

# *City of Kingsville, Texas*

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## **AGENDA CITY COMMISSION TUESDAY, AUGUST 27, 2019 SPECIAL MEETING**

**CITY HALL  
HELEN KLEBERG GROVES COMMUNITY ROOM  
400 WEST KING AVENUE  
4:00 P.M-Special Meeting**

### **I. Preliminary Proceedings.**


#### **OPEN MEETING**

**INVOCATION / PLEDGE OF ALLEGIANCE – (Mayor Fugate)**

**MINUTES OF PREVIOUS MEETING(S)**

None.

APPROVED BY:

  
Deborah Balli  
Interim City Manager

### **II. Public Hearing - (Required by Law).<sup>1</sup>**

None.

### **III. Reports from Commission & Staff.<sup>2</sup>**

*"At this time, the City Commission and Staff will report/update on all committee assignments which may include, but is not limited to the following: Planning & Zoning Commission, Zoning Board of Adjustments, Historical Board, Housing Authority Board, Library Board, Health Board, Tourism, Chamber of Commerce, Coastal Bend Council of Governments, Conner Museum, Keep Kingsville Beautiful, and Texas Municipal League. Staff reports include the following: Building & Development, Code Enforcement, Proposed Development Report; Accounting & Finance – Financial & Investment Information, Investment Report, Quarterly Budget Report, Monthly Financial Reports; Police & Fire Department – Grant Update, Police & Fire Reports; Street Updates; Public Works- Building Maintenance, Construction Updates; Park Services - grant(s) update, miscellaneous park projects, Administration –Workshop Schedule, Interlocal Agreements, Public Information, Hotel Occupancy Report, Quiet Zone, Proclamations, Health Plan Update, Tax Increment Zone Presentation, Main Street Downtown, Chapter 59 project, Financial Advisor, Water And Wastewater Rate Study Presentation. No formal action can be taken on these items at this time."*

### **IV. Public Comment on Agenda Items.<sup>3</sup>**

1. Comments on all agenda and non-agenda items.

### **V.**

#### **Consent Agenda**

## **Notice to the Public**

*The following items are of a routine or administrative nature. The Commission has been furnished with background and support material on each item, and/or it has been discussed at a previous meeting. All items will be acted upon by one vote without being discussed separately unless requested by a Commission Member in which event the item or items will immediately be withdrawn for individual consideration in its normal sequence after the items not requiring separate discussion have been acted upon. The remaining items will be adopted by one vote.*

### **CONSENT MOTIONS, RESOLUTIONS, ORDINANCES AND ORDINANCES FROM PREVIOUS MEETINGS:**

*(At this point the Commission will vote on all motions, resolutions and ordinances not removed for individual consideration)*

None.

## **REGULAR AGENDA**

### **CONSIDERATION OF MOTIONS, RESOLUTIONS, AND ORDINANCES:**

#### **VI. Items for consideration by Commissioners.<sup>4</sup>**

1. Review and discuss proposed fiscal year 2019-2020 budget for departments of the City of Kingsville. (Interim City Manager).
2. Consider final passage of an ordinance amending Chapter XV-Land Use, Article 3-Subdivisions, section 15-3-1 through 15-3-19, revising platting procedures. (Director of Planning & Development Services).
3. Executive Session: Pursuant to Section 551.074, Texas Government Code, the Personnel Exception, the City Commission shall convene in Executive Session to deliberate the appointment, employment, and duties of the City Manager. (Mayor Fugate).

#### **VII. Adjournment.**

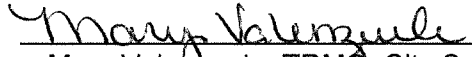
1. No person's comments shall exceed 5 minutes. Cannot be extended by Commission.
2. No person's comments shall exceed 5 minutes without permission of majority of Commission.
3. Comments are limited to 3 minutes per person. May be extended or permitted at other times in the meeting only with 5 affirmative Commission votes. The speaker must identify himself by name and address.
4. Items being considered by the Commission for action except citizen's comments to the Mayor and Commission, no comment at this point without 5 affirmative votes of the Commission.

#### **NOTICE**

This City of Kingsville and Commission Chambers are wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the City Secretary's office at 361/595-8002 or FAX 361/595-8024 or E-Mail [mvalenzuela@cityofkingsville.com](mailto:mvalenzuela@cityofkingsville.com) for further information. Braille Is Not Available. The City Commission reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed above, as authorized by the Texas Government Code, Section 551-071 (Consultation with Attorney), 551-072 (Deliberations about Real Property), 551-073 (Deliberations about Gifts and Donations), 551-074 (Personnel Matters), 551-076 (Deliberations about Security Devices), 551-086 (Certain Public Power Utilities: Competitive Matters), and 551-087 (Economic Development).

I, the undersigned authority do hereby certify that the Notice of Meeting was posted on the bulletin board at City Hall, City of Kingsville, 400 West King Avenue, Kingsville, Texas, a place convenient and readily accessible to the general public at all times and said Notice was posted on the following date and time:

August 20, 2019 at 1:15 P.M. and remained so posted continuously for at least 72 hours proceeding the schedule time of said meeting.

  
\_\_\_\_\_  
Mary Valenzuela, TRMO, City Secretary  
City of Kingsville, Texas

This public notice was removed from the official posting board at the Kingsville City Hall on the following date and time: \_\_\_\_\_

By: \_\_\_\_\_  
City Secretary's Office  
City of Kingsville, Texas

# **REGULAR AGENDA**

# **AGENDA ITEM #1**

## **AGENDA ITEM #2**

**City of Kingsville**  
**Planning and Development Services**

TO: Mayor and City Commissioners

CC: Interim City Manager, Deborah Balli

FROM: Tom Ginter, Director

DATE: August 2, 2019

SUBJECT: Recommended changes to Platting ordinance per House Bill 3167

**Summary:** As I stated to the City Commission at the August 12<sup>th</sup> meeting that House Bill 3167 will be effective September 1, 2019. Since the last meeting the City Attorney and I have met and are recommending the appropriate changes to our Platting Procedure ordinance Section 15-3.

**Background:** As you know House Bill 3167 was passed during the last legislative session. This bill is called the "shot clock bill". It forces cities to speed up the approval process for plans/plats and also to be more definitive if a plan/plat is not approved. Attached is a document from TML explaining the legislation and its impact on cities. Also enclosed is a draft of the ordinance changes that are being recommended so our ordinance is in compliance with the law. The changes are in yellow.

**Financial Impact:** At this time I do not think it will cause any direct financial impact but it will cause staff to develop other documents or to alter review times so the approval process is done within the time specified in the law. While frankly we are not overloaded with this process, we want to be in compliance with the law. The law also allows us to request other information such as a traffic impact analysis plan. Again while this may not be needed for every submittal, it could be appropriate for a project near a school or any other high traffic area in Kingsville. It should also be noted that in the future as we become more accustomed with the process and the changes in the ordinance we may be back to the City Commission to tweak the ordinance again.



**City of Kingsville**  
**Planning and Development Services**

**Recommendation:** This will be on the Planning and Zoning Commission Wednesday, August 21<sup>st</sup> agenda for their review and recommendation.





