
COMPREHENSIVE PLANS

TERRENCE S. WELCH

**Brown & Hofmeister, L.L.P.
740 E. Campbell, Suite 800
Richardson, Texas 75081
(214) 747-6100
(214) 747-6111 (fax)
twelch@bhlaw.net
www.bhlaw.net**

I. Statutory Basis - Chapter 213, Texas Local Government Code

§ 213.001. Purpose

The powers granted under this chapter are for the purpose of promoting sound development of municipalities and promoting public health, safety, and welfare.

§ 213.002. Comprehensive Plan

(a) The governing body of a municipality may adopt a comprehensive plan for the long-range development of the municipality. A municipality may define the content and design of a comprehensive plan.

(b) A comprehensive plan may:

(1) include but is not limited to provisions on land use, transportation, and public facilities;

(2) consist of a single plan or a coordinated set of plans organized by subject and geographic area; and

(3) be used to coordinate and guide the establishment of development regulations.

(c) A municipality may define, in its charter or by ordinance, the relationship between a comprehensive plan and development regulations and may provide standards for determining the consistency required between a plan and development regulations.

(d) Land use assumptions adopted in a manner that complies with Subchapter C, Chapter 395, may be incorporated in a comprehensive plan.

§ 213.003. Adoption or Amendment of Comprehensive Plan

(a) A comprehensive plan may be adopted or amended by ordinance following:

(1) a hearing at which the public is given the opportunity to give testimony and present written evidence; and

(2) review by the municipality's planning commission or department, if one exists.

(b) A municipality may establish, in its charter or by ordinance, procedures for adopting and amending a comprehensive plan.

§ 213.004. Effect on Other Municipal Plans

This Chapter does not limit the ability of a municipality to prepare other plans, policies, or strategies as required.

§ 213.005. Notation on Map of Comprehensive Plan

A map of a comprehensive plan illustrating future land use shall contain the following clearly visible statement: “A comprehensive plan shall not constitute zoning regulations or establish zoning district boundaries.”

II. What Is A Comprehensive Plan?

Traditionally, land use regulations such as zoning and subdivision ordinances adopted by local governments were written and promulgated without reference to any prior comprehensive municipal plan. In a growing number of states, however, the adoption of such regulatory ordinances in the absence of a general comprehensive plan may cast doubts upon the validity of the ordinances. The comprehensive plan, once viewed primarily as an advisory document to the local governmental body, is in many states becoming a legal, binding document as well as a prescription for future development patterns.

A comprehensive plan generally is defined as a long-range plan intended to direct the growth and physical development of a community for an extended period of time. Comprehensive planning is a process by which a community assesses what it has, what it wants, how to achieve what it wants and finally, how to implement what it wants. A comprehensive plan usually contains several components—transportation systems, parks and recreational services, utilities, housing and public facilities. It also provides for the distribution and relationships of various land uses and often serves as the basis for future land development recommendations. The plan may be in the form of a map, a written description and policy statements, or it may consist of an integrated set of policy statements. An expert in urban planning, T.J. Kent, Jr., defines the comprehensive plan as a community’s official statement of policies regarding desirable future physical development; the plan should be comprehensive in scope, general in nature and long-range in perspective.

A. “Rational Process” Comprehensive Planning

The growing importance in the United States of the comprehensive plan in local land use decisions prompted urban planning practitioners and theorists to develop a theory of planning as a “rational process.” The rational, comprehensive planning process has four principal characteristics. First, it is *future-oriented*, establishing goals and objectives for future land use and development, which will be attained incrementally over time through regulations, individual decisions about zoning and rezoning, development approval or disapproval, and municipal expenditures for capital improvements such as road construction and the installation of utilities.

Second, planning is *continuous*. The comprehensive plan is intended not as a blueprint for future development which must be as carefully executed as the architect’s design for a building or the engineer’s plan for a sewer system, but rather as a set of policies which must be periodically reevaluated and amended to adjust to changing conditions. A plan that is written purely as a static blueprint for future development will rapidly become obsolete.

