2026
COUNTY SUBDIVISION HANDBOOK

TEXAS ASSOCIATION OF COUNTIES

1210 San Antonio Street, Austin, Texas 78701

Hon. Cindy Yeatts Brown
Denton County Treasurer & Association President

Susan M. Redford
Executive Director

PREPARED BY ASSOCIATION LEGAL DEPARTMENT

Michael Pichinson
General Counsel

Laura V. Garcia
Associate General Counsel

Josh Humphreys
Associate General Counsel

Paul Miles
Associate General Counsel

John G. Redington
Associate General Counsel

Mike Thompson, Jr.
Associate General Counsel

Jamie Chandler
Operations Manager

Abbie Jamison
Paralegal

Sophie Vaught
Legal Administrative Assistant

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COUNTY SUBDIVISION HANDBOOK:
A PRACTICAL GUIDE FOR TEXAS COUNTY OFFICIALS

INTRODUCTION

The purpose of this publication is to provide county officials in Texas with practical information about issues frequently arising concerning the division of land lying in unincorporated areas. Questions typically involve statutory platting requirements and applicable exceptions, the basic elements of effective subdivision regulations, steps in the platting process, enforcement, and other land use regulations affecting the development of land.

Rapid population growth presents challenges for Texas counties as they provide sensible land use regulation that allows for economic development while also preserving the quality-of-life residents in unincorporated areas enjoy. Policymakers achieve this difficult balance by basing decisions not only on the law, but also on history, culture, and societal pressures unique to each county.

Texas law provides some flexibility for counties to regulate based on local priorities. Less populous counties may see no need for regulation beyond the basic state framework. On the other hand, growing counties may require a more comprehensive planning approach. In other words, no single planning solution will suit the variety of circumstances facing each of the State's 254 counties.

Accordingly, the Texas Association of Counties ("TAC") does not recommend one particular set of subdivision regulations; however, the materials included in this handbook may be used by a commissioners court, together with legal counsel and other planning experts, to formulate regulations that meet their citizens' needs. This handbook is not a substitute for competent legal counsel, nor does it cover every statute that may relate to county authority over land use.

This publication includes changes adopted by the 89th Legislature through the Second Called Session (2025).

HISTORY OF COUNTY AUTHORITY OVER LAND DEVELOPMENT

Commissioners courts were first given the authority to consider approval of plats ("maps or plan of delineated or partitioned ground."[1]) in 1931 through an amendment to the general recording statute.[2] Since then, county authority in relation to the division of land has evolved somewhat but still remains quite limited in comparison to the regulatory authority of municipalities, which may generally regulate zoning and adopt building codes, among other powers. The following timeline highlights the gradual expansion of county authority over land use:

- **1930s & 1940s:** As Texas experienced increased urbanization, particularly around major cities, the need for more structured land development became apparent. Limited legislative action began to reflect an interest in improving public health and safety.
- **1953:** Legislation passed giving counties more explicit authority over subdivision regulations, especially concerning roads and drainage, though it remained relatively limited.
- **1970s & 1980s:** This period saw a significant expansion of county regulatory power. The Texas Local Government Code, including Chapter 232, was codified. This provided a more comprehensive framework for county subdivision regulations, addressing platting, infrastructure, and other development standards.
- **1990s & 2000s:** Amendments to Chapter 232 and related statutes focused on addressing issues like environmental protection, border development, impact fees for infrastructure development, and water management.
- **2023:** HB 3697 from the 88th Texas Legislature was passed, aiming to streamline the subdivision approval process and enhance transparency. Also, groundwater availability studies were mandated for certain subdivisions (SB1440).
- **2025:** HB 3680 from the 89th Texas Legislature amended Chapter 232 of the Local Government Code, adding Subchapter G, applicable only to Cameron County to allow for limited local discretion in determining that the requirements of the model subdivision rules have been met, and to allow buyers to install the required infrastructure improvements in some limited circumstances.

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[1] *Town of Lakewood Vill. v. Bizios*, 493 S.W.3d 527, 532 (Tex. 2016), *citing* BLACK'S LAW DICTIONARY (10th ed.2014).

[2] Acts 1931, 42nd Leg., pp. 371, 372, ch. 217, § 2, *amending*, TEX. REV. CIV. STAT. ANN., art. 6626 (recodified in pertinent part as Tex. Prop. Code § 12.002 and Tex. Loc. Gov't Code § 232.002); 36 Brooks, Texas Practice, *County and Special District Law*, § 43.2 (West 1989).

PLATTING

Generally

A plat is commonly understood to mean the map of a tract of land which shows the division and location of lots and the placement of streets, easements, utilities, and other useful information. Statutory platting authority, originally applicable only to cities, was granted to promote "health, safety, morals, or general welfare" and "safe, orderly, and healthful development"[3]. Today, "platting" involves submitting (to the commissioners court or its designee) an application along with map or illustration outlining the elements mentioned above for a proposed division of a particular piece of land.

Chapter 232 of the Local Government Code is the primary statute granting counties limited authority to regulate certain facets of land development, including the subdivision of land.

Subchapter A: General requirements for county regulation of subdivision plats applying to most Texas counties (*see* this section, below).
Subchapter B: Specific requirements for Texas-Mexico border counties (*see* "Special Considerations" section).
Subchapter C: Specific requirements for economically distressed counties (*see* "Special Considerations" section).
Subchapter D: County planning commissions in border and economically distressed counties (*see* "Special Considerations").
Subchapter E: Infrastructure planning provisions (*see* "Common Subdivision Regulations" section).

When Platting is Required

The owner of a tract of land located within an unincorporated area of a county must have a plat of the subdivision prepared if the owner divides the tract into two or more parts to lay out:

- a subdivision of the tract, including an addition; or
- lots; or
- streets, alleys, squares, parks, or other parts of the tract intended by the owner of the tract to be dedicated to public use.

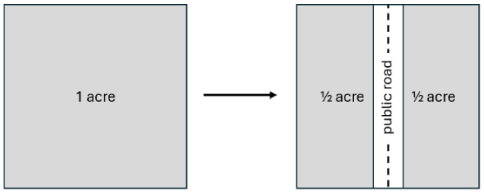
[3] Tex. Loc. Gov't Code § 212.002

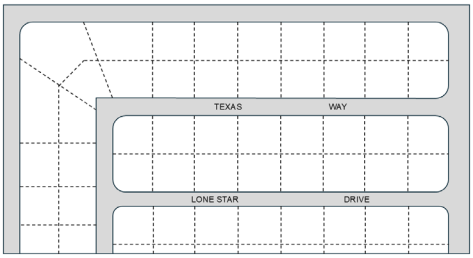
This law is frequently misinterpreted to apply exclusively to vast, master-planned communities; however, it applies to *any* division where land is separated into two or more parcels containing "parts intended by the owner to be dedicated to public use". Plat approval by the county is required for any such division.

FAQ

Is platting required for simple divisions of land?

While this authority is commonly understood to extend to master-planned types of communities (commonly known as "subdivisions") designed to feature homes that share cohesive standards and aesthetics, it actually applies to a much broader range of divisions. For instance, a county must require platting approval when an owner merely intends to convey a 1-acre tract out of a 2-acre tract and intends to dedicate any part to public use. Likewise, it applies to a division of a 100-acre tract into four 25-acre tracts with public roads. See illustrative examples below:





A county may regulate, as a subdivision, the partition of land for a residential development in the unincorporated portion of the county regardless of whether there has been a transfer of title to individual tracts.[4] Thus, condominiums also qualify as subdivisions of land.[5] Similarly, two cases have concluded that, as to mobile home parks whose spaces are leased, a subdivision of property may occur without transfer of the title to the property, although one of the cases recognized that the laws do not "explain" what

[4] *See* Tex. Att'y Gen. Op. No. GA-1007 (2013). Cases construing the term "subdivision" in statutes providing for municipal land use regulation also construe the term broadly. *See also City of Lucas v. N. Tex. Mun. Water Dist.*, 724 S.W.2d 811, 823 (Tex. App.-Dallas 1987, writ ref'd n.r.e.)

[5] *See* Tex. Att'y Gen. Op. No. GA-0223 (2004), citing *Cowboy Country Estates v. Ellis County*, 692 S.W.2d 882 (Tex. App.-Waco 1985, no writ) ("The manifest overall purpose of the statutes concerned is to give counties the power to control subdivisions to protect its citizens in matters of public health and sanitation, drainage, and maintenance of public roads").

a subdivision is.[6] Thus, it is important to remember that any division of land that creates two or more parts and lays out common areas is considered a "subdivision" requiring county plat approval.

Exceptions

Though counties have broad authority to require platting, exceptions may apply. The county *may* exempt certain subdivisions of land via its authority to "define and classify the divisions", creating discretionary exceptions. [7] For example, a county may define a "lot", or a "subdivision, including an addition" in its regulations, and may structure regulations differently in relation to divisions based on tract size, density, and/or overall volume of tracts. This is commonly known as a "tiered approach", whereby large and intricate master-planned communities with numerous lots of small size face more regulation than a more modest division creating a few homesites on larger tracts. A complex subdivision with a large footprint could significantly impact county drainage and road infrastructure and require more rigorous regulation, whereas a basic sale of a few lots may require less planning scrutiny.

On the other hand, mandatory exceptions—that a county *must* grant—are prescribed by statute[8], as listed below. **Keep in mind that the following exemptions do not apply if a plat dedicates streets, alleys, parks, and other property for public use.**

Agricultural use[9]

A county may not require the owner of a tract of land located outside the limits of a municipality to have a plat of a subdivision prepared if: (a) the owner does not dedicate any part of the subdivision for public or private use; and (b) the land is to be used primarily for agricultural use or for farm, ranch, wildlife management, or timber production use.[10]

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[6] *City of Weslaco v. Carpenter*, 694 S.W.2d 601 (Tex. App.—Corpus Christi 1985, writ ref' d n.r.e.) (injunctive suit by city per article 970a regarding eight acre park with 128 "rental lot spaces"). See also, *Cowboy Country Estates v. Ellis County*, 692 S.W.2d 882 (Tex. App.—Waco 1985, no writ) (injunctive suit by county against 100 acre mobile home park with 290 spaces; sale of property not required under then article 6626a).

[7] Tex. Loc. Gov't Code § 232.0015(a); *See also* discussion in Tex. Att'y Gen. Op. No JC-0260 (2000)

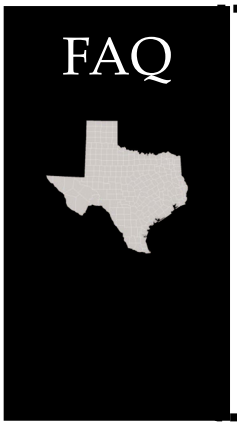
[8] Tex. Loc. Gov't Code § 232.0015

[9] Tex. Loc. Gov't Code § 232.0015(c-d)

[10] Agricultural use, as defined by the Texas Constitution, Art. 8, Sec. 1-d, means the raising of livestock or growing of crops, fruit, flowers, and other products of the soil under natural conditions as a business venture for profit, which is the primary occupation and source of income of the owner of such land.

Family Transactions Involving Four or Fewer Tracts[11]

So long as no "public use" is planned, and if each subdivided lot is to be sold, given, or otherwise transferred to an individual who is related to the owner within the third degree by consanguinity (blood relative) or affinity (relative by marriage), platting is not required.



What does within third degree by consanguinity or affinity mean?
Kinship is determined by two methods, consanguinity (by blood) or affinity (by marriage), as defined by Tex. Gov't Code Ch. 573. An adopted child is considered to be a child of the adoptive parent for this purpose. The ending of a marriage by divorce or the death of a spouse ends relationships by affinity created by that marriage unless a child of that marriage is living, in which case the marriage is considered to continue as long as a child of that marriage lives.

Greater than 10 acres and no parts laid out for public use[12]

Platting is not required if all lots of the subdivision are more than 10 acres, and the owner does not lay out parts of the tract for public use (lot, street, alley, square, park accessible to the public or lot owners)[13].

Veterans' Land Board transactions[14]

If the owner of the subdivided land does not lay out a part of the tract for public use and sells all lots to veterans through the Veterans' Land Board, platting is not required.

State and Political Subdivisions[15]

Platting requirements do not apply to subdivisions of land belonging to the state, or any state agency, board, or commission; or land owned by the permanent school fund or any other dedicated funds of the state unless the subdivision lays out a part of the tract for public use. Additionally, the county cannot require a plat of subdivided land if the owner

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Additionally, "agricultural use" takes on the meaning defined in Texas Constitution, Art. 8, Sec. 1-d-1, which includes open space land devoted to farm, ranch, or wildlife management purposes.

