

Basics of Planning and Zoning in Texas

North Central Texas Council of Governments

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**Beware the
Texas Legislature!**



**It's a whole new
landscape out there!**

A map background with a grid of streets and a large red 'ZONING' text overlay. The map shows a network of roads, with a prominent grid pattern in the center. The word 'ZONING' is written in a bold, red, sans-serif font, slanted upwards from left to right, across the center of the map.

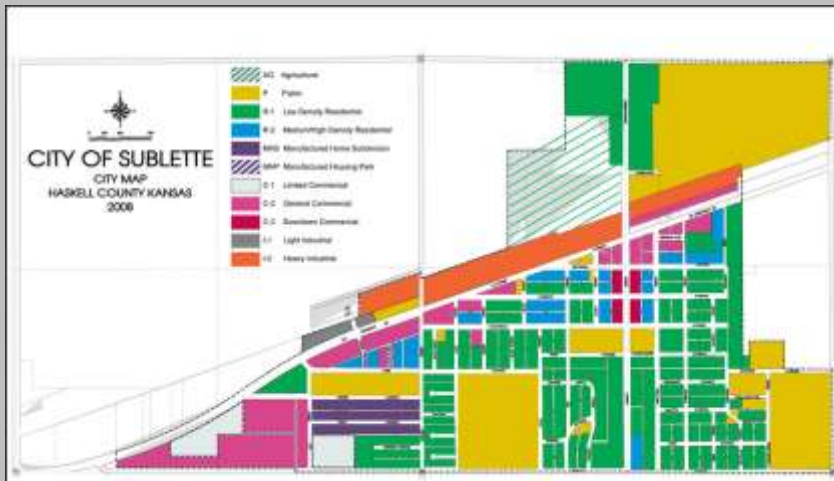
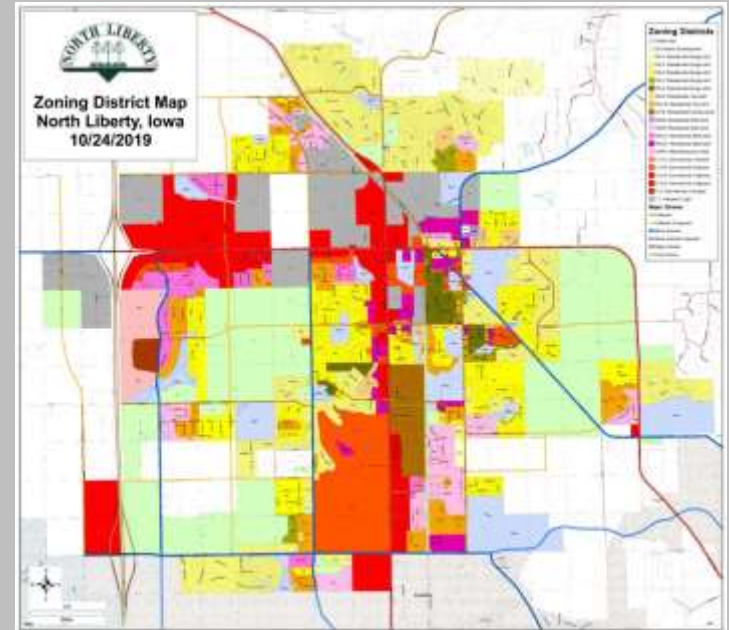
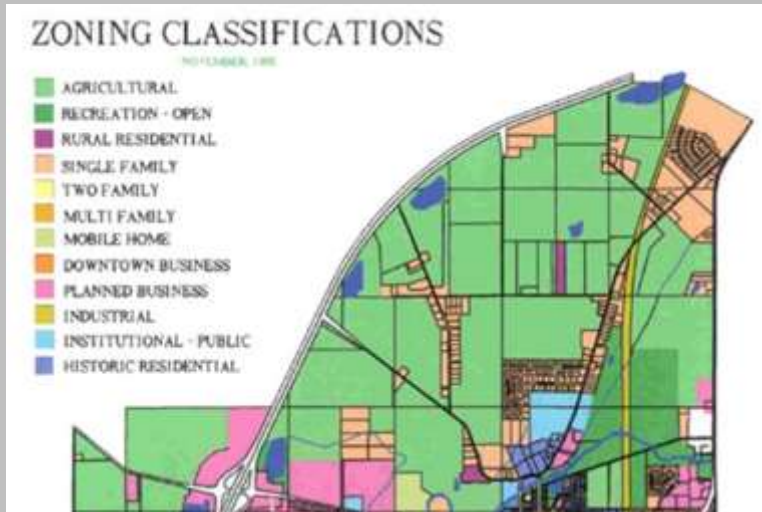
ZONING

WHAT IS ZONING?

The division of a city or area into districts and the prescription and application of different regulations in each district generally is referred to as zoning. A comprehensive zoning ordinance necessarily divides a city into certain districts and prescribes regulations for each one having to do with the architectural design of structures, the area to be occupied by them, and the use to which the property may be devoted. The use of a building may be restricted to that of trade, industry or residence.

Nature of Zoning

Divided into districts, with different regulations



Why did Zoning Flourish in the USA?

New York City



Washington, D.C.



“City Beautiful” Movement

Beginning of 20th Century

Precursor to modern urban planning

Pressed for paving of streets, sidewalks, street lighting, trees, gardens, public parks and development maintenance of attractive residential areas

By 1920s, many cities had adopted zoning ordinances





The Feds step in...

**United States
Department of
Commerce Secretary
Herbert Hoover
creates advisory
committee in 1921 to
draft model state
zoning and planning
enabling acts**

DEPARTMENT OF COMMERCE
HERBERT HOOVER, SECRETARY

A STANDARD
STATE ZONING ENABLING ACT

UNDER WHICH MUNICIPALITIES MAY ADOPT ZONING
REGULATIONS

BY THE
ADVISORY COMMITTEE ON ZONING

APPOINTED BY SECRETARY HOOVER

CHARLES B. BALL	Secretary-Treasurer, City Planning Division, American Society of Civil Engineers.
EDWARD M. BASSETT	Council, Zoning Committee of New York.
ALFRED BETTMAN	Director, National Conference on City Planning.
IRVING B. HIETT	Ex-President, National Association of Real Estate Boards.
JOHN HILDER	Manager, Civic Development Department of the Chamber of Commerce of the United States.
MORRIS KNOWLES	From the Chamber of Commerce of the United States; Chairman, City Planning Division, American Society of Civil Engineers.
NELSON P. LEWIS*	From the National Conference on City Planning and National Municipal League; Past Presi- dent, American City Planning Institute.
J. HORACE McFARLAND	Ex-President, The American Civic Association.
FREDERICK LAW OLNSTED	Ex-President, The American Society of Land- scape Architects; Ex-President, American City Planning Institute.
LAWRENCE VEILLER	Secretary and Director, The National Housing Association.

* Deceased.

JOHN M. GRIES

Chief, Division of Building and Housing, Bureau of Standards
Department of Commerce



[Revised Edition, 1926]

Standard State
Zoning
Enabling Act
1926 ed.

Standard Zoning Enabling Act

In SZEAs, states delegated zoning power to local governments



Established procedures for amendments, special exceptions, variances

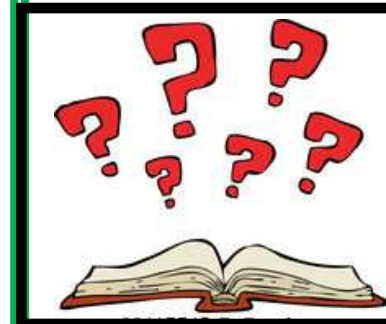


First utilized the enigmatic language “in accordance with a comprehensive plan”

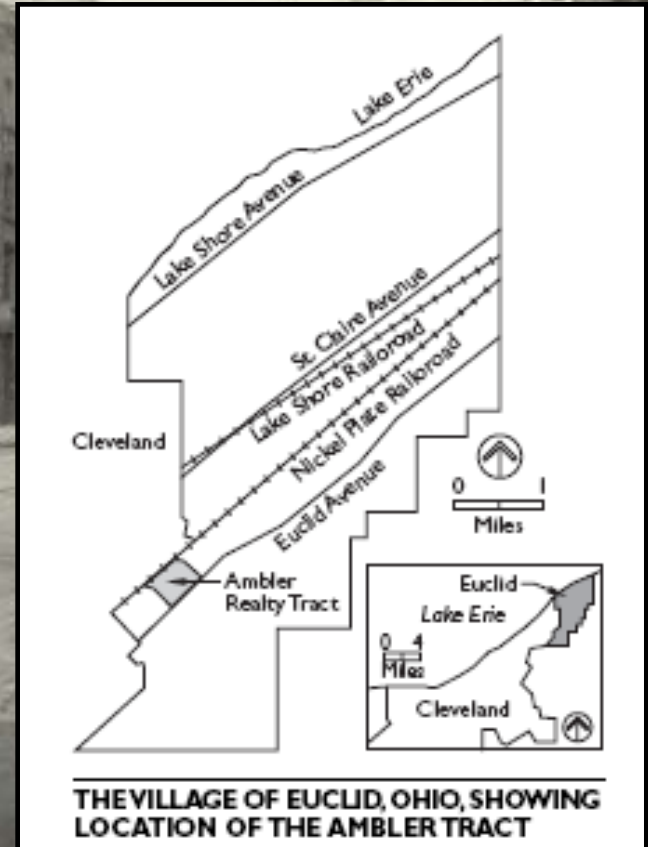
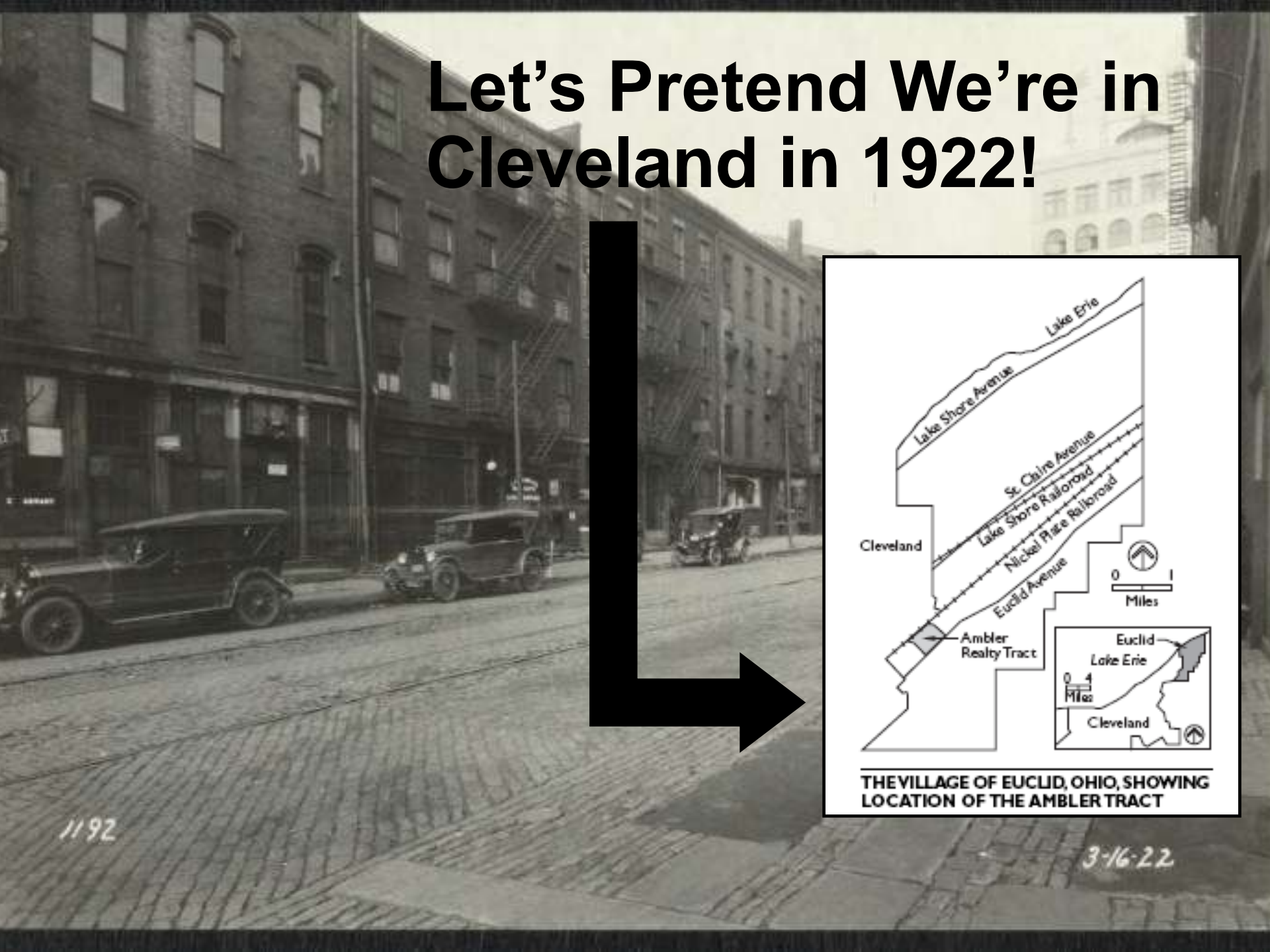
Limitations imposed on local governments



Created a zoning board of adjustment



Let's Pretend We're in Cleveland in 1922!



