POST SESSION UPDATE: CHANGES TO PLATTING SHOT CLOCK REGULATIONS

In 2019, the Texas Legislature passed H.B. 3167, significantly amending the statutes governing municipal platting and subdivision requirements. This bill, among other things, broadened the applicability of platting regulations to plans as well as plats, introduced a strict timeframe for plat and plan approval, and provided for automatic approval of applications that were not properly processed under the newly introduced procedures. These changes were quickly dubbed the "shot clock," and cities worked diligently to implement the significant new changes. In the first major amendment to the shot clock statutes since 2019, this past session, the legislature passed H.B. 3699, making several significant changes to the shot clock process. Most of the bill is effective September 1, 2023, except for certain requirements which must be completed by January 1, 2024 as discussed below.

The changes in H.B. 3699 center around clarifications and additional responsibilities concerning municipal governance over subdivision planning, as well as enhancing transparency and improving efficiency in the approval process. The effects of the various amendments will have differing impacts from city-to-city, depending in part on local process, so each city's attorney and planning professionals should take a close look at the changes in the bill, which are discussed below.

Shot Clock Applies to Plats Only

Before H.B. 3699, the shot clock applied to both "plats" and "plans" as defined in the statute; therefore, many cities would process certain site plans, construction plans, and other "plans" following the stringent shot clock timelines. Applying subdivision rules to all these different plans had complicated effects, because many aspects of site planning and construction planning do not fall squarely within the rubric of subdivision, i.e. site plans often include zoning or utilities details that may not technically be required under a city's subdivision authority. This led to confusion in some cases. By removing "plans" from the shot clock, the legislature has clarified the shot clock's application which could lead to greater regulatory consistency throughout the state.

The Plat Application

H.B. 3699 introduced new or amended old requirements related to the plat application itself, including what cities may require with an application as well as when an application is technically filed and complete.

Submission Requirements: By January 1, 2024, cities must adopt and make public a complete list of all documentation or other information that the city requires to be submitted with a plat application. This required documentation and other information must be related to a requirement authorized under the platting subchapter of the Local Government Code. These new requirements should provide greater transparency and certainty to all parties involved in the plat process. While the deadline for creation and publication of this list is early 2024, many cities are adopting and publishing the list currently, since the rest of H.B. 3699 takes effect September 1st. Cities have expressed additional concerns regarding what documentation or other information is "related to" and "authorized under" the platting subchapter. Keep in mind that the grants of authority contained in the subchapter include broad police power authority for cities to regulate the subdivision of land to promote the health, safety, and general welfare of the city as well as the safe, orderly, and healthful development of the city. Arguably, if a particular regulation is allowed under this grant of police powers, then documentation or information that allows the city to determine whether the regulation is being followed would likewise be authorized.

Prohibited Requirements: Following H.B. 3699, a city 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. This provision may cause concern, because while

cities have broad, general authority to regulate development in the best interest of the community, this new subsection appears to prohibit certain studies unless there is "explicit" authority to require the study or document. If a city cannot require an analysis from a landowner in order to understand whether the landowner's subdivision plans comply with a particular city regulation, ensuring compliance becomes difficult and potentially impossible. City officials should consult their city attorneys and planning professionals about how to proceed, but some compliance solutions may include the following:

1. A city could read this provision as being effective only at the moment of application submission. In this case, the city would not require these certain documents *at the moment* the application is submitted; however, those analyses or documents would still need to be submitted by the landowner at some point during the shot clock process in order for the city to effectively review the application for compliance. This is a particularly close, legalistic reading of the words "included in or as part of an application," so, as always, the city attorney should be consulted before adopting this interpretation.
2. Additionally, rather than requiring specific, named analyses, studies, or documents, the city could instead require the submission of the information or data needed for review. For example, if a city currently requires a study called a "Traffic Impact Analysis" to be submitted with a plat application, the landowner might protest under this new statute. However, if the city required the landowner to submit "data that determined the potential traffic impacts of a proposed subdivision," that could comply with H.B. 3699. This is somewhat of a step backwards, practically speaking, in terms of efficiency and clarity, but it could be a way to comply with the law, where the city needs to know certain information, but now the city is prohibited from requesting the exact type of study that would generate the needed information.
3. A city could conduct the required studies itself following the submission of a plat application or contract for those services. This is likely the most difficult option, because of the shot clock time constraints and the sheer volume of development applications being processed throughout the state. There may simply not be bandwidth to accomplish all the needed work in-house efficiently. Development fees would have to be adjusted upwards as well to cover the additional costs to the city as well.

Filing and Completeness of Plat Applications: Under the law, the shot clock's 30-day decision deadline begins on the date a plat application is "filed," so determination of that date is critical. Bear in mind that "submission" of a plat application is not the same as "filing" a plat application. Determination of the date when documentation has been submitted to the city is very easy, while determining whether that same documentation constitutes a filed plat application is something different altogether. H.B. 3699 adds language related to filing and completeness that cities need to be aware of and consider.

A plat application is "filed" on the date a landowner submits: (1) a plat; (2) a completed plat application; and (3) fees and other requirements prescribed by or under the platting subchapter to the city. A plat application containing all the documentation required to be submitted with a plat is considered "complete." These new subsections seem to equate filing with completeness, but they fail to address whether a city has any grace period following document submission to determine whether a submitted application is, in fact, a "complete" and therefore a "filed" plat application which would trigger the ticking shot clock.

