

Platting and Subdivision
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Q What is a plat?

A In common usage, the term “plat” refers to a “small piece of land” or to a “map describing a piece of land and its features, such as boundaries, lots, roads, and easements.” *Plat*, Black’s Law Dictionary (11th ed. 2019); *See also Town of Lakewood Vill. v. Bizios*, 493 S.W.3d 527, 531–32 (Tex. 2016). State law is less useful, defining “plat” to include a “preliminary plat, final plat, and replat” without defining those additional terms. Tex. Loc. Gov’t Code § 212.001(2). When most practitioners talk about a “plat,” they are referring to the map of a tract of land, showing the division and location of lots, and the placement of streets, easements, utilities, and other information useful to the developers or owners of the land.

Q What does it mean to plat?

A The verb “to plat” means to make a map or drawing of or to plan out a piece of land. *Plat*, Black’s Law Dictionary (11th ed. 2019). In practice, platting is the process a landowner or developer goes through to create the final map or “plat” of their property that shows all the features described above – the lot boundaries, roads, easements, and other information useful to the developers, owners, utility providers, or other regulators.

Q May a city regulate platting of land in its jurisdiction?

A Yes. Following a public hearing, 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 as well as the safe, orderly, and healthful development of the city. *See* Tex. Loc. Gov’t Code § 212.002; *City of Round Rock v. Smith*, 687 S.W. 2d. 300, 302 (Tex. 1985). The purpose of plat approval is to ensure that subdivisions are safely constructed and to promote the orderly development of the community. *See Lombardo v. City of Dallas*, 73 S.W.2d 475, 479 (Tex. 1934). Additionally, the plat approval process helps protect future purchasers from inadequate police and fire protection, inadequate drainage, or unsanitary conditions. *Id.* A city should consult with its local legal counsel before drafting and adopting what are often complex regulations.

Q May a city require platting of land in its extraterritorial jurisdiction (ETJ)?

A Yes. A city council, by ordinance, may extend to the ETJ of the city the application of rules and ordinances related to plats and subdivisions, with certain exceptions. *See id.* §§ 212.002, .003. Note that while cities may extend their subdivision and platting authority into the ETJ, there are limitations to the types of subdivision regulations cities may enforce there. Cities are not permitted to regulate the use of buildings or property; the bulk, height, or number of buildings on a particular tract; the size of a building; the number of residential units that can be built per acre; and the size, type, or method of construction of a water or wastewater facility in Harris County, in certain, specific circumstances. *Id.* § 212.003(a). Additionally, cities have no authority to regulate platting or subdivision of property outside their city limits or ETJ.

Q When is a plat required for land located within a city or in the city’s ETJ?

A H.B. 3699, adopted in 2023, makes subtle changes to the rules related to when a plat is required. Previously, a landowner subdividing a tract of land was required to file a plat when dividing his or her land into parts for public use or for the use of future landowners within the subdivision.

Now, a plat must be prepared when a tract of land in the city or in the city's extraterritorial jurisdiction (ETJ) when a three-part test is met. A plat is required if a tract is being divided *into two or more parts* to lay out: (1) a subdivision of the tract; or (2) suburban, building, or other lots; or streets, alleys, squares, parks, or other parts of the tract intended by the owner of the tract to be dedicated to public use. Tex. Loc. Gov't Code § 212.004(a) (emphasis added). Please note that the critical feature is the intent to divide one tract into two or more smaller tracts, regardless of whether there will be a transfer in ownership of the land. That said, a city is not obligated to require a plat for every division of land that could fall within the three-part rule above. *Id.* § 212.0045(a). A city may adopt various definitions and classifications of divisions of land to determine whether specific divisions of land are required to be platted. *Id.* A city may also require the filing of a "development plat" in lieu of a plat if the city's governing body chooses by ordinance to be covered by certain property development regulations. *See Id.* §§ 212.041-.050.

Q Are there statutory exceptions to the platting requirement?

