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**ZONING 101**

Brenda N. McDonald

Brenda N. McDonald  
Messer, Fort & McDonald, PLLC  
6371 Preston Road  
Suite 200  
Frisco, TX 75034  
[brenda@txmunicipallaw.com](mailto:brenda@txmunicipallaw.com)  
972.668.6400

# THE FUNDAMENTALS OF ZONING<sup>1</sup>

Zoning is one of the most crucial powers of a local government. It allows a city to maintain population density, prevent crime, protect civil rights, promote business, and further the needs of the community. It is an exercise of the state police power that allows cities to regulate the property rights of a private individual for the good of the community. Zoning involves the division of a city or area into districts, and the prescription and application of different land use regulations in each district.

## **The History of Zoning**

Interestingly, zoning began as a response to dangerous conditions posed to public health to reduce the presence of waste, nuisances, and other conditions associated with threats to the public health and safety.<sup>2</sup> As cities became larger through the early 20<sup>th</sup> century, more formal planning of growing communities began to evolve.<sup>3</sup> This led to the first constitutional challenge of zoning in 1926, which became the foundation for local planning and zoning authority, so much so that traditional zoning practices are referred to as “Euclidian zoning.”<sup>4</sup>

## **Village of Euclid v. Ambler Realty Co.**

The zoning power was initially challenged facially as a violation of the 14<sup>th</sup> Amendment of the Constitution, which protects the government from infringing on an individual’s fundamental rights.<sup>5</sup> The Supreme Court held in *Village of Euclid v. Ambler Realty Co.* that zoning is constitutional as a valid exercise of the police power to protect the community’s health, safety and welfare.<sup>6</sup> The Court found that before a

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<sup>1</sup> This article was authored by Cameron Saenz, soon to be a first-year associate with the firm, and edited by Brenda McDonald. Cameron may be reached at [cameron@txmunicipallaw.com](mailto:cameron@txmunicipallaw.com).

<sup>2</sup> ROBIN MALLOY, LAND USE AND DISABILITY: PLANNING AND ZONING FOR ACCESSIBLE COMMUNITIES, 28 (1st ed. 2016).

<sup>3</sup> *Id.* at 29.

<sup>4</sup> *Id.*

<sup>5</sup> USCS Const. Amend. 14.

<sup>6</sup> *Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926).

zoning ordinance can be found unconstitutional, it must be shown to be “clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare.”<sup>7</sup>

This granting of power by the Supreme Court through its decision was a huge expansion of the discretion and authority of local governments. Additionally, the standard of review of a zoning provision applied in this case was rational basis, the lowest standard of review for constitutional challenges.<sup>8</sup> Therefore, a court will not overturn a zoning regulation unless it is at least fairly debatable that the regulation promotes the desired public outcome.<sup>9</sup>

There are some additional key takeaways of this case that are important to zoning law today.<sup>10</sup> First, *Euclid* established the idea of a “hierarchy of uses,” meaning that some uses are valued more intently than others.<sup>11</sup> Typically, the single-family residential use is valued highest, followed by multi-family use, commercial use, and industrial use.<sup>12</sup> This furthers the understanding that zoning first protects the home before anything else. *Euclid* also established the idea that zones are cumulative, meaning that lower-value uses can be placed in higher-value use zones, but not vice versa.<sup>13</sup>

#### *Lombardo v. City of Dallas*

In 1934, the Texas Supreme Court followed *Euclid* in state court with its holding in *Lombardo v. City of Dallas*.<sup>14</sup> The Court applied a similar standard, stating “if a regulation, exacted by competent public authority avowedly for the protection of the public health, has a real, substantial relation to that object, the courts will not strike it down upon grounds merely of public policy or expediency.”<sup>15</sup> The Court further

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<sup>7</sup> *Id.*

<sup>8</sup> MALLOY, *supra* note 1 at 49.

<sup>9</sup> *Id.*

<sup>10</sup> ROBIN MALLOY, LAND USE AND ZONING LAW: PLANNING FOR ACCESSIBLE COMMUNITIES, 86 (2018).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Lombardo v. Dallas*, 73 S.W.2d 475 (1934)

<sup>15</sup> *Id.* at 480.

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