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SIXTH COURT OF APPEALS
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NO. 06-22-00078-CV

IN THE COURT OF APPEALS
FOR THE SIXTH DISTRICT OF TEXAS
AT TEXARKANA, TEXAS

SHANA ELLIOTT AND LAWRENCE KALKE,
***Appellants*,**

v.

CITY OF COLLEGE STATION, TEXAS; KARL MOONEY, IN HIS OFFICIAL CAPACITY AS MAYOR OF THE CITY OF COLLEGE STATION; AND BRYAN WOODS, IN HIS OFFICIAL CAPACITY AS THE CITY MANAGER OF THE CITY OF COLLEGE STATION,
***Appellees*.**

On Appeal from the 85th District Court of Brazos County, Texas
Trial Cause No. 22-001122-CV-85

BRIEF OF APPELLEES

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ORAL ARGUMENT REQUESTED

IDENTITY OF PARTIES AND COUNSEL

APPELLEES:	City of College Station, Texas; Karl Mooney, in his official capacity as Mayor of the City of College Station; and Bryan Woods, in his official capacity as the City Manager of the City of College Station
APPELLEES' TRIAL AND APPELLATE COUNSEL:	John J. Hightower Allison S. Killian OLSON & OLSON, LLP 2727 Allen Parkway, Suite 600 Houston, Texas 77019 Adam C. Falco, City Attorney College Station City Attorney's Office P.O. Box 9960 1101 Texas Ave. College Station, Texas 77842
APPELLANTS:	Shana Elliott and Lawrence Kalke
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STATEMENT OF THE CASE

***Nature of the Case*:** This is an appeal of an order, dismissing Appellants' claims for lack of jurisdiction. CR55-56. Appellants own property in Appellee City's extraterritorial jurisdiction. Appellants filed suit against the City, and its mayor and city manager in their official capacities, seeking declaratory and injunctive relief under the theory that the statutes authorizing cities to exercise certain regulatory authority in their extraterritorial jurisdiction, and any ordinances exercising that authority, are unconstitutional under the Texas Constitution. CR3-11. Appellees challenged jurisdiction for three separate reasons: 1) Appellants lack standing by basing their claims on hypothetical facts and, consequently, failing to show an actual or imminent injury; 2) their claims are not ripe; and 3) their claims present a non-justiciable political question. CR13-17; CR26-52; CR126-159.

Trial Court: 85th District Court of Brazos County, Texas; Cause No. 22-001122-CV-85; Hon. Kyle Hawthorne presiding.

***Course of Proceedings*:** Appellants initiated the underlying suit on May 23, 2022. CR3-11. On June 24, 2022, the City filed an answer and plea to jurisdiction. CR13-17. Appellants filed a memorandum in response. CR19-24. After the City amended its plea (CR26-52), and Appellants responded (CR59-123), the City filed a reply to Appellants' memorandum (CR126-159).

***Trial Court's Disposition*:** On September 16, 2022, after a hearing on the City's plea to jurisdiction, the trial court granted the City's plea, and dismissed Appellants' case with prejudice. CR55-56.

STATEMENT REGARDING ORAL ARGUMENT

Appellees respectfully request that the Court permit the parties to present oral argument to the Court. Oral argument will be helpful in identifying and discussing applicable law related to the jurisdictional issues in this case.

RESPONSE TO APPELLANTS' ISSUES PRESENTED

I. The trial court properly granted Appellees' plea to jurisdiction because Appellants assert hypothetical facts about unlikely future enforcement actions and, therefore, lack standing for failing to allege an actual or threatened injury.

II. The trial court properly granted Appellees' plea to jurisdiction because Appellants' claims are based on uncertain and contingent future events that will likely never occur and are, therefore, not ripe.

III. The trial court properly granted the Appellees' plea to jurisdiction because Appellants' claims present a non-justiciable political question.

STATEMENT OF FACTS

A. The Texas Legislature has authorized Texas municipalities to regulate activities in nearby areas outside their city limits since 1913.

The Texas Legislature has granted certain Texas cities the authority to regulate certain activities outside their corporate boundaries since at least 1913. Appx. A; Acts of 1913, 33rd Leg., R.S., ch. 147, § 1, 1919 Tex. Gen. Laws 307, 314 (originally codified Tex. Civ. Stats. Ann. art. 1175). In that year, the Legislature enacted a law authorizing home-rule cities to "define all nuisances and prohibit the same within the city and outside the city limits for a distance of 5000 feet." *Id*. Later, in 1927, the Legislature expanded the extraterritorial regulatory power of cities to authorize cities with populations of 25,000 or more to regulate the subdivision of property "within five miles of the[ir] corporate limits… ." Appx. B; Acts of 1927, 40th Leg., R.S., ch. 231, § 1, 1927 Tex. Gen. Laws 342.

In more recent years, the Legislature has codified the concept of municipal Extraterritorial Jurisdiction ("ETJ") in Chapter 42 of the Texas Local Government Code. Appx. C. ETJ refers to an unincorporated area that is contiguous to the corporate boundaries of a

municipality and subject to municipal regulation of certain activities. Appx. C; Tex. Loc. Gov't Code § 42.021. Chapter 42 declares it to be the policy of the State of Texas "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 municipalities." Appx. C; Tex. Loc. Gov't Code § 42.001.

Under current law, the extent of a particular city's ETJ depends on the size of that city's population. Appx. C; Tex. Loc. Gov't Code § 42.021. For cities with populations exceeding 100,000, like the City of College Station, the ETJ extends five miles out from the city's boundaries. Appx. C; Tex. Loc. Gov't Code § 42.021(a)(5).

Current statutes that authorize municipalities to regulate activities outside their city limits include: a) Chapter 212 of the Texas Local Government Code, which authorizes the regulation of the subdivision of property and certain related matters in a city's ETJ; b) Chapter 216 of the Texas Local Government Code, which authorizes the regulation of signs in a city's ETJ; and c) Chapter 217 of the Texas Local Government Code, which authorizes the regulation of certain

nuisance activities occurring within one mile of a city's boundaries. Appxs. D; E; F.

B. Appellants are residents of the City's ETJ, and they filed the underlying lawsuit against the City, its mayor, and its city manager, challenging the City's authority to regulate outside its city limits.

Appellants own residential property in the City's ETJ, where they reside. CR4-5. Although the Texas Legislature has exercised its legislative judgment and conferred authority on Texas cities to regulate certain activities in nearby areas outside their city limits, Appellants sued the City, its mayor, and its city manager[1] (collectively, "the City"), challenging the exercise of that authority as unconstitutional. CR8-10. Specifically, Appellants seek declaratory and injunctive relief against the City under the theory that three of its ordinances are unconstitutional under Article 1, Section 2 of the Texas Constitution, to the extent they apply outside the city limits. CR8-10.

C. Appellants assert hypothetical facts about unlikely future enforcement of the challenged regulations.

Appellants allege that they have not, but may want, in the future someday, to: a) fire air guns or practice archery on their properties;

[1] Appellants sued the mayor and city manager in their official capacities.

b) make changes to their driveways; and c) put up signs on their lots expressing their disagreement with the City's policy of regulating activities in its ETJ. CR4-5; CR8; CR43-47. For example, Appellant Elliott states:

- "[M]y property currently has a crushed gravel driveway which extends from our paved driveway to other parts of the property. I *intend to* make improvements to the driveway... ." CR43 (emphasis added).

- "*[W]hen I begin* to make a change to my driveway, *I will need to* apply for and receive a permit... ." CR43 (emphasis added).

- "Likewise, my family members and I *desire to engage* in archery target practice on our property ... my family members and *I wish* to fire a bow and arrow on the property located in the ETJ." CR43 (emphasis added).

- "Finally, *I desire to* place a sign on my property that refers to places not on my property. Specifically, *I wish to* place a sign that discusses how my neighbors' properties are being regulated." CR43 (emphasis added).

Similarly, Appellant Kalke explains:

- "*I am seeking to* add a mother-in-law suite to my property… . I cannot make those changes right now without facing a penalty from College Station." CR47 (emphasis added).

- "*[W]hen I begin* to make a change to my driveway *I will need to* apply for and receive a permit from the City of College Station in order to make these changes to my driveway." CR47 (emphasis added).

- "Likewise, my family members and I *desire to engage* in archery target practice on our property. I own a bow, and my family members and *I wish to* fire a bow and arrow on the property in the ETJ." CR47 (emphasis added).

- "Finally, *I desire to* place a sign on my property that refers to places not on my property. Specifically, *I wish to* place a sign that discusses how my neighbors' properties are being regulated by College Station." CR47 (emphasis added).

Accordingly, it is uncontroverted that Appellants base their challenge of the City's regulations on activities that Appellants have not actually engaged in on their properties but only contemplate engaging in at some point in the future and that they believe those activities will be subject to regulatory enforcement by the City. CR43-47; *see also* Appellants' Brief at 1-2. It is also uncontroverted that the City has not enforced or threatened to enforce the challenged regulations against Appellants or similarly situated owners of residential property outside the city limits or has had any communication with Appellants about the applicability of the challenged regulations to the hypothetical situations they describe other than in the context of the underlying lawsuit.[2]

[2] Although Appellants asked Bryan Woods, the City Manager, for his opinions on the meaning of various provisions of the regulations during his deposition, they did not ask him whether the City had ever had occasion to construe the applicability of the regulations to the hypothetical situations Appellants had raised in the lawsuit or whether his off-the-cuff lay opinions as expressed in the deposition represented the official position of the City for any purpose. CR68-78.

D. The City has never enforced or threatened to enforce the challenged regulations against Appellants.

Appellants challenge Section 26-2 of the City's Code of Ordinances, which they contend prevents them from practicing archery or shooting air guns on their property. Appx. G; CR133-134. They also challenge Section 7.5 of the City's Unified Development Code, which they contend prohibits them from placing signs on their property expressing their political views, and Section 34-36 of the City's Code of Ordinances, which they contend would require them to get permits from the City if they modify or add driveways on their property. Appxs. H; I; CR119; CR156.

Appellants do not assert that the City has actually enforced any of the challenged regulations against them or against others similarly situated. Appellants also do not allege that the City has threatened to enforce the challenged regulations against them or even that the City agrees with their construction of how the regulations might apply to them. In fact, it is uncontroverted that the City does not enforce the challenged regulations against residential lots located in its ETJ and there is no evidence that the City has ever had occasion to construe how they might apply to Appellants' properties. CR50-52.

E. The City's only option for enforcing the challenged regulations would be by civil suit for injunction, and the City has not filed a suit or threatened to file one.

In any event, were the City to agree with Appellants' contentions regarding the applicability of the challenged regulations to their property and seek to enforce them, the City's only option for enforcement would be to file a civil lawsuit for injunctive relief. CR136-137; CR159. No fines or criminal penalties apply to violations of the regulations challenged by Appellants to the extent they apply outside the city limits.

Article 10, Section 10.3 of the City's Unified Development Ordinance provides:

> Any person violating any provision of this UDO, outside the corporate limits of the City, but within the City's extraterritorial jurisdiction, shall not be considered as committing a misdemeanor, nor shall any fine provided in Section A above be applicable; however, the City shall have the right to institute an action in a court of competent jurisdiction to enjoin the violation of any provision of this UDO.

CR159.

Likewise, relating to the City's authority to regulate driveways, "a fine or criminal penalty prescribed by the ordinance does not apply to a violation in the extraterritorial jurisdiction." Appx. D; Tex. Loc. Gov't

Code § 212.003(b). The City would only be "entitled to appropriate injunctive relief in district court to enjoin a violation ... in the extraterritorial jurisdiction." Appx. D; Tex. Loc. Gov't Code § 212.003(c).

SUMMARY OF THE ARGUMENT

The trial court lacks jurisdiction over Appellants' claims for three distinct reasons: 1) Appellants lack standing; 2) their claims are not ripe for judicial review; and 3) their claims present a non-justiciable political question. Therefore, the trial court properly dismissed their claims.

Courts only have the power to remedy actual or imminent harm. They have no power to issue judgments to remedy hypothetical injuries.

Appellants have failed to meet their burden of establishing standing and ripeness because their claims are based on hypothetical facts, not an actual or threatened injury. They have not alleged facts or presented jurisdictional evidence that would show that the City has enforced or threatened to enforce the challenged regulations against them. Therefore, they merely seek an advisory opinion, which the trial court has no jurisdiction to render.

At best, Appellants allege nothing more than that there are City ordinances on the books, that might be read as applying to their properties, and that they fear the City might someday enforce against their residential lots in the City's ETJ for actions Appellants may someday decide to take. They maintain that position despite the uncontested facts that: a) the City has never enforced or threatened to enforce any of the challenged ordinances against them or anyone else in the City's ETJ; b) the challenged ordinance that Appellants allege prohibits them from practicing archery or shooting air guns on their properties does not prohibit or regulate activities in the ETJ at all; c) there is no evidence the City has ever construed how any of the challenged regulations would apply to them; and d) the City can only enforce the challenged ordinances, to the extent they apply in the ETJ, by filing a civil suit for injunctive relief, which the City has not done or threatened to do.

If the City someday files a civil action seeking to enjoin Appellants from putting signs in their yards or modifying their driveways, then their claims may ripen and they may have standing. But, until that day, as the Texas Supreme Court has made clear, there will be no live

controversy and no jurisdiction to bring their claims.

Lastly, while the trial court did not need to reach the question of whether Appellants' claims are barred by the political question doctrine because of the jurisdictional deficiencies regarding standing and ripeness, the political question doctrine was an additional basis for the trial court to dismiss Appellants' case. Under the political question doctrine, courts must abstain from matters committed to the other branches of the government.

The Texas Legislature has granted authority to Texas cities to regulate certain activities in nearby areas outside their corporate boundaries. Whether Texas municipalities should be afforded that authority is a question for the Legislature, not the courts.

ARGUMENT

I. Standard of Review.

"A plea to jurisdiction is a dilatory plea that seeks dismissal of a case for lack of subject matter jurisdiction." *Harris Cty. v. Sykes*, 136 S.W.3d 635, 638 (Tex. 2004). "The claims may form the context in which a dilatory plea is raised, but the plea should be decided without delving into the merits of the case." *Bland Indep. Sch. Dist. v. Blue*, 34

S.W.3d 547, 554 (Tex. 2000). "[B]ecause a court must not act without determining that it has subject-matter jurisdiction to do so, it should hear evidence as necessary to determine the issue before proceeding with the case." *Id.*

Challenging a plaintiff's ability to meet the constitutional requirements of standing in state court is appropriately raised by a plea to jurisdiction because standing is a component of subject matter jurisdiction. *Tex. Med. Res., LLP v. Molina Healthcare of Tex., Inc.*, No. 21-0291, 2023 WL 176287, at *12 (Tex. Jan. 13, 2023); *Farmers Tex. Cty. Mut. Ins. Co. v. Beasley*, 598 S.W.3d 237, 240 (Tex. 2020). Likewise, "the political question doctrine examines justiciability, a jurisdictional matter." *Am. K-9 Detection Servs., LLC v. Freeman*, 556 S.W.3d 246, 260 (Tex. 2018).

Whether the trial court has subject matter jurisdiction is a question of law subject to de novo review. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004). "[W]hether undisputed evidence of jurisdictional facts establishes a trial court's jurisdiction is also a question of law." *Id.*

II. Appellants have the burden of establishing the trial court's jurisdiction, which requires them to show that their case is justiciable, they have standing, and there is a live controversy between the parties.

Before a court may address the merits of any case, it must have jurisdiction over the subject matter, jurisdiction to enter the particular judgment, and capacity to act as a court. *The State Bar of Tex. v. Gomez*, 891 S.W.2d 243, 245 (Tex. 1994). "Subject matter jurisdiction requires that the party bringing the suit have standing, that there be a live controversy between the parties, and that the case be justiciable." *Id.*

As the plaintiffs, Appellants have the burden to establish subject matter jurisdiction. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 443 (Tex. 1993); *City of Robinson v. Leuschner*, 636 S.W.3d 48, 53 (Tex. App.—Waco 2021, pet. dism'd by agr.). That includes the burden to plead sufficient facts to demonstrate jurisdiction and, if the City provides evidence contesting those jurisdictional facts, to present sufficient evidence to at least raise a fact issue as to the existence of the essential elements of jurisdiction. *Alamo Heights Indep. Sch. Dist. v. Clark*, 544 S.W.3d 755, 770–71 (Tex. 2018).

> A jurisdictional plea may challenge the pleadings, the existence of jurisdictional facts, or both. When a jurisdictional plea challenges the pleadings, we determine if the plaintiff has alleged facts affirmatively demonstrating subject-matter jurisdiction. If, however, the plea challenges the existence of jurisdictional facts, we must move beyond the pleadings and consider evidence when necessary to resolve the jurisdictional issues, even if the evidence implicates both subject-matter jurisdiction and the merits of a claim.

Id. "If the pleadings affirmatively negate the existence of jurisdiction, then a plea to the jurisdiction may be granted without allowing the plaintiffs an opportunity to amend." *Miranda*, 133 S.W.3d at 227.

III. Appellants presented no evidence that the City has ever construed the challenged regulations as applying to residential lots in the City's ETJ in the manner they allege.

Appellants contend on page 11 of their brief that "[t]here is no dispute that the City's regulations, on their face, apply to Appellants' properties." That statement is incorrect because the City does not enforce the regulations against residential lots in its ETJ and, for that reason, has never had occasion to construe the application of the regulations to Appellants' properties. CR50-52.

For example, one of the regulations that Appellants challenge clearly does not apply outside the City limits. Appellants have alleged that they wish to shoot bows and arrows and air guns on their property

in the future and that Section 26-2 of the City's Code of Ordinances prohibits them from doing so. CR43, 47. Section 26-2(b) states: "It shall be unlawful to willfully or intentionally or otherwise shoot a firearm[3] *within the limits of the City*,… ." Appx. G; CR121 (emphasis added). It does not prohibit shooting a firearm outside the city limits. Appellants' properties are located outside of the City limits, and for that reason the regulations, on their face, do not prohibit the use of air guns or a bow and arrow.

As for the two other challenged regulations, the City agrees that they do apply in the ETJ but does not agree that they apply in the manner alleged by Appellants. There is no evidence that the City has ever had an occasion to construe how the regulations might apply to the residential properties in its ETJ and it has never enforced those regulations against those properties. For that reason, any future construction the City might make of those regulations remains hypothetical.

[3] The ordinance defines the term "firearm" to include an "air pistol, BB gun or bow and arrow." Appx. G; CR121.

IV. Appellants lack standing because they have failed to allege an actual or threatened injury.

"A court has no jurisdiction over a claim made by a plaintiff without standing to assert it." *DaimlerChrysler Corp. v. Inman*, 252 S.W.3d 299, 304 (Tex. 2008). "The standing doctrine identifies suits appropriate for judicial resolution" and "assures there is a real controversy between the parties that will be determined by the judicial declaration sought." *Patel v. Tex. Dep't of Licensing & Regulation*, 469 S.W.3d 69, 77 (Tex. 2015).

Generally, "for standing, a plaintiff must be personally aggrieved; his alleged injury must be concrete and particularized, actual or imminent, not hypothetical." *DaimlerChrysler Corp.*, 252 S.W.3d at 304-05. Further, the injury must be "traceable to the defendant's conduct" and redressable by a favorable decision. *Tex. Med. Res., LLP v. Molina Healthcare of Tex., Inc.*, No. 21-0291, 2023 WL 176287, at *12 (Tex. Jan. 13, 2023). A plaintiff lacks standing when "his claim of injury is too slight for a court to afford redress." *DaimlerChrysler Corp.*, 252 S.W.3d at 305.

a. Appellants failed to show that they suffer an actual or threatened restriction from regulations that have never been enforced against them or others similarly situated.

When challenging the constitutionality of a statute, there is a two-prong test to establish standing. *Patel*, 469 S.W.3d at 77; *Tex. Workers' Comp. Comm'n v. Garcia,* 893 S.W.2d 504, 517–18 (Tex. 1995). "A plaintiff must [both] suffer some *actual or threatened restriction* under the statute" and "contend that the statute unconstitutionally restricts the plaintiff's rights." *Patel*, 469 S.W.3d at 77 (quoting *Garcia*, 893 S.W.2d at 518) (emphasis added).

Whether the plaintiff brings an as-applied challenge or a facial challenge, the plaintiff must *always* establish that he suffered "some actual or threatened restriction" under the challenged regulations. *Garcia*, 893 S.W.2d at 518. Indeed, "an opinion issued in a case brought by a party without standing is advisory because rather than remedying an actual or imminent harm, the judgment addresses only a hypothetical injury." *Tex. Ass'n of Bus.*, 852 S.W.2d at 444. Like federal courts, Texas courts have no jurisdiction to render advisory opinions. *Id.*

> In Texas, the standing requirement stems from two constitutional limitations on subject-matter jurisdiction. *See Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 443–44 (Tex. 1993). The first limitation is the separation-of-powers doctrine under both the federal and state constitutions. *Id.* at 444; *see* Tex. Const. art. II, § 1; *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State*, 454 U.S. 464, 471–74, 102 S.Ct. 752, 70 L.Ed.2d 700 (1982). Under the separation-of-powers doctrine, courts are prohibited from issuing advisory opinions, because doing so invades the function of the executive rather than judicial department. *Tex. Ass'n of Bus.*, 852 S.W.2d at 444.
>
> The second constitutional limitation on a court's subject-matter jurisdiction is the open-courts provision of the Texas Constitution. *Id.* at 444; *see* Tex. Const. art. I, § 13. That provision states that all courts shall be open, and every person shall have remedy by due course of law, "for an injury done" to that person. Tex. Const. art. I, § 13.

Data Foundry, Inc. v. City of Austin, 620 S.W.3d 692, 700 (Tex. 2021).

In *Patel*, the plaintiffs were individuals who practiced commercial eyebrow threading and salon owners that employed the threaders.[4] *Patel*, 469 S.W.3d at 73. The plaintiffs challenged state licensing statutes and regulations that required cosmetology training that was generally unrelated to eyebrow threading to obtain a license to practice threading. *Id.* at 73-74. They sought injunctive and declaratory relief

[4] Eyebrow threading is a grooming practice that involves removing eyebrow hair and shaping eyebrows using a piece of cotton thread. *Patel*, 469 S.W.3d at 73.

under the Uniform Declaratory Judgments Act ("UDJA"), based on claims that the licensing scheme violated the Texas Constitution. *Id.* In addressing the standing of the plaintiffs, and the related issue of the ripeness of their claims, the Court focused on the enforcement actions of the State of Texas, not the text of the regulations. *Id.* at 77-78; *see also Garcia*, 893 S.W.2d at 518-19 (taking same approach by analyzing lack of action by regulatory authority in finding no standing in context of facial challenge).

After an inspection of a threading salon resulted in a finding that two threaders were practicing threading without the required licenses, the Department of Licensing and Regulation issued Notices of Alleged Violations to the two threaders, Nazira Nasruddin Momin and Vijay Lakshmi Yogi. *Id.* at 74. As a result, they were subjected to administrative hearings and fines. *Id.*

Two of the other plaintiffs, Ashish Patel and Anverali Satani, owned threading salons. *Id.* The State did not take any administrative action against the salons but issued warnings to Satani for employing unlicensed threaders. *Id.*

The State argued that Patel and Satani lacked standing because they failed "both prongs of the standing test": (1) to show that they suffered an actual or threatened restriction under the licensing regulations, and (2) to contend that the statute unconstitutionally restricted their rights. *Id.* at 77. The State did not challenge the standing of Momin and Yogi. *Id.* at 74.

The Texas Supreme Court ruled that Momin and Yogi, "who received Notices of Alleged Violation, have standing." *Id.* The Court reasoned that Momin and Yogi "suffered some actual restriction under the challenged statute because regulatory proceedings had been initiated against each of them pursuant to their alleged violations."[5] *Id.*

The Court did not reach the standing question regarding Patel and Satani.[6] *Id.* When a case has multiple plaintiffs, "who seek injunctive or declaratory relief (or both), who sue individually, and who

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[5] Because they brought as-applied challenges to the licensing regulations, Momin and Yogi had to separately establish that they met the second prong of the standing test. *Patel*, 469 S.W.3d at 74; *see also Garcia*, 893 S.W.2d at 518 (explaining that facial challenges, as opposed to as-applied challenges, by definition meet second prong of standing test—to contend that challenged statute operates unconstitutionally as to them). The Texas Supreme Court held that they met the second prong of the test because they contended that the statute unconstitutionally restricted their rights to practice eyebrow threading. *Id.*

[6] However, the Court did reach the closely related issue of whether their claims were ripe as discussed *infra* in Section V, pages 27-30.

all seek the same relief, the court need not analyze the standing of more than one plaintiff—so long as that plaintiff has standing to pursue as much or more relief than any of the other plaintiffs." *Id*. at 77. This is because "if one plaintiff prevails on the merits, the same prospective relief will issue regardless of the standing of the other plaintiffs," and there is no risk of a court issuing an advisory opinion. *Id*. at 77-78. Thus, because Momin and Yogi had been issued Notices of Alleged Violation, and regulatory proceedings were pending against them, the Court did not need to analyze the standing of Patel and Satani. *Id*.

In *Garcia*, workers and unions brought a declaratory judgment action against the Workers' Compensation Commission (the "Commission"), its executive director, and a private employer of one of the plaintiffs. *See* 893 S.W.2d 504. The plaintiffs brought a facial constitutional challenge to several provisions of the Workers' Compensation Act. *Id*. at 517.

In analyzing whether the plaintiffs had standing to make the facial challenge, the Texas Supreme Court explained that the plaintiffs must meet the two-prong test and "demonstrate that they are suffering some actual or threatened restriction under the Act." *Id*. at 518.

Regarding the second prong, the Court explained that "because they bring facial challenges, plaintiffs by definition are contending that the Act operates unconstitutionally as to them." *Id*.

Ultimately, the Court found that one of the plaintiffs, John Fuller, lacked standing because he failed to establish that a "real controversy" existed based on his particular complaints. *Id* at 519. The Court reasoned that Fuller had not submitted a claim for benefits under the Act and may never submit a claim. *Id*. Thus, the Commission had not taken any action as to Fuller. *Id*.