A Yes. A plat is not required for a subdivision of land within a city into parts where: (1) each part is greater than five acres, (2) each part has access, and (2) no public improvement is being dedicated. *Id.* § 212.004(a). There is also a specific exception for land that is: (1) is located wholly within a city with a population under 5,001; (2) being divided into parts larger than 2-1/2 acres; and (3) abutting any part of an aircraft runway. *Id.* § 212.0046.

Cities are also authorized to enforce rules and ordinances "governing plats and subdivisions of land" within their ETJ. But while cities can seek injunctive relief in district court to enjoin violations of city ordinances in the ETJ, cities cannot issue fines or enforce criminal penalties for violations of these ordinances. *Id.* Additionally, agreements between cities and counties, known colloquially as "1445 Agreements," may place additional limitations on a city's ability to regulate plats in the city's ETJ, as further discussed below. *Id.* § 212.0025.

Q Does the county ever have jurisdiction to regulate platting in a city's ETJ?

A It depends. In 2001, the Texas Legislature adopted H.B. 1445, which amended the Texas Local Government Code to prohibit a city and most counties from both regulating subdivisions within a common ETJ. *Id.* § 242.001 et seq. To that end, a city and an applicable county are mandated to execute a written agreement ("1445 Agreement") that identifies whether the county or the city will be the governing entity authorized to regulate subdivision plats and approve related permits in the ETJ. *Id.* § 242.001(c). The 1445 Agreement may: (1) provide that either the city or the county has exclusive approval authority in the ETJ; or (2) apportion regulation between the city and the county within the ETJ, whereby the city would approve plats in the area assigned to the city and the county would approve plats in the area assigned to the county. *Id.* § 242.001(d). Also, a city and an applicable county could enter into an interlocal agreement that establishes one office that is authorized to regulate plat application procedures in the ETJ and establishes a consolidated and consistent sets of regulations related to plats and subdivisions of land. *Id.* § 242.001(d)(4)(B). Cities should consult with their local legal counsel to determine if a 1445 Agreement is in place and which regulations govern ETJ platting.

Q May a city completely relinquish platting authority in the ETJ to the county?

A Yes, as mentioned above, the city and the county may enter into an agreement that gives the county exclusive jurisdiction to regulate subdivision plats and approve related permits in the ETJ. *Id.* § 242.001(d)(1).

Q Is state property exempt from city platting requirements?

A Likely yes. The police powers of a city are generally not applicable to the state itself. *See e.g., Port Arthur Indep. School Dist. v. City of Groves*, 376 S.W.2d 330, 332 (Tex. 1964); Tex. Loc. Gov't Code § 211.013(c) and Tex. Att'y Gen. LO 98-114 (1998) (state property is exempt from city zoning requirements); Tex. Att'y Gen. Ops. C-301 (1964) and C-690 (1966) (building code and permitting requirements generally do not apply so long as the state has been granted authority and supervision of a project). Because cities are created by the state and derive all of their power and authority from the state, it follows that the state should be able to act with regard to property that the state owns and controls without interference from a subordinate governmental entity. Practically, the law assumes that the state agency responsible for the construction or modification of state-owned buildings will be mindful of the health and safety of the community.

Q Is a school district's property exempt from platting requirements?

