

# 2023 Legislative Update


for the  
Town of Little Elm Town  
Council

Tuesday, November 7, 2023



Robert F. Brown  
Brown & Hofmeister, L.L.P.  
Richardson, Texas

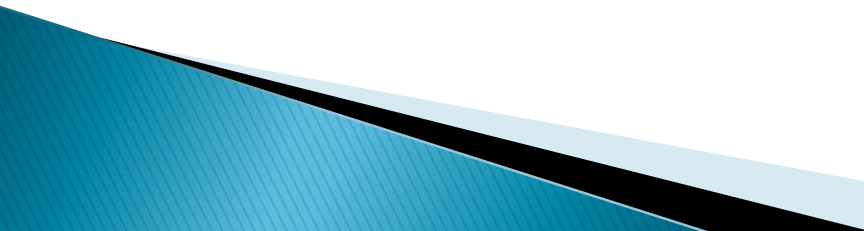
# HB 3699 (2023) – Platting Review Process Changes

- ▶ Removes plans from 30-day shot clock
  - ▶ Allows cities to delegate plat review to staff
  - ▶ Allows cities to adopt submittal calendars
  - ▶ Requires all plat application materials to be published
  - ▶ Prohibits cities and board from requiring an analysis, study, document, agreement, or similar requirement to be included as part of a plat application, development permit, or subdivision of land if not explicitly allowed by state law
- 

# SB 929 (2023) – Nonconforming Uses and Amortization

- ▶ Written notice of each public hearing to owner if there is a zoning change that results in a nonconforming use of property
- ▶ Bold 14–point text notice: “THE [CITY OF XYZ] IS HOLDING A HEARING THAT WILL DETERMINE WHETHER YOU MAY LOSE THE RIGHT TO CONTINUE USE OF YOUR PROPERTY FOR ITS CURRENT USE. PLEASE READ THIS NOTICE CAREFULLY.”

# SB 929 (2023) – Nonconforming Uses and Amortization

- ▶ SB 929 represents a sea change in how cities amortize nonconforming uses to get rid of them
  - ▶ Prior to SB 929, cities looked at the how long it took for a property owner to recoup investment in the property
  - ▶ No longer the case—now a city must pay for the market value of the use of the property (process detailed in SB 929)
  - ▶ Practical effect of SB 929: few cities will ever pay to get rid of nonconforming uses
- 

# SB 2038 (2023) – ETJ Release

- ▶ Provides for the Release of an area from the ETJ by petition or election
  - ETJ release provisions don't apply to an area:
    - Designated as industrial district
    - Subject to a strategic partnership agreement
    - Voluntarily annexed into a city's ETJ if located in high growth county with population over 240,000.
- ▶ Annexations after January 1, 2023, do not expand the ETJ unless inclusion is requested.
- ▶ If an area is released by a city from its ETJ, authority to regulate subdivisions in the area returns to the county.

# H.B. 1750 / H.J.R. 126 (2023) – Agricultural Operations


- ▶ City can't impose a requirement that applies to agricultural operations located in the city limits unless:
  - City health officer or consultant makes findings identifying evidence of health hazards; and
  - Resolution with clear and convincing evidence that requirement is necessary to protect residents in vicinity of agricultural operation from certain dangers.
- ▶ No city requirements that prohibit generally accepted agricultural practices, prohibit the use of pesticides or other measures to control vermin or disease-bearing insects, or require an agricultural operation to receive certain state designations.
- ▶ City may impose 12-inch maximum height for vegetation related to an agricultural operation if the operation is located near ROW or property boundary.