[11] Tex. Loc. Gov't Code § 232.0015(e) ; *see also* Tex. Gov. Code §573.022 through §573.025

[12] Tex. Loc. Gov't Code § 232.0015(f)

[13] Tex. Loc. Gov't Code § 232.001(a)(3)

[14] Tex. Loc. Gov't Code § 232.0015(g)

[15] Tex. Loc. Gov't Code § 232.0015(h-i)

is a political subdivision of the state, the land is situated in a floodplain, and the lots are sold to adjoining landowners.

Later subdivision[16]
If the owner does not lay out a part of the tract for public use, retains one new part, and the other new part is to be transferred to another person who will later subdivide the tract, platting is not required by the initial owner.

Undivided interests[17]
Platting is not required if the owner does not lay out a part of the tract for public use, and all parts are transferred to persons who owned an undivided interest in the original tract. However, a plat should be filed before any further development of any part of the tract.

If Joe Developer wants to divide a large tract into several 10.1 acre tracts and dedicate a new public road to provide access, is this exempt?
No, because he is laying out a road for dedication to public use, Joe must submit a plat application to the county. The size of the tract being over 10 acres is immaterial. Tex. Loc. Gov't Code § 232.0015(f)(1)-(2)

Impact of Platting Requirements
The requirement that the approved plat must be filed with the county clerk is important for at least two main reasons: 1) The approved plat is a source of validated public information available for government or private use; and 2) The process of plat approval is fundamental to development coordination, since certain regulatory requirements a county may order (e.g. road frontage requirements) must be reflected on the approved plat. Thus, Sections 232.001 (controlling platting) and 232.003 (subdivision regulation, discussed next chapter) work in tandem as the key regulatory controls over the division of land. The plat approval (or denial) process is the primary means by which both statutory requirements for filing and county regulatory authority are put into practice.

[16] Tex. Loc. Gov't Code § 232.0015(j)
[17] Tex. Loc. Gov't Code § 232.0015(k)

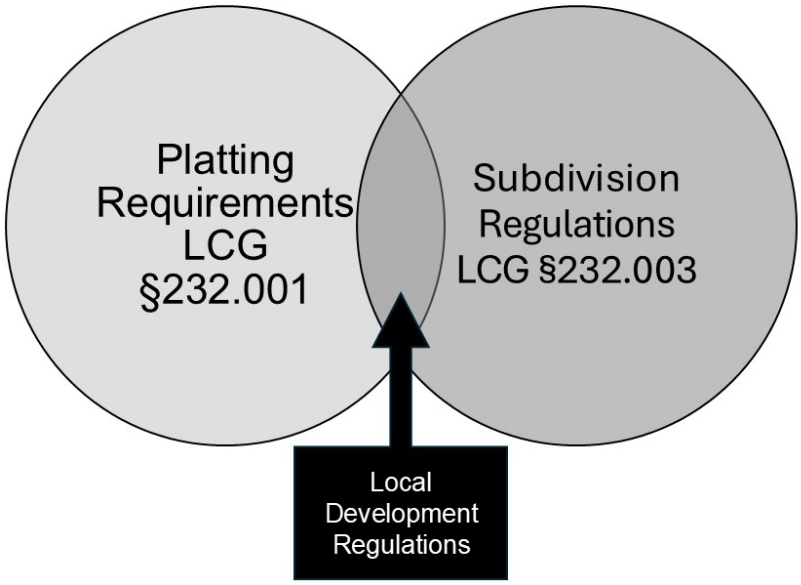
FAQ

Can a county clerk refuse to record a plat that has not been approved or recorded?

Yes. According to Tex. Prop. Code Ann. § 12.002(a), "[t]he county clerk or a deputy of the clerk with whom a plat or replat of a subdivision of real property is filed for recording shall determine whether the plat or replat is required by law to be approved by a county or municipal authority or both. The clerk or deputy may not record a plat or replat unless it is approved as provided by law by the appropriate authority and unless the plat or replat has attached to it the documents required by Subsection (e) or by Section 212.0105 or 232.023, Local Government Code, if applicable. If a plat or replat does not indicate whether land covered by the plat or replat is in the extraterritorial jurisdiction of the municipality, the county clerk may require the person filing the plat or replat for recording to file with the clerk an affidavit stating that information.

COMMON SUBDIVISION REGULATIONS

Although a county may rely strictly on the statutory requirements discussed above to regulate subdivisions, it is advisable to adopt a set of regulations unique to the needs and customs of each particular county.[18] In this effort, many counties enlist professional assistance from attorneys, engineers, and planning experts in collaboration with local surveyors and developers to arrive at workable regulations that serve the many interests at play. These local regulations are commonly called "subdivision regulations", though they apply broadly to any division of land meeting the elements discussed above.



Procedures for Adoption

Before adopting local development regulations, counties are cautioned against simply adding the matter to the next commissioners court agenda. Instead, it is strongly suggested that certain procedural measures be taken beforehand, because formally adopting certain regulations could conceivably be construed to constitute a "taking" of property rights[19] (e.g. a required dedication of right of way). If such a regulatory taking is remotely possible, prudent counties will carry out the following two-step process, including creating and publishing 1) a takings impact assessment, and 2) a public notice.

[18] Though TAC cannot endorse any specific form that would be appropriate for all Texas counties, a good starting place is researching other counties' existing regulations online, focusing on counties of similar size and position.

[19] Tex. Gov't Code § 2007.003(a)(1)-(3)

Takings Impact Assessment

Assuming some covered property right may be infringed, a county shall prepare a written takings impact assessment that complies with the evaluation guidelines developed by the attorney general under Government Code § 2007.041.[20] This statute defines the content of the takings impact assessment[21], which must describe the specific purpose of the proposed action, identify whether and how the proposed action substantially advances its stated purpose and the burdens imposed on private real property, and the benefits to society resulting from the proposed use of private real property. The assessment must also determine whether engaging in the proposed action will constitute a taking and describe reasonable alternative actions that could accomplish the specified purpose. In addition, the assessment must compare, evaluate, and explain how an alternative action would further the specified purpose and whether such alternative action would constitute a taking. A takings impact assessment is considered public information.

Public Notice[22]

A county must provide at least 30 days' notice of its intent to adopt regulations by providing a reasonably specific description of the proposed action in a newspaper of general circulation published in the county, or, if no such newspaper is published there, in a newspaper of general circulation in an adjacent county. The notice must, at a minimum, include a reasonably specific summary of the takings impact assessment and the name of the official of the county where a copy of the full assessment may be obtained.

Once the Takings Impact Assessment and the newspaper notice is complete, the commissioners court must adopt an order and record the adoption in the minutes of the commissioners court meeting. [23]

Basic County Authority

Local Government Code § 232.003 lays out the basic plat requirements that counties may adopt. Though not mandatory, these fundamental elements are typically adopted across the state. Specifically, counties may:

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[20] *See generally* at https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/general-oag/TexasPropertyRightsPreservationActGuidelines.pdf

[21] Though TAC cannot endorse any one document as being the right fit for all counties, many examples from other counties can be found online; However, this is an important step during which competent counsel should be consulted.

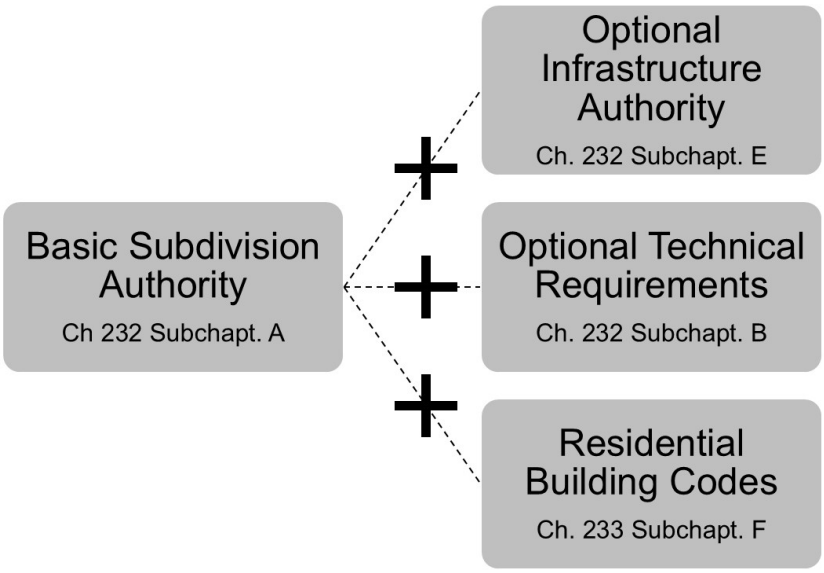
[22] Tex. Gov't Code § 2007.0042

[23] Tex. Loc. Gov't Code § 232.003

1. Require a right-of-way on a street or road that functions as a main artery in a subdivision, of a width of not less than 50 feet or more than 100 feet;
2. Require a right-of-way on any other street or road in a subdivision of not less than 40 feet or more than 70 feet;
3. Require that the shoulder-to-shoulder width on collectors or main arteries within the right-of-way be not less than 32 feet or more than 56 feet, and that the shoulder-to-shoulder width on any other street or road be not less than 25 feet or more than 35 feet;
4. Adopt reasonable specifications to provide adequate drainage for each street or road in a subdivision,
5. Adopt reasonable specifications relating to the construction of each street or road;
6. Require that each purchase contract made between the subdivider and a purchaser of land in the subdivision contain a statement describing the extent to which water will be made available to the subdivision and, if it will be made available, how and when;
7. Require that the owner of the tract to be subdivided execute a good and sufficient bond in the manner provided by §232.004;
8. Adopt reasonable specifications that provide for drainage in the subdivision to efficiently manage the flow of stormwater runoff and coordinate subdivision drainage with the general storm drainage pattern for the area; and
9. Require lot and block monumentation to be set by a registered professional surveyor before recordation of the plat.

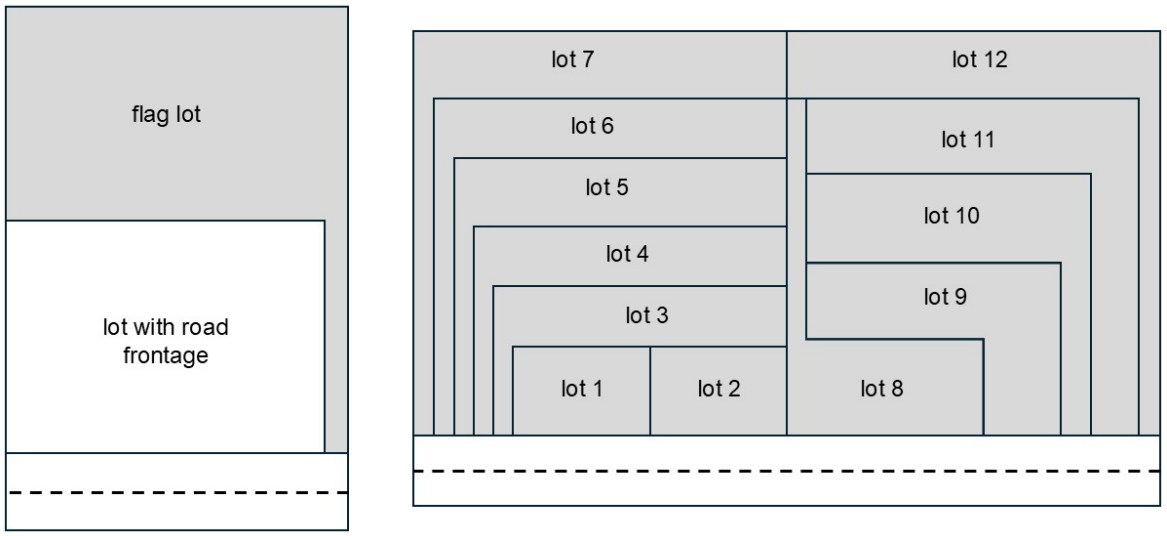
May counties adopt additional requirements beyond those listed in Subchapter A?

Yes. Though the basic county authority laid out in Subchapter A alleviates many development impacts, additional authority is available for counties who may choose to adopt additional standards which are discussed later in this section. *See* chart below.



Flag Lots

A flag lot is a parcel of land that has a narrow, flagpole-like access strip connecting it to the main road. Builders use flag lots to maximize the number of homes they can build in a given area. As the following diagram illustrates, the flag lot has very little street frontage; essentially, the "flag pole" is what allows access to the larger rectangle (or the "flag") that is set back some distance from the road.



Flag lots present challenges to county personnel who must deliver critical services to all citizens. Because quick ingress and egress to a flag lot may be difficult or impossible, a major concern is access for emergency responders, particularly fire departments. Fire engines are long and heavy and typically cannot drive onto private residential driveways

due to the risk of damage to the property or equipment. The narrow "pole" of a flag lot is often insufficient in width or construction strength to accommodate even small emergency vehicles such as ambulances, potentially delaying critical response times.