A Likely not. Although no Texas court has squarely addressed this question, it is likely that a city can require a school district to plat its property because the city's authority to require subdivision of property is derived from its police powers. *See Port Arthur*, 376 S.W. 2d at 334 (the legislature by authorizing the school district to locate a school facility within a municipality, did not preempt the city's police power to enforce necessary health and safety regulations); Tex. Att'y Gen. Op. KP-0373 (2021) (“[w]hile Texas courts have limited the application of municipal land use regulations to public schools, they have recognized the ongoing applicability of building codes and safety regulations. The validity of any ordinance requiring a public school, including an open-enrollment charter school, to obtain a permit or other permission before beginning construction must be evaluated on a case-by-case basis, but the permitting process may not be used to effectively deny public schools the right to choose reasonable locations for their buildings.”); Tex. Att'y Gen. Op. JM-180 (1984) (county's use of land as an auxiliary courthouse within the city limits is subject to the city's zoning ordinances only to the extent that such ordinances do not prevent the county from locating its auxiliary courthouse within the municipality, but the county must comply with municipal regulations regarding construction of its auxiliary courthouse); *cf. City of Addison v. Dallas Indep. School Dist.*, 632 S.W.2d 771 (Tex. App.—Dallas 1982) (discussing *Austin Indep. School Dist. v. City of Sunset Valley*, 502 S.W.2d 670 (Tex. 1973)) (pursuant to the delegation to school districts, the Texas Supreme Court “has determined that the school district's authority to locate school facilities overrides the police power of municipalities to zone them out in order that the legislative purpose in delegating this authority to the school district might not be frustrated.”).

Thus, while it is clear that school districts are exempt from location-based zoning requirements it is likely that they are still subject to other city police power regulations, including platting.

Q When is a development plat required?

A A city may require the filing of a development plat in lieu of a subdivision plat if the city council chooses by ordinance to be covered by certain property development regulations. *See . Tex. Loc.*

Gov't Code §§ 212.041-.050. If a city adopts such development regulations, a development plat is required for any person who proposes the development of a tract of land located within the limits or in the extraterritorial jurisdiction of the city. *Id.* § 212.045. The development plat of the tract must be prepared in accordance with state law and the applicable plans, rules, or ordinances of the city. *Id.* § 212.0046. A development plat must be prepared by a registered professional land surveyor as a boundary survey showing:

- (1) each existing or proposed building, structure, or improvement or proposed modification of the external configuration of the building, structure, or improvement involving a change of the building, structure, or improvement;
- (2) each easement and right-of-way within or abutting the boundary of the surveyed property; and
- (3) the dimensions of each street, sidewalk, alley, square, park, or other part of the property intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the street, sidewalk, alley, square, park, or other part.

Id. § 212.045(b).

New development may not begin on the property until the development plat is filed with and approved by the city. *Id.* § 212.045(c). If a subdivision plat is required, then a development plat is not required in addition to the subdivision plat. *Id.* § 212.045(d).

Q Can a landowner ask a city whether a plat would be required?

A Yes. On the written request of an owner of land; a purchaser of real property under a contract for deed, executory contract, or other executory conveyance; a utility service provider; or the city council, the municipal authority responsible for plat approval is obligated to make two determinations about the specified land within the city's jurisdiction: (1) whether the land requires a plat, and (2) if a plat is needed, whether it has been prepared, reviewed and approved by the municipal authority. *Id.* § 212.0115(c). The request must clearly identify the land in question. *Id.* § 212.0115(d). If the municipal authority decides that a plat is not necessary, they must provide the requester with a written certification confirming this. *Id.* § 212.0115(e). Conversely, if they determine that a plat is required and that it has been created and approved by the relevant authority, a written certification verifying these facts must be issued to the requesting party. *Id.* All determinations should be made within 20 days from the receipt of the request, and if applicable, the certificate must be issued within 10 days following the determination. *Id.* § 212.0115(f).

Q What procedures must a city follow to process a plat application?

A While state law creates the broad framework for plat approval, the city's plat and/or subdivision regulations will also dictate the procedures required in approving a plat. While the details can differ from city to city, the platting process often proceeds as follows: (1) the property owner or developer submits a plat application with the city, (2) the city confirms the application is complete, (3) once the application is complete, the city reviews the filed application for compliance with state law and city regulation, and (4) finally the city approves or denies the plat or approves the plat with conditions. If the plat is approved, the plat is recorded in the county deed records. If the plat is denied or approved with conditions, the developer will need to correct the issues which

prevented approval and resubmit the plat for approval at a later date. Each of these steps will be discussed below.

Q What information may a city require be submitted with a plat application?

