

Legal Q&A, Part 1

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(Editor’s note: This is the first part of a two-part Q&A on platting regulations in Texas. The second part will appear in the January 2022 edition of *Texas Town & City*.)

Q What is a plat?

A Other than providing that a “plat” “includes a preliminary plat, general plan, final plat, and replat,” state law does not provide a definition for the term “plat”. Tex. Loc. Gov’t Code § 212.001(3). In common usage, the term “plat” refers to a “small piece of land set apart for some special purpose” and to a “map or plan of delineated or partitioned ground.” *Plat*, Black’s Law Dictionary (10th ed. 2014); *See also Town of Lakewood Vill. v. Bizios*, 493 S.W.3d 527, 531–32 (Tex. 2016). Simply put, a “plat” is a map of a tract of land, showing the division and location of lots, and the placement of streets, easements, utilities, and other pertinent information.

Q What authority does a city have to regulate platting of property?

A A city’s authority to regulate platting is derived from the city’s police powers. *See* Tex. Loc. Gov’t Code § 212.002 (“the governing body of a municipality may adopt rules governing plats and subdivisions of land within the municipality’s jurisdiction to promote the health, safety, morals, or general welfare of the municipality and the safe, orderly, and healthful development of the municipality”); *City of Round Rock v. Smith*, 687 S.W. 2d. 300, 302 (Tex. 1985). The purpose of plat approval is to ensure that subdivisions are safely constructed and to promote the orderly development of the community. *See Lombardo v. City of Dallas*, 73 S.W.2d 475, 479 (Tex. 1934). Plat approval protects future purchasers from inadequate police and fire protection, inadequate drainage, and insures sanitary conditions. *Id.* Public health, safety, and morals are general public interests. *Id.*

Q How does a city establish platting requirements?

A State law provides that after a public hearing, the governing body of a city may adopt rules governing plats and subdivisions of land within the city limits and the city extraterritorial jurisdiction (ETJ). Tex. Loc. Gov’t Code § 212.002. A city should consult with its local legal counsel before drafting and adopting such complex regulations.

Q When is a plat required?

A State law provides that “[t]he owner of a tract of land located within the limits or in the extraterritorial jurisdiction of a municipality who divides the tract in *two or more parts* to layout a subdivision of the tract, including an addition to a municipality, to layout suburban, building, or other lots, or to layout streets, alleys, squares, parks or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the streets, alleys, squares, parks, or other parts must have a plat of the subdivision prepared.” Tex. Loc. Gov’t Code § 212.004 (emphasis added). In other words, whenever a property owner

wants to subdivide a tract of land into two or more parts, regardless of whether there will be a transfer in ownership of the land, a city can require a plat.

In addition, a city may adopt various definitions and classifications of divisions of land to determine whether specific divisions of land are required to be platted. *Id.* § 212.0045. In fact, state law provides that a city need not require platting for every division of land. *Id.* A city may also require the filing of a development plat in lieu of a plat if the city's governing body chooses by ordinance to be covered by certain property development regulations. *See Id.* § 212.041-.050.

However, a plat is not required for a subdivision of land into "parts greater than five acres, where each part has access and no public improvement is being dedicated." *Id.* § 212.004.

Additionally, an owner of a tract of land is not required to prepare a plat if the land: (1) is located wholly within a municipality with a population of 5,000 or less; (2) is divided into parts larger than 2-1/2 acres; and (3) abuts any part of an aircraft runway. *Id.* § 212.0046.

Q May a city require a plat in its extraterritorial jurisdiction (ETJ)?

A Maybe. The governing body of a city, by ordinance, may extend to the ETJ of the city the application of rules and ordinances related to plats and subdivisions. *See* Tex. Loc. Gov't Code §§ 212.002, .003(a). Cities are also expressly given authority to enforce rules and ordinances "governing plats and subdivisions of land" within their ETJs. *Id.* Until recently, cities that extended their platting authority to the ETJ had overlapping jurisdiction with county platting authority.

In 2001, the 77th Texas Legislature adopted H.B. 1445, which amended the Texas Local Government Code to prohibit a city and certain counties from both regulating subdivisions within a common ETJ. *Id.* § 242.001 et seq. To that end, a city and an applicable county are mandated to execute a written agreement that identifies whether the county or the city will be the governing entity authorized to regulate subdivision plats and approve related permits in the ETJ. *Id.* § 242.001(c). The agreement could: (1) provide that either the city or the county has exclusive approval authority in the ETJ; or (2) apportion regulation between the city and the county within the ETJ, whereby the city would approve plats in the area assigned to the city and the county would approve plats in the area assigned to the county. *Id.* §242.001(d). Also, a city and an applicable county could enter into an interlocal agreement that establishes one office that is authorized to regulate plat application procedures in the ETJ and establishes a consolidated and consistent sets of regulations related to plats and subdivisions of land. *Id.* § 242.001(d)(4)(B). Cities should consult with their local legal counsel to determine if a "1445 agreement" is in place and whether the county's or city's regulations would govern based on that agreement.