To: Planning and Zoning Commission

From: Tom Ginter, Director

Date: August 16, 2019

Subject: Agenda Item – House Bill 3167

As you recall I brought up that due to state legislation, specifically HB 3167 we anticipated to make changes to our platting procedure ordinance. The City Attorney and I have been working on the amendments which would bring us into compliance. I expect that as we move forward we may have to do some additional tweaking to the ordinance. Enclosed is a question/answer document that explains HB 3167. The changes in the ordinance are highlighted in yellow.

To: Planning and Zoning Commission Members

From: Tom Ginter, Director

Date: August 2, 2019

Subject: Discussion of House Bill 3167

In the past week I have been notified of the passage of HB 3167. This bill could cause us to make changes to our subdivision ordinance and zoning ordinance. Attached is a document from TML which explains the highlights of 3167. To determine the impact on our ordinances along with the city Attorney we will have to compare and see what differences there are. I hope by our meeting on Wednesday, August 7 I will have more to tell you.

**ORDINANCE NO.2015- \_\_\_\_\_**

**AMENDING THE CITY OF KINGSVILLE CODE OF ORDINANCES BY AMENDING CHAPTER XV, LAND USE, ARTICLE 3, SUBDIVISIONS, SECTIONS 15-3-1 THROUGH 15-3-19; REVISING PLATTING PROCEDURES; REPEALING ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING FOR AN EFFECTIVE DATE AND PUBLICATION.**

**WHEREAS**, the Texas Legislature passed H.B.3167 in May of 2019 which has caused the need for the City of Kingsville to update its Code of Ordinances in Sections 15-3-1 through 15-3-19, dealing with platting procedures;

**WHEREAS**, the City of Kingsville Planning & Zoning Commission met on Wednesday, August 21, 2019 to consider these recommended changes and voted [ ] to [ ] to ~~approve or disapprove~~;

**WHEREAS**, this Ordinance is necessary to protect the public safety, health, and welfare of the City of Kingsville.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF KINGSVILLE, TEXAS:**

**I.**

**THAT** Sections 15-3-15 through 15-3-25 of Article 3: Subdivisions of Chapter XV, Land Usage, of the Code of Ordinances of the City of Kingsville, Texas, shall be amended to read as follows:

...

**Sec. 15-3-1. - Subdivision of land in city's jurisdiction; approval and plat requirements.**

(A) Before any plan, plat or replat of a lot, subdivision or addition of land inside the city or within its extra-territorial jurisdiction thereof shall be recorded with the County Clerk, it shall first be approved by the Planning and Zoning Commission of the city, as well as the City Commission, in conformity with Tex. Loc. Gov't Code, §§ 212.001 et seq., and the provisions of this article. Hereafter, every owner of any tract of land situated within the corporate limits or within the extra-territorial jurisdiction of the corporate limits of the city who may hereafter divide the same into two or more parts for the purpose of laying out any subdivision of any tract of land, 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 the subdivision or addition by metes and bounds and locate the same with respect to an original corner of the original survey of which it is a part, giving the dimensions thereof of the 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.

(B) *Exceptions by reference.* See definition of "subdivision" in § 15-3-2 and "platted lots" in § 15-4-19(A).

(1962 Code, § 12-1-1; Ord. 95018, passed 8-28-95)

### **Sec. 15-3-2. - Definitions.**

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Any office referred to in this article by title means the person employed or appointed by the city in that position, or his duly authorized representative. Definitions not expressly described herein are to be construed in accordance with customary usage in municipal planning and engineering practices.

*Air installation compatible use zone (AICUZ).* The area of the Naval Air Station, Kingsville, and adjacent areas subject to the impacts of noise or accident hazards created by current aircraft operations as depicted in the "Air Installation Compatible Use Zone Study," dated 1994 that establishes recommended compatible uses of land as adopted by Ordinance No. 94024 by the City Commission on October 12, 1994.

*Alley.* A minor public right-of-way not intended to provide the primary means of access to abutting lots, but which is used primarily for location of utilities and vehicular service access for solid waste collection to the back or sides of properties (otherwise abutting on a street).

*Building setback line.* The line within a property defining the minimum horizontal distance between a building and the adjacent street line.

*City.* The City of Kingsville, Texas.

*City commission.* The City Commission of the city.

*City's authorized agent.* City Manager or his designated representative.

*Crosswalk way.* A public right-of-way, three feet or more in width between property lines, which provides pedestrian circulation.

*Cul-de-sac.* A street having but one outlet to another street and terminated on the opposite end by a vehicular turn-around.

*Dead-end street.* A street, other than a cul-de-sac, with only one outlet.

*Engineer.* A person duly authorized under the provisions of the Texas Engineering Registration Act, as heretofore or hereafter amended, to practice the profession of engineering.

*Extraterritorial jurisdiction (ETJ).* Two miles beyond the existing city limits.

*Filed.* The day the administrative review process is finished and the plan or plat is placed on the Planning and Zoning Commission agenda.

*Flood.* A temporary rise in stream level that results in inundation of areas not ordinarily covered by water.

*Floodway.* The channel of a watercourse and portions of the adjoining floodplain which are reasonably required to carry and discharge the regulatory flood.

*Lot.* An undivided tract or parcel of land having frontage on a public street and which is or in the future may be offered for sale, conveyance, transfer or improvement; which is designated as a distinct and separate tract, and is identified by a tract or lot number or symbol in a duly approved subdivision plat which has been properly filed of record.

*Pavement width.* The portion of a street available for vehicular traffic where curbs are laid. *Pavement width* is the portion between the outside of curbs.

*Person.* Any individual, association, firm, corporation, governmental agency or political subdivision.

*Planning commission.* The Planning and Zoning Commission of the city.

*Regulatory flood.* A flood which is representative of large floods known to have occurred generally in the area and reasonably characteristic of what can be expected to occur on a particular stream. The *regulatory flood* generally has a flood frequency of approximately 100 years as determined from an analysis of floods on a particular stream and other streams in the same general region.

*Regulatory flood protection elevation.* The elevation of a habitable area at or above the regulatory flood level.

*Should.* This word is recommended.

*Street.* A way for vehicular traffic, whether designated as a street, highway, thoroughfare, parkway, thoroughway, road, avenue, boulevard, lane, place or however otherwise designated.

(1) *Major thoroughfares or arterial streets.* Principal traffic arteries more or less continuous across the city which are intended to connect various neighborhoods of the city and which are used primarily for fast or heavy volume traffic and shall include, but not be limited to, each street designated as a major street on the major street plan.

(2) *Collector streets.* Those which carry traffic from minor streets to the major system of arterial streets and highways, including the principal entrance streets of residential development and streets for circulation within such a development.

(3) *Minor streets.* Those which are used primarily for access to the abutting properties and which are intended to serve traffic within a limited residential district.

(4) *Marginal access streets.* Minor streets which are parallel to and adjacent to arterial streets and highways; and which provide access to abutting properties and protection from through traffic.

(5) *Alleys.* Minor ways which are used primarily for vehicular service access to the back or the side of properties otherwise abutting on a street.

*Subdivider.* Any person or any agent thereof dividing or proposing to divide land so as to constitute a subdivision as that term is defined herein. In any event, the term *subdivider* shall be restricted to include only the owner, equitable owner or authorized agent of such owner or equitable owner of land sought to be subdivided.

