

By: Bettencourt

S.B. No. 1786

A BILL TO BE ENTITLED

AN ACT

relating to approval procedures for property development review by a municipality.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 212.0065(c), Local Government Code, is amended to read as follows:

(c) The person or persons shall not disapprove the plat and shall be required to refer any plat which the person or persons refuse to approve to the municipal authority responsible for approving plats within the time period specified in Section 212.023 [~~212.009~~].

SECTION 2. Chapter 212, Local Government Code, is amended by adding Subchapter A-1 to read as follows:

SUBCHAPTER A-1. APPROVAL PROCEDURES FOR PROPERTY DEVELOPMENT

REVIEW

Sec. 212.021. DEFINITIONS. In this subchapter:

(1) "Development application" means an application made to a municipal authority for property development review.

(2) "Development inspection" means the inspection of an improvement to land required to be conducted as part of a project to develop the land or construct or improve an improvement to the land.

(3) "Development permit" means a permit required to be obtained to develop land or construct or improve an improvement to

1 land.

2 (4) "Municipal authority" means the municipal
3 authority responsible for conducting a property development review
4 under law.

5 (5) "Plan" and "plat" have the meanings assigned by
6 Section 212.001.

7 (6) "Property development review" means the process of
8 granting municipal approval to subdivide land, develop land, or
9 construct or improve an improvement to land. The term includes the
10 review of a development application.

11 Sec. 212.028. DELEGATION OF APPROVAL RESPONSIBILITY TO
12 THIRD-PARTY REVIEWER. (a) Except as provided by Subsection (b),
13 the appropriate municipal authority may delegate to a third-party
14 reviewer the ability to approve a development application or
15 conduct a development inspection.

16 (b) If a municipality fails to complete at least 80 percent
17 of the total number of development applications and requests for
18 development inspections the municipality receives in a calendar
19 year in accordance with the deadlines prescribed by this subchapter
20 for two consecutive years, the governing body of the municipality
21 must delegate to third-party reviewers the ability to approve all
22 development applications and conduct all development inspections
23 for the five calendar years following that second consecutive year.

24 (c) A third-party reviewer shall process a development
25 application or complete a development inspection in accordance with
26 the deadlines and other approval procedures prescribed by this
27 subchapter as if the reviewer is the municipal authority.

1 (d) A municipality may audit the work of a third-party
2 reviewer with a third-party auditor. The auditor must be an
3 architect, engineer, or other appropriate professional who is
4 licensed, certified, or regulated by this state.

5 (e) A development application or development inspection
6 that is begun by a third-party reviewer must be completed by the
7 reviewer regardless of whether the governing body of the
8 municipality elects to discontinue delegation authorized by
9 Subsection (a) or the mandatory period of delegation prescribed by
10 Subsection (b) expires.

11 Sec. 212.029. THIRD-PARTY AUDITOR TRAINING. (a) The Texas
12 Department of Housing and Community Affairs, in coordination with
13 the Texas Department of Licensing and Regulation and other
14 appropriate state agencies, shall:

15 (1) develop requirements for certifying, insuring,
16 and auditing third-party reviewers; and

17 (2) develop and offer training programs for
18 third-party reviewers that establish best practices.

19 (b) The Texas Department of Housing and Community Affairs
20 may adopt rules necessary to implement this section.

21 SECTION 3. Sections 212.0085, 212.009, 212.0091, 212.0093,
22 212.0095, 212.0096, 212.0097, and 212.0099, Local Government Code,
23 are transferred to Subchapter A-1, Chapter 212, Local Government
24 Code, as added by this Act, redesignated as Sections 212.022,
25 212.023, 212.024, 212.025, 212.026, 212.027, 212.030, and 212.031,
26 respectively, and amended to read as follows:

27 Sec. 212.022 [~~212.0085~~]. [~~APPROVAL~~—~~PROCEDURE~~.]

1 APPLICABILITY OF SUBCHAPTER. The approval procedures under this
 2 subchapter apply to a municipality regardless of whether the
 3 municipality has entered into an interlocal agreement, including an
 4 interlocal agreement between a municipality and county under
 5 Section 242.001(d).