A H.B. 3699 introducing new and amended requirements related to the plat application, including what cities may require with an application as well as when an application is technically filed and complete. While there is no comprehensive, state-wide list of requirements that must be submitted with a plat application, cities may require documentation and other information related to demonstrating compliance with the city's subdivision or platting requirements. *Id.* § 212.0081(a). A city must make available to the public a complete, written list of all documentation and other information that the city requires to be submitted with a plat application. *Id.* Cities that operate a website must publish and continuously maintain this list on the website and update the online list within 30 days of any amendments. *Id.* § 212.0081(c). Cities that do not operate a website must publish the list and any amendments to it in the newspaper and post the list in a public place in the location where the city council meets. *Id.* § 212.0081(d).

Q What information is a city prohibited from requiring with a plat application?

A A city may not require an analysis, study, document, agreement, or similar requirement to be included in or as part of an application for a plat, development permit, or subdivision of land that is not explicitly allowed by state law. *Id.* § 212.004(g). However cities may still require documentation or other information pertinent to demonstrating compliance with the city's subdivision or platting requirements. *Id.* § 212.0081(a). Essentially, while cities cannot always dictate the exact format or kind of documents that need to be submitted, they retain the right to establish regulations and request necessary documentation that supports compliance with the established subdivision or platting standards.

Q When is a plat application considered complete?

A A plat application submitted to the municipal authority responsible for approving plats that contains all documents and other information on the city's written, public list of required documentation or information is considered complete. *Id.* § 212.0081(b). It follows that a submitted application that does not contain all the required documentation or information is not complete, and an incomplete application cannot be considered "filed."

Q When is a plat considered filed?

A A distinction exists between the "submission" and "filing" of a plat application. A plat is considered "submitted" when initially presented to the city even if it lacks requisite documentation, while a plat is considered "filed" on the date the applicant submits, to the city, the plat along with a completed plat application, the application fees, and other requirements prescribed by state platting statutes. *Id.* § 212.004(f).

Q Does a city have a specific amount of time to review a submitted application for completeness before an application is deemed "filed"?

A So as to comply with applicable statutory timeframes and approval deadlines discussed below, many cities have instituted review processes to assess the completeness of a submitted application before officially acknowledging it as filed, which triggers applicable statutory timeframes and approval deadlines discussed below. Note that there is no authority within Subchapter A, Chapter

212 of the Local Government Code (the “Platting Subchapter”) authorizing a city to delay the approval timeframes in order to review an application for completeness. In fact, H.B. 3699 specifically provides that cities may not construe the Platting Subchapter to convey any authority regarding completeness of a plat application. *Id.* § 212.005(b). This provision appears to signal a legislative intent to prevent cities from utilizing the completeness check as a means to potentially extend or defer the statutory deadlines mandated for the review and approval process of plat applications. Giving this new statute, the most conservative approach would be for a city to conduct any completeness reviews as quickly as possible once a plat application is submitted, and if the application is complete, deem the filing date to be the same as the submission date.

Q Can a city designate certain days when applications may be submitted to the city?

A Yes. Nothing in the platting chapter of the Local Government Code may be construed to restrict a city from establishing a submittal calendar to be used to facilitate compliance with the plat approval process. *Id.* § 212.0015. Among other things, notice requirements within the Texas Open Meetings Act can create timing difficulties when complying with platting timelines; consequently, cities across the state have adopted reasonable plat application submission calendars to make compliance review more predictable.

Q What happens after a complete plat application is filed?

A Broadly speaking, following the filing of a complete application, the proposed plat is reviewed by city staff or consultants to determine whether the plat complies with applicable federal, state, and city regulations. Ultimately, the approval of a plat is a ministerial duty, and the approving authority must approve a plat if the plat application complies with: (1) the general plan of the city and its current and future streets, alleys, parks, playgrounds, and public utility facilities; (2) the general plan for the extension of the city and its roads, streets, and public highways within the city and in its extraterritorial jurisdiction, taking into account access to and extension of sewer and water mains and the instrumentalities of public utilities; (3) a bond required under state law, if applicable, is filed with the city; and (4) any rules adopted governing plats and subdivisions of land within the city’s jurisdiction. *Id.* §§ 212.005; 212.010.

