lots that are intended for residential purposes and are five acres or less; and
- (3) is required under this subchapter to have a plat prepared for the subdivision.

(b) The owner of the tract:

- (1) must:
  - (A) include on the plat or have attached to the plat a document containing a description of the water and sewer service facilities that will be constructed or installed to service the subdivision



and a statement of the date by which the facilities will be fully operable; and

(B) have attached to the plat a document prepared by an engineer registered to practice in this state certifying that the water and sewer service facilities described by the plat or on the document attached to the plat are in compliance with the model rules adopted under Section 16.343, Water Code; or

(2) must:

(A) include on the plat a statement that water and sewer service facilities are unnecessary for the subdivision; and

(B) have attached to the plat a document prepared by an engineer registered to practice in this state certifying that water and sewer service facilities are unnecessary for the subdivision under the model rules adopted under Section 16.343, Water Code.

(c) The governing body of the municipality may extend, beyond the date specified on the plat or on the document attached to the plat, the date by which the water and sewer service facilities must be fully operable if the governing body finds the extension is reasonable and not contrary to the public interest. If the facilities are fully operable before the expiration of the extension period, the facilities are considered to have been made fully operable in a timely manner. An extension is not reasonable if it would allow a residence in the subdivision to be inhabited without water or sewer services.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 3.01, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 422, Sec. 7, eff. Sept. 1, 1991.

Amended by:

Acts 2005, 79th Leg., Ch. 927, Sec. 13, eff. September 1, 2005.

Sec. 212.0106. BOND REQUIREMENTS AND OTHER FINANCIAL GUARANTEES IN CER-

TAIN COUNTIES. (a) This section applies only to a person described by Section 212.0105(a).

(b) If the governing body of a municipality in a county described by Section 212.0105(a)(1)(A) or (B) requires the owner of the tract to execute a bond, the owner must do so before subdividing the tract unless an alternative financial guarantee is provided under Subsection (c). The bond must: (1) be payable to the presiding officer of the governing body or to the presiding officer's successors in office;

(2) be in an amount determined by the governing body to be adequate to ensure the proper construction or installation of the water and sewer service facilities to service the subdivision but not to exceed the estimated cost of the construction or installation of the facilities;

(3) be executed with sureties as may be approved by the governing body;

(4) be executed by a company authorized to do business as a surety in this state if the governing body requires a surety bond executed by a corporate surety; and

(5) be conditioned that the water and sewer service facilities will be constructed or installed:

(A) in compliance with the model rules adopted under Section 16.343, Water Code; and

(B) within the time stated on the plat or on the document attached to the plat for the subdivision or within any extension of that time.

(c) In lieu of the bond an owner may deposit cash, a letter of credit issued by a federally insured financial institution, or other acceptable financial guarantee.

(d) If a letter of credit is used, it must:

(1) list as the sole beneficiary the presiding officer of the governing body; and

(2) be conditioned that the water and sewer service facilities will be constructed or installed:

(A) in compliance with the model rules adopted under Section 16.343, Water Code; and



(B) within the time stated on the plat or on the document attached to the plat for the subdivision or within any extension of that time.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 3.01, eff. Sept. 1, 1989.

Sec. 212.011. EFFECT OF APPROVAL ON DEDICATION. (a) The approval of a plat is not considered an acceptance of any proposed dedication and does not impose on the municipality any duty regarding the maintenance or improvement of any dedicated parts until the appropriate municipal authorities make an actual appropriation of the dedicated parts by entry, use, or improvement.

(b) The disapproval of a plat is considered a refusal by the municipality of the offered dedication indicated on the plat.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 212.0115. CERTIFICATION REGARDING COMPLIANCE WITH PLAT REQUIREMENTS.

(a) For the purposes of this section, land is considered to be within the jurisdiction of a municipality if the land is located within the limits or in the extraterritorial jurisdiction of the municipality.

(b) On the approval of a plat by the municipal authority responsible for approving plats, the authority shall issue to the person applying for the approval a certificate stating that the plat has been reviewed and approved by the authority.

(c) On the written request of an owner of land, a purchaser of real property under a contract for deed, executory contract, or other executory conveyance, an entity that provides utility service, or the governing body of the municipality, the municipal authority responsible for approving plats shall make the following determinations regarding the owner's land or the land in which the en-

tity or governing body is interested that is located within the jurisdiction of the municipality:

(1) whether a plat is required under this subchapter for the land; and

(2) if a plat is required, whether it has been prepared and whether it has been reviewed and approved by the authority.

(d) The request made under Subsection (c) must identify the land that is the subject of the request.

(e) If the municipal authority responsible for approving plats determines under Subsection (c) that a plat is not required, the authority shall issue to the requesting party a written certification of that determination. If the authority determines that a plat is required and that the plat has been prepared and has been reviewed and approved by the authority, the authority shall issue to the requesting party a written certification of that determination.

(f) The municipal authority responsible for approving plats shall make its determination within 20 days after the date it receives the request under Subsection (c) and shall issue the certificate, if appropriate, within 10 days after the date the determination is made.

(g) If both the municipal planning commission and the governing body of the municipality have authority to approve plats, only one of those entities need make the determinations and issue the certificates required by this section.

(h) The municipal authority responsible for approving plats may adopt rules it considers necessary to administer its functions under this section.

(i) The governing body of a municipality may delegate, in writing, the ability to perform any of the responsibilities under this section to one or more persons. A binding decision of the person or persons under this subsection is appealable to the municipal authority responsible for approving plats.



Added by Acts 1989, 71st Leg., ch. 1, Sec. 46(b), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 624, Sec. 3.03, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 567, Sec. 1, eff. June 2, 1997. Amended by: Acts 2005, 79th Leg., Ch. 978, Sec. 1, eff. September 1, 2005.

**Sec. 212.012. CONNECTION OF UTILITIES.**

(a) Except as provided by Subsection (c), (d), or (j), an entity described by Subsection (b) may not serve or connect any land with water, sewer, electricity, gas, or other utility service unless the entity has been presented with or otherwise holds a certificate applicable to the land issued under Section 212.0115.

(b) The prohibition established by Subsection (a) applies only to:

- (1) a municipality and officials of a municipality that provides water, sewer, electricity, gas, or other utility service;
- (2) a municipally owned or municipally operated utility that provides any of those services;
- (3) a public utility that provides any of those services;
- (4) a water supply or sewer service corporation organized and operating under Chapter 67, Water Code, that provides any of those services;
- (5) a county that provides any of those services; and
- (6) a special district or authority created by or under state law that provides any of those services.

(c) An entity described by Subsection (b) may serve or connect land with water, sewer, electricity, gas, or other utility service regardless of whether the entity is presented with or otherwise holds a certificate applicable to the land issued under Section 212.0115 if:

(1) the land is covered by a development plat approved under Subchapter B or under an ordi-

nance or rule relating to the development plat;

(2) the land was first served or connected with service by an entity described by Subsection (b) (1), (b)(2), or (b)(3) before September 1, 1987; or

(3) the land was first served or connected with service by an entity described by Subsection (b) (4), (b)(5), or (b)(6) before September 1, 1989.

(d) In a county to which Subchapter B, Chapter 232, applies, an entity described by Subsection (b) may serve or connect land with water, sewer, electricity, gas, or other utility service that is located in the extraterritorial jurisdiction of a municipality regardless of whether the entity is presented with or otherwise holds a certificate applicable to the land issued under Section 212.0115, if the municipal authority responsible for approving plats issues a certificate stating that:

(1) the subdivided land:

(A) was sold or conveyed by a subdivider by any means of conveyance, including a contract for deed or executory contract, before:

(i) September 1, 1995, in a county defined under Section 232.022(a)(1);

(ii) September 1, 1999, in a county defined under Section 232.022(a)(1) if, on August 31, 1999, the subdivided land was located in the extraterritorial jurisdiction of a municipality as determined by Chapter 42; or

(iii) September 1, 2005, in a county defined under Section 232.022(a)(2);

(B) has not been subdivided after September 1, 1995, September 1, 1999, or September 1, 2005, as applicable under Paragraph (A);

(C) is the site of construction of a residence, evidenced by at least the existence of a completed foundation, that was begun on or before:

(i) May 1, 2003, in a county defined under Section 232.022(a)(1); or

(ii) September 1, 2005, in a county defined under Section 232.022(a)(2); and

(D) has had adequate sewer services installed



to service the lot or dwelling, as determined by an authorized agent responsible for the licensing or permitting of on-site sewage facilities under Chapter 366, Health and Safety Code;

(2) the subdivided land is a lot of record as defined by Section 232.021(6-a) that is located in a county defined by Section 232.022(a)(1) and has adequate sewer services installed that are fully operable to service the lot or dwelling, as determined by an authorized agent responsible for the licensing or permitting of on-site sewage facilities under Chapter 366, Health and Safety Code; or

(3) the land was not subdivided after September 1, 1995, in a county defined under Section 232.022(a)(1), or September 1, 2005, in a county defined under Section 232.022(a)(2), and:

(A) water service is available within 750 feet of the subdivided land; or

(B) water service is available more than 750 feet from the subdivided land and the extension of water service to the land may be feasible, subject to a final determination by the water service provider.

(e) An entity described by Subsection (b) may provide utility service to land described by Subsection (d)(1), (2), or (3) only if the person requesting service:

(1) is not the land's subdivider or the subdivider's agent; and

(2) provides to the entity a certificate described by Subsection (d).

(f) A person requesting service may obtain a certificate under Subsection (d)(1), (2), or (3) only if the person is the owner or purchaser of the subdivided land and provides to the municipal authority responsible for approving plats documentation containing:

(1) a copy of the means of conveyance or other documents that show that the land was sold or conveyed by a subdivider before September 1, 1995, before September 1, 1999, or before Sep-

tember 1, 2005, as applicable under Subsection (d);

(2) for a certificate issued under Subsection (d)(1), a notarized affidavit by the person requesting service that states that construction of a residence on the land, evidenced by at least the existence of a completed foundation, was begun on or before May 1, 2003, in a county defined by Section 232.022(a)(1) or September 1, 2005, in a county defined by Section 232.022(a)(2), and the request for utility connection or service is to connect or serve a residence described by Subsection (d)(1)(C);

(3) a notarized affidavit by the person requesting service that states that the subdivided land has not been further subdivided after September 1, 1995, September 1, 1999, or September 1, 2005, as applicable under Subsection (d); and

(4) evidence that adequate sewer service or facilities have been installed and are fully operable to service the lot or dwelling from an entity described by Subsection (b) or the authorized agent responsible for the licensing or permitting of on-site sewage facilities under Chapter 366, Health and Safety Code.

(g) On request, the municipal authority responsible for approving plats shall provide to the attorney general and any appropriate local, county, or state law enforcement official a copy of any document on which the municipal authority relied in determining the legality of providing service.

(h) This section may not be construed to abrogate any civil or criminal proceeding or prosecution or to waive any penalty against a subdivider for a violation of a state or local law, regardless of the date on which the violation occurred.

(i) In this section:

(1) "Foundation" means the lowest division of a residence, usually consisting of a masonry slab or a pier and beam structure, that is partly or wholly below the surface of the ground and on which the



residential structure rests.

(2) “Subdivider” has the meaning assigned by Section 232.021.

(j) Except as provided by Subsection (k), this section does not prohibit a water or sewer utility from providing in a county defined by Section 232.022(a)(1) water or sewer utility connection or service to a residential dwelling that:

(1) is provided water or wastewater facilities under or in conjunction with a federal or state funding program designed to address inadequate water or wastewater facilities in colonias or to residential lots located in a county described by Section 232.022(a)(1);

(2) is an existing dwelling identified as an eligible recipient for funding by the funding agency providing adequate water and wastewater facilities or improvements;

(3) when connected, will comply with the minimum state standards for both water and sewer facilities and as prescribed by the model subdivision rules adopted under Section 16.343, Water Code; and

(4) is located in a project for which the municipality with jurisdiction over the project or the approval of plats within the project area has approved the improvement project by order, resolution, or interlocal agreement under Chapter 791, Government Code.

(k) A utility may not serve any subdivided land with water utility connection or service under Subsection (j) unless the entity receives a determination that adequate sewer services have been installed to service the lot or dwelling from the municipal authority responsible for approving plats, an entity described by Subsection (b), or the authorized agent responsible for the licensing or permitting of on-site sewage facilities under Chapter 366, Health and Safety Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec.

46(b), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 624, Sec. 3.01, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 18.34, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 404, Sec. 2, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 708, Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1239, Sec. 1, eff. June 19, 2009.

Sec. 212.013. VACATING PLAT. (a) The proprietors of the tract covered by a plat may vacate the plat at any time before any lot in the plat is sold. The plat is vacated when a signed, acknowledged instrument declaring the plat vacated is approved and recorded in the manner prescribed for the original plat.

(b) If lots in the plat have been sold, the plat, or any part of the plat, may be vacated on the application of all the owners of lots in the plat with approval obtained in the manner prescribed for the original plat.

(c) The county clerk shall write legibly on the vacated plat the word “Vacated” and shall enter on the plat a reference to the volume and page at which the vacating instrument is recorded.

(d) On the execution and recording of the vacating instrument, the vacated plat has no effect. Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 212.014. REPLATTING WITHOUT VACATING PRECEDING PLAT. A replat of a subdivision or part of a subdivision may be recorded and is controlling over the preceding plat without vacation of that plat if the replat:

(1) is signed and acknowledged by only the owners of the property being replatted;

(2) is approved, after a public hearing on the



matter at which parties in interest and citizens have an opportunity to be heard, by the municipal authority responsible for approving plats; and (3) does not attempt to amend or remove any covenants or restrictions.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

**Sec. 212.0145. REPLATTING WITHOUT VACATING PRECEDING PLAT: CERTAIN SUBDIVISIONS.** (a) A replat of a part of a subdivision may be recorded and is controlling over the preceding plat without vacation of that plat if the replat:

(1) is signed and acknowledged by only the owners of the property being replatted; and

(2) involves only property:

(A) of less than one acre that fronts an existing street; and

(B) that is owned and used by a nonprofit corporation established to assist children in at-risk situations through volunteer and individualized attention.

(b) An existing covenant or restriction for property that is replatted under this section does not have to be amended or removed if:

(1) the covenant or restriction was recorded more than 50 years before the date of the replat; and

(2) the replatted property has been continuously used by the nonprofit corporation for at least 10 years before the date of the replat.

(c) Sections 212.014 and 212.015 do not apply to a replat under this section.

Added by Acts 1999, 76th Leg., ch. 1130, Sec. 1, eff. June 18, 1999.

**Sec. 212.0146. REPLATTING WITHOUT VACATING PRECEDING PLAT: CERTAIN MUNICIPALITIES.** (a) This section applies only to a replat of a subdivision or a part of a subdivision located in a municipality or the extraterritorial

jurisdiction of a municipality with a population of 1.9 million or more.

(b) A replat of a subdivision or part of a subdivision may be recorded and is controlling over the preceding plat without vacation of that plat if:

(1) the replat is signed and acknowledged by each owner and only the owners of the property being replatted;

(2) the municipal authority responsible for approving plats holds a public hearing on the matter at which parties in interest and citizens have an opportunity to be heard;

(3) the replat does not amend, remove, or violate, or have the effect of amending, removing, or violating, any covenants or restrictions that are contained or referenced in a dedicatory instrument recorded in the real property records separately from the preceding plat or replat;

(4) the replat does not attempt to amend, remove, or violate, or have the effect of amending, removing, or violating, any existing public utility easements without the consent of the affected utility companies; and

(5) the municipal authority responsible for approving plats approves the replat after determining that the replat complies with this subchapter and rules adopted under Section 212.002 and this section in effect at the time the application for the replat is filed.

(c) The governing body of a municipality may adopt rules governing replats, including rules that establish criteria under which covenants, restrictions, or plat notations that are contained only in the preceding plat or replat without reference in any dedicatory instrument recorded in the real property records separately from the preceding plat or replat may be amended or removed.

Added by Acts 2007, 80th Leg., R.S., Ch. 654, Sec. 1, eff. June 15, 2007.

**Sec. 212.015. ADDITIONAL REQUIREMENTS**



FOR CERTAIN REPLATS. (a) In addition to compliance with Section 212.014, a replat without vacation of the preceding plat must conform to the requirements of this section if:

- (1) during the preceding five years, any of the area to be replatted was limited by an interim or permanent zoning classification to residential use for not more than two residential units per lot; or
- (2) any lot in the preceding plat was limited by deed restrictions to residential use for not more than two residential units per lot.

(b) Notice of the hearing required under Section 212.014 shall be given before the 15th day before the date of the hearing by:

- (1) publication in an official newspaper or a newspaper of general circulation in the county in which the municipality is located; and
- (2) by written notice, with a copy of Subsection (c) attached, forwarded by the municipal authority responsible for approving plats to the owners of lots that are in the original subdivision and that are within 200 feet of the lots to be replatted, as indicated on the most recently approved municipal tax roll or in the case of a subdivision within the extraterritorial jurisdiction, the most recently approved county tax roll of the property upon which the replat is requested. The written notice may be delivered by depositing the notice, properly addressed with postage prepaid, in a post office or postal depository within the boundaries of the municipality.

(c) If the proposed replat requires a variance and is protested in accordance with this subsection, the proposed replat must receive, in order to be approved, the affirmative vote of at least three-fourths of the members present of the municipal planning commission or governing body, or both. For a legal protest, written instruments signed by the owners of at least 20 percent of the area of the lots or land immediately adjoining the area covered by the proposed replat and extending 200

feet from that area, but within the original subdivision, must be filed with the municipal planning commission or governing body, or both, prior to the close of the public hearing.

(d) In computing the percentage of land area under Subsection (c), the area of streets and alleys shall be included.

(e) Compliance with Subsections (c) and (d) is not required for approval of a replat of part of a preceding plat if the area to be replatted was designated or reserved for other than single or duplex family residential use by notation on the last legally recorded plat or in the legally recorded restrictions applicable to the plat.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 345, Sec. 2 to 5, eff. Aug. 28, 1989; Acts 1993, 73rd Leg., ch. 1046, Sec. 3, eff. Aug. 30, 1993.

Sec. 212.0155. ADDITIONAL REQUIREMENTS FOR CERTAIN REPLATS AFFECTING A SUBDIVISION GOLF COURSE. (a) This section applies to land located wholly or partly:

- (1) in the corporate boundaries of a municipality if the municipality:
  - (A) has a population of more than 50,000; and
  - (B) is located wholly or partly in:
    - (i) a county with a population of more than three million;
    - (ii) a county with a population of more than 400,000 that is adjacent to a county with a population of more than three million; or
    - (iii) a county with a population of more than 1.4 million:
      - (a) in which two or more municipalities with a population of 300,000 or more are primarily located; and
      - (b) that is adjacent to a county with a population of more than two million; or
- (2) in the corporate boundaries or extraterritorial jurisdiction of a municipality with a population of



1.9 million or more.

(b) In this section:

(1) “Management certificate” means a certificate described by Section 209.004, Property Code.

(2) “New plat” means a development plat, replat, amending plat, or vacating plat that would change the existing plat or the current use of the land that is the subject of the new plat.

(3) “Property owners’ association” and “restrictive covenant” have the meanings assigned by Section 202.001, Property Code.

(4) “Restrictions,” “subdivision,” and “owner” have the meanings assigned by Section 201.003, Property Code.