*Subdivision.* A division of any tract of land situated within the corporate limits or within its extra-territorial jurisdiction, in two or more parts for the purpose of laying out any subdivision of any tract of land or any addition of any town or city, or for laying out suburban lots or building lots or any lots and streets, alleys or parts or other portions intended for public use or the use of purchasers or owners of lots fronting thereon or adjacent thereto. *Subdivision* includes resubdivision and single lot development, but it does not include the division of land for agricultural purposes in parcels or tracts of five acres or more and not involving any new street, alley or easement of access.

*Surveyor.* A licensed surveyor or a registered public surveyor as authorized by state statute to practice the profession of surveying.

*Utility easement.* An interest in land granted to the city, to the public generally, and/or to a private utility corporation, for installing or maintaining utilities across, over or under private land, together with the right to enter thereon with machinery and vehicles necessary for the maintenance of the utilities.

U.S.G.S. United States Geological Survey.

(1962 Code, § 12-1-2; Ord. 95018, passed 8-28-95)

### **Sec. 15-3-3 GAS UTILITIES.**

The installation and dedication of gas distribution mains within the subdivision may be required.

(1962 Code, § 12-6-2; Ord. 95018, passed 8-28-95)

~~Secs. 15-3-4--15-3-14.~~ - Reserved.

## **SEC. 15-3-15 PURPOSES OF REGULATIONS.**

- (A) The purposes of these provisions are to regulate the subdivision and improvement of land for urban use, to provide adequate light, air, open space, drainage, transportation, public utilities and other needs; to assure the maintenance of health, safety and an attractive and efficient community; and to encourage the economical use of human and natural resources.
- (B) The subdivision of land is the first step in the process of urban development. The arrangement of land parcels in the community for residential, commercial and industrial uses and for streets, alleys, schools, parks and other public purposes provides the basic framework for the uses of land and for the arrangement of the community.
- (C) These regulations are designed, intended and should be administered in a manner to:
- (1) Implement the city's adopted master plan for development.
  - (2) Provide for neighborhood conservation and prevent the development of slums and blight.
  - (3) Harmoniously relate the development of the various tracts of land in the city to the existing community development and facilitate and coordinate the future development of adjoining tracts.
  - (4) Provide the best possible design for the tract being subdivided and developed.
  - (5) Reconcile the diverse interests of the subdivider, adjacent property owners and the city.
  - (6) Coordinate the provision of streets within subdivisions with existing and planned streets and with other features of the master plan and official future land use map.
  - (7) Ensure that all necessary public utilities and facilities are provided and are or will be available, accessible and adequate, pursuant to adopted city standards and requirements, at the time of subdivision or development.
  - (8) Establish adequate and accurate records of land subdivision.
- (D) *Authority.* This chapter is enacted pursuant to the authority of Local Government Code Sections 212.001 through 212.904, with all other statutory and legal authority which now, or which may in the future, provide authority for subdivision regulations.
- (E) *Applicability.* Hereafter, every owner or subdivider of any lot, tract or parcel of land situated within the corporate limits of the city or the extraterritorial jurisdiction of the city who may seek to subdivide the same into two or more parts for the purpose of laying out any subdivision or any additions thereto shall comply with the provisions of these regulations, as well as other city codes, state statutes, city

charter applicable to the plat or plan, unless otherwise exempted pursuant to this section.

- (F) *Conformity with zoning ordinance.* All plats reviewed under the provisions of these regulations shall conform to all zoning ordinance provisions for the district in which the plat is to be located. All required zoning changes shall be made prior to approval of the final plat by the council.
- (G) *Preliminary conference.* Prior to the official filing of a preliminary plat, the subdivider shall consult with and present a proposed plan of subdivision to the Department of Planning and Development Services for comments and advice on the procedures, specifications and standards required by the city for the subdivision of land.
- (H) *Filing period.* The filing of a plat or plan may only be done after all prerequisite steps are met and on the first Thursday of the month.

#### **SEC. 15-3-16 GENERAL SUBDIVISION & PLATTING PROCEDURES; DEFINITIONS.**

- (A) *Types of Plats Required.* A Final Plat or a Minor Plat shall be approved prior to any land division that is subject to these regulations and prior to commencement of any new development or construction project.
- (B) *Replat.* A replat in accordance with State Law and the provisions of Sections 15-3-21(A) and 15-3-21(B) shall be required any time a platted, recorded lot is further divided or expanded, thereby changing the boundary and dimensions of the property.
- (C) *Amending Plat.* In the case of minor revisions to recorded plats or lots, a Minor Plat or Amending Plat may also be utilized if allowed by State Law and if in accordance with Section 15-3-21(A) and 15-3-21(C).
- (D) *Conceptual Development Plat.* A conceptual development plat shall be required when application is made for a planned unit development where flexible zoning techniques will be utilized. The conceptual development plat is to accompany the planned unit development zoning application showing the information as required within Section 15-3-20.
- (E) *Definitions:*
  - (1) *Amending Plat.* A plat intended to perform a minor change in a previously approved plat that meets one or more of the criteria listed in section 15-3-21(A) and 15-3-21(C).



- (2) *Conceptual development plat.* A plat prepared in accordance with the provisions of these and any other applicable regulations for the purpose of providing a conceptual design of planned unit developments and other flexible zoning techniques to support and reflect a pending final subdivision plat.
- (3) *Final Plat.* A plat prepared in accordance with the provisions of these and any other applicable regulations and is prepared in the proper format to be recorded in the office of public records of Kleberg County.
- (4) *Lot line adjustment.* A boundary relocation between two or more existing adjacent parcels, where the land taken from one parcel is added to an adjacent parcel, and where no additional lots are created.
- (5) *Minor Plat.* A subdivision of an entire lot of record resulting in not more than a total of four lots, tracts, blocks or parcels whether the lots are created at one time or over an extended period of time, provided that such subdivision does not involve:
  - (a) a planned unit development;
  - (b) the creation of new public streets;
  - (c) the extension of a utility or other public facility; or
  - (d) the installation of drainage improvements through one or more lots to serve one or more other lots.
- (6) *Preliminary plat.* A plat prepared in accordance with the provisions of these and any other applicable regulations, which plat is made for the purpose of showing the design of a proposed subdivision and the existing conditions in and around it.
- (7) *Replat.* A plat indicating the replacement of all or a portion of an existing, recorded subdivision plat with a new and different subdivision plat.
- (8) *Subdivision.* Improved or unimproved land or lands divided or proposed to be divided for the purpose of sale or lease, whether immediate or future, into five or more lots, parcels or fractional interests.
- (9) *Vacating Plat.* An instrument declaring that a recorded plat and its dedication(s) be vacated or cancelled.

## **SEC. 15-3-17 MINOR PLAT; PROCESSING AND APPROVAL.**

(A) *Application Requirements.* The requirements for the submittal of a Minor Plat shall be the same as the requirements for a Final Plat, as outlined in Section 15-3-19.

The Director of Planning & Development Services shall administratively approve a Minor Plat if:

- (1) the plat consists of four or fewer lots fronting on an existing street and not creating a new street;
- (2) the plat is an amending plat as described in Section 212.016 of the Texas Local Government Code unless otherwise required by law.
- (3) water and sewer service for development on the proposed lots is immediately available without a service extension, and no extension of municipal facilities is required to serve the proposed lots;
- (4) no variance is required for the plat to meet the requirements of section 15-3-19; and
- (5) the plat complies with the subdivision ordinance applicable at the time the application for final plat approval was filed.

