

PRESENTED AT
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TABLE OF CONTENTS

BIO	iii
I. INTRODUCTION	1
II. CONDUCTING THE MEETING	1
Robert's Rules of Order	1
Role of the Chairperson	2
Regulating Talk	2
Public Hearings	2
III. OPEN MEETINGS AND PUBLIC INFORMATION	4
The Texas Open Meetings Act	4
The Texas Public Information Act	6
IV. ZONING	7
Zoning Changes	7
The Comprehensive Plan	8
The Comprehensive Zoning Ordinance	8
Procedures for Adoption/Amendment of Zoning Ordinances	9
Deed Restrictions/Restrictive Covenants	10
Zoning System	10
Zoning Terms	10
Zoning Issues	11
Frequently Asked Questions About Zoning	12

TABLE OF CONTENTS

V.	SUBDIVISION DEVELOPMENT, PLAT APPROVAL	12
	Chapter 212. Local Government Code	12
	Subdivision Defined	12
	Plat Review Process	13
	Rules for Plat Reviews	13
	Frequently Asked Questions	14
VI.	CONFLICTS OF INTEREST	14
	Chapter 171 - Local Government Code	15
VII.	VESTED RIGHTS; CHAPTER 245, TEXAS LOCAL GOVERNMENT CODE	15
	Definitions	15
	Projects in Progress	16
	Exemptions	16
	Dormant Projects	16
	Expiration of Dormant Projects	17
ATTACHMENTS		
	ATTACHMENT 1 – Specific Use Permit (“SUP”)	20
	ATTACHMENT 2 – Planned Development (“PD”)	24
	ATTACHMENT 3 – Planned Development (“PD”)	42

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I. INTRODUCTION

The authority of a municipality to impose land use controls and regulations ultimately derives from its constitutional police power. This is the source of authority from which municipal zoning ordinances are justified for the protection and preservation of communities. Statutory authority is found in Chapter 211 of the Texas Local Government Code (referred to as the "Zoning Enabling Act"). The powers granted by Chapter 211 are for the purpose of promoting the public health, safety, morals, or general welfare and for the preservation of places and areas of historical, cultural, or architectural importance or significance.

Municipalities are empowered to regulate the height, number of stories and size of buildings, the percentage of a lot that may be occupied, the size of yards and open spaces, population density, and the location and use of buildings, structures and land for residential, commercial and industrial purposes.

Zoning ordinances fall within two broad categories: 1) zoning regulations and 2) zoning district boundaries. The former addresses the regulations (typically use, density, and structural requirements) applicable within specified zoning districts. The latter addresses the imposition of those regulations within specified districts, areas or lots. Zoning regulations must be uniform within each district.

Under Section 211.004 of the Local Government Code, zoning regulations must be adopted in accordance with a comprehensive plan (see, Chapter 213, TEX. LOCAL GOV'T CODE) and must be designed to lessen traffic congestion, secure safety from fire, panic and other dangers, promote health and general welfare, provide adequate light and air, prevent overcrowding and avoid undue concentration of population, and facilitate the adequate provision of transportation, utilities, schools, parks and other public requirements. Zoning regulations must be uniform within each district and should be adopted with reasonable consideration for the character of the area, its suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land within the city.

A zoning ordinance must bear a substantial relationship to the public health, safety, morals or

general welfare and must not be arbitrary or unreasonable. The Texas Supreme Court, in *Pharr v. Tippet*, 616 S.W.2d 173 (Tex. 1981), set forth 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 amendatory ordinance and the public health, safety, morals or general welfare. *Pharr*, 616 S.W.2d at 176. It has been written that "[t]he concept of the public welfare is broad and inclusive. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled." *Village of Belle Terre v. Boraas*, 416 US 1, 94 S.Ct. 1536, 39 L.Ed.2d 797 (1974), citing *Berman v. Parker*, 348 US 26, 32-33 (1954).

