

# Pitfalls of Planning and Zoning



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## Plat Approvals

LGC § 212.009



*A plat is considered  
**APPROVED** unless it is denied  
within **30 days***

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## Plat Denials

**PLAT DENIALS SHOULD CONTAIN  
SPECIFIC FINDINGS AS WHY THE PLAT  
DOES NOT COMPLY WITH THE  
MUNICIPALITY'S REQUIREMENTS**

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## COMPREHENSIVE PLAN

LGC §§ 213.00 et. al. & 211.004

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

*Mayhew v. Town of Sunnyvale (1989) – Court struck down zoning regulations which were not in compliance with comprehensive plan*

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## Zoning Procedures

Zoning procedures must be followed or else zoning ordinances are void

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## Contract Zoning

- City Councils may not contract away its police power
- Bilateral agreement to rezone property for consideration.
- Vs. Conditional zoning

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## Spot Zoning

An unacceptable amendatory ordinance that singles out a small tract for treatment that differs from that accorded similar surrounding land without proof of changes in conditions.

It is preferential treatment which defeats a pre-established comprehensive plan.

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## Exclusionary Zoning

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

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## Constitutional Issues



Substantive Due Process – Arbitrary or irrational with no foundation in reason OR has no substantial relation to the public health, safety, morals, or welfare

Procedural Due Process – notice and opportunity to be heard – Legislative vs. Administrative

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## Constitutional Issues



Equal Protection – must treat similarly situated individuals the same

- rational basis
- regulation must be narrowly tailored to achieve a compelling governmental interest
- regulation must be substantially related to the achievement of an important governmental interest

### Takings

- Physical
- Regulatory

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## Regulation of certain uses

Religious institutions - RILUPA

Manufactured homes - TMHSA

SOB's – 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.

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## 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

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## Regulation of certain uses

### Pawn Shops – LGC section 211.035

§ 211.0035. ZONING REGULATIONS APPLICABLE TO PAWNSHOPS.

- (b) ..... the governing body of a municipality shall designate pawnshops that have been licensed to transact business by the Consumer Credit Commissioner under Chapter 371, Finance Code, as a permitted use in one or more zoning classifications.
- (c) The governing body of a municipality may not impose a specific use permit requirement or any requirement similar in effect to a specific use permit requirement on a pawnshop  
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## Regulation of certain uses



Cell Towers – Federal Telecommunications Act

Amateur Radio Antennas – Texas and Federal

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## QUESTIONS?

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