Q Who may approve a plat application?

A Typically, the authority responsible for approving plats is: (1) the planning commission; (2) the city council, if the city has no planning commission; or (3) both if required by ordinance. *Id.* § 212.006. In 2023, the Texas Legislature expanded the ability of cities to delegate plat approval, and now a city council may also delegate to employees or officers of the city or of a utility owned or operated by the city authority to approve, approve with conditions, or disapprove a plat. *Id.* § 212.0065.

Q Is there a deadline by which a plat must be approved or disapproved?

A Yes. The authority responsible for approving plats, whether it is the planning commission, city council, or an employee or official following a proper delegation of authority, must, within 30 days after the date the plat is filed, either approve the plat, approve the plat with conditions, or disapprove the plat. *Id.* § 212.009(a). Note that plat is approved by the municipal authority, unless it is disapproved within the 30-day time period, so missing this 30-day deadline can have significant impacts. *Id.*

If the city's plat or subdivision regulations require that a plat be approved by the city council, in addition to the planning commission or delegate, the council must approve the plat, approve the plat with conditions, or disapprove the plat within 30 days after the date the plat is initially approved the plat. *Id.* § 212.009(b). This applies whether the initial approval was through action or inaction of the municipal authority, i.e., missing the 30-day deadline. *Id.* There are instances where a planning commission fails to take action within the 30-day timeframe due to quorum failures or other timing difficulties, and having this second approval layer can help cities prevent inadvertent approval of noncompliant plat applications. Again, the plat is approved by the governing body unless it is disapproved in the 30-day timeframe. *Id.*

If a plat is approved due to the approving authority's failure to act, the authority, upon the applicant's request, must issue a certificate stating the date the plat was filed and that the approving authority failed to act on the plat within the requisite period. *Id.* § 212.009(d). Additionally, the city must maintain a record of each application made and the city's action taken on it and certify the reasons for the action taken on an application upon request of the property owner. *Id.* § 212.009(e).

Q What is required if a city conditionally approves or disapproves a plat application?

A If a city conditionally approves or disapproves a plat, it must provide the applicant with a written statement that clearly articulates specific conditions for the conditional approval or the reasons for disapproval. *Id.* § 212.0091(a). Each condition or reason specified in the written statement may not be arbitrary and must: (1) be directly related to the city's adopted regulations; and (2) include a citation to the law, including a statute or city ordinance, that is the basis for the conditional approval or disapproval as applicable. *Id.* § 212.0091(b).

Q Can an applicant resubmit a previously disapproved or conditionally approved plat?

A Yes. After the conditional approval or disapproval of a plat, the applicant may submit to the approving authority a written response that satisfies each condition for the conditional approval or remedies each reason for disapproval provided. *Id.* § 212.0093. The approving authority may not establish a deadline for an applicant to submit the response. *Id.* Once the approving authority receives the applicant's resubmission, it must determine whether to approve or disapprove the applicant's previously conditionally approved or disapproved plat no later than the 15th day after the date the applicant submits the response. *Id.* § 212.0095. This city must approve a previously disapproved or conditionally approved plat if the response adequately addresses each condition of the conditional approval or each reason for the disapproval. *Id.* § 212.0095(c). The city may again conditionally approve or disapprove a plat at this stage only for a specific condition or reason provided to the applicant with the initial disapproval or conditional approval and must again specifically cite the regulation forming the basis or disapproval. *Id.* § 212.0095 (b). Note that while there is a statutory basis providing for this re-submission process following an initial conditional approval or disapproval of a plat application, there is no statutory requirement to allow additional, subsequent re-submissions for an applicant who repeatedly fails to address the deficiencies in their plat application.

Q Can a city disapprove a resubmitted plat that contains additional deficiencies which were not present when the plat was initially submitted?