1192

3-16-22

Euclid adopts Zoning Ordinance

Uses

U-1: single family dwellings, farming, public parks, etc.

U-2: extended to two-family dwellings

U-3: includes apartments, hotels, churches, schools, libraries, museums, etc.

U-4: includes banks, offices, studios, fire and police stations, restaurants, theaters, retail stores, wholesale stores, etc.

U-5: includes billboards and advertising signs, cold storage plants, dry cleaning, blacksmiths, repair shops, etc.

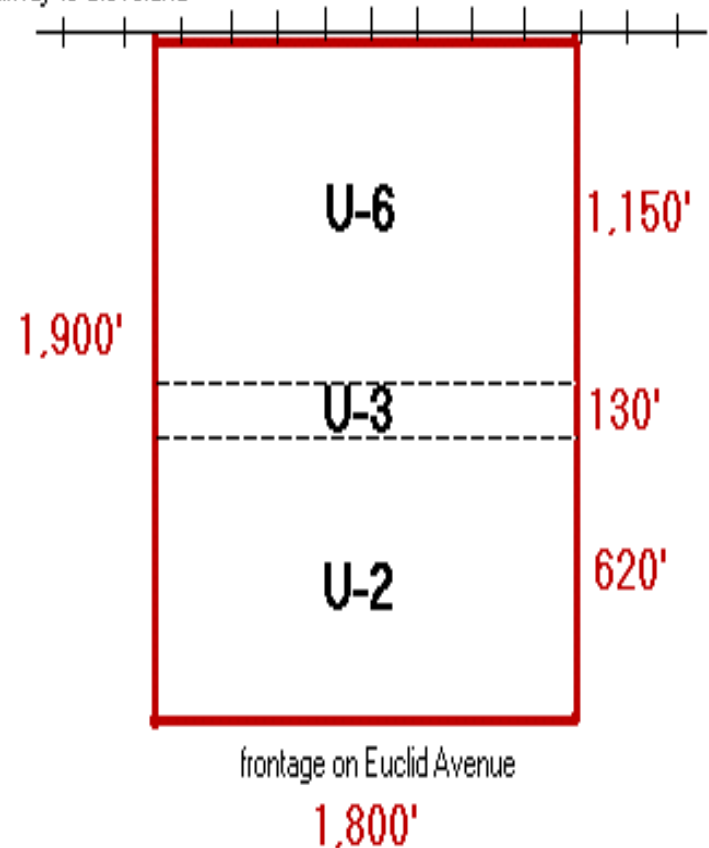
U-6: includes plants for sewage disposal, garbage incineration, scrap storage, aviation fields, cemeteries, penal institutions, manufacturing and industrial operations, etc.

In U-2 district, U-1 and U-2 uses allowed, in U-6 district, U-1, U-2, U-3, U-4, U-5 and U-6 uses allowed

Source:

<http://srufaculty.sru.edu/james.hughes/215/euclid.htm>

<-- railway to Cleveland



Village of Euclid v. Ambler Realty, 272 U.S. 365 (1926)

1

Supreme Court validated zoning on substantive due process grounds as valid exercise of the police power

Very deferential to local governments

2

3

Allowed the exclusion of undesirable uses (and people)

“Euclidian” zoning born: concept of separating incompatible land uses

4

Ambler Realty Site Today



Heading back to Texas. . .



**Texas adopted SZEA in
1927**

**Texas version of
TZEA, adopted in
1927, upheld by
Texas Supreme
Court in *Lombardo v.
City of Dallas* in 1934**

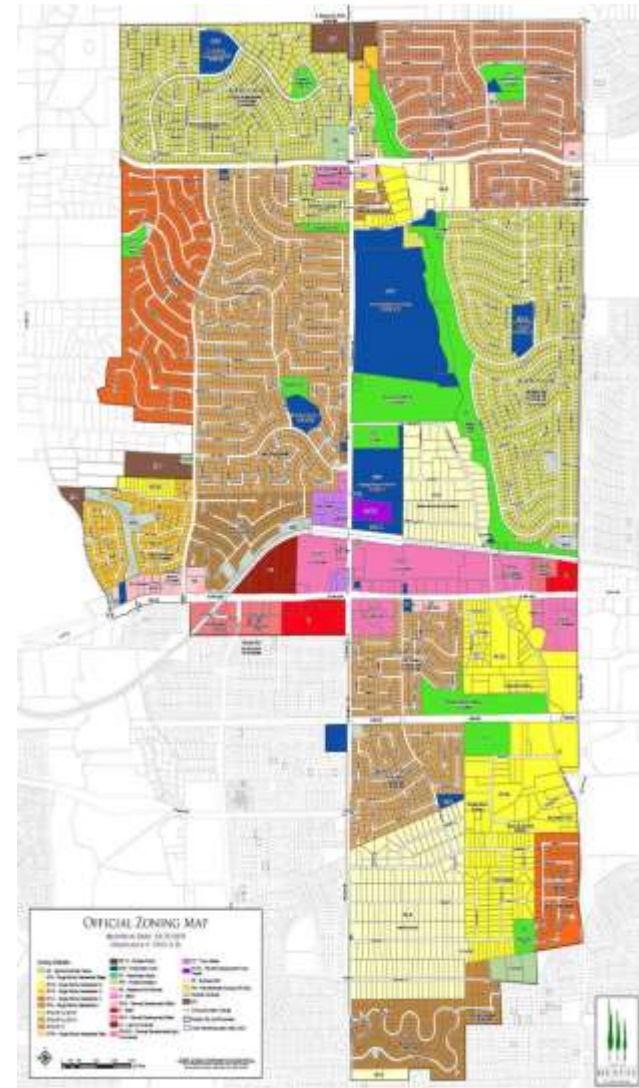
**No zoning power
delegated to counties**

Purpose of Zoning

To promote “the public health, safety, morals, or general welfare”

Protect and preserve “places and areas of historical, cultural, or architectural importance and significance”

Tex. Local Gov't Code § 211.001



Purpose of Zoning

Must be in accordance with a comprehensive plan and 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

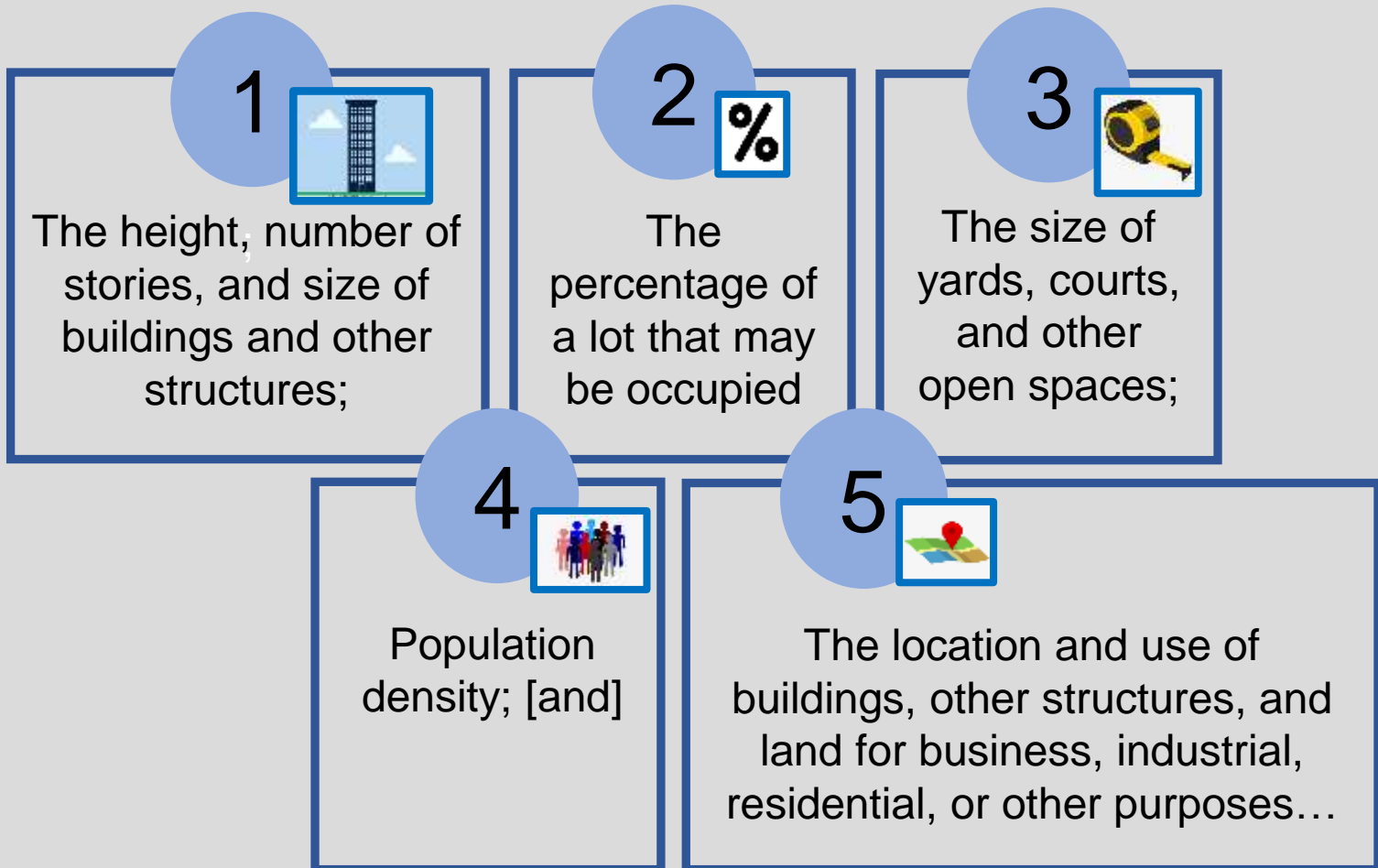


Facilitate the adequate provision of transportation, water, sewers, schools, parks, and other public requirements.

§ 211.001. Zoning Regulations

Generally

a) The governing body of a municipality may regulate:



Role of City Staff

Comply with all notice and publication rules

Review request for compliance with comprehensive plan, existing ordinances and good urban planning practices. Assist applicant in city process. Communicate Council and community goals to applicant. Liaison for P&Z and Council. Provide professional advice, not policymaking



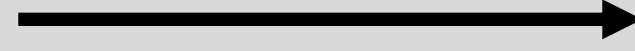
Planning & Zoning Commission

The commission shall recommend boundaries for districts and appropriate zoning regulations for each district

Make a preliminary report



Hold public hearings



Provide final report to governing body



Notice Requirements

NOTICE



**72-hour
posting
requirement
mandated
by the
Texas Open
Meetings
Act**



**Written
notice to
affected
property
owners
within 200
feet of
subject
tract**



**Property
owners
determined
by most
recently
approved
tax roll**



**Notice
must be
sent before
the 10th
day before
the public
hearing
date**

City Council Consideration



Legislative determination to promote public health, safety, morals or general welfare and to protect and preserve places and areas of historical, cultural or architectural importance and significance.

