Kimberley Mickelson, AICP, JD
City of Houston, Office of the City Attorney

October 19, 2018

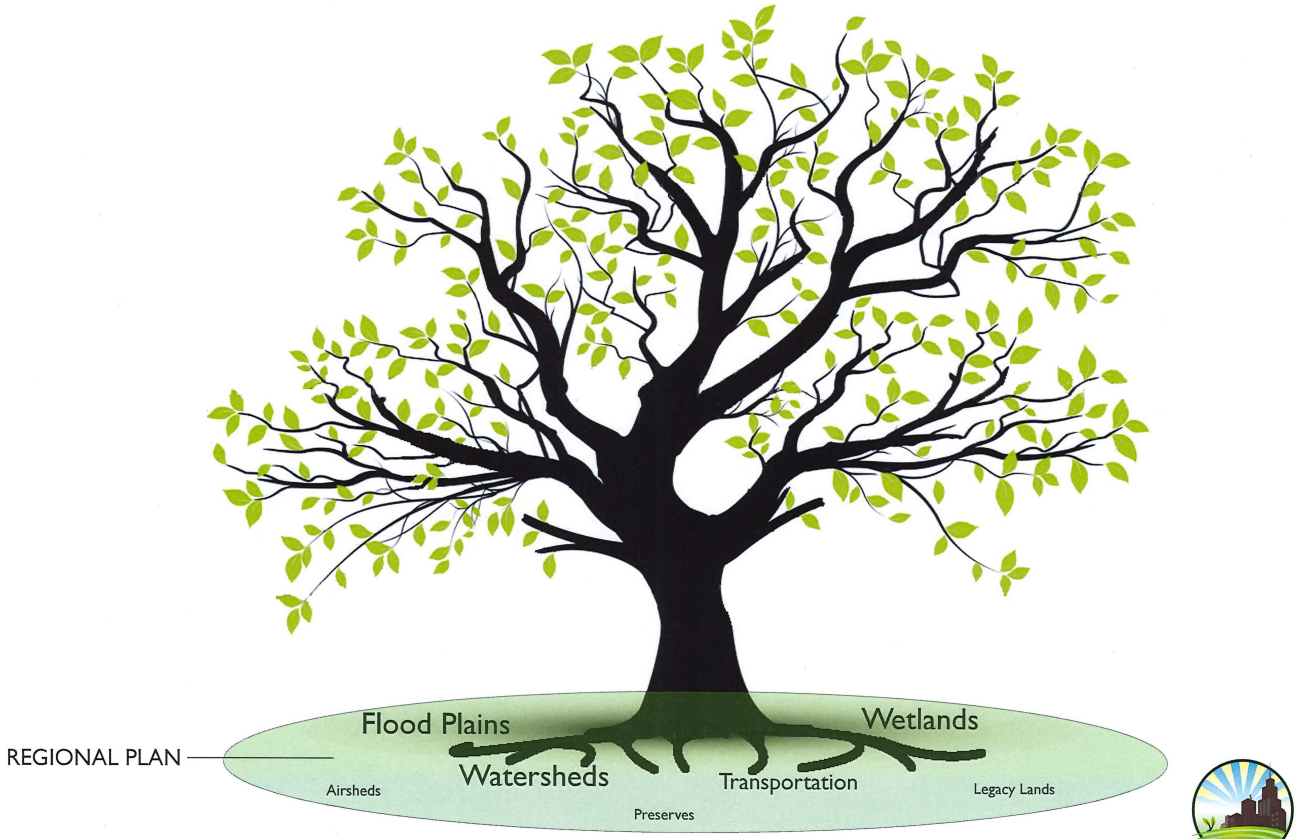
So have they broken the news to you that Houston doesn’t have zoning? ;>)