A Maybe not. From a plain reading of the statute, it seems that the city might be technically constrained to approve the resubmitted application as long as the previously noted issues are

addressed, even if new deficiencies have been introduced. This is because the statute stipulates that at the resubmission stage, an application can only be conditionally approved or disapproved based on a specific condition or reason provided to the applicant with the initial disapproval or conditional approval, not deficiencies newly discovered following resubmission. *Id.* § 212.0095(b). Because cities only have 15 days to complete a review of a resubmission, cities could consider refining the resubmission process to explicitly allow only for the resubmission of revisions directly addressing the previously cited deficiencies. One strategy could be to conditionally approve a resubmitted application that addresses the deficiencies, with the condition being that the final plat would be approved once the specific corrections were integrated back into the original submission with no additional changes. The process for checking the final plat for compliance with the condition before certifying its approval would arguably fall outside the overall plat approval timeframes, so a city could lower its risk of inadvertently approving a plat containing deficiencies introduced in the resubmission process. Concerned cities should work with their platting professionals and local counsel to address any concerns.

Q Can the city request or require a plat applicant waive the approval timeframe?

A No. The approving authority may not require or even request an applicant waive a deadline or other approval procedure set by state law. *Id.* § 212.0097. However, upon mutual agreement, the city and the applicant may extend the 30-day approval period for one or more additional periods not to exceed 30 days each if: (1) the applicant requests the extension in writing to the approving authority; and (2) the approving authority agrees to the extension request. *Id.* § 212.009(b-2). The law is silent about whether the municipal authority can adopt a policy related to automatic city approval of requests for extensions under specific circumstances.

Q Can the city alter the approval timeframes?

A Yes. Cities may adopt an alternate approval process if the process “allows for” a shorter approval period than the approval period described above. *Id.* § 212.0096(a). While the creation of a compliant alternative process must create a process that can result in faster approvals, the statute does not require that this process must invariably result in a shorter approval timeframe for every application in every circumstance. The alternative process should, however, generally offer the possibility or option of a shorter approval period compared to the standard process outlined above. Cities interested in creating a compliant alternative approval process should consult their planning professionals and local counsel for guidance.

Q What happens to a plat once it is approved by the city?

A Once a plat is approved, the municipal authority giving the approval shall endorse the plat with a certificate indicating the approval. As simple as this sounds, it is an area of potential ambiguity in the law. One section states that the required certificate must be signed by either: (1) the authority’s presiding officer and attested by the authority’s secretary; or (2) a majority of the members of the authority. *Id.* § 212.009(c). This provision seems tailored to situations where a body, such as a planning commission or a city council, is the approving authority. However, as discussed above, state law also permits the delegation of approval authority to a single employee or officer, creating a scenario where the designated signatories as per Section 212.009(c) may not be applicable. A separate section restates the requirement that upon approval of a plat, the municipal authority responsible for approving plats shall issue a certificate stating that the plat has been reviewed and approved by the authority, and separate subsection authorizes the municipal

authority responsible for approving plats to: (1) adopt rules it considers necessary to administer its functions under this section, and (2) delegate the ability to perform any of the responsibilities under this section to one or more persons. *Id.* § 212.0115(b), (h) & (i). Taken together, the law appears to provide several options with regard to who may sign the certificate indicating plat approval, which not only preserves the integrity of the plat approval process, including delegation authority, but also fosters efficiency and coherence in its execution.

An approved plat must be filed and recorded with the county clerk in the county in which the tract is located. *Id.* § 212.004(d). Before a plat may be recorded, the plat must: (1) describe the subdivision by metes and bounds; (2) locate the subdivision with respect to a corner of the surveyor tract or an original corner of the original survey of which it is a part; and (3) state the dimensions of the subdivision and of each street, alley, square, park, or other part of the tract intended by the owner to be dedicated to public use. *Id.* § 212.004(b). A plat must also: (1) have attached to it an original tax certificate from each taxing unit with jurisdiction of the real property indicating that no delinquent ad valorem taxes are owed on the real property; and (2) be acknowledged and notarized by the owner or owner's agent in the same manner as deeds. *Id.* § 212.004(c), (e); Tex. Prop. Code § 12.002.

