

**COUNTY OF HIDALGO
SUBDIVISION STATUTES,
REGULATIONS AND RULES
ENFORCEMENT PROTOCOL
AND
POLICY**



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HIDALGO COUNTY SUBDIVISION STATUTES, REGULATIONS AND RULES ENFORCEMENT PROTOCOL

Mission Statement

The enforcement of the statutes, regulations and rules governing county subdivisions, including the Model Subdivision Rules, in addition to achieving the legislative purposes associated with the adoption of the statutes and regulations, preserve and improve the safety, health and general welfare of all Hidalgo County (the "County") residents and visitors, and the livability of the community as a whole. Accordingly, within parameters of existing law, the County through the Planning Department will proactively require enforcement of the subdivision statutes, regulations and rules, including the Model Subdivision Rules, and plat note compliance, from all County residents in unincorporated areas of the County and will promptly respond to citizen complaints. The County will assure compliance both by encouraging voluntary compliance and by seeking punishment for those who fail to comply.

Purpose

The purpose of this Protocol is to provide written guidelines for:

- A. The initiation and investigation of alleged violations of subdivision statutes, rules, and regulations, including the Model Subdivision Rules and plat note violations (collectively, the "Subdivision Requirements");
- B. The enforcement of Subdivision Requirements through voluntary compliance; and
- C. The prosecution and punishment of Subdivision Requirements violators who do not comply.

Background

In Subchapter J of Chapter 16 and the Texas Water Code, the Texas Legislature outlined the framework for the "Model Subdivision Rules," which the County has adopted. One of the purposes of Subchapter J and the Model Rules is to assure that safe and sanitary water and sewer services are available in residential areas. The Model Rules prohibit, among other things, the establishment of residential developments with lots of five acres or less without adequate water supply and sewer services, prohibit more than one single family detached dwelling to be located on each subdivision lot, and establish minimum setbacks to ensure proper operation of water supply and sewer services and reduce the risk of fire hazards. Subchapter J also includes several enforcement provisions, which may be utilized by political subdivisions that have adopted the Model Rules. For example, Section 16.352 provides:

A person who violates a rule adopted by a municipality or county under this subchapter or under Subchapter B or C, Chapter 232, Local Government Code, is liable to the municipality or county for a civil penalty of not less than \$500 and not more than \$1,000 for each violation and for each day of a violation. The maximum civil penalty that may accrue each day is \$5,000. The appropriate attorney representing the municipality or county may sue to collect the penalty. The recovered penalty shall be deposited in the general fund of the municipality or county.

Moreover, Section 16.353 states

- (a) In addition to any other remedy, the attorney general, the municipal attorney of the municipality in which a violation under Section 16.352 occurs, or the county or district attorney of the county in which a violation under Section 16.352 occurs may apply to a district court for, and the district court may grant, the state or the political subdivision an appropriate prohibitory or mandatory order, including a temporary restraining order or a temporary or permanent injunction, enjoining a violation of this subchapter, the rules described by Section 16.352, or Subchapter B or C, Chapter 232, Local Government Code.
- (b) An injunction issued under this section may be issued without the requirement of a bond or other undertaking.

It is the County's position that Subchapter J not only expressly provides the County the authority to enforce the Model Rules, it also provides the County the implied authority to enforce plat note requirements that are consistent with and further the Model Rules. Accordingly, the County, through the Planning Department, will take all steps available under Subchapter J to enforce the Model Rules, including plat notes that are consistent with and further the Model Rules.

Similarly, it is the County's position that Subchapter I of Chapter 16 of the Texas Water Code allows the County to enforce the Model Rules, including plat notes, that relate to flood management and are necessary for planning and appropriate to protect public health and safety. Under Subchapter I, political subdivision may take "all necessary and reasonable actions to comply with the requirements and criteria of the National Flood Insurance Program ("NFIP")...." This includes, but is not limited to:

- Making appropriate land use adjustments to constrict the development of land which is exposed to flood damage and minimize damages caused by flood loss;
- Assisting in minimizing damage caused by floods;
- Engaging in flood plain management and adopting and enforcing permanent land use and control measures consistent with the criteria established under the NFIP;
- Declaring property, when such is the case, to be in violation of local laws, regulations, or ordinances which are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas and notify the director... of such property;
- Adopting permanent land use and control measures with enforcement provisions which are consistent with the criteria for land management and use; and
- Adopting more comprehensive flood plain management rules that the political subdivision determines are necessary for planning and appropriate to protect public health and safety.

