

Fundamentals of Land Use Regulation

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TML Newly Elected City Officials' Orientation

Caveats, Provisos, Stipulations, Etc.

- **I am not your attorney!**
- This presentation and my statements are for **informational purposes only** and are not legal advice.
- Please consult your City Attorney for specific guidance on the application and interpretation of local rules.
- For more information: the Legal Research page at TML.org,
 - (512) 231-7400
 - legalinfo@tml.org



Everything, Everywhere, All at Once!

Zoning, Platting, Annexation *and more!!!*

- Work through:
 - Jurisdiction
 - City authority over adding & removing land to/from the city, use control, regulation of subdivision
- Each is a massive topic on its own that cannot be covered in an hour – But we are going to try.
- Presentation structured around a hypothetical development being considered in world famous **Glurp, Texas**.
- The materials at tml.org/249/Legal-Research have the technical details.



The Big Three — and What Triggers Each

Zoning

- Use control
- Density and intensity

Applies when a landowner wishes to change the use of land.

Subdivision / Platting

- Layout and connectivity
- Roadway and utility connections
- Parkland dedication

Applies when land is divided.

Annexation

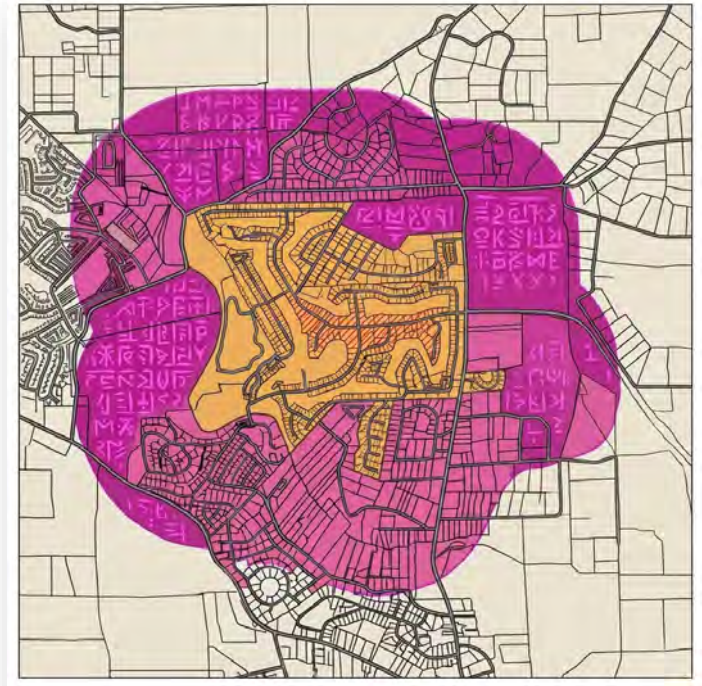
- Expansion or contraction of city jurisdiction
- Shifts agricultural land to urban land over time
- Disannexation runs the other way

Applies when a landowner wishes to change jurisdiction.

Land use decisions are about managing change.

Welcome to Glurp, Texas!

- Home rule
- Midsized city in Meadow Lark County
- “Full Service” city providing all municipal services.
- One of the few strong-mayor cities in Texas.
- Mayor D.C. Carl is very hands-on & very attached to his cat Princess Donut.



A Proposed Development: Dungeon Crawler World

- The Borant Corporation is looking for a location for a unique entertainment complex: Dungeon Crawler World
- **The plan calls for:**
 - 18 subterranean floors of immersive live-action roleplay and live-streamed gladiator-style combat
 - Exotic wildlife containment
 - Specialized retail — Loot, Potions, Food
 - Residential areas within the complex
- **Needs water and wastewater service, which is available only within the city.**



Borant Corp. Talks to the City

- The City has no problem with Borant's idea in theory...
- ...but the City only serves utilities to in-city properties.
- **So where Borant builds determines almost everything about how the City can regulate it.**



Location, Location, Location

- **Option One — Buy property in the City**
 - Utilities, police, amenities; greater potential for economic development assistance
 - City taxes and city regulations
- **Option Two — Develop in the ETJ**
 - Lower taxes and less regulation
 - Development agreement and agree to annexation later? Provide its own utilities?
- **Option Three — Leave the ETJ & build in “The County”**
 - No city authority — and no city amenities



The Power of the City Limits

- Inside the City
- Inside the City's ETJ
- Beyond the ETJ — the County

Is city authority the same in 1, 2, and 3?



Area No. 1: Inside the City Limits

- **Full city authority within the city limits:**
 - Land use controls — zoning and platting
 - Inspections and building codes
 - Police
 - Property and sales & use taxation
 - Utilities available throughout
 - Many other city powers...