Q Does plat approval serve to dedicate public infrastructure?

A Not without something more. A plat alone is not enough to dedicate public infrastructure to a city, and approval of a plat is not considered an acceptance of any proposed dedication. The approval also does not impose on the city any duty regarding the maintenance or improvement of any dedicated parts until the city makes an actual appropriation of the dedicated parts by entry, use, or improvement. Tex. Loc. Gov't Code § 212.011(a). Conversely, the disapproval of a plat is considered a refusal by the city of the offered dedication indicated on the plat. *Id.* §212.011(b).

Q May a city require dedication of road right of way as part of the platting process?

A It depends. As stated above, the requirement to plat can be triggered in several circumstances, and if the requirement to plat is triggered, then compliance with the city's properly adopted subdivision regulations, including those related to the dedication of road right of way for the streets being platted as part of the current subdivision, would be required to gain approval of the plat application.

That said, a city may not require the dedication of right of way for a "future" street or alley that is: (1) not intended by the owner of the tract, and (2) not included, funded, and approved in: (a) a capital improvement plan adopted by the city; or (b) a similar plan adopted by a county in which the city is located or the state. *Id.* § 212.010(c). Because this is a two-part test, both parts must be present for the prohibition to apply. Therefore, if the city has complied with subsection (2), above, meaning the future street or alley is included, funded, and approved in a relevant, adopted capital improvement plan, then the city would not be prohibited by this section from requiring the dedication of land within a subdivision for a future street or alley, even if it is not intended by the owner of the tract. That said, the lack of a prohibition is not the same as authority to require a particular dedication, so cities should consult their planning professionals and local counsel with regard to specific dedication requirements.

Additionally, by ordinance and after notice is published in the newspaper, a city may adopt as part of its subdivision regulations: (1) reasonable specifications relating to the construction of each street or road, based on the amount and kind of travel over each street or road in a subdivision, and (2) reasonable specifications to provide adequate drainage for each street or road in a subdivision in accordance with standard engineering practices. *Id.* § 212.0021.

Q When can a plat be vacated?

A A property owner may vacate (eliminate) a tract covered by a plat at any time before any lot in the plat is sold. *Id.* § 212.013. The plat is considered vacated when: (1) the approving authority approves a signed, acknowledged document declaring the plat vacated; and (2) the document is recorded in the same manner as the original plat. *Id.* If one or more lots in the plat have been sold, the plat, or any part of the plat, may be vacated on the application of all the owners of lots in the plat with approval obtained in the same manner prescribed for the original plat. *Id.* § 212.013(b). Once executed and recorded, a vacated plat has no effect. *Id.* § 212.013(d).

Q What is a replat?

A A replat is a new plat of all or a portion of a previously approved plat. Replats can either eliminate (vacate) or keep (replat without vacating) a prior plat. *Id.* §§ 212.013; .014—.0155.

A replat of a subdivision or part of a subdivision may be recorded and is controlling over the preceding plat without vacating that plat if the replat: (1) is signed and acknowledged by only the owners of the property being replatted; (2) is approved by the authority responsible for approving plats; and (3) does not attempt to amend or remove any covenants or restrictions. *Id.* § 212.014.

Additional requirements apply to certain residential replats if: (1) during the preceding five years, any of the area to be replatted was limited by an interim or permanent zoning classification to residential use for not more than two residential units per lot; or (2) any lot in the preceding plat was limited by deed restrictions to residential use for not more than two residential units per lot. *Id.* § 212.015. Moreover, additional requirements apply to the replatting of subdivisions in cities with a population of 1.4 million or more. *Id.* §§ 212.0145; 212.0146.

Q What is an amending plat?