Notice Requirements

NOTICE



**72-hour
posting
requirement
pursuant to
the Texas
Open
Meetings Act**



**Newspaper notice:
before 15th day before
public hearing, notice
of time and date of the
public hearing must
be published in an
official newspaper or
newspaper of general
circulation in the city**



**No notice to
adjoining
landowners
required**

Council Options in Considering Zoning Matters

May approve or deny the application

If zoning change is protested by the owners of (i) 20% of the affected property or (ii) the owners of real property within 200 feet of the affected property, 3/4 vote of council needed to approve

By ordinance or charter, 3/4 vote needed if Zoning Commission recommended denial

Some cities “opt out” of this provision, either by ordinance or charter provision

The Board of Adjustment May:



Hear and decide an appeal that alleges error in an order, requirement decision, or determination made by an administrative official in the enforcement of this subchapter or an ordinance adopted under this subchapter;



Hear and decide special exceptions to the terms of a zoning ordinance when the ordinance requires the board to do so;

The Board of Adjustment May:

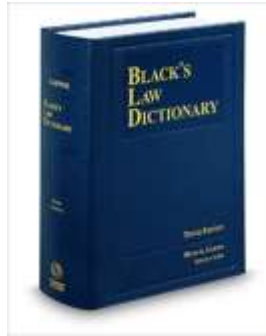


Authorize in specific cases a variance from the terms of a zoning ordinance if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship, and so that the spirit of the ordinance is observed and substantial justice is done; and



Hear and decide other matters authorized by an ordinance adopted under this subchapter.

Variations



A “variance” is defined by the Sixth Edition of Black’s Law Dictionary as “[p]ermission to depart from the literal requirements of a zoning ordinance by virtue of unique hardship due to special circumstances regarding [a] person’s property.”

Authorization to a property owner to depart from literal requirements of zoning regulations in utilization of his property in cases in which strict enforcement of the zoning regulations would cause undue hardship.” In reality, a variance actually sanctions violations of the strict technical terms contained in a zoning ordinance. An administrative official of a city cannot approve a variance.



Use Variances



The Zoning Board of Adjustment may not grant use variances. Variances may be granted from dimensional requirements such as setbacks; however, variances may not be granted which would allow a parcel of property to be used for a use that is not permitted under the zoning ordinance.

Unnecessary (Or Undue) Hardship

A variance may only be granted if there exists an unnecessary hardship. Although state law does not define the term “unnecessary hardship,” it does not include:

- property that cannot be used for its highest and best use;



- financial or economic hardship



- self-created hardship; or



- the development objectives of the property owner are or will be frustrated





***City of Dallas v.
Vanesko***
**189 S.W.3d 769 (Tex.
2006)**

- North Dallas area (Meadow Road between Hillcrest and Preston)
- “Hotbed” of redevelopment

Vanesko



Before

Vanesko



After

Vanesko

Quick factual background:

- The Vaneskos tore down their old house
- Designed their own new house

Vanesko



Vanesko

- Paid extra for plan review
- Got a permit from the City
- Built most of the house, . . .

Vanesko

- Periodic inspections by the City
- Almost finished
- Building official drives by . . .

**... and
maybe
says ...**



“Looks a little high”



Vanesko

- Vaneskos applied for variance (house was 38.11 feet high rather than permitted height of 30 feet)
- City staff: **support**
- Neighbors: **support**
- Opposed: **nobody**
- Assistant City Attorney said:
 - don't consider the permit,
 - or that it's already built

Vanesko

So . . .

- ZBA denied the variance
- Lower courts hold: ZBA abused its discretion

Vanesko

Texas Supreme Court
holds:

- Hardship did not relate to “area, shape or slope”
- Hardship was *self-created or personal*

Vanesko

Mistaken permit does *not*
“render the ordinance
unenforceable”
Otherwise, “City *would
never be able* to
correct errors in the
permitting process”

Definitions of Zoning Terms

**Accessory
Use**

Buffer Zones

**Conditional
Zoning**

**Cumulative
Zoning**

**Contract
Zoning**

Downzoning

Definitions of Zoning Terms

**Floor
Area
Ratio
(FAR)**

**Form-Based
Codes**

**Exclusionary
Zoning**

**Inclusionary
Zoning**

**Mixed Use
Development**

**Nonconforming Uses /
“Grandfathering” and Amortization**

Definitions of Zoning Terms

Overlays

**Performance
Zoning**

**Specific
Use
Permits**

**Planned
Developments
(PDs), a/k/a
Planned
Development
Districts (PDDs)**

**Spot
Zoning**

Upzoning

- **Keep detailed administrative records, including minutes and recordings of meetings**
- **Document both the harmful and beneficial impacts of projects**
- **Consider a court reporter present at zoning hearings if litigation is probable or likely**

Practical Pointers Zoning Matters

- **You may wish to retain experts or consultants for controversial cases**
- **Prepare draft findings—“Whereas” clauses in ordinances may be important**
- **Educate P&Z commissioners and council members about pitfalls**

Practical Pointers Zoning Matters

- **If you need to postpone consideration of an item to prepare draft findings, postpone to a specific date**
- **Double check that all procedural steps have been followed**
- **Be careful if significant changes to a project are made on the spot**

Practical Pointers Zoning Matters

- **Eliminate all discrimination concerns**
- **Always remember how much discretion the commission or council may have**
- **Be mindful of when a ZBA's decision or order is filed**

Practical Pointers Zoning Matters

- **Be aware of federal laws that impact land use decisions (RLUIPA; cell towers, for example)**
- **Should I go visit a site if I am a council member, P&Z commissioner or ZBA board member?**

Practical Pointers Zoning Matters

Frequently Asked Questions

1

Can the area of land subject to a zoning change be increased?

No.

For a zoning change to occur, there must be a public notice of the proposed change in zoning. Since the public notice contains a description of the property for which a zoning change is sought, there would not be adequate notice of a change in the increased area.

Frequently Asked Questions

2

Can the area of land subject to a zoning change be reduced?

Yes.

Since there has been public notice of the portion of land subject to a zoning change, decreasing the amount of land included in a zoning change would not violate the public notice requirements. The fact that a zoning change has been effected on only a portion of the land instead of all of the land is not injurious to those individuals who have an interest in the zoning change.

Frequently Asked Questions

3 Can the area of land subject to a zoning change be zoned to a more intense use than it was advertised?

No.

In such a situation there would not have been adequate public notice. For example, if the public notice stated that there was an application to change land zoned agricultural to residential with lots of 10,000 square feet, the governing body of a municipality instead could not zone the land residential with lots of 5,000 square feet since there was not adequate public notice and the use is more intense than advertised.

Frequently Asked Questions

4

Can the area of land subject to a zoning change be zoned to a less intense use than it was advertised?

Yes.

In this situation there was adequate public notice. Thus, if the public notice stated that there was an application to change land zoned agricultural to residential with lots of 5,000 square feet, the governing body of a municipality instead could zone the land residential with lots of 10,000 square feet since there was adequate public notice and the use is less intense than advertised.

Frequently Asked Questions

5

What can cities do to protect themselves in the zoning process?

- **Maintain detailed records and minutes**
- **Document harmful/beneficial impacts of projects**
- **Draft detailed findings of fact for inclusion in the text of an ordinance**
- **Eliminate discrimination concerns**
- **Beware of federal mandates (religious land uses and cell towers, for example)**

Frequently Asked Questions

6

Are there any special ethical concerns for attorneys who represent landowners?

Yes.

A landowner's attorney may not contact a councilmember or planning and zoning commissioner to discuss a pending land use matter where that city is represented by an attorney. See Texas Supreme Court Ethics Opinion 474 (1991).

Frequently Asked Questions

7

Text amendments require notice to individual property owners?

No.

Texas courts have held that no individual property owner notice is required in which a zoning ordinance change applies district-wide or across multiple zoning districts without a change in classification of individual property owners' properties.

Frequently Asked Questions

8

Is property owner notification needed when a variance is requested from ZBA?

No.

Unless the city's zoning ordinance requires it, only 72-hour Open Meetings Act notice is required for the agenda posting.

Frequently Asked Questions

9

Can cities enforce building materials requirements by including in a zoning ordinance?

No.

A 2019 legislative bill prohibited cities from adopting or enforcing a building materials requirement contained in an ordinance, the charter, code or other regulation. But . . . a contract (development agreement) can be enforced.

Frequently Asked Questions

10

Is a city required to follow and enforce its own land use regulations?

No.

The general rule is that cities can locate buildings or facilities anywhere in the city, even when exercising its eminent domain authority

Frequently Asked Questions

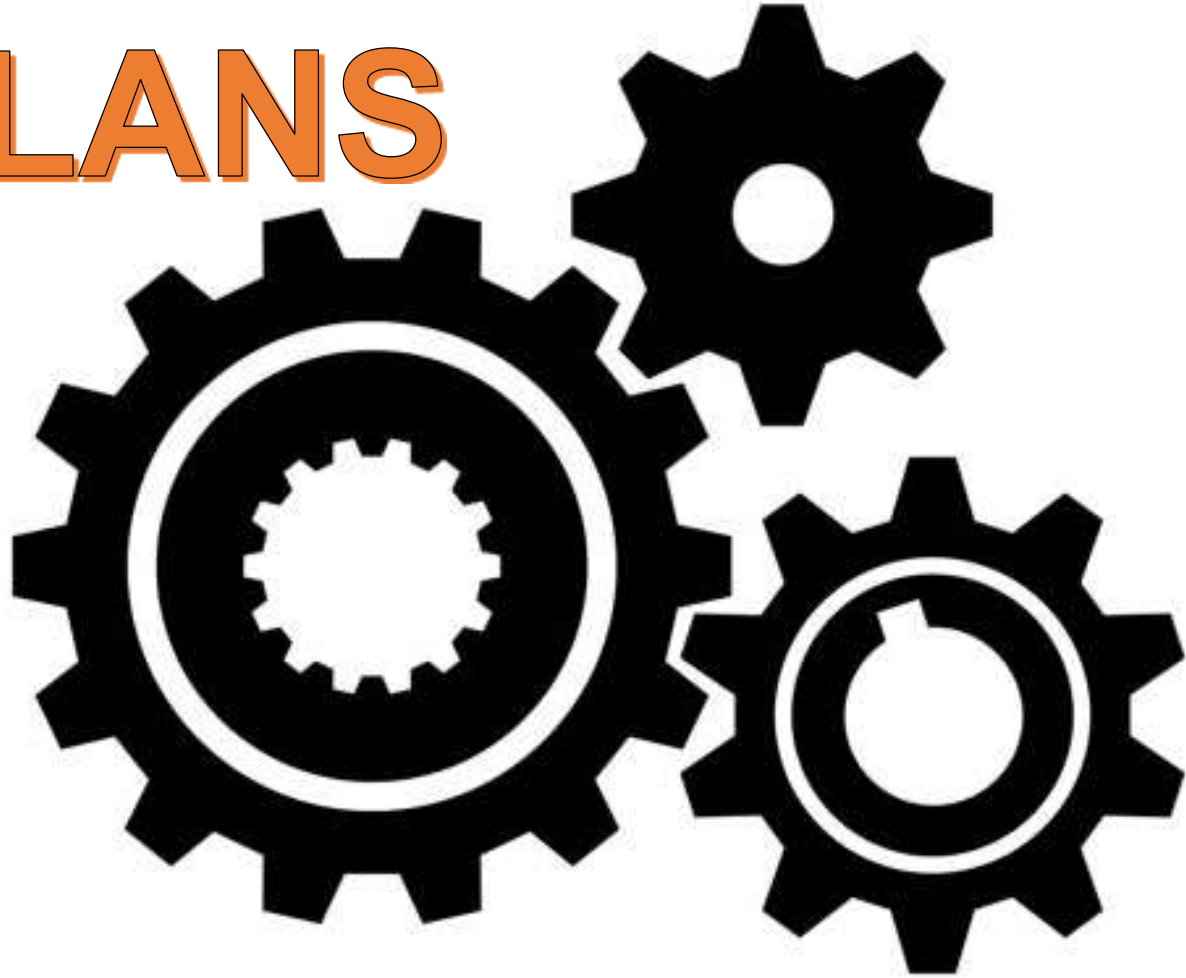
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Grab bag questions

Depends.