--Sept. 6, 2017, Don Knight, City of Dallas
Via IMLA ListServe

Congratulations…But you know, Houston doesn't have zoning…

--Sept. 7, 2017, John Hightower

Via IMLA ListServe



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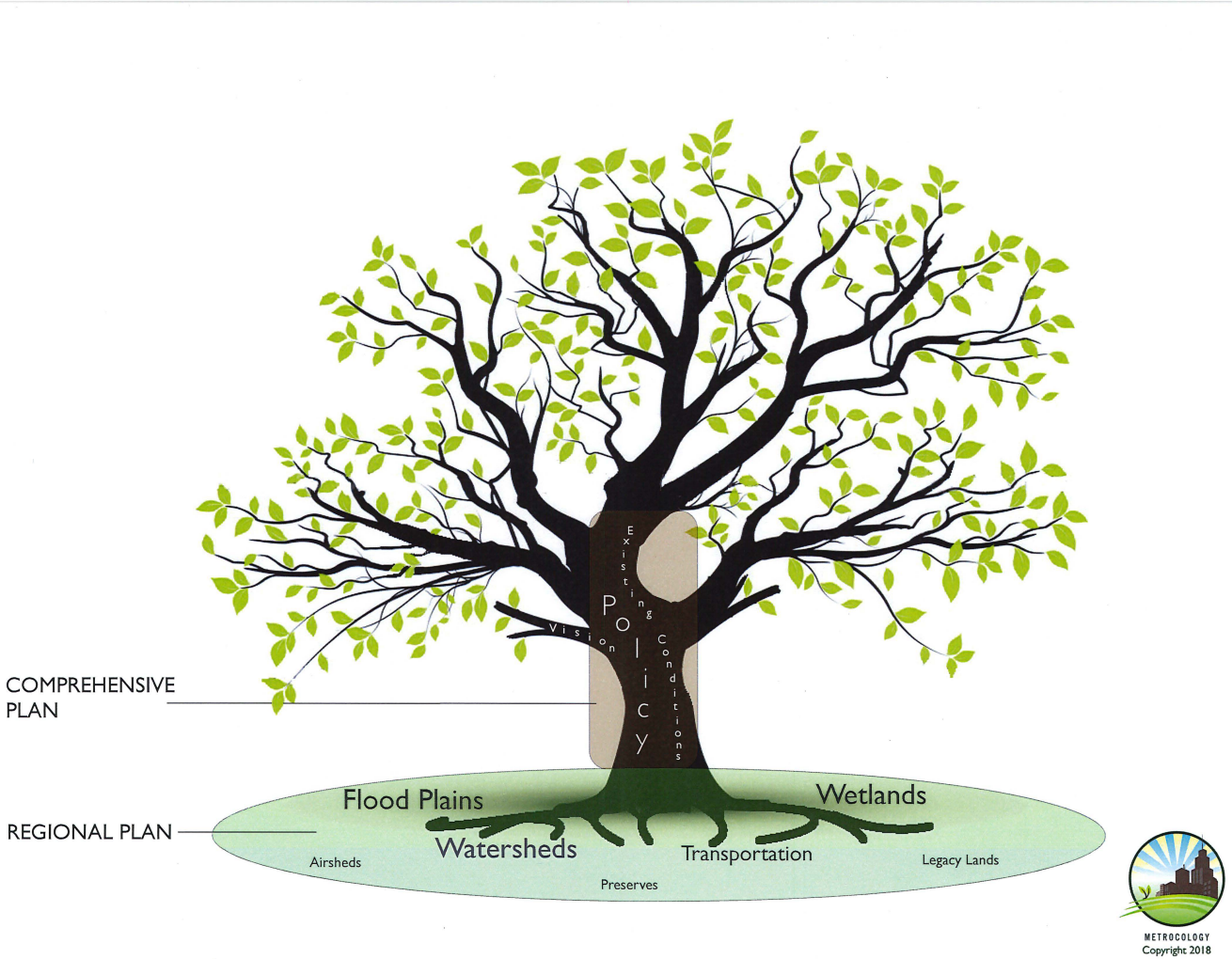