A An amending plat is essentially a replat that does not vacate the preceding plat and is for the purpose of addressing minor changes, correcting clerical errors or making minor modifications affecting a limited number of property owners or lots. *Id.* § 212.016. An amending plat may be recorded and is controlling over the preceding plat without vacating that plat, if the amending plat is signed by the applicants only and is solely for one or more of the following purposes:

- (1) to correct an error: (a) in a course or distance; (b) in a real property description; (c) in courses and distances of lot lines between two adjacent lots (if certain requirements are met); or (d) any other type of scrivener or clerical error or omission previously approved by the municipal authority responsible for approving plats, including lot numbers, acreage, street names, and identification of adjacent recorded plats;
- (2) to add: (a) a course or distance that was omitted; (b) an indication of monuments set after the death, disability, or retirement from practice of the engineer or surveyor

responsible for setting monuments; or (c) the location or character of a monument that has been changed in location or character or that is shown incorrectly as to location or character on the preceding plat;

(3) to relocate: (a) a lot line to eliminate an inadvertent encroachment of a building or other improvement on a lot line or easement; (b) one or more lot lines between one or more adjacent lots (if certain requirements are met); or (c) to make necessary changes to the preceding plat to create six or fewer lots in the subdivision or a part of the subdivision covered by the preceding plat (if certain requirements are met); or

(4) to replat one or more lots fronting on an existing street (if certain requirements are met).

Id. § 212.016(a)(1)–(11). Approval of an amending plat does not require notice to adjacent property owners or a public hearing. *Id.* § 212.016.

Q Does a plat need to be amended to change the name of a street?

A Not necessarily. State law does not require a plat to show street names; rather, state law only requires that a plat state the dimensions of the subdivision and of each street, alley, square, park, or other part of the tract intended by the owner to be dedicated to public use. *Id.* § 212.004(b)(3). Additionally, renaming streets is not in the list of authorized purposes for which an amending plat may be approved. A city may have additional local regulations or requirements that are more detailed and require street names to be shown on plats. If the city is only changing the street name and not the fact that there is a right of way present, then the city may not need to amend a plat and likely has no statutory authority to require a plat amendment. When in doubt, cities should consult with their local legal counsel.

Q Can a city be held liable for improperly approving a plat?

A It depends. Plat approval is considered a governmental function for which the city is immune from liability. *City of Round Rock v. Smith*, 687 S.W.2d 300, 303 (Tex. 1985) (city’s approval of subdivision plat, as a discretionary function that only governmental unit could perform, was a “governmental function” and city was immune from liability for its alleged negligence in approving plat, which authorized filling of watercourses, allegedly resulting in flooding); *see also* Tex. Civ. Prac. & Rem. Code § 101.0215(b)(29).

One appellate court did not find a takings claim for an inadvertent mistake or error in approving a plat. *See City of Mason v. Lee*, No. 04-18-00275-CV, 2018 WL 5808260, at *2 (Tex. App.—San Antonio 2018, no pet. h.) (mem. op.) (city was not held liable where plaintiff asserted immunity did not bar their regulatory takings claim because the city engaged in an intentional affirmative action by “illicitly approving the plat”).

However, a plat approved in spite of non-compliance with duly adopted local regulations may be the basis for an estoppel defense against a city if the city has received substantial benefits as result of its own mistake. *City of Austin v. Garza*, 124 S.W.3d 867 (Tex. App.—Austin 2003, no pet. h.) (holding the city was bound to a note on a final recorded plat upon which the city relied for dedications in the face of allegations by the city that it approved the note as a “mistake” since it

would be “manifestly unjust for the city to retain the benefits of its mistake yet avoid its obligations”).

This all gets further complicated by the fact that following the introduction in 2021 of the strict timeframes detailed above, non-compliant plats can be deemed “approved” by operation of law if a city misses certain deadlines and takes no action at all. Tex. Loc. Gov’t Code § 212.009(d). Furthermore, no relevant cases have been reported from an appellate court settling these issues after the 2021 amendments, and until that happens, predicting the outcome of a particular case is extremely difficult. Because litigation matters are always fact-intensive, a city should consult with its local legal counsel whenever a question arises.