

MUNICIPAL REGULATION: ENFORCEMENT WITHIN THE CITY LIMITS AND IN THE ETJ

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A. Enforcement of Municipal Ordinances

Municipalities in Texas exercise their statutory and constitutional powers generally through the legislative process of adopting municipal laws, commonly referred to as city ordinances. Under § 51.001 of the Local Government Code,

The governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule, or police regulation that:

- (1) is for the good government, peace, or order of the municipality or for the trade and commerce of the municipality; and
- (2) is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality.¹

Section 54.001 further provides that “[t]he governing body of a municipality may enforce each rule, ordinance, or police regulation of the municipality and may punish a violation of a rule, ordinance, or police regulation.”²

A city ordinance may be either civil or criminal in nature, depending upon the assessable penalties. Under the current law, a fine or penalty for the violation of a rule, ordinance, or police regulation may not exceed \$500, unless the rule, ordinance, or police regulation governs fire safety, zoning, or public health and sanitation, in which case the fine may not exceed \$2,000.³ A municipality may also bring a civil action for the enforcement of an ordinance:

- (1) for the preservation of public safety, relating to the materials or methods used to construct a building or other structure or improvement, including the foundation,

¹ TEX. LOCAL GOV'T CODE § 51.001.

² TEX. LOCAL GOV'T CODE § 54.001(a).

³ *See Id.* at § 54.001(b).

structural elements, electrical wiring or apparatus, plumbing and fixtures, entrances or exits;

- (2) relating to the preservation of public health or to the fire safety of a building or other structure or improvement, including provisions relating to materials, types of construction or design, interior configuration, illumination, warning devices, sprinklers or other fire suppression devices, availability of water supply for extinguishing fires, or location, design, or width of entrances or exits;
- (3) for zoning that provides for the use of land or classifies a parcel of land according to the municipality's district classification scheme;
- (4) establishing criteria for land subdivision or construction of buildings, including provisions relating to street width and design, lot size, building width or elevation, setback requirements, or utility service specifications or requirements;
- (5) implementing civil penalties under Section 54.012 of the Local Government Code for conduct classified by statute as a Class C misdemeanor;
- (6) relating to dangerously damaged or deteriorated structures or improvements;
- (7) relating to conditions caused by accumulations of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents;
- (8) relating to the interior configuration, design, illumination, or visibility of business premises exhibiting for viewing by customers while on the premises live or mechanically or electronically displayed entertainment intended to provide sexual stimulation or sexual gratification; or
- (9) relating to point source effluent limitations or the discharge of a pollutant, other than from a non-point source, into a sewer system, including a sanitary or storm water sewer system, owned or controlled by the municipality.⁴

In a suit against a property owner, a municipality may recover a civil penalty if it proves that the defendant was actually notified of the provisions of the ordinance, and after which the defendant “committed acts in violation of the ordinance or failed to take action necessary for compliance with the ordinance.”⁵

In lieu of a municipal court proceeding, the Local Government Code permits the enforcement of certain ordinances through a Building and Standards Commission, including those relating to building code construction standards, fire safety, dilapidated buildings, and the

⁴ TEX. LOCAL GOV'T CODE § 54.012.

⁵ *Id.* at § 54.017.

accumulation of refuse.⁶ A Building and Standards Commission may consist of one or more five-member panels who are appointed by the city council for a two-year term.⁷ A Building and Standards Commission is authorized to order the repair or removal of structures, in addition to determining the civil penalty to be assessed, up to \$1,000.⁸ To enforce a civil penalty, the municipal secretary or clerk must file with the district clerk of the county in which the municipality is located, a certified copy of the commission panel establishing the amount and duration of the penalty.⁹

Recent amendments to the Local Government Code provide an alternative procedure for the enforcement of health and safety ordinances, allowing a municipality to appoint an administrative hearing officer to conduct proceedings, including provisions for the issuance of citations and summons.¹⁰

B. Regulating in the ETJ

Generally, a municipality's ordinances and other regulations are valid and enforceable only within the municipality's corporate limits. When authority is expressly or impliedly extended by the Texas Constitution or by statute, however, a city may enforce certain ordinances and regulations in its extraterritorial jurisdiction (commonly referred to as the "ETJ").¹¹ The ETJ is a legislative creation which gives cities a buffer zone by granting them control over the unincorporated land in an area directly adjacent to the city.¹² The extent of a municipality's ETJ, defined as "the unincorporated area that is contiguous to the corporate boundaries of the municipality . . ." depends on the municipality's number of inhabitants.¹³

⁶ *See Id.* at § 54.032.

⁷ *See Id.* at § 54.033.

⁸ *See Id.* at § 54.036.

⁹ *See Id.* at § 54.037(b).

¹⁰ *See Id.* at § 54.044.

¹¹ *See Op. Tex. Att'y Gen. LO-97-055* (1997).

¹² *See TEX. LOCAL GOV'T CODE* § 42.001 ("The legislature declares it the policy of the state to designate certain areas as the extraterritorial jurisdiction of municipalities to promote and protect the general health, safety, and welfare of persons residing in and adjacent to the municipalities.")

¹³ *Id.* at § 42.021.

