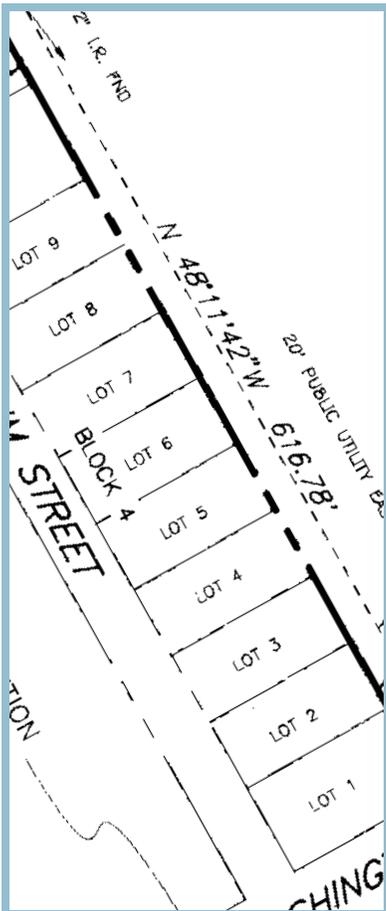




Chapter 3 Introduction to Subdivision Controls

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

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



PLATTING: AN INTRODUCTION

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

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

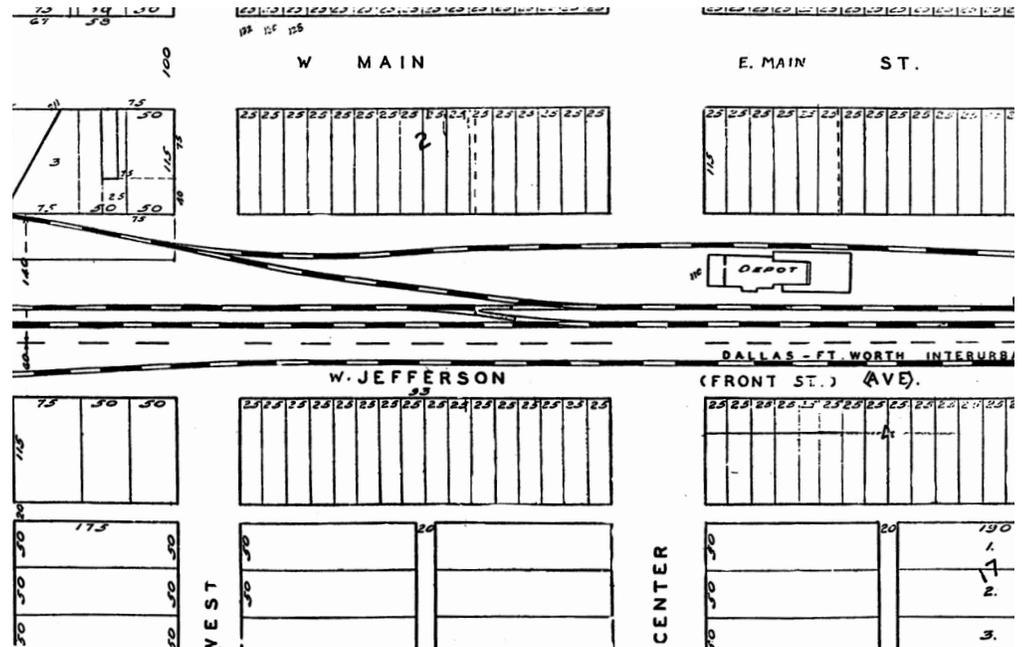
This article reviews the platting process, the purpose of platting, and the different types of plats set forth in the Texas Local Government Code (“LGC”). It also introduces legal principles that support actions taken during the platting and subdivision processes. For purposes of this article, the “platting”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

BACKGROUND AND HISTORY

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

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

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



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

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

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



WHY IS PLATTING REQUIRED?

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

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

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

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



Who benefits from platting?

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

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

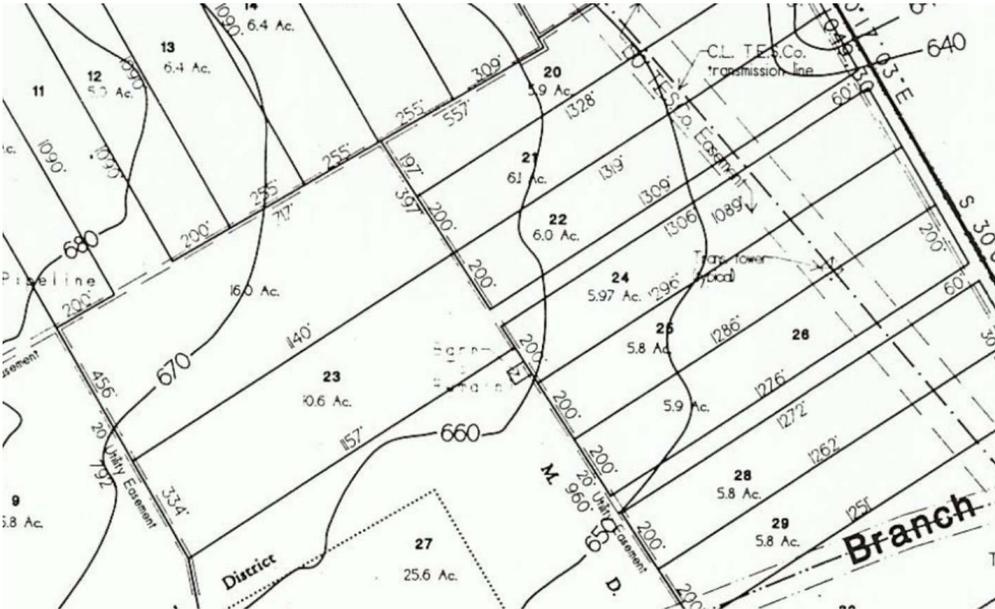
WHEN IS A PLAT REQUIRED?

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

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

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

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



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

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

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

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

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



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

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

PLATTING AUTHORITY

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

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

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

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



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

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

TYPES OF PLATS

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



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

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

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

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

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



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

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

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

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

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

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



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

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



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

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



permit counter.

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

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

DEVELOPMENT PLAT

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

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

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

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

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



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

PROCESS

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

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

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

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

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

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



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

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

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



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

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

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

STANDARD OF REVIEW

A municipal authority is obligated to approve a plat if:

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



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

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

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

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

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

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

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

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



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

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

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

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



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

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

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

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



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

SUBDIVISION CONTROLS

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

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



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

ROUGH PROPORTIONALITY OF REQUIREMENTS AND EXACTIONS



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

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

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

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



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

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

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

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

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



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



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

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

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

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

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



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

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

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

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

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

Testing a taking:

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



DEVELOPMENT AGREEMENTS

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

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



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

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

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

ENFORCEMENT

Subdivision regulations may be enforced in the following manner:

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

The new provision states that a development agreement must be:

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



CONCLUSION

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

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

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

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



ATTACHMENT A

LOCAL GOVERNMENT CODE

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

SUBTITLE A. MUNICIPAL REGULATORY AUTHORITY

CHAPTER 212. MUNICIPAL REGULATION OF SUBDIVISIONS AND PROPERTY DEVELOPMENT

SUBCHAPTER A. REGULATION OF SUBDIVISIONS

Sec. 212.001. DEFINITIONS. In this subchapter:

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

(2) "Plat" includes a replat.

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

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

Sec. 212.0025. CHAPTER-WIDE PROVISION

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

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

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

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



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

(B) the developed tract of land is:

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

(ii) served by:

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

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

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

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

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

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

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

(b) To be recorded, the plat must:

(1) describe the subdivision by metes and bounds;

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

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

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

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

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

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

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

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



chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

Amended by:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



ing plats shall approve a plat if:

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

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

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

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

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

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

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

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

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

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

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



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

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

(2) must:

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

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

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

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

Amended by:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

Sec. 212.0115. CERTIFICATION REGARDING COMPLIANCE WITH PLAT REQUIREMENTS.

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

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

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

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

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

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

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

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

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

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

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

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



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

Sec. 212.012. CONNECTION OF UTILITIES.

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

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

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

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

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

nance or rule relating to the development plat;

(2) the land was first served or connected with service by an entity described by Subsection (b) (1), (b)(2), or (b)(3) before September 1, 1987; or

(3) the land was first served or connected with service by an entity described by Subsection (b) (4), (b)(5), or (b)(6) before September 1, 1989.