The final plat and accompanying data shall conform to the preliminary plat as conditionally approved by the Planning & Zoning Commission, incorporating any and all changes, modifications, alterations, corrections and conditions required by the Planning & Zoning Commission.

## **SEC. 15-3-18 PRELIMINARY PLAT AND ACCOMPANYING DATA; PROCESSING PROCEDURES.**

(A) *General.* Preliminary plat shall be required when substantial water, wastewater, earthwork, roadway improvements or if unusual property circumstance require further review by city staff. When minor improvements are required a letter of explanation and detailed sketch will suffice. Waiving the preliminary plat requirement will be left to the discretion of the city's authorized agent. Before an application for development can be filed, any necessary studies (i.e., traffic impact analysis, drainage study, etc.) must be submitted to the Director of Planning & Development Services. Before a preliminary plat or plan can be submitted, the preliminary utility plans must be submitted to and approved by the Director of Planning & Development Services. If utility elevations, TxDOT or County road approvals, traffic impact analysis,

variance approvals, and any other submission that needs to be made to the County or another public entity, then said items must be submitted and approved before submitting the actual preliminary plat or plan to the Director of Planning & Development Services.

(B) *Time for filing and copies required.* The subdivider shall present 5 blue or black line copies of the plat to the Director of Planning and Development Services no less than ten working days prior to the date at which formal application for the preliminary plat approval is made to the Planning and Zoning Commission.

(C) *Form and content.* The preliminary plat shall be drawn at a scale of one inch to 100 feet on sheets 24 inches wide and 36 inches long, with a binding margin of not less than one and one-half inches on the left side of the sheet and margins on the other three sides of not less than one-half inch. When more than one sheet is necessary to accommodate the entire area, an index sheet showing the entire subdivision at an appropriate scale shall be attached to the plat. The plat shall show the following:

- (1) Names and addresses of the subdivider, record owner, engineer and/or surveyor.
- (2) Proposed name of the subdivision, which shall not have the same spelling as or be pronounced similarly to the name of any other subdivision located within the city limits or the extra-territorial jurisdiction of the city. Proposed names of streets, which shall not be the same or similar to those already assigned to other streets in other parts of the city unless there is a street continuation.
- (3) Names of contiguous subdivisions.
- (4) Subdivision boundary lines, indicated by heavy lines, and the computed acreage of the subdivision.
- (5) Existing sites as follows:
  - (a) The general location, dimensions, names and description of all existing or recorded streets, alleys, reservations, easements or other public rights-of-way within the subdivision, intersecting or contiguous with its boundaries or forming such boundaries.
  - (b) The general location, dimensions, description and name of all existing or recorded residential lots, parks, public areas and other sites within or contiguous with the subdivision.
  - (c) The general location, dimensions, description and flow line of the existing watercourses, associated floodplains and drainage structures within the subdivision or on contiguous tracts.
- (6) The general location, dimensions, description and names of all proposed streets, alleys, parks, other public areas, reservations,

easements or other rights-of-way, blocks, lots and other sites within the subdivision. Exception: Specific lot dimensions do not have to be shown.

(7) The location of sanitary sewer lines.

(8) The location of water lines.

(9) The location of watercourses, drainage and flood prevention structures.

(10) Date of preparation, scale of plat and north arrow.

(11) A copy of the U.S.G.S. topographical map.

(12) Vicinity sketch or map at a scale of not more than 1,000 feet to an inch which shall show existing subdivisions, streets, easements, rights-of-way, parks and public facilities in the vicinity.

(13) AICUZ boundaries where applicable and identified by the Department of Planning and Development Services.

(14) Staff reserves the right to request additional information to adequately enforce the intent of the preliminary plat requirements.

(15) A final plan for the proposed fills or other structure-elevating techniques, levees, channel modifications, retaining walls and other methods to overcome flood or erosion-related hazards (see § 15-3-65(B)(3) of this article).

(16) Notice: This property is located within an area that is one-quarter mile outside of the Naval Air Station (NAS) Kingsville 65 dB DNL noise contours and may be impacted by noise, odors, flight safety hazards, and other potential compatibility issues relating to installation operations. This property may also be subject to additional development regulations relative to the property's proximity to the installation.

(D) Processing the preliminary plat.

(1) On receipt of the preliminary plat and other required information, the Planning and Zoning Commission shall render a decision thereon within 30 days. Such decision may consist of approval, disapproval or conditional approval. Conditional approval shall be considered to be the approval of a plat or replat subject to conformity with prescribed conditions, but shall be deemed to be a disapproval of such plat or replat until such conditions are complied with. All objections made to the preliminary plat, or conditions imposed, shall be furnished to the subdivider in writing.

(2) When a preliminary plat and other required information has been approved, the subdivider may thereafter file a final plat or plats of sections of the subdivision upon which approval of the preliminary plat has been obtained, and upon the filing of the final plat or plats, preliminary plat shall be considered approved or conditionally approved as in subdivision (1) above; provided, however, that such

approval or conditional approval of the remainder of the preliminary plat shall be limited to a one year period; provided further, however, that the Planning and Zoning Commission may, at its discretion, extend such period of validity. When a preliminary plat has been approved and thereafter the subdivider fails to file with the Planning and Zoning Commission a final plat of the subdivision or a section thereof within a period of six months, the approval of the preliminary plat shall be void except, however, the Planning and Zoning Commission may, in its discretion, extend such period of validity.

#### **SEC. 15-3-19 FINAL PLAT; DECISION OF COMMISSION.**

The final plat, for both major and minor plats, and accompanying data shall conform to the preliminary plat as approved or conditionally approved by the Planning and Zoning Commission or the Director of Planning and Development Services in the case of a minor plat. The plat must incorporate any and all changes, modifications, alterations, corrections and conditions required by the Planning Commission or the Director. A final plat for review will not be accepted until subdivision construction plans are approved and either a fiscal surety is filed or the infrastructure improvements are constructed.

(A) *The original and ten copies of the final plat.* This plat shall be drawn on mylar, a minimum scale of one inch to 100 feet or larger in ink with all figures and letters legible, and the whole proper for filing for record in the office of the Kleberg County Clerk with the following information given:

- (1) The title or name by which the subdivision is to be identified, north point, the scale of the map and the name of the state-registered professional engineer and/or state-licensed or registered land surveyor responsible.
- (2) A definite legal description and identification of the tract being subdivided. This description shall be sufficient for the requirements of title examination. The plat shall be a descriptive diagram drawn to scale. The plat shall show by reference that the subdivision is a particular portion or part of the previously filed plat; recognized grant or partition.
- (3) The boundaries of the subdivided property, the location or designation of all streets, alleys, parks and other areas intended to be dedicated or deeded to the public use, with proper dimensions. The boundaries of the subdivisions shall be indicated by a heavy line and shall be tied by dimensions to the parent subdivision.