Third, the comprehensive plan must be based upon a *determination of present and projected conditions* within the area covered by the plan. This requirement ensures that the plan is not simply a list of hoped-for civic improvements, as were many of the plans prepared during the early part of the 20th century. Substantial efforts have been made by public planning staffs,

university planning departments and planning consulting firms to develop useful techniques for gathering data, analyzing existing conditions and projecting future trends and conditions within the geographic area covered by a comprehensive plan. This body of methods, procedure and models is generally termed “planning methodology.”

Fourth, planning is *comprehensive*. In the past, architects and engineers who became involved in solving urban problems tended to identify one problem perceived to be solvable by one solution. Having targeted that problem, these early planners preferred to develop and advocate one solution, usually expressed as a static blueprint which, if fully implemented, would solve that problem. This problem-solution approach was the product of the project orientation that was typical of traditional civil engineering and architecture.

Planning theorists over the past several decades have observed that this approach has led to a phenomenon termed “disjointed incrementalism,” in which successive municipal problems such as drainage, traffic circulation, or sewage treatment might be incrementally “solved” without reference to related concerns of municipal government. For example, sewer systems in the mid- to late-1800s were usually designed without reference to any overall plan for the optimum future locations, and densities, of different land uses to be served by them. Highways were often laid out without reference to any long-range plans for the types of land uses they were to serve in the future.

B. The Process of Comprehensive Planning

The recognition, starting after World War II, that the entire range of municipal land use, transportation, and growth problems were all interrelated, led to advocacy of comprehensive plans as a means of identifying the key problems in land use regulation, and recommending alternative solutions to these problems which were the product of rational planning process. The courts have recognized this role of planning, in defining planning as concerned with the physical development of the community and its environs in relation to its social and economic well-being for the fulfillment of the rightful common destiny, according to a “master plan” based on “careful and comprehensive surveys and studies of present conditions and the prospects of future growth of the municipality,” and embodying scientific teachings and creative experience.

The rational planning process essentially subsumes four discrete steps: *data gathering and analysis*, *setting of policies*, *plan implementation*, and *plan re-evaluation*. Rather than resulting in a final plan effective for all time, the process is instead reiterative over a period of years: re-evaluation of the plan starts the process over again, resulting in a new set of policies to be implemented, and the success of the new plan is again evaluated at a future date. Thus the rational planning process is both reiterative and continuous.

During the first step of the process, the planner preparing the comprehensive plan performs research and analysis of a wide range of present and projected physical, economic, and sociological conditions of the municipality, aided by a wide variety of planning methodologies. Statistical surveying, population forecasting, mapping of existing conditions in land use, transportation, and environmentally-sensitive areas, mathematical modeling of economic trends, analysis of traffic flows on major highways, and techniques borrowed from other professions such as economics, geography and engineering are some of the methods employed by planners in data gathering and analysis.

The data-gathering and analysis phase of the process usually results in the identification of present and potential future concerns in land use, transportation, environment, utilities, housing and other areas to be addressed in the plan. Thus, following the first stage of the process, the planner may identify and prioritize a range of municipal problems and opportunities which should be addressed in the policy-formation stage of the planning process.

Analysis of the data then leads naturally to the second phase, setting of policies for the plan. In this phase, the planner ceases being a data gatherer, and assumes a policy formation role. Working closely with the planning commission and sometimes the local legislative body, the planner examines and proposes alternative means of solving or averting the problems identified in the first phase of the process. Through communication with the local legislative body and the planning commission (if one exists), the planner develops a set of policies, goals, and objectives which constitute the principal, future-oriented sections of the comprehensive plan. Thus, for example, the policies may include a provision that sewage-treatment services must be expanded to accommodate new development; that the legislative body should initiate a program to stimulate new economic development in the declining downtown; and that steps should be taken to prevent further flood-prone development in low-lying areas adjoining rivers and streams.

