



Planning & Zoning Fundamentals

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P.C.

A close-up photograph of an architectural drawing on a light-colored paper. A yellow pencil is positioned vertically on the left side of the drawing. A wooden ruler is placed diagonally across the drawing, showing measurements in inches and centimeters. The drawing features various lines, circles, and text labels such as 'CORRIDOR', 'MEN', 'CONVERGENCE', 'EXIST KOMPEN', and 'MEN'. Dimensions like '13'-7"', '18'-4"', and '5'-8"' are visible. The drawing is overlaid with a semi-transparent teal circular graphic on the left and bottom edges.

Planning

Ethical Principles in Planning

The planning process exists to serve the public interest. While the public interest is a question of continuous debate, both in its general principles and in its case-by-case applications, it requires a conscientiously held view of the policies and actions that best serve the entire community.

Planning issues commonly involve a conflict of values, and often there are large private interests at stake. These accentuate the necessity for the highest standards of fairness and honesty among all participants.

Ethical Principles in Planning

Planning Process Participants should:

- Recognize the rights of citizens to participate in planning decisions;
- Strive to give citizens (including those who lack formal organization or influence) full, clear, and accurate information on planning issues and the opportunity to have a meaningful role in the development of plans and programs;
- Strive to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of disadvantaged groups and persons;

Ethical Principles in Planning

1

Assist in the clarification of community goals, objectives, and policies in plan-making;

2

Ensure that reports, records, and any other non-confidential information which is (or will be) available to decision makers is made available to the public in a convenient format and sufficiently in advance of any decision;

3

Strive to protect the integrity of the natural environment and the heritage of the built environment;

4

Pay special attention to the interrelatedness of decisions and the long-range consequences of present actions;

Ethical Principles in Planning

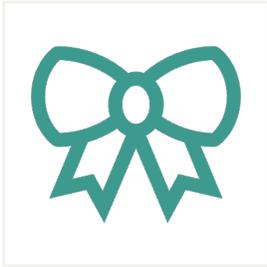
Exercise fair, honest, and independent judgment in their roles as decision makers and advisors;

Make public disclosure of all "personal interests" they may have regarding any decision to be made in the planning process in which they serve, or are requested to serve, as advisor or decision maker;

Define "personal interest" broadly to include any actual or potential benefits or advantages that they, a spouse, family member, or person living in their household might directly or indirectly obtain from a planning decision;

Abstain completely from direct or indirect participation as an advisor or decision maker in any matter in which they have a personal interest and leave any chamber in which such a matter is under deliberation, unless their personal interest has been made a matter of public record; their employer, if any, has given approval; and the public official, public agency, or court with jurisdiction to rule on ethics matters has expressly authorized their participation;

Ethical Principles in Planning



Seek no gifts or favors, nor offer any, under circumstances in which it might reasonably be inferred that the gifts or favors were intended or expected to influence a participant's objectivity as an advisor or decision maker in the planning process;



Not participate as an advisor or decision maker on any plan or project in which they have previously participated as an advocate;



Serve as advocates only when the client's objectives are legal and consistent with the public interest;

Ethical Principles in Planning

- Not participate as an advocate on any aspect of a plan or program on which they have previously served as advisor or decision maker unless their role as advocate is authorized by applicable law, agency regulation, or ruling of an ethics officer or agency; such participation as an advocate should be allowed only after prior disclosure to, and approval by, their affected client or employer; under no circumstance should such participation commence earlier than one year following termination of the role as advisor or decision maker;
- Not use confidential information acquired in the course of their duties to further a personal interest;
- Not disclose confidential information acquired in the course of their duties except when required by law, to prevent a clear violation of law or to prevent substantial injury to third persons, provided that disclosure in the latter two situations may not be made until after verification of the facts and issues involved and consultation with other planning process participants to obtain their separate opinions;

Ethical Principles in Planning

Misrepresent

Misrepresent – Not misrepresent facts or distort information for the purpose of achieving a desired outcome;



Participate in

Participate in – Not participate in any matter unless adequately prepared and sufficiently capacitated to render thorough and diligent service;



Respect

Respect – Respect the rights of all persons and not improperly discriminate against or harass others based on characteristics which are protected under civil rights laws and regulations.