- (4) The location of all adjacent streets and alleys, with their names, and the names of adjoining subdivisions with exact location and designation by number of lots and blocks.
- (5) All lot, block and street boundary lines, with blocks and lots numbered or lettered consecutively. Building lines and easements shall be shown and shall be defined by dimension. The actual width of all streets shall be shown, measured at right angles or radially, where curved. All principal lines shall have the bearing and any deviations from the norm shall be indicated.
- (6) Accurate dimensions, both linear and angular, of all items on the plat; the boundary survey on the site shall close within one in 10,000. Linear dimensions shall be expressed in feet and decimals of a foot; angular dimensions may be shown by bearings. Curved boundaries shall be fully described and all essential information given (radius, delta, arc), circular curves shall be defined by actual length of radius and not by degree of curve. Complete dimensional data shall be given on fractional lots.
- (7) The location and description of all lot, block and subdivision corners.
- (a) Lot corners shall be three-fourths inch iron pipe or five-eighths inch iron rod 24 inches to 30 inches long with the top set flush with the ground.
  - (b) Block corners shall be three-fourths inch iron pipe or five-eighths inch iron rod 24 inches to 30 inches long. They shall be double pinned with the top rod being set flush with ground and shall include the beginning and end of all curves within each block.
  - (c) Subdivision corners will be marked by a concrete monument that meets or exceeds the following standard. A five-eighths inch iron rod shall be set in a concrete block measuring six inches in diameter and 24 inches long.
- (8) The flood hazard areas shall be delineated on the final plat, and reserved by deed restrictions as areas not suitable for development.
- (9) A certificate of ownership in fee of all land embraced in the subdivision, and of the authenticity of the plat and dedication, shall be signed and acknowledged by all owners of any interest in the land. The acknowledgment shall be in the form required in the conveyance of real estate. Approval and acceptance of all lien holders shall be included.
- (10) A certificate by the responsible surveyor in charge, duly authenticated, that the plat is true and correct and in

accordance with the determination of surveys as staked on the ground.

(11) A disclosure statement that all or a portion of the subdivision falls within the AICUZ; the disclosure statement to be displayed prominently with other required certificates.

(12) In addition to other required certificates, the forms set out in the appendix shall be entered on the plat following the certificates of owner, engineer, and the like, and preceding the certificate of the County Clerk.

(13) The final plat submitted to the Planning and Zoning Commission, as well as the City Commission, and to be filed for record with the County Clerk, shall not show construction features such as curb lines or public utility lines or other structures not involved in the title covenant.

(14) The area of each lot shall be clearly indicated by writing the number of square feet in each lot on the final plat.

(B) *Final restrictive covenants.* A copy of the final restrictive covenants to govern the nature of the use of the property in the subdivision shall be submitted if the subdivision is planned for the use of individual septic tanks in lieu of a sanitary sewer system. The Planning and Zoning Commission may, in the public interest, require that these be filed simultaneously with the plat.

(C) *Planning and Zoning Commission to render decision within 30 days.* Upon filing of the final plat along with other required information, the Planning and Zoning Commission, as well as the City Commission, shall both render a decision thereon within 30 days after their respective regular meetings. The decision may consist of approval, disapproval or conditional approval. Reasons for disapproval or conditional approval shall be stated in writing. When a plat is conditionally approved, the subdivider may subsequently refile the final plat meeting the objections or required conditions, and the Planning and Zoning Commission shall, at the next regular meeting thereafter, sign the final plat, provided it meets the objections or imposed conditions.

(D) *When final plat approved.* Upon approval of the final plat, the plat being otherwise fully endorsed and all provisions of the Subdivision Ordinance complied with shall be filed by the city with the County Clerk of Kleberg County, Texas.

(E) *Assurance for completion and warranty of improvements.*

(1) *Completion of improvements.*

(a) Except for a single or two-family residential subdivision which may exercise the option provided in

section 15-3-19(F) as provided below, all applicants shall be required to complete, to the satisfaction of the Director of Public Works all street, sanitary and other public improvements, as well as lot improvements on the individual residential lots of the subdivision or addition as required in Article III of these regulations prior to approval of the final plat for the subdivision. The required improvements shall be those specified in the approved infrastructure improvement plan(s) and said improvements shall be initiated within two years. (b) As a condition of preliminary plat approval, the City Commission may require the applicant to deposit in escrow a deed describing by metes and bounds and conveying to the city all street rights-of-way, easements and public land required by these regulations, pending acceptance of improvements by the city and recordation of the final plat. In the event the applicant is unable to complete the required improvements, and such improvements are deemed necessary for the preservation of the public health and safety, the city may compel the delivery of the deed in order to complete the improvements as required.

*(F) Improvement agreement and guarantee of completion of public improvements.*

(1) *Subdivision improvement agreement.* The City Commission may waive the requirement of Section 15-3-19(E) for the completion of required improvements prior to issuance of building permits and, in lieu thereof, may permit the applicant to enter into a subdivision improvement agreement by which the applicant covenants and agrees to complete all required public improvements no later than five years following the date upon which the final plat is signed. Such five-year period may be extended for up to an additional five years upon its expiration at the discretion of the Director of Public Works. The City Commission may also require the applicant to complete and dedicate some required public improvements prior to approval of the final plat and to enter into a subdivision improvement agreement for completion of the remainder of the required improvements during such five-year period. The applicant shall covenant to warranty the required public improvements for a period of two years following acceptance by the city of all required public improvements and shall provide a warranty that all required public improvements shall be free from defect for a period of two years following such



acceptance by the city. The subdivision improvement agreement shall contain such other terms and conditions as are agreed to by the applicant and the city.

(2) *Covenants to run with the land.* The subdivision improvement agreement shall provide that the covenants contained therein shall run with the land and bind all successors, heirs and assignees of the applicant. The subdivision improvement agreement shall be recorded with the county recorder of deeds. All existing lienholders shall be required to subordinate their liens to the covenants contained in the subdivision improvement agreement.

(3) *Completion security.*

(a) Whenever the City Commission permits an applicant to enter into a subdivision improvement agreement, the applicant shall be required to provide sufficient security to ensure completion of the required public improvements. Such security shall be in the form of a surety bond, cash escrow or letter of credit.

(b) The surety bond, cash escrow or letter of credit shall be in an amount estimated by the Director of Public Works as reflecting the cost of the improvements in the approved construction plan and shall be sufficient to cover all promises and conditions contained in the subdivision improvement agreement.

(c) In addition to all other security, when the city participates in the cost of an improvement, the applicant shall provide a performance surety bond from the contractor, with the city as a co-obligee.

(d) The issuer of any surety bond shall be subject to the approval of the City Attorney.

(4) *Escrow agent.* If security is provided in the form of a cash escrow, the applicant shall deposit same with the Director of Finance and with an escrow agent mutually agreed upon by the Director and the applicant subject to City Commission approval and audit, a cash amount or certified check endorsed to the escrow agent for a face value in an amount not less than the amount specified by the Director of Public Works pursuant to Section 15-3-19(F)(3)(c).

(5) *Accrual.* The surety bond or cash escrow account shall accrue to the city for administering the construction, operation and maintenance of the improvements.

(6) *Warranty Bond/Maintenance Security.*

(a) The applicant shall guarantee the improvements, excluding sidewalks and streetlights, against defects in workman-ship and materials for a period of two years from the date of city acceptance of such

improvements. The maintenance security shall be secured by a surety bond, cash escrow or letter of credit in an amount reflecting 50% of the cost of the completed improvements pursuant to Subsection 15-3-19(F)(3)(c).