(5) “Subdivision golf course” means an area of land:

(A) that was originally developed as a golf course or a country club within a common scheme of development for a predominantly residential single-family development project;

(B) that was at any time in the seven years preceding the date on which a new plat for the land is filed:

(i) used as a golf course or a country club;

(ii) zoned as a community facility;

(iii) benefited from restrictive covenants on adjoining homeowners; or

(iv) designated on a recorded plat as a golf course or a country club; and

(C) that is not separated entirely from the predominantly residential single-family development project by a public street.

(c) In addition to any other requirement of this chapter, a new plat must conform to the requirements of this section if any of the area subject to the new plat is a subdivision golf course. The exception in Section 212.004(a) excluding divisions of land into parts greater than five acres for platting requirements does not apply to a subdivision golf course.

(d) A new plat that is subject to this section may

not be approved until each municipal authority reviewing the new plat conducts a public hearing on the matter at which the parties in interest and citizens have an adequate opportunity to be heard, present evidence, and submit statements or petitions for consideration by the municipal authority. The number, location, and procedure for the public hearings may be designated by the municipal authority for a particular hearing. The municipal authority may abate, continue, or reschedule, as the municipal authority considers appropriate, any public hearing in order to receive a full and complete record on which to make a decision. If the new plat would otherwise be administratively approved, the municipal planning commission is the approving body for the purposes of this section.

(e) The municipal authority may not approve the new plat without adequate consideration of testimony and the record from the public hearings and making the findings required by Subsection (k). Not later than the 30th day after the date on which all proceedings necessary for the public hearings have concluded, the municipal authority shall take action on the application for the new plat. Sections 212.009(a) and (b) do not apply to the approval of plats under this section.

(f) The municipality may provide notice of the initial hearing required by Subsection (d) only after the requirements of Subsections (m) and (n) are met. The notice shall be given before the 15th day before the date of the hearing by:

(1) publishing notice in an official newspaper or a newspaper of general circulation in the county in which the municipality is located;

(2) providing written notice, with a copy of this section attached, by the municipal authority responsible for approving plats to:

(A) each property owners’ association for each neighborhood benefited by the subdivision golf course, as indicated in the most recently filed



management certificates; and

(B) the owners of lots that are within 200 feet of the area subject to the new plat, as indicated:

(i) on the most recently approved municipal tax roll; and

(ii) in the most recent online records of the central appraisal district of the county in which the lots are located; and

(3) any other manner determined by the municipal authority to be necessary to ensure that full and fair notice is provided to all owners of residential single-family lots in the general vicinity of the subdivision golf course.

(g) The written notice required by Subsection (f) (2) may be delivered by depositing the notice, properly addressed with postage prepaid, in the United States mail.

(h) The cost of providing the notices under Subsection (f) shall be paid by the plat applicant.

(i) If written instruments protesting the proposed new plat are signed by the owners of at least 20 percent of the area of the lots or land immediately adjacent to the area covered by a proposed new plat and extending 200 feet from that area and are filed with the municipal planning commission or the municipality's governing body before the conclusion of the public hearings, the proposed new plat must receive, to be approved, the affirmative vote of at least three-fifths of the members of the municipal planning commission or governing body.

(j) In computing the percentage of land area under Subsection (i), the area of streets and alleys is included.

(k) The municipal planning commission or the municipality's governing body may not approve a new plat under this section unless it determines that:

(1) there is adequate existing or planned infrastructure to support the future development of the subdivision golf course;

(2) based on existing or planned facilities, the development of the subdivision golf course will not have a materially adverse effect on:

(A) traffic, parking, drainage, water, sewer, or other utilities;

(B) the health, safety, or general welfare of persons in the municipality; or

(C) safe, orderly, and healthful development of the municipality;

(3) the development of the subdivision golf course will not have a materially adverse effect on existing single-family property values;

(4) the new plat is consistent with all applicable land use regulations and restrictive covenants and the municipality's land use policies as described by the municipality's comprehensive plan or other appropriate public policy documents; and

(5) if any portion of a previous plat reflected a restriction on the subdivision golf course whether:

(A) that restriction is an implied covenant or easement benefiting adjacent residential properties; or

(B) the restriction, covenant, or easement has been legally released or has expired.

(l) The municipal authority may adopt rules to govern the platting of a subdivision golf course that do not conflict with this section, including rules that require more detailed information than is required by Subsection (n) for plans for development and new plat applications.

(m) The application for a new plat under this section is not complete and may not be submitted for review for administrative completeness unless the tax certificates required by Section 12.002(e), Property Code, are attached, notwithstanding that the application is for a type of plat other than a plat specified in that section.

(n) A plan for development or a new plat application for a subdivision golf course is not considered to provide fair notice of the project and nature of the permit sought unless it contains the



following information, complete in all material respects:

- (1) street layout;
  - (2) lot and block layout;
  - (3) number of residential units;
  - (4) location of nonresidential development, by type of development;
  - (5) drainage, detention, and retention plans;
  - (6) screening plan for adjacent residential properties, including landscaping or fencing; and
  - (7) an analysis of the effect of the project on values in the adjacent residential neighborhoods.
- (o) A municipal authority with authority over platting may require as a condition for approval of a plat for a golf course that:
- (1) the area be platted as a restricted reserve for the proposed use; and
  - (2) the plat be incorporated into the plat for any adjacent residential lots.
- (p) An owner of a lot that is within 200 feet of a subdivision golf course may seek declaratory or injunctive relief from a district court to enforce the provisions in this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1092, Sec. 1, eff. June 15, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 635, Sec. 1, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 675, Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1163, Sec. 78, eff. September 1, 2011.

Sec. 212.016. AMENDING PLAT. (a) The municipal authority responsible for approving plats may approve and issue an amending plat, which may be recorded and is controlling over the preceding plat without vacation of that plat, if the amending plat is signed by the applicants only and is solely for one or more of the following purposes:

- (1) to correct an error in a course or distance shown on the preceding plat;
- (2) to add a course or distance that was omitted on the preceding plat;
- (3) to correct an error in a real property description shown on the preceding plat;
- (4) to indicate monuments set after the death, disability, or retirement from practice of the engineer or surveyor responsible for setting monuments;
- (5) to show the location or character of a monument that has been changed in location or character or that is shown incorrectly as to location or character on the preceding plat;
- (6) to correct any other type of scrivener or clerical error or omission previously approved by the municipal authority responsible for approving plats, including lot numbers, acreage, street names, and identification of adjacent recorded plats;
- (7) to correct an error in courses and distances of lot lines between two adjacent lots if:
  - (A) both lot owners join in the application for amending the plat;
  - (B) neither lot is abolished;
  - (C) the amendment does not attempt to remove recorded covenants or restrictions; and
  - (D) the amendment does not have a material adverse effect on the property rights of the other owners in the plat;
- (8) to relocate a lot line to eliminate an inadvertent encroachment of a building or other improvement on a lot line or easement;
- (9) to relocate one or more lot lines between one or more adjacent lots if:
  - (A) the owners of all those lots join in the application for amending the plat;
  - (B) the amendment does not attempt to remove recorded covenants or restrictions; and
  - (C) the amendment does not increase the number of lots;



(10) to make necessary changes to the preceding plat to create six or fewer lots in the subdivision or a part of the subdivision covered by the preceding plat if:

- (A) the changes do not affect applicable zoning and other regulations of the municipality;
- (B) the changes do not attempt to amend or remove any covenants or restrictions; and
- (C) the area covered by the changes is located in an area that the municipal planning commission or other appropriate governing body of the municipality has approved, after a public hearing, as a residential improvement area; or

(11) to replat one or more lots fronting on an existing street if:

- (A) the owners of all those lots join in the application for amending the plat;
- (B) the amendment does not attempt to remove recorded covenants or restrictions;
- (C) the amendment does not increase the number of lots; and
- (D) the amendment does not create or require the creation of a new street or make necessary the extension of municipal facilities.

(b) Notice, a hearing, and the approval of other lot owners are not required for the approval and issuance of an amending plat.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 46(b), eff. Aug. 28, 1989; Acts 1995, 74th Leg., ch. 92, Sec. 2, eff. Aug. 28, 1995.

Sec. 212.017. CONFLICT OF INTEREST; PENALTY. (a) In this section, “subdivided tract” means a tract of land, as a whole, that is subdivided. The term does not mean an individual lot in a subdivided tract of land.

(b) A person has a substantial interest in a subdivided tract if the person:

- (1) has an equitable or legal ownership interest in the tract with a fair market value of \$2,500 or

more;

(2) acts as a developer of the tract;

(3) owns 10 percent or more of the voting stock or shares of or owns either 10 percent or more or \$5,000 or more of the fair market value of a business entity that:

(A) has an equitable or legal ownership interest in the tract with a fair market value of \$2,500 or more; or

(B) acts as a developer of the tract; or

(4) receives in a calendar year funds from a business entity described by Subdivision (3) that exceed 10 percent of the person’s gross income for the previous year.

(c) A person also is considered to have a substantial interest in a subdivided tract if the person is related in the first degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to another person who, under Subsection (b), has a substantial interest in the tract.

(d) If a member of the municipal authority responsible for approving plats has a substantial interest in a subdivided tract, the member shall file, before a vote or decision regarding the approval of a plat for the tract, an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter. The affidavit must be filed with the municipal secretary or clerk.

(e) A member of the municipal authority responsible for approving plats commits an offense if the member violates Subsection (d). An offense under this subsection is a Class A misdemeanor.

(f) The finding by a court of a violation of this section does not render voidable an action of the municipal authority responsible for approving plats unless the measure would not have passed the municipal authority without the vote of the member who violated this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 624,



Sec. 3.01, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 561, Sec. 38, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), eff. Sept. 1, 1995.

Sec. 212.0175. ENFORCEMENT IN CERTAIN COUNTIES; PENALTY. (a) The attorney general may take any action necessary to enforce a requirement imposed by or under Section 212.0105 or 212.0106 or to ensure that water and sewer service facilities are constructed or installed to service a subdivision in compliance with the model rules adopted under Section 16.343, Water Code.

(b) A person who violates Section 212.0105 or 212.0106 or fails to timely provide for the construction or installation of water or sewer service facilities that the person described on the plat or on the document attached to the plat, as required by Section 212.0105, is subject to a civil penalty of not less than \$500 nor more than \$1,000 plus court costs and attorney's fees.

(c) An owner of a tract of land commits an offense if the owner knowingly or intentionally violates a requirement imposed by or under Section 212.0105 or 212.0106 or fails to timely provide for the construction or installation of water or sewer service facilities that the person described on a plat or on a document attached to a plat, as required by Section 212.0105. An offense under this subsection is a Class B misdemeanor.

(d) A reference in this section to an "owner of a tract of land" does not include the owner of an individual lot in a subdivided tract of land. Added by Acts 1989, 71st Leg., ch. 624, Sec. 3.01, eff. Sept. 1, 1989.

Sec. 212.018. ENFORCEMENT IN GENERAL.

(a) At the request of the governing body of the municipality, the municipal attorney or any other attorney representing the municipality may file an action in a court of competent jurisdiction to:

(1) enjoin the violation or threatened violation by the owner of a tract of land of a requirement regarding the tract and established by, or adopted by the governing body under, this subchapter; or  
(2) recover damages from the owner of a tract of land in an amount adequate for the municipality to undertake any construction or other activity necessary to bring about compliance with a requirement regarding the tract and established by, or adopted by the governing body under, this subchapter.

(b) A reference in this section to an "owner of a tract of land" does not include the owner of an individual lot in a subdivided tract of land. Added by Acts 1989, 71st Leg., ch. 1, Sec. 46(b), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 624, Sec. 3.01, eff. Sept. 1, 1989.

## SUBCHAPTER B. REGULATION OF PROPERTY DEVELOPMENT

Sec. 212.041. MUNICIPALITY COVERED BY SUBCHAPTER. This subchapter applies only to a municipality whose governing body chooses by ordinance to be covered by this subchapter or chose by ordinance to be covered by the law codified by this subchapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 125, Sec. 1, eff. May 11, 1993; Acts 1993, 73rd Leg., ch. 1046, Sec. 4, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 10.04, eff. Sept. 1, 1995.

Sec. 212.042. APPLICATION OF SUBCHAPTER A. The provisions of Subchapter A that do not conflict with this subchapter apply to development plats.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 212.043. DEFINITIONS. In this subchapter:



(1) “Development” means the new construction or the enlargement of any exterior dimension of any building, structure, or improvement.

(2) “Extraterritorial jurisdiction” means a municipality’s extraterritorial jurisdiction as determined under Chapter 42.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 212.044. PLANS, RULES, AND ORDINANCES. After a public hearing on the matter, the municipality may adopt general plans, rules, or ordinances governing development plats of land within the limits and in the extraterritorial jurisdiction of the municipality to promote the health, safety, morals, or general welfare of the municipality and the safe, orderly, and healthful development of the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 212.045. DEVELOPMENT PLAT REQUIRED. (a) Any person who proposes the development of a tract of land located within the limits or in the extraterritorial jurisdiction of the municipality must have a development plat of the tract prepared in accordance with this subchapter and the applicable plans, rules, or ordinances of the municipality.

(b) A development plat must be prepared by a registered professional land surveyor as a boundary survey showing:

(1) each existing or proposed building, structure, or improvement or proposed modification of the external configuration of the building, structure, or improvement involving a change of the building, structure, or improvement;

(2) each easement and right-of-way within or abutting the boundary of the surveyed property; and

(3) the dimensions of each street, sidewalk, alley,

square, park, or other part of the property intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the street, sidewalk, alley, square, park, or other part.

(c) New development may not begin on the property until the development plat is filed with and approved by the municipality in accordance with Section 212.047.

(d) If a person is required under Subchapter A or an ordinance of the municipality to file a subdivision plat, a development plat is not required in addition to the subdivision plat.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1091, Sec. 28, eff. Sept. 1, 1989.

Sec. 212.046. RESTRICTION ON ISSUANCE OF BUILDING AND OTHER PERMITS BY MUNICIPALITY, COUNTY, OR OFFICIAL OF OTHER GOVERNMENTAL ENTITY. The municipality, a county, or an official of another governmental entity may not issue a building permit or any other type of permit for development on lots or tracts subject to this subchapter until a development plat is filed with and approved by the municipality in accordance with Section 212.047.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 212.047. APPROVAL OF DEVELOPMENT PLAT. The municipality shall endorse approval on a development plat filed with it if the plat conforms to:

(1) the general plans, rules, and ordinances of the municipality concerning its current and future streets, sidewalks, alleys, parks, playgrounds, and public utility facilities;

(2) the general plans, rules, and ordinances for the extension of the municipality or the extension, improvement, or widening of its roads, streets,



and public highways within the municipality and in its extraterritorial jurisdiction, taking into account access to and extension of sewer and water mains and the instrumentalities of public utilities; and

(3) any general plans, rules, or ordinances adopted under Section 212.044.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

**Sec. 212.048. EFFECT OF APPROVAL ON DEDICATION.** The approval of a development plat is not considered an acceptance of any proposed dedication for public use or use by persons other than the owner of the property covered by the plat and does not impose on the municipality any duty regarding the maintenance or improvement of any purportedly dedicated parts until the municipality's governing body makes an actual appropriation of the dedicated parts by formal acceptance, entry, use, or improvement.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

**Sec. 212.049. BUILDING PERMITS IN EXTRATERRITORIAL JURISDICTION.** This subchapter does not authorize the municipality to require municipal building permits or otherwise enforce the municipality's building code in its extraterritorial jurisdiction.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

**Sec. 212.050. ENFORCEMENT; PENALTY.** (a) If it appears that a violation or threat of a violation of this subchapter or a plan, rule, or ordinance adopted under this subchapter or consistent with this subchapter exists, the municipality is entitled to appropriate injunctive relief against the person who committed, is committing, or is threatening to commit the violation.

(b) A suit for injunctive relief may be brought in the county in which the defendant resides, the county in which the violation or threat of violation occurs, or any county in which the municipality is wholly or partly located.

(c) In a suit to enjoin a violation or threat of a violation of this subchapter or a plan, rule, or ordinance, or other order adopted under this subchapter, the court may grant the municipality any prohibitory or mandatory injunction warranted by the facts including a temporary restraining order, temporary injunction, or permanent injunction.

(d) A person commits an offense if the person violates this subchapter or a plan, rule, or ordinance adopted under this subchapter or consistent with this subchapter within the limits of the municipality. An offense under this subsection is a Class C misdemeanor. Each day the violation continues constitutes a separate offense.

(e) A suit under this section shall be given precedence over all other cases of a different nature on the docket of the trial or appellate court.

(f) It is no defense to a criminal or civil suit under this section that an agency of government other than the municipality issued a license or permit authorizing the construction, repair, or alteration of any building, structure, or improvement. It also is no defense that the defendant had no knowledge of this subchapter or of an applicable plan, rule, or ordinance.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

#### SUBCHAPTER C. DEVELOPER PARTICIPATION IN CONTRACT FOR PUBLIC IMPROVEMENTS

**Sec. 212.071. DEVELOPER PARTICIPATION CONTRACT.** Without complying with the competitive sealed bidding procedure of Chapter 252,



a municipality with 5,000 or more inhabitants may make a contract with a developer of a subdivision or land in the municipality to construct public improvements, not including a building, related to the development. If the contract does not meet the requirements of this subchapter, Chapter 252 applies to the contract if the contract would otherwise be governed by that chapter. Added by Acts 1989, 71st Leg., ch. 1, Sec. 47(b), eff. Aug. 28, 1989. Amended by Acts 1999, 76th Leg., ch. 1547, Sec. 1, eff. Sept. 1, 1999.

Sec. 212.072. DUTIES OF PARTIES UNDER CONTRACT. (a) Under the contract, the developer shall construct the improvements and the municipality shall participate in their cost.

(b) The contract:

- (1) must establish the limit of participation by the municipality at a level not to exceed 30 percent of the total contract price, if the municipality has a population of less than 1.8 million; or
- (2) may allow participation by a municipality at a level not to exceed 70 percent of the total contract price, if the municipality has a population of 1.8 million or more.

(b-1) In addition, if the municipality has a population of 1.8 million or more, the municipality may participate at a level not to exceed 100 percent of the total contract price for all required drainage improvements related to the development and construction of affordable housing. Under this subsection, affordable housing is defined as housing which is equal to or less than the median sales price, as determined by the Real Estate Center at Texas A&M University, of a home in the Metropolitan Statistical Area (MSA) in which the municipality is located.

(c) In addition, the contract may also allow participation by the municipality at a level not to exceed 100 percent of the total cost for any oversizing of improvements required by the mu-

nicipality, including but not limited to increased capacity of improvements to anticipate other future development in the area.

(d) The municipality is liable only for the agreed payment of its share of the contract, which shall be determined in advance either as a lump sum or as a factor or percentage of the total actual cost as determined by municipal ordinance.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 47(b), eff. Aug. 28, 1989. Amended by Acts 1999, 76th Leg., ch. 1526, Sec. 1, eff. Aug. 30, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1075, Sec. 1, eff. June 18, 2005.

Sec. 212.073. PERFORMANCE BOND. The developer must execute a performance bond for the construction of the improvements to ensure completion of the project. The bond must be executed by a corporate surety in accordance with Chapter 2253, Government Code.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 47(b), eff. Aug. 28, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(17), eff. Sept. 1, 1995.

Sec. 212.074. ADDITIONAL SAFEGUARDS; INSPECTION OF RECORDS. (a) In the ordinance adopted by the municipality under Section 212.072(b), the municipality may include additional safeguards against undue loading of cost, collusion, or fraud.