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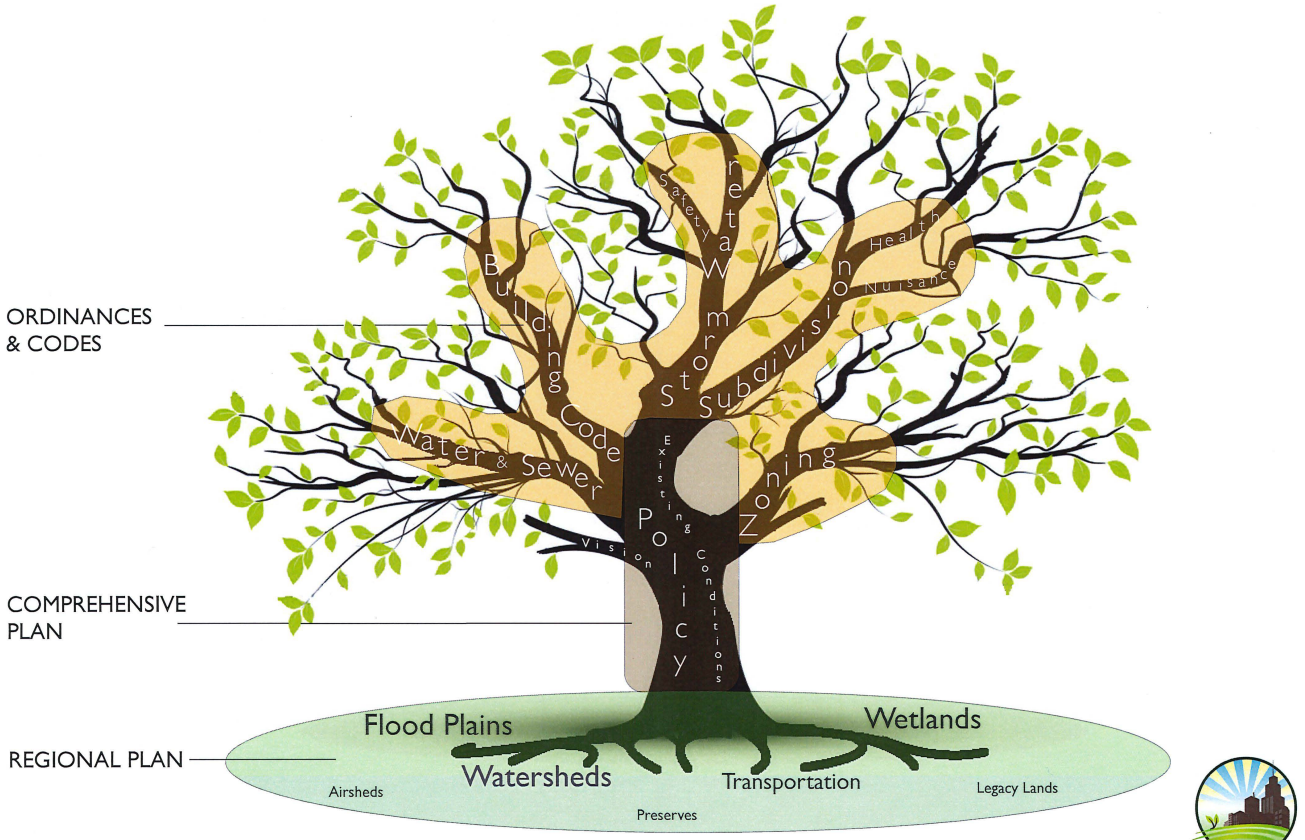