Subchapter I also allow political subdivisions that have qualified for the NFIP (such as the County) to "adopt and promulgate reasonable rules which are necessary for the orderly effectuation of the respective authorizations" Tex. Water. Code § 16.318. To enforce these rules, political subdivisions are authorized to "institute a civil suit in the appropriate court for:

1. injunctive relief to restrain the person from continuing the violation or threatened violation, including an order directing the person to remove illegal improvements and restore preexisting conditions;
2. the assessment and recovery of a civil penalty provided by Section 16.322; or
3. both injunctive relief and the civil penalty.”

Tex. Water. Code §16.323

Accordingly, the County, through the Planning Department, will take all available steps under Subchapter I to enforce the Model Rules, including plat notes, that relate to flood management and that are necessary for planning and appropriate to protect public health and safety in areas that are within designated flood hazard areas, and all other Subdivision Requirements.

The County believes that Subchapter B of Chapter 232 of the Local Government Code provides the County the necessary authority to enforce the Subdivision Requirements in residential subdivisions that relate to statutory subdivision requirements, such as road construction and drainage. Under Subchapter B, subdividers of land in affected counties must have a plat prepared. Tex. Loc. Gov't. Code §232.023 (a). The plat “must (among other things)... provide for drainage in the subdivision to:

1. avoid concentration of storm drainage water from each lot to adjacent lots;
2. provide positive drainage away from all buildings; and
3. coordinate individual lots drainage with the general storm drainage pattern for the area.”

Tex. Loc. Gov't Code §232.023 (b)(8). The plat must also include “a description of the drainage requirements as provided” above. Tex. Loc. Gov't Code §232.023 (b)(9). If the plat fails to do so, the County is obligated to “refuse to approve” the plat. Tex. Loc. Gov't Code §232.024 (a).

The County, pursuant to its Subchapter B obligations, requires that all residential subdivision plats have on their face certain plat note requirements, including notes related to drainage issues such as minimum floor elevations. Under the County's view, the plat note requirements are necessary to ensure that Section 232.023 (8) is satisfied. That is, without the plat note requirements, Section 232.023 (8) would not remedy the drainage issues that the Legislature targeted because property owners might disregard the drainage requirements and build homes in violation of the plat notes. Accordingly, under the County's view, Subchapter B of Chapter 232 of the Local Government Code provides the County the necessary authority to enforce the Subdivision Requirements in residential subdivision that relate to the statutory subdivision requirements.

The County, pursuant to the Texas Health & Safety Code, including Chapters 341 and 343 of such Code, acting through its County Health Department Enforcement officers, also has the authority to enforce minimum standards of sanitation and health protection measures, and to abate public nuisances. Enforcement of the Subdivision Requirements, and the applicable provisions of the Texas Health & Safety Code, compliment each other, and remedies under both statutory and regulatory schemes are available to the County to preserve and improve the safety, health and general welfare of all County residents and visitors, and the livability of the community as a whole.

In sum, the County, through the Planning Department and the County Health Department will seek to:

1. Enforce the Subdivision Requirements through the enforcement provisions of Subchapter J of Chapter 16 of the Texas Water Code;
2. Enforce the Subdivision Requirements through the enforcement provisions of Subchapter I of Chapter 16 of the Texas Water Code;
3. Enforce the Subdivision Requirements through the enforcement provisions of Subchapter B of Chapter 232 of the Texas Local Government Code and
4. Enforce the Subdivision Requirements, when appropriate, through the use of applicable provisions of the Texas Health & Safety Code, including applicable provisions of Chapters 341 and 343.

