

# Role of the Planning and Zoning Commission

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# A quick word on TOMA

- The commission is subject to the Texas Open Meetings Act.
  - Can only meet as a quorum to discuss subject matter within its purview in a properly notice meeting that is opened to the public.
    - Even when meeting in numbers less than a quorum an inadvertent TOMA violation may occur
    - Walking quorum occurs when members meet in a series of meetings in numbers less than a quorum

# Basic Land Development Tools

## Zoning and Platting

- Zoning regulates the use of land. Zoning authority may be extended to areas within a municipality's corporate limits. Once established, the Council has discretion to approve or disapprove requests for changes to the zoning map.
- Subdivision and Platting regulates the subdivision of land. May be extended to a city's extraterritorial jurisdiction. If plat application complies with Chapter 212 and municipality's platting regulations it must be approved.

# What is Zoning?

- Zoning is the division of land into distinct districts and the regulation of certain uses and developments within those districts.
- It is the process to legally control the use that may be made of property and the physical configuration of development
- The power of a municipality to establish zones is a police power and the adoption or amendment of a zoning ordinance is a legislative function.

# Zoning

- The act of creating zoning districts and imposing regulation on real property within those districts is a police power of the state.
- The Texas legislature delegated zoning authority to municipalities through statutes codified as Texas Local Government Code Chapter 211.
- No zoning power delegated to counties.

# Zoning

- Texas Constitution challenge: Texas zoning power upheld by Texas Supreme Court in *Lombardo v. City of Dallas* in 1934
- US Constitution challenge: United States Supreme Court validated zoning as valid exercise of the police power in *Village of Euclid v. Amber Realty*, 272 U.S. 365 (1926)

# What Can Zoning Regulate?

## LGC § 211.003

- Height, number of stories, and size of buildings and other structures;
- Percentage of a lot that may be occupied;
- Size of yards, courts, and other open spaces;
- Population density;

# What Can Zoning Regulate?

## LGC § 211.003

- The location and use of buildings, other structures, and land for business, industrial, residential, etc.;
- Construction in areas of historical, cultural, or architectural importance;
- The bulk of buildings (if home-rule).



# What Must Zoning be Designed to do?

## LGC § 211.004

- Lessen congestion in the streets
- Secure safety from fire, panic, dangers
- Promote health & general welfare
- Provide adequate light & air

# What Must Zoning be Designed to do?

## LGC § 211.004

- Prevent overcrowding of land
- Avoid undue concentration of population
- Facilitate adequate provision of transportation, water, sewer, schools, parks, etc.

# Zoning Procedure Initial Zoning

## LCG § § 211.006 & .007

- Zoning procedures must be followed or else zoning ordinances are void
- City Council establishes regulations and procedures for adopting and enforcing regulations and boundaries.
- Zoning Commission conducts land-use inventories, determines preliminary land-use goals and policies, formulates specific district regulations, and draws tentative district boundary lines.
- Zoning regulations must be uniform for each class or kind of building in a district but may vary from district to district.

# Zoning Procedure Amendments

## LCG § § 211.006 & .007

- Two Potential Changes to a zoning ordinance
  - Change in Classification (USE)
  - Change in Regulation
- Separate Process for Each
- A final report must be provided to the City Council before final action on a zoning classification change
- Written protest by 20% of lots or area of land covered or within 200 feet requires a 3/4 vote of all members of the city council

# Classification Change

## LCG § § 211.006 & .007

- Public hearings are held to receive input from the public
  - Notice of the public hearing must be delivered to owners of property within 200 feet of the real property that is the subject of the hearing and published in a newspaper of general circulation in the City. Notice must also be posted on the meeting agenda (local provisions can be more stringent)
  - At the hearing members of the public may give testimony and comments regarding the merits of the proposed zoning change.
    - Time limits may be imposed on speakers; provided all speakers are treated equally.

# Regulatory Change

## LCG § § 211.006 & .007

- A public hearing is held to receive input from the public
  - Notice is required to be published in a newspaper of general circulation and on the meeting agenda.
  - New Austin Case – March 17, 2022 - *City of Austin v. Acuna*, regarding notice to property owners (a comprehensive revision “changes” existing zoning ordinances, and thus, the statute’s written-notice and protest provisions apply).

# Specific/Special Use Permits (SUP)

- SUPs are uses that a zoning ordinance permits but are screened and specially approved based on particular conditions and suitability.
  - The authority to grant an SUP must be provided for in the zoning ordinance.
  - The ordinance must specify the conditions to be met for the SUP.

# Planned Unit Developments

- Development that does not fit the standards within the standard zoning
- Unique circumstances
- Current Provisions
  - C1 and C2 district
  - Minimum size – 5 acres
  - Minimum floor space – 1600 sq ft
  - Mixed Use allowed



# Comprehensive Plan and its Impact

LGC § § 213.00 et. al. & 211.004

- City is not required to have a comprehensive plan in order to zone;  
**HOWEVER**
- If a city adopts a comprehensive plan it must be followed when making zoning decisions. *LGC § 211.004(a)*

# Zoning Pitfalls

- Exclusionary Zoning

- Where the intent or effect of zoning excludes certain people such as racial minorities, ethnic groups, lower income, etc.