Designing and fitting utilities (water, sewer, power) down the long "flag poles" can be difficult, costly, and complex, and problems are often not discovered until late in the building process. Shared access drives also lead to complications regarding maintenance and repair costs, which can become a point of contention among neighbors.

As provided for in Chapter 251 of the Texas Transportation Code and in other state laws, counties have the general authority and responsibility for road and drainage maintenance and safety. Minimum driveway spacing is one critical component of both public safety and effective road and drainage maintenance where County equipment must operate in barrow ditches or along rural road shoulders.

Despite these problems, it is important to understand that counties currently lack specific authority to categorically prohibit flag lots. For tracts fronting existing county roads, however, counties may adopt reasonable standards for minimum lot frontages and establish reasonable standards for the lot frontages in relation to curves in the road.[24] Similarly, building and set-back lines, which prohibit locating any structure within certain distances of roads and other features, may limit flag lot usage.

The Subchapter E infrastructure authority discussed in the next section, if adopted, may mitigate some of the impacts that flag lots may present.

Optional Infrastructure Authority from Subchapter E

Once available only to certain urban counties, Subchapter E[25] now generally allows commissioners courts in *any* Texas county broad power to adopt rules for subdivisions and to require wider rights-of-way, minimum lot frontages, and set-backs—among other requirements. These powers are similar to the control that cities may exercise over subdivisions within their extraterritorial jurisdictions ("ETJ").

By an order adopted and entered in the minutes of the commissioners court and after a notice is published in a newspaper of general circulation in the county, the commissioners

[24] Tex. Loc. Gov't Code § 232.103

[25] Tex. Loc. Gov't Code § 232.101

court may adopt rules governing plats and subdivisions of land within the unincorporated area of the county to promote the health, safety, morals, or general welfare of the county and the safe, orderly, and healthful development of the unincorporated area of the county.

Lot frontages[26]
The commissioners court may adopt reasonable standards for minimum lot frontages on existing county roads and establish reasonable standards for the lot frontages in relation to curves in the road.

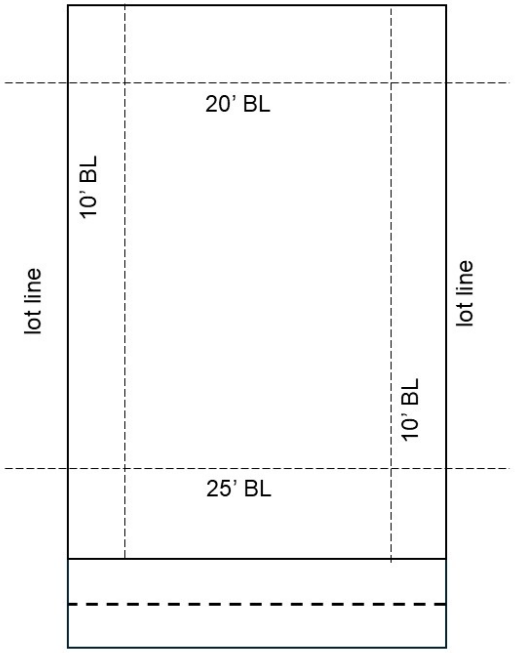
Set-Backs[27]
The commissioners court may establish reasonable building and set-back lines as provided by Chapter 233, with the exception of the limitation period[28].

If the commissioners court of a county determines that the general welfare will be promoted, the court may establish by order building or set-back lines on the public roads, including major highways and roads, in the county and prohibit the location of a new building within those building or set-back lines. Chapter 233 includes requirements related to public hearings, an optional board of building line adjustment, enforcement, and appeals.

Before the establishment or change of building or set-back lines, the commissioners court must hold at least one public hearing on the establishment or change. The court shall publish notice of the time and place of the hearing in a newspaper of general circulation in the county before the 15th day before the date of the hearing. The court may adjourn the hearing from time to time. The commissioners court may establish or change a building or set-back line only by an order passed by at least a majority vote of the full membership of the court.

The commissioners court must show each building or set-back line established on a map to be filed with the county clerk. Such lot features are shown below:

[26] *Id.*
[27] Tex. Loc. Gov't Code § 232.104
[28] Tex. Loc. Gov't Code § 233.034



The owner of land that abuts a road having a building or set-back line is charged with giving notice to the occupants. The county must begin construction of the improvement or widening of the road along the building or set-back line within **four years** after the established date or else they become void. However, the county and the affected property owners can agree to extend the time period for improvements or widening.

The commissioners court may appoint a Board of Building Line Adjustment[29] consisting of five freeholders of the county, who shall be appointed for staggered terms of two years, with two members' terms expiring one year and three members' terms expiring the next year. Members may be removed by the court for cause on a written charge after a public hearing. The court shall fill any vacancy on the board for the unexpired term of the member whose term becomes vacant. The board shall elect its own chairman and adopt rules of procedure. The Board may modify and vary the regulations affecting building or setback lines in a case in which unnecessary hardship may result from a literal enforcement of the regulations. The Board shall hear and decide an appeal in a case in which, because of exceptional narrowness, shallowness, shape, topography, existing building development, or another exceptional and extraordinary situation or condition of a specific piece of property, the strict application of established rules.
If a structure is erected, constructed, or reconstructed in violation of a building or set-back line established under this subchapter, the commissioners court, the district or

[29] Tex. Loc. Gov't Code § 233.035

county attorney, or an owner of real property in the county may institute an injunction, mandamus, abatement, or other appropriate action to prevent, abate, remove, or enjoin the unlawful erection, construction, or reconstruction. [30]

An aggrieved property owner may appeal to the commissioners court and must bring the appeal within 30 days after the date the action or order was adopted. An aggrieved property owner after a final order of the Board or the commissioners court may appeal to the district court or to another court with proper jurisdiction. The appellant must bring the appeal within 30 days after the date on which the final order in question was adopted. The appellant must also execute an appeal bond in an amount fixed by the court.

Major Thoroughfare Planning[31]

By an order adopted and entered in the minutes of the commissioners court and after a notice is published in a newspaper of general circulation in the county, the commissioners court may require a right-of-way on a street or road that functions as a major thoroughfare of a width of not more than 120 feet or require a right-of-way on a street or road that functions as a major thoroughfare of a width of more than 120 feet, if such requirement is consistent with a transportation plan adopted by the metropolitan planning organization of the region.

Future Transportation Corridors[32]

In *addition* to the other requirements of Chapter 233 of the Local Government Code, whether all or part of a subdivision for which a plat is required under this chapter is located within a future transportation corridor identified in an agreement under Transportation Code § 201.619. The commissioners court may refuse to approve the plat unless the plat states that the subdivision is located within the area of the alignment of a transportation project as shown in the final environmental decision document that is applicable to the future transportation corridor. The county may refuse to approve the plat if all or part of the subdivision is located within the area of the alignment of a transportation project as shown in the final environmental decision document that is applicable to the future transportation corridor.

Each purchase contract or lease between the subdivider and a purchaser or lessee of land in the subdivision must contain a conspicuous statement that the land is located within

[30] Tex. Loc. Gov't Code §233.036
[31] Tex. Loc. Gov't Code §232.102
[32] Tex. Loc. Gov't Code §232.0033

the area of the alignment of a transportation project as shown in the final environmental decision document that is applicable to the future transportation corridor.

Note that the commissioners court of a county or the court's designee may not refuse to review a plat application or refuse to approve a plat for recordation for failure to identify a corridor, as defined by Transportation Code § 201.619, unless the corridor is part of an agreement between the Texas Department of Transportation and the county under that section.

Limitations on Infrastructure Authority[33]
Unless otherwise authorized by state law, a commissioners court *shall not* regulate:

- the use of any building or property for business, industrial, residential, or other purposes;
- the bulk, height, or number of buildings constructed on a particular tract of land;
- the size of a building that can be constructed on a particular tract of land, including without limitation and restriction on the ratio of building floor space to the land square footage;
- the number of residential units that can be built per acre of land;
- a plat or subdivision in an adjoining county; or
- road access to a plat or subdivision in an adjoining county.

Note that this infrastructure planning authority is also subject to the exemptions to plat requirements provided for in §232.0015.

Optional Technical Requirements (from Border Counties in Subchapter B)
In addition to the general requirements in Subchapter A, Section 232.108 grants all counties the authority to adopt regulations once applicable only to border counties via Subchapter B. These provisions are outlined in §232.023, as follows:

1. be certified by a surveyor or engineer registered to practice in this state;
2. define the subdivision by metes and bounds;
3. locate the subdivision with respect to an original corner of the original survey of which it is a part;
4. describe each lot, number each lot in progression, and give the dimensions of each lot;
5. state the dimensions of and accurately describe each lot, street, alley, square, park, or other part of the tract intended to be dedicated to public use or for the use of

[33] Tex. Loc. Gov't Code §232.101(b)

purchasers or owners of lots fronting on or adjacent to the street, alley, square, park, or other part;

6. include or have attached a document containing a description in English (and Spanish if a border county[34]) of the water and sewer facilities and roadways and easements dedicated for the provision of water and sewer facilities that will be constructed or installed to service the subdivision and a statement specifying the date by which the facilities will be fully operable;
7. have attached a document prepared by an engineer registered to practice in this state certifying that the water and sewer service facilities proposed under Subdivision (6) are in compliance with the model rules adopted under Section 16.343, Water Code, and a certified estimate of the cost to install water and sewer service facilities;
8. adopt reasonable specifications that provide for drainage in the subdivision to[35]:
    a. efficiently manage the flow of stormwater runoff in the subdivision,
    b. provide positive drainage away from all buildings; and
    c. coordinate subdivision drainage with the general storm drainage pattern for the area
9. include a description of the drainage requirements as provided above;
10. identify the topography of the area;
11. include a certification by a surveyor or engineer registered to practice in this state describing any area of the subdivision that is in a floodplain or stating that no area is in a floodplain; and
12. include certification that the subdivider has complied with the requirements of Section 232.032 and that:
    a. the water quality and connections to the lots meet, or will meet, the minimum state standards;
    b. sewer connections to the lots or septic tanks meet, or will meet, the minimum requirements of state standards;
    c. electrical connections provided to the lot meet, or will meet, the minimum state standards; and
    d. gas connections, if available, provided to the lot meet, or will meet, the minimum state standards.

[34] *See* Tex. Loc. Gov't Code § 232.022

[35] *See* Tex. Loc. Gov't Code § 232.023(b)(8) for border counties

A subdivider may meet the sewer or septic requirements through the use of a certificate issued by the appropriate county or state official having jurisdiction over the approval of septic systems stating that lots in the subdivision can be adequately and legally served by septic systems. The subdivider of the tract must acknowledge the plat by signing the plat and attached documents and attest to the veracity and completeness of the matters asserted in the attached documents and in the plat. The plat must be filed and recorded with the county clerk of the county in which the tract is located. The plat is subject to the filing and recording provisions of Section 12.002, Property Code.

The commissioners court may require a plat application submitted for approval to include a digital map that is compatible with other mapping systems used by the county and that geo references the subdivision plat and related public infrastructure using the Texas Coordinate Systems adopted under Section 21.071, Natural Resources Code. A digital map required under this subsection may be required only in a format widely used by common geographic information system software. A requirement adopted under this subsection must provide for an exemption from the requirement if the subdivider of the tract submits with the plat application an acknowledged statement indicating that the digital mapping technology necessary to submit a map that complies with this subsection was not reasonably accessible.

If the commissioners court imposes the plat requirements prescribed above, any rules adopted under Section 232.101 (from Subchapter E, discussed above) must be consistent with these requirements.

Residential Building Codes[36]

Subchapter F of Chapter 233 allows any county (except Loving County) to adopt the International Residential Code (IRC) to apply to new, single-family or duplex residential construction and significant additions in unincorporated areas, but with a specific notice and inspection process *without* prior permits or fees. Key provisions include:

- Grants the authority to adopt the IRC for new residential construction and significant additions.[37]
- Narrowly applicable to new construction on vacant lots and substantial additions.[38]

[36] Tex. Loc. Gov't Code, Chap. 233, Subchapter F
[37] Tex. Loc. Gov't Code §§ 233.152, 233.153
[38] Tex. Loc. Gov't Code § 233.153

- Prohibits the requirement of prior approval (building permits) for this residential construction.[39]
- Requires builders to provide notice of construction and undergo specific inspections (foundation, framing/mechanical, final) with notice of compliance or non-compliance submitted to the county and the owner.[40]
- Prohibits the charging of fees for enforcing these residential building code standards.[41]
- States that municipal building codes prevail within a city's ETJ if adopted.[42]
- Explicitly states that this subchapter does not authorize counties to adopt or enforce zoning regulations.[43]
- Failure to submit the required notices is a Class C misdemeanor.[44]
- Allows for injunctive relief to enforce the notice requirements.[45]

Subdivision Roads

The most common way of dedicating roads is through the plat approval process. Not every road on a plat will be deemed to be a dedicated public right-of-way, nor is commissioners court approval of the plat for filing purposes necessarily an acceptance of the dedicated roads.[46]

While Local Government Code § 232.003(1) through (5) contain specific authority as to road specifications in subdivision plat applications, §232.0031 states that a county may not impose under §232.003 a higher standard for streets or roads in a subdivision than the county imposes on itself for the construction of streets or roads with a similar type and amount of traffic.