Enforcement

It is the County's intent to enforce compliance with the Subdivision Requirements, in all cases of reported and discovered violations. However, the County has limited enforcement resources. Consequently, the County has established, through this Protocol, procedures designed to maximize available enforcement resources. It is the County's intention that enforcement should follow the enforcement levels set forth below. The ranking below, however, is flexible enough to allow the level of enforcement that best fits the type and circumstances of the violation(s).

A. Enforcement Levels. The levels of enforcement of the County are:

1. Notice of Violation (hereafter "NOV");
2. Obtaining voluntary compliance; and
3. Forwarding files to the Hidalgo County District Attorney or the Office of the Attorney General, State of Texas, for prosecution.

B. Sequence of Enforcement. The levels of enforcement are not mutually exclusive, and may be used alone or in sequence or combination with other levels. However, in most enforcement cases, the County will use the enforcement levels in the sequence they appear in Paragraph A above.

C. Criteria for Choosing Level of Enforcement. Some violation cases may have aggravating circumstances requiring a different sequence for enforcement activity than that set forth in Paragraph A. The Planning Department, in consultation with the County Health Department, may choose a different sequence if one or more of the following circumstances is present:

1. The violation is severe;
2. The actions leading to the violation(s) were deliberate;
3. The violation poses a significant threat to the public health and safety, or to the environment;

4. The violation may cause economic harm to individuals or to the County as a whole;
5. The alleged violator is receiving significant economic benefit from continuing the violation;
6. The physical size or extent of the violation is significant;
7. The violation has existed uncorrected for a significant period;
8. There is a previous history of complaints and enforcement on the subject property and/or with the alleged violator; or
9. There is little likelihood of obtaining voluntary compliance.

Compliance Procedure

Preliminary Matters.

Investigations must be initiated by the Planning Department and/or the County Health Department if potential violations are found during routine observation by County personnel or if they are reported by citizens. At the beginning of each investigation, a file on the violation shall be opened and, to the extent possible, the following information must be determined and included in the file:

- A. **Jurisdiction.** The property upon which the alleged violation has occurred must be land over which the County has jurisdiction.
- B. **Permit Status.** The status of any land use, environmental health and construction permits on the subject property shall be determined.
- C. **Property Ownership.** All persons with a recorded legal interest in the subject property should be identified. These persons should include the owners, and if reasonably discoverable, contract purchasers, lessees and lien holders or other security interest holders.
- D. **Other Potentially Responsible Persons.** In addition to the persons listed in subparagraph C above, any other persons potentially responsible for the alleged violation(s) should be identified. These persons could include tenants, construction and landscape contractors and excavators.
- E. **Identification of Applicable Plat Notes and Water Code, Local Government Code and/or Texas Health & Safety Code Provisions.** The Planning Department, with the assistance of the County's Health Department, and the County's legal counsel whenever necessary, shall identify the pertinent statute(s), regulation(s) and/or plat note(s) alleged to have been violated and the applicable enforcement provisions of the Texas Water Code, Texas Health and Safety Code and/or Texas Local Government Code.
- F. **Prior Complaint History.** The Planning Department and County Health Department shall examine its records to determine the existence and status of any prior or existing violation complaints on the subject property or concerning the alleged violator.

Assignment of Investigation and Enforcement Responsibility.