Area No. 2: Extraterritorial Jurisdiction

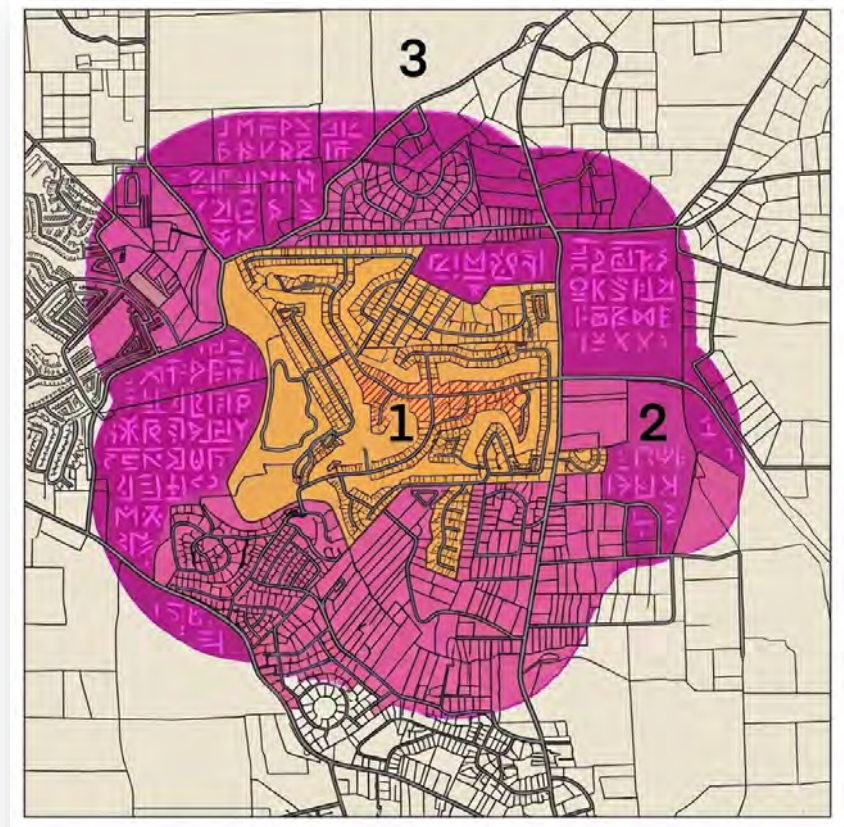
- An unincorporated area contiguous to the city limits, extending ½ mile to 5 miles out.
- Created in 1963 "to promote and protect the general health, safety, and welfare of persons residing in and adjacent to" cities — a buffer zone outside the corporate limits.
- **Cities have limited authority in the ETJ. The big ones:**
 - Subdivision and platting regulations
 - ETJ development agreements
 - Annexation
- **Cannot control use — no zoning!**



Tex. Loc. Gov't Code ch. 42

Area No. 3: Beyond the ETJ

- **AKA "The County"**
- No effective city authority.
- The city could have utilities in the county under specific conditions.



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- No effective city authority.
- The city could have utilities in the county under specific conditions.



City Authority Across the 3 Areas

City Authority	Inside City Limits	Inside ETJ	Outside City & ETJ
Zoning	✓	X	X
Utilities	✓	✓	With CCN
Subdivision & Platting	✓	✓	X
Ch. 212 Development Agreements	X	✓	X
Building Permits	✓	X	X
Code Compliance	✓	X	X
Police & Fire	✓	Limited	X
Taxation	✓	Limited	X
Elections	✓	Limited	X

This is not a comprehensive list of city authorities. For illustrative purposes only.

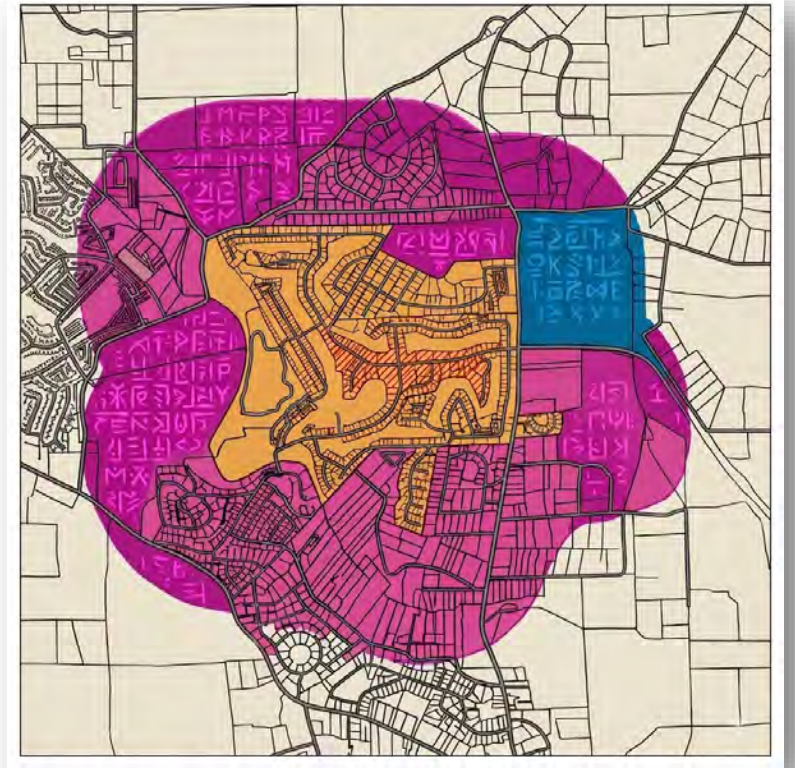
Know Your Limits

- **What rules apply depends on where these lines are. Know the limits!**
- And know that the limits can change:
 - *Annexation* — property in the ETJ may come inside the city limits; property in the county may be annexed into the ETJ
 - *Disannexation* — property in the city can shift to the ETJ in limited circumstances
 - *ETJ release* — property in the ETJ can be released by the city or by the landowner



Borant Chooses the ETJ

- **Borant buys several hundred acres in the Glurp ETJ.**
 - Contiguous to the city limits
 - Mostly undeveloped
 - No city police...
- **But it needs utilities, and the city is the sole provider.**
- **Borant must either:**
 1. **Annex into Glurp's city limits for utility service**
 2. **Provide for their own utilities in the ETJ or County**



Option One

Join the City?

