

Information as of March 3, 2008

County Land Use Controls

SB 873

The 77th Legislature passed SB 873 that took effect on September 1, 2001. Prior to SB 873 counties within the State of Texas had very little control in the development of infrastructure for subdivisions. SB 873 gave certain counties the authority to adopt infrastructure planning provisions that:

- have a population of 150,000 or more and is adjacent to an international border; or
- have a population of 700,000 or more (Travis County); or
- is adjacent to a county with a population of 700,000 or more and is within the same metropolitan statistical area as that adjacent county (Bastrop, Caldwell, Hays and Williamson and Counties).

SB 873 allows counties to adopt rules governing plats and the subdivision of land to promote the health, safety, morals, or general welfare of the county. SB 873 strictly prohibits the regulation of land use. The county will not be able to regulate the use, design standards, and density of buildings.

SB 873 granted counties the authority to enforce a major thoroughfare plan, lot frontages, set-backs, developer participation contracts, and the connection of utilities. A major thoroughfare plan can require the right-of-way dedication of a major thoroughfare street not to exceed 120 feet or require the right-of-way dedication of a major thoroughfare street to exceed 120 feet as long as the requirement is consistent with the transportation plan of the metropolitan planning organization. SB 873 granted counties the authority to adopt reasonable standards for minimum lot frontages along existing county roads and in relation to curves in the road. Reasonable building and set-back lines may be established no greater than 25 feet for roads other than major highways or no greater than 50 feet for major highways without the 4 year limitation of the building and set-back lines becoming void. Building and set-back lines become void if construction of an improvement or the widening of a road does not take place within 4 years of when the building and set-back line was established. A county may make a contract with a developer of a subdivision to construct public improvements without complying with the competitive sealed bidding procedure. Under this contract, the developer will be responsible for the construction of the improvements and the county will participate in the cost of the improvements. Finally, SB 873 granted counties the authority to require possession of a plat compliance certificate before utility hookups.

HB 1445

The 77th Legislature also passed HB 1445 that took effect on September 1, 2001. HB 1445 requires that a municipality and county enter into a written agreement to regulate subdivision plats and permits in the extraterritorial jurisdiction before April 1, 2002. This agreement was to ensure duplication of the review process within the extraterritorial jurisdiction between the county and municipality discontinued. This agreement will grant the authority to regulate subdivision plats and permits as follows:

- the municipality may be granted exclusive jurisdiction to regulate subdivision plats and approve related permits in the extraterritorial jurisdiction;
- the county may be granted exclusive jurisdiction to regulate subdivision plats and approve related permits in the extraterritorial jurisdiction;
- the municipality and the county may apportion the area within the extraterritorial jurisdiction of the municipality with the municipality regulating subdivision plats and approving related permits in the area assigned to the municipality and the county regulating subdivision plats and approving related permits in the area assigned to the county; or
- the municipality and the county may enter into an interlocal agreement that establishes one office and establishes a consolidated and consistent set of regulations related to plats and subdivision of land.

HB 1204

HB 1204 of the 78th Legislature expanded which counties are eligible for infrastructure planning provisions set forth by SB 873 by adding the following condition:

- is adjacent to a county with a population of 700,000 or more, and is not within the same metropolitan statistical area as that adjacent county, and has a population that has increased after the 1990 decennial census, from one decennial census to the next, by more than 40 percent (Blanco and Burnet Counties).

HB 1204 also related to subdivision regulations in the extraterritorial jurisdiction by stating that a county and municipality must enter into arbitration if they have not reached an agreement on regulations by January 1, 2004 with an extraterritorial jurisdiction of 3.5 miles or more. A county and municipality with an extraterritorial jurisdiction of less than 3.5 miles must reach an agreement before January 1, 2006 or enter into arbitration.

