

HB 1445: Mandated City-County Agreement on ETJ Platting

Questions & Answers

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What is HB 1445?

HB 1445 is legislation that mandates that cities and counties develop written agreements that provide developers of land unified platting review in the extraterritorial jurisdiction (ETJ) of cities.

Who authored HB 1445?

HB 1445 was authored by Rep. Bob Turner in the House and by Sen. Jeff Wentworth in the Senate.

What is ETJ?

Extraterritorial jurisdiction, or ETJ, is land just outside city limits in which a city may exercise authority so that it may promote the orderly growth of the city. A city may regulate subdivisions through platting within its ETJ. The size of the ETJ ranges from ½ mile to five miles, depending on city population.

What problem does HB 1445 address?

HB 1445 addresses complaints from the Texas Association of Builders that developers were subject to regulation by both cities and counties when subdividing within the ETJ.

How does HB 1445 solve the problem?

HB 1445 mandates that cities and counties adopt interlocal agreements that solve the problem by choosing from among four options:

Option 1. City Regulation. The county ends authority, and the city reviews all plats under city standards.

Option 2. County Regulation. The city ends authority, and the county reviews all plats under county standards.

Option 3. Divided Regulation. The city and county divide the ETJ geographically, each keeping authority only in one portion.

Option 4. Joint Regulation. The city and county jointly review plats under their authority, but provide one office to file plats, one filing fee, and provide one uniform and consistent set of plat regulations.

When must agreements be completed?

HB 1445 requires that the agreements be in place by April 1, 2002.

Who decides what option is used?

The city and the county must agree on the option used in each city's ETJ. Neither the city nor county can decide unilaterally – there must be agreement.

How is this agreement entered into?

HB 1445 requires that the agreement take the form of an interlocal contract. The county commissioners court and the city council must approve it.

Which cities and counties does HB 1445 apply to?

HB 1445 applies to every city in every county, except the following counties:

- “Colonias” Counties: Counties near the border and “EDAP” counties. These are: Andrews, Bee, Brewster, Brooks, Cameron, Coleman, Crane, Crockett, Crosby, Culberson, Dimmit, Duval, Edwards, El Paso, Frio, Grimes, Hall, Hidalgo, Hudspeth, Jeff Davis, Jim Hogg, Jim Wells, Kenedy, Kinney, Kleberg, La Salle, Leon, Liberty, Marion, Maverick, Mitchell, Newton, Nolan, Panola, Pecos, Presidio, Reagan, Reeves, San Augustine, San Patricio, Scurry, Starr, Sutton, Terrell, Tyler, Upshur, Upton, Uvalde, Val Verde, Ward, Webb, Willacy, Winkler, Zapata, and Zavala.
- City of Houston Counties: Counties that contain any ETJ of the City of Houston. These are: Fort Bend, Harris, Liberty, Montgomery, and Waller.

How does current law work?

Since the ETJ laws were created in the 1960s, builders have been subject to the regulation of both the city and the county within the ETJ. This means all subdividers in ETJs since that time have been required to file plats and obtain approval from both the city and the county under separate regulations. If the regulations conflict, the more stringent applies.

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Can both the city and the county continue to regulate plats in the ETJ?

Yes. Option 4, Joint Regulation, allows both the city and county to regulate plats in the ETJ. It does require the city and county to agree on the following items:

- A single office where plats are filed for subdivisions within that ETJ;
- A single plat application fee and the allocation of that fee revenue;
- A process whereby developers get one plat response of approval or disapproval for their plat application; and
- A single, unified, and consistent set of regulations for plats in that ETJ.

Does HB 1445 affect septic tanks or flood plain enforcement?

No. Permits issued for septic tanks or building permits for flood plain enforcement, or city building codes, are not considered part of the platting process, even if a city or county has integrated those functions. HB 1445 does not impact the issuance of those permits.

What if an area is in the ETJ of two cities?

