



COLLIN COUNTY

OFFICE OF COUNTY AUDITOR
2300 Bloomdale Road • Suite 3100
McKinney, Texas 75071
(972) 548-4731 • Metro (972) 424-1460
Fax (972) 548-4696

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OPINION COMMITTEE

RQ-0023-KP

The Honorable Ken Paxton
Attorney General of Texas
Office of the Attorney General
Opinion Division
P.O. Box 12548
Austin, Texas 78711-2548

RE: Request for opinion concerning authority of home rule municipality to impose building codes and related construction codes in its extraterritorial jurisdiction and to include such provisions in its subdivision platting agreement with a County per chapter 242 of the Local Government Code

Dear General Paxton:

I am requesting your opinion concerning the following issues:

1. May a home-rule municipality impose its building, fire and construction-related codes in its extraterritorial jurisdiction (ETJ) assuming its ordinances relating to such codes extend their application into the ETJ?
2. Assuming the answer to the above question is "yes", may a home-rule municipality and a county include in their subdivision plat approval agreement entered into under chapter 242 of the Local Government Code, provisions which authorize the home rule municipality to enforce its building, fire and construction-related codes in lieu of any conflicting, less-stringent county regulations, namely the county's fire code?

Background Facts:

The Collin County Commissioners Court has received a request from a home-rule municipality to amend its subdivision plat approval agreement entered into between the

County and the municipality pursuant to Chapter 242 of the Local Government Code.¹ The proposed amendment contemplates that the home-rule municipality will impose its building codes and construction-related codes in the ETJ in lieu of any conflicting, less-stringent County regulations, including the County's duly adopted fire code.

Per the current county-city plat approval agreement, the municipality already imposes its subdivision platting regulations in the ETJ, as is expressly authorized by TEX. LOCAL GOVERNMENT CODE § 242.001(d)(1) (Vernon 1999).

The home-rule municipality contends it possesses the requisite authority to impose building, fire and other construction-related codes in its ETJ, namely by virtue of sections 212.002 and 212.003 of the Local Government in conjunction with its home-rule status, and has amended its ordinances adopting safety and construction codes to extend their applicability to those areas within its ETJ.

Legal Analysis:

A city's authority to regulate land development in its ETJ is wholly derived from legislative grant of authority. *FM Props. Operating Co. v. City of Austin*, 22 S.W.3d 868, 902 (Tex. 2000).

Local Government Code section 242.001(d)(1) allows for city-county subdivision platting agreements to include provisions wherein "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." Tex. Local Government Code § 242.001(d)(1) (Vernon 1999) (emphasis added).

The home-rule municipality contends that the term "related permits" in section 242.001(d)(1) should be interpreted to include the authority to extend its building codes and construction-related codes into its ETJ, relying on its home-rule status, the platting provisions applicable to municipalities as set forth in chapter 212 of the Local Government Code, and the Dallas Court of Appeals' ruling in *City of Lucas v. North Texas Municipal Water District*, 724 S.W.2d 811 (Tex. App. – Dallas 1986).

In *Lucas*, the Dallas Court of Appeals found that that Article 970a V.T.C.S (the predecessor statute to subchapter A of chapter 212 of the Local Government Code) confers authority upon a city to extend its subdivision ordinances into its extraterritorial jurisdiction, including "ordinances regulating development, such as those specifying design, construction and maintenance standards". *Id.* at p. 823.

¹ County-city subdivision platting agreements governed by Local Government Code Chapter 242 are commonly referred to as "1445 Agreements" due to the fact such agreements were authorized pursuant to House Bill 1445 passed by the 77th Legislature of the State of Texas.

However, more recently, the Fort Worth Court of Appeals in *Bizios v. Town of Lakewood Village*, 453 S.W.3d 598 (Tex. App. – Fort Worth 2014) (issued December 31, 2014) found that a general law municipality did not have the authority to extend its building code to its ETJ under subchapter A of chapter 212. The Court's ruling, although interpreting various grants of municipal authority under subchapters A and B of chapter 212, did not reach the issue insofar as home-rule municipalities.² Yet, the home-rule municipality also contends *Bizios*' discussion of section 214.904(a) of the Texas Local Government Code is applicable. Section 214.904 of the Texas Local Government Code addresses time for issuance of municipal building permits. There, the *Bizios* court stated the following;

[a]lthough section 214.904, 'Time for Issuance of Municipal Building Permit,' states that '[t]his section applies only to a permit required by a municipality to erect or improve a building or other structure in the municipality or its extraterritorial jurisdiction,' *id.* § 214.904, we read this section in conjunction with the rest of the subchapter to apply to the municipalities granted such capacity, i.e., home-rule municipalities, *see, e.g., id.* § 214.901 (stating that a home-rule municipality may require that the construction of buildings comply with the energy conservation standards in the municipal building code), and in the context of other specific local government code provisions that expressly grant authority to extend a regulation into an ETJ.

Bizios, 453 S.W.3d at 604.

Although, the bill analysis of House Bill 265 (2005) from the 79th Regular Session suggests the bill was drafted to address all municipalities and its review of building permit applications, the *Bizios* court concluded section 214.904 applies only to home-rule municipalities. Given the *Bizios* court's rationale, and section 214.901 of the Texas Local Government Code which provides that a home-rule municipality may require the construction of buildings comply with the energy conservation standards within its municipal building code, and the *Lucas* decision, the home-rule municipality contends its building code must apply within the ETJ.

In conclusion, prior to considering the proposed amendment to the county-city subdivision approval agreement, the County seeks your opinion on whether a home-rule municipality may extend and enforce its building, fire and other construction-related ordinances into its ETJ. If the answer to that question is "yes" then may a home-rule

² The *Bizios* Court discussed in dicta the legislative grant of authority found in subchapter F of chapter 233 for municipalities (subject to that subchapter) to apply their building codes in the ETJ - essentially finding those provisions were limited to home-rule municipalities. From a review of the legislative history of subchapter F, it appears those provisions were intended to provide additional regulatory tools for municipalities in border counties in their efforts fight the proliferation of substandard housing in colonias. So it is questionable whether such discussion is pertinent to this inquiry.

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municipality and a county include in their subdivision plat approval agreement, new provisions which authorize the home rule municipality to enforce its building and construction-related codes in the ETJ in lieu of any conflicting, less-stringent County regulations, such as the County's fire code.

I appreciate your responses to these questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff May", written in a cursive style.

Jeff May
Collin County Auditor