The Court went on to contemplate that even if Fuller submitted a claim in the future, there was no way to predict what action the Commission might take on that hypothetical future claim. *Id*. "It is not clear whether the Commission would deny benefits to someone in Fuller's position." *Id*. "Until Fuller files a claim which is rejected by the Commission ... no real controversy exists regarding his particular complaints." *Id*.

Patel and *Garcia* control the current case. Whether Appellants frame their challenge of the City's ETJ regulations as a facial challenge or an as-applied challenge, they must establish "that they are suffering

some actual or threatened restriction" under the challenged regulations to have standing. *Id*. at 518; *Patel*, 469 S.W.3d at 77.

Appellants have failed to meet their burden. They allege only that the challenged regulations exist and that they believe that the regulations apply to hypothetical activities that they have not engaged in but contemplate engaging in, at some point in the future, on their residential lots in the City's ETJ. CR4-5; CR8; CR43-47.

Specifically, Appellants allege that at some point in the future, they may want to: a) fire air guns or shoot bows and arrows on their property, but Section 26-2 of the City's Code of Ordinances restricts that activity;[7] b) make changes to their driveways, but Section 34-36 of the City's Code of Ordinances requires them to get a permit; and c) post signs in their yards expressing their disagreement with the City's policy of regulating activities in its ETJ, but Section 7.5 of the City's Unified Development Code restricts that activity. Appxs. G; H; I; CR4-5; CR8; CR43-47. However, Appellants presented no evidence that the City has ever construed the challenged regulations in relation to their properties in the manner that they allege.

[7] As explained *supra* in Section III, pages 13-14, Section 26-2 of the City's Code of Ordinances does not restrict activity in the City's ETJ, and thus does not apply to Appellants' property.

Asking a court to decide the legality of a city's possible future enforcement of regulations based on hypothetical future events is a classic example of a request for a court to issue an advisory opinion. Rather than remedying actual or imminent harm, a judgment would address only a hypothetical injury. *Tex. Ass'n of Bus.*, 852 S.W.2d at 444.

Appellants do not allege and cannot show that the City has issued Notices of Alleged Violation like the notices the plaintiffs, who had standing in *Patel*, received. Appellants also do allege and cannot show that there are pending administrative proceedings or threatened fines regarding alleged violations of the City's regulations, like there were in *Patel*. In fact, it is uncontested that the City has never enforced or threatened to enforce any of the challenged ordinances against Appellants. CR50-52. Moreover, even if this Court assumes that the City will enforce the challenged ordinances against Appellants in the future in the manner they allege, the only action that the City could take to enforce the challenged sign regulations is to initiate a civil lawsuit for injunctive relief. CR159; *see also* Appx. D; Tex. Loc. Gov't Code § 212.003(b)-(c). No such suit has been initiated or threatened.

Like the plaintiff, John Fuller, in *Garcia*, who failed to establish standing because his particular complaints were based on hypothetical future action by the Commission, Appellants' claims are based on similar hypothetical scenarios. The Texas Supreme Court surmised that even if it assumed Fuller had submitted a claim to the Commission, there was no way to predict what action the Commission might take. Until the Commission took some action, the Texas Supreme Court concluded that Fuller lacked standing.

Similarly, Appellants only contemplate taking certain actions in the future. As they have not actually taken any of those actions, there is no way to predict whether the City might consider those actions to be in violation of its regulations and elect to enforce them.

b. The mere existence of a regulation is insufficient to meet the requirement of an actual or threatened restriction.

As discussed above, the Court's opinion in *Patel* focused on the enforcement actions of the State of Texas and not the text of the regulation in determining the standing and ripeness issues. In *Garcia*, the Court's opinion focused on the inability to predict future action by the Commission in determining that the plaintiff lacked standing.

Appellants ignore the binding precedent in *Patel* and *Garcia*, and, instead, rely on non-authoritative and inapplicable case law to support their position that proof of the mere existence of the challenged regulation, without regard to any actual or threatened enforcement action, is enough to satisfy their burden to establish standing and ripeness. *See* Appellants' Brief at 11. Appellants claim that the Austin Court of Appeals opinion, *Zaatari v. City of Austin*, supports their position. *Id.* Their reliance on *Zaatari* is misplaced for several reasons.

First, *Zaatari* is an Austin Court of Appeals case. *Zaatari v. City of Austin*, 615 S.W.3d 172, 181 (Tex. App.—Austin 2019, pet. denied). *Patel* and *Garcia* are Texas Supreme Court cases and, therefore, binding authority.[8] Moreover, *Zaatari* does not support Appellants' position on the requirement for demonstrating standing.

In *Zaatari*, property owners sued the City of Austin, challenging certain ordinances that banned the use of short-term rentals. *Zaatari*, 615 S.W.3d at 181. The challenged regulations would have applied retroactively, meaning the ban would extend to short-term rentals that

[8] "It is fundamental to the very structure of our appellate system that [Texas Supreme Court] decisions be binding on the lower courts." *Dallas Area Rapid Transit v. Amalgamated Transit Union Loc. No. 1338*, 273 S.W.3d 659, 666 (Tex. 2008).

were already operational, and the City did not deny that it intended to enforce the amended regulations against the plaintiffs. *Id*. at 188.

When analyzing whether the plaintiff property owners had suffered an injury sufficient to establish standing, the court of appeals held that at least one plaintiff could show an injury because she was already using property in violation of the retroactive ban.[9] *Id*. at 183. Therefore, she suffered an actual restriction and had standing. *Id*.

In *Zaatari*, the challenged restrictions banned a specific type of activity the plaintiffs were already engaged in, there was no question that the city intended to enforce the challenged restrictions against them, and they were at risk of incurring criminal fines of up to $2,000 if they violated the regulations. *Id*. at 172, 188. Accordingly, the court found that at least one plaintiff met the "actual or threatened restriction" element necessary to establish standing.

Here, unlike in *Zaatari*, Appellants have not engaged in the hypothetical activities they claim to be covered by the challenged regulations, it is undisputed that the City has not enforced or threatened to enforce the regulations against them, and there is no risk

[9] Because the court of appeals found that one plaintiff had standing, it did not analyze the standing of the remaining plaintiffs. *Zaatari*, 615 S.W.3d at 183; *Patel*, 469 S.W.3d at 77.

of incurring a criminal penalty. Instead, there is only Appellants' list of hypotheticals as to how the City might enforce the regulations in the future. In conclusion, Appellants lack standing because they have failed to allege an actual or threatened restriction under the challenged regulations. Therefore, the trial court correctly dismissed Appellants' claims for lack of jurisdiction, and this Court should affirm. *Patel*, 469 S.W.3d at 77; *Garcia*, 893 S.W.2d 504.

V. Appellants' claims are not ripe because their allegations are based on uncertain and contingent future events.

a. Ripeness requires an injury that has occurred or is likely to occur at the time the lawsuit is filed.

"'Ripeness, like standing, is a threshold issue that implicates subject matter jurisdiction ..., and like standing, emphasizes the need for a concrete injury for a justiciable claim to be presented.'" *Sw. Elec. Power Co. v. Lynch*, 595 S.W.3d 678, 683 (Tex. 2020). "Under the ripeness doctrine, courts must consider whether, *at the time a lawsuit is filed,* the facts are sufficiently developed so that an injury has occurred or is likely to occur, rather than being contingent or remote." *Patel*, 469 S.W.3d at 78 (citation omitted) (emphasis in original).

In a ripeness analysis, the focus is "on whether a case involves uncertain or contingent future events that may not occur as anticipated or may not occur at all." *Id.*; *Waco Indep. Sch. Dist. v. Gibson*, 22 S.W.3d 849, 852 (Tex. 2000) (holding challenge to school district policy of refusing to promote students who failed to meet certain criteria was not ripe because no student had been retained or given notice of retention.). The "threat of harm can constitute a concrete injury, but the threat must be direct and immediate rather than conjectural, hypothetical, or remote." *Gibson*, 22 S.W.3d at 852 (internal quotations omitted).

"By maintaining this focus, the ripeness doctrine serves to avoid premature adjudication." *Patterson v. Planned Parenthood of Houston & Se. Texas, Inc.*, 971 S.W.2d 439, 442 (Tex. 1998). "Avoiding premature litigation prevents courts from entangling themselves in abstract disagreements." *Id.* at 443.

To establish the ripeness of a constitutionality challenge, Appellants must demonstrate that an enforcement action is imminent or sufficiently likely. *Patel*, 469 S.W.3d at 78 (citing with approval *Mitz v. Texas State Bd. of Veterinary Med. Examiners*, 278 S.W.3d 17, 25

(Tex. App.—Austin 2008, pet. dism'd) (finding ripeness in a constitutionality challenge where plaintiffs received two cease-and-desist orders, participated in an informal settlement conference, and were informed that their case will be referred for a contested case hearing)).

In *Patel*, the State argued that the claims brought by Patel, Satani, and Chamadia were not ripe. *Id.* The Texas Supreme Court held that the threat of harm to them was more than conjectural, hypothetical or remote because of specific actions the State of Texas had taken and the risk of criminal penalties. More specifically, the Court noted the following: a) Satani's business had received warnings from the State and had been referred for enforcement for employing unlicensed threaders; b) Patel and Satani employed unlicensed threaders and were consequently subjected to $5,000 per day in penalties under the regulations; and c) Chamadia worked with Momin and Yogi, who were cited by the State for practicing without a license. *Id.* Therefore, at the time the lawsuit was filed "these individuals were subject to a real threat" of enforcement proceedings that could result in

penalties and sanctions, and their claims were ripe. *Id*. (citing *Mitz*, 278 S.W.3d at 26).

Here, Appellants have manufactured a hypothetical controversy by making guesses about how the City might respond to future actions that they say they are contemplating. It is undisputed that the City has not enforced or threatened to enforce the challenged regulations against Appellants or others, who might be similarly situated. Nor is there any evidence that the City has ever taken an official position as to how the challenged regulations might apply to Appellants' hypotheticals. And finally, Appellants are not at risk of incurring criminal penalties if they guess wrong about how the City might react to their hypotheticals because the City's only option for enforcing the challenged regulation in the ETJ would be to file a civil action seeking injunctive relief.

Appellants' conjecture regarding a scenario whereby some unidentified "potential purchaser" might look at Appellants' properties and "presume" that the challenged ordinances restrict their use, thereby reducing the value of the properties, is unsupported by any case law or by the record. *See* Appellants' Brief at 11-12. It is simply

another example of a hypothetical that Appellants conjured up involving "uncertain or contingent future events that may not occur as anticipated or may not occur at all." *Patel*, 469 S.W.3d at 78; *Gibson*, 22 S.W.3d at 852.

The mere fact that a regulation may apply to a plaintiff is not enough to show that a constitutionality challenge is ripe. *Patel,* 469 S.W.3d at 78; *Mitz*, 278 S.W.3d at 26. To the extent *Zaatari* holds to the contrary, it is inconsistent with *Patel* and *Mitz*. For all these reasons, Appellants failed to demonstrate that their claims against Appellees were ripe.

b. The special ripeness rules that apply to First Amendment and regulatory taking claims are not applicable because no such claims were asserted in this case.

The authorities cited by the *Zaatari* court in holding that the mere fact that a regulation may apply to a plaintiff is enough to establish ripeness were decisions involving First Amendment and regulatory taking challenges, which are not present here. 615 S.W.3d at 184 (citing *Hallco Texas, Inc. v. McMullen Cty.,* 221 S.W.3d 50, 60 (Tex. 2006) (analyzing whether taking claim was ripe); *Palazzolo v. Rhode Island*, 533 U.S. 606, 620 (2001) (explaining ripeness requirement in a

regulatory taking analysis); *Virginia v. Am. Booksellers Ass'n, Inc.*, 484 U.S. 383, 392, *certified question answered sub nom. Commonwealth v. Am. Booksellers Ass'n, Inc.*, 236 Va. 168, 372 S.E.2d 618 (1988) (explaining when a challenge to a statute is permitted "in the First Amendment context")). Appellants did not allege a regulatory taking or a violation of their First Amendment rights.

Unlike the present case, in cases involving facial challenges to regulations as First Amendment violations, "under the First Amendment's 'overbreadth' doctrine, a law may be declared unconstitutional on its face, … even if the parties before the court were not engaged in activity protected by the First Amendment." *State v. Johnson*, 475 S.W.3d 860, 864–65 (Tex. Crim. App. 2015); *see also United States v. Stevens*, 559 U.S. 460, 473 (2010) (explaining a facial challenge in "First Amendment context" is a "second type of facial challenge" and may be allowed pre-enforcement). The overbreadth doctrine is concerned with protecting third parties who cannot undertake the burden of as-applied litigation, and whose speech is likely to be chilled by an overbroad law. *NetChoice, L.L.C. v. Paxton*, 49 F.4th 439, 451 (5th Cir. 2022).

Appellants have not asserted a First Amendment claim and, even if they had, it is not clear that they would have standing under the facts of this case because of the absence of potential criminal penalties. The fear of a chilling effect is made less credible when criminal sanctions and damages are not available as remedies for violations of the law at issue, and the only remedial scheme is a suit for declaratory and injunctive relief. *Id*.

Appellants' "parade of whataboutisms proves their real complaint is a purely speculative one," and they "are therefore not entitled to pre-enforcement facial relief" regarding the City's sign regulations. *Id*. at 448. Any First Amendment cases cited by Appellants are distinguishable, including *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239 (2012) and *State v. Johnson*, 475 S.W.3d 860 (Tex. Crim. App. 2015). Additionally, any cases involving challenges to regulations that criminalize activity are distinguishable, including those mentioned in passing by Appellants. *Seals v. McBee*, 898 F.3d 587 (5th Cir. 2018) (challenge to statute criminalizing use of violence, force, or threats on public officer with intent to influence officer's conduct); *Johnson*, 475 S.W.3d 860 (challenge to statute criminalizing flag destruction); *see also*

City of Laredo v. Laredo Merchants Ass'n, 550 S.W.3d 586, 590 (Tex. 2018) (challenge to regulation banning plastic bags in commercial establishments punishable as Class C misdemeanor and criminal fine up to $2,000).

In conclusion, Appellants have failed to present any evidence or allegations that would show that an enforcement action is imminent or sufficiently likely as required by *Patel*. Appellants' claims are based on uncertainties, hypotheticals, and remote contingencies. Therefore, their claims are not ripe, the trial court properly granted the City's plea for lack of subject matter jurisdiction, and this Court should affirm.

VI. The trial court lacks jurisdiction for the additional reason that Appellants' claims are barred by the political question doctrine.

While the Court need not reach the issue because Appellants lack standing and their claims are not ripe, the trial court lacks jurisdiction on the additional ground that Appellants' claims present a non-justiciable political question. In Texas, subject matter jurisdiction requires that a case be justiciable, and political questions are nonjusticiable issues. *Am. K-9 Detection Servs., LLC v. Freeman*, 556 S.W.3d 246, 253-54 (Tex. 2018).

Appellants challenge three City regulations that the City has not enforced against them based on Appellants' contention that the regulations violate the republican form of government provision contained in Article I, Section 2 of the Texas Constitution. That section states:

> All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit. The faith of the people of Texas stands pledged to the preservation of a republican form of government, and, subject to this limitation only, they have at all times the inalienable right to alter, reform or abolish their government in such manner as they may think expedient.

Tex. Const. art. I, § 2. The United States Constitution contains a similar clause, which directs the United States to "guarantee to every State in this Union a Republican Form of Government." U.S. Const., Art. IV, § 4.

According to Appellants' pleadings, a city violates Article I, Section 2 of the Texas Constitution if an individual who resides in a city's ETJ is "subject to the municipality's regulatory authority but is denied the ability to vote to remove the holder of legislative power from office." CR8. However, cities derive the authority to regulate outside

their city limits from the Texas Legislature, whose members are elected by the people of Texas.

The Texas Legislature has exercised its legislative power to authorize Texas cities to regulate certain activities outside their city limits "to promote, and protect the general health, safety and welfare of persons residing in and adjacent to municipalities." *See* Appxs. C; D; E; F; Tex. Loc. Gov't Code chs. 42, 212, 216, 217. Whether Texas municipalities should be afforded that authority is a political question for the Texas Legislature, not a question for the judiciary.

a. Courts must abstain from deciding matters committed to the other branches of government.

Under the political question doctrine, the judiciary abstains from answering questions that are committed to the other two branches of government. *Baker v. Carr*, 369 U.S. 186, 209 (1962); *Am. K-9 Detection Servs., LLC*, 556 S.W.3d at 249.

> The separation of the powers of government, implicit in the United States Constitution, is explicit in the Texas Constitution, which states: The powers of the Government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are Legislative to one; those which are Executive to another, and those which are Judicial to another; and no person, or collection of persons, being of one of these departments, shall exercise

> any power properly attached to either of the others, except in the instances herein expressly permitted.

Am. K-9 Detection Servs., LLC, 556 S.W.3d at 253.

In determining whether a question is committed to another branch of the government, courts, including the Texas Supreme Court, have considered the two principal tests presented in the United States Supreme Court case *Baker v. Carr*: (1) whether there is "a textually demonstrable constitutional commitment of the issue to a coordinate political department;" or (2) "a lack of judicially discoverable and manageable standards for resolving it." *Am. K-9 Detection Servs., LLC*, 556 S.W.3d at 252-53 (quoting *Baker*, 369 U.S. at 217). Recently, the Texas Supreme Court explained that while it has never explicitly determined that the *Baker* test applies in Texas courts, "the Texas Constitution expressly enshrines the separation of powers as a fundamental principle of limited government." *Van Dorn Preston v. M1 Support Servs., L.P.*, 642 S.W.3d 452, 458 (Tex. 2022), *reh'g denied* (Apr. 1, 2022).

In *American K-9*, the Texas Supreme Court held that the plaintiff's claim was a non-justiciable political question "as required for the separation of powers mandated by the Texas Constitution." 556

S.W.3d at 254. "We think that separation is implicitly required by our state constitutional provision, as well as by principles of federalism, and mirrors the same separation of powers among the branches of government in Texas." *Id.* (holding Texas' political question doctrine barred state-court review of certain military decisions).

In reaching that determination, the Court was "guided in our view of the political question doctrine by *Marbury* and *Baker* as well as by other federal-court decisions." *Am. K-9 Detection Servs., LLC*, 556 S.W.3d at 254; *Van Dorn Preston*, 642 S.W.3d at 458 (recognizing Court's analysis in *American K-9 Detection Servs., LLC*). The Court explained in its analysis that the two tests from *Baker* "are related: the lack of judicially manageable standards may strengthen the conclusion that there is a textually demonstrable commitment to a coordinate branch." *Am. K-9 Detection Servs., LLC*, 556 S.W.3d at 253 (citing *Nixon v. United States*, 506 U.S. 224, 228–229 (1993)). "Each case requires a discriminating analysis of the particular question posed ... of its susceptibility to judicial handling in light of its nature and posture in the specific case, and of the possible consequences of judicial action."

Am. K-9 Detection Servs., LLC, 556 S.W.3d at 255 (citing *Baker*, 369 U.S. at 211–212).

b. Appellants' claims under Texas' republican form of government provision are outside the judiciary's authority to address.

The U.S. Supreme Court has held that claims under the federal Guarantee Clause are non-justiciable political questions. *New York v. United States*, 505 U.S. 144, 184 (1992); *State of Tex. v. United States,* 106 F.3d 661, 666–67 (5th Cir. 1997) (holding claim under Guarantee Clause non-justiciable political question because of lack of judicially manageable standards). In *New York v. United States*, the Court explained that it approached the issue "with some trepidation" as the "Guarantee Clause has been an infrequent basis for litigation throughout our history." *New York*, 505 U.S. at 184. "In most of the cases in which the Court has been asked to apply the Clause, the Court has found the claims presented to be nonjusticiable under the political question doctrine." *Id.* (citations omitted).

Although the Texas Supreme Court has not expressly held that a claim under the Texas Constitution's republican form of government provision presents a non-justiciable political question, it has

acknowledged that a claim under the federal constitution's guarantee of a republican form of government was not for the courts to decide. *Bonner v. Belsterling*, 138 S.W. 571, 574–75 (Tex. 1911). In *Bonner*, the court was faced with a challenge to a provision in the charter of the City of Dallas that provided for recall elections. *Id.*

The claimant, who had been recalled from his position on the City's board of education, argued that the recall provision violated the guarantee of a republican form of government in the U.S. Constitution. *Id.* at 574. In rejecting his claims, the court concluded that "[t]he policy of reserving to the people such power as the recall, the initiative, and the referendum is a question for the people themselves in framing the government, or for the Legislature in the creation of municipal governments." *Id.*

While the application of the political question doctrine does not depend on whether an issue is political in nature, the U.S. Supreme Court has held that the doctrine excludes from judicial review those controversies which "revolve around policy choices and determinations constitutionally committed for resolution" to the Legislative or Executive Branch. *Am. K-9 Detection Servs., LLC*, 556 S.W.3d at 253

(citing *Japan Whaling Ass'n v. Am. Cetacean Soc'y*, 478 U.S. 221, 230 (1986). The Texas Legislature "declare[d] it the policy of the state to designate certain areas as the extraterritorial jurisdiction of municipalities." Appx. C; Tex. Loc. Gov't Code § 42.001. As part of that policy, the Legislature made the determination that creating municipal ETJ and authorizing Texas municipalities to regulate certain activities outside their corporate boundaries was necessary to "promote and protect the general health, safety, and welfare of persons residing in and adjacent to the municipalities." Appx. C; Tex. Loc. Gov't Code § 42.001; *see also* Appxs. D; E; F; Tex. Loc. Gov't Code chs. 212, 216, 217.

"Municipal corporations and other government subdivisions derive their existence and powers from legislative enactments and are subject to legislative control and supremacy." *Tex. Workers' Comp. Comm'n v. City of Bridge City*, 900 S.W.2d 411, 414 (Tex. App.—Austin 1995, writ denied). Subject to certain exceptions, the Legislature has authorized cities to regulate the subdivision of land and access to public roads within their ETJ. Appx. D; Tex. Loc. Gov't Code § 212.003. The Legislature has also authorized cities to extend their sign regulations to

their ETJ and regulate certain nuisances within a defined area outside the city limits. Appxs. E; F; Tex. Loc. Gov't Code §§ 216.003, 217.042.

Thus, the regulations challenged by Appellants were adopted by the City under the express authority of the Texas Legislature. The Legislature's policy decision to enact legislation authorizing cities to regulate in certain ways outside of their corporate limits, is committed to the Legislature under the Texas Constitution. *See generally* Tex. Const. art. III.

If granted by the trial court, the specific declaratory relief sought by Appellants in their pleadings would be inconsistent with the Legislature's clear legislative decision that cities have the authority to regulate outside their city limits under certain circumstances. CR10. For these reasons, the trial court also lacked jurisdiction because Appellants' claims are barred by the political question doctrine.

VII. Framing their claims under the Uniform Declaratory Judgments Act does not remedy Appellants' jurisdictional deficiencies.

The UDJA does not create jurisdiction or dispense with the requirements of ripeness and standing. *Sw. Elec. Power Co. v. Lynch*, 595 S.W.3d 678, 685 (Tex. 2020); *City of El Paso v. Heinrich*, 284 S.W.3d

366, 370 (Tex. 2009). The UDJA "is merely a procedural device for deciding cases *already* within a court's jurisdiction." *Tex. Dep't of Transp. v. Sefzik*, 355 S.W.3d 618, 622 (Tex. 2011) (emphasis added). It is not a "legislative enlargement of a court's power," and it does not permit courts to render advisory opinions. *Lynch,* 595 S.W.3d at 684; *Tex. Ass'n of Bus*, 852 S.W.2d at 444.

"We have acknowledged that UDJA suits are often brought with an eye to future harm." *Lynch*, 595 S.W.3d at 685. A party asserting a claim under the UDJA must still establish the existence of a ripe judiciable controversy and standing. *Id*. at 683-85. "To be sure, the often future-looking nature of UDJA suits does not remove the requirement that the court must have subject matter jurisdiction over the suit—that is, that the parties must have standing, and a ripe, justiciable controversy must exist." *Id.* at 685; *see also Patel*, 469 S.W.3d at 77-78 (analyzing standing and ripeness of plaintiffs' declaratory judgment claims brought under UDJA).

As explained in this Brief, the trial court lacks jurisdiction for three independent reasons. Appellants lack standing; their claims are not ripe; and their claims are barred by the political question doctrine.

Bringing their claims under the UDJA does not resolve Appellants' jurisdictional flaws.

CONCLUSION AND PRAYER

The trial court properly granted the City's plea to jurisdiction, dismissing Appellants' claims for lack of subject matter jurisdiction. Appellants lack standing because they have not alleged or established that they have suffered some actual or threatened restriction under the challenged regulations. Their claims are not ripe because they have not alleged or established that they are subject to an enforcement action that is imminent or sufficiently likely.[10] Lastly, their claims are non-justiciable because they are barred by the political question doctrine. For all these reasons, Appellees respectfully request that the Court affirm the trial court's order and grant Appellees any other relief to which it may show itself entitled.

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[10] The trial court also recognized that Appellants' pleadings demonstrated incurable defects. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 227 (Tex. 2004). The uncontroverted evidence demonstrates that Appellants did not and cannot meet their burden to establish standing or ripeness because the City does not enforce the challenged regulations against residential properties in its ETJ. CR50-52.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Brief of Appellees has a word count of 8,893.

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CERTIFICATE OF SERVICE

As required by Texas Rule of Appellate Procedure 6.3 and 9.5(b), (d), (e), I certify that I have served this document on all other parties to this appeal, through their respective counsel of record, on January 27, 2023, as follows:

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NO. 06-22-00078-CV

IN THE COURT OF APPEALS
FOR THE SIXTH DISTRICT OF TEXAS
AT TEXARKANA, TEXAS

SHANA ELLIOTT AND LAWRENCE KALKE,
***Appellants*,**

v.

