

Building Department Legislation

H.B. 14 (Cody Harris/Bettencourt) – Third Party Inspections and Review of Development Applications: provides: (1) for a third-party review of certain development documents, permits, and inspections if a city fails to approve, conditionally approve, or disapprove the documents or conduct the inspection by the 15th day following the time prescribed by law for the review or inspection; (2) that a third-party document review may be performed by certain qualified persons, including: (a) a licensed engineer; or (b) a reviewer employed by the city or any other political subdivision, if the city approves the person; (3) that a third-party inspection may be performed by certain qualified persons, including: (a) a certified building inspector; (b) a licensed engineer; or (c) an inspector employed by the city or any other political subdivision, if the city approves the person; (4) that the city cannot collect an additional fee for the third-party review or inspection; (5) that the person performing the review or inspection must satisfy all applicable regulations and provide notice to the regulatory authority within 15 days of completion; and (6) that a person may appeal to the governing body of a political subdivision a decision to conditionally approve or disapprove a development document made by the regulatory authority for the political subdivision or a third party reviewer or inspector. (Effective September 1, 2023.)

Commentary: “The time prescribed by law” references a 2005 approved bill, HB 265, in Local Government Code, Chapter 214.904 TIME FOR ISSUANCE OF MUNICIPAL BUILDING PERMIT. We know this today as the 45-day “shot clock bill” on building permit approvals, which requires building departments to issue or deny a permit in 45 days or less. (again, this has been in place since 2005). Today, with HB 14, which goes into effect on September 1, 2023, if a building department does not comply with HB 265 then HB 14 will require a permit or inspection to be approved, conditionally approved, or disapproved in 15 days or it shall go to a third party review or an engineer or inspector from another city to complete the necessary plan review or inspections. $45 + 15 = 60$. So in effect you have 60 days. However, remember you can be challenged for violation of the 45 day rule, in place since 2005. It is viewed that some Texas cities are in violation now, which is why HB 14 was created.

Bill analysis – <https://capitol.texas.gov/tlodocs/88R/analysis/pdf/HB00014H.pdf#navpanes=0>

H.B. 1922 (Dutton/Bettencourt) – Reauthorization of Building Permit Fees: abolishes a city fee charged as a condition to constructing, renovating, or remodeling a structure on the 10th anniversary after the date the fee is adopted or most recently reauthorized unless the governing body of the city holds a public hearing and reauthorizes the fee by a vote of the governing body. (Effective January 1, 2024.)

Commentary: Cities need to update their permit fee schedules regularly. If a fee schedule is 10 years or older, it is abolished by HB 1922.

Bill analysis – <https://capitol.texas.gov/tlodocs/88R/analysis/pdf/HB01922H.pdf#navpanes=0>

H.B. 2334 (Burns/Paxton) – Plumbers: this bill provides that: (1) a person is not required to be licensed under the plumbing licensing law to perform plumbing work consisting of installing, servicing, or repairing service mains or service lines that provide water, sewer, or storm drainage services on private property in an area that extends from a public right-of-way or public easement to not less than five feet from a building or structure; and (2) the exemption to licensure in (1), above, does not apply to plumbing work performed on private property designated for use as a one-family or two-family dwelling. (Effective September 1, 2023.)

Commentary: Licensed Plumbers will not be required to install infrastructure services for water, sewer or drainage within five feet of a building. This is for commercial development on engineering infrastructure on the private side. However, this does not apply to private property single family dwellings per the bill exemption.

Bill analysis – <https://capitol.texas.gov/tlodocs/88R/analysis/pdf/HB02334H.pdf#navpanes=0>

H.B. 3526 (Raymond/Springer) – Solar Pergolas: prohibits a city from applying a local building code to the construction of a solar pergola. (Effective September 1, 2023.)

