

CAUSE NO. _____

FRANCISCA ACUÑA; SUSANA §
ALMANZA; JEFFERY L. BOWEN; §
WILLIAM BURKHARDT; ALECIA M. §
COOPER; ROGER FALK; SETH O. §
FOWLER; RANDY HOWARD; MARY §
INGLE; PATRICIA KING; FRED I. §
LEWIS; BARBARA MCARTHUR; §
ALLAN E. MCMURTRY; LAWRENCE §
MILLER; GILBERT RIVERA; JANE §
RIVERA; JOHN UMPHRESS; JAMES §
VALADEZ; and ED WENDLER, JR. §
PLAINTIFFS, §

IN THE DISTRICT COURT OF

v. §

TRAVIS COUNTY, TEXAS

THE CITY OF AUSTIN; THE CITY §
COUNCIL OF AUSTIN; THE §
HONORABLE AUSTIN MAYOR STEVE §
ADLER, IN HIS OFFICIAL CAPACITY; §
THE HONORABLE AUSTIN CITY §
COUNCIL MEMBERS NATASHA §
HARPER-MADISON, DELIA GARZA, §
SABINO RENTERIA, GREGORIO §
CASAR, ANN KITCHEN, JIMMY §
FLANNIGAN, LESLIE POOL, PAIGE §
ELLIS, KATHIE TOVO, AND ALISON §
ALTER, IN THEIR OFFICIAL §
CAPACITIES; AND THE HONORABLE §
AUSTIN CITY MANAGER, SPENCER §
CRONK, IN HIS OFFICIAL CAPACITY, §
DEFENDANTS

_____ JUDICIAL DISTRICT

ORIGINAL PETITION, APPLICATION FOR INJUNCTIVE RELIEF,
AND REQUEST FOR DECLARATORY JUDGMENT

COME NOW PLAINTIFFS, complaining of the conduct of DEFENDANTS, The City Of Austin; The City Council Of Austin; The Honorable Austin Mayor Steve Adler, in his official capacity; The Honorable Austin City Council Members Natasha Harper-Madison, Delia Garza,

Sabino Renteria, Gregorio Casar, Ann Kitchen, Jimmy Flannigan, Leslie Pool, Kathie Tovo, and Alison Alter, in their official capacities; and the Austin City Manager, Spencer Cronk, in his official capacity (hereafter collectively “Defendants”). In support thereof, Plaintiffs respectfully show as follows:

I.

NATURE OF THE CASE

1. The City of Austin (the “City”) is overhauling its land development code. On October 4, 2019, the City released a proposed revised land development code (hereafter “the Revised LDC”) consisting of over 1300 pages of text and a map changing the zoning regulations and zoning district boundaries of most of the property in the City of Austin. Before the zoning classification of a property can be changed, Texas law requires notice to property owners who will be affected. Texas law also requires the City to honor the statutory protest rights of property owners, which if asserted, require a three-fourths vote of the City Council in order to change the zoning of a property the subject of a protest. The City Council voted on first reading on the Revised LDC on December 11, 2019. The City Council voted at its December 10, 2019 hearing to disregard the Plaintiffs’ written protests as it proceeds to final adoption. In fact, the City staff and Council members have repeatedly advised property owners that they do not have protest rights in connection with the Revised LDC. Unless the City is restrained from the course of action it is pursuing, thousands of property owners in Austin will be deprived of their statutory protest rights and countless more will be misled into believing they have no statutory protest rights to assert. In both instances, property owners will be irreparably harmed. Further, the use, enjoyment and economic value of their property will be severely impacted as the City dramatically changes long-standing neighborhoods across the City.

A. **Protest Rights**

2. Plaintiffs are opposed to the proposed zoning changes of their property or property within 200 feet of their property in the City of Austin. The objecting property owner Plaintiffs and owners objecting to nearby property filed timely written, signed valid protest rights petitions with the City of Austin before the filing of this lawsuit. They are protesting, pursuant to Texas Local Government Code, Section 211.006 (d), any change in the zoning regulations or zoning district boundaries of their property or nearby property and are demanding the statutorily required supermajority vote before their respective property's zoning is changed.

3. For over 90 years, Texas law has provided safeguards to property owners when their cities have sought to rezone their properties or nearby properties. Property owners have a statutory right to object to a change in the zoning of their or nearby properties by filing a written protest pursuant to Texas Local Government Code, Section 211.006. When they do so, this state law prevents the Austin City Council from changing the protested zoning without a supermajority vote of three-fourths of the entire Council (9 of 11 Council members). Despite the plain language of this statute, the City has repeatedly stated that it is refusing to recognize these state statutory protest rights and will change the zoning of protesting property owners with a simple majority vote. This is illegal under state law.

B. Notice

4. In 2014 the City of Austin initiated a process called CodeNEXT to overhaul its land development code. Multiple drafts of the proposed code revisions were released. After significant and repeated community concerns were expressed with the process and the product, the Council terminated CodeNEXT by a resolution dated August 9, 2018, and directed the City Manager to “develop and propose a new process leading to a Land Development Code.” Thereafter, on May 2,

2019, the City Council communicated new policy directions to the City Manager for the new code revision process and product. On October 4, 2019, the City of Austin released a proposed revised land development code (“the Revised LDC”) consisting of over 1,300 pages and a map changing the zoning regulations and zoning district boundaries of most of the property in the City of Austin. Twenty-two days later, on October 26, 2019, the Austin Planning Commission held its public hearing on the Revised LDC, but never gave notice of the hearing pursuant to Texas Local Government Code, Sec. 211.007. The failure to give notice was illegal, deprived the City Council of jurisdiction to act on first reading, and renders the Council’s action on any subsequent readings void unless and until the City complies with the law.

II.

STATEMENT OF RELIEF SOUGHT AND DISCOVERY LEVEL

5. Pursuant to Chapter 37, Texas Civil Practice and Remedies Code, Plaintiffs seek a declaratory judgment that the Revised LDC is subject to the requirements of Texas Local Government Code, Sections 211.006(d) and 211.007 and an injunction against the Defendants prohibiting the continued violation of these statutes and requiring the City to remediate its past violations.

6. The issue in this case is a matter of law and minimal, if any, discovery appears needed. If there is any discovery, it should be conducted under level one pursuant to Texas Civil Procedure Rule 190.2.

III. PARTIES

A. Plaintiffs.

7. Plaintiffs have standing because they are all property owners in the City of Austin, and the City's Revised LDC, released October 4, 2019, proposed to change the zoning regulations or zoning district boundaries of their property or property within 200 feet of their property.

