

CHAPTER 1102

S.B. No. 408

AN ACT

relating to plat requirements, regulations, and utility services applicable to certain subdivisions of land.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Chapter 231, Acts of the 40th Legislature, Regular Session, 1927, as amended (Article 974a, Vernon's Texas Civil Statutes), is amended by amending Sections 1, 3A, and 8 and by adding Sections 1B, 4A, 9A, and 10 to read as follows:

Sec. 1. *Except as otherwise provided by Section 1A or under Section 1B of this Act, [Hereafter] every owner of any tract of land situated within the corporate limits, or within five miles of the corporate limits of any city in the State of Texas, who may hereafter divide the same in two or more parts by using a metes and bounds description in a deed conveyance, by using a metes and bounds description in a contract for a deed, or by another manner, for the purpose of laying out any subdivision of any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, and streets, alleys or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto, shall cause a plat to be made thereof which shall accurately describe all of said subdivision or addition by metes and bounds and locate the same with respect to a corner of the survey or tract or an original corner of the original survey of which it is a part, giving the dimensions thereof of said subdivision or addition, and dimensions of all streets, alleys, squares, parks or other portions of same intended to be dedicated to public use, or for the use of purchasers or owners of lots fronting thereon or adjacent thereto; provided, however, that no plat of any subdivision of any tract of land or any addition to any town or city shall be recorded unless the same shall accurately describe all of said subdivision or addition by metes and bounds and locate the same with respect to a corner of the survey or tract or an original corner of the original survey of which it is a part giving the dimensions thereof of said subdivision or addition, and dimensions of all streets, alleys, squares, parks or other portions of same intended to be dedicated to public use, or for the use of purchasers or owners of lots fronting thereon or adjacent thereto.*

*Sec. 1B. (a) To determine whether specific divisions of land are required to be planned, platted, or replatted, a city may define and classify the divisions. A city need not require planning, platting, or replatting for every division of land otherwise within the scope of this Act. Any ordinances, rules, and regulations that define or classify the divisions of land within the scope of this Act and that were adopted before September 1, 1987, are validated as of the dates they took effect.*

*(b) In lieu of a plan, plat, or replat contemplated by this Act, a city may require the filing of a development plat pursuant to Article 974a-3, Revised Statutes, if that article applies to the city.*

Sec. 3A. In a city that has a population of more than 1,500,000, according to the most recent federal census, and that has a city planning commission, *no less than two persons nor more than 25 percent of the members of the commission must [may] be persons who reside within the area outside the city boundaries in which the city exercises authority to approve subdivision plats.*

Sec. 4A. *(a) For the purposes of this section, land is considered to be within the jurisdiction of a city if the land is located in the area to which Section 1 of this Act applies.*

*(b) On the approval of a plan, plat, or replat by the city planning commission or the governing body of the city, as the case may be, the commission or governing body shall issue to the person applying for the approval a certificate stating that the plan, plat, or replat has been reviewed and approved by the commission or governing body.*

*(c) On the written request of an owner of land, a public utility, or the governing body of the city, the city planning commission or the governing body of the city, whichever has authority to approve plans, plats, or replats, shall make the following determinations regarding the owner's land or the land in which the utility or governing body is interested that is located within the jurisdiction of the city:*

*(1) whether a plan, plat, or replat is required under Section 1 of this Act for the land; and*

*(2) if a plan, plat, or replat is required, whether it has been prepared and whether it has been reviewed, and approved by the commission or governing body, as the case may be.*

*(d) The request made under Subsection (c) of this section must identify the land that is the subject of the request.*

*(e) If the commission or governing body determines that a plan, plat, or replat is not required, the commission or governing body shall issue to the requesting party a written certification of that determination. If the commission or governing body determines that a plan, plat, or replat is required and that such a document has been prepared and has been reviewed and approved by the commission or governing body, the commission or governing body shall issue to the requesting party a written certification of that determination.*

*(f) The commission or governing body shall make its determination within 20 days after the date it receives the request under Subsection (c) of this section and shall issue the certificate, if appropriate, within 10 days after the date the determination is made.*

*(g) If both the city planning commission and the governing body have authority to approve plans, plats, or replats, only one of those entities need make the determinations and issue the certificates required by this section.*

*(h) The commission or governing body may adopt rules it considers necessary to administer its functions under this section.*