[39] Tex. Loc. Gov't Code § 233.153(d)(1)
[40] Tex. Loc. Gov't Code § 233.154
[41] Tex. Loc. Gov't Code § 233.153(f)
[42] Tex. Loc. Gov't Code § 233.153(c)
[43] Tex. Loc. Gov't Code § 233.153(d)(2)
[44] Tex. Loc. Gov't Code §§ 233.15, 233.157
[45] Tex. Loc. Gov't Code § 233.155
[46] "Control and establishment of county roads", 36 Tex. Prac., County And Special District Law §40.7 (2d ed.), *citing Ives v. Karnes*, 452 S.W.2d 737 (Tex. Civ. App.—Corpus Christi 1970, no writ) (indication on plat of a "road" did not as a matter of law prove intent to dedicate to the public); Tex. Att'y Gen. Op. No. WW-1055 (1961) (filing subdivision plat with county clerk without commissioners court approval not acceptance of roads).

For residential subdivisions proposing 1,000 or more lots, the commissioners court must adopt infrastructure standards requiring at least two means of ingress and egress in the subdivision to provide for sufficient routes of travel for use by emergency vehicles and for use during evacuations resulting from fire or other natural disasters.

FAQ

Does the approval of a subdivision plat mean the county is responsible for maintaining those roads?

No, a commissioners court's approval of the subdivision plat for filing does not constitute county acceptance of a dedication of roads depicted on the plat. Under Transportation Code Chapter 281 counties with a population of 50,000 or less may acquire a public interest in a private road only according to the specific methods set out in that chapter. A road may be dedicated to a county subject to Chapter 281 only by explicit, written communication to the commissioners court. Adverse possession cannot be shown by maintenance of the road with public funds. Tex. Att'y Gen. Op. No. GA-0594 (2008)

FAQ

Does the county's approval of a plat including a drainage ditch require the county to maintain it?

Probably not. If the ditch was not dedicated for public use and was never maintained by the county and the flooding from the ditch is not the result of drainage from, or improvements to a county road, the county is not responsible for its maintenance. Tex. Att'y Gen. L.O. No. 93-98 (1993)

FAQ

Can a county accept roads in a gated subdivision?

Yes, a commissioners court may accept a dedication to the county of private roads within a gated subdivision, but the roads will no longer be private roads. Access to a public road may not be restricted by the landowner or owners on either side of it; therefore, they may not block access to the roads by means of a locked gate. Tex. Att'y Gen. Op. JC-0172 (2000)

Naming and Addressing[47]

The commissioners court of a county by order may adopt uniform standards for naming public roads located wholly or partly in unincorporated areas of the county and for assigning address numbers to property located in unincorporated areas of the county. The standards apply to any new public road that is established.

The county may adopt a name for a public road located wholly or partly in an unincorporated area of the county and may assign address numbers to property located in an unincorporated area of the county for which there is no established address system.

The county may adopt standards and specifications for the design and installation of address number signs to identify properties located in unincorporated areas of the county, including standards or specifications as to sign size, material, longevity, ability to be seen and to reflect light, and any other factor the commissioners court considers necessary or appropriate. Such an order may only be adopted after conducting a public hearing on the proposed order. The court shall give public notice of the hearing at least two weeks before the date of the hearing. If an order adopted under this section conflicts with a municipal ordinance, the municipal ordinance prevails in the territory in which it is effective. A person who knowingly fails or refuses to comply commits a Class C misdemeanor.

Groundwater[48]

As of Jan. 1, 2024, counties *must* require that a plat application for a subdivision that will source its water supply from groundwater under the land include a statement that the plat is prepared by an engineer or geoscientist licensed to practice in Texas and certifies that adequate groundwater is available for the subdivision. The Texas Commission on Environmental Quality (TCEQ) establishes the rules for appropriate form and content of certifications.[49] [50]

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[47] Texas Transportation Code § 251.013

[48] Tex. Loc. Gov't Code § 232.0032

[49] *See* promulgated form and other materials at: https://www.tceq.texas.gov/groundwater/groundwater-planning-assessment/groundwater-availability-certification

[50] Texas Water Code § 35.019, does provide a specific avenue for counties within a Priority Groundwater Management Area ("PGMA") to impose more strict regulations related to water availability for subdivisions seeking plat approval under Texas Local Government Code, Chapter 232. The commissioners court may adopt requirements to ensure adequate water supply, which could be considered "more strict" than what might be required in areas outside a PGMA. *See* https://www.tceq.texas.gov/groundwater/groundwater-planning-assessment/pgma.html.

The commissioners court may waive this requirement only if there is credible evidence that groundwater is available in the vicinity of the proposed subdivision and the court determines that sufficient groundwater will continue to be available. Additionally, the commissioners court must find that either the entire tract to be subdivided will be supplied with groundwater from the Gulf Coast Aquifer or the Carrizo-Wilcox Aquifer[51], or the tract will not be subdivided into more than 10 parts.

If the tract of land will be subdivided into more than 10 parts or the commissioners court determines the subdivision is part of a series of proposed subdivisions that will collectively include more than 10 parts, then the plat application must comply with the requirements in Local Government Code § 232.0032(a).

TCEQ, in consultation with the Texas Water Development Board, establishes rules that require a person who submits a plat application to also submit information to the Texas Water Development Board and any groundwater conservation district within the boundaries of the plat that would be useful in:

- performing groundwater conservation district activities;
- conducting regional water planning;
- maintaining the state's groundwater database; or
- conducting studies for the state related to groundwater.

On-Site Sewage Facilities (OSSFs)

Plats that lay out residential housing plots may implicate a county's authority to regulate on-site sewage facilities (OSSFs), commonly known as "septic tanks", if the county serves as an authorized agent for the Texas Commission on Environmental Quality (TCEQ) to enforce state rules[52]. To become an authorized agent, a county's commissioners court must first pass an order.[53]

County oversight typically involves requiring permits for installation, alterations, or repairs, reviewing site and soil evaluations, approving system designs, inspecting construction, and investigating complaints to ensure the systems are installed and

[51] Extending from the Rio Grande in South Texas northeastward into Arkansas and Louisiana, the Carrizo-Wilcox aquifer provides water to all or parts of 66 Texas counties.

[52] Health and Safety Code § 366.011

[53] *See* TCEQ recommendations and model ordinances at https://www.tceq.texas.gov/permitting/ossf/ossfauthorize.html

maintained according to state standards mostly encompassed in the Texas Administrative Code[54].

Counties may enforce their OSSF rules through various means, including injunctions, administrative penalties, and/or criminal penalties.

Emergency Planning

Fire Suppression System[55]

In a subdivision that is not served by fire hydrants as part of a centralized water system certified by TCEQ as meeting minimum standards for water utility service, the commissioners court may require a limited fire suppression system that requires a developer to construct:

1. for a subdivision of fewer than 50 houses, 2,500 gallons of storage; or
2. for a subdivision of 50 or more houses, 2,500 gallons of storage with a centralized water system or 5,000 gallons of storage.

Access by Emergency Vehicles[56]

In regard to a residential subdivision that is subdivided into 1,000 or more lots in the unincorporated area of a county, the commissioners court *shall* adopt infrastructure standards requiring at least two means of ingress and egress in the subdivision to provide for sufficient routes of travel for use by emergency vehicles and for use during evacuations resulting from fire or other natural disasters.

Please note that this section does not limit the authority of a commissioners court under other existing laws, as applicable, to adopt infrastructure standards that are more stringent than standards required by this section.

Floodplain Regulations

Though counties have no conventional zoning authority generally, counties may adopt certain land use regulations in flood prone areas in conjunction with the federal National Flood Insurance Act.[57] Citing a lack of available insurance against flooding due to unwise development decisions, the Texas Flood Control and Insurance Act[58] authorizes counties

[54] 30 TAC § 285.10
[55] Tex. Loc. Gov't Code § 232.109
[56] Tex. Loc. Gov't Code § 232.0034
[57] *See* 42 U.S.C.A. § 4001, et seq.
[58] Tex. Water Code §§ 16.311 to 16.324

and cities to adopt restrictions on residential construction, roads and bridges, the location making appropriate land use adjustments to constrict the development of land which is exposed to flood damage and minimize damage caused by flood losses; of mobile home parks, and the placement of utility lines or septic tanks. The county may elect to require application for building permits to monitor development in these areas.

Pursuant to Water Code § 16.315, counties are authorized to "take all necessary and reasonable actions that are not less stringent than the requirements and criteria of the National Flood Insurance Program, including but not limited to:

1. guiding the development of proposed future construction, where practicable, away from a location which is threatened by flood hazards;
2. assisting in minimizing damage caused by floods;
3. authorizing and engaging in continuing studies of flood hazards in order to facilitate a constant reappraisal of the flood insurance program and its effect on land use requirements;
4. engaging in floodplain management, adopting and enforcing permanent land use and control measures that are not less stringent than those established under the National Flood Insurance Act, and providing for the imposition of penalties on landowners who violate this subchapter or rules adopted or orders issued under this subchapter;
5. declaring property, when such is the case, to be in violation of local laws, regulations, or ordinances which are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas and notifying the director, or whomever the director designates, of such property;
6. consulting with, giving information to, and entering into agreements with the Federal Emergency Management Agency for the purpose of:
    a. identifying and publishing information with respect to all flood areas, including coastal areas; and
    b. establishing flood-risk zones in all such areas and making estimates with respect to the rates of probable flood-caused loss for the various flood-risk zones for each of these areas;
7. cooperating with the director's studies and investigations with respect to the adequacy of local measures in flood-prone areas as to land management and use, flood control, flood zoning, and flood damage prevention;
8. taking steps, using regional, watershed, and multi-objective approaches, to improve the long-range management and use of flood-prone areas;

9. purchasing, leasing, and receiving property from the director when such property is owned by the federal government and lies within the boundaries of the political subdivision pursuant to agreements with the Federal Emergency Management Agency or other appropriate legal representative of the United States Government;
10. requesting aid pursuant to the entire authorization from the board;
11. satisfying criteria adopted and promulgated by the board pursuant to the National Flood Insurance Program;
12. adopting permanent land use and control measures with enforcement provisions that are not less stringent than the criteria for land management and use adopted by the director;
13. adopting more comprehensive floodplain management rules that the political subdivision determines are necessary for planning and appropriate to protect public health and safety;
14. participating in floodplain management and mitigation initiatives such as the National Flood Insurance Program's Community Rating System, Project Impact, or other initiatives developed by federal, state, or local government; and
15. collecting reasonable fees to cover the cost of administering a local floodplain management program.[59]

For violations of a county's regulations, Water Code § 16.322 provides for a civil penalty of not more than $100 per violation *and* per day a violation persists. In addition, a Class C criminal violation may also be pursued under §16.3221. Water Code § 16.323 also provides for injunctive relief for threatened or past violations.

The Texas Attorney General has concluded that these sections of the Water Code, which ratify past actions by political subdivisions with respect to participation in the National Flood Insurance Program, is a valid exercise of legislative authority; it does not violate Const. Art. 1, § 16 and destroys any cause of action based on lack of legislative authority for actions ratified.[60]

Establishing local regulations is an effective strategy to reduce flood risk. Each community is different, but regulations typically require an elevation certificate and a

[59] The commissioners court of a county may set a reasonable fee for the county's issuance of a permit authorized by this subchapter for which a fee is not specifically prescribed. The fee must be set and itemized in the county's budget as part of the budget preparation process. Tex. Water Code § 16.324
[60] Tex. Att'y Gen. Op. No. JH-1102 (1977)

permit. A permit will verify certain information about a property. Most man-made changes to land in the floodplain require a permit, including:

- Constructing new buildings (including temporary or agricultural)
- Additions to existing buildings
- Substantial improvements to existing buildings (including interior renovation)
- Repair of substantially damaged buildings
- Placement of manufactured (mobile) homes
- Subdivision of land
- Parking or storage of recreational vehicles
- Storing materials, including gas/liquid tanks
- Construction of roads, bridges, and culverts
- Placement of fill, grading, excavation, mining, and dredging
- Alteration of stream channels
- Oil and gas drilling

Pre-Emption of Local Law

Notably, the legislature amended Local Government Code § 232.001 in 2023[61] to state that "[t]he commissioners court or the county authority responsible for approving plats may not require an analysis, study, document, agreement, or similar requirement to be included in or as part of an application for a plat, development permit, or subdivision of land that is not explicitly required by state law". This change makes it advisable for county planners to thoroughly review existing regulations to ensure that each and every regulation is supported explicitly by some state law.