8. The following Plaintiffs and thousands of other citizens have timely filed written, signed valid protest rights petitions with the City of Austin, objecting under Texas Local Government Code, Section 211.006 (d) to any change in the zoning regulations or zoning district boundaries of their property or at least 20% of the property adjoining within 200 feet of their property (hereafter "Objecting Property Owner Plaintiffs"). They demand their state-mandated right to a supermajority vote: as a condition to any change in zoning:

- a. Francisca Acuña, 509 Brassiewood Drive, Austin, Texas 78744;
- b. Susana Almanza, 6103 Larch Terrace, Austin, Texas 78741;
- c. Jeffery L. Bowen, 8404 Caspian Drive, Austin, Texas 78749;
- d. William Burkhardt, 802 Christopher St., Austin, Texas 78704;
- e. Alecia M. Cooper, 3900 Wrightwood Rd., Austin, Texas 78722;
- f. Roger Falk, 5904 Sierra Madre, Austin, Texas 78759;
- g. Seth O. Fowler, 6907 Drexel Dr., Austin, Texas 78723;
- h. Randy Howard, 2626 Spring Lane, Austin, Texas 78703;
- i. Mary Ingle, 3406 Duval Street, Austin, Texas 78705;
- j. Patricia King, 13325 Thome Valley Dr., Del Valle, Texas 78617;

- k. Fred I. Lewis, 4509 Edgemont, Austin, Texas 78731;
- l. Barbara McArthur, 5700 Clay Ave., Austin, Texas 78756;
- m. Allan E. McMurtry, 5901 Cary Drive, Austin, Texas 78757;
- n. Lawrence Miller, 502 W. 33rd St., Austin, Texas 78705;
- o. Gilbert Rivera, 1000 Glen Oaks Ct., Austin, Texas 78702;
- p. Jane Rivera, 1000 Glen Oaks Ct., Austin, Texas 78702;
- q. John Umphress, 2604 Geraghty Avenue, Austin, Texas 78757;
- r. James Valadez, 54 Waller St., Austin, Texas 78702; and
- s. Ed Wendler, Jr. 4803 Balcones Dr., Austin, Texas 78731.

9. In addition, numerous Austin citizens who are landowners have not filed protest rights petitions because their local government, the City of Austin, has stated repeatedly and unequivocally that they do not have protest rights under Section 211.006 and that the City will not recognize their protest rights (hereafter collectively “Chilled Property Owners”). This has discouraged or chilled their filing and resulted in their not filing their protest rights petitions. Plaintiffs seek a declaratory judgment and injunctive relief that the Chilled Property Owners have protest rights under Section 211.006 and these statutory rights must be recognized and applied before the Council adopts any zoning change applying to their property or property within 200 feet; and, further, that they have a reasonable opportunity to file such protests before the City Council votes upon adoption of the Revised LDC.

B. Defendants.

10. Defendant, City of Austin, is a home rule city in Texas and under Section 17.024(b),

Texas Civil Practice and Remedies Code, may be served through its Mayor, Steve Adler, 301 W. 2nd Street, Austin, Travis County, Texas; or its City Clerk, Janette Goodall, at 301 W. 2nd St., Austin, Travis County, Texas.

11. Defendant, City Council of Austin (hereafter “City Council”) is sued in its official capacity only and may be served through its Mayor, Steve Adler, at 301 W. 2nd St., 3rd Floor, Austin, Texas 78701.

12. Defendant Austin Mayor Steve Adler is sued in his official capacity only and may be served at Austin City Hall, 301 West 2nd St, 3rd Floor, Austin Texas 78701.

13. Defendant Austin City Council member Natasha Harper-Madison is sued in her official capacity only and may be served at Austin City Hall, 301 West 2nd St, 3rd Floor, Austin Texas 78701.

14. Defendant Austin City Council member Delia Garza is sued in her official capacity only and may be served at Austin City Hall, 301 West 2nd St, 3rd Floor, Austin Texas 78701.

15. Defendant Austin City Council member Sabino Renteria is sued in his official capacity only and may be served at Austin City Hall, 301 West 2nd St, 3rd Floor, Austin Texas 78701.

16. Defendant Austin City Council member Gregorio Casar is sued in his official capacity and may be served at Austin City Hall, 301 West 2nd St, 3rd Floor, Austin Texas 78701.

17. Defendant Austin City Council member Ann Kitchen is sued in her official capacity only and may be served at Austin City Hall, 301 West 2nd St, 3rd Floor, Austin Texas 78701.

18. Defendant Austin City Council member Jimmy Flannigan is sued in his official

capacity only and may be served at Austin City Hall, 301 West 2nd St, 3rd Floor, Austin Texas 78701.

19. Defendant Austin City Council member Leslie Pool is sued in her official capacity only and may be served at Austin City Hall, 301 West 2nd St, 3rd Floor, Austin Texas 78701.

20. Defendant Austin City Council member Paige Ellis is sued in her official capacity only and may be served at Austin City Hall, 301 West 2nd St, 3rd Floor, Austin Texas 78701.

21. Defendant Austin City Council member Kathie Tovo is sued in her official capacity only and may be served at Austin City Hall, 301 West 2nd St, 3rd Floor, Austin Texas 78701.

22. Defendant Austin City Council member Alison Alter is sued in her official capacity only and may be served at Austin City Hall, 301 West 2nd St, 3rd Floor, Austin Texas 78701.

23. Defendant City Manager, Spencer Cronk is sued in his official capacity only and may be served at Austin City Hall, 301 West 2nd St, Austin Texas 78701.

IV.

JURISDICTION AND VENUE

24. The Court has jurisdiction over Defendants and all causes of action asserted herein pursuant to Chapter 37, Texas Civil Practice and Remedies Code, as Plaintiffs seek a declaratory judgment, and pursuant to Section 65.021, Texas Civil Practice and Remedies Code, in that this suit seeks injunctive relief. Plaintiffs have fulfilled all jurisdictional prerequisites to the bringing of this suit.

25. Venue is proper in Travis County, Texas, because it is the county where (a) all or a substantial part of the events giving rise to the claims occurred; and (b) Defendants' principal office

is located. Texas Civil Practice and Remedies Code, Section 15.002

V.

FACTUAL BACKGROUND

26. On October 4, 2019, the City of Austin released its proposed revised land development code (“the Revised LDC”), which changes the zoning regulations and boundaries of most of the property in the City of Austin. Plaintiffs are property owners who own property affected by these changes or property within 200 feet of property affected.

27. Despite Texas law (*see*, paragraph VI below), Plaintiffs’ protests have been ignored and discouraged by the City.

28. The City of Austin has stated repeatedly in public memoranda, orally at public hearings, to the media and to the public that it refuses to recognize any state statutory protest rights and will not require a super-majority vote of Council to change Plaintiffs’ zoning. In *The Austin Monitor*, “Can You Protest Changes To Your Property Under The Land Code Rewrite? City Says No,” Audrey McGlinchy (October 28, 2019), the City repeated its opposition to recognizing protest rights: “‘Zoning protests may not be used to protest broad legislative amendments,’ then-Assistant City Attorney Brent Lloyd wrote in a memorandum to the Mayor and Council members on June 15, 2018. ‘This includes comprehensive revisions, like CodeNEXT, and amendments to general development standards applicable citywide or throughout one or more zoning districts.’”