(b) All of the developer's books and other records related to the project shall be available for inspection by the municipality.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 47(b), eff. Aug. 28, 1989.

#### SUBCHAPTER D. REGULATION OF PROPERTY DEVELOPMENT PROHIBITED IN CERTAIN CIRCUMSTANCES



**Sec. 212.101. APPLICATION OF SUBCHAPTER TO CERTAIN HOME-RULE MUNICIPALITY.**

This subchapter applies only to a home-rule municipality that:

- (1) has a charter provision allowing for limited-purpose annexation; and
- (2) has annexed territory for a limited purpose.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.02(a), eff. Sept. 1, 1997.

**Sec. 212.102. DEFINITIONS.** In this subchapter:

- (1) “Affected area” means an area that is:
  - (A) in a municipality or a municipality’s extraterritorial jurisdiction;
  - (B) in a county other than the county in which a majority of the territory of the municipality is located;
  - (C) within the boundaries of one or more school districts other than the school district in which a majority of the territory of the municipality is located; and
  - (D) within the area of or within 1,500 feet of the boundary of an assessment road district in which there are two state highways.
- (2) “Assessment road district” means a road district that has issued refunding bonds and that has imposed assessments on each parcel of land under Subchapter C, Chapter 1471, Government Code.
- (3) “State highway” means a highway that is part of the state highway system under Section 221.001, Transportation Code.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.02(a), eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.289, eff. Sept. 1, 2001.

**Sec. 212.103. TRAFFIC OR TRAFFIC OPERATIONS.** (a) A municipality may not deny, limit, delay, or condition the use or development of land, any part of which is within an affected area,

because of:

- (1) traffic or traffic operations that would result from the proposed use or development of the land; or
  - (2) the effect that the proposed use or development of the land would have on traffic or traffic operations.
- (b) In this section, an action to deny, limit, delay, or condition the use or development of land includes a decision or other action by the governing body of the municipality or by a commission, board, department, agency, office, or employee of the municipality related to zoning, subdivision, site planning, the construction or building permit process, or any other municipal process, approval, or permit.
- (c) This subchapter does not prevent a municipality from exercising its authority to require the dedication of right-of-way.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.02(a), eff. Sept. 1, 1997.

**Sec. 212.104. PROVISION NOT ENFORCEABLE.**

A provision in a covenant or agreement relating to land in an affected area that would have the effect of denying, limiting, delaying, or conditioning the use or development of the land because of its effect on traffic or traffic operations may not be enforced by a municipality.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.02(a), eff. Sept. 1, 1997.

**Sec. 212.105. SUBCHAPTER CONTROLS.** This subchapter controls over any other law relating to municipal regulation of land use or development based on traffic.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.02(a), eff. Sept. 1, 1997.

**SUBCHAPTER E. MORATORIUM ON PROPERTY DEVELOPMENT IN CERTAIN CIRCUM-**



## STANCES

Sec. 212.131. DEFINITIONS. In this subchapter:

(1) “Essential public facilities” means water, sewer, or storm drainage facilities or street improvements provided by a municipality or private utility.

(2) “Residential property” means property zoned for or otherwise authorized for single-family or multi-family use.

(3) “Property development” means the construction, reconstruction, or other alteration or improvement of residential or commercial buildings or the subdivision or replatting of a subdivision of residential or commercial property.

(4) “Commercial property” means property zoned for or otherwise authorized for use other than single-family use, multifamily use, heavy industrial use, or use as a quarry.

Added by Acts 2001, 77th Leg., ch. 441, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1321, Sec. 1, eff. September 1, 2005.

Sec. 212.132. APPLICABILITY. This subchapter applies only to a moratorium imposed on property development affecting only residential property, commercial property, or both residential and commercial property.

Added by Acts 2001, 77th Leg., ch. 441, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1321, Sec. 2, eff. September 1, 2005.

Sec. 212.133. PROCEDURE FOR ADOPTING MORATORIUM. A municipality may not adopt a moratorium on property development unless the municipality:

(1) complies with the notice and hearing proce-

dures prescribed by Section 212.134; and

(2) makes written findings as provided by Section 212.135, 212.1351, or 212.1352, as applicable.

Added by Acts 2001, 77th Leg., ch. 441, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1321, Sec. 2, eff. September 1, 2005.

Sec. 212.134. NOTICE AND PUBLIC HEARING REQUIREMENTS. (a) Before a moratorium on property development may be imposed, a municipality must conduct public hearings as provided by this section.

(b) A public hearing must provide municipal residents and affected parties an opportunity to be heard. The municipality must publish notice of the time and place of a hearing in a newspaper of general circulation in the municipality on the fourth day before the date of the hearing.

(c) Beginning on the fifth business day after the date a notice is published under Subsection (b), a temporary moratorium takes effect. During the period of the temporary moratorium, a municipality may stop accepting permits, authorizations, and approvals necessary for the subdivision of, site planning of, or construction on real property.

(d) One public hearing must be held before the governing body of the municipality. Another public hearing must be held before the municipal zoning commission, if the municipality has a zoning commission.

(e) If a general-law municipality does not have a zoning commission, two public hearings separated by at least four days must be held before the governing body of the municipality.

(f) Within 12 days after the date of the first public hearing, the municipality shall make a final determination on the imposition of a moratorium. Before an ordinance adopting a moratorium may be imposed, the ordinance must be given at



least two readings by the governing body of the municipality. The readings must be separated by at least four days. If the municipality fails to adopt an ordinance imposing a moratorium within the period prescribed by this subsection, an ordinance imposing a moratorium may not be adopted, and the temporary moratorium imposed under Subsection (c) expires.

Added by Acts 2001, 77th Leg., ch. 441, Sec. 1, eff. Sept. 1, 2001.

**Sec. 212.135. JUSTIFICATION FOR MORATORIUM: SHORTAGE OF ESSENTIAL PUBLIC FACILITIES; WRITTEN FINDINGS REQUIRED.**

(a) If a municipality adopts a moratorium on property development, the moratorium is justified by demonstrating a need to prevent a shortage of essential public facilities. The municipality must issue written findings based on reasonably available information.

(b) The written findings must include a summary of:

(1) evidence demonstrating the extent of need beyond the estimated capacity of existing essential public facilities that is expected to result from new property development, including identifying:

- (A) any essential public facilities currently operating near, at, or beyond capacity;
- (B) the portion of that capacity committed to the development subject to the moratorium; and
- (C) the impact fee revenue allocated to address the facility need; and

(2) evidence demonstrating that the moratorium is reasonably limited to:

- (A) areas of the municipality where a shortage of essential public facilities would otherwise occur; and
- (B) property that has not been approved for development because of the insufficiency of existing essential public facilities.

Added by Acts 2001, 77th Leg., ch. 441, Sec. 1, eff.

Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1321, Sec. 2, eff. September 1, 2005.

**Sec. 212.1351. JUSTIFICATION FOR MORATORIUM: SIGNIFICANT NEED FOR PUBLIC FACILITIES; WRITTEN FINDINGS REQUIRED.**

(a) Except as provided by Section 212.1352, a moratorium that is not based on a shortage of essential public facilities is justified only by demonstrating a significant need for other public facilities, including police and fire facilities. For purposes of this subsection, a significant need for public facilities is established if the failure to provide those public facilities would result in an overcapacity of public facilities or would be detrimental to the health, safety, and welfare of the residents of the municipality. The municipality must issue written findings based on reasonably available information.

(b) The written findings must include a summary of:

(1) evidence demonstrating that applying existing development ordinances or regulations and other applicable laws is inadequate to prevent the new development from causing the overcapacity of municipal infrastructure or being detrimental to the public health, safety, and welfare in an affected geographical area;

(2) evidence demonstrating that alternative methods of achieving the objectives of the moratorium are unsatisfactory; and

(3) evidence demonstrating that the municipality has approved a working plan and time schedule for achieving the objectives of the moratorium.

Added by Acts 2005, 79th Leg., Ch. 1321, Sec. 2, eff. September 1, 2005.

**Sec. 212.1352. JUSTIFICATION FOR COMMERCIAL MORATORIUM IN CERTAIN CIRCUM-**



**STANCES; WRITTEN FINDINGS REQUIRED.**

(a) If a municipality adopts a moratorium on commercial property development that is not based on a demonstrated shortage of essential public facilities, the municipality must issue written findings based on reasonably available information that the moratorium is justified by demonstrating that applying existing commercial development ordinances or regulations and other applicable laws is inadequate to prevent the new development from being detrimental to the public health, safety, or welfare of the residents of the municipality.

(b) The written findings must include a summary of:

- (1) evidence demonstrating the need to adopt new ordinances or regulations or to amend existing ordinances, including identification of the harm to the public health, safety, or welfare that will occur if a moratorium is not adopted;
- (2) the geographical boundaries in which the moratorium will apply;
- (3) the specific types of commercial property to which the moratorium will apply; and
- (4) the objectives or goals to be achieved by adopting new ordinances or regulations or amending existing ordinances or regulations during the period the moratorium is in effect.

Added by Acts 2005, 79th Leg., Ch. 1321, Sec. 2, eff. September 1, 2005.

**Sec. 212.136. EXPIRATION OF MORATORIUM; EXTENSION.** A moratorium adopted under Section 212.135 or 212.1351 expires on the 120th day after the date the moratorium is adopted unless the municipality extends the moratorium by:

- (1) holding a public hearing on the proposed extension of the moratorium; and
- (2) adopting written findings that:
  - (A) identify the problem requiring the need for extending the moratorium;

(B) describe the reasonable progress made to alleviate the problem; and

(C) specify a definite duration for the renewal period of the moratorium.

Added by Acts 2001, 77th Leg., ch. 441, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1321, Sec. 2, eff. September 1, 2005.

**Sec. 212.1361. NOTICE FOR EXTENSION REQUIRED.** A municipality proposing an extension of a moratorium under this subchapter must publish notice in a newspaper of general circulation in the municipality not later than the 15th day before the date of the hearing required by this subchapter.

Added by Acts 2005, 79th Leg., Ch. 1321, Sec. 2, eff. September 1, 2005.

**Sec. 212.1362. EXPIRATION OF MORATORIUM ON COMMERCIAL PROPERTY IN CERTAIN CIRCUMSTANCES; EXTENSION.** (a) A moratorium on commercial property adopted under Section 212.1352 expires on the 90th day after the date the moratorium is adopted unless the municipality extends the moratorium by:

- (1) holding a public hearing on the proposed extension of the moratorium; and
- (2) adopting written findings that:
  - (A) identify the problem requiring the need for extending the moratorium;
  - (B) describe the reasonable progress made to alleviate the problem;
  - (C) specify a definite duration for the renewal period of the moratorium; and
  - (D) include a summary of evidence demonstrating that the problem will be resolved within the extended duration of the moratorium.

(b) A municipality may not adopt a moratorium on commercial property under Section 212.1352



that exceeds an aggregate of 180 days. A municipality may not adopt a moratorium on commercial property under Section 212.1352 before the second anniversary of the expiration date of a previous moratorium if the subsequent moratorium addresses the same harm, affects the same type of commercial property, or affects the same geographical area identified by the previous moratorium.

Added by Acts 2005, 79th Leg., Ch. 1321, Sec. 2, eff. September 1, 2005.

**Sec. 212.137. WAIVER PROCEDURES REQUIRED.** (a) A moratorium adopted under this subchapter must allow a permit applicant to apply for a waiver from the moratorium relating to the property subject to the permit by:

(1) claiming a right obtained under a development agreement; or

(2) providing the public facilities that are the subject of the moratorium at the landowner's cost.

(b) The permit applicant must submit the reasons for the request to the governing body of the municipality in writing. The governing body of the municipality must vote on whether to grant the waiver request within 10 days after the date of receiving the written request.

Added by Acts 2001, 77th Leg., ch. 441, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1321, Sec. 2, eff. September 1, 2005.

**Sec. 212.138. EFFECT ON OTHER LAW.** A moratorium adopted under this subchapter does not affect the rights acquired under Chapter 245 or common law.

Added by Acts 2001, 77th Leg., ch. 441, Sec. 1, eff. Sept. 1, 2001.

**Sec. 212.139. LIMITATION ON MORATORIUM.**

(a) A moratorium adopted under this subchapter does not affect an application for a project in progress under Chapter 245.

(b) A municipality may not adopt a moratorium under this subchapter that:

(1) prohibits a person from filing or processing an application for a project in progress under Chapter 245; or

(2) prohibits or delays the processing of an application for zoning filed before the effective date of the moratorium.

Added by Acts 2005, 79th Leg., Ch. 1321, Sec. 2, eff. September 1, 2005.

#### **SUBCHAPTER F. ENFORCEMENT OF LAND USE RESTRICTIONS CONTAINED IN PLATS AND OTHER INSTRUMENTS**

**Sec. 212.151. MUNICIPALITY COVERED BY SUBCHAPTER.** This subchapter applies only to a municipality with a population of 1.5 million or more that passes an ordinance that requires uniform application and enforcement of this subchapter with regard to all property and residents or to a municipality that does not have zoning ordinances and passes an ordinance that requires uniform application and enforcement of this subchapter with regard to all property and residents. Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 893, Sec. 1, eff. Sept. 1, 1991. Renumbered from Local Government Code Sec. 230.001 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(1), eff. Sept. 1, 2001. Renumbered from Local Government Code Sec. 212.131 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(107), eff. Sept. 1, 2003.

**Sec. 212.152. DEFINITION.** In this subchapter, "restriction" means a land-use regulation that:

(1) affects the character of the use to which real



property, including residential and rental property, may be put;

- (2) fixes the distance that a structure must be set back from property lines, street lines, or lot lines;
- (3) affects the size of a lot or the size, type, and number of structures that may be built on the lot;
- (4) regulates or restricts the type of activities that may take place on the property, including commercial activities, sweepstakes activities, keeping of animals, use of fire, nuisance activities, vehicle storage, and parking;
- (5) regulates architectural features of a structure, construction of fences, landscaping, garbage disposal, or noise levels; or
- (6) specifies the type of maintenance that must be performed on a lot or structure, including maintenance of a yard or fence.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Renumbered from Local Government Code, Sec. 230.002 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(1), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1044, Sec. 1, eff. Sept. 1, 2003. Renumbered from Local Government Code, Sec. 212.132 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(107), eff. Sept. 1, 2003.

**Sec. 212.153. SUIT TO ENFORCE RESTRICTIONS.** (a) Except as provided by Subsection (b), the municipality may sue in any court of competent jurisdiction to enjoin or abate a violation of a restriction contained or incorporated by reference in a properly recorded plan, plat, or other instrument that affects a subdivision located inside the boundaries of the municipality. (b) The municipality may not initiate or maintain a suit to enjoin or abate a violation of a restriction if a property owners' association with the authority to enforce the restriction files suit to enforce the restriction. (c) In a suit by a property owners' association to enforce a restriction, the association may not

submit into evidence or otherwise use the work product of the municipality's legal counsel.

(d) In a suit filed under this section alleging that any of the following activities violates a restriction limiting property to residential use, it is not a defense that the activity is incidental to the residential use of the property:

- (1) storing a tow truck, crane, moving van or truck, dump truck, cement mixer, earth-moving device, or trailer longer than 20 feet; or
- (2) repairing or offering for sale more than two motor vehicles in a 12-month period.

(e) A municipality may not enforce a deed restriction which purports to regulate or restrict the rights granted to public utilities to install, operate, maintain, replace, and remove facilities within easements and private or public rights-of-way.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Renumbered from Local Government Code, Sec. 230.003 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1044, Sec. 2, eff. Sept. 1, 2003. Renumbered from Local Government Code, Sec. 212.133 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(107), eff. Sept. 1, 2003.

**Sec. 212.1535. FORECLOSURE BY PROPERTY OWNERS' ASSOCIATION.** (a) A municipality may not participate in a suit or other proceeding to foreclose a property owners' association's lien on real property.

(b) In a suit or other proceeding to foreclose a property owners' association's lien on real property in the subdivision, the association may not submit into evidence or otherwise use the work product of the municipality's legal counsel.

Added by Acts 2003, 78th Leg., ch. 1044, Sec. 4, eff. Sept. 1, 2003.

Renumbered from Local Government Code, Section 212.1335 by Acts 2007, 80th Leg., R.S., Ch.



921, Sec. 17.001(53), eff. September 1, 2007

**Sec. 212.154. LIMITATION ON ENFORCEMENT.** A restriction contained in a plan, plat, or other instrument that was properly recorded before August 30, 1965, may be enforced as provided by Section 212.153, but a violation of a restriction that occurred before that date may not be enjoined or abated by the municipality as long as the nature of the violation remains unchanged. Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Renumbered from Local Government Code Sec. 230.004 and amended by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(1), eff. Sept. 1, 2001. Renumbered from Local Government Code Sec. 212.134 and amended by Acts 2003, 78th Leg., ch. 1275, Sec. 2(107), 3(33), eff. Sept. 1, 2003.

**Sec. 212.155. NOTICE TO PURCHASERS.** (a) The governing body of the municipality may require, in the manner prescribed by law for official action of the municipality, any person who sells or conveys restricted property located inside the boundaries of the municipality to first give to the purchaser written notice of the restrictions and notice of the municipality's right to enforce compliance.

(b) If the municipality elects under this section to require that notice be given, the notice to the purchaser shall contain the following information:

- (1) the name of each purchaser;
- (2) the name of each seller;
- (3) a legal description of the property;
- (4) the street address of the property;
- (5) a statement that the property is subject to deed restrictions and the municipality is authorized to enforce the restrictions;
- (6) a reference to the volume and page, clerk's file number, or film code number where the restrictions are recorded; and
- (7) a statement that provisions that restrict the

sale, rental, or use of the real property on the basis of race, color, religion, sex, or national origin are unenforceable.

(c) If the municipality elects under this section to require that notice be given, the following procedure shall be followed to ensure the delivery and recordation of the notice:

- (1) the notice shall be given to the purchaser at or before the final closing of the sale and purchase;
- (2) the seller and purchaser shall sign and acknowledge the notice; and
- (3) following the execution, acknowledgment, and closing of the sale and purchase, the notice shall be recorded in the real property records of the county in which the property is located.

(d) If the municipality elects under this section to require that notice be given:

- (1) the municipality shall file in the real property records of the county clerk's office in each county in which the municipality is located a copy of the form of notice, with its effective date, that is prescribed for use by any person who sells or conveys restricted property located inside the boundaries of the municipality;
- (2) all sellers and all persons completing the prescribed notice on the seller's behalf are entitled to rely on the currently effective form filed by the municipality;
- (3) the municipality may prescribe a penalty against a seller, not to exceed \$500, for the failure of the seller to obtain the execution and recordation of the notice; and
- (4) an action may not be maintained by the municipality against a seller to collect a penalty for the failure to obtain the execution and recordation of the notice if the municipality has not filed for record the form of notice with the county clerk of the appropriate county.

(e) This section does not limit the seller's right to recover a penalty, or any part of a penalty, imposed pursuant to Subsection (d)(3) from a third



party for the negligent failure to obtain the execution or proper recordation of the notice.

(f) The failure of the seller to comply with the requirements of this section and the implementing municipal regulation does not affect the validity or enforceability of the sale or conveyance of restricted property or the validity or enforceability of restrictions covering the property.

(g) For the purposes of this section, an executory contract of purchase and sale having a performance period of more than six months is considered a sale under Subsection (a).

(h) For the purposes of the disclosure required by this section, restrictions may not include provisions that restrict the sale, rental, or use of property on the basis of race, color, religion, sex, or national origin and may not include any restrictions that by their express provisions have terminated.