[61] *See* Tex. Loc. Gov't Code § 232.001(h)

SPECIAL CONSIDERATIONS

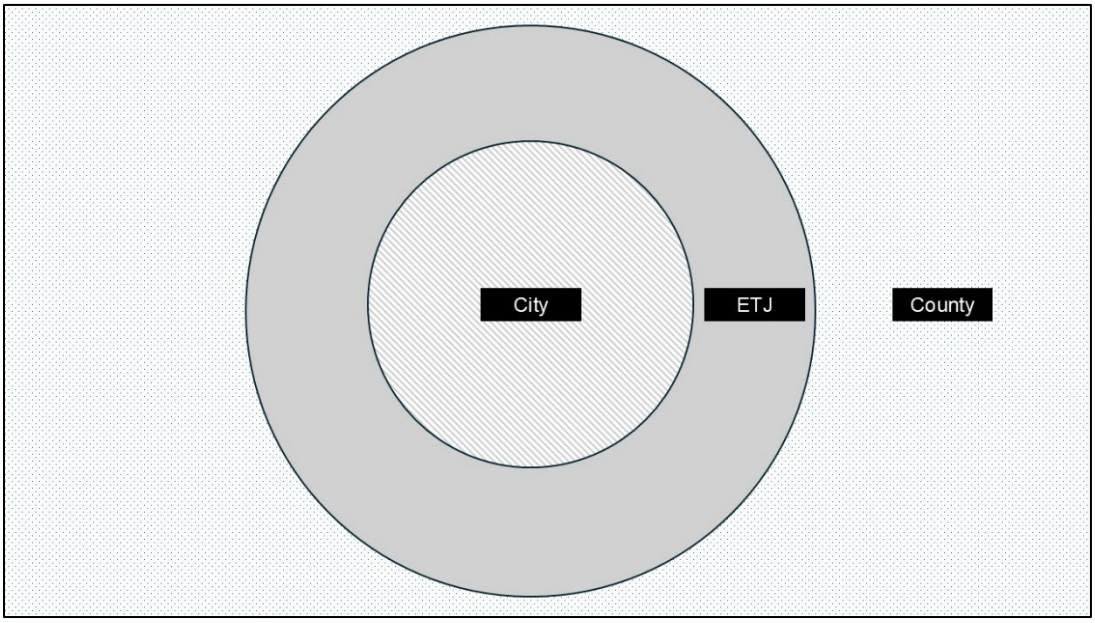
Extraterritorial Jurisdiction (the "ETJ)[62]

Generally

Counties have no authority to regulate within incorporated cities in Texas. Cities regulate land use pursuant to different statutes[63]. In addition, cities enjoy the ability to regulate land uses outside their corporate limits in the belt of land that immediately surrounds their incorporated area, known as a city's "ETJ". The expanse of this contiguous buffer zone increases in size based on each particular city's population. Having authority in this buffer zone allows cities to plan for future growth and development in areas outside their current limits.

Cities with smaller populations have smaller ETJs, while larger cities have larger ones. The general rules, as outlined in Chapter 42 of the Texas Local Government Code[64], are:

- Less than 5,000 inhabitants: ETJ extends up to 0.5 miles.
- 5,000 to 24,999 inhabitants: ETJ extends up to 1 mile.
- 25,000 to 49,999 inhabitants: ETJ extends up to 2 miles.
- 50,000 to 99,999 inhabitants: ETJ extends up to 3.5 miles.
- 100,000 or more inhabitants: ETJ extends up to 5 miles.
- Neighboring cities can negotiate and agree to adjust their ETJ boundaries



[62] Tex. Loc. Gov't Code § 212.003

[63] Tex. Loc. Gov., Chapter 212

[64] Tex. Loc. Gov't Code § 42.021

The governing body of a municipality may extend to the extraterritorial jurisdiction of the municipality the application of adopted municipal ordinances relating to rules governing plats and subdivisions of land, access to public roads or the pumping, extraction, and use of groundwater by persons other than retail public utilities[65].

Who Regulates in the ETJ

In 2001, the Legislature adopted HB 1445, which amended the Local Government Code to prohibit a city and most counties from *both* regulating subdivisions within an ETJ.[66] As a result, a city and an applicable county are now required to execute a written agreement (or "1445 Agreement") determining whether the county or the city will be the entity authorized to regulate subdivision plats and approve related permits in the ETJ.[67]

The 1445 Agreement may:

- provide that either the city or the county has exclusive approval authority in the ETJ; or
- 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.[68] Also, a city and an applicable county may 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.[69] Cities and counties should consult with legal counsel to determine if a 1445 Agreement is in place and which regulations govern ETJ platting.

Annexation in the ETJ

Senate Bill 2038, the "ETJ opt-out bill," passed during the 88th Texas legislative session and amended state law related to municipal extraterritorial jurisdiction (ETJ) by adding new Subchapters D and E to Chapter 42 of the Texas Local Government Code. The law went into effect on September 1, 2023, authorizing residents and landowners to decide if their respective areas within a city's ETJ remain in the ETJ, offering two pathways for areas within a city's ETJ to be released: (1) through a petition filed by residents or

[65] Tex. Loc. Gov't Code § 212.003
[66] *Id.* § 242.001 et seq.
[67] *Id.* § 242.001(c)
[68] *Id.* § 242.001(d)
[69] *Id.* § 242.001(d)(4)(B)

landowners, or (2) by an election on the question of release held in the area within the ETJ.

For the first option, a resident can file a petition for release of their area from the city's ETJ. The petition must contain signatures from more than 50 percent of the registered voters or a majority in value of the titleholders of land in the area, and a map of the land to be released. Upon receiving a valid petition, the city secretary verifies the signatures, notifies the residents whether or not the petition contains the required number of signatures, and, if it indeed contains the required number of signatures, the city is required to immediately release the area from its ETJ.[70]

The second pathway for release from the ETJ is by election.[71] A resident may request an election by submitting to the city a petition bearing the signatures of at least five percent of the registered voters in the area to be released. Following the election, if a majority of qualified voters in the area approve the release, the city must release the area. A city may also voluntarily release an area instead of holding an election.

SB 2038's ETJ release provisions do not apply to the following six areas[72]:

1. an area within five miles of a military base boundary where active training occurs;
2. an area that was voluntarily annexed into the ETJ that is located in a county in which the population grew by more than 50 percent from the previous federal decennial census in the federal decennial census conducted in 2020; and that has a population greater than 240,000;
3. within the portion of the extraterritorial jurisdiction of a municipality with a population of more than 1.4 million that is within 15 miles of the boundary of a military base, as defined by Section 43.0117, at which an active training program is conducted; and in a county with a population of more than two million;
4. property located in an industrial district;
5. property subject to a strategic partnership agreement as defined in Chapter 43 of the Texas Local Government Code.
6. for the ETJ of a municipality located in four or more counties, one of which has a population of 2.1 million or more and is adjacent to a county with a population of 2.6 million or more: in an area subject to an active development agreement entered into under Section 212.172 with the municipality; in a platted or unplatted lot of

[70] Tex. Loc. Gov't Code § 42.104
[71] Tex. Loc. Gov't Code § 42.152
[72] Tex. Loc. Gov't Code §§ 42.101, 42.151

less than 12 acres unless included with the other land in a petition for release under Section 42.152; or within a platted subdivision of 25 or more lots if the area is a single lot.

The same legislation prevents automatic ETJ expansion due to annexation after January 1, 2023. ETJ expansion can only occur if property owners who would be included in the city's ETJ request their area to be included in the ETJ when an area is annexed.[73]

SB 2038 may also impact "1445" agreements between cities and counties regarding the regulation of subdivisions in the ETJ under Chapter 242 of the Local Government Code. If an area that is subject to an agreement between the city and county relating to platting or subdivision authority is removed from the city's ETJ, the city retains no authority over that property and the county is the entity authorized to regulate subdivisions in the removed area.

Limitations on Regulation in the ETJ

Unless otherwise authorized by state law, in its ETJ a municipality cannot regulate:

- the use of any building or property for business, industrial, residential, or other purposes;
- the bulk, height, or number of buildings constructed on a particular tract of land;
- the size of a building that can be constructed on a particular tract of land, including without limitation any restriction on the ratio of building floor space to the land square footage;
- the number of residential units that can be built per acre of land; and
- the size, type, or method of construction of a water or wastewater facility that can be constructed to serve a developed tract of land.[74]

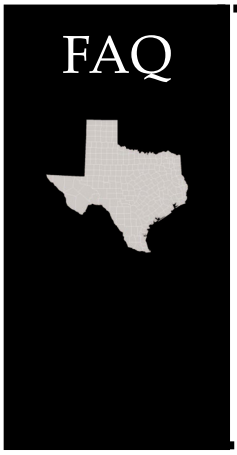
Similarly, if a county is regulating in the ETJ (pursuant to a "1445 agreement"), unless otherwise authorized by state law, it shall not regulate:

- the use of any building or property for business, industrial, residential, or other purposes;
- the bulk, height, or number of buildings constructed on a particular tract of land;

[73] Tex. Loc. Gov't Code § 42.021(e)

[74] Tex. Loc. Gov. Code § 212.003

- the size of a building that can be constructed on a particular tract of land, including without limitation and restriction on the ratio of building floor space to the land square footage;
- the number of residential units that can be built per acre of land;
- a plat or subdivision in an adjoining county; or
- road access to a plat or subdivision in an adjoining county.[75]



May a city extend their building codes into their ETJ?
No. The Texas Supreme Court has held that general law cities may not extend their building codes into the ETJ. See Town of Lakewood Vill. v. Bizios, 493 S.W.3d 527 (Tex. 2016). And the Dallas Court of Appeals held that a home rule city "lacks authority to require a landowner developing property in its [extraterritorial jurisdiction] to obtain City building permits, inspections and approvals, and pay related fees." Collin Cty. v. City of McKinney, 553 S.W.3d 79 (Tex. App.— Dallas 2018).

Populous & Contiguous Counties[76]

Generally

In a county that has a population of more than 3.3 million or is contiguous with a county that size and if the commissioners court by order so elects, §232.005 does not apply to the county.

Applies to Harris County and adjacent Montgomery, Liberty, Chambers, Galveston, Brazoria, Fort Bend, and Waller counties.

However, the sections of Chapter 232 preceding Section 232.005 do apply to the county in the same manner that they apply to other counties except that they apply only to tracts of land located outside municipalities and the extraterritorial jurisdiction of municipalities, as determined under Chapter 42 and the commissioners court of the county, instead of having the powers granted by Sections 232.003(2) and (3), may:

- require a right-of-way on a street or road that does not function as a main artery in the subdivision of not less than 40 feet or more than 50 feet; and

[75] Tex. Loc. Gov. Code § 232.101
[76] Tex. Loc. Gov't Code § 232.006

- require that the street cut on a main artery within the right-of-way be not less than 30 feet or more than 45 feet, and that the street cut on any other street or road within the right-of-way be not less than 25 feet or more than 35 feet; and
- Section 232.004(5)(B) does not apply to the county.

Fire Codes[77]

Certain populous counties (over 250,000 and adjacent) may adopt and enforce fire codes in their unincorporated areas for commercial establishments, public buildings, and larger multifamily residential dwellings.