What Sayeth the Attorney General

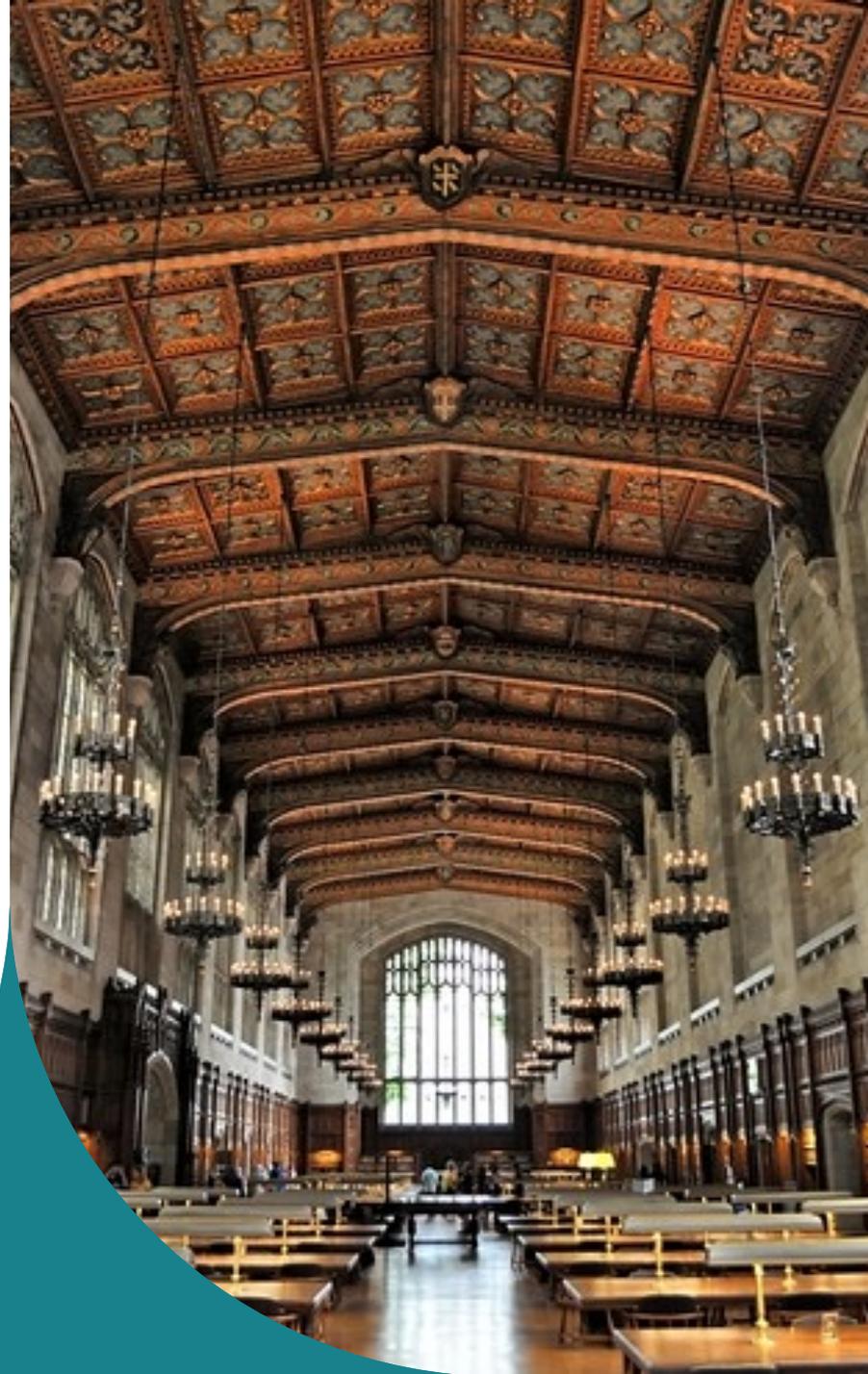
A "local public official" includes a "member of the governing body or another officer, whether elected, appointed, paid, or unpaid, of any district . . . who exercises responsibilities beyond those that are advisory in nature." *Id.* § 171.001(1).

This office has previously determined that a city employee is not a local public official and, as such, is not subject to chapter 171. See *Tex. Att'y Gen. Op. No. GA-0195 (2004)* at 2.