CITY OF COLLEGE STATION, TEXAS; KARL MOONEY, IN HIS OFFICIAL CAPACITY AS MAYOR OF THE CITY OF COLLEGE STATION; AND BRYAN WOODS, IN HIS OFFICIAL CAPACITY AS THE CITY MANAGER OF THE CITY OF COLLEGE STATION,
***Appellees*.**

On Appeal from the 85th District Court of Brazos County, Texas
Trial Cause No. 22-001122-CV-85

APPENDIX TO BRIEF OF APPELLEES

APPENDIX TAB A

Article 4019—Whenever a reef of oysters is over eight feet below the surface of the waters, the Game, Fish and Oyster Commissioner may grant permission, to any one applying for it, to dredge on such reef. And in doing this the Commissioner shall state the character and number of dredges to be used and the length of time for which they shall be used. The person to whom such privilege shall be granted shall not dredge except in the presence of a deputy Fish and Oyster commissioner, assigned to such duty by the Game, Fish and Oyster Commissioner. And the person granted such permission shall furnish board to such Commissioner on board of the dredge boat or other boat on the reef and shall pay to the Game, Fish and Oyster Commissioner $2.50 for all days or parts of days during such dredging, which money shall be placed in the special fish and oyster fund.

SEC. 2. That Articles 4020 and 4021, said Title, and all other laws and parts of laws in conflict herewith, be and the same are hereby repealed.

SEC. 3. The fact that the present law governing the fish and oyster industry is not sufficient to protect the industry from wanton destruction, creates an emergency and an imperative public necessity, that the constitutional rule requiring bills to be read on three several days be suspended, and the same is suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted.

[NOTE.—H. B. No. 76 passed the House of Representatives March 29, 1913, but no vote given; and passed the Senate by a two-thirds vote, yeas 24, nays 5.]

Approved April 7, 1913.
Takes effect 90 days after adjournment.

CITIES AND TOWNS—AUTHORIZES CITIES OF MORE THAN 5000 INHABITANTS TO ADOPT AND AMEND THEIR CHARTERS.

H. B. No. 13.] CHAPTER 147.

An Act authorizing cities having more than five thousand inhabitants, by a majority vote of the qualified voters of said city, at an election held for that purpose, to adopt and amend their charters, subject to such limitations as may be prescribed by the Legislature; and enumerating certain powers and providing same shall not be exclusive of other powers granted under the Constitution and laws of this State; and providing the method by which said election may be held; and amending Article 812 of the penal code; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. That cities having more than five thousand inhabitants may, by a majority vote of the qualified voters of said city, at an election held for that purpose, adopt or amend their charters, subject to such limitations as may be prescribed by the Legislature, and providing that no charter or any ordinance passed under said charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State, said cities may levy, assess and collect such taxes as may be authorized

by law, or by their charters; but no tax for any purpose shall ever be lawful for any one year, which shall exceed two and one-half per cent. of the taxable property of such city, and no debt shall ever be created by any city, unless at the same time provision be made to assess and collect annually a sufficient sum to pay the interest thereon and creating a sinking fund of at least two per cent. thereon; and providing further that no city charter shall be altered, amended or repealed oftener than every two years.

SEC. 2. The legislative or governing authority of any incorporated city, having more than five thousand inhabitants may, by a two-thirds vote of its members, or upon petition of ten per cent. of the qualified voters of said city, shall provide by ordinance for the submission of the question, "Shall a commission be chosen to frame a new charter?" The ordinance providing for the submission of such question shall require that it be submitted at the next regular municipal election, if one should be held, not less than thirty nor more than ninety days after the passage of said ordinance; otherwise it shall provide for the submission of the question at a special election to be called and held not less than thirty days, nor more than ninety days, after the passage of said ordinance and the publication thereof in some newspaper published in said city. The ballot containing such question shall bear no party designation, and provision shall be made thereon for the election from the city at large of a charter commission of not less than fifteen members or more than one member for each three thousand inhabitants, provided, that a majority of the qualified voters, voting on such question shall have voted in the affirmative. The charter so framed by said commission shall be submitted to the qualified voters of said city at an election to be held at a time fixed by the charter commission not less than forty days nor more than ninety days after the completion of the work of the charter commission; provision for which shall be made by the legislative or governing authority of the city insofar as not prescribed by general law. Not less than thirty days prior to such election the legislative or governing authority of said city shall cause the city clerk or city secretary to mail a copy of the proposed charter to each qualified voter in said city as appears from the tax collector's rolls for the year ending January 31st, preceding said election. If such proposed charter is approved by a majority of the qualified voters, voting at said election, it shall become the charter of said city until amended or repealed; provided, that in preparing the charter, the commission shall, as far as practicable, segregate each subject so that the voter may vote "Yes" or "No" on the same. Provided, that where the legislative or governing authority of any city, or where any mass meeting has selected a charter committee, or charter commission, or where the mayor of any city has appointed a charter committee which has proceeded with the formation of a charter for said city, the provisions of this Section as to the selection of the charter commission shall not apply to the first charter election to be held in said city under the terms of this Act. No charter shall be considered adopted until the votes have been counted and an official order entered upon the records of said city by the legislative or governing authority of such city declaring the same adopted. When the legislative or governing authority of any city of more than five thou-

sand inhabitants deems it preferable to submit amendments to any existing charter and in the absence of a petition hereinbefore provided for, said legislative or governing authority may, on its own motion, and shall upon the petition of at least ten per cent. of the qualified voters of said city submit any proposed amendment or amendments to such charter; provided, that the ordinance providing for the submission of any proposed amendment or amendments shall require that it, or they, be submitted at the next regular municipal election, if one shall be held, not less than thirty nor more than ninety days after the passage of said ordinance; otherwise it shall provide for the submission of the amendment or amendments at a special election to be called and held not less than thirty nor more than ninety days after the passage of said ordinance, and the publication thereof in some newspaper published in said city. The legislative or governing authority of said city shall cause the city clerk or city secretary to mail a copy of the proposed amendment or amendments to every qualified voter in said city as appears from the tax collector's rolls for the year ending January 31st, preceding said election. Every such proposed amendment or amendments, if approved by the majority of the qualified voters voting at said election, shall become a part of the charter of said city. Each and every amendment or amendments submitted must contain only one subject and in preparing the ballot for such amendment or amendments, it shall be done in such a manner that the voter may vote "Yes" or "No" on any one amendment or amendments, without voting "Yes" or "No" on all of said amendments; and provided that no amendment or amendments shall be considered adopted until the votes have been counted and an official order has been entered upon the records of said city by the legislative or governing authority of such city, declaring the same adopted. Provided, that no ordinance shall be passed submitting an amendment or amendments until twenty days' notice has been given of such intention by publication for ten days in some newspaper published in said city. By "twenty days" is meant from the first date said notice is published.

Provided, that nothing in this Act shall prevent the qualified voters of any city of over five thousand inhabitants from adopting any charter or amendment thereto, and at the same time electing officers under such charter or amendment.

SEC. 3. That, upon the adoption of any such charter or any amendment to any existing charter by the qualified voters, as provided in Section 1 of this Act, it shall be the duty of the mayor or chief executive officer exercising like or similar powers of any such city, as soon as practicable, after the adoption of any such charter or amendment, to certify to the Secretary of State an authenticated copy, under the seal of this city, showing the approval by the qualified voters of any such charter or amendment; and the Secretary of State shall thereupon file and record the same in a separate book to be kept in his office for such purpose; provided that the Secretary of State shall not be allowed to charge any greater fee for the recording of any such charter or amendment than fifteen cents (15c) per hundred words, provided such fee shall not be less than two dollars ($2.00). That it shall be the duty of the city secretary of any such city or other officer exercising like or similar powers, upon the adoption and approval of any such charter, any amend-

ment thereof by the qualified voters as herein provided, to record at length upon the records of the city, in a separate book to be kept in his office for such purpose, any such charter, or amendment so adopted. That, when said charter or any amendment thereof shall be recorded as herein above provided for, it shall be deemed a public act and all courts shall take judicial notice of same and no proofs shall be required of same. That all cities may institute and prosecute suit without giving security for cost, and may appeal from judgments without giving supersedeas or cost bond.

SEC. 4. That by the provisions of this Act it is contemplated to bestow upon any city adopting the charter or amendment hereunder the full power of local self government, and among the other powers that may be exercised by any such city, the following are hereby enumerated for greater certainty:

The creation of a commission, aldermanic or other form of government; the creation of offices, the manner and mode of selecting officers and prescribing their qualifications, duties, compensation and tenure of office.

The power to fix the boundary limits of said city, to provide for the extension of said boundary limits and the annexation of additional territory lying adjacent to said city, according to such rules as may be provided by said charter.

To hold by gift, deed, devise or otherwise any character of property, including any charitable or trust fund; to plead and be impleaded in all courts, and to act in perpetual succession as a body politic.

To provide that no public property or any other character of property owned or held by said city shall be subject to any execution of any kind or nature.

To provide that no fund of the city shall be subject to garnishment, and the city shall never be required to answer in any garnishment proceedings.

To provide for the exemption from liability on account of any claim for damages to any person or property, or to fix such rules and regulations governing the city's liability as may be deemed advisable.

To provide for the levying of any general or special ad valorem tax for any purpose not inconsistent with the Constitution of the State.

To provide for the mode and method of assessing taxes, both real and personal, against any person and corporation, including the right to assess the franchise of any public corporation using and occupying the public streets or grounds of the city separately from the tangible property of such corporation.

To provide for the collection of all taxes, including the right to impose penalties for delinquent taxes.

The power to control and manage the finances of any such city; to prescribe its fiscal year and fiscal arrangements; the power to issue bonds upon the credit of the city for the purpose of making permanent public improvements or for other public purposes in the amount and to the extent provided by such charter, and consistent with the Constitution of the State; provided, that said bonds shall have been first authorized by a majority vote cast by the duly qualified property taxpaying voters voting at an election held for that purpose. Thereafter all such bonds

shall be submitted to the Attorney General for his approval and the Comptroller for registration, as provided by the State law, provided that any such bonds, after approval, may be issued by the city, either optional or serial or otherwise as may be deemed advisable by the governing authority. That, whenever any city has heretofore been authorized, under any special charter, creating such city, to issue any bonds by the terms of such charter, the provisions of this Act shall not be construed to interfere with the issuance of any such bonds under the provisions of any charter under which such bonds were authorized.

To have the exclusive right to own, erect, maintain and operate water works and water works system for the use of any city and its inhabitants, to regulate the same and to have power to prescribe rates for water furnished and to acquire by purchase, donation or otherwise suitable grounds within and without the limits of the city on which to erect any such works and the necessary right of way, and to do and perform whatsoever may be necessary to operate and maintain the said water works or water works system and to compel the owners of all property and the agents of such owners or persons in control thereof to pay all charges for water furnished upon such property and to fix a lien upon such property for any such charges. To provide that all receipts from the water works may, in its discretion, constitute a separate or sacred fund, which shall be used for no other purpose than the extension, improvement, operation, maintenance, repair and betterment of said water works system or water works supply, and to provide for the pledging of any such receipts and revenues for the purpose of making of any of such improvements, and the payment of the principal and providing an interest and sinking fund for any bonds issued therefor, under such regulations as may be provided by the charter adopted by such city.

To prohibit the use of any street, alley, highway or grounds of the city by any telegraph, telephone, electric light, street railway, interurban railway, steam railway, gas company, or any other character of public utility without first obtaining the consent of the governing authorities expressed by ordinance and upon paying such compensation as may be prescribed and upon such condition as may be provided for by any such ordinance. To determine, fix and regulate the charges, fares, or rates of any person, firm or corporation enjoying or that may enjoy the franchise or exercising any other public privilege in said city, and to prescribe the kind of service to be furnished by such person, firm or corporation, and the manner in which it shall be rendered, and from time to time alter or change such rules, regulations and compensation; provided, that in adopting such regulations and in fixing or changing such compensation or determining the reasonableness thereof, no stock or bonds authorized or issued by any corporation enjoying the franchise shall be considered unless proof that the same have been actually issued by the corporation for money paid and used for the development of the corporate property, labor done or property actually received in accordance with the laws and Constitution of the State applicable thereto. That, in order to ascertain all facts necessary for a proper understanding of what is or should be a reasonable rate or regulation, the governing authority shall have full power to inspect the books and compel attendance of witnesses for such purpose.

To buy, own, construct within or without the city limits and to maintain and operate a system or systems, of gas, or electric lighting plant, telephones, street railways, sewage plants, fertilizing plants, abattoir, municipal railway terminals, docks, wharfs, ferries, ferry landings, loading and unloading devices and shipping facilities, or any other public service or public utility, and to demand and receive compensation for service furnished for private purposes or otherwise, and to exercise the right of eminent domain as hereinafter provided for the appropriation of lands, rights of way or anything whatsoever that may be proper and necessary to efficiently carry out said objects. That any city shall have the power to condemn the property of any person, firm or corporation now conducting any such business and for the purpose of operating and maintaining any such public utilities, and for the purpose of distributing such service throughout the city or any portion thereof; provided that any city may adopt by its charter such other rules and regulations as it may deem advisable for the acquiring and operation of any such public utilities.

To manufacture its own electricity, gas or anything else that may be needed or used by the public; to purchase and make contracts with any person or corporation for the purchasing of gas, electricity, oil or any other commodity or article used by the public and to sell the same to the public upon such terms as may be provided by the charter.

To have the power to appropriate private property for public purposes whenever the governing authorities shall deem it necessary and to take any private property within or without the city limits for any of the following purposes, to-wit: city halls, police stations, jails, calaboose, fire stations, libraries, school houses, high school buildings, academies, hospitals, sanitariums, auditoriums, market houses, reformatories, abbattoirs, railroad terminals, docks, wharves, warehouses, ferries, ferry landings, elevators, loading and unloading devices, shipping facilities, piers, streets, alleys, parks, highways, boulevards, speedways, play grounds, sewer systems, storm sewers, sewage disposal plants, drains, filtering beds and emptying grounds for sewer systems, reservoirs, water sheds, water supply sources, wells, water and electric light systems, gas plants, cemeteries, crematories, prison farms, and to acquire lands within and without the city for any other municipal purposes that may be deemed advisable. That the power herein granted for the purpose of acquiring private property shall include the power of the improvement and enlargement of the water works, including water supply, riparian rights, stand pipes, water sheds, the construction of supply reservoirs, parks, squares and pleasure grounds, public wharves and landing places for steamers and other crafts, and for the purpose of straightening or improving the channel of any stream, branch or drain, or the straightening or widening or extension of any street, alley, avenue or boulevard. That, in all cases where the city seeks to exercise the power of eminent domain, it shall be controlled, as nearly as practicable, by the law governing the condemnation of property of railroad corporations in this State, the city taking the position of the railroad corporations in any such case; that the power of eminent domain hereby conferred shall include the right of the governing authority, when so expressed, to take the fee in the lands so condemned and such power and authority shall include the right to condemn public property for such purposes.

To have exclusive dominion, control and jurisdiction in, over and under the public streets, avenues, alleys, highways and boulevards, and public grounds of such city and to provide for the improvement of any public street, alleys, highways, avenues or boulevards by paving, raising grading, filling, or otherwise improving the same and to charge the cost of making such improvements against the abutting property, by fixing a lien against the same, and a personal charge against the owner thereof according to an assessment specially levied therefor in an amount not to exceed the special benefit any such property received in enhanced value by reason of making any such improvement and to provide for the issuance of assignable certificates covering the payments for said cost, provided that the charter shall apportion the cost to be paid by the property owners and the amount to be paid by the city, and provided further, that all street railways, steam railways, or other railways, shall pay the cost of improving the said street between the rails and tracks of any such railway companies and for two feet on each side thereof. The city shall have the power to provide for the construction and building of sidewalks and charge the entire cost of construction of said sidewalks, including the curb, against the owner of abutting property, and to make a special charge against the owner for such cost and to provide by special assessment a lien against such property for such cost; to have the power to provide for the improvement of any such sidewalk or the construction of any such curb by penal ordinance and to declare defective sidewalks to be a a public nuisance. That the power herein granted for making street improvements and assessing the cost by special assessment in the manner herein stated shall not be construed to prevent any city from adopting any other method or plan for the improvement of its streets, sidewalks, alleys, curbs or boulevards, as it may deem advisable by its charter.

To open, extend straighten, widen any public street, alley, avenue or boulevard and for such purpose to acquire the necessary lands and to appropriate the same under the power of eminent domain and to provide that the cost of improving any such street, alley, avenue or boulevard by opening, extending and widening the same shall be paid by the owners of property specially benefited whose property lies in the territory of such improvement and to provide that the cost shall be charged by special assessment and that a personal charge shall be made against any owner for the amount due by him and to provide for the appointment by the county judge or other officer exercising like or similar powers of three special commissioners for the purpose of condemning the said lands and for the purpose of apportioning the said cost, which apportionment of said cost shall be specially assessed by the governing authorities against the owners and the property of the owners lying in the territory so found to be specially benefited in enhanced value by the said special commissioners. That the city shall pay such portion of such cost as may be determined by the said special commissioners, provided the same shall never exceed one-third the cost and the property owners and their property shall be liable for the balance of the same as may be apportioned by said commissioners. That the city may issue assignable certificates for the payment of any such cost against such property owners and may provide for the payments of any such cost in deferred payments, to bear interest at such rate as may be prescribed by the charter not to exceed

eight per cent. That the city may adopt any other method for the opening, straightening, widening or extending of its streets as herein provided for as may be deemed advisable and charge the cost of same against the property and the owner specially benefited in enhanced value and lying in the territory of said improvement that its charter may provide. That the authority to adopt any other method shall include the manner of appointing commissioners, the manner of giving notice and the manner of fixing assessments or providing for the payment for any such improvement.

To control, regulate and remove all obstructions or other encroachments or incumbrances on any public street, alley or ground and to narrow, alter, widen or straighten any such streets, alleys, avenues or boulevards and to vacate and abandon and close any such streets, alleys, avenues or boulevards, and to regulate and control the moving of buildings or other structures over and upon the streets or avenues of such city.

That each city shall have the power to define all nuisances and prohibit the same within the city and outside the city limits for a distance of five thousand feet; to have power to police all parks or grounds, speedways, or boulevards owned by said city and lying outside of said city; to prohibit the pollution of any stream, drain or tributaries thereof which constitutes the source of water supply of any city and to provide for policing the same as well as to provide for the protection of any water sheds and the policing of same; to inspect dairies, slaughter pens and slaughter houses inside or outside the limits of the city from which meat or milk from same is furnished to the inhabitants of the city.

To license, operate and control the operation of all character of vehicles using the public streets, including motorcycles, automobiles or like vehicles, and to prescribe the speed of the same, the qualification of the operator of the same, and the lighting of the same by night and to provide for the giving of bond or other security for the operation of the same.

To regulate, license and fix the charges of fares made by any person owning, operating or controlling any vehicle of any character used for the carrying of passengers for hire or the transportation of freight for hire on the public streets and alleys of the city.

To provide for the establishment of districts within said city wherein saloons may be located or maintained and wherein spirituous, vinous and malt liquors may be sold to be drunk on the premises, and to prohibit the sale of such liquors or the location of such saloons without such defined district, to regulate the location and control the conduct of theaters, moving picture shows, ten pin alleys, vaudeville shows, pool halls, and all places of public amusements.

To license any lawful business, occupation or calling that is susceptible to the control of the police power.

To license, regulate control or prohibit the erection of signs or bill boards as may be provided by charter or ordinance.

To provide for the establishment and designation of fire limits and to prescribe the kind and character of buildings or structures or improvements to be erected therein, and to provide for the erection of fire proof buildings within certain limits, and to provide for the condemnation of dangerous structures or buildings or dilapidated buildings or buildings

calculated to increase the fire hazard and the manner of their removal or destruction.

To provide for police and fire departments.

To provide for a health department and the establishment of rules and regulations protecting the health of the city and the establishment of quarantine stations, and pest houses, emergency hospitals and hospitals, and to provide for the adoption of necessary quarantine laws to protect the inhabitants against contagious or infectious diseases.

To provide for a sanitary sewer system and to require property owners to make connections with such sewers with their premises and to provide for fixing a lien against any property owner's premises who fails or refuses to make sanitary sewer connections and to charge the cost against the said owner and make it a personal liability. Also to provide for fixing penalties for a failure to make sanitary sewer connections.

The power to require water works corporations, gas companies, street car companies, telephone companies, telegraph companies, electric light companies, or other companies or individuals enjoying a franchise now or hereafter from the city to make and furnish extensions of their service to such territory as may be required by the charter.

Provided, that in all cities of over twenty-five thousand inhabitants, the city commissioners, or city council, or the governing board or authorities of any such city, when the public service of such city may require the same, shall have the right and power to compel any street railway or other public utility corporation to extend its lines or service into any section of said city not to exceed two miles, all told, in any one year.

To provide for the establishment of public schools and public school system in any such city and to have exclusive control over same and to provide such regulations and rules governing the management of same as may be deemed advisable; to levy and collect the necessary taxes, general or special, for the support of such public schools and public school system.

That, whenever any city may determine to acquire any public utility using and occupying its streets, alleys, and avenues as hereinbefore provided, and it shall be necessary to condemn the said public utility, the city may obtain funds for the purpose of acquiring the said public utility and paying the compensation therefor, by issuing bonds or notes or other evidence of indebtedness and shall secure the same by fixing a lien upon the said properties constituting the said public utility so acquired by condemnation or purchase or otherwise; that said security shall apply alone to the said properties so pledged; that such further regulations may be provided by any charter for the proper financing or raising the revenues necessary for obtaining any public utilities and providing for the fixing of said security.

To enforce all ordinances necessary to protect health, life and property, and to prevent and summarily abate and remove all nuisances and to preserve and enforce the good government, order and security of the city and its inhabitants, and as incident to giving effect to the provisions hereof Article 812 of the Penal Code of the State of Texas is hereby amended so as to hereafter read as follows:

Art. 812. If any person shall wilfully obstruct or injure, or cause to be obstructed or injured in any manner whatsoever, any public road or

highway, or any street or alley in any incorporated town or city, or any public bridge or causeway, he shall be fined in a sum not exceeding two hundred dollars.

SEC. 5. The enumeration of powers hereinabove made shall never be construed to preclude, by implication or otherwise, any such city from exercising the powers incident to the enjoyment of local self-government, provided, that such powers shall not be inhibited by the Constitution of the State.

SEC. 6. All powers heretofore granted any city by general law or special charter are hereby preserved to each of said cities, respectively, and the power so conferred upon such cities, either by special or general law, is hereby granted to such cities when embraced in and made a part of the charter adopted by such city; and provided, that, until the charter of such city as the same now exists is amended and adopted, it shall be and remain in full force and effect.

SEC. 7. That the adoption of any charter hereunder or any amendment thereof shall never be construed to destroy any property, action, rights of action, claims and demands of any nature or kind whatever vested in the city under and by virtue of any charter theretofore existing or otherwise accruing to the city, but all such rights of action, claims or demands shall vest in and inure to the city and to any persons asserting any such claims against the city as fully and completely as though the said charter or amendment had not been adopted hereunder. That the adoption of any charter or amendment hereunder shall never be construed to affect the right of the city, to collect by special assessment any special assessment heretofore levied under any law or special charter for the purpose of paving or improving any street, highway, avenue or boulevard of any city, or for the purpose of opening, extending, widening, straightening or otherwise improving the same, nor affect any right of any contract or obligation existing between the city and any person, firm or corporation for the making of any such improvements and for the purpose of collecting any such special assessment and carrying out of any such contract, the provisions of all charters shall be continued in force.

SEC. 8. Any such city shall have the power to create and establish improvement districts, to levy, straighten, widen, enclose or otherwise improve any river, creek, bayou, stream, or other body of water or streets or alleys, and to drain, grade, fill and otherwise protect and improve the territory within its limits, and shall have the power to issue bonds for making such improvements, such improvement districts to be created and established agreeably to the General Laws of the State providing for the creation of such improvement districts and the issuance of such bonds shall be governed by the powers a city possesses in the matter of issuing bonds.

Any such city shall further have the power to straighten, widen, levy, enclose, or otherwise improve any river, creek, bayou, stream, or other body of water, or streets, or alleys, and to drain, grade, fill and otherwise protect and improve the territory within its limits and to provide that the cost of making any such improvements shall be paid for by the property owners owning property in the territory specially benefited in enhanced value by reason of making any such improvements and a personal charge shall be made against any such property owners as well as a

lien shall be fixed by special assessment against any such property, and the city may issue assignable certificates or negotiable certificates, as it deems advisable, covering such cost and may provide for the payment of such cost in deferred payments and fix the rate of interest not to exceed eight per cent., and pay [may] provide for the appointment of special commissioners or otherwise for the making and levying of said special assessment or may provide that the same shall be done by the governing authorities and that such rules and regulations may be adopted for a hearing and other proceedings had as may be provided by said charter.

SEC. 9. Any such charter may provide a different penalty for the obstruction or incumbrance of its streets, alleys, avenues and highways from that provided by the State law, and provided, further, that no ordinance shall be in conflict with the State law or provide a penalty in conflict therewith save and except in the case of the obstruction and incumbrance of the public streets, alleys, avenues and boulevards of said city.

No charter or any amendment thereof framed or adopted under the provisions of this Act, shall ever grant to any person, firm or corporation any right or franchise to use or occupy the public streets, avenues, alleys or grounds of any such city, but the governing authority of any such city shall have the exclusive power and authority to make any such grant of any such franchise or right to use and occupy the public streets, avenues, alleys and grounds of the city; provided, that if at any time before any ordinance granting a franchise takes effect, a petition shall be submitted to the governing authority signed by five hundred of the bona fide qualified voters of the city, then the governing authority shall submit the question of granting such franchise to a vote of the qualified voters of the city, at the next succeeding general election; provided such election shall occur within twelve months from the date such ordinance takes effect; that, if such election shall not occur within the said twelve months then said ordinance may be submitted if petitioned therefor as herein provided for at a special election to be called by the governing authorities therefor; provided, further that in case said ordinance is submitted at any of said elections, notice thereof shall be published at least twenty days successively in a daily newspaper published in said city prior to the holding of said election. The ballot used at said elections shall briefly describe the franchise to be voted on and the terms thereof and shall contain the words "For the granting of a franchise" and "Against the granting of the franchise." That if a majority of those voting at said election shall vote in favor of granting a franchise the governing body upon canvassing the returns shall so declare and said franchise shall take effect in accordance with its terms, provided, further, however, that no franchise shall extend beyond the period fixed for its termination.