Sec. 8. *(a) An entity described by Subsection (b) of this section may not [Unless and until any such plan, plat or replat shall have been first approved in the manner and by the authorities provided for in this Act, it shall be unlawful within the area covered by said plan, plat or replat for any city affected by this Act, or any officials of such city, to] serve or connect any [said] land[, or any part thereof, or for the use of the owners or purchasers of said land, or any part thereof,] with water, sewer, electricity, gas, or other utility service unless the entity has been presented with or otherwise holds a certificate applicable to the land and issued under Section 4A of this Act [any public utilities such as water, sewers, light, gas, etc., which may be owned, controlled or distributed by such city].*

*(b) The prohibition established by Subsection (a) of this section applies only to:*

(1) a city and officials of a city that provides water, sewer, electricity, gas, or other utility service;

(2) a city-owned or city-operated utility that provides any of those services; and

(3) a public utility that provides any of those services.

(c) This section does not apply to any area covered by a development plat duly approved pursuant to Article 974a-3, Revised Statutes, or pursuant to an ordinance, rule, or regulation relating to such a development plat.

(d) The prohibition established by Subsection (a) of this section applies only to land that an entity described by Subsection (b) of this section first serves or first connects with services on or after September 1, 1987. This section, as it existed before September 1, 1987, continues to apply to land that an entity first served or first connected with services before that date, and the former law is continued in effect for that purpose.

Sec. 9A. (a) At the request of the governing body of the city, the city attorney or any other attorney representing the city may file an action in a court of competent jurisdiction to:

(1) enjoin the violation or threatened violation by the owner of a tract of land of a requirement regarding the tract and established by, or adopted by the governing body under, this Act; or

(2) recover damages from the owner of a tract of land in an amount adequate for the city to undertake any construction or other activity necessary to bring about compliance with a requirement regarding the tract and established by, or adopted by the governing body under, this Act.

(b) A reference in this section to an "owner of a tract of land" does not include the owner of an individual lot in a subdivided tract of land.

Sec. 10. The governing body of any city may, pursuant to the provisions of this section and Section 4, Municipal Annexation Act (Article 970a, Vernon's Texas Civil Statutes), extend by ordinance to all of the area under its extraterritorial jurisdiction the application of such city's ordinance establishing rules and regulations governing plats and the subdivision of land. Provided, however, a city may not impose zoning requirements, including those which regulate the use of any building or property, in any area outside of its corporate limits.

SECTION 2. Subsection (d), Section 5, Chapter 231, Acts of the 40th Legislature, Regular Session, 1927 (Article 974a, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) Notwithstanding any other provision of this section, the City Planning Commission or other appropriate governing body of a city is authorized to approve and issue an amending plat which is signed by the applicants only, and which is for one or more of the purposes set forth in *this subsection* [~~the following Subdivisions (1) through (9), both inclusive~~], and such approval and issuance shall not require notice, hearing, or approval of other lot owners. This subsection shall apply only if the sole purpose of the amending plat is:

(1) to correct an error in any course or distance shown on the prior plat;

(2) to add any course or distance that was omitted on the prior plat;

(3) to correct an error in the description of the real property shown on the prior plat;

(4) to indicate monuments set after death, disability, or retirement from practice of the engineer or surveyor charged with responsibilities for setting monuments;

(5) to show the proper location or character of any monument which has been changed in location or character or which originally was shown at the wrong location or incorrectly as to its character on the prior plat;

(6) to correct any other type of scrivener or clerical error or omission as previously approved by the City Planning Commission or governing body of such city; such errors and omissions may include, but are not limited to, lot numbers, acreage, street names, and identification of adjacent recorded plats;

(7) to correct an error in courses and distances of lot lines between two adjacent lots where both lot owners join in the application for plat amendment and neither lot is abolished, provided that such amendment does not attempt to remove recorded covenants or restrictions and does not have a material adverse effect on the property rights of the other owners in the plat;

(8) to relocate a lot line in order to cure an inadvertent encroachment of a building or improvement on a lot line or on an easement; ~~or~~

(9) to relocate one or more lot lines between one or more adjacent lots where the owner or owners of all such lots join in the application for the plat amendment, provided that such amendment does not:

(A) attempt to remove recorded covenants or restrictions; or

(B) increase the number of lots; or

(10) to make necessary changes to the prior plat to create six or fewer lots in the subdivision or a part of the subdivision covered by the prior plat if:

(A) the changes do not affect applicable zoning and other regulations of the city;

(B) the changes do not attempt to amend or remove any covenants or restrictions; and

(C) the area covered by the changes is located in an area that the City Planning Commission or other appropriate governing body of the city has approved, after a public hearing, as a residential improvement area.