6 Sec. 212.023 [~~212.009~~]. [~~APPROVAL PROCEDURE~~] INITIAL
 7 APPROVAL. (a) A A [~~The~~] municipal authority [~~responsible for~~
 8 ~~approving plats~~] shall approve, approve with conditions, or
 9 disapprove a plan or plat, approve or disapprove a development
 10 permit, or complete a development inspection not later than the
 11 30th day [~~within 30 days~~] after the date the plan, [~~or~~] plat, or
 12 permit application is filed or the inspection is requested. A plan,
 13 [~~or~~] plat, or development permit is approved by the municipal
 14 authority unless it is disapproved within that period and in
 15 accordance with this subchapter [~~Section 212.0091~~]. A development
 16 inspection requirement is waived unless the inspection is completed
 17 within that period and in accordance with this subchapter.

18 (b) If an ordinance requires that a plan, [~~or~~] plat, or
 19 development permit be approved by the governing body of the
 20 municipality in addition to any other municipal authority [~~the~~
 21 ~~planning commission~~], the governing body shall approve, approve
 22 with conditions, or disapprove the plan or plat, or approve or
 23 disapprove the permit, as applicable, not later than the 30th day
 24 [~~within 30 days~~] after the date the plan, [~~or~~] plat, or permit is
 25 approved by the other authority [~~planning commission~~] or is
 26 approved by the inaction of that authority [~~the commission~~]. A
 27 plan, [~~or~~] plat, or development permit is approved by the governing

1 body unless it is disapproved within that period and in accordance
2 with this subchapter [~~Section 212.0091~~].

3 (c) [~~(b-1)~~] Notwithstanding Subsection (a) or (b), if a
4 groundwater availability certification is required under Section
5 212.0101, the 30-day period described by those subsections to
6 approve, approve with conditions, or disapprove a plat begins on
7 the date the applicant submits the groundwater availability
8 certification to the applicable municipal authority [~~responsible~~
9 ~~for approving plats or the governing body of the municipality, as~~
10 ~~applicable~~].

11 (d) [~~(b-2)~~] Notwithstanding Subsection (a) or (b), the
12 parties may extend the 30-day period described by those subsections
13 for a period not to exceed 30 days if:

14 (1) the applicant requests the extension in writing to
15 the applicable municipal authority [~~responsible for approving~~
16 ~~plats or the governing body of the municipality, as applicable~~];
17 and

18 (2) the [~~municipal~~] authority [~~or governing body, as~~
19 ~~applicable,~~] approves the extension request.

20 (e) [~~(c)~~] If a plan or plat is approved, the municipal
21 authority giving the approval shall endorse the plan or plat with a
22 certificate indicating the approval. The certificate must be
23 signed by:

24 (1) the authority's presiding officer and attested by
25 the authority's secretary; or

26 (2) a majority of the members of the authority.

27 (f) [~~(d)~~] If the municipal authority [~~responsible for~~

1 ~~approving plats]~~ fails to approve, approve with conditions, or
2 disapprove a plan or plat within the prescribed period, the
3 authority on the applicant's request shall issue a certificate
4 stating the date the plan or plat was filed and that the authority
5 failed to act on the plan or plat within the period. The
6 certificate is effective in place of the endorsement required by
7 Subsection (e) [~~(e)~~].

8 (g) [~~(e)~~] The municipal authority [~~responsible for~~
9 ~~approving plats]~~ shall maintain a record of each development
10 application and request for a development inspection made to the
11 authority and the authority's action taken on it. On request of an
12 owner of an affected tract, the authority shall certify the reasons
13 for the action taken on an application.

14 Sec. 212.024 [212.0091]. [~~APPROVAL PROCEDURE.~~]
15 CONDITIONAL APPROVAL OR DISAPPROVAL REQUIREMENTS. (a) A municipal
16 authority [~~or governing body]~~ that conditionally approves or
17 disapproves a plan or plat, or disapproves a development permit,
18 under this subchapter shall provide the applicant a written
19 statement of the conditions for the conditional approval or reasons
20 for disapproval, as applicable, that clearly articulates each
21 specific condition for the conditional approval or reason for
22 disapproval.

23 (b) Each condition or reason specified in the written
24 statement:

25 (1) must:

26 (A) be directly related to the requirements
27 prescribed by law for the applicable development project [~~under~~

1 ~~this subchapter~~]; and

2 (B) include a citation to the law, including a
3 statute or municipal ordinance, that is the basis for the
4 conditional approval or disapproval, if applicable; and

5 (2) may not be arbitrary.