- **What about municipal regulation of Short-Term Rentals?**
- **What are Public Facilities Corporations and how are they used?**
- **What is “gentle” density?**

COMPREHENSIVE PLANS



A Comprehensive Plan May:

1

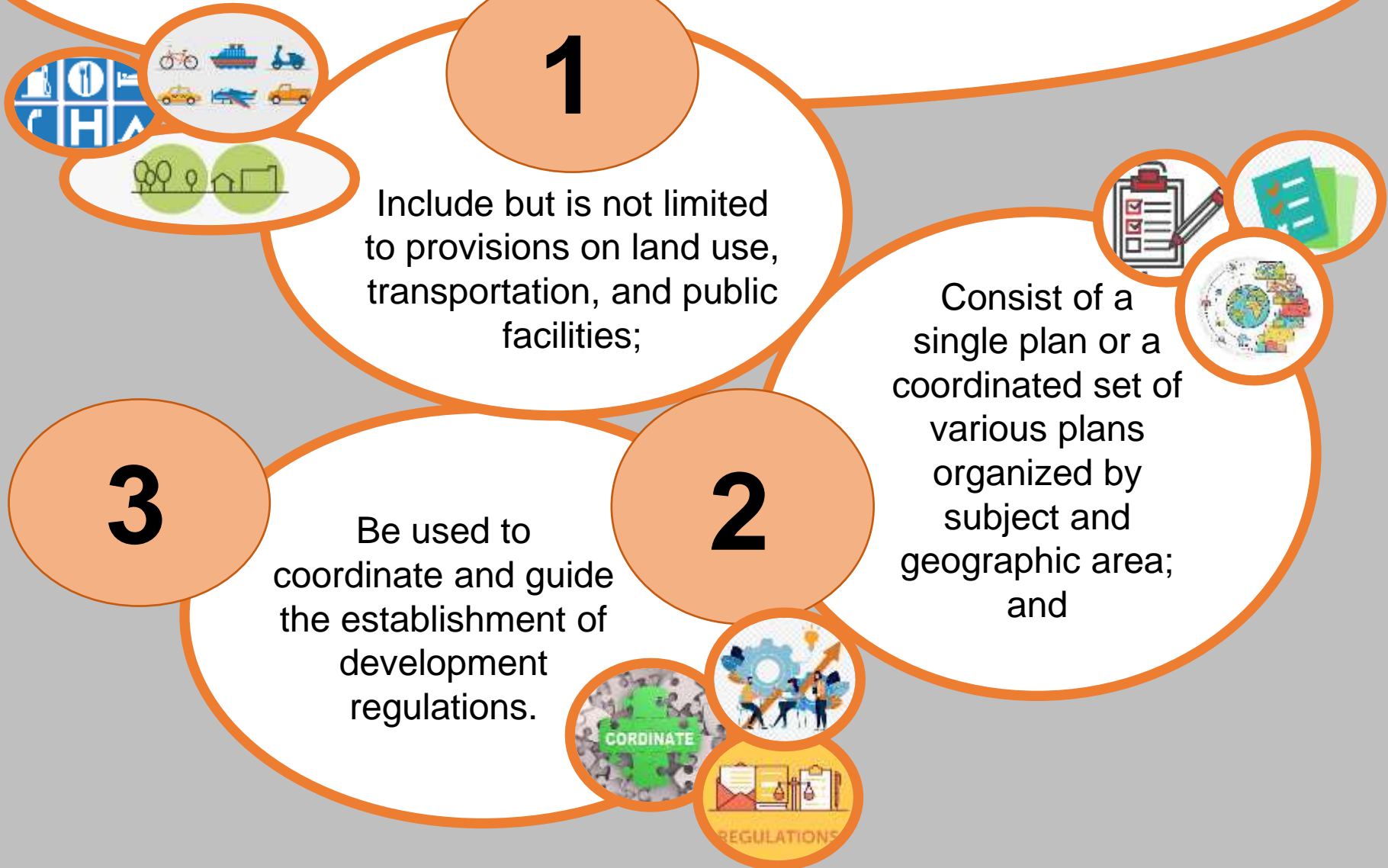
Include but is not limited to provisions on land use, transportation, and public facilities;

Consist of a single plan or a coordinated set of various plans organized by subject and geographic area; and

2

Be used to coordinate and guide the establishment of development regulations.

3



What is a Comprehensive Plan?

A comprehensive plan generally is defined as a long-range plan intended to direct the growth and physical development of a community for an extended period of time. Comprehensive planning is a process by which a community assesses what it has, what it wants, how to achieve what it wants and finally, how to implement what it wants.



Comprehensive Planning Process is:

**Future-
oriented**



Continuous



**Based on a
determination
of present and
projected
conditions**



Comprehensive



Mayhew v. Town of Sunnyvale,

774 S.W.2d 284 (Tex.App.—Dallas 1989, writ denied)

“A comprehensive zoning ordinance is law that binds the municipal legislative body itself. . . . The legislative body does not, on each rezoning hearing, redetermine as an original matter, the city’s policy of comprehensive planning. The law demands that the approved zoning plan should be respected. . . . The duty to obey the existing law forbids municipal actions that disregard not only the pre-established zoning ordinance but also the long-range master plans and maps that have been adopted by ordinance.”

§ 213.002. Comprehensive Plan

(a) The governing body of a municipality may adopt a comprehensive plan for the long-range development of the municipality. A municipality may define the content and design of a comprehensive plan.

**1995: The
Comprehensive
Planning Statute Arrives**



(c) A municipality may define, in its charter or by ordinance, the relationship between a comprehensive plan and development regulations and may provide standards for determining the consistency required between a plan and development regulations.

§ 213.002. Comprehensive Plan

Frequently Asked Questions

1

Are Texas cities required to adopt comprehensive plans?

No.



2

If a city has not adopted a comprehensive plan, may it nevertheless zone property?

Yes.



Frequently Asked Questions

3

If a city has adopted a comprehensive plan, must it follow it when making zoning decisions?

Yes.



4

What is the effect of a comprehensive plan on pre-existing zoning?

Pre-existing zoning on a tract of land controls the development of that tract, regardless of the use designation contained in the comprehensive plan.

Ctrl

Frequently Asked Questions

5

Is there a difference between a master plan and a comprehensive plan?

Sometimes yes, sometimes no.



6

How should a city view a comprehensive plan, as a guide or a document with the force of law?

Due to the requirements of state law that all zoning must be in accordance with a comprehensive plan, I personally view a comprehensive plan as far more than a “guide.”



An aerial photograph of a rural property. A paved road runs vertically through the center. To the left of the road, there are two houses with light-colored roofs, surrounded by lush green trees and landscaping. To the right of the road, there is a large, vibrant green field, likely a pasture, with several dark spots that appear to be cows grazing. The overall scene is bright and sunny, with long shadows cast across the landscape.

CONSERVATION DEVELOPMENT

What is Conservation Development?

Conservation Development permits residential development while still protecting an area's environmental features, allowing for more open space, and protecting farmland, woodland and ranchland.



Conservation Development

- Conservation developments usually site homes on smaller lots

- Less emphasis on minimum lot size

- Density does not necessarily increase over that allowed in the traditional subdivision designs

- Same number of homes clustered on smaller portion of the total available land

- Remaining land is converted into protected open space

So, what does a conservation development project look like?



**Conventional
Subdivision
High Density**

**Conservation
Subdivision
Low Density**

**Conventional
Subdivision
Low Density**





Gross Density 1 dwelling unit / 5 acres

Total Units / Lots 60 total

Average Lot Size 1-3 acre - water

Agricultural & Forested 3-5 acre - upland

	<u># of Lots</u>	<u>Each Lot</u>	<u>Value</u>
Waterfront	21 @	\$175,000	\$3,675,000
Marsh Lots	16 @	\$75,000	\$1,200,000
Interior Lots	23 @	\$15,000	<u>\$345,000</u>
Total			\$5,220,000



Gross Density 1 dwelling unit / 21 acres

Total Units / Lots 15 total

Average Lot Size 15 acres

Agricultural & Forested

	<u># of Lots</u>	<u>Each Lot</u>	<u>Value</u>
Waterfront	10 @	\$450,000	\$4,500,000
Interior Lots	5 @	\$50,000	<u>\$250,000</u>
Total			\$4,750,000



Gross Density 1 dwelling unit / 15 acres

Total Units / Lots 22 total

Average Lot Size 3 acres

Agricultural & Forested 257 acres (79%)

	<u># of Lots</u>	<u>Each Lot</u>	<u>Value</u>
Waterfront	19 @	\$250,000	\$4,750,000
Interior Lots	3 @	\$150,000	<u>\$450,000</u>
Total			\$5,200,000



CHIMNEY ROCK











Scale: 1" = 100'

The boundaries of the subdivision are shown in black. The boundaries of the lots are shown in yellow.

CHIMNEY ROCK

FLOWER MOUND, TEXAS



- **Open space can provide community members with larger recreation areas and open spaces, creating a sense of openness that many people desire.**



- **Open space can benefit the environment by providing habitat for wildlife, naturally filtering storm water, reducing storm water runoff from impervious surfaces and protecting the natural features of a site.**



- **Linking the open space of several conservation design subdivisions can help develop larger and more effective “environmental corridors” within and between communities.**



Advantages of Conservation Development

- **Developers may benefit because these designs usually reduce the costs of site development and increase the market price of individual plots in comparison with traditional subdivisions.**



- **These designs can benefit rural areas by reinforcing the policy of maintaining the local rural character that is included in many comprehensive land use plans.**



Advantages of Conservation Development

- **Local officials, developers and the community may be predisposed toward traditional development designs because they are familiar and well understood.**

TRADITION

- **During the planning phases, lot and home layout may take extra work to ensure that while homes are located closer together, they still take advantage of the open-space goals of the design.**



Disadvantages of Conservation Development

- **Methods to protect and maintain the open space must be carefully developed, implemented and monitored.**



- **Although not necessarily a restricting disadvantage, the management of waste water must be carefully designed for smaller lots.**



Disadvantages of Conservation Development

Making Conservation Development A Reality

Educating the Public

- Easiest phase or the toughest phase

- Explain the concept and its benefits

- Use diagrams

- Fighting the notion that “is there anything here other than flat land that is worth preserving?”

Making Conservation Development A Reality

Justifying the Economics



- Development community will be skeptical
- Use hard data about land sales and conservation development costs
- Consider offering incentives to developers to utilize conservation development techniques

Making Conservation Development A Reality

What kind of incentives?

- waiver of permit fees

- waiver of inspection fees (water, sanitary system, draining and paving)

- waiver of up to 50% of park dedication fees

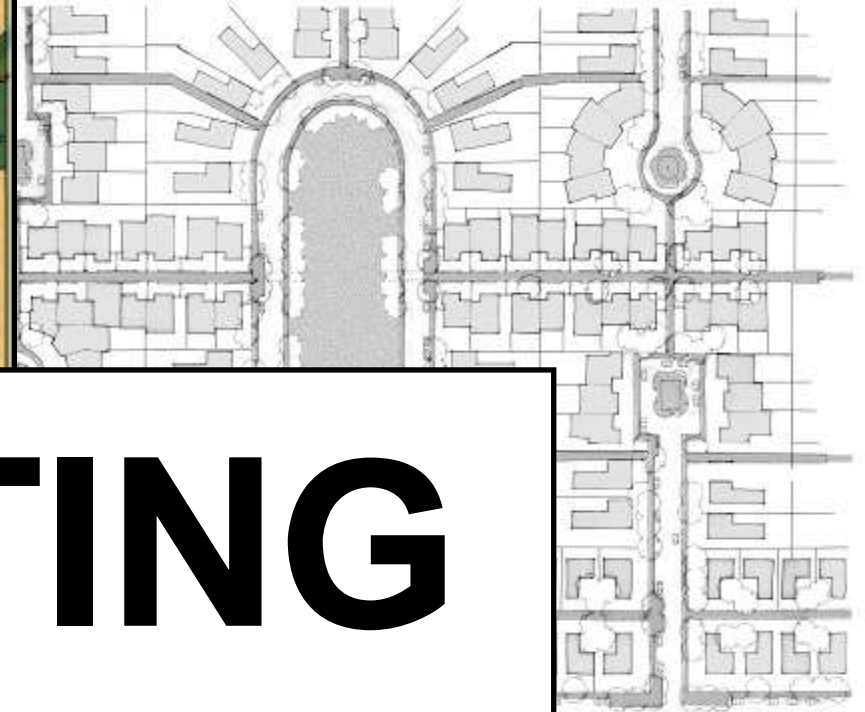
- expedited development approval (90-day reduction in development approval time)