As a supplement to these general policies, or goals, of planning, the planner may suggest means of achieving these goals. In setting the goals and recommending alternative objectives, the planner may refer to standards and principles widely-accepted in the planning profession: that excessive use of septic tanks may tend to pollute groundwater; that decay of the central business district leads to devaluation of the tax base; that development in flood-prone areas is detrimental to public safety by exposing buildings and their occupants to flood hazards.

The mere statement of policies and objectives will not, in itself, ensure that action is taken. Thus, the third stage of the planning process, implementation of the plan, becomes the most important stage. Implementation involves three discrete steps: developing public support for the plan by means of various forms of citizen participation and a series of public hearings and media coverage; securing adoption of the plan, either as an advisory document (as in many states) or as a legally-binding ordinance or resolution (as in a growing number of states); and action by the legislative body to implement the policies and objectives.

Upon adoption of the plan, the adopting agency espouses the policies and objectives of the plan as guidelines for daily decision-making. Thus, to return to our three examples of policies, the local legislative body will undertake revisions of the municipal zoning map to bring it into accord with the land-use recommendations of the plan. Similarly, the governing body may prepare plans for expansion of sewers and construction of new roads to serve new development. The legislative body may appoint a downtown revitalization authority to oversee efforts to attract new businesses back into the central business district. The governing body may authorize the city attorney to draft a new flood-plain protection ordinance prohibiting careless construction of new buildings in low-lying areas adjoining streams and rivers.¹³² The comprehensive plan is the single most important document for managing a community's physical growth because it can consolidate and coordinate physical planning needs and goals and policies, as well as separate community studies that address various aspects of physical development in a

¹³² See Juergensmeyer & Roberts, *Land Use Planning and Control Law* (West 1998), at 27-30.

city. Further, comprehensive planning, to be effective, has to be an on-going process, involving periodic evaluation and updating. To further aid in its effectiveness, the comprehensive plan has to be based on a shared vision of the community. This vision usually is constructed through consensus-based planning.¹³³

It should be noted that in Texas it is not mandatory that cities adopt comprehensive plans; however, if one is adopted, Section 211.004 of the Texas Local Government Code provides, in part, that “[z]oning regulations must be adopted in accordance with a comprehensive plan. . . .” Thus, any city that has a comprehensive plan must zone in accordance with that plan; otherwise, a strong argument may be made that any action not taken in accordance with the comprehensive plan is arbitrary and capricious as well as violative of a zoning applicant’s federal and state constitutional rights.

III. Frequently Asked Questions

1. Are Texas cities required to adopt comprehensive plans?

No. In *Bernard v. City of Bedford*,¹³⁴ the Court of Civil Appeals wrote that “[w]e know of no rule of law which requires that a city adopt a comprehensive zoning ordinance which constitutes or becomes its comprehensive zoning or land use plan.” The Court further wrote that “[t]here is no requirement that a single comprehensive ordinance be passed to constitute the comprehensive plan.”¹³⁵

2. If a city has not adopted a comprehensive plan, may it nevertheless zone property?

Yes. In *City of Brookside Village v. Comeau*,¹³⁶ the Texas Supreme Court, in footnote 4 to its opinion, wrote as follows:

Because Brookside Village, a general law city, has no comprehensive zoning plan, the ordinances in question do not come under article 1011a [the Zoning Enabling Act, now contained in Chapter 211 of the Texas Local Government Code], which embodies legislative authorization for zoning. . . . A city, however, may regulate land use under its general police powers. [Citation omitted].

3. If a city has adopted a comprehensive plan, must it follow it when making zoning decisions?

Yes. As the Texas Court of Appeals wrote in *Mayhew v. Town of Sunnyvale*,¹³⁷ “[t]he [municipal] legislative body does not, on each rezoning hearing, redetermine as an

¹³³ See *A Guide to Urban Planning in Texas* at 1-10, 3-1–3-2 (Texas Chapter, American Planning Association).

¹³⁴ 593 S.W.2d 809 (Tex.Civ.App.—Fort Worth 1980, writ ref’d n.r.e.).

¹³⁵ *Id.* at 812.