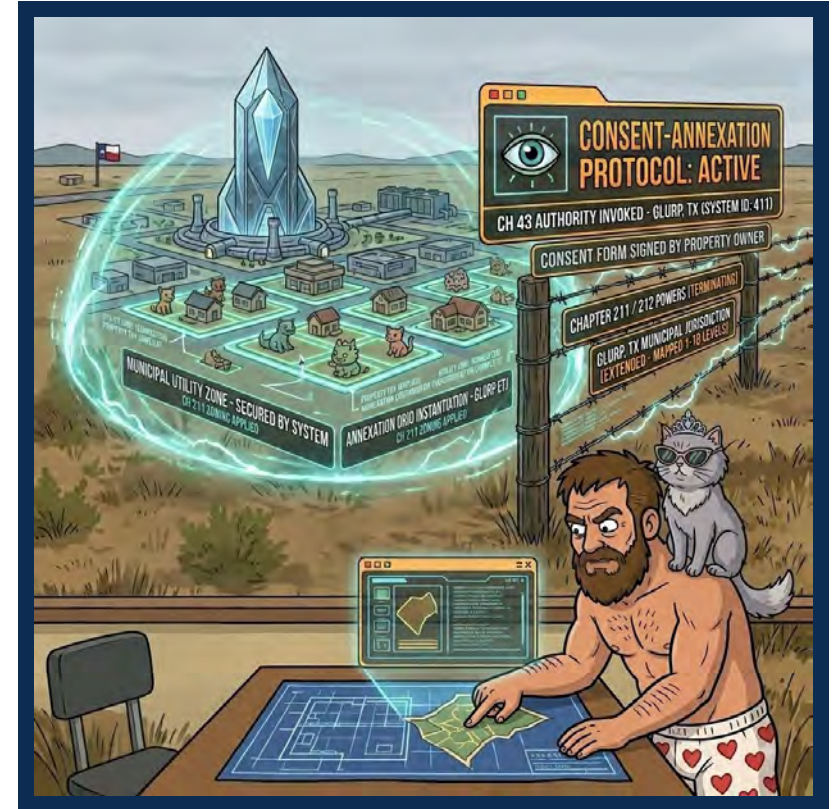
Regulatory Considerations:

- Annexation
- Zoning
- Subdivision

Annexation: How Property Is Brought Into a City

- Annex: "to append or add to." The mechanism for growth and expansion of the city.
- **Mostly by CONSENT of the landowners:**
 - Written request — 100% landowner consent (Subch. C-3)
 - Petition — area under 200 population, 50% + 1 consent (Subch. C-4)
 - Election — area over 200 population, 50% + 1 consent (Subch. C-5)
- Plus a few "consent-exempt" annexation situations.

Tex. Loc. Gov't Code ch. 43



Annexation Prerequisites

- **A city may annex property only if:**
 - The area is located in the city's ETJ (§ 43.014)
 - The area is adjacent to the city (§ 43.003(2)) — physically, or by roadway (§ 43.1055)
 - No statutory prerequisite for contiguity — only adjacency
- **If the area is taxed as Ag, Timber, or Wildlife Management:**
 - Offer a § 212.172 development agreement to (1) guarantee ETJ status and (2) authorize enforcement of city planning regs that do not affect use, and
 - The owner rejects the offer
- **Check your city charter — an explicit home rule requirement.**



Consent Annexations — and Other Wrinkles

- **All three processes require:**
 - Prerequisites met; a map; a list of city services to be provided and a schedule showing when
 - Written service agreement (C-3) or resolution (C-4 and C-5)
 - Notice to public entities and school districts; public hearing(s)
 - Annexation by ordinance following the final hearing, then updated maps and more notices
- **Other wrinkles:**
 - Annexation does not extend the ETJ — but property may be annexed into the ETJ at the landowner's request
 - ETJ development agreements can define annexation procedures



Consent Annexations — and Other Wrinkles

All 3 processes require:

- Annexation prerequisites are met.
- Map
- List of city services to be provided to annexed area and a schedule showing when.
 - Written Service Agreement: C-3
 - Resolution: C-4 & C-5
- Notice to public entities and school districts
- Public Hearing(s)
- Annex property by ordinance following final hearing
- Update city maps and more notices



Most Common Consent-Exempt Annexations

- **Area owned by a Type A city (§ 43.012)**
 - The area need not be in the city's ETJ (§ 43.014)
- **Strategic Partnership Agreement (§ 43.0751(h))**
 - A negotiated agreement between a city and a district — may provide for limited-purpose or full annexation, commercial-area annexation, debt or transfer limits, and sales tax receipts
- **Right of way (§ 43.1055)**
 - If the owner — commonly TxDOT or the county — does not object within 60 days, the city may annex the ROW
 - New authority. Very useful for making connectivity.

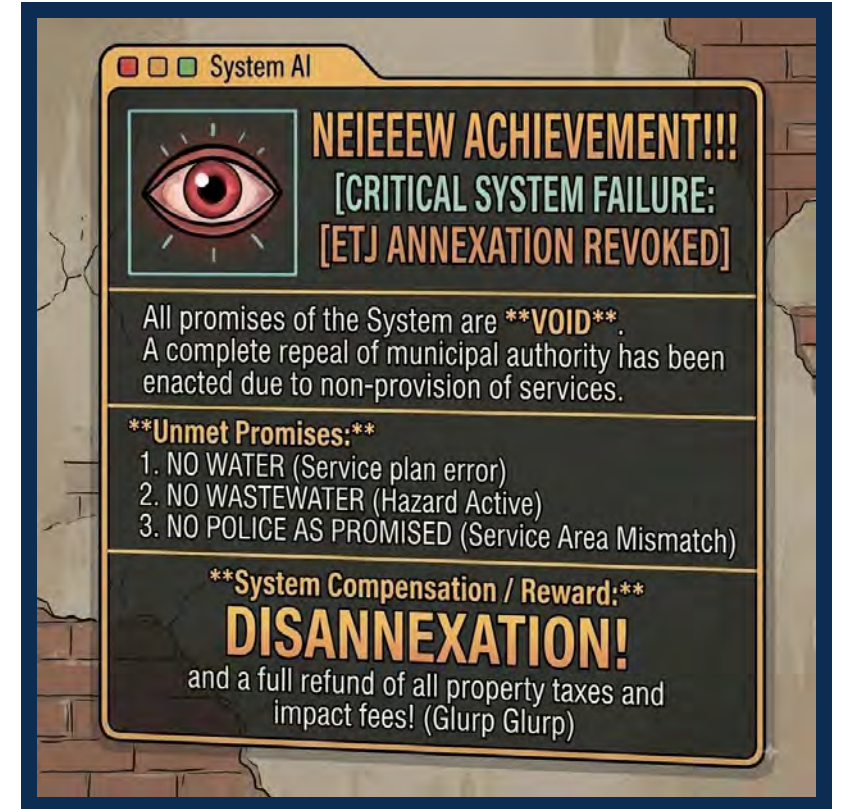


Side Quest: Disannexation

For Failure to Provide Promised Services

- A majority of owners in an area may petition for disannexation if city services are not provided:
 - In accordance with a service plan or municipal services agreement; or
 - Water and wastewater are not provided to a majority of the area, where the area is adjacent to a navigable waterway and those services are provided elsewhere in the city
- The city must disannex the area within 60 days of the petition.
 - Residents may sue in district court for inaction
 - The area may not be annexed again for 10 years