29. That same reasoning has appeared in two memoranda written this year by Mitzi Cotton of the City’s Law Department, one of which was sent to Mayor Steve Adler and City Manager

Spencer Cronk on October 24, 2019. That City Legal Department memorandum was sent widely to the Mayor, Council staff and media, stating unequivocally: “Therefore, zoning protests, such as those citing Texas Local Government Code Section 211.006, may not be used to trigger a super majority vote on broad legislative amendments, including comprehensive revisions such as the revision of the Land Development Code. The City has determined that it will approve protested zoning changes with only a simple majority of the Council and will not recognize the supermajority vote requirement of Section 211.006 for property or nearby property owners’ valid protest rights petition.”

30. On the City of Austin’s Land Development Code Revision website, the City poses the question: “As a property owner, may I file a protest to the zoning changes being proposed under the Land Development Code Revision, as I could with a standard zoning change in my area?” The City answer: “No, zoning protests may not be used to protest broad legislative amendments, including comprehensive revisions such as the revision of the entire Land Development Code. The zoning protest rights established in state law provide a mechanism for protesting zoning cases involving individual properties or a limited area.”

31. The City of Austin’s written public memoranda, public statements, and media statements clearly state that the City of Austin does not recognize Austin property owners’ statutory protest rights. These repeated City declarations are misleading, wrong, and stopping some Austin property owners from filing their protest rights petitions. These owners wish to protest these properties from having a change in zoning under state law, Texas Local Government Code, Section 211.006, but are relying in good faith on the City’s erroneous legal position on protest rights. These Chilled Property Owners may lose their protest rights if they fail to file their valid protest rights petitions before the Council adopts the maps changing the zoning of their property, thereby

undermining their statutory protest rights because of the City's campaign of misinformation.

VI.

TEXAS LAW

32. The Texas Legislature has provided property owners protest rights for zoning changes to their and nearby properties since 1927, when it adopted the Texas Municipal Zoning Law Statutes.

Texas Rev. Civ. Stat. Ann. art. 1011e (Vernon 1928) provided:

Such [zoning] regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified, or repealed; In case, however, of a protest against such change, signed by the owners of 20 per cent of [or] more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending 200 feet therefrom, or of those directly opposite thereto extending 200 feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths of all the members of the legislative body of such municipality. The provisions of the previous section relative to public hearing and official notice shall apply equally to all changes or amendments.

Acts 1927, 40th Leg., p. 424, ch. 283, § 5 (emphasis added).

33. This same provision remained unchanged until 1987, when the Texas Legislature re-codified the Texas Civil Statutes into the Texas Local Government Code. This codification was explicitly "a non-substantive revision of the statutes." Acts 1987, 70th Leg., p 70., ch. 149, Section 1. Texas Local Government Code, Section 211.006(d) is the non-substantive codification of Tex. Rev. Civ. Statutes, Section 1011e above:

If a proposed change to a regulation or boundary is protested in accordance with this subsection, the proposed change must receive,

in order to take effect, the affirmative vote of at least three-fourths of all members of the governing body. The protest must be written and signed by the owners of at least 20 percent of either:(1) the area of the lots or land covered by the proposed change; or (2) the area of the lots or land immediately adjoining the area covered by the proposed change and extending 200 feet from that area.

Texas Local Government Code, Section 211.006 (emphasis added). (Attachment A).

34. The City of Austin has adopted the identical requirements. *See*, Ordinance No. 20160211-008 (Feb. 11, 2016) (Attachment B).

35. Texas Local Government Code, Chapter 211 controls Texas cities' zoning authority and preempts any City laws or actions to the contrary. Section 211.002 explains that a city's adoption of a zoning regulation or boundary includes amendments, repeals or other changes: "A reference in this subchapter to the adoption of a zoning regulation or a zoning district boundary includes **the amendment, repeal, or other change of a regulation or boundary**" (emphasis added). Section 211.003 defines zoning broadly, providing in part that "A municipality may regulate: (1) the height, number of stories, and size of buildings and other structures; (2) the percentage of a lot that may be occupied; (3) the size of yards, courts, and other open spaces; (4) population density; (5) the location and use of buildings, other structures, and land for business, industrial, residential, or other purposes..." Section 211.005 provides that a city may prescribe the zoning districts as well as zoning regulations. Section 211.006 mandates the procedures to which a city's authority to regulate zoning and zoning districts, including changes, is subject. Section 211.006(d) prescribes the state-mandated procedures governing property owners' protests to zoning changes under Chapter 211: "If a proposed change to a regulation or boundary is protested in accordance with this subsection, the proposed change must receive, **in order to take effect**, the affirmative vote of at least three-fourths of all

members of the governing body,” which applies to zoning regulations and procedures (emphasis added). The protested changes (including amendments, repeals, or other changes) of a zoning regulation or zoning district shall not “take effect” unless they receive the votes of “at least three-fourths of all members of the governing body.”

36. In Chapter 211, the Texas Legislature recognized and balanced the need for zoning changes and the expectations of property owners in the stability of their current zoning. Thus, under Section 211.006, the City Council may change the zoning of a property by simple majority vote if less than 20% of the owners (or less than 20% by area of the surrounding owners within 200 feet of the property) protest. The City Council may change the zoning of a properties and override the owners’ valid protest rights petitions upon a three-fourths vote of all council members. The Defendants cannot, however, change the zoning of properties over property owners’ or nearby property owners’ valid protest rights petitions without a supermajority vote.

37. In addition to protest rights, Texas’ zoning law provides that the City of Austin Planning Commission must provide specific, written notice to individual property owners (and surrounding property owners within 200 feet) that the zoning of the property in question is being changed. Texas Local Government Code, section 211.007(c) provides: “ Before the 10th day before the hearing date, written notice of each public hearing before the zoning commission on a proposed change in a zoning classification shall be sent to each owner, as indicated by the most recently approved municipal tax roll, of real property within 200 feet of the property on which the change in classification is proposed.” The Planning Commission’s hearing and final report are an integral part of the zoning process under state law. The City has not provided the required specific notice of a Planning Commission hearing on a proposed zoning change to plaintiffs’ properties or nearby

properties under the Revised LDC, in violation of Section 211.007. The failure to give notice was illegal and deprives the City Council of jurisdiction to act on first reading and renders action on any subsequent reading void unless and until the City complies with the law.

VII.

CAUSES OF ACTION AND RELIEF SOUGHT

A. Declaratory Judgment

38. Incorporating paragraphs 1 - 37 above, Defendants are violating Sections 211.006 and 211.007 of the Texas Local Government Code by failing to recognize Plaintiffs' valid protest rights petitions or providing statutorily-required notice of the Planning Commission hearing to them of the change in zoning of their or nearby property in the City of Austin. Defendants' actions constitute *ultra vires* acts in that they are legally incorrect and are preempted by state laws, Section 211.006 and 211.007. As such, plaintiffs are entitled to relief against Defendants, in their official capacities, prohibiting said *ultra vires* acts.