- agricultural property tax rollback relief

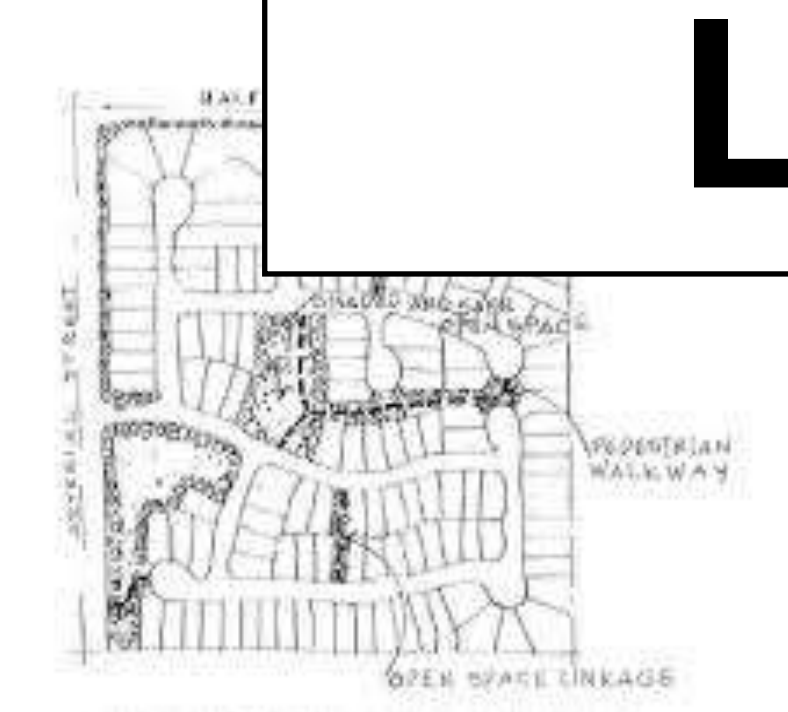
**Making Conservation
Development A Reality**



**Draft the
Ordinance**



PLATTING LAW



Plat:

- **“A map of a specific land area such as a subdivision, showing the location and boundaries of individual parcels of land subdivided into lots with streets, alleys, easements, etc. drawn to scale.”**

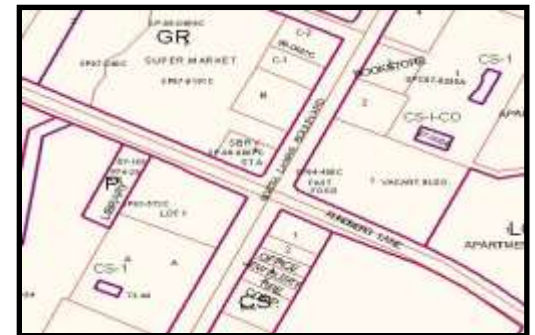


Basic Platting Concepts in Texas

Distinction between Platting and Subdivision

Platting is a geographical description that aids in recording and deed description and does not necessarily involve subdivision.

Subdivision actually divides land into marketable parcels.



Statutory Authority

Statutory authority relative to municipal plats and subdivisions is found in Chapter 212 of the Local Government Code

§ 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.

Statutory Authority

§ 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.

Statutory Authority

§ 212.003.

**Extension of Rules to Extraterritorial
Jurisdiction**

**Beware of Senate Bill 2038 (2023)
and its potential “gutting” of
enforcement of subdivision
regulations and other regulations in
the ETJ due to new ETJ release laws
in Texas.**

However, unless otherwise authorized by state law, in its extraterritorial jurisdiction a municipality shall not regulate:

- The use of any building or property for business, industrial, residential, or other purposes;
- The bulk, height, or number of buildings constructed on a particular tract of land;
- 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; or
- The number of residential units that can be built per acre of land.



Statutory Authority

§ 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 by the owner of the tract to be dedicated to public use must have a plat of the subdivision prepared.

Statutory Authority

§ 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.



OR



Statutory Authority

§ 212.009. Approval Procedure

- a) The municipal authority responsible for approving plats shall approve, approve with conditions, or disapprove 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.
- a)
- 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 approve, approve with conditions, or disapprove 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 and in accordance with Section 212.0091.

Statutory Authority

§ 212.010. Standards for Approval

a) The municipal authority responsible for approving 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;

Statutory Authority

§ 212.010. Standards for Approval

a) The municipal authority responsible for approving plats shall approve a plat if:

- 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.



Purpose of Platting

To regulate subdivisions and implement planning policies;



To implement plans for orderly growth and development within the municipality's boundaries and extraterritorial jurisdiction (ETJ);



To require compliance with certain lot and development standards;



To insure adequate public facilities such as streets, parks, water, wastewater, and other facilities indispensable to the community;



To protect future purchasers from inadequate police and fire protection; and



To insure sanitary conditions and other governmental services.





Purpose and Policy

“Plat approval, like zoning, is an exercise of the police power. The police power is a grant of authority from the people to their governmental agents ‘to promote the public convenience or the general prosperity, as well as regulations designed to promote the public health, the public morals, or the public safety.’”

City of Round Rock v. Smith, 687 S.W.2d 300, 302

(Tex. 1985)



Purpose and Policy

Moreover, “[t]he purpose of plat approval is to ensure that subdivisions are safely constructed and to promote the orderly development of the community. Plat approval protects future purchasers from inadequate police and fire protection, inadequate drainage, and insures sanitary conditions. Public health, safety, and morals are general public interests.” *Id.*

Where are Plats Required?

Texas municipalities do not possess the statutory authority to zone property in their extraterritorial jurisdictions. Section 212.003 of the Local Government Code provides that a subdivision ordinance is applicable to a municipality's extraterritorial jurisdiction **if, and only if**, the municipality specifically has extended its subdivision regulations to be extraterritorial jurisdiction. Subdivision regulations are not automatically applicable to a municipality's ETJ.

Where are Plats Required?

City of Lucas v. North Texas Municipal Water Dist., 724 S.W.2d 811
(Tex. App. – Dallas 1986, writ ref'd n.r.e.).

Consequently, we conclude that the power over subdivisions conferred by article 970a necessarily or fairly implies a right to issue regulations governing construction of housing, buildings, and the components thereof.



Where are Plats Required?

Based upon the court's rationale in *Lucas*, a municipality

- (1) may enforce its subdivision ordinance in its ETJ,
- (2) may issue building permits for construction in its ETJ and further,
- (3) may enforce its construction-related ordinances (Uniform Building Code, Uniform Plumbing Code, Uniform Mechanical Code and Uniform Electrical Code) in its ETJ.



But Wait!

In *Town of Lakewood Village v. Bizios*, 493 S.W.3d 527 (Tex. 2016), the Texas Supreme Court ruled that general law cities may not extend their building codes into their ETJs.

Thus, at present, both general law and home rule municipalities may enforce their subdivision ordinances in their ETJs

But only home rule municipalities may issue building permits for construction in their ETJs and further, may enforce their construction-related ordinances (Uniform Building Code, Uniform Plumbing Code, Uniform Mechanical Code and Uniform Electrical Code) in their ETJ.

When Are Plats Required?

Section 212.004 of the Texas Local Government Code provides, in part, that an “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 . . . must have a plat of the subdivision prepared.”

This provision refers to any partitioning of a tract, not any sale or even intended sale, and is liberally construed.



Exceptions to the Platting Requirements

**Acquisition of Property
by Governmental
Entities**

Partitions

**Common
Ownership
Arrangements**

**Military
Installations**

**Municipal
Determination of
Platting
Requirement**

**Five Acre
Tract
Exemption**

Types of Plats

Although there are plats that are filed of record in the county records (often referred to as “final plats” or “record plats”), there are other plats as well:

 **Minor Plats**

 **Replats**

 **Amending
Plats**

 **Vacating
Plats**

Types of Plats

Minor Plats:

One “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.”

Minor plats may be approved by an employee of the municipality if the governing body of the municipality has delegated such authority.

Amending Plats

1

To correct an error in a course or distance shown on the preceding plat;

3

To correct an error in a real property description shown on the preceding plat;

2

To add a course or distance that was omitted on the preceding plat;

5

To show the locations 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;

4

To indicate monuments set after the death, disability, or retirement from practice of the engineer or surveyor responsible for setting monuments;

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;

D

the amendment does not have a material adverse effect on the property rights of the other owners in the plat;

C

the amendment does not attempt to remove recorded covenants or restrictions; and

Amending Plats

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

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;

Amending Plats

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

Amending Plats

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.

Amending Plats

Replats

Section 212.014:

Permits replatting of property without the vacation of the preceding plat as long as the replat is:

- 1) signed and acknowledged by only the property owners of the property being replatted;
- 2) the replat does not attempt to amend or remove any covenants or restrictions; and
- 3) there is a public hearing at which parties in interest and citizens have an opportunity to be heard before the municipal authority responsible for approving plats.

Vacating Plats

§ 212.013 of the Texas Local Government Code:

A plat may be vacated at any time before any lot in the plat is sold. The plat is deemed “vacated when a signed, acknowledged instrument declaring the plat vacated is approved and recorded in the manner prescribed for the original plat.”



The Platting Process



After the subdivision of a tract of property into at least two or more parts (Tex. Local Gov't Code § 212.004(a)) and the preparation of a plat by a developer or landowner, the municipal review process begins. Administrative or staff review procedures will vary from municipality to municipality; however, the following is indicative of a typical review process, from staff review to city council approval.

The Platting Process



Staff Review

Staff review of a plat involves determination by a city's staff whether a plat is necessary, and if so, staff review usually involves comments to the applicant regarding what is or should be included in the plat. This usually is a technical review to determine compliance with applicable ordinances and other municipal regulations and involves review of engineering plans, drainage plans, improvement plans, etc.

The Platting Process



Planning and Zoning Commission Review

After staff has determined that the plat is complete and technical issues have been adequately addressed, the plat proceeds to the Planning and Zoning Commission. After review and approval by the Planning and Zoning Commission, the plat proceeds to the governing body.

The Platting Process



Section 212.009(a) of the Texas Local Government Code provides, in part, that “[t]he municipal authority responsible for approving plats shall act on a plat within 30 days after the plat is filed.”

The Platting Process



Governing Body Review

After the municipality's Planning and Zoning Commission has approved a plat, the governing body must review it and act upon the plat within thirty (30) days. If the governing body does not approve the plat within thirty (30) days, then state law deems the plat approved.

The Platting Process



Assuming the plat is approved, it is signed and filed in the county's records, usually in the county clerk's office in the county's deed records. 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 part;
- 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;
- 4) the owner or proprietor's agent must acknowledge the plat in the manner required for the acknowledgement of deeds;
- 5) be filed and recorded with the county clerk of the county in which the tract is located.

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 (*i.e.*, it conforms to applicable subdivision regulations).

Standards for Plat **APPROVAL**

Governmental Discretion in Platting Matters

MANDATORY



The approval of plats is mandatory as long as the conditions enumerated in Section 212.010(a) are met. If a plat meets all applicable standards and regulations, the governmental body's inclusion of new standards or guidelines, not mandated by the applicable zoning ordinance and subdivision regulations, prior to approval by that body, the plat may operate as a denial of the applicant's state and federal due process rights absent compelling health, safety or welfare concerns.

Enforcement of Platting and Subdivision Regulations

- Refusal to serve or allow connection to water, electricity, gas or other utility service;



- Injunctive relief for the violation or threatened violation by the owner of a tract of land of a municipal requirement, such as a subdivision regulation, regarding the tract;



- Recovery of 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 subdivision or other municipal regulation;



- Criminal penalty for violation of municipal ordinances; or



- A civil action and penalties pursuant to Chapter 54 of the Texas Local Government Code.



Conflicts of Interest

Section 212.017(d) of the Texas Local Government

Code:

- “[I]f 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 a 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. . . .”

Challenges to Land Use Regulations



Challenges to Land Use Regulations

JUST COMPENSATION TAKINGS CLAIM

This claim arises when a landowner asserts that the zoning or land use decision applied to his property constitutes a taking of his property without just compensation in contravention of the Fifth and Fourteenth amendments to the United States Constitution.