Added by Acts 1989, 71st Leg., ch. 446, Sec. 1, eff. June 14, 1989. Renumbered from Local Government Code Sec. 230.005 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(1), eff. Sept. 1, 2001. Renumbered from Local Government Code Sec. 212.135 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(107), eff. Sept. 1, 2003.

**Sec. 212.156. ENFORCEMENT BY ORDINANCE; CIVIL PENALTY.** (a) The governing body of the municipality by ordinance may require compliance with a restriction contained or incorporated by reference in a properly recorded plan, plat, or other instrument that affects a subdivision located inside the boundaries of the municipality.

(b) The municipality may bring a civil action to recover a civil penalty for a violation of the restriction. The municipality may bring an action and recover the penalty in the same manner as a municipality may bring an action and recover a penalty under Subchapter B, Chapter 54.

(c) For the purposes of an ordinance adopted

under this section, restrictions do not include provisions that restrict the sale, rental, or use of property on the basis of race, color, religion, sex, or national origin and do not include any restrictions that by their express provisions have terminated.

Added by Acts 1991, 72nd Leg., ch. 893, Sec. 2, eff. Sept. 1, 1991. Renumbered from Local Government Code Sec. 230.006 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(1), eff. Sept. 1, 2001. Renumbered from Local Government Code Sec. 212.136 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(107), eff. Sept. 1, 2003.

**Sec. 212.157. GOVERNMENTAL FUNCTION.** An action filed by a municipality under this subchapter to enforce a land use restriction is a governmental function of the municipality.

Added by Acts 2001, 77th Leg., ch. 1399, Sec. 2, eff. June 16, 2001.

Renumbered from Local Government Code, Section 230.007 by Acts 2007, 80th Leg., R.S., Ch. 921, Sec. 17.001(56), eff. September 1, 2007

**Sec. 212.158. EFFECT ON OTHER LAW.** This subchapter does not prohibit the exhibition, play, or necessary incidental action thereto of a sweepstakes not prohibited by Chapter 622, Business & Commerce Code.

Added by Acts 2003, 78th Leg., ch. 1044, Sec. 5, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885, Sec. 2.25, eff. April 1, 2009.

Renumbered from Local Government Code, Section 212.138 by Acts 2007, 80th Leg., R.S., Ch. 921, Sec. 17.001(54), eff. September 1, 2007.

**SUBCHAPTER G. AGREEMENT GOVERNING CERTAIN LAND IN A MUNICIPALITY'S EXTRATERRITORIAL JURISDICTION**



Sec. 212.171. **APPLICABILITY.** This subchapter does not apply to land located in the extraterritorial jurisdiction of a municipality with a population of 1.9 million or more.

Added by Acts 2003, 78th Leg., ch. 522, Sec. 1, eff. June 20, 2003.

Sec. 212.172. **DEVELOPMENT AGREEMENT.**

(a) In this subchapter, “extraterritorial jurisdiction” means a municipality’s extraterritorial jurisdiction as determined under Chapter 42.

(b) The governing body of a municipality may make a written contract with an owner of land that is located in the extraterritorial jurisdiction of the municipality to:

- (1) guarantee the continuation of the extraterritorial status of the land and its immunity from annexation by the municipality;
- (2) extend the municipality’s planning authority over the land by providing for a development plan to be prepared by the landowner and approved by the municipality under which certain general uses and development of the land are authorized;
- (3) authorize enforcement by the municipality of certain municipal land use and development regulations in the same manner the regulations are enforced within the municipality’s boundaries;
- (4) authorize enforcement by the municipality of land use and development regulations other than those that apply within the municipality’s boundaries, as may be agreed to by the landowner and the municipality;
- (5) provide for infrastructure for the land, including:
  - (A) streets and roads;
  - (B) street and road drainage;
  - (C) land drainage; and
  - (D) water, wastewater, and other utility systems;
- (6) authorize enforcement of environmental regulations;

(7) provide for the annexation of the land as a whole or in parts and to provide for the terms of annexation, if annexation is agreed to by the parties;

(8) specify the uses and development of the land before and after annexation, if annexation is agreed to by the parties; or

(9) include other lawful terms and considerations the parties consider appropriate.

(c) An agreement under this subchapter must:

(1) be in writing;

(2) contain an adequate legal description of the land;

(3) be approved by the governing body of the municipality and the landowner; and

(4) be recorded in the real property records of each county in which any part of the land that is subject to the agreement is located.

(d) The total duration of the contract and any successive renewals or extensions may not exceed 45 years.

(e) A municipality in an affected county, as defined by Section 16.341, Water Code, may not enter into an agreement under this subchapter that is inconsistent with the model rules adopted under Section 16.343, Water Code.

(f) The agreement between the governing body of the municipality and the landowner is binding on the municipality and the landowner and on their respective successors and assigns for the term of the agreement. The agreement is not binding on, and does not create any encumbrance to title as to, any end-buyer of a fully developed and improved lot within the development, except for land use and development regulations that may apply to a specific lot.

(g) An agreement under this subchapter constitutes a permit under Chapter 245.

(h) An agreement between a municipality and a landowner entered into prior to the effective date of this section and that complies with this section



is validated.

Added by Acts 2003, 78th Leg., ch. 522, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 281, Sec. 1, eff. June 17, 2011.

Sec. 212.173. CERTAIN COASTAL AREAS. This subchapter does not apply to, limit, or otherwise affect any ordinance, order, rule, plan, or standard adopted by this state or a state agency, county, municipality, or other political subdivision of this state under the federal Coastal Zone Management Act of 1972 (16 U.S.C. Section 1451 et seq.), and its subsequent amendments, or Subtitle E, Title 2, Natural Resources Code.

Added by Acts 2003, 78th Leg., ch. 522, Sec. 1, eff. June 20, 2003.

Sec. 212.174. MUNICIPAL UTILITIES. A municipality may not require an agreement under this subchapter as a condition for providing water, sewer, electricity, gas, or other utility service from a municipally owned or municipally operated utility that provides any of those services.

Added by Acts 2003, 78th Leg., ch. 522, Sec. 1, eff. June 20, 2003.

#### SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 212.901. DEVELOPER REQUIRED TO PROVIDE SURETY. (a) To ensure that it will not incur liabilities, a municipality may require, before it gives approval of the plans for a development, that the owner of the development provide sufficient surety to guarantee that claims against the development will be satisfied if a default occurs. (b) This section does not preclude a claimant from seeking recovery by other means.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 48(a),

eff. Aug. 28, 1989.

Sec. 212.902. SCHOOL DISTRICT LAND DEVELOPMENT STANDARDS. (a) This section applies to agreements between school districts and any municipality which has annexed territory for limited purposes.

(b) On request by a school district, a municipality shall enter an agreement with the board of trustees of the school district to establish review fees, review periods, and land development standards ordinances and to provide alternative water pollution control methodologies for school buildings constructed by the school district. The agreement shall include a provision exempting the district from all land development ordinances in cases where the district is adding temporary classroom buildings on an existing school campus.

(c) If the municipality and the school district do not reach an agreement on or before the 120th day after the date on which the municipality receives the district's request for an agreement, proposed agreements by the school district and the municipality shall be submitted to an independent arbitrator appointed by the presiding district judge whose jurisdiction includes the school district. The arbitrator shall, after a hearing at which both the school district and municipality make presentations on their proposed agreements, prepare an agreement resolving any differences between the proposals. The agreement prepared by the arbitrator will be final and binding upon both the school district and the municipality. The cost of the arbitration proceeding shall be borne equally by the school district and the municipality.

(d) A school district that requests an agreement under this section, at the time it makes the request, shall send a copy of the request to the commissioner of education. At the end of the 120-day period, the requesting district shall report to the



commissioner the status or result of negotiations with the municipality. A municipality may send a separate status report to the commissioner. The district shall send to the commissioner a copy of each agreement between the district and a municipality under this section.

(e) In this section, “land development standards” includes impervious cover limitations, building setbacks, floor to area ratios, building coverage, water quality controls, landscaping, development setbacks, compatibility standards, traffic analyses, and driveway cuts, if applicable.

(f) Nothing in this section shall be construed to limit the applicability of or waive fees for fire, safety, health, or building code ordinances of the municipality prior to or during construction of school buildings, nor shall any agreement waive any fee or modify any ordinance of a municipality for an administration, service, or athletic facility proposed for construction by a school district. Added by Acts 1990, 71st Leg., 6th C.S., ch. 1, Sec. 3.18, eff. Sept. 1, 1990.

**Sec. 212.903. CONSTRUCTION AND RENOVATION WORK ON COUNTY-OWNED BUILDINGS OR FACILITIES IN CERTAIN COUNTIES.**

(a) This section applies only to a county with a population of 250,000 or more.

(b) A municipality is not authorized to require a county to notify the municipality or obtain a building permit for any new construction or renovation work performed within the limits of the municipality by the county’s personnel or by county personnel acting as general contractor on county-owned buildings or facilities. Such construction or renovation work shall be inspected by a registered professional engineer or architect licensed in this state in accordance with any other applicable law. A municipality may require a building permit for construction or renovation work performed on county-owned buildings or

facilities by private general contractors.

(c) This section does not exempt a county from complying with a municipality’s building code standards when performing construction or renovation work.

Added by Acts 1997, 75th Leg., ch. 271, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 368, Sec. 1, eff. Aug. 30, 1999.

**Sec. 212.904. APPORTIONMENT OF MUNICIPAL INFRASTRUCTURE COSTS.**

(a) If a municipality requires as a condition of approval for a property development project that the developer bear a portion of the costs of municipal infrastructure improvements by the making of dedications, the payment of fees, or the payment of construction costs, the developer’s portion of the costs may not exceed the amount required for infrastructure improvements that are roughly proportionate to the proposed development as approved by a professional engineer who holds a license issued under Chapter 1001, Occupations Code, and is retained by the municipality.

(b) A developer who disputes the determination made under Subsection (a) may appeal to the governing body of the municipality. At the appeal, the developer may present evidence and testimony under procedures adopted by the governing body. After hearing any testimony and reviewing the evidence, the governing body shall make the applicable determination within 30 days following the final submission of any testimony or evidence by the developer.

(c) A developer may appeal the determination of the governing body to a county or district court of the county in which the development project is located within 30 days of the final determination by the governing body.

(d) A municipality may not require a developer to waive the right of appeal authorized by this section as a condition of approval for a development



project.

(e) A developer who prevails in an appeal under this section is entitled to applicable costs and to reasonable attorney's fees, including expert witness fees.

(f) This section does not diminish the authority or modify the procedures specified by Chapter 395.

Added by Acts 2005, 79th Leg., Ch. 982, Sec. 1, eff. June 18, 2005.



American Planning Association  
**Texas Chapter**

*A Guide to Urban Planning in Texas Communities 2013*



# Chapter 4 Zoning Regulations in Texas

William Dahlstrom, JD, AICP



This chapter explains the basics of zoning law in Texas. It provides a definition and brief history, along with a legal basis for zoning and the statutory authority. The chapter discusses the connection between zoning and the comprehensive plan and districts, the basic zoning units to divide cities. These boundaries and ordinances are approved by zoning commissions. Procedures include hearings and notice at zoning commission meetings, city council meetings, and general law city council meetings. The supermajority vote is described and the board of adjustment is discussed in detail. The chapter also describes ways in which municipalities enforce zoning ordinances and the variety of exceptions to zoning authority. Additional zoning concepts are briefly discussed as well as the ways in which zoning laws are challenged. Understanding such regulations is valuable because zoning is an essential tool, if not the essential tool, used to implement the comprehensive plan along with subdivision regulations, infrastructure planning, and economic strategies.

This chapter was developed from the 17th Annual Land Use Planning Law Conference with the University of Texas School of Law on March 20, 2013

Left: Zoning map of a neighborhood

Altered image of image by HistoricOmaha.net on Flickr and reproduced under Creative Commons 2.0



## DEFINITION AND HISTORY

“Zoning” is the fundamental regulation of a governmental entity used to control land uses pursuant to a comprehensive plan. “Zoning regulation is a recognized tool of community planning, allowing a municipality, in the exercise of its legislative discretion, to restrict the use of private property.”<sup>1</sup>

As the result of the mounting problems from industrialization and urbanization of cities in the late nineteenth and early twentieth cities, municipal governments recognized the need to adopt regulations to make cities more livable, safe and sanitary. Widely recognized as the first comprehensive zoning ordinance, the New York City Zoning Ordinance of 1916 was enacted to regulate height and setbacks of larger buildings to allow sunlight and air to reach adjacent properties and to restrict incompatible uses from residential districts.<sup>2</sup>

In 1921, U.S. Secretary of Commerce Herbert Hoover, commissioned an advisory committee to draft a model zoning statute, The Standard Zoning Enabling Act of 1926, which became the model for zoning legislation throughout the country. The Act included a section on a “Grant of Power” which authorized zoning for “the purpose of promoting health, safety, morals, or the general welfare of the community.”<sup>3</sup>

Section 3 of the Act, “Purposes in View” provided,

*Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.*<sup>4</sup>

<sup>1</sup> City of Brookside Village. v. Comeau, 633 S.W.2d 790, 792 (Tex. 1982), cert. denied, 459 U.S. 1087 (1982).

<sup>2</sup> New York City Department of City Planning Website, 2013

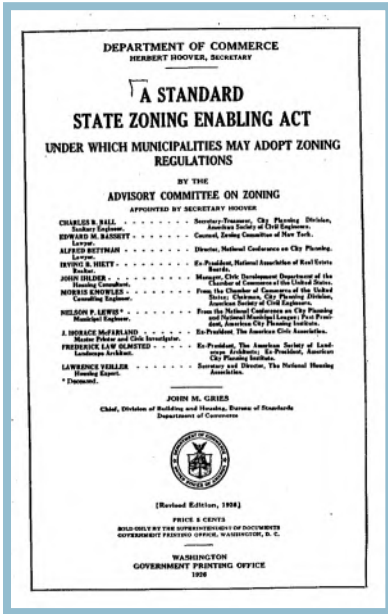
<sup>3</sup> A Standard State Zoning Enabling Act Under Which Municipalities May Adopt Zoning Regulations; Section 1, U.S. Department of Commerce (1926)

<sup>4</sup> Id. at Section 3

Typically, zoning will consist of:

- (i) an ordinance that sets forth items such as definitions, permitted land uses and development standards, and
- (ii) a map designating the districts within the jurisdiction.

*Municipal governments recognized the need to adopt regulations to make cities more livable, safe and sanitary.*



The **Standard Zoning Enabling Act of 1926** became the model for zoning legislation throughout the country.

*In Village of Euclid, Ohio v. Ambler Realty Co., the Court ruled that there may be valid reasons to separate intensive uses from less intensive uses for the general welfare*

The Act also included sections describing the means of adopting and amending the regulations, the establishment of a zoning commission and board of adjustment, the enforcement of regulations, and the resolution of conflicts with other laws.<sup>5</sup>

## LEGAL BASIS

The United States Supreme Court ruled in 1926 that zoning is a valid exercise of the municipality’s police power. In *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365 (1926), the Village of Euclid enacted an ordinance that established six classes of use districts, three classes of height districts, and four classes of area districts in an effort to control industrial expansion from the City of Cleveland into the Village. Ambler Realty argued that the classification of its property deprived it “of liberty and property without due process of law” and denied “it the equal protection of the law.”<sup>6</sup> Ambler Realty also specifically argued that the zoning ordinance attempted “to restrict and control the lawful uses of appellee’s land so as to confiscate and destroy a great part of its value.”<sup>7</sup> The Court ruled that there may be valid reasons to separate intensive uses from less intensive uses for the general welfare holding, “it is enough for us to determine, as we do, that the ordinance, in its general scope and dominant features, so far as its provisions are here involved, is a valid exercise of authority.”<sup>8</sup>

The validity of zoning in Texas was approved by the Texas Supreme Court in *Lombardo v. City of Dallas*. In that case, the Court acknowledged that “it appears that full authority was delegated cities and incorporated villages to restrict the use of buildings, structures and land for trade, industry, residence, or other purposes. Zoning, in general, is the division of a city or area into districts, and the prescription and application of different regulations in each district; generally, such division is into two classes of districts, such as was attempted by the ordinance under consideration. Effective zoning regulations, as that term is now well understood, comprehends, necessarily, prohibitions and restrictions; prohibitions against certain uses in named districts, and restrictions as to the area of lots to be built upon, the size and height of

5 A Standard State Zoning Enabling Act Under Which Municipalities May Adopt Zoning Regulations, U.S. Department of Commerce (1926)  
6 *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 384 (1926)  
7 *Id.*  
8 *Id.* at 397



structures, yard spaces to be left unoccupied, etc.”<sup>9</sup> The Court held, “that the legislative act and the ordinance of the city of Dallas, called in question, and the provisions of same as applied to plaintiff and his property, are not subject to the objections urged by plaintiff, but that they are valid and enforceable.”<sup>10</sup>

## STATUTORY AUTHORITY

In *Lombardo*, the City of Dallas relied on Texas’ adopted version of the Standard Zoning Enabling Act adopted in 1927 as Article 1011 of the Texas General Statutes. In 1987, the sections of Article 1011 were codified in Chapter 211 of the Texas Local Government Code. Chapter 211 currently provides that the zoning regulatory power is “for the purpose of promoting the public health, safety, morals, or general welfare and protecting and preserving places and areas of historical, cultural, or architectural importance and significance.”<sup>11</sup>

*“...promoting the public health, safety, morals, or general welfare and protecting and preserving places and areas of historical, cultural, or architectural importance and significance”*

Under Section 211.003, the municipality may regulate:

1. The height, number of stories, and size of buildings and other structures;
2. The percentage of a lot that may be occupied;
3. The size of yards, courts, and other open spaces;
4. Population density;
5. The location and use of buildings, other structures, and land for business, industrial, residential, or other purposes; and
6. The pumping, extraction, and use of groundwater by persons other than retail public utilities, as defined by Section 13.002, Water Code, for the purpose of preventing the use or contact with groundwater that presents an actual or potential threat to human health.<sup>12</sup>

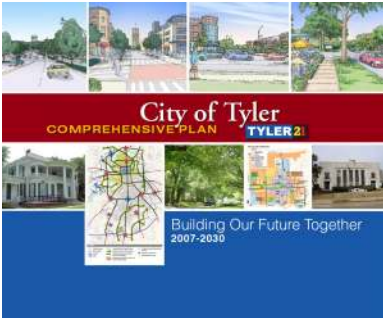
Further, the Statute provides that a city may regulate “the construction,

<sup>9</sup> *Lombardo v. City of Dallas*, 47 S.W.2d 495, 499 (Tex. Civ. App.—Dallas 1932), aff’d, 124 Tex. 1, 73 S.W.2d 475 (1934)

<sup>10</sup> Id.