(d) In a county to which Subchapter B, Chapter 232, applies, an entity described by Subsection (b) may serve or connect land with water, sewer, electricity, gas, or other utility service that is located in the extraterritorial jurisdiction of a municipality regardless of whether the entity is presented with or otherwise holds a certificate applicable to the land issued under Section 212.0115, if the municipal authority responsible for approving plats issues a certificate stating that:

(1) the subdivided land:

(A) was sold or conveyed by a subdivider by any means of conveyance, including a contract for deed or executory contract, before:

(i) September 1, 1995, in a county defined under Section 232.022(a)(1);

(ii) September 1, 1999, in a county defined under Section 232.022(a)(1) if, on August 31, 1999, the subdivided land was located in the extraterritorial jurisdiction of a municipality as determined by Chapter 42; or

(iii) September 1, 2005, in a county defined under Section 232.022(a)(2);

(B) has not been subdivided after September 1, 1995, September 1, 1999, or September 1, 2005, as applicable under Paragraph (A);

(C) is the site of construction of a residence, evidenced by at least the existence of a completed foundation, that was begun on or before:

(i) May 1, 2003, in a county defined under Section 232.022(a)(1); or

(ii) September 1, 2005, in a county defined under Section 232.022(a)(2); and

(D) has had adequate sewer services installed



to service the lot or dwelling, as determined by an authorized agent responsible for the licensing or permitting of on-site sewage facilities under Chapter 366, Health and Safety Code;

(2) the subdivided land is a lot of record as defined by Section 232.021(6-a) that is located in a county defined by Section 232.022(a)(1) and has adequate sewer services installed that are fully operable to service the lot or dwelling, as determined by an authorized agent responsible for the licensing or permitting of on-site sewage facilities under Chapter 366, Health and Safety Code; or

(3) the land was not subdivided after September 1, 1995, in a county defined under Section 232.022(a)(1), or September 1, 2005, in a county defined under Section 232.022(a)(2), and:

(A) water service is available within 750 feet of the subdivided land; or

(B) water service is available more than 750 feet from the subdivided land and the extension of water service to the land may be feasible, subject to a final determination by the water service provider.

(e) An entity described by Subsection (b) may provide utility service to land described by Subsection (d)(1), (2), or (3) only if the person requesting service:

(1) is not the land's subdivider or the subdivider's agent; and

(2) provides to the entity a certificate described by Subsection (d).

(f) A person requesting service may obtain a certificate under Subsection (d)(1), (2), or (3) only if the person is the owner or purchaser of the subdivided land and provides to the municipal authority responsible for approving plats documentation containing:

(1) a copy of the means of conveyance or other documents that show that the land was sold or conveyed by a subdivider before September 1, 1995, before September 1, 1999, or before Sep-

tember 1, 2005, as applicable under Subsection (d);

(2) for a certificate issued under Subsection (d)(1), a notarized affidavit by the person requesting service that states that construction of a residence on the land, evidenced by at least the existence of a completed foundation, was begun on or before May 1, 2003, in a county defined by Section 232.022(a)(1) or September 1, 2005, in a county defined by Section 232.022(a)(2), and the request for utility connection or service is to connect or serve a residence described by Subsection (d)(1)(C);

(3) a notarized affidavit by the person requesting service that states that the subdivided land has not been further subdivided after September 1, 1995, September 1, 1999, or September 1, 2005, as applicable under Subsection (d); and

(4) evidence that adequate sewer service or facilities have been installed and are fully operable to service the lot or dwelling from an entity described by Subsection (b) or the authorized agent responsible for the licensing or permitting of on-site sewage facilities under Chapter 366, Health and Safety Code.

(g) On request, the municipal authority responsible for approving plats shall provide to the attorney general and any appropriate local, county, or state law enforcement official a copy of any document on which the municipal authority relied in determining the legality of providing service.

(h) This section may not be construed to abrogate any civil or criminal proceeding or prosecution or to waive any penalty against a subdivider for a violation of a state or local law, regardless of the date on which the violation occurred.

(i) In this section:

(1) "Foundation" means the lowest division of a residence, usually consisting of a masonry slab or a pier and beam structure, that is partly or wholly below the surface of the ground and on which the



residential structure rests.

(2) “Subdivider” has the meaning assigned by Section 232.021.

(j) Except as provided by Subsection (k), this section does not prohibit a water or sewer utility from providing in a county defined by Section 232.022(a)(1) water or sewer utility connection or service to a residential dwelling that:

(1) is provided water or wastewater facilities under or in conjunction with a federal or state funding program designed to address inadequate water or wastewater facilities in colonias or to residential lots located in a county described by Section 232.022(a)(1);

(2) is an existing dwelling identified as an eligible recipient for funding by the funding agency providing adequate water and wastewater facilities or improvements;

(3) when connected, will comply with the minimum state standards for both water and sewer facilities and as prescribed by the model subdivision rules adopted under Section 16.343, Water Code; and

(4) is located in a project for which the municipality with jurisdiction over the project or the approval of plats within the project area has approved the improvement project by order, resolution, or interlocal agreement under Chapter 791, Government Code.

(k) A utility may not serve any subdivided land with water utility connection or service under Subsection (j) unless the entity receives a determination that adequate sewer services have been installed to service the lot or dwelling from the municipal authority responsible for approving plats, an entity described by Subsection (b), or the authorized agent responsible for the licensing or permitting of on-site sewage facilities under Chapter 366, Health and Safety Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec.

46(b), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 624, Sec. 3.01, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 18.34, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 404, Sec. 2, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 708, Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1239, Sec. 1, eff. June 19, 2009.

Sec. 212.013. VACATING PLAT. (a) The proprietors of the tract covered by a plat may vacate the plat at any time before any lot in the plat is sold. The plat is vacated when a signed, acknowledged instrument declaring the plat vacated is approved and recorded in the manner prescribed for the original plat.

(b) If lots in the plat have been sold, the plat, or any part of the plat, may be vacated on the application of all the owners of lots in the plat with approval obtained in the manner prescribed for the original plat.

(c) The county clerk shall write legibly on the vacated plat the word “Vacated” and shall enter on the plat a reference to the volume and page at which the vacating instrument is recorded.

(d) On the execution and recording of the vacating instrument, the vacated plat has no effect. Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 212.014. REPLATTING WITHOUT VACATING PRECEDING PLAT. A replat of a subdivision or part of a subdivision may be recorded and is controlling over the preceding plat without vacation of that plat if the replat:

(1) is signed and acknowledged by only the owners of the property being replatted;

(2) is approved, after a public hearing on the



matter at which parties in interest and citizens have an opportunity to be heard, by the municipal authority responsible for approving plats; and (3) does not attempt to amend or remove any covenants or restrictions.

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

Sec. 212.0145. REPLATTING WITHOUT VACATING PRECEDING PLAT: CERTAIN SUBDIVISIONS. (a) A replat of a part of a subdivision may be recorded and is controlling over the preceding plat without vacation of that plat if the replat:

(1) is signed and acknowledged by only the owners of the property being replatted; and

(2) involves only property:

(A) of less than one acre that fronts an existing street; and

(B) that is owned and used by a nonprofit corporation established to assist children in at-risk situations through volunteer and individualized attention.

(b) An existing covenant or restriction for property that is replatted under this section does not have to be amended or removed if:

(1) the covenant or restriction was recorded more than 50 years before the date of the replat; and

(2) the replatted property has been continuously used by the nonprofit corporation for at least 10 years before the date of the replat.

(c) Sections 212.014 and 212.015 do not apply to a replat under this section.

Added by Acts 1999, 76th Leg., ch. 1130, Sec. 1, eff. June 18, 1999.

Sec. 212.0146. REPLATTING WITHOUT VACATING PRECEDING PLAT: CERTAIN MUNICIPALITIES. (a) This section applies only to a replat of a subdivision or a part of a subdivision located in a municipality or the extraterritorial

jurisdiction of a municipality with a population of 1.9 million or more.

(b) A replat of a subdivision or part of a subdivision may be recorded and is controlling over the preceding plat without vacation of that plat if:

(1) the replat is signed and acknowledged by each owner and only the owners of the property being replatted;

(2) the municipal authority responsible for approving plats holds a public hearing on the matter at which parties in interest and citizens have an opportunity to be heard;

(3) the replat does not amend, remove, or violate, or have the effect of amending, removing, or violating, any covenants or restrictions that are contained or referenced in a dedicatory instrument recorded in the real property records separately from the preceding plat or replat;

(4) the replat does not attempt to amend, remove, or violate, or have the effect of amending, removing, or violating, any existing public utility easements without the consent of the affected utility companies; and

(5) the municipal authority responsible for approving plats approves the replat after determining that the replat complies with this subchapter and rules adopted under Section 212.002 and this section in effect at the time the application for the replat is filed.

(c) The governing body of a municipality may adopt rules governing replats, including rules that establish criteria under which covenants, restrictions, or plat notations that are contained only in the preceding plat or replat without reference in any dedicatory instrument recorded in the real property records separately from the preceding plat or replat may be amended or removed.

Added by Acts 2007, 80th Leg., R.S., Ch. 654, Sec. 1, eff. June 15, 2007.