39. Plaintiffs seek a declaratory judgment, pursuant to Chapter 37 of the Texas Civil Practice and Remedies Code, declaring that property owners have valid protest rights and petitions pursuant to Texas Local Government Code, Section 211.006, as to any change in the zoning regulation or districts of their property or, any property within 200 feet of their property protested by 20% of the owners by area; and declaring that the City of Austin must obtain a three-fourths majority vote of all Council members for any such protested zoning change to go into effect and be valid. In addition, Plaintiffs seek a declaratory judgment that the Defendants must not tell property owners that valid protest rights are not applicable to their property, and the City must affirmatively inform property owners and surrounding property owners of their valid protest

rights. Last, Plaintiffs seek a declaratory judgement that the City must send written notice to all property owners whose property is having its zoning changed, and property owners within 200 feet of the property in question, at least 10 days before the Planning Commission's hearing to change the zoning of their or nearby properties, and that the City's failure to do so renders the City's action to rezone these properties void.

B. Injunctive Relief

40. To obtain injunctive relief, the applicant must plead and prove: (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). Such relief is clearly appropriate in this case.

41. Incorporating all of the above by reference, Plaintiffs seek an injunction, pursuant to equity and Chapter 65 of the Texas Civil Practice and Remedies Code, mandating that the Defendants recognize and accept Plaintiffs' valid protest rights petitions, pursuant to Texas Local Government Code, Section 211.006, as to any change in the zoning regulations or zoning district boundaries of their property or, any property within 200 feet of their property protested by 20% of the owners by area; and enjoining the City of Austin from effectuating any zoning change of any property subject to a valid protest rights petition without the City Council first approving by three-fourths majority vote of all Council members for any such protested zoning change. In addition, Plaintiffs seek an injunction that the Defendants are prohibited from advising Austin property owners that they do not have valid protest rights under Section 211.006; and further, Plaintiffs seek an injunction directing the Defendants to affirmatively advise property owners of their valid protest rights pursuant to Section 211.006. Lastly, Plaintiffs seek an injunction that the Defendants be ordered to send written notice to all property owners, and surrounding property owners within 200 feet, in the City of Austin whose zoning

regulations or zoning district boundaries are being changed at least 10 days before the Planning Commission's hearing on those zoning changes, pursuant to Section 211.007.

42. Plaintiffs have established a probable right to the requested relief. A probable right of recovery is shown by alleging a cause of action and presenting evidence to sustain it. *Fox v. Tropical Warehouses, Inc.*, 121 S.W.3d 853, 857 (Tex. App.—Fort Worth 2003, no pet.). To satisfy this element, Plaintiff need not prove its case with absolute certainty. *State v. Southwestern Bell Tel. Co.*, 526 S.W.2d 526, 528 (Tex. 1975) (applicant need only show probable right and probable injury). A reasonable probability of success, not an overwhelming likelihood, is all that need be shown for temporary injunctive relief. *Casarez v. Val Verde County*, 957 F. Supp. 847, 858 (W.D. Tex. 1997). Thus, a plaintiff is required only to demonstrate enough evidence to present a prima facie case, but “need not show a certainty of winning.” *Texas v. United States*, 86 F. Supp. 3d 591, 647 (S.D. Tex. 2015). The evidence to be presented to the Court demonstrates a substantial likelihood of success on the merits on Plaintiffs’ claims for its causes of action and supports the issuance of a temporary injunction.

43. Plaintiffs will suffer probable, imminent, and irreparable harm if Defendants, and all persons in active concert, or participation with them, are not enjoined from directly or indirectly, from adopting the Revised LDC without notice to all affected landowners and, where a protest has been filed, without a super majority vote.

VIII.

MONETARY DAMAGES

44. Plaintiffs do not seek monetary damages as categorized under Tex. R. Civ. P. 47 and

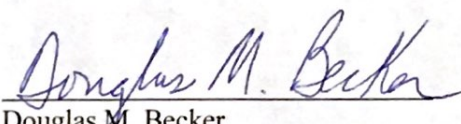
seek only the relief (none of which is prohibited by governmental immunity) stated herein.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully pray that Defendants be cited to appear and answer herein, and that upon preliminary hearing and final trial hereof, Plaintiffs be accorded declaratory and injunctive relief as stated herein, court costs, and/or all such other and further relief, at law or in equity, to which Plaintiffs may show themselves justly entitled.

Respectfully submitted,

GRAY BECKER, P.C.
900 West Avenue
Austin, Texas 78701
Telephone: (512) 482-0061
Fax: (512) 482-0924

By:


Douglas M. Becker
State Bar No. 02012900
doug.becker@graybecker.com
Richard E. Gray, III
State Bar No. 08328300
rick.gray@graybecker.com
Monte Swearingen
State Bar No. 18871700
monte.swearingen@graybecker.com
Attorneys for Plaintiffs

AFFIDAVIT OF FRED LEWIS

STATE OF TEXAS §


COUNTY OF TRAVIS §

Before me, the undersigned authority personally appeared Fred Lewis, who being by me first duly sworn on his oath, deposed as follows:

“I am Fred Lewis, a Plaintiff in the above and foregoing Original Petition, Application for Injunctive Relief, and Request for Declaratory Judgment.

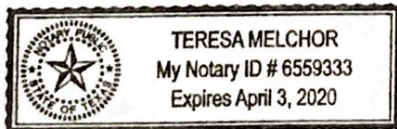
“All statements of fact therein are within my personal knowledge and are true and correct.”

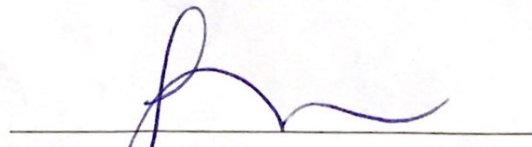
Further affiant saith not.



Fred Lewis

SWORN TO AND SUBSCRIBED before me on the 12 day of December 2019, to certify which witness my hand and official seal of office.





Notary Public in and for the State of Texas

LOCAL GOVERNMENT CODE

TITLE 7. REGULATION OF LAND USE, STRUCTURES, BUSINESSES, AND RELATED
ACTIVITIES

SUBTITLE A. MUNICIPAL REGULATORY AUTHORITY

CHAPTER 211. MUNICIPAL ZONING AUTHORITY

SUBCHAPTER A. GENERAL ZONING REGULATIONS

Sec. 211.001. PURPOSE. The powers granted under this subchapter are for the purpose of promoting the public health, safety, morals, or general welfare and protecting and preserving places and areas of historical, cultural, or architectural importance and significance.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 211.002. ADOPTION OF REGULATION OR BOUNDARY INCLUDES AMENDMENT OR OTHER CHANGE. A reference in this subchapter to the adoption of a zoning regulation or a zoning district boundary includes the amendment, repeal, or other change of a regulation or boundary.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 211.003. ZONING REGULATIONS GENERALLY. (a) The governing body of a municipality may regulate:

- (1) the height, number of stories, and size of buildings and other structures;
- (2) the percentage of a lot that may be occupied;
- (3) the size of yards, courts, and other open spaces;
- (4) population density;
- (5) the location and use of buildings, other structures, and land for business, industrial, residential, or other purposes; and
- (6) the pumping, extraction, and use of groundwater by persons other than retail public utilities, as defined by Section 13.002, Water Code, for the purpose of preventing the use or contact with groundwater that presents an actual or potential threat to human health.

