

391 Commissions

# FORMING A 391 COMMISSION

Defend the Border

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A GUIDE FOR  
LOCAL ELECTED  
OFFICIALS IN TEXAS

Counties, cities and special districts can band together to form 391 Commissions in Texas to compel State Agencies to “coordinate” actions to protect American citizens from the border invasion.

# SUMMARY

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## HOW TO FORM 391 COMMISSIONS

1. Identify two counties, a city and a county or two cities that are within the same COG region and are facing similar problems working with state agencies.
2. Each entity must pass a resolution authorizing the formation of the new sub-regional planning commission.
3. Hold first commission meeting where the new entity adopts by-laws, considers inviting additional members, and discusses the steps to initiate coordination with state agencies.
4. Adopt Commissions plans and policies.
5. Set first coordination meeting(s) and send request letters to the agencies.
6. Prepare issues to be discussed and publish meeting agenda.
7. Meet with agencies to coordinate and move forward with the actions necessary to protect the health, safety, and welfare of the people.

## WHAT IS “COORDINATION?”

The purpose of coordination is to achieve consistent policies and plans across all levels of government.

At the Federal level, Congress placed the burden of working to reach consistency on the Federal agencies. The Texas State code places the burden to harmonize policies on the State agencies. There are unique nuances as to what each agency is required to do based on the specific laws they implement. Nevertheless, the end goal remains the same: to harmonize the plans, objectives and policies across all levels of government.

“Coordinate” and “coordination” refer to government-to-government oral and written communications between the authorized representatives of an agency and the elected officials of a local government that are intended, in good faith, to identify, consider and resolve issues and concerns of a local government, including conflicts with plans, policies, and programs.

The Texas courts defined what “coordinate” means in *Empire Ins. Co. of Texas v. Cooper*, (138 S.W. 2<sup>nd</sup> 159 (TEX. CIV. APP. 1940)) stating “Co-ordinate’ means equal, of the same order, rank, degree or importance; not subordinate.”

# AUTHORITY —

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The Texas Local Government Code provides in section 391, the authorization for local governments within the same Council of Government (COGs) or regions to join together and form a sub-regional planning commission, for the purpose of protecting the health, safety and welfare of the people. This creates a formal process for the local governments to work together on issues that impact their region and develop plans and policies for how these can be jointly carried out. Importantly, one of the primary purposes the Code grants to planning commissions is its' ability to demand state agencies coordinate to the greatest extent feasible.

## TEXAS LOCAL GOVERNMENT CODE 391

1. **391 Commissions** – Texas Local Government Code, Section 391, authorizes local governments within the same Council of Government (COGs) to join together to form a sub-regional planning commission.

2. **State Agencies Required to Coordinate** – Local Government Code 391.009(c) states:

*“In carrying out their planning and program development responsibilities, state agencies shall, to the greatest extent feasible, coordinate planning with commissions to ensure effective and orderly implementation of state programs at the regional level.”*

3. **State District Court Rules on 391.009(c)** – On January 5, 2017, the District Court of Travis County ruled in *Waller County Sub-Regional Planning Commission v. Texas Department of Transportation*, that the Department had a duty to coordinate planning with Waller County Sub-Regional Planning Commission “to the greatest extent.”

4. **Purpose for 391 Commissions** – To “encourage and permit” local government units to:

*(1) join and cooperate to improve the health, safety, and general welfare of their residents; and (2) plan for the future development of communities, areas, and regions.” (Texas Local Government Code 391.0001(a))*

Carried out through the development of plans coordinated with the state agencies:

*“The general purpose of a commission is to make studies and plans to guide the unified, far-reaching development of a region, eliminate duplication, and promote economy and efficiency in the coordinated development of a region.” (391.0001(b))*

# PROCESS

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## **1. How to form Planning Commission –**

By a joint resolution of two counties, two cities, or a county and a city within the same COG. Each unit of government appoints a representative, who will represent that government as a voting member at a regular or special meeting. The commission members then hold their first meeting to formally organize by adopting by-laws and electing a Chairman and Vice Chairman. Two-thirds of the voting members must be elected officials. Additionally, a provision added to the code in 2011, requires the commission invite a member of the state legislature, who represents a district located wholly or partly in the region as ex-officio, non-voting member of the governing body.

## **2. Commissions Create Plans and Policies**

**-** Commission adopts, by resolution, plans, policies, and priorities to be coordinated with state agencies and carried out across the commission's sub-region. Can be simple resolutions identifying the policies or larger, comprehensive planning documents. Additionally, the commission can adopt a plan already authorized by one of its members.