# HB 14 (2023) – Third-Party Review of Plats and Inspections

- ▶ Adds Chapter 247 to the Local Govt Code requiring third party review or inspection of development documents if regulatory authority
  - does not approve, conditionally approve, or disapprove a development document by the 15th day after date prescribed in the statute
  - does not conduct required development inspection by the 15th day after date prescribed in the statute




# HB 14 (2023) – Third-Party Review of Plats and Inspections

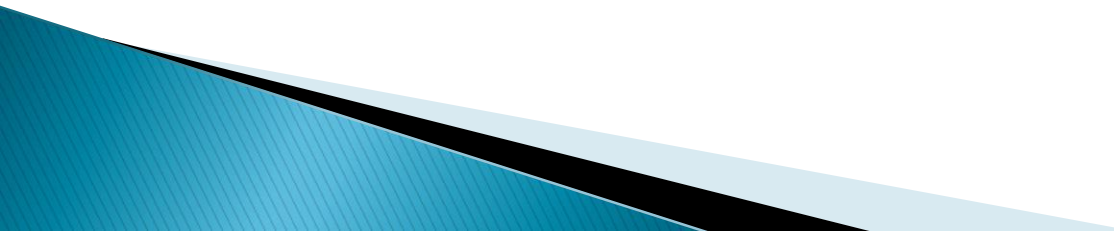
- ▶ Third party review/inspection must provide notice to city of the results of the review or inspection no later than the 15th day after completing review/inspection.
  - ▶ Applicant may appeal decision not later than the 15th day after the date the decision is made.
  - ▶ If governing body hearing appeal does not affirm the decision by a majority vote on/before the 60th day after the day is appealed, the appeal is considered approved or the inspection requirement is considered waived.
- 




# HB 1381 (2023) – P&Z Public Hearings for Zoning Changes

- ▶ Section 221.006(b) of LGC states that a “zoning commission shall make a preliminary report and hold public hearings on that report” before submission of a final report to the governing body
  - ▶ HB 1381 clarifies that at least one public hearing must be held, not “hearings”
  - ▶ Not a big issue for most cities
- 


# HB 1193 (2023) – Housing Discrimination Provision

- ▶ Property owners' association cannot include or enforce a provision in a deed restriction that prohibits or restricts a property owner from renting to someone who has a Section 8 (or similar) voucher
  - ▶ A Providence Village Homeowners Association's board passed a rule effectively banning Section 8 renters from living in the neighborhood—overwhelmingly impacted black families (93% of holders of Section 8 vouchers)
- 

# HB 1750 and 2308 (2023) – Regulation and Enforcement of Agricultural Operations

- ▶ Detailed definition of what constitutes an “agricultural operation”
  - ▶ Severely limits cities on regulations they can impose on agricultural operations, but can impose at least 12-inch vegetation heights with certain distance restrictions
  - ▶ Cities cannot impose restrictions on most agricultural operations inside a city
  - ▶ Courts can impose an unlimited array of damages on cities (“any damages found by a trier of fact”)
  - ▶ HB 2947 expands definition of “agricultural operation” and preempts nuisance actions
- 

# SB 543 (2023) – Conveyance of Property by City for Economic Development Purposes

- ▶ Does Chapter 380 authorize a city to convey property it owns free of charge to a private entity for economic development purposes?
  - ▶ Although some cities did so, no statutory basis for such a conveyance
  - ▶ SB 543 now authorizes a city to convey property (not a park or public square) for free to an economic development prospect
  - ▶ Use of the property must be for a public purpose relating to economic development
  - ▶ Must have a written agreement (Chapter 380 agreement) with claw back provisions in the event of non-performance
  - ▶ Notification requirements in newspaper or other means if no newspaper
- 

# HB 2956 (2023) – Annexation Across Railway Right-of-Way

- ▶ In the past, a city could not annex property in the ETJ if a rail line separated the city from property in the ETJ—the rail line was a “Berlin Wall” that could not be crossed unless the rail company agreed to annexation as well
- ▶ HB 2956 now allows a city to annex adjacent ETJ property without annexing contiguous and parallel rail lines, rail spurs or railroad property
- ▶ Each property owner must agree to the annexation