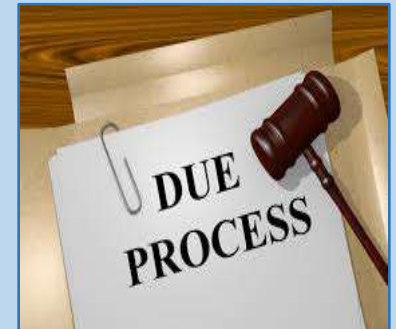


The remedy usually sought in this type of challenge is just compensation.

Challenges to Land Use Regulations

DUE PROCESS TAKINGS CLAIM

In this challenge, a landowner claims that the zoning or land use regulation applied to his property goes too far and destroys the value of his property to such an extent that it amounts to a taking by eminent domain without due process of law.



The remedy sought in this challenge is typically the invalidation of the zoning or other land use regulation.

Challenges to Land Use Regulations

ARBITRARY AND CAPRICIOUS SUBSTANTIVE DUE PROCESS CLAIM

A landowner may claim that the zoning regulation or other land use decision is arbitrary and capricious in that it does not bear a substantial relation to the public health, safety, morals, or general welfare.



FACIAL

This type of challenge may be brought under either a facial or “as applied” attack.

Challenges to Land Use Regulations

EQUAL PROTECTION

An equal protection challenge may be based upon an assertion that the zoning regulation or other land use decision unfairly impacts upon a suspect class, which would involve a strict scrutiny review, or results in an economic discrimination, which would involve a rational basis review.



Challenges to Land Use Regulations

PROCEDURAL DUE PROCESS

This last category involves an attack whereby a landowner claims that he has been deprived of procedural due process in the manner in which the zoning or other land use regulation has been enacted.



An illustration featuring three stylized human figures. On the left, a woman with dark hair in a ponytail, wearing a light blue sweater and a brown skirt, holds a large teal question mark. In the center, a person with dark hair, wearing a dark blue long-sleeved shirt and dark pants, holds a large blue question mark. On the right, a woman with long brown hair, wearing a yellow sweater and light blue pants, holds a large dark blue question mark. In the center of the image, a white rectangular box with a thin brown border contains the text "Practical Questions" in a bold, black, sans-serif font.

Practical Questions

Can a plat be tabled?

No.

A plat is approved by operation of law if it is not disapproved within thirty (30) days, as referenced above in § 212.009 of the Texas Local Government Code; however, developers, in attempting to resolve differences and avoiding a council vote to disapprove or deny a plat, often agree on the record to a continuance to resolve those differences. Other cities deny the plat subject to additional items being resolved. Once those items are resolved, the plat is placed on a subsequent agenda for consideration. These procedures are almost always beneficial to the developer because he/she is not required to file a new plat and pay a few filing fee. Please be advised, however, that there is no reported case law that sanctions this procedure, although it is highly unlikely to be challenged.

Can (or should) a plat be approved subject to the staff working out certain problems?

No.

A plat must be approved or disapproved with specific conditions set out. As a practical matter, if the plat is acceptable except for some very minor condition (e.g., no indication of north on the plat, an adjacent road name is improperly labeled, etc.), the plat may be approved subject to it being corrected *and* the motion to approve the plat should specifically state the necessary addition or modification. It is not advisable, however, to approve a plat subject to a major condition or modification (e.g., all streets will be curvilinear, the number of lots will be reduced or increased, easements will be added or removed, etc.). In those situations, problems invariably arise and it is unclear whether there is an approved plat or not.

If a plat conforms to all applicable ordinances, must a city council or commissioners court approve the plat?

Yes.

If the plat conforms to the general plan of the city, its streets, alleys, parks, playgrounds, public utility facilities, sewer, water, and all rules and regulations governing plats, then the city must approve the plat. The same applies to counties as well.



**Should cities
periodically review their
subdivision regulations?**

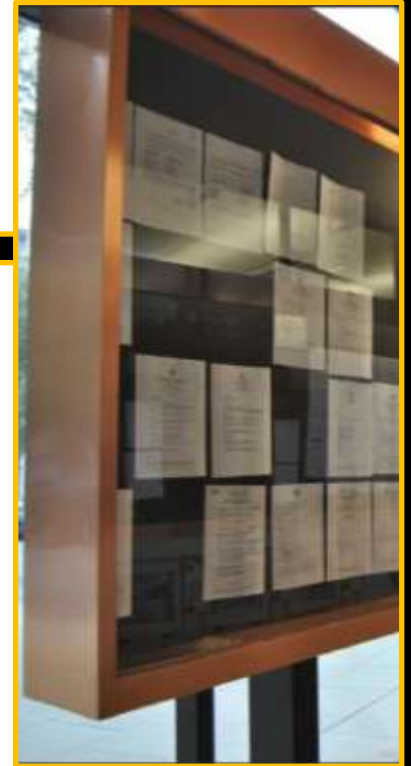
Yes.

Ordinances (or commissioners court orders) should be reviewed periodically to ensure compliance with constitutional standards regarding exactions, vagueness, procedural due process issues as well as a host of other issues.

A close-up photograph of the word "REVIEWED!" written in black marker on a white surface. The word is underlined with a single stroke. A black pen tip is visible at the bottom right of the frame, pointing towards the end of the underline.

Should governing bodies be aware of other statutory obligations?

There always should be compliance with the Texas Open Meetings Act (Tex. Gov't Code Ch. 551) and all meetings should be posted in accordance with the Texas Open Meetings Act. This applies also to Planning and Zoning Commissions as well as other bodies, such as a Zoning Board of Adjustment.



Procedurally, is there a difference between a preliminary plat and a final plat?

Good Question!

Some cities apply the same rules (e.g., 30 day rule contained in Section 212.009 of the Texas Local Government Code) to preliminary plats as final (or recorded) plats. I personally disagree with that practice, while noting that there is no case law on point in Texas. Preliminary plats generally are less detailed than final plats and in no case can a preliminary plat be filed with the county and the building permits subsequently be issued for commencement of construction of buildings. The final plat is the plat of record.

Procedurally, is there a difference between a preliminary plat and a final plat?

Consequently, I believe the rules contained in Chapter 212 of the Texas Local Government Code do not apply to preliminary plats. Therefore, preliminary plats may be tabled and not acted upon within the 30 day time period mandated by Section 212.009. I am obliged to state, however, that there are a good number of municipal attorneys who disagree with my assessment of this matter and advise their clients to treat preliminary plats the same way they treat final (or recorded) plats.

Is a municipality or county liable for negligently approving a plat?

No.

See City of Round Rock v. Smith, 687 S.W.2d 300, 303 (Tex. 1985) (“[P]lat approval is a discretionary function that only a governmental unit can perform. By definition a quasi-judicial exercise of the police power is exclusively the province of the sovereign. An individual or private corporation cannot exercise that same power. We hold that plat approval is a governmental function”).



**VESTED
RIGHTS**

Introduction

1997

In 1997, the Texas Legislature inadvertently repealed Section 481.141 *et seq.* of the Texas Government Code, commonly known as the vested rights statute.

1999

Adopted a new vested rights statute which became effective May 11, 1999.

2005

In 2005, the Texas Legislature significantly weakened municipal authority regarding vested rights.

SIGNIFICANT

The concept of vested rights is significant in the Texas land use context.

Section 481.143 Uniformity of Requirements

- a) The approval, disapproval, or conditional approval of an application for a permit shall be considered by each regulatory agency solely on the basis of any orders, regulations, ordinances, or other duly adopted requirements in effect at the time the original application for the permit is filed. If a series of requirements in effect at the time the original application for the first permit in that series is filed shall be the sole basis for consideration of all subsequent permits required for the completion of the project.

Definitions



“Project” means an endeavor over which a regulatory agency exerts its jurisdiction and for which one or more permits are required to initiate, continue, or complete the endeavor.

Definitions



“Regulatory agency” means the governing body of, or a bureau, department, division, board, commission, or other agency of, a political subdivision acting in its capacity of processing, approving, or issuing a permit.

Definitions



Definition of “project” makes clear that the real estate development permit process, which will generally include multiple stages, will be viewed as a single event for purposes of the statute.

STAGE 1 STAGE 2 = ONE EVENT
STAGE 3 STAGE 4

Definitions

The definition of “permit” has been expanded beyond a form of authorization to perform an action or initiate, continue, or complete a project to include a contract or other agreement for construction related, or provision of, service from a water or wastewater utility owned, operated, or controlled by a regulatory agency.





UNIFORMITY OF REQUIREMENTS

Section 245.002



Uniformity of Requirements

- a) Each regulatory agency shall consider the approval, disapproval, or conditional approval of an application for a permit solely on the basis of any orders, regulations, ordinances, rules, expiration dates, or other duly adopted requirements in effect at the time: (1) the original application for the permit is filed for review for any purpose, including review for administrative completeness; or (2) a plan for development of real property or plat application is filed with a regulatory agency.

Section 245.002



(a-1) Rights to which a permit applicant is entitled under this chapter accrue on the filing of an original application or plan for development or plat application that gives the regulatory agency fair notice of the project and the nature of the permit sought. An application or plan is considered filed on the date the applicant delivers the application or plan to the regulatory agency or deposits the application or plan with the United States Postal Service by certified mail addressed to the regulatory agency. . . .

Section 245.002



Uniformity of Requirements

- b) If a series of permits is required for a project, the orders, regulations, ordinances, rules, expiration dates or other properly adopted requirements in effect at the time the original application for the first permit in that series is filed shall be the sole basis for consideration of all subsequent permits required for completion of the project. All permits required for the project are considered to be a single series of permits.

Preliminary plans and related subdivision plats, site plans, and all other development permits for land covered by the preliminary plans or subdivision plats are considered collectively to be one series of permits for a project.

Section 245.002

Uniformity of Requirements

- c) After an application for a project is filed, a regulatory agency may not shorten the duration of any permit required for the project.



Williamson Pointe Venture v.

City of Austin, 912 S.W.2d 340

(Tex.App.-Austin 1995, no writ)



REZONING



The court held that a rezoning was not a permit that entitled a property owner to later develop his property to comply only with the standards existing at the time of the rezoning. In its analysis, the court distinguished between zoning, subdivision and platting, and site plan analysis. *Id.* at 342. The court reviewed the definition of permit used in Chapter 245, and concluded that a permit did not include the legislative act of rezoning. *Id.* at 343.

A hand holding a megaphone on a sunburst background. The megaphone is red and white, and the hand is brown. The background is orange with radiating lines. The text "GOOD NEWS!" is written in large, white, 3D letters with a red shadow, tilted upwards. There are three white lightning bolts around the text.

GOOD NEWS!

**Exemptions:
The good
news!**

Section 245.004 states:

This chapter does not apply to:

- 1) a permit that is at least two years old, is issued for the construction of a building or structure intended for human occupancy or habitation and is issued under laws, ordinances, procedures, rules or regulations adopting only:
 - a) uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; or
 - b) local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons;

Section 245.004 states:

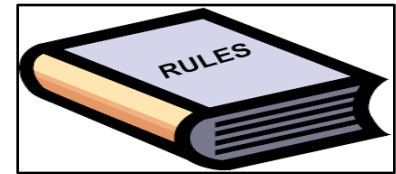
- 2) municipal zoning regulations that do not affect landscaping or tree preservation, open space or park dedication, property classification, lot size, lot dimensions, lot coverage, or building size or that do not change development permitted by a restrictive covenant required by the municipality;
- 3) regulations that specifically control only the use of land in a municipality that do not have zoning and that do not affect landscaping or tree preservation, open space or park dedication, lot size, lot dimensions, lot coverage, or building size;

Section 245.004 states:

4) regulations for sexually oriented businesses;



5) municipal or county ordinances, rules, regulations, or other requirements affecting colonias;



6) fees imposed in conjunction with development permits;

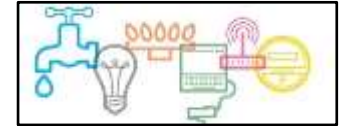
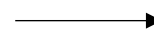


7) regulations for annexation that do not affect landscaping or tree preservation or open space or park dedication;



Section 245.004 states:

8) regulations for utility connections;



9) regulations to prevent imminent destruction of property or injury to persons including regulations effective only within a flood plain established by a federal flood control program and enacted to prevent the flooding of buildings intended for public occupancy;



10) construction standards for public works located on public lands or easements; or



Section 245.004 states:

11) regulations to prevent the imminent destruction of property or injury to persons if the regulations do not:



- a) affect landscaping or tree preservation, open space or park dedication, lot size, lot dimensions, lot coverage, building, residential or commercial density, or timing of a project; or
- b) change development permitted by a restrictive covenant required by a municipality.