Sec. 212.015. ADDITIONAL REQUIREMENTS



FOR CERTAIN REPLATS. (a) In addition to compliance with Section 212.014, a replat without vacation of the preceding plat must conform to the requirements of this section if:

- (1) during the preceding five years, any of the area to be replatted was limited by an interim or permanent zoning classification to residential use for not more than two residential units per lot; or
- (2) any lot in the preceding plat was limited by deed restrictions to residential use for not more than two residential units per lot.

(b) Notice of the hearing required under Section 212.014 shall be given before the 15th day before the date of the hearing by:

- (1) publication in an official newspaper or a newspaper of general circulation in the county in which the municipality is located; and
- (2) by written notice, with a copy of Subsection (c) attached, forwarded by the municipal authority responsible for approving plats to the owners of lots that are in the original subdivision and that are within 200 feet of the lots to be replatted, as indicated on the most recently approved municipal tax roll or in the case of a subdivision within the extraterritorial jurisdiction, the most recently approved county tax roll of the property upon which the replat is requested. The written notice may be delivered by depositing the notice, properly addressed with postage prepaid, in a post office or postal depository within the boundaries of the municipality.

(c) If the proposed replat requires a variance and is protested in accordance with this subsection, the proposed replat must receive, in order to be approved, the affirmative vote of at least three-fourths of the members present of the municipal planning commission or governing body, or both. For a legal protest, written instruments signed by the owners of at least 20 percent of the area of the lots or land immediately adjoining the area covered by the proposed replat and extending 200

feet from that area, but within the original subdivision, must be filed with the municipal planning commission or governing body, or both, prior to the close of the public hearing.

(d) In computing the percentage of land area under Subsection (c), the area of streets and alleys shall be included.

(e) Compliance with Subsections (c) and (d) is not required for approval of a replat of part of a preceding plat if the area to be replatted was designated or reserved for other than single or duplex family residential use by notation on the last legally recorded plat or in the legally recorded restrictions applicable to the plat.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 345, Sec. 2 to 5, eff. Aug. 28, 1989; Acts 1993, 73rd Leg., ch. 1046, Sec. 3, eff. Aug. 30, 1993.

Sec. 212.0155. ADDITIONAL REQUIREMENTS FOR CERTAIN REPLATS AFFECTING A SUBDIVISION GOLF COURSE. (a) This section applies to land located wholly or partly:

- (1) in the corporate boundaries of a municipality if the municipality:
 - (A) has a population of more than 50,000; and
 - (B) is located wholly or partly in:
 - (i) a county with a population of more than three million;
 - (ii) a county with a population of more than 400,000 that is adjacent to a county with a population of more than three million; or
 - (iii) a county with a population of more than 1.4 million:
 - (a) in which two or more municipalities with a population of 300,000 or more are primarily located; and
 - (b) that is adjacent to a county with a population of more than two million; or
- (2) in the corporate boundaries or extraterritorial jurisdiction of a municipality with a population of



1.9 million or more.

(b) In this section:

(1) “Management certificate” means a certificate described by Section 209.004, Property Code.

(2) “New plat” means a development plat, replat, amending plat, or vacating plat that would change the existing plat or the current use of the land that is the subject of the new plat.

(3) “Property owners’ association” and “restrictive covenant” have the meanings assigned by Section 202.001, Property Code.

(4) “Restrictions,” “subdivision,” and “owner” have the meanings assigned by Section 201.003, Property Code.

(5) “Subdivision golf course” means an area of land:

(A) that was originally developed as a golf course or a country club within a common scheme of development for a predominantly residential single-family development project;

(B) that was at any time in the seven years preceding the date on which a new plat for the land is filed:

(i) used as a golf course or a country club;

(ii) zoned as a community facility;

(iii) benefited from restrictive covenants on adjoining homeowners; or

(iv) designated on a recorded plat as a golf course or a country club; and

(C) that is not separated entirely from the predominantly residential single-family development project by a public street.

(c) In addition to any other requirement of this chapter, a new plat must conform to the requirements of this section if any of the area subject to the new plat is a subdivision golf course. The exception in Section 212.004(a) excluding divisions of land into parts greater than five acres for platting requirements does not apply to a subdivision golf course.

(d) A new plat that is subject to this section may

not be approved until each municipal authority reviewing the new plat conducts a public hearing on the matter at which the parties in interest and citizens have an adequate opportunity to be heard, present evidence, and submit statements or petitions for consideration by the municipal authority. The number, location, and procedure for the public hearings may be designated by the municipal authority for a particular hearing. The municipal authority may abate, continue, or reschedule, as the municipal authority considers appropriate, any public hearing in order to receive a full and complete record on which to make a decision. If the new plat would otherwise be administratively approved, the municipal planning commission is the approving body for the purposes of this section.

(e) The municipal authority may not approve the new plat without adequate consideration of testimony and the record from the public hearings and making the findings required by Subsection (k). Not later than the 30th day after the date on which all proceedings necessary for the public hearings have concluded, the municipal authority shall take action on the application for the new plat. Sections 212.009(a) and (b) do not apply to the approval of plats under this section.

(f) The municipality may provide notice of the initial hearing required by Subsection (d) only after the requirements of Subsections (m) and (n) are met. The notice shall be given before the 15th day before the date of the hearing by:

(1) publishing notice in an official newspaper or a newspaper of general circulation in the county in which the municipality is located;

(2) providing written notice, with a copy of this section attached, by the municipal authority responsible for approving plats to:

(A) each property owners’ association for each neighborhood benefited by the subdivision golf course, as indicated in the most recently filed



management certificates; and

(B) the owners of lots that are within 200 feet of the area subject to the new plat, as indicated:

(i) on the most recently approved municipal tax roll; and

(ii) in the most recent online records of the central appraisal district of the county in which the lots are located; and

(3) any other manner determined by the municipal authority to be necessary to ensure that full and fair notice is provided to all owners of residential single-family lots in the general vicinity of the subdivision golf course.

(g) The written notice required by Subsection (f) (2) may be delivered by depositing the notice, properly addressed with postage prepaid, in the United States mail.

(h) The cost of providing the notices under Subsection (f) shall be paid by the plat applicant.

(i) If written instruments protesting the proposed new plat are signed by the owners of at least 20 percent of the area of the lots or land immediately adjacent to the area covered by a proposed new plat and extending 200 feet from that area and are filed with the municipal planning commission or the municipality's governing body before the conclusion of the public hearings, the proposed new plat must receive, to be approved, the affirmative vote of at least three-fifths of the members of the municipal planning commission or governing body.

(j) In computing the percentage of land area under Subsection (i), the area of streets and alleys is included.

(k) The municipal planning commission or the municipality's governing body may not approve a new plat under this section unless it determines that:

(1) there is adequate existing or planned infrastructure to support the future development of the subdivision golf course;

(2) based on existing or planned facilities, the development of the subdivision golf course will not have a materially adverse effect on:

(A) traffic, parking, drainage, water, sewer, or other utilities;

(B) the health, safety, or general welfare of persons in the municipality; or

(C) safe, orderly, and healthful development of the municipality;

(3) the development of the subdivision golf course will not have a materially adverse effect on existing single-family property values;

(4) the new plat is consistent with all applicable land use regulations and restrictive covenants and the municipality's land use policies as described by the municipality's comprehensive plan or other appropriate public policy documents; and

(5) if any portion of a previous plat reflected a restriction on the subdivision golf course whether:

(A) that restriction is an implied covenant or easement benefiting adjacent residential properties; or

(B) the restriction, covenant, or easement has been legally released or has expired.

(l) The municipal authority may adopt rules to govern the platting of a subdivision golf course that do not conflict with this section, including rules that require more detailed information than is required by Subsection (n) for plans for development and new plat applications.

(m) The application for a new plat under this section is not complete and may not be submitted for review for administrative completeness unless the tax certificates required by Section 12.002(e), Property Code, are attached, notwithstanding that the application is for a type of plat other than a plat specified in that section.

(n) A plan for development or a new plat application for a subdivision golf course is not considered to provide fair notice of the project and nature of the permit sought unless it contains the



following information, complete in all material respects:

- (1) street layout;
 - (2) lot and block layout;
 - (3) number of residential units;
 - (4) location of nonresidential development, by type of development;
 - (5) drainage, detention, and retention plans;
 - (6) screening plan for adjacent residential properties, including landscaping or fencing; and
 - (7) an analysis of the effect of the project on values in the adjacent residential neighborhoods.
- (o) A municipal authority with authority over platting may require as a condition for approval of a plat for a golf course that:
- (1) the area be platted as a restricted reserve for the proposed use; and
 - (2) the plat be incorporated into the plat for any adjacent residential lots.
- (p) An owner of a lot that is within 200 feet of a subdivision golf course may seek declaratory or injunctive relief from a district court to enforce the provisions in this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1092, Sec. 1, eff. June 15, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 635, Sec. 1, eff. June 19, 2009.

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

Acts 2011, 82nd Leg., R.S., Ch. 1163, Sec. 78, eff. September 1, 2011.