# HB 586 (2023) – Annexation of Road Right-of-Way

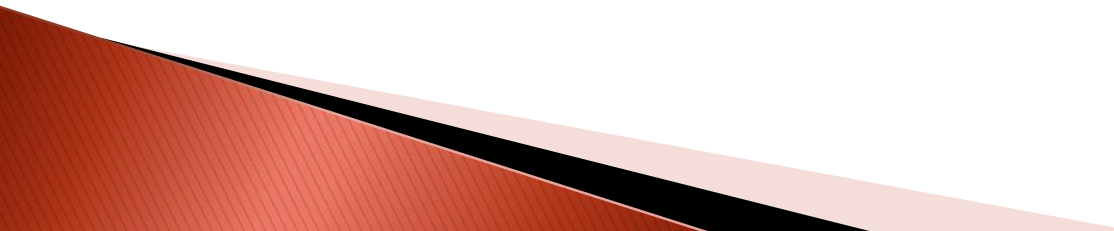
- ▶ Authorizes a city to annex road ROW that is contiguous to the city's boundary, either parallel to a boundary or to area being annexed or connects the boundary of a city to area being annexed (with certain ETJ issues addressed)
- ▶ Either owner of ROW or governing body of political entity owning the ROW requests the annexation or if the political entity does not object to the annexation (after notice at least 61 days prior to annexation date)
- ▶ This type of annexation does not expand ETJ

# SB 1340 (2023) – Incentive Agreement Database

- ▶ All city and county property tax incentive agreements must be kept in the Comptroller's searchable database
- ▶ 380 and 381 agreements already required to be kept in database, but now tax incentive agreements under the Tax Code are included
- ▶ Specific requirements for the information that is searchable in the Comptroller's database—including entity contact information, total monetary value of the incentives, source of money used (HOT, sales tax, property tax) and Internet link to the agreement—and Comptroller will prescribe the form and manner entities must use



# H.B. 1922 (2023) – Reauthorization of Building Permit Fees


- ▶ All building permit fees are abolished on the 10th anniversary of their adoption or most recent reauthorization
  - ▶ Prior to the anniversary date, a governing body must hold a public hearing on the reauthorization of the fee and then vote on the reauthorization
  - ▶ Practical effect—we will see lots of building permit fee reauthorization hearings after 1-1-24
- 

# HB 3526 (2023) – Solar Pergolas

- ▶ Cities cannot apply local building codes to the construction of solar pergolas

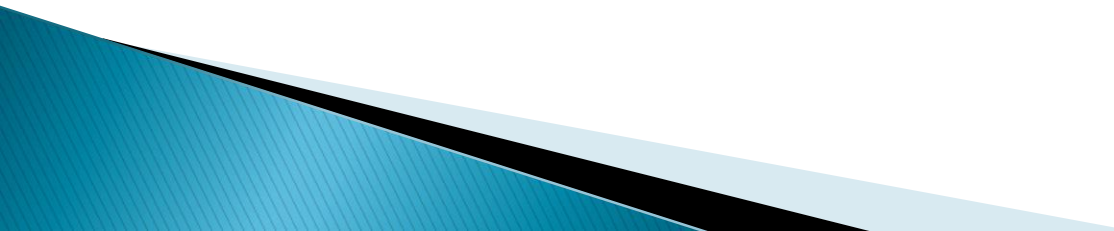


# HB 1707 (2023) – Open enrollment Charter Schools

- ▶ Open enrollment charter schools now treated the same as public schools and school districts relative to zoning, platting, licensing, utilities, signage and tree and vegetation requirements, among others
  - ▶ But, open enrollment charter schools do NOT have the power of eminent domain and pays water and wastewater (not roadway) impact fees under Chapter 395 of the LGC
- 

