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Municipal Regulation of Outdoor Lighting

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BACKGROUND, EDUCATION, AND PRACTICE

The Bojorquez Law firm represents cities across the state as either City Attorney or Special Counsel. Before going into private practice, Alan was a staff attorney for the Texas Municipal League. He graduated from Texas Tech University with a Bachelor of Arts in English, Master of Public Administration, and Doctor of Jurisprudence. Alan is on the Board of Directors of the Texas City Attorneys Association, and is Texas Chairperson for the International Municipal Lawyers Association. He authors the TEXAS MUNICIPAL LAW & PROCEDURE MANUAL (6th Ed.).

Alan has the privilege of serving as City Attorney for the municipalities of Dripping Springs, and West Lake Hills – both of which have enacted outdoor lighting regulations.

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A. POLICY

- 1. Problem Identification.** When drafting regulations, it is wise to begin with Problem Identification. Establish the nature of the *negative* to be prevented, or the *positive* to be encouraged. When it comes to writing outdoor lighting ordinances, it is prudent to spend time documenting the adverse effects of light pollution, and stating the policy objectives sought to be accomplished. Are there examples of bad lighting in the community that citizens are well-aware of or share an aversion to? Or conversely, are there positive examples of the benefits of dark skies that the community wants to preserve? For example, encouraging uniform aesthetics, attracting shoppers, and reducing hazards to motorists and pedestrians have all been found to be legitimate reasons for municipalities to enact land use regulations.¹
- 2. Expert Statements.** Absent specific factual situations documented locally, it is prudent to draw upon the published opinions of experts in the field. Articles, papers, and presentations are worthwhile sources. Not every municipality has the time or resources to retain a consultant, but many of those educational materials are available online and can be incorporated by reference into the file. Aside from the merits of star gazing, the comfort of dark skies, and the threats to vehicular and pedestrian safety, there is also ample documentation on the negative impact of artificial light at night on the health of humans and other living things.
- 3. Comp Plan.** Ideally, the subjective value statements about the benefits of dark skies will be mentioned in the municipality's comprehensive plan.² The first step in the land use regulatory process is often the preparation of a comprehensive plan. Comprehensive planning is a process by which a community assesses what it had, what it has, what it wants, how to achieve what it wants, and finally, how to implement those objectives.

B. AUTHORITY

- 1. Type of Municipality.** Once a need for the regulation has been identified, the next step is to locate the municipality's legal ability to regulate.

Home-Rule municipalities have the full power of local self-government.³ Generally a home-rule municipality may exercise any power not prohibited by the Constitution or laws of the State of Texas, which is lawfully conferred by its charter.⁴

General-Law municipalities look not to charters, but to state statutes as sources of regulatory authority.⁵ They may enact a regulation that is for the good government,

¹ *Lamar Corp. v. City of Longview*, 270 S.W.3d 609, 616 (Tex. App.—Texarkana 2008, no pet.) (citing *Murmur Corp. v. Bd. of Adjustment*, 718 S.W.2d 790, 794 (Tex. App.—Dallas 1986, writ ref'd n.r.e.)).

² Tex. Loc. Gov't Code Ann. § 211.004 (West 2014).

³ *Id.* § 51.072.

⁴ *Bland v. City of Taylor*, 37 S.W.2d 291, (Tex. Civ. App. - Austin 1931) *aff'd* by 67 S.W.2d 1033, (Tex. 1934).

⁵ 22 David Brooks, *Tex. Prac., Municipal Law and Practice* § 3.03 (2d ed. 2014)

peace, or order of the municipality, and is necessary or proper for carrying out a power granted to the municipality or to an officer of the municipality (provided the regulation is not contrary to the constitution or state law).⁶

Type A general-law municipalities may adopt ordinances, acts, laws, or regulations, not inconsistent with state law, that are necessary for the government, interest, welfare, or good order of the municipality as a body politic.⁷

Type B general-law municipalities may adopt ordinances that are not inconsistent with the laws and Constitution of Texas, as it deems proper for the government of the municipality.⁸ Type B municipalities can prescribe fines for the violation of an ordinance.⁹ Further, Type B municipalities can take any other action necessary to carry out a provision of the Texas Local Government Code applicable to the municipality.¹⁰

Type C general-law municipalities of 201 to 500 inhabitants have all authority and duties as conferred upon the city council of a Type B municipality unless the authority or duty conflicts with provisions of the Texas Local Government Code relating specifically to Type C municipalities.¹¹ The city council of Type C municipalities of 501 to 4,999 inhabitants have all authority and duties as conferred upon the city council of a Type A municipality unless the authority or duty conflicts with provisions of the Texas Local Government Code relating specifically to Type C municipalities.¹²

2. Zoning. Municipalities have the power to enact zoning regulations for the purpose of promoting the public health, safety, morals, or general welfare and protecting and preserving places and areas of historical, cultural, or architectural importance and significance.¹³ Pursuant to its zoning authority, a municipality may:

- (a) Regulate and restrict the height, number of stories, and size of buildings and other structures.
- (b) Regulate the percentage of a lot that may be occupied.
- (c) Regulate the size of the yards, courts, and other open spaces.
- (d) Regulate the density of population.

⁶Loc. Gov't Code § 51.001.

⁷ *Id.* § 51.012.

⁸ *Id.* § 51.032(a).

⁹ *Id.* § 54.002.

¹⁰ *Id.* § 51.032(b).

¹¹ *Id.* § 51.051(b).

¹² *Id.* § 51.051(a).

¹³ *Id.* § 211.001.

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