(b) In the case of designated places and areas of historical, cultural, or architectural importance and significance, the governing

body of a municipality may regulate the construction, reconstruction, alteration, or razing of buildings and other structures.

(c) The governing body of a home-rule municipality may also regulate the bulk of buildings.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2003, 78th Leg., ch. 731, Sec. 2, eff. Sept. 1, 2003.

Sec. 211.0035. ZONING REGULATIONS AND DISTRICT BOUNDARIES APPLICABLE TO PAWNSHOPS. (a) In this section, "pawnshop" has the meaning assigned by Section 371.003, Finance Code.

(b) For the purposes of zoning regulation and determination of zoning district boundaries, 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 that has been licensed to transact business by the Consumer Credit Commissioner under Chapter 371, Finance Code.

Added by Acts 1991, 72nd Leg., ch. 687, Sec. 18, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.81, eff. Sept. 1, 1999.

Sec. 211.004. COMPLIANCE WITH COMPREHENSIVE PLAN. (a) Zoning regulations must be adopted in accordance with a comprehensive plan and must be designed to:

- (1) lessen congestion in the streets;
- (2) secure safety from fire, panic, and other dangers;
- (3) promote health and the general welfare;
- (4) provide adequate light and air;
- (5) prevent the overcrowding of land;
- (6) avoid undue concentration of population; or
- (7) facilitate the adequate provision of transportation, water, sewers, schools, parks, and other public requirements.

(b) Repealed by Acts 1997, 75th Leg., ch. 459, Sec. 2, eff. Sept. 1, 1997.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by

Acts 1989, 71st Leg., ch. 458, Sec. 1, eff. Aug. 28, 1989; Acts 1997, 75th Leg., ch. 459, Sec. 2, eff. Sept. 1, 1997.

Sec. 211.005. DISTRICTS. (a) The governing body of a municipality may divide the municipality into districts of a number, shape, and size the governing body considers best for carrying out this subchapter. Within each district, the governing body may regulate the erection, construction, reconstruction, alteration, repair, or use of buildings, other structures, or land.

(b) Zoning regulations must be uniform for each class or kind of building in a district, but the regulations may vary from district to district. The regulations shall be adopted with reasonable consideration, among other things, for the character of each district and its peculiar suitability for particular uses, with a view of conserving the value of buildings and encouraging the most appropriate use of land in the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 211.006. PROCEDURES GOVERNING ADOPTION OF ZONING REGULATIONS AND DISTRICT BOUNDARIES. (a) The governing body of a municipality wishing to exercise the authority relating to zoning regulations and zoning district boundaries shall establish procedures for adopting and enforcing the regulations and boundaries. A regulation or boundary is not effective until after a public hearing on the matter at which parties in interest and citizens have an opportunity to be heard. Before the 15th day before the date of the hearing, notice of the time and place of the hearing must be published in an official newspaper or a newspaper of general circulation in the municipality.

(b) In addition to the notice required by Subsection (a), a general-law municipality that does not have a zoning commission shall give notice of a proposed change in a zoning classification to each property owner who would be entitled to notice under Section 211.007(c) if the municipality had a zoning commission. That notice must be given in the same manner as required for notice to property owners under Section 211.007(c). The governing body may not adopt the proposed change until after the 30th day after the date the notice required by this subsection is given.

(c) If the governing body of a home-rule municipality conducts a hearing under Subsection (a), the governing body may, by a two-thirds

vote, prescribe the type of notice to be given of the time and place of the public hearing. Notice requirements prescribed under this subsection are in addition to the publication of notice required by Subsection (a).

(d) If a proposed change to a regulation or boundary is protested in accordance with this subsection, the proposed change must receive, in order to take effect, the affirmative vote of at least three-fourths of all members of the governing body. The protest must be written and signed by the owners of at least 20 percent of either:

(1) the area of the lots or land covered by the proposed change; or

(2) the area of the lots or land immediately adjoining the area covered by the proposed change and extending 200 feet from that area.

(e) In computing the percentage of land area under Subsection (d), the area of streets and alleys shall be included.

(f) The governing body by ordinance may provide that the affirmative vote of at least three-fourths of all its members is required to overrule a recommendation of the municipality's zoning commission that a proposed change to a regulation or boundary be denied.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 211.007. ZONING COMMISSION. (a) To exercise the powers authorized by this subchapter, the governing body of a home-rule municipality shall, and the governing body of a general-law municipality may, appoint a zoning commission. The commission shall recommend boundaries for the original zoning districts and appropriate zoning regulations for each district. If the municipality has a municipal planning commission at the time of implementation of this subchapter, the governing body may appoint that commission to serve as the zoning commission.

(b) The zoning commission shall make a preliminary report and hold public hearings on that report before submitting a final report to the governing body. The governing body may not hold a public hearing until it receives the final report of the zoning commission unless the governing body by ordinance provides that a public hearing is to be held, after the notice required by Section 211.006(a), jointly with a public hearing required to be held by the zoning commission. In either case, the governing body may not take action on the matter until it receives the final report of the zoning commission.

(c) Before the 10th day before the hearing date, written notice of

each public hearing before the zoning commission on a proposed change in a zoning classification shall be sent to each owner, as indicated by the most recently approved municipal tax roll, of real property within 200 feet of the property on which the change in classification is proposed. The notice may be served by its deposit in the municipality, properly addressed with postage paid, in the United States mail. If the property within 200 feet of the property on which the change is proposed is located in territory annexed to the municipality and is not included on the most recently approved municipal tax roll, the notice shall be given in the manner provided by Section 211.006(a).

(c-1) Before the 10th day before the hearing date, written notice of each public hearing before the zoning commission on a proposed change in a zoning classification affecting residential or multifamily zoning shall be sent to each school district in which the property for which the change in classification is proposed is located. The notice may be served by its deposit in the municipality, properly addressed with postage paid, in the United States mail.

(c-2) Subsection (c-1) does not apply to a municipality the majority of which is located in a county with a population of 100,000 or less, except that such a municipality must give notice under Subsection (c-1) to a school district that has territory in the municipality and requests the notice. For purposes of this subsection, if a school district makes a request for notice under Subsection (c-1), the municipality must give notice of each public hearing held following the request unless the school district requests that no further notices under Subsection (c-1) be given to the school district.

(d) The governing body of a home-rule municipality may, by a two-thirds vote, prescribe the type of notice to be given of the time and place of a public hearing held jointly by the governing body and the zoning commission. If notice requirements are prescribed under this subsection, the notice requirements prescribed by Subsections (b) and (c) and by Section 211.006(a) do not apply.

(e) If a general-law municipality exercises zoning authority without the appointment of a zoning commission, any reference in a law to a municipal zoning commission or planning commission means the governing body of the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 640 (H.B. 674), Sec. 1, eff.

September 1, 2013.