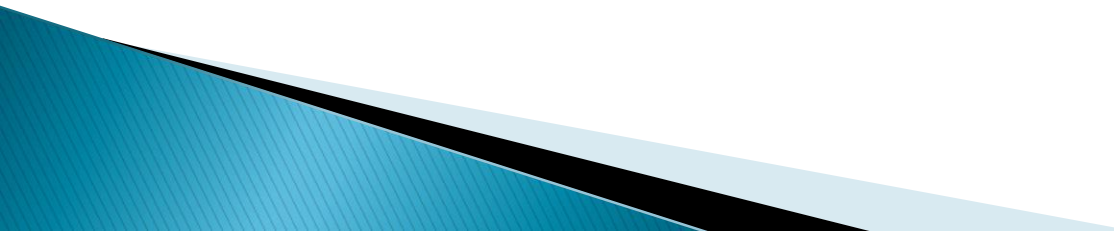
# Preemption – H.B. 2127

## H.B. 2127:

- ▶ Expressly preempts certain home rule city regulations;
  - ▶ Potentially preempts other home rule city regulations in fields occupied by state statute in particular codes, depending on how courts rule;
  - ▶ Creates a cause of action for lawsuits against a home rule city to determine whether a city regulation is preempted; and
  - ▶ Requires three months notice before a claimant may bring a lawsuit against a city.
- 

# Preemption – H.B. 2127


What city authority is expressly protected?

- ▶ Existing payday lending ordinances, if valid under previous law
  - ▶ Existing regulations of the retail sale of dogs or cats, until the state adopts statewide regulations
  - ▶ Ability to regulate a massage establishment
  - ▶ Ability to maintain roads, impose taxes, and carry out any authority expressly authorized by statute
  - ▶ Authority to conduct a public awareness campaign
  - ▶ Ability to negotiate terms of a collective bargaining agreement
  - ▶ Adoption of policies related to city employees
- 



# Preemption – H.B. 2127

Which city regulations are expressly preempted by the bill?

- ▶ Regulations relating to employment leave, hiring practices, breaks, employment benefits, scheduling practices, and other terms of employment that exceed or conflict with federal or state law
  - ▶ Regulations involving the breeding, care, treatment, or sale of animals or animal products if person holds a license for the business issued by federal or state government.
  - ▶ Regulations of evictions or delivery of notice to vacate prior to an eviction
- 

# Preemption – H.B. 2127

Which city regulations *may* be preempted by the bill?

Unless expressly authorized, a city ordinance that regulates conduct in a field of regulation that is occupied by a provision of one of the following codes is void and unenforceable:

- Agriculture Code
- Business & Commerce Code
- Finance Code
- Insurance Code
- Labor Code
- Natural Resources Code
- Occupations Code
- Property Code

When does a state statute occupy a field of regulation?



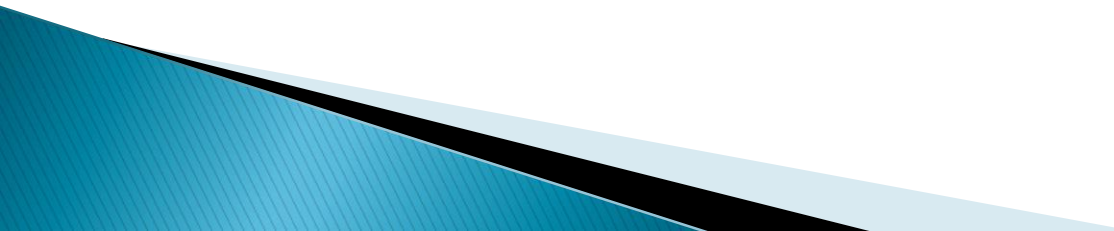


# Preemption – H.B. 2127

- ▶ H.B. 2127 is effective September 1, 2023
- ▶ Consult your city attorney about how to proceed
- ▶ Three-month notice prior to suit gives cities ability to review and repeal or amend, if necessary, before suit
- ▶ Extent of city preemption won't be fully known for years while courts define “field preemption”\*

\*Postscript – *City of Houston v. State of Texas* filed 7/5/2023, allegations include that law is unconstitutionally vague and also that it violates the Texas constitution home rule provisions. On August 30, 2023, a Travis County district judge declared that H.B. 2127, the Texas Regulatory Consistency Act, was unconstitutional.

## Other Miscellaneous\*

- **Public Safety** - H.B. 1819 – Prohibits local juvenile curfews;
  - **Open Gov't** - H.B. 3033 – PIA request reforms (business days, vexatious requestors, electronic submission)
  - **Elections** H.B. 3613 – Unifying single member district councilmember terms
- 

# Questions?