¹³⁶ 633 S.W.2d 790, 793 (Tex.), *cert. denied*, 459 U.S. 1087 (1982).

¹³⁷ 774 S.W.2d 284, 295 (Tex.App.—Dallas 1989, writ denied), *cert. denied*, 498 U.S. 1087 (1991).

original matter, the city's policy of comprehensive planning. The law demands that the approved zoning plan should be respected. . . . The duty to obey the existing law forbids municipal actions that disregard not only the pre-established zoning ordinance but also the long-range master plans and maps that have been adopted by ordinance."¹³⁸

4. What is the effect of a comprehensive plan on pre-existing zoning?

Pre-existing zoning on a tract of land controls the development of that tract, regardless of the use designation contained in the comprehensive plan. For example, if a parcel was zoned for multi-family uses in 1990 and the new comprehensive plan adopted in 1994 calls the parcel to be low density residential, the parcel may be developed as multi-family notwithstanding the comprehensive plan designation. If, however, the owner of the parcel elected to rezone the property in 1995, it must be rezoned in accordance with the comprehensive plan designation of low density residential. To rezone the parcel to anything else would violate the state law provision that zoning must be done in accordance with a comprehensive plan.¹³⁹

5. Is there a difference between a master plan and a comprehensive plan?

Sometimes yes, sometimes no. On occasion, comprehensive plans have been denominated as "master plans." On other occasions, a comprehensive plan is composed of various "master plans." For example, a city's comprehensive plan could consist of a parks master plan, land use master plan, thoroughfare master plan, wastewater master plan and water master plan. In such a situation, all of the "master plans" constitute the "comprehensive plan."

6. How should a city view a comprehensive plan, as a guide or a document with the force of law?

Due to the requirements of state law that all zoning must be in accordance with a comprehensive plan, we personally view a comprehensive plan as far more than a "guide." The term "guide" seems to imply that one may or may not follow it, depending upon the facts of any particular situation. It is our opinion that, due to the requirements of the Texas Local Government Code, a comprehensive plan is a legally binding document that a city must follow. This means that whenever an individual wishes to rezone property, he or she must do so in accordance with the comprehensive plan and that the failure to do so will result in the denial of both a comprehensive plan amendment and a subsequent zoning amendment.

7. Can a comprehensive plan be amended through the initiative process?

No. Initiative is the "initiation of municipal legislation and its enactment or rejection by the municipal electorate in the event the proposed measure is not enacted by their elected

¹³⁸ See also *City of Pharr v. Tippitt*, 616 S.W.2d 173, 176-77 (Tex. 1981).

¹³⁹ See Tex. Local Gov't Code § 211.004(a).

representatives.”¹⁴⁰ While the right to initiative is to be liberally construed, “the field in which the initiatory process is operative is not unlimited.”¹⁴¹

Any rights conferred by or claimed under the provisions of a city charter, including the right to an initiative election, are subordinate to the provisions of the general law. It follows that the Legislature may by general law withdraw a particular subject from the field in which the initiatory process is operative. Other provisions of the charter may withdraw from the people the power under which the initiative provisions deal with a particular subject. The limitation by the general law or by the charter of the field in which the initiatory process is operative may be either an express limitation or one arising by implication. Such a limitation will not be implied, however, unless the provisions of the general law or of the charter are clear and compelling to that end.¹⁴²

One of the exceptions to the initiatory process is where a public hearing is mandated by law.

In all the Texas cases called to our attention in which it has been held that the people of a municipality could not validly exercise a delegated legislative power through initiative proceedings, it will be found that authority to act was expressly conferred upon the municipal governing body exclusively, or there was some preliminary duty such as the holding of hearings, etc., impossible of performance by the people in an initiative proceeding, by statute or charter made a prerequisite to the exercise of the legislative power.¹⁴³

Thus, initiative elections are limited by either the general laws of the State of Texas or by a city charter.

