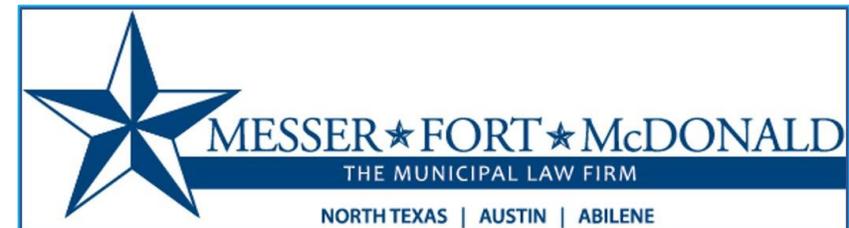


# Land Use Training

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Be Prepared . . .

# The Basics

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# Zoning – What Is It?

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The division of a city or area into districts and the prescription and application of different land use regulations in each district. An exercise of the police power that allows cities to regulate the rights of a private individual for the good of the community.



# A Brief History of Zoning

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Zoning is a valid exercise of the police power to protect the community's health, safety and welfare.



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

# A Brief History of Zoning

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- Standard Zoning Enabling Act – 1926
- Texas:
  - *Lombardo v. City of Dallas*, 124 Tex. 1, 73 S.W. 2d 475 (1934)
    - All property is held subject to the police power
    - A proper zoning regulation is not a “taking” for which compensation must be paid
  - Texas Local Government Code – Chapter 211

# Purpose – §211.001

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To promote the public health, safety, morals, or general welfare and protecting and preserving places and areas of historical, cultural, or architectural importance and significance.



got purpose?

# What Can Cities Regulate – §211.003

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1. The height, number of stories, and size of buildings and other structures
2. The percentage of a lot that may be occupied
3. The size of yards, courts, and other open spaces
4. Population density
5. The location and use of buildings, other structures, and land for business, industrial, residential or other purposes
6. In areas of historical, cultural or architectural significance - may regulate construction, reconstruction, alteration or razing of buildings or other structures
7. Home rule cities may also regulate the bulk of buildings

# Districts – § 211.005

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1. City may divide the municipality into districts of a number, shape, and size
2. Regulations must be uniform for each class or kind of building in a district
3. Regulations may vary from district to district
4. Regulations must be adopted “with reasonable consideration, among others things, for the character of each district and its peculiar suitability for particular uses with a view of conserving the value of buildings and encouraging the most appropriate use of land in the municipality”
5. Planned Development Districts
6. Conditional Use Permit

# The Comprehensive Plan – §211.004

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1. Zoning regulations must be adopted in accordance with a comprehensive plan and must be designed to (police power elements):
  - a. lessen congestion in the streets
  - b. secure safety from fire, panic, and other dangers
  - c. promote health and general welfare
  - d. provide adequate light and air
  - e. prevent the overcrowding of land
  - f. avoid undue concentration of population
  - g. facilitate that adequate provision of transportation, water, sewers, schools, parks, and other public requirements

# The Comprehensive Plan – §211.004

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## 2. Elements of a Comprehensive Plan

- a. Land use plan
- b. Transportation plan
- c. Park and Open Space plan
- d. Housing and Public facilities plan
- e. Written policies and goals



# Procedures - §211.006 and 211.007

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## 1. Notice of Public Hearings

- a. Mailed notice of P&Z hearing to property owners within 200 feet

“Before the 10<sup>th</sup> day before the hearing date, . . .” §211.007(c)

- b. Publish notice of City Council hearing in the newspaper of general circulation

“Before the 15<sup>th</sup> day before the date of the hearing, . . .” §211.006(a)

## 2. Hearing - Public hearings required

- 3. P&Z Recommendation – P&Z must make a recommendation prior to the City Council public hearing (in a General Law city, the Council may act as the zoning commission)

# Procedures - §211.006 and 211.007

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4. Legislative Action by City Council
  - a. Generally simple majority vote approves a zoning change
  - b. Protest by Neighbors- if the property owners of 20% of the area with 200 feet of the proposed zoning change file a written protest, the Council must vote by a super-majority (3/4 of the members voting in the affirmative) to approve an amendment
  - c. Protest by Owner- If the property owners of 20% of the land area covered by the proposed amendment file a protest, the Council must vote by a super-majority (3/4 of the members voting in the affirmative) to approve an amendment
  - d. Many local ordinances require more than a simple majority vote by City Council to approve zoning that received a negative recommendation from the P&Z

# Making a Zoning Decision

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# Fourteenth Amendment

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1. The 14th Amendment provides that states (cities) shall not deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
2. Due process requires that all persons similarly situated should be treated similarly (equal protection).
3. Due process also requires that before a person may be deprived of a property right as a result of the zoning process, they are entitled to notice and a hearing.

# Fourteenth Amendment

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a. When does an individual have a property interest?

Chapter 211 of the TEXAS LOCAL GOVT. CODE is the Texas Legislature's practical response. If you are the property owner of the property being rezoned or if you own property within 200 feet of the property being rezoned, then you are deemed to have a property interest in the governmental action. (Home-rule cities may provide different rules.)

b. What notice is required?

Again, § 211.007 of the TEXAS LOCAL GOVT. CODE establishes that written notice, 10 days prior to the public hearing before the Zoning Commission is deemed to be adequate notice. (Home-rule cities may provide different rules.)

c. What hearing is required?

See §211.006 and § 211.007 of the TEXAS LOCAL GOVT. CODE.

# Fifth Amendment

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1. The 5th Amendment provides that private property shall not be taken for public use without just compensation.
2. There are typically two types of claims for a taking by a municipality. One involves an actual physical invasion of private property and the other a diminution in the development rights on the property by virtue of some regulatory action taken by the city.
  - a. Physical invasion.

**Illustration:** A city passes an ordinance which requires that a landowner permit the installation of a very small cable t.v. connection box and connection by the cable company upon payment to the property owner of a nominal fee.

*See Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982).

# Fifth Amendment

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## b. Regulatory taking.

**Illustration:** A developer owns property located on a steep hillside that is zoned a Planned Development District for single family homes that would allow 60 homes to be built on the hillside. The city conducts a hillside preservation study and as a result implements a rezoning of the property that ties the maximum density permitted to the degree of slope of the hillside. The bottom line is that the developer will now only be permitted to construct 10 houses instead of his original 60. He claims that his property has been taken for a public use (preservation of the hillside for the enjoyment of all residents of the city) without just compensation.

*See City of El Paso v. Madero Development*, 803 S.W.2d 396 (Tex. App. -- El Paso 1991, writ denied).

# First Amendment

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1. The 1st Amendment provides that congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.
2. Land use regulation challenges typically involve two oft-discussed freedoms: freedom of speech and freedom of religion.

# First Amendment

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**Illustration:** Freedom of speech -- A municipality adopts a sign ordinance prohibiting all off-premise advertising (commercial billboards) and limiting on-premise signs to the display of commercial messages (general business signs).

*See Metromedia, Inc. v. City of San Diego*, 453 U.S. 490 (1981).

**Illustration:** Freedom of speech -- A municipality has an ordinance regulating sexually oriented businesses by prohibiting them from locating within 1,000 feet of another sexually oriented business, bars, taverns, pool halls, residential property, schools, churches and hospitals. The municipality's stated purpose in the regulation was to prevent the neighborhood deterioration that has been shown to accompany the concentration of adult businesses in a neighborhood.