Applies to the following **populous** and *adjacent* counties: **Harris**, *Montgomery, Liberty, Chambers, Galveston, Brazoria, Fort Bend,* and *Waller*; **Dallas,** *Denton, Collin, Rockwall, Kaufman, Ellis, Tarrant*; **Tarrant**, *Johnson, Parker, Wise*; **Bexar**, *Kendall, Comal, Guadalupe, Wilson, Atascosa, Medina, Bandera*; **Travis,** *Williamson, Bastrop, Caldwell, Hays, Blanco,* and *Burnet*; **Collin,** *Grayson, Fannin, Hunt,* and *Rockwall*; **Denton**, *Cooke, Grayson, Collin, Dallas, Tarrant,* and *Wise*; **Fort Bend**, *Harris, Brazoria, Wharton, Austin,* and *Waller*; **Hidalgo,** *Starr, Brooks,* and *Cameron*; **El Paso** and *Hudspeth*; **Montgomery**, *Walker, San Jacinto, Liberty, Harris, Waller,* and *Grimes*; **Williamson**, *Bell, Milam, Lee, Bastrop, Travis,* and *Burnet*; **Cameron**, *Willacy,* and *Hidalgo*; **Brazoria**, *Matagorda, Fort Bend, Harris,* and *Galveston*; **Bell**, *McLennan, Falls, Milam, Williamson, Burnet, Lampasas,* and *Coryell*; **Galveston**, *Harris, Chambers,* and *Brazoria*; **Nueces**, *San Patricio, Jim Wells,* and *Kleberg*; **Lubbock,** *Hale, Crosby, Lynn, Hockley, Lamb, Terry,* and *Garza*; **Hays**, *Travis, Caldwell, Comal, Guadalupe,* and *Blanco*; **Webb,** *Zapata, Jim Hogg, Duval, La Salle, Dimmit* and *Maverick*; **McLennan**, *Hill, Limestone, Falls, Bell, Coryell,* and *Bosque*; **Jefferson**, *Hardin, Orange,* and *Chambers*; **Smith,** *Wood, Upshur, Gregg, Rusk, Cherokee, Henderson,* and *Van Zandt*; **Brazos**, *Robertson, Leon, Madison, Grimes, Washington,* and *Burleson*.

Key provisions include:

- Grants the authority to adopt a fire code based on recognized national standards.[78]
- Specifies the types of buildings subject to the fire code.[79]
- Allows the requirement of building permits for these structures.[80]
- Authorizes inspections to ensure compliance.[81]

[77] Tex. Loc. Gov't Code, Chap. 233, Subchapter C
[78] Tex. Loc. Gov't Code §§ 233.061, 233.062
[79] Tex. Loc. Gov't Code § 233.062
[80] Tex. Loc. Gov't Code § 233.063
[81] Tex. Loc. Gov't Code § 233.064

- Allows fees for permits and inspections.[82]
- Provides for enforcement through injunctions and civil penalties.[83]

Border Counties[84]

Generally

Enacted in 1995, Subchapter B applies in 27 Texas counties having some part within 50 miles of the Texas-Mexico border and in Nueces County.

> Applies to the following counties: Brewster, Brooks, Culberson, Dimmit, Duval, Edwards, El Paso, Frio, Hidalgo, Hudspeth, Jeff Davis, Jim Hogg, Jim Wells, Kinney, La Salle, Maverick, McMullen, Nueces, Presidio, Reeves, Starr, Sutton, Terrell, Uvalde, Val Verde, Webb, Willacy, Zapata. *Note:* Cameron County is not included on this list, as the 89th Texas legislature recently passed HB 3680 into law authorizing it to be governed by Subchapter G with specialized requirements.

The laws focus on four major initiatives:

1. requiring subdividers to provide basic infrastructure (water, sewer, roads, and drainage) when creating (or "platting") new residential developments;
2. restricting the advertising and selling of lots that are not platted or that lack water and sewer;
3. limiting connections to utilities in substandard areas; and
4. mandating certain disclosures and protections when lots are sold through contracts for deeds[85].

Requirements

For new residential subdivisions, the subdivider is responsible for providing utilities, roads, and drainage. Plats must include information and certifications about the utilities and drainage. If the water and sewer facilities have not been built at the time of plat approval, the subdivider must provide a financial guarantee that they will be completed by a chosen operability date. This requirement is termed "build it or bond it".

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[82] Tex. Loc. Gov't Code § 233.065

[83] Tex. Loc. Gov't Code §§ 233.066, 233.067

[84] Tex. Loc. Gov't Code, Chap. 232, Subchapter B

[85] An agreement under which land is sold through installment payments, with the seller providing a deed to the land only after all the payments have been made.

Further, Subchapter B requires the county to adopt and enforce the model rules of the Texas Water Development Board, even if the county is not seeking Economically Distressed Area Program ("EDAP") funds.[86] Subchapter B also contains restrictions on selling and advertising lots, generally forbidding the sale of a lot lacking water and sewer (or a guarantee for them) unless the seller resides on the lot.

A lot is eligible for connection to utilities (water, sewer, electric, and gas) only if certain listed conditions are met. Typically, a lot must be platted to be eligible for water or sewer service. For electric or gas service to a lot, the subdivision must have water and sewer facilities installed (although suitability for septic systems suffices). However, there are several categories of exceptions and exemptions.

In these counties, a utility may not serve or connect any subdivided land with certain utilities unless authorized by the commissioners court.[87] By an order adopted and entered in the minutes of the commissioners court, and after a notice is published in a newspaper of general circulation in the county, the commissioners court may impose very detailed and specific requirements for the connection of utilities[88] [89]

Counties Near the Gulf of Mexico[90]

Allows specific coastal counties bordering the Gulf of Mexico and adjacent to a county with a population over 3.3 million to regulate dangerous structures, specifically bulkheads, that pose a threat to persons or property.

Applies to the following counties: Chambers, Galveston, and Brazoria.

Key Provisions include:

- Authorizes the county to determine if a structure is dangerous.[91]
- Permits the county to order the owner to repair, remove, or demolish the structure.[92]

[86] *See* more about model rules in the "Economically Distressed Counties" section, *infra.*
[87] Tex. Loc. Gov't Code §§ 232.029(a-p), 232.0291(a-k)
[88] Tex. Loc. Gov't Code §§ 232.029 (with 50 miles of border) or 232.0291 (within 100 miles of border)
[89] Tex. Loc. Gov't Code § 232.106
[90] Tex. Loc. Gov't Code, Chap. 233, Subchapter A
[91] Tex. Loc. Gov't Code § 233.001(a)
[92] Tex. Loc. Gov't Code § 233.001(a)(1)

- Outlines the process for notice to the owner.[93]
- Allows the county to perform the work if the owner fails to comply and to assess costs as a lien on the property.[94]
- Provides for judicial review of the county's actions.[95]

Economically Distressed Area Program ("EDAP") Counties[96]

Subchapter C applies to counties eligible for funding under EDAP[97] but not within 50 miles of the border. For new subdivisions with two or more lots of five acres or less intended for residential purposes in these counties, plats must include information about water and sewer service. An engineer must certify that the water and sewer facilities comply with the model rules.[98] The subdivider must construct those facilities or financially guarantee their construction.

The law forbids the sale of a lot that should have but has not been platted under Subchapter C. It also forbids utility connection to any unplatted lots. The requirements for residential subdivisions in Subchapter C apply *in addition to* the county's general subdivision platting requirements (for example, for roads and drainage) in Subchapter A of Chapter 232.

Zoning Authority in Certain Counties[99]

Chapter 231 grants specific zoning and land-use regulatory powers to certain counties in narrowly defined areas. Texas generally limits county land-use authority, but this statute authorizes these counties to adopt zoning or planning regulations in special contexts. To be clear, this chapter does not itself grant zoning power; it merely sets the framework for the following counties to adopt zoning regulations:

- **Willacy and Cameron Counties**: around Padre Island (Subchapter B).
- **Val Verde County**: near Amistad Recreation Area (Subchapter C).

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[93] Tex. Loc. Gov't Code § 233.001(b)(2)
[94] Tex. Loc. Gov't Code § 233.001(a)(2)
[95] Tex. Loc. Gov't Code § 233.001(d)
[96] Tex. Loc. Gov't Code, Chap. 232, Subchapter C
[97] Program counties change from year to year. *See* map and other details at: https://www.twdb.texas.gov/financial/programs/EDAP/index.asp
[98] To be eligible for EDAP funding, counties must adopt the "Model Subdivision Rules" found at https://www.twdb.texas.gov/financial/programs/EDAP/MSR/index.asp#3
[99] Tex. Loc. Gov. Code § 231.001, et. seq.

- **Counties with Military Zones**: any county containing a US Naval or Coast Guard base, up to 1 mile surrounding (Subchapter D).
- **Counties with Publicly-Owned Lakes**: Lakes owned by a public entity with more than 1-million acre-feet capacity, and built after 1985 (Subchapter E).
- **Denton, Cooke, Grayson and Hunt Counties**: around Lake Tawakoni & Lake Ray Roberts (Subchapter F).
- **Garza and Kent Counties**: that surround certain lakes & reservoirs (Subchapter G).
- **El Paso County**: around the El Paso Mission Trail Historical Area (Subchapter I).
- **Burleson, Milam, Lee, and Washington Counties**: around Lake Somerville (Subchapter J).
- **Hood County**: all unincorporated areas, due to Lake Grandbury watershed (Subchapter K).
- **Zapata County**: around Falcon Lake (Subchapter L)

Each subchapter is different, and should be individually consulted, along with any local regulations adopted thereunder, but generally these counties may:

- Adopt zoning regulations tailored to preserve public health, safety, welfare, and orderly development in designated areas.
- Establish zoning districts and planning commissions to study and recommend regulations.
- Adjust land use, building size/height, density, and lot coverage, among other factors in certain zones.
- Seek local option elections or require petitions to verify community support in some subchapters.

These counties must hold public hearings and publish notice before regulations or boundaries take effect.

In addition to the zoning authority provided above, counties may have zoning authority around airports pursuant to Chapter 241 of the Local Government Code.

Manufactured Home Developments[100]

A manufactured-home rental community is not a subdivision subject to county subdivision regulations and Sections 232.001-232.006 do not apply to the community.[101]

A "manufactured home rental community" is defined as a plot or tract of land that is separated into two or more spaces or lots that are rented, leased, or offered for rent or lease, for a term of less than 60 months without a purchase option, for the installation of manufactured homes for use and occupancy as residences. Thus, if any purchase option is available, or if lots are sold via deed or contract for deed, then regular Chapter 232 platting rules apply.

However, after a public hearing and after notice is published in a newspaper of general circulation in the county, the county may establish minimum infrastructure standards for manufactured home rental communities.

The minimum standards may include only:

- reasonable specifications to provide adequate drainage in accordance with standard engineering practices, including specifying necessary drainage culverts and identifying areas included in the 100-year flood plain;
- reasonable specifications for providing an adequate public or community water supply, including specifying the location of supply lines, in accordance with Subchapter C, Chapter 341, Health and Safety Code;
- reasonable requirements for providing access to sanitary sewer lines, including specifying the location of sanitary sewer lines, or providing adequate on-site sewage facilities in accordance with Chapter 366, Health and Safety Code;
- a requirement for the preparation of a survey identifying the proposed manufactured home rental community boundaries and any significant features of the community, including the proposed location of manufactured home rental community spaces, utility easements, and dedications of rights-of-way; and
- reasonable specifications for streets or roads in the manufactured rental home community to provide ingress and egress access for fire and emergency vehicles.

The commissioners court may not adopt minimum infrastructure standards that are more stringent than requirements adopted by the commissioners court for subdivisions. The

[100] Tex. Loc. Gov't Code § 232.007

[101] Tex. Loc. Gov't Code § 232.007(b)

commissioners court may only adopt minimum infrastructure standards for ingress and egress access by fire and emergency vehicles that are reasonably necessary.

If the commissioners court adopts minimum infrastructure standards for manufactured home rental communities, the owner of land located outside the limits of a municipality who intends to use the land for a manufactured home rental community must have an infrastructure development plan prepared that complies with the minimum infrastructure standards adopted by the commissioners court under Subsection (c).

Not later than the 60th day after the date the owner of a proposed manufactured home rental community submits an infrastructure development plan for approval, the county engineer or another person designated by the commissioners court shall approve or reject the plan in writing. If the plan is rejected, the written rejection must specify the reasons for the rejection and the actions required for approval of the plan. The failure to reject a plan within the period prescribed by this subsection constitutes approval of the plan.

Construction of a proposed manufactured home rental community may not begin before the date the county engineer, or another person designated by the commissioners court, approves the infrastructure development plan. The commissioners court may require inspection of the infrastructure during or on completion of its construction. If a final inspection is required, the final inspection must be completed not later than the second business day after the date the commissioners court or the person designated by the commissioners court receives a written confirmation from the owner that the construction of the infrastructure is complete. If the inspector determines that the infrastructure complies with the infrastructure development plan, the commissioners court shall issue a certificate of compliance not later than the fifth business day after the date the final inspection is completed. If a final inspection is not required, the commissioners court shall issue a certificate of compliance not later than the fifth business day after the date the commissioners court or the person designated by the commissioners court receives written certification from the owner that construction of the infrastructure has been completed in compliance with the infrastructure development plan.

A utility may not provide utility services, including water, sewer, gas, and electric services, to a manufactured home rental community subject to an infrastructure development plan or to a manufactured home in the community unless the owner provides the utility with a copy of the certificate of compliance issued under Subsection (g). This subsection applies only to:

- a municipality that provides utility services;
- a municipally owned or municipally operated utility that provides utility services;
- a public utility that provides utility services;
- a nonprofit water supply or sewer service corporation organized and operating under Chapter 67, Water Code, that provides utility services;
- a county that provides utility services; and
- a special district or authority created by state law that provides utility service.