Sec. 212.016. AMENDING PLAT. (a) The municipal authority responsible for approving plats may approve and issue an amending plat, which may be recorded and is controlling over the preceding plat without vacation of that plat, if the amending plat is signed by the applicants only and is solely for one or more of the following purposes:

- (1) to correct an error in a course or distance shown on the preceding plat;
- (2) to add a course or distance that was omitted on the preceding plat;
- (3) to correct an error in a real property description shown on the preceding plat;
- (4) to indicate monuments set after the death, disability, or retirement from practice of the engineer or surveyor responsible for setting monuments;
- (5) to show the location or character of a monument that has been changed in location or character or that is shown incorrectly as to location or character on the preceding plat;
- (6) to correct any other type of scrivener or clerical error or omission previously approved by the municipal authority responsible for approving plats, including lot numbers, acreage, street names, and identification of adjacent recorded plats;
- (7) to correct an error in courses and distances of lot lines between two adjacent lots if:
 - (A) both lot owners join in the application for amending the plat;
 - (B) neither lot is abolished;
 - (C) the amendment does not attempt to remove recorded covenants or restrictions; and
 - (D) the amendment does not have a material adverse effect on the property rights of the other owners in the plat;
- (8) to relocate a lot line to eliminate an inadvertent encroachment of a building or other improvement on a lot line or easement;
- (9) to relocate one or more lot lines between one or more adjacent lots if:
 - (A) the owners of all those lots join in the application for amending the plat;
 - (B) the amendment does not attempt to remove recorded covenants or restrictions; and
 - (C) the amendment does not increase the number of lots;



(10) to make necessary changes to the preceding plat to create six or fewer lots in the subdivision or a part of the subdivision covered by the preceding plat if:

- (A) the changes do not affect applicable zoning and other regulations of the municipality;
- (B) the changes do not attempt to amend or remove any covenants or restrictions; and
- (C) the area covered by the changes is located in an area that the municipal planning commission or other appropriate governing body of the municipality has approved, after a public hearing, as a residential improvement area; or

(11) to replat one or more lots fronting on an existing street if:

- (A) the owners of all those lots join in the application for amending the plat;
- (B) the amendment does not attempt to remove recorded covenants or restrictions;
- (C) the amendment does not increase the number of lots; and
- (D) the amendment does not create or require the creation of a new street or make necessary the extension of municipal facilities.

(b) Notice, a hearing, and the approval of other lot owners are not required for the approval and issuance of an amending plat.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 46(b), eff. Aug. 28, 1989; Acts 1995, 74th Leg., ch. 92, Sec. 2, eff. Aug. 28, 1995.

Sec. 212.017. CONFLICT OF INTEREST; PENALTY. (a) In this section, "subdivided tract" means a tract of land, as a whole, that is subdivided. The term does not mean an individual lot in a subdivided tract of land.

(b) A person has a substantial interest in a subdivided tract if the person:

- (1) has an equitable or legal ownership interest in the tract with a fair market value of \$2,500 or

more;

(2) acts as a developer of the tract;

(3) owns 10 percent or more of the voting stock or shares of or owns either 10 percent or more or \$5,000 or more of the fair market value of a business entity that:

(A) has an equitable or legal ownership interest in the tract with a fair market value of \$2,500 or more; or

(B) acts as a developer of the tract; or

(4) receives in a calendar year funds from a business entity described by Subdivision (3) that exceed 10 percent of the person's gross income for the previous year.

(c) A person also is considered to have a substantial interest in a subdivided tract if the person is related in the first degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to another person who, under Subsection (b), has a substantial interest in the tract.

(d) If a member of the municipal authority responsible for approving plats has a substantial interest in a subdivided tract, the member shall file, before a vote or decision regarding the approval of a plat for the tract, an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter. The affidavit must be filed with the municipal secretary or clerk.

(e) A member of the municipal authority responsible for approving plats commits an offense if the member violates Subsection (d). An offense under this subsection is a Class A misdemeanor.

(f) The finding by a court of a violation of this section does not render voidable an action of the municipal authority responsible for approving plats unless the measure would not have passed the municipal authority without the vote of the member who violated this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 624,



Sec. 3.01, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 561, Sec. 38, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), eff. Sept. 1, 1995.

Sec. 212.0175. ENFORCEMENT IN CERTAIN COUNTIES; PENALTY. (a) The attorney general may take any action necessary to enforce a requirement imposed by or under Section 212.0105 or 212.0106 or to ensure that water and sewer service facilities are constructed or installed to service a subdivision in compliance with the model rules adopted under Section 16.343, Water Code.

(b) A person who violates Section 212.0105 or 212.0106 or fails to timely provide for the construction or installation of water or sewer service facilities that the person described on the plat or on the document attached to the plat, as required by Section 212.0105, is subject to a civil penalty of not less than \$500 nor more than \$1,000 plus court costs and attorney's fees.

(c) An owner of a tract of land commits an offense if the owner knowingly or intentionally violates a requirement imposed by or under Section 212.0105 or 212.0106 or fails to timely provide for the construction or installation of water or sewer service facilities that the person described on a plat or on a document attached to a plat, as required by Section 212.0105. An offense under this subsection is a Class B misdemeanor.

(d) A reference in this section to an "owner of a tract of land" does not include the owner of an individual lot in a subdivided tract of land. Added by Acts 1989, 71st Leg., ch. 624, Sec. 3.01, eff. Sept. 1, 1989.

Sec. 212.018. ENFORCEMENT IN GENERAL.

(a) At the request of the governing body of the municipality, the municipal attorney or any other attorney representing the municipality may file an action in a court of competent jurisdiction to:

(1) enjoin the violation or threatened violation by the owner of a tract of land of a requirement regarding the tract and established by, or adopted by the governing body under, this subchapter; or
(2) recover damages from the owner of a tract of land in an amount adequate for the municipality to undertake any construction or other activity necessary to bring about compliance with a requirement regarding the tract and established by, or adopted by the governing body under, this subchapter.

(b) A reference in this section to an "owner of a tract of land" does not include the owner of an individual lot in a subdivided tract of land. Added by Acts 1989, 71st Leg., ch. 1, Sec. 46(b), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 624, Sec. 3.01, eff. Sept. 1, 1989.

SUBCHAPTER B. REGULATION OF PROPERTY DEVELOPMENT

Sec. 212.041. MUNICIPALITY COVERED BY SUBCHAPTER. This subchapter applies only to a municipality whose governing body chooses by ordinance to be covered by this subchapter or chose by ordinance to be covered by the law codified by this subchapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 125, Sec. 1, eff. May 11, 1993; Acts 1993, 73rd Leg., ch. 1046, Sec. 4, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 10.04, eff. Sept. 1, 1995.

Sec. 212.042. APPLICATION OF SUBCHAPTER A. The provisions of Subchapter A that do not conflict with this subchapter apply to development plats.

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

Sec. 212.043. DEFINITIONS. In this subchapter:



(1) “Development” means the new construction or the enlargement of any exterior dimension of any building, structure, or improvement.

(2) “Extraterritorial jurisdiction” means a municipality’s extraterritorial jurisdiction as determined under Chapter 42.

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

Sec. 212.044. PLANS, RULES, AND ORDINANCES. After a public hearing on the matter, the municipality may adopt general plans, rules, or ordinances governing development plats of land within the limits and in the extraterritorial jurisdiction of the municipality to promote the health, safety, morals, or general welfare of the municipality and the safe, orderly, and healthful development of the municipality.

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

Sec. 212.045. DEVELOPMENT PLAT REQUIRED. (a) Any person who proposes the development of a tract of land located within the limits or in the extraterritorial jurisdiction of the municipality must have a development plat of the tract prepared in accordance with this subchapter and the applicable plans, rules, or ordinances of the municipality.

(b) A development plat must be prepared by a registered professional land surveyor as a boundary survey showing:

(1) each existing or proposed building, structure, or improvement or proposed modification of the external configuration of the building, structure, or improvement involving a change of the building, structure, or improvement;

(2) each easement and right-of-way within or abutting the boundary of the surveyed property; and

(3) the dimensions of each street, sidewalk, alley,

square, park, or other part of the property intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the street, sidewalk, alley, square, park, or other part.

(c) New development may not begin on the property until the development plat is filed with and approved by the municipality in accordance with Section 212.047.

(d) If a person is required under Subchapter A or an ordinance of the municipality to file a subdivision plat, a development plat is not required in addition to the subdivision plat.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1091, Sec. 28, eff. Sept. 1, 1989.

Sec. 212.046. RESTRICTION ON ISSUANCE OF BUILDING AND OTHER PERMITS BY MUNICIPALITY, COUNTY, OR OFFICIAL OF OTHER GOVERNMENTAL ENTITY. The municipality, a county, or an official of another governmental entity may not issue a building permit or any other type of permit for development on lots or tracts subject to this subchapter until a development plat is filed with and approved by the municipality in accordance with Section 212.047.