SEC. 10. The fact that there is no enabling act authorizing cities of more than five thousand inhabitants to avail themselves of the constitutional amendment recently adopted, authorizing them by a vote of the qualified voters to adopt or amend their charter, creates an emergency and an imperative public necessity requiring that the constitutional rule, requiring that bills shall be read on three several days, be suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

[NOTE.—H. B. No. 13 passed the House of Representatives by the following vote, yeas 89, nays 0; House refused to concur in Senate amendments and requested appointment of free conference committee, and adopted report of free conference committee by a two-thirds vote, yeas 114, nays 3; and passed the Senate with amendments by a two-thirds vote, yeas 26, nays 0; Senate granted request of House for appointment of free conference committee, and adopted report of free conference committee by the following vote: yeas —, nays —. Received from the Executive office March 31, 1913 for correction, and House adopted report of free conference committee by a two-thirds vote, yeas 103, and nays 12.]

Approved April 7, 1913.
Takes effect 90 days after adjournment.

RAILROADS—AMENDS ARTICLE 6553, CHAPTER 10, TITLE 115, R. S. 1911, RELATING TO TRAIN DISPATCHERS.

S. B. No. 175.] CHAPTER 148.

An Act to amend Article 6553 of Title 115 Chapter 10 of the Revised Civil Statutes of 1911 relating to railroad train dispatchers and affixing a penalty, and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. That Article 6553 of Title 115, Chapter 10 of the Revised Civil Statutes of 1911 be so amended as hereafter to read as follows:

SEC. 2. Every such railroad corporation operating trains in this State shall employ a competent train dispatcher whose duty it shall be to keep informed of the movement of all trains upon the lines of such railroad corporation. Said train dispatcher shall also keep all agents at stations having telegraph offices in or near them, informed of the movement of all passenger trains one hour prior to the time such passenger train or trains are due, according to the published schedule at such stations. And in the event any such passenger train is delayed for more than one hour, than the published schedule, then it shall be the duty of such train dispatcher to inform such local agents how late said train is and the last telegraph station passed. If such train dispatcher shall fail or refuse to furnish the information concerning the movement of trains to agents as herein required, then such dispatcher shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than fifty nor more than two hundred dollars for each offense.

SEC. 3. The fact that there is no sufficient law upon this subject with a penalty, together with the near approach of the end of the present session of the Legislature, creates an emergency, and an imperative public necessity that the constitutional rule requiring bills to be read on three several days, be suspended, and that this Act take immediate effect, and be enforced from and after its passage.

[NOTE.—S. B. No. 175 passed the Senate by a two-thirds vote, yeas 24, nays 0; and passed the House of Representatives March 31, 1913, but no vote given.]

Approved April 7, 1913.
Takes effect 90 days after adjournment.

APPENDIX TAB B

The fact that County Treasurers are under paid for services rendered creates an emergency and imperative public necessity that the Constitutional rule requiring bills to be read on three several occasions be suspended and that this Act shall take effect and be in force from and after its passage and it is so enacted.

Approved March 30, 1927.
Effective March 30, 1927.

GRANTING AUTHORITY TO CITIES TO CONTROL THE PLATTING OF SURROUNDING TERRITORY.

S. B. No. 277] CHAPTER 231.

An Act to provide for the approval by municipal authorities before filing, and for the filing and recordation of plans, plats or replats of land lying in or within five miles of the corporate limits of cities having a population of twenty-five thousand persons or over, according to the Federal Census of 1920 and of any subsequent Federal Census, and providing for the adoption and promulgation by cities of general rules and regulations governing plats and subdivisions, and making it unlawful and a misdemeanor in office for officials of such cities, unless said plans, plats or replats have first received the required approval, to serve or connect the land covered by such plans, plats or replats, or for the use of owners or purchasers of said lands, or any part thereof, with any public utilities, such as light, gas, water, sewer, etc., which may be owned by such cities, and making it unlawful and a misdemeanor in office for any county clerk to file or record such plans, plats or replats before same have received the approval required by this Act, and providing a penalty therefor; and providing for the acceptance of the provisions of this Act by cities having less than twenty-five thousand inhabitants, and providing for the repeal of laws and parts of laws in conflict therewith; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. That hereafter, every owner of any tract of land situated within the corporate limits or within five miles of the corporate limits of any city in the State of Texas which contains twenty-five thousand inhabitants or more, according to the Federal Census of 1920, or any subsequent Federal Census, who may hereafter subdivide the same in two or more parts for the purpose of laying out any subdivision of any such town, or city, or any addition thereto, or any part thereof, or suburban lots or building lots, or any lots, and streets, alleys, parks or other portions intended for public use, or for the use of purchasers or owners of lots fronting thereon or adjacent thereto, shall cause a plat to be made which shall accurately describe all of the subdivision of such tract or parcels of land, giving dimensions thereof, and the dimensions of all the streets, alleys, squares, parks, or other portions of same intended so be dedicated to public use, or for the use of purchasers or owners of lots fronting thereon or adjacent thereto.

SEC. 2. That every such plat shall be duly acknowledged by owners or proprietors of the land, or by some duly authorized agent of said owners or proprietors, in the manner required for the acknowledgment of deeds; and the said plat, subject to the provisions contained in this Act, shall be filed for record and be recorded in the office of the County Clerk of the County in which the land lies.

SEC. 3. That it shall be unlawful for the County Clerk of any county in which such land lies to receive or record any such plan, plat or replat, unless and until the same shall have been approved by the City Planning Commission of any city affected by this Act, if said city have a City Planning Commission and if it have no City Planning Commission, unless and until the said plan, plat, or replat shall have been approved by the governing body of such city. If such land lies outside of and within five miles of more than one city affected by this Act, then the requisite approval shall be by the City Planning Commission or Governing Body, as the case may be, of such of said cities having the largest population. Any person desiring to have a plan, plat or replat approved as herein provided, shall apply therefor to and file a copy with the Commission or governing body herein authorized to approve same, which shall act upon same within thirty days from the filing date. If said plat be not disapproved within thirty days from said filing date, it shall be deemed to have been approved and a certificate showing said filing date and the failure to take action thereon within thirty days from said filing date, shall on demand be issued by the City Planning Commission or Governing Body, as the case may be, of such city, and said certificate shall be sufficient in lieu of the written endorsement or other evidence of approval herein required. If the plan, plat, or replat is approved, such Commission or governing body shall indicate such finding by certificate endorsed thereon, signed by the Chairman or presiding officer of said Commission or governing body and attested by its Secretary, or signed by a majority of the members of said Commission or Governing Body. Such Commission or governing body shall keep a record of such applications and the action taken thereupon, and upon demand of the owners of any land affected, shall certify its reasons for the action taken in the matter.

SEC. 4. If such plan or plat, or replat shall conform to the general plan of said city and its streets, alleys, parks, playgrounds and public utility facilities, including those which have been or may be laid out, and to the general plan for the extension of such city and of its roads, streets and public highways within said city and within five miles of the corporate limits thereof, regard being had for access to and extension of sewer and water mains and the instrumentalities of public utilities, and if same shall conform to such general rules and regulations, if any, governing plats and subdivisions of land falling within its jurisdiction as the governing body of such city may adopt and promulgate to promote the health, safety, morals or general wel-

fare of the community, and the safe, orderly and healthful development of said community (which general rules and regulations for said purposes such cities are hereby authorized to adopt and promulgate after public hearing held thereon), then it shall be the duty of said City Planning Commission or of the governing body of such city, as the case may be, to endorse approval upon the plan, plat or replat submitted to it.

SEC. 5. That any such plan, plat or replat may be vacated by the proprietors of the land covered thereby at any time before the sale of any lot therein by a written instrument declaring the same to be vacated, duly executed, acknowledged and recorded in the same office as the plat to be vacated, provided the approval of the City Planning Commission or governing body of such city, as the case may be, shall have been obtained as above provided, and the execution and recordation of such shall operate to destroy the force and effect of the recording of the plan, plat or replat so vacated. In cases where lots have been sold, the plan, plat or replat, or any part thereof, may be vacated upon the application of all the owners of lots in said plat and with the approval, as above provided, of the City Planning Commission or governing body of said city, as the case may be. The County Clerk of the county in whose office the plan or plat thus vacated has been recorded shall write in plain, legible letters across the plan or plat so vacated the word "Vacated," and also make a reference on the same to the volume and page in which said instrument of vacation is recorded.

SEC. 6. The approval of any such plan, plat, or replat shall not be deemed an acceptance of the proposed dedication and shall not impose any duty upon such city concerning the maintenance or improvement of any such dedicated parts until the proper authorities of said city shall have made actual appropriation of the same by entry, use or improvement.

SEC. 7. When any such map, plat, or replat is tendered for filing in the office of the County Clerk of any county in which any city of the above class may be situated, it shall be the duty of such Clerk to ascertain that the proposed plan, plat or replat is or is not subject to the provisions of this Act, and if it is subject to its provisions, then to examine said may, plat or replat to ascertain whether the endorsements required by this Act appear thereon. If such endorsements do appear thereon, he shall accept same for registration. If such endorsements do not appear thereon, he shall refuse to accept same for registration. When same does not disclose whether the land covered by said map, plat or replat, or any part thereof, is or is not within five miles of the corporate limits of a city of the class above mentioned, the County Clerk may require one offering said map, plat or replat for registration to file with him an affidavit setting forth such information. The filing or recording of any plan, plat or replat contrary to the provisions of this Act shall constitute a misdemeanor punishable by fine of not less than

Fifty Dollars ($50.00) nor more than Two Hundred Dollars ($200.00), and both the County Clerk and any Deputy filing or recording the same shall be guilty.

SEC. 8. Unless and until any such plan, plat or replat shall have been first approved in the manner and by the authorities provided for in this Act, it shall be unlawful within the area covered by said plan, plat or replat for any city affected by this Act, or any officials of such city, to serve or connect said land, or any part thereof, or for the use of the owners or purchasers of said land, or any part thereof, with any public utilities such as water, sewers, light, gas, etc., which may be owned, controlled or distributed by such city.

SEC. 9. If any such plan, plat or replat is disapproved by the City Planning Commission or governing body of such city, as the case may be, such disapproval shall be deemed a refusal by the city of the offered dedication shown thereon.

SEC. 10. The benefits of the provisions of this law shall apply to, and the terms thereof extend to, any city in the State of Texas now or hereafter having less than twenty-five thousand inhabitants, as above defined, if and when the governing body thereof shall submit the question of the adoption or rejection hereof to a vote of the qualified voters of said city, either at a general election in said city or at a special election called for the purpose by said city, and if and when same shall have been adopted at such election by a majority vote of the qualified voters of said city voting at such election, said election shall be held as nearly as possible in compliance with the law with reference to regular city elections in said city, but said governing body is hereby empowered to order said election and to prescribe the time and manner of holding the same. Said body shall canvass and determine the result of said election, and if a majority of the voters voting upon the question of the adoption of said law at such election shall vote to adopt the same, the result of said election shall by said governing body be entered upon their minutes, and thereupon all terms hereof shall be applicable to and govern such city adopting the same. A certified copy of said minutes shall be prima facie evidence of the result of such election and the regularity thereof, and the facts therein recited shall in all courts be accepted as true.

SEC. 11. If any clause, requirement, provision, or part of this Act shall, for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not invalidate the remainder of this Act, but shall be confined in its operation to the clause, requirement, provision or part thereof declared invalid.

SEC. 12. That all Acts, or parts of Acts in conflict with this Act, be, and the same are, hereby repealed, to the extent of such conflict.

SEC. 13. The absence of any adequate law controlling the platting of property within and surrounding large, rapidly growing cities creates an emergency and imperative public necessity

which demands that the constitutional rule requiring Bills to be read on three several days before final passage be suspended, and that this Act shall take effect and be in force from its passage, and it is so enacted.

[NOTE.—S. B. No. 277 passed the Senate without a roll call, passed the House 102 yeas, 12 nays. Received in the Executive Office March 14, 1927. Received in the Department of State March 31, 1927, without signature of Governor.]

Effective (90) ninety days after adjournment.

VALIDATING APPOINTMENT OF GUARDIANS WHEN CITATION WAS PUBLISHED AND NOT POSTED.

H. B. No. 294.] CHAPTER 232.

An Act validating the appointment of guardians when citation was published, as provided in Chapter 179, Acts, Regular Session, 1917, being now Article 28 of the Revised Civil Statutes of Texas, 1925, and where such citation was not published as provided in Article 4115 of the Revised Civil Statutes of Texas, 1925; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. In all cases where guardians have been appointed by the Probate Courts of the several counties of this State after citation was published as provided in Chapter 179, Acts, Regular Session, 1917, being now Article 28 of the Revised Civil Statutes of Texas, 1925, and without service of citation or notice by posting as provided in Article 4115, Revised Civil Statutes of Texas, 1925, such service of citation and appointment of guardian by any Probate Court in this State are hereby validated, and any such guarianship heretofore granted and closed or now pending are held to be legal guardianships, and the order appointing any guardian made on an application and after notice published as provided in said Chapter 179, Acts, Regular Session, 1917, are hereby declared to be legal guardianships and valid for all purposes.

SEC. 2. The fact that many guardians have been appointed where notice of application for appointment has been published in some newspaper as provided in said Chapter 179, Acts, Regular Session, 1917, being now Article 28, Revised Civil Statutes of Texas, 1925, and without notices or citation being published as required by Article 4115 of the Revised Civil Statutes of Texas, 1925, creates an emergency and necessity for suspending the constitutional rule requiring bills to be read on three several days be suspended and the same is suspended, and this Act take effect from and after its passage, and it is so enacted.

[NOTE.—H. B. No. 294 passed the House 99 yeas, 1 nay; passed the Senate by a viva voce vote.]

Approved March 30, 1927.
Effective (90) ninety days after adjournment.

APPENDIX TAB C

LOCAL GOVERNMENT CODE

TITLE 2. ORGANIZATION OF MUNICIPAL GOVERNMENT

SUBTITLE C. MUNICIPAL BOUNDARIES AND ANNEXATION

CHAPTER 42. EXTRATERRITORIAL JURISDICTION OF MUNICIPALITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 42.001. PURPOSE OF EXTRATERRITORIAL JURISDICTION. The legislature declares it 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.

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

SUBCHAPTER B. DETERMINATION OF EXTRATERRITORIAL JURISDICTION

Sec. 42.021. EXTENT OF EXTRATERRITORIAL JURISDICTION. (a) The extraterritorial jurisdiction of a municipality is the unincorporated area that is contiguous to the corporate boundaries of the municipality and that is located:

(1) within one-half mile of those boundaries, in the case of a municipality with fewer than 5,000 inhabitants;

(2) within one mile of those boundaries, in the case of a municipality with 5,000 to 24,999 inhabitants;

(3) within two miles of those boundaries, in the case of a municipality with 25,000 to 49,999 inhabitants;

(4) within 3-1/2 miles of those boundaries, in the case of a municipality with 50,000 to 99,999 inhabitants; or

(5) within five miles of those boundaries, in the case of a municipality with 100,000 or more inhabitants.

(b) Regardless of Subsection (a), the extraterritorial jurisdiction of a municipality is the unincorporated area that is contiguous to the corporate boundaries of the municipality and that is located:

(1) within five miles of those boundaries on a barrier island; or

(2) within one-half mile of those boundaries off a barrier

island.

(c) Subsection (b) applies to a municipality that has:

(1) a population of 2,000 or more; and

(2) territory located:

(A) entirely on a barrier island in the Gulf of Mexico; and

(B) within 30 miles of an international border.

(d) Regardless of Subsection (a), the extraterritorial jurisdiction of a municipality is the unincorporated area that is contiguous to the corporate boundaries of the municipality and that is located within three miles of those boundaries if the municipality:

(1) has a population of not less than 20,000 or more than 29,000; and

(2) is located in a county that has a population of 45,000 or more and borders the Trinity River.

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

Acts 2007, 80th Leg., R.S., Ch. 761 (H.B. 3325), Sec. 1, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 215 (H.B. 91), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 612 (S.B. 508), Sec. 1, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(33), eff. September 1, 2013.

Sec. 42.022. EXPANSION OF EXTRATERRITORIAL JURISDICTION. (a) When a municipality annexes an area, the extraterritorial jurisdiction of the municipality expands with the annexation to comprise, consistent with Section 42.021, the area around the new municipal boundaries.

(b) The extraterritorial jurisdiction of a municipality may expand beyond the distance limitations imposed by Section 42.021 to include an area contiguous to the otherwise existing extraterritorial jurisdiction of the municipality if the owners of the area request the expansion.

(c) The expansion of the extraterritorial jurisdiction of a municipality through annexation, request, or increase in the number of inhabitants may not include any area in the existing extraterritorial jurisdiction of another municipality, except as provided by Subsection (d).

(d) The extraterritorial jurisdiction of a municipality may be expanded through annexation to include area that on the date of annexation is located in the extraterritorial jurisdiction of another municipality if a written agreement between the municipalities in effect on the date of annexation allocates the area to the extraterritorial jurisdiction of the annexing municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 337 (H.B. 2902), Sec. 1, eff. June 17, 2011.

Sec. 42.0225. EXTRATERRITORIAL JURISDICTION AROUND CERTAIN MUNICIPALLY OWNED PROPERTY. (a) This section applies only to an area owned by a municipality that is:

(1) annexed by the municipality; and

(2) not contiguous to other territory of the municipality.

(b) Notwithstanding Section 42.021, the annexation of an area described by Subsection (a) does not expand the extraterritorial jurisdiction of the municipality.

Added by Acts 1999, 76th Leg., ch. 1167, Sec. 1, eff. Sept. 1, 1999.

Sec. 42.023. REDUCTION OF EXTRATERRITORIAL JURISDICTION. The extraterritorial jurisdiction of a municipality may not be reduced unless the governing body of the municipality gives its written consent by ordinance or resolution, except:

(1) in cases of judicial apportionment of overlapping extraterritorial jurisdictions under Section 42.901;

(2) in accordance with an agreement under Section 42.022(d); or

(3) as necessary to comply with Section 42.0235.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 337 (H.B. 2902), Sec. 2, eff. June 17, 2011.
Acts 2015, 84th Leg., R.S., Ch. 941 (H.B. 4059), Sec. 1, eff. June 18, 2015.

Sec. 42.0235. LIMITATION ON EXTRATERRITORIAL JURISDICTION OF

CERTAIN MUNICIPALITIES. (a) Notwithstanding Section 42.021, and except as provided by Subsection (d), the extraterritorial jurisdiction of a municipality with a population of more than 175,000 located in a county that contains an international border and borders the Gulf of Mexico terminates two miles from the extraterritorial jurisdiction of a neighboring municipality if extension of the extraterritorial jurisdiction beyond that limit would:

(1) completely surround the corporate boundaries or extraterritorial jurisdiction of the neighboring municipality; and

(2) limit the growth of the neighboring municipality by precluding the expansion of the neighboring municipality's extraterritorial jurisdiction.

(b) A municipality shall release extraterritorial jurisdiction as necessary to comply with Subsection (a).

(c) Notwithstanding any other law, a municipality that owns an electric system and that releases extraterritorial jurisdiction under Subsection (b) may provide electric service in the released area to the same extent that the service would have been provided if the municipality had annexed the area.

(d) Extraterritorial jurisdiction for a municipality subject to this section is determined under Section 42.021 if the governing body of the municipality and the governing body of the neighboring municipality each adopt, on or after June 1, 2017, resolutions stating that the determination of extraterritorial jurisdiction under Section 42.0235(a) is not in the best interest of the municipality.

Added by Acts 2015, 84th Leg., R.S., Ch. 941 (H.B. 4059), Sec. 2, eff. June 18, 2015.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 447 (S.B. 468), Sec. 1, eff. September 1, 2017.

Sec. 42.024. TRANSFER OF EXTRATERRITORIAL JURISDICTION BETWEEN CERTAIN MUNICIPALITIES. (a) In this section:

(1) "Adopting municipality" means a home-rule municipality with a population of less than 25,000 that purchases and appropriates raw water for its water utility through a transbasin diversion permit from one or two river authorities in which the municipality has territory.

(2) "Releasing municipality" means a home-rule municipality with a population of more than 450,000 that owns an electric utility,

that has a charter provision allowing for limited-purpose annexation, and that has annexed territory for a limited purpose.

(b) The governing body of an adopting municipality may by resolution include in its extraterritorial jurisdiction an area that is in the extraterritorial jurisdiction of a releasing municipality if:

(1) the releasing municipality does not provide water, sewer services, and electricity to the released area;

(2) the owners of a majority of the land within the released area request that the adopting municipality include in its extraterritorial jurisdiction the released area;

(3) the released area is:

(A) adjacent to the territory of the adopting municipality;

(B) wholly within a county in which both municipalities have territory; and

(C) located in one or more school districts, each of which has the majority of its territory outside the territory of the releasing municipality;

(4) the adopting municipality adopts ordinances or regulations within the released area for water quality standards relating to the control or abatement of water pollution that are in conformity with those of the Texas Natural Resource Conservation Commission applicable to the released area on January 1, 1995;

(5) the adopting municipality has adopted a service plan to provide water and sewer service to the area acceptable to the owners of a majority of the land within the released area; and

(6) the size of the released area does not exceed the difference between the total area within the extraterritorial jurisdiction of the adopting municipality, exclusive of the extraterritorial jurisdiction of the releasing municipality, on the date the resolution was adopted under this subsection, as determined by Section 42.021, and the total area within the adopting municipality's extraterritorial jurisdiction on the date of the resolution.

(c)(1) The service plan under Subsection (b)(5) shall include an assessment of the availability and feasibility of participation in any regional facility permitted by the Texas Natural Resource Conservation Commission in which the releasing municipality is a participant and had plans to provide service to the released area. The plan for regional service shall include:

(A) proposed dates for providing sewer service through the

regional facility;

(B) terms of financial participation to provide sewer service to the released area, including rates proposed for service sufficient to reimburse the regional participants over a reasonable time for any expenditures associated with that portion of the regional facility designed or constructed to serve the released area as of January 1, 1993; and

(C) participation by the adopting municipality in governance of the regional facility based on the percentage of land to be served by the regional facility in the released area compared to the total land area to be served by the regional facility.

(2) The adopting municipality shall deliver a copy of the service plan to the releasing municipality and any other participant in any regional facility described in this subsection at least 30 days before the resolution to assume extraterritorial jurisdiction. The releasing municipality and any other participant in any regional facility described in this subsection by resolution shall, within 30 days of delivery of the service plan, either accept that portion of the service plan related to participation by the adopting municipality in the regional facility or propose alternative terms of participation.

(3) If the adopting municipality, the releasing municipality, and any other participant in any regional facility described in this subsection fail to reach agreement on the service plan within 60 days after the service plan is delivered, any municipality that is a participant in the regional facility or any owner of land within the area to be released may appeal the matter to the Texas Natural Resource Conservation Commission. The Texas Natural Resource Conservation Commission shall, in its resolution of any differences between proposals submitted for review in this subsection, use a cost-of-service allocation methodology which treats each service unit in the regional facility equally, with any variance in rates to be based only on differences in costs based on the time service is provided to an area served by the regional facility. The Texas Natural Resource Conservation Commission may allow the adopting municipality, the releasing municipality, or any other participant in any regional facility described in this subsection to withdraw from participation in the regional facility on a showing of undue financial hardship.

(4) A decision by the Texas Natural Resource Conservation Commission under this subsection is not subject to judicial review, and any costs associated with the commission's review shall be assessed to

the parties to the decision in proportion to the percentage of land served by the regional facility subject to review in the jurisdiction of each party.

(5) The releasing municipality shall not, prior to January 1, 1997, discontinue or terminate any interlocal agreement, contract, or commitment relating to water or sewer service that it has as of January 1, 1995, with the adopting municipality without the consent of the adopting municipality.

(d) On the date the adopting municipality delivers a copy of the resolution under Subsection (b) to the municipal clerk of the releasing municipality, the released area shall be included in the extraterritorial jurisdiction of the adopting municipality and excluded from the extraterritorial jurisdiction of the releasing municipality.

(e) If any part of a tract of land, owned either in fee simple or under common control or undivided ownership, was or becomes split, before or after the dedication or deed of a portion of the land for a public purpose, between the extraterritorial jurisdiction of a releasing municipality and the jurisdiction of another municipality, or is land described in Subsection (b)(3)(C), the authority to act under Chapter 212 and the authority to regulate development and building with respect to the tract of land is, on the request of the owner to the municipality, with the municipality selected by the owner of the tract of land. The municipality selected under this subsection may also provide or authorize another person or entity to provide municipal services to land subject to this subsection.

(f) Nothing in this section requires the releasing municipality to continue to participate in a regional wastewater treatment plant providing service, or to provide new services, to any territory within the released area.

(g) This section controls over any conflicting provision of this subchapter.

Added by Acts 1995, 74th Leg., ch. 766, Sec. 1, eff. Aug. 28, 1995.

Sec. 42.025. RELEASE OF EXTRATERRITORIAL JURISDICTION BY CERTAIN MUNICIPALITIES. (a) In this section, "eligible property" means any portion of a contiguous tract of land:

(1) that is located in the extraterritorial jurisdiction of a municipality within one-half mile of the territory of a proposed municipal airport;

(2) for which a contract for land acquisition services was awarded by the municipality; and

(3) that has not been acquired through the contract described by Subdivision (2) for the proposed municipal airport.

(b) The owner of eligible property may petition the municipality to release the property from the municipality's extraterritorial jurisdiction not later than June 1, 1996. The petition must be filed with the secretary or clerk of the municipality.

(c) Not later than the 10th day after the date the secretary or clerk receives a petition under Subsection (b), the municipality by resolution shall release the eligible property from the extraterritorial jurisdiction of the municipality.

(d) Eligible property that is released from the extraterritorial jurisdiction of a municipality under Subsection (c) may be included in the extraterritorial jurisdiction of another municipality if:

(1) any part of the other municipality is located in the same county as the property; and

(2) the other municipality and the owner agree to the inclusion of the property in the extraterritorial jurisdiction.

Added by Acts 1995, 74th Leg., ch. 788, Sec. 1, eff. June 16, 1995. Renumbered from Local Government Code Sec. 42.024 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(64), eff. Sept. 1, 1997.

Sec. 42.0251. RELEASE OF EXTRATERRITORIAL JURISDICTION BY CERTAIN GENERAL-LAW MUNICIPALITIES. (a) This section applies only to a general-law municipality:

(1) that has a population of less than 3,000;

(2) that is located in a county with a population of more than 500,000 that is adjacent to a county with a population of more than four million; and

(3) in which at least two-thirds of the residents reside within a gated community.