	Major Thoroughfare Plan	Lot Frontages	Set- Backs	Developer Participation Contracts	Connection of Utilities	Comment	Contact
Bastrop	N	Y	Y	Y	Y	10 acre exemption	Dee Czora
Blanco	N	N	N	N	N		Kathy Strickland
Burnet	N	Y	N	N	Y	Right-of-Way Dedication / 10 acre exemption	Herb Darling
Caldwell	N	Y	Y	N	Y	Right-of-Way Dedication	Charles Scheler, P.E.
Hays	Y	Y	N	Y	N	Right-of-Way Dedication	John Thompson
Travis	Y	N	N	Y	Y		Anna Bowlin
Williamson	Y	Y	Y	N	Y		Belinda Wallace

LOCAL GOVERNMENT CODE

CHAPTER 232. COUNTY REGULATION OF SUBDIVISIONS

SUBCHAPTER E. INFRASTRUCTURE PLANNING PROVISIONS IN CERTAIN URBAN COUNTIES

§ 232.100. APPLICABILITY. This subchapter applies only to the subdivision of the land that is:

- (1) subject to county regulations under Subchapter A or B; and
- (2) in a county that:
 - (A) has a population of 150,000 or more and is adjacent to an international border;
 - (B) has a population of 700,000 or more;
 - (C) is adjacent to a county with a population of 700,000 or more and is within the same metropolitan statistical area as that adjacent county, as designated by the United States Office of Management and Budget; or
 - (D) is adjacent to a county with a population of 700,000 or more, is not within the same metropolitan statistical area as that adjacent county, and has a population that has increased after the 1990 decennial census, from one decennial census to the next, by more than 40 percent.

Added by Acts 2001, 77th Leg., ch. 736, § 1, eff. Sept. 1, 2001.
Amended by Acts 2003, 78th Leg., ch. 523, § 11, eff. June 20, 2003.

§ 232.101. RULES. (a) By an order adopted and entered in the minutes of the commissioners court and after a notice is published in a newspaper of general circulation in the county, the commissioners court may adopt rules governing plats and subdivisions of land within the unincorporated area of the county to promote the health, safety, morals, or general welfare of the county and the safe, orderly, and healthful development of the unincorporated area of the county.

(b) Unless otherwise authorized by state law, a commissioners court shall not regulate under this section:

- (1) the use of any building or property for business, industrial, residential, or other purposes;
- (2) the bulk, height, or number of buildings constructed on a particular tract of land;
- (3) the size of a building that can be constructed on a particular tract of land, including without limitation and restriction on the ratio of building floor space to the land square footage; or

(4) the number of residential units that can be built per acre of land.

(c) The authority granted under Subsection (a) is subject to the exemptions to plat requirements provided for in Section 232.0015.

Added by Acts 2001, 77th Leg., ch. 736, § 1, eff. Sept. 1, 2001.

§ 232.102. MAJOR THOROUGHFARE PLAN. By an order adopted and entered in the minutes of the commissioners court and after a notice is published in a newspaper of general circulation in the county, the commissioners court may:

(1) require a right-of-way on a street or road that functions as a major thoroughfare of a width of not more than 120 feet; or

(2) require a right-of-way on a street or road that functions as a major thoroughfare of a width of more than 120 feet, if such requirement is consistent with a transportation plan adopted by the metropolitan planning organization of the region.

Added by Acts 2001, 77th Leg., ch. 736, § 1, eff. Sept. 1, 2001.

§ 232.103. LOT FRONTAGES. By an order adopted and entered in the minutes of the commissioners court and after a notice is published in a newspaper of general circulation in the county, the commissioners court may adopt reasonable standards for minimum lot frontages on existing county roads and establish reasonable standards for the lot frontages in relation to curves in the road.

Added by Acts 2001, 77th Leg., ch. 736, § 1, eff. Sept. 1, 2001.

§ 232.104. SET-BACKS. By an order adopted and entered in the minutes of the commissioners court and after a notice is published in a newspaper of general circulation in the county, the commissioners court may establish reasonable building and set-back lines as provided by Chapter 233 without the limitation period provided by Section 233.004(c).