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

Sec. 212.047. APPROVAL OF DEVELOPMENT PLAT. The municipality shall endorse approval on a development plat filed with it if the plat conforms to:

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

(2) the general plans, rules, and ordinances for the extension of the municipality or the extension, improvement, or widening of its roads, streets,



and public highways within the municipality and in its extraterritorial jurisdiction, taking into account access to and extension of sewer and water mains and the instrumentalities of public utilities; and

(3) any general plans, rules, or ordinances adopted under Section 212.044.

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

Sec. 212.048. EFFECT OF APPROVAL ON DEDICATION. The approval of a development plat is not considered an acceptance of any proposed dedication for public use or use by persons other than the owner of the property covered by the plat and does not impose on the municipality any duty regarding the maintenance or improvement of any purportedly dedicated parts until the municipality's governing body makes an actual appropriation of the dedicated parts by formal acceptance, entry, use, or improvement.

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

Sec. 212.049. BUILDING PERMITS IN EXTRATERRITORIAL JURISDICTION. This subchapter does not authorize the municipality to require municipal building permits or otherwise enforce the municipality's building code in its extraterritorial jurisdiction.

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

Sec. 212.050. ENFORCEMENT; PENALTY. (a) If it appears that a violation or threat of a violation of this subchapter or a plan, rule, or ordinance adopted under this subchapter or consistent with this subchapter exists, the municipality is entitled to appropriate injunctive relief against the person who committed, is committing, or is threatening to commit the violation.

(b) A suit for injunctive relief may be brought in the county in which the defendant resides, the county in which the violation or threat of violation occurs, or any county in which the municipality is wholly or partly located.

(c) In a suit to enjoin a violation or threat of a violation of this subchapter or a plan, rule, or ordinance, or other order adopted under this subchapter, the court may grant the municipality any prohibitory or mandatory injunction warranted by the facts including a temporary restraining order, temporary injunction, or permanent injunction.

(d) A person commits an offense if the person violates this subchapter or a plan, rule, or ordinance adopted under this subchapter or consistent with this subchapter within the limits of the municipality. An offense under this subsection is a Class C misdemeanor. Each day the violation continues constitutes a separate offense.

(e) A suit under this section shall be given precedence over all other cases of a different nature on the docket of the trial or appellate court.

(f) It is no defense to a criminal or civil suit under this section that an agency of government other than the municipality issued a license or permit authorizing the construction, repair, or alteration of any building, structure, or improvement. It also is no defense that the defendant had no knowledge of this subchapter or of an applicable plan, rule, or ordinance.

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

SUBCHAPTER C. DEVELOPER PARTICIPATION IN CONTRACT FOR PUBLIC IMPROVEMENTS

Sec. 212.071. DEVELOPER PARTICIPATION CONTRACT. Without complying with the competitive sealed bidding procedure of Chapter 252,



a municipality with 5,000 or more inhabitants may make a contract with a developer of a subdivision or land in the municipality to construct public improvements, not including a building, related to the development. If the contract does not meet the requirements of this subchapter, Chapter 252 applies to the contract if the contract would otherwise be governed by that chapter. Added by Acts 1989, 71st Leg., ch. 1, Sec. 47(b), eff. Aug. 28, 1989. Amended by Acts 1999, 76th Leg., ch. 1547, Sec. 1, eff. Sept. 1, 1999.

Sec. 212.072. DUTIES OF PARTIES UNDER CONTRACT. (a) Under the contract, the developer shall construct the improvements and the municipality shall participate in their cost.

(b) The contract:

- (1) must establish the limit of participation by the municipality at a level not to exceed 30 percent of the total contract price, if the municipality has a population of less than 1.8 million; or
- (2) may allow participation by a municipality at a level not to exceed 70 percent of the total contract price, if the municipality has a population of 1.8 million or more.

(b-1) In addition, if the municipality has a population of 1.8 million or more, the municipality may participate at a level not to exceed 100 percent of the total contract price for all required drainage improvements related to the development and construction of affordable housing. Under this subsection, affordable housing is defined as housing which is equal to or less than the median sales price, as determined by the Real Estate Center at Texas A&M University, of a home in the Metropolitan Statistical Area (MSA) in which the municipality is located.

(c) In addition, the contract may also allow participation by the municipality at a level not to exceed 100 percent of the total cost for any oversizing of improvements required by the mu-

nicipality, including but not limited to increased capacity of improvements to anticipate other future development in the area.

(d) The municipality is liable only for the agreed payment of its share of the contract, which shall be determined in advance either as a lump sum or as a factor or percentage of the total actual cost as determined by municipal ordinance.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 47(b), eff. Aug. 28, 1989. Amended by Acts 1999, 76th Leg., ch. 1526, Sec. 1, eff. Aug. 30, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1075, Sec. 1, eff. June 18, 2005.

Sec. 212.073. PERFORMANCE BOND. The developer must execute a performance bond for the construction of the improvements to ensure completion of the project. The bond must be executed by a corporate surety in accordance with Chapter 2253, Government Code.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 47(b), eff. Aug. 28, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(17), eff. Sept. 1, 1995.

Sec. 212.074. ADDITIONAL SAFEGUARDS; INSPECTION OF RECORDS. (a) In the ordinance adopted by the municipality under Section 212.072(b), the municipality may include additional safeguards against undue loading of cost, collusion, or fraud.

(b) All of the developer's books and other records related to the project shall be available for inspection by the municipality.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 47(b), eff. Aug. 28, 1989.

SUBCHAPTER D. REGULATION OF PROPERTY DEVELOPMENT PROHIBITED IN CERTAIN CIRCUMSTANCES



Sec. 212.101. APPLICATION OF SUBCHAPTER TO CERTAIN HOME-RULE MUNICIPALITY.

This subchapter applies only to a home-rule municipality that:

- (1) has a charter provision allowing for limited-purpose annexation; and
- (2) has annexed territory for a limited purpose.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.02(a), eff. Sept. 1, 1997.

Sec. 212.102. DEFINITIONS. In this subchapter:

- (1) “Affected area” means an area that is:
 - (A) in a municipality or a municipality’s extraterritorial jurisdiction;
 - (B) in a county other than the county in which a majority of the territory of the municipality is located;
 - (C) within the boundaries of one or more school districts other than the school district in which a majority of the territory of the municipality is located; and
 - (D) within the area of or within 1,500 feet of the boundary of an assessment road district in which there are two state highways.
- (2) “Assessment road district” means a road district that has issued refunding bonds and that has imposed assessments on each parcel of land under Subchapter C, Chapter 1471, Government Code.
- (3) “State highway” means a highway that is part of the state highway system under Section 221.001, Transportation Code.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.02(a), eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.289, eff. Sept. 1, 2001.

Sec. 212.103. TRAFFIC OR TRAFFIC OPERATIONS. (a) A municipality may not deny, limit, delay, or condition the use or development of land, any part of which is within an affected area,

because of:

- (1) traffic or traffic operations that would result from the proposed use or development of the land; or
 - (2) the effect that the proposed use or development of the land would have on traffic or traffic operations.
- (b) In this section, an action to deny, limit, delay, or condition the use or development of land includes a decision or other action by the governing body of the municipality or by a commission, board, department, agency, office, or employee of the municipality related to zoning, subdivision, site planning, the construction or building permit process, or any other municipal process, approval, or permit.
- (c) This subchapter does not prevent a municipality from exercising its authority to require the dedication of right-of-way.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.02(a), eff. Sept. 1, 1997.

Sec. 212.104. PROVISION NOT ENFORCEABLE.

A provision in a covenant or agreement relating to land in an affected area that would have the effect of denying, limiting, delaying, or conditioning the use or development of the land because of its effect on traffic or traffic operations may not be enforced by a municipality.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.02(a), eff. Sept. 1, 1997.

Sec. 212.105. SUBCHAPTER CONTROLS. This subchapter controls over any other law relating to municipal regulation of land use or development based on traffic.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.02(a), eff. Sept. 1, 1997.

SUBCHAPTER E. MORATORIUM ON PROPERTY DEVELOPMENT IN CERTAIN CIRCUM-



STANCES

Sec. 212.131. **DEFINITIONS.** In this subchapter:

(1) “Essential public facilities” means water, sewer, or storm drainage facilities or street improvements provided by a municipality or private utility.

(2) “Residential property” means property zoned for or otherwise authorized for single-family or multi-family use.

(3) “Property development” means the construction, reconstruction, or other alteration or improvement of residential or commercial buildings or the subdivision or replatting of a subdivision of residential or commercial property.

(4) “Commercial property” means property zoned for or otherwise authorized for use other than single-family use, multifamily use, heavy industrial use, or use as a quarry.

Added by Acts 2001, 77th Leg., ch. 441, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1321, Sec. 1, eff. September 1, 2005.