<sup>11</sup> Texas Local Government Code Section 211.001 (2013)

<sup>12</sup> Id. at Section 211.003 (a)



The Purpose in View of the Standard Zoning Enabling Act states that “such regulations shall be made in accordance with a comprehensive plan...” The above image is of the City of Tyler, Texas Comprehensive Plan 2007-2030.

reconstruction, alteration, or razing of buildings and other structures” with regard to designated places and areas of historical, cultural, or architectural importance and significance.<sup>13</sup> The governing body of a home-rule municipality may also regulate the bulk of buildings.<sup>14</sup>

## THE COMPREHENSIVE PLAN

Zoning is one of the primary implementation tools of a municipality’s comprehensive plan. Zoning regulations must be adopted in accordance with a comprehensive plan and must be designed to:

1. Lessen congestion in the streets;
2. Secure safety from fire, panic, and other dangers;
3. Promote health and the general welfare;
4. Provide adequate light and air;
5. Prevent the overcrowding of land;
6. Avoid undue concentration of population; or
7. Facilitate the adequate provision of transportation, water, sewers, schools, parks, and other public requirements.<sup>15</sup>

## DISTRICTS

According to the Chapter 211, a city may divide the municipality into districts of a number, shape, and size and within each district, the city may regulate the erection, construction, reconstruction, alteration, repair, or use of buildings, other structures, or land.<sup>16</sup> The regulations must be uniform for each class or kind of building in a district; however, the regulations may vary from

<sup>13</sup> Id. at Section 211.003 (b)  
<sup>14</sup> Id. at 211.003 (c)  
<sup>15</sup> Id. at 211.004  
<sup>16</sup> Id. at 211.005 (a)



Left: Dallas, Texas Council Chambers.

Image by jypsygen on Flickr and reproduced under Creative Commons 2.0

district to district<sup>17</sup> and shall be adopted “with reasonable consideration, among other things, for the character of each district and its peculiar suitability for particular uses, with a view of conserving the value of buildings and encouraging the most appropriate use of land in the municipality.”<sup>18</sup>

## CREATION OF A ZONING COMMISSION

A city may appoint a zoning commission to make recommendations regarding the boundaries of the original zoning districts and zoning regulations.<sup>19</sup> Often, a city will appoint a commission that performs the recommending authority under Chapter 211 and the planning commission authority regarding subdivisions and plats granted under Chapter 212 of the Texas Local Government Code.

With regard to zoning, this body is a “recommending” body. However, some zoning ordinances also provide that the zoning commission is charged with approval of site plans pursuant to the provisions of that city’s zoning ordinance. In that regard, they may be the final municipal authority for the

<sup>17</sup> Id. at 211.005 (b)

<sup>18</sup> Id. at 211.005 (c)

<sup>19</sup> Id. at 211.007 (a)



review and approval of a site plan.

## PROCEDURES

### Hearings

Approval of a zoning ordinance, districts and amendments of the same require public hearings before the zoning commission and city council. The commission is required to make a preliminary report, hold the public hearing and submit a final report to the city council.<sup>20</sup> The city council must receive the report before it can conduct its hearing.<sup>21</sup> A home rule city may allow joint hearings of the city council and zoning commission provided the city council, by two-thirds vote, has prescribed the type of notice and location for the hearing.<sup>22</sup>

### Notice

#### Zoning Commission

Written notice of the zoning commission hearing must be sent to the owners of the property within 200 feet of the property on which a change in classification is proposed “before the 10th day before the hearing date.” Notice is sufficient if it is deposited in the municipality, with properly addressed with postage paid, in the United States mail.<sup>23</sup>

#### City Council

Notice of the time and place of the city council hearing must be published in official newspaper or a newspaper of general circulation in the city, “before the 15th day before the date of the hearing.”<sup>24</sup>

#### General law city without a zoning commission

A general law city without a commission must provide notice of the city council hearing to the property owners within 200 feet of the property subject to change in the same manner as notice prior to a commission hearing.<sup>25</sup>

20 Id. at 211.007 (b)

21 Id.

22 Id. at (d)

23 Id. at 211.007 (c)

24 Id. at 211.006 (a)

25 Id. at 211.006 (b)



## SUPERMAJORITY VOTE

The Statute provides that three-fourths majority affirmative vote is required to approve a change in a regulation or boundary if written protest is filed by the owners of at least 20 percent of either:

1. The area of the lots or land covered by the proposed change; or
2. The area of the lots or land immediately adjoining the area covered by the proposed change and extending 200 feet from that area.<sup>26</sup>

Further, the city may by ordinance require that the affirmative vote of at least three-fourths majority of city council is required to overrule a recommendation of the zoning commission that a proposed change to a regulation or boundary be **denied**.<sup>27</sup>

However, in *Appolo Development, Inc. v. City of Garland*, the Court ruled that the supermajority requirement did not apply to property that was subject to interim zoning at the time of annexation.

*"We do not believe it was intended that Section 5 of Ordinance 1011 [predecessor of Section 211.006 (d)] should have the effect of so zoning all property thereafter annexed that no owner of newly annexed property could apply for permanent zoning without placing himself under the burden of obtaining a favorable vote of three-fourths of the members of the City Council if a protest were made by adjacent property owners described in Article 1011e."<sup>28</sup>*

## BOARD OF ADJUSTMENT

The city may appoint a board of adjustment to consider variances, special exceptions and appeals of administrative officials in the enforcement of the zoning regulations.<sup>29</sup> The board consists of five members who are appointed by the city council. Each case before the board must be heard by at least 75 percent of the members of the board.<sup>30</sup> Boards of adjustment in cities in excess of 500,000 may consist of several panels with at least five members

<sup>26</sup> Id. at Section 211.006 (d)

<sup>27</sup> Id. at Section 211.006 (f)

<sup>28</sup> *Appolo Development, Inc. v. City of Garland*, 476 S.W.2d 365 (Tex. App.-Dallas, 1972; reh'g denied 1972)

<sup>29</sup> TEXAS LOCAL GOV'T CODE, Section 211.008

<sup>30</sup> Id. at 211.008 (d)



Above: Zoning and land use maps

Image by tracktwenty-nine on Flickr and reproduced under Creative Commons 2.0



per panel.<sup>31</sup>

The board of adjustment may hear and decide:

1. Appeals of an order, requirement, decision, or determination made by an administrative official in the enforcement of zoning regulations;
2. Special exceptions;
3. Variances from the terms of a zoning ordinance; and
4. Other matters authorized by an ordinance adopted under Chapter 211.<sup>32</sup>

Variances by definition are modifications to zoning regulations authorized by the board when the following standards are met:

1. The variance is not contrary to the public interest;
2. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship. (A financial hardship will not be sufficient to qualify as an unnecessary hardship adequate for a variance request.<sup>33</sup>);
3. The spirit of the ordinance must be observed; and
4. Substantial justice must be done.<sup>34</sup>

Special Exceptions are modifications to the zoning regulations specifically set forth in the zoning ordinance that allow such if certain criteria set forth in the ordinance are satisfied.<sup>35</sup>

Additionally, some cities authorize the board to amortize nonconforming uses after conducting hearings and enabling the owner of the nonconforming use to recoup its investment in the nonconforming use. In *City of University Park v. Benners*, the Texas Supreme Court ruled “[m]unicipal zoning ordinances requiring the termination of nonconforming uses under reasonable

<sup>31</sup> Id. at 211.012  
<sup>32</sup> Id. at 211.009 (a)  
<sup>33</sup> *Board of Adjustment of the City of Piney Point Village v. Solar*, 171 S.W. 3d 251, 255 (Tex. App-Houston [14th Dist.] 2005)  
<sup>34</sup> TEXAS LOCAL GOV'T CODE, Section 211.009 (a) (3)  
<sup>35</sup> Id. at 211.009 (a) (2)



conditions are within the scope of municipal police power.”<sup>36</sup>

Any person aggrieved by the decision of an administrative official or any officer, department, board, or bureau of the municipality affected by the decision may appeal the decision of the administrative official by filing with the board and the official from whom the appeal is taken a notice of appeal specifying the grounds for the appeal.<sup>37</sup> The appeal will stay all proceedings in furtherance of the action that is appealed unless the official from whom the appeal is taken certifies in writing to the board facts supporting the official’s opinion that a stay would cause imminent peril to life or property.<sup>38</sup>

A concurring vote of 75 percent of the board members is required to:

1. Reverse an order, requirement, decision, or determination of an administrative official;
2. Decide in favor of an applicant on a matter on which the board is required to pass under a zoning ordinance; or
3. Authorize a variation from the terms of a zoning ordinance.<sup>39</sup>

The decision of the board may be appealed to district court or county court, but not to the zoning commission or city council.<sup>40</sup> The appeal must be a verified petition, presented within 10 days after the date the decision is filed in the board’s office, stating that the decision of the board of adjustment is illegal in whole or in part and specifying the grounds of the illegality.

The party attacking the decision of the board must demonstrate that the decision is a “very clear showing of abuse of discretion”<sup>41</sup> and that the board could have reasonably reached only one decision.<sup>42</sup> The Courts in Texas hold that the Board “is a quasi-judicial body and the district court sits only as a court of review by writ of certiorari.”<sup>43</sup> The order of the Board is presumed valid and the party attacking the order must establish a “very clear showing of abuse of discretion.” [cite omitted] A zoning board abuses its discretion

36 *City of University Park v. Benners*, 485 S.W. 2d 773, 778 (Tex. 1972)  
 37 *Id.* at 211.010 (a)  
 38 *Id.* at 211.010 (c)  
 39 TEXAS LOCAL GOV’T CODE at 211.009 (c)  
 40 *Id.* at 211.011 (a)  
 41 *City of Dallas v. Vanesko*, 189 S.W.3d 769, 771 (Tex.2006)  
 42 *Id.*  
 43 *Board of Adjustment of City of Corpus Christi v. Flores*, 860 S.W. 2d 622, 625 (Tex. Pp.- Corpus Christi 1993, writ denied)

*In City of University Park v. Benners, the Texas Supreme Court ruled that cities could terminate nonconforming uses under ‘reasonable conditions’.*

**The appeal or verified petition must be filed by:**

1. A person aggrieved by a decision of the board;
2. A taxpayer; or
3. An officer, department, board, or bureau of the municipality.<sup>1</sup>

1 *Id.*



if it acts without reference to any guiding rules and principles or clearly fails to analyze or apply the law correctly. [cites omitted] With respect to a zoning board's factual findings, a reviewing court may not substitute its own judgment for that of the board. [cite omitted]. Instead, a party challenging those findings must establish that the board could only have reasonably reached one decision. [cite omitted].<sup>44</sup>

## ENFORCEMENT

A violation of a zoning ordinance is a misdemeanor, punishable by fine, imprisonment, or both, as provided by the city. The governing body may also provide civil penalties for a violation.<sup>45</sup> Per chapter 54 of the Texas Local Government Code, a fine or penalty for violation of a zoning regulation may not exceed \$2,000.00.<sup>46</sup>

Further, the city may institute the following measure if a building or other structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or if a building, other structure, or land is used in violation of zoning regulations:

1. Prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;
2. Restrain, correct, or abate the violation;
3. Prevent the occupancy of the building, structure, or land; or
4. Prevent any illegal act, conduct, business, or use on or about the premises.

## EXCEPTIONS TO A CITY'S ZONING AUTHORITY

### State or Federal Preemption

Matters regulated by state or federal law are preempted from local zoning authority. For example, the Texas Alcoholic Beverage Code specifically provides

44 Vanesko at 771.  
45 Id. at 211.012  
46 Id. at 54.001 (b)



that such Code “shall exclusively govern the regulation of alcoholic beverages in this state, and that except as permitted by this code.”<sup>47</sup> However, that Code permits city regulation of alcoholic beverage sales and service in specific areas. City regulation of alcoholic beverages where not otherwise permitted by the Texas Alcoholic Beverage Code would be preempted.

In the case of *Southern Crushed Concrete, LLC v. City of Houston*, a concrete crushing company secured an air quality permit from the Texas Commission on Environmental Quality, but was denied a similar permit by the City whose regulations were more restrictive to the point of rendering the use unlawful. The Texas Supreme Court ruled, “But, the express language of section 382.112(b) compels us to give effect to the Legislature’s clear intent that a city may not pass an ordinance that effectively moots a Commission decision. We hold that the Ordinance makes unlawful an ‘act approved or authorized under . . . the [C]ommission’s . . . orders’ and is thus preempted by the TCAA and unenforceable. TEX. HEALTH & SAFETY CODE § 382.113(b).”<sup>48</sup>

### State and Federal Buildings

The Local Government Code provides that zoning regulations enacted pursuant to Chapter 211 do not apply to “a building, other structure, or land under the control, administration, or jurisdiction of a state or federal agency.”<sup>49</sup> However, zoning will apply to a privately-owned building which is leased to a state agency.<sup>50</sup>

### Pawnshops

Pawnshops are afforded some protection under the Texas Local Government Code. Section 211.0035 provides a city must designate pawnshops, which have been licensed to transact business by the Consumer Credit Commissioner under Chapter 371, Finance Code, as “a permitted use in one or more zoning classifications and cannot “impose a specific use permit requirement or any requirement similar in effect to a specific use permit requirement on a pawnshop.”<sup>51</sup>



Above: Austin, TX food truck  
Many cities do not indicate ‘mobile food truck vending’ among approved land uses listed in the city zoning codes.

Image by Katherine Lynch on Flickr and reproduced under Creative Commons 2.0

47 Texas Alcoholic Beverage Code, Section 109.57 (b)  
48 *Southern Crushed Concrete, LLC v. City of Houston*; \_\_\_\_\_ (Tex. 2013)  
49 TEXAS LOCAL GOV'T CODE, Section 211.013 (c)  
50 Id. at Section 211.013 (d)  
51 Id. at Section 211.0035



## SOME ADDITIONAL ZONING CONCEPTS

**Accessory Use** A use that is customarily incidental to a main use. Typically, these uses must be on the same lot as the main use and are permitted in the same zoning district as the main use.

**Conservation Zoning** Zoning regulations that provide development standards aimed at protecting environmental, historic or cultural amenities of a community. Often these types of regulations provide modifications to standard zoning development standards, including but not limited to setbacks and lot sizes, and may provide density bonuses, in order to provide flexibility and incentives for protecting the targeted amenities.

**Cumulative Zoning** Zoning regulations in which uses in more restrictive districts are permitted in more intensive districts.

**Euclidean Zoning** Zoning regulations that provide individual districts for permitted uses and development standards.

**Design Guidelines** Standards aimed at maintaining the architectural integrity of a unique area of a city or at providing an architectural or design theme for an area of the city.

**Exclusionary Zoning** A discriminatory zoning system in which regulations are enacted to unlawfully exclude certain groups of people.

**Form-Based Code** A zoning code in which the regulations “address the relationship between building facades and the public realm, the form and mass of buildings in relation to one another, and the scale and types of streets and blocks.”<sup>52</sup>

**Incentive Zoning** Zoning regulations that provide bonuses or other incentives pursuant to standards that further specific community development objectives.

**Inclusionary Zoning** Zoning that provides for wide array of residential uses including low income and affordable units.

<sup>52</sup> Definition of a Form-Based Code, Form-Based Code Institute; 2011 [Form-Based Code Institute website]



**Nonconforming Uses** Uses that were previously permitted on a property, but subsequently prohibited by zoning regulations imposed with annexation or an amendment to the zoning regulations.

**Performance Zoning** Zoning regulations that focus on performance criteria rather than solely on the separation of uses.

**Planned Development District (PD) or Planned Unit Development (PUD)** A zoning classification that provides flexible development regulations to allow the construction of a unified development concept which may not conform entirely to the standard zoning regulations. Often these types of development include mixed uses, protection of environmentally significant features, preservation of and provision for open space, interconnection of uses, modified development standards, and special design guidelines and landscaping requirements. Because the authority and limitations for planned development districts are set forth in a city's zoning code, it is necessary to review those portions of the city's code to determine to what extent a planned development district may be used.

**Smart Growth** According to the American Planning Association,

*Smart Growth is not a single tool, but a set of cohesive urban and regional planning principles that can be blended together and melded with unique local and regional conditions to achieve a better development pattern. Smart Growth is an approach to achieving communities that are socially, economically, and environmentally sustainable. Smart Growth provides choices — in housing, in transportation, in jobs, and in amenities (including cultural, social services, recreational, educational, among others) — using comprehensive planning to guide, design, develop, manage, revitalize, and build inclusive communities and regions to:*

- *Have a unique sense of community and place;*
- *Preserve and enhance valuable natural and cultural resources;*
- *Equitably distribute the costs and benefits of land development, considering both participants and the short- and long-term time scale;*
- *Create and/or enhance economic value;*





The Saltillo Lofts development in Austin, TX exemplify many Smart Growth principles.

Image by peterlfrench on Flickr and reproduced under Creative Commons 2.0



- *Expand the range of transportation, employment, and housing choices in a fiscally responsible manner;*
- *Balance long-range, regional considerations of sustainability with short-term incremental geographically isolated actions;*
- *Promote public health and healthy communities;*
- *Apply up-to-date local and regional performance measures of successful urban and regional growth;*
- *Encourage compact, transit-accessible (where available), pedestrian-oriented, mixed-use development patterns and land reuse; and,*
- *Increase collaboration and partnerships to advance place-based and regional goals and objectives, while respecting local land-use preferences and priorities.*

Core principles of Smart Growth include:

1. Efficient use of land and infrastructure
2. Creation and/or enhancement of economic value
3. A greater mix of uses and housing choices
4. Neighborhoods and communities focused around human-scale, mixed-use centers
5. A balanced, multi-modal transportation system providing increased transportation choice
6. Conservation and enhancement of environmental and cultural resources
7. Preservation or creation of a sense of place
8. Increased citizen participation in all aspects of the planning process and at every level of government



9. Vibrant center city life
10. Vital small towns and rural areas
11. A multi-disciplinary and inclusionary process to accomplish smart growth
12. Planning processes and regulations at multiple levels that promote diversity and equity
13. Regional view of community, economy and ecological sustainability
14. Recognition that institutions, governments, businesses and individuals require a concept of cooperation to support smart growth
15. Local, state, and federal policies and programs that support urban investment, compact development and land conservation
16. Well defined community edges, such as agricultural greenbelts, wildlife corridors or greenways permanently preserved as farmland or open space.<sup>53</sup>

The U.S. Environmental Protection Agency identifies the following ten basic principles of Smart Growth developments:

1. Mix land uses
2. Take advantage of compact building design
3. Create a range of housing opportunities and choices
4. Create walkable neighborhoods
5. Foster distinctive, attractive communities with a strong sense of place

---

<sup>53</sup> Policy Guide on Smart Growth, American Planning Association; Originally Ratified by Board of Directors, April 15, 2002; Updated Guide Adopted by Chapter Delegate Assembly, April 14, 2012; Updated Guide Ratified by Board of Directors, April 14, 2012



6. Preserve open space, farmland, natural beauty, and critical environmental areas
7. Strengthen and direct development towards existing communities
8. Provide a variety of transportation choices
9. Make development decisions predictable, fair, and cost-effective
10. Encourage community and stakeholder collaboration in development decisions.<sup>54</sup>

**Street Design Standards** Standards focusing on various elements of street design and construction including, but not limited to street width, curbs and gutters, medians, lane widths, street parking, sidewalks, pedestrian amenities, bicycle lanes, crosswalks, landscaping, lighting, and street.

**Transit-Oriented Development** Typically higher density, mixed use development surrounding a transit station (usually 1/4-1/2 mile radius) which is designed to exploit the transportation opportunities afforded by the transit station.

**Unified Development Code** A single code that incorporates all development-related regulations including zoning and subdivision regulations, but may also include signage, landscaping, screening and fencing, environmental performance, and other development-related regulations.