(b) A municipality shall release an area from its extraterritorial jurisdiction not later than the 10th day after the date the municipality receives a petition requesting that the area be released that is signed by at least 80 percent of the owners of real property located in the area requesting release.

Added by Acts 2011, 82nd Leg., R.S., Ch. 337 (H.B. 2902), Sec. 3, eff.

June 17, 2011.

Sec. 42.026. LIMITATION ON EXTRATERRITORIAL JURISDICTION OF CERTAIN MUNICIPALITIES. (a) In this section, "navigable stream" has the meaning assigned by Section 21.001, Natural Resources Code.

(b) This section applies only to an area that is:

(1) located in the extraterritorial jurisdiction of a home-rule municipality that has a population of 60,000 or less and is located in whole or in part in a county with a population of 240,000 or less;

(2) located outside the county in which a majority of the land area of the municipality is located; and

(3) separated from the municipality's corporate boundaries by a navigable stream.

(c) A municipality that, on August 31, 1999, includes that area in its extraterritorial jurisdiction shall, before January 1, 2000:

(1) adopt an ordinance removing that area from the municipality's extraterritorial jurisdiction; or

(2) enter into an agreement with a municipality located in the county in which that area is located to transfer that area to the extraterritorial jurisdiction of that municipality.

(d) If the municipality that is required to act under Subsection (c) does not do so as provided by that subsection, the area is automatically removed from the extraterritorial jurisdiction of that municipality on January 1, 2000.

(e) Section 42.021 does not apply to a transfer of extraterritorial jurisdiction under Subsection (c)(2).

Added by Acts 1999, 76th Leg., ch. 1494, Sec. 1, eff. Aug. 30, 1999.

SUBCHAPTER C. CREATION OR EXPANSION OF GOVERNMENTAL ENTITIES IN EXTRATERRITORIAL JURISDICTION

Sec. 42.041. MUNICIPAL INCORPORATION IN EXTRATERRITORIAL JURISDICTION GENERALLY. (a) A municipality may not be incorporated in the extraterritorial jurisdiction of an existing municipality unless the governing body of the existing municipality gives its written consent by ordinance or resolution.

(b) If the governing body of the existing municipality refuses to give its consent, a majority of the qualified voters of the area of the proposed municipality and the owners of at least 50 percent of the land

in the proposed municipality may petition the governing body to annex the area. If the governing body fails or refuses to annex the area within six months after the date it receives the petition, that failure or refusal constitutes the governing body's consent to the incorporation of the proposed municipality.

(c) The consent to the incorporation of the proposed municipality is only an authorization to initiate incorporation proceedings as provided by law.

(d) If the consent to initiate incorporation proceedings is obtained, the incorporation must be initiated within six months after the date of the consent and must be finally completed within 18 months after the date of the consent. Failure to comply with either time requirement terminates the consent.

(e) This section applies only to the proposed municipality's area located in the extraterritorial jurisdiction of the existing municipality.

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

Acts 2005, 79th Leg., Ch. 287 (H.B. 585), Sec. 1, eff. June 16, 2005.

For expiration of Subsections (c) and (d), see Subsections (c) and (d).

Sec. 42.0411. MUNICIPAL INCORPORATION IN EXTRATERRITORIAL JURISDICTION OF CERTAIN MUNICIPALITIES. (a) This section applies only to:

(1) an area located north and east of Interstate Highway 10 that is included in the extraterritorial jurisdiction, or the limited-purpose annexation area, of a municipality with a population of one million or more that has operated under a three-year annexation plan similar to the municipal annexation plan described by Section 43.052 for at least 10 years; or

(2) an area located north and east of Interstate Highway 10:

(A) that is included in the extraterritorial jurisdiction, or the limited-purpose annexation area, of a municipality with a population of one million or more that has operated under a three-year annexation plan similar to the municipal annexation plan described by Section 43.052 for at least 10 years;

(B) that has not been included in the municipality's

annexation plan described by Section 43.052 before the 180th day before the date consent for incorporation is requested under Section 42.041(a); and

(C) for which the municipality refused to give its consent to incorporation under Section 42.041(a).

(b) The residents of the area described by Subsection (a)(2) may initiate an attempt to incorporate as a municipality by filing a written petition signed by at least 10 percent of the registered voters of the area of the proposed municipality with the county judge of the county in which the proposed municipality is located. The petition must request the county judge to order an election to determine whether the area of the proposed municipality will incorporate. An incorporation election under this section shall be conducted in the same manner as an incorporation election under Subchapter A, Chapter 8. The consent of the municipality that previously refused to give consent is not required for the incorporation.

(c) In this subsection, "deferred annexation area" means an area that has entered into an agreement with a municipality under which the municipality defers annexation of the area for at least 10 years. An area described by Subsection (a)(1) that is located within 1-1/2 miles of a municipality's deferred annexation area or adjacent to the corporate boundaries of the municipality may not be annexed for limited or full purposes during the period provided under the agreement. During the period provided under the agreement, the residents of the area may incorporate in accordance with the incorporation proceedings provided by law, except that the consent of the municipality is not required for the incorporation. This subsection expires on the later of:

(1) September 1, 2009; or

(2) the date that all areas entitled to incorporate under this subsection have incorporated.

(d) This subsection applies only to an area that is described by Subsection (a)(1) and removed from a municipality's annexation plan under Section 43.052(e) two times or more. The residents of the area and any adjacent territory that is located within the extraterritorial jurisdiction of the municipality or located within an area annexed for limited purposes by the municipality and that is adjacent to the corporate boundaries of the municipality may incorporate in accordance with the incorporation proceedings provided by law, except that the consent of the municipality is not required for the incorporation. This subsection expires on the later of:

(1) September 1, 2009; or

(2) the date that all areas entitled to incorporate under this subsection have incorporated.

Added by Acts 2005, 79th Leg., Ch. 287 (H.B. 585), Sec. 2, eff. June 16, 2005.

Sec. 42.042. CREATION OF POLITICAL SUBDIVISION TO SUPPLY WATER OR SEWER SERVICES, ROADWAYS, OR DRAINAGE FACILITIES IN EXTRATERRITORIAL JURISDICTION. (a) A political subdivision, one purpose of which is to supply fresh water for domestic or commercial use or to furnish sanitary sewer services, roadways, or drainage, may not be created in the extraterritorial jurisdiction of a municipality unless the governing body of the municipality gives its written consent by ordinance or resolution in accordance with this subsection and the Water Code. In giving its consent, the municipality may not place any conditions or other restrictions on the creation of the political subdivision other than those expressly permitted by Sections 54.016(e) and (i), Water Code.

(b) If the governing body fails or refuses to give its consent for the creation of the political subdivision, including a water district previously created by an act of the legislature, on mutually agreeable terms within 90 days after the date the governing body receives a written request for the consent, a majority of the qualified voters of the area of the proposed political subdivision and the owners of at least 50 percent of the land in the proposed political subdivision may petition the governing body to make available to the area the water, sanitary sewer services, or both that would be provided by the political subdivision.

(c) If, within 120 days after the date the governing body receives the petition, the governing body fails to make a contract with a majority of the qualified voters of the area of the proposed political subdivision and the owners of at least 50 percent of the land in the proposed political subdivision to provide the services, that failure constitutes the governing body's consent to the creation of the proposed political subdivision.

(d) The consent to the creation of the political subdivision is only an authorization to initiate proceedings to create the political subdivision as provided by law.

(e) Repealed by Acts 1997, 75th Leg., ch. 1070, Sec. 55, eff. Sept. 1, 1997.

(f) If the municipality fails or refuses to give its consent to the creation of the political subdivision, including a water district previously created by an act of the legislature, or fails or refuses to execute a contract providing for the water or sanitary sewer services requested within the time limits prescribed by this section, the applicant may petition the Texas Commission on Environmental Quality for the creation of the political subdivision or the inclusion of the land in a political subdivision. The commission shall allow creation or confirmation of the creation of the political subdivision or inclusion of the land in a proposed political subdivision on finding that the municipality either does not have the reasonable ability to serve or has failed to make a legally binding commitment with sufficient funds available to provide water and wastewater service adequate to serve the proposed development at a reasonable cost to the landowner. The commitment must provide that construction of the facilities necessary to serve the land will begin within two years and will be substantially completed within 4-1/2 years after the date the petition was filed with the municipality.

(g) On an appeal taken to the district court from the ruling of the Texas Commission on Environmental Quality, all parties to the commission hearing must be made parties to the appeal. The court shall hear the appeal within 120 days after the date the appeal is filed. If the case is continued or appealed to a higher court beyond the 120-day period, the court shall require the appealing party or party requesting the continuance to post a bond or other adequate security in the amount of damages that may be incurred by any party as a result of the appeal or delay from the commission action. The amount of the bond or other security shall be determined by the court after notice and hearing. On final disposition, a court may award damages, including any damages for delays, attorney's fees, and costs of court to the prevailing party.

(h) A municipality may not unilaterally extend the time limits prescribed by this section through the adoption of preapplication periods or by passage of any rules, resolutions, ordinances, or charter provisions. However, the municipality and the petitioner may jointly petition the Texas Commission on Environmental Quality to request an extension of the time limits.

(i) Repealed by Acts 1989, 71st Leg., ch. 1058, Sec. 1, eff. Sept. 1, 1989.

(j) The consent requirements of this section do not apply to the creation of a special utility district under Chapter 65, Water Code. If

a special utility district is to be converted to a district with taxing authority that provides utility services, this section applies to the conversion.

(k) This section, except Subsection (i), applies only to the proposed political subdivision's area located in the extraterritorial jurisdiction of the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 3(b), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1058, Sec. 1, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 76, Sec. 11.254, eff. Sept. 1, 1995.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1098 (H.B. 3378), Sec. 1, eff. June 15, 2007.

Acts 2019, 86th Leg., R.S., Ch. 1128 (H.B. 2590), Sec. 1, eff. September 1, 2019.

Sec. 42.0425. ADDITION OF LAND IN EXTRATERRITORIAL JURISDICTION OF MUNICIPALITY TO CERTAIN POLITICAL SUBDIVISIONS. (a) A political subdivision, one purpose of which is to supply fresh water for domestic or commercial use or to furnish sanitary sewer services, roadways, or drainage, may not add land that is located in the extraterritorial jurisdiction of a municipality unless the governing body of the municipality gives its written consent by ordinance or resolution in accordance with this section and the Water Code. In giving its consent, the municipality may not place any conditions or other restrictions on the expansion of the political subdivision other than those expressly permitted by Section 54.016(e), Water Code.

(b) The procedures under Section 42.042 governing a municipality's refusal to consent to the creation of a political subdivision apply to a municipality that refuses to consent to the addition of land to a political subdivision under this section.

(c) An owner of land in the area proposed to be added to the political subdivision may not unreasonably refuse to enter into a contract for water or sanitary sewer services with the municipality under Section 42.042(c).

(d) This section does not apply to a political subdivision created by Chapter 289, Acts of the 73rd Legislature, Regular Session, 1993.

Added by Acts 2007, 80th Leg., R.S., Ch. 703 (H.B. 2091), Sec. 2, eff.

June 15, 2007.

Sec. 42.043. REQUIREMENTS APPLYING TO PETITION. (a) A petition under Section 42.041 or 42.042 must:

(1) be written;

(2) request that the area be annexed or that the services be made available, as appropriate;

(3) be signed in ink or indelible pencil by the appropriate voters and landowners;

(4) be signed, in the case of a person signing as a voter, as the person's name appears on the most recent official list of registered voters;

(5) contain, in the case of a person signing as a voter, a note made by the person stating the person's residence address and the precinct number and voter registration number that appear on the person's voter registration certificate;

(6) contain, in the case of a person signing as a landowner, a note made by the person opposite the person's name stating the approximate total acreage that the person owns in the area to be annexed or serviced;

(7) describe the area to be annexed or serviced and have a plat of the area attached; and

(8) be presented to the secretary or clerk of the municipality.

(b) The signatures to the petition need not be appended to one paper.

(c) Before the petition is circulated among the voters and landowners, notice of the petition must be given by posting a copy of the petition for 10 days in three public places in the area to be annexed or serviced and by publishing the notice once, in a newspaper of general circulation serving the area, before the 15th day before the date the petition is first circulated. Proof of posting and publication must be made by attaching to the petition presented to the secretary or clerk:

(1) the affidavit of any voter who signed the petition, stating the places and dates of the posting;

(2) the affidavit of the publisher of the newspaper in which the notice was published, stating the name of the newspaper and the issue and date of publication; and

(3) the affidavit of at least three voters who signed the petition, if there are that many, stating the total number of voters

residing in the area and the approximate total acreage in the area.

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

Sec. 42.044. CREATION OF INDUSTRIAL DISTRICT IN EXTRATERRITORIAL JURISDICTION. (a) In this section, "industrial district" has the meaning customarily given to the term but also includes any area in which tourist-related businesses and facilities are located.

(b) The governing body of a municipality may designate any part of its extraterritorial jurisdiction as an industrial district and may treat the designated area in a manner considered by the governing body to be in the best interests of the municipality.

(c) The governing body may make written contracts with owners of land in the industrial district:

(1) to guarantee the continuation of the extraterritorial status of the district and its immunity from annexation by the municipality for a period not to exceed 15 years; and

(2) with other lawful terms and considerations that the parties agree to be reasonable, appropriate, and not unduly restrictive of business activities.

(d) The parties to a contract may renew or extend it for successive periods not to exceed 15 years each. In the event any owner of land in an industrial district is offered an opportunity to renew or extend a contract, then all owners of land in that industrial district must be offered an opportunity to renew or extend a contract subject to the provisions of Subsection (c).

(e) A municipality may provide for adequate fire-fighting services in the industrial district by:

(1) directly furnishing fire-fighting services that are to be paid for by the property owners of the district;

(2) contracting for fire-fighting services, whether or not all or a part of the services are to be paid for by the property owners of the district; or

(3) contracting with the property owners of the district to have them provide for their own fire-fighting services.

(f) A property owner who provides for his own fire-fighting services under this section may not be required to pay any part of the cost of the fire-fighting services provided by the municipality to other property owners in the district.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 975, Sec. 1, eff. Aug. 30, 1993.

Sec. 42.045. CREATION OF POLITICAL SUBDIVISION IN INDUSTRIAL DISTRICT. (a) A political subdivision, one purpose of which is to provide services of a governmental or proprietary nature, may not be created in an industrial district designated under Section 42.044 by a municipality unless the municipality gives its written consent by ordinance or resolution. The municipality shall give or deny consent within 60 days after the date the municipality receives a written request for consent. Failure to give or deny consent in the allotted period constitutes the municipality's consent to the initiation of the creation proceedings.

(b) If the consent is obtained, the creation proceedings must be initiated within six months after the date of the consent and must be finally completed within 18 months after the date of the consent. Failure to comply with either time requirement terminates the consent for the proceedings.

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

Sec. 42.046. DESIGNATION OF A PLANNED UNIT DEVELOPMENT DISTRICT IN EXTRATERRITORIAL JURISDICTION. (a) The governing body of a municipality that has disannexed territory previously annexed for limited purposes may designate an area within its extraterritorial jurisdiction as a planned unit development district by written agreement with the owner of the land under Subsection (b). The agreement shall be recorded in the deed records of the county or counties in which the land is located. A planned unit development district designated under this section shall contain no less than 250 acres. If there are more than four owners of land to be designated as a single planned unit development, each owner shall appoint a single person to negotiate with the municipality and authorize that person to bind each owner for purposes of this section.

(b) An agreement governing the creation, development, and existence of a planned unit development district established under this section shall be between the governing body of the municipality and the owner of the land subject to the agreement. The agreement shall not be effective until signed by both parties and by any other person with an interest in the land, as that interest is evidenced by an instrument recorded in the

deed records of the county or counties in which the land is located. The parties may agree:

(1) to guarantee continuation of the extraterritorial status of the planned unit development district and its immunity from annexation by the municipality for a period not to exceed 15 years after the effective date of the agreement;

(2) to authorize certain land uses and development within the planned unit development;

(3) to authorize enforcement by the municipality of certain municipal land use and development regulations within the planned unit development district, in the same manner such regulations are enforced within the municipality's boundaries, as may be agreed by the landowner and the municipality;

(4) to vary any watershed protection regulations;

(5) to authorize or restrict the creation of political subdivisions within the planned unit development district; and

(6) to such other terms and considerations the parties consider appropriate.

(c) The agreement between the governing body of the municipality and the owner of the land within the planned unit development district shall be binding upon all subsequent governing bodies of the municipality and subsequent owners of the land within the planned unit development district for the term of the agreement.

(d) An agreement or a decision made under this section and an action taken under the agreement by the parties to the agreement are not subject to an approval or an appeal brought under Section 26.177, Water Code.

Added by Acts 1989, 71st Leg., ch. 822, Sec. 5, eff. Sept. 1, 1989.
Amended by Acts 1991, 72nd Leg., ch. 891, Sec. 1, eff. June 8, 1991.

Sec. 42.047. CREATION OF A POLITICAL SUBDIVISION IN AN AREA PROPOSED FOR A PLANNED UNIT DEVELOPMENT DISTRICT. If the governing body of a municipality that has disannexed territory previously annexed for limited purposes refuses to designate a planned unit development district under Section 42.046 no later than 180 days after the date a request for the designation is filed with the municipality by the owner of the land to be included in the planned unit development district, the municipality shall be considered to have given the consent required by Section 42.041 to the incorporation of a proposed municipality including within its

boundaries all or some of such land. If consent to incorporation is granted by this subsection, the consenting municipality waives all rights to challenge the proposed incorporation in any court.

Added by Acts 1989, 71st Leg., ch. 822, Sec. 5, eff. Sept. 1, 1989.

Sec. 42.049. AUTHORITY OF WELLS BRANCH MUNICIPAL UTILITY DISTRICT. (a) Wells Branch Municipal Utility district is authorized to contract with a municipality:

(1) to provide for payments to be made to the municipality for purposes that the governing body of the district determines will further regional cooperation between the district and the municipality; and

(2) to provide other lawful terms and considerations that the district and the municipality agree are reasonable and appropriate.

(b) A contract entered into under this section may be for a term that is mutually agreeable to the parties. The parties to such a contract may renew or extend the contract.

(c) A municipality may contract with the district to accomplish the purposes set forth in Subsection (a) of this section. In a contract entered into under this section, a municipality may agree that the district will remain in existence and be exempt from annexation by the municipality for the term of the contract.

(d) A contract entered into under this section will be binding on all subsequent governing bodies of the district and of the municipality for the term of the contract.

(e) The district may make annual appropriations from its operations and maintenance tax or other revenues lawfully available to the district to make payments to a municipality under a contract entered into under this section.

Added by Acts 1999, 76th Leg., ch. 926, Sec. 4, eff. June 18, 1999.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 42.901. APPORTIONMENT OF EXTRATERRITORIAL JURISDICTIONS THAT OVERLAPPED ON AUGUST 23, 1963. (a) If, on August 23, 1963, the extraterritorial jurisdiction of a municipality overlapped the extraterritorial jurisdiction of one or more other municipalities, the governing bodies of the affected municipalities may apportion the overlapped area by a written agreement approved by an ordinance or a

resolution adopted by the governing bodies.

(b) A municipality having a claim of extraterritorial jurisdiction to the overlapping area may bring an action as plaintiff in the district court of the judicial district in which the largest municipality having a claim to the area is located. The plaintiff municipality must name as a defendant each municipality having a claim of extraterritorial jurisdiction to the area and must request the court to apportion the area among the affected municipalities. In apportioning the area, the court shall consider population densities, patterns of growth, transportation, topography, and land use in the municipalities and the overlapping area. The area must be apportioned among the municipalities:

(1) so that each municipality's part is contiguous to the extraterritorial jurisdiction of the municipality or, if the extraterritorial jurisdiction of the municipality is totally overlapped, is contiguous to the boundaries of the municipality;

(2) so that each municipality's part is in a substantially compact shape; and

(3) in the same ratio, to one decimal, that the respective populations of the municipalities bear to each other, but with each municipality receiving at least one-tenth of the area.

(c) An apportionment under this section must consider existing property lines. A tract of land or adjoining tracts of land that were under one ownership on August 23, 1963, and that do not exceed 160 acres may not be apportioned so as to be in the extraterritorial jurisdiction of more than one municipality unless the landowner gives written consent to that apportionment.

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

Sec. 42.902. RESTRICTION AGAINST IMPOSING TAX IN EXTRATERRITORIAL JURISDICTION. The inclusion of an area in the extraterritorial jurisdiction of a municipality does not by itself authorize the municipality to impose a tax in the area.

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

Sec. 42.9025. RESTRICTION ON IMPOSING FINE OR FEE IN CERTAIN AREAS IN EXTRATERRITORIAL JURISDICTION. (a) This section applies only to an area that is located in a municipality's extraterritorial jurisdiction and:

(1) that has been disannexed from the municipality under Subchapter G, Chapter 43; or

(2) for which the municipality has attempted and failed to obtain consent for annexation under Subchapter C-4 or C-5, Chapter 43.

(b) Notwithstanding any other law, a municipality may not impose under a municipal ordinance a fine or fee on a person on the basis of:

(1) an activity that occurs wholly in an area described by Subsection (a); or

(2) the management or ownership of property located wholly in an area described by Subsection (a).

(c) This section does not limit a municipality, including a municipally owned retail water, wastewater, or drainage utility, from imposing in an area described by Subsection (a) a fine or fee, including through the adoption and enforcement of rates, for water, sewer, drainage, or other related utility services.

(d) This section does not apply to development or redevelopment in an area in which an election was held under Section 43.0117.

Added by Acts 2021, 87th Leg., R.S., Ch. 386 (S.B. 1168), Sec. 1, eff. June 7, 2021.

Sec. 42.903. EXTRATERRITORIAL JURISDICTION OF CERTAIN TYPE B OR C GENERAL-LAW MUNICIPALITIES. (a) This section applies only to a Type B or C general-law municipality:

(1) that has more than 200 inhabitants;

(2) that is wholly surrounded, at the time of incorporation, by the extraterritorial jurisdiction of another municipality; and

(3) part of which was located, at any time before incorporation, in an area annexed for limited purposes by another municipality.

(b) The governing body of the municipality by resolution or ordinance may adopt an extraterritorial jurisdiction for all or part of the unincorporated area contiguous to the corporate boundaries of the municipality and located within one mile of those boundaries. The authority granted by this section is subject to the limitation provided by Section 26.178, Water Code.

(c) Within 90 days after the date the municipality adopts the resolution or ordinance, an owner of real property in the extraterritorial jurisdiction may petition the municipality to release the owner's property from the extraterritorial jurisdiction. On the

presentation of the petition, the property:

(1) is automatically released from the extraterritorial jurisdiction of the municipality and becomes part of the extraterritorial jurisdiction or limited purpose area of the municipality whose jurisdiction surrounded, on May 31, 1989, the municipality from whose jurisdiction the property is released; and

(2) becomes subject to any existing zoning or other land use approval provisions that applied to the property before the property was included in the municipality's extraterritorial jurisdiction under Subsection (b).

(d) The municipality may exercise in its extraterritorial jurisdiction the powers granted under state law to other municipalities in their extraterritorial jurisdiction, including the power to ensure its water supply and to carry out other public purposes.

(e) To the extent of any conflict, this section controls over other laws relating to the creation of extraterritorial jurisdiction.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.01(a), eff. Aug. 26, 1991.

Sec. 42.904. EXTRATERRITORIAL JURISDICTION AND VOTING RIGHTS IN CERTAIN MUNICIPALITIES. (a) This section applies only to a municipality that has disannexed territory under Section 43.133 that it had previously annexed for limited purposes and that has extended rules to its extraterritorial jurisdiction under Section 212.003.

(b) The municipality shall allow all qualified voters residing in the municipality's extraterritorial jurisdiction to vote on any proposition that is submitted to the voters of the municipality and that involves:

(1) an adoption of or change to an ordinance or charter provision that would apply to the municipality's extraterritorial jurisdiction; or

(2) a nonbinding referendum that, if binding, would apply to the municipality's extraterritorial jurisdiction.

Added by Acts 1993, 73rd Leg., ch. 172, Sec. 1, eff. May 17, 1993.

APPENDIX TAB D

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) "Plan" means a subdivision development plan, including a subdivision plan, subdivision construction plan, site plan, land development application, and site development plan.

(3) "Plat" includes a preliminary plat, general plan, final plat, and 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.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 951 (H.B. 3167), Sec. 1, eff. September 1, 2019.

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 subchapter.

(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 (H.B. 2281), 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. 212.0085. APPROVAL PROCEDURE: APPLICABILITY. The approval procedures under this subchapter apply to a municipality regardless of whether the municipality has entered into an interlocal agreement, including an interlocal agreement between a municipality and county under Section 242.001(d).

Added by Acts 2019, 86th Leg., R.S., Ch. 951 (H.B. 3167), Sec. 2, eff. September 1, 2019.

Sec. 212.009. APPROVAL PROCEDURE: INITIAL APPROVAL. (a) The municipal authority responsible for approving plats shall approve, approve with conditions, or disapprove a plan or plat within 30 days after the date the plan or plat is filed. A plan or plat is approved by the municipal authority unless it is disapproved within that period and in accordance with Section 212.0091.

(b) If an ordinance requires that a plan or 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 plan or plat within 30 days after the date the plan or plat is approved by the planning commission or is approved by the inaction of the commission. A plan or plat is approved by the governing body unless it is disapproved within that period and in accordance with Section 212.0091.

(b-1) Notwithstanding Subsection (a) or (b), if a groundwater availability certification is required under Section 212.0101, the 30-day period described by those subsections begins on the date the applicant submits the groundwater availability certification to the municipal authority responsible for approving plats or the governing body of the municipality, as applicable.

(b-2) Notwithstanding Subsection (a) or (b), the parties may extend the 30-day period described by those subsections for a period not to exceed 30 days if:

(1) the applicant requests the extension in writing to the municipal authority responsible for approving plats or the governing body of the municipality, as applicable; and

(2) the municipal authority or governing body, as applicable, approves the extension request.

(c) If a plan or plat is approved, the municipal authority giving the approval shall endorse the plan or 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 approve, approve with conditions, or disapprove a plan or plat within the prescribed period, the authority on the applicant's request shall issue a certificate stating the date the plan or plat was filed and that the authority failed to act on the plan or 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.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 951 (H.B. 3167), Sec. 3, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 951 (H.B. 3167), Sec. 4, eff. September 1, 2019.