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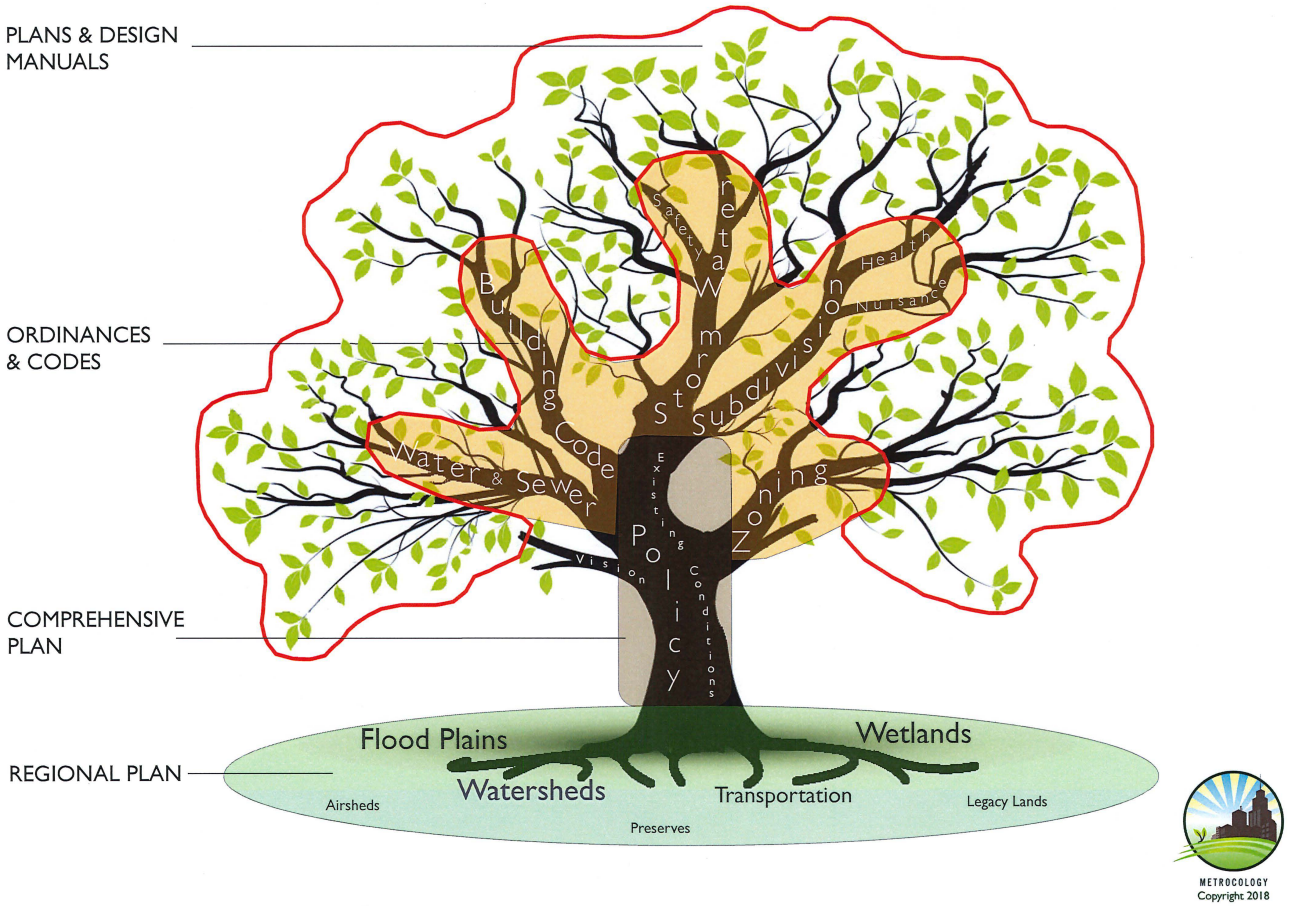