Sec. 212.132. **APPLICABILITY.** This subchapter applies only to a moratorium imposed on property development affecting only residential property, commercial property, or both residential and commercial property.

Added by Acts 2001, 77th Leg., ch. 441, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1321, Sec. 2, eff. September 1, 2005.

Sec. 212.133. **PROCEDURE FOR ADOPTING MORATORIUM.** A municipality may not adopt a moratorium on property development unless the municipality:

(1) complies with the notice and hearing proce-

dures prescribed by Section 212.134; and

(2) makes written findings as provided by Section 212.135, 212.1351, or 212.1352, as applicable.

Added by Acts 2001, 77th Leg., ch. 441, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1321, Sec. 2, eff. September 1, 2005.

Sec. 212.134. **NOTICE AND PUBLIC HEARING REQUIREMENTS.** (a) Before a moratorium on property development may be imposed, a municipality must conduct public hearings as provided by this section.

(b) A public hearing must provide municipal residents and affected parties an opportunity to be heard. The municipality must publish notice of the time and place of a hearing in a newspaper of general circulation in the municipality on the fourth day before the date of the hearing.

(c) Beginning on the fifth business day after the date a notice is published under Subsection (b), a temporary moratorium takes effect. During the period of the temporary moratorium, a municipality may stop accepting permits, authorizations, and approvals necessary for the subdivision of, site planning of, or construction on real property.

(d) One public hearing must be held before the governing body of the municipality. Another public hearing must be held before the municipal zoning commission, if the municipality has a zoning commission.

(e) If a general-law municipality does not have a zoning commission, two public hearings separated by at least four days must be held before the governing body of the municipality.

(f) Within 12 days after the date of the first public hearing, the municipality shall make a final determination on the imposition of a moratorium. Before an ordinance adopting a moratorium may be imposed, the ordinance must be given at



least two readings by the governing body of the municipality. The readings must be separated by at least four days. If the municipality fails to adopt an ordinance imposing a moratorium within the period prescribed by this subsection, an ordinance imposing a moratorium may not be adopted, and the temporary moratorium imposed under Subsection (c) expires.

Added by Acts 2001, 77th Leg., ch. 441, Sec. 1, eff. Sept. 1, 2001.

Sec. 212.135. JUSTIFICATION FOR MORATORIUM: SHORTAGE OF ESSENTIAL PUBLIC FACILITIES; WRITTEN FINDINGS REQUIRED.

(a) If a municipality adopts a moratorium on property development, the moratorium is justified by demonstrating a need to prevent a shortage of essential public facilities. The municipality must issue written findings based on reasonably available information.

(b) The written findings must include a summary of:

(1) evidence demonstrating the extent of need beyond the estimated capacity of existing essential public facilities that is expected to result from new property development, including identifying:

- (A) any essential public facilities currently operating near, at, or beyond capacity;
- (B) the portion of that capacity committed to the development subject to the moratorium; and
- (C) the impact fee revenue allocated to address the facility need; and

(2) evidence demonstrating that the moratorium is reasonably limited to:

- (A) areas of the municipality where a shortage of essential public facilities would otherwise occur; and
- (B) property that has not been approved for development because of the insufficiency of existing essential public facilities.

Added by Acts 2001, 77th Leg., ch. 441, Sec. 1, eff.

Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1321, Sec. 2, eff. September 1, 2005.

Sec. 212.1351. JUSTIFICATION FOR MORATORIUM: SIGNIFICANT NEED FOR PUBLIC FACILITIES; WRITTEN FINDINGS REQUIRED.

(a) Except as provided by Section 212.1352, a moratorium that is not based on a shortage of essential public facilities is justified only by demonstrating a significant need for other public facilities, including police and fire facilities. For purposes of this subsection, a significant need for public facilities is established if the failure to provide those public facilities would result in an overcapacity of public facilities or would be detrimental to the health, safety, and welfare of the residents of the municipality. The municipality must issue written findings based on reasonably available information.

(b) The written findings must include a summary of:

(1) evidence demonstrating that applying existing development ordinances or regulations and other applicable laws is inadequate to prevent the new development from causing the overcapacity of municipal infrastructure or being detrimental to the public health, safety, and welfare in an affected geographical area;

(2) evidence demonstrating that alternative methods of achieving the objectives of the moratorium are unsatisfactory; and

(3) evidence demonstrating that the municipality has approved a working plan and time schedule for achieving the objectives of the moratorium.

Added by Acts 2005, 79th Leg., Ch. 1321, Sec. 2, eff. September 1, 2005.

Sec. 212.1352. JUSTIFICATION FOR COMMERCIAL MORATORIUM IN CERTAIN CIRCUM-



STANCES; WRITTEN FINDINGS REQUIRED.

(a) If a municipality adopts a moratorium on commercial property development that is not based on a demonstrated shortage of essential public facilities, the municipality must issue written findings based on reasonably available information that the moratorium is justified by demonstrating that applying existing commercial development ordinances or regulations and other applicable laws is inadequate to prevent the new development from being detrimental to the public health, safety, or welfare of the residents of the municipality.

(b) The written findings must include a summary of:

- (1) evidence demonstrating the need to adopt new ordinances or regulations or to amend existing ordinances, including identification of the harm to the public health, safety, or welfare that will occur if a moratorium is not adopted;
- (2) the geographical boundaries in which the moratorium will apply;
- (3) the specific types of commercial property to which the moratorium will apply; and
- (4) the objectives or goals to be achieved by adopting new ordinances or regulations or amending existing ordinances or regulations during the period the moratorium is in effect.

Added by Acts 2005, 79th Leg., Ch. 1321, Sec. 2, eff. September 1, 2005.

Sec. 212.136. EXPIRATION OF MORATORIUM; EXTENSION. A moratorium adopted under Section 212.135 or 212.1351 expires on the 120th day after the date the moratorium is adopted unless the municipality extends the moratorium by:

- (1) holding a public hearing on the proposed extension of the moratorium; and
- (2) adopting written findings that:
 - (A) identify the problem requiring the need for extending the moratorium;

(B) describe the reasonable progress made to alleviate the problem; and

(C) specify a definite duration for the renewal period of the moratorium.

Added by Acts 2001, 77th Leg., ch. 441, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1321, Sec. 2, eff. September 1, 2005.

Sec. 212.1361. NOTICE FOR EXTENSION REQUIRED. A municipality proposing an extension of a moratorium under this subchapter must publish notice in a newspaper of general circulation in the municipality not later than the 15th day before the date of the hearing required by this subchapter.

Added by Acts 2005, 79th Leg., Ch. 1321, Sec. 2, eff. September 1, 2005.

Sec. 212.1362. EXPIRATION OF MORATORIUM ON COMMERCIAL PROPERTY IN CERTAIN CIRCUMSTANCES; EXTENSION. (a) A moratorium on commercial property adopted under Section 212.1352 expires on the 90th day after the date the moratorium is adopted unless the municipality extends the moratorium by:

- (1) holding a public hearing on the proposed extension of the moratorium; and
- (2) adopting written findings that:
 - (A) identify the problem requiring the need for extending the moratorium;
 - (B) describe the reasonable progress made to alleviate the problem;
 - (C) specify a definite duration for the renewal period of the moratorium; and
 - (D) include a summary of evidence demonstrating that the problem will be resolved within the extended duration of the moratorium.

(b) A municipality may not adopt a moratorium on commercial property under Section 212.1352



that exceeds an aggregate of 180 days. A municipality may not adopt a moratorium on commercial property under Section 212.1352 before the second anniversary of the expiration date of a previous moratorium if the subsequent moratorium addresses the same harm, affects the same type of commercial property, or affects the same geographical area identified by the previous moratorium.

Added by Acts 2005, 79th Leg., Ch. 1321, Sec. 2, eff. September 1, 2005.

Sec. 212.137. WAIVER PROCEDURES REQUIRED. (a) A moratorium adopted under this subchapter must allow a permit applicant to apply for a waiver from the moratorium relating to the property subject to the permit by:

- (1) claiming a right obtained under a development agreement; or
- (2) providing the public facilities that are the subject of the moratorium at the landowner's cost.

(b) The permit applicant must submit the reasons for the request to the governing body of the municipality in writing. The governing body of the municipality must vote on whether to grant the waiver request within 10 days after the date of receiving the written request.

Added by Acts 2001, 77th Leg., ch. 441, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1321, Sec. 2, eff. September 1, 2005.

Sec. 212.138. EFFECT ON OTHER LAW. A moratorium adopted under this subchapter does not affect the rights acquired under Chapter 245 or common law.

Added by Acts 2001, 77th Leg., ch. 441, Sec. 1, eff. Sept. 1, 2001.

Sec. 212.139. LIMITATION ON MORATORIUM.

(a) A moratorium adopted under this subchapter does not affect an application for a project in progress under Chapter 245.