Tex. Loc. Gov't Code § 43.141



Disannexation: Other Avenues and the Aftermath

- **General law city — by petition and election (§ 43.143, old law)**
 - Petition of 50 qualified voters of the area forces a city-wide election on disannexing it
 - A majority in favor releases the area, unless that would take the city under one square mile
- **Home rule city — per the city charter.**
- **After disannexation: refund of taxes and fees (§ 43.148)**
 - Refund all taxes and fees received from landowners in the area, less what the city spent for the direct benefit of the area, for the period it was in the city
 - Exception for navigable waterway disannexation
 - Notices and map updates, as with annexation



Zoning and Subdivision: "Police Powers"

Zoning

Tex. Loc. Gov't Code § 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.

Subdivision

Tex. Loc. Gov't Code § 212.002 — Rules

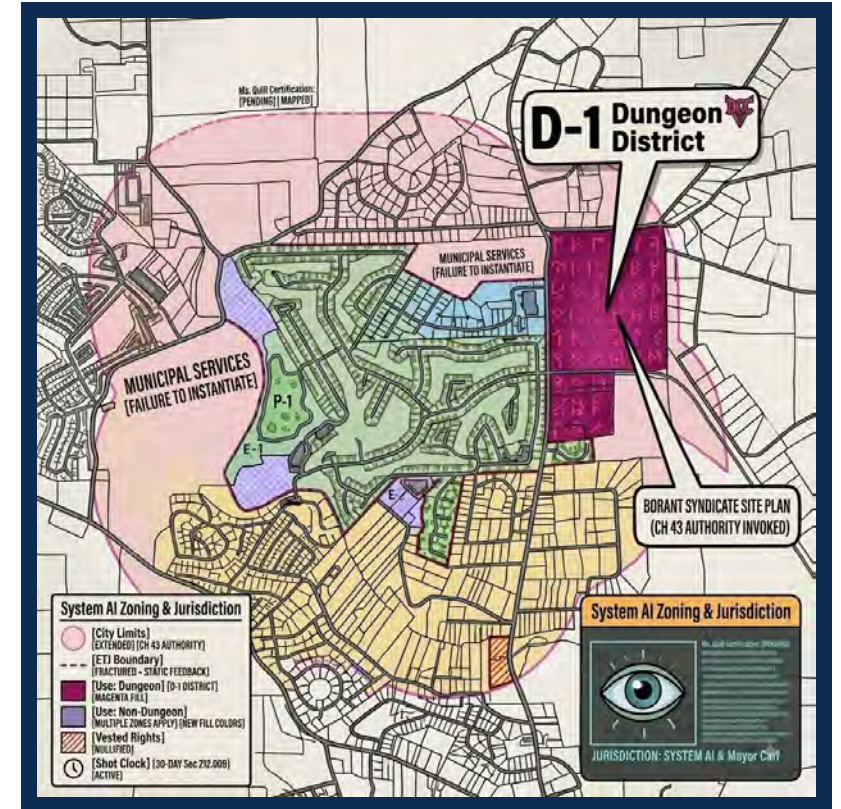
[T]he governing body of a [city] may adopt rules governing plats and subdivisions of land within the [city's] jurisdiction to **promote the health, safety, morals, or general welfare** of the [city] and the safe, orderly, and healthful development of the [city].

Same constitutional root. Same words. Two different tools.

Zoning

- **Division of the city into areas by use**
 - Some uses allowed by right; some allowed if conditions are met
- **Zoning only exists in cities**
 - No ETJ zoning. No county zoning.
- Cities are not required to have zoning, and zoning is unique city-to-city.

Tex. Loc. Gov't Code ch. 211



What Zoning Regulates: Use, Size, Character, Density

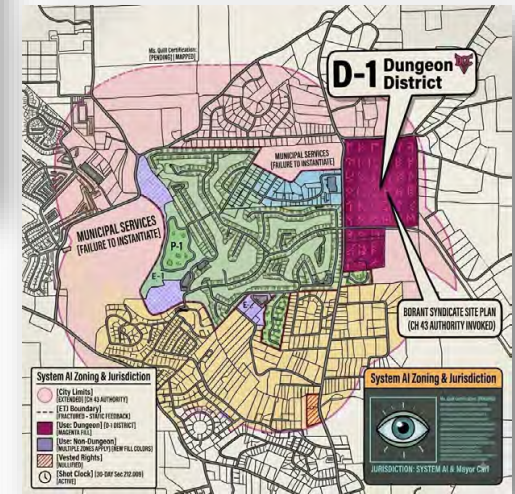
- **Location** and **use** of buildings, other structures, and land — business, industrial, residential, or other purposes
- **Height**, number of stories, and **size** of buildings and other structures
- **Percentage** of a lot that may be occupied; size of yards, courts, and other **open spaces**; lot width and **setbacks**
- Population **density**
- Within a district: **construction**, reconstruction, alteration, repair, or use of buildings and land
- In places of **historical**, cultural, or architectural importance: construction, reconstruction, destruction, or removal

Tex. Loc. Gov't Code § 211.003



City-Side Zoning Considerations

- **Zoning decisions are discretionary**
 - Rezoning
 - Variances
- **Constitutional Considerations**
 - Following the Ch. 211 process ensures due process
 - Failure to follow voids the action
- **Zone the Use not the User**
- **Avoid arbitrary and capricious decision-making**
- **No Spot Zoning. No zoning by contract.**
- **Ethical Issues. TLGC Ch. 171**
- Must be adopted in accordance with the **comprehensive plan** — but the comprehensive plan is not zoning.