Added by Acts 2001, 77th Leg., ch. 736, § 1, eff. Sept. 1, 2001.

§ 232.105. DEVELOPER PARTICIPATION CONTRACTS. (a) Without complying with the competitive sealed bidding procedure of Chapter 262, a commissioners court may make a contract with a developer of a subdivision or land in the unincorporated area of the county to construct public improvements, not including a building, related to the development. If the contract does not meet the requirements of this subchapter, Chapter 262 applies to the contract if the contract would otherwise be governed by that chapter.

(b) Under the contract, the developer shall construct the improvements, and the county shall participate in the cost of the improvements.

(c) The contract must establish the limit of participation

by the county at a level not to exceed 30 percent of the total contract price. In addition, the contract may also allow participation by the county at a level not to exceed 100 percent of the total cost for any oversizing of improvements required by the county, including but not limited to increased capacity of improvements to anticipate other future development in the area. The county is liable only for the agreed payment of its share, which shall be determined in advance either as a lump sum or as a factor or percentage of the total actual cost as determined by an order of the commissioners court.

(d) The developer must execute a performance bond for the construction of the improvements to ensure completion of the project. The bond must be executed by a corporate surety in accordance with Chapter 2253, Government Code.

(e) In the order adopted by the commissioners court under Subsection (c), the county may include additional safeguards against undue loading of cost, collusion, or fraud.

Added by Acts 2001, 77th Leg., ch. 736, § 1, eff. Sept. 1, 2001.

§ 232.106. CONNECTION OF UTILITIES. By an order adopted and entered in the minutes of the commissioners court, and after a notice is published in a newspaper of general circulation in the county, the commissioners court may impose the requirements of Section 232.029.

Added by Acts 2001, 77th Leg., ch. 736, § 1, eff. Sept. 1, 2001.

§ 232.107. PROVISIONS CUMULATIVE. The authorities under this subchapter are cumulative of and in addition to the authorities granted under this chapter and all other laws to counties to regulate the subdivision of land.

Added by Acts 2001, 77th Leg., ch. 736, § 1, eff. Sept. 1, 2001.

LOCAL GOVERNMENT CODE
CHAPTER 242. AUTHORITY OF MUNICIPALITY AND COUNTY TO REGULATE
SUBDIVISIONS IN AND OUTSIDE MUNICIPALITY'S EXTRATERRITORIAL
JURISDICTION

Sec. 242.001. REGULATION OF SUBDIVISIONS IN EXTRATERRITORIAL JURISDICTION GENERALLY. (a) This section applies only to a county operating under Sections 232.001-232.005 or Subchapter B, C, or E, Chapter 232, and a municipality that has extraterritorial jurisdiction in that county. Subsections (b)-(g) do not apply:

(1) within a county that contains extraterritorial jurisdiction of a municipality with a population of 1.9 million or more;

(2) within a county within 50 miles of an international border, or to which Subchapter C, Chapter 232, applies; or

(3) to a tract of land subject to a development agreement under Subchapter G, Chapter 212, or other provisions of this code.

(b) For an area in a municipality's extraterritorial jurisdiction, as defined by Section 212.001, a plat may not be filed with the county clerk without the approval of the governmental entity authorized under Subsection (c) or (d) to regulate subdivisions in the area.

