

## EMERGING CREATIVE DISTRICTS

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### A. Introduction

Zoning and development regulations can both control development and also act to catalyze innovative development in key areas of cities. The way we have used development regulations has drastically changed over the last ten years. Development regulations continue evolve and adapt to market conditions and transform to satisfy specific development demands. Special districts are being created to combine academic, business, creative, and technological forces to cater to a new generation. Often, innovative zoning tools will focus on items such as technology, forced-interaction, mixed uses, urban form, higher densities, flexibility in development regulations, transit-orientation, preservation of environmental and cultural amenities, coordinated street infrastructure and compact development to satisfy a city's development goals.

This article will provide an overview of creative approaches and common features with some of these newer development regulations.

### B. Basis

“Zoning” is the fundamental regulation of a governmental entity used to control land uses pursuant to a comprehensive plan. “Zoning regulation is a recognized tool of community planning, allowing a municipality, in the exercise of its legislative discretion, to restrict the use of private property.”<sup>1</sup> Typically, zoning will consist of (i) an ordinance that sets forth items such as definitions, permitted land uses and development standards, and (ii) a map designating the districts within the jurisdiction.

The United States Supreme Court ruled in 1926 that zoning is a valid exercise of the municipality's police power. In *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365 (1926), the Village of Euclid enacted an ordinance that established six classes of use districts, three classes of height districts, and four classes of area districts in an effort to control industrial expansion from the City of Cleveland into the Village. Ambler Realty argued that the classification of its property deprived it “of liberty and property without due process of law” and denied “it the equal protection of the law.”<sup>2</sup> Ambler Realty also specifically argued that the zoning ordinance attempted “to restrict and control the lawful uses of appellee's land so as to confiscate and destroy a great part of its value.”<sup>3</sup> The Court

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<sup>1</sup>*City of Brookside Village. v. Comeau*, 633 S.W.2d 790, 792 (Tex. 1982), cert. denied, 459 U.S. 1087 (1982).

<sup>2</sup> *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 384 (1926)

<sup>3</sup> Id.

ruled that there may be valid reasons to separate intensive uses from less intensive uses for the general welfare holding, “it is enough for us to determine, as we do, that the ordinance, in its general scope and dominant features, so far as its provisions are here involved, is a valid exercise of authority.”<sup>4</sup>

The validity of zoning in Texas was approved by the Texas Supreme Court in *Lombardo v. City of Dallas*. In that case, the Court acknowledged that “it appears that full authority was delegated cities and incorporated villages to restrict the use of buildings, structures and land for trade, industry, residence, or other purposes. Zoning, in general, is the division of a city or area into districts, and the prescription and application of different regulations in each district; generally, such division is into two classes of districts, such as was attempted by the ordinance under consideration. Effective zoning regulation, as that term is now well understood, comprehends, necessarily, prohibitions and restrictions; prohibitions against certain uses in named districts, and restrictions as to the area of lots to be built upon, the size and height of structures, yard spaces to be left unoccupied, etc.”<sup>5</sup> The Court held, “that the legislative act and the ordinance of the city of Dallas, called in question, and the provisions of same as applied to plaintiff and his property, are not subject to the objections urged by plaintiff, but that they are valid and enforceable.”<sup>6</sup>

Texas zoning authority is codified in Chapter 211 of the Texas Local Government Code, which provides that the zoning regulatory power is “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.”<sup>7</sup>

Under Section 211.003, the municipality may regulate:

- (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; and
- (6) the pumping, extraction, and use of groundwater by persons other than retail public utilities, as defined by Section 13.002, Water Code, for the purpose of preventing the use or contact with groundwater that presents an actual or potential threat to human health.<sup>8</sup>

Further, the Statute provides that a city may regulate “the construction, reconstruction, alteration, or razing of buildings and other structures” with regard to

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<sup>4</sup> Id. at 397

<sup>5</sup> *Lombardo v. City of Dallas*, 47 S.W.2d 495, 499 (Tex. Civ. App.—Dallas 1932), aff’d, 124 Tex. 1, 73 S.W.2d 475 (1934)

<sup>6</sup> Id.

<sup>7</sup> Texas Local Government Code Section 211.001 (2018)

<sup>8</sup> Id. at Section 211.003 (a)

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