In a recent case, the Texas Court of Appeals held that initiative and referendum could not be used for zoning matters. *City of Canyon v. Fehr*¹⁴⁴ involved the approval of the rezoning of two tracts of land by the Canyon city commission. Two citizens filed a petition with the city, requesting that (1) the city adopt a resolution negating the rezoning ordinances, (2) repeal the zoning amendments, or (3) submit the rezoning issue to a referendum election. When the city did not do so, suit was filed to compel the city commission to “undertake one of the three actions mentioned.”¹⁴⁵

¹⁴⁰ 5 *McQuillin Municipal Corporations* § 16.52 (3d ed.).

¹⁴¹ *Glass v. Smith*, 244 S.W.2d 645, 649 (Tex. 1951).

¹⁴² *Id.*

¹⁴³ *Id.*, 244 S.W.2d at 653.

¹⁴⁴ 121 S.W.3d 899 (Tex.App.—Amarillo 2003, no pet.).

¹⁴⁵ *Id.*, 121 S.W.3d at 902.

In discussing the initiative and referendum provisions, the Court of Appeals discussed the initiative and referendum powers of Texas local governments.

As previously said, initiative and referendum is not a right granted the citizenry. Rather, it represents a power reserved from the government and retained by the people. Because of this, provisions dealing with it should be liberally construed in favor of the reservation. However, it may be limited. That can occur through either express directive or by implication. And, before it can arise through implication, the provisions must evince a clear and compelling intent to limit the power.¹⁴⁶

While discussing one exception to the rule that referendum could not be utilized in the zoning context (Section 211.015 of the Local Government Code authorizes zoning referenda to repeal a home rule municipality's zoning regulations in their entirety or for the determination whether a municipality should initially adopt zoning regulations), the Court of Appeals addressed two cases that held initiative and referendum may not be utilized in the zoning arena.¹⁴⁷ In *San Pedro North, Ltd. V. City of San Antonio*,¹⁴⁸ the court held that to allow the initiative process in the zoning context "would be to add a procedural step which is not required by the comprehensive provisions of the [Texas Zoning] Enabling Act. A city can no more add a step to the procedures required by state law than it can omit one."¹⁴⁹ Similarly, in *Hancock*, the court held that "[a] zoning ordinance enacted by the City Council without the notice and hearing required by statute would be invalid and the power of the people to legislate directly is subject to the same limitations. . . . [T]he power of the people . . . to legislate directly does not extend to the subject of zoning."¹⁵⁰

Nevertheless, the foregoing cases address rezonings of tracts of land, not comprehensive plan amendments. While there is no case directly on point in Texas, an amendment to a comprehensive plan is part of the statutory zoning scheme because (1) the Texas Zoning Enabling Act, codified in Chapter 211 of the Texas Local Government Code, specifically provides that all zoning must be in accordance with a comprehensive plan¹⁵¹ and hence, a comprehensive plan is an integral part of the zoning arena; (2) Chapter 213 of the Texas Local Government Code, which specifically addresses comprehensive plans, provides that comprehensive plans "may be adopted or amended by

¹⁴⁶ *Id.*, 121 S.W.3d at 903.

¹⁴⁷ See *San Pedro North, Ltd. v. City of San Antonio*, 562 S.W.2d 260 (Tex.Civ.App.—San Antonio 1978, writ ref'd n.r.e.); *Hancock v. Rouse*, 437 S.W.2d 1 (Tex.Civ.App.—Houston [1st Dist.] 1969, writ ref'd n.r.e.). See also *City of Canyon*, 121 S.W.3d at 904.

¹⁴⁸ *Supra*.

¹⁴⁹ *Id.*, 562 S.W.2d at 262, citing *City of San Antonio v. Lanier*, 542 S.W.2d 232 (Tex.Civ.App.—San Antonio 1976, writ ref'd n.r.e.).

¹⁵⁰ *Id.*, 437 S.W.2d at 4.

¹⁵¹ Tex. Local Gov't Code § 211.004(a).

ordinance following a public hearing at which the public is given the opportunity to provide testimony and present written evidence; and review by the municipality's planning commission or department, if one exists"¹⁵²; and (3) many municipalities have adopted the provisions of Chapter 213 by requiring public hearings, notice and planning and zoning commission and city council review of all comprehensive plan amendments. Therefore, even if it were determined that an amendment to a comprehensive plan is not "zoning," the requirement for a public hearing should defeat the use of initiative in the comprehensive plan amendment process.