6 Sec. 212.025 [~~212.0093~~]. [~~APPROVAL PROCEDURE.~~] APPLICANT
7 RESPONSE TO CONDITIONAL APPROVAL OR DISAPPROVAL. After the
8 conditional approval or disapproval of a plan or plat, or
9 disapproval of a development permit, under Section 212.024
10 [~~212.0091~~], the applicant may submit to the municipal authority [~~or~~
11 ~~governing body~~] that conditionally approved or disapproved the
12 plan, [~~or~~] plat, or permit a written response that satisfies each
13 condition for the conditional approval or remedies each reason for
14 disapproval provided. The municipal authority [~~or governing body~~]
15 may not establish a deadline for an applicant to submit the
16 response.

17 Sec. 212.026 [~~212.0095~~]. [~~APPROVAL PROCEDURE.~~] APPROVAL OR
18 DISAPPROVAL OF RESPONSE. (a) A municipal authority [~~or governing~~
19 ~~body~~] that receives a response under Section 212.025 [~~212.0093~~]
20 shall determine whether to approve or disapprove the applicant's
21 previously conditionally approved or disapproved plan or plat, or
22 disapproved development permit, not later than the 15th day after
23 the date the response was submitted.

24 (b) A municipal authority [~~or governing body~~] that
25 conditionally approves or disapproves a plan or plat, or
26 disapproves a development permit, following the submission of a
27 response under Section 212.025 [~~212.0093~~]:

1 (1) must comply with Section 212.024 [~~212.0091~~]; and
2 (2) may disapprove the plan, ~~[or]~~ plat, or permit only
3 for a specific condition or reason provided to the applicant under
4 Section 212.024 [~~212.0091~~].

5 (c) A municipal authority [~~or governing body~~] that receives
6 a response under Section 212.025 [~~212.0093~~] shall approve a
7 previously conditionally approved or disapproved plan or plat, or
8 disapproved development permit, if the response adequately
9 addresses each condition of the conditional approval or each reason
10 for the disapproval.

11 (d) A previously conditionally approved or disapproved plan
12 or plat, or disapproved development permit, is approved if:

13 (1) the applicant filed a response that meets the
14 requirements of Subsection (c); and

15 (2) the municipal authority [~~or governing body~~] that
16 received the response does not disapprove the plan, ~~[or]~~ plat, or
17 permit on or before the date required by Subsection (a) and in
18 accordance with Section 212.024 [~~212.0091~~].

19 Sec. 212.027 [~~212.0096~~]. [~~APPROVAL PROCEDURE.~~]

20 ALTERNATIVE APPROVAL PROCESS. (a) Notwithstanding Sections
21 212.023 [~~212.009~~], 212.024 [~~212.0091~~], 212.025 [~~212.0093~~], and
22 212.026 [~~212.0095~~], an applicant may elect at any time to seek
23 approval for a plan, ~~[or]~~ plat, or development permit under an
24 alternative approval process adopted by a municipality if the
25 process allows for a shorter approval period than the approval
26 process described by Sections 212.023 [~~212.009~~], 212.024
27 [~~212.0091~~], 212.025 [~~212.0093~~], and 212.026 [~~212.0095~~].

1 (b) An applicant that elects to seek approval under the
2 alternative approval process described by Subsection (a) is not:

3 (1) required to satisfy the requirements of Sections
4 212.023 [~~212.009~~], 212.024 [~~212.0091~~], 212.025 [~~212.0093~~], and
5 212.026 [~~212.0095~~] before bringing an action challenging a
6 disapproval of a plan, ~~or~~ plat, or development permit under this
7 subchapter; and

8 (2) prejudiced in any manner in bringing the action
9 described by Subdivision (1), including satisfying a requirement to
10 exhaust any and all remedies.

11 Sec. 212.030 [~~212.0097~~]. [~~APPROVAL PROCEDURE~~] WAIVER
12 PROHIBITED. A municipal authority [~~responsible for approving plats~~
13 ~~or the governing body of a municipality~~] may not request or require
14 an applicant to waive a deadline or other approval procedure under
15 this subchapter.