Since August 23, 1963, it has not been legally possible for ETJs to overlap, and a procedure is provided in Sec. 42.901, Local Government Code, for apportionment of ETJs that overlapped prior to that date. Accordingly, the only ETJs that can now overlap are those that overlapped before August 23, 1963 and which were never apportioned. In such an area, Sec. 212.007, Local Government Code, provides that the city with the largest population has the authority to approve plats in the overlapping ETJ.

Can a city and county use a combination of options within an ETJ – for instance divide the ETJ in portions and both still regulate?

Yes. Options 3 & 4 can be combined within a city's ETJ.

There are many cities in our county – do we all develop one agreement?

The law requires that there be one agreement for each municipal ETJ in the county. This could be accomplished with one agreement with multiple parties – but is not required. More likely, there will need to be one agreement for each city that has ETJ.

What happens if a city and county do not agree?

If no agreement is in place, current law continues until an agreement is adopted by both entities. That is, developers will continue to file with both the city and county. If regulations conflict, the more stringent applies.

While HB 1445 contains no penalty provisions, the city and county could be subject to a mandamus action. More importantly, the legislature will meet again in 2003 and likely create penalties for those failing to comply. Legislative committees have already scheduled meetings to monitor compliance with HB 1445.

How does this affect road maintenance?

It does not. HB 1445 has no impact on road maintenance issues. Counties are still responsible for roads outside of actual city limits where the road is accepted into the county road system. Cities are still responsible for roads inside of city limits.

Who can I call with additional questions?

TML and the Urban Counties have developed a more detailed document entitled: *Matters for Consideration for Cities and Counties Negotiating Agreement Under HB 1445*. The document is available at either the TML or Urban Counties website, which is listed below.

If you have additional questions, contact either:

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Matters for Consideration for Cities and Counties
Negotiating Agreements Under H.B. 1445

1. As an initial matter, is the county one that is subject to H.B. 1445?

H.B. 1445 does not apply to certain specified counties: those containing the ETJ of a city with a population of 1.9 million or more (Harris, Fort Bend, Liberty, Montgomery, and Walker), or those within 50 miles of an international border or those defined as economically distressed (Andrews, Bee, Brewster, Brooks, Cameron, Coleman, Crane, Crockett, Crosby, Culberson, Dimmit, Duval, Edwards, El Paso, Frio, Grimes, Hall, Hidalgo, Hudspeth, Jeff Davis, Jim Hogg, Jim Wells, Kenedy, Kinney, Kleberg, La Salle, Leon, Liberty, Marion, Maverick, Mitchell, Newton, Nolan, Panola, Pecos, Presidio, Reagan, Reeves, San Augustine, San Patricio, Scurry, Starr, Sutton, Terrell, Tyler, Upshur, Upton, Uvalde, Val Verde, Ward, Webb, Willacy, Winkler, Zapata, and Zavala). An agreement between such a county and its cities for subdivision regulation in the ETJ is not required. Such a county and a city or cities therein, however, could voluntarily agree to such an agreement.

2. After an agreement is reached, will subdivision regulation within the ETJ be performed exclusively by the county, exclusively by the city, or on a geographical basis?

Section 242.001(d), Local Government Code, provides that a city and a county may agree that either the county or city may be granted exclusive jurisdiction to regulate subdivision plats and to approve related permits in the ETJ, or they may apportion the ETJ so that the city regulates in some areas and the county regulates in the other areas. A fourth option is also possible: the city and county may establish uniform regulations and a joint office to provide a single point of contact for subdivision regulation in the ETJ.

3. Who regulates subdivisions prior to an agreement or in the event an agreement cannot be reached?

H.B. 1445 provides that until an agreement is reached, the former law essentially remains in effect. That is, a subdivider or developer must continue to obtain the approval of both the city and county, with the more stringent regulation controlling in the case of a conflict. While the former law would be continued in case an agreement is not reached by the statutory deadline (April 1, 2002, in most cases), it should be noted that the deadline appears mandatory, and failure to reach an agreement might result in a legislative solution that is unfavorable to both parties.