(b) A municipality may not adopt a moratorium under this subchapter that:

- (1) prohibits a person from filing or processing an application for a project in progress under Chapter 245; or
- (2) prohibits or delays the processing of an application for zoning filed before the effective date of the moratorium.

Added by Acts 2005, 79th Leg., Ch. 1321, Sec. 2, eff. September 1, 2005.

SUBCHAPTER F. ENFORCEMENT OF LAND USE RESTRICTIONS CONTAINED IN PLATS AND OTHER INSTRUMENTS

Sec. 212.151. MUNICIPALITY COVERED BY SUBCHAPTER. This subchapter applies only to a municipality with a population of 1.5 million or more that passes an ordinance that requires uniform application and enforcement of this subchapter with regard to all property and residents or to a municipality that does not have zoning ordinances and passes an ordinance that requires uniform application and enforcement of this subchapter with regard to all property and residents. Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 893, Sec. 1, eff. Sept. 1, 1991. Renumbered from Local Government Code Sec. 230.001 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(1), eff. Sept. 1, 2001. Renumbered from Local Government Code Sec. 212.131 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(107), eff. Sept. 1, 2003.

Sec. 212.152. DEFINITION. In this subchapter, "restriction" means a land-use regulation that:

- (1) affects the character of the use to which real



property, including residential and rental property, may be put;

(2) fixes the distance that a structure must be set back from property lines, street lines, or lot lines;

(3) affects the size of a lot or the size, type, and number of structures that may be built on the lot;

(4) regulates or restricts the type of activities that may take place on the property, including commercial activities, sweepstakes activities, keeping of animals, use of fire, nuisance activities, vehicle storage, and parking;

(5) regulates architectural features of a structure, construction of fences, landscaping, garbage disposal, or noise levels; or

(6) specifies the type of maintenance that must be performed on a lot or structure, including maintenance of a yard or fence.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Renumbered from Local Government Code, Sec. 230.002 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(1), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1044, Sec. 1, eff. Sept. 1, 2003. Renumbered from Local Government Code, Sec. 212.132 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(107), eff. Sept. 1, 2003.

Sec. 212.153. SUIT TO ENFORCE RESTRICTIONS.

(a) Except as provided by Subsection (b), the municipality may sue in any court of competent jurisdiction to enjoin or abate a violation of a restriction contained or incorporated by reference in a properly recorded plan, plat, or other instrument that affects a subdivision located inside the boundaries of the municipality.

(b) The municipality may not initiate or maintain a suit to enjoin or abate a violation of a restriction if a property owners' association with the authority to enforce the restriction files suit to enforce the restriction.

(c) In a suit by a property owners' association to enforce a restriction, the association may not

submit into evidence or otherwise use the work product of the municipality's legal counsel.

(d) In a suit filed under this section alleging that any of the following activities violates a restriction limiting property to residential use, it is not a defense that the activity is incidental to the residential use of the property:

(1) storing a tow truck, crane, moving van or truck, dump truck, cement mixer, earth-moving device, or trailer longer than 20 feet; or

(2) repairing or offering for sale more than two motor vehicles in a 12-month period.

(e) A municipality may not enforce a deed restriction which purports to regulate or restrict the rights granted to public utilities to install, operate, maintain, replace, and remove facilities within easements and private or public rights-of-way.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Renumbered from Local Government Code, Sec. 230.003 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1044, Sec. 2, eff. Sept. 1, 2003. Renumbered from Local Government Code, Sec. 212.133 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(107), eff. Sept. 1, 2003.

Sec. 212.1535. FORECLOSURE BY PROPERTY OWNERS' ASSOCIATION. (a) A municipality may not participate in a suit or other proceeding to foreclose a property owners' association's lien on real property.

(b) In a suit or other proceeding to foreclose a property owners' association's lien on real property in the subdivision, the association may not submit into evidence or otherwise use the work product of the municipality's legal counsel.

Added by Acts 2003, 78th Leg., ch. 1044, Sec. 4, eff. Sept. 1, 2003.

Renumbered from Local Government Code, Section 212.1335 by Acts 2007, 80th Leg., R.S., Ch.



921, Sec. 17.001(53), eff. September 1, 2007

Sec. 212.154. LIMITATION ON ENFORCEMENT. A restriction contained in a plan, plat, or other instrument that was properly recorded before August 30, 1965, may be enforced as provided by Section 212.153, but a violation of a restriction that occurred before that date may not be enjoined or abated by the municipality as long as the nature of the violation remains unchanged. Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Renumbered from Local Government Code Sec. 230.004 and amended by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(1), eff. Sept. 1, 2001. Renumbered from Local Government Code Sec. 212.134 and amended by Acts 2003, 78th Leg., ch. 1275, Sec. 2(107), 3(33), eff. Sept. 1, 2003.

Sec. 212.155. NOTICE TO PURCHASERS. (a) The governing body of the municipality may require, in the manner prescribed by law for official action of the municipality, any person who sells or conveys restricted property located inside the boundaries of the municipality to first give to the purchaser written notice of the restrictions and notice of the municipality's right to enforce compliance.

(b) If the municipality elects under this section to require that notice be given, the notice to the purchaser shall contain the following information:

- (1) the name of each purchaser;
- (2) the name of each seller;
- (3) a legal description of the property;
- (4) the street address of the property;
- (5) a statement that the property is subject to deed restrictions and the municipality is authorized to enforce the restrictions;
- (6) a reference to the volume and page, clerk's file number, or film code number where the restrictions are recorded; and
- (7) a statement that provisions that restrict the

sale, rental, or use of the real property on the basis of race, color, religion, sex, or national origin are unenforceable.

(c) If the municipality elects under this section to require that notice be given, the following procedure shall be followed to ensure the delivery and recordation of the notice:

- (1) the notice shall be given to the purchaser at or before the final closing of the sale and purchase;
- (2) the seller and purchaser shall sign and acknowledge the notice; and
- (3) following the execution, acknowledgment, and closing of the sale and purchase, the notice shall be recorded in the real property records of the county in which the property is located.

(d) If the municipality elects under this section to require that notice be given:

- (1) the municipality shall file in the real property records of the county clerk's office in each county in which the municipality is located a copy of the form of notice, with its effective date, that is prescribed for use by any person who sells or conveys restricted property located inside the boundaries of the municipality;
- (2) all sellers and all persons completing the prescribed notice on the seller's behalf are entitled to rely on the currently effective form filed by the municipality;
- (3) the municipality may prescribe a penalty against a seller, not to exceed \$500, for the failure of the seller to obtain the execution and recordation of the notice; and
- (4) an action may not be maintained by the municipality against a seller to collect a penalty for the failure to obtain the execution and recordation of the notice if the municipality has not filed for record the form of notice with the county clerk of the appropriate county.

(e) This section does not limit the seller's right to recover a penalty, or any part of a penalty, imposed pursuant to Subsection (d)(3) from a third



party for the negligent failure to obtain the execution or proper recordation of the notice.

(f) The failure of the seller to comply with the requirements of this section and the implementing municipal regulation does not affect the validity or enforceability of the sale or conveyance of restricted property or the validity or enforceability of restrictions covering the property.

(g) For the purposes of this section, an executory contract of purchase and sale having a performance period of more than six months is considered a sale under Subsection (a).

(h) For the purposes of the disclosure required by this section, restrictions may not include provisions that restrict the sale, rental, or use of property on the basis of race, color, religion, sex, or national origin and may not include any restrictions that by their express provisions have terminated.

Added by Acts 1989, 71st Leg., ch. 446, Sec. 1, eff. June 14, 1989. Renumbered from Local Government Code Sec. 230.005 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(1), eff. Sept. 1, 2001. Renumbered from Local Government Code Sec. 212.135 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(107), eff. Sept. 1, 2003.

Sec. 212.156. ENFORCEMENT BY ORDINANCE; CIVIL PENALTY. (a) The governing body of the municipality by ordinance may require compliance with a restriction contained or incorporated by reference in a properly recorded plan, plat, or other instrument that affects a subdivision located inside the boundaries of the municipality.

(b) The municipality may bring a civil action to recover a civil penalty for a violation of the restriction. The municipality may bring an action and recover the penalty in the same manner as a municipality may bring an action and recover a penalty under Subchapter B, Chapter 54.

(c) For the purposes of an ordinance adopted

under this section, restrictions do not include provisions that restrict the sale, rental, or use of property on the basis of race, color, religion, sex, or national origin and do not include any restrictions that by their express provisions have terminated.

Added by Acts 1991, 72nd Leg., ch. 893, Sec. 2, eff. Sept. 1, 1991. Renumbered from Local Government Code Sec. 230.006 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(1), eff. Sept. 1, 2001. Renumbered from Local Government Code Sec. 212.136 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(107), eff. Sept. 1, 2003.

Sec. 212.157. GOVERNMENTAL FUNCTION. An action filed by a municipality under this subchapter to enforce a land use restriction is a governmental function of the municipality.