Q May a city relinquish platting authority in the ETJ back to the county?

A Yes, as mentioned above, the city and the county may enter into an agreement that gives the county exclusive jurisdiction to regulate subdivision plats and approve related permits in the ETJ. Tex. Local Gov't Code § 242.001(d)(1).

Q When is a development plat required?

A A city may require the filing of a development plat in lieu of a subdivision plat if the city's governing body chooses by ordinance to be covered by certain property development regulations. *See id.* § 212.041-.050. If a city adopts such development regulations, a development plat is required for any person who proposes the development of a tract of land located within the limits or in the extraterritorial jurisdiction of the city. *Id.* § 212.045. The development plat of the tract must be prepared in accordance with state law and the applicable plans, rules, or ordinances of the city. *Id.* § 212.0046. A development plat must be prepared by a registered professional land surveyor as a boundary survey showing:

- (1) each existing or proposed building, structure, or improvement or proposed modification of the external configuration of the building, structure, or improvement involving a change of the building, structure, or improvement;
- (2) each easement and right-of-way within or abutting the boundary of the surveyed property; and
- (3) the dimensions of each street, sidewalk, alley, square, park, or other part of the property intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the street, sidewalk, alley, square, park, or other part.

Id. § 212.045(b).

New development may not begin on the property until the development plat is filed with and approved by the city. *Id.* § 212.045(c). If a subdivision plat is required, then a development plat is not required in addition to the subdivision plat. *Id.* § 212.045(d).

Q Is state property exempt from platting requirements?

A Likely yes. The police powers of a city are generally not applicable to the state itself. *See e.g., Port Arthur Indep. School Dist. v. City of Groves*, 376 S.W.2d 330, 332 (Tex. 1964); Tex. Loc. Gov't Code § 211.013(c) and Tex. Att'y Gen. LO 98-114 (1998) (state property is exempt from city zoning requirements); Tex. Att'y Gen. Ops. C-301 (1964) and C-690 (1966) (building code and permitting requirements generally do not apply so long as the state has been granted authority and supervision of a project). The rationale given in the cases and attorney general opinions is both practical and political in nature.

Practically, the law assumes that the state agency responsible for the construction or modification of state-owned buildings will be mindful of the health and safety of the community. Politically, the law cites the ultimate right of the state to act with regard to property that the state owns and controls without interference from a subordinate entity which was created by the state and derives all of its power and authority from the state.

Q Is a school district's property exempt from platting requirements?

A Likely yes. Although no Texas court has squarely addressed this question, it is likely that a city can require a school district to plat its property because the city's authority to require subdivision of property is derived from its police powers. *See Port Arthur*, 376 S.W. 2d at 334 (the legislature by authorizing the school district to locate a school facility within a municipality, did not preempt the city's police power to enforce necessary health and safety regulations); Tex. Att'y Gen. Op. KP-0373 (2021) (“[w]hile Texas courts have limited the application of municipal land use regulations to public schools, they have recognized the ongoing applicability of building codes and safety regulations. The validity of any ordinance requiring a public school, including an open-enrollment charter school, to obtain a permit or other permission before beginning construction must be evaluated on a case-by-case basis, but the permitting process may not be used to effectively deny public schools the right to choose reasonable locations for their buildings.”); Tex. Att'y Gen. Op. JM-180 (1984) (county's use of land as an auxiliary courthouse within the city limits is subject to the city's zoning ordinances only to the extent that such ordinances do not prevent the county from locating its auxiliary courthouse within the municipality, but the county must comply with municipal regulations regarding construction of its auxiliary courthouse); *cf. City of Addison v. Dallas Indep. School Dist.*, 632 S.W.2d 771 (Tex. App.—Dallas 1982) (discussing *Austin Indep. School Dist. v. City of Sunset Valley*, 502 S.W.2d 670 (Tex. 1973)) (Pursuant to the delegation to school districts, the Texas Supreme Court “has determined that the school district's authority to locate school facilities overrides the police power of municipalities to zone them out in order that the legislative purpose in delegating this authority to the school district might not be frustrated.”).

Thus, while it is clear that school districts are exempt from location-based zoning requirements it is likely that they are still subject to other city police power regulations, including platting.

Q Can a plat serve to dedicate public infrastructure without anything more?

A No. A plat alone is not enough to dedicate public infrastructure to a city. The approval of a plat is not considered an acceptance of any proposed dedication. The approval also does not impose on the city any duty regarding the maintenance or improvement of any dedicated parts until the city makes an actual appropriation of the dedicated parts by entry, use, or improvement. Tex. Loc. Gov't Code § 212.011(a). The disapproval of a plat is considered a refusal by the city of the offered dedication indicated on the plat. *Id.* §211.011(b).