Sec. 212.0091. APPROVAL PROCEDURE: CONDITIONAL APPROVAL OR DISAPPROVAL REQUIREMENTS. (a) A municipal authority or governing body that conditionally approves or disapproves a plan or plat under this subchapter shall provide the applicant a written statement of the conditions for the conditional approval or reasons for disapproval that clearly articulates each specific condition for the conditional approval or reason for disapproval.

(b) Each condition or reason specified in the written statement:

(1) must:

(A) be directly related to the requirements under this subchapter; and

(B) include a citation to the law, including a statute or municipal ordinance, that is the basis for the conditional approval or disapproval, if applicable; and

(2) may not be arbitrary.

Added by Acts 2019, 86th Leg., R.S., Ch. 951 (H.B. 3167), Sec. 5, eff. September 1, 2019.

Sec. 212.0093. APPROVAL PROCEDURE: APPLICANT RESPONSE TO CONDITIONAL APPROVAL OR DISAPPROVAL. After the conditional approval or disapproval of a plan or plat under Section 212.0091, the applicant may submit to the municipal authority or governing body that conditionally approved or disapproved the plan or plat a written response that satisfies each condition for the conditional approval or remedies each

reason for disapproval provided. The municipal authority or governing body may not establish a deadline for an applicant to submit the response.

Added by Acts 2019, 86th Leg., R.S., Ch. 951 (H.B. 3167), Sec. 5, eff. September 1, 2019.

Sec. 212.0095. APPROVAL PROCEDURE: APPROVAL OR DISAPPROVAL OF RESPONSE. (a) A municipal authority or governing body that receives a response under Section 212.0093 shall determine whether to approve or disapprove the applicant's previously conditionally approved or disapproved plan or plat not later than the 15th day after the date the response was submitted.

(b) A municipal authority or governing body that conditionally approves or disapproves a plan or plat following the submission of a response under Section 212.0093:

(1) must comply with Section 212.0091; and

(2) may disapprove the plan or plat only for a specific condition or reason provided to the applicant under Section 212.0091.

(c) A municipal authority or governing body that receives a response under Section 212.0093 shall approve a previously conditionally approved or disapproved plan or plat if the response adequately addresses each condition of the conditional approval or each reason for the disapproval.

(d) A previously conditionally approved or disapproved plan or plat is approved if:

(1) the applicant filed a response that meets the requirements of Subsection (c); and

(2) the municipal authority or governing body that received the response does not disapprove the plan or plat on or before the date required by Subsection (a) and in accordance with Section 212.0091.

Added by Acts 2019, 86th Leg., R.S., Ch. 951 (H.B. 3167), Sec. 5, eff. September 1, 2019.

Sec. 212.0096. APPROVAL PROCEDURE: ALTERNATIVE APPROVAL PROCESS. (a) Notwithstanding Sections 212.009, 212.0091, 212.0093, and 212.0095, an applicant may elect at any time to seek approval for a plan or plat under an alternative approval process adopted by a municipality if the process allows for a shorter approval period than the approval process

described by Sections 212.009, 212.0091, 212.0093, and 212.0095.

(b) An applicant that elects to seek approval under the alternative approval process described by Subsection (a) is not:

(1) required to satisfy the requirements of Sections 212.009, 212.0091, 212.0093, and 212.0095 before bringing an action challenging a disapproval of a plan or plat under this subchapter; and

(2) prejudiced in any manner in bringing the action described by Subdivision (1), including satisfying a requirement to exhaust any and all remedies.

Added by Acts 2019, 86th Leg., R.S., Ch. 951 (H.B. 3167), Sec. 5, eff. September 1, 2019.

Sec. 212.0097. APPROVAL PROCEDURE: WAIVER PROHIBITED. A municipal authority responsible for approving plats or the governing body of a municipality may not request or require an applicant to waive a deadline or other approval procedure under this subchapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 951 (H.B. 3167), Sec. 5, eff. September 1, 2019.

Sec. 212.0099. JUDICIAL REVIEW OF DISAPPROVAL. In a legal action challenging a disapproval of a plan or plat under this subchapter, the municipality has the burden of proving by clear and convincing evidence that the disapproval meets the requirements of this subchapter or any applicable case law. The court may not use a deferential standard.

Added by Acts 2019, 86th Leg., R.S., Ch. 951 (H.B. 3167), Sec. 5, eff. September 1, 2019.

Sec. 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;

(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 (S.B. 662), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), 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 (H.B. 467), Sec. 13, eff. September 1, 2005.

Sec. 212.0106. BOND REQUIREMENTS AND OTHER FINANCIAL GUARANTEES IN CERTAIN 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 entity 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 (H.B. 1823), 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 ordinance 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 September 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 (S.B. 425), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1239 (S.B. 2253), 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 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.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 951 (H.B. 3167), Sec. 6, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1242 (H.B. 3314), Sec. 1, eff. September 1, 2019.

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 1.3 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 (H.B. 1067), Sec. 1, eff. June 15, 2007.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 60 (H.B. 1553), Sec. 1, eff. May 18, 2013.

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.

(a-1) If a proposed replat described by Subsection (a) requires a variance or exception, a public hearing must be held by the municipal planning commission or the governing body of the municipality.

(b) Notice of the hearing required under Subsection (a-1) 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.

(f) If a proposed replat described by Subsection (a) does not require a variance or exception, the municipality shall, not later than the 15th day after the date the replat is approved, provide written notice by mail of the approval of the replat to each owner of a lot in the original subdivision that is within 200 feet of the lots to be replatted according to the most recent municipality or county tax roll. This subsection does not apply to a proposed replat if the municipal planning commission or the governing body of the municipality holds a public hearing and gives notice of the hearing in the manner provided by Subsection (b).

(g) The notice of a replat approval required by Subsection (f) must include:

(1) the zoning designation of the property after the replat; and

(2) a telephone number and e-mail address an owner of a lot may use to contact the municipality about the replat.

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.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 951 (H.B. 3167), Sec. 7, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1242 (H.B. 3314), Sec. 2, eff. September 1, 2019.

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 (H.B. 3232), Sec. 1, eff. June 15, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 635 (H.B. 1473), Sec. 1, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 675 (S.B. 1789), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), 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, 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 municipality, 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 (H.B. 1606), 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 CIRCUMSTANCES

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 (H.B. 3461), 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 (H.B. 3461), 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 procedures 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 (H.B. 3461), 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 (H.B. 3461), 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 (H.B. 3461), Sec. 2, eff. September 1, 2005.

Sec. 212.1352. JUSTIFICATION FOR COMMERCIAL MORATORIUM IN CERTAIN CIRCUMSTANCES; 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 (H.B. 3461), 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 (H.B. 3461), 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 (H.B. 3461), 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 (H.B. 3461), 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 (H.B. 3461), 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 (H.B. 3461), 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:

(1) 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;

(2) with a population of less than 4,000 that:

(A) is located in two counties, one of which has a population greater than 45,000; and

(B) borders Lake Lyndon B. Johnson; or

(3) 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.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 475 (S.B. 1090), Sec. 3, eff. September 1, 2021.

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 (H.B. 3167), 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 (H.B. 3167), 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 (H.B. 2278), Sec. 2.25, eff. April 1, 2009.

Renumbered from Local Government Code, Section 212.138 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), 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:

(1) "Adjudication" of a claim means the bringing of a civil suit and prosecution to final judgment in county or state court and includes the bringing of an authorized arbitration proceeding and prosecution to final resolution in accordance with any mandatory procedures established in the contract agreement for the arbitration proceedings.

(2) "Contract" means a contract for a development agreement authorized by this subchapter.

(3) "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.

(b-1) At the time a municipality makes an offer to a landowner to enter into an agreement under this subchapter, the municipality must provide the landowner with a written disclosure that includes:

(1) a statement that the landowner is not required to enter into the agreement;

(2) the authority under which the municipality may annex the land with references to relevant law;

(3) a plain-language description of the annexation procedures applicable to the land;

(4) whether the procedures require the landowner's consent; and

(5) a statement regarding the municipality's waiver of immunity to suit.

(b-2) An agreement for which a disclosure is not provided in accordance with Subsection (b-1) is void.

(c) A contract 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 contract 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 a contract that is inconsistent with the model rules adopted under Section 16.343, Water Code.

(f) The contract 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 contract. The contract 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. Annexation by a municipality of land subject to a contract does not invalidate the enforceability of the contract or infringe on the rights of a party to adjudicate a claim arising under the contract.

(g) A contract:

(1) constitutes a permit under Chapter 245; and

(2) is a program authorized by the legislature under Section 52-a, Article III, Texas Constitution.

(h) A contract between a municipality and a landowner entered into prior to the effective date of this section, or any amendment to this section, and that complies with this section is validated, enforceable, and may be adjudicated subject to the terms and conditions of this subchapter, as amended.

(i) A municipality that enters into a contract waives immunity from suit for the purpose of adjudicating a claim for breach of the contract.

(j) Except as provided by Subsection (k), actual damages, specific performance, or injunctive relief may be granted in an adjudication brought against a municipality for breach of a contract. The total amount of money awarded in an adjudication brought against a municipality for breach of a contract is limited to the following:

(1) the balance due and owed by the municipality under the contract as it may have been amended;

(2) any amount owed by the landowner as a result of the municipality's failure to perform under the contract, including compensation for the increased cost of infrastructure as a result of delays or accelerations caused by the municipality;

(3) reasonable attorney's fees; and

(4) interest as allowed by law, including interest as calculated under Chapter 2251, Government Code.

(k) Damages awarded in an adjudication brought against a municipality for breach of a contract may not include:

(1) consequential damages, except as expressly allowed under Subsection (j)(2); or

(2) exemplary damages.

Added by Acts 2003, 78th Leg., ch. 522, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 281 (H.B. 1643), Sec. 1, eff. June 17, 2011.

Acts 2021, 87th Leg., R.S., Ch. 103 (S.B. 1338), Sec. 2, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 678 (H.B. 1929), Sec. 1, eff. September 1, 2021.

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 a contract 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.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 678 (H.B. 1929), Sec. 2, eff. September 1, 2021.

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, including under an agreement under Chapter 242, 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. The municipality's determination shall be completed within thirty days following the submission of the developer's application for determination under this subsection.

(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 (H.B. 1835), Sec. 1, eff. June 18, 2005.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 635 (S.B. 1510), Sec. 1, eff. June 10, 2019.

Sec. 212.905. REGULATION OF TREE REMOVAL. (a) In this section:

(1) "Residential structure" means:

(A) a manufactured home as that term is defined by Section 1201.003, Occupations Code;

(B) a detached one-family or two-family dwelling, including the accessory structures of the dwelling;

(C) a multiple single-family dwelling that is not more than three stories in height with a separate means of entry for each dwelling, including the accessory structures of the dwelling; or

(D) any other multifamily structure.

(2) "Tree mitigation fee" means a fee or charge imposed by a municipality in connection with the removal of a tree from private property.

(b) A municipality may not require a person to pay a tree mitigation fee for the removed tree if the tree:

(1) is located on a property that is an existing one-family or two-family dwelling that is the person's residence; and

(2) is less than 10 inches in diameter at the point on the trunk 4.5 feet above the ground.

(c) A municipality that imposes a tree mitigation fee for tree removal on a person's property must allow that person to apply for a credit for tree planting under this section to offset the amount of the fee.

(d) An application for a credit under Subsection (c) must be in the

form and manner prescribed by the municipality. To qualify for a credit under this section, a tree must be:

(1) planted on property:

(A) for which the tree mitigation fee was assessed; or

(B) mutually agreed upon by the municipality and the person; and

(2) at least two inches in diameter at the point on the trunk 4.5 feet above ground.

(e) For purposes of Subsection (d)(1)(B), the municipality and the person may consult with an academic organization, state agency, or nonprofit organization to identify an area for which tree planting will best address the science-based benefits of trees and other reforestation needs of the municipality.

(f) The amount of a credit provided to a person under this section must be applied in the same manner as the tree mitigation fee assessed against the person and:

(1) equal to the amount of the tree mitigation fee assessed against the person if the property is an existing one-family or two-family dwelling that is the person's residence;

(2) at least 50 percent of the amount of the tree mitigation fee assessed against the person if:

(A) the property is a residential structure or pertains to the development, construction, or renovation of a residential structure; and

(B) the person is developing, constructing, or renovating the property not for use as the person's residence; or

(3) at least 40 percent of the amount of the tree mitigation fee assessed against the person if:

(A) the property is not a residential structure; or

(B) the person is constructing or intends to construct a structure on the property that is not a residential structure.

(g) As long as the municipality meets the requirement to provide a person a credit under Subsection (c), this section does not affect the ability of or require a municipality to determine:

(1) the type of trees that must be planted to receive a credit under this section, except as provided by Subsection (d);

(2) the requirements for tree removal and corresponding tree mitigation fees, if applicable;

(3) the requirements for tree-planting methods and best management practices to ensure that the tree grows to the anticipated

height at maturity; or

(4) the amount of a tree mitigation fee.

(h) A municipality may not prohibit the removal of or impose a tree mitigation fee for the removal of a tree that:

(1) is diseased or dead; or

(2) poses an imminent or immediate threat to persons or property.

(i) This section does not apply to property within five miles of a federal military base in active use as of December 1, 2017.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 7 (H.B. 7), Sec. 1, eff. December 1, 2017.

APPENDIX TAB E

LOCAL GOVERNMENT CODE

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

SUBTITLE A. MUNICIPAL REGULATORY AUTHORITY

CHAPTER 216. REGULATION OF SIGNS BY MUNICIPALITIES

SUBCHAPTER A. RELOCATION, RECONSTRUCTION, OR REMOVAL OF SIGN

Sec. 216.001. LEGISLATIVE INTENT. (a) This subchapter is not intended to require a municipality to provide for the relocation, reconstruction, or removal of any sign in the municipality, nor is it intended to prohibit a municipality from requiring the relocation, reconstruction, or removal of any sign. This subchapter is intended only to authorize a municipality to take that action and to establish the procedure by which the municipality may do so.

(b) This subchapter is not intended to require a municipality to make a cash payment to compensate the owner of a sign that the municipality requires to be relocated, reconstructed, or removed. Cash payment is established as only one of several methods from which a municipality may choose in compensating the owner of a sign.

(c) This subchapter is not intended to affect any eminent domain proceeding in which the taking of a sign is only an incidental part of the exercise of the eminent domain power.

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

Sec. 216.002. DEFINITIONS. In this subchapter:

(1) "Sign" means an outdoor structure, sign, display, light device, figure, painting, drawing, message, plaque, poster, billboard, or other thing that is designed, intended, or used to advertise or inform.

(2) "On-premise sign" means a freestanding sign identifying or advertising a business, person, or activity, and installed and maintained on the same premises as the business, person, or activity.

(3) "Off-premise sign" means a sign displaying advertising copy that pertains to a business, person, organization, activity, event, place, service, or product not principally located or primarily manufactured or sold on the premises on which the sign is located.

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

Sec. 216.003. MUNICIPAL REGULATION. (a) Subject to the requirements of this subchapter, a municipality may require the relocation, reconstruction, or removal of any sign within its corporate limits or extraterritorial jurisdiction.

(b) Except as provided by Subsection (e), the owner of a sign that is required to be relocated, reconstructed, or removed is entitled to be compensated by the municipality for costs associated with the relocation, reconstruction, or removal.

(c) If application of a municipal regulation would require reconstruction of a sign in a manner that would make the sign ineffective for its intended purpose, such as by substantially impairing the sign's visibility, application of the regulation is treated as the required removal of the sign for purposes of this subchapter.

(d) In lieu of paying compensation, a municipality may exempt from required relocation, reconstruction, or removal those signs lawfully in place on the effective date of the requirement.

(e) A municipality that exercises authority under this subchapter may, without paying compensation as provided by this subchapter, require the removal of an on-premise sign or sign structure not sooner than the first anniversary of the date the business, person, or activity that the sign or sign structure identifies or advertises ceases to operate on the premises on which the sign or sign structure is located. If the premises containing the sign or sign structure is leased, a municipality may not require removal under this subsection sooner than the second anniversary after the date the most recent tenant ceases to operate on the premises. The removal of a sign or sign structure as described by this subsection does not require the appointment of a board under Section 216.004.

(f) A municipality acting under Subsection (e) may agree with the owner of the sign or sign structure to remove only a portion of the sign or sign structure.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 87(m), eff. Aug. 28, 1989; Acts 2003, 78th Leg., ch. 865, Sec. 1, eff. Sept. 1, 2003.

Sec. 216.0035. REGULATORY AUTHORITY NOT APPLICABLE TO ON-PREMISES SIGNS UNDER CERTAIN CIRCUMSTANCES. The authority granted to a

municipality by this subchapter to require the relocation, reconstruction, or removal of signs does not apply to:

(1) on-premises signs in the extraterritorial jurisdiction of municipalities in a county described by Section 394.063, Transportation Code, if the circumstances described by that section occur; and

(2) on-premises signs in a municipality's extraterritorial jurisdiction in a county that borders a county described by that law.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 54(e), eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch. 482, Sec. 1, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 165, Sec. 30.218, eff. Sept. 1, 1997.

Sec. 216.004. MUNICIPAL BOARD. (a) If a municipality requires the relocation, reconstruction, or removal of a sign within its corporate limits or extraterritorial jurisdiction, the presiding officer of the governing body of the municipality shall appoint a municipal board on sign control. The board must be composed of:

(1) two real estate appraisers, each of whom must be a member in good standing of a nationally recognized professional appraiser society or trade organization that has an established code of ethics, educational program, and professional certification program;

(2) one person engaged in the sign business in the municipality;

(3) one employee of the Texas Department of Transportation who is familiar with real estate valuations in eminent domain proceedings; and

(4) one architect or landscape architect licensed by this state.

(b) A member of the board is appointed for a term of two years.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 951, Sec. 2, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 165, Sec. 22(47), eff. Sept. 1, 1995.

Sec. 216.005. DETERMINATION OF AMOUNT OF COMPENSATION. (a) The municipal board on sign control shall determine the amount of the compensation to which the owner of a sign that is required to be relocated, reconstructed, or removed is entitled. The determination shall be made after the owner of the sign is given the opportunity for a hearing before the board about the issues involved in the matter.

(b) In any court proceeding in which the reasonableness of compensation is at issue and the compensation is to be provided over a period longer than one year, the court shall consider whether the duration of the period is reasonable under the circumstances.

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

Sec. 216.006. COMPENSATION FOR RELOCATED SIGN. The compensable costs for a sign that is required to be relocated include the expenses of dismantling the sign, transporting it to another site, and reerecting it. The board shall determine the compensable costs according to the standards applicable in a proceeding under Chapter 21, Property Code. In addition, the municipality shall issue to the owner of the sign an appropriate permit or other authority to operate a substitute sign of the same type at an alternative site of substantially equivalent value. Whether an alternative site is of substantially equivalent value is determined by standards generally accepted in the outdoor advertising industry, including visibility, traffic count, and demographic factors. The municipality shall compensate the owner for any increased operating costs, including increased rent, at the new location. The owner is responsible for designating an alternative site where the erection of the sign would be in compliance with the sign ordinance.

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

Sec. 216.007. COMPENSATION FOR RECONSTRUCTED SIGN. The compensable costs for a sign that is required to be reconstructed include expenses of labor and materials and any loss in the value of the sign due to the reconstruction in excess of 15 percent of that value. The board shall determine the compensable costs according to standards applicable in a proceeding under Chapter 21, Property Code.

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

Sec. 216.008. COMPENSATION FOR REMOVAL OF OFF-PREMISE SIGN. (a) For an off-premise sign that is required to be removed, the compensable cost is an amount computed by determining the average annual gross revenue received by the owner from the sign during the two years preceding September 1, 1985, or the two years preceding the month in which the removal date of the sign occurs, whichever is less, and by

multiplying that amount by three. If the sign has not been in existence for all of either two-year period, the average annual gross revenue for that period, for the purpose of this computation, is an amount computed by dividing 12 by the number of months that the sign has been in existence, and multiplying that result by the total amount of the gross revenue received for the period that the sign has been in existence. However, if the sign did not generate revenue for at least one month preceding September 1, 1985, this computation of compensable costs is to be made using only the average annual gross revenue received during the two years preceding the month in which the removal date of the sign occurs, and by multiplying that amount by three. In determining the amounts under this paragraph, a sign is treated as if it were in existence for the entire month if it was in existence for more than 15 days of the month and is treated as if it were not in existence for any part of the month if it was in existence for 15 or fewer days of the month.

(b) The owner of the real property on which the sign was located is entitled to be compensated for any decrease in the value of the real property. The compensable cost is to be determined by the board according to standards applicable in a proceeding under Chapter 21, Property Code.

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

Sec. 216.009. COMPENSATION FOR REMOVAL OF ON-PREMISE SIGN. For an on-premise sign that is required to be removed, the compensable cost is an amount computed by determining a reasonable balance between the original cost of the sign, less depreciation, and the current replacement cost of the sign, less an adjustment for the present age and condition of the sign.

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

Sec. 216.010. METHOD OF COMPENSATION. (a) To pay the compensable costs required under this subchapter, the governing body of a municipality may use only a method, or a combination of the methods, prescribed by this section.

(b) If any sign is required to be relocated or reconstructed, or an on-premise sign is required to be removed, the municipality, acting pursuant to the Property Redevelopment and Tax Abatement Act (Chapter

312, Tax Code), may abate municipal property taxes that otherwise would be owed by the owner of the sign. The abated taxes may be on any real or personal property owned by the owner of the sign except residential property. The right to the abatement of taxes is assignable by the holder, and the assignee may use the right to abatement with respect to taxes on any nonresidential property in the same taxing jurisdiction. In a municipality where tax abatement is used to pay compensable costs, the costs include reasonable interest and the abatement period may not exceed five years.

(c) The municipality may allocate to a special fund in the municipal treasury, to be known as the sign abatement and community beautification fund, all or any part of the municipal property taxes paid on signs, on the real property on which the signs are located, or on other real or personal property owned by the owner of the sign. The municipality may make payments from that fund to reimburse compensable costs to owners of signs required to be relocated, reconstructed, or removed.

(d) The municipality may provide for the issuance of sign abatement revenue bonds and use the proceeds to make payments to reimburse costs to the owners of signs within the corporate limits of such municipality that are required to be relocated, reconstructed, or removed.

(e) The municipality may pay compensable costs in cash.

(f) Except as prohibited by federal law, a municipality with a population of more than 1.9 million may pay the compensable costs to the owner of an on-premise sign by allowing the sign to remain in place for a period sufficient to recover the compensable cost of the sign as determined under Section 216.009, based on a determination by the municipal board of the average annual gross revenue as determined under Section 216.008 that would be generated by the sign in its specific location if the sign were used as an off-premise sign rather than an on-premise sign. During the period in which a sign remains in place under this subsection, the owner of the sign shall maintain the sign in compliance with all other regulations applicable to the sign, including structural regulations.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 51(a), eff. Aug. 28, 1989; Acts 2003, 78th Leg., ch. 865, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 742 (H.B. 2945), Sec. 1, eff.

September 1, 2007.

Sec. 216.011. TAX APPRAISAL OF PROPERTY WITH NONCONFORMING SIGN. For each nonconforming sign, the board shall file with the appropriate property tax appraisal office the board's compensable costs value appraisal of the sign. The appraisal office shall consider the board's appraisal when the office, for property tax purposes, determines the appraised value of the real property to which the sign is attached.

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

Sec. 216.012. SPECIAL PROVISIONS FOR SIGNS UNDER SIGN ORDINANCE IN EFFECT ON JUNE 1, 1985. (a) This section applies to compensation for the required relocation, reconstruction, or removal of a sign under a municipal ordinance in effect on June 1, 1985, that provided for compensation to the sign owner under an amortization plan.

(b) For a nonconforming sign erected after September 1, 1985, or for a sign in place on that date that later is made nonconforming by an extension of or strengthening of an ordinance that was in effect on June 1, 1985, and that provided an amortization plan, the amortization period is the entire useful life of the sign. If it has not already done so, the board shall determine the entire useful life of signs by type or category, such as mono-pole signs, metal signs, and wood signs. The useful life may not be solely determined by the natural life expectancy of a sign.

(c) Compensation for the relocation, reconstruction, or removal of a sign that, on September 1, 1985, was not in compliance with the sign ordinance shall be made in accordance with the applicable procedures of Section 6, Chapter 221, Acts of the 69th Legislature, Regular Session, 1985 (Article 1015o, Vernon's Texas Civil Statutes), and that law is continued in effect for this purpose.

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

Sec. 216.013. EXCEPTIONS. (a) The requirements of this subchapter do not apply to a sign that was erected in violation of local ordinances, laws, or regulations applicable at the time of its erection.

(b) The requirements of this subchapter do not apply to a sign that, having been permitted to remain in place as a nonconforming use, is

required to be removed by a municipality because the sign, or a substantial part of it, is blown down or otherwise destroyed or dismantled for any purpose other than maintenance operations or for changing the letters, symbols, or other matter on the sign.

(c) For purposes of Subsection (b), a sign or substantial part of it is considered to have been destroyed only if the cost of repairing the sign is more than 60 percent of the cost of erecting a new sign of the same type at the same location.

(d) This subchapter does not limit or restrict the compensation provisions of the highway beautification provisions contained in Chapter 391, Transportation Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 284(82), eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 165, Sec. 30.219, eff. Sept. 1, 1997.

Sec. 216.014. APPEAL. (a) Any person aggrieved by a decision of the board may file in district court a verified petition setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. The petition must be filed within 20 days after the date the decision is rendered by the board.

(b) On the filing of the petition, the court may issue a writ of certiorari directed to the board to review the decision of the board and shall prescribe in the writ the time within which a return must be made, which must be longer than 10 days and may be extended by the court.

(c) The board is not required to return the original papers acted on by it, but it shall be sufficient to return certified or sworn copies of the papers. The return must concisely set forth all other facts as may be pertinent and material to show the grounds of the decision appealed from and must be verified.

(d) The court may reverse or affirm, wholly or partly, or modify the decision brought up for review.

(e) Costs may not be allowed against the board unless it appears to the court that the board acted with gross negligence, in bad faith, or with malice in making the decision appealed from.