Commentary: Bill states prohibition on building code construction not electrical codes. Purpose appears to be elimination of city zoning code restrictions for solar pergolas and not to undermine safety of solar installations for electrical requirements. Bill analysis - <https://capitol.texas.gov/tlodocs/88R/analysis/pdf/HB03526E.pdf#navpanes=0>

Engineering Department Legislation

H.B. 3492 (Stucky/Springer) – Value-Based Fees: this bill, among other things: (1) prohibits cities from considering the cost of constructing or improving public infrastructure for a subdivision, lot, or related property development in determining the amount of an application, review, engineering, inspection, acceptance, administrative, or other fee imposed by the city related to the processing of engineering or construction plans or for the inspection of improvements for construction of a subdivision or lot or a related improvement required in conjunction with that construction; (2) provides that a city shall determine a fee described in (1), above, by considering the city’s actual cost to review and process the engineering or construction plan or to inspect the public infrastructure improvement; (3) provides that, in determining the city’s actual cost for reviewing and processing an engineering or construction plan or inspecting a public infrastructure improvement, a city may consider: (a) the fee that would be charged by a qualified, independent third-party entity for those services; (b) the hourly rate for the estimated actual direct time of the city’s employees performing those services; or (c) the actual costs assessed to the city by a third-party entity that provides those services to the city; (4) prohibit a city from requiring the disclosure of information related to the value of or cost of constructing or improving a residential dwelling or the public infrastructure improvements for a subdivision, lot, or related property development as a condition of obtaining approval for subdivision construction or for the acceptance of public infrastructure improvements except as required by the federal Emergency Management Agency for participation in the National Flood Insurance Program; and (5) require a city that imposes a fee for reviewing or processing an engineering or construction plan or inspecting a public infrastructure improvement to annually publish the fee and the hourly rate and estimated direct time incurred by city employees under (3)(b), above, on the city’s website or if the city does not maintain a website, in a newspaper of general circulation in the county in which the city is located. (Effective September 1, 2023.)

Commentary: Cities can no longer base any application, review, inspection, or other related fees for constructing or improving public infrastructure for a subdivision lot on the cost or value of the infrastructure project. Additionally, cities may no longer require an applicant to disclose information related to the cost or value of a public infrastructure project for city acceptance of the subdivision or infrastructure project, except as required by the FEMA for participating in the National Flood Insurance Program.

Bill analysis: <https://capitol.texas.gov/tlodocs/88R/analysis/pdf/HB03492H.pdf#navpanes=0>

H.B. 1707 (Klick/Hughes) – Open-Enrollment Charter Schools: provides, among other things, that: (1) to be considered a school district by a city for the purposes below, the governing body of an open-enrollment charter school must certify in writing to the city that no administrator, officer, or employee the school and no member of the governing body of the charter school or its charter holder derives any personal financial benefit from a real estate transaction with the charter school; (2) a city shall consider an open-enrollment charter school that qualifies under (1), above, a school district for purposes of, among other things, zoning, permitting, platting, subdivision, construction and site development, land

(Legislative review for Building Inspection, Engineering and Planning. Electronic copy has links to bills and analysis.)

development regulation, application processing and timelines, regulation of architectural features, business licensing, franchises, utility services, signage, the requirements for posting bonds or securities, contract requirements, and fees and assessments; (3) a city may not consider an open enrollment charter school a school district for the purpose of collection of impact fees; (4) a city may not take any action that prohibits an open-enrollment charter school from operating a public school campus, educational support facility, athletic facility, or administrative office that it could not take against a school district; (5) the provisions above apply to property owned or leased by the charter school; and (6) charter schools are treated the same as school districts with regard to development agreements between a city and a school located in an area annexed for limited purposes. (Effective September 1, 2023.)

Commentary: Amends the Education Code to require cities to consider an open enrollment charter school a public school district for purposes of: zoning; project permitting; platting and replatting processes; business licensing; franchises; utility services; signage; subdivision regulation; property development projects; the requirements for posting bonds or securities; contract requirements; applicable land development standards; tree and vegetation regulations; regulations of architectural features of a structure; construction of fences; landscaping; garbage disposal; noise levels; fees or other assessments; and construction or site development work. The bill requires a political subdivision to grant approval in the same manner and follow the same timelines as if the charter school were a public school district located in the jurisdiction. Bill analysis: <https://capitol.texas.gov/tlodocs/88R/analysis/pdf/HB01707H.pdf#navpanes=0>

Planning Department Legislation

H.B. 1381 (Hernandez/Alvarado) – Zoning Hearing: requires a zoning commission to hold at least one public hearing on a preliminary report related to a proposed change in zoning classification before submitting a final report to the city’s governing body, whereas current law requires multiple hearings. (Effective September 1, 2023.)