(b) If the applicant has entered into a subdivision improvement agreement for the completion of required improvements, the surety bond, cash escrow or letter of credit may be retained by the city in lieu of the warranty bond/maintenance security, provided the total amount of the surety bond, cash escrow or letter of credit reflects 50% of the cost of the completed improvements pursuant to Subsection 15-3-19(F)(3)(c).

(c) The applicant shall enter into a maintenance agreement with the city providing the applicant's guarantee of the improvements as required by Section 15-3-19(F)(6)(a). The maintenance agreement shall be accompanied by maintenance security in the form of a surety bond, cash escrow or letter of credit totaling 50% of the costs of all completed improvements pursuant to Subsection 15-3-19(F)(3)(c). The maintenance security shall run with the land and bind all successors, heirs and assignees of the applicant and shall be filed with the City Secretary's office.

(d) The city shall have the right, by ordinance, to waive the warranty bond/maintenance security on those sanitary sewers and street improvements constructed that were inspected and approved by the Director of Public Works and have been in use for two or more years.

(G) *Approval to be valid for 12 months.* Approval of a final plat shall be valid for a period of 12 months; provided, however, that this period may be extended by the Planning and Zoning Commission upon written request by the subdivider.

...

**Secs. 15-3-26—15-3-29. Reserved.**

...

## II.

**THAT** all Ordinances or parts of Ordinances in conflict with this Ordinance are repealed to the extent of such conflict only.

III.

**THAT** if for any reason any section, paragraph, subdivision, clause, phrase, word or provision of this ordinance shall be held invalid or unconstitutional by final judgment of a court of competent jurisdiction, it shall not affect any other section, paragraph, subdivision, clause, phrase, word or provision of this ordinance, for it is the definite intent of this City Commission that every section, paragraph, subdivision, clause, phrase, word or provision hereof be given full force and effect for its purpose.

IV.

**THAT** this Ordinance shall be codified and become effective on and after adoption and publication as required by law.

**INTRODUCED** on this the 26nd day of August, 2019.

**PASSED AND APPROVED** on this the 27th day of August, 2019.

\_\_\_\_\_  
Sam R. Fugate, Mayor

**ATTEST:**

\_\_\_\_\_  
Mary Valenzuela, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Courtney Alvarez, City Attorney

**EFFECTIVE DATE:** \_\_\_\_\_, 2019

**H.B. 3167 (2019)**  
**Legal Q&A**  
**Scott Houston**

**1. What is H.B. 3167?**

House Bill 3167 by Rep. Tom Oliverson (R – Houston) is legislation that becomes effective on September 1, 2019. The bill makes numerous changes to the site plan and subdivision platting approval process, and it will require most cities to make changes to their subdivision ordinance, zoning ordinance, and/or unified development code approval processes. A chart of the process required by the bill is included at the end of this Q&A.

**2. Why was the bill needed?**

The Texas House Land and Resource Management Committee Report states that:

Concerns have been raised regarding the process for plat and land development application approval by political subdivisions. It has been suggested that some political subdivisions circumvent statutory timelines for approving an application by simply denying the application with generic comments that do not fully address specific deficiencies with the application. C.S.H.B. 3167 seeks to provide greater certainty and clarity for the process by setting out provisions relating to county and municipal approval procedures for land development applications.

In other words, the bill is meant to force cities to speed up the site plan/subdivision plat approval process, and to provide more information when a plan or plat isn't approved. In reality, it may create red tape that slows the process down and/or results in substandard planning. A list of witnesses for and against the bill is available at:

<https://capitol.texas.gov/tlodocs/86R/witlistbill/pdf/HB03167H.pdf#navpanes=0>.

**3. What types of development applications are subject to H.B. 3167?**

The bill applies to plans and plats. It defines a "plan" to mean a subdivision development plan, including a subdivision plan, subdivision construction plan, site plan, land development application, and site development plan. TEX. LOC. GOV'T CODE § 212.001(2). It defines "plat" to include a preliminary plat, general plan, final plat, and replat. *Id.* § 212.001(3).

Many have questioned the meaning of these terms. Does the reference to "site plan" only refer to that term as used in Chapter 212, Subchapter B? And what does the term "general plan" refer to? That term is mentioned in current law in a handful of places. *Id.* §§ 212.010; 212.044; 212.047. As mentioned in those sections, the term may be referring to the city's comprehensive plan. In the context of H.B. 3167, the term is included in the definition of "plat." The City of Houston's ordinance, which was praised by some developers, defines the term "general plan" as "a site plan submitted for the purpose of establishing a street system for a large tract to be developed in sections. The General Plan is submitted with the subdivision plat for the first section being platted. The General Plan is valid for 4 years and can be extended by planning commission

action. Upon planning commission approval, the General Plan establishes the street system for future development." Thus, it appears that the term "general plan" in H.B. 3167 means something different than where it appears in other places in Chapter 212.

The bill also provides that the approval procedures as amended by the bill apply to a city regardless of whether it has entered into an interlocal agreement, including an interlocal agreement between the city and county relating to extraterritorial jurisdiction subdivision platting agreement as required by state law. *Id.* § 212.0085.

#### **4. What application materials are included in the definition of "plan?"**

Looking at the definitions in the question above, some say that essentially any type of plan that shows the layout of a project is subject to the bill. The bill uses some terms that aren't common in planning, such as including "general plan" in the definition of "plan." No one is certain what a "general plan" means, so each city should decide and define that term in its ordinance(s).

The bill amends Local Government Code Chapter 212, which relates to subdivision platting. It seems to insert a "site plan" and "site development plan" into the subdivision plat approval process, but those are traditionally based on the zoning authority in Chapter 211. As such, most attorneys argue that a zoning site plan isn't subject to the bill's requirements.

Because of the ambiguity, each city may wish to define certain term(s) in its ordinance for clarity.

#### **5. How does H.B. 3167 change the plan/plat approval timeline?**

The bill requires the municipal authority responsible for approving plats to take the following action with regard to the "initial approval" of a plan or plat within 30 days after the date the plan or plat is filed: (1) approve, (2) approve with conditions, or (3) disapprove with explanation. *Id.* § 212.009(a).

Current law defines "the municipal authority responsible for approving plats" as the municipal planning commission or, if the city has no planning commission, the governing body of the city. Also under current law, the governing body by ordinance may require the approval of the governing body in addition to that of the municipal planning commission. *Id.* § 212.006(a).

If an ordinance requires that a plan or plat be approved by the governing body of the city in addition to the planning commission, the governing body shall approve, approve with conditions, or disapprove the plan or plat within 30 days after the date the plan or plat is approved by the planning commission or is approved by the inaction of the commission, and a plan or plat is approved by the governing body unless it is approved with conditions or disapproved within that period.

#### **6. May the city and applicant agree to extend the deadline in the question above?**

Yes, but only if the applicant (not the city) requests the extension. The parties may extend the 30-day period described above for a period not to exceed 30 days if: (1) the applicant requests the extension in writing to the municipal authority responsible for approving plats or the governing body of the municipality, as applicable; and (2) the municipal authority or governing body, as applicable, approves the extension request. *Id.* § 212.009(b-2).

**7. What does a city do when it approves a plan or plat?**

If a plan or plat is approved, the municipal authority giving the approval shall endorse the plan or plat with a certificate indicating the approval. *Id.* § 212.009(c).