Since the introduction of the shot clock in 2019, different cities have developed different methods and rules related to completeness checks and the determination of filing dates. With this new language, a landowner could argue that if the documentation they submit constitutes a complete application, then the filing date which starts the shot clock was the date the documentation was originally submitted and not the date the city determined the that the application was complete. In many cities this could be a fundamental shift in the way plat applications are treated.

Changes to City Regulatory Authority

When a Plat is Required: H.B. 3699 makes subtle yet significant changes to the requirements related to when a plat is required at all. Previously, a landowner subdividing a tract of land would have to file a plat when their land was being divided into parts for public use or for the use of future landowners within the subdivision. Following H.B. 3699, a plat will be required only when a land is being divided into parts which include parts that are intended by the owner to be dedicated for public use. Subdivision of land into parts intended solely for the use of future owners within the subdivision no longer triggers platting.

The most obvious effect of this change is that entirely private subdivisions could arguably be exempt from platting altogether and therefore be exempt from much of a city's subdivision regulations. This could include certain projects developed as condominiums or certain types of single-family detached rental units which some cities regulate as though they are apartment complexes.

On the other hand, most subdivisions of land include public dedication related to utilities, which could trigger platting requirements. Cities need to carefully consider the current wording of their subdivision regulations to determine whether this change in H.B. 3699 could undermine enforcement altogether. Many subdivision-related regulations could likely be enforceable even in the absence of a plat; however, a city's regulation must make that clear. Consultation with the city's attorney is critical to ensure that the city's regulations will continue to aid safe and thoughtful development within a community.

Future Street Dedication: Following the passage of H.B. 3699, a city may not require a dedication for a future street or alley within a subdivision that is not: (1) intended by the owner; and (2) not included, funded and approved as an adopted city or county capital improvement project (CIP). Because the local right-of-way dedications meant to serve the individual properties within a new subdivision would usually never be included in a city CIP, this new provision is likely intended to address dedication requirements related to larger collector and arterial roadways which may appear on transportation planning documents but do not yet exist. This provision appears to require cities to take the significant steps of approving and funding these roadways before the city can potentially require the dedication of the right of way during the platting process. Even then, owner intention to dedicate the roads is still required. Note that these provisions do not seem to impact existing roadways that could be affected by a new subdivision of property. Additionally, cities may want to consider how they define "future street" and "funded" as it relates to streets. There may be some ability to create predictability and clarity through local definitions.

The Shot Clock

While the fundamental idea of the 30-day shot clock remains largely unchanged, H.B. 3699 amends the process in a few important ways:

Submittal Calendar: The creation of the 30-day shot clock in 2019 appeared to give a city 30 days to process and make a decision related to plat and plan applications. By law, most of these decisions had to be made in open meetings of a city's planning commission or the city council. In order to comply with the shot clock while allowing city staff and officials appropriate time to adequately review applications, many cities created submittal calendars to control the dates when plat applications would be accepted by the city. This authority was not

explicitly granted in statute, but after the passage of H.B. 3699, cities now have statutory authority to create submittal calendars, which adds clarity and predictability for cities and landowners during the platting process.

Multiple 30-day Extensions*:* Following H.B. 3699, by agreement, a city and a landowner may extend the deadlines under the Shot Clock for multiple additional 30-day periods. Previously, the city and landowner could do this one time. The request must be submitted in writing by the applicant -- a request the municipal authority can approve or deny. A city wishing to extend additional flexibility and predictability to applicants could likely adopt a policy of automatic approval in certain cases or under certain conditions. City officials should consult with the city attorney for direct guidance.

Delegation of Approval Authority: Prior to H.B. 3699, a city could delegate the ability to approve certain amending plats, minor plats, and replats to a city officer of employee. H.B. 3699 significantly expands this authority. Now city council or the planning commission may empower a city staff member or officer to approve, approve with conditions, or disapprove all plat applications. This is a fundamental change in the way the shot clock works, because it allows cities to act on plat applications without the requirements for the decision to occur in a posted public meeting. This additional authority could significantly help those cities that struggle to meet quorum requirements for all the meetings the shot clock requires.

The flip side is that while staff delegation can speed up the process, it can also lead to less transparency for the public. City officials will need to fully consider the best balance to strike between speed and public debate. Keep in mind that delegation to staff will likely increase pressure on the employees in the planning and development department. Not only could it increase their workload, it may also increase their individual exposure to landowner anger when an application is denied. Planning commissions and city councils may be better suited to take the heat, so careful consideration of the effects of delegation is recommended. While some cities have chosen to allow for full delegation to city staff, others are considering adding delegation authority in certain circumstances only. A city could, for example, allow for staff-side final approval for resubmissions of a plat that had previously been conditionally approved by the governing body. Or a city could choose to allow staff full approval authority for subdivisions of land based on the size of the tract. There are a lot of ways cities could use this expanded authority to enhance the platting process, so cities will want to consider the local conditions and craft a solution that works best for their community.

The recent passage of H.B. 3699 showcases the legislature's ongoing commitment to refining the platting process for Texas cities. While it seeks to provide a more streamlined and transparent approach, the bill also presents its share of challenges. The removal of "plans," expanded staff delegation authority, additional extensions of time, and the inclusion of a submittal calendar are concrete improvements to the process, but the implications of H.B. 3699 will vary for each city. This underlines the importance of city attorneys and planning professionals thoroughly examining the bill's provisions to help cities strike the correct balance between the speed of approvals and ensuring public transparency, safety, and thoughtful development.