Sec. 211.0075. COMPLIANCE WITH OPEN MEETINGS LAW. A board or commission established by an ordinance or resolution adopted by the governing body of a municipality to assist the governing body in developing an initial comprehensive zoning plan or initial zoning regulations for the municipality, or a committee of the board or commission that includes one or more members of the board or commission, is subject to Chapter 551, Government Code, regardless of whether the board, commission, or committee has rulemaking or quasi-judicial powers or functions only in an advisory capacity.

Added by Acts 1993, 73rd Leg., ch. 381, Sec. 1, eff. Aug. 30, 1993.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(82), eff. Sept. 1, 1995.

Sec. 211.008. BOARD OF ADJUSTMENT. (a) The governing body of a municipality may provide for the appointment of a board of adjustment. In the regulations adopted under this subchapter, the governing body may authorize the board of adjustment, in appropriate cases and subject to appropriate conditions and safeguards, to make special exceptions to the terms of the zoning ordinance that are consistent with the general purpose and intent of the ordinance and in accordance with any applicable rules contained in the ordinance.

(b) A board of adjustment must consist of at least five members to be appointed for terms of two years. The governing body must provide the procedure for appointment. The governing body may authorize each member of the governing body, including the mayor, to appoint one member to the board. The appointing authority may remove a board member for cause, as found by the appointing authority, on a written charge after a public hearing. A vacancy on the board shall be filled for the unexpired term.

(c) The governing body, by charter or ordinance, may provide for the appointment of alternate board members to serve in the absence of one or more regular members when requested to do so by the mayor or city manager. An alternate member serves for the same period as a regular member and is subject to removal in the same manner as a regular member. A vacancy among the alternate members is filled in the same manner as a vacancy among the regular members.

(d) Each case before the board of adjustment must be heard by at least 75 percent of the members.

(e) The board by majority vote shall adopt rules in accordance with any ordinance adopted under this subchapter and with the approval of the governing body. Meetings of the board are held at the call of the presiding officer and at other times as determined by the board. The presiding officer or acting presiding officer may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public.

(f) The board shall keep minutes of its proceedings that indicate the vote of each member on each question or the fact that a member is absent or fails to vote. The board shall keep records of its examinations and other official actions. The minutes and records shall be filed immediately in the board's office and are public records.

(g) The governing body of a Type A general-law municipality by ordinance may grant the members of the governing body the authority to act as a board of adjustment under this chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 126, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 724, Sec. 1, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 363, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 820 (H.B. [2497](#)), Sec. 1, eff. September 1, 2019.

Sec. 211.009. AUTHORITY OF BOARD. (a) The board of adjustment may:

(1) hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official in the enforcement of this subchapter or an ordinance adopted under this subchapter;

(2) hear and decide special exceptions to the terms of a zoning ordinance when the ordinance requires the board to do so;

(3) authorize in specific cases a variance from the terms of a zoning ordinance if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship, and so that the spirit of the ordinance is observed and substantial justice is done; and

(4) hear and decide other matters authorized by an ordinance adopted under this subchapter.

(b) In exercising its authority under Subsection (a)(1), the board

may reverse or affirm, in whole or in part, or modify the administrative official's order, requirement, decision, or determination from which an appeal is taken and make the correct order, requirement, decision, or determination, and for that purpose the board has the same authority as the administrative official.

(c) The concurring vote of 75 percent of the members of the board is necessary to:

- (1) reverse an order, requirement, decision, or determination of an administrative official;
- (2) decide in favor of an applicant on a matter on which the board is required to pass under a zoning ordinance; or
- (3) authorize a variation from the terms of a zoning ordinance.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 126, Sec. 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 724, Sec. 2, eff. Aug. 28, 1995.

Sec. 211.010. APPEAL TO BOARD. (a) Except as provided by Subsection (e), any of the following persons may appeal to the board of adjustment a decision made by an administrative official that is not related to a specific application, address, or project:

- (1) a person aggrieved by the decision; or
- (2) any officer, department, board, or bureau of the municipality affected by the decision.

(a-1) Except as provided by Subsection (e), any of the following persons may appeal to the board of adjustment a decision made by an administrative official that is related to a specific application, address, or project:

- (1) a person who:
 - (A) filed the application that is the subject of the decision;
 - (B) is the owner or representative of the owner of the property that is the subject of the decision; or
 - (C) is aggrieved by the decision and is the owner of real property within 200 feet of the property that is the subject of the decision; or
- (2) any officer, department, board, or bureau of the municipality affected by the decision.

(b) The appellant must file with the board and the official from whom the appeal is taken a notice of appeal specifying the grounds for

the appeal. The appeal must be filed not later than the 20th day after the date the decision is made. On receiving the notice, the official from whom the appeal is taken shall immediately transmit to the board all the papers constituting the record of the action that is appealed.

(c) An appeal stays all proceedings in furtherance of the action that is appealed unless the official from whom the appeal is taken certifies in writing to the board facts supporting the official's opinion that a stay would cause imminent peril to life or property. In that case, the proceedings may be stayed only by a restraining order granted by the board or a court of record on application, after notice to the official, if due cause is shown.

(d) The board shall set a reasonable time for the appeal hearing and shall give public notice of the hearing and due notice to the parties in interest. A party may appear at the appeal hearing in person or by agent or attorney. The board shall decide the appeal at the next meeting for which notice can be provided following the hearing and not later than the 60th day after the date the appeal is filed.

(e) A member of the governing body of the municipality who serves on the board of adjustment under Section 211.008(g) may not bring an appeal under this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 363, Sec. 2, eff. Sept. 1, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 820 (H.B. 2497), Sec. 2, eff. September 1, 2019.

Sec. 211.011. JUDICIAL REVIEW OF BOARD DECISION. (a) Any of the following persons may present to a district court, county court, or county court at law a verified petition stating that the decision of the board of adjustment is illegal in whole or in part and specifying the grounds of the illegality:

- (1) a person aggrieved by a decision of the board;
- (2) a taxpayer; or
- (3) an officer, department, board, or bureau of the municipality.

(b) The petition must be presented within 10 days after the date the decision is filed in the board's office.

(c) On the presentation of the petition, the court may grant a writ of certiorari directed to the board to review the board's decision. The

writ must indicate the time by which the board's return must be made and served on the petitioner's attorney, which must be after 10 days and may be extended by the court. Granting of the writ does not stay the proceedings on the decision under appeal, but on application and after notice to the board the court may grant a restraining order if due cause is shown.

(d) The board's return must be verified and must concisely state any pertinent and material facts that show the grounds of the decision under appeal. The board is not required to return the original documents on which the board acted but may return certified or sworn copies of the documents or parts of the documents as required by the writ.

(e) If at the hearing the court determines that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take evidence as directed. The referee shall report the evidence to the court with the referee's findings of fact and conclusions of law. The referee's report constitutes a part of the proceedings on which the court shall make its decision.

(f) The court may reverse or affirm, in whole or in part, or modify the decision that is appealed. Costs may not be assessed against the board unless the court determines that the board acted with gross negligence, in bad faith, or with malice in making its decision.

(g) The court may not apply a different standard of review to a decision of a board of adjustment that is composed of members of the governing body of the municipality under Section 211.008(g) than is applied to a decision of a board of adjustment that does not contain members of the governing body of a municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 363, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 646, Sec. 1, eff. Aug. 30, 1999.