MUNICIPAL
REGULATION
OF THE ETJ

Policy Underlying ETJ

The legislature declares it is the policy of the state to designate certain areas as the extraterritorial jurisdiction of municipalities to promote and protect the general health, safety, and welfare of persons residing in and adjacent to the municipalities.

Tex. Local Gov't Code § 42.001

What is ETJ?

“[T]he unincorporated area that is contiguous to the corporate boundaries of the municipality. . . .”



Tex. Local Gov't Code § 42.021

Extraterritorial Jurisdiction

The Extent of a Municipality's Extraterritorial Jurisdiction is Based Upon the Number of Inhabitants in the Municipality.



Extraterritorial Jurisdiction

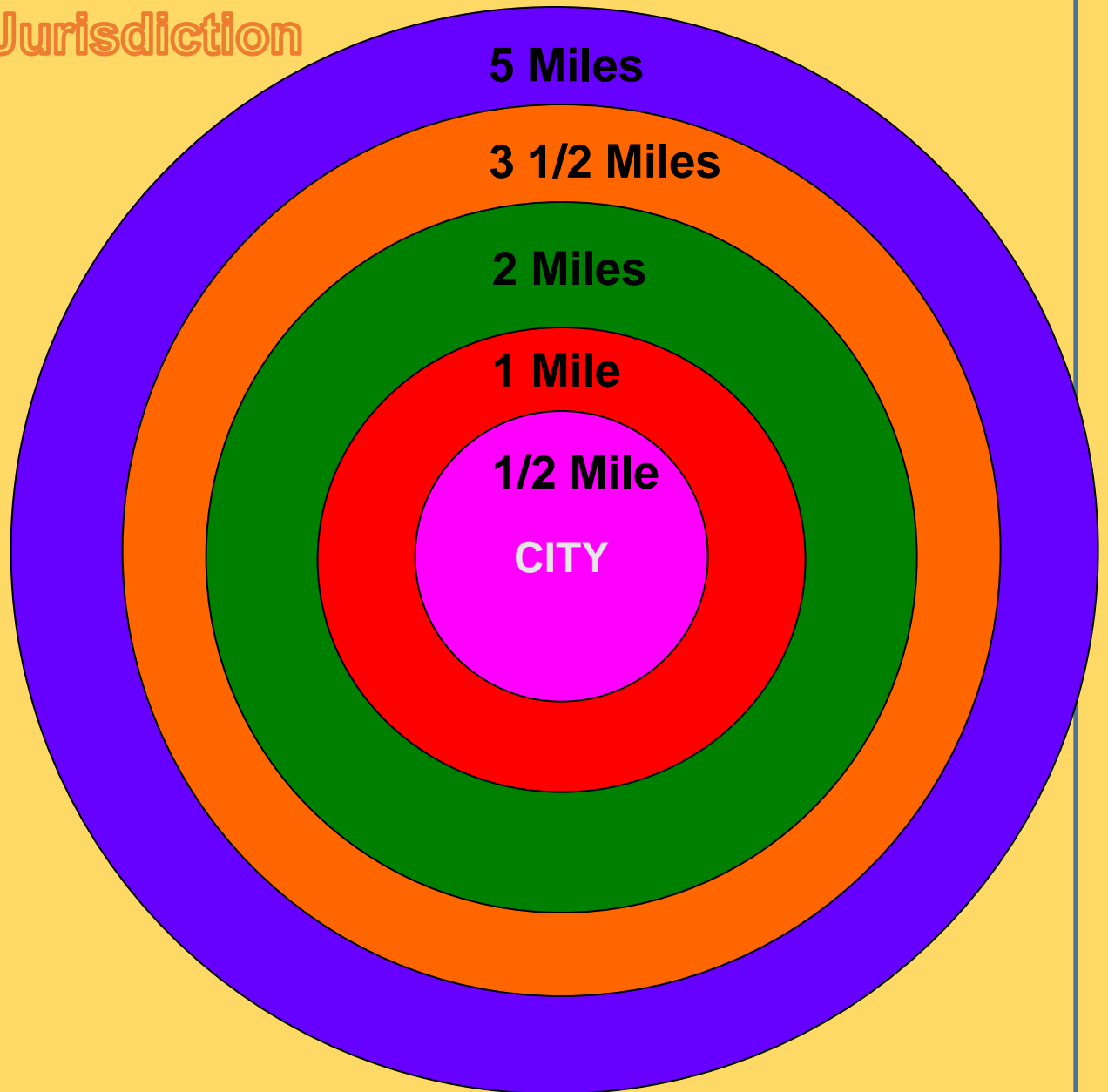
Less than 5,000
Inhabitants

5,000 – 24,999
Inhabitants

25,000 – 49,999
Inhabitants

50,000 – 99,999
Inhabitants

100,000 or more
Inhabitants





Reduction of the ETJ

- Consent
- Judicial Apportionment



Expansion of the ETJ

- Landowner Request
- Annexation
- Increase in Number of Inhabitants

**Reduction/Expansion
of the ETJ**

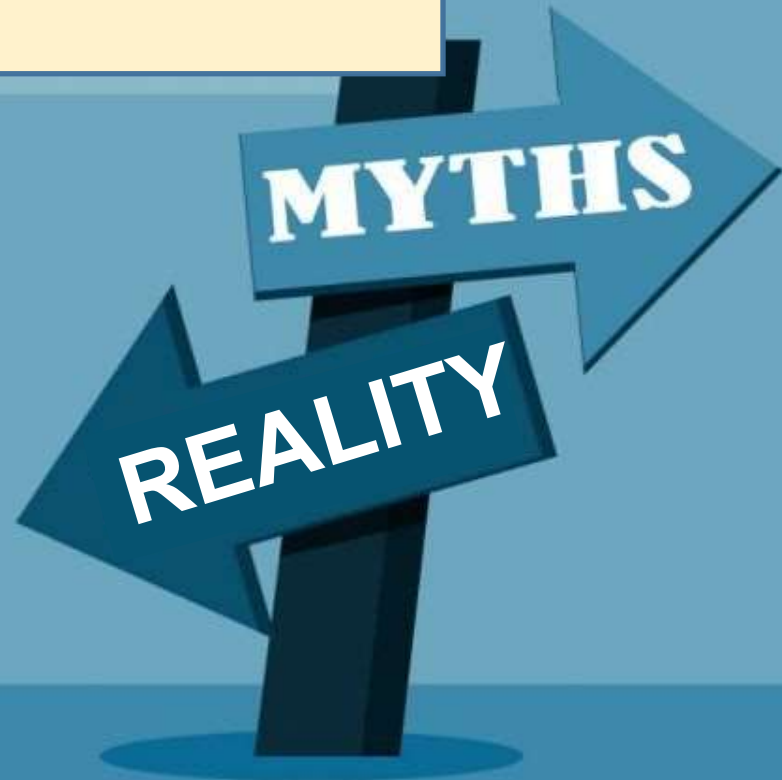
LGC, ch. 42

**What did we learn about the new
Extraterritorial Jurisdiction law?**

**Recall Senate Bill 2038 (2023)
and its potential “gutting” of
enforcement of subdivision
regulations and other
regulations in the ETJ due to
new ETJ release laws in Texas.**

Overlapping ETJ

- The Myth
- The Reality



SO WHAT CAN
CITIES REGULATE
IN THE ETJ?

Subdivision Regulations

Texas municipalities do not possess the statutory authority to zone property in their ETJs. Section 212.003 of the Local Government Code provides that a subdivision ordinance is applicable to a municipality's extraterritorial jurisdiction **if, and only if**, the municipality specifically has extended its subdivision regulations to be extraterritorial jurisdiction. Subdivision regulations are not automatically applicable to a municipality's ETJ.



House Bill 1445

(Tex. Local Gov't Code § 242.001)

H.B. 1445 (2001 Session) required that a city and county (except for counties over 1.9 million and border counties) shall enter into a written agreement that identifies the governmental entity authorized to regulate subdivision plats and approve related permits in the extraterritorial jurisdiction.

**> 1.9
MILLION**

**BORDER
COUNTIES**

HB 1197 – ETJ Agreements with Landowners

The bill allows a city council to enter into a written contract with an owner of land in the city's extraterritorial jurisdiction ("ETJ") to (1) guarantee the land's immunity from annexation for a period of up to fifteen years; (2) extend certain aspects of the city's land use and environmental authority over the land; (3) authorize enforcement of land use regulations other than those that apply within the city; (4) provide for infrastructure for the land; and (5) 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.

- Chapter 216 of the Texas Local Government Code addresses, in part, the relocation, reconstruction or removal of a sign in the ETJ. Specifically, Section 216.003 authorizes a city to “require the relocation, reconstruction, or removal of any sign within its corporate limits or extraterritorial jurisdiction.”



- Home-rule exceptions

Sign Regulations

Industrial Districts

Tex. Local Gov't
Code § 42.044

Planned Unit Development Districts

Tex. Local Gov't
Code § 42.046

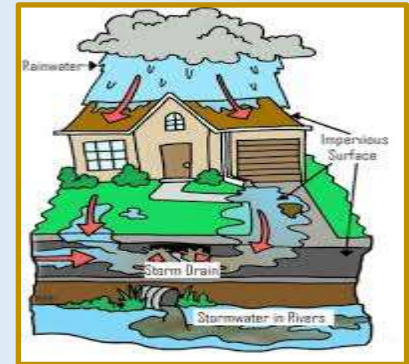
Water and wastewater facilities. Most cities in Texas have adopted the entire city and the city's ETJ as the service area.



Roadway facilities. The service area is limited to areas within the corporate boundaries (i.e., ETJ cannot be included).



Storm water, drainage and flood control facilities. The service area is limited to all or part of the land within the corporate limits of the city or its ETJ actually served by the storm water, drainage and flood control facilities designated in the Capital Improvements Plan and shall not extend across watershed boundaries.



Impact Fees

Municipal Drainage Utility Systems

(Chapter 402 of the Local
Government Code)

Boundaries of a municipal drainage system service area may extend into areas of the ETJ that contribute overland flow into the watershed of the municipality



5,000 Foot Nuisance Zone

Tex. Local Gov't Code § 217.042

high weeds and grass



litter control and abatement



unwholesome matters (filth, decaying matters, garbage, hazardous materials and substances, etc.)



mosquito control



rodent control



junked and abandoned vehicles



The “SOB Zone”

The distance requirements contained in local SOB ordinances may be enforced, even if the underlying SOB ordinance has no extraterritorial effect.



IMPACT FEES



Capital Improvements

sewer lines

lift stations

**water or
wastewater
treatment
plants**

Drainage facilities and roadways

- High, one-time cost, a useful life exceeding five years, significant land acquisition costs, site preparation, engineering, planning and construction costs and long-term financing options;
- Local financing of these public facilities is generally built upon a foundation consisting of three elements: the annual budget, a capital improvements program and long-range facilities/transportation plans.

Impact Fees

“Impact fees, like other forms of development exactions, are imposed as a condition of development approval to mitigate impacts on public facilities and services generated by the development project. The principal use of impact fees, which distinguishes them from traditional subdivision exactions, is the financing of off-site capital facilities to support new growth.”

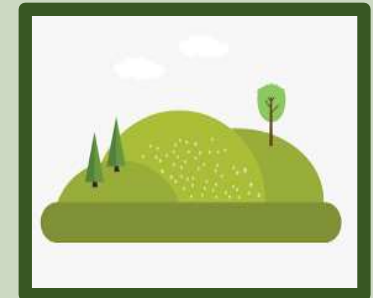
Impact Fees

- An impact fee is broadly defined as a contribution of land, improvements or money imposed as a condition of development approval to mitigate the impacts of the development project.
- Such development exactions include mandatory dedications of property for rights-of-way, requirements to construct capital improvements, fees in lieu of dedication or construction, impact fees for public facilities, and fees or charges that are assessed against development projects to mitigate environmental or social impacts.

- Impact fees allow local governments to fully mitigate the demands created by new development on public facilities through monetary payments that are quantified for the development at issue.



- At the same time, traditional subdivision requirements, such as land dedication and facilities construction, can be continued in effect by crediting the value of such improvements against the payment of impact fees.