**Zoning Overlay** “A set of zoning ordinances, optional or required, specifying land use and/or design standards for a designated portion of the underlying zoning within a defined district; typically used to keep architectural character and urban form consistent, make adjacent uses compatible, and/or accelerate the conversion of non-conforming land uses.”<sup>55</sup>

---

<sup>54</sup> About Smart Growth, U.S. Environmental Protection Agency, (2013) [U.S. EPA website]

<sup>55</sup> *Makin Smart Growth Happen*, U.S. Environmental Protection Agency, [U.S.EPA website] (2013)



## CHALLENGES

Zoning is an exercise of a municipality’s legislative powers<sup>56</sup> and courts will give deference to the municipality’s ordinances and “[i]f reasonable minds may differ as to whether or not a particular zoning ordinance has a substantial relationship to the public health, safety, morals or general welfare, no clear abuse of discretion is shown and the ordinance must stand as a valid exercise of the city’s police power.”<sup>57</sup> Therefore, a zoning ordinance receives deference and is presumed valid. A party challenging the zoning ordinance must show that the ordinance is arbitrary or unreasonable because it bears no substantial relationship to the public health, safety, morals or general welfare.<sup>58</sup> “Determining the reasonableness of a zoning ordinance is a question of law for the court.”<sup>59</sup>

The following are some of the common challenges to zoning ordinances:

### Inverse condemnation, taking, damaging

The U.S. Supreme Court has held that, “while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking” in violation of the Fifth Amendment of the U.S. Constitution.<sup>60</sup> In this sense the action of the governmental authority is characterized as a “regulatory taking” as opposed to a physical taking such as the acquisition of property for a public purpose. “In a regulatory taking, it is the passage of the ordinance that injures a property’s value or usefulness.”<sup>61</sup>

A regulatory taking may occur if a regulation deprives a property owner of all economically beneficial use of his land.<sup>62</sup> A regulatory taking may also be found if the regulation unreasonably interferes with a landowner’s right to use and enjoy his property or does not substantially advance a legitimate

<sup>56</sup> *City of Pharr v. Tippitt*, 616 S.W. 2d 173, 173 (Tex. 1981) citing *Thompson v. City of Palestine*, 510 S.W. 2d 579 (Tex. 1974)  
<sup>57</sup> *Id.* at 176  
<sup>58</sup> *Id.*  
<sup>59</sup> *City of San Antonio v. Arden Encino Partners, Ltd.*, 103 S.W.3d 627, 630 (Tex. App.-San Antonio 2003) *Id.* at 103 S.W.3d 627  
<sup>60</sup> *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 413, 43 S.Ct. 158, 67 L.Ed. 322 (1922)  
<sup>61</sup> *Lowenberg v. City of Dallas*, 168 S.W.3d 800, 802 (Tex.2005)  
<sup>62</sup> *Lucas v. South Carolina Coastal Commission*, 112 S.Ct. 2886 (1992); *Mayhew v. Town of Sunnyvale*, 964 S.W.2d 922, 935 (Tex.1998) cert. denied, 526 U.S. 1144, 119 S.Ct. 2018, 143 L.Ed.2d 1030 (1999).

## CHALLENGES:

1. Inverse condemnation, taking, damaging
2. Substantive due process
3. Procedural due process
4. Failure to comply with statutory or local procedures
5. Equal protection
6. Free exercise
7. Spot Zoning
8. Contract Zoning

In order to **challenge a zoning ordinance**, one must show that the ordinance is

1. arbitrary or
2. unreasonable

because it bears no substantial relationship to the:

- public health,
- safety,
- morals or
- general welfare.



*A regulatory taking may occur if a regulation deprives a property owner of all economically beneficial use of his land.*

governmental interest.<sup>63</sup> Further, regulations may be deemed as takings if they unreasonably interfere with an owner’s investment-backed expectations while also considering the economic impact of the regulation on the property owner, and the character of the governmental action.<sup>64</sup>

### Substantive due process

Regulations may be subject to a substantive due process challenge if they fail to further a legitimate State interest or fail to have any relation to the public health, safety or welfare.<sup>65</sup> The regulations must first be “rationally related to legitimate government interests.”<sup>66</sup> Further, the regulations must not be arbitrary, unreasonable or capricious and must have a substantial relationship to the public health, safety or welfare.<sup>67</sup>

*“When a zoning determination is challenged on substantive due process grounds, if reasonable minds could differ as to whether the city’s zoning action had a substantial relationship to the public health, safety, morals or general welfare, the action must stand as a valid exercise of the city’s police power.”<sup>68</sup>*

### Procedural due process

Procedural due process mandates that a property owner who is deprived of a property right must have been given an “appropriate and meaningful opportunity to be heard.”<sup>69</sup> A city satisfies this standard if it provides notice and an opportunity to be heard.<sup>70</sup>

### Failure to comply with Statutory or local procedures

Zoning ordinances are invalid, and not merely voidable, if the statutory procedure is not followed. “(F)ull compliance with the statute is necessary to the validity of amendatory, temporary or emergency zoning ordinances.”<sup>71</sup> Further, the “right to have notice and appear before a zoning commission is a

63 *Mayhew* at 935  
64 *Sheffield Development Company, Inc. v City of Glenn Heights*, 140 S.W. 3d 660, 672 (Tex. 2004)  
65 *Mayhew* at 938  
66 *Id.*  
67 *Id.*  
68 *City of Waxahachie v. Watkins*, 154 Tex. 206, 275 S.W.2d 477, 481 (1955)  
69 *Mayhew* at 939  
70 *Id.* at 940  
71 *Bolton v. Sparks*, 362 S.W. 946, 950 (Tex. 1962)



statutory right, not a due-process requirement.”<sup>72</sup> Therefore, one complaining of defective notice, based solely on noncompliance with the statute, does not have a constitutional claim.

## Equal protection

An equal protection challenge may be brought if an individual can demonstrate that the city treated the individual differently from other similarly situated individuals without any reasonable basis. Such an ordinance generally must only be rationally related to a legitimate state interest unless the ordinance discriminates against a suspect class or infringes.<sup>73</sup> “Economic regulations, including zoning decisions, have traditionally been afforded only rational relation scrutiny under the equal protection clause.”<sup>74</sup>

*Cities cannot treat individuals differently from other similarly situated individuals without any reasonable basis.*

## Free Exercise

Regulations that attempt to regulate religious activities may be challenged if they interfere with the exercise of religious freedoms in violation of the First Amendment of the U.S. Constitution. The Religious Land Use and Institutionalized Persons Act (RLUIPA), provides further protection by prohibiting:

*“zoning and landmarking laws that substantially burden the religious exercise of churches or other religious assemblies or institutions absent the least restrictive means of furthering a compelling governmental interest. This prohibition applies in any situation where: (i) the state or local government entity imposing the substantial burden receives federal funding; (ii) the substantial burden affects, or removal of the substantial burden would affect, interstate commerce; or (iii) the substantial burden arises from the state or local government’s formal or informal procedures for making individualized assessments of a property’s uses. In addition, RLUIPA prohibits zoning and landmarking laws that:*

1. *Treat churches or other religious assemblies or institutions on less than equal terms with nonreligious institutions;*
2. *Discriminate against any assemblies or institutions on the basis of religion or religious denomination;*

<sup>72</sup> *Murmur Corporation v. Board of Adjustment of the City of Dallas*, 718 S.W. 2d 790, 792 (Tex. App- Dallas, 1986, writ ref’d n.r.e.)

<sup>73</sup> Mayhew at 939

<sup>74</sup> Id.



3. *Totally exclude religious assemblies from a jurisdiction; or*
4. *Unreasonably limit religious assemblies, institutions, or structures within a jurisdiction. laws.”<sup>75</sup>*

## Spot Zoning

Some zoning changes may be challenged if the rezoning is deemed to be “Spot Zoning”. “Spot Zoning” is the process of singling out a small tract of land and treating it differently from similar surrounding land “without any showing of justifiable changes in conditions.”<sup>76</sup> In *City of Pharr v. Tippitt*, the Texas Supreme Court identified the following factors to be reviewed in determining whether a rezoning is Spot Zoning:

1. Whether the City has disregarded the zoning ordinance or long-range master plans and maps that have been adopted by ordinance;
2. The nature and degree of an adverse impact on surrounding properties; i.e. is the change substantially inconsistent with surrounding properties; and,
3. Whether the use of the property as presently zoned is suitable or unsuitable;
4. Whether the rezoning ordinance bears a substantial relationship to the public health, safety, morals or general welfare or protect and preserve historical and cultural places and areas.

## Contract Zoning

Zoning ordinances whereby the City commits itself to rezone land in consideration of the landowner to use or not use his land in a particular manner, or provide some other consideration in exchange for the zoning may be challenged as “Contract Zoning.” Contract zoning is invalid because the city dele-

---

<sup>75</sup> Religious Land Use and Institutionalized Persons Act of 2000; The United States Department of Justice

<sup>76</sup> *City of Pharr v. Tippitt*, 616 S.W.2d 173, 177 (Tex.1981)



gates its legislative authority and bypasses the legislative process.<sup>77</sup> Zoning is legislative function of municipalities that they cannot contract away.<sup>78</sup>

## CONCLUSION

Comprehensive plans are intended to set forth a city's goals and objectives for future growth and identify a strategy by which the city will strive to achieve them. Zoning is an essential tool, if not the essential tool, used to implement the comprehensive plan along with subdivision regulations, infrastructure planning, and economic strategies. As evidenced above, there are numerous technical, legal and political issues that must be evaluated in the enactment and modification of zoning regulations. This article was intended to introduce these concepts at a broad level and not penetrate the deeper judicial analyses and more developed standards of review. A fundamental awareness of zoning should include the basics of the grant of authority, purposes, police power, process, and enforcement just as those same basic concepts were imperative in the Standard Zoning Enabling Act of 1926.

---

<sup>77</sup> *Super Wash, Inc. v City of White Settlement*, 131 S.W.3d 249,257 (Tex. App.-Fort Worth, 2004)

<sup>78</sup> *Id.*



# Chapter 5 Annexation and the ETJ

Ben Luckens, AICP



This chapter discusses the role of annexation in Texas. It explains the differences in annexing home rule cities and general law cities and specific definitions and purposes of extraterritorial jurisdictions. The chapter explains the statutory framework for which Texans abide by annexation, giving general process requirements, or annexation/development development agreements and the annexation of water districts. Other statutory requirements include spatial requirements; hearings and notice requirements; service plan requirements--including service issues related to the level of service, capital improvements and water and wastewater service, and the impact on services to the balance of the city-- annexation processes, including concensual annexation processes, MAP processes, and MAP-exempt processes. The post-annexation requirements for all full purpose annexations, the continuation of uses and zoning, the limited purpose annexation and disannexation are also discussed. Annexation planning and explained in a step by step format, including managing the ETJ, developing an annexation plan, the annexation evaluation process, fiscal impact analysis, and implementation.



## INTRODUCTION

*Annexation is the process by which a city extends its municipal services, regulations, voting privileges and taxing authority to new territory.*

Cities annex territory to provide urbanizing areas with municipal services and to exercise regulatory authority necessary to protect public health and safety. Annexation and the imposition of land use controls can also be a tool with which to implement a comprehensive plan. Annexation is also a means of ensuring that residents and businesses outside a city's corporate limits who benefit from access to the city's facilities and services share the tax burden associated with constructing and maintaining those facilities and services. Recognizing that annexation is essential to the efficient extension of urban services and to the general well being of cities and their residents, Texas annexation law (codified in Chapter 43 of the Texas Local Government Code) allows home rule cities to annex territory on a non-consensual basis.

### General Law and Home Rule

Chapter 43 differentiates between and general law and home rule cities in terms of their relative authority to annex. A general law city is a municipality with a population of less than 5000 persons or a city with a population greater than 5000 which has not adopted a home rule charter. A general law city can only annex property on a non-consensual basis under certain conditions:

- The municipality has a population between 1000 and 5000 persons;
- The municipality is providing the area to be annexed with water or wastewater service; and
- The area to be annexed does not include unoccupied territory in excess of one acre for each service address for water and wastewater service or, in case of Type A general-law cities, the area is entirely surrounded by the city.

A home rule city is a municipality with a population greater than 5000 which has adopted a home rule charter. A home rule city may annex territory on a consensual basis or on a non-consensual basis. Some home rule charters,

#### General Law City

- population <5000
- population >5000 that has not adopted a home rule charter
- annex on non-consensual years under certain conditions

#### Home Rule City

- population >5000 with adopted home rule charter
- annex on a consensual or non-consensual years
- annexation may require voter approval



Image by Buggy Sailor on Flickr and reproduced under Creative Commons 2.0

Right: **Voter approval** may be required prior to annexation with consent.

Image by Jasleen\_kaur on Flickr and reproduced under Creative Commons 2.0

**Non-consensual annexation**

The authority to annex unilaterally, without consent

**Consensual annexation**

The authority to annex by petition, with consent



however, may require voter approval prior to annexation.

Chapter 43 differentiates between non-consensual annexations that are part of a Subchapter C municipal annexation plan (MAP) and those that are exempt from the requirement to be included in a MAP. Chapter 43 sets out different process for consensual annexations, MAP annexations and MAP-exempt annexations.

Chapter 43 also contains a number of special provisions that go beyond differentiating between home rule and general law cities and between MAP and exempt areas. These provisions include brackets, typically based on population, that grant certain cities special authority, exempt other cities from one or more requirements, or impose conditions for annexation not required of other cities. For these reasons, officials of cities considering annexation should carefully review the appropriate sections of the Local Government Code and closely monitor proposed amendments.

Because cities can only annex land within their extraterritorial jurisdiction (ETJ), any discussion of annexation must begin with consideration of the ETJ.



## EXTRATERRITORIAL JURISDICTION (ETJ)

The ETJ of a city is the contiguous unincorporated land extending from its corporate limits that is not within another city's ETJ. The extent of a city's ETJ varies according to its population, ranging from one-half mile for communities with less than 5,000 persons, to five miles for cities greater than 100,000 in population. A city's ETJ may exceed its statutory size limit if the owners of additional contiguous area not in another city's ETJ request to be included in the ETJ. Annexations extend a city's ETJ out to the statutory limit or to the point where the extension abuts another municipality's ETJ. Annexation of city owned land, however, does not extend the ETJ. Cities may exchange or transfer ETJ within the spatial limitations described above. ETJ-related statutes can be found in Chapter .42 of the Local Government Code.

The purpose of the ETJ is to encourage cities to plan for growth in the area outside their corporate boundaries. The ETJ does this in two ways. First, there is a statutory prohibition against a municipality annexing into another city's ETJ. This provides a city with land that it alone can annex encouraging mid and long-range infrastructure and facilities planning in the ETJ. Second, cities are authorized to enforce their subdivision regulations and infrastructure standards (and a very limited number of other regulations) in their ETJ. This ensures that cities will not have to assume maintenance responsibilities for substandard infrastructure upon annexation and generally results in a higher standard of development than would have otherwise occurred.

*The purpose of the ETJ is to encourage cities to plan for growth in the area outside their corporate boundaries.*

Because of the direct relationship between the ETJ and a city's ability to annex land, proposals regarding the creation of special districts in the ETJ, requests for incorporation, and ETJ adjustments with other cities should be evaluated in terms of their potential impacts on future annexation.

## STATUTORY FRAMEWORK FOR ANNEXATION

Most of the Texas statutes associated with annexation are codified in Chapter 43 of the Texas Local Government Code. Chapter 43 establishes a number of general procedural requirements for all annexations. These procedural requirements can be divided into:

1. General process requirements



### MAP-Exempt Annexations Areas

In addition to the exemptions noted above, the following other areas are exempt from the requirement to be included in the MAP:

- Areas where more than 50% of the real property owners have petitioned for annexation, or by a vote or petition of the qualified voters or real property owners;
- Areas that are the subject of an industrial district contract or a strategic partnership agreement;
- Colonias;
- Areas included in boundary adjustments less than a 1000 feet wide that are part of agreements between cities;
- Areas enclosed within a military installation;
- An annexation to protect the area or municipality from imminent destruction of property or injury to persons; or a condition or use that constitutes a public or private nuisance; and
- The annexation of adjacent navigable streams by general law cities

2. Spatial requirements
3. Hearing and notice requirements
4. Service plan requirements

Prior to initiating an annexation program, staff should closely review Chapter 43 and consult with their city attorney to ensure that the correct procedures are being followed.

## General Process Requirements

### Municipal Annexation Plan

Section 43.052 of the Local Government Code requires all cities to adopt a municipal annexation plan (MAP). To annex an area that contains more than 99 tracts on which one or more residential dwellings are located on each tract on a non consensual basis the area must be included in the municipal annexation plan (MAP) and can only be annexed following the three-year MAP process set out in Chapter 43 Subchapter C. The MAP process is discussed in detail elsewhere in this chapter.

All consensual annexation areas and areas that contain fewer than 100 tracts on which one or more residential dwellings are located on each tract are exempt from the requirement to be included in the MAP and can be brought into the City within a much shorter time frame. The statute places limitations on dividing an area into separate areas of less than 100 tracts.

In addition to the exemptions noted above, the following other areas are exempt from the requirement to be included in the MAP:

- Areas where more than 50% of the real property owners have petitioned for annexation, or by a vote or petition of the qualified voters or real property owners;
- Areas that are the subject of an industrial district contract or a strategic partnership agreement;
- Colonias;



- Areas included in boundary adjustments less than a 1000 feet wide that are part of agreements between cities;
- Areas enclosed within a military installation;
- An annexation to protect the area or municipality from imminent destruction of property or injury to persons; or a condition or use that constitutes a public or private nuisance; and
- The annexation of adjacent navigable streams by general law cities

### **Annexation/development Development Agreements**

Section 43.035 of the Texas Local Government Code requires that all cities offer the owners of property covered by agricultural, wildlife or timber management exemptions an annexation/development agreement before the property can be annexed on a non-consensual basis. Implications of this requirement are discussed in greater detail in the annexation planning section of this chapter.

### **Annexation of Water Districts (MUDs and WCIDs)**

Chapter 43 includes a number of requirements regarding the annexation of water districts. Unless a district is located in two or more ETJs, the city must annex the entire district. Following its annexation, the district must be dissolved and the city must assume all of the district's debts and assets. If a district is located in two or more ETJs, it can be annexed piecemeal in accordance with an allocation agreement regarding the district's assets and debts with the other city or cities.

If the annexation precludes the developer from being reimbursed through district bonds the city must reimburse the developer all the costs that are eligible for reimbursement from bond proceeds under the rules of the Texas Environmental Conservation Quality Commission.

### **Spatial Requirements**

- Annexation areas must be in the ETJ unless the city owns the property
- Annexation areas must be contiguous to the city's corporate limits



Two public hearings must be held, having provided proper public notice.