## **3. Meeting Process for Commissions -**

Commissions are political subdivisions of the state subject to the Texas Open Meetings Act. All meetings are open to the public and require a 72-hour advance notice of the meeting, location, and agenda. Meetings are run by the Chairman, formally recorded through minutes and other appropriate records. Meetings are government-to-government, with the discussion limited between the

commission and the state agency (agencies) with no public comment, but it allows citizens to hear the entire discussion. Citizens can bring concerns to the next regular commission meeting.

**4. Issues Addressed** – All issues relating to the health, safety and welfare of the citizens can be addressed through the commission.

**5. Resources to Operate** – No additional resources are required. Local governments have staff who publish notices and record meetings. Individuals such as Sheriffs, school and fire district members can be utilized, as well as, any expert on a subject matter and/or can hire staff and consultants. It can collect funds and grants for plans.

The commission is required to submit an annual audit and report to the governor, the state auditor, the comptroller, and the Legislative Budget Board. The report is to include the amount of funds collected and expended (if any), a summary of activities (usually the commissions minutes) and projected plans for the coming year.

**6. Commissions Can Coordinate with Federal Agencies** – When there is a "federal connection" i.e., a federal agency provides funds, approves the project, or when the statute governing the federal statute requires them to coordinate with local governments. In particular, the Homeland Security Act requires coordination with local governments for specific purposes that are limited, but may help communities protect the border.

# HISTORY

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*American Stewards of Liberty* discovered that Texas had a “coordination” requirement in state law similar to that found in federal statutes in 2007 when researching strategies to stop the Trans-Texas Corridor. The organization has been working with local governments across the nation since the early 1990’s, helping them implement the “coordination” process for a variety of issues. The requirement of federal and state agencies to coordinate with local governments is found in numerous federal and state statutes. *American Stewards* has trained hundreds of local governments on how to implement the process and helps the entities advocate their position as they work to a successful conclusion.

## 391 COMMISSIONS IN TEXAS

**The first 391** sub-regional planning commission was formed in August 2007. The Eastern Central Texas Sub-Regional Planning Commission located in Bell County, Texas was created to require the Texas Department of Transportation (TXDOT) to coordinate the Trans-Texas Corridor, a quarter-mile wide international toll road designed to connect the Chinese seaports in Mexico to Canada. Several other commissions were then formed along the route of the planned highway. This Commission is credited with stopping the international highway through the coordination process.

**In 2009, Mason County** and City of Mason formed a commission to stop a CREZ power line. When the Commission was formed, the preferred route for the line was through Mason County. After a series of coordination meetings with state and federal agencies, the route selected went around Mason County as the Administrative Court removed the Mason County route for environmental concerns – the issues raised by the Commission.

**In 2016, Waller County** formed a commission to fight the High Speed Rail between Dallas and Houston. Waller County brought the successful lawsuit (mentioned earlier) in District Court requiring TXDOT to coordinate in 2017.

**In 2021, Kinney and Uvalde County** and the City of Uvalde formed the Texas Border Sub-Regional Planning Commission to protect their citizens from the invasion of illegal aliens pouring into their communities. They've held one meeting with the Texas Department of Emergency Management in late 2021 and since have received requested support primarily from the Governor's office.

# ASL

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# BACKGROUND

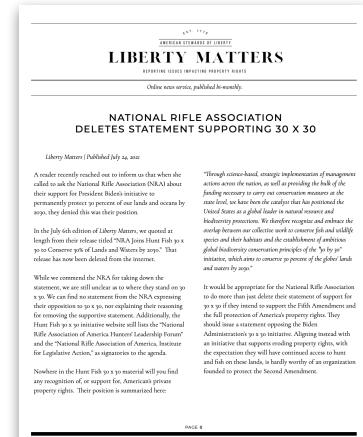
American Stewards of Liberty (ASL) is a 501(c)(3) non-profit educational organization incorporated in Texas working to protect private property rights and the liberties they secure. We are currently in our 30th year of operation.

ASL challenges the policies that seek to undermine Americans ability to produce the food, fiber, energy, and minerals our nation needs. From defeating the Trans-Texas Corridor, developing the local government coordination strategy, proactively delisting species that do not warrant federal protection, to actively confronting the 30x30 international program — ASL challenges the radical environmental movement, which believes the administrative state, not individuals, should determine how Americans use their land.

ASL provides expertise and assistance to counties and municipalities in forming, strategizing, and advising 391 Sub-Regional Planning Commissions defined in the Texas Local Government Code.

We publish the online news service, *Liberty Matters*, available free to the public, and the members only quarterly journal, *Standing Ground*.

For more information on ASL and coordination go to [www.americanstewards.us](http://www.americanstewards.us)



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