- A. Assignment. After the file on a violation has been opened, the Planning Department Director will, on a case-by-case basis, assign the matter to a Planning Department officer, and/or refer the matter to the County's Health Department Enforcement Officer(s) for co-ordination of the investigation with the County's Health Department. The following criteria shall be used for assignment of responsibility:
1. the nature of the alleged violation(s);
 2. the knowledge and expertise needed to investigate the alleged violation;
 3. the history of prior enforcement on the subject property or with the alleged violator;
 4. the status of permits and approvals on the subject property; and
 5. the projected timeline for investigation and resolution of the complaint.
- B. Field Investigation. After the Planning Department Director assigns an alleged violation case to a Planning Department officer, and/or refers an alleged violation case to the County's Health Department Enforcement Officer(s), the applicable officer(s) shall promptly conduct a field investigation. The purposes of field investigations are:
1. to verify the existence and severity of the violations;
 2. to document violations by means of written notes, photographs, witness interviews, etc.;
 3. to obtain supporting evidence, such as the names and statements of potential witnesses; and
 4. if possible, to discuss with the property owner, occupant or other responsible person:
 - A. The nature of the violation(s)
 - B. Methods for complying with the statutes, regulations and plat note(s);
 - C. Timelines for compliance;
 - D. Enforcement procedures; and
 - E. Potential consequences for failure to comply.
- C. Preparations and Precautions. It is the County's intention that Planning Department officers, the County Health Department Enforcement officers, and other assigned County staff, as well as members of the public, not be exposed to unreasonable risks of violent confrontation or injury during the course of field investigations. Accordingly, County staff shall take whatever actions are reasonable and necessary to minimize the known risk of violent confrontation or injury to themselves or others in conducting field investigations.
1. Law Enforcement Assistance. When appropriate, the Planning Department officer, the County Health Department Enforcement officers, or other assigned County staff should contact the sheriff's office to determine if there have been previous criminal complaints or investigations concerning the subject property or alleged violator, and whether, in the opinion of the sheriff's office, a field investigation would be present any threat to the

safety of the Planning Department officer, the County Health Department Enforcement officer, or other staff, by a contact with the alleged violator or other persons present during a field investigation. The Planning Department officer, County Health Department Enforcement officer, or other assigned County staff person may request law enforcement assistance in conducting the field investigation, and may postpone such investigation until law enforcement assistance is available.

2. Announced/Unannounced Field Visits. At the discretion of the Planning Department officer, the County Health Department Enforcement officer, or other assigned County staff, a field visit to the vicinity of the subject property may be conducted with or without prior notice to the property owner, occupant or alleged violator. The determination of whether or not to give prior notice shall be made on the basis of the following criteria
 - A. the nature of the alleged violation;
 - B. whether or not prior notice will make detection and documentation of the alleged violation more difficult; and
 - C. whether or not prior notice will unnecessarily increase the known risk of violent confrontation or injury to the Planning Department officer, the County Health Department Enforcement officer, or other assigned County staff.
3. Entering Upon Property or Premises. It is the County's intent that the Planning Department officers, the County Health Department Enforcement officers, and other assigned County staff shall not enter upon private property or premises to conduct a field investigation without authority to enter. Planning Department officers, County Health Department Enforcement officers and other assigned staff may enter unposted property to seek permission to investigate on the premises. Unless permission is granted, the investigation shall be conducted from public roads or property where permission to enter has been granted. If the Planning Department officer, County Health Department Enforcement officer or other assigned County staff does not have permission or other authority to enter upon the property or premises, and entry upon the property or premises is necessary to conduct the investigation, the Planning Department officer, the County Health Department Enforcement officer or other assigned County staff shall consult with County legal counsel about obtaining a search warrant.
4. Report of Field Investigation. Upon completion of the field investigation, the Planning Department officer, County Health Department Enforcement officer or other assigned County staff shall prepare an investigation report to be placed in the file. The report shall include the following information:
 - A. Name of investigator;
 - B. Date, time and place of field visit;
 - C. Violation(s) observed;
 - D. If no violation(s) observed, an explanation;
 - E. Witnesses, if any interviewed;
 - F. Evidence, if any, obtained (e.g., photographs);
 - G. Discussion, if any, of violation with owner, occupant or other responsible person;
 - H. Action necessary to correct violation; and
 - I. Recommended enforcement action.

Establishing the Elements of a Violation.

Before a NOV is sent, the Planning Department officer, or the County Health Department Enforcement officer, with the assistance of County legal counsel as necessary, and after any necessary field investigation, shall determine if the following elements have been established:

1. **Responsible Person.** The person or persons who are reasonably believed to have committed the violation, or who are or may be legally responsible for the alleged violation, have been identified; and
2. **Alleged Violation Occurred or is Occurring.** The Planning Department officer, or the County Health Department Enforcement officer, shall determine whether there are reasonable grounds to believe that a violation does or does not exist. Such grounds may be established either by personal observation by a Planning Department officer, County Health Department Enforcement officer, or by other reliable evidence.