4. May the agreement to regulate in the ETJ contemplate any exercise of authority by a city or county that is not granted to the city under Chapter 212, Local Government Code, or to the county under Chapter 232, Local Government Code?

H.B. 1445 directs cities and counties to enter into agreements for subdivision regulation within the ETJ. In §242.001(d)(4), the bill provides that the agreement may establish “a consolidated and consistent set of regulations related to plats 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.” While it isn’t perfectly clear, this provision seems to grant authority to a city to exercise relevant authority granted to a county and to grant authority to a county to exercise relevant authority granted to a city if both parties so agree.

This is different than an agreement under the Interlocal Cooperation Act (Chapter 791, Government Code), which authorizes governmental bodies to contract to provide functions and services that each party is authorized to perform individually, but does not allow the parties to expand, by agreement, the jurisdiction of a governmental body beyond that which is authorized. Because city authority and county authority to regulate subdivisions in the ETJ differ in certain respects, the agreement should be specific about any authority a city or county will exercise that is not currently contained in a statute applicable to the city or county.

5. What is the term of the agreement or period for review?

H.B. 1445 does not specify that agreements must be for a particular term of years or in perpetuity. Cities and counties should provide for periodic review, revision, and renewal of the agreements to address changed circumstances. This may be accomplished by providing for a specified term of the agreement, a periodic review, or for review at the request of one party. Changes in the ETJ should trigger automatic review.

6. Should the agreement incorporate the most stringent authority available?

H.B. 1445 is consistent with prior law by providing that where an agreement is not in place between a city and a county, the more stringent regulation prevails in the event of conflict. Accordingly, to the extent that the authority or practice of particular counties and cities differs, the parties to the agreement should agree to adoption of the more stringent provisions in order to maintain maximum regulatory jurisdiction.

7. Is provision made for expansion or reduction of the ETJ?

Section 242.001(c), added by H.B. 1445, provides that the city shall notify the county of any expansion or reduction of its ETJ and that any change in the ETJ does not alter the effectiveness of any plat or permit as provided by Chapter 245, Local Government Code (the “vesting” statute).

8. Will there be one office for plat applications, fee payments, and response to applicants for ETJ property?

The effect of H.B. 1445 will be that a subdivider will need to deal with only one office for most ETJ platting purposes. That office will either be run by the city, the county, or jointly by the two. If jointly, the required uniformity of regulations and fees will make the sharing of authority seem transparent to the applicant.

9. How will fees be divided and distributed?

The agreement should address whether, how, when, and in what proportion fees that are paid lump-sum will be divided between the county and city, and how such funds will be paid to the entity not collecting the fees.

10. Do both the city and county require platting of the same types of subdivisions?

“Subdivision” is not defined in either Chapter 212 or Chapter 232, which apply to city and county subdivision authority, respectively. Instead, both cities and counties are authorized to define and classify divisions of land, and the requirement to plat need not apply to every division otherwise within the scope of the law. Property may be divided in many ways and for many purposes, depending, for example, on use, tenure, and method of creation. Texas courts have held that the term “subdivision” may be broadly construed, and the term should be defined broadly in order to maintain maximum regulatory jurisdiction. Cities and counties should compare their platting requirements and reach agreement regarding any existing differences in the types of subdivisions required to be platted. Exceptions to platting requirements often create problems both for landowners and local governments, and the creation of exceptions should be carefully considered before being included. Appropriate exceptions are more likely to focus on divisions created through inheritance, large tracts used for agriculture or open space, large remainders occurring after platting of a portion of a tract, leaseholds for agricultural purposes or multi-occupant buildings, or dedications of rights-of-way and public easements. Inappropriate exceptions may include those based solely upon conveyance to a relative, subdivisions by governmental entities, or those based upon the fact that no road is being constructed.