Added by Acts 2001, 77th Leg., ch. 1399, Sec. 2, eff. June 16, 2001.

Renumbered from Local Government Code, Section 230.007 by Acts 2007, 80th Leg., R.S., Ch. 921, Sec. 17.001(56), eff. September 1, 2007

Sec. 212.158. EFFECT ON OTHER LAW. This subchapter does not prohibit the exhibition, play, or necessary incidental action thereto of a sweepstakes not prohibited by Chapter 622, Business & Commerce Code.

Added by Acts 2003, 78th Leg., ch. 1044, Sec. 5, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885, Sec. 2.25, eff. April 1, 2009.

Renumbered from Local Government Code, Section 212.138 by Acts 2007, 80th Leg., R.S., Ch. 921, Sec. 17.001(54), eff. September 1, 2007.

SUBCHAPTER G. AGREEMENT GOVERNING CERTAIN LAND IN A MUNICIPALITY'S EXTRATERRITORIAL JURISDICTION



Sec. 212.171. **APPLICABILITY.** This subchapter does not apply to land located in the extraterritorial jurisdiction of a municipality with a population of 1.9 million or more.

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

Sec. 212.172. **DEVELOPMENT AGREEMENT.**

(a) In this subchapter, “extraterritorial jurisdiction” means a municipality’s extraterritorial jurisdiction as determined under Chapter 42.

(b) The governing body of a municipality may make a written contract with an owner of land that is located in the extraterritorial jurisdiction of the municipality to:

- (1) guarantee the continuation of the extraterritorial status of the land and its immunity from annexation by the municipality;
- (2) extend the municipality’s planning authority over the land by providing for a development plan to be prepared by the landowner and approved by the municipality under which certain general uses and development of the land are authorized;
- (3) authorize enforcement by the municipality of certain municipal land use and development regulations in the same manner the regulations are enforced within the municipality’s boundaries;
- (4) authorize enforcement by the municipality of land use and development regulations other than those that apply within the municipality’s boundaries, as may be agreed to by the landowner and the municipality;
- (5) provide for infrastructure for the land, including:
 - (A) streets and roads;
 - (B) street and road drainage;
 - (C) land drainage; and
 - (D) water, wastewater, and other utility systems;
- (6) authorize enforcement of environmental regulations;

(7) provide for the annexation of the land as a whole or in parts and to provide for the terms of annexation, if annexation is agreed to by the parties;

(8) specify the uses and development of the land before and after annexation, if annexation is agreed to by the parties; or

(9) include other lawful terms and considerations the parties consider appropriate.

(c) An agreement under this subchapter must:

- (1) be in writing;
 - (2) contain an adequate legal description of the land;
 - (3) be approved by the governing body of the municipality and the landowner; and
 - (4) be recorded in the real property records of each county in which any part of the land that is subject to the agreement is located.
- (d) The total duration of the contract and any successive renewals or extensions may not exceed 45 years.
- (e) A municipality in an affected county, as defined by Section 16.341, Water Code, may not enter into an agreement under this subchapter that is inconsistent with the model rules adopted under Section 16.343, Water Code.
- (f) The agreement between the governing body of the municipality and the landowner is binding on the municipality and the landowner and on their respective successors and assigns for the term of the agreement. The agreement is not binding on, and does not create any encumbrance to title as to, any end-buyer of a fully developed and improved lot within the development, except for land use and development regulations that may apply to a specific lot.
- (g) An agreement under this subchapter constitutes a permit under Chapter 245.
- (h) An agreement between a municipality and a landowner entered into prior to the effective date of this section and that complies with this section



is validated.

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

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 281, Sec. 1, eff. June 17, 2011.

Sec. 212.173. CERTAIN COASTAL AREAS. This subchapter does not apply to, limit, or otherwise affect any ordinance, order, rule, plan, or standard adopted by this state or a state agency, county, municipality, or other political subdivision of this state under the federal Coastal Zone Management Act of 1972 (16 U.S.C. Section 1451 et seq.), and its subsequent amendments, or Subtitle E, Title 2, Natural Resources Code.

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

Sec. 212.174. MUNICIPAL UTILITIES. A municipality may not require an agreement under this subchapter as a condition for providing water, sewer, electricity, gas, or other utility service from a municipally owned or municipally operated utility that provides any of those services.

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

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 212.901. DEVELOPER REQUIRED TO PROVIDE SURETY. (a) To ensure that it will not incur liabilities, a municipality may require, before it gives approval of the plans for a development, that the owner of the development provide sufficient surety to guarantee that claims against the development will be satisfied if a default occurs. (b) This section does not preclude a claimant from seeking recovery by other means.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 48(a),

eff. Aug. 28, 1989.

Sec. 212.902. SCHOOL DISTRICT LAND DEVELOPMENT STANDARDS. (a) This section applies to agreements between school districts and any municipality which has annexed territory for limited purposes.

(b) On request by a school district, a municipality shall enter an agreement with the board of trustees of the school district to establish review fees, review periods, and land development standards ordinances and to provide alternative water pollution control methodologies for school buildings constructed by the school district. The agreement shall include a provision exempting the district from all land development ordinances in cases where the district is adding temporary classroom buildings on an existing school campus.

(c) If the municipality and the school district do not reach an agreement on or before the 120th day after the date on which the municipality receives the district's request for an agreement, proposed agreements by the school district and the municipality shall be submitted to an independent arbitrator appointed by the presiding district judge whose jurisdiction includes the school district. The arbitrator shall, after a hearing at which both the school district and municipality make presentations on their proposed agreements, prepare an agreement resolving any differences between the proposals. The agreement prepared by the arbitrator will be final and binding upon both the school district and the municipality. The cost of the arbitration proceeding shall be borne equally by the school district and the municipality.

(d) A school district that requests an agreement under this section, at the time it makes the request, shall send a copy of the request to the commissioner of education. At the end of the 120-day period, the requesting district shall report to the



commissioner the status or result of negotiations with the municipality. A municipality may send a separate status report to the commissioner. The district shall send to the commissioner a copy of each agreement between the district and a municipality under this section.

(e) In this section, “land development standards” includes impervious cover limitations, building setbacks, floor to area ratios, building coverage, water quality controls, landscaping, development setbacks, compatibility standards, traffic analyses, and driveway cuts, if applicable.

(f) Nothing in this section shall be construed to limit the applicability of or waive fees for fire, safety, health, or building code ordinances of the municipality prior to or during construction of school buildings, nor shall any agreement waive any fee or modify any ordinance of a municipality for an administration, service, or athletic facility proposed for construction by a school district. Added by Acts 1990, 71st Leg., 6th C.S., ch. 1, Sec. 3.18, eff. Sept. 1, 1990.

Sec. 212.903. CONSTRUCTION AND RENOVATION WORK ON COUNTY-OWNED BUILDINGS OR FACILITIES IN CERTAIN COUNTIES.

(a) This section applies only to a county with a population of 250,000 or more.

(b) A municipality is not authorized to require a county to notify the municipality or obtain a building permit for any new construction or renovation work performed within the limits of the municipality by the county’s personnel or by county personnel acting as general contractor on county-owned buildings or facilities. Such construction or renovation work shall be inspected by a registered professional engineer or architect licensed in this state in accordance with any other applicable law. A municipality may require a building permit for construction or renovation work performed on county-owned buildings or

facilities by private general contractors.

(c) This section does not exempt a county from complying with a municipality’s building code standards when performing construction or renovation work.

Added by Acts 1997, 75th Leg., ch. 271, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 368, Sec. 1, eff. Aug. 30, 1999.

Sec. 212.904. APPORTIONMENT OF MUNICIPAL INFRASTRUCTURE COSTS.

(a) If a municipality requires as a condition of approval for a property development project that the developer bear a portion of the costs of municipal infrastructure improvements by the making of dedications, the payment of fees, or the payment of construction costs, the developer’s portion of the costs may not exceed the amount required for infrastructure improvements that are roughly proportionate to the proposed development as approved by a professional engineer who holds a license issued under Chapter 1001, Occupations Code, and is retained by the municipality.

(b) A developer who disputes the determination made under Subsection (a) may appeal to the governing body of the municipality. At the appeal, the developer may present evidence and testimony under procedures adopted by the governing body. After hearing any testimony and reviewing the evidence, the governing body shall make the applicable determination within 30 days following the final submission of any testimony or evidence by the developer.

(c) A developer may appeal the determination of the governing body to a county or district court of the county in which the development project is located within 30 days of the final determination by the governing body.

(d) A municipality may not require a developer to waive the right of appeal authorized by this section as a condition of approval for a development



project.

(e) A developer who prevails in an appeal under this section is entitled to applicable costs and to reasonable attorney's fees, including expert witness fees.

(f) This section does not diminish the authority or modify the procedures specified by Chapter 395.

Added by Acts 2005, 79th Leg., Ch. 982, Sec. 1, eff. June 18, 2005.



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