Sec. 211.012. ENFORCEMENT; PENALTY; REMEDIES. (a) The governing body of a municipality may adopt ordinances to enforce this subchapter or any ordinance or regulation adopted under this subchapter.

(b) A person commits an offense if the person violates this subchapter or an ordinance or regulation adopted under this subchapter. An offense under this subsection is a misdemeanor, punishable by fine, imprisonment, or both, as provided by the governing body. The governing body may also provide civil penalties for a violation.

(c) If a building or other structure is erected, constructed,

reconstructed, altered, repaired, converted, or maintained or if a building, other structure, or land is used in violation of this subchapter or an ordinance or regulation adopted under this subchapter, the appropriate municipal authority, in addition to other remedies, may institute appropriate action to:

- (1) prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;
 - (2) restrain, correct, or abate the violation;
 - (3) prevent the occupancy of the building, structure, or land;
- or
- (4) prevent any illegal act, conduct, business, or use on or about the premises.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 211.013. CONFLICT WITH OTHER LAWS; EXCEPTIONS. (a) If a zoning regulation adopted under this subchapter requires a greater width or size of a yard, court, or other open space, requires a lower building height or fewer number of stories for a building, requires a greater percentage of lot to be left unoccupied, or otherwise imposes higher standards than those required under another statute or local ordinance or regulation, the regulation adopted under this subchapter controls. If the other statute or local ordinance or regulation imposes higher standards, that statute, ordinance, or regulation controls.

(b) This subchapter does not authorize the governing body of a municipality to require the removal or destruction of property that exists at the time the governing body implements this subchapter and that is actually and necessarily used in a public service business.

(c) This subchapter does not apply to a building, other structure, or land under the control, administration, or jurisdiction of a state or federal agency.

(d) This subchapter applies to a privately owned building or other structure and privately owned land when leased to a state agency.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 476, Sec. 1, eff. June 18, 1999.

Sec. 211.014. PANEL OF BOARD OF ADJUSTMENT. (a) This section applies only to a municipality with a population of 500,000 or more.

(b) A board of adjustment shall consist of one or more panels of at

least five members each to be appointed for terms of two years. If more than one panel of the board is appointed, the board consists of the regular members of all of the panels. The board may adopt rules for the assignment of appeals to a panel.

(c) If the board consists of more than one panel, only one panel may hear, handle, or render a decision in a particular case. A decision of a panel of the board on a case constitutes the decision of the board.

(d) Meetings of a panel of the board are held at the call of the presiding officer of the panel and at other times as determined by the panel or the board.

(e) A panel of a board of adjustment:

(1) has the powers and duties that a board of adjustment has under Sections [211.008](#), [211.009](#), [211.010](#), and [211.011](#); and

(2) is to be treated as a board of adjustment for purposes of the requirement imposed by Section [211.008](#)(d).

Added by Acts 1993, 73rd Leg., ch. 126, Sec. 3, eff. Sept. 1, 1993.

Amended by Acts 2001, 77th Leg., ch. 402, Sec. 12, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 669, Sec. 73, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 24 (S.B. [177](#)), Sec. 1, eff. May 9, 2005.

Sec. 211.015. ZONING REFERENDUM IN HOME-RULE MUNICIPALITY. (a) Notwithstanding other requirements of this subchapter, the voters of a home-rule municipality may repeal the municipality's zoning regulations adopted under this subchapter by either:

(1) a charter election conducted under law; or

(2) on the initial adoption of zoning regulations by a municipality, the use of any referendum process that is authorized under the charter of the municipality for public protest of the adoption of an ordinance.

(b) Notwithstanding any procedural or other requirements of this chapter to the contrary, the governing body of a home-rule municipality may on its own motion submit the repeal of the municipality's zoning regulations, as adopted under this chapter, in their entirety to the electors by use of any process that is authorized under the charter of the municipality for a popular vote on the rejection or repeal of ordinances in general.

(c) The provisions of this chapter shall not be construed to prohibit the adoption or application of any charter provision of a home-

rule municipality that requires a waiting period prior to the adoption of zoning regulations or the submission of the initial adoption of zoning regulations to a binding referendum election, or both, provided that all procedural requirements of this chapter for the adoption of the zoning regulation are otherwise complied with. This subsection does not apply to the adoption of airport zoning regulations under Chapter 241.

(d) Notwithstanding any charter provision to the contrary, a governing body of a municipality may adopt a zoning ordinance and condition its taking effect upon the ordinance receiving the approval of the electors at an election held for that purpose.

(e) The provisions of this section may only be utilized for the repeal of a municipality's zoning regulations in their entirety or for determinations of whether a municipality should initially adopt zoning regulations, except the governing body of a municipality may amend, modify, or repeal a zoning ordinance adopted, approved, or ratified at an election conducted pursuant to this section.

(f) The provisions of this section shall not authorize the repeal of:

(1) an ordinance approving land-use regulations adopted under the provisions of this chapter by a board of directors of a reinvestment zone under the authority of Section 311.010(c), Tax Code; or

(2) an ordinance approving airport zoning regulations adopted under Chapter 241.

Added by Acts 1993, 73rd Leg., ch. 126, Sec. 4, eff. Sept. 1, 1993.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 190 (S.B. 1360), Sec. 1, eff. May 23, 2007.

Sec. 211.016. ZONING REGULATION AFFECTING APPEARANCE OF BUILDINGS OR OPEN SPACE. (a) This section applies only to a zoning regulation that affects:

(1) the exterior appearance of a single-family house, including the type and amount of building materials; or

(2) the landscaping of a single-family residential lot, including the type and amount of plants or landscaping materials.

(b) A zoning regulation adopted after the approval of a residential subdivision plat does not apply to that subdivision until the second anniversary of the later of:

(1) the date the plat was approved; or

(2) the date the municipality accepts the subdivision improvements offered for public dedication.

(c) This section does not prevent a municipality from adopting or enforcing applicable building codes or prohibiting the use of building materials that have been proven to be inherently dangerous.

Added by Acts 2003, 78th Leg., ch. 524, Sec. 1, eff. Sept. 1, 2003.

Sec. 211.0165. DESIGNATION OF HISTORIC LANDMARK. (a) Except as provided by Subsection (b), a municipality that has established a process for designating places or areas of historical, cultural, or architectural importance and significance through the adoption of zoning regulations or zoning district boundaries may not designate a property as a local historic landmark unless:

- (1) the owner of the property consents to the designation; or
- (2) the designation is approved by a three-fourths vote of:
 - (A) the governing body of the municipality; and
 - (B) the zoning, planning, or historical commission of the municipality, if any.

(b) If the property is owned by an organization that qualifies as a religious organization under Section 11.20, Tax Code, the municipality may designate the property as a local historic landmark only if the organization consents to the designation.

(c) The municipality must provide the property owner a statement that describes the impact that a historic designation of the owner's property may have on the owner and the owner's property. The municipality must provide the statement to the owner not later than the 15th day before the date of the initial hearing on the historic designation of the property of:

- (1) the zoning, planning, or historical commission, if any; or
- (2) the governing body of the municipality.