- Constitutional Issues

- Substantive Due Process – goes too far
- Procedural Due Process – notice and opportunity to be heard (Legislative vs. Administrative)
- Spot Zoning
- Takings

# Zoning Pitfalls

- Regulation of certain uses
  - Religious institutions - RILUPA
  - Manufactured homes - TMHSA
  - Sexually Oriented Businesses (SOB) – LGC section 243.000 et. al.
  - Alcohol sales – TABC
    - § 1.06. CODE EXCLUSIVELY GOVERNS. Unless otherwise specifically provided by the terms of this code, the manufacture, sale, distribution, transportation, and possession of alcoholic beverages shall be governed exclusively by the provisions of this code.

# Zoning Pitfalls

- Regulation of certain uses
  - Group homes – THRC section 123.003
    - Sec. 123.003. ZONING AND RESTRICTION DISCRIMINATION AGAINST COMMUNITY HOMES PROHIBITED. (a) The use and operation of a community home that meets the qualifications imposed under this chapter is a use by right that is authorized in any district zoned as residential.
    - (b) A restriction, reservation, exception, or other provision in an instrument created or amended on or after September 1, 1985, that relates to the transfer, sale, lease, or use of property may not prohibit the use of the property as a community home.
  - Federal Fair Housing Act

# Zoning Pitfalls

- Regulation of certain uses
  - Pawn Shops – LGC section 211.035
    - § 211.0035. ZONING REGULATIONS APPLICABLE TO PAWNSHOPS.
      - (b) ..... the governing body of a municipality shall designate pawnshops that 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.
      - (c) The governing body of a municipality may not impose a specific use permit requirement or any requirement similar in effect to a specific use permit requirement on a pawnshop .....
  - Cell Towers – Federal Telecommunications Act
  - Amateur Radio Antennas – Texas and Federal

# Purpose of Platting Regulations

- Primary areas that the plat approval process addresses are: ingress and egress; water, sewer, electricity and other utilities; and drainage
- Additional subdivision and platting regulations can include matters such as tree preservation; storm water detention; water quality.

# Plat & Subdivision Authority

## Adoption of Subdivision Regulations

After a Public Hearing on the matter cities 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 city.

**Tex. Loc. Gov't Code § 212.002**

# When are Plats Required?

## LGC § 212.004

- Owner divides the tract into 2 or more parts to lay out a subdivision,
- 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



# When are Plats Required?

## LGC § 212.004

- EXCEPTION

- Within corporate limits: Division into lots greater than Five Acres where each part has access and no public improvement is being dedicated
- Within ETJ: Division into lots greater than Ten Acres where each part has access and no public improvement is being dedicated
- A municipality need not require platting for every division of land not covered by the scope of section 212.004

# **AUTHORITY RESPONSIBLE FOR APPROVAL GENERALLY**

## **LGC § 212.006**

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.

# Delegation of Approval

## LGC § 212.0065

- ① Amending Plats (corrections)
  - ② Minor Plats (4 or fewer lots; no need for streets or extension of utilities)
  - ③ Certain Replats (no need for streets or extension of utilities)
- May present to Municipal Authority for approval for any reason
  - Must refer any disapproval

# Approval Procedure

LGC § 212.009 - .0095

*The municipal authority responsible for approving plats shall act on a plat within **30 days** after the date the plat is considered filed*

- Approve
- Approve w/conditions
- Disapprove

# Standards for Approval

LGC § 212.010

- A Plat **MUST** be approved If It conforms to
  - the general plan of the municipality and its current and future streets, alleys, parks, playgrounds, and public utility facilities; **AND**
  - the general plan for extension of the municipality and its roads, streets, and public highways within the municipality taking into account access to and extension of sewer and water mains and the instrumentalities of public utilities; **AND**
  - the city's subdivision regulations

# Approval Procedure

LGC § 212.009 - .0095

*A plat is considered **APPROVED** unless it is denied within **30 days** after the date the plat application is considered filed or **15 days** after response submitted to conditional approval or disapproval*

# Role of P&Z Commission

- **Serves at the will of the City Council with limited powers (no final authority)** General Law municipality may have a zoning commission
- **Act as an advisory group to the City Council in required and discretionary functions**
  - Comprehensive planning
  - Zoning
  - Platting
  - Other growth management initiatives related to the physical development of the city.
- **P&Z members shall deal with city staff solely through the City Council, City Administrator, or the City Administrator's designee to the P&Z.**

# Role of City Staff

- **Responsible for implementing the ordinances and policies adopted by the City Council and for upholding State and Federal laws and regulations, inclusive of all planning and zoning matters.**
  - Comprehensive planning
  - Zoning
  - Platting
  - Other growth management initiatives related to the physical development of the city.
- **Provide the P&Z and City Council with professional, technical, and clerical services**
  - Manage all pre-application submittal meeting requirements for planning and zoning matters
  - Prepare agendas and necessary supporting material for P&Z and City Council packets
  - Review and analyze applications, compare to plans and ordinances
  - Submit findings with professional recommendations and advice to P&Z for consideration
  - Submit findings with professional recommendations and advice, inclusive of final P&Z recommendations, for City Council consideration.
  - Keep a true copy of all P&Z proceedings;
  - Have custody and maintain all P&Z records;
  - Give and serve all notices required for public hearings; and
  - Attend to all official correspondence and communications to and of the P&Z



# Questions ?

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