

Zoning Code Administrative Interpretation Decision No. 2021-002

Date Issued: July 30, 2021

Question. Is the Burnet Independent School District required to comply with the zoning code height restrictions and landscaping requirements when renovating athletic facilities?

Answer. No, Texas courts have held the zoning authority of a municipality is subservient to the reasonable exercise of public-school district authority unless the municipality can show the public-school district is acting unreasonable or arbitrary.¹ However, as discussed infra, the city's building codes, and subdivision regulations do apply to public-school district projects.

Analysis. The Texas Supreme Court and the Dallas Court of Appeals have opined on the limits of a city's authority to classify property to prohibit use by a public-school district. The law developed from these decisions can best be summarized as follows:

The legislature has granted particular powers to each of these governmental bodies. In order to carry out the purposes for which they were created, the reasonable exercise of those powers must not conflict. The supreme court has determined that the school district's authority to locate school facilities overrides the police power of municipalities to zone them out in order that the legislative purpose in delegating this authority to the school district might not be frustrated. We cannot agree with Addison's interpretation of Sunset Valley. We read Sunset Valley to hold that a school district may place any school facility within an area zoned residential, unless the school district action is unreasonable or a nuisance, because the school district authority is paramount.²

The question in both cases was whether zoning regulations could be applied to prohibit the use of property for public-school purposes. The courts concluded a public-school district is immune from zoning regulations use restrictions; noting the immunity is absolute unless the city can show that its exercise by the public-school district is unreasonable or arbitrary.³ Although the zoning regulations at issue in this instance do not restrict use, if applied they would adversely affect the public-school district's development of their facilities. Consequently, the prudent interpretation of the cases is that the zoning regulations in question are not applicable in this instance unless the city can show the public-school district's plans are arbitrary or capricious endangering the health or safety of students, employees, or other members of the public. We cannot conclude that to be the case here.

However, it should be noted that the Texas Supreme Court has expressly ruled that a public-school district is subject to a municipality's building codes and health and safety

¹ *Austin Indep. Sch. Dist. v. City of Sunset Valley*, 502 S.W.2d 670, 674 (Tex. 1973);

² *City of Addison v. Dallas Indep. Sch. Dist.*, 632 S.W.2d 771, 772–73 (Tex. App. 1982), writ refused NRE (June 16, 1982)

³ *Austin Indep. Sch. Dist.* at 674

regulations.⁴ Moreover, the city's land development standards found in Chapter 98 are applicable to a public-school district.⁵

Application. This question was raised in conjunction with the Burnet Independent School District's application for building permit for a Student Activity Center project located at 1401 N Main Street. The project's plans include a structure with a total height of fifty feet, which is fifteen feet above what is allowed in the zoning code. The City Planner has confirmed with both the Fire Chief and the Police Chief that the proposed height does not pose a health or safety concern. As the zoning code's landscaping requirements are not directly related to public health or safety their applicability to the public-school district is questionable.

The city's building codes, and subdivision ordinance are applicable to this project in all respects.

Conclusion. The city's zoning code does not apply to a public-school district project unless the public school district is actions are found to be arbitrary or capricious. The city's building codes, and subdivision ordinance do apply to public-school district projects. Pursuant to section 118-73(d), this decision shall govern questions relating to enforcement of city codes to a public school district; and shall be retained in the official records of the Director of Development Services until rescinded by action of City Council, amendment to Chapter 118 or reversed by action of the Zoning Board of Adjustment.

Appeal. Pursuant to Texas Local Government Code Section 211.01 this decision is appealable to the City of Burnet, Board of Adjustment. Notice of appeal must be filed in the office of the City Secretary **not later than 20 days** from the date this decision was issued. The notice must include a written narrative specifying the grounds for the appeal. To be effective as of the date first stated above.

City of Burnet, Texas
Zoning Administrator



Habib H. Erkan Jr.
Assistant City Manager

⁴ *Port Arthur Indep. Sch. Dist. v. City of Groves*, 376 S.W.2d 330, 334 (Tex. 1964) (*The state has the responsibilities of educating the children of Texas and of protecting the health and safety of its citizens. The state chose to fulfill its duties of providing education through the local school districts and to discharge its duties of protecting the health, safety and property of the people by delegating such to the municipalities.*)

⁵ See Texas Local Government Code Section 212.902 authorizing land development agreements between a school district and a municipality that has exercised limited purpose annexation.