What Is a Comprehensive Plan?

- **A plan for the long-range development of the city.**
- Purpose: promote the sound development of cities by promoting public health, safety, and welfare. (Sound familiar?)
- A comp plan may include provisions on land use, transportation, and public facilities, and may be used to coordinate and guide development regulations.
- **The important bridge between zoning, platting, and the other city planning tools.**
- Consistency with the comp plan demonstrates fairness and helps avoid accusations of arbitrary decision making.

Tex. Loc. Gov't Code ch. 213



Changing Districts: The Rezoning Process

If the city has a P&Z

- First public hearing at P&Z
 - Direct and newspaper notice (check local rules too)
 - P&Z must make a report to council
- Final public hearing and action by council

If the city has no P&Z

- Public hearing and action at city council

Home rule cities must have a P&Z. General law cities may.

Council members should not serve on P&Z — self-appointment incompatibility. Safest approach: don't.

Tex. Loc. Gov't Code §§ 211.006 & 211.007

Zoning Variances

Variances

- Allowed when literal enforcement would create unnecessary hardship
 - Not contrary to the public interest, and the spirit of the ordinance is observed
 - Due to a special condition
- **Undue hardship exists if compliance would:**
 - Cost more than 50% of tax appraised value
 - Lose 25% of the development area on the lot
 - Put the structure out of compliance with another rule
 - Result in unreasonable encroachment, or create a non-conforming use
- **Always discretionary.**

Who Decides?

- **The Board of Adjustment (BOA / ZBA) — NOT P&Z!**
- **Powers:**
 - Decide variances from, special exceptions to, and appeals of administrative decisions related to the zoning ordinance
 - Decide other matters authorized by the zoning ordinance

Tex. Loc. Gov't Code § 211.008

What Might the Borant Corporation Do?

- **Read the city's zoning ordinance / unified development code**
 - A city's ordinance can be unique
- **Determine the initial zoning, if any**
 - Does that zoning district work?
 - Special/Conditional Use Permit?
- **If not — what district would work?**
 - District definitions and the use table
 - Use "by right" vs. conditional uses
 - Planned unit development / planned development district

VERSION: JUL 11, 2024 (CURRENT) ▾

- CHAPTER 154: - SITE DEVELOPMENT
- CHAPTER 155: - SUBDIVISIONS
- ▼ CHAPTER 156: - ZONING
- GENERAL PROVISIONS

CHAPTER 156: - ZONING

GENERAL PROVISIONS

§ 156.001 - AUTHORITY.

This chapter is adopted pursuant to...

Local Gov't. Code Ch. 2...

2005; Ord. 19-255, 3-1...

E.

shall be known, and ma...

2005; Ord. 19-255, 3-1...

GENERAL PURPOSE AN...

primary purposes of this...

residents; provide reas...

and general welfare...

§ 156.083 - CHART 4: SPECIAL DUNGEON ZONING DISTRICTS.

Maximum dungeon depth is not restricted, but vertical expansion is subject to a 'Labyrinthine Floor-to-Area' ratio. All sites shall contain adequate space for required crawler egress and monster instantiation zone. Prohibited uses include any activity which produces magical 'Gawsh Darnit' nuisances as described herein.

(A) *Crawler and Commercial Services.* (See § 156.080 of this chapter for additional information requirements.)

- (1) *L-Office, Labyrinthine Office.* This district is intended to provide sites for Dungeon Administrative Services, and Guild Management, as approved by the Dungeon AI (System).
- (2) *C-Market, Combat Market.* This district is intended to provide sites for Merchant Caravan-to-Item Exchanges, and Equipment Sales. Special permits for open-air Loot-Pool to be approved by Dungeon Management. (See § 156.080 of this chapter.)
- (3) *B-Arena, Battle Arena.* This district is intended for major mixed-use development, focusing on large-scale crawler-monster encounters, tournament venues, and spectator facilities requiring intersection of primary inter-level pathways.
- (4) *T-Inn, Tavern/Rest Area.* This district is intended to provide appropriate facilities for shops including inns, bed-and-breakfasts, and 'Secure Safe Zones.' Special conditions apply to all uses.
- (5) *A-Field, Agricultural Field.* This district is intended to provide sites for resource cultivation including 'Mob-Farms', Potion Ingredient Fields, and Mana-Tree Groves. Restrictions apply to non-agricultural uses.

(B) *Monster and Non-Crawler Districts.*

- (1) *M-Lair, Monster Lair.* This district is intended to establish and preserve attractive conditions for monster populations, lair development, and habitat protection. Special event permits for 'Floor Wars' may be issued pursuant to § 156.082 of this chapter.
- (2) *S-Sanctuary, System Sanctuary.* This district is intended to provide appropriate areas for system infrastructure, AI-controlled facilities, and Protected Reliquaries. Access is severely restricted.
- (3) *U-Utility, Utility Services.* This district is intended for uses required for both crawler and monster support, including teleportation hubs, mana-conduits, treasure chest regeneration points, and utility connection points. (See other applicable sections.)

(C) *Other Specialized Districts.*

- (1) *D-Training, Training Grounds.* This district is intended for crawler-only combat practice, development centers, and class-specific advancement facilities. Uses restricted to permitted uses.
- (2) *R-Vault, Resource Vault.* This district is intended for the storage of high-value items, and critical resources under maximum security. Special construction requirements apply.
- (3) *W-Wilds, Wilds Zone.* This district is intended to maintain areas with minimal System AI presence, encouraging native monster development and natural dungeon resources. Permanent s...