THE PLATTING PROCESS

Application[102]

The commissioners court of a county or the court's designee may designate one or more officers or employees of the county the authority to approve, approve with conditions, or disapprove a plat. The court or its designee shall issue a written list of all documentation and other information that must be submitted with a plat application, which must relate to the requirements set forth in Local Government Code, Chap. 232 or other applicable law. The county must post and continuously update the most current version of the list on the county's Internet website (see "Web posting requirement" section below). Nothing in Chapter 232 prohibits providing a submittal calendar to applicants, and given the complex nature of the timeline, providing this is advisable. Again, retention of a skilled attorney and other professionals is strongly recommended when drafting an appropriate and defensible application.

No Development Plan or Preliminary Plat Review[103]

Unless explicitly authorized by other law, a county may not require a person to submit a development plan[104] during the plat approval process required by Chapter 232, Subchapter A. If a county is authorized under another law of this state to require approval of a *development plan*, the county must comply with the approval procedures under Chapter 232, Subchapter A during the approval process.

Web Posting Requirement

Section 232.0025(a) of the Local Government Code requires the commissioners court, or a person designated by the court, to issue a written list of all the documentation and other information that must be submitted with a plat application. The documentation or other information must relate to a requirement authorized under this section or other applicable law. An application submitted to the commissioners court or the person designated by the commissioners court that contains all the documents and other information on the written list is considered complete. The commissioners court shall post and continuously maintain the most current version of the list on the county's Internet website".

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[102] Tex. Loc. Gov't Code §§ 232.002, 232.0022, 232.0025(a).

[103] Tex. Loc. Gov't Code § 232.00285

[104] In this paragraph, "development plan" includes a preliminary plat, preliminary subdivision plan, subdivision construction plan, site plan, general plan, land development application, or site development plan.

With this change having taken effect on January 1, 2024, counties who have not issued this list, and posted it on their website, should undertake that process as soon as possible.

Conflict of Interest[105]

If a member of the commissioners court of a county has a substantial interest in a subdivided tract, the member should file, before a vote or decision regarding the approval of a plat for the tract, an affidavit stating the nature and extent of the interest and abstain from further participation in the matter. The affidavit must be filed with the county clerk.

A person has a substantial interest in a subdivided tract if the person:

1. has an equitable or legal ownership interest in the tract with a fair market value of $2,500 or more;
2. acts as a developer of the tract;
3. owns 10% or more of the voting stock or shares of, or owns either 10% or more, or $5,000 or more of the fair market value of a business entity that has an equitable or legal ownership interest in the tract with a fair market value of $2,500 or more, or acts as a developer of the tract; or
4. receives in a calendar year funds from a business entity that exceeds 10% of the person's gross income for the previous year.

Fees [106]

Generally, under Section 232.0021 the commissioners court may impose an application fee to cover the cost of the county's review of a subdivision plat. The fee may vary based on the number of proposed lots in the subdivision, the acreage described by the plat, the type or extent of proposed street and drainage improvements, or any other reasonable criteria as determined by the commissioners court.

However, pursuant to Local Government Code § 232.901, certain value-based fees are prohibited. This prohibition applies only to an application, review, engineering, inspection, acceptance, administrative, or other fee imposed by a county related to the acceptance, review, or processing of engineering or construction plans or for the inspection of improvements for construction in a subdivision or a related improvement associated with or required in conjunction with that construction.

[105] Tex. Loc. Gov't Code § 232.0048

[106] Tex. Loc. Gov't Code § 232.0021

A county may not consider the cost of constructing or improving the public infrastructure for a subdivision, lot, or related property development in determining the amount of a fee subject to this section.[107] The county shall determine the fee by considering the county's actual cost to, as applicable, review and process the engineering or construction plan or to inspect the public infrastructure improvement.

In determining the county's actual cost for reviewing and processing an engineering or construction plan or inspecting a public infrastructure improvement under Subsection (b), a county may consider:

1. the fee that would be charged by a qualified, independent third-party entity for those services;
2. the hourly rate for the estimated actual direct time of the county's employees performing those services; or
3. the actual costs assessed to the county by a third-party entity that provides those services to the county.

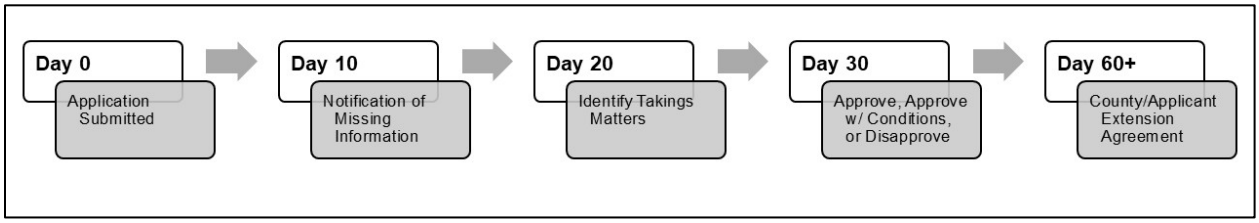
Further, a county may not require the disclosure of information related to the value of or cost of constructing or improving a residential dwelling or the public infrastructure improvements for a subdivision, lot, or related property development as a condition of obtaining approval for subdivision construction or for the acceptance of those public infrastructure improvements except as required by the Federal Emergency Management Agency (FEMA) for participation in the National Flood Insurance Program (NFIP).[108]

A county that imposes a fee for reviewing or processing an engineering or construction plan or inspecting a public infrastructure improvement shall annually publish the fee and the hourly rate and estimated direct time incurred by county employees for a fee calculated under Subsection (c)(2).[109] The county must publish the information on the county's website.

[107] Tex. Loc. Gov't Code § 232.901(b)
[108] Tex. Loc. Gov't Code § 232.901(d)
[109] Tex. Loc. Gov't Code § 232.901(e)

Timeline[110]

Texas Local Government Code § 232.0025 lays out a specific timeline for the platting process. The county may not require an applicant to waive the time limits or approval procedure contained. [111]



Notification of Missing Information[112]

If a person applies without all the required information, the application is considered incomplete. Not later than the 10th business day after the date the application is received, the court or its designee must notify the applicant of the missing information. The commissioners court shall allow the applicant to timely submit the missing documents or other information. The county may not require an applicant to waive the time limits or approval procedure contained in this subchapter.

Completeness[113]

An application is considered complete when all documentation or other information required is received by the court or its designee. Acceptance by the commissioners court or the county authority responsible for approving plats of a completed plat application with the documentation or other information required shall not be construed as approval of the documentation or other information.

Approve, Approve with Conditions, or Disapprove[114]

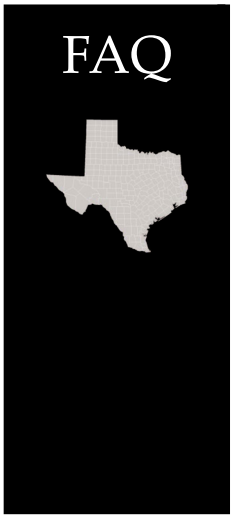
Either the commissioners court or the county authority responsible for approving plats shall approve, approve with conditions, or disapprove a plat application not later than the 30th day after the date the completed application is received by the commissioners court or the county authority. An application is approved by the commissioners court or

[110] Tex. Loc. Gov't Code § 232.0025
[111] Tex. Loc. Gov't Code § 232.0025(h)
[112] Tex. Loc. Gov't Code § 232.0025(b)
[113] Tex. Loc. Gov't Code § 232.0025(c)
[114] Tex. Loc. Gov't Code § 232.0025(d)

the county authority unless the application is disapproved within that period and in accordance with Section 232.0026.

Judicial Review[115]

In a legal action challenging a disapproval of a plat application under this subchapter, the county has the burden of proving by clear and convincing evidence that the disapproval meets the requirements of this subchapter or any applicable case law. The court may not use a deferential standard.



Is there standard language a county can use to denying or conditionally approving a plat?

No. The Local Government Code prohibits local jurisdictions from denying or conditionally approving a plan or plat with generic statements, instead requiring specific reasons with accompanying citations to law for anything other than full approval of a plan or plat. If a county fails to adequately explain the reason for the denial or conditional approval, the plan or plat is approved, and the county's decision to deny approval of a plan or plat is subject to judicial review. Tex. Ag. Op. No. KP-0349 (2021)

Extensions[116]

The 30-day period under Subsection (d) of Section 235.0025 may be extended for one or more periods, not to exceed 30 days, if requested and agreed to in writing by the applicant and approved by the county.

Only for purposes related to Chapter 2007, Government Code (regarding takings issues), the 30-day period may be unilaterally extended for a period not to exceed 30 days if the county makes the determination for Subsection (f)(1) takings matters not later than the 20th day after the date a completed plat application is received by the county.

Further, the 30-day period applies only to a decision wholly within the control of the commissioners court or the county authority responsible for approving plats (e.g. in the event a "1445 Agreement" confers this authority to a city).

[115] Tex. Loc. Gov't Code § 232.0029

[116] Tex. Loc. Gov't Code § 232.0025(f)

Refunds[117]

If the court or its designee fails to make a determination within the required timeframe, the commissioners court shall refund the greater of the unexpended portion of any application fee or deposit or 50% of an application fee that has been paid and the application is granted by operation of law. The applicant may apply to a district court in the county where the tract of land is located for a writ of mandamus to compel the commissioners court to issue documents recognizing the plat application's approval. The applicant shall recover reasonable attorney's fees and court costs incurred in bringing an action in district court if the applicant prevails and the county may recover reasonable attorney's fees and court costs incurred in an action brought in district court if the county prevails and the court finds the action is frivolous.

Conditional Approval[118]

A court or its designee that conditionally approves or disapproves of a plat application shall provide the applicant with a written statement of the conditions for the conditional approval or the reasons for disapproval that clearly articulates each specific condition. Each condition or reason specified in the written statement must be directly related to the requirements of Chapter 232 and include a citation of the law, statute, or order that is the basis for the conditional approval or disapproval. Specified conditions may not be arbitrary.

After receiving the conditional approval or disapproval, the applicant may submit to the commissioners court or its designee a written response that satisfies each condition or provides remedies for each reason for the conditional approval or disapproval provided. The commissioners court may not establish a deadline for an applicant to submit their response.

Once a response is received from the applicant and not later than the 15th day after receipt, the approver shall determine whether to approve or disapprove the applicant's previous plat application. The court or its designee can approve the application if the response adequately addresses each condition for the conditional approval or each reason for the disapproval.

[117] Tex. Loc. Gov't Code § 232.0025(i)(1)

[118] Tex. Loc. Gov't Code §§ 232.0026, 232.0027, 232.0028

Expiration[119]

If no portion of the land subdivided under a plat approved is sold or transferred before January 1 of the 51st year after the year in which the plat was approved, the approval of the plat expires, and the owner must resubmit a plat of the subdivision for approval. A plat resubmitted for approval under this subsection is subject to the requirements prescribed by this chapter at the time the plat is resubmitted.

[119] Tex. Loc. Gov't Code § 232.002(c).

PLAT REVISIONS AND AMENDMENTS

Revision[120]

A person may apply to the county for a plat revision only if the subdivision is located outside the corporate limits of a municipality and is not within the extraterritorial jurisdiction of a municipality with a population of 1.5 million or more[121].

Application Process

A property owner can apply in writing to the county commissioners court to revise a subdivision plat.

Notice Requirements

Generally, the commissioners court must publish notice of the application in a newspaper of general circulation at least three times, between 30 and 7 days before the meeting to consider the application. If all or part of the subdivided tract has been sold to non-developer owners, notice must also be sent to each of those owners by certified or registered mail, return receipt requested, unless the revision only combines existing tracts.[122] For example, if a two-lot subdivision merely eliminates the lot division line, notice is not required.

Exceptions to Notice

If the commissioners court determines the revision does not affect a public interest or public property (like a park, school, or road), less stringent notice requirements apply. In such cases, written notice is provided to owners within 200 feet of the affected plat, and if the county has a website, notice is posted there for at least 30 days before the meeting.

Approval Conditions

The commissioners court can permit the revision if it will not interfere with the established rights of any owner of the subdivided land, or each owner whose rights might be interfered with has agreed to the revision.

Implementation of Revision

If approved, the revision is made by filing a revised plat or part of a plat with the county clerk, indicating the changes.