Commentary: Represents a positive change to current zoning law for cities. Effective September 1, cities’ P&Z commissions will no longer need to hold more than one hearing on a preliminary report for a proposed change in zoning classification before submitting the report to city council. The statute previously required “hearings,” meaning at least two P&Z commission hearings were required before submitting a report to council. Now state law will specifically require only one public hearing.

Bill analysis: <https://capitol.texas.gov/tlodocs/88R/analysis/pdf/HB01381H.pdf#navpanes=0>

H.B. 3699 (Wilson/Bettencourt) – Platting Shot Clock: this bill, among other things, provides that:

1. subdivision development plans, including a subdivision plan, subdivision construction plan, site plan, land development application, and site development plan are no longer subject to the 30-day review and approval shot clock;
2. the state statute governing city regulation of subdivisions may not be construed to restrict a city from establishing a submittal calendar to be used by an applicant to facilitate compliance with the shot clock for plat review;
3. a city council, by ordinance and after notice is published in a newspaper of general circulation in the city, may:
(a) adopt reasonable specifications relating to the construction of each street or road based on the amount and kind of travel over each street or road in a subdivision; and (b) adopt reasonable specifications to provide adequate drainage for each street or road in a subdivision in accordance with standard engineering practices;
4. a landowner subdividing property must prepare a plat when the owner intends parts of the subdivided tract to be dedicated to public use.

(Legislative review for Building Inspection, Engineering and Planning. Electronic copy has links to bills and analysis.)

5. a plat is considered filed on the date the applicant submits the plat, along with a completed plat application and the application fees and other requirements to the city council or the municipal authority responsible for approving plats;
 6. the city council or the municipal authority responsible for approving plats may not require an analysis, study, document, agreement, or similar requirement to be included in or as part of an application for a plat, development permit, or subdivision of land that is not explicitly allowed by state law;
 7. the city authority responsible for approving plats must approve a plat or replat that is required to be prepared pursuant to Subchapter A, Chapter 212 of the Local Government Code, and that subchapter may not be construed to convey any authority to a city regarding the completeness of an application or the approval of a plat or replat that is not explicitly granted by the subchapter;
 8. a city council or city planning commission may delegate the ability to approve, approve with conditions, or disapprove a plat to municipal officers or employees;
 9. an applicant has the right to appeal a delegated plat application disapproval decision under Number 8, above, to the city council or the city planning commission;
 10. by January 1, 2024, a city shall adopt and make available to the public a complete, written list of all documentation and other information that the city requires to be submitted with a plat application;
 11. an application submitted to the city that contains all documents and other information on the list provided by Number 10, above, is considered complete;
 12. a city that operates a website must publish and continuously maintain the list described by Number 10, above, on the website not later than the 30th day after the date the city adopts or amends the list;
 13. a city that does not operate a website must publish the list described by Number 10, above, in a newspaper of general circulation in the city and a public place in the location in which the city council meets;
 14. the statutory approval timeframes may be extended for multiple 30-day periods under certain circumstances;
 15. the city authority responsible for approving plats may not require dedication of land within a subdivision for a future street or alley that is not: (a) intended by the owner of the tract; and (b) included in the city's capital improvement plan;
 16. a city authority responsible for approving plats may not refuse to review a plat or to approve a plate for recordation for failure to identify a roadway corridor unless the corridor is part of an agreement between the Texas Department of Transportation and a county in which the city is located; and
 17. if a city authority responsible for approving plats fails or refuses to approve a complying plat application, the owner of the tract may bring an action in district court for: (a) a writ of mandamus to compel the city to approve the plat; and (b) reasonable attorney fees and costs.
- (Effective September 1, 2023.)

Commentary: Concerns are raised that municipal subdivision regulation and the approval of subdivision plats differ from municipality to municipality. Specifically, no consistency with regard to how municipalities handle requirements for completed subdivision plat applications and the beginning of the 30-day period in which to approve, approve with conditions, or disapprove a completed plat application. H.B. 3699 seeks consistency and transparency regarding the municipal subdivision plat application and approval process by requiring the publication of a list of all documentation and other information that a municipality requires to be submitted with a plat application.

Bill analysis: <https://capitol.texas.gov/tlodocs/88R/analysis/pdf/HB03699S.pdf#navpanes=0>