



# Subdivision and Platting: A Land Use Foundation

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## Origin of Subdivision Regulation

- Public law (health, safety and public welfare – the “police power”) not contract law.
- Different from zoning- Gov’t rights significantly limited when reviewing a plat.
- Land registration system - Privilege
- Gov’t grant/ withhold registration approval based upon the compliance with conditions
- Legitimate government interest in
  - “promoting healthy and orderly development” and
  - protecting future lot owners

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## Definitions and Key Concepts

### Subdivision (to subdivide, subdividing)

A division of land. Subdividing  $\neq$  platting

**Plat\Subdivision Plat** – Map of subdivision to submit to government for approval and recordation. Request for permit to subdivide property.

**Planning (and Zoning) Commission** – Appointed governmental body with plat approval authority

**Houston – 26 members**

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## Definitions and Key Concepts

**Variance** – Entitlement to vary from the literal word of the applicable regulation upon a showing of “hardship.” Granted by Planning Commission.

**Extraterritorial Jurisdiction (“ETJ”)** - Defined area surrounding city limits where city has power of annexation and limited regulatory authority- City platting authority may be extended to ETJ

TEX. LOC. GOV'T CODE §§ 42.021:

**Population**  
 Less than 5,000  
 5,000 - 24,999  
 25,000 - 49,999  
 50,000 - 99,999  
 100,000 +

**ETJ from City's Boundary**  
 ½ mile  
 1 mile  
 2 miles  
 3.5 miles  
 5 miles

**Applicant** – Any “person” may be an applicant, but only an “owner” may actually plat property

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## Definitions and Key Concepts

**Development Agreement** – An agreement between a landowner and a local government relating to development of land.

LGC §212.172- ETJ Dev. Agmts.

- ETJ only
- Defer annexation up to 15 yrs. & 2 extensions – 45 yrs. max.
- May extend in-City planning regulations to ETJ
- Authorizes application of land use regulations
- May provide for infrastructure – Streets, utilities
- May specify uses
- “Other lawful terms”
- Must be recorded
- Vests rights

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## Definitions and Key Concepts

### Plat Note

- Any notation on the face of the plat outside of the dedicatory certificate or city regulatory limitations.
- Not statutorily defined, but referenced in LGC Chap. 245:
  - “Notwithstanding any provision of this chapter to the contrary, a permit holder may take advantage of recorded subdivision plat notes.”
- Enforced against the City in *City of Austin v. Garza*:
  - “This subdivision shall be developed, constructed and maintained in accordance with the terms and conditions of Chapter 13–2, Article V, and chapter 13–7, Article V, dated June 1, 1988.”
- Typically, can amend by replat
- Should not be private restriction enforceable by neighbors

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