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[120] Tex. Loc. Gov't Code § 232.009

[121] *See also* similar procedure for border counties at *Id.* § 232.041

[122] Tex. Att'y Gen. Op. No. JC-0260 (2000)

Fees

The commissioners court may charge a fee for filing an application, which must be based on the cost of processing, including publishing required notices. Because it has no express constitutional or statutory authority to do so, a county may not charge an applicant for a plat revision for the costs of issuing notice of the proposed revision under Local Government Code § 232.041(b).[123]

Amendment[124]

For minor errors, the commissioners court may approve and issue an amending plat for the following purposes:

1. to correct an error in a course or distance shown on the preceding plat;
2. to add a course or distance that was omitted on the preceding plat;
3. to correct an error in a real property description shown on the preceding plat;
4. to show the location or character of a monument that has been changed in location or character or that is shown incorrectly as to location or character on the preceding plat;
5. to correct any other type of scrivener or clerical error or omission of the previously approved plat, including lot numbers, acreage, street names, and identification of adjacent recorded plats; or
6. to correct an error in courses and distances of lot lines between two adjacent lots if:
    a. both lot owners join in the application for amending the plat;
    b. neither lot is abolished;
    c. the amendment does not attempt to remove recorded covenants or restrictions; and
    d. the amendment does not have a material adverse effect on the property rights of the other owners of the property that is the subject of the plat.

An amending plat controls over the preceding plat and does not require that the preceding plat be vacated, revised or cancelled. Unlike for revision, notice, a hearing, and approval of lot owners are not required for an amending plat to be considered.

[123] Tex. Att'y Gen. Op. No JC-0367 (2001)

[124] Tex. Loc. Gov't § 232.011

Cancellation of Subdivision[125]

A person owning real property in this state that has been subdivided into lots and blocks or into smaller subdivisions may apply to the commissioners court for permission to cancel all or part of the subdivision, including a dedicated easement or roadway, to reestablish the property as acreage tracts as it existed before the subdivision. If such an application does not interfere with the established rights of any purchaser who owns any part of the subdivision, or the purchaser agrees to the cancellation, the commissioners court shall authorize the owner of the subdivision to file an instrument canceling the subdivision in whole or in part. After the instrument is filed and recorded in the deed records of the county, the tax assessor-collector shall assess the property as if it had never been subdivided.

A notice of the application for cancellation must be published in a newspaper in the county for at least three weeks before the date on which action at a regular meeting will be taken on the application. The notice must direct any person who is interested in the property and who wishes to protest the proposed cancellation to appear at the time specified in the notice.

If delinquent taxes are owed on the subdivided tract for any preceding year, the owner of the tract may pay the delinquent taxes on an acreage basis as if the tract had not been subdivided.

Additionally, the commissioners court shall authorize cancellation if 75 percent of the ownership in the property applies. However, if the owners of at least 10 percent of the property affected file written objections to the cancellation with the court, the grant of an order of cancellation is at the discretion of the court.

To cancel or close a roadway or easement in a subdivision, a person must own a lot or part of the subdivision that:

1. abuts directly on the part of the roadway or easement to be canceled or closed; or
2. is connected by the part of the roadway or easement to be canceled or closed, by the most direct feasible route to the nearest remaining public highway, county road, or access road to the public highway or county road, or any uncanceled common amenity of the subdivision.[126]

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[125] Tex. Loc. Gov't Code § 232.008

[126] *See* similar procedure for economically distressed counties at Tex. Loc. Gov't Code § 232.0085

ENFORCEMENT[127]

Aside from simply refusing to approve an application for subdivision[128], other remedies exist to enforce compliance with county subdivision regulations.

Primarily, civil remedies for injunction and attorney's fees can be taken against violators. Pursuant to Sec. 232.005 of the Local Government Code:
At the request of the commissioners court, the county attorney or other prosecuting attorney for the county may file an action in a court of competent jurisdiction to:

1. enjoin the violation or threatened violation of a requirement established by, or adopted by the commissioners court under a preceding section of this chapter; or
2. recover damages in an amount adequate for the county to undertake any construction or other activity necessary to bring about compliance with a requirement established by or adopted by the commissioners court under a preceding section of this chapter.

Criminal penalties may be sought if a person knowingly or intentionally violates a requirement established by or adopted by the commissioners court pursuant to Chapter 232. An offense is a Class B misdemeanor. At the request of the commissioners court, the county attorney or other prosecuting attorney for the county may also recover damages in an amount adequate for the county to undertake any construction or other activity necessary to bring about compliance with an established requirement.

Performance and maintenance bonds also provide a source of relief against non-compliance. *See* "Funding" section.

Although codified in state law, it is advisable to incorporate the above-referenced enforcement remedies into a county's local regulations.

[127] Tex. Loc. Gov't Code § 232.005

[128] Presumably the lack of an approved plat makes the sale of lots more difficult. Without approval, lots cannot be legally sold or developed. Monitoring the deed records by the County Clerk helps catch illegal lot sales that bypass platting requirements.

FUNDING

Growth in unincorporated areas often creates a fiscal imbalance where the cost of providing public services to new residential developments exceeds the property tax and sales tax revenue those developments generate. County governments are often expected to fill in the gap, but the tools available through the platting process to minimize this gap are limited.

Developer Participation Contracts[129]

Pursuant to its Subchapter E infrastructure planning authority, a commissioners court *may* make a contract with a developer of a subdivision or land in the unincorporated area of the county to construct public improvements, not including a building, related to the development.

Under such contract, the developer shall construct the improvements, and the county shall participate in the cost of the improvements. The contract must establish the limit of participation by the county at a level not to exceed 30 percent of the total contract price. The contract may also allow participation by the county at a level not to exceed 100 percent of the total cost for any oversizing of improvements required by the county, including but not limited to increased capacity of improvements to anticipate other future development in the area. The county is liable only for the agreed payment of its share, which shall be determined in advance either as a lump sum or as a factor or percentage of the total actual cost as determined by an order of the commissioners court.

The developer must execute a performance bond for the construction of the improvements to ensure completion of the project. The bond must be executed by a corporate surety in accordance with Chapter 2253 of the Government Code. In the order adopted by the commissioners court, the county may include additional safeguards against undue loading of cost, collusion, or fraud.

Apportionment Of County Infrastructure Costs[130]

Generally

Also pursuant to Subchapter E infrastructure planning authority, apportionment is available to counties. If, under any authority expressly authorized by Chapter 232, a

[129] Tex. Loc. Gov't Code § 232.105

[130] Tex. Loc. Gov't Code § 232.110

county requires, including under an agreement under Chapter 242 (for an ETJ), as a condition of approval for a property development project that the developer bear a portion of the costs of county infrastructure improvements by the making of dedications, the payment of fees, or the payment of construction costs, the developer's portion of the costs may not exceed the amount required for infrastructure improvements that are roughly proportionate to the proposed development as approved by a professional engineer who holds a license issued under Chapter 1001, Occupations Code, and is retained by the county. The county's determination shall be completed within 30 days following the submission of the developer's application for determination.

Apportionment of costs is usually for on-site or adjacent infrastructure (e.g., laying pipes within a subdivision or paving the road in front of it). This differs from the imposition of "impact fees"[131], which are generally for off-site, system-wide expansion (e.g., building a new water treatment plant or major road extension) based on a formula.

Appeal

A developer who disputes the determination made above may appeal to the commissioners court of the county. At the appeal, the developer may present evidence and testimony under procedures adopted by the commissioners court. After hearing any testimony and reviewing the evidence, the commissioners court shall make the applicable determination within 30 days following the final submission of any testimony or evidence by the developer.

A developer may appeal the determination of the commissioners court to a county or district court of the county in which the development project is located within 30 days of the final determination by the commissioners court.

A county may not require a developer to waive the right of appeal authorized by this section as a condition of approval for a development project.

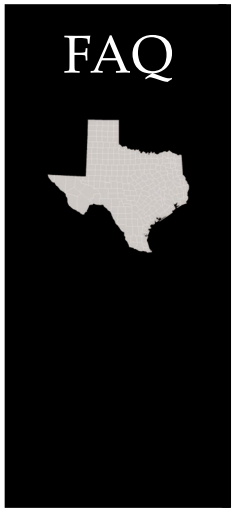
A developer who prevails in such an appeal is entitled to applicable costs and to reasonable attorney's fees, including expert witness fees.

Caveats

[131] *See* "Financing of Capital Improvements", *infra*, next section.

This section does not diminish the authority or modify the procedures specified by Chapter 395.[132]

This section does not increase or expand, and shall not be interpreted to increase or expand, the authority of a county to regulate plats or subdivisions under this chapter.



Is there a way that the county can implement a new subdivision cost apportionment program for developers? With new subdivisions turning up everywhere, our county will need to commit more material, labor and equipment to maintain county roads that are now seeing considerable amount of increased traffic, as well as degradation of those roads by heavy truck and equipment during all types of weather.

Yes. The commissioners court may consider implementing an assessment for county infrastructure improvement costs pursuant to Local Government Code §232.110.

Financing Capital Improvements

Applies to the following counties: Harris County and adjacent Montgomery, Liberty, Chambers, Galveston, Brazoria, Fort Bend, and Waller.

Only the above-referenced counties may finance the cost of certain infrastructure expansion through assessment of an "impact fee", which may be adopted by following the procedures detailed in Chapter 395 of the Texas Local Government Code.[133]

These impact fees may *only* be used to pay certain costs to expand or build new stormwater, drainage and flood control facilities.[134]

An "impact fee" is defined as "a charge or assessment imposed [..] against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development."[135]

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[132] *See* "Financing Capital Improvements", next section

[133] Tex. Loc. Gov't Code Chap. 395

[134] *Id.* § 395.079

[135] Tex. Loc. Gov't Code § 395.001(4)

Adoption of an impact fee requires strict compliance with several detailed and technical processes, including an independent financial audit[136], with specific notice and hearing timelines, and any county wishing to adopt impact fees or update its impact fees should involve its professionals early, including skilled attorneys and engineers.

The county must first adopt land use assumptions and a capital improvements plan ("CIP"). Then, based upon those assumptions and the CIP, the county must determine the maximum allowable impact fee amount and the actual amount that it wants to charge the regulated community. Under Texas law, "land use assumptions" consist of a description of the impact fee service area and the projected changes in land uses, densities, intensities, and population over at least a 10-year period. Simply put, these assumptions provide the entity's expected growth for the next decade. A CIP is a plan identifying capital improvements/expansions that will be needed to meet anticipated growth in the upcoming 10 years. A CIP must be prepared by a qualified engineer licensed in the state of Texas to provide engineering services, and the Texas Legislature has set the parameters in the Local Government Code[137] for the facilities that an engineer can and cannot include in a CIP.

Approval of the imposition of an impact fee by a political subdivision requires an affirmative vote of two-thirds of the members of the governing body of the political subdivision.[138] The Texas Attorney General may bring an action on behalf of a property owner to contest an impact fee or to recover a refund for an impact fee.[139]

Bond Requirements[140] [141]

If the commissioners court requires the owner of the tract of land to execute a bond, the owner must do so before subdividing the tract. The bond must:

1. be payable to the county judge of the county in which the subdivision will be located or to the judge's successor in office;

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[136] Tex Local Gov't. § 395.059, added by SB 1883, 89th (R.S.) Leg., effective September 1, 2025

[137] Tex. Loc. Gov't Code §§ 395.012, 395.014

[138] Tex Local Gov't § 395.051(a), as amended by SB 1883, 89th (R.S.) Leg., effective September 1, 2025

[139] Tex Local Gov't § 395.077(f), added by SB 1883, 89th (R.S.) Leg., effective September 1, 2025

[140] Tex. Loc. Gov't Code § 232.004

[141] *Also note* in regard to pipelines, as of September 1, 2025, counties may not require a cash bond as a condition of approval for the construction of a pipeline in the county's boundaries. *See* H.B. 206 (89th Reg. Session).

2. be in an amount determined by the commissioners court to be adequate, but not to exceed the cost, to ensure proper construction of the roads and streets and drainage requirements for the subdivision;
3. be executed with sureties approved by the court;
4. be executed by a company authorized to do business as a surety in Texas if the court requires a surety bond executed by a corporate surety; and
5. be conditioned that the roads, streets, and drainage requirements be constructed in accordance with the specifications adopted by the court and within a reasonable time set by the court.

Financial Guarantee in Lieu of Bond[142]

Instead of providing a bond, an owner may deposit cash, a letter of credit issued by a federally insured financial institution, or another acceptable financial guarantee. If a letter of credit is used, it must list the sole beneficiary as the county judge of the county in which the subdivision is located and be conditioned that the owner of the tract of land to be subdivided will construct any roads or streets in the subdivision in accordance with specifications adopted by the commissioners court and within a reasonable time.

[142] Tex. Loc. Gov't Code § 232.0045