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

Sec. 216.015. EFFECT OF PARTIAL INVALIDITY. (a) The legislature declares that it would not have enacted the following without the

inclusion of Section 216.010(a), to the extent that provision excludes methods of compensation not specifically authorized by that provision:

(1) this subchapter;

(2) Section 216.902;

(3) Article 2, Chapter 221, Acts of the 69th Legislature, Regular Session, 1985 (codified as Chapter 394, Transportation Code); and

(4) the amendments made to Section 3, Property Redevelopment and Tax Abatement Act (codified as Chapter 312, Tax Code) by Article 4, Chapter 221, Acts of the 69th Legislature, Regular Session, 1985.

(b) If that exclusion of alternative methods of compensation is held invalid for any reason by a final judgment of a court of competent jurisdiction, the enactments described by Subsection (a) are void.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.220, eff. Sept. 1, 1997.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 216.901. REGULATION OF SIGNS BY HOME-RULE MUNICIPALITY. (a) A home-rule municipality may license, regulate, control, or prohibit the erection of signs or billboards by charter or ordinance.

(b) Subsection (a) does not authorize a municipality to regulate the relocation, reconstruction, or removal of a sign in violation of Subchapter A.

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

Sec. 216.902. REGULATION OF OUTDOOR SIGNS IN MUNICIPALITY'S EXTRATERRITORIAL JURISDICTION. (a) A municipality may extend the provisions of its outdoor sign regulatory ordinance and enforce the ordinance within its area of extraterritorial jurisdiction as defined by Chapter 42. However, any municipality, in lieu of the regulatory ordinances, may allow the Texas Transportation Commission to regulate outdoor signs in the municipality's extraterritorial jurisdiction by filing a written notice with the commission.

(b) If a municipality extends its outdoor sign ordinance within its area of extraterritorial jurisdiction, the municipal ordinance supersedes the regulations imposed by or adopted under Chapter 394, Transportation Code.

(c) The authority granted to a municipality by this section to extend its outdoor sign ordinance does not apply to:

(1) on-premises signs in the extraterritorial jurisdiction of municipalities in a county described by Section 394.063, Transportation Code, if the circumstances described by that section occur;

(2) on-premises signs in a municipality's extraterritorial jurisdiction in a county that borders a county described by that law; and

(3) on-premises signs in the extraterritorial jurisdiction of a municipality with a population of 1.5 million or more that are located in a county that is adjacent to the county in which the majority of the land of the municipality is located.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 54(f), eff. Aug. 28, 1989; Acts 1993, 73rd Leg., ch. 482, Sec. 2, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 165, Sec. 22(48), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 30.221, eff. Sept. 1, 1997.

APPENDIX TAB F

LOCAL GOVERNMENT CODE

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

SUBTITLE A. MUNICIPAL REGULATORY AUTHORITY

CHAPTER 217. MUNICIPAL REGULATION OF NUISANCES AND DISORDERLY CONDUCT

SUBCHAPTER A. REGULATION BY TYPE A GENERAL-LAW MUNICIPALITY

Sec. 217.001. MUNICIPALITY COVERED BY SUBCHAPTER. This subchapter applies only to a Type A general-law municipality.

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

Sec. 217.002. NUISANCE. The governing body of the municipality may:

(1) abate and remove a nuisance and punish by fine the person responsible for the nuisance;

(2) define and declare what constitutes a nuisance and authorize and direct the summary abatement of the nuisance; and

(3) abate in any manner the governing body considers expedient any nuisance that may injure or affect the public health or comfort.

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

Sec. 217.003. DISORDERLY CONDUCT. (a) The governing body of the municipality may prevent and may punish a person engaging in:

(1) trespass or breach of the peace;

(2) assault, battery, fighting, or quarreling;

(3) use of abusive, obscene, profane, or insulting language; or

(4) other disorderly conduct.

(b) The governing body may suppress or prevent any riot, affray, noise, disturbance, or disorderly assembly in any public or private place in the municipality.

(c) The governing body may restrain or prohibit the firing of firecrackers or guns, the use of a bicycle or similar conveyance, the use of a firework or similar material, or any other amusement or practice

tending to annoy persons passing on a street or sidewalk.

(d) The governing body may restrain or prohibit the ringing of bells, blowing of horns, hawking of goods, or any other noise, practice, or performance directed to persons on a street or sidewalk by an auctioneer or other person for the purpose of business, amusement, or otherwise.

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

SUBCHAPTER B. REGULATION BY TYPE B GENERAL-LAW MUNICIPALITY

Sec. 217.021. MUNICIPALITY COVERED BY SUBCHAPTER. This subchapter applies only to a Type B general-law municipality.

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

Sec. 217.022. NUISANCE. The governing body of the municipality shall prevent to the extent practicable any nuisance within the limits of the municipality and shall have each nuisance removed at the expense of the person who is responsible for the nuisance or who owns the property on which the nuisance exists.

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

SUBCHAPTER C. REGULATION BY HOME-RULE MUNICIPALITY

Sec. 217.041. MUNICIPALITY COVERED BY SUBCHAPTER. This subchapter applies only to a home-rule municipality.

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

Sec. 217.042. NUISANCE. (a) Except as provided by Subsection (c), the municipality may define and prohibit any nuisance within the limits of the municipality and within 5,000 feet outside the limits.

(b) The municipality may enforce all ordinances necessary to prevent and summarily abate and remove a nuisance.

(c) The municipality may not define and prohibit as a nuisance the sale of fireworks or similar materials outside the limits of the municipality.

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

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1212 (S.B. 1593), Sec. 1, eff. September 1, 2015.

APPENDIX TAB G

Sec. 26-2. Discharge of firearms.

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Effective consent means the consent of a person authorized to act, or whom the shooter reasonably believed was so authorized.

Firearm means specifically, but not exclusively, any shotgun, pistol, rifle, air rifle, air pistol, BB gun, bow and arrow, or any other mechanism that discharges or ejects any bullet, buckshot, or any other projectile of any size by force of combustion, mechanism, or air. The term "firearm" does not include pitching machines or similar devices that are designed and used only as a substitute for a human action.

One ownership means an undivided parcel or tract of land that may be owned by a person, corporation, or other entity, or by a combination thereof, or by a tenant in common.

(b) *Unlawful to shoot firearms within City.* It shall be unlawful to willfully or intentionally or otherwise shoot a firearm within the limits of the City, except as provided hereafter. Pursuant to Texas Local Government Code § 229.001, this subsection does not prohibit the discharge of firearms or air guns at a sport shooting range. A person asserting an exception to prosecution under this section shall be required to prove the same as a defense under the provisions of the Texas Penal Code, as amended, and the Texas Code of Criminal Procedures, as amended.

(c) *Excepted from this provision.* The following are excepted from the provisions of this section:

(1) Shooting a shotgun, air rifle, air pistol, BB gun, or bow and arrow upon a tract of land of ten acres or more under one ownership, with the effective consent of the owner and any tenant residing thereon, and not within 300 feet of any residence or occupied building, provided that the firearm is not discharged in such a manner that it would reasonably be expected to cause any projectile to cross the boundary of the tract onto other premises. Under this subsection, the term "shotgun" shall mean a ten-gauge or smaller shotgun with shot no larger than size seven.

(2) Shooting a center fire or rim fire rifle or pistol of any caliber upon a tract of land of 50 acres or more under one ownership, with the effective consent of the owner and any tenant residing thereon, and not within 300 feet of any residence or occupied building, provided that the firearm is not discharged in such a manner that it would reasonably be expected to cause any projectile to cross the boundary of the tract onto other premises.

(3) Shooting any firearm in lawful defense of self, a third person, or property, provided that the firearm is not discharged in such a manner as to unreasonably endanger innocent persons.

(4) Law Enforcement and Animal Control Officers while in the lawful discharge of their duties.

(5) The discharge of firearms or other weapons in the extraterritorial jurisdiction of the City or in an area annexed by the City after September 1, 1981, if the firearm or other weapon is:

a. A shotgun, air rifle or pistol, or BB gun, discharged:

1. On a tract of land of ten acres or more and more than 150 feet from a residence or occupied building located on another property; and

2. In a manner not reasonably expected to cause a projectile to cross the boundary of the tract; or

b. A center fire or rim fire rifle or pistol of any caliber discharged:

1. On a tract of land of 50 acres or more and more than 300 feet from a residence or occupied building located on another property; and

2. In a manner not reasonably expected to cause a projectile to cross the boundary of the tract.

(d) *Penalty.* A violation of this section shall constitute a misdemeanor and upon conviction thereof shall be punished as provided in Section 1-7.

(Code 2011 (Repub.), § 1-16; altered in 2017 recodification)

APPENDIX TAB H

Sec. 7.5. Signs.

A. **Purpose.**

The purpose of this Section is to establish clear and unambiguous regulations pertaining to signs in the City of College Station and to promote an attractive community, foster traffic safety, and enhance the effective communication and exchange of ideas and commercial information.

B. **Applicability.**

The City Council recognizes that signs are necessary for visual communication for public convenience, and that businesses and other activities have the right to identify themselves by using signs that are incidental to the use on the premises where the signs are located. The Council herein seeks to provide a reasonable balance between the right of a person to identify his or her business or activity, and the rights of the public to be protected against visual discord and safety hazards that result from the unrestricted proliferation, location, and construction of signs. This Section will insure that signs are compatible with adjacent land uses and with the total visual environment of the community, in accordance with the City's Comprehensive Plan.

1. The City Council finds that the rights of residents of this City to fully exercise their rights of free speech by the use of signs containing non-commercial messages are subject to minimum regulation regarding structural safety and setbacks for purposes of traffic protection. The City Council seeks herein to provide for the reasonably prompt removal and disposal of such signs after they have served their purpose, and yet to avoid any interference with First Amendment freedoms, especially as to persons who are of limited financial means.
2. The City Council finds that instances may occur in the application of this Section where strict enforcement would deprive a person of the reasonable use of a sign, or the reasonable utilization of a sign in connection with other related property rights, and herein provides for such persons to have the right to seek variances from the requirements of this UDO for good cause. The City Council finds that it is imperative that enforcement officials apply this Section as it is written, in the interest of equality and fair and impartial application to all persons, and that the procedures to appeal a denial of a sign permit to the ZBA shall remain the sole administrative means to obtain any exception to the terms hereof.
3. The regulations of this Section shall apply for developments within the zoning districts listed in Section 12-7.5.C Summary of Permitted Signs. These regulations only apply to special districts within the City of College Station so far as is stated in the following Sections of this UDO:
    a. Wolf Pen Creek District (WPC), Section 12-5.8.A;
    b. Northgate Districts (NG-1, NG-2, NG-3), Section 12-5.8.B; and
    c. Corridor Overlay District (OV), Section 12-5.10.A.

C. **Summary of Permitted Signs.**

The following signs are permitted in the relevant zoning districts of the City:

Click here to access a PDF version of the Summary of Permitted Signs table.

	R	WE	E	WRS	R-1B	GS	D	T	MF	MU	R-4	R-6	MHP	O	SC	WC	GC	CI	C-3	BP	BPI	R&D	M-1	M-2
Apartment/ Condominium/ Manufactured Home Park Identification Signs									X	****	X	X	X											

	R	WE	E	WRS	R-1B	GS	D	T	MF	MU	R-4	R-6	MHP	O	SC	WC	GC	CI	C-3	BP	BPI	R&D	M-1	M-2
Area Identification/ Subdivision Signs	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Attached Signs***									X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Campus Way-finding Signs									X	X				X	X	X	X	X		X	X	X		
Commercial Banners***									X	X	X	X		X	X	X	X	X	X	X	X	X	X	X
Development Signs	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Directional Traffic Control Signs										X				X	X	X	X	X	X	X	X	X	X	X
Freestanding Signs***														*	**		X	X					X	X
Hanging Signs										X														
Home Occupa-tion Signs	X	X	X	X	X	X	X	X	X	X	X	X	X											
Low Profile Signs***									X					X	X	X	X	X	X	X	X	X	X	X
Non-Com-mercial Signs	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Projection Signs									X	X														
Real Estate, Finance, and Construction Signs	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Roof Signs																	X	X					X	X

* One (1) Freestanding Sign shall be allowed in the O Office zone only when the premises has a minimum of two (2) acres.

** Freestanding Signs are permitted for building plots with freeway frontage only. See 7.5.N "Freestanding Commercial Signs" for additional standards.

*** Except as provided for in Section 7.5.Y, Signs for Permitted Non-residential Uses in Residential or Agricultural Districts.

**** Apartment signage is permitted in the MU Mixed-Use district as attached signs only.

D. **Prohibited Signs.**

The following signs shall be prohibited in the City of College Station:

1. Portable and trailer signs, and temporary freestanding signs.
2. Signs painted on rooftops.
3. Inflated signs, pennants, wind driven devises (excluding flags), tethered balloons, and/or any gas filled objects for advertisement, decoration, or otherwise, except as permitted in Section 7.5.P, Grand Opening Signs and Section 7.5.V, Special Event Signs.
4. Vehicle signs except as permitted in Section 7.5.W, Vehicle Signs.

5. Flags containing copy or logo, excluding the flags of any country, state, city, or school, are prohibited in residential zones and on any residentially-developed property (except when flags are used as subdivision signs).

6. Signs and displays with flashing, blinking, or traveling lights, or erratic or other moving parts, including electronic message boards that change more than once per fifteen (15) minutes, either internal or external to the premise, and oriented and visible to vehicular traffic, provided that time and temperature signs are permissible if the maximum area and setback requirements of this Section are met and if the commercial information or content of such signs are restricted to no more than eight (8) square feet.

7. Signs containing manual change copy which are greater than thirty (30) percent of the allowable sign area.

8. Any signs that are intended to or designed to resemble traffic signs or signals and bear such words as "stop", "slow", "caution", "danger", "warning", or other words, and that are erected for purposes other than actual traffic control or warning to the public.

9. Any sign located within the site triangle in any district as stated in Section 7.2.C, Visibility at Intersections in all Districts. This does not include traffic control or directional signs.

10. Any sign that emits sound, odor, or visible matter.

11. Off-premises signs, including commercial and non-commercial billboards.

E. **Exempt Signs.**

The following signs are exempt from the requirements of this UDO:

1. Signs that are not easily identified from beyond the boundaries of the lot or parcel on which they are located or from any public thoroughfare or traveled right-of-way, as determined by the Administrator. Such signs are not exempt from the safety regulations contained herein and in City Building and Electrical Codes;

2. Official notices posted by government officials in the performance of their duties: government signs controlling traffic, regulating public conduct, identifying streets, or warning of danger. Bulletin boards or identification signs accessory to government buildings or other buildings are subject to the provisions of this UDO;

3. Signs related to a Primary & Secondary Educational Facility, except that such signs shall adhere to the limitations of Section 7.5.D Prohibited Signs;

4. Temporary signs erected by private property owners for the purpose of warning of a dangerous defect, condition, or other hazard to the public;

5. Non-commercial signs on private property or works of art that in no way identify or advertise a product or business, or by their location and placement impede traffic safety, except as stated in Section 7.5.S, Non-Commercial and Political Signs;

6. Temporary decorations or displays, if they are clearly incidental to and are customarily and commonly associated with any national, local, or religious celebration;

7. Temporary or permanent signs erected by public utilities or construction companies to warn of the location of pipelines, electrical conduits, or other dangers or conditions in public rights-of-way;

8. Non-Commercial Signs carried by a person and not set or affixed to the ground, that in no way identify or advertise a product or business, or by their location and placement impede traffic safety;

9. Commercial Signs carried by a person and not set on or affixed to the ground, provided that the sign is temporary, on-premises, and not used by the person on the premises for more than three (3) consecutive days, more than four (4) times per calendar year;

10. Outdoor advertising display signs for sponsors of charitable events held on public properties. These signs may be displayed for the duration of the event or not more than three (3) days with approval of the City Manager;

11. Flags used as political symbols; and

12. Special District Identification Signs, as defined by Section 11.2 Defined Terms, that in no way advertise a product or a business, or by their location and placement impede traffic safety. Special District Identification Signs must be approved by the appropriate Board or Committee.

13. On-premises and/or off-premises signs where there has been a resolution adopted by the City of College Station or an executed contract with the City of College Station and the display of the signs are for designated locations, a specified time period, and;

    a. Promotes a positive image of the City of College Station for the attraction of business or tourism;

    b. Depict an accomplishment of an individual or group; or

    c. Creates a positive community spirit.

14. Temporary signs erected for a neighborhood event sponsored by a neighborhood group that is registered with the City of College Station, provided that the signage is:

    a. Located within the perimeter of the neighborhood;

    b. Provides the name of the association sponsoring the event on the sign;

    c. In good repair;

    d. Allowed up to fourteen (14) days prior to the event; and

    e. Removed within twenty-four (24) hours of the event.

15. Home Tour Event signs, as defined by Section 11.2 Defined Terms, with a limit of two (2) events per calendar year. Such signage shall:

    a. Be in good repair;

    b. Display the name of the group sponsoring the event (if applicable);

    c. Be allowed up to ten (10) consecutive days per event;

    d. Be removed within twenty-four (24) hours of the end of the event;

    e. Comply with the following if located within a right-of-way:

        1. Located outside the visibility triangle of intersections as defined in Section 7.2.C Visibility at Intersections in all Districts.

        2. Permitted by the State Department of Highways and Public Transportation if located on any state highway or roadway.

        3. Be constructed of durable material and no sign shall be greater in size than three (3) feet by three (3) feet.

        Per Ordinance No. 3280 (September 9, 2010)

F. **Sign Standards.**

The following table summarizes the sign standards for the City of College Station:

Sign Type	**Maximum Area (s.f.)****	**Maximum Height (ft.)**	**Setback From ROW (ft.)**	**Number Allowed**
Apartment/Condominium/Manufactured Home Park Identification Signs	100	10	10	1/frontage
Area Identification Signs	16	4	10	1/10-50 acre subdivision or phase
Attached Signs	Varies, see Section 7.5.I below	Not to exceed one (1) foot from top of wall, marquee, or parapet to which it is attached	—-	Any number allowed if within the total allowed square footage of attached signs
Campus Wayfinding signs	30	6	—-	See Section 7.5 BB below
Commercial Banners	36	No to exceed the top of structure to which it is attached	10	1/premises
Development Signs		15	10	1/premises
Residential/Collector Street	35			
Arterial Street	65			
Freeway (As designated on Thoroughfare Plan)	200			
Directional Traffic Control Signs	3	4	4	1/curb cut
Freestanding Signs	Varies, see 7.5.N below			1/building plot where lot exceeds 75 feet of frontage
Hanging Signs	4	—-	—-	1/building entrance
Home Occupation Signs	2	Not to exceed top of wall	—-	1/dwelling unit

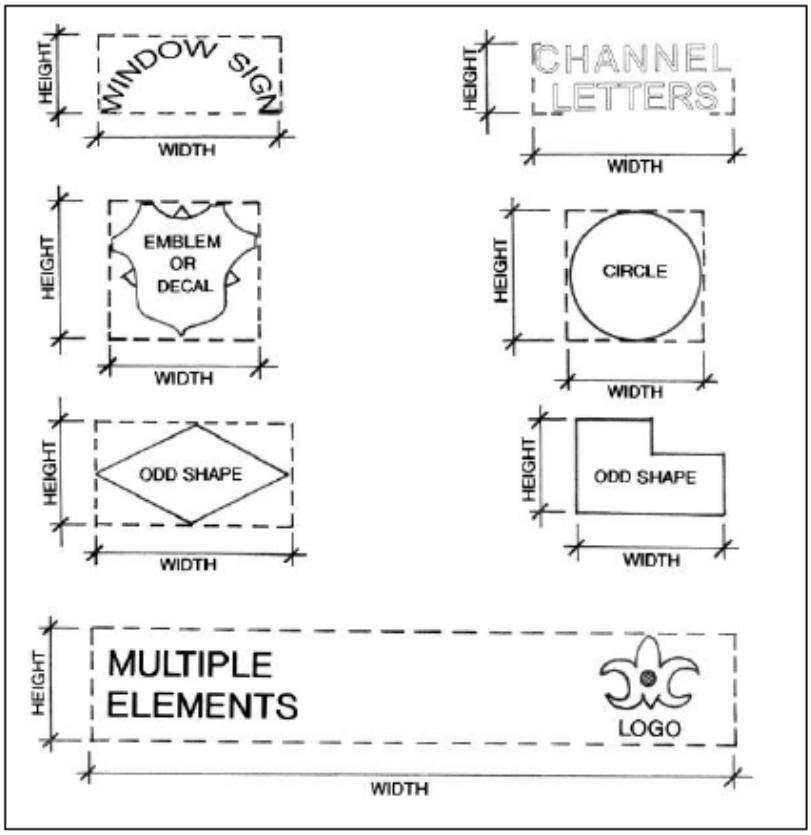
		to which it is attached		
Low Profile Signs	60	4	10	See 7.5 R "Low Profile Signs" below/***
Low Profile Signs (In lieu of permitted Freestanding Sign)	60	4	10	1/150 feet of frontage *
Projection Signs	Varies, see 7.5.U below	Not to exceed one (1) foot from top of wall, marquee, or parapet to which it is attached	—-	1/frontage
Real Estate, Finance, and Construction Signs				1/frontage(Real Estate)
Up to 150-foot frontage	16	8	10	1/property (Finance)
Greater than 150-foot frontage	32	8	10	3/property (Construction)
Roof Signs	Determined by frontage. Same as freestanding Max. 100 s.f.	10 feet above structural roof	—-	1/building plot in place of a freestanding sign
Subdivision Signs	150	15	10	1/primary subdivision entrance. Not to exceed 2 signs.

* Except as provided for in Section 7.5.N.10, Freestanding Commercial Signs.

** The area of a sign is the area enclosed by the minimum imaginary rectangle or vertical and horizontal lines that fully contains all extremities (as shown in the illustration below), exclusive of supports.

*** In SC Suburban Commercial, WC Wellborn Commercial, BP Business Park, and BPI Business Park Industrial, one (1) low-profile sign per structure is permitted.

Per Ordinance No. 2011-3348 (May 26, 2011), Ordinance No. 2014-3624 , Pt. 1(Exh. K) (Dec. 18, 2014, and Ordinance No. 2016-3792 , Pt. 1(Exh. E), (July 28, 2016))



G. **Area Identification and Subdivision Signs.**

1. Area Identification Signs shall be permitted upon private property in any zone to identify multiple-lot subdivisions of ten (10) to fifty (50) acres in size and subject to the requirements set forth in Section 7.5.F, Sign Standards above. Area Identification Signs may also be used within a large subdivision to identify distinct areas within that subdivision, subject to the requirements in Section 7.5.F, Sign Standards above.

2. Subdivision Signs shall be permitted upon private property in any zone to identify subdivisions of greater than fifty (50) acres, subject to the requirements set forth in Section 7.5.F, Sign Standards above.

3. Both Area Identification and Subdivision Signs must be located on the premises as identified by a preliminary or master preliminary plat of the subdivision. Subdivision Signs will be permitted only at major intersections on the perimeter of the subdivision (intersection of two (2) collector or larger streets). At each intersection either one (1) or two (2) Subdivision Signs may be permitted so long as the total area of the signs does not exceed one hundred fifty (150) square feet. Flags may be utilized in place of a Subdivision Identification Sign, but the overall height shall not exceed twenty (20) feet and twenty-five (25) square feet in area in a residential zone and thirty-five (35) feet in height and one hundred (100) square feet in area in industrial or commercial districts.

4. Subdivision markers of no more than one (1) square foot in area and used in conjunction with a subdivision or area identification sign are permitted attached to architectural elements within the subdivision.

5. Indirect lighting is permissible but no optical effects, moving parts, or alternating, erratic, or flashing lights shall be permitted. Landscaping valued at two hundred fifty (250) points shall be installed around each Subdivision Sign. Adequate arrangements for permanent maintenance of all signs and any landscaping in conjunction with such signs shall be made, which may be through an owners association if one (1) exists or is created for this purpose.

6. All signs shall be setback as shown in Section 7.5.F, Sign Standards above except in areas where a Private Improvement in Public Right-of-Way permit has been issued.

H. **Apartment/Condominium/Manufactured Home Park Identification Signs.**

1. One (1) Apartment/Condominium/Manufactured Home Park Identification Sign may be located at a primary entrance on each frontage to a public road.

2. The maximum area allowed for each frontage may be divided among two (2) signs if those signs are single sided and mounted at a single entrance.

3. An Apartment/Condominium/Manufactured Home Park Identification Sign may be either an attached sign or a freestanding monument sign. It shall be placed upon the private property of a particular multi-family project in the appropriate zone as established in Section 7.5.C, Summary of Permitted Signs subject to the requirements set forth in Section 7.5.F, Sign Standards above.

4. The Apartment/Condominium/Manufactured Home Park Identification Sign shall list the name and may list the facilities available and have leasing or sales information incorporated as a part of the sign.

5. An apartment or condominium project must have a minimum of twenty-four (24) dwelling units to qualify for an identification sign.

6. Indirect lighting is permissible, but no optical effects, moving parts, or alternating, erratic, or flashing lights or devices shall be permitted.

7. Any manufactured home parks existing at the time of this UDO that are nonconforming may still utilize an identification sign meeting the provisions of this Section and Section 7.5.F, Sign Standards above.

I. **Attached Signs.**

1. Attached Signs are commercial signs under this Section.

2. Attached Signs on any commercial building or tenant lease space shall not exceed a total of two and one-half (2.5) square feet per linear foot of all public entry façades, with a maximum of five hundred (500) square feet of attached signage allowed for any one (1) tenant. Multi-story businesses will be allowed one hundred (100) square feet of additional attached signage.

3. The division of allowable building signage amongst building tenants shall be the sole responsibility of the owner or property manager, and not the City of College Station.

4. Signs attached to features such as gasoline pumps, automatic teller machines, mail/package drop boxes, or similar on-site features, if identifiable from the right-of-way, as determined by the Administrator, shall count as part of the allowable sign area of the attached signs for the site. Information contained on such features pertaining to federal and state requirements, and operation/safety instructions are not counted. All other signage on such features shall count towards the allowable attached sign area.

5. Architectural elements, which are not part of the sign or logo and in no way identify the specific business tenant, shall not be considered attached signage.