Side Quest: Can a City Terminate an Existing Use?

- Probably — if it is a non-conforming use. (There is a bar to use termination in the annexation chapter.)
- **A non-conforming use is a legal land use in existence prior to a change in law or status.**
 - The landowner can generally keep that use
- **Basic limitations:**
 - No expansion of the non-conforming use
 - Cannot stop and restart the use
- **New(ish) law allows a city to terminate non-conforming uses through a statutory valuation and payment process.**



Tex. Loc. Gov't Code § 211.019

How Does Borant Feel About Dealing With Zoning?

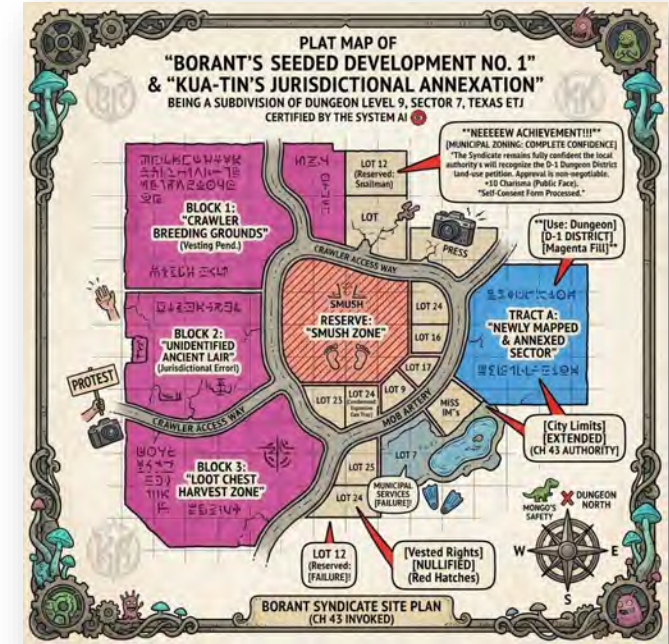
"The Borant Corporation does not anticipate any regulatory friction, and we fully expect any needed zoning amendments to pass as presented, on schedule and without modification."

— Zev, Borant Corp. public relations



Subdivision Powers

- **When a landowner divides property into 2 or more tracts, they are "subdividing" it.**
- **City regulatory authority kicks in if/when a plat is required.**
- A plat may be required, depending on the circumstances.
 - Division to lay out streets, alleys, parks, etc. for public use requires platting
 - Lot size and access exceptions — more in a moment
- **Cities can adopt rules governing plats that promote:**
 - The health, safety, morals, or general welfare of the city, and
 - The safe, orderly, and healthful development of the municipality



Tex. Loc. Gov't Code chs. 212 & 242

Subdivision Regulations: How, When, Where, What

How and when they apply

- Subdivision ordinance, UDC, or other regulatory statutes
 - **Rules must exist to be enforced!**
 - Rough proportionality limitation
- They apply when a tract is being divided and a plat is required
 - **In-city exception:** all tracts are over 5 acres with access
- "Plat" = preliminary or final plat; replat; general plan

Where and what they cover

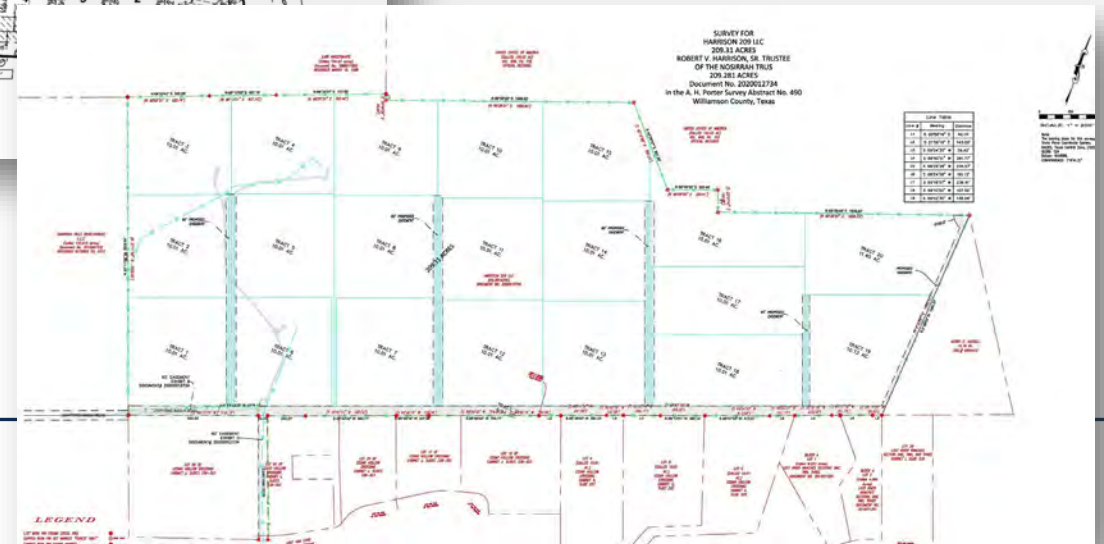
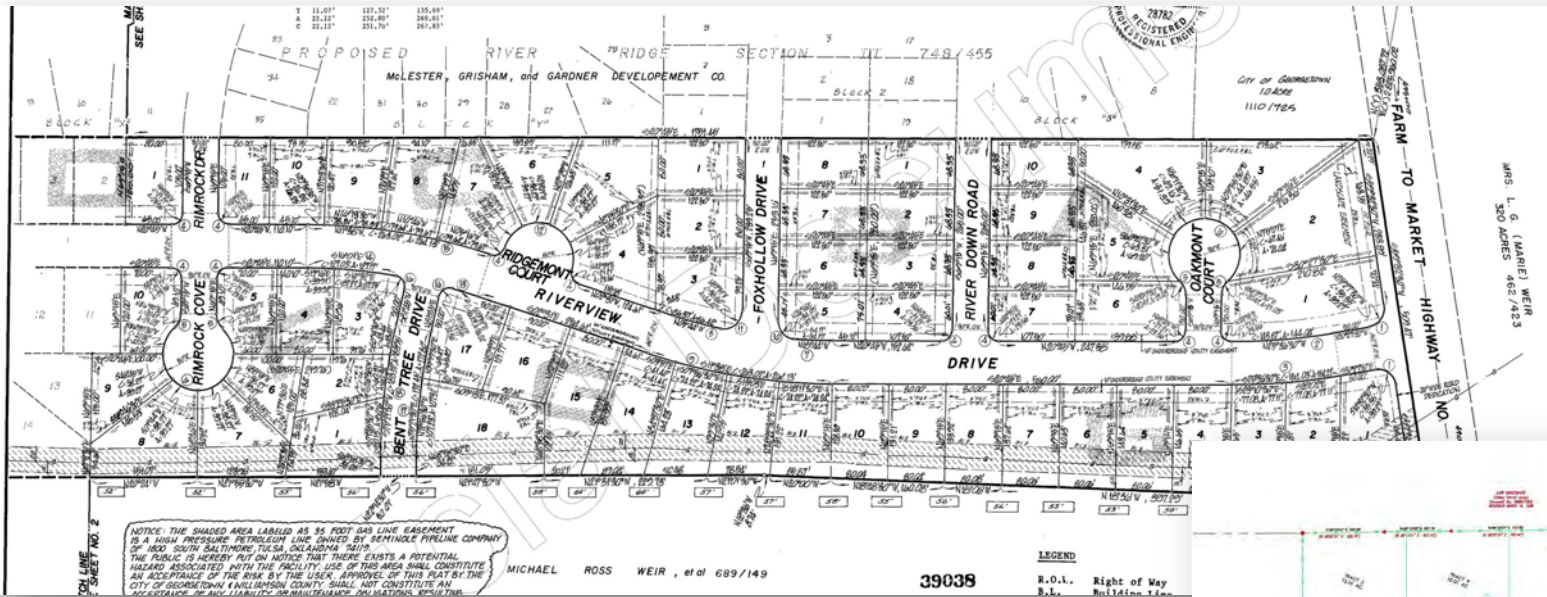
- Within the city, 100% — and can be extended into the ETJ
- **Connectivity:**
 - Roadway and pedestrian connections
 - Transportation network improvements
 - Utility connections and extensions
- Parkland and open space dedication
- Landscaping and tree preservation