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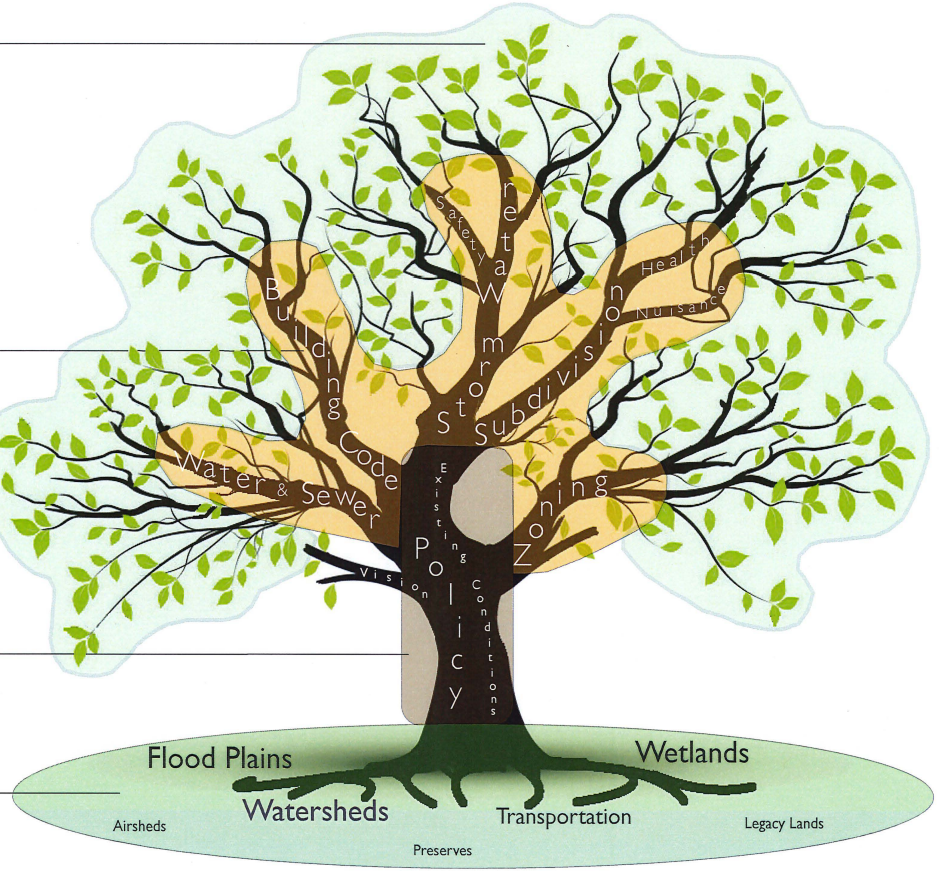
PLANS & DESIGN MANUALS

- Small Area / Specific Plans
  - Transportation / Transit
  - Neighborhood
  - Pedestrian
  - Cycle
  - Park / Recreation
  - Corridor
  - Streetscape
  - Strategic
  - Community Gardens
- Design Manuals
  - Planned Development
  - Overlay Zone
  - Historic District
  - Subdivision
  - Stormwater

ORDINANCES & CODES

COMPREHENSIVE PLAN

REGIONAL PLAN



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Early efforts to plan and zone in US

- 1916—New York adopted comprehensive zoning ordinance.
- 1922—Standard Zoning Enabling Act, Dept. of Commerce
- 1926—*City of Euclid Heights v. Ambler Realty Co.*, 227 US 365 (1926)
- 1927/28—Standard Planning Enabling Act, Dept. of Commerce

Early Houston Was Planned

- 1927—City Planning Department and City Planning Commission est.
- 1929—Zoning proposal and comp plan presented to council. REJECTED
- 1936—Hugh Potter sought to revive 1929 proposal.
- 1938—New ordinance and plan prepared. REJECTED. Planning Commission resigned en masse.

The “Z” word

Sec. 211.015. ZONING REFERENDUM IN HOME-RULE MUNICIPALITY. (a) Notwithstanding other requirements of this subchapter, the voters of a home-rule municipality may repeal the municipality's zoning regulations adopted under this subchapter by either:

(1) a charter election conducted under law; or

(2) on the initial adoption of zoning regulations by a municipality, the use of any referendum process that is authorized under the charter of the municipality for public protest of the adoption of an ordinance.