11. What statutory exceptions to platting should be included?

Chapters 212 and 232 each contain certain statutory exceptions to platting, but counties, which do not adopt and enforce building codes, have ten exceptions. Cities, which may require a plat as a condition for the issuance of a building permit, have only three statutory exceptions. The county statutory exceptions are contained in Sections 232.0015(e)-(k), 232.007, and Subchapter B of Chapter 232 (for economically distressed counties). Municipal statutory exceptions are

contained in Sections 212.004, 212.0046, and Subchapter B of Chapter 212. Cities and counties should agree on whether all statutory exceptions will be allowed and, if so, whether the regulating entity has authority to allow the exception.

12. Are development plats currently required by the city, and if so, will development plats be required in the agreement?

Subchapter B of Chapter 212 (§§212.041-050) authorizes cities to adopt an ordinance establishing a development plat method of subdivision regulation, while counties have limited or different authority to do so. Development plats were originally allowed only for Houston, but the subchapter was later amended to apply to all cities. It is a method by which a city may define the subdivisions to which their regulations apply (if they are not limited to divisions of land into parts of less than five acres where each part has access and no public improvement is being dedicated). An agreement between a county and city operating under Subchapter B of Ch. 212 should be specific about the extent, if any, to which development plats will continue to be utilized by the entity exercising exclusive authority in the ETJ or a part thereof.

13. Is deferred development adequately addressed?

When there are no plans to immediately develop or improve property that is being divided, the owner typically wishes to avoid platting, particularly if plat approval requires construction of public improvements, such as roads or utilities. Cities and counties may establish platting regulations that do not require immediate construction of public improvements. For example, cities sometimes require “conveyance plats,” which are boundary surveys drawn as plats with easements, dedications, and reservations recorded thereon, but which do not require engineering plans. Often, conveyance plats are limited in application to tracts larger than five acres. County authority for conveyance plats may be implied in §232.0015(a), but it is not certain, and the agreement between the city and county should address deferred development and, if necessary, be specific about conveyance plats or any other type of interim or minor plat.

14. Does the agreement contain adequate, uniform provisions for informing applicants of requirements for receiving plat approval?

Cities and counties are currently responsible for providing applicants with understandable and complete information relating to requirements for plat approval, but Chapters 212 and 232 are not consistent. Chapter 232 requires a county to issue a written list of the documentation and other information that must be submitted with a plat application, and not later than the 10th day after receiving an application, a county must notify the applicant of any missing information. Chapter 212 does not specify the city’s duty to provide the information or the period of time for notifying the applicant of missing data, although that duty is

implied and presumed. The agreement should be specific about such requirements.

15. Are substantive requirements for public improvements adequately addressed?

Another difference between city and county subdivision authority is in regard to the substantive requirements for public improvements, such as planning and engineering standards. City authority is broader due to the greater complexities of urban development, whereas county authority is limited to right-of-way, road construction, drainage, and provision of water (One exception would be counties operating under new Subchapter E to Chapter 232—See S.B. 873—where county authority is nearly as broad as city authority.). The agreement should be specific about such requirements and should normally maximize the authority granted to cities.

16. Is connection of utility service addressed?

Under §212.012, a utility is prohibited from providing service to land unless it is presented with a certificate that the property is in compliance with the city's subdivision regulations. There may not be corresponding provision for counties, due to the necessity of serving unplatted development in unincorporated areas (again, certain urban counties may now have equivalent authority under S.B. 873). The agreement should be consistent with §212.012 for land in the ETJ.

17. Are major and minor plats to be utilized?

Cities have authority to classify subdivisions as major or minor depending on the number of lots and the extent of public improvements, but counties do not have the same authority. Approval of a minor plat, which is for four or fewer lots facing an existing street and not requiring a new street or extension of municipal facilities, may be delegated to a member of the city staff, a procedure that expedites the approval process. (§212.0065). The parties to the agreement are encouraged to incorporate the minor plat requirements and approval process into the agreement.

18. Are plat amendments addressed?

Under §212.016, cities have authority to approve amended plats in order to make corrections or limited changes to previously approved final plats. County authority in this area is questionable. The amendment process, which can also be delegated to a staff member, expedites the approval process, and should be adequately addressed in the agreement.