6. An attached sign:

a. Shall advertise only the name of, uses of, or goods or services available within the building or tenant lease space to which the sign is attached;

b. Shall be parallel to the face of the building;

c. Shall not be cantilevered away from the structure;

d. Shall not extend more than one (1) foot from any exterior building face, mansard, awning, or canopy;

e. Shall not obstruct any window, door, stairway, or other opening intended for ingress or for needed ventilation or light; and

f. Shall not be attached to any tree or public utility pole.

7. Attached Signs may be mounted to site lighting poles located on private property and may be constructed of cloth, canvas, or other flexible material provided such signage is maintained in good condition and complies with the following restrictions:

a. No part of any sign attached to a light pole will be allowed to overhang or encroach into any portion of the public right-of-way

b. Light pole signs shall not exceed twelve (12) square feet in area and shall have a minimum of eight (8) feet of clearance from the grade below;

c. Light pole signs shall only be attached to one (1) side of a light pole;

d. Light pole signs shall not project more than three (3) feet from the edge of the light pole; and

e. Light pole signs constructed of cloth, canvas, or other flexible material shall be secured on a minimum of two (2) opposing sides to prevent wind-driven movement.

J. **Commercial Banners.**

1. A Commercial Banner:

a. Shall be in good repair;

b. Shall have the permit number conspicuously posted in the lower right hand corner of the banner;

c. Shall be allowed in addition to the signage provided for in Section 7.5.1, Attached Signage;

d. Shall advertise only the name of, uses of, or goods or services available within the building or tenant lease space to which the sign is attached;

e. Shall be mounted parallel to the face of a building or permanent structure;

f. Shall not be located within public road right-of-way of the State of Texas or the City of College Station;

g. Shall not obstruct any window, door, stairway, or other opening intended for ingress or for needed ventilation or light; and

h. Except for J.2. below, shall be allowed for a maximum fourteen-day period per permit.

2. An annual banner permit may be allowed for places of worship meeting in public spaces on a temporary basis. Banners allowed by this Section shall only be displayed on the day of the worship service.

3. The applicant shall pay an application fee as established from time-to-time by resolution of the City Council upon submission of a banner permit application to the City. The application fee is waived for a

non-profit association or organization. This fee shall not apply to banners associated with special events as provided for in Section 7.5.X, Special Event Signs.

K. **Development Sign.**

1. A Development Sign may be placed only on private property subject to the requirements in Section 7.5.F, Sign Standards above.

2. A Development Sign for a building project shall be removed if the project has not received a Building Permit at the end of twelve (12) months. The Administrator may renew the sign permit for one (1) additional twelve-month period upon request. Once a Building Permit for the project is received, the sign may stay in place until seventy-five (75) percent of the project is leased or a permanent sign is installed, whichever comes first.

3. A Development Sign for a proposed subdivision shall be removed if a Preliminary or Final Plat has not been approved by the end of twelve (12) months. The Administrator may renew the Sign Permit for one (1) additional twelve-month period upon request. Once a plat has been approved, the Sign Permit is valid as long as a Preliminary Plat is in effect, or in the absence of a valid Preliminary Plat, for twenty-four (24) months from the date of approval of a Final Plat.

L. **Directional Traffic Control Sign.**

1. Directional Traffic Control Signs may be utilized as traffic control devices in off-street parking areas subject to the requirements set forth in Section 7.5.F, Sign Standards above.

2. For multiple lots sharing an access easement to public right-of-way, there shall be only one (1) directional sign located at the curb cut.

3. Logo or copy shall be less than fifty (50) percent of the sign area.

4. No Directional Traffic Control Sign shall be permitted within or upon the right-of-way of any public street unless its construction, design, and location have been approved by the City Traffic Engineer.

M. **Flags.**

1. One (1) freestanding corporate flag per premise, not to exceed thirty-five (35) feet in height or one hundred (100) square feet in area, is allowed in multi-family, commercial, and industrial districts.

2. Flags used solely for decoration and not containing any copy or logo and located only in multi-family, commercial, and industrial districts or developments are allowed without a permit. In multi-family developments, such flags will be restricted to sixteen (16) square feet in area. In all permitted zoning districts such flags will be restricted to thirty (30) feet in height, and the number shall be restricted to no more than six (6) flags per building plot.

3. Flags containing commercial copy or logo, excluding the flags of any country, state, city, school, or church are prohibited in residential zones and on any residentially developed property (except when flags are used as Subdivision Signs).

N. **Freestanding Commercial Signs.**

1. Any development with over seventy-five (75) linear feet of frontage will be allowed one (1) Freestanding Commercial Sign. All Freestanding Commercial Signs shall meet the following standards:

a. **Allowable Area.**

Allowable Area For Freestanding Signs	
Frontage (Feet)	**Maximum Area (s.f.)**
0—75	Low Profile only
76—100	50

101—150	75
151—200	100
201—250	125
251—300	150
301—350	175
351—400	200
401—450	225
451—500	250
501—550	275
551—600+	300

b. **Area.**

For the purposes of this Section, area shall be considered the area in square feet of a single-face sign, or one (1) side of a double-face sign, or half the sides of a multi-face sign.

c. **Frontage.**

1. For the purposes of this Section, frontage shall be considered the number of feet fronting on a public street to which a sign is oriented; and
2. On corner lots, the frontage street shall be the greater street as classified on the thoroughfare plan. Where the two (2) streets are classified the same, the applicant may choose the frontage street.

d. **Allowable Height.**

1. The allowable height of a Freestanding Commercial Sign is determined by measuring the distance from the closest point of the sign to the curb or pavement edge and dividing this distance by two (2). No Freestanding Commercial Sign shall exceed thirty-five (35) feet in height;
2. For the purposes of this Section, height of a sign shall be measured from the elevation of the curb or pavement edge;
3. For the purposes of this Section, the distance from curb shall be measured in feet from the back of curb or pavement edge to the nearest part of the sign; and
4. For properties with Freeway frontage in SC Suburban Commercial districts, the maximum height of the sign may not exceed the eave height of the structure to which it most closely relates. Sign must be adjacent to and orient to the Freeway.

2. Freestanding Commercial Signs are allowed only on developed commercial property established in the appropriate zones as set forth in Section 7.5.C, Summary of Permitted Signs. One (1) freestanding sign shall be allowed in the O zone only when the premises has a minimum of two (2) acres, subject to the requirements set forth in Section 7.5.F, Sign Standards. One (1) Low Profile Sign shall be allowed in the O zone when the premises has less than two (2) acres subject to the requirements set forth in Section 7.5.F, Sign Standards, above.
3. A premises with more than one hundred fifty (150) feet of frontage shall be allowed to use one (1) Freestanding Commercial Sign or any number of Low Profile Signs as long as there is a minimum separation between signs of one hundred fifty (150) feet.

   In lieu of one (1) Low Profile Sign every one hundred fifty (150) feet, hospital uses may have one (1) low profile sign located at each driveway.

4. Premises with less than seventy-five (75) feet of frontage may be combined in order to utilize signage corresponding to the resulting frontage as described in the preceding two (2) paragraphs.

5. No more than one (1) Freestanding Commercial Sign shall be allowed on any premises except when the site meets one (1) of the following sets of criteria:

   a. The building plot, as recognized on an approved Plat or Site Plan, must be twenty-five (25) acres or more in area with at least one thousand (1,000) feet of continuous unsubdivided frontage on any major arterial street or higher (as classified on the Thoroughfare Plan) toward which one (1) additional Freestanding Commercial Sign may be displayed (see diagram below); or

   b. The Building plot, as recognized on an approved Plat or Site Plan, must be fifteen (15) acres or more in area with at least six hundred (600) feet of continuous unsubdivided frontage on any major arterial street or higher (as classified on the Thoroughfare Plan) and the site must have additional frontage on a street classified as a minor arterial or greater on the Thoroughfare Plan, toward which the additional Freestanding Commercial Sign may be displayed.

6. Any sign where two (2) or more panels have separate supports extending to them shall be considered to be more than one (1) Freestanding Commercial Sign, even where only one (1) main support extends to the ground.

7. Sites with limited or no street frontage, due to a proliferation of pad sites, that are not contained within the building plot, as defined by the Administrator, and are fronting along a street classified as a collector or greater on the Thoroughfare Plan, will be allowed the area of the sign to be less than or equal to the square of one-sixth of the distance from the closest portion of the sign to the curb or pavement edge, with the maximum area not to exceed two hundred (200) square feet.

8. Any site defined as a single building plot, and containing one (1) or more pad sites, shall be permitted to erect a Freestanding Commercial Sign in accordance with Section 7.5.N, Freestanding Commercial Signs, and to the standards of Section 7.5.N.1.a, Allowable Area, with the maximum area not to exceed two hundred (200) square feet. In addition, each pad site will be permitted one (1) Low Profile Sign per pad site according to the restrictions of 7.5.F, Sign Standards.

O. **Fuel Price Signs.**

Facilities with fuel sales will be allowed one (1) additional sign for the purposes of fuel pricing, either freestanding or attached, per premises.

1. The area of the fuel price sign shall not exceed twenty-four (24) square feet.

2. Fuel pricing may be incorporated into the allowable square footage of a Freestanding Commercial Sign or Attached Sign.

3. This sign shall follow the setback requirements for a Freestanding Commercial Sign and shall not be located within the right-of-way.

P. **Grand Opening Signs.**

1. Flags, commercial banners, and balloons, which advertise a business's grand opening, may be displayed for one (1) consecutive fourteen-day period, selected by the business owner, within sixty (60) days of

the granting of the initial Certificate of Occupancy, a change in the use, or of a change in the name of the business. A permit is required.

2. A Commercial Banner:

   a. Shall advertise only the name of, uses of, or goods or services available within the building, or tenant lease space, to which the sign is attached;

   b. Shall be parallel to the face of the building;

   c. Shall not be cantilevered away from the structure;

   d. Shall not extend more than one (1) foot from any exterior building face, mansard, awning, or canopy;

   e. Shall not obstruct any window, door, stairway, or other opening intended for ingress or for needed ventilation or light; and

   f. Shall not be attached to any tree, fence, or public utility pole.

Q. **Hanging Signs**.

a) Hanging signs shall be suspended from canopies or awnings and located in front of building entrances, perpendicular to the façade.

b) A maximum of one (1) hanging sign per building entrance is allowed.

c) The hanging sign shall not exceed four (4) square feet in size and shall have a minimum of eight (8) feet of clearance from the walkway grade, four (4) inches of clearance from the building face, and eight (8) inches of clearance from the edge of the canopy/awning.

d) Hanging signs located in or over the public right-of-way shall require a Private Improvement in the Public Right-of-Way agreement (PIP) in addition to the necessary Building Permit.

R. **Home Occupation Sign**.

1. A person having a legal home occupation may have one (1) sign on the building or porch of a residence.

2. The sign may contain only the name and occupation of the resident.

3. It shall be attached directly to the face of the building or porch.

4. It shall not exceed two (2) square feet in area, shall not be illuminated in any way, and shall not project more that twelve (12) inches beyond the building.

5. No display of merchandise or other forms of commercial communication shall be allowed within a residential area, unless same are in existence prior to the adoption of the UDO in connection with a use that is presently a lawful nonconforming use within the district.

6. Such a nonconforming sign may be maintained until the nonconforming use of the building ceases, subject to the requirements for maintenance herein. Discontinuance of the use of such a sign for more than three (3) months shall prevent future use, even if the nonconforming use of the premises is continuous.

S. **Low Profile Signs.**

In addition to meeting the other requirements of this Section, Low Profile Signs are subject to the following:

1. A premises with less than seventy-five (75) feet of street frontage shall be allowed to use one (1) Low Profile Sign in lieu of a Freestanding Commercial Sign;

2. Each single building plot containing one (1) or more pad sites, shall be permitted one (1) Low Profile Sign per pad site according to the restrictions of 7.5.F, Sign Standards; and

3. In SC Suburban Commercial, WC Wellborn Commercial, BP Business Park, and BPI Business Park Industrial, one (1) Low Profile Sign per structure is permitted.

T. **Non-Commercial and Political Signs.**

This Section does not regulate the size, content, or location of non-commercial signs except as follows:

1. No commercial message shall be shown on any non-commercial sign.

2. No non-commercial sign:

   a. May be greater than fifty (50) square feet in size;

   b. May be located within public road right-of-way of the State of Texas or the City of College Station;

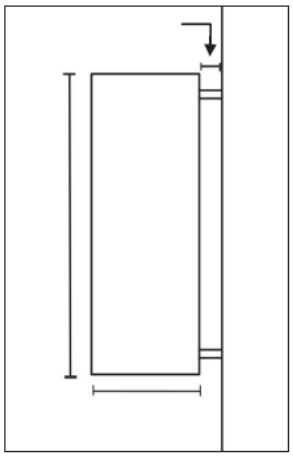
   c. May be located off the premises of the property owner who is displaying the sign; and

   d. May be located within any sight distance triangle as defined in Section 7.2.C, Visibility at Intersections in All Districts, or where determined by the Administrator as a location that would hinder intersection visibility. This provision is necessary to avoid clutter, proliferation, and dangerous distraction to drivers caused by close proximity of such signs to automobile traffic, to avoid damage to automobiles which may leave the paved surface intentionally or by accident, and to avoid the necessity for pedestrians to step into the roadway to bypass such signs. No regulatory alternative exists to accomplish this police power obligation.

3. In the event that any non-commercial sign is located in a public right-of-way of the State or City, the City shall remove it.

4. All non-commercial signs addressing a particular event are allowed up to ninety (90) days prior to the event and shall be removed within ten (10) days after.

U. **Projection Signs**.



City of College Station, Texas

Projection signs will be allowed in the MU Mixed-Use District with the following restrictions:

1) One (1) projection sign per frontage along a public right-of-way will be allowed except where otherwise stated in this Section.

2) The total square footage of all projection signs used will be applied toward the total allowable area for attached signage.

3) The division and placement of allowable building signage amongst building tenants shall be the sole responsibility of the owner or property manager, and not the City of College Station.

4) Projection signs shall be mounted perpendicular to buildings.

5) Internally lit plastic signs will not be permitted.

6) Projection signs may utilize fabric or other flexible material provided that they remain in good condition at all times.

7) Projection signs shall have a minimum of eight (8) feet of clearance from the walkway grade and four (4) inches of clearance from the building face. Excluding the four-inch minimum clearance requirement, no part of a projection sign shall project more than three (3) feet from the building face.

8) Projection signs shall not extend above the façade of the building to which it is attached.

9) Buildings with one (1) story may have a sign that shall not exceed eighteen (18) square feet in size. For each additional building story, an additional eight (8) square feet of signage is allowed, up to a maximum of fifty (50) square feet per sign.

10) Projection signs located in rover the public right-of-way shall require a Private Improvement in the Public Right-of-Way agreement (PIP) in addition to the necessary Building Permit.

V. **Real Estate/Finance/Construction Signs.**

1. One (1) Real Estate Sign not exceeding sixteen (16) square feet in total area (exclusive of stakes and posts) may be erected at any time while a property is offered for sale or lease to the public. Properties with a minimum of one hundred fifty (150) feet of frontage shall be allowed one (1) Real Estate Sign not exceeding thirty-two (32) square feet in total area. Properties with a minimum of two (2) acres and frontage on two (2) streets shall be allowed one (1) real estate sign on each frontage street with the area of the sign to be determined by the amount of frontage as stated above.

2. One (1) Finance Sign and three (3) Construction Signs (for a total of four (4) signs), not exceeding sixteen (16) square feet in total area each (exclusive of stakes and posts) may be erected once a building permit has been issued on a property. Properties with a minimum of ten (10) acres and one thousand (1,000) feet of frontage shall be allowed one (1) Finance Sign and three (3) Construction Signs not exceeding thirty-two (32) square feet in total area each.

3. Real Estate, Finance, and Construction Signs may be either attached or freestanding and only those visible from the street are limited in number.

4. All such signs shall be maintained by the persons in control of the premises so as to remain erect and in good repair. Such signs shall be removed by the property owner or other person in control of the premises if they are damaged, broken, or incapable of remaining erect.

5. Such signs must be removed by the owner or person in control of the premises when either the property has sold or been leased and/or when performance under the construction contract or subcontract (in the case of Construction Signs) has been completed. In all cases, Financing and Construction Signs shall be removed prior to issuance of a Certificate of Occupancy.

W. **Roof Signs.**

1. Signs mounted to the structural roof shall be regulated as Freestanding Commercial Signs.

2. Painted or applied roof signs are prohibited.

X. **Special Event Signs.**

1. Signs, including commercial banners and balloons, advertising or announcing a Special Event, as defined in Section 4-4.B of the Code of Ordinances, are permitted as a part of the Special Event License and shall be limited to the property holding the event.

2. The Special Event Signage is allowed up to fourteen (14) days prior to the event and must be removed within twenty-four (24) hours of the end of the event.

Y. **Vehicle Signs.**

1. Signs that are displayed on motor vehicles that are being operated or stored in the normal course of a business, such as signs indicating the name or the type of business, excluding all banners, that are located on moving vans, delivery trucks, trailers or other commercial vehicles are permitted; but only if the primary purpose of such vehicles is not for the display of the signs thereon, and only if such vehicles are parked or stored in areas appropriate to their use as commercial or delivery vehicles, such as service areas or locations close to the business building away from public traffic areas.

2. Signs or advertisements permanently attached to non-commercial vehicles, excluding all banners, are permitted.

Z. **Signs for Conditional Uses.**

1. Signs for Conditional Uses shall comply with the regulations for the zoning district in which the Conditional Use is permitted.

2. Signs for Conditional Uses in residential or rural zoning districts shall comply with Section 7.5.F, Sign Standards, "Low Profile Signs."

AA. **Signs for Permitted Non-residential Uses in Residential or Rural Districts.**

1. Signs for permitted non-residential uses in residential or rural zoning districts shall comply with Section 7.5.F, Sign Standards, "Low Profile Signs."

2. Signs for Places of Worship with frontage on a street classified as Freeway/Expressway on the Thoroughfare Plan are allowed one (1) "Freestanding Sign" in accordance with Section 7.5.N, "Freestanding Commercial Signs" or "Low Profile Signs" in accordance with Section 7.5.F, Sign Standards, "Low Profile Signs." The "Freestanding Sign" must be adjacent to and orient to the Freeway/Expressway.

3. Signs for Places of Worship and Government Facilities in residential or rural zoning districts may utilize signage in accordance with Section 7.5.I, Sign Standards, "Attached Signs" and Section 7.5.J, "Commercial Banners."

BB. **Abandoned, Damaged, or Unsafe Signs.**

1. The provisions of this Section shall apply when in conflict with the provisions of the Building Code; but where the provisions of both ordinances are consistent, the enforcement of either shall be permissible and remedies or penalties cumulative.

2. Nonconforming signs that have become deteriorated or damaged to an extent that the cost of the reconstruction or restoration of such signs is in excess of fifty (50) percent of its replacement value exclusive of foundations, will be required to be removed or brought into full compliance with the current sign regulations.

3. All abandoned signs and their supports shall be removed within sixty (60) days from the date of abandonment. All damaged signs shall be repaired or removed within sixty (60) days. The Administrator shall have authority to grant a thirty-day time extension where he determines there is a reasonable necessity for same.

4. Discontinuance of use or removal of any nonconforming sign or any sign in connection with a nonconforming use shall create a presumption of intent to abandon said sign. A nonconforming sign that is damaged and not repaired within sixty (60) days shall be presumed to be abandoned.

5. When a building is demolished, the associated signs and sign structures shall also be removed.

CC. **Signs in the Extraterritorial Jurisdiction.**

All off-premise and portable signs shall be prohibited within the Extraterritorial Jurisdiction of the City of College Station.

DD. **Campus Wayfinding Signs.**

1. A campus wayfinding sign:

   a. May be utilized as part of a Planned Development District (PDD) or unified development that is at least twenty (20) acres in size, contains multiple buildings and that may include multiple building plots;

   b. A maximum of one (1) campus wayfinding sign shall be allowed per intersection of two (2) primary circulation drive aisles, when parking is not provided along the drive aisle; or intersection of a primary circulation drive aisle and public way, when parking is not provided along the drive aisle and public way;

   c. All signs shall be internal to the development and shall not be located along a public right-of-way or at the intersection of a primary circulation aisle or public way and right-of-way.

   d. Shall be limited in height to no greater than six (6) feet, measured from the elevation of the curb or pavement edge, with a maximum total sign area of thirty (30) square feet;

   e. Shall not be located within a site visibility triangle.

   f. All campus wayfinding signs shall be submitted as part of a sign package for the development; and,

   g. Shall utilize a common design or theme throughout the development and contain no commercial logo or graphics.

Per Ordinance No. 2011-3348 (May 26, 2011)

EE. **Electronic Reader Boards.**

In addition to meeting the other requirements of this Section, Electronic Reader Boards (ERB) are subject to the following requirements:

1. The sign display (message) change shall be instantaneous; scrolling, fading, or animation between messages is prohibited;

2. No electronic reader board shall exceed a brightness level of 0.3 foot candles above ambient light as measured using a light meter capable of measuring in foot candles at a distance based upon sign area, measured as follows:

   Measurement distance = √ (sign display area of ERB x 100)

3. The sign shall be equipped with automatic brightness control keyed to ambient light levels;

4. In the event of a malfunction, the sign display must go dark; and,

5. Electronic Reader Board size is limited to thirty (30) percent of the allowable sign area.

(Ord. No. 2012-3449 , Pt. 1(Exh. I), 9-27-2012; Ord. No. 2012-3450 , Pt. 1(Exh. E), 9-27-2012; Ord. No. 2013-3521 , Pt. 1(Exh. J), 9-12-2013; Ord. No. 2014-3547 , Pt. 1(Exh. A), 1-9-2014; Ord. No. 2014-3588 , Pt. 1(Exh. A), 7-24-2014; Ord. No. 2014-3624 , Pt. 1(Exh. K), 12-18-2014; Ord. No. 2016-3792 , Pt. 1(Exh. E), 7-28-2016; Ord. No. 2016-3845, Pt. 1(Exh. C), 12-8-2016; Ord. No. 2018-4001 , Pt. 1(Exh. E), 4-12-2018)

APPENDIX TAB I

lien contract, approved by the City Attorney, from the owners of at least 90 percent of the abutting lot owners to cover the estimated portions of the construction cost for each such lot, prior to the approval of any proposed paving or repaving.

(b) *Planting on street right-of-way.*

(1) *Unpaved areas.* There will be no restrictions on planting and care of grass on unpaved areas, and no permit shall be required.

(2) *Obstructions.* It shall be unlawful to plant flowers, shrubs, or trees to obstruct the view of or access to fire hydrants, mail boxes, traffic control devices, police or fire call boxes.

(3) *Permit requirements.* Other plantings will be permitted only if an application, together with a plan of planting, has been filed with the City Engineer and the City Engineer in turn has issued a permit for such planting.

(Code 2011 (Repub.), § 3-3(C))

Sec. 34-35. - Priority in sidewalk construction.

In the established and platted part of the City, priority in sidewalk construction will be established by the City Council, based on recommendations of the City Manager and City Engineer. Lengths shall be one block or more. First consideration will be given to major streets, second consideration to minor streets; however, no consideration will be given until petitioned by property owners representing a percentage of the front footage of the property as established by policy of the City Council, and funds are available. The Council may, however, at its discretion, when a situation warrants, arrange for construction without a signed petition.

(Code 2011 (Repub.), § 3-3(D))

Sec. 34-36. - Driveways.

(a) *Interference.* No driveway approach shall interfere with municipal facilities such as street light or traffic signal poles, signs, fire hydrants, cross walks, bus loading zones, utility poles, fire alarm supports, drainage structures, or other necessary street structures. The City Engineer is authorized to order and effect the removal or

reconstruction of any driveway approach which is constructed in conflict with street structures. The cost of reconstructing or relocating such driveway approaches shall be at the expense of the abutting property owner.

(b) *Permits.*

(1) Any plans submitted for building approval which include or involve driveway approaches shall be referred to the City Engineer or designee for approval before a building permit is issued.

(2) A written driveway permit for a new development shall not be issued or required. Approval of driveway location and design for new properties and other developments on a building plan or site plan shall be considered the permit for driveway installation.

(3) Any property owner desiring a new driveway approach or an improvement to an existing driveway at an existing residential or other property shall make application for a driveway permit, in writing, and designating the contractor who will do the work, to the City Engineer or the building supervisor, accompanied by a sketch or drawing showing clearly the driveway, parking area, or doorway to be connected and the location of the nearest existing driveways on the same and opposite sides of the roadway. The City Engineer will prescribe the construction procedure to be followed. (See the Building Code for contractor's bond and permit requirement, for work on public property.)

(4) A permit or building/site plan approval as per the procedure of either Subsection (b)(2) or (3) of this section shall be required for the location of all driveways which provide for access to property. Driveway permits will also be required for any significant structure change, land use change, or property boundary change.

(5) The driveway permit fee is established in Section 2-117, which shall be of an amount to cover the cost of licensing and maintaining records.

(6) All permits granted for the use of public property under the terms of this section shall be revocable at the will of the City Council.

(Code 2011 (Repub.), § 3-3(E); altered in 2017 recodification)

Secs. 34-37—34-60. - Reserved.

Automated Certificate of eService

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Kaela Olson on behalf of Allison Poole
Bar No. 24099785
kolson@olsonllp.com
Envelope ID: 72236163
Status as of 1/30/2023 8:35 AM CST

Associated Case Party: Shana Elliott

Name	BarNumber	Email	TimestampSubmitted	Status
Yvonne Simental		ysimental@texaspolicy.com	1/27/2023 4:59:01 PM	SENT
Robert Henneke		rhenneke@texaspolicy.com	1/27/2023 4:59:01 PM	SENT
Christian Townsend		ctownsend@texaspolicy.com	1/27/2023 4:59:01 PM	SENT
Chance DWeldon		cweldon@texaspolicy.com	1/27/2023 4:59:01 PM	SENT

Associated Case Party: City of College Station, Texas

Name	BarNumber	Email	TimestampSubmitted	Status
John J.Hightower		jhightower@olsonllp.com	1/27/2023 4:59:01 PM	SENT
Allison Killian		akillian@olsonllp.com	1/27/2023 4:59:01 PM	SENT
Adam C.Falco		afalco@cstx.gov	1/27/2023 4:59:01 PM	SENT