16 Sec. 212.031 [~~212.0099~~]. JUDICIAL REVIEW OF DISAPPROVAL.
17 In a legal action challenging a disapproval of a plan, ~~or~~ plat, or
18 development permit under this subchapter, the municipality has the
19 burden of proving by clear and convincing evidence that the
20 disapproval meets the requirements of this subchapter or any
21 applicable case law. The court may not use a deferential standard.

22 SECTION 4. Section 212.0155(e), Local Government Code, is
23 amended to read as follows:

24 (e) The municipal authority may not approve the new plat
25 without adequate consideration of testimony and the record from the
26 public hearings and making the findings required by Subsection (k).
27 Not later than the 30th day after the date on which all proceedings

1 necessary for the public hearings have concluded, the municipal
2 authority shall take action on the application for the new plat.
3 Sections 212.023(a) [~~212.009(a)~~] and (b) do not apply to the
4 approval of plats under this section.

5 SECTION 5. Section 242.001(c), Local Government Code, is
6 amended to read as follows:

7 (c) Except as provided by Subsections (d)(3) and (4), a
8 municipality and a county may not both regulate subdivisions and
9 approve related permits in the extraterritorial jurisdiction of a
10 municipality after an agreement under Subsection (d) is executed.
11 The municipality and the county shall enter into a written
12 agreement that identifies the governmental entity authorized to
13 regulate subdivision plats and approve related permits in the
14 extraterritorial jurisdiction. For a municipality in existence on
15 September 1, 2001, the municipality and county shall enter into a
16 written agreement under this subsection on or before April 1, 2002.
17 For a municipality incorporated after September 1, 2001, the
18 municipality and county shall enter into a written agreement under
19 this subsection not later than the 120th day after the date the
20 municipality incorporates. On reaching an agreement, the
21 municipality and county shall certify that the agreement complies
22 with the requirements of this chapter. The municipality and the
23 county shall adopt the agreement by order, ordinance, or
24 resolution. The agreement must be amended by the municipality and
25 the county if necessary to take into account an expansion or
26 reduction in the extraterritorial jurisdiction of the
27 municipality. The municipality shall notify the county of any

1 expansion or reduction in the municipality's extraterritorial
2 jurisdiction. Any expansion or reduction in the municipality's
3 extraterritorial jurisdiction that affects property that is
4 subject to a preliminary or final plat, a plat application, or an
5 application for a related permit filed with the municipality or the
6 county or that was previously approved under Section 212.023
7 [~~212.009~~] or Chapter 232 does not affect any rights accrued under
8 Chapter 245. The approval of the plat, any permit, a plat
9 application, or an application for a related permit remains
10 effective as provided by Chapter 245 regardless of the change in
11 designation as extraterritorial jurisdiction of the municipality.

12 SECTION 6. Section 242.003(c), Local Government Code, is
13 amended to read as follows:

14 (c) The agreement must be amended by the county and the
15 municipality if necessary to take into account an expansion or
16 reduction in the extraterritorial jurisdiction of the
17 municipality. The municipality shall notify the county of any
18 expansion or reduction in the municipality's extraterritorial
19 jurisdiction. Any expansion or reduction in the municipality's
20 extraterritorial jurisdiction that affects property that is
21 subject to a preliminary or final plat, a plat application, or an
22 application for a related permit filed with the municipality or the
23 county or that was previously approved under Section 212.023
24 [~~212.009~~] or Chapter 232 does not affect any rights accrued under
25 Chapter 245. The approval of the plat, any permit, a plat
26 application, or an application for a related permit remains
27 effective as provided by Chapter 245 regardless of the change in

1 designation as extraterritorial jurisdiction of the municipality.

2 SECTION 7. Section 214.904, Local Government Code, is
3 repealed.

4 SECTION 8. The requirement that a municipality process a
5 certain percentage of development applications and development
6 inspections in a calendar year as prescribed by Section 212.028(b),
7 Local Government Code, as added by this Act, applies only to a
8 calendar year that begins on or after the effective date of this
9 Act.

10 SECTION 9. Not later than the effective date of this Act,
11 the Texas Department of Housing and Community Affairs shall comply
12 with the requirements of Section 212.029, Local Government Code, as
13 added by this Act.

14 SECTION 10. The changes in law made by this Act apply only
15 to a development application or request for a development
16 inspection, as those terms are defined by Section 212.021, Local
17 Government Code, as added by this Act, submitted on or after the
18 effective date of this Act.

19 SECTION 11. This Act takes effect January 1, 2024.