The Adoption of an Impact Fee Ordinance in Texas



- After a city has determined that impact fees are or would be beneficial to the community, a capital improvements advisory committee must be appointed. Tex.Local Gov't Code § 395.058. The city's planning and zoning commission may be appointed as the advisory committee; however, if that is done by the city, at least one member of the advisory committee must be a representative of the real estate, development or building industry. In that case, the industry representative is an *ad hoc* voting member of the planning and zoning commission when it acts as the advisory committee.

The Adoption of an Impact Fee Ordinance in Texas



The primary purpose of the advisory committee in Texas is to advise and assist in the preparation of the land use assumptions and the capital improvements plan. The advisory committee also has the ongoing responsibility to produce semi-annual reports and assist in the updating of the impact fee program.

The Adoption of an Impact Fee Ordinance in Texas

It is important that the scope of the proposed impact fee ordinance be reviewed and that target facilities be identified.

➤ Water supply



Eligible facilities are:

➤ Roadway facilities.



➤ Treatment and distribution facilities; wastewater collection and treatment facilities; storm water, drainage and flood control facilities; and



In determining the scope of the impact fee program, only certain charges and facilities may be included in the impact fee.

Those are:

1

Construction contract price;



3

Land acquisition costs, including land purchases, court awards and costs, attorney's fees and expert witness fees;

2

Surveying and engineering fees;



5

Interest and other finance costs (if bonds, notes or other obligations are issued to finance the capital improvements or facility expansions).



4

Fees actually paid or contracted to be paid to engineers and financial consultants preparing or updating the capital improvements plan and who is not an employee of the political subdivision; and



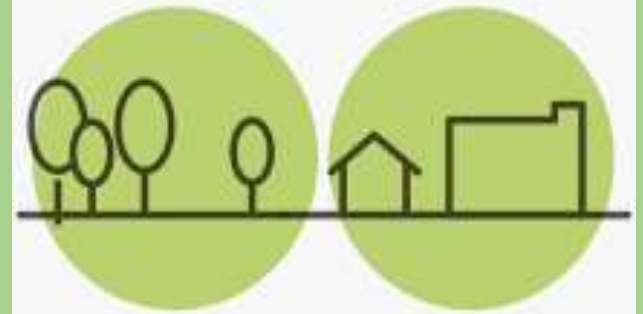
The Adoption of an Impact Fee Ordinance in Texas

The Adoption of an Impact Fee Ordinance in Texas

Certain items may ***not*** be paid by impact fees. Those items are:

- Projects and related costs of those projects that are not included in the capital improvements plan or facility expansions;
- Repair, operation and maintenance of existing or new capital improvements or facility expansions;
- Upgrading, updating, expanding or replacing existing capital improvements to serve existing development to meet stricter safety, efficiency, environmental or regulatory standards;
- Upgrading, updating, expanding or replacing existing capital improvements to provide better service to existing development;
- Administrative and operating costs of the impact fee program; and
- Principal payments and interest or other finance charges on bonds or other indebtedness for projects not in the capital improvements plan.

Land Use Assumptions



After the scope of a proposed impact fee ordinance is determined, the advisory committee must prepare Land Use Assumptions (LUA) and prepare a Capital Improvements Plan (CIP). “Land Use Assumptions” are defined as including a “description of the service area and projections of changes in land uses densities, and population in the service area over at least a 10-year period.” § 395.001(5)

Land Use Assumptions

The advisory committee may engage in the following types of review and analysis:

Analyze existing conditions.



Land Use Assumptions

Determine service areas.



- Water and wastewater facilities. Most cities in Texas have adopted the entire city and the city's extraterritorial jurisdiction (ETJ) as the service area and thus, impact fees are the same city-wide.



- Roadway facilities. The service area is limited to an area within the corporate limits (*i.e.*, ETJ cannot be included) not exceeding 6 miles and designated in the Capital Improvements Plan.



- Storm water, drainage and flood control facilities. The service area is limited to all or part of the land within the corporate limits of the city or its extraterritorial jurisdiction (ETJ) actually served by the storm water, drainage and flood control facilities designated in the Capital Improvements Plan.

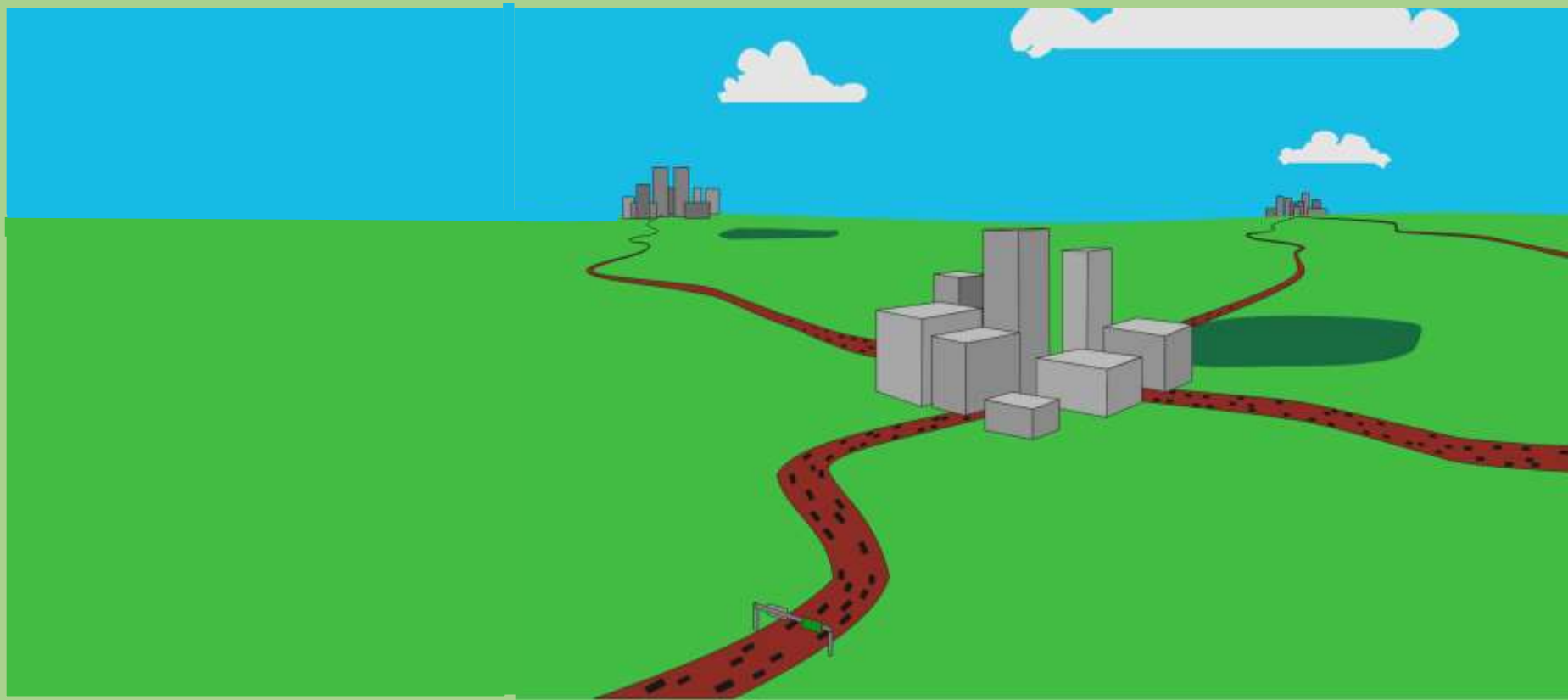
Land Use Assumptions

- **Project ten-year growth patterns.**



Land Use Assumptions

- **Ultimate (or “built out”) growth projections.**



Land Use Assumptions



The Land Use Assumptions (LUA) will serve as a basis for the preparation of the Capital Improvements Plan (CIP) over a ten-year period as well as a basis for the generation of the number of “service units” to be served. A city must be able to show that costs within the Capital Improvements Plan that are eligible for impact fee funding indeed are attributable to new growth and are derived from the Land Use Assumptions.

The Capital Improvements Plan

The statute sets out certain requirements for the Capital Improvements Plan.

It must:

Analyze the total capacity and current levels of usage and commitments for usage of capacity of the existing capital improvements; **3**

Be prepared by a qualified professional (registered professional engineer); **1**

Describe existing capital improvements within the service area and the costs to upgrade, update, improve, expand or replace the improvements to meet existing needs and usage and stricter safety, efficiency, environmental or regulatory standards; **2**

The Capital Improvements Plan

Describe each type of facility expansions or capital improvements (water, wastewater, storm water, roadway, etc.) and associated costs for improvements of each necessitated by and attributable to new development within each service area based on the approved Land Use Assumptions;

4

Determine by service unit the consumption, generation, discharge or use of a facility or capital improvement relative to various types of land use (residential, commercial and industrial);

5

Determine the total number of projected service units;

6

The Capital Improvements Plan

Project the demand for capital improvements or facility expansions required by new service units over the next ten-year period;

7

Determine and calculate the maximum impact fee that can be charged for each service unit for each type of facility or improvement.

9

Award a credit for the portion of ad valorem tax and utility service revenues generated by new service units during the program period, OR award a credit of 50% of the total projected cost of implementing the CIP; and

8

The Capital Improvements Plan

It should be noted that the Capital Improvements Plan prepared pursuant to Chapter 395 of the Texas Local Government Code is very different from a city's traditional capital improvements plan.

The traditional capital improvements plan usually identifies many projects (including repairs or enhancements of existing facilities) that are to be undertaken during a shorter period of time.

Joint Public Hearing

Pursuant to Section 395.042 of the Texas Local Government Code, hold a joint public hearing on both the LUA and CIP prior to adoption of an impact fee ordinance

Any impact fee ordinance adopted as a consequence of the Land Use Assumptions and Capital Improvements Plan should contain the following elements:

- Administration of impact fees;



- Time of assessment of the impact fees;



- Time of collection of the impact fees;



- Make provision for offsets and credits of impact fees;



- Schedule of maximum fees and actual fees to be collected;



- Accounting system for funds collected; and



- Refund provisions.



Impact Fees: Questions and Answers

1

Can only cities
impose impact fees?



NO

Impact Fees: Questions and Answers

2

Can a city charge an impact fee outside its corporate limits and ETJ?

but only if it has contracted to provide capital improvements to such an area. It cannot collect a roadway impact fee, however.



YES

Impact Fees: Questions and Answers

3 If a city wishes to impose an impact fee, can it do so on its own without following all of the requirements of Chapter 395?

NO



Impact Fees: Questions and Answers

4 If a landowner cannot pay an impact fee, can a city enter into an agreement providing for the time and method of paying the fee?



YES



FEES

Impact Fees: Questions and Answers

5 If a city has assessed impact fees, but those fees have not yet been paid, can the city subsequently increase the fees?

NO



Impact Fees: Questions and Answers

6 Does Chapter 395 of the Texas
Local Government Code
prohibit moratoriums?

YES AND

NO



Impact Fees: Questions and Answers

7

How long does a developer have to challenge the imposition of an impact fee?



**NINETY
DAYS**



Impact Fees: Questions and Answers

8

Can impact fees be
assessed for park land?



NO



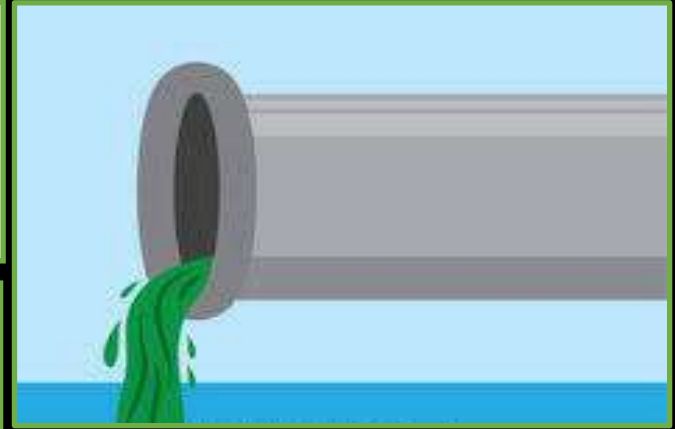
Impact Fees: Questions and Answers

9

Are pro rata agreements for water and sewer lines valid if a city has adopted an impact fee ordinance?



YES



Basics of Planning and Zoning in Texas

North Central Texas Council of Governments

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