This office has also previously concluded that a member of a planning and zoning commission is a local public official under chapter 171. See *Tex. Att'y Gen. Op. No. DM-309 (1994)* at 2.

What Sayeth the Attorney General

Whether the members must abstain from voting on matters involving their property interest depends on whether it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public.



Conflict Rules and Principles

Section 171 of the Local Government Code which requires council members and certain officers to file an affidavit disclosing a substantial interest in a business or property that would be beneficially affected by a decision of the city council and thereafter abstaining from participation in discussion and voting on the matter.

Section 176 of the Local Government Code which requires city council members and the city manager to file a conflicts disclosure statement disclosing any business relationship with a person or business doing business with the city or being considered by the city for a business relationship.

Section 176.003(a)(2)(B) of the Local Government Code which requires the disclosure of gifts of an aggregate value of more than \$250.00 in the twelve (12) month period preceding a transaction described in section 176, other than gifts of food, lodging, transportation, or entertainment accepted as a guest.

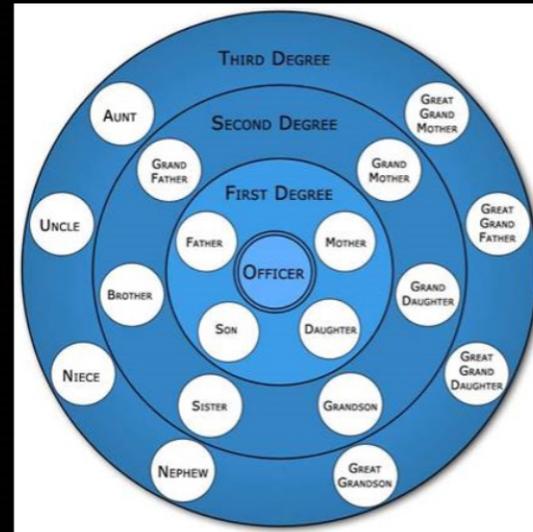
Sections 553.001–553.003 of the Government Code which requires the filing of an affidavit before the date the city will acquire a property in which public servants have a legal or equitable interest.

City employees shall disclose potential conflicts of interest to their supervisor and avoid participation in the handling of matters wherein employees have a personal interest.

In order to assure their independence and impartiality on behalf of the public good, city officials and employees are prohibited from using their positions to influence government decisions in which they have a personal interest.

Consanguinity Affinity

Consanguinity Kinship (Relationship by **Blood**)



Affinity Kinship (Relationship by **Marriage**)



NEPOTISM CIRCLES



Zoning

What is zoning and why do we need it?

Zoning is the division of land into distinct districts and the regulation of certain uses and developments within those districts.

It is the process to legally control the use that may be made of property and the physical configuration of development.

The power of a municipality to establish zones is a police power and the adoption or amendment of a zoning ordinance is a legislative function.

What may be regulated?

Height, number of stories, and size of buildings and other structures;

Percentage of a lot that may be occupied;

Size of yards, courts, and other open spaces;

Population density;

The location and use of buildings, other structures, and land for business, industrial, residential, etc.;

Construction in areas of historical, cultural, or architectural importance;

The bulk of buildings.

What is the public purpose?

Lessen	Lessen – Lessen congestion in the streets
Secure	Secure – Secure safety from fire, panic, dangers
Promote	Promote – Promote health & general welfare
Provide	Provide – Provide adequate light & air
Prevent	Prevent – Prevent overcrowding of land
Avoid	Avoid – Avoid undue concentration of population
Facilitate	Facilitate – Facilitate adequate provision of transportation, water, sewer, schools, parks, etc.