- Efforts to adopt zoning were rejected by voters three times.

Houston City Charter, Art. VII-b, Sec. 13

Section 13. - Referendum on Zoning.

The City of Houston shall have the power to adopt a zoning ordinance **only by:**

(a) allowing a six month waiting period after publication of any proposed ordinance for public hearings and debate **and**

(b) holding a binding referendum at a regularly scheduled election. Any existing zoning ordinance is hereby repealed.

(Added by amendment January 15, 1994; amended November 6, 2012)

Airport Compatible Land Use Ordinance



Airport Regulations

- Land Use—Article VI, Chapter 9, Code of Ordinances
- Hazard—Article VII, Chapter 9 Code of Ordinances
- Adopted pursuant to Chapter 245, Tex. Local Gov't Code
- CH. 245 amended to add provision finding that adoptions do not constitute "zoning" in the sense contemplated by Chapter 211, Tex. Local Gov't Code and do not trigger an election requirement.

Land Development Regulation in Houston

- Enforcement of private deed restrictions by CoH.
- City review of deed restrictions, covenants for replats.
- Chapter 42, Code of Ordinances—Platting and related matters
- Other Chapters of the City Code
  - Historic Preservation
  - Minimum Lot Size, Building Lines
  - Streets, sidewalks—Walkable Places
  - Tree and Landscaping requirements
  - Floodplain regulations

Sec. 212.0146. REPLATTING WITHOUT VACATING PRECEDING PLAT

(a) This section applies only to a replat of a subdivision or a part of a subdivision located in a municipality or the extraterritorial jurisdiction of a municipality with a population of 1.3 million or more.

(b) A replat of a subdivision or part of a subdivision may be recorded and is controlling over the preceding plat without vacation of that plat if:…

(3) the replat does not amend, remove, or violate, or have the effect of amending, removing, or violating, any covenants or restrictions that are contained or referenced in a dedicatory instrument recorded in the real property records separately from the preceding plat or replat; …

Deed restriction enforcement

SUBCHAPTER F. ENFORCEMENT OF LAND USE RESTRICTIONS CONTAINED IN PLATS AND OTHER INSTRUMENTS

Sec. 212.151. MUNICIPALITY COVERED BY SUBCHAPTER.

--applies only to a municipality with a population of 1.5 million or more that passes an ordinance requiring uniform application and enforcement of this subchapter with regard to all property and residents OR

--to a municipality that does not have zoning ordinances and passes an ordinance that requires uniform application and enforcement of this subchapter with regard to all property and residents.