Municipalities are clearly authorized to regulate subdivision and property development within their jurisdictions,¹⁴ and may extend to the ETJ the application of regulations governing plats and subdivisions, along with other municipal ordinances relating to access to public roads.¹⁵ A Texas court has ruled specifically that a municipality may extend the applicability of its “ordinances regulating development, such as those specifying design, construction and maintenance standards,” to its ETJ.¹⁶ Section 212.003 of the Local Government Code, however, expressly prohibits a municipality from regulating the following in its ETJ:¹⁷

- (1) the use of any building or property for business, industrial, residential, or other purposes;
- (2) the bulk, height, or number of buildings constructed on a particular tract of land;
- (3) 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;
- (4) the number of residential units that can be built per acre of land; or
- (5) the size, type, or method of construction of a water or wastewater facility that can be constructed to serve a developed tract of land if:
 - (A) the facility meets the minimum standards established for water or wastewater facilities by state and federal regulatory entities; and
 - (B) the developed tract of land is:
 - (i) located in a county with a population of 2.8 million or more; and
 - (ii) served by:
 - (a) on-site septic systems constructed before September 1, 2001, that fails to provide adequate services;

¹⁴ See TEX. LOCAL GOV'T CODE § 212.002 (“[T]he governing body of a municipality may adopt rules governing plats and subdivisions of land within the municipality’s jurisdiction to promote the health, safety, morals, or general welfare of the municipality and the safe, orderly and healthful development of the municipality.”)

¹⁵ See *Id.* at 212.003. A municipality is entitled to appropriate injunctive relief in district court to enjoin violation of municipal ordinances or codes applicable in the ETJ. It is important to note, however, that “[a] fine or criminal penalty prescribed by the ordinance does not apply to a violation in the extraterritorial jurisdiction.” *Id.* at 212.003(b).

¹⁶ *City of Lucas v. North Texas Municipal Water Dist.*, 724 S.W.2d 811, 823 (Tex. App.–Dallas 1986, writ ref’d n.r.e.).

¹⁷ *Id.*

- (b) on-site water wells constructed before September 1, 2001, that fails to provide an adequate supply of safe drinking water.

Chapter 242 of the Local Government Code was amended by the Texas Legislature in 2001 to provide for an agreement between a municipality and a county to regulate a subdivision in the ETJ of a municipality.¹⁸ This same statute was again amended in the Legislative session in 2003. A municipality and county (except for border counties and counties over 1.9 million or except for a tract of land covered by a development agreement), “shall enter into a written agreement that identifies the governmental entity authorized to regulate subdivision plats and approve related permits in the extraterritorial jurisdiction.”¹⁹ For a municipality in existence on September 1, 2001, the municipality and county were required to enter into this written agreement on or before April 1, 2002, and for a municipality incorporated after September 1, 2001, the municipality and county are required to enter into an agreement no later than the 120th day after the date the municipality incorporates.²⁰ However, in the 2003 Legislative Session the Legislature enacted Section 242.0015 of the Local Government Code which created an extension of time to the deadlines set out in Section 242.001(f). The result was that a city with an ETJ of 3.5 miles or more was given until January 1, 2004 to come to an agreement with the County and a city with an ETJ less than 3.5 miles was given until January 1, 2006 to come to an agreement with the County. If an agreement is not reached prior to the deadline, then the City and County must engage in binding arbitration.

Municipalities have four basic options under Chapter 242:

- (1) the municipality will have exclusive jurisdiction over plats and all review of permits;
- (2) the county will have exclusive jurisdiction over plats and all review of permits;
- (3) the municipality and county will divide the area within the ETJ and each will possess authority over plats and review of permits in its respective area;
- (4) pursuant to an interlocal agreement, the municipality and county will jointly review plats, with the requirement that there be one office to file plats, one filing fee, and one consolidated and consistent set of regulations.²¹

¹⁸ See TEX. LOCAL GOV'T CODE § 242.001.

¹⁹ *Id.* at § 242.001(c).

²⁰ See *Id.* Note that in 2003 the Legislature passed House Bill 1204, which provides that if a city and county were unable to reach an agreement concerning the city's ETJ of land in the county by April 2002, the city and county must enter into arbitration. The arbitrators must issue an interim order within 60 days regarding the regulation of plats and subdivisions which will be effective only until the arbitrators reach a final decision.

²¹ See *Id.* at § 242.001(d).

A municipality and a county may adopt the agreement by order, ordinance or resolution, and a municipality must notify the county of any expansion or reduction in the municipality's ETJ.²²

C. Miscellaneous Statutory Authority for ETJ Regulation

Other miscellaneous statutory provisions that expressly authorize municipal regulation in the ETJ include the following:

- Local Government Code § 42.044 (Part of ETJ may be designated as an industrial district);
- Local Government Code § 216.003 (Relocation, reconstruction, or removal of signs);
- Local Government Code § 217.042 (Home-rule city may define and prohibit any nuisance within 5,000 feet outside its city limits);
- Local Government Code § 243.003 (Sexually oriented businesses—authority to regulate in ETJ extended by Texas Attorney General Opinion No. JC-0485);
- Local Government Code § 395 (Impact fees);
- Local Government Code § 401.002 (Home-rule city may police any watersheds in its ETJ, or outside its ETJ if required to meet other state or federal requirements);
- Local Government Code § 402.001 (Regulation of utility system);
- Local Government Code § 401.002 (Regulation to protect against pollution of water resources); and
- General Law Cities with Special Legislation that allows regulation of Water Quality in the ETJ (NPS authority).

²² See *Id.* at § 242.001(c).