(c) Except as provided by Subsections (d)(3) and (4), a municipality and a county may not both regulate subdivisions and approve related permits in the extraterritorial jurisdiction of a municipality after an agreement under Subsection (d) is executed. The municipality and the county shall enter into a written agreement that identifies the governmental entity authorized to regulate subdivision plats and approve related permits in the extraterritorial jurisdiction. For a municipality in existence on September 1, 2001, the municipality and county shall enter into a written agreement under this subsection on or before April 1, 2002. For a municipality incorporated after September 1, 2001, the municipality and county shall enter into a written agreement under this subsection not later than the 120th day after the date the municipality incorporates. On reaching an agreement, the municipality and county shall certify that the agreement complies with the requirements of this chapter. The municipality and the county shall adopt the agreement by order, ordinance, or resolution. The agreement must be amended by the municipality and the county if necessary to take into account an expansion or reduction in the extraterritorial jurisdiction of the municipality. The municipality shall notify the county of any expansion or reduction in the municipality's extraterritorial jurisdiction. Any expansion or reduction in the municipality's extraterritorial jurisdiction that affects property that is subject to a preliminary or final plat, a plat application, or an application for a related permit filed with the municipality or the county or that was previously approved under Section 212.009 or Chapter 232 does not affect any rights accrued under Chapter 245. The approval of the plat, any permit, a plat application, or an application for a related permit remains effective as provided by Chapter 245 regardless of the change in designation as extraterritorial jurisdiction of the municipality.

(d) An agreement under Subsection (c) may grant the authority to regulate subdivision plats and approve related permits in the extraterritorial jurisdiction of a municipality as follows:

(1) the municipality may be granted exclusive jurisdiction to regulate subdivision plats and approve related permits in the extraterritorial jurisdiction and may regulate subdivisions under Subchapter A of Chapter 212 and other statutes applicable to municipalities;

(2) the county may be granted exclusive jurisdiction to regulate subdivision plats and approve related permits in the extraterritorial jurisdiction and may regulate subdivisions under Sections 232.001-232.005, Subchapter B or C, Chapter 232, and other statutes applicable to counties;

(3) the municipality and the county may apportion the area within the extraterritorial jurisdiction of the municipality with the municipality regulating subdivision plats and approving related permits in the area assigned to the municipality and the county regulating subdivision plats and approving related permits in the area assigned to the county; or

(4) the municipality and the county may enter into an interlocal agreement that:

(A) establishes one office that is authorized to:

(i) accept plat applications for tracts of land located in the extraterritorial jurisdiction;

(ii) collect municipal and county plat application fees in a lump-sum amount; and

(iii) provide applicants one response indicating approval or denial of the plat application; and

(B) establishes a single set of consolidated and consistent regulations related to plats, subdivision construction plans, and subdivisions of land as authorized by Chapter 212, Sections 232.001-232.005, Subchapters B and C, Chapter 232, and other statutes applicable to municipalities and counties that will be enforced in the extraterritorial jurisdiction.

(e) In an unincorporated area outside the extraterritorial jurisdiction of a municipality, the municipality may not regulate subdivisions or approve the filing of plats, except as provided by The Interlocal Cooperation Act, Chapter 791, Government Code.

(f) If a certified agreement between a county and municipality as required by Subsection (c) is not in effect on or before the applicable date prescribed by Section 242.0015(a), the municipality and the county must enter into arbitration as provided by Section 242.0015. If the arbitrator or arbitration panel, as applicable, has not reached a decision in the 60-day period as provided by Section 242.0015, the arbitrator or arbitration panel, as applicable, shall issue an interim decision regarding the regulation of plats and subdivisions and approval of related permits in the extraterritorial jurisdiction of the municipality. The interim decision shall provide for a single set of regulations and authorize a single entity to regulate plats and subdivisions. The interim decision remains in effect only until the arbitrator or arbitration panel reaches a final decision.

(g) If a regulation or agreement adopted under this section relating to plats and subdivisions of land or subdivision development establishes a plan for future roads that

conflicts with a proposal or plan for future roads adopted by a metropolitan planning organization, the proposal or plan of the metropolitan planning organization prevails.

(h) This subsection applies only to a county to which Subsections (b)-(g) do not apply, except that this subsection does not apply to a county subject to Section 242.002. For an area in a municipality's extraterritorial jurisdiction, as defined by Section 212.001, a plat may not be filed with the county clerk without the approval of both the municipality and the county. If a municipal regulation and a county regulation relating to plats and subdivisions of land conflict, the more stringent regulation prevails. However, if one governmental entity requires a plat to be filed for the subdivision of a particular tract of land in the extraterritorial jurisdiction of the municipality and the other governmental entity does not require the filing of a plat for that subdivision, the authority responsible for approving plats for the governmental entity that does not require the filing shall issue on request of the subdivider a written certification stating that a plat is not required to be filed for that subdivision of the land. The certification must be attached to a plat required to be filed under this subsection.