(d) The historic designation impact statement must include lists of the:

- (1) regulations that may be applied to any structure on the property after the designation;
- (2) procedures for the designation;
- (3) tax benefits that may be applied to the property after the designation; and
- (4) rehabilitation or repair programs that the municipality offers for a property designated as historic.

(e) The municipality must allow an owner to withdraw consent at any time during the designation process.

Added by Acts 2019, 86th Leg., R.S., Ch. 231 (H.B. 2496), Sec. 1, eff. May 25, 2019.

Sec. 211.017. CONTINUATION OF LAND USE IN NEWLY INCORPORATED AREAS.

(a) A municipality incorporated after September 1, 2003, may not prohibit a person from:

(1) continuing to use land in the area in the manner in which the land was being used on the date of incorporation if the land use was legal at that time; or

(2) beginning to use land in the area in the manner that was planned for the land before the 90th day before the effective date of the incorporation if:

(A) one or more licenses, certificates, permits, approvals, or other forms of authorization by a governmental entity were required by law for the planned land use; and

(B) a completed application for the initial authorization was filed with the governmental entity before the date of incorporation.

(b) For purposes of this section, a completed application is filed if the application includes all documents and other information designated as required by the governmental entity in a written notice to the applicant.

(c) This section does not prohibit a municipality from imposing:

(1) a regulation relating to the location of sexually oriented businesses, as that term is defined by Section 243.002;

(2) a municipal ordinance, regulation, or other requirement affecting colonias, as that term is defined by Section 2306.581, Government Code;

(3) a regulation relating to preventing imminent destruction of property or injury to persons;

(4) a regulation relating to public nuisances;

(5) a regulation relating to flood control;

(6) a regulation relating to the storage and use of hazardous substances;

(7) a regulation relating to the sale and use of fireworks; or

(8) a regulation relating to the discharge of firearms.

(d) A municipal ordinance or rule in conflict with this section is void.

Added by Acts 2003, 78th Leg., ch. 279, Sec. 1, eff. Sept. 1, 2003.
Renumbered from Local Government Code, Section 211.016 by Acts 2005, 79th
Leg., Ch. 728 (H.B. 2018), Sec. 23.001(66), eff. September 1, 2005.

Sec. 211.018. CONTINUATION OF LAND USE REGARDING MANUFACTURED HOME
COMMUNITIES. (a) In this section, "manufactured home," "manufactured
home community," and "manufactured home lot" have the meanings assigned
by Section 94.001, Property Code.

(b) The governing body of a municipality may not require a change
in the nonconforming use of any manufactured home lot within the
boundaries of a manufactured home community if:

(1) the nonconforming use of the land constituting the
manufactured home community is authorized by law; and

(2) at least 50 percent of the manufactured home lots in the
manufactured home community are physically occupied by a manufactured
home used as a residence.

(c) For purposes of Subsection (b), requiring a change in the
nonconforming use includes:

(1) requiring the number of manufactured home lots designated
as a nonconforming use to be decreased; and

(2) declaring that the nonconforming use of the manufactured
home lots has been abandoned based on a period of continuous abandonment
of use as a manufactured home lot of any lot for less than 12 months.

(d) A manufactured home owner may install a new or used
manufactured home, regardless of the size, or any appurtenance on a
manufactured home lot located in a manufactured home community for which
a nonconforming use is authorized by law, provided that the manufactured
home or appurtenance and the installation of the manufactured home or
appurtenance comply with:

(1) nonconforming land use standards, including standards
relating to separation and setback distances and lot size, applicable on
the date the nonconforming use of the land constituting the manufactured
home community was authorized by law; and

(2) all applicable state and federal law and standards in
effect on the date of the installation of the manufactured home or
appurtenance.

(e) A municipality that prohibits the construction of new single-
family residences or the construction of additions to existing single-
family residences on a site located in a designated floodplain may,

notwithstanding Subsection (b), (c), or (d), prohibit the installation of a manufactured home in a manufactured home community on a manufactured home lot that is located in an equivalently designated floodplain.

Added by Acts 2017, 85th Leg., R.S., Ch. 741 (S.B. 1248), Sec. 1, eff. September 1, 2017.

SUBCHAPTER B. ADDITIONAL ZONING REGULATIONS IN MUNICIPALITY WITH
POPULATION OF MORE THAN 290,000

Sec. 211.021. ADDITIONAL ZONING REGULATIONS. (a) The governing body of a municipality with a population of more than 290,000 that has adopted a comprehensive zoning ordinance under Subchapter A may, by ordinance, divide the municipality into neighborhood zoning areas after a public hearing on the matter at which parties in interest and citizens have an opportunity to be heard. Before the 15th day before the date of the hearing, notice of the time and place of the hearing must be published in an official newspaper or a newspaper of general circulation in the municipality.

(b) The mayor of the municipality, with the approval of the governing body, may appoint a neighborhood advisory zoning council for each of the neighborhood zoning areas. Each zoning council must be composed of five citizens who reside in the neighborhood zoning area. A zoning council member is appointed for a term of two years.

(c) Each neighborhood advisory zoning council shall provide the zoning commission with information, advice, and recommendations relating to each application filed with the zoning commission for zoning regulation changes that affect property within that neighborhood zoning area.

(d) On the filing of a zoning change application with the zoning commission, the zoning commission shall provide the appropriate neighborhood advisory zoning council with a copy of the application. The zoning council shall conduct a public hearing on the application and must publish notice of the time and place of the hearing in an official newspaper or a newspaper of general circulation in the municipality before the 10th day before the date of the hearing.

(e) At or before the zoning commission's hearing on the zoning change application, the neighborhood advisory zoning council shall submit to the zoning commission any information, advice, and recommendations relating to that application that the zoning council considers proper.

The zoning commission may not overrule a recommendation of the zoning council with respect to the disposition of the application unless at least three-fourths of the members of the zoning commission who are present at the meeting vote to overrule the recommendation.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER C. REGULATION OF COTTAGE FOOD PRODUCTION OPERATIONS

Sec. 211.031. DEFINITIONS. In this subchapter, "cottage food production operation" and "home" have the meanings assigned by Section [437.001](#), Health and Safety Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 653 (H.B. [970](#)), Sec. 7, eff. September 1, 2013.

Sec. 211.032. CERTAIN ZONING REGULATIONS PROHIBITED. A municipal zoning ordinance may not prohibit the use of a home for cottage food production operations.

Added by Acts 2013, 83rd Leg., R.S., Ch. 653 (H.B. [970](#)), Sec. 7, eff. September 1, 2013.

Sec. 211.033. ACTION FOR NUISANCE OR OTHER TORT. This subchapter does not affect the right of a person to bring a cause of action under other law against an individual for nuisance or another tort arising out of the individual's use of the individual's home for cottage food production operations.

Added by Acts 2013, 83rd Leg., R.S., Ch. 653 (H.B. [970](#)), Sec. 7, eff. September 1, 2013.