**8. What if the municipal authority responsible for approving plats fails to approve, approve with conditions, or disapprove with explanation a plan or plat within the prescribed period?**

A plan or plat is approved by the municipal authority unless it is disapproved within the periods described above and in accordance with the bill's procedures. *Id.* § 212.009(b).

If that happens, the authority on the applicant's request shall issue a certificate stating the date the plan or plat was filed and that the authority failed to act on the plan or plat within the period. *Id.* § 212.009(d).

**9. What must a city do with regard to approval, approval with conditions, or disapproval with explanation?**

A municipal authority or governing body that conditionally approves or disapproves a plan or plat shall provide the applicant a written statement of the conditions for the conditional approval or reasons for disapproval that clearly articulates each specific condition for the conditional approval or reason for disapproval. *Id.* § 212.0091(a).

Each condition or reason specified in the written statement: (1) must be directly related to the requirements under the subdivision platting law and include a citation to the law, including a statute or municipal ordinance, that is the basis for the conditional approval or disapproval, if applicable; and (2) may not be arbitrary. *Id.* § 212.0091(b).

**10. If the municipal authority approves with conditions or disapproves with explanation, what is the applicant entitled to do?**

After the conditional approval or disapproval with explanation of a plan or plat, the applicant may submit to the municipal authority or governing body a written response that satisfies each condition for the conditional approval or remedies each reason for disapproval provided, and the municipal authority or governing body may not establish a deadline for an applicant to submit the response. *Id.* § 212.0093.

**11. What must the city do with regard to the applicant's written response?**

A municipal authority or governing body that receives a written response shall determine whether to “approve” or “disapprove [with explanation]” the applicant’s previously conditionally-approved or disapproved plan or plat not later than the 15th day after the date the response was submitted. *Id.* § 212.0095(a). Again, a city may not establish a deadline before which the applicant must submit the response. *Id.* § 212.0093

A municipal authority or governing body that receives a response shall approve a previously conditionally approved or disapproved plan or plat if the response adequately addresses each condition of the conditional approval or each reason for the disapproval. *Id.* § 212.0095(c).

A previously conditionally-approved or disapproved plan or plat is approved if: (1) the applicant files a response that adequately addresses each condition of the conditional approval or each reason for disapproval, and (2) the municipal authority or governing body that receives the response does not disapprove the plan or plat on or before the 15th day the response was submitted. *Id.* § 212.0095(d).

The two paragraphs above mean the plan or plat must be approved if: (1) the applicant’s written response addresses all the issues raised in the city’s prior approval with conditions or disapproval with explanation; and (2) no new issues are raised by the applicant’s written response. *Id.* § 212.0095(d)(2). What to do when new issues are raised by the applicant’s written response is the subject of some debate and is addressed in question 12, below.

**12. What if the applicant’s written response changes the plan or plat in a way that creates new issues?**

At least two schools of thought exist in relation to what happens once the city receives the applicant’s written response: (1) the written response and 15-day decision period of the city continues repeatedly in relation to new issues raised by corrections; or (2) the city must disapprove with explanation a submission that creates new issues, which starts the process from the beginning.

Under the first process, it appears that – if the applicant’s written response raises new issues – a city may, once again, “approve” or “disapprove with explanation” the plan or plat on or before the 15<sup>th</sup> day the response was submitted. Section 212.0095(d) supports that conclusion:

(d) A previously conditionally approved or disapproved plan or plat is approved if: (1) the applicant filed a response that meets the requirements of Subsection (c); and (2) the municipal authority or governing body that received the response *does not disapprove the plan or plat* on or before the date required by Subsection (a) and in accordance with Section 212.0091.

Disapproval must follow the process spelled out previously:

- A municipal authority or governing body that conditionally approves or disapproves a plan or plat shall provide the applicant a written statement of the conditions for the conditional approval or reasons for disapproval that clearly articulates each specific

condition for the conditional approval or reason for disapproval. *Id.* §§ 212.0095(b); 212.0091(a) (Note that (a) includes the “conditional approval” option, but a city can’t use that. It can only disapprove with explanation because it is limited to doing so by Section 212.0095(d)(2)).

- Each condition or reason specified in the written statement: (1) must be directly related to the requirements under the subdivision platting law and include a citation to the law, including a statute or municipal ordinance, that is the basis for the conditional approval or disapproval, if applicable; and (2) may not be arbitrary. *Id.* §§ 212.0095(b); 212.0091(b) (Again, only disapproval with conditions is allowed at this stage).

Presumably, the approval or disapproval with explanation for new issues within 15 days allows the applicant to once again submit a written response, which once again triggers the 15 day deadline. That process could conceivably continue until all issues have been addressed.

The second process presumes that the applicant’s written submission and the city’s response to it within 15 days is a “one-and-done” proposition. That process interprets Sections 212.0095(b)(2) and (c)-(d) to allow approval if all of the items are corrected or disapproved with explanation if not. The disapproval with explanation would mean that the applicant starts again at the beginning by resubmitting the plan or plat.

### **13. Does the bill provide for an alternative plan or plat approval procedure?**

Yes, but only if they applicant agrees. An applicant may elect at any time to seek approval for a plan or plat under an alternative approval process adopted by a city if the process allows for a shorter approval period than the approval process described in the questions above. *Id.* § 212.0096.

An applicant that elects to seek approval under the alternative approval process described above is not: (1) required to satisfy the requirements of the statutory approval process in the bill above before bringing an action challenging a disapproval of a plan or plat; or (2) prejudiced in any manner in bringing the action described by (1), including satisfying a requirement to exhaust any and all remedies. *Id.* § 212.0096(b).

This alternative approval procedure may be a way to grant more authority to staff and speed up internal processes. An applicant would usually have nothing to lose by trying a city’s alternative process because the applicant could always opt back in to the procedures in the bill.

### **14. May a city require an applicant to waive any deadlines or procedures in the bill?**

Maybe, but only with regard to a plan, not a plat. A municipal authority responsible for approving plats or the governing body of a city may not request or require an applicant to waive a deadline or other approval procedure. *Id.* § 212.0097. The waiver prohibition applies only to “plats” and not to “plans,” which could allow a city to require a waiver for anything other than an actual plat, which is defined in the bill as a preliminary plat, general plan, final plat, and



replat. Of course, the prohibition against establishing a deadline by which the applicant must submit a written response remains in place. *Id.* § 212.0093.

**15. What is the burden of proof in a legal action challenging the disapproval of a plan or plat?**

In a legal action challenging a disapproval of a plan or plat, the city has the burden of proving by clear and convincing evidence that the disapproval meets the requirements of the subdivision platting law or any applicable case law, and the court may not use a “deferential standard.” *Id.* § 212.0099.

**16. May a city require a plan or plat to meet administrative completeness requirements before being considered “filed?” May a city have a submittal calendar that corresponds to the city’s internal meetings process?**

The bill doesn’t appear to modify the authority of a city to require an administrative completeness review (i.e., meet a checklist of requirements) prior to being accepted for filing. A city could also continue to have a submittal calendar that corresponds, for example, to planning and zoning commission meetings. In other words, the bill doesn’t make any additions related to acceptance for filing requirements. Thus, if a city believes it had the authority to do so prior to the bill, it should be able to continue those practices.

One exception is that, if a groundwater availability certification is required, the 30-day period begins on the date the applicant submits the groundwater availability certification to the municipal authority responsible for approving plats or the governing body, as applicable. *Id.* § 212.009(b-1).