Who Is the Decider?

- **For plats inside the city limits, the city is the platting authority.**
 - Planning commission (P&Z) if it exists, otherwise council — or both by ordinance
 - **May be delegated to staff**
- **For plats in the ETJ, either the city or the county is the regulator.**
 - One or the other — not both
 - "1445 agreements" — TLGC ch. 242
 - City regs, county regs, or a joint set apply



Side Quest: A Plat Inside the City v. Outside



The Platting Process — and the Shot Clock

The process

- A subdivision plat application is filed.
- The city must act within 30 days: approve, approve with conditions, or disapprove.
 - Conditions or disapproval must cite the regulation in writing
 - Additional 30 days if both P&Z and council are involved (calendar days)
- **Missed deadline = automatic approval; the landowner can file a mandamus action.**
- **A final plat that complies must be approved — discretion until there's no discretion.**

Where cities get caught

- What is the **filing date**? Authorized filing dates (i.e., 'only Mondays')
- **"Completeness"** review — 10 days to reject an incomplete submission (§ 245.002(e))
- **Calendar control** — open meetings timing, P&Z scheduling
- **Quorum** control — alternate members? Do you even need a planning commission?
- **Are the regs actually adopted?**

Tex. Loc. Gov't Code § 212.009

Exactions & Rough Proportionality

- "Rough proportionality" requires that any condition imposed on a development be proportional to the impact of the proposed development.
 - Dedications of land for public use
 - Paying for infrastructure improvements
- This is a **constitutional** issue: excessive demands for dedication or payment beyond what is proportional can give rise to a Fifth Amendment takings claim.



What Does Borant Think about In-City Development?

- **City requirements — the developer must construct or finance:**
 - Utility extensions to serve the development, and
 - Roadway improvements, including a new turn lane to serve the increased traffic
- The city has extended platting rules into the ETJ, and is the platting authority there per its 1445 agreement with the county.
- **Borant is okay with these requirements.**
 - It can get utilities, and it understands it has to pay its way
 - HOWEVER — Borant does not really want to annex into the city, potentially increasing its tax burden, before the dungeon is running...



Option Two

Develop in the ETJ

Regulatory Considerations:

- **Development Agreements**
- **ETJ Release**

Development Agreements (and Annexation)

- A city and the owner of ETJ property may agree, among other things, to "provide for annexation of the land as a whole or in parts [and] to provide for the terms of annexation."
 - **Independent annexation authority outside Ch. 43**
- **With development agreements, cities and ETJ property owners may also agree to:**
 - Land uses and city planning authority
 - "Provide for" infrastructure
 - Opportunities for incentivizing annexation and development
- Development Agreements have risk:
 - **Waiver of immunity** to suit
 - City liability for **delay damages** including increases in material costs
- Other ETJ agreements Borant and the city could consider: Ch. 380 economic development agreements.

Tex. Loc. Gov't Code § 212.172(b)(7)

Remove Dungeon Crawler World From the ETJ?