Despite the discretion afforded to zoning authorities, the application of a zoning regulation to specific property must at least substantially advance legitimate state interests and must not deprive the owner of all economically viable uses of the land. *Agins v. City of Tiburon*, 447 U.S. 255, 100 S.Ct. 2138, 65 L.Ed.2d 106 (1980). Zoning ordinances carry a strong presumption of validity; the burden of establishing the invalidity of a zoning ordinance falls on the party contesting its validity and the burden is a high one. *Pharr v. Tippet*, 616 S.W.2d 173 (Tex. 1981). Since zoning decisions are an exercise of a city council's legislative authority, public officials involved in the zoning process possess legislative immunity for zoning decisions.

II. CONDUCTING THE MEETING

Robert's Rules of Order

Robert's Rules provide general guidance on the conduct of meetings. Compliance with the Rules will assist in maintaining protocol and preserving the dignity of the meeting. However, the Rules are used only as guidance; a departure from strict compliance will not invalidate formal action (state law generally requires that the official minutes reflect a majority vote in compliance with the Open Meetings Act, regardless of the mechanics in which that majority vote was reached).

Role of the Chairperson

The chairperson, as presiding officer, has the primary responsibility for seeing to it that the Commission's rules of procedure are followed and for maintaining the dignity of the meetings. The chairperson calls the meeting to order, and confines the discussion to the agreed order of business. He or she recognizes members for motions and statements, and allows audience participation at appropriate times. The chairperson sees to it that speakers limit their remarks to the item being considered and, as necessary, calls down people who are out of order.

Presiding effectively at a meeting is an art that no book or person can fully teach. The tactful presiding officer knows how to courteously discourage Commissioners who talk too much or too often, and how to encourage shy Commissioners who are hesitant to speak at all.

Regulating Talk

The Open Meetings Act gives the public the right to attend and observe; it does not give the public the right to participate. With the exception of public hearings, the board, commission or council has no legal obligation to recognize any speaker. Recognizing the board's obligation towards public service, most boards allow some form of citizen input, usually at the commencement of a meeting.

Excessive talking can assume a variety of forms: bickering or tiresome exchanges of personal opinions among members, endless speeches by citizens, or unnecessarily long and detailed reports by staff. All of these problems can be overcome by tactful action on the part of the chair. If citizens ramble, the chairperson may have no choice but to tell them to confine their remarks to the subject at hand and conclude as quickly as possible. If the problem is created by a talkative board member that talks off point, a simple statement to the effect that "we must remain on topic" will usually suffice, though private visits by the chairperson may be needed to handle chronic talkers.

Public Hearings

The purpose of a public hearing is to present and receive evidence on both sides of an issue. Although the law requires public hearings in some circumstances, the law does not dictate the process or procedure that must be followed. Commonly, the presiding officer will allow anyone wishing to speak on an issue the opportunity to do so and will not limit the time given to each speaker. However, depending on the wishes of the chair or the balance of the members of the board or commission, the chair may limit speakers to, for example, three minutes each. He/she may also prohibit pooling of time, whereby several people will "give" their speaking time to one designated representative. The chair can also regulate or limit content by prohibiting speakers from repeating what other speakers have previously said. Finally, it is not against the law to limit the number of speakers. It is essential, however, that any limitations be applied fairly and evenly; limiting only the speakers on one side of an issue while not doing so to those on the other side is correctly perceived as unfair.

At the start of the hearing, the chairperson should clearly state the subject to be discussed. If the subject is controversial, the following order can be followed: proponents' presentation; opponents' presentation; proponents' rebuttal; opponents' rebuttal; questions from the Commission. Remember that numbers don't always count. There are some topics which naturally draw large, highly-biased crowds. Vocal minorities often fill public hearings to show widespread support. The size of the crowd does not necessarily indicate that the cause is just. The Commission is appointed to serve all the citizens, and a Commissioner must look at the overall picture, and not just at the view presented by one partisan group.

When a decision is announced, the Commission does not have to give the reasons why the decision was reached, although a brief explanation will help prevent the feeling that the outcome of the hearing was decided in advance, and that they wasted their time.

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First appeared as part of the conference materials for the
2017 Land Use Fundamentals session

"Zoning Alphabet Soup: ZBA/BOA v. P&Z/ZPC"