**17. How does the bill interact with Chapter 245 (the “permit vesting statute”)?**

Chapter 245, in sections 245.001(a) and (b), provides in relevant part that:

Each regulatory agency shall consider the approval, disapproval, or conditional approval of an application for a permit solely on the basis of any orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time: (1) the original application for the permit is filed for review for any purpose, including review for administrative completeness; or (2) a plan for development of real property or plat application is filed with a regulatory agency.

Rights to which a permit applicant is entitled under this chapter accrue on the filing of an original application or plan for development or plat application that gives the regulatory agency fair notice of the project and the nature of the permit sought. An application or plan is considered filed on the date the applicant delivers the application or plan to the regulatory agency or deposits the application or plan with the United States Postal Service by certified mail addressed to the regulatory agency. A certified mail receipt obtained by the applicant at the time of deposit is prima facie evidence of the date the application or plan was deposited with the United States Postal Service.

The above means that an applicant could submit something for approval that would trigger vesting, but that doesn't necessarily mean that the application is "filed" for purposes of H.B. 3167. However, Section 245.001(e) provides that:

(e) A regulatory agency may provide that a permit application expires on or after the 45th day after the date the application is filed if:

(1) the applicant fails to provide documents or other information necessary to comply with the agency's technical requirements relating to the form and content of the permit application;

(2) the agency provides to the applicant not later than the 10th business day after the date the application is filed written notice of the failure that specifies the necessary documents or other information and the date the application will expire if the documents or other information is not provided; and

(3) the applicant fails to provide the specified documents or other information within the time provided in the notice.

The subsection above provides additional authority for a city to require "administrative completeness" prior to an application being considered as "filed" for purposes of H.B. 3167.

#### **18. What are best practices and practical tips for compliance with the bill?**

The following suggestions were provided by planners and land use attorneys:

- Review ordinances to make sure they: (1) include all grounds for approval with conditions or denial with explanation; and (2) specifically reference/cross-reference the development code, municipal code, charter, critical manuals, and other rules that may be cited as a result of H.B. 3167.
- Conduct a study of the cost to provide service for the required staffing levels necessary to meet H.B. 3167 timelines. For instance, a city may need additional engineering services. Adopt new fees that require development to cover the associated costs.
- Establish a detailed internal review process with internal deadlines.
- If a city doesn't have both the planning commission and governing body approval process (as allowed in Local Government Code Section 212.006), it should consider adopting such a process so that if one misses something (e.g., an item that needs to be conditionally approved), the other one can address it.
- Define "filed" in the city's ordinance to mean the day the administrative review process is finished and the plan or plat is placed on the planning and zoning commission agenda.
- Create a waiver form and make it available to applicants. The city can't request a waiver for plats, but it arguably can for plans (see question 14, above), and staff could point out that the process may actually be longer without one.
- Develop standard forms with fill-in-the-blanks and have a comment bank that includes citations to point out frequent errors.

- Establish a detailed quality control checklist (with code citations) and require it to be submitted, and stamped by the submitting engineer, as part of the completeness review.
- Host meeting/informational sessions for the development community to roll out process changes.
- Require pre-application conferences before applicants can submit.
- Limit filing to a schedule or certain day(s) of week.
- Consider whether you need to add dates to the planning and zoning commission meeting schedule, and consider what happens to the application if the commission is unable to meet within the 30-day timeframe (e.g., because of a lack of quorum).
- Delegate any applications to staff rather than the “authority responsible for approving plats” to avoid the 30-day provisions.
- Require supporting “studies” (i.e. traffic impact analysis, drainage study, etc.) be submitted prior to the first application for development.
- Consider requiring submission and approval of preliminary utility plans, potentially as part of a service availability determination, separate and prior to any submission of the actual preliminary plan or plat. Consider the same regarding: utility evaluations (city and third party); TxDOT or county road approvals (curb cuts/driveways); traffic impact analysis; variance approvals; and any other submissions that need to be made to the county and ESD (or any other governmental entity that needs to review) prior to filing.
- Do not accept a final plat for review until subdivision construction plans are approved and either a fiscal surety is filed or the infrastructure improvements are constructed.
- Call responses “notices of code deficiency” that state “your submission fails to comply with section \_\_\_\_\_ regarding \_\_\_\_\_” or “does not adequately address section \_\_\_\_\_ regarding \_\_\_\_\_.”

**19. Does the bill contain any beneficial provisions?**

Yes. With regard to the approval of replats, the bill provides that:

1. 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 the replat: (a) is signed and acknowledged by only the owners of the property being replatted; (b) is approved by the municipal authority responsible for approving plats; and (c) does not attempt to amend or remove any covenants or restrictions (*Id.* § 212.014); and
2. for a replat that, during the preceding five years, any of the area to be replatted was limited by an interim or permanent zoning classification to residential use for not more than two residential units per lot or any lot in the preceding plat was limited by deed restrictions to residential use for not more than two residential units per lot: (a) if the proposed replat requires a variance or exception, a public hearing must be held by the municipal planning commission or the governing body of the city and; (b) if a proposed replat does not require a variance or exception, the city shall, not later than the 15th day after the date the replat is approved, provide written notice by mail of the approval of the replat to each owner of a lot in the original subdivision that is within 200 feet of the lots to be replatted according to the most recent municipality or county tax roll; (c) sections (a) and (b) do not apply to a proposed replat if the municipal planning commission or the governing body of the city holds a public hearing and gives notice of the hearing in the

manner provided by section (b); (d) the notice of a replat approval required by section (b) must include: (i) the zoning designation of the property after the replat; and (ii) a telephone number and e-mail address an owner of a lot may use to contact the city about the replat (*Id.* § 212.015).

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graph TD
    Start([Plat/Plan Submission]) --> Review{Completeness review?}
    Review --> Day1[Day 1 Filed]
    Review --> Start
    Day1 --> Response[Applicant written response  
(no deadline)  
212.0093]
    Response --> Day15{Day 15  
212.0095(a)}
    Day15 --> Approve[1. Approve;  
2. Approve w/conditions; or  
3. Disapprove w/conditions.  
212.009]
    Day15 --> Response
    Approve --> Endorsement[Issue endorsement certificate  
212.009(c)]
    Approve --> Day30[Day 30]
    Day30 --> Deemed[Deemed approved if miss deadline  
212.009(d)]
    Day30 --> Extended[Can be extended by agreement  
212.009(b-2)]
    Deemed --> Endorsement
    Extended --> Endorsement
    Endorsement --> Loop{Continuous loop until all new issues are resolved?}
    Loop --> Day30
    Loop --> Endorsement
    
```

Plat/Plan Submission

Completeness review?

Day 1 Filed

Applicant written response (no deadline) 212.0093

Day 15 212.0095(a)

1. Approve;  
2. Approve w/conditions; or  
3. Disapprove w/conditions.  
212.009

Issue endorsement certificate 212.009(c)

212.0095(b)

If governing body approval is required, 30 days to 1, 2, or 3. 212.009(b)

Day 30

- Deemed approved if miss deadline 212.009(d)
- Can be extended by agreement 212.009(b-2)

Applicant optional alternate approval process 212.0096

Continuous loop until all new issues are resolved?

# **AGENDA ITEM #3**