Zoning Procedure Amendments LCG §§ 211.006 & .007

Two Potential Changes
to a zoning ordinance

- Change in Classification (USE)
- Change in Regulation

Separate Process for
Each

Different Process
depending on existence
of Zoning Commission

Classification Change Process with a P&Z Commission

Public hearings are held to receive input from the public

Zoning Commission

11 days before hearing, written notice to owners within 200 feet

11 days before hearing, written notice to Nonconforming properties, if applicable (LGC 211.006(a-1))

Post agenda 72 hours prior to hearing

Preliminary Report created from PH

City Council

Newspaper notice 16 days prior to hearing

11 days before hearing, written notice to Nonconforming properties, if applicable (LGC 211.006(a-1)) - can be combined with P&Z notice

Post agenda 72 hours prior to hearing

City Council receives Preliminary Report

City Council adopts zoning classification change



Classification Change Process without a P&Z Commission

Public hearings are held to receive input from the public

City Council

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City Council adopts zoning classification change

after *City Council cannot adopt the change until 31 days
written notice of the public hearing is mailed



Regulatory Change Process with a P&Z Commission

Public hearings are held to receive input from the public

Zoning Commission

11 days before hearing, written notice to affected properties and owners within 200 feet may be required*

11 days before hearing, written notice to Nonconforming properties, if applicable (LGC 211.006(a-1))

Post agenda 72 hours prior to hearing

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Zoning Amendments

LCG §§ 211.006 & .007

A final report must be provided to the City Council before final action on a zoning classification change

Written protest by 20% of lots or area of land covered or within 200 feet requires a 3/4 vote of all members of the city council

Council may require $\frac{3}{4}$ vote of all members to overrule a recommended denial by the Planning & Zoning Commission (must be in ordinance)

Comprehensive Land Use Plan

- Comprehensive Land Use Plan is a policy document that serves as a guide for decisions relating to the physical, social, and economic growth of the city.
- Comprehensive Land Use Plans come in all shapes and sizes and should be designed to meet the city's needs.



What's the big deal with a comprehensive plan?

If a city adopts a comprehensive plan, it must be followed when making zoning decisions. LGC § 211.004(a)



Zoning Pitfalls

LEGAL PITFALLS TO AVOID

Exclusionary Zoning

- Where the intent or effect of zoning excludes certain people such as racial minorities, ethnic groups, lower income, etc.

Constitutional Issues

- Substantive Due Process – goes too far
- Procedural Due Process – notice and opportunity to be heard (Legislative vs. Administrative)
- Spot Zoning
- Takings

Legal Pitfalls to Avoid

- Regulation of certain uses
 - Agricultural Operations – Texas Agriculture Code Ch. 251
 - Religious institutions - RILUPA
 - Manufactured homes - TMHSA
 - Sexually Oriented Businesses (SOB) – LGC section 243.000 et. al.
- Alcohol sales – TABC
 - § 1.06. CODE EXCLUSIVELY GOVERNS. Unless otherwise specifically provided by the terms of this code, the manufacture, sale, distribution, transportation, and possession of alcoholic beverages shall be governed exclusively by the provisions of this code.

Legal Pitfalls to Avoid

- Regulation of certain uses
 - Group homes – THRC section 123.003
 - Sec. 123.003. ZONING AND RESTRICTION DISCRIMINATION AGAINST COMMUNITY HOMES PROHIBITED. (a) The use and operation of a community home that meets the qualifications imposed under this chapter is a use by right that is authorized in any district zoned as residential.
 - (b) A restriction, reservation, exception, or other provision in an instrument created or amended on or after September 1, 1985, that relates to the transfer, sale, lease, or use of property may not prohibit the use of the property as a community home.
 - Federal Fair Housing Act

How does the Fair Housing Act relate to zoning and land use? Title VIII of the Civil Rights Act of 1968 (The Fair Housing Act)

According to the Fair Housing Act, a dwelling includes “any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof”.

Therefore, decisions related to the development or use of such land may not be based upon the race, sex, religion, national origin, color, disability, or familial status of the residents or potential residents who may live in the dwelling. Similarly, a municipality may not make zoning or land use decisions based on neighbors’ fears that a dwelling would be occupied by members of these protected classes.

Zoning ordinances may not contain provisions that treat uses such as affordable housing, supportive housing, or group homes for people with disabilities differently than other similar uses, and municipalities may not enforce ordinances more strictly against housing occupied by members of the protected classes.

FHA Cont.

Another way that discrimination in zoning and land use may occur is when a facially neutral ordinance has a disparate impact, or causes disproportional harm, to a protected group. Land use policies such as density or design requirements that make residential development prohibitively expensive, prohibitions on multifamily housing, or a ceiling of four or fewer unrelated adults in a household may be considered discriminatory if it can be proven that these policies have a disproportionate impact on minorities, families with children, or people with disabilities.

Questions?

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