- Strip annexations less than 1,000 feet in width are prohibited unless initiated by the owner of the land or the city is contiguous to the strip on at least two sides
- With some exceptions, cities may not annex additional land from strips less than 1000 feet in width or from areas that are in the ETJ only because of the previous annexation of strips less than 1000 feet in width
- The total amount of land annexed in any calendar year cannot be more than 10 percent of the city's total area as of January 1 of that year. If a city does not annex the full 10 percent, it may carry over the unused allocation for use in subsequent years up to a maximum 30 percent of the city's total area as of January 1 of that year. There are a number of exceptions to this rule. Government property is not included in the total nor is land which is being annexed at the request of a majority of its owners or residents

## Hearing and Notice Requirements

- For MAP-exempt areas two public hearings must be held on or after the 40th day but before the 20th day before the date of first reading of the annexation ordinance
- For MAP areas two public hearings must be held within 90 days of releasing the inventory of services (this is described in detail in the MAP process of this chapter)
- Public notice of the hearings must be published in a local newspaper at least 11 days but not more than 20 days before the hearings
- Notice of each hearing must also be posted on the city's website at least 11 days but not more than 20 days before the hearings
- If more than 20 permanent adult residents of the area proposed for annexation protest the annexation within 10 days after publication of the notice (10% of residents in the case of MAP-exempt areas), one of the public hearings must be conducted in the area proposed for annexation or in the nearest suitable public facility if the annexation area does not have a suitable site
- Notice must be sent to property owners in areas covered by the less than 100 tract exemption 30 days prior to the first hearing. Property owners in MAP areas must be notified of the proposed annexation within 89 days of MAP



adoption

- Notice must be sent to each public entity (as defined by Sec. 43.053) and utility service provider that provides services in the proposed annexation area (service providers in MAP areas receive notice by certified mail within 89 days of MAP adoption; providers in areas covered by the less than 100 developed tract exemption receive standard mail notice 30 days prior to the first hearing)
- Notice must be sent to each railroad company that serves the annexing city and is on the city's tax rolls if the railroad has right-of-way in the proposed annexation area (railroads in MAP areas receive notice by certified mail within 89 days of MAP adoption; railroads in areas covered by the less than 100 developed tract exemption receive standard mail notice 30 days prior to the first hearing)
- Cities must notify all school districts within the annexation area of the hearings. The notice must include an estimate of any financial impact to the districts and proposals to mitigate the impacts on the districts

## Service Plan Requirements

As part of the public hearing process for all annexations, the city must present a service plan for the area proposed for annexation. The service plan is essentially a contract between the city and the people being annexed and is valid for a period of ten years. Any person residing or owning property in an annexation area may enforce a service plan by applying for a writ of mandamus in which case the city has the burden of proving that the services were provided in accordance with the service plan. Residents can also seek arbitration to enforce service plan conditions. Failure to fulfill the service plan can result in disannexation, the refunding of taxes paid for services not received, and a civil penalty.

Prior to publication of the first annexation hearing notice, an annexation service plan meeting the requirements of Sec. 43.056 must be prepared

The service plan must provide for the extension of the following services immediately upon annexation if the city provides the services:

- Police protection;





- Fire protection;
- Solid waste collection (residents of annexation areas have the option of continuing to use private service providers for up to two years);
- Maintenance of public water and wastewater facilities that are not in the service area of another water or wastewater utility;
- Maintenance of public roads and streets, including road and street lighting;
- Maintenance of public parks, playgrounds, and swimming pools; and,
- Maintenance of any other publicly owned facility, building, or service

### Service Issues

Services issues fall into three categories:

1. The level of service for general government services
2. Capital improvements and the provision of water and wastewater service
3. The impact on services in the balance of the city

### Level of Service

In general, if an annexation area is receiving a lower level of general government services infrastructure, and infrastructure maintenance than is available in the city, the city must provide the annexation area with a level of services that is comparable to areas inside the city with similar topography, land use and population density. If an annexation area is receiving a level of service equal to what is available in the city, the service plan must maintain the existing levels. If an area to be annexed is receiving a higher level of service, infrastructure, and infrastructure maintenance than is available in the city, the service plan need only provide the area with a level of service comparable to areas inside the city with similar topography, land use and population density. The city, however, must continue to operate and maintain the existing public infrastructure and facilities at the higher pre-annexation level.

*The city must provide the annexation area with a level of services that is comparable to areas inside the city*



### **Capital Improvements and Water and Wastewater Service**

The service plan must include a capital improvements program element for capital projects necessary to provide full municipal services. State law defines full municipal services to include water and wastewater service. If the city owns a water and wastewater utility and the annexation area is not in the service area of another utility the service plan must provide for the construction of capital facilities necessary to extend water and/or wastewater service within 2 1/2 years unless the plan includes a schedule for providing full services in which case the city has 4 1/2 years. Capital facility construction deadlines do not apply if the annexation was consensual and the landowners agreed that the facilities are not needed within the specified period.

*State law defines full municipal services to include water and wastewater service.*

The service plan may state that water and wastewater service will be provided in accordance with the city's utility extension policies. Typically these policies do not provide for the extension of utilities to unplatted land. A summary of the city's water and wastewater utility extension policies is required to be attached to the annexation service plan.

The water and wastewater component of the annexation service plan may not:

- Require the creation of another political subdivision (such as a water district)
- Require a landowner in the area to fund the required capital improvements in a manner inconsistent with state impact fee legislation unless otherwise agreed to by the landowner

### **Impact on Services to the Balance of the City**

Service issues also include the impact of annexation on services in the balance of the city. A city may not provide services to an annexation area in a manner that would result in more than a negligible reduction in the level of fire, police or emergency medical services provided to areas in the existing city.

## **Annexation Processes**

As noted above, Chapter 43 sets out different process for consensual, MAP and MAP-exempt annexations.



### **The Consensual Annexation Process**

Typically, consensual annexations are initiated by landowners as projects go through the development process. These annexations can be processed under Sec. 43.028 or as a MAP-exempt area under Subchapter C-1 of Chapter 43.

Sec. 43.028 is for vacant tracts that are less than one-half mile in width. Under the Sec. 43.028 process, the landowner petitions the City Council for annexation and the Council has 30 days to accept the annexation petition. Following acceptance of the petition, the City goes through the notification and hearing processes described above and then may complete the annexation process by adopting an annexation ordinance. First reading (at least) of the annexation ordinance must take place within 40 days of the date of the first hearing and not less than 20 days from the second hearing. The annexation must be completed within 90 days of first reading of the annexation ordinance.

The Subchapter C-1 process for consensual annexations include the notices and hearings described above but does not require separate acceptance of the petition. Land eligible for the Sec. 43.028 process may also be annexed through the C-1 process.

### **MAP Process**

To annex an area with more than 99 tracts on which one or more residential dwellings are located on each tract a city must first include the area in its municipal annexation plan (MAP). The MAP is a three-year process that begins on the effective date of plan adoption.

Within 89 days of the effective date of plan adoption, the city must notify each property owner in the proposed annexation area and each of the public or private entities that provide municipal-type services to the proposed annexation area. In addition, the plan must be posted on the city's website.

Following notification, the city must prepare an inventory of services provided to the proposed annexation area. The information for the inventory comes from the service providers themselves. The city's notification to area service providers must include a request for information regarding the types and levels of services and facilities they were providing in the year preceding adoption of the MAP. If a service provider fails to submit the required information within 90 days of receiving notification, the city is not obligated to include



that information in its inventory. The city may monitor the services provided in an area proposed for annexation to verify the inventory information provided by the service provider.

The following types of information are required for infrastructure (utilities, roads, drainage etc):

- An engineering report that describes the physical condition of all infrastructure elements in the area
- A summary of expenditures for that infrastructure

The following information is required for fire, police and emergency medical services:

- Average dispatch and delivery times.
- Equipment schedules.
- Staffing schedules including certification and/or training levels.
- A summary of operating and capital expenditures.

Within 60 days of receiving the requested information, the city must complete the inventory and make it public. Only those services and facilities provided in the year preceding the date of plan adoption are to be included in the inventory. The inventory becomes a baseline by which the city’s service plan will be measured and a basis for negotiations during the annexation process.

Within 90 days of making the inventory available for public review, the city must hold two annexation public hearings. A preliminary service plan must be presented and explained at each of the hearings. After completing the hearings, the city negotiates the terms of the final service plan with five representatives from the area who are appointed by the County Commissioners Court. In the case of water districts (MUDs, WCIDs etc.), the city negotiates with the district’s board.

The final service plan must be completed prior to the first day of the tenth

**MAP Process**

1. Notify
  - Property owners
  - Service providers
  - Railroad companies
  - School districts
  - Public
2. Inventory:
  - Services
  - Engineering report and expenditures of areas infrastructure
  - First responders information needs
3. Make inventories public
4. First public hearing with preliminary service plan
5. Second public hearing with preliminary service plan
6. Negotiations
7. Plan adoption
8. Final service plan
9. Annexation three years following adoption



month following completion of the inventory of services, or approximately 17 months after plan adoption. If an agreement cannot be reached between the City and the area's representatives, the law provides for a binding arbitration process. The scope of the arbitration is, however, limited to issues relating to the service plan. Including arbitration, the negotiation phase of the process can be completed within 21 months of plan adoption. The city pays the cost of arbitration unless it can be shown the negotiators requested arbitration in bad faith or the request was groundless or for the purpose of harassment in which case the negotiators pay the costs.

The city and the area's representatives may also negotiate terms of a contract for the provision of services in lieu of annexation. The terms of this contract can be fairly broad and include permissible land uses, compliance with ordinances, the funding of services and any other term to which the parties agree will resolve the dispute including the creation of any special district allowed by law.

*Be aware that for property to be on the tax rolls for the following year, it must be annexed by December 31.*

The annexation itself cannot take place until the third anniversary of the effective date of plan adoption and must be completed before the 31st day following the third anniversary of adoption of the plan. If the process is not completed within that time frame, the city may not annex the area for five years. In the context of these timing considerations, planners need to be aware that for property to be on the tax rolls for the following year, it must be annexed by December 31. The plan's effective date needs to be early enough to allow for a December 31 annexation date.

Note that virtually all developed water districts (MUD, WCIDs etc) meet the criteria for inclusion into a city's MAP prior to annexation. If a district that has been added to the MAP requests a Strategic Partnership Agreement (SPA) the city must negotiate and enter into an SPA. Districts must submit their request for an SPA within 61 days after second annexation public hearing. State law provides for an arbitration process if the city and the district cannot agree on the terms of the SPA.

The terms of the SPA can be fairly broad and include limited purpose annexation and setting a date certain for future annexation. If a city annexes a portion of a district for limited purposes under an SPA, the city may impose its sales tax in that portion of the district.



A district with an SPA can be converted to a Limited District following its full purpose annexation and continue to collect taxes and fees to maintain its parks, provide solid waste services and enforce deed restrictions.

A MAP may be amended to include new annexation areas, however, similar timing requirements would apply to each added area. Areas may also be removed from the MAP. If an area is removed within the first 18 months following its inclusion in the plan, the area may not be amended again to re-include the area until the one-year anniversary of its removal. Any area removed after the first 18 months would be subject to a two-year moratorium before it could be re-included in the MAP. Property owner notification is required if an area is removed from the plan after the first 18 months.

### **MAP-exempt Process**

The process for the non-consensual annexation of areas with fewer than 100 tracts on which one or more residential dwellings are located on each tract and of other MAP-exempt areas is set out in Subchapter C-1.

The hearing and notice requirements are described in the Hearings and Notice Section of this chapter. Public notice of the hearings must be published in a local newspaper at least 11 days but not more than 20 days before the hearings. Two public hearings must be held on or after the 40th day but before the 20th day before the date of first reading of the annexation ordinance. As with the consensual process, the non-consensual MAP-exempt process requires first reading (at least) of the annexation ordinance within 40 days of the date of the first hearing and not less than 20 days from the second hearing. The annexation must be completed within 90 days of first reading of the annexation ordinance.

Prior to publication of the first annexation hearing notice, an annexation service plan meeting the requirements of Sec. 43.056 must be prepared and presented at the public hearings. The service plan can be refined during the annexation process but there can be no reduction in the level of services from what was presented during the public hearings.

### **Post-annexation Requirements for All Full Purpose Annexations**



- Cities must reimburse the Emergency Service District (ESD) that served the area prior to annexation a pro rata share of the debt issued and facilities and equipment purchased to serve the annexation area (there are limitations on what the ESD may claim)
- Annexations are not effective until the ESD has been notified
- Cities are required to submit applications to the U.S. Department of Justice for preclearance at the earliest date permitted by federal law and after receiving preclearance must permit residents to vote in the next municipal annexation.
- A city that changes its boundaries or the boundaries of the districts used to elect city council members must, within 30 days, notify the county voter registrar of the boundary change and provide the registrar with a map of the boundary changes in a format that is compatible with the mapping format used by the registrar

## Continuation of Uses and Zoning

### Existing or proposed developments:

- Have continuation of nonconforming use rights
- Can be zoned, unless vested under Ch 245 of LGC

Landowners of existing or proposed developments have continuation of use rights. Essentially these rights represent an extension of legal nonconforming use status.

Following annexation, a city can not prohibit the continuation of a legal land use if the use was in existence on the date annexation proceedings were instituted (first reading of the annexation ordinance) or prohibit a landowner from beginning to use land if the use was planned 90 days before the effective date of the annexation and a complete application for any required government permit was submitted before the date annexation proceedings were instituted.

Zoning after annexation is a legislative function of the city council, however, projects vested under Chapter 245 of the Local Government Code are not subject to zoning regulations that affect property classification. Vested projects are also not subject to zoning regulations that affect landscaping, tree preservation, or open space/park dedication.



## Limited Purpose Annexation

Subchapter F of Chapter 43 authorizes cities with populations in excess of 225,000 to annex territory for the limited purposes of applying planning, zoning, health, and safety ordinances to the area. Areas annexed for limited purposes must be annexed for full purposes within three years unless this condition is waived by the landowner. Areas annexed for limited purposes must be contiguous to the full purpose city limits unless the landowner consents to non-contiguous annexation. Residents in a city's limited purpose jurisdiction may vote in municipal elections but do not pay city taxes.

Limited purpose annexation can be a useful tool in implementing a city's comprehensive plan, but its use must be closely coordinated with capital improvements planning. As part of the process for limited purpose annexation, a city must prepare a planning study and a regulatory plan for the area proposed for annexation. With the exception of consensual limited purpose annexations in which the land owner waives or postpones full purpose annexation, the annexing city must take specific steps leading to full purpose annexation in each of the years preceding full purpose annexation (see right).

Failure to meet such milestones may result in a court order requiring either full purpose annexation or disannexation of the area.

Following annexation at the end of the third year, the city has up to 4½ years in which to provide the necessary capital improvements.

## Disannexation

A majority of the voters of an area annexed for full purposes by a home rule city may petition the city for disannexation if the city fails to provide the services called for in the annexation service plan or otherwise fails to meet the service requirements of the Local Government Code. If the city fails to disannex the area, any signer of the petition may seek disannexation in district court. If the area is disannexed by the city following receipt of the petition or by district court, it can not be reannexed for ten years. Following disannexation, the city must refund the taxes and fees collected less the amount spent for the direct benefit of the area during the period in which it was in the city. A city cannot disannex a portion of an annexation area.

### Limited Purpose Annexation Steps

- By the end of the first year the city must prepare a land use and intensity plan as a basis for services and capital improvements planning;
- By the end of the second year the city must include the area in its long-range financial forecast capital improvements plan; and
- By the end of the third year the city must add the projects necessary to serve the area into its capital improvements plan and identify potential funding sources



Disannexation procedures for general law cities permit fifty (50) or more voters of an area to request a disannexation election. If a majority of the voters in the election vote for disannexation, the area is disannexed. However, the area may not be disannexed if it would result in the city becoming less than one mile square or having less than one mile in diameter measured at the center of the original municipal boundaries. In addition, if the city has any debt, the area is not released from its pro rata share of that indebtedness.

The Local Government Code also provides for the disannexation of very low density or unimproved acreage by general law cities and of unimproved land by home rule cities of certain population in counties of certain population.

## **Annexation Planning**

*Annexation is critical to the long-term well being of cities and should not be performed on an ad hoc basis*

Because annexation is so critical to the long-term well being of cities, it needs to be carried out in accordance with established policies and not on an ad hoc basis. A city's comprehensive plan should include ETJ and annexation-related goals and policies. Every ETJ and annexation proposal should be evaluated in terms of how it fits with those goals and policies. Annexation policies should include the use of criteria with which to select areas to be annexed from the range of potential annexation areas. The policies must also be aligned with the requirements of Chapter 43, other applicable statutes and the city's charter.

Annexation planning should also be coordinated with the city's financial and capital improvements plans and be supported by the city's water and wastewater service extension policies. Successful annexation planning and ETJ management is dependent upon a robust water and wastewater utility and upon active long-range capital improvements planning.

## **ETJ Management**

Annexation planning is a continuous process that begins with management of the extraterritorial jurisdiction (ETJ).

ETJ management issues faced by all cities with ETJs include petitions for creation of water districts (MUDs and WCIDs) and requests for ETJ exchanges and releases. Approval of these sorts of petitions and requests is discretionary on the part of cities and need to be evaluated in terms of their impact on annexation. The use of strategic partnership agreements can provide opportuni-



ties for cities when annexation and the provision of services is not an option.

Another ETJ management issue is the development of large projects in the ETJ that cannot be immediately annexed. Annexation of a residential project after it is developed can be problematic and developed projects in the ETJ may not conform with all city standards or with the land use element of the Comprehensive Plan. These issues can be dealt with through the negotiation of annexation/development agreements while the project is still in the conceptual stage. Annexation/development agreements can also be negotiated with the owners of tracts prior to their entering the development process.

As noted earlier in this chapter, an agreement must be offered before properties covered by agricultural, wildlife management, or timber management exemptions can be annexed. Section 43.035 states that a city may not annex an area that is appraised for ad valorem tax purposes as agricultural, wildlife management, or timber management unless the city offers a development agreement to the landowner that would:

- Guarantee the continuation of the ETJ status of the area
- Authorize the enforcement of all regulations and planning authority of the city that do not interfere with the use of the area for agriculture, wildlife management, or timber production.

The landowner may either: (1) accept the agreement; or (2) decline to make the agreement and be subject to annexation. To annex the property the City must still meet all the requirements of Chapter 43.

A development agreement under Section 43.035 does not extend the ETJ but it does establish contiguity for the purpose of annexing adjacent land within the existing ETJ.

The guarantee of ETJ status is voided when the landowner files a subdivision application or other development application.

Section 43.035 is linked to Section 212.172. Section 212.72 is fairly broad in outlining what may be in a development agreement. There is no requirement in Sec. 43.035, however, for cities to offer anything more than a guarantee of the continuation of ETJ status until a subdivision application or other devel-



opment application is filed. In return, a city gains land use regulatory control over the property and the assurance that the area will be annexed prior to development. Given that Section 43.035 agreements do not create service obligations, they can be almost as useful as annexation itself.

When combined with the broad language of Sec. 212.172, development agreements have the potential to be a valuable tool for cities and developers to cooperatively master plan ETJ areas prior to annexation and zoning. These agreements can also be a tool for implementing the comprehensive plan.

Strategic partnership agreements (SPAs), annexation/development agreements and limited purpose annexation have created new opportunities for public/private partnerships in the ETJ. These partnerships still need to be evaluated in terms of their relationship to the comprehensive plan.

### **The Annexation Plan**

In addition to the three-year annexation plan required by statute, cities should develop mid-range annexation plans. A mid-range plan should look out 10 years and include all the potential annexation areas in the ETJ. The mid-range plan should be reviewed on an annual basis to identify areas for annexation that year and to add additional areas for future evaluation. The city departments that deliver the municipal services required by Chapter 43 need to be involved in developing the mid-range annexation plan and in the selection of areas for annexation. Facility and service requirements for mid-range areas should be reflected in the city's financial forecast and CIP. The mid-range plan should be based on the annexation policies of the comprehensive plan and be implemented through regular annexation programs that include MAP, MAP-exempt and consensual annexations.

### **Annexation Evaluation Process**

As part of the annual review of the Mid-term Plan the staff should look at each area in terms of its readiness for annexation. Each potential area should be evaluated on its unique land use, environmental, fiscal and demographic characteristics. The criteria listed below are typical of the criteria used in evaluating a property for annexation.