(i) Property subject to pending approval of a preliminary or final plat application filed after September 1, 2002, that is released from the extraterritorial jurisdiction of a municipality shall be subject only to county approval of the plat application and related permits and county regulation of that plat. This subsection does not apply to the simultaneous exchange of extraterritorial jurisdiction between two or more municipalities or an exchange of extraterritorial jurisdiction that is contingent on the subsequent approval by the releasing municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 46(c), 87(n), eff. Aug. 28, 1989; Acts 1997, 75th Leg., ch. 1428, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 404, Sec. 26, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 736, Sec. 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1028, Sec. 1, eff. Sept. 2001; Acts 2003, 78th Leg., ch. 523, Sec. 1, 3(a), 4, eff. June 20, 2003.

Sec. 242.0015. **ARBITRATION REGARDING SUBDIVISION REGULATION AGREEMENT.** (a) This section applies only to a county and a municipality that are required to make an agreement as described under Section 242.001(f). If a certified agreement between a county and a municipality with an extraterritorial jurisdiction that extends 3.5 miles or more from the corporate boundaries of the municipality is not in effect on or before January 1, 2004, the parties must arbitrate the disputed issues. If a certified agreement between a county and a municipality with an extraterritorial jurisdiction that extends less than 3.5 miles from the corporate boundaries of the municipality is not in effect on or before January 1, 2006, the parties must arbitrate the disputed issues. A party may not refuse to participate in arbitration requested under this section. An arbitration decision under this section is binding on the parties.

(b) The county and the municipality must agree on an individual to serve as arbitrator. If the county and the municipality cannot agree on an individual to serve as arbitrator, the county and the municipality shall each select an arbitrator and the arbitrators selected shall select a third arbitrator.

(c) The third arbitrator selected under Subsection (b) presides over the arbitration panel.

(d) Not later than the 30th day after the date the county and the municipality are required to have an agreement in effect under Section 242.001(f), the arbitrator or arbitration panel, as applicable, must be selected.

(e) The authority of the arbitrator or arbitration panel is limited to issuing a decision relating only to the disputed issues between the county and the municipality regarding the authority of the county or municipality to regulate plats, subdivisions, or development plans.

(f) Each party is equally liable for the costs of an arbitration conducted under this section.

(g) The arbitrator or arbitration panel, as applicable, shall render a decision under this section not later than the 60th day after the date the arbitrator or arbitration panel is selected. If after a good faith effort the arbitrator or panel has not reached a decision as provided under this subsection, the arbitrator or panel shall continue to arbitrate the matter until the arbitrator or panel reaches a decision.

(h) A municipality and a county may not arbitrate the subdivision of an individual plat under this section.

Added by Acts 2003, 78th Leg., ch. 523, Sec. 5, eff. June 20, 2003.

Sec. 242.002. REGULATION OF SUBDIVISIONS IN POPULOUS COUNTIES OR CONTIGUOUS COUNTIES. (a) This section applies only to a county operating under Section 232.006.

(b) For an area in a municipality's extraterritorial jurisdiction, as defined by Section 212.001, a subdivision plat may not be filed with the county clerk without the approval of the municipality.

(c) In the extraterritorial jurisdiction of a municipality, the municipality has exclusive authority to regulate subdivisions under Subchapter A of Chapter 212 and other statutes applicable to municipalities.

(d) In an unincorporated area outside the extraterritorial jurisdiction of a municipality, the municipality may not regulate subdivisions or approve the filing of plats, except as provided by The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes).

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 46(d), 87(o), eff. Aug. 28, 1989; Acts 2001, 77th Leg., Ch. 669, Sec. 77, eff. Sept. 1, 2001.