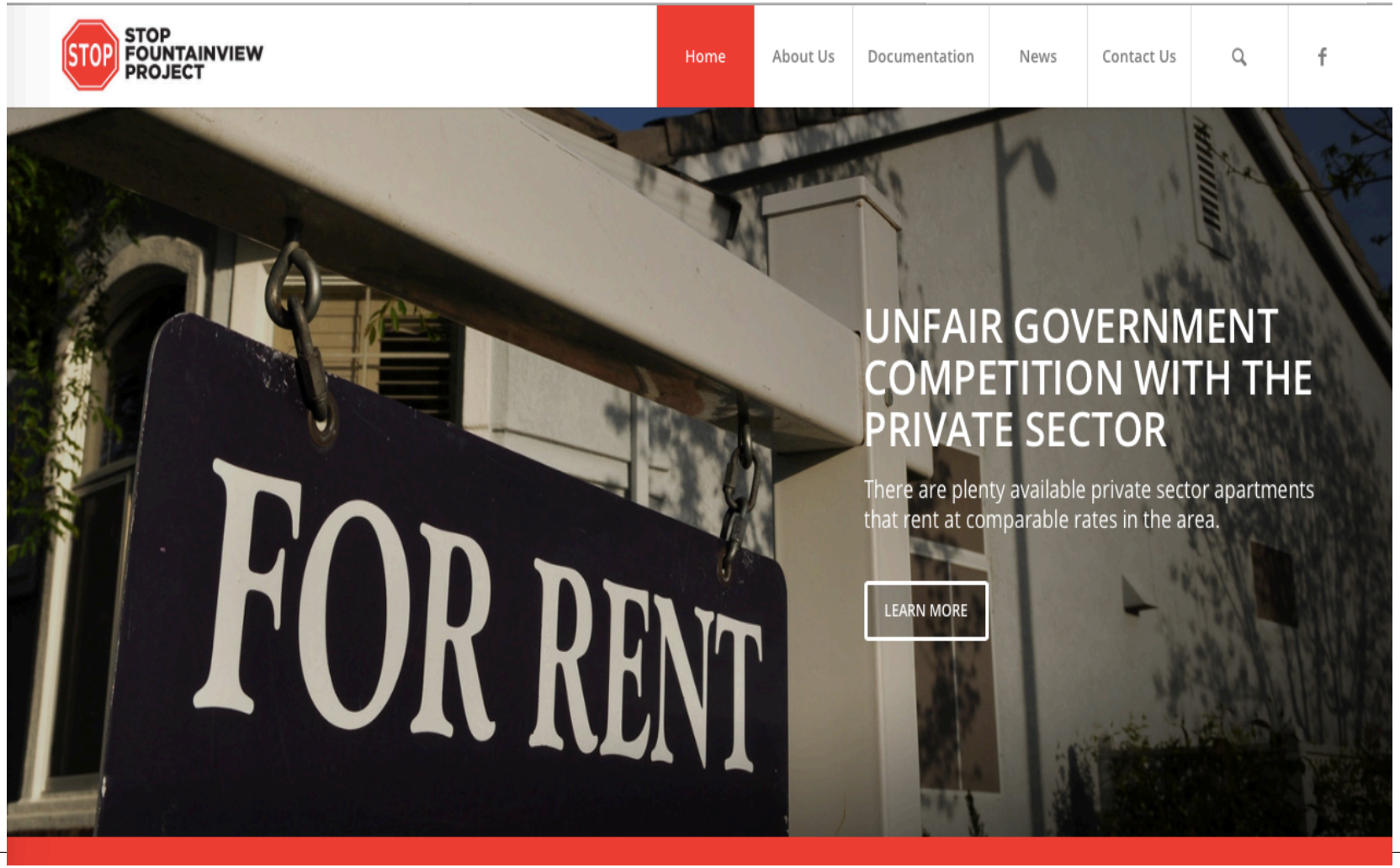
Sec. 212.153. SUIT TO ENFORCE RESTRICTIONS

(a) Except as provided by Subsection (b), the municipality may sue in any court of competent jurisdiction to enjoin or abate a violation of a restriction contained or incorporated by reference in a properly recorded plan, plat, or other instrument that affects a subdivision located inside the boundaries of the municipality.

(b) The municipality may not initiate or maintain a suit to enjoin or abate a violation of a restriction if a property owners' association with the authority to enforce the restriction files suit to enforce the restriction.

Land Use Controversies




STOP
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FOR RENT
UNFAIR GOVERNMENT COMPETITION WITH THE PRIVATE SECTOR
There are plenty available private sector apartments that rent at comparable rates in the area.
LEARN MORE


UR CONDO IS UGLY


STOP THE EVICTIONS



Takeaways

- Zoning is just one tool in the regulatory toolbox.
- Zoning is not without flaws and its own legal problems.
- A wide variety of regulations affect, if not limit, land use.
- Consider opt-in provisions; watch consistency issues if you have zoning.
- Think outside the box of regulatory options.
- Other approaches won't release you from legal challenges.

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