8. If a city amends its zoning without reference to the underlying comprehensive plan, is that action subject to a legal challenge?

Yes. In *Mayhew v. Town of Sunnyvale*,¹⁵³ the Texas Court of Appeals held that a municipality's failure to zone property in accordance with a comprehensive plan may result in a declaration by a court that there has been a violation of Section 211.004 of the Local Government Code.¹⁵⁴ While such a declaration will not result in the imposition of damages, the zoning ordinance may be invalidated and a plaintiff may be entitled to attorney's fees under the Texas Declaratory Judgment Act, contained in Chapter 37 of the Texas Civil Practice and Remedies Code. *Mayhew* also stands for the proposition, however, that the state's validation act (currently found in Section 51.003 of the Texas Local Government Code) may cure such illegality if not timely brought:

Although *Mayhew* insists that the town's challenged zoning ordinance was not made in accordance with a comprehensive plan as required by the Texas Zoning Enabling Act, we must now decide if subsequent validation statutes deny *Mayhew* his cause of action based on failure to comply with the state statute. We conclude that the challenged zoning ordinance is not subject to attack on the grounds of the town's failure to comply with the Texas Zoning Enabling Act. We reach this conclusion because since the town's challenged action, the legislature has enacted validating statutes. . . . *Mayhew* argues that a validation statute may not be used to cure substantive defects such as those alleged in the present case. We disagree. Validation acts are remedial and are to be liberally construed. *Murmur Corp.* at 793. They apply to amendatory zoning ordinances. *Murmur*, 718 S.W.2d at 793. Although validation statutes may not cure constitutional defects, they may cure defects that do not render the ordinance unconstitutional. *Murmur*, 718 S.W.2d at 793. As noted, *Mayhew* asserts no constitutional defect. Because the irregularity challenged by *Mayhew* did not affect a constitutional right, we conclude it was the intention of the legislature to cure this type of defect and that the

¹⁵² *Id.*, § 213.003(a).

¹⁵³ 774 S.W.2d 284 (Tex.App.—Dallas 1989, writ denied), *cert. denied*, 498 U.S. 1087 (1991), *rev'd after remand*, 964 S.W.2d 922 (Tex. 1998), *cert. denied*, 526 U.S. 1144 (1999).

¹⁵⁴ *Id.*, 774 S.W.2d at 296.

alleged violation of the Texas Zoning Enabling Act was validated. See *Murmur*, 718 S.W.2d at 793.¹⁵⁵

9. If zoning must be in accordance with a comprehensive plan, are planned developments and mixed use projects susceptible to legal challenge since most comprehensive plans separate uses rather than mix uses?

A city may be subject to a legal challenge for failure to zone in accordance with a comprehensive plan when it approves a planned development or mixed use project. Planned developments are often referred to as “floating zones” that do not appear on comprehensive plans. Mixed use projects, by definition, mix various uses of property, usually combining various types of residential uses with retail/commercial uses in a large project. In a recent article in *The Urban Lawyer*, Professor Gerald Fisher contends that if a community does not provide for planned developments and mixed use projects in its comprehensive plan, then zoning decisions relative to those types of land use projects may be subject to challenge under the due process, equal protection and takings clauses of the Constitution.¹⁵⁶

¹⁵⁵ *Mayhew*, 774 S.W.2d at 296 (citing *Murmur Corp. v. Board of Adjustment of Dallas*, 718 S.W.2d 790, 809 (Tex.App.—Dallas 1986, writ ref’d n.r.e.).

¹⁵⁶ See Gerald Fisher, *The Comprehensive Plan Is an Indispensable Compass for Navigating Mixed-Use Zoning Decisions Through the Precepts of the Due Process, Takings, and Equal Protection Clauses*, 40 Urb. Law. 831 (2008).