If the Planning Department officer, or the County Health Department Enforcement officer determines that reasonable grounds do not exist, no enforcement action should be taken until the Planning Department officer or the County Health Department Enforcement officer has had a reasonable opportunity to develop such grounds. If no reasonable grounds are developed within a reasonable period, the case should be resolved by file closure. If reasonable grounds of a violation do exist, the Planning Department officer, or the County Health Department Enforcement officer shall prepare an NOV and follow the procedure below.

Notice of Violation.

1. **When Sent.** Promptly after a Planning Department officer, County Health Department Enforcement officer, or other assigned County staff determines there are reasonable grounds to believe a violation exists, an NOV shall be sent on a standard form developed by the Planning Department Director or the County Health Department Director depending on which department within the County is conducting the investigation. The NOV must, at a minimum provide:
 - A. the name of the investigator assigned to the matter and his or her contact information;
 - B. a description of the property;
 - C. the alleged violation;
 - D. the potential consequences for failing to remedy the violation in question;
 - E. the relevant Water Code, Local Government Code and/or Health and Safety Code provisions; and
 - F. the date for final compliance.
2. **To Whom Sent.** An NOV shall be sent to the subject property owner(s). A separate NOV shall be sent to each additional person who is or may be responsible for the alleged violation.
3. **How Sent.** NOV's shall be sent by first-class mail to the best available address for the property owner(s) and other responsible person(s). If necessary, NOV's may be hand delivered.

Voluntary Compliance

It is the County's intention to encourage voluntary compliance with the Subdivision Requirements by providing violators and other responsible persons with the opportunity during the enforcement procedure to comply with the Subdivision Requirements. The County believes that voluntary compliance generally is less expensive for all parties and of a more satisfactory and lasting nature than involuntary compliance. Nevertheless, the County believes that allowing violators the opportunity to voluntarily comply any time during the enforcement procedure, or outside reasonable time limits for such compliance, may actually result in abuse of this opportunity in order to delay compliance. Therefore, it is the County's intention to limit the time frame during which violators may come into voluntary compliance.

1. **Limited Time Frames.** Opportunities for voluntary compliance, where provided, shall be of limited duration. The time frame for voluntary compliance shall be established, on a case-by-case basis, by the Planning Department Director or the County Health Department Director depending on which County Department is investigating the violation.
2. **Time Extended by Agreement to Abate.** Following the issuance of an NOV, extensions of time may be granted only if the alleged violator signs an "Agreement to Abate" and admits to the violation(s). The agreement shall provide that, in exchange for the extended time for voluntary compliance, the alleged violator agrees to abate the violation(s) by a specified time.

Forwarding File to Hidalgo County District Attorney and/or Office of the Attorney General of Texas.

If a violator fails to remedy the violation by the date set out in the NOV (or where applicable, in an Agreement to Abate), the Planning Department officer or the County Health Department Enforcement officer shall forward a "Final Compliance" letter to the property owner (and others where applicable). The letter shall state that the officer will be forwarding the violator's name and file to the Hidalgo County District Attorney and/or the Office of the Attorney General of Texas for prosecution, unless the violation is corrected within three(3) business days of the date of the letter. If the violator fails to remedy the violation within the three (3) business days, the Planning Department officer or the County Health Department Enforcement officer, as the case may be, shall forward the file to the Hidalgo County District Attorney and/or the Office of the Attorney General of Texas for prosecution. A copy of the letter from the officer to the Hidalgo County District Attorney and/or the Office of the Attorney General of Texas shall be forwarded to the property owner. To the extent necessary, the Planning Department officer and/or the County Health Department Enforcement officer, shall cooperate with the Hidalgo County District Attorney and/or the Office of the Attorney General of Texas to ensure compliance.