SECTION 3. Subsection (a), Section 58, Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) *Except as provided by this section or Section 58A of this Act, the [The] holder of any certificate of public convenience and necessity shall serve every consumer within its certified area and shall render continuous and adequate service within the area or areas.*

SECTION 4. The Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes) is amended by adding Section 58A to read as follows:

*Sec. 58A. CONDITIONS REQUIRING REFUSAL OF SERVICE. The holder of a certificate of public convenience and necessity shall refuse to serve a customer within its certified area if the holder of the certificate is prohibited from providing the service under Section 8, Chapter 231, Acts of the 40th Legislature, Regular Session, 1927 (Article 974a, Vernon's Texas Civil Statutes).*

SECTION 5. Subsection (a), Section 13.250, Water Code, is amended to read as follows:

(a) *Except as provided by this section or Section 13.2501 of this code, the [The] holder of any certificate of public convenience and necessity shall serve every consumer within its certified area and shall render continuous and adequate service within the area or areas.*

SECTION 6. Chapter 13, Water Code, is amended by adding Section 13.2501 to read as follows:

*Sec. 13.2501. CONDITIONS REQUIRING REFUSAL OF SERVICE. The holder of a certificate of public convenience and necessity shall refuse to serve a customer within its certified area if the holder of the certificate is prohibited from providing the service under Section 8, Chapter 231, Acts of the 40th Legislature, Regular Session, 1927 (Article 974a, Vernon's Texas Civil Statutes).*

SECTION 7. The amendment by this Act of Section 1 of and the addition by this Act of Section 1B to Chapter 231, Acts of the 40th Legislature, Regular Session, 1927 (Article 974a, Vernon's Texas Civil Statutes), apply only to a subdivision of land for which a plan, plat, or replat is first required to be filed on or after September 1, 1987, except for the validations made by Section 1B.

(b) The addition by this Act of Sections 9A and 10 to Chapter 231, Acts of the 40th Legislature, Regular Session, 1927 (Article 974a, Vernon's Texas Civil Statutes), applies to a subdivision of land regardless of whether it was made before, on, or after September 1, 1987.

SECTION 8. In a city having a city planning commission and covered by Section 3A, Chapter 231, Acts of the 40th Legislature, Regular Session, 1927 (Article 974a, Vernon's Texas Civil Statutes), the authority that appoints members to the commission shall make appointments, as commission members' terms expire or as membership positions are vacated, to achieve as soon as possible the membership scheme established by Section 3A, as amended by this Act.

SECTION 9. Title 28, Revised Statutes, is amended by adding Article 974a.4 to read as follows:

*Art. 974a.4. SUBDIVISION REGULATION IN COUNTIES THAT BORDER THE RIO GRANDE RIVER.*

*Sec. 1. For a city that has a population of 5,000 or more, according to the most recent federal census, and that lies within a county that borders on the Rio Grande River, the provisions of Chapter 231, Acts of the 40th Legislature, Regular Session, 1927 (Article 974a, Vernon's Texas Civil Statutes), that relate to the area within five miles of the city do actually apply to that area within five miles of the city. This is the case regardless of the fact that those provisions, as they apply to other cities, are superseded by other law and are construed as applying to the extraterritorial jurisdiction of the city, as determined under the Municipal Annexation Act (Article 970a, Vernon's Texas Civil Statutes), rather than to the area within five miles of the city.*

SECTION 10. This Act takes effect September 1, 1987.

SECTION 11. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on March 26, 1987, by the following vote: Yeas 30, Nays 0; May 31, 1987, Senate refused to concur in House amendments and requested appointment of Conference Committee; June 1, 1987, Senate adopted Conference Committee Report by a viva-voce vote. Passed the House, with amendments, on May 29, 1987, by a non-record vote; June 1, 1987, House adopted Conference Committee Report by a non-record vote.

Approved June 19, 1987.

Effective Sept. 1, 1987.