


**LAND USE LAW**  
PROCEDURAL TOOLS AND TRAPS

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**ZONING REGULATIONS**



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The Texas Supreme Court has established four basic criteria that should be used in reviewing zoning ordinances:

1. respect for the approved comprehensive plan;
2. the nature and degree of adverse impact on neighboring properties;
3. the suitability of the tract as presently zoned; and
4. the existence of a substantial relationship between the ordinance and the public health, safety, morals or general welfare.



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## Tools

- Comprehensive Plan
- Comprehensive Zoning Ordinance

Criteria for adoption:

1. respect for the approved comprehensive plan;
2. the nature and degree of adverse impact on neighboring properties;
3. the suitability of the tract as presently zoned; and
4. the existence of a substantial relationship between the ordinance and the public health, safety, morals or general welfare.




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Preemption by Specific Legislation.  
The authority of a local government to adopt zoning regulations may be preempted by an express statutory enactment of the legislature.

- Sale of alcoholic beverages.  
*City of Dallas v. Dallas Merchants Concessionaires Association*, 823 S.W.2d 347
- Pawn shop regulation.  
TEX. LOC. GOV'T CODE § 211.0035
- Sexually oriented businesses.  
TEX. LOC. GOV'T CODE § 243.003
- Manufactured housing.  
TEX. OCC. CODE § 1201

## Limitations on Zoning




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# NOTICE




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# PROPER NOTICE

- Notice to the property owner, as certified on the most recent municipal property tax roles, located within 200 feet of the property subject to zoning change:
  - At least **11** days before Planning & Zoning meeting
  - At least **16** days before City Council meeting
- Contents of Notice
- Substantial change requires new notice




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Insufficient notice is no notice at all and **INVALIDATES** the ordinance

Errors may not be fatal and will not automatically render the notice legally insufficient.

### EXAMPLE

A misidentification of the current zoning classification of the property was acceptable when the mistake did not result in any failure to give accurate notice of which land was to be rezoned or of the nature of the proposed change of zoning.

Eurdaly v. City of Colleyville, 642 S.W.2d 75 (Tex. App.—Fort Worth 1982, writ ref'd n.r.e.)




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- Even if a City fails to provide proper notice, if no person challenges the adoption of the ordinance within three years, the ordinance is valid despite such errors
- The Validation Statute creates a conclusive presumption of validity for actions taken more than three years before suit is filed

TEX. LOC. GOV'T CODE § 51.003

# VALIDATION STATUTE




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- Zoning ordinances must be adopted by a majority of the City Council; however, if there is a proper protest, the vote changes to a **supermajority** for passage.

- Proper protest

Written protest is signed by at least twenty percent of the owners of either:

1. the property covered by the proposed change; or
2. the land within 200 feet of the subject property.

## VOTING issues



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## PLAT REGULATIONS



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## WHEN IS A PLAT REQUIRED?

### For a subdivision...

- Instrument conveying portion of property;
- Division into lots, laying out streets, alleys, and other areas dedicated to the public.



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At a minimum, should identify:

1. lot lines and dimensions;
2. the locations of streets and alleys;
3. utility easements; and
4. dedications of parks and other areas designated for public use.

Local subdivision regulations may include additional requirements.

Plat Requirements

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To be recorded, the plat must:

- describe the subdivision by metes and bounds;
- locate the subdivision with respect to a corner of the survey or tract;
- identify the dimensions of the subdivision and each street, alley, park, and other portion to be dedicated to the public use or the use of abutting property owners; and
- must contain a jurat or acknowledgement similar to a deed.

TEX. LOC. GOV'T CODE § 212.004(b).

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**Platting Process**

- Concept Plan
- Preliminary Plat
- Final Plat


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**Standards for Approval**

A plat shall be approved if:

- 1.it conforms to the city's general plan 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, taking into account access to and extension of sewer and water mains and the instrumentalities of public utilities; and
- 3.it complies with the city's subdivision and other regulations.




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
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**DOES THE CITY HAVE TO PROVIDE THE REASON FOR A PLAT DENIAL?**

**YES**, upon request by the applicant, the City must certify the reasons for the plat denial.

TEX. LOCAL GOV'T CODE  
§ 212.009




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“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.”  
Tex. Local Gov't Code § 212.009

- Plat deemed approved by operation of law if not denied within 30 days of filing.
- If process involves P&Z and council review process, the 30-day period applies to each body.
- Applicant can request, and city must issue, certificate stating date of filing and failure to act within 30 days.

## 30-day rule



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## QUESTIONS ?

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