- Is the proposed annexation area contiguous to the existing City limits or can contiguity can be established?
- Is there an agreement (Strategic Partnership, Annexation/Development Agreement etc.) with an established annexation date/trigger point?
- Is the area a MAP area or is it MAP-exempt
- Is the property covered by an agricultural, wildlife management, or timber management exemption
- Has a water and/or wastewater service extension request been filed/approved for the property?
- Can the City serve the property with existing water and/or wastewater facilities?
- Has the property been subdivided or is otherwise “legal”?
- Is the area within the certificated (CCN) area of another water or sewer service provider?
- Can the area be provided with full municipal services with existing City resources?
- Is a CIP or budget amendment needed to provide services?
- Has a development proposal been submitted/approved for the property?
- Does the annexation create an opportunity for further annexations/ETJ expansions in the short term?
- Are there emergency service district (ESD) related expenses associated with the annexation?
- Is the area inside a library district (library districts impact may impact sales tax receipts)
- Is there a positive financial impact for the City?

**Criteria to evaluate a property  
for annexation**



### **Fiscal Impact Analysis**

In recent years, fiscal impact analysis has become a critical part of annexation planning and implementation. Given the fiscal implications of annexation, the cost of providing municipal services needs to be estimated and weighed against the anticipated revenues of each annexation program.

First year service costs will almost always exceed revenues because of the lag time between annexation and the collection of taxes. Annexations may also require one-time only expenditures for capital facilities. To spread these costs over several years and to provide a better picture of the operating costs associated with those facilities, the fiscal impact of annexations should be estimated over a multi-year time frame. Fiscal impact analyses for annexation are typically based on the time period used by the city's finance department for budgetary planning or on the ten-year period of the annexation service plan.

Many cities use a fiscal impact model to estimate the impacts of annexations on municipal revenues and expenditures. These models vary in their sophistication. It should be noted that complexity does not necessarily equate with accuracy. Performing fiscal impact analyses does not mean that only areas with positive cash flow should be annexed. There will be instances when health, safety, environmental or other factors will override fiscal considerations and an area will be proposed for annexation despite its fiscal impact. An accurate fiscal impact analysis becomes especially critical in these instances.

### **A Final Note Regarding Implementation**

A successful annexation plan must include attention to implementation. Implementation of the plan begins with meeting the procedural requirements of State law and includes monitoring the delivery of services and the timely construction of facilities. It cannot be overemphasized that implementation extends through the life of the annexation service plan.



# The Job of the Planning Commissioner

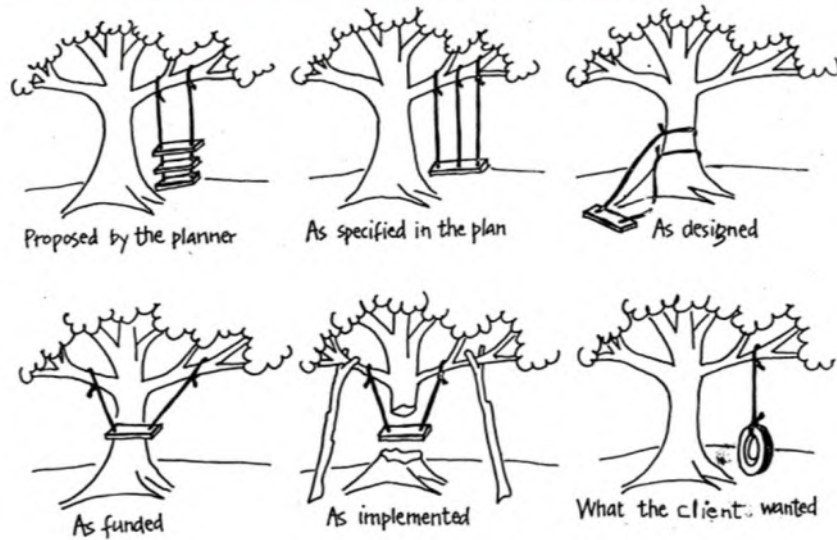
What you need to know about the role and responsibilities of the Commissioner

2015 Central Texas Elected & Appointed Officials Planning Workshop

Sponsored By  
Texas Chapter of American Planning Association

Speaker:  
Dave Gattis, FAICP  
Benbrook Deputy City Manager  
[dgattis@cityofbenbrook.com](mailto:dgattis@cityofbenbrook.com)

Based on *A Guide to Urban Planning in Texas Communities* of the Texas Chapter of American Planning Association.



## Before We Begin...

Please place cell phones and pagers on silent mode ...

Fasten your seat belts, put your trays up, and your seats in their full upright position ...

Feel free to ask questions



## So You've Been Appointed to the Planning & Zoning Commission...

### Now What?




### Planning Commission

In Texas, a *Planning Commission* is:

- a group of citizens appointed by the legislative body that performs both required and discretionary functions in land use matters.\*
- May also include zoning matters and be called ***Planning and Zoning Commission***.



(\*Texas Local Government Code 211.007)



**Understanding the Job of P&Z Commissioner**

Become familiar with your responsibilities/expectations both on and off the Commission

Orientation -- begin to grasp:

- Legal issues (incl. Open Meetings Act)
- Basic elements of planning
- Comprehensive Planning
- Zoning Ordinance
- Subdivision Regulations
- Enabling statutes in state law for planning/zoning



**Why have Training Sessions?**

Introduction to New Members

Refresher course for existing members

Insurance benefits

State-mandated training

- **(once within 90 days of appointment)**
- Open Meetings Act
  - [http://www.oag.state.tx.us/opinopen/og\\_training.shtml](http://www.oag.state.tx.us/opinopen/og_training.shtml)
- Open Records Act
  - **May not be required, staff responsibility**

## Types and Jurisdiction of Cities

Home Rule vs. General Law

- Dillon's Rule

Corporate limits

Extraterritorial Jurisdiction (ETJ)

Population	ETJ
< 5,000	1/2 mile
5,000 – 24,999	1 mile
25,000 – 49,999	2 miles
50,000 – 99,999	3 ½ miles
100,000 or more	5 miles

## General Powers of Cities

Administrative oversight

- Financial and personnel

Police power (to protect the general welfare)

- Police, fire, code enforcement, etc.
- Construct & manage public facilities
- Streets, utilities, drainage, buildings, parks

Planning & development

- Land use, infrastructure, building standards

## Source of Authority of Cities

- U.S. Constitution
  - Federal laws
- Texas Constitution
  - Local Government Code
  - Other Texas statutes
- City Charter
  - City Ordinances

## Types of Planning & Development Regulation

- Types of Planning (vision)**
    - Comprehensive Planning
    - Strategic Planning
    - Special Area Planning
  - Types of Development Regulation (tools)**
    - Proactive approaches
      - **Capital Improvements**
      - **Public-Private partnerships**
    - Reactive approaches
      - **Zoning**
      - **Subdivision Approval**
      - **Other regulations**
- Conformity between plans and development regulations**

## Why and How Do We Regulate Development?

### Why? Goals

- Implement comprehensive plan
- Reduce land use conflicts
- Assure adequate public facilities
- Promote quality of life/community image

### How

- Ordinances
  - Zoning, Subdivision, Unified Development Codes
- Developer Agreements

## Legal Basis and Authority for Development Regulations

Most authority provided by general police powers (protect health, safety and welfare) plus specific statutory authority.

Zoning authority provided in Chapter 211, Texas Local Government Code

Subdivision authority provided in Chapter 212, LGC

Comprehensive planning authority in Chapter 213, LGC

Differences between home rule cities and general law cities (Dillon's Rule)

Authority within city limits versus authority within extraterritorial jurisdiction

## Limits on Authority to regulate Development

- Legislative (zoning) versus Ministerial (planning) acts
- Arbitrary and capricious decisions
- Ultra vires – regulating beyond your authority
- Takings – results from overregulation that denies all use of property
- Procedural due process (error in notice, denial of hearing, Open Meetings Act violations, conflict of interest)
- Vested Rights – Chapter 245 LGC – rules are vested at time of initial application for project
- Manufactured Housing
- Religious Institutions (RLUIPA of 2000)

## Types of Decisions

- Advisory Recommendations
- Legislative Acts
  - Zoning, Planning
- Ministerial Acts
  - Subdivision approval
- Quasi-judicial Acts
  - ZBA variances



## Responsibilities and Activities of the Planning Commission

- Develop and update the comprehensive plan
- Implement land use patterns
- Monitor current zoning ordinance
- Make recommendations on zoning changes
- Approve (or recommend approval of) subdivisions
- Make recommendations for annexation
- Interface with public on community values through public meetings, focus groups, and neighborhood organizations

## Responsibilities and Activities of the Planning Commission continued

- Recommend a Capital Improvements Program
- Coordinate with economic development activities
- Encourage and monitor the "visual image" through urban design
- Adopt an annual work program and prepare an annual report
- Use base data on population, land use, utilities, and topography in decision making

## Typical Applications Reviewed by P&Z

### Comprehensive Plan amendments

- Land use plan
- Thoroughfare plan

### Zoning Changes

- Map amendments
- Text changes
- Specific Use Permits

### Subdivision Plats

### Site Plan Approvals

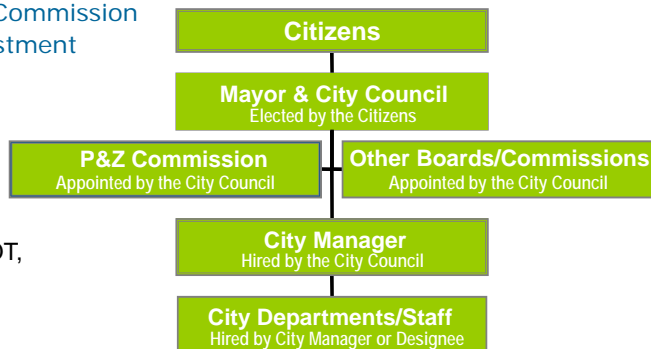


## Roles in Development Regulation

City Council  
Planning and Zoning Commission  
Zoning Board of Adjustment

### Staff

Administrative  
Planning issues  
Engineering issues  
Other staff (police, fire, etc.)  
Other entities (TxDOT, franchised utilities)



## Conducting a P&Z Meeting

Role of the Chair

Rules of procedure

- Robert's Rules of Order
- Rosenberg's Rules of Order?
- Chair should inform audience of rules

Texas Open Meetings Act

## Normal Conduct of Hearing

- Applicant allowed to present case
- P&Z and staff may ask questions
  - Don't be argumentative
  - Be mindful of evidence rather than opinion
  - Don't indicate leanings until after hearing
- Staff then makes their presentation

## Conduct of Hearing continued

- Public Invited to speak
  - Allow everyone an opportunity to speak
  - May establish time limits if necessary
  - Establish relationship of speaker to applicant (neighbor etc.)
  - Determine what evidence is being presented and what weight to give it
  - Board may ask questions for clarification, but should not cross-examine public speakers
  - Applicant and staff not compelled to be cross-examined by public (address comments to Chair.
- Applicant given opportunity for rebuttal
- Once hearing is closed, applicant and public must be quiet

## Conduct of Hearing

P&Z's motions should cite findings and reason for decision

- Failure to make findings may render decision void
- Needed to create record for review
- Example motions

Quorum, Majority, Super-majority

## Robert's Rules of Order

American Parliamentary Law

- **Gen. Henry M. Robert, 1876**
- **Robert's Rules, Newly revised, 10<sup>th</sup> Ed. (RONR)**

Provides orderly process for meeting

Role of the Chair

- **Opens and closes meeting**
- **Keeps order during meeting**
- **Introduces each agenda item**
- **Recognizes speakers and accepts motions**
- **Rules on matters of procedure**
  - **May consult with staff on parliamentary procedure**
  - **Appeals to ruling of Chair**

## Motions

Main Motions

- Approval or denial of item before Board
- State any conditions to be imposed
- Rationale for making motion, findings
  - E.g. conforms to Comprehensive Plan, and
  - Adjacent property is protected.
- Second required before discussion
- Discussion on motion plus any subsidiary motions
- Vote
  - Vote on subsidiary motions first

## Sample Motion

I move to approve the subdivision because it meets the requirements of the Subdivision Ordinance and conforms to the Comprehensive Plan

Motion must have a second before any other discussion is held with two exceptions:

- Point of Information
- Point of Order

## Debate

Must be recognized by Chair

Does your city have a specific debate procedure?

- Some have established specific rules
  - Total time allowed for debate
  - Order of debate
    - Typically motion maker goes first
    - Each other member has opportunity to speak before getting second chance
    - Motion maker has final rebuttal before vote
  - Motions to extend or limit debate (2/3rds required)

Who may speak from floor during public hearing?

- Anyone may speak, but time may be limited
- Better to give someone opportunity to speak rather than deny it
- No one is entitled to speak after hearing is closed

## Amendments

### Friendly amendments?

- Not allowed under RONR
- Chair may ask if there is “any objection” to amendment, and the approve by consent, otherwise must vote

### Motion to Amend (or to amend the amendment)

- Amends main motion
- Requires second before debate
- Example, “I move that we amend the motion to require that the new structure be screened with a six-foot fence.”

### Motion to Substitute

- Replaces main motion
- Requires second before debate
- Example, “I move the we deny the variance request,” after a motion to approve has been placed on the floor.

### Motion to Amend or Motion to Substitute acted on first

- Question is whether to amend or substitute
- If approved, revised Main Motion is acted upon

## Other Motions

### Point of Order and Point of Information

- Member raises “point of order”
- Upon being recognized by Chair, member states question or objection
- Chair rules whether point is sustained or denied
- Any member may appeal, with majority vote by Council

### Motion to Continue (Postpone) vs. Motion to Table

- Motion to Continue is appropriate for consideration of item at a future meeting
- Motion to Table is rarely appropriate
  - Mainly for considering an item later in same meeting

### Motion to Commit (refer to committee or staff)

### Calling the Question (“move the previous question”)

- Not automatic, must be recognized by Chair
- Must have second, not debated, but must receive 2/3<sup>rd</sup> vote to close debate

### Motion to Adjourn is not required if you’ve reached the end of the agenda

## Other Motions, cont.

### Motion to Reconsider

- Must be made by member on prevailing side during same meeting
  - First vote is whether to reconsider
  - Second vote is on main motion again
  - Only reconsider vote once

### Motion to Rescind

- Requires 2/3rds vote to change results of a vote held earlier in meeting
- Reconsideration on a later agenda up to Council policy

### Motion to Suspend Rules

- 2/3rds vote required under RONR

## Public Hearings

Except for Public Hearings required by State Law, no one has right to speak during meeting

### Public Hearings

- Generally allow everyone to speak
- Impose and enforce time limits
- Avoid discussion, except questions from Board for clarification
- Typical Order of Presentation
  - Applicant
  - Staff
  - Audience
  - Applicant Rebuttal
- Once Hearing is Closed, no one speaks except Board and staff

## Issues in Hearings

What happens if applicant doesn't show up?

- Burden of proof is on applicant

Continuation of hearings

- Should be continued to a date certain
- Inaction causes due process problems

Minutes

Appeal of decisions

## Public Comment Periods

Covered by Rules of Procedure?

- 3 minute time limit typical

Not covered by RONR

## Responsibilities of Board Member

Be prepared

- Read and study packet
- Visit site, if possible
  - Avoid receiving information from public outside of public hearing
- Ask questions of staff

Be fair

Be honest

Be ethical

Be objective

## Traits for Successful Planning Commissioners

Visionary

- Has a feel for the assets and problem and potentials of the city
- Can see the big picture without missing the details

No conflicts of interest

Impartial and objective

- Works toward the common good
- Places community interest first

Comes to meetings prepared

Appreciates dialogue and enjoys collaboration

Practical, yet creative

Consistent

## Final Thoughts – Importance of Public Participation

Planning is a political process.

Opportunity for consensus building.

Common techniques:

- Surveys
- Public meetings
- Citizens advisory committees
- Charrette




## Potential Liability (How Can You Be Sued?)

Procedural errors

- Was decision unbiased?
- Was there adequate notice of hearing?
- Was there opportunity to introduce evidence?
- Was decision based on record of reasons and findings of fact?
- § 1983 Civil Rights Act (KKK clause)


Substantive due process

- Fifth and 14<sup>th</sup> Amendment takings



**Potential Liability, cont.**

- Ex parte contact
- Open Meetings Act
  - State-Mandated training ([https://www.oag.state.tx.us/open/og\\_training.shtml](https://www.oag.state.tx.us/open/og_training.shtml))
  - Notice of meetings
  - Deliberation of quorum
  - Executive sessions
- Open Records issues



**Potential Liability, cont.**

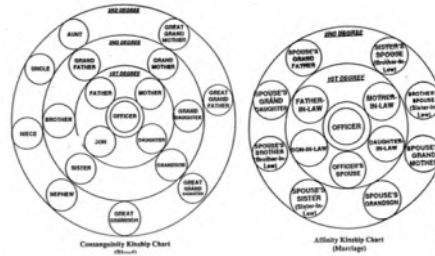
- No plan or bad plan (arbitrary and capricious decisions)
- Ultra vires (no authority)
- Equal protection attacks
- First Amendment (speech, religion)
- § 1983 Civil Rights Act
- Fair Housing Act
- Gifts to Public Servants

## Potential Liability, cont.

### Conflict of Interest

- Chapter 171 of Local Government Code
  - Substantial interest test
    - 10% of stock, equity (\$15,000), or income
    - \$2,500 interest in real property
  - Relationship test
    - First degree of consanguinity or affinity
  - Affidavit and recusal
  - Smell test

TEXAS NEPOTISM 1992



## Balancing Demands

### Developer's Wants

- Highest and Best Use
- Maximize short term gain
- Market Demands
- Past Experience
- Profitable Development
- Low cost-high return



### City's Wants

- Quality Development
- Long-term Benefits
- Compatible Land Uses
- Adequate Infrastructure
- Fiscal impacts

## Other sources of information

### Training and Resources for Planning Commissioners:

- City orientation and training for new Commissioners
- APA Texas Chapter
  - Regional Workshops for Planning Officials
  - Annual Short Course for Planning Commissioners
  - State Planning Conference
  - [www.txplanning.org](http://www.txplanning.org)
- American Planning Association – publications and conferences
  - *Planning Magazine*
  - National Planning Conference
  - *The Commissioner* quarterly newsletter
  - [www.planning.org](http://www.planning.org)
  - CD-ROM training packages
  - [www.planningbooks.com](http://www.planningbooks.com)
- Planning Commissioner's Journal
- Texas Municipal League
- Planning staff

# Questions?

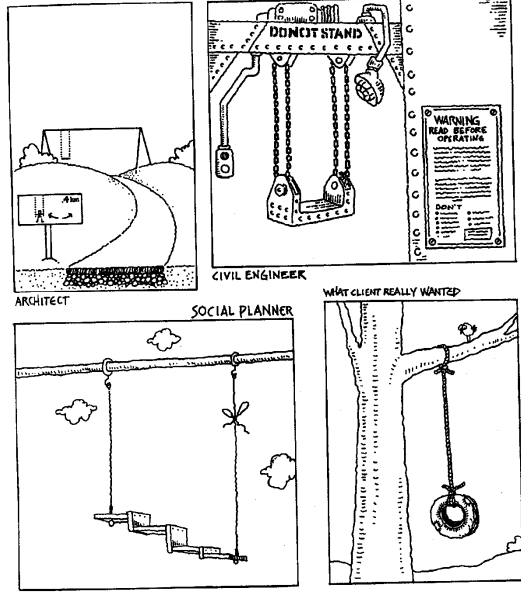


Figure 1-2 Variations on the design of a swing.