- **The landowner's question: stay in the ETJ, or leave it?**
 - The process allows owners or residents of ETJ property to petition for removal from the city's ETJ
 - If the petition is statutorily sufficient, the property is released by operation of law
- **Consequences of release:**
 - No annexation outside the ETJ
 - No development agreements outside the ETJ
 - No ch. 380 agreements outside the ETJ

Tex. Loc. Gov't Code ch. 42, subchs. D & E



ETJ Release: The Process and the Exemptions

Removal by petition or election

▪ Petition

- 50% + 1 of residents or owners must sign
- Other requirements: Election Code rules, map, legal description, 180-day timing
- A compliant petition = release (with opt-out provisions for landowners)

▪ Election

- A resident may file a petition requesting an election; 5% of registered voters in the area must sign
- Election on the next uniform date 90+ days after receipt; a successful vote = release

Exempt areas

- Within 5 miles of an active military base (15 miles in the San Antonio and Houston ETJs)
- Certain areas in Hays County; Fort Worth
- Property in an industrial district
- Property subject to a Strategic Partnership Agreement
- NOT exempt: areas subject to a development agreement (unless you are Fort Worth), areas with a city CCN, and areas within most Texas counties.
- **No exemption applies to Borant's property — it can leave.**

Great Success!!

Borant agrees to annex in immediately, gets zoned and platted, and the dungeon is constructed in record time.

Let the Crawl Begin!!



But Wait!! There's More...

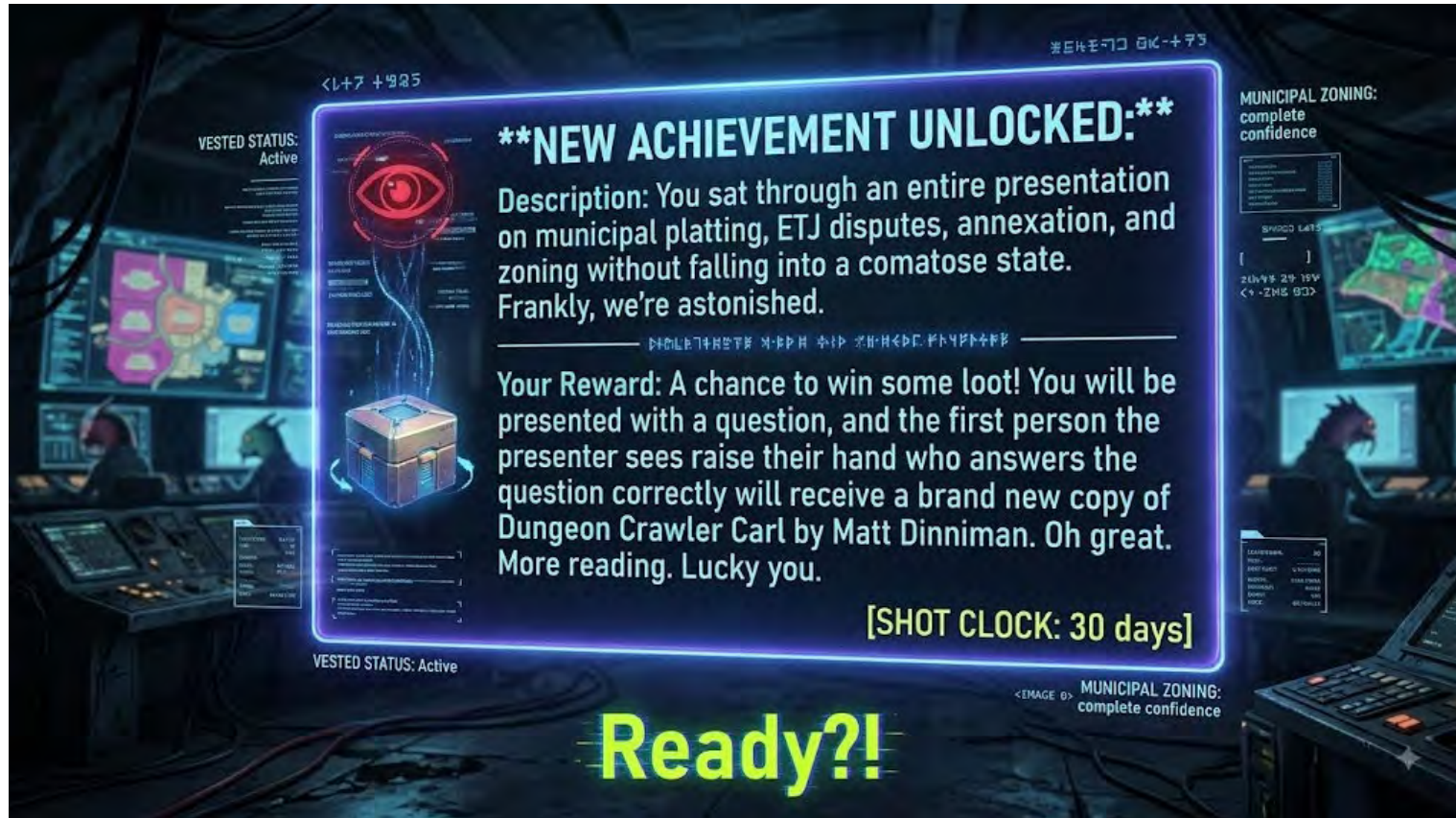
- Building and fire codes
- Eminent domain
- Nuisance abatement
- Inspections and permitting
- Utilities
- Streets and transportation regulations
- Alcohol regulation
- Environmental regulations
- Economic development performance agreements / ch. 380 agreements
- Special districts
 - Public improvement districts
 - Public facility corporations
- And the list goes on...

At the heart of many regulatory frameworks, you will find land use control.

A Couple of Common Questions...

- **Can the city force a landowner to improve, update, renovate, remove, or sell their property?**
 - Health and safety?
 - Takings?
 - Negotiation?
- **Can the city dictate the look of a new construction? Or the materials it will be built from?**
 - Historic?
 - Negotiation?
 - Tex. Gov't Code ch. 3000

The Final Quest



Land Use Decisions Affect More Than Land

These decisions touch every aspect of life in your city.

Economy

Cost of living, jobs, and the tax base

Quality of Life

Parks, character, and the feel of the community

Equity & Access

Access to jobs, services, and transportation

Connectivity

Road design, ingress and egress

Environment

Climate, heat, and water

Resilience

Emergency response and public safety

Level Complete

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